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12 TEAMSTERS LOCAL UNION NO. 206

13 UNITED STATES OF AMERICA  
14 NATIONAL LABOR RELATIONS BOARD  
15 REGION 19

16 TEAMSTERS LOCAL UNION NO. 206  
17 affiliated with the INTERNATIONAL  
18 BROTHERHOOD OF TEAMSTERS (First  
19 Student, Inc.),

20 Respondent,

21 and

22 RICHARD O. HARMON,

23 Charging Party.

No. 36-CB-2823

**RESPONSE TO NOTICE TO SHOW  
CAUSE**

24 **I. RESPONSE TO NSC – HARMON/FIRST STUDENT**

25 Teamsters Local 206 (“Local 206” or “Union”) respectfully submits the following in  
26 response to the National Labor Relations Board’s (“Board” or “NLRB”) Notice to Show Cause as  
27 to why the Acting General Counsel’s Motion for Default Judgment should not be granted.

28 The Union submits that it has complied in full with the terms of the Settlement Agreement  
as to the first charge at issue, 36-CB-2823. In addition, the Region has overstepped the terms of  
this Settlement Agreement through improper consolidation and merging of the Settlement  
Agreement in 36-CB-2823 with the second charge at issue, 19-CB-071288, by attempting to  
make the Union responsible for defaulting on an agreement that it never entered into.

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1 7). This responsive information was provided via letter to Ms. Dunn on June 1, 2011. (Sencer  
2 Decl., Exhibit 8). Included with the documents was a copy of Mr. Harmon’s membership  
3 application (which includes *General Motors*<sup>2</sup> and *Beck* notices) and a copy of the May 9, 2011  
4 breakdown from Middleton showing the 2010 chargeable and non-chargeable expenses. The  
5 second page of this document includes a breakdown of the per capita taxes paid monthly per  
6 employee and further analysis based on the percentage of non-chargeable per capita taxes. (*Id.*)  
7 The letter to Ms. Dunn notes that the Union had previously provided all of the information  
8 regarding the breakdown, including the *Beck* calculations from Middleton to the Region.

9 As of June 1, 2011, it is clear that the Union provided the Region with a copy of the  
10 breakdown between chargeable and non-chargeable expenses that it provided to Mr. Harmon.  
11 The Union again provided the chargeable and non-chargeable expenditures to the Board as part of  
12 Dan O’Keefe’s affidavit provided to the Board on June 8, 2011. (Sencer Decl., Exhibit 9). Thus  
13 twice in June the Region was provided the documentation showing how Local 206 broke down its  
14 chargeable and non-chargeable expenses.

15 On June 13, 2011, Mr. Harmon filed an Amended Charge indicating that the Union  
16 acknowledged Mr. Harmon as a *Beck* objector, but failed to provide him with a breakdown of the  
17 fees verified by an independent audit and other protections guaranteed by *Beck* and its progeny.  
18 This allegation is included in paragraphs 5 and 7 of the Amended Charge. In the Amended  
19 Charge, Mr. Harmon admits the Union has acknowledged Mr. Harmon as a *Beck* objector. The  
20 phraseology of both paragraphs 5 and 7 indicate that the issue on which Mr. Harmon seeks a  
21 remedy is with respect to the “verified audit.” Mr. Harmon’s Amended Charge does not, by  
22 contrast, seek as a remedy a particular category or breakdown of fees. (Sencer Decl., Exhibit 10).

23 On August 9, 2011, the Region issued a partial dismissal of Amended Charge 2823. The  
24 Region, at that time, found that the Union had provided notices in compliance with *General*  
25 *Motors* and *Beck*. In addition, the Region found that the Union did not improperly collect dues  
26 from Mr. Harmon. (Sencer Decl., Exhibit 11).

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<sup>2</sup> *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963).

