UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

RAYMOND INTERIOR SYSTEMS and OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL UNION 200, AFL-CIO	Case No. 21-CA-38492
and SOUTHERN CALIFORNIA PLASTERING INSTITUTE GROUP BENEFIT TRUST C/O AMERICAN BENEFIT PLAN ADMINISTRATORS, INC., et al., and SOUTHWEST REGIONAL COUNCIL OF CARPENTERS	Case No. 21-CA-38589
and OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL UNION 200, AFL-CIO	Case No. 21-CB-14576

CHARGING PARTIES' CROSS-EXCEPTIONS AND BRIEF IN SUPPORT OF CROSS-EXCEPTIONS

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Charging Party Operative Plasterers' and Cement Masons' International Association Local 200 ("Local 200") and Charging Party Southern California Plastering Institute Group Benefit Trust c/o American Benefit Plan Administrators, Inc. ("the Trusts") hereby submit these Cross-Exceptions and Brief in Support of Cross-Exceptions in accordance with Rule 102.46(e) of the Rules and Regulations of the National Labor Relations Board.

CROSS-EXCEPTIONS

CROSS-EXCEPTION #1:

Charging Parties cross-except to the Administrative Law Judge ("ALJ")'s finding that Bob Pullen misspoke by saying "June 25, 2003" instead of granting Charging Parties' Motion to Correct Transcript. (ALJD at p. 6, n. 5, lines 49-50). This ruling deprives Charging Parties of the due process right to create an accurate factual record in the event that the Board finds merit to Raymond Interior Systems, Inc's corresponding exception to the ALJ's finding on this same matter.

CROSS-EXCEPTION #2:

Charging Parties except to the ALJ's proposed remedy set forth on page 19, line 27 through page 21, line 16. The proposed remedy is correct, but greater specificity as to its scope is valuable to ensure that employees denied employment and work opportunities as a result of Raymond's unlawful withdrawal of recognition receive a complete make-whole remedy.

CROSS-EXCEPTION #3:

Charging Parties except to the ALJ's proposed remedy as set forth on page 19, line 27 through page 21, line 16. The proposed remedy is correct, but greater specificity as to its scope

is valuable to ensure that valid dues check-off authorizations submitted by Raymond employees as of August 6, 2008 requiring Raymond to transmit dues to Local 200 are honored.

BRIEF IN SUPPORT OF CROSS-EXCEPTIONS

I. STATEMENT OF THE CASE

These cross-exceptions are filed for the purpose of assuring that a complete record is created regarding a factual point that Raymond apparently finds crucial to its case and also to ensure that the scope of the remedy is properly elucidated for purposes of compliance proceedings.

The first exception pertains to the ALJ's finding at page 6, note 5, lines 47-50 of the Decision that Pullen "misspoke" by identifying the date that Fritchel visited Raymond as "June 25, 2003" instead of "June 26, 2003" and his related decision not to rule on Charging Parties' Motion to Correct the Transcript. Charging Parties presented the ALJ with evidence supporting their claim that Pullen testified "June 26, 2003" instead of "June 25, 2003" at a certain point in his testimony, but that his testimony was incorrectly transcriped. The ALJ denied the motion. It is in the interest of justice for the record to be corrected in this regard because Raymond continues to place great reliance on Pullen's supposedly having testified "June 25, 2003" instead of "June 26, 2003."

The second and third exceptions pertain to the remedy ordered by the ALJ on page 19, line 27 through page 21, line 16. The ALJ ordered the following remedial steps, among others:

> c. Notify the Plasterers' Union in writing of all changes made to its plastering employees' terms and conditions of employment since August 6, 2008 and on request of the Plasterers' Union rescind any changes and restore terms and conditions of employment retroactively to August 6, 2008.
> d. Make whole its plastering employees for all wages and benefits, with interest, that would have been paid since August 6, 2008.

e. Make whole all its plastering employees who joined the Carpenters' Union on or after August 6, 2008 for all dues and fees plus interest.

