

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

CLINICAS DE SALUD DEL PUEBLO, INC.,  
D/B/A INNERCARE

and

Cases: 21-CA-344340  
21-CA-344657  
21-CA-344978  
21-CA-344986  
21-CA-345332  
21-CA-345714  
21-CA-345822  
21-CA-346136  
21-CA-346184  
21-CA-347518  
21-CA-353720  
21-RC-344126  
21-RC-344127

SEIU UNITED HEALTHCARE WORKERS - WEST, CLC

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**Decision**

Eleanor Laws, Administrative Law Judge.

## STATEMENT OF THE CASE

This case arises out of a campaign by SEIU United Healthcare Workers – West, CLC (the Union) to organize the employees of Clinicas de Salud del Pueblo, Inc., d/b/a Innercare (the Respondent or Innercare), a nonprofit community health system serving low-income patients across Imperial and Riverside Counties, California. The organizing drive was hard-fought and contentious, and emotions ran high on both sides. On June 10, 2024, claiming the support of a majority of the employees it sought to represent, the Union demanded recognition and filed two representation petitions with the Board. Innercare did not voluntarily recognize the Union; instead, the parties entered a June 21, 2024, stipulated election agreement that combined the two petitioned-for units into a single appropriate unit, conformed the petitions to that unit, and set a mail-ballot election for July 11–26, 2024.<sup>1</sup>

The consolidated complaint alleges that, during the critical period between the petition and election, Innercare violated the National Labor Relations Act (the Act). The Section 8(a)(1) allegations include unlawful interrogation, threats, creating an impression of surveillance, and restrictions on union materials and employees’ access to non-working areas. The Section 8(a)(3) allegations involve the discharge of six employees, demotion of an employee, and changes to an employee’s travel assignments.<sup>2</sup> As explained below, I find that the Respondent committed most of the unfair labor practices alleged and that its misconduct requires the election to be set aside. I deny the request for a bargaining order under *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023),<sup>3</sup> or in the alternative, *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), however, because as to *Cemex* and *Gissel* category II, the Union did not have majority status in the single, combined bargaining unit the parties stipulated to be appropriate, and as to *Gissel* category I, the Respondent’s conduct, though serious, did not rise to the requisite level.

A trial was conducted in this matter from March 17-27, 2026, in San Diego, California. Counsel for the General Counsel, the Charging Party, and the Respondent filed post-trial briefs in support of their positions by June 15, 2026.

On the entire record, I make the following findings, conclusions of law, and recommendations.<sup>4</sup>

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<sup>1</sup> All dates are in 2024 unless otherwise indicated.

<sup>2</sup> Paragraphs 5 and 6 of the complaint were withdrawn at the hearing. (Tr. 592-593.)

<sup>3</sup> The Sixth Circuit has since declined to enforce a bargaining order resting on *Cemex*, holding that the standard “was created through an improper exercise of the Board’s adjudicatory authority” and so “cannot serve as the basis for a bargaining order.” *Brown-Forman Corp. v. NLRB*, 169 F.4th 646 (6th Cir. 2026). Under the Board’s policy of nonacquiescence, however, the Board adheres to its own precedent “until the Supreme Court of the United States has ruled otherwise.” *Arvin Indus.*, 285 NLRB 753 (1987). *Cemex* thus remains binding Board precedent that I am obligated to apply.

<sup>4</sup> The General Counsel filed a motion to correct the transcript, with listed corrections covering more than 3 pages. Neither party opposes the motion, and it is hereby granted and admitted into the record as administrative law judge (ALJ) Exhibit 1. In addition to the corrections noted in

## FINDINGS OF FACT

## JURISDICTION

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At all material times, the Respondent, a California corporation with principal offices located at 852 East Danenberg Drive, El Centro, California, and facilities located throughout Imperial and Riverside Counties, has been engaged in the business of providing primary care services to residents throughout these Counties. In performing its services, the Respondent derived gross revenues in excess of \$1,000,000, and purchased and received at its California facilities, goods valued in excess of \$50,000 directly from points outside the State of California.

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At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a healthcare institution within the meaning of Section 2(14) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

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## ALLEGED UNFAIR LABOR PRACTICES

## A. Background

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## 1. The Respondent's Operations

Innecare operates 10 medical clinics, four dental and three women, infants, and children (WIC) locations and has around 650 employees. As a nonprofit, federally qualified community health system, Innecare serves primarily low-income rural clients.

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Innecare's corporate office is in El Centro, and is open Monday through Friday from 7:00 a.m. to 6:00 p.m. The El Centro facility has two levels. The first floor houses the clinic, and the second floor houses the corporate offices. A two-story glass-fronted lobby/atrium at the front provides visibility between outside and inside. Corporate offices on the second floor surround this glass atrium. A large lobby window overlooks the exterior parking/sidewalk area. On the second floor, which is divided by the atrium, one side houses finance functions (billing, purchasing, accounting). The other side houses IT, higher management, and human resources (HR). Management offices are distributed around the level, with many finance/administrative teams in open cubicle areas.

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Other Innecare facilities are located throughout the area, including in Blythe, Brawley, Calexico, Coachella, Hemet, Mecca, Salton City, and Winterhaven.<sup>5</sup>

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ALJ Exhibit 1, on p. 272 line 14, replace "A" with "THE INTERPRETER."

<sup>5</sup> Some of these locations are home to facilities at more than one location/address.

During the relevant period, Yvonne Bell was Innercare’s chief executive officer (CEO). Young Kwon was the chief legal officer (CLO) and chief human resources officer (CHRO).<sup>6</sup> Marlene Rizo was the chief financial officer (CFO). Carole Felix was the vice president of human resources (HR VP) and Laura Ryan was HR Manager. Dr. Allen Wu was the chief medical officer (CMO).

## 2. The Union and Organizing Efforts

The Union began organizing efforts in 2023, seeking to organize all Innercare locations. Elliott Petty was the lead organizer assigned to the Innercare campaign, and Liliana Diaz, an organizer from the Union worked on the campaign. An organizing committee of about 30 Innercare workers was formed. As detailed below, the organizing committee members distributed union flyers and gear, talked to coworkers about the Union, and wore union T-shirts, pins, scrunchies and other items. The SEIU’s color was purple, so union supporters wore purple clothing and accessories to show their support.<sup>7</sup> Organizing committee members visited employees at their homes and called them.

### a. Solicitation of authorization cards

The Union solicited authorization cards from employees during its campaign. The cards were available in both printed and electronic format. The text of both versions was in English and Spanish. (GC Exhs. 52, 53.)<sup>8</sup> The cards contained a statement expressing support for the Union and the understanding that the card would be filed with the NLRB. Below this statement were fields for the employee to input their name, personal email address, cell phone number, the health center and department in which they worked, their job title, home address, city, zip code, work status, and the reason they supported forming a union. On the electronic card submission form, there was also an open field for employees to identify which person provided the electronic authorization card to them.<sup>9</sup> (GC Exh. 52.)

<sup>6</sup> Because the allegations are HR-focused, Kwon is referenced throughout this decision as CHRO Kwon.

<sup>7</sup> HR VP Felix was aware, during the organizing campaign, that employees wore purple to show support for the Union. (Tr. 1237.)

Abbreviations used in this decision are as follows: “Tr.” for transcript; “R Exh.” for Respondent’s exhibit; “GC Exh.” for General Counsel’s exhibit; “CP Exh.” for Charging Party’s exhibit; “GC Br.” for the General Counsel’s brief, “R Br.” for the Respondent’s brief, and “CP Br.” for the Charging Party’s brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited but rather are based on my review and consideration of the entire record.

<sup>8</sup> The Spanish language version of the physical card appears to contain the same message as the English version but also includes a final sentence that is not part of the English version. It is in Spanish and was not translated. (GC Exh. 52 p. 10.)

<sup>9</sup> In the spreadsheets admitted at the hearing listing the names and information of individuals who had signed electronic authorization cards, there was no column including information about who provided the employee with the card. (GC Exhs. 52, 53.)

The Union’s Assistant Director, Elliott Petty, testified generally about his role in the creation of the electronic authorization cards and the procedure for employees to access and sign electronic authorization cards. To access the page with the authorization card form, employees need to click a link they typically would receive from a coworker, union supporter, or union organizer. After an employee clicked the online button to submit their completed authorization card, the Union’s system would automatically generate a confirmation email to the employee that was also sent to several individuals from the Union. (Tr. 568-570.) The confirmation email summarized the content of the information provided and alerted the recipient to immediately reply to the email if they did not submit the authorization card. The Union received no emails from employees in response to these emails claiming they had not filled out an authorization card.<sup>10</sup> (GC Exhs. 52, 53.)

The Union presented two spreadsheets listing 87 employees who had submitted electronic authorization cards. (GC Exhs. 52, 53.) The spreadsheets were prepared by the Union’s data department using a computer program that populates the report once workers click submit. (Tr. 569.) The spreadsheets contain separate columns for first name, last name, email, mobile, job title, IP address, date card submitted, and e-signed card notes.<sup>11</sup> Petty explained that the distinct IP addresses reflect that users used unique devices to submit the electronic authorization cards, rather than one person sitting at a computer punching in employees’ names. (Tr. 569.)

Of the electronic authorization cards provided by the General Counsel in support of the Union’s majority support, only one was authenticated by the person who signed it, employee Nayelli Garcia. (Tr. 219; GC Exh. 23.) Employee Maabel Quevedo-Cuevas testified she had “probably more than 24” employees submit electronic authorization cards, but she did not identify any of those employees or explain how she knew the solicited employees had submitted electronic authorization cards. (Tr. 441-442). Petty did not testify about any individual’s electronic authorization card and provided no evidence that he provided the URL link or otherwise solicited cards from any of the 87 card signers.

b. Request for recognition and the open letter

On June 10, 2024, Petty sent an email to CEO Bell and CHRO Kwon requesting recognition of two units, a service and technical unit and a WIC (women, infants, and children) unit, based on a showing of majority support.<sup>12</sup> The email described the service and technical unit as consisting of 122 classifications across 14 facilities. One of the listed classifications was “unknown.” (GC Exh. 51.) According to Petty, there were approximately 450 employees in the service and technical unit. (Tr. 563.) Before June 10, the Union had collected authorization cards from 259 employees in this unit, or 57.5%.

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<sup>10</sup> Petty also prepared a declaration concerning the methodology used for collecting electronic authorization cards that appears to be in accordance with the requirements set forth in General Counsel Memorandum 15-08 (Revised) *Guidance Memorandum on Electronic Signatures to Support a Showing of Interest*. (GC Exhs. 52, 53.)

<sup>11</sup> The e-signed card notes column contains information presumably from the field asking employees to write why they supported forming a union.

<sup>12</sup> Inncare hired a labor consulting firm, A&S Consulting, on June 5, 2024. (GC Exh. 102.)

Eighty-one were signed digitally, and 178 paper authorization cards were physically signed by employees. (GC Exh. 52). For the WIC unit, the Union’s June 10 email identified eleven classifications across three WIC facilities.<sup>13</sup> (GC Exh. 51.) Three of those classifications – janitor, WIC call center, and receptionist – were also included in the service and technical unit, albeit in different facilities. According to Petty, there were approximately 20 employees in the WIC unit. (Tr. 564.) Before June 10, the Union had collected authorization cards from nine employees in the WIC unit, or 45%. Six were signed digitally and three were physically signed paper authorization cards.<sup>14</sup> (GC Exh. 53.) Innercare did not respond to the email. (Tr. 564.)

The Union also filed two petitions for representation with the Board on June 10, seeking to represent the same units, accompanied by the signed authorization cards. (GC Exhs. 1(a), (b), 52, 53; Tr. 565-574.) The Union checked box 7a in both RC petitions that requests Respondent recognize the Union as the bargaining representative of the petitioned-for units. (GC Exhs. 1(a) & 1(b).)

On June 10, 2024, employee union organizers Alejandro Ascolani and Maabel Quevedo gave a flyer, which included an open letter to coworkers, to a supervisor on the second floor of the El Centro facility (the June 10 flyer or open letter flyer). (GC Exh. 3; Tr. 442-443.) The flyer was posted and distributed throughout Innercare’s facilities. (Tr. 39-42, 443.) The flyer was an 8x10 single-fold brochure. The front of the flyer depicted a large photo of a female wearing an SEIU purple shirt and hat, and an SEIU lanyard. A couple individuals stood behind her. Beneath her, on a smaller scale, were 10 individuals and the slogan “LET’S WIN A BETTER FUTURE at Clinicas de Salud Del Pueblo Inc./Innercare.” The opened flyer’s interior depicted individual headshot pictures and job positions of the organizing committee members on the left side, and an open letter on the right side.<sup>15</sup> The back of the flyer depicted a large picture of a patient registration representative from a non-Innercare facility represented by the SEIU with a quotation about the benefits of the Union. The flyer announced that the Union had filed a petition and set out the Union’s goals. (GC Exh. 3.) A couple of days later, Quevedo posted the flyer on her public Instagram with a message saying they had just filed for a union election. (GC Exh. 30; Tr. 444.)

### c. Stipulated election agreement

<sup>13</sup> There was no overlap between the facilities in the two units.

<sup>14</sup> When submitting the showings of interest supporting the representation petitions to the Board, in accordance with General Counsel Memorandum 15-08, Petty included declarations concerning the submission of the electronic signatures the Union had obtained from employees that described the Union’s electronic authorization form, how employees accessed the form, the information they were required to fill out, the process to electronically sign, the confirming transmission to the e-mail provided by the employee, and the fact that the Union had not received responses to the confirmation transmissions prior to the filing of the petitions.

<sup>15</sup> The pictured organizers included Alejandro Ascolani, Maabel Quevedo, and Francisco Borjon.

Pursuant to the terms of a stipulated election agreement executed on June 21, the “Service and Technical Unit” and “WIC Unit” were combined into one appropriate unit:

INCLUDED:

5 All regular full-time, part-time, and per diem Administrative Assistants,  
 Assistant Managers, Behavioral Health Case Managers, Behavioral Health  
 Medical Assistants, Behavioral Health Patient Representatives, Billers (I, II),  
 Billing Clerks (I, II), Bookkeepers, Breastfeeding Coordinators, Call Center Patient  
 Representatives, Call Center Support, Case Managers, Certified  
 10 Professional Coders, Clerks, Coders, Communications, Community Health  
 Workers (I, II), Coordinators, Credentialing Specialists, Dental Assistants,  
 Dental Assistants/Patient Representatives, Dental Patient Representatives, Drivers,  
 Education Counselors, ECM Community Health, Financial Analysts, Greeters,  
 Health Navigators, HEDIS Patient Representatives, Housekeepers, Internal Auditor  
 15 Specialists, IT Programmer Analysts, IT Support Technicians, IT Systems  
 Analysts, Janitors, Junior Systems Specialists, Laboratory Assistants, Lead  
 Behavioral Case Manager, Lead Medical Assistants, Lead Patient Representatives,  
 Lead Referral Coordinators, Lead Registered Dental Assistants, Licensed  
 Vocational Nurses, Maintenance Workers, Marketing and Outreach Specialists,  
 20 Medical Assistants/Referral Clerks, Medical Assistants (I, II, III), Medical  
 Assistant/Phlebotomists, Medical Assistant/Scribes, Medical Records  
 Representatives, Medical Records/Patient Representatives, Nutrition Assistants,  
 Nutritionists, Occupational Health Coordinators, Optometrist Assistants,  
 Orthopedic Technicians, Outreach & Enrollment Specialists, Patient  
 25 Representatives, Payroll Assistants, PBX Operators, Pharmacy Clerks, Pharmacy  
 Delivery Drivers, Pharmacy Technicians (I, II), Phlebotomists (I, II, Float), Prep  
 Case Managers, Prior Authorization Specialists, Purchasing Buyers, Purchasing  
 Buyers/Bookkeepers, Purchasing Clerks, QI/QA Administrative Assistant, QI/QA  
 Coordinator, Radiology Technicians, Radiology Coordinators, Receptionists,  
 30 Referral Clerks, Referral Coordinators, Referrals Assistant Managers, Regional  
 Breastfeeding Liaison, Registered Dental Assistant, Registration Coordinators,  
 Risk Managers, Schedulers, Scribes, Sonographers, Substance Abuse Counselors,  
 Surgery Schedulers, Telehealth Technicians, Ultrasound Technicians, Ultrasound  
 Technicians OB, WIC Nutrition Support, WIC Patient Representatives and X-Ray  
 35 Technicians employed by the Employer at its California facilities currently located  
 at 1415 West Hobson Way, Blythe; 900 Main Street, Brawley; 223 West Cole  
 Boulevard, Calexico; 50249 Cesar Chavez, Suite K, Coachella; 1023 East Florida  
 Avenue, Hemet; 91-275 66th Avenue, Suite 500, PO Box 1378, Mecca; 8027  
 Highway 111, Niland; 1166 K Street; Brawley; 1289 South Marina Drive, PO Box  
 40 5720, Salton City; 900 Main Street, Brawley; 852 East Danenberg Drive, El Centro;  
 283 Main Street, Unit 102, PO Box 1279, Brawley; 233 West Cole Boulevard,  
 Calexico; 91275 66th Avenue, Suite 300, PO Box 1378, Mecca; 91-275 66th  
 Avenue, Suite 200, Mecca; 561 East Street; Brawley; 2451 Rockwood Avenue,  
 Suite 109, Calexico; 2600 Thomas Drive, El Centro and 2133 Winterhaven Drive,  
 45 Winterhaven.

## EXCLUDED:

All other employees, confidential employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

- 5 The stipulated election agreement amends the underlying petitions to conform to the agreement that contains the description of the appropriate unit. (GC Exh. 54.)

10 There are substantive differences between the combined single unit the parties stipulated to be appropriate and the originally sought separate units. In addition to the 17 facilities identified on the Union's June 10 request for recognition, the stipulated unit included an 18<sup>th</sup> facility located at 1166 K Street in Brawley. Also, the request for recognition identified 133 job classifications across the two units, whereas the stipulated joint unit includes approximately 100 classifications. (GC Exhs. 51, 55.)

15 The stipulated election agreement established a mail ballot election between July 11-26. The July 26 tally of ballots reflected approximately 463 eligible voters, with 132 votes in favor of Union representation and 214 against representation, with 15 challenged ballots, with 361 total ballots counted, including the challenged ballots.<sup>16</sup> (GC Exh. 60.) Of the approximately 463 eligible voters, 258, or 55.7%, had signed authorization cards. (GC Exhs. 52-53, 55.)

### 3. Relevant Rules, Policies, and Practices

25 Innercare maintains various workplace rules and policies and follows certain practices. They are mostly contained in an employee handbook which covers a broad variety of topics. (GC Exh. 15.) Directors train the supervisors on the handbook provisions by going over the policies and the expectations around them. (Tr. 1235.) Changes to Innercare's policies, including changes to the handbook, are communicated to employees by all-staff emails. (Tr. 1089.)

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#### a. Workplace Investigations and Discipline

35 When HR receives an employee complaint, they review it and determine whether, if true, it implicates any Innercare policies. If it does, HR launches an investigation during which it interviews and requests statements from all involved, reviews relevant documents, gives the employee an opportunity to respond, and recommends how to move forward. (Tr. 911, 1083-1084.) HR notifies the employee's supervisor, and if the supervisor has input, they may share it. (Tr. 1239.) HR VP Felix consults with CHRO Kwon about investigations and recommends what type of discipline, if any, an employee should receive. Kwon usually, but not always, agrees with Felix's recommendations. (Tr. 1242-1243.)

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<sup>16</sup> The voter list contained 455 approved voters, with one voter subject to challenge. Sara Garcia appears on the list twice. (GC Exh. 55.) The voter count, however, was 463, indicating others voted, and there were 5 void ballots and 15 challenged ballots. (GC Exh. 60.) Of the employees on the voter list, 165 worked in El Centro, 90 in Brawley, 70 in Calexico, 46 in Coachella, 33 in Mecca, 22 in Blythe, 17 in Hemet, 4 in a referral center, 4 in Winterhaven, 3 in Niland, and 1 who worked at home.

The employee handbook addresses discipline. Section 18.5 provides that, although employment is at will, Inncare may use progressive discipline at its discretion, and §18.6 sets out a five-step structure (oral reprimand, written reprimand, disciplinary probation, unpaid suspension, dismissal). The handbook makes clear the schedule is discretionary and does not mandate termination for any listed offense. (GC Exh. 15.) HR management and senior management, which includes Felix and Kwon, determine when to use progressive discipline.<sup>17</sup> The employee’s supervisor provides input. (Tr. 960-961.)

The handbook, at section 18.3, entitled “Grounds for Discipline” provides a non-exhaustive list of offenses, including theft, for which employees may be “admonished, reprimanded, suspended, demoted, or discharged.” (GC Exh. 15.)<sup>18</sup> The handbook explicitly addresses conduct for which Inncare has zero tolerance: (1) workplace violence, and (2) manufacturing, distributing, dispensing, possessing, or using controlled substances in the workplace, and using drugs or alcohol at work.

#### b. Confidential Information

Inncare’s confidentiality policy, at Section 8.8 of the handbook, states:

Employees are expected to maintain confidentiality at all times with regard to confidential or private information that they obtain in the course of their employment. Such Confidential Information may include: Inncare’s business or financial information, a patient’s identity, address, social security number, date of birth, insurance, treatment, prescriptions, diagnosis, or family information; or the identity, address, social security number, date of birth of a Inncare employee and/or members of the Board of Directors.

Section 17.8 of the handbook, entitled “Confidential Information While Using Technical Resources,” reiterates the definition of confidential information, and prohibits employees from viewing it on Inncare’s equipment unless required for their job. Section 17.11, entitled “Employee Responsibilities,” echoes that employees may access only files or programs, whether computerized or not, that they have permission to enter, and warns that violations may result in termination of access to the internet and/or disciplinary action (including termination) or legal action.

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<sup>17</sup> HR VP Felix testified that it was CHRO Kwon who determined whether an infraction is serious enough for termination. (Tr. 1238.)

<sup>18</sup> Inncare managers testified that all incidents of theft lead to termination, bypassing progressive discipline, but this policy is not stated in the handbook or other written policy, but instead is precedent in HR. (Tr. 963-964, 1085, 1240.) Felix initially testified that the termination mandate for theft was in the handbook, but after counsel for the General Counsel pointed her to the relevant handbook provisions, she agreed that the handbook did not mandate termination for theft. As explored below, this unpublished oral rule does not withstand scrutiny.

HR Manager Ryan did not know where the practice of automatic termination for all theft was defined or described. (Tr. 964.)

Innecare’s employees must not disclose protected health information as defined by the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d–1320d-9; 45 CFR Parts 160 and 164. Violations of HIPAA can result in fines and/or criminal penalties for Innecare and/or the culpable employee. *Id.*

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Employees beginning work at Innecare must sign a HIPAA attestation titled the “HIPAA Privacy/Security Agreement for Member of the Workforce.” The agreement requires workforce members to safeguard all confidential information from unauthorized access and disclosure and provides that unauthorized access or disclosure is prohibited and may result in disciplinary action up to and including termination, as well as civil and criminal penalties. It prohibits employees from accessing, viewing, altering, or deleting their own records — or accessing any patient’s or other person’s records — without an express, legitimate business need, and bars using one’s employee status to obtain another person’s information unless required to perform the job. Significantly, these restrictions reach not only protected health information covered by HIPAA but also employees’ own and others’ financial and employment information maintained in Innecare’s systems. (GC Exh. 12.)<sup>19</sup>

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Violation of company policy, including the confidentiality policies, is included in the “Grounds for Discipline” list of offenses for which employees may be “admonished, reprimanded, suspended, demoted, or discharged” pursuant to Section 18.3 of the handbook.<sup>20</sup>

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#### c. Attendance-Related Provisions

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Innecare’s employees accrue paid time off (PTO). Under Section 11.5 of the handbook, PTO must be approved by the employee’s supervisor before the leave is taken, except for illness or an unforeseen emergency such as an accident, an urgent matter at home, sudden medical or dental needs of the employee or a family member, or a child’s immediate safety and welfare needs. For non-emergency absences or routine illness such as a medical appointment, a supervisor may disapprove a PTO request that is submitted without proper notice or that does not meet the handbook’s timelines, and employees are generally expected to give four weeks’ notice. The handbook treats sick time as part of

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<sup>19</sup> GC Exh. 12 is Alejandro Ascolani’s HIPAA acknowledgment form, signed on November 11, 2021. GC Exh. 20 is Oscar Munguia’s. Munguia was also required to sign a separate HIPAA Privacy/Security Agreement, that only addressed protected health information, not financial information. (GC Exh. 21.)

<sup>20</sup> HR VP Felix initially testified that unauthorized access to confidential employee information, patient information, or financial information always resulted in immediate termination. (Tr. 1085.) She later testified that HIPAA violations, which she believed covered accessing a patient’s private information, an employee’s private information, or financial information without authorization, did not necessarily result in termination. She said a patient who only accessed their own chart or a family member’s chart one time may not be terminated. (Tr. 1130-1131.) Even later, she testified that Innecare had a written policy mandating termination for unauthorized access to confidential information in section 18.3 of the employee handbook but then conceded the handbook did not require termination. (Tr. 1241.)

HIPAA is confined to protected health information (PHI) by the terms of the statute.

PTO rather than as a separate bank. Under Section 11.7, once an employee exhausts PTO, any additional time off is classified as leave without pay (LWOP); excessive use of LWOP may result in disciplinary action unless the time off is protected by applicable law, and an employee who still has accrued PTO must use it for such absences. The handbook does not specify how many absences constitute “excessive” use, nor does it define an “unexcused” absence; those determinations are left to HR’s discretion. Innercare also maintains an extended illness bank (EIB) for illnesses lasting more than two days, which requires medical documentation, and provides for leave for illnesses lasting more than five days, including leave under the FMLA. (GC Exh. 15.)

d. Solicitation

Innercare’s solicitation policy, at Section 8.11 of the employee handbook, provides:

Solicitation, whether for an organization or an employee and his/her immediate family . . . is only allowed in non-work areas when all employees involved are on their rest periods, lunch breaks or are otherwise off duty. Solicitation, other than for a gift for an employee, requires the prior approval from Human Resources Department. No outside vendors are permitted on Innercare’s property.

B. Alejandro Ascolani and Oscar Munguia

Alejandro Ascolani and Oscar Munguia worked at adjacent cubicles in Innercare’s finance department in El Centro. Ascolani worked for Innercare from November 1, 2021, until his termination on June 18, 2024. He started as a purchasing clerk and was promoted to bookkeeper in February 2022. As bookkeeper, Ascolani’s duties included reconciling all the purchases that were made with the company’s credit card and processing all incoming payments from insurance companies and patients.<sup>21</sup> (Tr. 34; R Exh. 1.) Ascolani reported to Luz Lara, business manager. Lara reported to CFO Rizo. (Tr. 35-36.) Sofia Ramirez, the billing director, also supervised Ascolani.<sup>22</sup> (Tr. 44.)

Munguia worked as a purchasing buyer from June 16, 2021, until his termination on June 27, 2024.<sup>23</sup> In that capacity, he bought medical, dental, and office supplies. His role required him to access purchase orders and requisitions, upload orders of purchasing receipts and invoices, and work with accounts payable to ensure invoices were received and paid in a timely manner. (Tr. 157; R Exh. 2.) He reported to Maritza Romero, the purchasing manager, until her termination in April 2024. In June 2024, Irma Adame,

<sup>21</sup> The Biller I job description appears in the file at R Exh. 1. It was inadvertently submitted, and R Exh. 1 has been replaced with the bookkeeper position description. (R Br. 39.) A joint motion to correct the record, which is hereby granted, substitutes the bookkeeper job description for the biller I job description.

<sup>22</sup> The complaint was amended to include Ramirez as a supervisor of the Respondent.

<sup>23</sup> Munguia acknowledged receipt of Innercare’s employee manual on June 14, 2021. (R Exh. 3.) He signed a confidentiality pledge on June 14, 2021, agreeing only to access information for which he had received instructions, and to maintain confidentiality, safeguard his access code, etc. (R Exh. 4.)

accounts payable purchasing manager, became Munguia’s supervisor.<sup>24</sup> (Tr. 158, 196, 760.)

As a member of the Union’s organizing committee, Ascolani began visibly supporting the Union around April 2024 by distributing flyers, wearing SEIU/purple items, and talking to employees during breaks about the importance of having a union at Innercare. (Tr. 40-43.) Munguia became involved with the Union in May 2024, attending four or five meetings in May and June. He handed out flyers and talked to coworkers about the Union. (Tr. 161.) Both Ascolani and Munguia signed union authorization cards.

#### 1. Munguia Interaction with Adame over the June 10 Flyer

The week of June 10, union organizers were handing out flyers before work at the El Centro facility. (Tr. 770.) That Wednesday, June 12, Munguia received the June 10 flyer with the open letter and put it on his desk. (Tr. 163; GC Exh. 3.) Munguia’s new supervisor, Purchasing Manager Adame, asked Munguia what the flyer was, why he had it, and where he had gotten it. Munguia felt afraid and told Adame he grabbed the flyer from downstairs but had not had time to read it so he did not know what it was about, but he would read it when he had time during his break. Adame asked if she could take the flyer and Munguia said she could. Munguia described Adame as aggressive. (Tr. 163-164.) Ascolani was sitting in the cubicle across from Munguia and heard Adame question Munguia about the union flyer. He overheard Adame asking to take the flyer and saw her take it. Ascolani perceived Adame’s tone as aggressive and threatening and observed Munguia’s voice was shaking. Ascolani recalled that even when Munguia told Adame he did not know what the flyer was about, she repeatedly asked why he had it on his desk.<sup>25</sup> (Tr. 44-46.)

#### 2. Ascolani’s June 14 Demotion and Union Flyer Instructions

As bookkeeper, part of Ascolani’s job was to deposit checks. He received dozens of checks each day and deposited them daily or every other day. (Tr. 118.) He was also responsible for reconciling credit cards, including the CEO’s. (Tr. 1123.) According to CFO Rizo, everyone in the finance department had access to a program called DocStar, which stores financial information.<sup>26</sup> (Tr. 639.)

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<sup>24</sup> Munguia thought he would be promoted to Adame’s position and believed it was offered to Adame because she was personally closer to Rizo. (Tr. 519.)

<sup>25</sup> Adame described the interaction differently. She said she went to Munguia’s desk, saw a pamphlet of some sort on his desk with some pictures, got curious, and picked it up. She asked him what it was, and Munguia responded that he got it from the people distributing flyers outside. Adame testified that, when she first saw the flyer, she thought it was a company newsletter until Munguia said he got it from the people outside. As soon as Munguia told Adame where he got the flyer, she set it down and walked away. She did not report to anyone that she saw a union flyer at Munguia’s desk. (Tr. 762-764.) For the reasons discussed in the analysis section below, I credit Munguia and Ascolani’s testimony.

<sup>26</sup> Rizo later testified that billers did not have DocStar access. (Tr. 646.)

On June 6, Veronica Bueno, who worked in HR, complained to HR VP Felix about an incident with Ascolani in the breakroom, and provided a statement the same day. (Tr. 1102.) According to Bueno's statement, Ascolani told her he was involved with the Union, and Bueno's "name and payroll was mentioned in the meetings about the deductions and reimbursements not being made properly." Bueno responded that sounded more like finance. Bueno's statement provides:

Alex then said "you need to be really careful, you need to be careful, because they can", then as Alex was serving himself water with his left-hand, he had his eyebrows raised up then ran his right-hand fingers close to his neck and collar bone like emphasizing a cut, fired in a threatening manner. I felt very confused, scared, and threatened. Knowing my name was mentioned, I always take care of my reputation so to think my name was mentioned scared and worried me. I made a confused and shocked look. In that moment I felt terrified because of what he said, I was physically shaking in fear and worry. I have no idea how the Union works and "IF" they can really fire me in the future if in place for something like this that is not in my control. I was shocked in that moment by his threatening behavior. (R Exh. 14, p. 23.)

Ascolani recalled this conversation with Bueno, and specifically that he was telling her about his involvement with the Union when another employee walked into the breakroom, so Ascolani made a movement across his mouth signaling to end the conversation or "zip it." (Tr. 70.) There is a camera in the El Centro breakroom, but HR did not review any possible footage regarding this incident. (Tr. 1340.)

Ascolani worked overtime on June 12 because he was taking June 13 off to attend his son's kindergarten graduation. He did not ask permission to stay overtime but had done so in the past without repercussions. (Tr. 47-48.) That day, June 12, he accessed checks issued to the CEO's son, Dr. Eric Mendoza, because a rumor had been spread by the former bookkeeper that Mendoza had received a large bonus check, and he had concerns about corporate integrity and fraud.<sup>27</sup> In May, Juan Pablo Cabrera, an accountant, had shown Ascolani a paycheck issued to Maritza Romero, the manager who had been terminated in April, to show him her salary, as well as a spreadsheet showing all employees' titles and pay. Ascolani did not recall an instruction that he was prohibited from accessing employees' pay information and believed he was authorized to view the information he accessed on June 12.<sup>28</sup> (Tr. 73-76, 110, 149.) (R Exh. 1.)

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<sup>27</sup> The large check to Mendoza rumored to be a bonus check, for \$47,004.67, was dated October 12, 2023.

<sup>28</sup> As noted above, all employees, including Ascolani, signed a HIPAA attestation form when he was hired, outlining Innercare's confidentiality policies, as well as acknowledgement of the employee handbook. Both were signed as part of Ascolani's orientation onboarding. Most people in the workforce can relate to the common experience of a new employee orientation, which generally entails signing numerous documents in an HR setting. In such a setting, it is reasonable to infer that employees regularly sign orientation documents, particularly lengthy documents and/or documents with legalese, without genuinely absorbing their contents. As illustrated here, even HR VP Felix testified she believed the handbook mandated immediate termination for theft

Cabrera texted Rizo on June 12 at 2:27 p.m., stating, “Hi, I just wanted to let you know that even though I talk to Alex, I don’t agree with his actions. He’s listening to everything right now and looking to find something. I don’t want to come across as gossipy either. Bye.” Rizo responded, “You can continue to talk to him. Don’t worry about it. I know everyone gets along well in the department.” Cabrera replied, “Ok. The union affected him greatly.” (GC Exh. 61; Tr. 643.)<sup>29</sup> Rizo did not know what “actions” of Ascolani’s Cabrera was referencing when he said, “I don’t agree with his actions,” and she did not ask Cabrera what he meant. Rizo did not know what Cabrera meant when he said Ascolani was “listening to everything right now” and did not know what Cabrera meant when he said Ascolani was “looking to find something.” (Tr. 714-715.)<sup>30</sup> With regard to Cabrera’s comment about the Union affecting Ascolani greatly, Rizo believed Cabrera was stating that the Union might be the reason Ascolani was listening to everything and looking to find something.<sup>31</sup> (Tr. 686-687.) Rizo had a “gut feeling” Ascolani was looking at financial records. Nothing in Ascolani’s history and nothing she heard from anyone other than Cabrera caused this gut feeling. (Tr. 716.)

Yesennia Carillo talked to HR VP Felix verbally and wrote a statement to her on June 12, relaying that Ascolani had approached her about the Union the previous week.<sup>32</sup> Carillo conveyed that Ascolani had asked her if she wanted to join the Union, and told her if she went to lunch with him, he would go into detail regarding the benefits of joining. According to Carillo’s statement, Ascolani complained about how much money administration had spent on eating out and an employee appreciation event, and said the Union would benefit employees like Maria Madrid, who was making around \$20 per hour despite working at Inncare more than 15 years.<sup>33</sup> (R Exhs. 43, 44; Tr. 1111-1113.)

Felix spoke with Cabrera on June 13.<sup>34</sup> (Tr. 1101.) Although Cabrera did not mention Oscar Munguia to Rizo, and Rizo did not report anything to HR about Cabrera mentioning Munguia, Felix testified as follows:

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and violations of Inncare’s confidentiality policies when it did not.

Felix did not investigate whether Cabrera, whose job did not require him to access checks to employees, accessed confidential employee documents. Cabrera was not disciplined. (Tr. 75-76, 704-705, 1255.)

<sup>29</sup> The parties stipulated that GC Exh. 61 is a 2024 document.

<sup>30</sup> At the hearing, Rizo testified that Cabrera’s text message said Ascolani was accessing confidential information but acknowledged he did not use the words “confidential information.” (Tr. 685-686.)

<sup>31</sup> Felix initially testified that she thought Cabrera had mentioned Ascolani accessing DocStar in the text he sent Rizo but changed her testimony when shown the text at the hearing. (Tr. 1095-1096.)

<sup>32</sup> June 12, 2024, was a Wednesday, and Carillo recounted the interaction with Ascolani was the previous Thursday.

<sup>33</sup> No evidence was presented, nor was it alleged, that Ascolani accessed Madrid’s pay rate. Carillo’s statement also mentioned an employee from Brawley coming to El Centro and discussing the Union and employees’ concerns about favoritism and not being able to take their breaks.

<sup>34</sup> At the hearing, Felix initially testified she spoke with Cabrera after Ascolani was

5 Other than the text, what I recall is -- I'm trying to remember. Somebody had also shared with -- I believe it was Juan -- an employee by the name of Juan Pablo had shared that -- to Marlene that she -- that she should speak with Oscar Munguia because he -- he would know -- he would know more about Alex getting into the confidential information, basically.<sup>35</sup>

10 (Tr. 1098.) Cabrera told Felix that Ascolani showed him receipts from the CEO and saw him looking up checks pertaining to Dr. Mendoza. (Tr. 1099.) During this conversation, Cabrera told Felix that Ascolani was "brainwashed" by the Union and was determined to change everything at work. (Tr. 1271-1272.)

15 On June 14, a Friday, Ascolani returned to work and did not have access to files he needed on his computer. After IT could not immediately help, he contacted Rizo. Later that morning, at 7:33 a.m. Rizo sent an email to the finance department informing them that F drive access had been modified to show only folders pertaining to their current duties, and to email her if access to a folder he needed had been removed. Ascolani did so, was granted access, and began working on his daily duties, but lost access again that afternoon a little before 2:00 p.m. (Tr. 47-49; GC Exh. 5.)

20 After lunch that day, CEO Bell walked by Ascolani's cubicle, which was directly across from the CFO's office. Ascolani had a flyer on his desk with Bell's picture and salary depicted. (Tr. 55; CP Exh. 1.)

25 Later that day, June 14, Rizo called Ascolani into her office and questioned him about why he had stayed late on June 12. Ascolani informed her that he wanted to get everything done before he took Thursday off for his son's graduation because Thursday was the closing day for the books. Rizo said that moving forward, Ascolani needed approval to stay late. (Tr. 47, 51.)

30 At 2:38 p.m., on June 14, CFO Rizo, at Felix's request, sent Felix and CHRO Kwon an email outlining Ascolani's performance issues.<sup>36</sup> (Tr. 687.) The email stated:

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repositioned. (Tr 1099.) After her recollection was refreshed, she recalled it was June 13, which was before. (Tr. 1100-1101.)

<sup>35</sup> As discussed below, Felix appears to have confused Cabrera with Carlos Guerrero with regard to Munguia.

<sup>36</sup> Rizo initially could not recall whether Felix asked her to prepare the summary. She did not remember if the request was by phone, email, or in person, and she did not recall what Felix said when she asked for the summary of Ascolani's performance issues. (Tr. 687.)