1 Near in time to the partial dismissal, the parties began negotiations on a Settlement  
2 Agreement of the remaining allegations. The settlement agreement was signed by Local 206 on  
3 August 29, 2011. (Sencer Decl., Exhibit 12). The scope of the Settlement Agreement indicates  
4 that the Union failed to: 1) immediately acknowledge Charging Party as a *Beck* objector; 2) failed  
5 to promptly reduce Charging Party's dues and fees; and 3) failed to provide Charging Party with  
6 information setting forth "the percentage of reduction in dues and fees charged to him, the basis  
7 for that calculation and the right to challenge and a procedure for challenging, the amounts  
8 charged." The agreement was ultimately approved on September 12, 2011. It must be noted that  
9 at no point as part of the settlement discussions, was there any mention or reference to the  
10 breakdown that had been provided in June by the Union to the Region as being inadequate.  
11 (Sencer Decl., ¶ 14).

12 On November 23, 2011, the Region sent a letter indicating Mr. Harmon felt that the  
13 agreement had not been complied with. (Sencer Decl., Exhibit 13). This letter did not include any  
14 specifics as to what information Mr. Harmon felt was lacking.

15 On December 1, 2011, the Union sent a letter to the Region indicating that the settlement  
16 had been complied with. The letter states, "We have reduced the Charging Party's dues and fees,  
17 provided him with a refund, provided the Charging Party with information setting forth the  
18 percentage of the reduction in dues and fees charged to him or any other non-member, and the  
19 right to challenge and a procedure for challenging the amounts charged." (Sencer Decl., Exhibit  
20 14).

21 On December 14, 2011, the Region sent correspondence to the Union indicating that Mr.  
22 Harmon had identified two areas in which he believed the information provided by the Union was  
23 inadequate. (Sencer Decl., Exhibit 15). This was the first communication from the Region that  
24 indicated specifically what Mr. Harmon was alleging to be inadequate, or that raised an issue  
25 under *Teamsters Local Union No. 579*, 350 NLRB 1166 [*"Chambers and Owen"*] (2007).

26 Thereafter, it appears the Region began to merge two cases together. The Settlement  
27 Agreement was entered into in Case 36-CB-2823. Notwithstanding that case, Mr. Harmon filed a  
28 second CB charge against the Union docketed as 19-CB-071288 on December 22, 2011. (Sencer

1 Decl., Exhibit 16). It is in the second case that Mr. Harmon claims that the breakdown was not  
2 verified by an independent audit and that the breakdown he received failed to provide a separate  
3 breakdown for each affiliate to whom per capita payments were made, and third, that the  
4 breakdown does not provide allocation for payments made for organizing and for  
5 communications and legislative expenses. Again, before this time (well-after execution of the  
6 settlement agreement), no issue as to a breakdown of fees had been raised, despite the Region and  
7 Mr. Harmon's access to the breakdown of fees for months.

8 On February 6, 2012, Mr. Williams from Region 19 solicited the Union's position in,  
9 response to the second charge, case 19-CB-071288. (Sencer Decl., Exhibit 17). In that letter, the  
10 Region recognized that the Union had provided a breakdown of chargeable and non-chargeable  
11 expenditures to the Charging Party in November 2011. The new charge, 071288, included  
12 allegations that the breakdown was not verified by an independent audit, an allegation that there  
13 was not a separate breakdown for each for whom per capita payments were made, and a third  
14 allegation that there is no allocation for payments made for organizing and communications and  
15 legislative expenses.

16 The Union responded to the Region's request regarding the second charge via letter dated  
17 February 28, 2012. (Sencer Decl., Exhibit 18). It stated the Union's position regarding Middleton  
18 & Company being an independent auditor and the lack of any legal standard requiring the Union  
19 to provide proof in its initial letter that the breakdown between chargeable and non-chargeable  
20 expenses was determined via an independent audit with proof of the independent audit occurring.  
21 It also stated that allegation 3 regarding the breakdowns' failure to have an allocation for  
22 payments made for organizing communications and legislative expenses is also unwarranted as  
23 there is no case law that indicates that the Union is required to provide particular categories of  
24 information as compared to "major categories."