These remedial steps are correct. However, in order to avoid further disputes during compliance, Charging Parties contend that specific clarification concerning the remedy is valuable with respect to two issues: unilateral changes to hiring procedures and unilateral changes to dues check-off procedures.

II. QUESTIONS INVOLVED

(1). Should the Charging Parties' motion to correct the transcript be ruled upon?

(2). Should the remedy be clarified to address any unilateral changes to hiring procedures, or should this be left to compliance proceedings?

(3). Should the remedy by clarified to address the issue of any unilateral changes to dues checkoff procedures, or should this be left to compliance proceedings?

III. ARGUMENT

A. CHARGING PARTIES' MOTION TO CORRECT THE TRANSCRIPT SHOULD BE GRANTED AS NECESSARY TO ENSURE AN ACCURATE RECORD

In its Exceptions and Brief in Support of Exceptions, Raymond makes repeated reference to the following testimony by Bob Pullen:

> Q. BY MS. McNEILL: Did you take any course of action after sending the letter in June of 2003?
> A. Yes, Dave Fritchel was sent over there on *June 25, '03*, with a binder of the authorization cards to get signed and sign in front of Gary and two copies, at least two copies—leave a copy there.

(Tr. 71) (emphasis added). In fact, Charging Parties contend that Mr. Pullen testified that Mr. Fritchel was sent on June 26, 2003 and presented evidence to support that claim (*see* Exhibit A and C, attached hereto). That evidence consisted of the sworn testimony of the undersigned verifying the accuracy of a transcription of a voice mail message left by the court reporter service, in which the speaker identified herself and confirmed that the transcription was in error. The evidence was presented for the purpose of providing grounds for the ALJ to order that that portion of the transcription to be formally reviewed.

On December 16, 2009, Charging Parties filed a motion before the ALJ asking that he order the court reporting service to formally review the transcript and correct it if warranted to state "June 26, 2003" instead of "June 25, 2003." (*See* Exhibit A attached hereto). On December 18, 2009, Respondents filed a response in opposition. (*See* Exhibit B attached hereto). On December 23, 2009, Charging Parties filed a reply. (*See* Exhibit C attached hereto).

The ALJ ruled as follows:

> In its brief, Respondent contends that Pullen sent Fritchel to Respondent Raymond to get a copy of the voluntary recognition agreement signed on June 25, 2003. (Tr. 71, line 17). Respondent incorrectly cites GC exhibit 5 for the proposition that the Raymond voluntary recognition agreement was signed June 25, 2003. General Counsel's exhibit 5 clearly shows that the Raymond agreement was signed on June 26, 2003. However from the entire context of Pullen's testimony, it is apparent that he misspoke regarding June 25, 2003 and actually meant June 26, 2003. (Tr. 72, lines 4-6 and at 74, line 4). Have so found, it is unnecessary to rule on Charging Parties' Motion to Correct the Transcript.

(ALJD, p. 6, n.5, lines 42-50.)

Raymond has excepted to the ALJ's finding that Pullen "misspoke" and continues to argue that Pullen stated "June 25, 2003" in his testimony. (Raymond Brief, p. 8, 28). The ALJ left the door open to Raymond's erroneous argument by determining that Pullen "misspoke"

instead of resolving whether Pullen's testimony was correctly transcribed. Obviously, the ALJ might still reasonably have concluded that Pullen misspoke if the transcript were found to be correct, but that puts the cart before the horse. The better course would have been to grant the motion to correct the transcript and to allow the parties to argue this case before the Board on the basis of an accurate transcript—a circumstance that Raymond clearly would like to avoid. To the extent that the Board is inclined to entertain Raymond's attack on the ALJ's conclusion that Pullen misspoke concerning the dates in question, it should make no determination until the transcript is reviewed and corrected as necessary.