Rizo testified she had already been considering moving Ascolani to a different position based on his performance, but after receiving the text from Cabrera, she decided she needed to do it sooner rather than later. (Tr. 645.) Felix testified that, prior to completing their investigation, they decided to reposition Ascolani to a position that did not require access to DocStar to alleviate the concern about him accessing confidential information. (Tr. 1113-1114.) As discussed below, I do not credit this testimony.

Rizo's June 14 email, immediately preceding Ascolani's demotion, is the earliest documentation of record that she was concerned about his performance.

These are some of the performance issues we have had and discussed with Alejandro

- 5           1. Credit Card Receipts - On 2/20/24 1pm requested list of missing receipts. On March 12 he sent partial complete list.<sup>37</sup> On 3/15 I asked him to stay overtime in order to complete and to come in on Saturday 3/16 if it was not completed. On 3/19 sent him another email requesting list of missing receipts. In multiple occasions starting in April 2023 to present I have asked him to email me list of missing receipts to so I can assist him in finding those. I have explained leaving receipts outstanding for 3-9 or even 12 months reduces our chances of getting the receipts. As of today I have not received any list of missing receipts for 2024.<sup>38</sup>
- 10
- 15           2. Scanned Journal Entries - On 1/24 10am sent Alex an email to review all scanned JE's for 2023 and send me list of those missing and person responsible by 2/7. On 3/22 24 8am sent email requesting pending JE's for 2023 as he had not responded to first request. On 3/27 sent another request and he responded all were complete.<sup>39</sup> On 3/28 I received a comment about a missing JE and I was in disbelief as he had told me they were all complete. I went in to see and the task had not been completed.
- 20           I sent him another email asking him there were still missing items and to send me list of missing JE's. I questioned him in person regarding giving me wrong information about it being complete and he apologized.
- 25           3. Timing of Deposits - in more than one occasion Luz has talked to him about making deposits daily.<sup>40</sup> He has a machine on his desk to make the check deposits daily. Luz asked him to physically go to the bank or ATM machine once a week. In April made 6 deposits, May 7 deposits and June 1 deposit. We should have 20 deposits per month.
- 30           4. Cash Reconciliation log and spreadsheet for General Receipts - In August 2023 Luz reviewed the bank reconciliation process and noticed he was not completed this task daily. She spoke to him and let him know it need to be completed and submitted 1st of the month.<sup>41</sup> In Feb/Mar 2024 Luz was reviewing and noticed again the month information had not been initiated.<sup>42</sup> Again she spoke to him and asked him

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<sup>37</sup> Neither Rizo's request, which was presumably documented as she was able to recall the day and time, nor Ascolani's partial response, are part of the record.

<sup>38</sup> The referenced emails are not part of the record.

<sup>39</sup> Neither of Rizo's requesting emails nor Ascolani's response were made part of the record.

<sup>40</sup> Ascolani testified he made deposits every day or every other day.

<sup>41</sup> The bookkeeper position description calls for "monthly reconciliation of bank accounts."

<sup>42</sup> Presumably if it was due the first of the month, the reconciliation for June would be due July 1. Rizo's statement that Lara told Ascolani to complete bank reconciliations daily is uncorroborated hearsay and therefore unreliable and not entitled to weight. The Respondent did not present Lara as a witness. Ascolani did not know whether he spoke with Lara about missing bank reconciliation information in 2023 and 2024. (Tr. 121.)

to complete daily. If I look at June spreadsheet which is half the month currently he has not started any of it.

(R Exh. 14, p. 22; Tr. 627-629, 632-634, 661-662.)

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Ascolani recalled Rizo speaking with him in 2023 and 2024 about missing credit card receipts but did not recall Rizo speaking with him about missing journal entries. (Tr. 119-120.) Ascolani was not issued a record of verbal warning, or any discipline, based on any discussions he had with Rizo or Lara about his work performance. (Tr. 145.)

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Ascolani's July 28, 2023, performance appraisal rated him as "meets expectations." The box "needs improvement" was not checked for any performance element. The appraisal noted he had worked different positions in the finance department, was receptive to cross-training, was a team player, and was receptive to feedback and incorporated it for continued improvement. Goals were to improve productivity, meet deadlines, and ask for help when needed.<sup>43</sup> (GC Exh. 14.)

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Ascolani returned to work on June 14, but at about 3:50 p.m., was called back into Rizo's office where HR VP Felix was also present. CHRO Kwon joined the meeting by phone. (R Exh. 45.) Kwon informed Ascolani that he was not performing up to standards, and he was being moved, effective the following day, to a biller I position where he could perform better.<sup>44</sup> His salary remained the same. Kwon pointed to some mistakes Ascolani had made, which Ascolani was not familiar with, characterized as vague, and which he had not been disciplined for contemporaneously. (Tr. 51-54, 57, 1114.)<sup>45</sup> The confidentiality concerns Rizo formed after Cabrera's text were not discussed at this meeting. More specifically, Ascolani was not asked if he had accessed any checks in DocStar during this meeting. Bueno's June 6 complaint to Felix was also not raised. (Tr. 1115, 1250.)

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Kwon had been informed that Ascolani had flyers on the corner of his desk.<sup>46</sup> He interpreted this as solicitation because in his view, the flyers on the desk's corner were "asking people to ask about it" and Kwon thought Ascolani was probably distributing the flyers. (Tr. 1374.) Kwon did not know where Ascolani sat and had not seen his cubicle. (Tr. 1418.) As of June 14, Ascolani had the June 10 "open letter" flyer pinned on his cubicle and he had a flyer with CEO Bell's compensation on his desk. (Tr. 54, 131-132, GC Exh. 3, CP Exh. 1.) Ascolani did not distribute flyers to employees from his desk. (Tr. 134.)

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<sup>43</sup> Rizo testified Ascolani needed constant follow-up on tasks, but this was not reflected in the performance evaluation. (Tr. 698.)

<sup>44</sup> According to Felix, the decision was Kwon's and was consistent with Felix's recommendation. (Tr. 1246.)

<sup>45</sup> Kwon said Ascolani agreed to rely on Rizo's statement about his mistakes. (Tr. 665.) Ascolani did not remember making such a statement. (Tr. 122.)

Felix recalled Kwon going over each of the concerns Rizo had documented in the email she had sent to Felix at 2:38 p.m. that day. (R Exhs. 14 p. 22; R Exh. 45; Tr. 1115.)

<sup>46</sup> When asked if there was one flyer or more than one flyer, Kwon's testimony was uncertain. (Tr. 1344.)

During this same June 14 meeting, Kwon told Ascolani that what he did on his own time was fine, but he could not distribute flyers and could not keep them on his desk. Ascolani asked about having personal items on his desk, as he had observed almost all employees had items such as pictures of their families, decorations, and sports items on their desks. Kwon said people had keys, cups, mugs, and family pictures on their desks, and those items were fine and non-disruptive to the workplace.<sup>47</sup> According to Ascolani, Kwon “kept going around the question” and said if Ascolani meant a TV, the answer was no. At the time, Ascolani had a picture of his family, his son’s school calendar, and the union flyers described above at his desk. (Tr. 54-56, 58, 1375-1376; GC Exhs. 4, 6; CP Exh. 1.)

CFO Rizo, whose office was across from Ascolani’s cubicle, could not remember whether Ascolani had flyers at his desk.<sup>48</sup> (Tr. 717.)

Employees had non-work items on their desks such as water bottles, mugs, pictures of family, sports items, and souvenirs. Employees also had decorations on their desks for holidays like Halloween and Christmas. (Tr. 58, 165-166, 250, 666, 1196.) Employees sold food plates every Friday at work in El Centro, and things for school fundraisers such as chocolates and popcorn. Ascolani recalled Maria Madrid was constantly selling candles, going from cubicle to cubicle. (Tr. 58.) If Felix learned of someone trying to sell something during work hours, she would advise them they needed to do it during non-work hours. (Tr. 1197.) Kwon said employees could only distribute or solicit in the break room with HR’s permission, and he would ask anyone walking around asking employees to buy something to stop it.<sup>49</sup> (Tr. 1377.)

Ascolani viewed the biller I position as a demotion because, though his pay did not change, the starting salary was less than for his previous bookkeeper position. (Tr. 56.) The pay rate for bookkeeper ranged from \$20.00 to \$22.92, while the pay rate for biller I ranged from \$19.00 to \$20.35. (Tr. 691; GC Exh. 64.) It was the lowest level position in the finance department.<sup>50</sup> (Tr. 144.) Ascolani’s pay was \$21.60 on June 14, already above the top of the biller I pay scale. (Tr. 36; GC Exh. 64.)

### 3. Ascolani’s June 18 Termination

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<sup>47</sup> Rizo recalled Kwon telling Ascolani about the solicitation policy and telling him he could not have political type documents at his desk because that was a solicitation. (Tr. 666.) Kwon confirmed this and recalled telling Ascolani that he could only solicit during non-work hours in non-work areas. (Tr. 1374-1375, 1441.) According to Felix, Kwon said, “That in no way, basically, shape, or form, can they -- can anybody solicit during working hours and cannot have items on their desks -- their workstations.” (Tr. 1194.)

<sup>48</sup> Rizo testified the solicitation issue did not factor into Ascolani’s transfer and she did not know why Kwon raised it at the meeting. (Tr. 717.)

<sup>49</sup> Kwon testified that Ascolani bringing the pizzas in violated Inncare’s solicitation policy but he chose not to take action because it was union-related. (Tr. 1440.) This is at odds with his testimony that solicitation was confined to the breakroom.

<sup>50</sup> The biller I position required a high school diploma or a GED. The bookkeeper position required graduation from college with an associate’s degree. (GC Exh. 62; R Exh. 1.)

June 17 was Ascolani's first day in the biller I position.<sup>51</sup> He wore a purple polo shirt to work in support of the Union. Ascolani also brought pizzas to the employee break room that the Union had supplied, with the union logo and Innercare's profits with the slogan, "We want a piece of the pie." (Tr. 60-61, 1439-1440.)

The same day, June 17, either Dolores Martinez, the vice president of operations, or CHRO Kwon, texted CFO Rizo a link to a comment on a YouTube video from Manuel Alaniz, an employee in the lab department, about the CEO's son receiving a \$47,000 bonus.<sup>52</sup> (Tr. 691-692.) Rizo began an audit to investigate whether Ascolani had looked at confidential information.<sup>53</sup> (Tr. 645-646.) She did not interview Alaniz.<sup>54</sup> (Tr. 693.) The investigation revealed that Ascolani looked at a check for Dr. Mendoza as well as a check for Jose Gutierrez, an accountant, on June 12. (R Exh. 14, pp. 4-21; Tr. 647-657, 1119-1121.) At this same time, Rizo did an audit trail to determine who had accessed a copy of the \$47,000 check to Dr. Mendoza as well as other payments Ascolani had accessed.<sup>55</sup> (Tr. 647.) Rizo turned this information over to HR.<sup>56</sup> Ascolani admitted he did not have a business reason to look at checks issued to Mendoza or Gutierrez. (Tr. 126-127.)

On June 17 or 18, Munguia gave Ascolani a union koozie displaying "SEIU-UHW UNITED FOR ALL" in the presence of Ascolani's then-supervisor Sofia Ramirez, the billing director. (Tr. 44, 167; GC Exh. 4.)

At around 3:15 on June 18, HR VP Felix called Ascolani into the conference room, where Kwon was also present. Before the meeting, Felix had prepared questions for Kwon to ask Ascolani. (R Exh. 46; Tr. 1125.) Kwon informed Ascolani that HR had received a signed statement from Veronica Bueno stating that Ascolani had threatened to kill her and

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<sup>51</sup> As both biller I and bookkeeper, Ascolani's job description stated he was to maintain the privacy of all patient, employee, and volunteer information and access this information only on a need-to-know basis for business purposes. (R Exh. 1; Tr. 640.)

<sup>52</sup> Kwon explained that the \$47,000 was not a bonus but instead was for a loan forgiveness program. (Tr. 1422.)

<sup>53</sup> The comment on the video from @mannyalaniz926, stated in relevant part, "Perhaps another video explaining how only certain people get bonuses . . . like \$47,000 for a retention bonus . . . CEO's son? Now that's quite the Scam, don't you think so? All while us employees are getting what? A dollar raise with cookies? We deserve more. UNION strong, we will win this!" (R Exh. 14, p. 3.) Alaniz did not have access to DocStar. (Tr. 1118-1119.) HR VP Felix did not talk to Alaniz during her investigation into Ascolani. Felix never saw the YouTube video. (Tr. 1334-1335.) Its content is not a matter of record nor is its creator, and Ascolani was not accused of creating it.

<sup>54</sup> The Respondent's witnesses testified they did not interview Alaniz because as a lab employee, he would not have access to the pay information. The origin of the YouTube video is not a matter of record, and Alaniz was not asked who provided him with the video.

<sup>55</sup> Rizo testified the audit trail revealed that no accountants or financial analysts accessed these checks. (Tr. 670.)

<sup>56</sup> At least one of the audit reports Rizo provided to Kwon and Felix used to justify Ascolani's termination was dated June 19, a day after his termination. (R Exh. 14, p. 6; Tr. 694.)

cut her throat, and that there was a video.<sup>57</sup> Ascolani said he never threatened Bueno.<sup>58</sup> (Tr. 61-62.) Felix's prepared questions and contemporaneous notes show the meeting was opened with Kwon saying that Bueno had made a complaint to HR where Ascolani used a gesture "a cut" near his neck and collar bone, causing her anxiety. The prepared questions made no reference to job security.<sup>59</sup> (R Exh. 46.) Kwon then mentioned Ascolani's performance, and Ascolani said Kwon should talk to Lara, his supervisor, because during Ascolani's last evaluation, they acknowledged he did not receive proper training. (Tr. 62.) Felix's notes reflect that Kwon asked what Ascolani's duties were as a bookkeeper, and Ascolani mentioned he never received proper training.<sup>60</sup> (R Exh. 46.)

Kwon asked if Ascolani had ever used the program DocStar to access checks. Kwon showed Ascolani copies of the checks he had accessed, and asked Ascolani if he would be surprised if they had proof he had accessed the checks. (Tr. 1124; R Exh. 46.) Ascolani said he oversaw making checks and he looked at checks every day for his job and could not remember if he had seen any specific checks.<sup>61</sup> (Tr. 63.)

Ascolani left the meeting and spoke with his direct supervisor, Lara, who told him not to worry because she knew Ascolani and Bueno had a close relationship.<sup>62</sup> No police reports were filed about the interaction between Ascolani and Bueno, and Ascolani never saw a video of it. Lara had not shared with Ascolani the performance concerns Kwon raised at the meeting. (Tr. 63-64, 72.)

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<sup>57</sup> The parties stipulated there are no video recordings of Ascolani making any threats or gestures to other employees on or about June 6, 2024. (Tr. 90.)

<sup>58</sup> At the hearing, Kwon testified his understanding was that Bueno's job was in danger, and he did not think he accused Ascolani of threatening Bueno's life during the meeting. Kwon did not recall the sequence of events at the meeting. (Tr. 1379-1380.)

Felix interpreted Bueno's statement as follows:

Describing what I just shared that he -- yeah, that she was concerned of her safety -- not her safety. She -- she was concerned because he had made a -- a remark that did concern her of that. But her main concern was of her job. She was afraid she was going to lose her job, or she could lose her job. (Tr. 1102.)

<sup>59</sup> At the hearing, Felix testified that Kwon opened by stating Bueno felt like her job was threatened. (Tr. 1124.)

<sup>60</sup> Felix's handwriting on this document is impossible for me to decipher in many parts.

<sup>61</sup> Felix testified that Ascolani denied accessing the checks at the time, but her notes indicate Ascolani said he did not remember. (Tr. 1124; R Exh. 46.) Kwon testified that Ascolani never denied outright that he accessed payments to Inncare employees. (Tr. 1380-1381.)

Ascolani testified that on June 17, his first day in the biller I position, he was assigned videos to watch all day and was "burned out." (Tr 63.)

Rizo testified that Ascolani had previously been responsible for printing checks, but not at the end of his employment. (Tr. 661-662; R Exh. 16.) While printing checks was not part of the biller I job, I credit Ascolani's testimony that he was responsible for printing checks as a bookkeeper because it is consistent with the bookkeeper position description, which lists as a duty, "Prints and prepares checks for signatures with attached documentation." (R Exh. 1.)

<sup>62</sup> Bueno and Ascolani had worked together at another company in the past, and she informed him of the job opening at Inncare. During their time as coworkers, Bueno and Ascolani exchanged instant messages regularly. Bueno was not in favor of the Union. (GC Exh. 7; Tr. 66.)

After the HR investigation concluded, Rizo recommended terminating Ascolani, and Felix and Kwon approved it.<sup>63</sup> (R Exh. 14; Tr. 965, 1419-1420.) The evening of June 18, 2024, Felix sent Ascolani an email stating he was terminated effective that day. The email stated, in relevant part:

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Company has valuable Confidential information which is to be maintained as confidential information and not shared with anyone other than those that require the information for company purposes. We spoke earlier today regarding your access to various systems, including DocStar. When we discussed, you denied having accessed checks issued to employees of the company on June 12, 2024. A review of the DocStar access log shows that you accessed on June 12, 2024 and reviewed checks issued to multiple employees and multiple checks. You did not have a legitimate reason to access those checks for those employees. Effective today, 6/18/2024 your employment at Inncare has been terminated.

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(GC Exh. 8.) The termination letter accompanying the email, signed by Felix, stated that his employment was terminated, effective June 18, citing the following provisions of Section 18.3 of the handbook:

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- Failure to comply with one or more of Inncare's policies, procedures, regulations, and/or instructions, including the policy against harassment, discrimination, or retaliation.

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- Unauthorized use, misuse, or negligence in the use of Inncare's tools, equipment, or property.

(GC Exh. 9.)

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Ascolani was not asked for a written statement prior to his termination.<sup>64</sup> (Tr. 1255.) He had received no previous discipline. (Tr. 87-88, 689, 699.) Rizo and Kwon knew Ascolani was involved with and supported the Union. (Tr. 680, 1419.) As of June 18, no other employee had been terminated for misuse of DocStar. Aside from Munguia, Ascolani was the only employee terminated for accessing and disseminating confidential financial information. (Tr. 1126-1127.)

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<sup>63</sup> Felix testified she made the decision to terminate Ascolani. (Tr. 658.) The weight of the evidence shows Rizo recommended it but Kwon had final approval.

<sup>64</sup> Felix testified he could have provided one during his separation meeting. (Tr. 1255.)

After Ascolani’s termination, the finance department removed DocStar access from employees who did not need it.<sup>65</sup> (Tr. 677.) On June 28, Felix prepared a termination summary.<sup>66</sup> (R Exh. 14.)

5                   4. Munguia’s June 27 Termination

On June 21, Munguia met with some of the union organizers and Ascolani at Chuck E. Cheese near the El Centro office. HR Manager Laura Ryan and another coworker, Tanira Olivas, saw them.<sup>67</sup> (GC Exh. 16; Tr. 80-81, 168-170.)

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Munguia went to work on June 25 and did not have access to some of the systems he needed, including DocStar. He told his supervisor, Purchasing Manager Adame, and she said she would investigate it, but it was not resolved that day. (Tr. 170-171.) The next day, June 26, Munguia still did not have access, so he contacted the IT department, and it was  
15 restored. He was told usernames had been modified. (Tr. 198.)

15

CFO Rizo investigated whether Munguia accessed confidential information based on a verbal comment from employee Carlos Guerrero, a financial analyst, that “he wouldn’t be surprised what else – what Oscar knows.”<sup>68</sup> She did not recall when Guerrero made this  
20 comment. (Tr. 668-669, 700.) Rizo did not ask Guerrero the basis for his comment or ask any follow-up questions about it. (Tr. 700, 721.) She described it as a “random comment” during a work-related conversation. (Tr. 720.) Rizo testified, “It raised a red flag of, I should investigate Oscar Munguia’s access into DocStar.” (Tr. 669.)

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Rizo had noticed, when she investigated Ascolani’s access on June 17, Munguia had accessed a large number of documents, including some checks, but determined at the time that it was too much to filter. After receiving the comment from Guerrero, Rizo made extra effort to figure out ways to filter the data.<sup>69</sup> (Tr. 669-670.) When Rizo got “stuck on the amount of data” for Munguia, she clarified that she got part of the way into it but moved  
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<sup>65</sup> After Ascolani’s termination, on July 11, 2024, Isabel Garcia asked Leticia Ornelas if she could hand out flyers from the Calxico Neighborhood House Preschool. The request was forwarded to Dolores Martinez, who asked Kwon how to respond, noting that in the past they only displayed government-required posted and flyers. Kwon replied, on July 17, they should respond as they have before, consistent with the no solicitation policy. (R Exh. 80; Tr. 1365.)

<sup>66</sup> The signature on the summary is dated August 28, 2024, which is a typo. (Tr. 1111.) The summary omits the discussion Kwon initiated about the union flyers on Ascolani’s desk. Rizo had not seen such a summary prior to those that Felix prepared for Ascolani and Munguia. (Tr. 718.)

<sup>67</sup> Ryan was not questioned about whether she saw Munguia on June 21.

<sup>68</sup> Rizo later in her testimony stated that Guerrero said, he “wouldn’t be surprised about Oscar also accessing documents.” (Tr. 700.) Later, she testified Guerrero said he “wouldn’t be surprised of Oscar looking for information or knowing information or something.” (Tr. 719.)

Felix testified this comment came from Cabrera. (Tr. 1163.) Rizo, who spoke directly to both Cabrera and Guerrero, is credited over Felix, who only spoke to Cabrera after the fact, and apparently mistakenly believes his comments caused Rizo to audit Munguia.

<sup>69</sup> Later in her testimony, Rizo said she did not notice when she was going through the access data for Ascolani that Munguia’s name was on it. (Tr. 701.)

on due to the volume. She did not pinpoint anything at the time because the amount of data was so big. (Tr. 721.)

5 Rizo’s audit showed that Munguia had accessed invoices to attorneys and to doctors who provided temporary services to Innercare’s clinics and that he had accessed payments to employees.<sup>70</sup> (R Exh. 17.) Review of Munguia’s DocStar access revealed that on April 26, he accessed a check issued to Maritza Romero,<sup>71</sup> on May 30, he accessed a check to Jose Gutierrez,<sup>72</sup> on June 7, he accessed a check issued to Jessica Gayton,<sup>73</sup> and on June 13 he accessed a check to Abraham Vendiver, a check to Community Care IPA, and a check to Kronick, Moskovitz, Tiedemann & Girard. In total, the report showed Munguia accessed 10 checks and 73 invoices. (R Exh. 17.)

15 HR VP Felix testified that Munguia accessed checks to Innercare’s attorneys Call & Jensen, his own checks, checks to employees Laura Ryan, Hilda Teran, and other people. She later corrected herself and said he only accessed invoices for these businesses and individuals, which he was authorized to do in his role. (R Exh. 17; Tr. 1165, 1169.) Munguia’s job description listed as duties, “Assist in month end close & works with AP department to ensure invoices are received and paid in a timely manner”; “Reviews and makes sure that vendor’s invoices or packing slips are signed by personnel receiving the service or merchandise”; and “Contact vendors regarding receipt of merchandise, credits, 20 returns, invoices or any other issue that needs to be resolved.” (R Exh. 2.)

On June 27, Munguia again did not have access to everything he needed for work. He was told to report to Felix’s office that morning. He went to Felix’s office at 10:07, and 25 CHRO Kwon was there telephonically. (Tr. 172-173; R Exh. 56.) They asked Munguia whether he had viewed coworkers’ checks, and Munguia responded that he had not. Kwon asked Munguia if his job required accessing employees’ checks, and he responded it did not. Felix showed Munguia a page depicting his username showing he viewed checks, and Munguia said that was not true, and they said they would investigate. (Tr. 172-173, 1384; 30 R Exh. 56.) Munguia testified he reviewed invoices but denied reviewing or accessing paychecks. (Tr. 174-175, 197, 1168.)

35 Rizo asked AVP IT Felix Leon for any records showing Munguia sent emails around the time he accessed documents in DocStar. At 11:05 a.m. on June 27, Leon sent Rizo a screenshot of an email Munguia had sent to some coworkers and his supervisor at 11:10 a.m. on June 13. (R Exh. 18.) The checks accessed on June 13 under Munguia’s

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<sup>70</sup> Rizo testified that Munguia accessed “payments” to attorneys and providers, but the document shows it was invoices. Rizo testified that Munguia had no business reason to access any of the checks or invoices. (Tr. 671-674.) This testimony is discredited as described below.

<sup>71</sup> The same check appears twice, check number 143233, accessed at 12:51 and 12:52. (R Exh. 17.)

<sup>72</sup> The same check appears twice, check number 140559, accessed both times at 12:33. (R Exh. 17.)

<sup>73</sup> The same check appears twice, check number 143172, accessed at 13:57 and 13:58. (R Exh. 17.)

username were at 10:53 a.m. and 10:58 a.m. All other entries for that day were invoices. (R Exh. 17.)

5 Munguia sometimes left his computer unattended when he needed to pick up UPS or FedEx orders that had been delivered. This could take up to 30-40 minutes because Munguia had to receive the items and deliver them to their recipient.<sup>74</sup> He did not know leaving his computer unlocked and unattended was against Innercare policy, and he was never disciplined for it. (Tr. 177, 198-199, 202.)

10 Nobody other than Guerrero provided Rizo with information that led her to believe Munguia was looking at documents he should not have accessed, and nothing else in his history caused Rizo to believe Munguia was looking at documents he shouldn't access. (Tr. 722.)

15 Rizo provided the results of her audit to HR. She decided to terminate Munguia for violating company policy by accessing documents not needed to complete his job duties.<sup>75</sup> (Tr. 676.)

20 After lunch, HR Manager Ryan told Munguia to report to Felix's office. Felix told Munguia they had investigated and they decided to terminate him. (Tr. 176.) Munguia's termination letter, signed by Felix, stated that his employment was terminated, effective June 27, citing the following provisions of Section 18.3 of the handbook:

- 25
- Failure to comply with one or more of Innercare's policies, procedures, regulations, and/or instructions, including the policy against harassment, discrimination, or retaliation.
  - Unauthorized use, misuse, or negligence in the use of Innercare's tools, equipment, or property.

30 (GC Exh. 17.) Felix wrote and signed the letter on Innercare's behalf. The first bullet point referred to Innercare's policy on accessing unauthorized confidential information. The second bullet point referred to his unauthorized access of confidential information on Innercare's computer. (Tr. 1173-1175.) Rizo knew Munguia was involved with the Union. 35 (Tr. 680.)

Felix prepared a summary of Munguia's termination, dated September 16, 2024.<sup>76</sup> (R Exh. 17.) She did not prepare an investigative summary earlier because "[t]here was a

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<sup>74</sup> Kwon believed the Innercare computers logged someone off after 15 minutes of inactivity. (Tr. 1427.)

<sup>75</sup> Kwon testified that he had final authority to terminate Munguia. (Tr. 1426.) The stated reason for delay was it took time to go through all the data

<sup>76</sup> The summary stated, "During the investigation in regard to Alexander Ascolani, I had met and interviewed another finance employee who shared with me on June 13, 2024, to ask Oscar for the information he knows." The finance employee referenced was Cabrera, not Guerrero. Felix thought the summary was prepared in response to a request from the NLRB. (Tr. 1258.)

lot going on in HR at the time. There were other investigations that we were, you know, working on. And I had to, you know, focus on other things at that time. We had 600 employees at that time, so we're very busy." Felix could not recall if she asked Munguia for a written statement during her investigation. (Tr. 1258.)

Munguia had received a written warning on October 19, 2022, for unsatisfactory job performance, citing errors in his work. (GC Exh. 18.) After the warning, no further performance concerns were raised. (Tr. 180.) On August 1, 2023, Munguia received an "above expectations" performance review and a 3-percent merit raise. (GC Exh. 19.)

### C. Francisco Borjon and Nayelli Garcia

Francisco Borjon (F. Borjon) and Nayelli Garcia worked for Inncare as night janitors at the El Centro facility.<sup>77</sup> Two other janitors, Norma Barajas and Maria Castaneda, who began employment with Inncare around January 2024, also worked the night shift in June 2024. (Tr. 251, 331.) F. Borjon worked for Inncare from April 19, 2019, until his termination on June 19, 2024. (Tr. 300.) Garcia's employment was from September 30, 2019, until her termination on June 18, 2024. (Tr. 211, 234.)

The night shift janitors worked from 5p.m. until 2 a.m. Monday-Friday.<sup>78</sup> Their supervisor was Joe Gutierrez, the maintenance supervisor. Gutierrez' supervisor was Veronica Abarca, the director of facilities. For the night shift, the clinic was divided into four areas, two on the first floor and two on the second floor. The janitors rotated their individual work areas sequentially every three months. (Tr. 248.) They generally worked independently in their respective designated areas.<sup>79</sup> Lunch was for an hour and usually taken by each janitor independently. (Tr. 251-253, 330.) F. Borjon believed lunch could start after working 4 hours, and Garcia believed it could be any time.<sup>80</sup> (Tr. 253, 330.) Gutierrez, who worked in Brawley, was not usually present in El Centro during the night shift. (Tr. 252, 330.)

Garcia used her lunch break either to sleep or do schoolwork. She slept during her lunch break because, between school and work, she only could sleep about two to three hours. Garcia was unaware of any policies related to sleeping during lunch. (Tr. 254-256.) Garcia set an alarm to wake herself up and never slept for more than the hour-long lunch

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<sup>77</sup> Garcia signed a number of documents upon onboarding, including an acknowledgement she received the employee handbook, a HIPAA attestation form, and a confidentiality pledge. (R Exhs. 6-9; Tr. 284.) At the time, she was not capable of understanding their contents because she did not have sufficient English comprehension skills and she was not provided an interpreter or a Spanish version of the documents. (Tr. 295.) F. Borjon signed an acknowledgment he received the employee handbook on March 19, 2019. (R Exh. 11.)

<sup>78</sup> Day-shift janitors worked 8:00 a.m. to 5:00 p.m.

<sup>79</sup> Joann Salinas, who was the operations office manager at the time, said she saw two employees cleaning the break room at a time, one doing the trash and another cleaning the floor. She did not mention when she saw this, who the employees were, or whether it was the day or night shift. (Tr. 840-841.)

<sup>80</sup> HR VP Felix testified it needed to be taken by the fifth hour. (Tr. 1321.)

break. (Tr. 272-273.) She sometimes slept in CFO Rizo's office, but she was not aware of Rizo's position or title. Garcia was not aware she needed permission to be in any part of the clinic during her lunch break. (Tr. 292.)

5 F. Borjon became an organizing committee leader with the Union in May or June 2024. (Tr. 302.) He handed out flyers in the clinic breakroom a couple times a month, spoke to his coworkers about the Union, and attended a couple of mixers.<sup>81</sup> (Tr. 302-303.) He also wore a purple polo shirt a couple of times and signed a union authorization card. (Tr. 304, 305; GC Exh. 27.) Garcia provided flyers and brochures two or three times before and after  
10 the Union filed its petition for representation. (Tr. 213-214.) She also provided some union hair scrunchies and badge holders to her coworkers. (Tr. 215-216; GC Exh. 22.) She wore her union badge holder every day and wore purple scrubs and/or socks once or twice a week (Tr. 217-218.) Garcia signed an authorization card. (GC Exh. 23.)

#### 15 1. Paylocity Timekeeping System

Employees clocked in using a program called Paylocity that required an individual username and password. Paylocity could be accessed from almost any computer at the facility, and it sometimes went down during work hours. (Tr. 258, 288, 967.) If an  
20 employee entered the incorrect password too many times, they were locked out of the system for an hour. When this occurred for an employee, it did not impact the system for other employees, who were still able to log in using their unique username and passwords. (Tr. 259, 388-389, 967.)

25 When janitorial employees were locked out of Paylocity and unable to clock in or out, Gutierrez could adjust their timecards. When Garcia and F. Borjon got locked out, they would take a picture of it on the computer and send it to Gutierrez and provide an explanation so he could make an adjustment. (Tr. 259-260, 339-340.)

#### 30 2. The June 13 Meeting and Reports of Misconduct

Innecare hired A&S Consulting Services, Inc., on June 5, and labor consultants Able Flores and his wife held captive-audience meetings with employees. The meetings, mandatory for all employees, were broken down into sessions that included up to 26  
35 employees.<sup>82</sup> (GC Exhs. 24, 102; Tr. 1357.)

On June 13, 2024, some employees, including Garcia and F. Borjon, attended such a meeting with the labor consultants that started around 4:30 p.m. (GC Exh. 24.) Other employees, including Joann Salinas, the operations office manager, and Abby Carrillo from  
40 HR also attended this session.<sup>83</sup> HR Manager Ryan attended for a couple of minutes and

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<sup>81</sup> At the mixers, which only a few employees attended, union organizers provided information to employees. (Tr. 303.)

<sup>82</sup> HR Manager Ryan was unsure whether Flores shared his presentation with anyone in HR, and she testified she did not have prior knowledge of presentation's content. (Tr. 997.)

<sup>83</sup> Salinas only oversaw the janitorial staff when Abarca was off duty. (Tr. 839.) She was not a regular supervisor or manager of any employees and did not work the night shift. (Tr. 815-816,

introduced the Floreses. (Tr. 222-226, 309, 822; GC Exh. 24.) Some employees in the meeting were pro-union, and others were against it.

Mr. Flores told the attendees his history, including how he stopped believing in the union. (Tr. 226-227.) F. Borjon asked Flores if he was for or against the Union, and Flores responded neither. Flores said they did not need a third party at Innercare because they had a human resources department. (Tr. 310.) F. Borjon said they could not trust human resources and provided an example of not being able to take a day off to go to his brother's funeral and his aunt's funeral. (Tr. 228, 312-313, 823.) When an attendee said F. Borjon was lying, Garcia turned around and told everyone that it was true, she had witnessed Innercare not giving F. Borjon the day off for his brother's funeral.<sup>84</sup> (Tr. 229, 314.) F. Borjon stated that employee rights were not respected, and that was why they needed the Union. (Tr. 230.) F. Borjon provided some other examples of what he viewed as unfair, mentioned that his schedule was changed, and he was not compensated or thanked, and that was why they needed the Union. (Tr. 230-231.) F. Borjon also claimed that Innercare was being unfair in their evaluations. (Tr. 313.) Garcia described the meeting as "tense and ugly." Mr. Flores asked Garcia if she wanted to be part of the Union and she responded that yes, she did. Mr. Flores told Garcia to think about it and decide what was best for her. (Tr. 231.)

Just after the meeting, Castaneda and Barajas, the other night janitors, complained to Salinas that F. Borjon was clocking Garcia in when Garcia arrived late, F. Borjon and Garcia went through boxes and paperwork in the administrative suite, F. Borjon showed employees a provider's check stub/salary, and Garcia slept in CFO Rizo's office. They said they were scared to come forward because Garcia's ex was in a gang, and they wanted to be changed to the day shift. (Tr. 233, 818-819, 1132.) They did not specify anything that was said or done to cause them to feel threatened. (Tr. 836.) Salinas recalled specific dates Castaneda and Barajas reported they saw F. Borjon clock in for Garcia were June 3, 5 and 6. They did not say where or what times, and Salinas did not ask.<sup>85</sup> (Tr. 831-833.) They did not say where or when F. Borjon showed employees a provider's check stub or identify the provider, and Salinas did not ask. (Tr. 833-834.) They did not provide dates or times when they saw Garcia sleeping in the CFO's office. (Tr. 834-835.) They did not provide dates when they saw Garcia and F. Borjon reviewing documents, and Salinas did not ask. Salinas did not recall asking them any questions.<sup>86</sup> (Tr. 835.)

842.) She was supervisor in and around June 13 as Abarca was on leave. (Tr. 824, 827.)

<sup>84</sup> F. Borjon was able to attend the funerals because coworkers covered his work until he came back, but he was not given the days off. (Tr. 312.) Salinas testified she did not know if F. Borjon was upset when he talked about being denied time off for his brother's funeral, but she recalled the comment. (Tr. 829-830.) Salinas agreed to follow up with Abarca about F. Borjon not getting the day off for his brother's funeral, and she did so. (Tr. 229, 823-824.)

<sup>85</sup> HR VP Felix testified that Castaneda and Barajas did not specify dates they saw F. Borjon clocking in Garcia. (Tr. 1294.)

<sup>86</sup> Salinas was unaware how long Castaneda and Barajas had been working for Innercare. (Tr. 834.)

The next day, June 14, Salinas memorialized her conversation with Castaneda and Barajas and sent it to HR VP Felix and CHRO Kwon, stating:

5 I am writing to formally file a statement regarding incidents reported to me on June 13, 2024 at 6:00 pm. As I was leaving work, I received reports from two staff members, Maria Castaneda, and Norma Barajas, concerning inappropriate conduct of two employees, Francisco Borjon, and Nayelli Garcia; during working hours. Maria Castaneda and Norma Barajas were hesitant to come forward with this information, as they feel bullied by Francisco Borjon, and Nayelli Garcia and fear retaliation. They are afraid to come forward and report these activities to Human Resources, because they have become aware that Erick Ortiz is good friends with Nayelli Garcia.<sup>87</sup> These following activities reported are not permitted and require immediate attention.

15 **Details of the Reported Misconduct:**

**1) Clock-In Irregularities:**

Nayelli Garcia has arrived late to work in different occasions and that Francisco Borjon clocks her in when she is running late. The following dates were given to me as reference: June 3, 2024, June 5, 2024 and June 6, 2024.

**2) Inappropriate Handling of Confidential Documentation:**

Francisco Borjon obtained a doctor's payroll check stub and was showing it to other staff members. This act is a violation of privacy policies.

**3) Sleeping During Working Hours**

25 Nayelli Garcia has been sleeping on the couch in the CFO's office during working hours. This behavior is unacceptable.

**4) Unauthorized Access to Documents and Items:**

Both Nayelli Garcia, and Francisco Borjon review Documents and items in the Operations Office without authorization. This is a violation of confidentiality and security.

(R Exh. 22, emphasis in original; Tr. 820, 838.)

35 Though it was not in Salinas's email, HR Manager Ryan recalled, "And also regularly, when either Ms. Garcia would arrive late and -- or Mr. Borjon was arriving late, Naomi (sic) would regularly punch in a bad password to lock our timekeeping system and then report to her supervisor that she was unable to clock in on time because the system was locked, so that the supervisor would make the time entry for time when she wasn't there." (Tr. 935.) Ryan also recalled there were allegations of Garcia going through the desks of Abarca, the facilities manager, and Erica Torres, the director of practice operations.<sup>88</sup> (Tr. 935, 936.)

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<sup>87</sup> Ortiz was a human resources assistant. (Tr. 820.)

<sup>88</sup> Torres' surname is now Coterio, but during the relevant time period it was Torres, and she is referred to by her former name in documents of record, so for purposes of this decision she is referred to by her former surname.

Supervisor Gutierrez emailed Felix, with Abarca cc'd, at 1:08 p.m. on June 14 about some complaints regarding F. Borjon and Garcia. Gutierrez could not recall the dates of the complaints. He reported that Nohemi Valenzuela complained about Garcia in connection with her denial of coverage to help cover night-shift duties in light of Early McClain's departure.<sup>89</sup> Valenzuela described F. Borjon as harassing her by calling her a word for a brown-noser or kiss ass. Gutierrez also reported that Valenzuela told him F. Borjon told Valenzuela once Gutierrez retired, F. Borjon would become maintenance supervisor and would do his best to terminate her. Valenzuela told Gutierrez she took a job at the Calxico clinic because she wanted out of El Centro. Gutierrez stated he asked Valenzuela to make a statement but she declined. Gutierrez also said that Barajas had reported to Gutierrez that F. Borjon was telling people she was not cleaning properly. Gutierrez opined in his statement that there must be more because Barajas also said she wanted to transfer. Gutierrez asked for something in writing, but Barajas did not get back to him. Gutierrez wrote that he was bringing these issues from the past up now because he had just completed harassment training and realized he should have mentioned them to HR. (R Exh. 53.)