25 As to the third allegation of the second charge, the Union invited the opportunity for the  
26 Region to issue a complaint and for the parties to litigate the *Chambers & Owen* issue of the  
27 breakdown for each affiliate to whom per capita payments are paid. If the Union had believed  
28 that any *Chambers & Owens* issues had been raised in the context of the first charge—and thus

1 settled—it would make no sense for the Union to then take the position it took with respect to  
2 *Chambers & Owens* in response to the second charge. In other words, unless there was a good  
3 faith belief on the part of the Union that the *Chambers & Owens* issue was *not* raised as part of  
4 the first charge, the Union’s position in response to the second charge, with regard to welcoming  
5 litigation on the *Chambers & Owens* issue, would be clearly incoherent and inconsistent. No  
6 *Chambers & Owens* issues, no inadequacy issues, were raised in the first charge. Thus, the Union  
7 could not have violated the settlement agreement. The Union cannot have violated an agreement  
8 as to an issue never raised or included as part of the terms of the settlement agreement.

9 Mr. Harmon amended his charge in the second case on February 29, 2012. (Sencer Decl.,  
10 Exhibit 21). In the Amended Charge, the he stunningly attempts to consolidate the pending  
11 charge with the charge that had been previously settled (CB-2823). This was not an allegation  
12 found in the original complaint filed in December 2011.<sup>3</sup>

13 It was March 2, 2012, before the Region contacted the Union asserting lack of compliance  
14 with the settlement agreement (Sencer Decl., Exhibit 20), nearly six months after the settlement  
15 was entered into and nine months since the Region had first been provided with a copy of the  
16 (apparently now inadequate) breakdown also provided to Mr. Harmon.

17 The complaint currently at issue simply states in paragraph 8(a) that “Respondent has  
18 failed to provide Harmon with independently verified detailed apportionment of its expenditures  
19 since that time for representational activities and non-representational activities.” There is no  
20 indication of what detailed apportionment is missing or what the Region is seeking. This is  
21 troubling as it is the first time the Region has raised a concern regarding the detail of the  
22 chargeable breakdown; a change fully explained in the second case (071288) which was filed  
23 three months after the parties entered into the settlement agreement. The Region had in its  
24 possession a copy of this breakdown three months prior to the settlement agreement in 2823 was

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26 <sup>3</sup> The second charge, 36-CB-2823 remains open although the Region has made no contact  
27 regarding the allegations contained therein since providing the Amended Charge on February 29.  
28 It is the Union’s belief that it is the practice of the Region to dismiss or consolidate charges that  
are duplicative of the same facts and events covered by prior charges. No such action has  
happened in these matters thus supporting the Union’s position that the allegations of 36-CB-  
2823, seeking a break-down of per capita charges and verification, are independent of the  
allegations in 19-CB-71288.

1 entered into *and approved* by the Region. In effect, the General Counsel is attempting to  
2 bootstrap the allegations of 071288 into the already existing settlement agreement in 2823. It is  
3 then claiming the Union has defaulted by failing to adhere to a settlement agreement into which it  
4 did not enter.

### 5 **III. LEGAL ARGUMENT**

#### 6 **A. THE UNION HAS SUBSTANTIALLY COMPLIED WITH THE SETTLEMENT AGREEMENT**

7 As the extensive correspondence between the parties has made clear, the Union has been  
8 consistently providing its best efforts to provide Mr. Harmon with the information the General  
9 Counsel claims is necessary. The Union has been responsive in providing documents and  
10 affidavits. It has recognized Mr. Harmon's dues objector status and withdrawal of membership.  
11 (Sencer Decl., Exhibit 7). It has provided a dues refund to Mr. Harmon. (*Id.*) It has provided a  
12 breakdown between chargeable and non-chargeable expenses as produced by its outside CPA  
13 firm. (Sencer Decl., Exhibit 17).

14 The Complaint contains three allegations - failure to timely recognize Mr. Harmon's  
15 withdrawal, failure to apprise Harmon of the right to challenge,<sup>4</sup> and the only point that gives rise  
16 to the General Counsel's attempt at default enforcement - the Union has "failed to provide  
17 Harmon with an independently verified detailed apportionment of its expenditures since that time  
18 for representational activities and nonrepresentational activities." (§ 8.a). This is simply not true.  
19 Mr. Harmon was undeniably provided with a copy of the chargeable and non-chargeable  
20 expenditures as provided by Middleton & Co. Middleton is not required to verify the  
21 apportionment of expenditures but merely to assure the expenditures, regardless of categorization,  
22 have been made. (*California Saw and Knife Works*, 320 NLRB 224, 241 (1995)).

