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6 Attorneys for Respondent-Employer  
TEMECULA MECHANICAL, INC.

7  
8 UNITED STATES OF AMERICA  
9 BEFORE THE NATIONAL LABOR RELATIONS BOARD  
10

11 TEMECULA MECHANICAL, INC.,  
12 Respondent-Employer,  
13 and  
14 PLUMBERS AND PIPEFITTERS LOCAL  
398, UNITED ASSOCIATION OF  
15 JOURNEYMEN AND APPRENTICES OF  
THE PLUMBING AND PIPE FITTING  
16 INDUSTRY OF THE UNITED STATES AND  
CANADA, AFL-CIO,  
17 Charging Party-Union.  
18

Case No. 21-CA-39667  
21-CA-39834  
**REPLY BRIEF OF RESPONDENT-  
EMPLOYER TEMECULA  
MECHANICAL, INC. ON  
EXCEPTIONS**  
[Board Rules and Regulations Section  
102.46(a),(b)]

19  
20 Arguments of Counsel for the General Counsel essentially revisit the scope of facts and  
21 legal findings put before the Judge in support of the General Counsel’s case in chief. This is a  
22 discrimination case. A discrimination claim, be it for refusal to recall or otherwise, requires a  
23 prima facie case. There is no prima facie case of discrimination against Temecula Mechanical,  
24 Inc. (“TMI” or the “Employer”) in this case.

25 Notably:

26 1. At best, protected activity *may* have occurred – this falls short of the legal standard.  
27 The General Counsel failed to provide concrete credible evidence that Norman Guardado  
28 (“Guardado”) engaged in protected activity.

1           2. Assuming, arguendo that Guardado engaged in protected activity, it does not mean that  
2 the Employer knew about the alleged protected activity. Circumstances suggest that Guardado  
3 kept any alleged protected activity secret from the Employer. Tr. 268:13-15. The evidence of  
4 knowledge presented by the General Counsel is speculative at best and therefore unreliable.

5           3. Animus can be established from statements or timing of actions. Animus simply isn't  
6 there. The Employer has a union history and has continued to work on project labor agreement  
7 jobs as a union contractor for the scope of that work. Tr. 222:25-223:7, 240:18-242:4, 252:7-13.  
8 Timing is consistent with declining work and other layoffs to reduce the work force. Tr. 248:15-  
9 249:21, 311:17-312:3, 329:8-18; Respondent's Exhibit 2.

10           4. Discriminatory action depends on what happens to who and when. Again, there is  
11 declining work in the Employer's workforce, layoffs to go along with that declining work, and a  
12 lack of qualifications (employment eligibility and job classification-related) confirmed in the  
13 record. Tr. 248:15-249:21, 266:19-267:7, 267:15-18, 311:17-312:3, 313:16-314:4, 314:16-315:3,  
14 329:8-18; Respondent's Exhibit 2.

15           5. Timing is consistent with lawful reductions in the workforce rather than discrimination  
16 to retaliate against protected activity. Guardado was legitimately laid off due to lack of work. Tr.  
17 93:4-22, 318:8-319:10, 320:23-322:5.

18           6. Whether or not Guardado engaged in protected activity, with the mass of layoffs and  
19 declining work taking place, the Employer would have laid off this individual not eligible to work  
20 in the United States as well as everyone else, more and less qualified, yet more eligible to work in  
21 the United States. The same action would have occurred regardless of protected activity and  
22 consistent with Wright Line, 251 NLRB 1083 (1980).

23           There is no basis for a finding of unlawful activity against Guardado. The Complaint  
24 allegations should be dismissed. Guardado is not entitled to relief either on the merits or based  
25 upon his lack of employment eligibility. Hoffman Plastics Compound, Inc. v. NLRB, 535 U.S.  
26 137 (2002); Mezonos Bakery, 357 NLRB 47 (2011).