### 3. Investigation

Surveillance cameras cover every entrance to the El Centro facility. (Tr. 1267.) On June 14 or 15, over the weekend, Operations Office Manager Salinas and CHRO Kwon asked AVP IT Leon to pull some video footage of Garcia for June 3 and 6.<sup>90</sup> (R Exh. 20; Tr. 734-735, 749, 821.) Leon did not know what Garcia looked like, so Salinas told him what kind of car she drove, an Acura MDX, which is an SUV.<sup>91</sup> (Tr. 751, 753.) A still shot from video footage at 5:10 p.m.<sup>92</sup> on June 3 showed Garcia on the sidewalk between a dark sedan and the building. (R Exh. 19; Tr. 737.) Leon could not find footage of Garcia entering the building on June 6.<sup>93</sup> (Tr. 749, 1299.) HR VP Felix did not have evidence indicating Garcia had arrived late on June 5 and 6. (Tr. 1134.) Leon also looked at video footage from June 10. Barajas and Castaneda did not report June 10 as a date that F. Borjon clocked Garcia in, and Felix was unsure if she asked him to look at footage for that date but said she may have asked him to look for more days. (Tr. 1299.) Video footage for June 10 showed Garcia on the sidewalk between a dark sedan and the building at 5:05 p.m. (R Exh. 19; Tr. 738.) Felix did not review the videos, only the screenshots. (Tr. 1134.) Leon did not

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<sup>89</sup> Presumably, this complaint stemmed from events prior to January 2024, when Barajas and Castaneda started.

<sup>90</sup> HR VP Felix testified they asked Leon to look at June 3, 5, and 6, but Leon's email indicates just June 3 and 6. June 3, 2024, was a Monday.

<sup>91</sup> Leon described Garcia's car as a bluish-gray Acura MDX. (Tr. 756.) HR Manager Ryan described Garcia's car as a dark blue Acura SUV, noting she observed her entering it. (R Exh. 48, p.7.)

<sup>92</sup> The video footage showed 4:10 as the time, but Leon testified the time on the security camera had not been changed for daylight savings time, so the actual time was 5:10. (R Exh. 20; Tr. 738-739.)

<sup>93</sup> Leon did not specify what times he checked the footage for Garcia's arrival on June 6. (Tr. 749.) Garcia's timecards show various start times, as early as 3:30 p.m. and as late as 7:10 p.m. (GC Exh. 100.)

confirm whether the time stamp on the security footage matched the time clock in Paylocity. (Tr. 747.)

5 Felix asked payroll to identify the dates Garcia had Gutierrez correct her timecard due to being locked out. The document payroll provided showed that from June 1, 2023, to June 30, 2024, Garcia was locked out on four dates, all in 2024: January 29 at 7:02 p.m. and 11:05 p.m., March 13 at 7:06 p.m. and 11:38 p.m., March 29 at 5:08 p.m. and 9:42 p.m., and May 17 at 6:03 p.m. and 10:08 p.m.<sup>94</sup> Only March 29 reflected Garcia being locked out around her start time. (R Exh. 49; Tr. 1139, 1289-1290.)

10 Payroll records show that Gutierrez corrected the start time on Garcia's timecard on June 3 to show arrival at 5:00 p.m. Abarca corrected Garcia's timecard on June 6, changing a 9:13 p.m. punch in to 4:56 p.m. (GC Exh. 100.) The manual entries mean Garcia's credentials were never used to clock her on June 3, and her credentials were used to clock her in at 9:13 p.m. on June 6, with Abarca correcting it to 4:56. (Tr. 1304.) On June 5, Garcia took 1.15 hours of PTO and clocked in with her credentials at 6:10. (GC Exh. 100.)

20 Felix met with Castaneda and Barajas separately on June 17, and at the end of their respective meetings, asked them to write statements. (Tr. 1144-1146; R Exhs. 50, 51.) Castaneda provided a statement dated June 18, stating:

25 I direct to you to inform you about some events that have been happening in the time that I've been working for Innercare. I work in the area of billing from January to March of this year and there were many times that Nayeli will enter the finance office and she would sleep for a long period of time. On other occasions I witnessed how Nayeli and Francisco reviewed personal documents in different area of the clinic. One time Francisco showed us a check or paystub from a provider, showing us what this provider was earning. In regard clocking in, Nayeli one time offered me a ride from my house to work and when arriving she was about to clock in and told me that the computer had locked up and that for that reason she couldn't clock in, nor Francisco or myself and she sent Joe a photo. Francisco that day wasn't here yet and that she did not informed to Joe. Nayeli in this month of June was coming various times late, 4, 6, 8th of June,<sup>95</sup> she will say that she would notify Joe. It was the same in other occasions too.

35 With this I am informing, I don't want to be affected in any kind. I do this because it is not fair, all of what they do inside the clinic and I don't want to be part of what Francisco and Nayeli do. I want to keep my job and my integrity.

40 (R Exh. 36.) Barajas provided a statement, also dated June 18, stating:

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<sup>94</sup> Some dates show Garcia was locked out more than once. The times are variable, with only one entry reflecting any time within 10 minutes of her start time. (R Exh. 49.)

<sup>95</sup> June 8, 2024, was a Saturday.

I, Norma Barajas have taken bravery to let the human resources department know in this letter about things and situations that have been occurring at work with my coworkers Nayeli and Francisco. Which I am not in complete agreement and I am not participant of it. When I was working as a coverage and Nayeli was training me in her area, which is where the offices of Veronica are and where Veronica's desk is, Nayeli started to move documents on the desk, I continued cleaning and that impacted me. In another occasion, when I was cleaning in the adult's area, which was more or less on January of this year, Nayeli entered Erica's office and she also started to look and move documents in Erica's desk. Nayeli told me and my coworker, Maria, "find, find" but we didn't know what to look for and we stayed stood and shocked. Also, we have noticed that Nayeli would fall asleep during the work shift and it was not in her lunch hour and that's very often because her work area is without light for a long time. We also notice that many times during the month she is late and she parks next to the clinic and Francisco would sometimes clock her in and vice versa Nayeli would clock in Francisco.<sup>96</sup> This was very obvious, she would lock the computer, take a picture and send it to the supervisor and that day Francisco wasn't here yet. Francisco in one occasion showed us a check from a provider. I don't know if it was a check or a paystub. He did this to show us how much providers earn. I do not know where he got it from but this was in the adult's area. I am in complete disagreement with what has been happening with Francisco and Nayeli. I desire to keep my work and my integrity because I love my work. I am very thankful with Innercare for giving me a job and support for my daughter.

(R Exh. 37.)

Contrary to Salinas's testimony above, that Castaneda and Barajas specifically told her they saw F. Borjon clock in for Garcia on June 3, 5 and 6, Felix understood, after her June 17 interviews, that Castaneda and Barajas did not observe F. Borjon clocking Garcia in on the specific reported dates of June 3, 5, and 6, but they suspected him of it. (Tr. 1293-1294.) They did not state whose paycheck F. Borjon had obtained or when he obtained it. (Tr. 1295.) They also did not provide dates pertaining to F. Borjon and Garcia reviewing documents in the operations office. (Tr. 1311, 1337.)

#### 4. Garcia's June 18 Termination

On June 18, Garcia met with HR VP Felix, CHRO Kwon, and HR Manager Ryan at around 6:00 p.m. and was told she was being terminated. They showed Garcia pictures from June 3 and June 10 illustrating that camera showed a certain time and the computer showed a different time for her clocking in. (Tr. 235-236, 294, 940, 1147-1148, 1395; R Exh. 52.) They accused her of having F. Borjon clock her in and asked if she provided F. Borjon with her password. (Tr. 237.) Garcia responded that she had not.<sup>97</sup> Garcia said she

<sup>96</sup> HR did not find any evidence that Garcia had clocked in for F. Borjon. (Tr. 1337.)

<sup>97</sup> Kwon recalled Garcia said she had come in earlier and she wanted to move her car. (Tr. 1395.)

was aware this was happening because she wanted to be part of the Union.<sup>98</sup> (Tr. 238, 1149.)

Garcia was also told she was seen sleeping during her shift in CFO Rizo’s office. Garcia asked when she was observed sleeping because she wanted to know if it was during her lunch hour. They did not show her evidence of sleeping on the job or of F. Borjon clocking her in. They told Garcia to leave, and they would mail her personal things to her. Garcia was upset and refused to leave. Kwon told her he would call the police if she didn’t leave. Garcia left and went to retrieve her personal property. Ryan followed behind, while Garcia was on the phone with her father. (Tr. 239-242, 941-942, 1398.) Garcia saw F. Borjon, and she yelled, “They just fired me.” She heard someone tell F. Borjon he was next. (Tr. 243.)

Felix’s handwritten notes depicting who said what at the meeting reflect Kwon telling Garcia she was being put on administrative leave with pay. (R Exh. 52.) Felix and Kwon had talked about putting Garcia on administrative leave, but they decided to terminate her.<sup>99</sup> (Tr. 1151.)

The only reason Garcia could think of for the time discrepancies on June 3 and 10 was maybe she had forgotten her lunch and went to her car to get it or she moved her car because at night it is very dangerous. (Tr. 261-263.) Garcia has not given F. Borjon her login information for Paylocity and has not asked him to clock in for her. (Tr. 263.) She did not have any of her coworkers log in for her when she was running late and knew that was against Innercare policy. (Tr. 289.) Garcia was not aware of coworkers reporting that she intentionally locked herself out of Paylocity sometimes. (Tr. 291-292.)

Garcia was not provided with dates, times, or number of times she was accused of sleeping in Rizo’s office. (Tr. 256.) Felix did not know what times during the shifts Garcia slept and was not aware of a fixed lunch time for the night janitors. (Tr. 1321.) Innercare did not have a policy mandating termination for sleeping either during work time or nonwork time. (Tr. 1241.) Salinas was unaware of any rules prohibiting sleeping during breaks and lunches. (Tr. 841.) Garcia’s performance appraisal in August 2023 was a 45 out of 84 “meets expectations.” Areas of improvement were absences (25 days) and being a team player. (GC Exh. 26.)

Garcia’s termination letter, dated June 18, 2024, and signed by Felix, cited the following provisions of Section 18.3 of the handbook:

- Time theft;
- Demonstrating conduct unbecoming of employee.

<sup>98</sup> Garcia said Kwon and Felix were yelling at her and not letting her speak. (Tr. 238.) Ryan, Felix, and Kwon described Kwon’s demeanor as calm. (Tr. 940, 1148, 1398.)

<sup>99</sup> When asked why progressive discipline was not followed, Felix testified, “[b]ecause she was separated for time theft. And that’s always immediate separation from employment.” (Tr. 1153.)

(GC Exh. 25.)

Garcia did not receive any discipline prior to her termination and was not accused of failing to complete tasks or performing poor quality work.<sup>100</sup> (Tr. 267-268, 1153.)

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10 Felix wrote a summary of the meeting the day of Garcia’s termination, which was dated and signed June 18, but was not in fact completed until at least July 3. She recounted the reports from Castaneda and Barajas, and the footage from June 3 and 10. She added that Garcia slept on the CFO’s couch and that both Garcia and F. Borjon “review documents and boxes of items in offices of the operations department and offices of providers without authorization. Examples are that from doctor’s offices they would pick up payroll stub/records of doctors and share them with Maria and Norma. In Operations dept. they would pick up boxes of items.”<sup>101</sup> In addition, Felix wrote, “Young Kwon showed Nayelli a still footage of the exterior security camera video with a time stamp of 15 Nayelli entering the building in the back employee entrance on June 3, 2024 at 5:10pm, as well as the timecard report of Nayelli which showed she clocked in at 5:00pm on June 3, 2024 (regular time entry on clocking in system, not manually edited).” (R Exh. 48.) At the hearing, when asked why she added the last sentence in light of payroll records showing that the entry was, in fact, manually edited, Felix did not know. (Tr. 1309-1310.) Felix also 20 referenced, in the body of her summary, emails from June 20 and July 3 from AVP IT Leon, described below. In addition, Ryan’s June 19 witness report was referred to in the summary’s body and included as an attachment. (R Exh. 48.)

25 Ryan prepared a summary of the meeting the following day, June 19. (R Exh. 38.) She related that Garcia “ranted” that others should be fired as well because one always leaves to give family members rides and the other always leaves because of her depressed daughter. (R Exh. 38.)

30 After Garcia’s termination, on June 20, AVP IT Leon emailed Kwon and summarized the footage he viewed for June 3 and noted that the time stamp on the camera was an hour off because the system had not been updated to reflect daylight savings time. (R Exh. 20.) On July 3, Leon emailed Kwon and Felix, stating:

35 I wanted to confirm that during the investigation, I reviewed footage from other cameras around the building to ensure the employee in question did not park elsewhere and then move her car. I observed her driving directly to the vacant parking spot captured in the video footage. Additionally, the footage shows her exiting her car, grabbing her purse, and entering the premises.

40 (R Exh. 20.) He attached the video footage he described.<sup>102</sup> (Tr. 741.) Leon did not oversee the Paylocity platform and was unsure if the time in Paylocity, which was web-based, was

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<sup>100</sup> Ryan and Felix both testified they were not aware of Garcia’s union activity. (Tr. 944, 1150.)

<sup>101</sup> The report Felix received about the doctor’s pay stub was singular and limited to F. Borjon.

<sup>102</sup> The footage Leon described was not entered into evidence and it is not apparent from the

synchronized with the time stamps on the surveillance cameras, which were older and not web-based.<sup>103</sup> He did not manage Paylocity and was unaware of any regular practice to ensure Paylocity's time clock matched the surveillance cameras. (Tr. 747-748.)

## 5 5. F. Borjon's June 19 Termination

After 6:00 p.m. on June 18, HR VP Felix told F. Borjon to report to the second-floor conference room, where CHRO Kwon was also present. (Tr. 318; R Exh. 54.) Kwon informed F. Borjon of a report that he had clocked in Garcia for work, stating they had a photo of Garcia coming into work having already been clocked in, and he was the only person who had been working with Garcia on the first floor. F. Borjon responded that he had never clocked in anyone, and he did not have Garcia's password so he could not have clocked her in. (Tr. 319-321, 1157, 1402.) They did not provide him with any dates. (Tr. 320.)

Kwon and Felix also said F. Borjon had gone into the desk of Torres, the clinic manager, taken a check stub, and shown it to employees. They did not state to whom he had allegedly shown the check stub or when. (Tr. 323-324.) F. Borjon said that Torres' office was locked so he could not have entered it without Carmen Sanchez, who has a key and lets him in to empty the trash and sweep, also being present. He was only ever left alone in her office for about three minutes. (Tr. 324, 326.) At some point during the meeting, F. Borjon said he was being retaliated against for his union activity, and Kwon said this had nothing to do with the Union. At the end of the meeting F. Borjon asked for dates of his alleged misconduct, but they were not provided. (R Exh. 54; Tr. 320, 1322, 1416.) Felix and Kwon said they would investigate and inform F. Borjon of the outcome. Meanwhile, they placed him on administrative leave and escorted him out of the building.<sup>104</sup> (Tr. 325; R Exh. 54.)

Based only on the information they had at the time of the June 18 meeting, F. Borjon was terminated the following day. (Tr. 1158.) F. Borjon's termination letter, dated June 19, 2024, and signed by Felix, cited the following provisions of Section 18.3 of the handbook:

- Time theft
- Demonstrating conduct unbecoming of an employee
- Violation of patient or employee confidentiality
- Any conduct that impairs, disrupts or causes discredit to the employee and/or his/her place of employment.

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email what date(s) he is referencing.

<sup>103</sup> Leon speculated that a time discrepancy would result in complaints, but there is no evidence in the record that employees reviewed footage from the surveillance cameras at all, much less footage where a focus would be on the time stamp, in the course of their duties.

<sup>104</sup> According to Felix, the decision to terminate F. Borjon was made later the night of June 18. (Tr. 1161.)

(GC Exh. 28.) Prior to his termination, F. Borjon had not received any discipline. (Tr. 343.) Felix was never told any specific dates F. Borjon was looking through offices.

5 Felix wrote a summary, signed and dated June 18, but not completed until later, of the reasons for F. Borjon’s termination. In it, she wrote that F. Borjon was separated from employment on June 19 by phone call from Kwon. (R Exh. 55.)

#### D. July 8 Union Rally and Yearbook Flyer Distribution

10 A rally to support the Union took place outside the El Centro facility on July 8. (GC Exh. 58.) The Union distributed another flyer by mail in July referred to as the “yearbook.” It depicted the pictures of numerous employees and featured certain named employees’ larger photos and quotes about why they were supporting the Union.<sup>105</sup> (GC Exh. 11; Tr. 82-83, 450.) As discussed below, the police showed up at the rally. Prior to the election, in  
15 July, employees distributed flyers at different facilities highlighting union supporters who had been terminated.<sup>106</sup> (GC Exh. 10; Tr. 84, 579.)

#### E. Maabel Quevedo and the Telehealth Technicians

20 Maabel Quevedo-Cuevas (Quevedo), worked for Inncare from April 2018 until her termination on July 9, 2024.<sup>107</sup> (Tr. 431, 450-451.) During the relevant time, Quevedo was a telehealth technician, which entailed scheduling and coordinating telehealth visits, most of which concerned behavioral health.<sup>108</sup> (Tr. 432-433, 778.) Ruben Miranda, IT senior telehealth manager, supervised the telehealth technicians. He worked in El Centro.  
25 (Tr. 434, 777, 847.) Alberto Quihuis, telehealth manager, also reported to Miranda. (Tr. 883.) Miranda reported to Yolanda Lantz, associate vice president of information technology (AVP IT), who also worked in El Centro. (Tr. 434.)

30 Telehealth technicians were based in El Centro, Mecca, Brawley, and Calexico. They traveled to remote clinics in Blythe, Niland, Hemet, and Winterhaven as needed. (Tr. 884-885.) There were six telehealth technicians as of the beginning of June 2024: Quevedo and Francisco Hernandez<sup>109</sup> based in Calexico, Julio Barak based in El Centro, Jessica Valdez based in Coachella, Imelda Oseguera based in Mecca, and Scarlet Lizahola based in Brawley. Lizahola resigned in early June, leaving the Brawley clinic uncovered. (Tr.  
35 854-860.)

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<sup>105</sup> HR VP Felix saw this flyer. (Tr. 1238.)

<sup>106</sup> The Calexico Chronicle wrote an article about the rally, which included pictures of some employees and quotes from Ascolani, F. Borjon, and Garcia. (GC Exh. 57.)

<sup>107</sup> Quevedo signed an acknowledgment of the employee handbook when she started. (R Exh. 12.)

<sup>108</sup> Telehealth technicians were classified as medical assistants. As of June 2025, Inncare no longer employed telehealth technicians. Medical assistants, who were not specifically designated as telehealth technicians, assumed the telehealth work. The two employees remaining in the telehealth technician role were laid off in June 2025. (Tr. 780-781, 848-849.)

<sup>109</sup> A different telehealth technician with the same last name, Melhaya Hernandez, was fired in 2023.

The telehealth technicians kept track of their work in a system called Nextgen, which used color coding to delineate whether tasks had been received, addressed, and completed. Initially, when a clinical task is sent, it appears in the recipient's email as bold black. If, after 24 hours, the task is not opened, it turns bold red.<sup>110</sup> (Tr. 503, 875.) When a task no longer appears bold, it has been opened. If a task is red, but not bold red, it means the task was opened but not necessarily completed. If a task is gray, it has been completed. (Tr. 875.) Most of the work assigned through NextGen involved a medical assistant requesting the telehealth technician to schedule an appointment for a patient. (Tr. 504.)

### 1. Quevedo's Union Activity

Quevedo's brother worked for the Union and told Quevedo they were great to work with. In 2023, Quevedo contacted the Union about coming to Inncare. She continued her union activity in 2024 as a member of the organizing committee. She attended meetings and spoke with employees about the Union at the Calxico, Brawley, Blythe, and Winterhaven facilities between February and July. She also texted with a group of employees on a WhatsApp group chat. Quevedo signed an authorization card and collected cards from about 30 employees. She distributed the June 10 "open letter" flyer, which had her picture on it, to employees in El Centro, Calxico, Brawley, Blythe, and Winterhaven, and posted it to her public Instagram page. She also distributed other flyers. Every day after June 10, she wore union buttons and a placard attached to her work badge setting forth some of the things Inncare was legally prohibited from doing during the organizing drive. A couple times a week, Quevedo wore purple scrubs, hair scrunchies, and ribbons. (Tr. 436-450; GC Exhs. 3, 11, 3-34.)

After the petition was filed on June 10, Quevedo noticed that, when she was in El Centro, AVP IT Lantz would come into her office without knocking to see what she was doing and would ask her what she was doing. Quevedo had to lock the door when patients were there to avoid a confidentiality breach. (Tr. 496-497.)

### 2. Quevedo's Attendance History and Recent Leave Use

IT Sr. Telehealth Manager Miranda kept performance and attendance logs for the employees he supervised. (R Exh. 28; Tr. 863.) He noticed Quevedo had attendance issues as soon as he started supervising her in 2021. The attendance issues resulted in a series of corrective actions. On December 7, 2021, Quevedo received a written warning for habitual and unexcused tardiness or absenteeism, noting 29 of 84 absences unexcused in 2021, and, following an oral conversation with supervisor Miranda, three unexcused absences since September 29, 2021. (GC Exh. 39.) On October 26, 2022, Quevedo received a notice of corrective probation period for habitual and unexcused tardiness or absenteeism, noting 20 out of 47 unplanned in absences 2022. (GC Exh. 40.)

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<sup>110</sup> There is no way in Next Gen to mark a task that has been read as unread like there is in many email programs. (Tr. 904.)

Quevedo did not receive any attendance-related discipline in 2023. (Tr. 476.) On November 6, 2023, she received a notice of corrective probation period for failing to follow instructions, which had been provided to her on August 30 and again on September 6, about clocking in and out. Specifically, she failed to clock into the clinics she traveled to on September 5, 13, and 26, October 2, 4, 11, 18, and 24, and November 1 and 3. She also failed to clock out when she departed the facility she had traveled to on September 5, October 11 and 20, and November 1. The discipline also cited working without covering her tattoos in violation of the Respondent’s dress code policies, following two previous complaints. (GC Exh. 41; R Exh. 57.) Quevedo was never suspended for any reason. (Tr. 477.)

In December 2023, Quevedo had surgery and was out of work on a combination of PTO, extended illness bank (EIB), holiday leave, and LWOP until February 2, 2024. The LWOP was covered by the FMLA. (Tr. 478; GC Exh. 42.).<sup>111</sup> Quevedo used approved PTO and LWOP on April 1 and 2 due to a medical emergency with her son. (GC Exh. 42; R Exh. 57; Tr. 477-480.)

Quevedo took approved PTO and LWOP on April 15, LWOP on April 17 and 18, and used the extended illness bank on April 19, when she had COVID and was not permitted to work.<sup>112</sup> (GC Exh. 42; R Exh. 57; Tr. 481-482, 800, 958, 1264.) On April 19, a Friday, Miranda sent Quevedo an email informing her that, consistent with their conversation earlier that day, the death of her uncle did not qualify for bereavement leave, and she was expected back at work on April 22. Erick Ortiz, a human resources assistant, confirmed this, and informed Quevedo that her request for time off for April 22 had not been approved because she did not have sufficient PTO. He advised her to reach out to her supervisor. (GC Exh. 43; Tr. 434.) Quevedo worked on April 22 from 8 a.m. until 1:40 p.m. She left early because she got a call from the morgue saying she needed to pick up her uncle’s body or it would be cremated. She worked regular time for 5.67 hours and was absent without leave for the remainder of her shift. (Tr. 484; GC Exh. 42.)

Quevedo took PTO on June 14, for a partial day on June 21, and again on June 24, and 25, and LWOP on June 26, all of which were approved. She was sick on June 24 and the axle on her car broke on June 25. Quevedo used approved PTO and LWOP on July 3

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<sup>111</sup> Quevedo testified that employees accrued sick time separately from PTO. (Tr. 477.) Felix testified that sick leave was not separate, and everything was compiled into PTO. (Tr. 1178.) Felix’s interpretation is consistent with the employee handbook, which includes sick time in the definition of PTO, and consistent with Quevedo’s leave records, which do not denote any sick leave other than the extended illness bank. (GC Exhs. 15, 42.)

<sup>112</sup> HR VP Felix also confirmed that employees are not permitted to come to work if they have a communicable illness. When asked if there was any way this would not count against them for purposes of absenteeism, Felix responded, “If it had turned into a long leave or FMLA.” (Tr. 1264.) Kwon testified that if an employee called in sick and subsequently brought in a doctor’s note, that would be an excused absence. (Tr. 1438.) Felix defined an unexcused absence as occurring when someone did not give enough notice that they were calling in sick. An absence protected by law was not considered unexcused. (Tr. 1177.)

and LWOP on July 5. Nobody told her the leave was excessive or unexcused. (GC Exh. 42; R Exh. 57; Tr. 481-488.)

### 3. Changes to Telehealth Technicians' Travel

Quevedo, based in Calexico, traveled frequently, at least once a week, mostly to Blythe and Winterhaven and occasionally to Brawley, El Centro, and Niland. When Quevedo worked at facilities other than Calexico, she clocked in at her home site in Calexico and drove to the other facility. (GC Exh. 35; Tr. 451, 852.) When the telehealth technicians traveled, they used their personal vehicle and filled out a mileage claim form for reimbursement. (GC Exh. 35.) Quevedo traveled the most among the telehealth technicians, but Barak also traveled frequently, mostly between El Centro and Brawley.<sup>113</sup> (R Exh. 23.) Lizahola, Oseguera, and Valdez also traveled regularly, but not as frequently. (R Exhs. 23-27.)

After Lizahola's departure in June 2024, there were 5 telehealth technicians. At some point, AVP IT Lantz and HR VP Felix spoke about how to address the staffing shortage.<sup>114</sup> On June 17, Miranda informed the telehealth technicians about an upcoming travel pause. (Tr. 886.) When Quevedo arrived at El Centro to work June 17, Miranda told her the telehealth technicians would not be traveling to other clinics anymore because of the union election.<sup>115</sup> (Tr. 461.) At 9:36 a.m., Miranda emailed Quihuis, Barak, and Quevedo, notifying them that they were missing a team member and instructing them where to report. Quevedo was told to report to El Centro on June 17, Winterhaven on June 18,<sup>116</sup> El Centro on June 19 and 20, and Blythe on June 21. (GC Exh. 36.) Barak was instructed to report to Brawley each day, and to Brawley and Niland on June 19.<sup>117</sup> At 11:34 on June 18, Miranda emailed Quevedo, Barak, Quihuis, and Valdez, changing Quevedo's assignment for June 21 from Blythe to El Centro, sending Valdez (based in Coachella) to Blythe, and instructing Telehealth Manager Quihuis to report to "Corp." (GC Exh. 36.)

After June 18, Quevedo only traveled to El Centro. (GC Exh. 35.) Barak continued to travel from El Centro to Brawley the remainder of June and into July. (R Exh. 23.) Valdez traveled from her base in Coachella to Hemet on June 20 and 27, and to Blythe on

<sup>113</sup> The mileage reimbursement exceeded Quevedo's costs to maintain her vehicle, and she relied on this extra money. (Tr. 458-459.)

<sup>114</sup> Lantz testified that, in June 2024, there were four telehealth technicians, Quevedo, Hernandez, Barak, and Oseguera, who covered all 10 Innercare clinics. This was incorrect, as there were five remaining. In a phone call with Felix, Lantz described the challenges with staffing to see "what we could do to work around this with the limited staff that we had." (Tr. 782-784.)

<sup>115</sup> Miranda did not recall if he told Quevedo about the travel pause in person.

<sup>116</sup> Quevedo worked at Winterhaven on June 18 until about 11:00 a.m., when she was told she was needed in El Centro. (Tr. 462-463; GC Exh. 35.)

<sup>117</sup> According to Quevedo, Miranda said that, off the record, the yearbook had gone out, and the employees in it had put targets on their backs. (Tr. 460-461.) I do not credit this part of Quevedo's testimony as discussed below.

June 26. (R Exh. 27.) Miranda did not recall traveling to remote clinics during this time and did not recall Quihuis traveling to the remote clinics.<sup>118</sup> (Tr. 887-888.)

5 On June 27, Felix emailed Miranda, cc'ing Lantz, with the subject line "Telehealth floaters," asking who was floating to the different clinics. Lantz responded, "Imelda, Julio, Maabel, Jessica." Felix responded, "Can we not float anyone right now, meaning keep the same person at the same location for a month or so? IS that possible?" Lantz replied, "We don't have enough techs for all the clinics, but we will get creative with the patient schedules." (R Exh. 21.) Lantz testified this email was a follow-up to her phone  
10 conversation with Felix. (Tr. 784.)

When asked about the pause in travel, Lantz testified as follows:

15 Q. So during that pause, how were the -- so let me ask this. During that pause, where did the telehealth technicians work?

A They were -- they were working at their home bases.

Q And why was the decision made that they should stay at their home bases?

A Because the ones that were at their home base were in -- in the -- one of them was in the larger -- in the -- they were in the larger clinics like Calxico, El Centro, Brawley and Mecca.  
20

Q And how were the smaller clinics covered?

A So here's where we had the challenge. We had to have Ruben and Albert help, but in some cases, we actually have to reschedule patients, which is the last thing we want to do. But it was just more of a logistics trying to coordinate those visits  
25 for -- for the technicians, but with the patients.

(Tr. 783.)

30 Though changes to Quevedo's travel started in June, the travel pause officially began on July 1.<sup>119</sup> When asked how the travel pause would resolve the staffing issues, Lantz responded:

35 It wouldn't resolve the staffing issue, but it would be a temporary band-aid if you will, trying to get coverage for all the clinics. And we would have to get very creative with the schedules, that would be including having Reuben [Miranda] and Albert [Quihuis] travel to the -- to the clinics where there was coverage needed.

(Tr. 786.) Miranda described the reason for the pause as follows:

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<sup>118</sup> According to Lantz, Miranda and Quihuis traveled to remote clinics after June 17. They had previously done this only occasionally. (Tr. 806.) This is not supported by the travel logs or other witness' testimony and is not credited.

<sup>119</sup> Lantz testified travel for the telehealth technicians was paused in July, then corrected it to June, then changed it again to July 1. (Tr. 782, 805, 808, 812.)

We were short-staffed in the telehealth department, and we had just recently lost an additional telehealth technician sometime early June, so we needed to keep our telehealth technicians at our bigger clinics, which were busier.

- 5 (Tr. 851.).<sup>120</sup> The changes to Quevedo’s travel negatively affected her compensation, as her mileage reimbursement checks went down significantly.<sup>121</sup> (Tr. 462-463.)

10 Some telehealth technicians traveled after July 1 to honor previously scheduled appointments at remote clinics. (Tr. 854.) Barak traveled frequently in July, mostly to Brawley, with trips to Calexico and Mecca on July 24, Winterhaven on July 25, and Coachella on July 27. (R Exh. 23.) Hernandez did not submit travel reimbursement in July, leading Miranda to conclude he did not travel. (R Exh. 24; Tr. 858-859.) On July 24 and 26, Oseguera traveled to Coachella because the telehealth technician based there was absent. (R Exh. 26; Tr. 860-861.) Valdez did not travel during the pause. (R Exh. 27; Tr. 15 861-862.)

Travel resumed in August because, with Quevedo’s July 9 termination, they needed coverage.<sup>122</sup> (Tr. 788, 812, 851.)

#### 20 4. Complaint about Quevedo’s Work

On June 25, at 11:45 a.m., Ann Karen Molina Rivera, a behavioral health case manager who worked in El Centro, emailed IT Sr. Telehealth Manager Miranda with a complaint about Quevedo, stating:

25 Good morning, this email I am writing is to express my concern and discontent with one of your Telehealth Techs Mabel Quevedo. Last week on Monday I tasked a 91 year old female patient in need of an appointment with telemedicine as soon as possible as per one of our PCPs. I proceeded to tasked her the patient’s information 30 on 6/17/2024 with the hopes she would contact patient/caregiver with an

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<sup>120</sup> Miranda’s stated justification for the change in Quevedo’s travel was they lost the telehealth technician in Brawley in June 2024, so it was easier for him to relocate Barak, who was based in El Centro, to the Brawley clinic and relocate Quevedo to El Centro. (853-854, 858; GC Exh. 35, R Exh. 23.) Of the two telehealth technicians, based in Calexico, Quevedo was more willing to travel, so he chose her to cover El Centro. (Tr. 853-854.)

R Exh. 23 reflects that Barak traveled from El Centro to Brawley very frequently in June 2024. The distances between El Centro and Brawley varied between 15-20 miles each way on Barak’s reimbursement forms, which makes sense given that Brawley has more than one facility. Quevedo recorded the distance between Calexico and El Centro as 18 miles roundtrip and the round-trip distance from Calexico to Brawley as 59 miles. Quevedo recorded the round-trip distance between Calexico and Winterhaven as 119 miles round-trip and the round-trip distance between Calexico and Blythe as 212 miles.

<sup>121</sup> Quevedo testified that, after June 17, when there was a telehealth visit in Blythe or Winterhaven, Barak or Hernandez was sent. (Tr. 467.) Records show that Barak did not travel to Blythe or Winterhaven during June. (R Exh. 23.)

<sup>122</sup> Lantz could not recall if travel stopped again once there were only two telehealth technicians. (Tr. 789.)

appointment. By the next day, Tuesday, the task was not accepted. I spoke to her in person Tuesday morning and asked her if she was aware I tasked her the information the previous day, she said no, I asked her to please FU with patient/caregiver as I needed to provide an update to the PCP. She stated she was going to discuss the case with Dr. Ibrahim as she was unsure if he was able to see a patient with such an advanced age, I agreed as she mentioned she would FU back with me later that day. I did not hear back from her on Tuesday. I was out of the office for the rest of the week. I returned to the office yesterday 6/24, as I was following up with my patients I became aware that the task sent to her was never opened nor I had a task from her updating me on patients case, as a consequence I was not able to provide an update to my PCP. This is not the first time this incident has happened. There has been at least two incident in the past where I tasked her patients with no response from her when she is covering, I had reassign those patients to Julio Barak or Jessica Valdez as she was not able to assist. I am bringing this issue as Innercare is responsible to ensure and provide the best health care for our patients in a timely matter. I attached the task I send to her previously, I hope we can resolve this matter. Thank you for your support.

(R Exh. 30; Tr. 888, 872.)

The email from Molina Rivera prompted Miranda to look at Quevedo's NextGen inbox. At 2:15 p.m. on June 24, he took screenshots of the inbox, showing that Quevedo had over 100 clinical tasks dating back to February that had not been acknowledged. (R Exh. 31; Tr. 874-875.) Miranda did not see this sooner because he trusted his employees and did not normally look in their inboxes. Miranda did not interview Quevedo about the incomplete tasks because it was clear she was not completing her work. (Tr. 876.) He assigned Quevedo's uncompleted work to other telehealth technicians. (Tr. 904-905.)

As detailed above, Quevedo had some absences in June. On June 25, at 3:44 p.m., Miranda emailed an update to HR VP Felix, copying AVP IT Lantz and HR Manager Ryan, providing an update from a November 9, 2023, email from Felix.<sup>123</sup> It stated:

This is an update on Maabel Quevedo's attendance.

On Friday, June 14, 2024, I received a text message from Maabel at 4:24am, saying that she had woken up with a fever and that she wouldn't be able to make it work. Maabel provided a medical note that stated that she did not present any symptoms or being currently treated for a viral infection.

On Friday, June 21, 2024, Maabel was working at the El Centro clinic. At 9:52am, she messaged me that she was going to be seen by a provider at 10:00am because she was feeling ill. Maabel clocked out from 10:16am- 10:46am. Shortly after, she called me and stated that the provider had excused her from work for the rest of the day, and clocked out at 11:30am. Maabel did not provide a medical excuse.

On Monday, June 24, 2024, I received a text message from Maabel at 5:46am saying that she was still sick and was unable to make it to work.

<sup>123</sup> Miranda thought there might have been phone calls from Felix asking to be kept up to date, but he could not answer definitively and could not provide the month(s) or day(s). (Tr. 891.)

On Tuesday, June 25, 2025, I received a text message from Maabel at 6:36am saying that she was still sick and that she would seek medical attention. Maabel has not provided any type of medical documentation yet.<sup>124</sup>

5 On a different note, I have received a complaint involving Maabel where we would like your guidance.

(R Exh. 29.)

10 The complaint Miranda referenced was Molina Rivera’s June 25 email. Miranda and Felix discussed the complaint. On June 26, Miranda sent a follow-up email to Felix (cc’ing Lantz), recounting Molina Rivera’s complaint, and adding that a review of Quevedo’s work in NextGen showed she had accepted 34 of the last 176 clinical tasks sent to her, including 108 high-priority clinical tasks.<sup>125</sup> (R Exh. 30.)

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#### 5. Quevedo’s Participation in the July 8 Rally

20 Quevedo participated in the July 8 rally from 11:15-11:45. (Tr. 468.) She was photographed at the rally wearing a purple SEIU Leader T-shirt and holding one side of a banner that said, “Respect Healthcare Workers” and “SEIU-UHW.” (GC Exh. 37; Tr. 470-471.)

25 After Quevedo went back to work, IT Sr. Telehealth Manager Miranda reiterated that Quevedo needed to be careful because they had a target on her back and she was being watched.<sup>126</sup> (Tr. 471, 510.)

#### 6. Quevedo’s July 9 Termination

30 On July 9, Quevedo clocked in at Calxico and drove to El Centro to work. At around 11 a.m., she was told to report to HR VP Felix’s office. When Quevedo arrived at Felix’s office, AVP IT Lantz was also present. (Tr. 473.) Felix asked Quevedo if she was recording and asked for her phone. Quevedo said she was not recording and she would not turn over her phone. Quevedo asked if she should call her lawyer and Felix said they did not want her to call her lawyer. (Tr. 473.) Felix asked Quevedo if she knew why she was

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<sup>124</sup> The reference to 2025 is likely a typo. These June 2024 incidents were not included in Miranda’s logs. (R Exh. 28; Tr. 902.)

<sup>125</sup> Miranda included the screenshots he had taken on June 25. (Tr. 876.)

<sup>126</sup> According to Miranda, Quevedo said she was stressed because of the Union’s demands, and the Union people kept calling and texting her even though she had told them multiple times not to contact her. She said she did not authorize the Union to use her picture, and it made her feel like she had a target on her back. (Tr. 879.) Quevedo denied that she told Miranda she did not consent to the Union using her photo and denied telling Miranda it made her feel like she had a target on her back. (Tr. 508.) I credit Quevedo on this point, as discussed below.

Quevedo, when asked, “And he never told you that you were being watched or looked at; is that right?”, responded, “No, he didn’t.” (Tr. 509.) She later testified her response was incorrect. Miranda also recalled this conversation differently.

getting fired, and Quevedo responded no. They handed Quevedo a yellow folder, escorted her to her office to get her belongings, and escorted her out. (Tr. 473-474.)