B. RESCINDING UNILATERL CHANGES TO HIRING PROCEDURES SHOULD BE PART OF THE MAKE-WHOLE REMEDY

The ALJ correctly ordered the Respondent to take the following steps to restore the *status quo* in correction of its unlawful withdrawal of recognition from Local 200 as section 9(a) representative of its plastering employees:

> [. . . .]
>
> c. Notify the Plasterers' Union in writing of all changes made to its plastering employees' terms and conditions of employment since August 6, 2008 and on request of the Plasterers' Union rescind any changes and restore terms and conditions of employment retroactively to August 6, 2008.
>
> d. Make whole its plastering employees for all wages and benefits, with interest, that would have been paid since August 6, 2008.
>
> e. Make whole all its plastering employees who joined the Carpenters' Union on or after August 6, 2008 for all dues and fees plus interest.

The WWCCA Master Labor Agreement provides for hiring procedures to be used in the event that Raymond requires plasterers beyond those whom it directly employs to perform plastering work. (G.C. Exh. 2-C, Art. III, pp. 2-5.) Upon expiration of the Master Labor Agreement, Raymond was required to maintain the *status quo* with respect to these hiring

procedures. *See, e.g., The Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143, 149 (2007); *The Strand Theatre of Shreveport Corp.*, 346 NLRB 523, 542 (2006).

The Board holds that the corrective remedy for bad faith bargaining with respect to hiring procedures must extend both to bargaining unit employees *and* to employees who were denied the opportunity to obtain employment and perform work within the bargaining unit. *Positive Electric Enterprises, Inc.*, 345 NLRB 915, 923 (2005); *Williams Pipeline Co.*, 315 NLRB 630 (1994); *J.E. Brown Electric*, 315 NLRB 620 (1994); *R.L. Resinger Co.*, 312 NLRB 915 (1993); Thus, to the extent that Raymond has hired plastering employees (including but not limited to apprentices) using procedures other than those encompassed within the *status quo* established as of August 6, 2008, it has deprived out-of-work members of Local 200 from gaining such work opportunities since that time. Inasmuch as a full make-whole remedy must provide relief for *both* Raymond's employees and its potential employees, Local 200 requests that the Board clarify the proposed remedy.

C. RESCINDING UNILATERAL CHANGES TO DUES CHECK-OFF PROCEDURES SHOULD BE PART OF THE MAKE-WHOLE REMEDY

The Master Labor Agreement provided for a process by which the Raymond was contractually bound to honor employees' duly signed check-off authorizations. (G.C. Exh. 2-C, art. VI, section 7, p. 15.) Raymond remitted monthly dues payments to Local 200 on behalf of employees who had submitted valid authorizations for this purpose up until its unlawful withdrawal of recognition.

The appropriate remedy for an employer's refusal to honor valid and unrevoked dues check-off authorizations is for the employer to remit unpaid dues to the union that stood to receive them. *Williams Pipeline Co.*, 315 NLRB at 632. Furthermore, an employer is not obligated to cease complying with dues check-off provisions of an expired collective bargaining

agreement. *See Lowell Corrugated Container Corp.*, 177 NRB 169, 173 (1969). In ordering restoration of the *status quo*, the Board should consider that Raymond would have continued to honor its employees' dues check off authorizations by remitting dues to Local 200 as it had done in the past throughout any hiatus period between the expired Master Labor Agreement and a successor agreement containing check-off obligations. While Raymond may speculate that it might have unilaterally discontinued its check-off obligation upon contract expiration even if it had not withdrawn recognition from Local 200, such conjecture is unwarranted. There is no evidence that Raymond ever intended to act in this fashion, and as the wrongdoer in this matter, any speculations concerning what "would have" happened must be construed against Raymond. *Twin City Concrete, Inc.*, 317 NLRB 1313, 1323 (1995); *Fugazy Continental Corp.*, 276 NLRB 1334, 1376 (1985).

