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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 21

2 SISTERS FOOD GROUP, INC. and FRESH & EASY NEIGHBORHOOD MARKET, INC., Respondent, and UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 1167, Charging Party.	No. 21-CA-038915, 21-CA-038932 **MOTION FOR RECONSIDERATION**

The Board limited the remedies adopted by the Administrative Law Judge (ALJ) relying on *Wellstream Corp.*, 321 NLRB 455 (1996), see fn. 3.

Here, however, 2 Sisters is guilty of separate additional conduct which requires additional, not modified remedies. See *Gimrock Construction, Inc.*, 356 NLRB 83 (2011), enforcement granted in part and denied in part, *NLRB v. Gimrock Construction, Inc.*, 695 Fd.3d 1188 (11th Cir. 2012).

Here, the Board issued its underlying decision involving Fresh & Easy Neighborhood Market on December 29, 2011. 2 Sisters, as the plain successor, resisted complying with that decision and it was necessary to issue compliance proceedings. The ALJ issued a decision on November 29, 2012 and eight months later the Board issued its decision. By the time this matter

is even in the Circuit Court, 2 Sisters Food Group will have created at least two years of additional delay.

It is appropriate to impose additional remedies (not modified remedies) because of 2 Sisters Food Group's independent conduct. First, the Board should modify its decision to require the mailing of the notices to all current and former employees employed by the Respondent at any time from the time that it became the successor until the date the notices are mailed. This will conform to the Board's recent decision in *Bud Antle, Inc.*, 359 NLRB 140 (2013). The additional mailing remedy will ensure that employees of 2 Sisters, from the date of its successorship, are aware of its misconduct and the remedy.

The Respondent should furthermore be required to mail the Board's decision along with a notice. The mere receipt of the notice, only, without the Board's decision is not a sufficient explanation of what occurred in light of the lengthy delay. It is also not sufficient simply to post a notice because the employees will not understand why 2 Sisters Food Group is posting or mailing a notice because of the conduct of Fresh & Easy.

Because employees have more and more access to the Internet, the Board's notice should identify where the Board's decision is available on the Board's website. Employees should have immediate electronic access to the decision.

Finally, the notice should be posted for the length of time between when 2 Sisters Food Group took over the operation until the notice is actually posted. 2 Sisters has obtained delay and the employees who eventually see the notice will be further and further isolated and insulated from the misconduct of Fresh & Easy. The notice should be posted for this additional time period.

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In summary, the Board's decision should be modified to reflect the independent unlawful conduct of 2 Sisters Food Group in avoiding its successorship obligations. This does not contradict *Wellstream Corp*, *supra*, because it is the independent conduct of 2 Sisters which warrants these additional remedies. In all other respects, the Board should fully affirm the Supplemental Decision and Order.

Dated: July 30, 2013

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

/s/ David A. Rosenfeld
By: DAVID A. ROSENFELD
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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 July 31, 2013, I served the following documents in the manner described below:

MOTION FOR RECONSIDERATION

☐ (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 FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

☐ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from rfortier-bourne@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 31, 2013, at Alameda, California.

/s/ Rhonda Fortier-Bourne
Rhonda Fortier-Bourne