Quevedo's termination letter, signed by Felix, stated her employment was terminated effective July 9, and cited the following provisions of the handbook Section 18.3:

- Habitual and unexcused tardiness and absenteeism
- Unsatisfactory Job Performance

(GC Exh. 38.) Miranda recommended Quevedo's termination. (Tr. 877.)

On her most recent performance appraisal, signed on August 4, 2023, Quevedo received a score of 56 out of 84, which fell into the "meets expectations" category. The "needs improvement" box was checked for "Adheres to work schedule, attendance, punctuality and time management."<sup>127</sup> (GC Exh. 44.) Miranda customarily follows progressive discipline. (Tr. 899.) Prior to her termination, no supervisor or manager discussed her performance with her or issued performance-based discipline. (Tr. 492, 893.)

Felix did not consider Quevedo's FMLA leave in January 2024 as a factor in her termination and focused on the dates after she returned from FMLA leave in determining her leave use was excessive.<sup>128</sup> (Tr. 1181.) The discovery that Quevedo had not been completing her tasks, based on Molina Rivera's complaint, was the reason for the decision to terminate Quevedo's employment. (Tr. 1183-1184.) Felix did not ask Quevedo about her absences or her performance concerns, nor did anyone in HR. (Tr. 1266-1267.)

Quevedo was not told what constituted excessive use of LWOP. (Tr. 490.) There is no policy defining the number of absences that would be considered excessive and there is no written definition of what constitutes an unexcused absence. (Tr. 801, 896, 1435-1436.) HR makes this determination using its discretion. (Tr. 957-958.) Felix prepared an investigative summary for Quevedo on August 22, 2024.<sup>129</sup>

Lantz was aware of Quevedo's union involvement because she had received the June 10 "open letter" flyer. She testified she saw Quevedo's picture on it, along with Barak's. (Tr. 793-794, 795.) The telehealth technicians pictured on the flyer were Quevedo, Hernandez, and Oseguera. (R Exh. 3; Tr. 796.) Miranda saw the flyer with these employees' pictures. (Tr. 879.)

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<sup>127</sup> Quevedo received an award for five years of "outstanding service" in November 2023, on her 5-year anniversary. (GC Exh. 45.)

<sup>128</sup> There is no set number of days in any policy that counts as "excessive" leave use. HR VP Felix would consider 10-15 unexcused absences in a year to be excessive. (Tr. 1266.)

<sup>129</sup> When asked about the reason for the delay, she testified it was prioritized at a lower level and also that the delay may have been because it was created in response to the NLRB investigation. (Tr. 1260-1261.)

## F. Impact of Ascolani, Munguia, and Quevedo’s Terminations on Union Drive

Petty noticed a decrease in engagement with the Union following the terminations of Ascolani, Munguia, F. Borjon, Garcia, and Quevedo. He recalled an organizing committee member telling him she was really scared because she was a single mom and the only source of income for her family. He noticed that some organizing committee members disengaged completely after the terminations. (Tr. 577-578.) At the time the petition was filed, Petty observed that about 20 to 30 percent of workers wore union items. Toward the end of the election period, he estimated that number decreased to about 5 percent. The Union stopped providing swag because organizing committee members said it was really difficult to hand anything out because employees did not want to be seen with union gear. (Tr. 586.)

At some point in July, following the terminations, the Union distributed a flyer asking for Innercare to respect workers and abstain from what the Union referred to as bullying and retaliation. (GC Exh. 56; Tr. 581.)

## G. Carmen Borjon’s October 23 Termination

Carmen Borjon (C. Borjon) worked for Innercare from 1998 until her termination on October 23, 2024.<sup>130</sup> (Tr. 513.) She is married to Francisco Borjon. During the relevant time period, she worked in the Callexico health clinic as a private telephone branch exchange operator (PBX).<sup>131</sup> (Tr. 513.) She reported to Maria Fabiola Rivera, the clinic manager. C. Borjon worked Monday through Friday, 9 a.m. to 6 p.m. (Tr. 515.)

After F. Borjon was terminated on June 19, 2024, C. Borjon showed her support for the Union by wearing a purple scrunchie and a purple pin for two days. She did not wear them for longer because she was afraid of getting fired. (Tr. 516-517.)

The Callexico facility’s break has refrigerators available for employees to use. A poster in the break room reminded employees to take their food on Fridays or maintenance would toss it. (Tr. 518-519.)

Employees frequently sold food plates in the break room. C. Borjon testified that on September 6, 2024, which was a Friday, Isidra Rodas sold barbeque plates. At the end of her shift, at about 5:30 p.m., C. Borjon got a food plate and took it home, believing it was going to be thrown away. (Tr. 521.)

On September 25, employee Evelin Gutierrez emailed Clinic Manager Fabiola Rivera stating that, the previous day, someone had stolen her food, which she had placed on top of the refrigerator. She said it was not the first time her food had been taken and noted that other employees have also had their food taken. (R Exh. 32.) Fabiola Rivera emailed the complaint to HR Manager Ryan the same day and asked her if there was a way

<sup>130</sup> She signed an acknowledgment of receipt of the employee handbook in 2003. (R Exh. 13.)

<sup>131</sup> She previously worked at a few different facilities in various jobs, including clinic manager. (Tr. 514.)

to review the cameras in the break room. (R Exh. 32; Tr. 912.) Complaints about stolen food were fairly common and were investigated by HR.<sup>132</sup> (Tr. 914-915, 1187.) Fabiola Rivera followed up on October 2, and Ryan responded the same day that HR VP Felix was working on it, and it was still under review. (R Exh. 32.)

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Ryan and Felix reviewed video footage of the break room from September 24. The video, date-stamped Tuesday September 24, at 5:34 p.m., shows C. Borjon grabbing a lunch container from the refrigerator, then looking at and touching some items on top of the refrigerator. C. Borjon then set down her container and returned to the items on the top of the refrigerator. Another employee entered the breakroom and grabbed what appeared to be a plastic bag of tortillas from the top of the refrigerator and then opened the refrigerator and retrieved her lunch box. When the other employee came in, C. Borjon stopped what she was doing, re-opened the refrigerator, and then closed it, having retrieved nothing. After the employee left, C. Borjon took a container from the top of the refrigerator with a small plastic bag of chips on top of it, smelled it, put it in her lunch container, and left. (GC Exh. 46.) C. Borjon had seen the container, which was disposable, on top of the refrigerator earlier in the day, around noon, and did not see a post-it or note with a name on the container. (Tr. 528, 529, 539, 542.)

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On October 8, C. Borjon was called in to see Felix, with Ryan also present.<sup>133</sup> Felix showed C. Borjon a video and told her there was a complaint she stole food. After watching the video, C. Borjon said she took the food because September 24 was a Friday, and the food was going to be thrown away. (Tr. 524-525, 1191.) C. Borjon was adamant that the incident took place on a Friday and that housekeeping would have thrown the food away. (R Exh. 34.; Tr. 920.) Felix told C. Borjon the incident would be investigated. (Tr. 524-525, 921.)

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Felix and Ryan asked AVP IT Leon to confirm the video was from September 24, a Tuesday, on October 9 at 9:32 a.m., and Leon responded the same day at 9:47 a.m., confirming September 24 was the date the video was taken.<sup>134</sup> (GC Exh. 101.) On an unidentified date, Felix emailed CHRO Kwon that the September 24 date was confirmed and asked if he wanted Felix to proceed with C. Borjon's separation that day or wait until the end of the day Friday. Felix noted that she spoke with CEO Bell, who agreed with separation.<sup>135</sup> (GC Exh. 101.)

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<sup>132</sup> Complaints about stolen food were one reason cameras were installed in the Callexico break room.

<sup>133</sup> Felix and Ryan had traveled from El Centro to the Callexico clinic for the meeting. (Tr. 919.)

<sup>134</sup> The video was played at the hearing. Afterward, C. Borjon believed that, regardless of the day of the week, the food on the top of the refrigerator was going to be thrown away because when she arrived at work, she never saw anything on top of the refrigerator. She smelled the beans because she had seen them on top of the refrigerator throughout the day. (Tr. 527-528.)

<sup>135</sup> Felix and Ryan testified they agreed, after confirming the video's date, to move forward with discharging C. Borjon because the penalty for theft at Innercare is separation. (Tr. 922-923, 1189, 1191.)

On October 22, 2024, the union organizer Liliana Diaz, F. Borjon, Quevedo, Munguia, and a couple of other employees met with Joey Acuna, a candidate for state political office. In videos of the meeting, F. Borjon told Acuna he was terminated because of his union advocacy and Innercare made false allegations against him but showed him no proof. They asked him to sign a letter of support to help them get their jobs back. Mr. Acuna declined to sign the letter, saying he was a development manager for Innercare. (CP Exhs. 3-4; Tr. 606-611.) Acuna's positions at Innercare included outreach governance and development manager. (Tr. 1323-1324.)

On October 23, C. Borjon was told to go to El Centro to meet with HR VP Felix, where HR Manager Ryan was also present. (Tr. 530-531.) Felix told C. Borjon her employment was terminated. C. Borjon's termination letter, signed by Felix, stated that her employment was terminated effective October 23, citing to the following provisions under Section 18.3 of the handbook:

- Theft
- Dishonesty

(GC Exh. 47.) C. Borjon's only other discipline was a record of verbal warning on August 6, 2012, when she was clinic manager, for not immediately reporting an employee injury. (GC Exh. 48.) C. Borjon's termination took about 5-10 minutes.<sup>136</sup> (Tr. 1329.)

#### H. Jaime Padilla Alleged Interrogation

Jaime Padilla worked at the El Centro facility as a licensed vocational nurse (LVN) from January 2024 until his termination in December 2024. His supervisor was Lourdes Fusi, registered nurse supervisor. Fusi's supervisor was Hector Perez, the director of nursing. Padilla became involved with the Union in February or March, participating in meetings. (Tr. 378.)

On around June 26, an anonymous complaint was filed with the California Board of Vocational Nursing saying Padilla was denying patient care, being insubordinate, and was AWOL in the clinic. (Tr. 379, 1013.) Nursing Director Perez investigated complaints made to the California Board of Vocational Nursing. (Tr. 391, 1010-1011.) Perez held a meeting in Erica Torres' office and read the complaint to Padilla, which alleged he was rude to patients and would take his own phone calls rather than assist patients. Perez did not mention the Union. Jessica Espinoza, a nurse, was present at the meeting.<sup>137</sup> She recalled that Perez informed Padilla about the complaint but did not recall Padilla's

<sup>136</sup> When asked about why the termination occurred on October 23, Ryan responded:

I'm unsure exactly what it would have been, but everything in our office moves very quickly, and we reprioritize on a daily basis depending on other issues that we have at hand. So sometimes, some investigations get set aside for other more important things at the time, and we deal with them as we're able to, particularly when they're not in our home base. Where we're located, it takes more time to -- to conduct a full investigation. (Tr. 925.) Felix and Ryan testified the delay was just a matter of timing and circumstances. (Tr. 986, 1192.)

<sup>137</sup> She placed the call as "sometime around June" (Tr. 1037.)

response. There was no discussion other than Perez informing Padilla about the complaint. Perez did not ask Padilla about the Union or mention the Union. This was the only meeting Espinoza attended with Perez and Padilla. (Tr. 1014-1015, 1038-1041.)

5           Perez investigated the complaint, which included asking Padilla for a statement and  
interviewing five employees. (Tr. 1015-1016.) Padilla prepared a personal statement  
refuting the June 26 complaint and emailed it to Perez a couple days later. According to  
Padilla, he later was paged to report to Fusi's cubicle, and when he arrived, Padilla and  
Perez went to Torres' office. (Tr. 379-380.) Perez gave Padilla a copy of his statement,  
10           which he had printed out, and asked Padilla to go over his statement and to sign it. Padilla  
initialized each page, signed the statement, and gave it back to Perez. (Tr. 380.) As he stood  
up to leave, Perez asked if he was familiar with the Union. Padilla responded that he was,  
and upon further prompting, said he had been a union member when he worked for Imperial  
County Behavioral Health Services. Perez asked Padilla his thoughts on the Union. Padilla  
15           responded that he has seen coworkers being terminated due to tiny errors. Padilla said he  
was in the middle on the Union, not pro or against, and that it was a personal choice. He  
continued, saying he never had any problems with the Union and had a great experience  
with them, and reiterated it was his personal choice to vote yes or no, and he was in the  
middle, even though he supported the Union. (Tr. 380-382.) Only Padilla and Perez were  
20           in the meeting. (Tr. 391.) Perez met with Padilla twice about the June complaint. (Tr. 1023.)

          A second anonymous complaint was filed in late July. The complaints against  
Padilla were closed based on Perez's investigation and did not lead to discipline.<sup>138</sup> (Tr.  
390, 1016.)

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#### I. Maria Montoya

          Innercare's Callexico facility is a medical office with family medicine, pediatrics,  
and OB/Gyn. Maria Montoya has worked at the Callexico facility since 2006 as a medical  
30           assistant. During the relevant time period, her hours were 7:00 a.m. to 4:00 p.m. Monday  
through Friday, and her supervisor was Edgardo Felix, RN (E. Felix).

          Montoya was a member of the organizing committee. In that capacity, she talked to  
her coworkers, handed out flyers, trinkets, candies, and T-shirts, wore a union badge, and  
35           sometimes wore purple. (Tr. 398-399.)

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<sup>138</sup> The Respondent requested I take notice of an unfair labor practice charge filed in connection with Padilla's termination. (R Br. 28.) As discussed at the hearing, any charge regarding Padilla's discharge was resolved through a settlement agreement negotiated between Mr. Padilla's private counsel and the Respondent, the terms of which were confidential, and therefore I do not consider it as it is not before me and the terms of any settlement agreement are unknown. I likewise do not consider disposition of charges and complaint allegations not before me in line with the General Counsel's July 7, 2026, motion to strike portions of the Respondent's brief. In the event a reviewing authority considers this information relevant, I am declining to strike the information from the record, but I am not considering unlitigated charges in making this decision.

# 1. Instruction Not to Arrive to Work Early

Starting about six months leading up to the election, Montoya distributed flyers and other union items before work in the lounge, in the nurse's station, and sometimes in the parking lot and talked to employees about the Union.<sup>139</sup> On July 1, Nursing Director Perez approached her at the nurse's station before her shift and told her she should not be coming in this early.<sup>140</sup> Prior to this, Montoya had not been instructed not to arrive early. When she asked why she could not arrive early, Perez walked away. (Tr. 403-406.) Perez did not limit his instruction to work areas. (Tr. 416-417.) After Perez's instruction, Montoya stopped coming to work early. (Tr. 408.)

Perez heard from Clinic Manager Fabiola Rivera in June or July that employees, including Montoya, were arriving early, going directly to the workstations, and talking to employees on the clock, that Montoya was coming to the clinic early to distribute flyers.<sup>141</sup> (Tr. 1027-1029.) He described the discussion as follows:

Q What was discussed during your conversation with Ms. Rivera?

A My discussion with M[s]. Rivera, she stated -- she told me that she saw Ms. Montoya. She's coming early, and she asked her why she was so early, and Ms. Montoya did not respond. And she goes straight to the lunchroom. And Ms. Rivera, she saw the Ms. Montoya and her husband has something, but she don't know exactly what she was doing. But she find out later on that some time ago the Union was in a table for the lunchroom.

Q When did you learn that -- that she had union pamphlets?

A I don't know. I didn't know.

Q What was your response to the issue of employees arriving to work early?

A I gave an instruction to the supervisor for those employees to don't come so early.

(Tr. 1018-1019.)

Perez told the nursing supervisors, which in Calexico was E. Felix, to ask employees who came in early to avoid the nursing station or workstations. (Tr. 1024.) He relied on section 18.1 of the handbook, which states, "Late arrivals, early departures or other deviations from the scheduled hours are disruptive and must be avoided." (Tr. 1021; GC Exh. 15.) Perez did not mean to include the parking lot, other public areas, or the lunchroom in his instruction to supervisors, but did not explicitly tell E. Felix to mention that employees could be in the parking lot or break room, and did not know what instruction E. Felix ultimately gave to employees.<sup>142</sup> (Tr. 1019, 1024-1025.)

<sup>139</sup> Montoya did not punch in early when she came in early to do union activities. Patient care was not provided at the nurse's station. (Tr. 426.)

<sup>140</sup> Perez could not remember if he told Montoya directly not to come to work early. (Tr. 1023.)

<sup>141</sup> Fabiola Rivera, the clinic manager, did not testify.

<sup>142</sup> Nobody, including Perez, told Montoya she could come in early and go to the break room or other nonwork area. (Tr. 415.)

Perez testified he did not care where employees entered the facility, i.e. the public vs.

Montoya observed Yesenia Alarcon come to work 30 to 40 minutes early and chat with people. To Montoya's knowledge, Alarcon was not told not to come in early.<sup>143</sup> (Tr. 407.) Montoya did not recall an announcement of a rule that would apply to everyone about not coming to work areas prior to their shifts.<sup>144</sup> (Tr. 415.)

Employees talked about nonwork things such as kids' activities, TV shows and movies, what they did over the weekend, etc., during work. (Tr. 59, 166.) In Calexico, they talked about social media, sports, news, and other topics. (Tr. 408.)

## 2. Alleged Threat of Job Loss

CMO Wu maintained an office in Calexico, which he used when he was at the clinic and shared with Dr. Lisa Bean. (Tr. 403, 412.) After a voluntary session about the Union in July, which included Innercare's solicitation policy, Dr. Wu returned to his office and noticed boxes with purple scrubs and other SEIU-related materials. (Tr. 1044, 1047.) The boxes were visible to those walking by the office. Upon learning they belonged to Montoya, he asked her to meet in his office.<sup>145</sup> (Tr. 400, 1048.) Dr. Wu said he knew that a lot of families were hurting because of the union thing and Montoya said she knew that and was sorry. Dr. Wu then said that if the union thing did not pass, he did not know how he could keep Montoya in her job.<sup>146</sup> (Tr. 400.)

Dr. Wu asked Montoya why she kept union items in the office, and she said there was nowhere else to put them, and they were tucked away in the corner. Dr. Wu asked Montoya to move the boxes, which she did.<sup>147</sup> (Tr. 401.) Dr. Wu was concerned that it looked like he was distributing purple scrubs for the Union, and he was concerned this violated Innercare's solicitation policy. (Tr. 1049-1050.) He also had been told to stay neutral, and he was concerned about violating this directive. (Tr. 1062.) He explained to Montoya that he and Dr. Bean could lose their jobs because they were not supposed to solicit or distribute items in work areas, and his office was a work area. Montoya apologized and picked up the materials. (Tr. 1053.)

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employee entrance. When confronted with his Board affidavit, he admitted his issue was employees coming in through the staff entrance before their shifts. (Tr. 1026-1027.)

<sup>143</sup> Management's knowledge of Alarcon's early arrivals is not a matter of record.

<sup>144</sup> Montoya was unaware of any complaint about disruptions in the front area of the clinic in the early mornings. (Tr. 417.)

<sup>145</sup> Montoya had worked as Wu's medical assistant during Wu's first six years at the Calexico Clinic. (Tr. 1052.)

Dr. Bean permitted medical assistants to use the refrigerator and microwave in the office. (Tr. 429, 1065.) She did not tell Montoya one way or the other whether they could store other items, including union materials, in the office. (Tr. 413, 423.)

<sup>146</sup> Montoya feared losing her job because she was a union organizer. (Tr. 410.) Dr. Wu said he did not discuss Montoya's job in any way. (Tr. 1054.) As discussed below, I credit Montoya on this issue.

<sup>147</sup> Montoya then testified it was a bag of items. (Tr. 412.) Dr. Wu testified it was four or five large boxes. (Tr. 1057.) The dispute over the items' container is immaterial.

## J. Other Employees' Discipline/Termination

### 1. Time and Attendance

#### 5 a. Discipline

On October 5, 2022, Kelly Aguilera, a medical assistant, received a record of verbal warning for being late 13 times over a two-month period, totaling 229 minutes. (GC Exh. 65.)

10 On February 24, 2023, Marylou Torres, a medical assistant, received a written warning for being late six times, calling off once, and leaving early twice between January 10 and February 22. (GC Exh. 92.) On September 15, 2023, Maria Perez, a medical assistant, received a record of verbal warning for calling off work nine times between  
15 February 24 and September 15. (GC Exh. 84.)

On April 26, 2024, Ashley Harris, a medical assistant, received a written warning for unexcused absences on March 7 and March 28. (GC Exh. 79.) On August 16, 2024, Ramiro Villareal, an IT employee, received a written warning for 25 unexcused absences  
20 in 2024, resulting in LWOP four times. (GC Exh. 95.)

On March 18, 2025, Clara Zazucta, a biller, received a record of verbal warning for arriving to work late 29 times from December 30, 2024, to March 5, 2025. (GC Exh. 96.)

#### 25 b. Termination

Telehealth Technician Melhaya Hernandez was terminated on October 20, 2023, for punctuality infractions. She had received progressive discipline, including a disciplinary probation, for previous infractions. (GC Exh. 80.)

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### 2. Performance Issues

#### a. Discipline

35 On February 14, 2023, Julio Camacho, a lab technician, received a written warning for telling his supervisor that there was no work to do and not working when there were several tasks that had not been completed, and not wearing his mask. He received a second written warning on February 15, 2023, for making false statements by signing off on work he did not complete, including whitening-out the name of an employee who completed a task  
40 and substituting his own name. (GC Exh. 70.)

On January 23, 2024, Roxanna Vazquez, a patient representative, received a written warning for two instances of failing to check in patients, resulting in delay and requiring the patient to wait. She later received a notice of corrective probation period on March 5,  
45 2024, for forgetting about two additional patients. (GC Exh. 94, pp. 4-5.)

On March 5, 2024, Juliette Bernal, a patient representative, received a written warning for failing to update medical records during the patient check-in process, causing a patient to wait for hours, with a notation that this continued to be an issue. (GC Exh. 68.)

5 On March 29, 2024, Alejandra Gutierrez, a lab technician, received a record of verbal warning for multiple errors (12) documenting laboratory medical information. (GC Exh. 78.)

10 On April 3, 2024, Felipe Bastidas, a patient representative, received a record of verbal warning for failing to fill out his daily cash log sheet. (GC Exh. 67.) Also on April 3, Georgina Osuna, a medical assistant/lab technician, received a record of verbal warning for failing to run negative urine controls on March 19. (GC Exh. 83.)

15 On April 4, 2024, Chelsea Cabrera, a finance department/administrative employee,<sup>148</sup> received a record of verbal warning for not posting her work on NextGen and failing her daily collection duties on April 3 and 4. (GC Exh. 69.) On April 26, 2024, Leslie Garcia, a medical assistant, received a written warning for refusing to let nursing students shadow her on two occasions and being discourteous. (GC Exh. 77.)

20 On May 1, 2024, Rene Canchola, a lab technician, received a written warning for failing to complete assignments, including entering control log information incorrectly or not entering the logs, not following patient identification policies, and maintaining expired supplies. (GC Exh. 71.)

25 On May 7, 2024, Norma Tellez, a medical assistant, received a second written warning for charting errors, not checking in patients in a timely manner, not processing patients efficiently, and turning off a program required for her to assist coworkers. (GC Exh. 88.)

30 On May 21, 2024, Leticia Ornelas, an administrative assistant, received a written warning for failing to maintain adequate supplies on numerous occasions and becoming defensive and behaving unprofessionally when management attempted to provide constructive feedback. (GC Exh. 82.)

35 On June 18, 2024, Andrea Ramirez, a biller, received a written warning for failing to provide good faith estimates of anticipated costs to multiple patients, which was required daily for patients scheduled 3 or more days in advance.<sup>149</sup> (GC Exh. 86.) Manuel Terrazas,

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<sup>148</sup> Felix was not completely certain of Chelsea Cabrera's title or where she worked. (Tr. 1226-1227.) Her record of verbal warning does not contain information about or a signature from a supervisor.

<sup>149</sup> Maria Fabiola Rivera signed this discipline. I take administrative notice that the federal law entitled the No Surprises Act, and specifically, 42 U.S.C. § 300gg-136(a)(2), requires a provider or facility, upon scheduling or request, to provide a notification of the good faith estimate (GFE) of expected charges for the scheduled items or services, including reasonably expected related services.

a patient representative, received a record of verbal warning on September 13, 2024, for this same error for multiple patients.<sup>150</sup> (GC Exh. 90.)

5 On August 8, 2024, Fabiola Flores, a patient representative, received a written warning for several errors on insurance forms, following two previous instructions to correct the errors. (GC Exh. 76.)

10 On October 11, 2024, Brenda Ruiz, a patient representative, received a record of verbal warning for multiple coding errors (totaling 1,303) related to insurance billing. (GC Exh. 87.)

15 On September 27, 2023, an employee named Carla<sup>151</sup> received a record of verbal warning for cutting and pasting a patient's signature on a form because she forgot to ask the patient to sign it on September 20, the date of service. (GC Exh. 75.)

#### b. Termination

20 On July 9, 2020, Valerie Obeso was terminated for unsatisfactory job performance. She had been hired on November 11, 2019, as a pharmacy technician, and had received two written warnings for tardiness in March 2020, and failure to follow COVID protocols in April 2020. On June 29, 2020, the pharmacy director informed HR VP Felix he wanted to terminate Obeso for performance reasons, including failure to follow processes, slow learning pace, problems doing basic math, making too many typing errors, and not paying attention (staring into space and starting to fall asleep) at meetings. On July 7, Felix asked  
25 CEO Bell if they could move forward with termination, referencing Obeso's two written warnings and continued issues with overall performance. The termination was effectuated July 9. (R Exhs. 72-73.)

### 30 3. Confidentiality/Medical Records

#### a. Discipline

35 On November 21, 2019, Hannah Cano, a medical assistant, received a record of verbal warning for violating patient confidentiality when she accessed her aunt's medical record on five occasions. In addition to the record of verbal warning, she was required to obtain a release of information from her aunt and complete HIPAA training. Cano was subsequently suspended without pay for five days on March 10, 2021, for going into her ex-husband's medical record multiple times, in violation of HIPAA. The access of Cano's ex-husband's records resulted in an incident report documenting that the ex-husband had  
40 called the doctor who had examined him and wanted to know how his ex-wife was aware of the details of his visit. The doctor apologized and referred the matter for investigation, which revealed multiple additional violations in 2020. The incident report was sent to the director of nursing, and the HIPAA compliance director. (GC Exh. 72.)

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<sup>150</sup> Fabiola Rivera also signed this discipline.

<sup>151</sup> Carla's last name is difficult to discern.

b. Termination

On May 17, 2019, Joline Panico was terminated for violation of HIPAA policy, possibly related to accessing her own medical records several times.<sup>152</sup> HR VP Felix believed she was issued warnings prior to her termination but was not completely certain. (R Exh. 59; Tr. 1131, 1218.)

On June 18, 2019, Giovanna Gil-Lamadrid, an HR assistant, was terminated for “Violation of patient or employee confidentiality and failure to comply with one or more of Clinicas policies, procedures, regulations and/or instruction.” (R Exh. 47.) Specifically, she disclosed medical information about a clinician to another employee.<sup>153</sup> She was not disciplined prior to her termination. (Tr. 1127-1128, 1222.)

4. Time Theft

On January 16, 2017, Teresa Davidds was terminated for time theft and falsifying records when she clocked out at lunchtime, and clocked back in after lunch, but did not return to work from 12:52-5:00 p.m. She returned to the facility and clocked out at the end of the day. (R Exhs. 62-63.)

Janel Garcia and Valerie Lopez, both health navigators, were terminated because evidence, including text messages, showed that Garcia had clocked in Lopez on August 1, 2018, when Lopez was at home. Lopez also said that she had been at work but clocked out sick, while a neighbor reported seeing her dressed casually at about 9:30 walking from her home to her car when Lopez said she had been at work.<sup>154</sup> Luz Moreno, community engagement program manager, informed Felix that she had spoken by phone with Lopez at 10:40 to see if she was helping a patient with enrollment, and Lopez told Moreno she had been in the bathroom throwing up with diarrhea all morning. Paylocity records showed both employees were clocked in at the Calxico clinic, where Garcia worked, but Lopez worked in Brawley. When Felix asked Lopez to write a statement of her entire day, she only put that she was sick and went home at 10:00 a.m. The timeclock showed she clocked out at 10:34 a.m. Felix found text messages from two dates when Garcia and Lopez clocked each other in. Lopez was terminated for time theft and dishonesty on August 2. Garcia was terminated for time theft on August 9. (R Exhs. 64-67.)

<sup>152</sup> Felix first testified that Panico accessed her own chart several times. (Tr. 1131.) She then testified, “I believe she -- she may have looked at her own chart, but again, I’m not sure.” (Tr. 1218.) Felix thought Panico was a medical assistant. (Tr. 1131.)

<sup>153</sup> There was no investigative file for Gil-Lamadrid, and Felix was unsure why. (Tr. 1222-1223.)

<sup>154</sup> In an August 23, 2019 email, April Dawn Duerbusch, an unemployment claims services employee from Equifax, emailed Ana Zapata, a human resources assistant, and HR VP Felix regarding Garcia, noting that time theft and dishonesty were contestable issues, and to let her know whether they wished to contest Garcia’s unemployment compensation claim. Zapata said she would let Felix decide. They sent Ms. Duerbusch a claim saying they were not contesting, and Duerbusch said she still needed information with “the basics” to the state to ensure they were not fined.

## 5. Multiple Reasons

### a. Discipline

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On May 12, 2023, Vanessa Urrutia, a biller, received a record of verbal warning for being tardy 11 times since April 1, and for excessive cell phone usage during work. (GC Exh. 93.)

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On September 9, 2023, Rosario Anaya, a dental assistant, received a written warning for coming in late nine times and calling out once between August 4 and September 11, as well as turning in work-related forms a month late. (GC Exh. 66.)

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On September 28, 2023, Sandra Huerta, a patient representative, received a notice of corrective probation period for calling off work five times, being late two times, and leaving work early twice between August 3 and September 19, for turning in sliding fees late after having already been written up for it, and for a second incident of turning in a late payment. (GC Exh. 81.)

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On March 25, 2024, Amanda Deniz, a medical records employee, received a written warning and was demoted due to a series of failures in completing tasks even though she had checked them off as completed, failing to schedule scanning sessions, and mishandling funds. The documentation identified two separate incidents of Deniz falsifying the results of her operational checklist. She received a second written warning on May 29, 2024, for her pattern of time-off requests, including leaving at the end of the week. (GC Exh. 74.)

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On April 9, 2024, Stephanie Carrera, a medical assistant, received a written warning for failing to perform/complete job duties related to cleaning and sterilizing equipment, and failing to communicate with her supervisor when she left early eight times, including five times after requests for leave were denied, and for two no-shows. (GC Exh. 73.)

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On November 1, 2024, Juliann Torres, a behavioral health employee, received a written warning for unsatisfactory job performance, failure to act in a timely manner, insubordination and failure to cooperate with her supervisor. Multiple employees reported that, on more than one occasion, Torres slept with her head down on her desk and did not move when told to return to work. Torres had a confrontation with a coworker and failed to comply with instructions to provide a written statement about it. The supervisor had talked to Torres about teamwork and communication in the past, as well as excessive cell phone use during work hours. (GC Exh. 91.)

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On February 6, 2025, Selene Prado, a medical assistant, received a notice of 5-day suspension for violating several handbook provisions. She caused real or potential harm to Innercare employees or patients when, on November 11, 2024, she asked another employee to access her medical record so she could view it, in violation of HIPAA. Prado caused real or potential harm to Innercare's reputation when, on November 4, 2024, she made an

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unfounded false statement accusing a supervisor of pressuring clinicians to change Prado's return to work date on medical documentation. This conduct violated the handbook provision on making false statements. Prado also demonstrated dishonesty on November 11 in connection with false reporting regarding an employee accessing her chart. She demonstrated conduct unbecoming an employee when made disparaging remarks about a supervisor during an interview with HR. (GC Exh. 85.)

b. Termination

Alejandra Teran, a billing clerk, was terminated on August 21, 2023, due to multiple continued work errors following a January 27, 2023, written warning for poor performance and absenteeism, and a final written warning on May 18, 2023, for failing to meet productivity goals and continued absenteeism with multiple instances of LWOP. Her supervisor, Sofia Ramirez, had gone over her errors and her failure to follow instructions, and told her she had disrupted staff by asking them for help rather than calling the health plan, as she had been instructed to do. Ramirez had also counseled Teran not to vent her personal issues with staff and offered her mental health services through Innercare, noting that staff had mentioned Teran overwhelmed them with her personal issues, which was negatively impacting morale. (GC Exh. 89.)

On September 12, 2023, Ruby Mata, a referral clerk, was terminated for demonstrating conduct unbecoming an employee and failure to comply with one or more policy including Innercare's policy on harassment (calling a supervisor a "bitch" and "f-ing liar"), insubordination by refusing to follow management's instructions concerning a job-related matter, unauthorized use/misuse of Innercare's tools, equipment, or property and violation of patient or employee confidentiality (abusing NexGen by accessing supervisor's medical chart three times). (R Exhs. 60-61.)

Jaime Padilla was terminated on December 12, 2024, for conduct unbecoming an employee, insubordination, and theft. Specifically, Padilla admitted he took a tin of cookies from Dr. Rosa-Re's desk that had been meant for Dr. Rosa-Re and had a card with her name on it (though he stated her name was not on the cookie tin) and he offered to return them to her. Padilla's wife told the nurse supervisor that Dr. Rosa-Re's name was on the cookie tin. Dr. Rosa-Re reported that Padilla came to her office, closed the door, and said, "I thought you weren't going to say anything. Now I have got to talk to someone else in HR." making her feel scared and intimidated. The HR investigation concluded that Padilla knowingly took Dr. Rosa-Re's cookies and displayed lack of professionalism by confronting Dr. Rosa-Re after HR spoke with him. During Padilla's separation interview, Ryan informed him that theft always results in separation. (R Exhs. 78-79.)

On April 17, 2025, Alan Brinkman, payroll and benefits coordinator, was terminated for dishonesty, benefit theft, and misuse of company property. The termination was based on calling in sick, using the extended illness bank, and informing management he was sick and at home, when he was not sick and was instead teaching a course at Los Angeles Pacific University. Brinkman also printed forms for his outside work using Innercare's secure printing system. (R Exhs. 76-77.)

## K. The Objections: Police Visits and Alleged Surveillance

5 After their terminations, Ascolani, Garcia, F. Borjon, and Quevedo continued to talk to employees and hand out flyers.

10 Padilla saw law enforcement in the parking lot when he was working on the second floor at El Centro. The security guard mentioned that they had called law enforcement. (Tr. 384-386.) Ascolani observed law enforcement at the El Centro facility at least three times, twice before the Fourth of July, and once during the July 8 rally. On one occasion, Ascolani observed HR Manager Ryan recording the police interactions at the El Centro facility from the second-story window. (Tr. 93-95, 140.) Ryan did not recall whether she looked out the second-floor window when the police were at the facility. (Tr. 994.)

15 The police were called during the rally at El Centro on July 8. CHRO Kwon spoke with the police asking them to remove a truck with electronic billboard with messaging regarding Inncare's CEO. He asked for help because he believed it was causing a traffic jam relative to the normal traffic, and "they" thought it could be a security hazard. The police did not remove the truck with the billboard, and the truck continued to meander  
20 through the parking lot. (Tr. 1451-1452.) HR Manager Ryan's understanding was the police were called because the clinic, including the parking lot, is private property, so the police were called to ask the union organizers to leave. She was not sure who from Inncare called the police, but believed they were called, because the police do not otherwise drive by the facility. (Tr. 952-953.) Kwon believed it was likely Anthony Rubio,  
25 director of project management, who called the police. (Tr. 1451.)

Organizer Liliana Diaz saw the police a couple of times when she was handing out flyers before work at the El Centro facility. (Tr. 596.) On July 16, Diaz and another union worker, Arturo Castellanos, interacted with law enforcement at El Centro. According to  
30 Diaz, the police told her the clinic called them because the organizers should not be in the parking lot because it was private property. Diaz explained to the police that they had a right to be there and showed them a letter from the Union's attorney. An officer responded that it would be better if they could be outside the parking lot so that the police would not be called again, but agreed they were doing nothing wrong and ultimately did not ask them  
35 to move. (Tr. 597-599, 604; CP Exh. 3.)

Garcia found it more difficult to speak to employees at El Centro due to the presence of the corporate offices. Some coworkers mentioned fear and said it was difficult to talk the union workers. (Tr. 281-282.) When the police came, Ascolani observed that  
40 workers seemed hesitant to interact with the Union in the presence of law enforcement and told him they didn't want to get fired like he did. (Tr. 93-103.)

Quevedo was handing out flyers in the Callexico parking lot in mid-July when Fabiola Rivera, the Callexico clinic manager, told them they could not be there, and she was  
45 going to call the police. The police arrived and told the union organizers to stand on the sidewalk (Tr. 498.) Garcia visited the Callexico clinic to talk to employees and hand out

flyers several times around lunch time, between 11a.m.-1p.m. She stood in the parking lot away from the entrance. The people in charge of the clinic asked the union workers to leave and threatened to call the police. In total, the police came to Calexico two or three times when Garcia was present. On one occasion, probably before July 4, two officers arrived and told Garcia they were called to see what was happening. Garcia showed them a letter and said she was doing nothing wrong. They said it would be better if Garcia left so she did. Another time, the police did not ask Garcia and the organizers to leave. (Tr. 275-277.)

F. Borjon observed the police come to Calexico twice. One of the occasions was after work, so employees who were leaving the facility observed the police and the union volunteers. According to F. Borjon, the employees ignored the union representatives and ran away from them. (Tr. 352-353.) Garcia observed employees making fun of the police coming to Calexico. (Tr. 278.)

Garcia and F. Borjon did not encounter police when they visited Brawley. (Tr. 278-279, 355.) F. Borjon observed that, when he was handing out flyers, employees did not want to talk to them. (Tr. 357.)

On July 9, there was an organized caravan of cars with flyers in the Coachella parking lot, and organizers spoke with employees. The police came and told them to get off the premises, so they left. (Tr. 499.) The Coachella clinic is in a multi-tenant outdoor strip mall with a large parking lot all tenants of the strip mall share. Innercare does not own or control the Coachella clinic's parking lot. (Tr. 1456-1457.) Quevedo noted that employees in the parking lot, who had previously been laughing and seemed happy, went inside quickly once the police arrived. (Tr. 500.)

The police did not, at any facility, arrest anyone or take anyone into custody.

#### L. Employees' Complaints about the Union

Several employees complained about the Union's actions during the campaign, to HR Manager Ryan, HR VP Felix and Director Torres. Each manager instructed the employees to put their complaints in writing. (Tr. 944-946, 1003-1004, 1199, 1361-1363.)

During July, numerous employees submitted written complaints reporting that they felt harassed by union representatives through repeated calls and home visits after asking them to stop.<sup>155</sup> (R Exhs. 39-42, 58, 81.) Across the complaints, employees described the

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<sup>155</sup> These statements are hearsay and are not considered for the truth of the Union's conduct. Rule 803(6) does not make them admissible to prove the Union engaged in the conduct described. Even if Innercare's HR files qualify as business records, the exception reaches only the fact that the complaints were received, not the truth of the employees' out-of-court assertions. The business-records exception "does not embrace statements contained within a business record that were made by one who is not a part of the business if the embraced statements are offered for their truth." *United States v. Vigneau*, 187 F.3d 70, 75-76 (1st Cir. 1999); See also *Cont'l Pet Techs.*, 291 NLRB 290 (1988). The Respondent contends that the complaints are not offered for the truth of the Union's conduct but to show their effect. (R Br. 96.) They are admissible and

same core grievance: repeated, unwanted contact from union representatives, including phone calls, texts, and visits to their homes, that continued after they asked it to stop and that they experienced as harassing, pressuring, or intrusive on their homes and families. One employee described being told that she would receive a bigger raise and more benefits. Another employee complained about the Union’s use of her photograph in a flyer without her permission. A different employee’s complaint concerned a representative handing a flyer to another employee in an aggressive manner, rather than contact directed at the complainant herself.