23 At all relevant times, the Board Agent responsible for this case has had a copy of the  
24 Union's breakdown as produced by the Union's independent CPA which included the breakdown  
25 by affiliate to whom per capita is paid. At no time prior to moving for default has any employee  
26 of the National Labor Relations Board indicated what documentation would specifically satisfy it

27 <sup>4</sup> There can be no dispute that Mr. Harmon was previously apprised of the right to challenge  
28 albeit had not been given the specific procedure to follow. The membership application signed by  
Mr. Harmon (Sencer Decl., Exhibit 8), provides actual knowledge to Mr. Harmon of the right to  
protest the allocation between chargeable and non-chargeable expenses.

1 for compliance, nor indicated whether the document provided to the Subregion in June would  
2 cure the alleged defect.

3 The Union, as stated in its correspondence of February 28 on charge 36-CB-2823 is  
4 willing to litigate the application of *Chambers & Owen*, which it views as wrongly decided.  
5 Given the circumstances and opportunity now provided, we address the issue below.

6 **B. CHAMBERS & OWEN SHOULD BE REJECTED**

7 A brief history of relevant, or seemingly relevant, prior National Labor Relations Board  
8 and United States Supreme Court decisions is the appropriate place to start.

9 In *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986) [*“Hudson”*], the  
10 Supreme Court held that public sector employees could not be required to support the non-  
11 representational activities of their union. This finding was based on First Amendment  
12 considerations. In addressing the process by which non-members were to be given dues  
13 deductions and the right to challenge the apportionment between representational and political  
14 activities, the Court stated “[b]asic considerations of fairness, as well as concern for the First  
15 Amendment rights at stake, also dictate that the potential objectors be given sufficient  
16 information to gauge the propriety of the union’s fee.” (*Hudson*, 475 U.S. at 306.)

17 Thereafter, in 1988, the Supreme Court decided *Beck*. In *Beck*, the Court applied analysis  
18 previously developed under the Railway Labor Act and held that the NLRA, like the RLA,  
19 prohibits unions from requiring non-members to contribute the portion of dues that would be  
20 expended on political causes. (*Beck*, 487 U.S. 745 relying on *Machinists v. Street*, 367 U.S. 740  
21 (1961).) *Beck* makes no reference to *Hudson* nor does it attempt to provide a procedure by which  
22 unions could satisfy its *Beck* obligations.

23 Many of the questions left unanswered in *Beck* were addressed in *California Saw, supra*.<sup>5</sup>  
24 *California Saw* was decided 9 years after *Hudson* and explicitly chooses not to place the  
25 standards required in the public sector, based on First Amendment issues, into place for private  
26 sector bargaining units. The Board found “public sector and RLA precedents premised on  
27 constitutional principles are not controlling the context of the NLRA.” (*California Saw*, 320

28 <sup>5</sup> *California Saw* was enforcement by *International Association of Machinists & Aerospace  
Workers v. NLRB*, 133 F.3d 1012 (7<sup>th</sup> Cir. 1998).

1 NLRB at 226.) *California Saw* establishes that *Beck* cases are resolved by application of the duty  
2 of fair representation. (*Id.* at 230.) In applying the duty of fair representation standard and the  
3 “basic consideration of fairness” from *Hudson*, the Board held that an employee must have notice  
4 of the right to be a non-member, right to object to paying for and receive a dues deduction for  
5 non-representational activities, provide sufficient information to “intelligently decide whether to  
6 object” and be apprised of internal processes with the union to resolve objections to the dues  
7 deduction.” (*Id.* at 233.)