27           Alleged unlawful statements were non-coercive and should be considered lawful consistent  
28 with Section 8(c) of the Act. Any statements made by the Employer did not interfere with,

1 restrain or coerce *any* employees' exercise of their Section 7 rights under the Act.

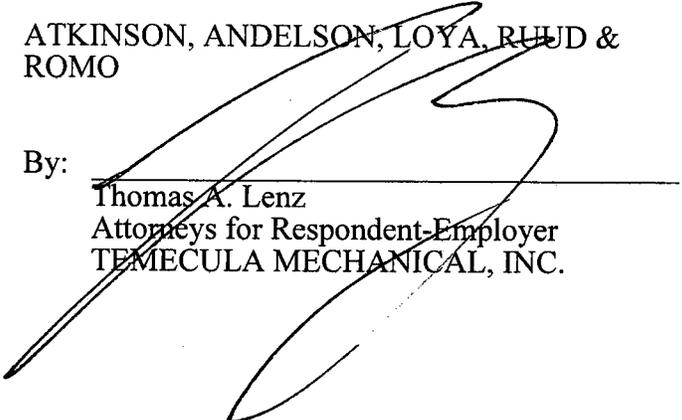
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Dated: July 12, 2012

Respectfully Submitted,

ATKINSON, ANDELSON, LOYA, RUUD &  
ROMO

By:



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1 **PROOF OF SERVICE**

2 (CODE CIV. PROC. § 1013A(3))

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
5 years and am not a party to the within action; my business address is 12800 Center Court Drive  
South, Suite 300, Cerritos, California 90703.

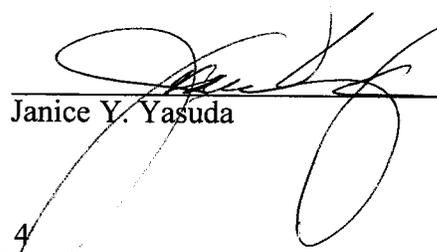
6 On July 12, 2012, I served the following document(s) described as **REPLY BRIEF OF**  
7 **RESPONDENT-EMPLOYER TEMECULA MECHANICAL, INC. ON EXCEPTIONS** on  
the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes  
8 addressed as follows:

9 NLRB – Executive Secretary E-filing Via NLRB site  
10 Lisa McNeill Via Tel: 213/894-5204  
NLRB, Region 21 facsimile Fax: 213/894-2778  
888 S. Figueroa Street, 9th Floor  
11 Los Angeles, CA 90017-5449  
12 Plumbers and Pipefitters Local 398, United Via e-mail Tel: 909-625-2493  
Association of Journeymen and Apprentices of Fax: 909-625-2493  
13 the Plumbing and Pipe Fitting Industry of the ualocal398@verizon.net  
United States and Canada, AFL-CIO  
14 4959 Palo Verde Street CHARGING PARTY  
Montclair, CA 91763

15 Client/Employer Temecula Mechanical Via e-mail

- 16  **BY MAIL:** I deposited such envelope in the mail at Cerritos, California. The envelope(s)  
17 was mailed with postage thereon fully prepaid. I am readily familiar with the firm's  
18 practice of collection and processing correspondence for mailing. It is deposited with  
19 U.S. postal service on that same day in the ordinary course of business. I am aware that  
on motion of 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 an affidavit.
- 20  **BY FAX:** I sent such document by use of facsimile machine telephone number (562) 653-  
21 3333. The facsimile machine I used complied with California Rules of Court Rule  
2.301(3) and no error was reported by the machine.
- 22  **BY EMAIL:** I sent such document by use of email to the email address(es) above.  
23 (CCP § 1013(a)) Such document was scanned and emailed to such recipient and email  
24 confirmation is attached hereto indicating the recipients' email address and time of receipt  
pursuant to CCP § 1013(a).

25 Executed on July 12, 2012, at Cerritos, California.

26   
27 Janice Y. Yasuda  
28