It is probable that this remedy does not entail an increased financial burden upon Raymond. It merely requires that Raymond pay over to Local 200 dues that are refunded to bargaining unit members to the extent that such employees had valid check-off authorizations on file. This will avoid the problem of employees being in arrears for their membership obligation to Local 200, and permit them to restore their membership in good standing without any administrative complications. Because that was the intended effect of employees to having signed dues check-off authorizations, honoring those authorizations is necessary in order to restore the status quo.

CONCLUSION

For the foregoing reasons, the Board should resolve the motion to correct the transcript as necessary to ensure an accurate record and it specify in its order that the make-whole remedy should extend to employees who were deprived of work opportunities and employees whose dues check-off authorizations were dishonored following Raymond's unlawful withdrawal of recognition.

Dated: June 14, 2010

Respectfully submitted,

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EXHIBIT A

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

RAYMOND INTERIOR SYSTEMS

and

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL UNION 200, AFL-CIO, et al.

Case No. 21-CA-38492, et al..

CHARGING PARTIES' MOTION TO CORRECT THE TRANSCRIPT

Charging Parties Operative Plasterers' and Cement Masons' International Association Local Union 200, AFL-CIO and Southern California Plastering Institute Group Benefit Trust, et al. present this motion to correct the transcript in accordance with NLRB Rules and Regulation Rule 102.24(a) and NLRB Casehandling Manual ¶ 10412.

In its Post-Hearing Brief, Raymond Interior Systems ("Raymond") refers at various points to Robert Pullen's testimony at Page 71 of the transcript.

> Q. BY MS. McNEIL: Did you take any course of action after sending the letter in June of 2003:
>
> A. Yes, Dave Fritchel was sent over there on June 25, '03, with a binder of the authorization cards to get signed and sign in front of Gary and two copies, at least two copies—leave a copy there.

(Tr. 71, lines 15-20.)(Emphasis added.) Raymond argues that Pullen's testimony corroborates the testimony of Gary Jaacks, who testified that Fritchel visited Raymond's office prior to June 26, 2003. (*See* Raymond Post-Hearing Brief, p. 8, n.3.) Raymond

also argues that Pullen's testimony impeaches Fritchel's testimony that Fritchel visited Raymond on June 26, 2003. (*See id.*, p. 34.)

Finding Raymond's argument surprising in light of his recollection of the proceeding, the undersigned counsel reviewed Raymond's transcript reference at page 71. Raymond is obviously correct that the transcript states "June 25." But it was highly apparent within the context of the passage that this was a typographical error. For example, the ensuing reference on page 72 is to "June 26" and there was no effort by the counsel for the General Counsel to question Pullen's mention of the "June 25" date.

In light of this ambiguity, I made inquiry with Argie Reporting Service concerning the accuracy of page 71, line 17. Ms. Molinaro of Argie Reporting Service subsequently informed me that, upon her review of the tape recording, there was in fact an error in the transcription with respect to the "June 25" reference. Mr. Pullen stated "June 26" in his testimony, not "June 25."

On this basis, the Charging Parties respectfully request that the Administrative Law Judge take the following actions, or such other action as he deems appropriate:

1) direct the transcription service to formally review the passage in question, and

2) issue a correction to conform the transcript to the recorded testimony.

Raymond is obviously free to make the factual and legal arguments it wishes to support its position. But those arguments should not be premised on transcription mistakes. If the transcript passage that Raymond relies upon is erroneous, it is in the

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interest of justice that the transcript be corrected. The Board's ultimate decision should be premised upon the actual testimony offered during the evidentiary hearing.

Dated: December 16, 2009

Respectfully submitted,

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PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the city and county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 1400, San Francisco, CA 94105.

On December 16, 2009 I served the document described as **CHARGING PARTIES' MOTION TO CORRECT THE TRANSCRIPT** by facsimile a true copy, as indicated below:

Kathleen Jorgenson
Daniel M. Shanley
Fax:213-488-4180

Lisa E. McNeil
Fax: 213-894-2778

James A. Bowles
Richard S. Zuniga
Fax: 213-624-4840

Executed on December 16, 2009 at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

s/Renee Saunders
Renee Saunders

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Division of Judges

RAYMOND INTERIOR SYSTEMS

and Case 21-CA-38492

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL UNION 200, AFL-CIO

and Case 21-CA-38589

SOUTHERN CALIFORNIA PLASTERING GROUP BENEFIT TRUST C/O AMERICAN BENEFIT PLAN ADMINISTRATORS, INC., ET AL.