8 The *California Saw* decision addresses the specifics of the internal auditing protocol that  
9 was used by the union. The Board finds that the union does not have to provide “supporting  
10 schedules” or adhere to “audit protocol.” (*Id.* at 239.) The Union must provide information  
11 based on “major categories” of union expenditures, but the Board does not define what those  
12 categories are. (*Id.*) The expenditures of the union do not have to be verified by an independent  
13 auditor nor does the allocation between chargeable and non-chargeable expenditures need to be  
14 verified by an independent auditor. (*Id.* at 240-241.) In so finding, the Board explicitly rejects  
15 the application of *Hudson* to dues objection cases under the NLRA. (*Id.*)

16 *California Saw* continues to be good law and has been interpreted repeatedly since its  
17 issuance. In *American Federation of Television and Recordings Artists (KGW Radio)*, 327  
18 NLRB 474 (1999), the Board explained that the use of the term “audit” in *California Saw* requires  
19 the “auditor” to independently verify that expenditures were in fact made for the purposes  
20 claimed, not to pass on the correctness of the union’s allocation of expenditures to the chargeable  
21 and nonchargeable categories.” (327 NLRB at 477). The duty of fair representation is met if the  
22 union provides a non-member with reliable information to calculate the fees that must be paid.  
23 (*Id.*)

24 *California Saw* is further refined by *International Brotherhood of Teamsters, Local 166*  
25 (*Dyncorp*) [“*Dyncorp I*”], 327 NLRB 950 (1999) review granted sub nom. *Penrod v. NLRB*, 203  
26 F.3d 41 (D.C. Cir. 2000) decision on remand *Dyncorp II*, 333 NLRB 1145 (2001). *Dyncorp*  
27 rejects the contention that *Hudson* style information must be provided to individuals prior to  
28 making the decision to be a dues objector. In addition, it reaffirms that a union is not required to

1 provide a breakdown of the per capita items. (327 NLRB at 953 and 954.) On review, the Circuit  
2 Court for the District of Columbia Circuit applied *Hudson* per capita disclosure standards to the  
3 private sector. (203 F.3d at 47). The Board accepted the remand in full. (333 NLRB 1145).

4 Notwithstanding *Dyncorp II*, the Board did not adopt this standard moving forward. In  
5 fact, in *Teamsters Local 75 (Schreiber Foods)*, 329 NLRB 28, the Board reaffirms the *Dyncorp I*  
6 standard and finds no merit in the General Counsel’s position that the union was required to  
7 provide a breakdown of how affiliates spent money forwarded to them. (329 NLRB 31 n. 10.)

8 Finally, in 2007, the Board issued its decision in *Teamsters Local Union No. 579*  
9 (*Chambers & Owen, Inc.*), 350 NLRB 1166. Despite full knowledge of *Hudson* at the time *Beck*  
10 and *California Saw* were issued, by the Supreme Court and the NLRB respectively, the Board  
11 waited until 2007 – 12 years after the decision in *California Saw* to apply *Hudson* to a local  
12 union’s requirement to provide specific information about how affiliates to whom it pays per  
13 capita taxes to, spend their money. The result is a rejection of *Dyncorp I* in favor of *Penrod*.  
14 (350 NLRB at 1168). As a result, information that was previously required to be provided only at  
15 the 3<sup>rd</sup> step of the dues objection process was required to be provided at the 2<sup>nd</sup> step. (*Id.*)  
16 Members Liebman and Walsh dissented on the basis that the prior standard, under *California*  
17 *Saw*, properly balances the interests of the union and the dues objector. (*Id.* at 1172). The Dissent  
18 also carefully traced the evolution of the *California Saw* standard in context with the continued  
19 application of *Hudson* to the public sector.

20 Since the time *Chambers & Owen* was decided, there has not been a single decision of the  
21 Board that has applied the change in obligation to a union. (Sencer Decl., Exhibits 29 and 30).  
22 Nonetheless, there have been a considerable number of *Beck* related cases particularly related to  
23 renewal requirements. (*See, i.e., Int’l Assoc. Machinists, Local Lodge 2777 (L-3*  
24 *Communications)*, 355 NLRB 1062 (2010); *United Steel, Paper and Forestry (Trimas Corp.)*,  
25 357 NLRB No. 48 (2011) *reconsideration denied* (April 16, 2012). In particular, *California Saw*  
26 has been cited at least 30 times since 2007. (Sencer Decl., Exhibit 27).