## LEGAL STANDARDS AND ANALYSIS

### A. Legal Standards

#### 1. Witness Credibility

Many of the disputes at issue can be resolved only by assessing witness credibility. A credibility determination may rest on various factors, including “the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole.” *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op. at 7 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enf’d. 183 F. App’x 17 (2d Cir. 2006). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness’s testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), rev’d on other grounds, 340 U.S. 474.

The Board has agreed that “when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge.” *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. mem. 861 F.2d 720 (6th Cir. 1988). This is particularly true where the witness is the Respondent’s agent. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006). Moreover, an adverse inference is warranted by the unexpected failure of a witness to testify regarding a factual issue upon which the witness would likely have knowledge. See *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15, 15 fn. 1 (1977) (adverse inference appropriate where no explanation as to why supervisors did not testify); *Flexsteel Industries*, 316 NLRB 745, 758 (1995) (failure to examine a favorable witness regarding factual issue upon which that witness would likely have knowledge gives rise to the “strongest possible adverse inference” regarding such fact).

Testimony from current employees tends to be particularly reliable because it goes against their pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304, 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193

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considered for that purpose, as well as, where applicable, the complaining employee’s own then-existing emotions.

NLRB 47, 48 (1971); *Federal Stainless Sink Div. of Unarco Industries*, 197 NLRB 489, 491 (1972).

It is impossible to reconcile all of the different recollections of the witnesses for both sides. Moreover, I would not expect memories, especially on matters that did not seem out of the ordinary at the time, to be perfect given the passage of time. In evaluating the various different versions of events, I have fully reviewed the entire record and carefully observed the demeanor of all the witnesses. I have considered the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or the lack of it; consistencies or inconsistencies within the testimony of each witness and between witnesses with similar apparent interests. See, e.g., *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). Where my credibility resolutions rest on the witnesses' demeanor as I observed it at the hearing, I make that basis explicit, recognizing that demeanor-based credibility findings are entitled to special weight because they derive from the unique advantage of having seen and heard the witnesses testify. Where a resolution rests on demeanor, I have also confirmed it against the documentary record, the inherent probabilities, and the internal and cross-witness consistency of the testimony, so that each finding stands independent of demeanor alone. *Standard Dry Wall Products*, 91 NLRB 544, 545 (1950). Testimony in contradiction to my factual findings has been carefully considered but discredited. Where there is inconsistent evidence on a relevant point, my credibility findings are incorporated into my legal analysis below.

## 2. Section 8(a)(3) *Wright Line*

In mixed-motives cases, where an employer defends against an allegation that it has terminated or taken other adverse action against an employee because of their union activity by asserting that the termination or adverse action was for legitimate reasons, the Board applies the analysis set forth in *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). Under this framework, the General Counsel has the initial burden to provide evidence supporting the inference that union activity was a motivating factor in the employer's decision. See, e.g., *Intertape Polymer Corp.*, 372 NLRB No. 133, *slip op.* at 6 (2023), *enfd.* 2024 WL 2764160 (6th Cir. 2024). The elements required to sustain the General Counsel's initial burden are: (1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) employer animus against union or other protected activity. *Id.*

Evidence of the employer's hostility toward union activity may be circumstantial, and may include, among other things: (1) the timing of the employer's adverse action in relationship to the employee's protected activity; (2) the presence of other unfair labor practices; (3) statements and actions showing the employer's general and specific animus; (4) disparate treatment of the discriminatees; (5) departure from past practice; and (6) evidence that an employer's proffered explanation for the adverse action is a pretext. See *Golden Day Schools v. NLRB*, 644 F.2d 834, 838 (9th Cir. 1981); *NLRB v. Rain-Ware, Inc.*, 732 F.2d 1349, 1354 (7th Cir. 1984) (timing); *Mid-Mountain Foods, Inc.*, 332 NLRB 251, 260 (2000), *enfd. mem.* 169 LRRM 2448 (4th Cir. 2001); *Richardson Bros. South*, 312 NLRB 534, 540 (1993) (other unfair labor practices); *NLRB v. Vemco, Inc.*, 989 F.2d

1468, 1473-1474 (6th Cir. 1993); *Affiliated Foods, Inc.*, 328 NLRB 1107, 1110 (1999) (statements showing animus); *Wright Line* at 1089; *Naomi Knitting Plant*, 328 NLRB 1279, 1283 (1999) (disparate treatment); *JAMCO*, 294 NLRB 896, 905 (1989), *affd. mem.* 927 F.2d 614 (11th Cir. 1991), *cert. denied* 502 U.S. 814 (1991) (departure from past practice); Another indicator of unlawful motivation is shifting explanations for a personnel action. See *City Stationery, Inc.*, 340 NLRB 523, 524 (2003) (nondiscriminatory reasons for discharge offered at the hearing were found to be pretextual where different from those set forth in the discharge letters); *GATX Logistics, Inc.*, 323 NLRB 328, 335 (1997).

The Board will infer an unlawful motive or animus where the employer’s action is “baseless, unreasonable, or so contrived as to raise a presumption of unlawful motive.” *J. S. Troup Electric*, 344 NLRB 1009, 1016 (2005) (citing *Montgomery Ward & Co.*, 316 NLRB 1248, 1253 (1995)); See also *ADS Electric Co.*, 339 NLRB 1020, 1023 (2003); *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966). The lack of meaningful investigation into the incident is further evidence of unlawful motivation. “The failure to conduct a meaningful investigation and to give the employee who is the subject of the investigation an opportunity to explain are [likewise] clear indicia of discriminatory intent.” See *New Orleans Cold Storage & Warehouse Co., Ltd.*, 326 NLRB 1471, 1477 (1998), *enfd.* 201 F.3d 592 (5th Cir.2000). Delay can be evidence of unlawful motivation. *Doctors’ Hospital of Staten Island, Inc.* 325 NLRB 730, 738 (1998); *New Haven Register*, 346 NLRB 1131, 1143 (2006) (suspension on January 7, 2005 for events that occurred on December 23-24, 2004).

If the General Counsel has established the employee’s protected conduct was a motivating factor in the employer’s decision, the burden of persuasion shifts to the employer to demonstrate, by preponderant evidence, that it would have taken the same action even in the absence of the protected conduct. The employer cannot meet its burden merely by showing that it had a legitimate reason for the action; rather, it must demonstrate that it would have taken the same action even in the absence of protected conduct. *Wright Line*, above; *Intertape Polymer*, above.

### 3. Section 8(a)(1)

Section 7 of the Act provides that employees have the right to engage in union activities and “the right to ... engage in ... concerted activities for the purpose of collective bargaining or other mutual aid or protection ....” “Other mutual aid or protection” extends to employee efforts to improve terms and conditions of employment or otherwise improve their lot as employees. Section 8(a)(1) states, “It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.”

The Board’s longstanding test to determine if there has been a violation of Section 8(a)(1) of the Act is whether the employer engaged in conduct which might reasonably tend to interfere with the free exercise of employee rights under Section 7. *American Freightways Co.*, 124 NLRB 146, 147 (1959). This test is an objective one, not based on subjective coerciveness. *Sunbelt Rentals, Inc.*, 370 NLRB No. 102, slip op. at 3 (2021). It

is well settled that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed. *American Tissue Corp.*, 336 NLRB 435, 441 (2001) (citing *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946)). It is the General Counsel's burden to prove 8(a)(1) violations.

## B. Alejandro Ascolani

### 1. June 14 Instruction to Remove Union Materials

Complaint paragraphs 8 and 20 allege that, on June 14, 2024, the Respondent, by Young Kwon, through a conference call with employees who were in Marlene Rizo's office at the El Centro facility, instructed employees that they were not allowed to have union posters or flyers on their desks or at their cubicles, in violation of Section 8(a)(1) of the Act. I find the General Counsel has established this complaint allegation.

There is no dispute that CHRO Kwon instructed Ascolani to remove union materials from his desk. There is also no dispute regarding the validity of Innercare's solicitation policy. Finally, there is no dispute that employees were permitted to have various other non-work-related materials at their desks, and were permitted to wear union lanyards, purple scrubs, and possess other items that displayed their support for the Union.

The Respondent asserts that it was the "stack" of flyers on Ascolani's desk that constituted solicitation. When asked about whether Ascolani had more than one flyer on his desk, Kwon, who admittedly had never seen Ascolani's cubicle, was equivocal at first:

Q [D]o you recall with the flyer on Mr. Ascolani's desk, is your understanding, was it one

flyer or more than one flyer?

A I believe it was just one -- there was a -- well, it was a stack of them on the desk.<sup>156</sup>

Then, when asked why others were permitted to have a union flyer at their desk, but Ascolani was not, Kwon testified as follows:

Q And were there employees during the union election who had flyers -- you know,

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flyer at their desk?

A Yes.

Q And then why did you tell Mr. Ascolani to put his away?

A He had a stack of them in the corner of his desk, as I understood it.<sup>157</sup>

CFO Rizo, whose office was less than five feet from Ascolani's cubicle, could not remember whether Ascolani had flyers at his desk, much less whether flyers were in a stack

<sup>156</sup> Tr. 1343-1344.

<sup>157</sup> Tr. 1376.

on the corner of Ascolani's desk displayed so as to, on their own, constitute solicitation.<sup>158</sup>

5 Although other employees had displayed union materials, Kwon testified he did not instruct other employees to remove union materials from their workspace.<sup>159</sup> Despite Kwon's testimony, HR VP Felix recalled Kwon told Ascolani, "That in no way, basically, shape, or form, can they -- can anybody solicit during working hours and cannot have items on their desks -- their workstations."<sup>160</sup> Rizo recounted Kwon's instruction as follows:

10 Well, he was pretty much saying that we couldn't have documents that, I guess, kind of, like, political type of documents as well, that it's not very -- that we can't -- that's -- that's a solicitation. That's what those documents were.<sup>161</sup>

15 In *Wal-Mart Stores, Inc. v. NLRB*, 400 F.3d 1093 (8th Cir. 2005), enfg. in part 340 NLRB 637 (2003), the court explained that solicitation typically means "asking someone to join the union by signing his name to an authorization card" and requires an immediate response from the listener, distinguishing it from "talking about a union" or displaying union insignia, which don't constitute solicitation. There was no explanation as to how the flyers on Ascolani's desk solicited a response from anyone, especially considering they left  
20 no impression on Rizo.

In any event, by instructing Ascolani to put away his flyers while permitting employees to keep non-work items on their desks, the Respondent treated Ascolani disparately, in violation of Section 8(a)(1). See *United Parcel Serv., Inc. v. NLRB*, 228 F.3d 772 (6th Cir. 2000) ("while an employer may, under the NLRA, validly enforce a rule prohibiting the distribution of literature on working time and in work areas, it may not . . . enforce such a rule in a discriminatory manner."). Permitting some employees to display union materials does not cure the violation. In *Cintas Corp.*, 353 NLRB 752 (2009), enfd. *Cintas Corp. v. NLRB*, 589 F.3d 905 (8th Cir. 2009), around 8 employees, including  
30 employee Cruz, an active union supporter, wore pro-union stickers on their shirts on the production floor.<sup>162</sup> The production floor supervisor instructed Cruz, but not the other employees, to remove the sticker from her shirt and throw it away. The Eighth Circuit agreed that this instruction violated Section 8(a)(1).

35 Preponderant evidence shows that Kwon's instruction to Ascolani to put away the union flyers on his desk violated Section 8(a)(1), and I therefore find the General Counsel established this complaint allegation.

## 2. Ascolani's June 14 Demotion

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<sup>158</sup> Tr. 717.

<sup>159</sup> Tr. 1376-1377, 1447.

<sup>160</sup> Tr. 1194.

<sup>161</sup> Tr. 666.

<sup>162</sup> The Board's two-member *Cintas* decision issued without a valid quorum under *New Process Steel*, 560 U.S. 674 (2010). I rely on the Eighth Circuit's enforcing decision, which remains good law.

Complaint paragraphs 12(a) and 21 allege that on June 14, 2024, the Respondent demoted its employee Alejandro Ascolani, in violation of Sections 8(a)(3) and (1) of the Act. I find the General Counsel has established this complaint allegation.

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A threshold issue is whether the reassignment from bookkeeper to biller I was a demotion. I find that it did. As detailed above, biller I was the lowest level position in the finance office, requiring less education and offering less earning and promotional potential. As such, I find Ascolani's reassignment was a demotion.

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As of June 14, Ascolani had engaged in union activities, and the Respondent had the requisite knowledge of them. Bueno's June 6 statement to HR, the June 10 "open letter" flyer, on which Ascolani was pictured and identified as an organizer, and Kwon's instruction to Ascolani to remove union flyers from his desktop, and Cabrera's June 13 comment that Ascolani was "brainwashed" by the Union, firmly establish knowledge.

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As for animus, the timing of Ascolani's demotion, four days after the petition was filed and the "open letter" flyer depicting Ascolani as an organizer was distributed, is strong evidence of unlawful motivation. Likewise, the instruction to Ascolani, during the demotion meeting, to remove union flyers from his desk, which I have found constitutes an unfair labor practice, *infra.*, is strong evidence of animus, along with other unfair labor practices found herein.<sup>163</sup> See *Best Plumbing Supply*, 310 NLRB 143, 144 (1993); *NLRB v. Rain-Ware, Inc.*, *supra*.

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The Respondent contends that, because no action was taken against the numerous other employees who appeared on the June 10 flyer, the General Counsel cannot establish animus. This is unavailing. "[A] discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not weed out all union adherents." *Nachman Corp. v. NLRB*, 337 F.2d 421, 424 (7th Cir. 1964); see also *Smyrna Ready Mix Concrete, LLC*, 371 NLRB No. 73 slip op. at 20 (2022) ("Antiunion animus otherwise established is not disproved by an employer's failure to retaliate against all known union supporters.") I find the General Counsel has met her initial *Wright Line* showing.

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The Respondent asserts that Ascolani was demoted because of performance concerns, and also because CFO Rizo had a feeling he was accessing confidential information. Rizo testified she was thinking of demoting Ascolani for performance-based reasons, but the June 12 text from Cabrera that Ascolani was "listening to everything" and "looking to find something" caused her to have a gut feeling Ascolani was accessing confidential information, prompting her to take immediate action. At the time of Ascolani's demotion, no specific unauthorized access to confidential information had been identified.

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<sup>163</sup> Ascolani testified that after lunch on June 14, CEO Bell walked by Ascolani's cubicle, where he had a flyer with Bell's picture and salary displayed. Bell did not testify, but it is not clear whether or not Bell saw the flyer. Ascolani believed she did, but also testified both that she "walked by" his cubicle and "stopped at" his cubicle. (Tr. 55.) He did not elaborate on whether they spoke, whether she looked at the poster, or any other details forming the basis for this belief.

I find the General Counsel has established the Respondent’s asserted reasons for Ascolani’s demotion were pretext. Ascolani never received discipline, such as a documented warning, for any performance deficiencies. The evidence shows that the vast majority of other Inncare employees who had trouble with or failed to perform certain job tasks received warnings (verbal and/or written) rather than demotions, as detailed in the statement of facts.<sup>164</sup> One employee, Amanda Deniz, was issued a written warning and demoted. I find, however, that Deniz’ actions of twice actively falsifying records meaningfully distinguishes her errors from Ascolani’s purported deficiencies.<sup>165</sup> Moreover, the performance failures of Andrea Ramirez and Manuel Terrazas exposed Inncare to a violation of federal law, the No Surprises Act, yet Ramirez, who worked in finance, was issued a written warning for her errors and Terrazas was issued a record of verbal warning.

It is undisputed that, before Ascolani’s union activity and Cabrera’s comments to Rizo, no steps had been taken toward demoting Ascolani for performance reasons (or any reason). The earliest record of Rizo involving HR in any of Ascolani’s performance-related problems was the June 14, 2024, email she sent to Felix, at Felix’s request, explaining his history of errors dating back to August 2023. Lara, Ascolani’s direct supervisor, was not called to testify and did not submit anything to HR concerning Ascolani’s performance. The record does not reflect that Lara believed Ascolani’s performance problems warranted demotion.<sup>166</sup> The record also does not contain the various requests Rizo testified she made to Ascolani in relation to his performance, even though many of the requests and Ascolani’s responses were in writing. The only direct documentation of his performance deficiencies was a few checks he had not deposited, which were discovered only after Ascolani’s demotion and subsequent termination. Reliance on after-the-fact documentation is indicia of pretext. See *Inter-Disciplinary Advantage, Inc.*, 349 NLRB 480, 509 (2007); *Stephens Media, LLC v. NLRB*, 677 F.3d 1241 (D.C. Cir. 2012).

Rizo’s demonstrable exaggeration of Ascolani’s performance deficiencies also points to pretext. In her affidavit, she said Ascolani’s performance evaluation for 2023 showed a rating of 40 out of 80, indicating he “needed substantial improvement.”<sup>167</sup> The evaluation in fact reflected 48 out of 84, a score that fell into the “meets expectations” range, and no single element was marked as “needs improvement.”

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<sup>164</sup> Many of these employees had documented performance problems as well as misconduct and/or attendance issues yet were given documented warnings.

<sup>165</sup> The record does not reflect whether Deniz had previous discipline. Two other employees were terminated for performance-related reasons. They both, however, had previous discipline. One of the employees, Valerie Obeso, had been employed for just shy of 8 months at the time of her termination, and had received two previous written warnings. The other, Alejandra Teran had been issued a written warning and a final written warning but continued to make errors. (GC Exh. 89.)

<sup>166</sup> Rizo testified that Lara had spoken to Ascolani about not completing the bank reconciliation process, but this was uncorroborated hearsay.

<sup>167</sup> Tr. 697-698.

The shifting reasons for Ascolani’s demotion also point to pretext. *GATX Logistics, Inc.*, supra. Turning from performance, the Respondent asserts that Rizo reasonably acted on the conduct of Cabrera’s comments to conclude that an employee with broad system access was potentially gathering Innercare’s financial information.<sup>168</sup> Cabrera’s comments, however, did not mention financial information, but conveyed that “[h]e’s listening to everything right now and looking to find something” and that the union had “affected him greatly.” Rizo did not ask Cabrera for details or to clarify his comments, even though she had no other reason from Ascolani’s history to believe he was accessing unauthorized confidential financial information. The Respondent contends that moving Ascolani to the biller I position was a cautionary measure to prevent further access pending investigation into whether access had occurred.<sup>169</sup> While seemingly at odds with the explanation that Ascolani’s poor performance justified a permanent demotion, nothing in the record hints that the position change to biller I was a temporary measure.

Even though Ascolani’s access to confidential information was not confirmed until after his demotion, the decision to immediately demote him based on suspicion also points to pretext. See *Woodlands Health Center*, 325 NLRB 351, 366 (1998). It is undisputed that Rizo’s audit affirmed that Ascolani accessed checks not required for his work. In the interim, however, nothing prevented Innercare from curtailing Ascolani’s DocStar access. Indeed, after Ascolani’s termination, restricted DocStar access was implemented departmentwide. In addition, if Ascolani’s potential unauthorized access of financial information was such a grave and urgent matter, the failure to raise it at the June 14 demotion meeting prompted by this suspicion makes no sense. Reminding him that accessing confidential financial information not necessary for his work was prohibited, and upon discovery that he had accessed such information, issuing him written discipline and giving him a chance to improve, would have been much more in line with how Innercare treated other employees, as discussed further below.<sup>170</sup>

Because the General Counsel established that Ascolani’s known union activity was a motivating factor in his demotion, and because the Respondent’s asserted performance and confidentiality justifications were pretextual, unsupported by any prior discipline, inconsistent with its lenient treatment of comparable employees, grounded in after-the-fact and exaggerated documentation and shifting rationales, and resting on unraised suspicion,

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<sup>168</sup> R Br. 117.

<sup>169</sup> R Br. 117-118.

<sup>170</sup> While the employee handbook, the HIPAA/confidentiality attestation, and Ascolani’s job description depicted Innercare’s confidentiality policy, these policies (which Ascolani signed off on in 2021) were not top of mind for Ascolani, as he testified other employees accessed similar information and he did not know it was prohibited.

That Ascolani may not have remembered some of the forms he signed is highly plausible, given the context of where he signed them (see footnote 28 above). Indeed, as discussed herein, even management employees within HR needed to be reminded of some of Innercare’s written rules. While these factors don’t excuse Ascolani or any employee from abiding by Innercare’s rules, they bear relevance as to Ascolani’s veracity and whether a reminder coupled with a warning or other formal discipline would possibly take care of the problem, or at least be the first line of action, as it was with similarly situated employees.

the Respondent did not carry its *Wright Line* burden, and I find the demotion violated Section 8(a)(3) and (1) of the Act.

### 3. Ascolani's June 18 Termination

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Complaint paragraphs 12(b) and 21 allege that, on June 18, 2024, the Respondent discharged its employee Ascolani, in violation of Section 8(a)(3) and (1) of the Act. I find the General Counsel has established this complaint allegation.

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For the reasons set forth above with respect to Ascolani's demotion, I find Ascolani engaged in union activities about which the Respondent knew, and that animus has been established. In addition, on June 17, Ascolani brought pizzas to the employee break room with the union logo and a slogan on the pizza boxes, and he wore a purple polo shirt.<sup>171</sup> On June 17 or 18, one of Ascolani's supervisors, Billing Director Ramirez, saw Munguia hand Ascolani a union koozie.<sup>172</sup>

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The Respondent contends that Ascolani was terminated for accessing confidential documentation not needed for his job duties and against Innercare policies. It is undisputed that Ascolani accessed checks on June 12 showing payments to the CEO's son and another employee, and this was not required for his job. The access was discovered after CFO Rizo conducted an audit of Ascolani's DocStar access following Cabrera's comment set forth above and Alaniz' comment on a YouTube video about the CEO's son receiving a bonus.

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I find the evidence shows the Respondent's stated justification is pretext, and that Ascolani was terminated because of his union activities. The Respondent acknowledged that Bueno's June 6 statement was not a basis for Ascolani's termination.<sup>173</sup> At Ascolani's June 18 termination meeting, however, CHRO Kwon opened things up by raising Bueno's complaint, framing it as a threat to cut her, and said there was video. Until this point, Ascolani had not been informed of Bueno's complaint. There was no video and HR did not review footage from the video camera in the El Centro breakroom to determine if there was footage. Record testimony shows nobody in management believed there was a threat to Bueno's physical safety. It is unclear why Bueno's complaint was raised, and knowingly exaggerated, at the outset of the meeting, and it supports an inference that the Respondent was trying to put Ascolani on the defensive by accusing him of misconduct.

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Most importantly, the preponderant evidence establishes that progressive discipline was used when other employees accessed confidential information. The record shows that some employees accessed confidential information multiple times, and committed other serious infractions in tandem, yet were disciplined rather than terminated. For example,

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<sup>171</sup> While it is clear that Kwon knew about the pizzas, including the slogan, there is no evidence he (or anyone) knew Ascolani brought in the pizzas on June 17. (Tr. 1436-1437.) Accordingly, the pizzas are not a basis for finding Innercare had knowledge of Ascolani's union activities.

<sup>172</sup> Ascolani and Munguia's testimony on this incident was generally consistent and unrefuted.

<sup>173</sup> See R Br. 120.

Cano violated HIPAA, a federal law that exposes Innercare to monetary and criminal liability, when she accessed her aunt’s confidential medical records multiple times in 2019, but received a record of verbal warning. She received a notice of 5-day suspension in 2021 for again violating HIPAA when she accessed her ex-husband’s confidential medical records multiple times. Cano’s actions resulted in a complaint from the ex-husband and an incident report, because the ex-husband, a patient, was angered that his ex-wife knew the details of his recent medical visit. Moreover, the investigation into Cano’s access of her ex-husband’s chart revealed multiple similar violations in 2020. Yet Cano received further progressive discipline and was not fired. Prado also violated HIPAA multiple times, and committed several other infractions, including making false statements and making disparaging comments about her supervisor, and received a notice of 5-day suspension.

HR VP Felix’s shifting testimony is strong evidence of pretext. Felix first testified that unauthorized access to confidential information such as employee information, patient information, and /or financial information would result in immediate separation. This is demonstrably false, as it is clear progressive discipline was used for employees Cano and Prado. Felix initially testified this was part of a written policy. When, at the hearing, she could not point to a written policy, she changed her testimony and said it was an unwritten policy. When confronted with evidence that other employees had been treated less harshly for viewing confidential information, Felix changed her testimony again in an attempt to distinguish between violations of confidential financial information and violations of confidential HIPAA-covered health information, and testified that the latter, which violate federal law and expose Innercare to monetary and criminal liability, did not require immediate termination, while the former did. This defies logic. Felix then further conformed her testimony, saying that a one-time HIPAA violation for accessing one’s own chart or a family member’s chart might be met with some leniency. Prado and Cano, however, accessed confidential information more than once. Cano accessed the confidential medical information of her ex-husband, who was not a family member, and who was, not surprisingly, angry about it and filed a complaint. The investigation into this complaint revealed multiple other breaches that had previously not been discovered, yet she was not terminated. Each version of Felix’s shifting testimony has been discredited by record evidence. Felix’s demeanor as she testified, answering readily on direct but growing hesitant and ultimately, while appearing reluctant, changing her testimony when pressed by the General Counsel and the Charging Party, reinforced my impression that her explanations were assembled to justify a decision already made rather than recalled.

There is no evidence that any version of Innercare’s evolving unwritten policies about zero tolerance for confidential information infractions was communicated to employees. Innercare maintains a written zero-tolerance policy for workplace violence and drug-related conduct in its employee handbook. By contrast, the same employee handbook permits discretion, specifying disciplinary action up to and including immediate discharge rather than an automatic termination mandate for violation of the confidentiality policy. Only an apparently shifting unwritten and non-disseminated zero-tolerance policy for breaches of its confidentiality policy, first covering the whole policy, then making some allowances for certain HIPAA violations, and then isolated to financial information, required immediate termination. See *Woodlands Health Center*, supra. (Employer

vacillation in offering a consistent explanation for its actions leads to the inference that the real reason for its actions is not among those asserted); *10 Ellicott Square Court Corp.*, 320 NLRB 762, 773 (1996), *enfd. mem.* 104 F.3d 354 (2d Cir. 1996).

5 Felix testified that changes to the handbook were communicated by email to all staff. Nowhere, in the thousands of pages of exhibits in the record, is any historical policy or practice of zero tolerance for violation of Innercare’s confidentiality policy, or a portion thereof, referenced, despite the numerous records of discipline and/or termination the record contains. Especially given the unlikely coincidence that would need to happen for 10 Ascolani, at the time, to be the only employee ever to have violated the version of the unwritten confidentiality policy singling out financial information, I find this purported lack of wiggle room to engage in progressive discipline was contrived to justify terminating Ascolani. See *Bally’s Park Place, Inc. v. NLRB*, 646 F.3d 929 (D.C. Cir. 2011)(Court affirmed Board finding that employer claim of a “zero-tolerance” for leave misuse was 15 pretext where employer had no written zero-tolerance policy and no evidence it had ever announced such a policy to its employees). In sum, I find there was no such hard and fast policy isolated to the financial provisions of Innercare’s policies about confidential information requiring Ascolani’s immediate termination, and this explanation was pretext to mask unlawful motivation.

20 The Respondent’s remaining proffered comparators, Panico and Gil-Lamadrid, do not carry its burden. As the party with exclusive custody of its own personnel and investigatory records, the Respondent bore the burden of placing before me a comparator record adequate to permit a meaningful comparison, and it did not do so. The investigative 25 files for both employees are absent from the record, and Felix could offer no adequate explanation for their omission.<sup>174</sup> As to Panico, Felix believed, but could not confirm, that she received warnings before her HIPAA-related termination. Her disciplinary history is therefore not shown to parallel Ascolani’s, and she is not a similarly situated comparator. Turning to Gil-Lamadrid, although Felix testified she had received no prior discipline, the 30 absence of any investigative file makes it impossible to determine the nature, severity, or frequency of her misconduct, or the facts that led to her discharge. The sum total of the reason for Gil-Lamadrid’s termination, “Violation of patient or employee confidentiality and failure to comply with one of more of Clinicas polices, procedures, regulations, and/or instruction,”<sup>175</sup> is a boilerplate recitation that reveals nothing about whether her conduct 35 was comparable to Ascolani’s.

40 A comparator aids an employer only where the misconduct is the same or substantially comparable and the record permits the disparity to be assessed. An employer relying on comparators must show that any difference in treatment is “attributable to differences in work history, to the severity of misconduct, or to some other factor unrelated to union activity.” *Avondale Indus., Inc.*, 329 NLRB 1064, 1066 (1999). The Respondent cannot make that showing when it has withheld the very files that would document its

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<sup>174</sup> Felix testified the only thought she had was the HIPAA officer may have kept them. This does not explain why the documents were not produced, because even if Felix’s supposition was true, they were still in the Respondent’s control.

<sup>175</sup> R Exh. 47.

comparators’ work history and the severity of their conduct. A respondent does not satisfy its *Wright Line* burden by articulating a legitimate reason; it must prove it would have taken the same action absent the protected activity, and the Board has repeatedly found that burden unmet where the respondent’s comparator evidence is insufficient. See, e.g. *Publix Super Markets*, 347 NLRB 1434, 1438-1439 (2006). Because the missing files were within the Respondent’s exclusive control, I draw the inference that their contents would not have supported its position, as “[t]he production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse.” *Interstate Circuit, Inc., et al. v. United States*, 306 U.S. 208, 220 (1939). I therefore find that the Panico and Gil-Lamadrid terminations do not establish that the Respondent would have discharged Ascolani in the absence of his union activity.

I conclude that the Respondent’s proffered confidentiality justification was refuted by its markedly more lenient, progressive discipline of employees who committed more serious and repeated confidentiality violations, by HR’s shifting and discredited account of an unwritten, never-communicated zero-tolerance policy, and by the pretextual injection of the exaggerated Bueno complaint at the discharge meeting.<sup>176</sup> I find, therefore, the Respondent did not carry its *Wright Line* burden, and I find Ascolani’s termination violated Section 8(a)(3) and (1) of the Act.

### C. Oscar Munguia

#### 1. June 12 Alleged Interrogation

Complaint paragraphs 7 and 20 allege that, on June 12, 2024, the Respondent, by Irma Adame in the finance department of the Respondent’s administrative office at its El Centro facility, interrogated employees about their union activities and sympathies and removed union literature from employees’ desks. I find the General Counsel has established this complaint allegation.<sup>177</sup>

The Board considers the totality of the circumstances in determining whether the questioning of an employee constitutes an unlawful interrogation. *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), *affd. sub nom. HERE Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). This test involves a case-by-case analysis of various factors, including those set out in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964): (1) the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity; (2) the nature of the information sought; (3) the identity of the interrogator, i.e., his or her placement in the Respondent’s hierarchy; (4) the place and method of the interrogation; and (5) the truthfulness of the interrogated employee’s reply. See, e.g., *Sproule Construction Co.*, 350 NLRB 774 fn. 2 (2007); *Grass Valley Grocery Outlet*, 338 NLRB 877, fn. 1 (2003), *affd. mem. NLRB v. Cubitt*, 121 Fed. Appx. 720 (9th Cir. 2005).

<sup>176</sup> The Union’s third objection mirrors the allegations regarding Ascolani’s demotion and termination, and is hereby sustained.

<sup>177</sup> The General Counsel and the Charging party treated this as a single interrogation allegation and did not separately analyze the removal of literature, so that is how it is analyzed here. (See CP Br.; GC Br.)

The Board also considers the timing of the interrogation and whether the interrogated employees are open and active union supporters. See, e.g., *Gardner Engineering*, 313 NLRB 755 (1994), *enfd.* as modified on other grounds, *Gardner Mechanical Services, Inc. v. NLRB*, 115 F.3d 636 (9th Cir. 1997); *Blue Flash Express*, 109 NLRB 591, 593-594 (1954). Another factor is whether adequate assurances against reprisal were provided. See *RHCG Safety Corp.*, 365 NLRB 852, 853 (2017) These factors “are not to be mechanically applied,” they represent “some areas of inquiry” for consideration in evaluating an interrogation’s legality. *Rossmore House*, *supra*, fn. 20.

As detailed above, on June 12, union organizers were handing out flyers before work, and Munguia took one. Munguia and Ascolani testified his supervisor, Purchasing Manager Adame, questioned Munguia about the flyer and took it. Adame, by contrast, testified she saw the flyer on Munguia’s desk, picked it up, asked what it was, and when Munguia told her he got it from the people distributing flyers outside, she set it down and walked away.

I credit Ascolani and Munguia over Adame, and I do so based on demeanor as well as the content of their testimony. Both men answered in an open-ended, unguarded manner, without hesitation or the defensive qualification I observed in Adame, described below. Munguia described his fear in immediate, specific terms that appeared genuine rather than constructed, and his account did not shift on cross-examination. Ascolani’s account was equally direct and dovetailed with Munguia’s on the details each independently recounted. His memory of standing up and observing Adame take the flyer after hearing her words to Munguia was specific and rang true.<sup>178</sup> Their straightforward manner contrasted markedly with Adame’s rehearsed and non-responsive delivery, and their testimony is further corroborated by the flyer distribution that morning.

Adame did not deny asking Munguia what the flyer was, but said she thought maybe Innercare had issued a newsletter. When questioned about her perception of the flyer, Adame’s testimony had a rehearsed quality. She delivered her explanation for believing the flyer was a company newsletter in a rote, unhesitating cadence that did not vary under questioning, yet she could offer no logical basis for that belief, answering “Absolutely not” reflexively when asked whether she connected the flyer to the union materials being distributed in the parking lot that morning. Her manner of answering, fluent when reciting her prepared explanation but flat and non-responsive when pressed on its logic, reinforced my impression that she was reciting a narrative rather than recounting a recollection. Specifically, when asked about her belief that the flyer was a company newsletter, despite the fact that the Union had been distributing flyers that morning, Adame’s rehearsed demeanor was backed up by testimony highlighting a lack of logical rationale for this belief:

Q You didn’t make the connection that the flyer on his desk was one of the flyers that you saw being handed out in the parking lot?

A Absolutely not.

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<sup>178</sup> Tr. 46-47.

Q Why not?

A Because I had photos on it, and I -- I was curious. I'm like, oh, is Innercare starting some newsletter that I'm not aware of?

Q Have they ever started a newsletter before?

5 A They send periodically emails, like, corporate memos and from the ops team, employee awards and different types of recognition, so I thought maybe this was some new thing that they were doing.

Q But there were never any physical flyers that the company handed out.

A No.

10 . . .

Q You were aware that the Union was passing out flyers, right?

A Correct.

15 Q You were aware that the company had never circulated any kind of physical newsletter before, right?

A Correct.

Q No one from the company had told you that any kind of newsletter was coming out soon, right?

A Right.

20 Q You hadn't gotten an email announcing the creation of a company newsletter, right?

A There wouldn't be an email announcing that.

Q Well, how would you know? There hasn't been one before.

A Well, true

25 Q Okay. Was there like an official -- well, from what you could see of the pamphlet on Oscar's desk, was there like an official Innercare logo on there or anything like that?

A No.

30 (Tr. 770-774.) Adame said she based her belief that the flyer was the inaugural Innercare newsletter on the "little photos of employees" on it "with a bunch of squares."<sup>179</sup> This part of the flyer was only visible by opening up the trifold and looking inside, where the "open letter" also appeared. I find Adame's testimony that she believed the flyer was a corporate newsletter, especially considering that she picked it up and looked at it, lacks credence.<sup>180</sup>

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Turning to the first *Bourne* factor, the employer's history, as of June 12 there was no history of hostility toward or discrimination against union activity, weighing in the Respondent's favor. As to the second and third factors, the nature of the information sought and the identity of the interrogator, these weigh in the General Counsel's favor. Adame, Munguia's direct supervisor, asked him in an aggressive tone, what the flyer was, where he had gotten it, and why he had it. Particularly the "why" strikes at the heart of organizing efforts and would tend to elicit Munguia's union sympathies. See *Starbucks Corp.*, 373 NLRB No. 90, slip op. at 1 (2024). As to the fifth factor, the truthfulness of the response, this weighs in the General Counsel's favor. When asked what the flyer was, Munguia told

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<sup>179</sup> Tr. 763.

<sup>180</sup> I recognize that Munguia wanted Adame's job, and have taken that into account.

Adame that he did not know what the flyer was about because he did not have time to read it, because he had taken it and started to work, but that he would read it when he had time during his break. He responded untruthfully out of fear because he knew the clinic “didn’t like those things.” The fourth factor, the location and method, weighs in favor of the Respondent. The location element favors the Respondent, as the interaction took place at Munguia’s cubicle and he was not summoned to a formal meeting. The method of interrogation included repeated questioning with an aggressive tone, but the interaction was relatively brief, occurred naturally during the course of work, and did not end in hostility. I find the method element weighs slightly in the Respondent’s favor. See *In Re Hancock*, 337 NLRB 1223 (2002).

Considering the totality of the circumstances, including balancing the *Bourne* factors, I find the General Counsel has established this complaint allegation.<sup>181</sup>

## 2. Munguia’s June 27 Termination

Complaint paragraphs 15 and 21 allege that the Respondent on June 27, 2024, discharged Oscar Munguia, in violation of Section 8(a)(3) and (1) of the Act.<sup>182</sup> I find the General Counsel has established this complaint allegation.

Munguia engaged in union activity, attending meetings in May and June, as well as handing out flyers and talking to coworkers about the Union. Purchasing Manager Adame knew Munguia had a union flyer at his desk on June 12. Billing Director Ramirez saw him hand Ascolani a union koozie on June 17 or 18. In addition, he was seen meeting with Ascolani and a union representative by management, including HR Manager Ryan, on June 21. CFO Rizo and HR VP Felix testified they knew Munguia was involved with the Union. The elements of union activity and knowledge are met.

As to animus, by June 27, the Respondent’s managers had already terminated Ascolani, Garcia, and F. Borjon which I find herein to be unfair labor practices. In addition, they had questioned Munguia about his union flyer and told Ascolani he could not keep union flyers on his desk, which I have also found to be unfair labor practices.

The Respondent asserts that Munguia was terminated because he accessed confidential financial information that was not required for his job. For a number of reasons, I find the evidence shows this proffered legitimate nondiscriminatory reason is pretextual and that Munguia was fired for his union activity.

The timing is indicative of both animus and pretext. Rizo testified that when she was looking into Ascolani’s DocStar access on June 17, she looked at all of the employees in the finance department. She noticed that Munguia had accessed some checks, but apparently did not think it was of enough concern to “sift through the data” and determine what he had accessed. This makes no sense for an offense so severe it warrants immediate termination. The overwhelming amount alone should have sounded the alarm. Moreover,

<sup>181</sup> Complaint paragraph 7 mirrors the Union’s second objection, which is hereby sustained.

<sup>182</sup> The complaint puts the date at “about June 26” but the record shows it was June 27.