SOUTHWEST REGIONAL COUNCIL OF CARPENTERS

and

OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, LOCAL UNION 200, AFL-CIO Case 21-CB-14576

OPPOSITION OF RESPONDENT SOUTHWEST REGIONAL COUNCIL OF CARPENTERS TO CHARGING PARTIES' MOTION TO CORRECT THE TRANSCRIPT

Respondent Southwest Regional Council of Carpenters ("Respondent Carpenters") hereby objects to and opposes the Motion to Correct the Transcript ("Motion") filed by Charging Parties Operative Plasterers' and Cement Masons' International Association Local Union 200, AFL-CIO and Southern California Plastering Institute Group Benefit Trust, et al. ("Charging Parties"). Respondent Carpenters opposes the Motion on the grounds that it is inappropriately and prejudicially late, that it is based upon multiple levels of hearsay, and that it evidences inappropriate and prejudicial *ex parte* communications with the reporting service utilized in this matter.

Charging Parties contend that the transcript in this case contains an inaccuracy at page 71, line 17. Specifically, Charging Parties contend that the testimony of Robert Pullen was actually that Dave Fritchel went to Respondent Raymond Interior Systems' ("Raymond") facility on June 26, 2003 -- instead of June 25, 2003, as reflected in the transcript. Charging Parties further contend that this purported inaccuracy must be corrected at this juncture *because* Respondent Raymond relied upon it in its post-hearing brief.

The transcripts in this matter were delivered to the parties on or around October 13, 2009 -- over two months ago. Obviously, the Charging Parties or their counsel reviewed the transcripts prior to filing the Charging Parties' post-hearing brief since their brief contained transcript citations. Yet, Counsel now claims that he did not notice this purported "error" in the transcript until he read Respondents' briefs in this matter, which briefs were received by Charging Parties' counsel on December 2. This does not justify or excuse counsel's waiting until this late date to request that this purported "error" in the transcript be corrected. If any inaccuracy truly existed, particularly on a point that Charging Parties deem key to the case,

Charging Parties' counsel could and should have noted it and requested that it be corrected prior to the filing of post-hearing briefs, or at a minimum requested (either by motion or otherwise) that the transcript be corrected before they filed their brief. By waiting until the parties submitted their post-hearing briefs before seeking to have the transcript corrected, Charging Parties have prejudiced the other parties who -- hearing no objection from either Counsel for the General Counsel or from the Charging Parties -- relied upon the evidence reflected in said transcripts.

Further, Charging Parties fail to demonstrate that the transcript requires correction. The Motion contains unsworn assertions by counsel for the Charging Parties, as to unsworn statements made by an employee of Argie Reporting Service who was not even the reporter at the hearing, as to the contents of the tape recording of the hearing. This is multiple hearsay, and is further prejudicial and inappropriate.

Lastly, Charging Parties' actions in conducting these *ex parte* discussions with the reporting service are further inappropriate and prejudicial. After reading Respondent Raymond's argument in its post-hearing brief, counsel for the Charging Parties called the reporting service *ex parte* and engaged in some sort of dialogue -- which is noticeably absent from Charging Parties' Motion, and which should have been quoted verbatim under these circumstances. The power of suggestion in such situations can be strong, even when it is unintentionally employed.

As a consequence, Charging Parties' Motion has prejudiced the Respondents in more ways than one. For these reasons, and because the Motion is unsupported by anything other than multiple hearsay, Respondent Carpenters objects to the Motion and respectfully submits that the it should not be entertained by the Administrative Law Judge and should be denied.

