UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

BAY AREA BEVERAGE COMPANY

and **Case 32-CA-063723**

TEAMSTERS LOCAL 853,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHANGE TO WIN

MOTION FOR SUMMARY JUDGMENT

Comes now the Acting General Counsel for the National Labor Relations Board, herein called the Board, by the undersigned, and alleges as follows:

1. On August 31, 2011, Teamsters Local 853, International Brotherhood of Teamsters, Change to Win, herein called the Union, filed the unfair labor practice charge in Case 32-CA-063723, alleging that Bay Area Beverage Company, herein called Respondent, violated Section 8(a)(1) of the Act by promulgating and/or maintaining an overly broad no solicitation rule. [A copy of the charge has been marked as Exhibit 1 and attached hereto and made a part hereof, as are all of the documents marked as Exhibits and referred to hereinafter.]

2. On October 27, 2011, the Regional Director of the Thirty-Second Region of the Board issued and served a Complaint in Case 32-CA-063723, alleging that at all times material herein, Respondent has maintained in effect at its Richmond, California facility certain no solicitation policies, which were described in a memorandum issued to employees dated May 27, 2011 as follows:

> We allow solicitation on company premises only during non-working time and in non-work areas. This also includes the distribution of written materials.

The Complaint also alleged that the maintenance of this rule violated Section 8(a)(1) of the Act. [Exhibit 2]

3. On or about November 10, 2011, Respondent filed an Answer to the Complaint, admitting, as alleged in the Complaint, that Respondent maintained in effect the above-cited rule. [Exhibit 3]

4. In support of this Motion for Summary Judgment, the undersigned notes the following regarding the Complaint and Answer herein:

(a) Respondent's Answer admits the following paragraphs of the Complaint:

(1) Paragraph 1: Filing and receipt of the charge.

(2) Paragraphs 2(a) and 2(b): Jurisdictional facts.

(3) Paragraph 3: The conclusion that Respondent is an employer engaged in commerce.

(4) Paragraph 4: The Union's status as a statutory labor organization.

(5) Paragraph 5: That at all times material Respondent maintained in effect at its Richmond, California facility certain no solicitation policies, which were described in a memorandum dated May 27, 2011 as follows:

> We allow solicitation on company premises only during non-working time and in non-work areas. This also includes the distribution of written materials.

(b) Respondent's answer denied the following paragraph of the Complaint:

(1) Paragraph 6: The legal conclusion that Respondent has engaged in, and is engaging in, conduct in violation of Section 8(a)(1) of the Act.

5. Respondent's Answer does not raise any bona fide issue of fact, and denies only the legal conclusions to be drawn from the factual allegations pleaded in the Complaint and admitted in Respondent's Answer thereto. Moreover, even though Respondent has in its Answer denied the legal conclusion, it cannot be more clear that Respondent's no-solicitation rule is unlawfully overbroad on its face under well established Board law because the rule prohibits solicitation in work areas on non-work time. *Cardinal Home Products*, 338 NLRB 1004, 1005-1006 (2003). Thus, the legal issue of lawfulness of Respondent's no solicitation rule can easily and readily be determined solely on the language of the rule itself.

6. By letter dated January 9, 2012, Counsel for the Acting General Counsel memorialized a telephone conversation he had with Respondent's attorney on December 8, 2011 in which Respondent's attorney agreed that there were no factual issues preventing a motion for summary judgment. The letter requested that Respondent's attorney contact Counsel for the Acting General Counsel by the close of business on January 11, 2012 if he disagreed with the memorialization contained in the January 9, 2012 letter. [Exhibit 4]

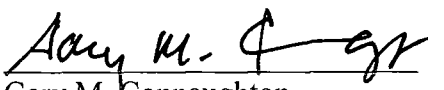
7. To date, Respondent's attorney has not notified Counsel for the Acting General Counsel that he disagrees with the memorialization contained in the aforementioned January 9, 2012 letter.

Where, as here, there are no factual issues warranting a hearing, it has long been the practice of the Board to grant Summary Judgment. *Henderson Trumbell Supply Corporation*, 205 NLRB 245 (1973); *Richmond, Division of Pak-Well*, 206 NLRB 260 (1973); *Tri-City Linen Supply*, 226 NLRB 669 (1976).

WHEREFORE, in view of the matters set forth above, and upon consideration of the documents attached hereto and incorporated in this Motion, and as Respondent's Answer raises no issues of fact or law requiring a hearing in this proceeding, the undersigned prays that the Board find and conclude that Respondent has violated Section 8(a)(1) of the Act and that it issue a Decision and Order in conformity with the allegations in the Complaint.

DATED AT Oakland, California this 13th day of January 2012.