Rizo’s June 17 audit of Ascolani, which appears to have been filtered out to show only certain checks, showed Munguia accessed a check – a finding extremely easy to spot on a quick review as it appeared *immediately below* Ascolani’s June 12 access of the same check.<sup>183</sup>

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The treatment of Munguia in comparison to other employees, aside from Ascolani, likewise points to animus and pretext. As detailed in the section on Ascolani’s termination, other employees who violated the Respondent’s confidentiality policy were treated more leniently. Though Munguia had a previous letter of warning for performance-related concerns, other employees with previous discipline were treated less harshly than Munguia even for multiple violations of Innercare’s confidentiality policies. My analysis above discrediting the unwritten, undisseminated, shifting, and, in its final version under the testimony, nonsensical policy purportedly requiring immediate termination for a single violation of the financial part of Innercare’s confidentiality rules while allowing lesser discipline for repeated violations of the HIPAA-related provisions is hereby incorporated.

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I do not credit Rizo’s account of why she began investigating, which was vague, internally inconsistent, and shifting. She testified the investigation occurred because of a comment, on a date she could not recall, from Carlos Guerrero, a financial analyst, that “he wouldn’t be surprised what else – what Oscar knows.” Rizo later embellished this comment, stating that Guerrero said, he “wouldn’t be surprised about Oscar also accessing documents.” She later testified that Guerrero said he “wouldn’t be surprised of Oscar looking for information or knowing information or something.” She did not ask Guerrero the basis for the comment, however, phrased, or any follow-up question, yet treated it as a “red flag” warranting an audit of Munguia’s access. Felix’s testimony indicates she was confused about the origins of the investigation, thinking that Cabrera had made this comment.

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There is also conflicting testimony from the Respondent’s witnesses about the nature of the allegedly unauthorized financial information Munguia had accessed. Rizo claimed that Munguia did not have authority to access the invoices that appeared in her audit. Felix testified Munguia’s access to invoices was job-related and unrestricted. I agree with the Respondent that Rizo worked more closely with Munguia than Felix and likely had better knowledge of what his work entailed. As VP of HR, however, Felix was aware of the various job functions at Innercare, and Munguia’s job description contained multiple job duties related to invoices. In addition, Adame, who testified at the hearing and was Munguia’s direct supervisor, was not asked whether Munguia was permitted to access invoices in general or the specific invoices appearing on the audit. See *Flexsteel Industries*, supra. Presumably, as Munguia’s direct supervisor, she was the official most directly knowledgeable about his daily work. This preponderant evidence establishes Munguia’s job entailed accessing invoices, including the invoices on Rizo’s audit, and that Munguia accessed only checks without authorization.<sup>184</sup> Munguia’s unauthorized access to checks

<sup>183</sup> The audit shows Munguia accessed a check on May 30, 2024, at 1:33p.m. (R Exh. 14, p. 6.) The check, issued to Jose Gutierrez, was accessed numerous times by six different accounts between December 2023 and June 2024.

<sup>184</sup> I do not credit Munguia’s testimony pinning the blame on someone else accessing the

was embellished with Felix testifying he accessed checks to attorneys, himself, and a few other people, but when faced with the audit document, acknowledged that these were invoices, not checks, and he was permitted to access them. As discussed above, the evidence shows Munguia was treated much more harshly than other employees caught accessing confidential information for the first time.

Munguia engaged in known union activity against which the Respondent harbored animus, evidenced by its contemporaneous unlawful interrogation of him, the unlawful desk-flyer instruction to Ascolani, and the unlawful discharges of Ascolani, Garcia, and F. Borjon. Because the Respondent's proffered justification of unauthorized access to confidential financial information was pretextual, belied by the suspicious timing, Rizo's shifting and unsubstantiated account of the investigation's origin, evidence establishing that Munguia was in fact authorized to access the invoices at issue, and the Respondent's disparately harsh treatment of Munguia under a discredited and undisseminated zero-tolerance policy, the Respondent did not carry its *Wright Line* burden, and I find Munguia's termination violated Section 8(a)(3) and (1) of the Act.<sup>185</sup>

#### D. Nayelli Garcia's June 18 Termination

Complaint paragraphs 13 and 21 allege the Respondent discharged Nayelli Garcia on June 18, in violation of Section 8(a)(3) and (1) of the Act. I find the General Counsel has established this complaint allegation.

At a captive audience meeting on June 13, with Operations Office Manager Joann Salinas<sup>186</sup> present, Garcia spoke up in support of her colleague, F. Borjon, who voiced the need for the Union based on the denial of the day off for his brother's funeral. When the labor consultant leading the meeting asked Garcia if she wanted to be part of the Union, Garcia said yes.<sup>187</sup> Garcia also handed out flyers on two or three occasions, wore a union badge holder every day, and wore purple scrubs and/or socks once or twice a week. I find Garcia engaged in union activity about which the Respondent was aware.

The Respondent asserts that Salinas was unaware that Garcia's comments at the June 13 meeting demonstrated union support. I find this denial lacks credibility. Garcia specifically stated she supported the Union during the captive audience meeting and spoke

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documents that showed up under his username on Rizo's audit because it strikes me as improbable.

The General Counsel also asserts that Munguia's termination letter is evidence of unlawful motivation because it terminated him for failure to follow one or more of Innercare's policies, including the policy against harassment, discrimination, or retaliation. (GC Br. 189.) This is just blanket recitation of one of the grounds for discipline listed in 18.3 of Innercare's handbook. I don't find it probative of motivation.

<sup>185</sup> The Union's 16<sup>th</sup> objection mirrors this complaint allegation and is hereby sustained.

<sup>186</sup> The complaint was amended to add Salinas as a supervisor.

<sup>187</sup> Salinas did not refute Garcia's account but instead testified she could not recall whether Garcia spoke at the meeting. I have discredited Salinas's testimony concerning her lack of memory.

out in favor of F. Borjon’s comment that the denial of the day off for his brother’s funeral was a reason the Respondent needed the Union. Salinas remembered F. Borjon’s comments specifically, stating it struck her because he was part of her department and was denied time off.<sup>188</sup> Salinas’s denial that F. Borjon’s comments indicated he supported the Union shows a deliberate attempt to disingenuously deny knowledge. When asked whether F. Borjon brought up the funeral day off denial as the reason why they needed a union to address those types of problems, she answered, “Well, he didn’t say anything about unionizing” and further testified, “ I -- I -- honestly don’t know why he brought it up.”<sup>189</sup> The context of F. Borjon’s comments, however, was a captive-audience meeting, where the labor consultant was explaining his view of why Innercare did not need a union. F. Borjon’s comments, in the immediate wake, were a direct challenge to that, pushing back with a personal example. He clearly was advocating for the Union. Salinas’s attempts to attenuate F. Borjon’s comments from the Union in this context render her testimony about lack of knowledge unconvincing. Turning to Garcia’s comments, the labor consultants did not testify, and no witness challenged Garcia’s vocal support for F. Borjon or her statement she was in favor of a Union. Salinas testified she could not remember if anyone other than F. Borjon spoke. Especially considering Salinas’s evasive demeanor when asked about what happened at the meeting and who was there, I find her purported memory lapses unavailing, and find Salinas knew Garcia voiced support for the Union at the meeting.<sup>190</sup>

I did not credit Salinas’s professed inability to recall who spoke at the June 13 meeting or whether Garcia voiced support for the Union, and I base this on her demeanor as well as the improbability of her account. When questioned about F. Borjon’s comment, which favored her employer’s narrative, Salinas answered readily and in detail; when asked who else was present or what else was said, she became visibly guarded and retreated to “I don’t recall,” even when shown the signed attendance sheet. This selective command of the same meeting, fluent as to the one point helpful to the Respondent and blank as to the protected activity, was not the product of ordinary memory loss but of evasion. *See Bancroft Manufacturing*, 210 NLRB 1019, 1021 (1974).

CHRO Kwon and HR VP Felix both testified that they were unaware of Garcia’s union activity. A statutory supervisor’s knowledge of an alleged discriminatee’s union support and activity may be imputed to an employer, “unless the evidence affirmatively establishes a basis for negating such imputation.” *Airgas USA, LLC*, 366 NLRB No. 92 slip op. at 7 (2018), *enf’d*, 760 Fed.Appx. 413 (6th Cir. 2019); *G4S Secure Solutions (USA) Inc.*, 364 NLRB 1327, 1330 (2016), *enf’d*, 707 Fed.Appx. 610 (11th Cir. 2017). The Respondent offered no such basis. Kwon’s and Felix’s denials of awareness were conclusory, uncorroborated, and self-serving, and they do not affirmatively negate the imputed knowledge, particularly considering Garcia’s active and open union activity.

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<sup>188</sup> Tr. 829-830.

<sup>189</sup> Tr. 828-829.

<sup>190</sup> Salinas’s lack of memory about the meeting, including who was at the meeting even after being refreshed with the attendance roster, is a strong red flag, suggesting her “I don’t recall” answers functioned to avoid confirming who was in the room rather than a true failure of recollection. She testified she could not even recall whether Barajas, who approached her right after the meeting, was present. (Tr. 830.)

Moreover, during the June 18 meeting with Felix and Kwon, Garcia said she knew she was being accused because of her union support.<sup>191</sup> Felix's notes further reflect that, at the end of the meeting, after Garcia raised the Union, Kwon told her she was being put on administrative leave.<sup>192</sup> This changed to termination at the end of the meeting. I find the knowledge factor has been established.

The timing of Garcia's termination, just five days after she spoke out at the captive audience meeting, which she described as tense and ugly, is indicative of animus. In addition, Kwon's instruction to Ascolani to stow his union flyers and Purchasing Manager Adame's questioning Munguia about his union flyers demonstrate animus. As detailed below, the haste in which the decision to terminate Garcia was reached, including a rushed investigation, the basis of which contained demonstrable falsities very easy to discern had objectivity and an open mindset governed, also demonstrate unlawful motivation.

The stated reasons for Garcia's termination were time theft and conduct unbecoming. I find this proffered explanation was pretext for a number of reasons.

The investigation into Garcia's time theft was prompted by reports from two other night janitors, Barajas and Castaneda. It is important to point out how Castaneda's and Barajas's allegations against Garcia (and F. Borjon) were characterized across five record sources over roughly a month: (1) their June 13 oral report, as Operations Office Manager Salinas recounted it; (2) Salinas's June 14 written memo about the report; (3) Castaneda's and Barajas's own June 18 written statements; (4) HR VP Felix's understanding from her June 17 interviews; and (5) Felix's investigative summary dated and signed June 18 but in fact completed no earlier than July 3.

Neither Castaneda nor Barajas testified; their only first-person accounts are their June 18 statements.<sup>193</sup> The consistent pattern is expansion and specification after the fact: the secondhand HR renderings grow more detailed, more dated, and more incriminating than the women's own contemporaneous words, while the two women's statements diverge from each other and, on several points, contradict the reports others attributed to them. The core accusation degrades at every step. Salinas's reported eyewitness observation was that on three specific dates, June 3, 5, and 6, the witnesses said F. Borjon clocked Garcia in; by the June 17 interviews Felix understood it was only suspicion, not observation; and neither

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<sup>191</sup> Garcia's testimony is not contradicted and is corroborated by Felix's notes referencing the Union.

<sup>192</sup> Though the administrative leave never occurred, Felix's notes indicate it was discussed and planned.

<sup>193</sup> The reports, oral and written, from Barajas and Castaneda are hearsay, and are not relied upon for the truth of the matter asserted as they are uncorroborated other than with each other. As the genesis of the investigations into Garcia and F. Borjon, they are considered for the effects on the listener.

The General Counsel takes issue with HR Manager Ryan's translation of Castaneda and Barajas's statements based on her lack of Spanish language proficiency and some admitted use of her own interpretations. I do not find any of the potentially inaccurate or unclear translations to be material.

woman’s own statement actually says F. Borjon clocked Garcia in on those dates — both instead describe a lockout episode on a day “Francisco wasn’t here yet.” Even the dates migrate: Salinas’s memo’s June 3/5/6 became Castaneda’s June 4/6/8 (June 8 was a Saturday and there is no evidence of lateness June 4<sup>194</sup>), and Castaneda only said that Garcia  
 5 was late, and not that F. Borjon clocked her in. The investigation ultimately rested on June 10, a date no one reported. The entirety of Castaneda’s statement about clocking in stated:

10 In regard clocking in, Nayeli one time offered me a ride from my house to work and when arriving she was about to clock in and told me that the computer had locked up and that for that reason she couldn’t clock in, nor Francisco or myself and she sent Joe a photo. Francisco that day wasn’t here yet and that she did not informed to Joe. Nayeli in this month of June was coming various times late, 4, 6, 8th of June, she will say that she would notify Joe. It was the same in other occasions too.

15 She does not, anywhere in her statement, allege F. Borjon clocked Garcia in on any occasion. The entirety of Barajas’s statement about clocking in states:

20 We also notice that many times during the month she is late and she parks next to the clinic and Francisco would sometimes clock her in and vice versa Nayeli would clock in Francisco. This was very obvious, she would lock the computer, take a picture and send it to the supervisor and that day Francisco wasn’t here yet.

25 The investigation was initially centered around Salinas’s June 14 memo, focusing on whether F. Borjon clocked in Garcia in when she arrived late on June 3, 5, and 6. A simple review of Garcia’s time records shows that F. Borjon could not have clocked Garcia in on June 3 and 6, because Gutierrez, Garcia’s supervisor, entered her time manually on June 3, and Abarca entered her time manually on June 6. Garcia’s credentials were not used to clock in at all on June 3 and were not used to clock her in anywhere near her ordinary start time on June 6. As for June 5, Garcia took 1.15 hours of leave and clocked in on time  
 30 at 6:10. Given that the night janitors started their shifts at 5:00, some sort of explanation as to why Barajas, Castaneda, and F. Borjon were all at the same computer to enable Barajas and Castaneda to see F. Borjon logging Garcia in at 6:10 on June 5 would seem a logical piece of any facially legitimate investigation. As the General Counsel points out, this raises an inference that the reason AVP IT Leon was not asked to look for records for June 5 was  
 35 because the Respondent knew, before asking Leon to review footage, that Garcia took PTO that day. Similarly, on June 6, when the first login using Garcia’s credentials was at 9:13 p.m., an explanation as to why Barajas, Castaneda, and F. Borjon would all be at the same log-in location at that time would seem to be a reasonable part of the investigation, yet it was not.

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Key elements of the rationale for terminating Garcia shifted or were unsupported. In the face of evidence clearly showing Castaneda and Barajas’s reports that F. Borjon clocked Garcia in on June 3, 5 or 6, were false, Felix testified she may have added dates

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<sup>194</sup> Payroll records show a regular punch-in at 4:56 on June 4, with no manual adjustment.

for Leon to investigate. The evidence shows she did, including on June 10, even though nobody reported this as a date F. Borjon clocked Garcia in.

Felix’s written investigative summary, signed and dated June 18 with parts of it created and finalized later, asserted a regular clock-in on June 3, specifically adding it was not manually edited, which, at the hearing, she acknowledged was contrary to payroll evidence. The summary, which Felix signed and dated both manually and in type print as June 18, contained documents from June 19, June 20, and July 3, all referenced within the body of the report, signed and dated to appear as contemporaneous. I find this report could not have been drafted on June 18, and it was instead an after-the-fact justification for Garcia’s termination. An employer’s post hoc attempt to rationalize a termination decision, including producing documentation after the fact, is suggestive of pretext and unlawful motive. See *Inter-Disciplinary Advantage, Inc.*, above. Felix’s report, along with Ryan’s June 19 summary, and Leon’s July 3 email, stating that during the investigation he confirmed he viewed video showing that Garcia did not park her car and move elsewhere, fall into this category, and suggest unlawful motivation. With regard to Leon’s July 3 email that he reviewed video during his investigation, it is not only an after-the-fact justification, it also begs the question of why this video was not shown to Garcia or presented as evidence at trial.

The reports of Garcia going through documents were unsupported and ultimately not used as a basis for her termination, though such reports were raised during Garcia’s termination meeting.<sup>195</sup> The problems with the different reports about going through documents are many. The location moves (administrative suite → Operations Office → “different area” → Veronica’s and Erica’s desks), and the actor changes: Barajas describes Garcia alone rummaging and does not implicate F. Borjon, whereas Salinas’s June 14 memo and Castaneda’s statement name both. Barajas’s vivid “find, find” detail appears in no other source.

HR Manager Ryan’s testimony that, “regularly, when either Ms. Garcia would arrive late and -- or Mr. Borjon was arriving late, Naomi (sic) would regularly punch in a bad password to lock our timekeeping system and then report to her supervisor that she was unable to clock in on time because the system was locked, so that the supervisor would make the time entry for time when she wasn’t there,” was demonstrably false. Castaneda and Barajas’s reports only describe one incident of this, on a date when F. Borjon was not there yet. More damaging to Ryan’s account is that timekeeping records show Garcia was only locked out of Paylocity on four dates over more than a year’s time, and was only locked out around her start time once, on March 29.

In the face of these demonstrable and known falsities with Castaneda’s and Barajas’s complaints (and the various iterations thereof), the Respondent nonetheless relied

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<sup>195</sup> What was described as going through boxes and paperwork in the administrative suite, later changed to looking at and moving documents on Torres’ desk and looking at things in doctors’ offices. HR Manager Ryan, who did not interview Castaneda or Barajas, framed the complaint as “going through the desks of managers.” No documents were specified and no dates provided.

solely on them to justify the claim that Garcia was sleeping in CFO Rizo’s office, on unspecified dates and times. The various reports of Garcia sleeping are vague and inconsistent. Three different settings emerged: the post-hoc HR memo fixes the conduct in the CFO’s office couch; Castaneda places it in the finance office months earlier (Jan–March); Barajas attributes dozing to a dark work area and never mentions the CFO’s office. Only the HR memo’s version, the most serious framing, was used to justify Garcia’s termination, despite the absence of any dates.

Garcia admitted sleeping in Rizo’s office on her breaks. While this may have shown poor judgment, Garcia testified she did not think it was against the rules. The Respondent admittedly did not maintain a rule or policy about sleeping during breaks, and sleeping was not grounds for immediate termination. This is illustrated by the written warning given to Juliann Torres, who, in addition to excessive cell phone use, having a confrontation with a coworker, and being insubordinate to her supervisor, slept with her head down on her desk and did not move when told to return to work. Garcia had received no prior discipline. The Respondent did not give Garcia an opportunity to learn that she was not permitted to use the CFO’s office as a place to sleep on her breaks, engage in progressive discipline, and give her a chance to change her behavior. I find the unsubstantiated sleeping allegations from sources shown to be unreliable do not withstand scrutiny and were pretext to mask unlawful antiunion motivation.

That leaves the two instances of alleged time theft: June 3 and June 10. Surveillance footage showed Garcia in the parking lot walking toward the entrance at 5:10 on June 3, with a manual time entry from Gutierrez at 5:00. Gutierrez, who manually entered Garcia’s time that day, still worked for Innercare, was not called to testify as a witness, and there is no statement from him in the record about June 3. Records show he did not change her start time from an errant punch, and also show Garcia was not locked out that day.<sup>196</sup> As to the footage showing Garcia walking to the entrance at 5:10 p.m., Garcia did not have a specific recollection of when she arrived that particular date, but testified she may have gone back to her car because she forgot her lunch, or she may have moved her car, because the night janitors had a practice of this because it is very dangerous at night. These explanations are both plausible. Garcia arrives at 5:00 p.m., when people from the day shift are still there and presumably encumbering favored spaces in the parking lot. As a woman walking to her car at 2 in the morning, it is reasonable to believe Garcia would sometimes move her car closer to the entrance after 5:00 p.m. to create a safer exit for herself. Leon’s after-the-fact email that he checked footage and determined she had not moved her car is unreliable, as the evidence shows he reviewed footage and did not see her arrive on some days when she was admittedly there. Moreover, as explained, after-the-fact justifications are indicative of pretext.<sup>197</sup>

On June 10, the surveillance footage showed Garcia walking toward the entrance at 5:05, with a Paylocity clock-in time of 5:02. Leon admittedly did not check to see if its

<sup>196</sup> GC Exh. 100; R Exh. 49.

<sup>197</sup> Leon’s knowledge about Garcia’s car is likewise shaky, as detailed in the statement of facts. Asked directly what prompted the July 3 email, Leon said he “needed to specify exactly why [the time] was off and then to ... verify that I checked all the cameras.” (Tr. 755.)

surveillance system’s time stamp, which requires manual adjustment and is not synched with Paylocity, reflected the same time as Paylocity on either June 3 or June 10. Notably, the time stamp between these two systems was off by at least an hour on June 3 and 10, as the surveillance time stamp reflected standard time, as the system had not been manually updated, as required because it is not web-based, to reflect daylight savings time. The requirement for manual adjustment of the surveillance system’s time clock leaves room for human error, rendering the 3-minute discrepancy on June 10 negligible. Garcia was not shown surveillance footage, nor was she offered a meaningful opportunity to respond to the allegations against her. Such failure to engage in a full investigation of alleged incidents of misconduct is a recognized indicium of pretext. See *Midnight Rose Hotel & Casino*, 343 NLRB 1003, 1004-1005 (2004), *enfd.* 198 Fed. Appx. 752 (10th Cir. 2006).

The Respondent contends that, pursuant to an unwritten rule, time theft is always grounds for immediate termination. This unwritten rule was not communicated or disseminated to employees, the employee handbook does not include it in its list of “zero-tolerance” infractions, and despite Felix’s initial testimony that the employee handbook mandates termination for it, the handbook itself permits the discretion for other discipline. Based on this evidence, I find this purported lack of wiggle room to engage in progressive discipline was contrived to justify terminating Garcia because of her union activity and support. See *Bally’s Park Place, Inc. v. NLRB*, above.

While other employees at Innercare have been terminated for time theft, their actions have been significantly more egregious and materially different.<sup>198</sup> See *Remington Lodging & Hosp.*, 847 F.3d 180, 186 (5th Cir. 2017) (emphasizing that comparator evidence must demonstrate truly analogous situations). Teresa Davidds was terminated for time theft and falsifying records when she clocked out at lunchtime, then clocked back in but left the facility and did not return to work from 12:52-5:00 p.m. and then returned to the facility and clocked out at the end of the day. Janel Garcia and Valerie Lopez, both health navigators, were terminated because evidence, including text messages, showed that Garcia had clocked in Lopez when Lopez was observed at home, and Lopez lied when her supervisor asked why she was not doing her work, saying she was at work in the bathroom sick. Finally, Innercare paid Alan Brinkman for sick leave, which he took while he was not sick but instead was working an outside job and using Innercare’s equipment for this other job. Davidds and Brinkman’s situations are not analogous situations to Garcia’s, which concern at most a few minutes, and about which Garcia was not given an opportunity to explain herself or the slightest benefit of the doubt before she was briskly terminated.

In sum, the General Counsel established union activity, employer knowledge, and animus. Because the proffered time-theft and conduct-unbecoming reasons were pretextual, resting on demonstrably false clock-in reports, shifting and after-the-fact justifications, a failure to show Garcia the footage or investigate fairly, unreliable sleeping allegations that warranted no termination, and a contrived and uncommunicated zero-tolerance rule unsupported by any analogous comparator, the Respondent did not carry its

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<sup>198</sup> The General Counsel contends that the comparators the Respondent relies on are too remote in time. While temporal proximity is one consideration, it is not determinative on its own.

*Wright Line* burden, and I find Garcia’s termination violated Section 8(a)(3) and (1) of the Act.<sup>199</sup>

#### E. Francisco Borjon’s June 19 Termination

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Complaint paragraphs 14 and 21 allege that on June 19, the Respondent discharged its employee Francisco Borjon in violation of Section 8(a)(3) and (1) of the Act. I find the General Counsel has established this complaint allegation.

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F. Borjon’s union activities, specified in the statement of facts, were extensive. It is undisputed management knew he was an organizing committee member pictured on the June 10 “open letter” flyer, and that he spoke out at the captive audience meeting about why he believed Innercare needed the Union. Moreover, at the meeting with CHRO Kwon and HR VP Felix on June 18, F. Borjon said he was being retaliated against for his union activity, and Kwon said it had nothing to do with the Union. F. Borjon thus engaged in union activity about which the Respondent was aware. As for animus, this has been established based on the same evidence relied on for Garcia, above, including the hastiness and one-sided nature of any fact-finding investigation in connection with her termination.

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The Respondent contends that F. Borjon was terminated for time theft, as described in the reports from coworkers Castaneda and Barajas about him and Garcia clocking each other in for work. The problems regarding the differing accounts of Barajas’s and Castaneda’s statements in discussion of Garcia’s termination are hereby incorporated. It is clear, for the reasons stated above, that the Respondent chose to ignore obvious evidence foreclosing any possibility that F. Borjon clocked Garcia in on June 3, 5, or 6, that any minimal and reasonable truth-seeking investigation would include. A simple look at payroll records disproves he took any such action on each of those dates, as detailed above. Respondent’s own payroll records for these three dates are not voluminous, complex or technical. Under a simple reading of Garcia’s time records for the dates in question, the Respondent could not honestly have formulated a reasonable belief that F. Borjon had clocked her in on any of these dates. Whether these payroll records were intentionally ignored in the course of the investigation or the Respondent chose not to gather them, both point to pretext. Indeed, if employers could simply choose to believe coworkers’ statements when they have the means to verify the statements with readily accessible objective evidence, the concept of good faith belief would be illusory. Any prospect the Respondent honestly formed a reasonable belief the employees’ complaints about F. Borjon served as a legitimate basis for his termination is unmistakably belied by the Respondent’s pronounced one-sidedness in seeking to justify its actions.

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The Respondent’s fallback theory fares no better. The only clock-in dates Salinas believed Castaneda and Barajas ever reported — June 3, 5, and 6<sup>200</sup> — were disproven by the Respondent’s own payroll records. In the face of that proof, the Respondent appears to have shifted ground and justified F. Borjon’s discharge on a wholly uncharged, unreported

<sup>199</sup> The Union’s fifth objection mirrors this complaint allegation and is hereby sustained.

<sup>200</sup> As noted, Castaneda reported that Garcia was late on June 4, 6, and 8, and that she would inform Gutierrez. June 8 was a Saturday.

instance of his purportedly clocking Garcia in on June 10. No one reported June 10 as a date F. Borjon clocked Garcia in; Felix acknowledged she “may have added dates” for AVP IT Leon to investigate, and the evidence shows she did, including June 10. That the Respondent reached for June 10 is itself revealing, because June 10 was the very day the Union filed its election petition and circulated the “open letter” flyer picturing F. Borjon as an organizing-committee member. The June 10 theory rests on nothing more than conjecture. Both Garcia and F. Borjon testified unequivocally that Garcia never shared her login credentials with F. Borjon. Garcia denied ever having a coworker clock her in, and F. Borjon asked, pointedly, “how could I clock in [Garcia] if I don’t have her password[?]”<sup>201</sup> The Respondent summarily disbelieved these denials without any competent evidence that F. Borjon clocked Garcia in on June 10. Its evidence was a three-minute gap between a surveillance image of Garcia walking toward the entrance at 5:05 p.m. and a Paylocity clock-in recorded at 5:02 p.m. — from which the Respondent, echoing Castaneda’s and Barajas’s discredited and shifting accounts and management’s characterization that F. Borjon was the only person who could have clocked Garcia in, simply inferred his guilt. That inference collapses on the Respondent’s own evidence. Leon admittedly never checked whether the surveillance system’s time stamp matched Paylocity, and the two systems were off by at least an hour on June 10 because the camera clock, which is not web-based, had not been reset for daylight saving time. A three-minute “discrepancy” between two clocks known to differ by an hour, when one of them is set manually, proves nothing, least of all that F. Borjon was the perpetrator who used Garcia’s credentials to clock her in. And as with Garcia, the Respondent never showed F. Borjon the footage or afforded a meaningful opportunity to respond.

Suspicion is not proof. See *Lasell Junior Coll.*, 230 NLRB 1076, 1076 fn. 1 (1977) (“mere suspicion cannot substitute for proof of an unfair labor practice”).<sup>202</sup> The suspicion was followed by actions the Board has found to be evidence of an improper motive, including a “failure to conduct a meaningful investigation,” together with “shifting, false, or exaggerated reasons.” *Intertape Polymer*, supra.; see also *BS&B Safety Systems, LLC*, 370 NLRB No. 90, slip op. at 1 (2021) (sustaining an 8(a)(3) discharge finding on the employer’s “shifting explanations” and its “failure to conduct a meaningful investigation”). Indeed, were an employer free to credit coworker accusations it could check against readily accessible objective evidence but chose not to, the concept of good faith belief would be illusory. I find the June 10 rationale was not honestly invoked but was a pretext to mask the Respondent’s unlawful motive for terminating F. Borjon. See *New York Presbyterian Hudson Valley Hosp.*, 372 NLRB No. 15 (2022).

Turning to the other reasons listed on F. Borjon’s documentation, i.e. conduct unbecoming, violation of patient or employee confidentiality, and any conduct that impairs, disrupts or causes discredit to the employee and/or his place of employment, I find these are likewise pretextual.<sup>203</sup>

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<sup>201</sup> Tr. 324.

<sup>202</sup> While this case concerns the General Counsel’s burden, the Respondent’s standard of proof is the same: preponderant evidence.

<sup>203</sup> Gutierrez’ June 14 statement about undated oral complaints from Nohemi Valenzuela and Barajas reporting that F. Borjon said she was not cleaning properly are unreliable double hearsay.

Castaneda and Barajas’s reports of accessing checks and going through unnamed documents are exceptionally vague, and characterizations of them changed over time. Nobody could identify whose check F. Borjon allegedly shared, where he shared it, or when he shared it. The women’s own accounts are modest and hedged — F. Borjon “showed” a check or paystub, of unknown origin (“I do not know where he got it from”), to illustrate provider pay. Salinas’s version hardens this into F. Borjon having “obtained” a doctor’s stub, then Felix’s summary adds a date (February 2024), a specific amount (\$20,000) F. Borjon supposedly told them, and a source (Torres’s desk), none of which appears in Castaneda’s or Barajas’s statements. In her own statement, Castaneda stated F. Borjon “showed us a check or paystub from a provider, showing us what the provider was earning.” Barajas’s statement also said F. Borjon “showed” them “a check or paystub” from a provider to “show us” how much providers earn. Neither mentioned that F. Borjon told them the amount. Notably, Felix’s summary about this check stated that F. Borjon denied accessing the check. The first time F. Borjon was confronted about it, and therefore his first opportunity to deny it, was June 18 after 6:00 p.m. Yet Felix testified she interviewed Castaneda and Barajas on June 17. There is no contemporaneous record of Felix, or anyone, interviewing Castaneda and/or Barajas after F. Borjon’s denial of accessing checks during his June 18 meeting with Felix and Kwon, and no written statements providing this level of detail about the check from Castaneda, Barajas, or anyone are part of the record.

Nobody could identify when F. Borjon allegedly looked through confidential materials, including how he accessed them or specifics about what he shared. The report about “gifts and trips” first appeared in Felix’s same flawed summary and is not apparent in Salinas’s recitation of what Castaneda and Barajas told her, or in either of Castaneda or Barajas’s June 18 statements. In any event, even after the fact, any assertion that F. Borjon (or Garcia for that matter) accessed any particular document, be it a receipt, a brochure, or anything else improperly related to “gifts and trips” is speculation.

Given F. Borjon’s extensive and admittedly known union activity, the Respondent’s demonstrated animus, and the pretextual nature of every proffered justification—time-theft accusations refuted by the Respondent’s own payroll records, a June 10 charge grounded in mere suspicion, and vague, evolving, and unverified confidentiality and conduct allegations—I find the General Counsel has proven that his termination violated Section 8(a)(3) and (1) of the Act.<sup>204</sup>

#### F. Maabel Quevedo

##### 1. June 17 Alleged Threat and July 8 Alleged Surveillance

Complaint paragraphs 9(a) and 20 allege that on June 17, 2024, Ruben Miranda, in the telehealth department at the Callexico facility, threatened employees with unspecified reprisals if they continued engaging in union activities by telling employees they had a

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(R Exh. 53.) There is no evidence that Gutierrez, who did not testify, intended to impose discipline as a result of these complaints or that they served as a basis for F. Borjon’s termination.

<sup>204</sup> The Union’s sixth objection mirrors this complaint allegation and is hereby sustained.

target on their backs. Complaint paragraph 9(b) and 21 alleged that, on July 8, Miranda created the impression of surveillance by telling employees they were being looked at. I find the General Counsel established the impression of surveillance allegation but not the threat allegation.

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In assessing whether a remark constitutes a threat, the appropriate test is whether the remark “can reasonably be interpreted by the employee as a threat.” *Smithers Tire*, 308 NLRB 72 (1992); see also *Wyman-Gordon Co. v. NLRB*, 654 F.2d 134, 145 (1st Cir. 1981). The “threats in question need not be explicit if the language used by the employer or his representative can reasonably be construed as threatening.” *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970). The focus is on the effect on the listener rather than the intent of the speaker. Whether or not the employee changed their behavior in response is not dispositive, nor is the employee’s subjective interpretation of the statement. See *Boar’s Head Provisions Co.*, 370 NLRB No. 124, slip op. at 16 (2021); *Sunnyside Home Care Project*, 308 NLRB 346, 346 fn. 1 (1992). The Board considers the totality of the circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. *KSM Industries*, 336 NLRB 133, 133 (2001).

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The Board has found statements such as warnings to “be careful,” “watch out,” or “watch your back,” to constitute unlawful threats even where the manager or supervisor was genuinely concerned for the warned employee’s job security and intended the warning as friendly advice. See, e.g., *Gaetano & Associates Inc.*, 344 NLRB 531, 534 (2005); *St. Francis Medical Center*, 340 NLRB 1370, 1383-1384 (2003); *Jordan Marsh Stores Corp.*, 317 NLRB 460, 462 (1995).

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To determine whether an employer engages in unlawful surveillance, the Board considers whether the employer’s conduct, under the totality of the circumstances, would reasonably tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Starbucks Coffee Co.*, 372 NLRB No. 50, slip op. at 23 (2023), citing *Sage Dining Services, Inc.*, 312 NLRB 845, 846 (1993), and *Brown Transportation Corp.*, 294 NLRB 969, 971–972 (1989).

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According to Quevedo, when IT Sr. Telehealth Manager Miranda told the telehealth technicians on June 17 that there would be an upcoming pause in their travel, he told Quevedo, off the record, that the yearbook had gone out, and the employees in it had put targets on their backs. After the July 8 rally, he reiterated to Quevedo that she needed to be careful because they had a target on her back. Miranda testified that Quevedo herself said, in early July, regarding a union flyer using her photo without authorization, “now, because of that I feel like I have a target on my back” and she also said she had told the Union not to contact her multiple times but they kept calling and texting her.<sup>205</sup>

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The yearbook was distributed in early July, so it had not gone out by June 17.<sup>206</sup> I therefore find Quevedo’s testimony linking Miranda’s statement to the yearbook on June

<sup>205</sup> Tr. 879.

<sup>206</sup> The General Counsel asserts that the yearbook may have been distributed earlier. (GC Br. 192.) Quevedo herself, however, testified it was after June. (Tr. 450.)

17 date is implausible. It is unclear whether Quevedo was confused about the date or whether she misstated what flyer Miranda was referring to in her testimony and meant to testify it was the “open letter” flyer. It seems highly unlikely that Miranda would have mistakenly referred to the flyer as the “yearbook” when it had not issued and, as a manager,  
 5 he would not logically be privy to any advanced knowledge that it was in the works. As it was the General Counsel’s burden to prove this allegation, I find this burden has not been met and recommend dismissal of complaint paragraph 9(a).

Turning to July 8, Quevedo and Miranda have different accounts of what occurred, though both referenced a comment about a “target” on Quevedo’s back.<sup>207</sup> I credit  
 10 Quevedo’s testimony. Quevedo had just participated in the July 8 rally and was consistently a very active participant in the organizing drive. In fact, she was the person who contacted the Union in the first instance, and the evidence, especially her own testimony, demonstrates she did not waver in her Union support. She posted the “open letter” flyer,  
 15 with her name and picture on it, to her public Instagram page. Miranda’s testimony, by contrast, seems in line with employee complaints to HR and other management indicating frustration over the Union’s tactics to garner their support for the election. There would be no need to do this with Quevedo, an avid and consistent union supporter, making Miranda’s testimony implausible. Moreover, Quevedo’s continued union advocacy, even after her  
 20 termination, is at odds with Miranda’s version of the conversation.

In *800 River Rd. Operating Co. LLC v. NLRB*, 784 F.3d 902, 916 (3d Cir. 2015), a newspaper article contained an employee’s pro-union statements. The employee’s supervisor told the employee, “they’re pretty pissed” and warned him to watch his back  
 25 and be careful. The supervisor also mentioned that the employee’s name had come up at management meetings. The court found that these comments were sufficient to support an impression of surveillance allegation. The employer argued that “tone it down” and “watch [your] back” comments did not convey an unlawful impression of surveillance, but rather conveyed an unlawful threat, which would not support an unlawful impression of  
 30 surveillance charge. The Court disagreed, stating it was “an eminently reasonable inference that these comments conveyed an unlawful impression of surveillance.”

Here, the comment to Quevedo to watch her back and be careful would reasonably create an inference that her union activities were being monitored. I find the General  
 35 Counsel has established complaint allegation 9(b).

## 2. Travel Pause

Complaint paragraphs 16(a) and 21 allege that, from about June 17, 2024 through  
 40 July 8, 2024, the Respondent stopped assigning Quevedo to commute to remote clinics to provide telehealth services thus reducing her pay, in violation of Section 8(a)(3) and (1).<sup>208</sup> I find the General Counsel has established this complaint allegation.

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<sup>207</sup> Quevedo also said Miranda told her she was being watched, though the record needed to be clarified on that point. The precise verbiage is immaterial.

<sup>208</sup> The complaint was amended at the hearing to drop “work assignments” from paragraph 16(a). (Tr. 593.)

This allegation is analyzed under *Wright Line*. Quevedo was an active union supporter, serving on the organizing committee. Her picture was on the June 10 “open letter” flyer, which she presented to management. She spoke with employees and distributed flyers at the Calxico, Brawley, Blythe, and Winterhaven facilities. I find the Respondent was aware Quevedo was an active union supporter.

As to animus, the Board will infer animus or unlawful motivation “where the reason given . . . is so baseless, unreasonable, or contrived as to itself raise a presumption of wrongful motive.” *Montgomery Ward & Co.*, 316 NLRB at 1253. That is the case here.

The Respondent’s rationale simply does not add up. The Respondent asserts that the pause was based on operational needs due to an acute staffing shortage after Lizahola’s resignation in early June. Her resignation was the “triggering event” to pause travel. The Respondent also asserts that the decision to resume travel on August 1 was made because Quevedo’s termination “left the department with only four Telehealth Technicians to cover Innercare’s 10 clinics, requiring the remaining technicians to travel once again.”<sup>209</sup> There was no cogent explanation as to how having 5 rather than 6 telehealth technicians supported the travel pause, and why having 4 rather than 5 required the travel resumption.

AVP IT Lantz’s testimony, detailed above in the statement of facts, underscores the nonsensical rationale and points to pretext. She did not explain how the changes helped with staffing, stating:

It wouldn’t resolve the staffing issue, but it would be a temporary band-aid if you will, trying to get coverage for all the clinics. And we would have to get very creative with the schedules, that would be including having Reuben [Miranda] and Albert [Quihuis] travel to the -- to the clinics where there was coverage needed.