Respectfully submitted,

DATE: December 18, 2009

DeCARLO, CONNOR & SHANLEY
a Professional Corporation

By: _____
Kathleen M. Jorgenson
Attorneys for Respondent SOUTHWEST
REGIONAL COUNCIL OF CARPENTERS

PROOF OF SERVICE

I, Kathleen M. Jorgenson, declare as follows:

1. I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is DeCARLO, CONNOR & SHANLEY, a Professional Corporation, 533 South Fremont Avenue, Ninth Floor, Los Angeles, California 90071-1706.

2. I hereby certify that on December 18, 2009, I filed the foregoing **OPPOSITION OF RESPONDENT SOUTHWEST REGIONAL COUNCIL OF CARPENTERS TO CHARGING PARTIES' MOTION TO CORRECT THE TRANSCRIPT** in Case Nos. 21-CA-38492, 21-CA-38589, and 21-CB-14576 via E-filing with the Division of Judges.

3. I hereby certify that on December 18, 2009, I served the foregoing **OPPOSITION OF RESPONDENT SOUTHWEST REGIONAL COUNCIL OF CARPENTERS TO CHARGING PARTIES' MOTION TO CORRECT THE TRANSCRIPT** in Case Nos. 21-CA-38492, 21-CA-38589, and 21-CB-14576 via E-mail as follows:

James Small, Regional Director
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Lisa McNeill
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///

///

Jeffrey L. Cutler
Wohlner Kaplon Phillips Young & Cutler
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I declare under the laws of the State of California that the foregoing is true and correct. Executed this 18th day of December, 2009, at Los Angeles, California.

Kathleen M. Jorgenson

DEC 23 2009

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Division of Judges

RAYMOND INTERIOR SYSTEMS and OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL UNION 200, AFL-CIO and SOUTHERN CALIFORNIA PLASTERING GROUP BENEFIT TRUST C/O AMERICAN BENEFIT PLAN ADMINISTRATORS, INC., ET AL.	Case 21-CA-38492 Case 21-CA-38589
SOUTHWEST REGIONAL COUNCIL OF CARPENTERS and OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL UNION 200, AFL-CIO	Case 21-CB-14576

RESPONDENT RAYMOND INTERIOR SYSTEMS' JOINDER TO OPPOSITION OF RESPONDENT SOUTHWEST REGIONAL COUNCIL OF CARPENTERS TO CHARGING PARTIES' MOTION TO CORRECT THE TRANSCRIPT

Respondent Raymond Interior Systems hereby joins in the Opposition of Respondent Southwest Regional Council of Carpenters to the Charging Parties' Motion to Correct the Transcript.

DATED: December 21, 2009

HILL, FARRER & BURRILL LLP
JAMES A. BOWLES, ESQ.
RICHARD S. ZUNIGA, ESQ.

By: Richard S. Zuniga
Richard S. Zuniga
Attorneys for Respondent
RAYMOND INTERIOR SYSTEMS

HFB 923482.1 R1766006

CERTIFICATE OF SERVICE

I, Richard S. Zuniga, declare as follows:

1. I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is Hill, Farrer & Burrill LLP, One California Plaza, 37th Floor, Los Angeles, California 90071-3147.

1. I hereby certify that on December 21, 2009, I filed the foregoing **RESPONDENT RAYMOND INTERIOR SYSTEMS' JOINDER TO OPPOSITION OF RESPONDENT SOUTHWEST REGIONAL COUNCIL OF CARPENTERS TO CHARGING PARTIES' MOTION TO CORRECT THE TRANSCRIPT** in Cases 21-CA-38492, 21-CA-38589, and 21-CB-14576, via E-Filing with the Division of Judges.