Respectfully submitted,



Gary M. Connaughton
Counsel for the Acting General Counsel
National Labor Relations Board
Region 32
Oakland Federal Building
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case	Date Filed
32-CA-063723	8/31/2011

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Bay Area Beverage

b. Tel. No. 510-965-6120
c. Cell No.
f. Fax No. 510-965-6323
g. e-Mail
h. Number of workers employed 100

d. Address *(Street, city, state, and ZIP code)*
700 National Ct., Richmond, CA 94804-2008

e. Employer Representative
TJ Louderback

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Beverage Distributor

j. Identify principal product or service
marketing and distribution of beverages

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Within the last six months the above-named employer has promulgated and/or maintained an overly broad no solicitation rule.

RECEIVED
NLRB REGION 32
2011 AUG 31 PM 2:2
OAKLAND, CA.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Teamsters Local 853

4a. Address *(Street and number, city, state, and ZIP code)*
2100 Merced St., Suite B, San Leandro, CA 94577

4b. Tel. No. 510-895-8853
4c. Cell No.
4d. Fax No. 510-895-6853
4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)* International Brotherhood of Teamsters, Change to Win

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By [signature] *(signature of representative or person making charge)* Representative *(Print/type name and title or office, if any)*

Address 2100 Merced St., Suite B, San Leandro, CA 94577 08/31/2011 *(date)*

Tel. No. 510-895-8853
Office, if any, Cell No.
Fax No. 510-895-6853
e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

BAY AREA BEVERAGE COMPANY

and **Case 32-CA-063723**

TEAMSTERS LOCAL 853,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHANGE TO WIN

COMPLAINT AND NOTICE OF HEARING

It having been charged by Teamsters Local 853, International Brotherhood of Teamsters, Change to Win, herein called the Union, that Bay Area Beverage Company, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, the Acting General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1.

The charge was filed by the Union on August 31, 2011, and a copy was served on Respondent by mail on or about the same date.

2.

(a) At all times material herein, Respondent, a California corporation with a facility in Richmond, California, has been engaged in the non-retail distribution of beverages.

Exhibit 2

(b) During the past twelve months, Respondent, in the course and conduct of its business operations, sold and shipped goods or provided services valued in excess of $50,000 directly to customers or business enterprises who themselves meet ne of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards.

3.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4.

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5.

At all times material herein, Respondent has maintained in effect at its Richmond, California facility certain no solicitation policies, which were described in a memorandum issued to employees dated May 27, 2011 as follows:

> We allow solicitation on company premises only during non-working time and in non-work areas. This also includes the distribution of written materials.

6.

By the acts and conduct described above in paragraph 5, and by each of said acts, Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing, employees in the exercise of the rights guaranteed in Section 7

of the Act, and Respondent thereby has been engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Sections 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 10th day of January 2012, at 9:00 a.m., in the Oakland Regional Office of the Board, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, and continuing on consecutive days thereafter, a hearing will be conducted before a duly designated Administrative Law Judge of the Board on the allegations in this Complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear in person and present testimony. Form NLRB 4668, Summary of Standard Procedures in Formal Hearing Held Before the National Labor Relations Board in Unfair Labor Practice Proceedings, is attached.

ANSWER REQUIREMENT

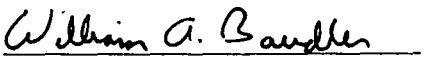
Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Complaint. The answer must be **received by this office on or before November 10, 2011, or postmarked on or before November 9, 2011.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website

at http://www.nlrb.gov, click on ***File CASE Documents***, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer needs to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the

Complaint are true.

DATED AT Oakland, California this 27th day of October 2011.



William A. Baudler
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

BAY AREA BEVERAGE Charged Party and **TEAMSTERS LOCAL 853, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHANGE TO WIN** Charging Party	**Case 32-CA-063723**

AFFIDAVIT OF SERVICE OF ORDER COMPLAINT AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, state under oath that on , I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

T.J. LOUDERBACK
BAY AREA BEVERAGE COMPANY
700 NATIONAL CT
RICHMOND, CA 94804-2008

7001 2510 0007 6032 3726

PATRICK W. JORDAN, ESQ.
JORDAN LAW GROUP
1010 B ST
STE 320
SAN RAFAEL, CA 94901-2920

PAULA MACHELLO and JESSE CASQUEIRO,
Business Agents
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 853
2100 MERCED ST,
STE B
SAN LEANDRO, CA 94577-3265

Attn: Davette Repola and/or Karen Samcoe
AvTranz
845 N. 3rd Avenue
Phoenix, AZ 85003

National Labor Relations Board
Division of Judges
901 Market St., Suite 300
San Francisco, CA 94103
E-File