(Tr. 786.) Miranda and Telehealth Manager Quihuis did not travel to remote clinics after June 18. Barak and Valdez, however, did, so this explanation, beyond not making inherent sense, is unsupported.

HR VP Felix asking Lantz which employees were traveling is indicative of pretext. If the needs were simply operational, the identity of the employees who traveled would not be important. Indeed, the record shows that, once she learned who was traveling (including Quevedo and another union organizing committee member Oseguera) it was her idea to institute the travel pause, writing on June 27, which was during the critical period, “Can we not float anyone right now, meaning keep the same person at the same location for a month or so? IS that possible?” Lantz responded that they did not have enough techs to cover the clinics but she would abide by Felix’s plan and “get creative with patient schedules.” This explains why Lantz’s testimony reads like she was trying to fit a square peg into a round hole. The simpler explanation, and more importantly the one that is supported by the record, is that, during the critical period, the Respondent wanted to keep

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<sup>209</sup> R. Br. 133-134.

Quevedo at either her home facility, or at the corporate offices in El Centro where they could see her, and not out at clinics promoting the Union. Though it occurred prior to the “official pause” this is starkly illustrated by having Barak, stationed in El Centro, travel to cover Brawley after Lizahola’s departure, rather than keeping Barak in El Centro, where he had been, and having Quevedo cover Brawley.

Quevedo was a known, active union supporter. The Respondent’s asserted operational and staffing-shortage rationale for the pause was so baseless and contrived as to itself raise a presumption of unlawful motive, given the absence of any coherent explanation for why five rather than six technicians required a travel pause or four rather than five required its resumption, Lantz’s admission that the change “wouldn’t resolve the staffing issue,” the inconsistent implementation under which Barak and Valdez continued to travel while Miranda and Quihuis did not, and Felix’s tellingly employee-specific focus on who was traveling and her critical-period instruction to keep the same person at the same location. Because the record establishes that the true purpose was to keep Quevedo where she could be watched rather than out at remote clinics promoting the Union, I find the travel pause was designed to thwart protected activity and violated Section 8(a)(3) and (1) of the Act.

### 3. Quevedo’s July 9 Termination

Complaint paragraphs 16(b) and 21 allege that on July 9, 2024, the Respondent discharged its employee Maabel Quevedo, in violation of Section 8(a)(3) and (1) of the Act. I find the General Counsel has not established this complaint allegation.

*Wright Line* governs, and for the reasons above, I find union activity, employer knowledge, and animus have been established. The Respondent’s asserted reasons for Quevedo’s termination were habitual and unexcused tardiness and absenteeism and unsatisfactory job performance. I find, despite Quevedo’s extensive union activity, the General Counsel has not established these asserted reasons were pretext to mask unlawful motivation.

The record shows the Respondent followed progressive discipline for Quevedo in a manner consistent with other employees. As detailed more fully in the statement of facts, Quevedo received a written warning on December 7, 2021, for habitual and unexcused tardiness or absenteeism, following a previous oral conversation. Quevedo received a notice of corrective probation period for continued absences on October 26, 2022. She then received a second notice of corrective probation period on November 6, 2023, for insubordination in connection with failing to enter her time correctly on multiple dates following repeated instructions and not covering her arm tattoos despite two previous complaints. The November 2023 corrective probation period shows that, before the organizing drive, the Respondent did not start from scratch with progressive discipline when an additional infraction fell into a different category of conduct than the previous discipline, for example performance versus attendance.

Turning to the conduct relied upon to terminate Quevedo, the record reflects that Quevedo continued to have attendance problems. Quevedo's use of leave is set forth in the statement of facts. After she was told, on April 19, that she needed to return to work on April 22, Quevedo's request for time off on April 22 was denied because she did not have sufficient PTO and the death of her uncle did not qualify for bereavement leave. Quevedo clocked in at 8:00 on April 22, but left early at 1:40 after receiving a call about retrieving her uncle's body. Quevedo's leave for the rest of the day was not excused. In addition, Quevedo continued to use LWOP in June and July.

The record supports the Respondent's contention that Quevedo's leave use continued to be a problem, despite previous discipline. The General Counsel and the Charging Party assert that the leave was not "unexcused." The leave for the afternoon of April 22 was unexcused. While I am sympathetic to Quevedo's situation, the Respondent was justified in expecting her to be at work, especially considering her documented history of poor attendance. Moreover, the extensive use of LWOP, regardless of whether it is excused, may result in discipline under section 11.7 of the employee handbook. Quevedo continued to use non-protected LWOP in April, June, and July.

As to the Respondent's unsatisfactory job performance justification, the evidence shows Miranda received a complaint from behavioral health specialist Karen Molina Rivera on June 25. The complaint outlined Quevedo's repeated failures to schedule an appointment for a 91-year-old patient, and Molina Rivera noted she'd had similar problems with Quevedo in the past. When Miranda, in the face of this complaint, looked at Quevedo's NextGen information, he learned she had failed to acknowledge over 100 clinical tasks. The General Counsel and the Charging Party rely on Quevedo's testimony that she could not schedule appointments due to the termination of a provider, resulting in a 3-month wait for appointments. This would not appear to excuse her from acknowledging the task and scheduling the appointment, regardless of the wait time for the patient.

As noted, Quevedo's termination was in line with comparative employees, whether for attendance, performance, misconduct, or a combination of issues. Telehealth Technician Melhaya Hernandez was terminated for repeated punctuality infractions. She had received progressive discipline, including a disciplinary probation, for previous infractions, and was not suspended prior to her termination. Valerie Obeso had received two written warnings, for tardiness and failure to follow Covid protocols, when she was terminated for poor performance. As set forth in the statement of facts, numerous employees were terminated for a combination of multiple reasons, with similar or less progressive discipline than Quevedo received.

The General Counsel asserts that the Respondent's failure to interview Quevedo about the unfinished task, indicates pretext. While true, it is not dispositive. The General Counsel also points to Miranda's failure to enter Quevedo's continued attendance problems into his log. The attendance problems are apparent from the Respondent's records, and Miranda's discontinuation of his log does not bear upon Quevedo's attendance problems. While his records would have potentially buttressed electronic attendance records, their absence does not negate them. The most troubling aspect of Quevedo's termination is the

timing, a day after her manager told her she had a target on her back. Even so, I find the evidence shows the Respondent followed progressive discipline in line with comparator employees, and Quevedo would have been discharged absent her union activity.

5 Although the General Counsel established Quevedo’s union activity, the Respondent’s knowledge, and animus, the preponderant evidence shows the Respondent would have terminated her regardless of her protected activity, so the allegation is not proven. Her discharge followed documented, consistently applied progressive discipline  
10 predating the organizing drive (a written warning and two corrective-action probations for attendance and other infractions), a resumption of unexcused absences, an instance of being AWOL, repeated non-protected LWOP use, and serious performance deficiencies surfaced by a complaint from an untarnished source and confirmed by more than 100 unacknowledged clinical tasks, and it was in line with the treatment of comparable employees, such that her union activity did not shield her from discipline. I recommend  
15 dismissal of this allegation.<sup>210</sup>

#### G. Carmen Borjon’s October 23, 2024 Termination

20 Complaint paragraphs 17 and 21 allege that on October 23, 2024, the Respondent discharged its employee Carmen Borjon, in violation of Section 8(a)(3) and (1). I find the General Counsel has established this complaint allegation.

25 *Wright Line* applies. There is no dispute that C. Borjon’s husband, F. Borjon, engaged in union activity and I have found the Respondent was aware of it, as stated in the discussion of his termination. In addition, after F. Borjon’s termination, he continued to hand out flyers and talk to employees about the Union. On October 22, he also met with  
30 Joey Acuna, a political candidate who was also a member of Innercare’s management, along with a group of others including Union employee Diaz, explaining why they believed Innercare had treated employees unfairly, and seeking his assistance in returning the fired Innercare employees to work.

35 It is well-established that retaliating against an employee because of a close relative’s protected activity can constitute an unfair labor practice. This doctrine, sometimes called associational or derivative retaliation, has been consistently recognized by the Board and courts. See *ILWU Unit 223*, 373 NLRB No. 133 (2024); *PJAX*, 307 NLRB 1201, 1203 (1992); *NLRB v. Advertiser’s Mfg. Co.*, 823 F.2d 1086, 1088 (7th Cir. 1987). I find, therefore, union activity and knowledge elements for C. Borjon’s termination were met by virtue of F. Borjon’s union activity, and animus has been established, based on the numerous reasons articulated above.

40 Though the election had already taken place by the time C. Borjon was discharged, the Act’s protections do not expire at the ballot box, regardless of the election’s outcome, particularly where election objections and unfair labor practices are live. *Allied Mechanical, Inc.*, 343 NLRB 631 (2004).

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<sup>210</sup> The Union’s twenty-first objection concerns Quevedo’s termination and is hereby overruled.

The Respondent asserts that C. Borjon was terminated for theft, relying on its unwritten zero-tolerance policy.

5           The record establishes that C. Borjon took some beans and chips that were not hers from the top of the shared breakroom refrigerator at the end of the day on September 24, a Tuesday. The video evidence reveals that she hesitated and changed her course of action when another employee entered the room and then proceeded to take the beans and chips after the employee left. While C. Borjon may have believed the food on top of the refrigerator was going to be thrown away, her actions on the video indicate she had some reservations about taking it in the presence of a coworker. I find the Respondent had a reasonable belief, based on the video, that C. Borjon took the food with at least some suspicion they were not hers.

15           I find, however, that this isolated and relatively minor incident of food theft<sup>211</sup> was not the reason for C. Borjon’s termination, and the real reason was antiunion animus.

20           The timing is striking. One day after F. Borjon, along with a union representative and other advocates, met with political candidate and Innercare Manager Acuna on October 22 to try to persuade him to intervene on their behalf against Innercare, C. Borjon, who had worked for Innercare for 26 years, was discharged. HR VP Felix and HR Manager Ryan had verified the tape was from a Tuesday two weeks earlier, on October 9. According to Felix and Ryan, executing C. Borjon’s termination for this extremely serious infraction that ostensibly requires automatic immediate removal from the workplace was then placed on the back burner for two weeks. Along with other evidence described below, this leads me to infer the verbal rule that any theft automatically results in termination was a contrived justification.

30           That C. Borjon’s termination was the very first documented reliance on the unwritten and non-disseminated zero-tolerance policy for theft also strongly points to pretext. I incorporate the above analyses regarding the unwritten rules on zero tolerance for breaches of the confidentiality policy and time theft and find reliance on this unwritten rule for all theft is a strong indicator of pretext. Adherence to this unwritten rule renders the taking of some beans and chips left on the top of a shared refrigerator in an employee breakroom at the end of a workday more egregious than multiple intentional HIPAA violations, which as the evidence shows, usually resulted in progressive discipline. Tellingly, C. Borjon is the very first person of record to have been terminated under this unwritten rule.

40           Though theft was assertedly an immediately terminable offense, Padilla was the only other employee terminated for property theft after taking some cookies from a physician in December 2024, after C. Borjon’s termination. Unlike C. Borjon, Padilla’s

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<sup>211</sup> As discussed below, in the context of a shared breakroom refrigerator at the end of a workday, I am not convinced C. Borjon acted with intent to steal. I am using the word “theft” because that is how it was framed in her discipline, but I want to make clear my use of it in this decision does not imply the element of intent.

termination was also because his conduct toward the physician after he was caught caused her to feel scared and intimidated. Moreover, Padilla's termination occurred after C. Borjon's. Having terminated C. Borjon in October for an isolated incident of theft, the Respondent's contention that C. Borjon's termination was justified would be severely  
 5 weakened if Padilla received a lesser penalty two months later in December. Padilla is therefore not a meaningful comparator.

Although I have found the Respondent had a reasonable belief that C. Borjon took beans that she perhaps suspected were not hers, C. Borjon's history with Innercare demonstrates the contrived and nonsensical nature of the Respondent's asserted unwritten  
 10 rule that any theft results in immediate termination, with no room to exercise discretion. Innercare's written handbook, acknowledged by all employees when they begin at employment, permits discretion for theft and does not list it as a zero-tolerance infraction. C. Borjon had worked for Innercare for roughly 26 years at the time of her termination. In  
 15 all these years, she received discipline once, when she was clinic manager, and it was a record of verbal warning more than a decade earlier for delay in reporting an employee injury. Under their own published handbook, Innercare managers could have offered C. Borjon a milder penalty yet chose not to.

20 C. Borjon was not some brazen thief who risked recidivism. I have described C. Borjon's food misappropriation as isolated and relatively minor because it was. The isolated nature of the infraction speaks for itself. I find the act of taking a container of beans and chips at the end of a workday from a shared breakroom was relatively minor because, even though the video indicated some hesitation about taking them in front of another  
 25 employee, I also consider context as informed by C. Borjon's testimony. C. Borjon initially testified she thought the incident occurred on a Friday. Taking food at the end of the day on a Friday was a regular occurrence, so it was not unreasonable for her to assume the video was from a Friday, and she had recalled taking barbeque on Friday September 6. When she was informed the video was from a Tuesday, C. Borjon said she thought the  
 30 beans would be thrown away because they had been on top of the refrigerator during the day, which is why she smelled them before taking them. Had the Respondent given C. Borjon, a 26-year employee, the slightest benefit of the doubt, the element of intent would be in the gray. She hesitated to take the beans in front of another employee, but she thought, even though she maybe wasn't 100 percent certain, that their presence on the top of the  
 35 shared refrigerator at the end of the day indicated they had likely been abandoned. This is a reasonable assumption, and viewed through an unbiased lens, would create doubt as to whether C. Borjon acted with intent of being a thief.

40 The involvement of CEO Bell, coupled with the conspicuous absence of when she was consulted, also suggests unlawful motivation. See *Advanced Masonry Associates, LLC*, 366 NLRB No. 57, slip op. at 4 (2018). Felix emailed Kwon on a date uncertain, informing him that she had spoken to Bell, who was in agreement with C. Borjon's separation. The record evidence firmly establishes that Bell was not regularly consulted on personnel matters. Consulting her in C. Borjon's case, which really would have required  
 45 little to no thought if the automatic termination for theft policy was a legitimate regular

practice, makes no sense given the seemingly simple case.<sup>212</sup> Moreover, Felix’s email states that Bell was “in agreement” with separation. Her agreement suggests there was something to agree to beyond implementation of a firm policy with no room for disagreement.

5           The missing date from Felix’s email confirming Bell’s agreement with C. Borjon’s termination is both conspicuous and problematic. The record contains many emails sent and received on Innercare’s email system. Their structure mirrors the familiar Outlook format, as exemplified by the email Felix sent Leon the morning of October 9, as well as numerous other emails in the record:

10           **From:** Carole Felix <CaroleF@innercare.org>

**Sent:** Wednesday, October 9, 2024 9:32 AM

**To:** Felix Leon <felixl@innercare.org>

**Subject:** RE: Felix Leon shared the folder “Incident 09252024 (HR)” with you

15           Yet, the email to Kwon indicating when Bell’s agreement to terminate C. Borjon is missing the entire “sent” line, though structurally it otherwise appears the same as the auto-generated company email heading. Its missing “sent” line is not merely unexplained — it is structurally anomalous compared to the regular pre-populated headings on company email, making an innocent explanation implausible. Bell did not testify at the hearing, and Felix did not testify as to the date she contacted Bell for her input into C. Borjon’s termination. Seeking input from CEO Bell, an extraordinary level of attention and escalation inconsistent with routine policy application, and then sitting on her agreement to implement the termination, defies explanation. Moreover, as the General Counsel points out, the Respondent would be all but exonerated if the email’s date showed C. Borjon’s termination decision was made before F. Borjon’s meeting with Acuna.<sup>213</sup> “The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse.” *Interstate Circuit, Inc., et al. v. United States*, supra. I therefore infer that the decision to terminate C. Borjon occurred after F. Borjon’s meeting with Acuna.

30           In sum, C. Borjon’s protected activity and the Respondent’s knowledge were established derivatively through her husband F. Borjon’s known union advocacy, and animus was established for the reasons stated above. The theft justification was pretextual, evidenced by the isolated and minor taking of beans and chips from atop a shared breakroom refrigerator, the first-ever invocation of an unwritten, undisseminated, discretion-eliminating zero-tolerance theft rule that the handbook itself contradicts, applied to a 26-year employee with a nearly spotless record whom management declined to offer any lesser penalty, and the striking timing one day after F. Borjon’s October 22 meeting with Acuna, the two-week delay inconsistent with a supposedly automatic removal, and the unusual CEO involvement memorialized in an anomalous email missing its date. I

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<sup>212</sup> There is no record evidence that Bell viewed the video.

<sup>213</sup> As the evidence regarding when Munguia’s emails were sent in juxtaposition to his DocStar access shows, the Respondent had the capability, through its IT department, to determine the date of Felix’s email.

therefore find that C. Borjon was terminated because of her husband’s union advocacy and that her termination violated Section 8(a)(3) and (1) of the Act.

#### H. Allegations Involving Hector Perez

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##### 1. Alleged June Interrogation- Jaime Padilla

Complaint paragraphs 10(a) and 20 allege Hector Perez, at the end of June 2024, inside the Director of Operations office at the El Centro facility, interrogated employees about their union sympathies and support in violation of Section 8(a)(1) of the Act. I find the General Counsel has established this complaint allegation.

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Both Nursing Director Perez and Espinoza, a nurse, testified about a meeting in June informing Padilla about the June 26 anonymous complaint to the California Board of Nursing, and agreed the Union was not mentioned in this meeting. Perez testified there were two meetings about the June complaint. Padilla’s testimony was about the second meeting to review and sign his statement in response to the complaint, not a meeting informing him of the complaint, which was the one Espinoza attended. Her testimony, therefore, is not informative.

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Though the meeting during which Perez informed Padilla about the anonymous complaint is not at issue, Perez testified more broadly that he had not spoken with employees about the Union. I find Padilla’s more detailed testimony is more reliable than Perez’s general denial.

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The analysis involving the *Bourne* factors, set forth above, applies here. These factors each weigh in the General Counsel’s favor. Turning to the first factor, the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity, I have considered the unfair labor practices I have found that preceded the meeting. The second factor, the nature of the information sought, was whether Padilla was familiar with the Union and what his thoughts on it were, which directly elicits Padilla’s sympathies. The third factor, the identity of the interrogator, was Padilla’s second level supervisor, making the questioning coercive. Turning to the fourth factor, the place and method of the interrogation, it occurred in a closed office and was done in connection with complaints to Padilla’s professional governing body. Finally, as to the truthfulness of Padilla’s reply, even though Padilla was a union supporter, he said he was “in the middle,” not pro or against, and it was a personal choice, demonstrating he felt the need to hide his support.

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Considering the totality of the circumstances, including weighing the *Bourne* factors, I find the General Counsel has established this complaint allegation.<sup>214</sup>

##### 2. Alleged July 1 Instruction Not to Arrive Early- Maria Montoya

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<sup>214</sup> The Union’s twenty-fourth objection mirrors this complaint allegation and is hereby sustained.

Complaint paragraphs 10(b) and 20 alleged that on about July 1, Hector Perez denied its off-duty employees access to non-working areas by instructing union supporters not to come to work early, in violation of Section 8(a)(1). I find the General Counsel has established this complaint allegation.

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As more fully described above, Montoya distributed flyers and spoke to coworkers about the Union before work for months prior to the election. Montoya testified that Nursing Director Perez approached her at the nurse’s station on July 1 before her shift and told her she should not be coming to work this early. Perez testified he instructed the supervisors to convey to their subordinate employees that employees should not come to work early, then later said the instruction was to not be in work areas early. Montoya did not recall any instructions to everyone to avoid coming in early, Perez did not know what instructions E. Felix provided, and E. Felix, a supervisor, did not testify.<sup>215</sup> Perez initially denied telling Montoya she could not come to work early, but then testified he did not remember if he spoke to Montoya directly.

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I do not credit Perez’s account, and I credit Montoya’s. Montoya testified in specific, internally consistent terms that Perez approached her at the nurse’s station on July 1, 2024, and told her she “should not be coming in this early,” fixing the date, place, and circumstances of the exchange. Perez, by contrast, could not remember whether he spoke to Montoya at all. Perez admitted that Clinic Manager Fabiola Rivera reported to him that Montoya was coming to the clinic early to distribute flyers and that he was aware of the Union’s organizing campaign and had seen union literature distributed at the Calxico facility.<sup>216</sup> Montoya testified without contradiction that she had arrived before her shift to distribute union flyers for roughly six months, never clocking in when she did so, and had never been told she could not.<sup>217</sup> I found Montoya’s demeanor was straightforward and unwavering, maintaining consistency when testifying about her July 1 morning interaction with Perez. As a current employee testifying against her own pecuniary interests, I find Montoya’s testimony particularly reliable. *Gold Standard Enterprises*, supra; *Georgia Rug Mill*, supra.<sup>218</sup>

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<sup>215</sup> Any such instructions are not at issue here.

<sup>216</sup> Tr. 1023, 1027. At another point in his testimony, Perez said he did not know when he learned Montoya had union materials. (Tr. 1019.) I resolve the timing element against Perez on credibility grounds, including Perez’s inconsistent testimony, and Perez’s knowledge about the flyers based on his cross-examination admission.

<sup>217</sup> In *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 492-493 (1978), the Supreme Court affirmed the Board’s general approach of requiring health care facilities to permit employee solicitation and distribution during non-working time in non-working areas where the facility has not justified the prohibition as necessary to avoid disruption of health care operations or disturbance of patients. The Court elaborated further in *NLRB v. Baptist Hospital, Inc.*, 442 U.S. 773, 781-782 (1979), that if a hospital’s no-solicitation or no-distribution policy applies to areas beyond immediate patient care areas, the hospital bears the burden of presenting affirmative evidence to justify the policy in such areas. This includes nurses’ stations. *Id.*; *Rocky Mountain Hosp.*, 289 NLRB 1347, 1349 (1988).

<sup>218</sup> Though it does not impact the outcome of my decision, I draw an adverse inference from the Respondent’s failure to call Fabiola Rivera or Supervisor E. Felix.

On July 1, 2024, ten days before the July 11 mail ballot issued, Perez told Montoya, who had regularly been engaging in union activity before work for months, that she “should not be coming in this early.”<sup>219</sup> Against this backdrop, I find Perez’s instruction to Montoya would have a reasonable tendency to interfere with, restrain, and coerce employees in the exercise of their Section 7 rights. I therefore find the General Counsel has established this complaint allegation.

#### I. Alleged July Threat to Maria Montoya

Complaint paragraphs 11 and 20 allege that in July 2024, the Respondent, by Dr. Allen Wu, in an office at the Calxico facility, threatened employees with job loss if they continued engaging in union activities.

As detailed above, the conversation underlying this allegation occurred after CMO Wu, having attended a session about the Union in July that included solicitation, asked Montoya to meet him in his office to instruct her to remove union materials she had stored there. Dr. Wu’s direction to remove the materials was understandable and is not at issue; Montoya complied immediately and was never disciplined. From both witnesses’ testimony, the relationship between Dr. Wu and Montoya, spanning roughly ten years, was close and mutually supportive, and both were saddened by the fracture the union drive caused in it.

I found both Montoya and Dr. Wu generally credible in demeanor, and both plainly recalled a conversation that was impactful to them. As to the specific comment by Dr. Wu that if the union thing did not pass, he did not know how he could keep Montoya in her job, I find the evidence establishes Dr. Wu made it. He denied discussing Montoya’s job “in any way whatsoever” and denied threatening anyone’s job. That denial, however, is difficult to square with Dr. Wu’s own testimony. He acknowledged telling Montoya during the same conversation that the union materials could put his job “in jeopardy,” that “I could lose my job,” and that if he and Dr. Bean had lost their jobs, there would be no way for them to take care of their families, before asking her, in reference to leaving union materials in his shared office, “how could you do this to us?”<sup>220</sup> With job loss connected to the Union clearly a subject of the meeting, Dr. Wu’s insistence that he did not discuss Montoya’s job “in any way whatsoever” is overstated and undermines the reliability of his denial. It also makes Montoya’s account, that he linked her own job to the election result, the more probable version. Montoya’s recollection was specific, offered in an open-ended way, and delivered with an earnest, emotional demeanor consistent with her close relationship with Dr. Wu. As a current employee testifying against her own pecuniary interests, her testimony is particularly reliable. *Gold Standard Enterprises*, supra; *Georgia Rug Mill*, supra. Dr. Wu, by contrast, is the Respondent’s Chief Medical Officer who admitted he feared for his own job, giving him reason to deny the statement.

I find the comment, which directly tied Montoya’s job security to the Union election, would coerce a reasonable employee. Because it rested on no objective fact and

<sup>219</sup> Tr. 406.

<sup>220</sup> Tr. 1053, 1061

implied consequences within the Respondent’s own control, it was an unlawful threat rather than a protected prediction. *NLRB v. Gissel Packing*, supra, at 618-619. The standard is objective, so Montoya’s testimony that she did not feel threatened does not change the result, see *American Tissue Corp.*, supra, and Dr. Wu’s genuine concern and compassionate framing do not excuse it.<sup>221</sup>

## J. The Remaining Objections

Most of the Union’s objections overlap with General Counsel’s unfair labor practice allegations and are decided above. The remaining objections are analyzed below, and are sustained in part and overruled in part.

The Board’s task in a representation case is to maintain “laboratory conditions” for the election, “conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.” *Gen. Shoe Corp.*, 77 NLRB 124, 127 (1948). Conduct that “creates an atmosphere which renders improbable a free choice” may warrant setting an election aside “even though that conduct may not constitute an unfair labor practice,” though the Board exercises this power sparingly and “[t]he question is one of degree.” *Id.* In a contested case, the critical period runs from the filing of the petition to the election. *Ideal Elec. & Mfg. Co.*, 134 NLRB 1275, 1277 (1961).

For conduct by a party to the election (the employer), “[t]he test, an objective one, is whether the conduct of a party to an election has the tendency to interfere with the employees’ freedom of choice,” weighing factors including the closeness of the election. *Cambridge Tool & Mfg. Co.*, 316 NLRB 716, 716 (1995). Actual effect need not be shown: “[t]he fact that a threat does not produce the desired result does not mean that there was no threat.” *Id.* Conduct violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of a free and untrammelled choice in an election, because the laboratory-conditions test is “considerably more restrictive” than the 8(a)(1) test. *Dal-Tex Optical Co., Inc.*, 137 NLRB 1782, 1786-1787 (1962). The objecting party (here, the Union), bears the burden of establishing that the conduct is attributable to the Respondent and had the tendency to interfere with employee free choice. *Id.* Where, by contrast, there is “no evidence of ... involvement” by a party, the higher third-party standard applies, and the objecting party must show misconduct “so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.” *Westwood Horizons Hotel*, 270 NLRB 802, 802-803 (1984). In assessing seriousness, the Board weighs the nature of the conduct, whether it reached the entire unit, how widely it was disseminated, whether the actor was capable of carrying out the threat such that employees likely acted in fear, and whether it was renewed near the election. *Id.*

### 1. The Police

Objection 26 asserts that, during the critical period, the employer, through its managers, supervisors, agents, representatives and consultants, repeatedly called police on

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<sup>221</sup> The Union’s twenty-second objection mirrors this complaint allegation and is hereby overruled.

union organizers and supporters who were engaging in lawful and peaceful leafletting outside of the employer’s facilities at El Centro, Calexico, Coachella, and that after the police were called, fewer workers interacted with the Union.

5 I sustain the Union’s objection as to the police being called in El Centro and Calexico and overrule the objection as to Coachella for the reasons detailed below. I sustain the objection that, after the police were called, fewer workers interacted with the Union and avoided speaking with organizers based on the unrefuted testimony from the organizing committee members, detailed in the statement of facts above.

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Summoning police against “lawful and peaceful activities protected by the Act” on the assumption that union activity is dangerous “negates the principles upon which the Act rests.” *Smithfield Packing Co.*, 344 NLRB No. 1 (2004).

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There is no dispute the police came to each of these facilities, as detailed in the statement of facts.<sup>222</sup> The contested question is whether their presence is attributable to the Respondent.

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a. El Centro

The weight of the evidence establishes that the Respondent called the police to the El Centro facility for both the July 8 rally, and during organizing activity on July 16.

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CHRO Kwon spoke with the police on July 8 about a “large moving truck with” “an electronic billboard with messaging regarding [CEO] Yvonne Bell,” the Respondent’s chief executive officer. Kwon asked why the Respondent could not “have it removed” and why the police could not “assist us in doing that,” asserting that the truck was “causing a traffic jam, in my opinion,” and that “it would be a security hazard.” The police declined to remove the truck, which “continued to meander through the parking lot” afterward.<sup>223</sup>

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Ryan was unsure who called the police but believed they were called because the police do not otherwise drive by the facility. This is corroborated by Kwon, who testified it was likely Anthony Rubio, director of project management, who called the police.<sup>224</sup>

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Diaz’ video establishes the police were present at the El Centro facility on July 16. According to Diaz, on that day, the police told her they were called by the clinic and told the organizers should not be on private property. Although the officers’ statement is hearsay as to who called, it is corroborated by the Respondent’s own witness. HR Manager Laura Ryan testified that her understanding was that “the police were at the clinic because

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<sup>222</sup> No record evidence challenges witness testimony about the police presence on the various occasions, dated or undated.

<sup>223</sup> Tr. 1451-1452.

<sup>224</sup> Tr. 1451. Kwon’s testimony about who called the police the day of the rally seemed initially to indicate he may have called the police a different day:

Q Were you responsible for calling the police?

A That day, no.

In an immediate follow-up question, he said he did not ever call them. (Tr. 1451.)

the clinic is on private property, including the parking lot[,] [s]o the police was called to ask them to leave.”<sup>225</sup>

5 Both episodes are attributable to the Respondent and are evaluated under the party-conduct standard.

10 The July 8 request that the police remove the Union’s billboard truck served no legitimate police function. The asserted traffic hazard rested on Kwon’s own “opinion”; the object of the request was a vehicle bearing protected Union expression about the Respondent’s chief executive; and the officers, who were present at the scene, declined to act, allowing the truck to continue through the lot. An employer cannot use a police agency during a campaign when no legitimate police function is served thereby, and the officers’ refusal to act confirms the absence of any such function here and supports the inference that the Respondent’s true object was to enlist law enforcement to suppress the Union’s  
15 protected message. *Smithfield Packing*, above. That the police declined to remove the truck does not diminish the coercive tendency of the Respondent’s resort to law enforcement during the rally. The inquiry is objective and turns on the tendency of the conduct to interfere, not on its result. *Cambridge Tool & Mfg. Co.*, above.

20 The July 16 summoning of police to remove peaceful organizers, on a bare private-property rationale, with no disorder, obstruction, or other legitimate police function shown, likewise had a reasonable tendency to interfere with employees’ free choice. That organizers persisted does not diminish the coercive tendency of the conduct. *Cambridge Tool & Mfg. Co.* I therefore sustain Objection 26 as to El Centro.

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b. Calexico

Turning to Calexico, preponderant evidence shows the police were called to the facility. Quevedo provided unrefuted testimony that was handing out flyers in the Calexico  
30 parking lot in mid-July when Fabiola Rivera, the clinic manager, told them they could not be there, and she was going to call the police. The police arrived and told the union organizers to stand on the sidewalk. Garcia’s testimony, also unrefuted, stated that when she talked to employees and handed out flyers during lunchtime, the people in charge of the clinic told union workers to leave and threatened to call the police. The police arrived  
35 and said they were called to see what was going on.<sup>226</sup> On one occasion they asked the organizers to leave, on another they did not.

40 A manager’s express threat to summon the police against peaceful leafleting, followed by the arrival of police who confirmed they had been called, is conduct attributable to the Respondent. Judged objectively, directing law enforcement against protected activity with no legitimate police function served had a reasonable tendency to interfere with employee free choice. I therefore sustain Objection 26 as to Calexico.

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<sup>225</sup> Tr. 952-953.

<sup>226</sup> Though this is hearsay, I find it is corroborated by both Quevedo and Garcia’s testimony that preceding law enforcement’s arrival, management had threatened to call the police.

## c. Coachella

The record establishes that police appeared at the Coachella facility on July 9, during a Union car caravan, but it does not establish that the Respondent summoned or controlled them. Quevedo testified that the caravan took place in what she described as a “public parking lot,” that the police “came ... straight to us” and told the organizers “to get out of the premises,” and that no Inncare manager came out while the caravan was underway.<sup>227</sup> Ascolani, who visited Coachella once, testified that no “supervisor or manager from Inncare” came out to speak with law enforcement there, in contrast to his observations at El Centro.

I take administrative notice that the Coachella clinic is one tenant in a multi-tenant outdoor strip mall and that the large parking lot where the caravan occurred is shared by the mall’s other tenants, including a Planet Fitness gym, a Cricket Wireless store, a Cardenas supermarket, and a Carl’s Jr.<sup>228</sup> See *Bud Antle, Inc.*, 359 NLRB 1257 n. 3 (2013), reaff’d. 361 NLRB 873 (2014) (administrative notice of distance between cities based on Google Maps). CHRO Kwon described the Coachella clinic as “a single tenant” of a “multi-tenant” strip mall with a shared “huge parking lot” the Respondent does not control. Ascolani described the site as “a plaza with different companies ... sharing the same parking lot.”<sup>229</sup> Especially considering this context, I find the evidence does not establish that Inncare called the police to the Coachella clinic.

I have considered Ascolani’s testimony that the police were “called on” the Union at Coachella as well as at the other sites. I give that characterization little weight on the dispositive question. Ascolani did not testify who summoned the police, did not report any officer stating that the clinic had called, and affirmatively testified that no Respondent agent interacted with the police at Coachella. His lay statement that the police were “called on us” does not, standing alone, attribute the call to the Respondent, particularly in a shared commercial lot serving numerous unaffiliated businesses, where police presence is as readily explained by sources unconnected to the Respondent. For the same reason, I do not draw an adverse inference from Quevedo’s observation that the officers “came ... straight to” the organizers; officers responding to a large, shared lot would naturally approach the unusual activity of a caravan, whether or not they were summoned by the Respondent, another tenant, or happened to be in the parking lot.

Because the Union has not shown that the police presence at Coachella is attributable to the Respondent, the objection fails under the party-conduct standard; there is no party conduct to evaluate. Treated as third-party conduct, the single appearance of police in a shared commercial parking lot the Respondent neither owns nor controls, resulting in no arrests and no further incident, falls far short of misconduct “so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.” *Westwood Horizons Hotel*, supra. I therefore overrule Objection 26 as to Coachella.

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<sup>227</sup> Tr. 499-501.

<sup>228</sup> See [Inncare - Coachella - Google Maps](#)

<sup>229</sup> Tr. 100-101, 1456-1457

## 2. Alleged Surveillance

Objection 27 asserts that, during the critical period, the employer, through its managers, supervisors, agents, representatives and consultants, engaged in surveillance of Union leafleting. More specifically, the objection elaborates:

After Inncare called the police on Union organizers outside of the El Centro facility, Union organizers witnessed Heriberto Galvan, Lead HR Assistant and Laura Ryan, HR Manager, watching interactions with police through the windows of the facility and were communicating with the police themselves. Outside of the Brawley facility where the Union did a car caravan through a shared parking lot, managers Yolanda Paez and Joe Gutierrez took pictures of the caravan. The Union is prepared to present witnesses who will testify that they saw Galvan and Ryan observing interactions with the Police and themselves interacting with the El Centro police officers at the El Centro facility. The Union is also prepared to present additional witnesses who will testify that they saw Paez and Gutierrez taking Pictures of the caravan that took place in a shared parking lot where the Brawley clinic is located.

For the reasons below, I sustain the objection as to the recording of union activity at El Centro and overrule it as to the remaining allegations. No witness testified that Lead HR Assistant Galvan watched or communicated with police, and no witness testified that Paez or Gutierrez, or any Respondent agent, photographed the Brawley car caravan. The record is devoid of evidence supporting these allegations and they were not litigated.

Because this is a consolidated representation and unfair-labor-practice proceeding, conduct that violates Section 8(a)(1) during the critical period is, a fortiori, objectionable; the Board nonetheless examines whether the conduct was extensive enough to interfere with the election. *Dal-Tex Optical Co., Inc.*, supra.

The substantive standard for surveillance is well settled. An employer’s “mere observation” of open, public union activity on or near its property does not violate the Act. When an employer’s surveillance activity constitutes more than “mere observation,” the Board has found a violation of the Act. See *Gupta Permold Corp.*, 289 NLRB 1234, 1234 fn. 2 (1988). The Board has held that “[p]hotographing and videotaping clearly constitute more than ‘mere observation’ because such pictorial recordkeeping tends to create fear among employees of future reprisals.” *F.W. Woolworth Co.*, 310 NLRB 1197, 1197 (1993); quoting *Waco, Inc.*, 273 NLRB 746, 747 (1984). Accordingly, absent proper justification, the photographing of employees engaged in protected concerted activities is coercive because it has a tendency to intimidate. 310 NLRB at 1197. The violation turns on the conduct’s “tendency to coerce, [regardless of its] actual impact”; the indifference of some participants and the absence of any past reprisal do not negate that tendency. *Nat’l Steel & Shipbuilding Co. v. NLRB*, 156 F.3d 1268, 1271 (D.C. Cir. 1998).

The Board has refined the inquiry into an objective, three-factor test: observation becomes unlawful when it is “out of the ordinary” and thereby coercive, as measured by

“the duration of the observation, the employer’s distance from its employees while observing them, and whether the employer engaged in other coercive behavior during its observation.” *Aladdin Gaming, LLC*, 345 NLRB 585, 586 (2005). The Ninth Circuit has adopted that test as “rational and consistent” with the Act, explaining that observation is unlawful when it “goes beyond casual and becomes unduly intrusive.” *Loc. Joint Exec. Bd. of Las Vegas v. NLRB*, 515 F.3d 942, 945 (9th Cir. 2008); quoting *Kenworth Truck Co., Inc.*, 327 NLRB 497, 501 (1999). Routine or brief observation does not cross that line. *Aladdin Gaming*, above.

I find that, on at least one occasion during the critical period when police were present at the El Centro facility, HR Manager Laura Ryan recorded the Union’s activity outside from a second-floor window using her cellphone. Alejandro Ascolani testified that, as management came out to speak with the police, “you could also see them on the second floor through the window recording,” and identified Ryan as the person recording with her phone, with HR VP Felix present with her.<sup>230</sup> On cross-examination he confirmed that he saw Ryan and Felix “in the second floor window ...recording activities outside,” though he could only confirm police were present on one occasion.<sup>231</sup> When asked whether the observation was long enough to suggest a video recording rather than a photograph, Ascolani answered “Correct,” and estimated the recording lasted “at least a couple minutes.”<sup>232</sup>

Ryan did not deny the conduct. Asked whether she “never looked out that window ... to look at police officers,” she testified, “Not that I recall,” and, when pressed whether that meant she did not do so or did not remember, she answered, “I would say I don’t recall.”<sup>233</sup> She was not asked, and did not testify, whether she recorded the activity with her phone. I credit Ascolani’s specific, firsthand recollection, including his account of the device and the duration, over Ryan’s professed lack of recollection. That Ryan testified she would pass the window to reach her workstation does not undermine the finding, which rests on a sustained, multi-minute recording and not on mere passing observation.