2 I hereby certify that on December 21, 2009, I served the foregoing via e-mail and U.S. Mail as follows:

Lisa E. McNeill, Esq. National Labor Relations Board Region 21 888 South Figueroa Street, Ninth Floor Los Angeles, CA 90017-5449 Tel: (213) 894-5213 E-mail: Lisa.Mcneill@nlrb.gov	Kathleen Jorgenson, Esq. Daniel M. Shanley, Esq. DeCarlo, Connor & Shanley 533 S. Fremont Avenue, 9th Floor Los Angeles, CA 90071 Tel: (213) 488-4100 E-mail: kjorgenson@deconsel.com and, dshanley@deconsel.com
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I hereby certify that the foregoing is true and correct. Executed this 21th day of December 2009 at Los Angeles, California.

Richard S. Zuniga

Richard S. Zuniga

HFB 923479.1 R1766006

EXHIBIT C

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

RAYMOND INTERIOR SYSTEMS and OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL UNION 200, AFL-CIO, et al.	Case No. 21-CA-38492, et al. **CHARGING PARTIES' REPLY TO OPPOSITION FILED BY SOUTHWEST REGIONAL COUNCIL OF CARPENTERS AND RAYMOND INTERIOR SYSTEMS TO MOTION TO CORRECT TRANSCRIPT**

Charging Parties hereby reply to the Opposition filed by Southwest Regional Council of Carpenters and Raymond Interior on the Motion to Correct the Transcript.

1. THE BOARD'S RULES PERMIT CORRECTION OF THE TRANSCRIPT AT ANY STAGE IN THE PROCEEDING

Respondents argue that it is too late to correct the transcript because Raymond has already cited it in its brief. But the NLRB Casehandling Manual provides that "[c]orrections may be made by stipulation or by motion to the Administrative Law Judge or to the Board after transfer." NLRB CASEHANDLING MANUAL, ¶ 10412. If a motion to correct the record may be made to the Board after transfer, it obviously may be made to the Judge prior to decision.

An accurate transcript does not cause Respondents cognizable prejudice at whatever stage the stage of the proceedings. Raymond made repeated reference in its Post-Hearing Brief to a section of the transcript that quite apparently contained a

typographical error. Respondents should not oppose having the accuracy of the relied-upon text verified. If Pullen really said "June 25" as the transcript currently reflects, then the Judge should consider Raymond's argument for whatever it is worth. If not, the record should be corrected.

2. REPLY TO ARGUMENT REGARDING HEARSAY

Respondents argue that the Motion sets forth hearsay. If this were a motion to change the record without the court reporter's participation, it obviously would present hearsay. But Charging Parties do not ask the Judge to take counsel's word for what Ms. Molinaro said. They ask the Judge to direct Argie Reporting Service to review the transcript and to issue a formal correction as necessary. That correction may be in the form of a sworn statement if the Judge deems it appropriate. That correction will not be hearsay.

Counsel did not set forth "verbatim" the contents of the communication between him and Ms. Molinaro precisely because it is hearsay. But in light of Respondents' objection, he has included a sworn declaration attesting to the contents. Notwithstanding, it is the content of Pullen's testimony—not the content of counsel's conversation—that matters.

3. REPLY TO ARGUMENT REGARDING *EX PARTE* COMMUNICATIONS

Ex Parte communications are those that are made with the judge, not a court reporter. *See* NLRB Rules and Regulations § 102.128(e). Moreover, there is nothing improper about counsel seeking to determine whether there is a factual basis to file a

motion before filing it. It is unclear what Respondents mean when they suggest that counsel used the "power of suggestion" to produce a prejudicial result. Argie Reporting Service contracts with the federal government to provide transcription services for NLRB proceedings. Presumably, Ms. Molinaro and her associates can be trusted to review a tape recording and verify a transcript with accuracy and integrity. Unless Respondents are prepared to produce evidence to the contrary, their baseless speculations should be ignored. A verified statement by Argie Reporting Service regarding the accuracy of Page 71, line 17 of the transcript will put the matter to rest.

Dated: December 23, 2009

Respectfully submitted,

s/Eric B. Myers

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Southern California Plastering Institute Group Benefit Trust, et al

PROOF OF SERVICE
STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the city and county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 1400, San Francisco, CA 94105.