October 27, 2011
Date

Shirley M. Owens, Designated Agent of NLRB
Name

Signature

JORDAN LAW GROUP
PATRICK W. JORDAN (Bar No. 52115)
pwj@pjordanlaw.com
NOAH J. WOODS (Bar No. 264823)
njw@pjordanlaw.com
1010 B Street, Suite 320
San Rafael, CA 94901
Telephone: (415) 459-9865
Facsimile: (415) 459-9871

Attorneys for Respondent, BAY AREA
BEVERAGE COMPANY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 32

BAY AREA BEVERAGE COMPANY, Respondent, and TEAMSTERS LOCAL 853, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHANGE TO WIN, Union.	))))))))))))	CASE NO. 32-CA-063723

ANSWER TO COMPLAINT AND NOTICE OF HEARING

COMES NOW BAY AREA BEVERAGE COMPANY and in answer to the Complaint in the above-captioned matter, hereby admits, denies and alleges as follows:

I. Answering the allegations of Paragraphs 1, 2, 3, 4, 5 of the Complaint, Respondent

Exhibit 3

admits the allegation contained therein.

II. Answering the allegations of Paragraphs 6 of the Complaint, Respondent denies each and every allegation contained therein.

WHEREFORE, the Respondent urges that the Complaint be dismissed in its entirety.

DATED: November 9, 2011

Respectfully submitted,

JORDAN LAW GROUP
PATRICK W. JORDAN
NOAH J. WOODS

By: _____
NOAH J. WOODS
Attorneys for Respondent BAY AREA BEVERAGE COMPANY

P R O O F O F S E R V I C E

STATE OF CALIFORNIA, COUNTY OF MARIN

I am employed in the County of Marin, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1010 B Street, San Rafael, California 94901.

On November 9, 2011, I served the document(s) described as **ANSWER TO COMPLAINT AND NOTICE OF HEARING** in this action by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

Paula Machello and Jesse Casqueiro, Business Agents
International Brotherhood of Teamsters, Local 853
2100 Merced Street, Suite B
San Leandro, CA 94577-3265

[X] (BY MAIL) I am "readily familiar" with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Rafael, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY FAX) Pursuant to FRCP Rule 5(b), I transmitted the above-described document by facsimile machine to the above-listed fax number(s). The transmission originated from facsimile phone number (415) 459-9871 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto.

[ ] (BY EMAIL) Pursuant to Rules 2.260 et seq., and agreement of counsel, I transmitted the above-described document by electronic transmission (email) (which complied with Rule 2.260(a)-(c), to the above-listed electronic address(s). The transmission originated from kk@pjordanlaw.com and was reported as complete and without error. A paper copy of the document(s) have also been served by mail as indicated above.

[X] (BY PERSONAL SERVICE) I caused to be delivered such envelope by hand to the offices of the addressee.

[ ] (BY OVERNIGHT DELIVERY) I caused said envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s).

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on November 9, 2011, at San Rafael, California.

Karen E. Kempler

Karen E. Kempler

United States Government

NATIONAL LABOR RELATIONS BOARD
Region 32
1301 Clay Street, Room 300N
Oakland, CA 94612-5211

January 9, 2012 510-637-3256

Patrick W. Jordan
Jordan Law Group
1010 B St., Suite 320
San Rafael, CA 94901

Re: Bay Area Beverage **VIA FAX**
Case 32-CA-063273

Dear Mr. Jordan:

I am writing to confirm our telephone conversation of December 8, 2011 wherein you agreed that there were no factual issues that would prevent the Region from pursuing summary judgment in this case if our attempts at settlement were unsuccessful. If this account of our conversation does not conform with your recollection of the conversation, please call me immediately but in no case later than the close of business on Wednesday January 11, 2012..

Very truly yours,

Gary M. Connaughton
Attorney

Exhibit 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BAY AREA BEVERAGE COMPANY Charged Party **and** **TEAMSTERS LOCAL 853, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHANGE TO WIN** Charging Party	**Case 32-CA-063723**

AFFIDAVIT OF SERVICE OF MOTION FOR SUMMARY JUDGMENT

I, the undersigned employee of the National Labor Relations Board, state under oath that on **January 13, 2012,** I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Paula Macchello, Business Agent
International Brotherhood Of
Teamsters Local 853
2100 Merced Street, Suite B
San Leandro, CA 94577-3265
pmacchello@teamsters853.org
E-MAILED

Patrick W. Jordan, Esq.
Jordan Law Group
1010 B Street, Ste 320
San Rafael, CA 94901-2920
pwj@pjordanlaw.com
E-MAILED

Les Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W. Suite 11610
Washington, DC 20570
E- FILED

January 13, 2013
Date

Frances Hayden, Designated Agent of NLRB
Name

Signature