27 As noted above, the *California Saw* decision is upheld in the Seventh Circuit Court of  
28 Appeals. In part, enforcement is granted based on *Chevron* deference. (133 F.2d at 1015 *citing*

1 *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).) *Chevron*  
2 deference provides an agency charged with enforcement of law with “broad latitude” in  
3 interpreting the law it is required to enforce and gives deference to the agency’s interpretation if it  
4 is a permissible construction of the statute. This deference, however, is not absolute. The Court  
5 of Appeals have regularly chastised the NLRB for making unsupported departures from prior  
6 precedent and regularly deny enforcement to Board decisions that fail to meet the exacting  
7 standards of the Court of Appeal. (*See ConAgra, Inc. v. NLRB*, 117 F.3d 1435, 1443-44 (D.C.  
8 Cir. 1997); *Chelsea Industries, Inc. v. NLRB*, 285 F.3d 1073, 1075-76 (D.C. Cir. 2002);  
9 *Healthcare Employees v. NLRB*, 463 F.3d 909, 918 (9th Cir. 2006); *Rasmussen v. NLRB*, 875  
10 F.3d 1390, 1392 (9th Cir. 1989) [the Court will not rubber-stamp administrative decisions that it  
11 deems inconsistent with statutory mandates or that frustrate Congressional policy underlying the  
12 statute”]; *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 401 (1996); *Allentown Mack Sales & Serv.*  
13 *v. NLRB*, 522 U.S. 359, 364 (1998); *NLRB v. Calkins*, 187 F.3d 1080, 1085 (9th Cir. 1999); *Todd*  
14 *Pac. Shipyards Corp. v. Dir., Office of Workers Comp. Programs*, 914 F.2d 1317, 1320 (9th Cir.  
15 1990); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *Lee Lumber & Bldg.*  
16 *Material Corp. v. NLRB*, 117 F.3d 1454, 1460 (D.C. Cir. 1997) *citing Motor Vehicle Mfrs. Ass’n*  
17 *v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

18 Here, the Board changed its standard in *Chambers & Owen* after 12 years. The main basis  
19 for the change is acceptance of the *Hudson* standard that the Board was clearly aware of at the  
20 time it issued the *California Saw* decision. If tested in a Court of Appeal, it is unlikely that any  
21 kind of deference could be given to the NLRB for this kind of unsupported flip-flop of standards.

#### 22 **IV. CONCLUSION**

23 In sum, the Union expended its best efforts to comply with the Settlement Agreement as  
24 written. The Region, and by extension, the General Counsel, has overstepped the terms of the  
25 Settlement Agreement in an attempt to hold the Union responsible for defaulting on an agreement  
26 that it never entered into. This is a result of the improper consolidation and merging of the  
27 Settlement Agreement in 36-CB-2823 with the then pending charge in 19-CB-071288.

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Nonetheless, the Board should take this opportunity to retire its unprincipled departure from precedent as announced in *Chambers & Owen*.

At the very least, due to the merging of the two separate charges, the Board should deny the motion for default judgment and require the underlying dispute to be fully litigated to allow for a complete record to be provided to the Board on review.

Dated: May 17, 2012

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ Caren P. Sencer  
CAREN P. SENCER  
Attorneys for Respondent TEAMSTERS LOCAL  
UNION NO. 206 affiliated with the  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS (First Student, Inc.)

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**PROOF OF SERVICE  
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On May 17, 2012, I served the following documents in the manner described below:

**RESPONSE TO NOTICE TO SHOW CAUSE**

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [jwatkinson@unioncounsel.net](mailto:jwatkinson@unioncounsel.net) to the email addresses set forth below.

On the following part(ies) in this action:

Mr. John C. Scully  
8001 Braddock Road, Suite 600  
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Email: [jcs@nrtw.org](mailto:jcs@nrtw.org)

Ms. Anne Pomerantz  
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Henry M. Jackson Federal Building  
915 Second Avenue, Room 2948  
Seattle, WA 98174-1078

Mr. Richard O. Harmon  
42461 SE Coalman Road  
Sandy, OR 97055-6778

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 17, 2012, at Alameda, California.

/s/ Jennifer Watkinson  
Jennifer Watkinson