On December 23, 2009 I served the document described as **CHARGING PARTIES' REPLY TO OPPOSITION FILED BY SOUTHWEST REGIONAL COUNCIL OF CARPENTERS AND RAYMOND INTERIOR SYSTEMS TO MOTION TO CORRECT TRANSCRIPT** by facsimile a true copy, as indicated below:

Kathleen Jorgenson
Daniel M. Shanley
Fax:213-488-4180

Lisa E. McNeil
Fax: 213-894-2778

James A. Bowles
Richard S. Zuniga
Fax: 213-624-4840

Executed on December 23, 2009 at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

s/Renee Saunders

Renee Saunders

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

RAYMOND INTERIOR SYSTEMS and OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL UNION 200, AFL-CIO, et al.	Case No. 21-CA-38492, et al. **DECLARATION OF ERIC B. MYERS IN SUPPORT OF CHARGING PARTIES' REPLY TO OPPOSITION FILED BY SOUTHWEST REGIONAL COUNCIL OF CARPENTERS AND RAYMOND INTERIOR SYSTEMS TO MOTION TO CORRECT TRANSCRIPT**

I, Eric B. Myers, declare:

1. On December 14, 2009, I contacted Argie Reporting Service by telephone. I spoke with a person who identified herself as Jennifer Molinaro.

2. I do not know Ms. Molinaro. Information from the internet suggests that she is the owner of Argie Reporting Service.

3. I identified myself as attorney for one of the Charging Parties in the captioned case. I asked Ms. Molinaro if she could review the accuracy of a portion of the transcript. I directed her attention to Page 71, line 17 of the transcript. I asked her to review the accuracy of the reference to "June 25." I did not propose what I thought the reference should be. Ms. Molinaro stated that she would review the audio recording and inform me.

4. Later on December 14, I received a voice mail message from Ms. Molinaro. The message states as follows: "Hey Eric, this is Jen with Argie Reporting. I found the

tape and the place – it sounds like they're saying 'June 26'. So I think what she did is hit the '5' versus the '6'. I think all we have to do is to redact that and I can call the Region and tell them that, and they'll just put that in and change it. Let me know if you want me to do anything else. My number is 913-422-5198. Thank you."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of December 2009.

s/Eric B. Myers
Eric B. Myers

PROOF OF SERVICE
STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

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On December 23, 2009 I served the document described as **DECLARATION OF ERIC B. MYERS IN SUPPORT OF CHARGING PARTIES' REPLY TO OPPOSITION FILED BY SOUTHWEST REGIONAL COUNCIL OF CARPENTERS AND RAYMOND INTERIOR SYSTEMS TO MOTION TO CORRECT TRANSCRIPT** by facsimile a true copy, as indicated below:

Kathleen Jorgenson
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Fax:213-488-4180

Lisa E. McNeil
Fax: 213-894-2778

James A. Bowles
Richard S. Zuniga
Fax: 213-624-4840

Executed on December 23, 2009 at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

s/Renee Saunders
Renee Saunders

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the city and county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 1400, San Francisco, CA 94105.

On June 14, 2010 I served the document described as **CHARGING PARTIES' CROSS-EXCEPTIONS AND BRIEF IN SUPPORT OF CROSS-EXCEPTIONS** via electronic mail a true copy, as indicated below:

Lisa E. McNeill
Lisa.McNeill@nlrb.gov

Daniel M. Shanley
dshanley@deconsel.com

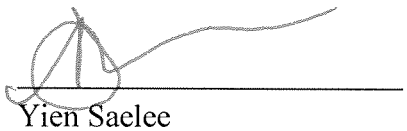
James A. Bowles
JBowles@hillfarrer.com

Jeffrey L. Cutler
jcutler@wkpyc.com

Richard S. Zuniga
RZuniga@hillfarrer.com

Executed on June 14, 2010 at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Yien Saelee