Ryan’s conduct, attributable to the Respondent as its HR Manager, exceeded the lawful observation of open union activity. She did not merely watch; she made a pictorial record, a cellphone video of several minutes’ duration, of employees and organizers engaged in protected activity outside the facility. The recording’s minutes-long duration and fixed second-floor vantage make it “out of the ordinary” and coercive under the governing test, distinguishing it from the brief or routine observation the Board has found lawful. That some participants may have been indifferent, or that no reprisal followed, does not defeat the violation, which turns on the conduct’s tendency to coerce. Judged objectively, recording employees’ protected activity in this manner had a reasonable tendency to interfere with their free choice and, occurring within the critical period in this consolidated proceeding, is a fortiori objectionable and was extensive enough to interfere with the election. *Dal-Tex Optical Co.*, supra.

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<sup>230</sup> Tr. 95.

<sup>231</sup> Tr. 140.

<sup>232</sup> Tr. 141

<sup>233</sup> Tr. 994.

I sustain objection 27 as to the allegation regarding HR Manager Ryan in El Centro, and overrule it as to the other alleged conduct.

5 K. The Request for Bargaining Order

10 The General Counsel requests an order pursuant to *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), enfd. *International Brotherhood of Teamsters v. NLRB*, 2026 WL 1079297 (9th Cir. 2026), or, in the alternative, the General Counsel requests a bargaining order pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), requiring the Respondent to recognize and bargain in good faith with the Union as the exclusive bargaining agent of the bargaining-unit for a reasonable period of time.

15 1. Cemex

In *Cemex*, the Board described two scenarios where an employer's conduct will warrant a remedial bargaining order. First, by refusing to recognize, upon request, a union that has been designated as the Section 9(a) representative of a majority of employees in an appropriate unit the employer will violate Section 8(a)(5) and (1) of the Act *unless* it promptly files an RM petition, or avails itself of its right to test the union's claim of majority status and/or the appropriateness of the unit during the processing of a representation petition filed by the union. *Id.*, slip op. at 25. In situations where the union does not file a representation petition and the employer does not recognize the union or promptly file an RM petition, the employer's conduct will constitute an unlawful failure and refusal to bargain under Section 8(a)(5) of the Act and will warrant imposition of a remedial bargaining order. *Id.*, slip op. at 26, fn. 141.

Under the second scenario, an employer who lawfully elects to test the union's majority support or the appropriateness of the unit will nevertheless be subject to a remedial bargaining order if it commits an unfair labor practice that would require setting aside the election. *Id.* slip op. at 26. The General Counsel must establish that: (1) a respondent refused the union's request to bargain; (2) at a time when the union had in fact been designated representative by a majority of employees; (3) in a concededly appropriate unit; and then (4) committed unfair labor practices requiring the election be set aside, violating Section 8(a)(5) and warranting a remedial bargaining order. *Id.* at 29.

This case does not fall within the first scenario discussed in *Cemex* because the Union filed two representation petitions on the same day it requested voluntary recognition from Respondent. Respondent was entitled to test the Union's majority status and the appropriateness of the bargaining unit. Its failure to immediately recognize the Union or promptly file an RM petition does not warrant the imposition of a remedial bargaining order.

45 Analyzing the facts under the second scenario, I find that the General Counsel has established each of the required elements save one. Although the General Counsel

introduced enough authorization cards to establish majority support, only one of the electronic cards was properly authenticated.

- 5           a. The Respondent refused the Union’s request to bargain regarding a  
concededly appropriate unit

10           Because of the substantial change in the unit between the time of the filing of the  
petition and the signing of the stipulated election agreement, I discuss elements one and  
three together. The Union’s June 10 request for recognition and bargaining and its  
representation petitions concerned two separate units: the service and technical unit and the  
WIC unit. There is insufficient evidence to establish, and no party now argues, that these  
two units were appropriate units.<sup>234</sup> There was no concededly appropriate unit until the  
parties entered into a stipulation election agreement on June 21, 2024. In that document,  
the parties agreed that a single combined unit with 18 locations and approximately 100 job  
15           classifications is an appropriate unit.

20           This leads to the question whether the Respondent refused the Union’s request to  
bargain with respect to the single unit. The record reflects no evidence that the Union  
specifically requested recognition after the parties agreed upon an appropriate unit.  
However, because the stipulated election agreement amended the representation petitions  
to conform with the terms of the stipulated election agreement, the express requests for  
bargaining in the representation petitions applied to the concededly appropriate unit as of  
June 21. I find this sufficient to establish that as of June 21, the Union had effectively  
requested that the Respondent recognize and bargain with the Union concerning the  
25           agreed-upon appropriate bargaining unit. The Respondent’s decision to enter into the  
stipulation, rather than voluntarily recognize the Union in the agreed-upon appropriate unit,  
is sufficient evidence to establish that the Respondent declined the Union’s request for  
recognition. See *Cemex*, 372 NLRB No. 130 slip op. at 38 (employer deemed to have  
declined to recognize union as of date it entered stipulation in representation case prior to  
30           pre-election hearing).

- b. There is insufficient evidence to establish the Union had majority support  
within the unit

35           Of the 463 eligible voters, the General Counsel provided 176 physical authorization  
cards with exemplar signatures, and 82 electronic authorization cards in two lists.<sup>235</sup> All  
cards were signed before June 21, 2024. If each of these cards were properly authenticated,  
there would have been sufficient evidence to establish that the Union enjoyed majority  
support as of June 21 – a total of 258 employees, or 55.7%.

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<sup>234</sup> The service and technical unit included certain job classifications that were also included  
in the WIC unit, included a job classification entitled “unknown,” and did not include one of the  
facilities named in the unit ultimately agreed to be appropriate. Also, even if all nine authorization  
cards provided as a showing of interest in the WIC unit were properly authenticated, they  
amounted to only 45% of that unit.

<sup>235</sup> Five of the eighty-seven employees on the Union’s lists of electronic card signers  
do not appear on the list of eligible voters.

Authorization cards are authenticated under the Federal Rules of Evidence, which apply “so far as practicable” under Section 10(b) of the Act. 29 U.S.C. § 160(b). Rule 901(a) provides that authentication is satisfied by “evidence sufficient to support a finding that the matter in question is what its proponent claims” and sets forth a list of methods to meet this standard, which under Rule 901(b) are “by way of illustration only, and not by way of limitation.” See *Traction Wholesale Center Co. v. NLRB*, 216 F.3d 92 (D.C. Cir. 2000), enfg. 328 NLRB 1058 (1999).

The Board’s traditional card authentication methods include: testimony from the signatory or a person who witnessed the employee sign the card; testimony from the solicitor to whom the signatory returned a completed card, even without witnessed execution; and/or a comparison of the signature with the employee’s signature on authenticated business records by the trier of fact. Fed. R. Evid. § 901(b)(1), (3); *Novelis Corp.*, 364 NLRB 1452, 1454 (2016) enf. denied in part on other grounds, 885 F.3d 100, 108 fn. 7 (2d Cir. 2018); *Traction Wholesale*, 328 NLRB at 1059. These methods are illustrative and are oriented to ink signatures.

Electronic records, by contrast, are evaluated under Rule 901(b)(1) (a witness with knowledge of the system), 901(b)(4) (distinctive characteristics and circumstantial evidence), and 901(b)(9) (“[e]vidence describing a process or system used to produce a result and showing that the process or system produces an accurate result”, with accuracy challenges ordinarily going to weight rather than admissibility. See *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 545-549 (D. Md. 2007).

A clarification about the governing standard is warranted. I do not rest my findings on any presumption arising from the showing-of-interest process. A showing of interest is an “administrative expedient[]” that is “not subject to direct or collateral attack at hearings,” and its nonlitigability is “an integral and essential element of the Board’s showing-of-interest rule.” *O.D. Jennings & Co.*, 68 NLRB 516, 517-518 (1946); *S.H. Kress & Co.*, 137 NLRB 1244, 1248 (1962), rev’d on other grounds, 317 F.2d 225 (9th Cir. 1963).<sup>236</sup> To support a remedial bargaining order, the General Counsel bears the burden of proving the Union’s actual majority status on this record, with no presumption of validity, and the Respondent is “fully free to contest the union’s claim by presenting evidence . . . that the . . . showing of majority support is deficient because of irregularities in the procurement of cards or otherwise.” *Cemex*, slip op. 33.

With respect to the physical authorization cards, the General Counsel relies solely on the trier of fact to compare employee signatures on the authorization cards with employee signatures on authenticated records from the Respondent. In accordance with Fed. R. Evid. 901(b)(3), I have carefully compared the signatures on the authorization cards to the known exemplars from Respondent’s records, specifically the signatures on W-4

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<sup>236</sup> Although the Union’s process for collecting electronic authorization cards may have complied with the guidelines set forth in General Counsel Memorandum 15-08, that guidance pertains to the procedure for using electronic authorization cards as a showing of interest to support a petition and does not govern majority-status hearings.

forms and handbook or policy acknowledgement forms. Based on this comparison, I find that 156 of the signatures on the authorization cards compare favorably with the exemplars and that those signatures are genuine and authentic. I further find that 20 of the signatures on the authorization cards are not sufficiently similar to establish that they are authentic.<sup>237</sup>

Turning to the 82 electronic authorization cards submitted into evidence, the General Counsel provided one employee witness, Nayelli Garcia, to authenticate the electronic authorization card she herself had completed. This is sufficient to authenticate Garcia’s electronic authorization card. The remaining 81 were not authenticated by any signatory, by any witness to their completion, or by any solicitor who testified to receiving a completed ballot from a specifically identified employee. I evaluate those 81 under Rules 901(b)(4) and (9), and, on review of the electronic-ballot report itself, find the circumstantial and system proof insufficient to attribute the cards to the specific employees named on them.

Rule 901(b)(9) permits authentication by evidence describing a process or system and showing that it produces an accurate result. The Union’s Assistant Director, Elliott Petty, testified that the authorization cards were collected through an online form built on the FormAssembly platform, which “populates the report once workers click submit,” capturing for each entry the signer’s name, email, mobile number, job title, a unique IP address, and the date of submission, and generating an automatic confirmation email to the address entered.<sup>238</sup> That testimony describes the system’s general operation. It does not, however, establish the one proposition the General Counsel needed to prove, i.e. that the data the system logged reliably ties each ballot to the particular employee named on it.

The IP column illustrates the gap. Petty testified that the system logs a unique IP address for each submission “to show . . . each worker is signing this from their own personal devices, not . . . one union person sitting at a computer punching in names.”<sup>239</sup> The reliability of that inference is the foundation on which the 81 electronic cards depend, and it was the General Counsel’s burden to lay it. The General Counsel did not. No witness explained what the logged addresses represent, how they were captured, or critically, whether a given address corresponds to one and only one employee. That foundational omission is not cured by the report, which undercuts the assumption of a one-to-one correspondence. The identical IP address 104.28.85.108 appears for both Melanie Alaniz Correa and Enrique Armenta, which is the very pattern the IP log purportedly systematically excluded. Absent such an explanation, the record does not establish that the

<sup>237</sup> These employees can be located at the following row numbers on the summary chart of signatures and exemplars: 1, 5, 9, 27, 32, 33, 43, 55, 67, 82, 96, 120, 121, 122, 130, 139, 146, 160, 170, and 174. (GC Exh. 97(a).) A reference chart is attached as Appendix B.

<sup>238</sup> Tr. 568-569. Petty testified generally about the system. He did not testify to any controls ensuring that the person who completed a given form was in fact the employee named on it, and he provided no evidence that he, or any identified solicitor, furnished the link to or solicited a card from any of the 81 signers. No declaration describing the signature technology and its controls was offered, and no witness from the data department that generated the report testified.

<sup>239</sup> Tr. 569.

system produced an accurate result tying each of the 81 electronic cards to the named employee, and Rule 901(b)(9) is not satisfied.

5 Rule 901(b)(4) permits authentication by “[t]he appearance, contents, substance,  
internal patterns, or other distinctive characteristics of the item, taken together with all the  
circumstances.” The spreadsheet shows the electronic cards carry individualized fields  
(name, email, mobile, job title, and a free-text statement) and each generated a confirmation  
email to the address the signer supplied, to which no recipient replied to disclaim a ballot.  
10 The email addresses were self-entered on the form and were not matched to any  
independent record of the employees’ own addresses. A confirmation email sent to them,  
therefore, does not establish that the named employee authored the ballot. The absence of  
a disclaiming reply presupposes the very fact to be proved, i.e. that the ballot reached the  
genuine employee. Moreover, the evidence contains incomplete entries, missing fields that  
15 a complete submission would include, such as the submission date for Juliette Bernal and  
Josefa Silva. This further undercuts any claim that the system produced a uniformly reliable  
record.<sup>240</sup> These are not technical defects I resolve against the Union; they are gaps in the  
General Counsel’s proof that leave the attributive link unestablished.

20 I recognize that the threshold for authentication is low and that challenges to the  
accuracy of system-generated records ordinarily go to weight rather than admissibility.  
That principle does not carry the General Counsel here, because the deficiency is not a  
disputed question about the accuracy of an established record, it is the absence of the  
foundational proof that would make the record probative of attribution in the first place.  
25 The General Counsel, which bore the burden of proving actual majority support without  
the aid of any presumption, did not offer the testimony or corroboration needed to tie the  
81 electronic cards to the named employees, with no explanation of the facial  
inconsistencies in the data on which the attribution depends. Measured against the General  
Counsel’s burden, the circumstantial and system evidence does not persuade me that the  
30 81 unattributed electronic cards are the authentic designations of the named employees.

Because only 157 authorization cards have been authenticated, the General Counsel  
has not established that the Union had obtained the support of a majority of the appropriate  
bargaining unit consisting of approximately 463 employees as of June 21, 2024. A remedial  
bargaining order under *Cemex* is, therefore, not appropriate here.<sup>241</sup>

35 c. The Respondent’s unlawful conduct requires the election be set aside

During the critical period, the Respondent committed several serious unfair labor  
practices, including “hallmark” violations, when it discharged key union supporters.  
40 Specifically, I have found that Respondent violated Section 8(a)(3) and (1) of the Act when

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<sup>240</sup> Some names on the evidence submitted for the electronic signatures appear to be misspelled. “Ashley Gargia” appears to be a misspelling of Garcia (the voter list has “Garcia, Ashley”); Marisela Saldoval” appears to be a misspelling of Sandoval (voter list: “Sandoval, Marisela”); “Martia James” “Martia” may be a mis-transcription of “Maria.”

<sup>241</sup> If the 82 electronic cards were properly authenticated, the Union would have established majority support with 238 total cards, or 51.4% of the 463-person unit.

it discharged Alejandro Ascolani on June 18, Nayelli Garcia on June 18, Francisco Borjon on June 19, and Oscar Munguia on June 27. As the Board noted in *Cemex*, the discipline and discharge of prominent union activists has a “particularly strong coercive effect” and acts as a “powerful and enduring warning against supporting the Union to all employees who became aware of it.” 372 NLRB No. 130, slip op. at 15. Even a single 8(a)(3) violation of the Act by an employer during the critical period between the filing of an election petition and the election, can warrant setting aside the election because it interferes with employee free choice and undermines the reliability of the election. *Lucky Cab Co.*, 360 NLRB 271, 277 (2014). Setting aside the election is further supported by Respondent’s other unfair labor practices committed during the critical period.

## 2. *Gissel*

The purpose of a remedial bargaining order is “to remedy past election damage [and] deter future misconduct.” *Gissel*, 395 U.S. at 612. The Supreme Court has sanctioned the issuance of such a bargaining order “where an employer has committed independent unfair labor practices which have made the holding of a fair election unlikely or which have in fact undermined the union’s majority. . . .” Id. at 610. A bargaining order is designed as much to remedy past election damage as it is to deter future misconduct, re-establishing “the laboratory conditions as they existed before the employer’s unlawful campaign” where the employer “has succeeded in undermining a union’s strength and destroying the laboratory conditions necessary for a fair election.” Id. at 612. The Board thus has the authority to order an employer to recognize and bargain with a union even if the employees have not voted for union representation in an election.

In *Gissel*, the Court identified two categories of employer misconduct that warrant imposition of a bargaining order. The first, referred to as category I cases, are “exceptional” and “marked by ‘outrageous’ and ‘pervasive’ unfair labor practices.” Id. at 613. The second, referred to as category II cases, involve “less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes.” Id. at 614. A Category II order is appropriate where (1) “at one point the union had a majority”; (2) “the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight”; and (3) “employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order.” Id. at 614-615. The Court also recognized a third category of “minor or less extensive unfair labor practices, which, because of their minimal impact on the election machinery, will not sustain a bargaining order”; there is “no per se rule.” Id. at 615.

In assessing whether to impose a *Gissel* bargaining order, the Board examines factors such as “the seriousness of the violations and their pervasiveness, the size of the unit, the number of affected employees, the extent of dissemination, and the position of the persons committing the violations.” *Bristol Industrial Corp.*, 366 NLRB No. 101, slip op. at 3 (2018). It weighs “the extensiveness of an employer’s unfair practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future,” considering the entire course of conduct. *Red Rock Casino*, 373 NLRB No. 67, slip op. at

7 (2024), quoting *Gissel*, 395 U.S. at 614. The Board also considers “the inadequacy of the Board’s traditional remedies,” “the Section 7 rights of all employees involved,” and whether an affirmative bargaining order “serves the policies of the Act.” *Bristol*, slip op. at 3-4. In making this latter determination, the Board considers the length of time between the election and its order, as well as whether there has been significant employee turnover since the employer began commission of unfair labor practices. See *Stern Produce*, 368 NLRB No. 31, slip op. at 5 (2019), and cases cited therein; *Sysco Grand Rapids, LLC*, 367 NLRB No. 111, slip op. at 2 (2019).

a. Category II is foreclosed due to insufficient evidence of majority support

Category II is, by its terms, available only on “a showing that at one point the union had a majority.” *Gissel* at 614. As detailed above, the General Counsel did not establish that the Union attained majority status in the stipulated unit: although the General Counsel offered cards from a facial majority (258 of approximately 463 employees, or 55.7%), only 157 cards were properly authenticated, short of a majority of the roughly 463-employee unit.

As the first element of the category II test is not met, a category II bargaining order cannot issue. The point is not merely formal. The Supreme Court grounded the category II remedy in the protection of “employee sentiment once expressed through cards” and explained that the free-choice aim rises to equal importance with deterrence only “where there is also a showing that at one point the union had a majority.” *Gissel* at 614. Absent a proven majority, there is no ascertainable majority sentiment for a bargaining order to protect, and imposing representation would rest on deterrence alone, forcing a bargaining relationship on a unit that was never shown to desire one. A category II order is therefore unsupported.<sup>242</sup>

b. The Respondent’s conduct, though serious, does not rise to the category I level

Because a category I order may issue “without need of inquiry into majority status,” it is the only available route given the lack of majority finding. *Gissel* at 613. Category I is reserved for the “exceptional” case of “outrageous” and “pervasive” misconduct so coercive that “a fair and reliable election cannot be had.” *Gissel* at 613-614.

Seriousness of the violations. This factor favors a bargaining order. Innercare committed unlawful discharges of union supporters Alejandro Ascolani (June 18), Nayelli Garcia (June 18), Francisco Borjon (June 19), Oscar Munguia (June 27), and Carmen Borjon (October 23), together with an unlawful demotion of Ascolani (June 14) and an unlawful reduction of Maabel Quevedo’s work assignments (June-July). I have also found a threat of job loss by CMO Allen Wu, and creation of the impression of surveillance by IT Sr. Telehealth manager Ruben Miranda, unlawful interrogation and a denial of access by Nursing Director Hector Perez, and unlawful restrictions on union materials by CHRO Kwon. The discharge of union adherents and threats of job loss are “hallmark” violations

<sup>242</sup> Given the seriousness of the violations, had a majority been established through cards, I would find a bargaining order should issue under category II.

“with effects on bargaining unit employees that cannot be underestimated,” and discharges of union supporters are among “the most public and serious unfair labor practices,” creating “precisely the legacy of coercion that endures in the workplace and that the Supreme Court addressed in *Gissel*.” *Garvey Marine, Inc.*, 328 NLRB 991, 993-994 (1999), *enfd.* 245 F.3d 819 (D.C. Cir. 2001). Hallmark discharges are “the most flagrant forms of interference with Section 7 rights and are more likely to destroy election conditions for a longer period of time than are other unfair labor practices because they tend to reinforce the employees’ fear that they will lose their employment if union activity persists.” *Traction Wholesale*, 328 NLRB at 1077; see also *Milum Textile Servs.*, 357 NLRB 2047, 2055 (2011).

Identity and position of the violators. This factor favors issuance of an order. The violations were committed by the Respondent’s most senior officials: CHRO Kwon, CFO Marlene Rizo, HR VP Carole Felix, CMO Wu, Nursing Director Hector Perez, and HR Manager Ryan. The involvement of high management heightened their coercive effect, magnifying the impact of the misconduct.

Likelihood of recurrence. This factor favors a bargaining order. The Respondent did not desist after the election, discharging Carmen Borjon on October 23, 2024, months after the July 2024 election. This continued unlawful conduct after the election demonstrates the Respondent’s “continuing propensity to violate the Act and indicates that the coercive effects of [its] unlawful conduct are likely to linger,” and “evidences a strong likelihood of a recurrence of unlawful conduct in the event of another organizing effort.” *Evergreen Am. Corp.* 348 NLRB 178, 181 (2006), *enfd.* 531 F.3d 321 (4th Cir. 2008); *General Fabrications Corp.*, 328 NLRB 1114, 1115 (1999), *enfd.* 222 F.3d 218 (6th Cir. 2000), quoting *Garney Morris, Inc.*, 313 NLRB 101, 103 (1993).

Number of employees directly affected and size of the unit. This factor weighs against an order. Where a substantial percentage of employees in the bargaining unit is directly affected by an employer’s serious unfair labor practices, the possibility of holding a fair election decreases. *Cogburn Healthcare Center*, 335 NLRB 1397, 1399 (2001). Thus, serious employer misconduct that is widespread and directly reaches all or a significant portion of unit employees supports a bargaining order. See *Power Inc. v. NLRB*, 40 F.3d 409, 423 (D.C. Cir. 1994), *enfg.* 311 NLRB 599 (1993) (unfair labor practices directly reached nearly every employee in the bargaining unit)

Here, the stipulated unit is large, consisting of approximately 463 employees across 18 locations and roughly 100 job classifications. The violations directly affected a comparatively small number of identified employees (the discharged and disciplined activists and those subjected to individual interrogation, threats, and surveillance), concentrated at the El Centro and Calxico facilities.<sup>243</sup> None of the conduct directly impacted the entire bargaining unit or even a substantial percentage. See *Cardinal Home Products*, 338 NLRB 1004, 1011 (2003) (bargaining order not supported where employer’s unfair labor practices, other than maintenance/promulgation of unlawful rules, directly affected approximately 9 employees out of a bargaining unit of approximately 60 eligible

<sup>243</sup> I recognize the significance that most of the conduct took place at the El Centro facility, which was large and served as corporate headquarters.

voters); cf. *Evergreen Am. Corp.*, supra. (unit-wide benefits and threats in a 115-person unit supported an order). Though the conduct was serious, it directly affected a relatively small number of eligible voters in a large unit.

5        Extent of Dissemination. This factor is mixed. The Board considers dissemination  
 “to employees not personally affected,” asking whether the conduct created a unit-wide  
 “legacy of coercion.” *Cardinal Home Products* at 1010. Here, the discharges were known  
 10        to coworkers, who expressed fear of getting fired. The discharged activists themselves  
 spread awareness, disseminating a flyer highlighting their terminations. Cutting the other  
 way, the unit spans 18 geographically dispersed sites, and the record ties the discharges,  
 threats, interrogation, and surveillance principally to El Centro and Calexico. It does not  
 establish that knowledge of the misconduct reached all or substantially all of the roughly  
 463 employees across every location. Whether the coercive effects pervaded the unit so  
 15        thoroughly that no fair election could be held is the determinative question, and the record  
 does not compel that conclusion.

20        Adequacy of traditional remedies / laboratory conditions. This factor favors the  
 Respondent. The misconduct is serious and includes hallmark discharges and a job-loss  
 threat by senior officials, but it is concentrated rather than unit-wide across a large,  
 dispersed workforce. Where serious violations do not pervade the unit, “the coercive  
 effects of the Respondent’s conduct can be erased through the use of other remedies,”  
 including a notice posting and reading, reinstatement and backpay for the discriminatees,  
 and the Board’s other traditional remedies, rather than the extraordinary step of ordering  
 the parties to bargain. *Cardinal Home Products* at 1011. On this record, the violations do  
 25        not rise to the Category I level of “outrageous” and “pervasive” misconduct that makes a  
 fair and reliable election unattainable by any traditional remedy. *Gissel* at 613-614

#### L. Notice Reading and Re-Run Election

30        In sum, I find the balance weighs against issuance of a bargaining order and the  
 employees’ rights would be best served by a second election, which I find to be the  
 appropriate remedy rather than certification of the election. In addition, I find a notice  
 reading is warranted.

##### 35        1. A Re-Run Election is the Appropriate Remedy

40        The proper remedy is to set aside the July 2024 election and direct a second election.  
 The Board’s normal practice is to set aside an election whenever an unfair practice occurs  
 during the critical period, subject to a single, narrow exception: the election will not be  
 disturbed where “the violations are such that it is virtually impossible to conclude that they  
 could have affected the results of the election.” *Greenpark Care Ctr.*, 236 NLRB 683, 684  
 (1978). The de minimis exception does not apply here given the Respondent’s conduct  
 described throughout this decision. See *Caron Int’l, Inc.*, 246 NLRB 1120 (1979).

##### 45        2. A Notice Reading is Warranted

The General Counsel has requested a notice reading by CEO Yvonne Bell, in the presence of a Board agent and a representative from the Union, and I agree this remedy is warranted. Because Innercare’s “unfair labor practices are such that they are likely to have a continuing coercive effect on the free exercise by employees of their Section 7 rights long after the violations have occurred,” I recommend that additional remedial action be ordered to “dissipate as much as possible the lingering atmosphere of fear created by Respondent’s unlawful conduct and to insure” employees will “be able to voice a free choice” when a re-run election occurs. *Haddon House Food Products, Inc.*, 242 NLRB 1057, 1058-1059 (1979) enfd. in pert. part, 640 F.2d 392 (D.C. Cir. 1981), cert. denied, 454 U.S. 827 (1981).

The Board has explained the rationale for notice readings, distilled from its caselaw:

The Board has ordered the notice-reading remedy in cases where the respondent’s unlawful conduct has been “sufficiently serious and widespread” to ensure that the content of the notice is disseminated to all employees. . . . Notice reading is a way to let in a “warming wind of information” to not only alert employees to their rights but also impress upon them that, as a matter of law, their employer or union must and will respect those rights in the future. Reading the notice (and any explanation of rights) aloud disseminates that information through the work force in a clear and effective way. This awareness, in turn, means that respondents will be less able to violate the Act unnoticed as a matter of course. . . . Notice reading offers employees a chance to hear, in a formal setting and in the presence of other employees and a Board agent, that their rights have value and that the Board takes those rights seriously.

*Noah’s Ark Processors, LLC*, 372 NLRB No. 80 (2023), slip op. at 6 (footnotes omitted). I agree a notice reading remedy is needed to remedy the effects of the discrimination and to ensure any re-run election is undertaken with employee knowledge that management understands their rights under the Act, and their vote will be free from coercion. *Stern Produce*, above, slip op. at 5.

#### CONCLUSIONS OF LAW

1. The Respondent, Clinicas de Salud del Pueblo, Inc. d/b/a Innercare, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and is a health care institution within the meaning of Section 2(14) of the Act.
2. The Charging Party, SEIU United Healthcare Workers-West, CLC (the Union), is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by the following conduct:
  - (a) On June 12, 2024, coercively interrogating Oscar Munguia about his union activities and sympathies.
  - (b) On June 14, 2024, instructing Alejandro Ascolani to remove union materials from his desk while permitting employees to keep other,

non-work materials at their workstations, thereby disparately restricting the display of union materials.

5 (c) In late June 2024, coercively interrogating Jaime Padilla about his union sympathies and support.

(d) On or about July 1, 2024, denying Maria Montoya off-duty access to non-working areas by instructing her not to arrive at work early.

10 (e) In July 2024, threatening Maria Montoya with job loss if employees selected the Union.

(f) On or about July 8, 2024, creating the impression that Maabel Quevedo's union activities were under surveillance.

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4. The Respondent violated Section 8(a)(3) and (1) of the Act by the following conduct, taken because its employees engaged in union activity:

20 (a) On June 14, 2024, demoting Alejandro Ascolani from bookkeeper to biller I.

(b) On June 18, 2024, discharging Alejandro Ascolani.

25 (c) On June 18, 2024, discharging Nayelli Garcia.

(d) On June 19, 2024, discharging Francisco Borjon.

(e) On June 27, 2024, discharging Oscar Munguia.

30 (f) From on or about June 17 through July 8, discontinuing Maabel Quevedo's travel assignments to remote clinics, thereby reducing her pay

35 (g) On October 23, discharging Carmen Borjon based on her spouse's union activity.

5. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

40 6. The General Counsel did not establish that the Union represented a majority of the employees in the stipulated appropriate unit of approximately 463 employees, and a remedial bargaining order under *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), is not warranted.

7. The General Counsel did not establish the Union’s majority status, or that the violations rose to the level of a category I violation under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), and a *Gissel* bargaining order is not warranted.

5 8. The Respondent’s unfair labor practices committed during the critical period interfered with the employees’ free choice in the election conducted in Cases 21-RC-344126 and 21-RC-344127, and the election must be set aside.

9. The Respondent did not violate the Act in any manner other than as found above.

10

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

15

Having found that the Respondent violated Section 8(a)(1) of the Act by disparately restricting employees from displaying union materials at their workstations, by coercively interrogating employees about their union activities and sympathies, by denying off-duty employees access to non-working areas because of their union activity, by threatening employees with job loss if they selected the Union, and by creating the impression that employees’ union activities were under surveillance, I shall order the Respondent to cease and desist from such conduct and from in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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Having found that the Respondent unlawfully discharged Alejandro Ascolani, Nayelli Garcia, Francisco Borjon, Oscar Munguia, and Carmen Borjon, the Respondent shall offer each of them full reinstatement to his or her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his or her seniority or any other rights or privileges previously enjoyed, and shall make each of them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Having found that the Respondent unlawfully demoted Alejandro Ascolani, the Respondent shall also rescind the demotion and restore Ascolani to the bookkeeper position he held before June 14, 2024. Having found that the Respondent unlawfully discontinued Maabel Quevedo’s travel assignments, the Respondent shall make Quevedo whole for any loss of earnings and other benefits suffered as a result of that unlawful conduct.

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Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *Thryv, Inc.*, 372 NLRB No. 22 (2022), the Respondent shall also compensate the discriminatees for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful conduct, including reasonable search-for-work and interim employment expenses, regardless of whether those expenses exceed interim earnings; compensation for these harms shall be calculated separately from taxable net backpay, with

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interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.<sup>244</sup>

5 The Respondent shall compensate the discriminatees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and shall file with the Regional Director for Region 21, within 21 days of the date the amount of backpay is fixed either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years. *Latino Express, Inc.*, 359 NLRB No. 44 (2012); *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

10 The Respondent shall also remove from its files any reference to the unlawful demotion and discharges and to the unlawful reduction of Quevedo’s assignments, and shall notify each affected employee in writing that this has been done and that the unlawful actions will not be used against them in any way.

15 The Respondent shall post the attached notice marked “Appendix A” in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010), and, in addition to physical posting, shall distribute the notice electronically if it customarily communicates with its employees by such means.

20 Because the Respondent’s unlawful conduct is likely to have a continuing coercive effect on the free exercise of Section 7 rights, and to ensure that any rerun election is conducted free of coercion, the notice shall also be read aloud to assembled employees, during working time, by Chief Executive Officer Yvonne Bell, in the presence of a Board agent and, if the Union so desires, an agent of the Union, or, at the Respondent’s option, by a Board agent in the presence of Bell and, if the Union so desires, an agent of the Union. *Noah’s Ark Processors*, supra; *Bozzuto’s, Inc.*, 365 NLRB 1444 (2017).

25 Because the General Counsel did not establish the Union’s majority status, or that the violations rose to the level of a category I violation under *Gissel*, supra, no bargaining order will issue; and because the Respondent’s misconduct interfered with the election, the election conducted in Cases 21-RC-344126 and 21-RC-344127 will be set aside, and those cases will be severed and remanded to the Regional Director for Region 21 to conduct a second election whenever the Regional Director shall deem appropriate.

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>245</sup>

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<sup>244</sup> *Thryv* remains binding Board precedent notwithstanding the subsequent denial of enforcement on other grounds, 102 F.4th 727 (5th Cir. 2024), under the Board’s long-established policy of nonacquiescence to adverse appellate court decisions. *Airgas USA, LLC*, 373 NLRB No. 102, slip op. at 1 fn. 2 (2024).

<sup>245</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.

## ORDER

The Respondent, Clinicas de Salud del Pueblo, Inc. d/b/a Innercare, El Centro, California, its officers, agents, successors, and assigns, shall

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## 1. Cease and desist from

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a. Coercively interrogating employees about their union activities, sympathies, or support.

b. Threatening employees with job loss or other reprisals because they support or select the Union.

15

c. Disparately restricting employees from displaying or keeping union materials at their workstations while permitting other non-work materials.

d. Creating the impression that employees' union activities are under surveillance.

20

e. Denying off-duty employees access to non-working areas or instructing employees not to arrive to work early, because they engage in union activity.

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f. Demoting, discharging, reducing the assignments or pay of, or otherwise discriminating against employees because they engage in Union or other protected activity.

g. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

30

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

35

a. Within 14 days from the date of this Order, offer Alejandro Ascolani, Nayelli Garcia, Francisco Borjon, Oscar Munguia, and Carmen Borjon full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

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b. Within 14 days from the date of this Order, rescind the June 14, 2024 demotion of Alejandro Ascolani and restore him to the bookkeeper position, or a substantially equivalent position, that he held before the demotion.

45

c. Make Alejandro Ascolani, Nayelli Garcia, Francisco Borjon, Oscar Munguia, Carmen Borjon, and Maabel Quevedo whole for any loss of earnings and other benefits, and for any other direct or foreseeable

pecuniary harms, suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

- 5           d. Compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 21, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.
- 10           e. Within 14 days from the date of this Order, remove from its files any reference to the unlawful demotion and discharges and to the unlawful reduction of Maabel Quevedo’s assignments, and within 3 days thereafter, notify each affected employee in writing that this has been done and that the unlawful actions will not be used against them in any way.
- 15           f. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all  
20           other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- 25           g. Within 14 days after service by the Region, post at its facilities in El Centro, Calexico, and its other California locations where notices to employees are customarily posted copies of the attached notice marked “Appendix A.” Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent’s authorized representative, shall be maintained for 60 consecutive days in conspicuous places, including all  
30           places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notice shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the  
35           Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed  
40           by the Respondent since June 12, 2024.
- 45           h. Within 14 days after service by the Region, hold a meeting or meetings during working time, scheduled to ensure the widest possible attendance, at which the attached notice shall be read to employees by Chief Executive Officer Yvonne Bell in the presence of a Board agent and, if the Union so desires, an agent of the Union, or, at the Respondent’s option, by a Board

agent in the presence of Yvonne Bell and, if the Union so desires, an agent of the Union.

- 5           i. Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply

10           IT IS FURTHER ORDERED that the election held July 11-26, 2024, in Cases 21-RC-344126 and 21-RC-344127 is set aside, and that those cases are severed and remanded to the Regional Director for Region 21 to direct a second election whenever the Regional Director shall deem appropriate.

15           IT IS FURTHER ORDERED that the consolidated complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. October 14, 2026

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Eleanor Laws  
Administrative Law Judge

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APPENDIX A  
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.

**FEDERAL LAW 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** disparately restrict you from displaying or keeping union materials at your workstation while permitting other, non-work materials.

**WE WILL NOT** coercively question you about your union activities, sympathies, or support.

**WE WILL NOT** deny you access to non-working areas, or tell you not to arrive to work early, because you engage in union activity.

**WE WILL NOT** threaten you with job loss or other reprisals because you support or select the union.

**WE WILL NOT** create the impression that your union activities are under surveillance.

**WE WILL NOT** demote, discharge, reduce the assignments or pay of, or otherwise discriminate against you because you engage in union or other protected activity.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL**, within 14 days from the date of the Board's Order, offer Alejandro Ascolani, Nayelli Garcia, Francisco Borjon, Oscar Munguia, and Carmen Borjon full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

**WE WILL**, within 14 days from the date of the Board's Order, rescind the demotion of Alejandro Ascolani and restore him to his former bookkeeper position.

**WE WILL** make Alejandro Ascolani, Nayelli Garcia, Francisco Borjon, Oscar Munguia, Carmen Borjon, and Maabel Quevedo whole, with interest, for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of our unlawful conduct against them.

**WE WILL** compensate the affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and **WE WILL** file with the Regional Director a report allocating the backpay awards to the appropriate calendar years.

**WE WILL**, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful demotion, discharges, and reduction of assignments, and **WE WILL**, within 3 days thereafter, notify each affected employee in writing that this has been done and that the unlawful actions will not be used against them in any way.

**CLINICAS DE SALUD DEL PUEBLO, INC.,  
D/B/A INNERCARE**

\_\_\_\_\_  
(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. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies 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. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).*

Region 21  
National Labor Relations Board  
US Court House, Spring Street  
312 N Spring Street, 10th Floor  
Los Angeles, CA 90012  
Telephone (213) 894-5200, Hours: 8:30 a.m. -5:00 p.m. Pacific Time

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/21-CA-344340](http://www.nlr.gov/case/21-CA-344340) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**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 (213) 634-6502.

## APPENDIX B

Chart of paper authorization cards with non-matching signatures:

| Number on 97(a) chart | Last Name      | First Name  | Signature Issue                                                        |
|-----------------------|----------------|-------------|------------------------------------------------------------------------|
| 1                     | Abrica         | Paulina     | Does not match exemplars                                               |
| 5                     | Aguillar       | Mayra       | Both M and A look off                                                  |
| 9                     | Alvarez        | Josssdayala | Each signature different                                               |
| 27                    | Campos         | Karen       | Does not match exemplars                                               |
| 32                    | Castro         | Abril       | Cap a, cross of t, and ro are different                                |
| 33                    | Celaya         | Jacqueline  | Each sig is different                                                  |
| 43                    | Doshier        | Stephanie   | looks somewhat different                                               |
| 55                    | Garcia         | Andrea      | Does not match exemplars                                               |
| 67                    | Gonzalez-Tapia | Maricela    | Does not match exemplars                                               |
| 82                    | Herrera        | Carlos      | Does not match exemplars                                               |
| 96                    | Medina         | Frida       | Does not match exemplars                                               |
| 120                   | Paez           | Michelle    | Does not match exemplars                                               |
| 121                   | Perez          | Martha      | Does not match exemplars                                               |
| 122                   | Pineda         | Jesus       | Does not match exemplars                                               |
| 130                   | Rangel         | Andrea      | Does not look like a signature - just printed name - compare exemplars |
| 139                   | Rojas          | Francine    | Does not match exemplars                                               |
| 146                   | Sanchez        | Karime      | Does not match exemplars                                               |
| 160                   | Torres         | Marylou     | Does not match exemplars                                               |
| 170                   | Villaescusa    | Krizia      | Does not match exemplars                                               |
| 174                   | Yanez          | Vanessa     | Last name appears different than exemplars                             |