UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES – SAN FRANCISCO, CA

DESERT CAB, INC. d/b/a ODS
CHAUFFEURED TRANSPORTATION

and **Case 28-CA-199576**

PAUL LYONS, an Individual

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I. INTRODUCTION

Desert Cab, Inc. d/b/a ODS Chauffeured Transportation (Respondent Desert Cab and Respondent ODS) interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the National Labor Relations Act (Act) by: maintaining an overly-broad and discriminatory rule that employees will be discharged if they engage in unprofessional conduct towards management; enforcing said rule; and also discharging Charging Party Paul Lyons (Lyons) because of, and in order to discourage, his protected concerted activities concerning wages, hours, and working conditions, in violation of Section 8(a)(1) of the Act. Lyons engaged in protected concerted activities by messaging management and posting on Facebook on behalf of other employees. Although Lyons employed colorful rhetoric on Facebook as an effective means to make a point in their reduction in wages and hours, neither the text nor the pictures arise to the level of product disparagement.

In order for Your Honor to find that Respondent did not violate the Act, Your Honor must believe Lyons lost the protection of the Act, despite there being no evidence he acted with malice. Furthermore, neither Respondent nor its client may claim they suffered any economic harm as a result of his Facebook posts.

II. STATEMENT OF FACTS

A. Respondent ODS's Operations

Respondent ODS is a luxury transportation company; "ODS" stands for "On Demand Sedan." (32:8-9; 35:9-21) Respondent has a fleet of limousines, town cars, and large shuttle busses. *Id*. There are two sides to the business: shuttle service and charter service. (111:10-11) Respondent ODS employs approximately 180 chauffeurs/drivers.[1] (35:22-24; 138:22-25; 139:1-

[1] Herein referred to as drivers.

12) There are approximately 15-20 designated shuttle drivers, and approximately 160 charter drivers. *Id*.

Respondent ODS contracts with various properties on the Las Vegas strip (e.g., The Cosmopolitan, Bellagio, Luxor, etc.) for "staging rights" so the drivers can "stage" their vehicles in a dedicated area in the front of these properties to cover the door for possible walk-ups or reservations. (36:1-15; 202:2-8) "Staging" means parking or displaying the vehicle. (37:13-14) Charter service typically refers to reservations made over the phone or online. (143:3-8) If customers do not have reservations, they are referred to as "walk-ups" because they can simply walk up to a staged vehicle. (37:15-24) Charter drivers take both reservations and walk-ups, and typically those passengers tip the drivers. (37:25; 38:1)

Respondent ODS also contracts with the Las Vegas McCarran International Airport, and a helicopter tour company called Sundance to drop off and pick up the passengers going on helicopter rides. (36:16-21) This is commonly referred to as shuttle service. Respondent ODS has a specific number of shuttle drivers that drive exclusively for Sundance , but sometimes Respondent ODS has to take some of the charter drivers off of charter duty and assign them to do shuttle service to pick up the Sundance passengers instead. (63:6-25; 113:18-25)

B. Relationship Between Respondent ODS and Respondent Desert Cab

Respondent ODS and Respondent Desert Cab reside in the same building and share the same address (4675 Wynn Road, Las Vegas, Nevada)[2], the same parking lot, and the same maintenance personnel. (182:1-16; 185:8-18) They also share the same supervisors and the same in-house attorney. *Id*. Whenever there is an accident involving an ODS vehicle, Respondent Desert Cab supervisors are the ones that respond to accidents and handle any workman's compensation issues. (193:1-11) Respondent Desert Cab has supervisors on duty 24

[2] See the bottom of webpages for the physical address: http://www.desertcabinc.com/ & https://www.odslimo.com/ .

hours a day that are trained in accident response, whereas Respondent ODS does not, so they share common supervision in this regard. *Id*.

C. Respondent ODS's Supervisors, Managers and Agents

The owner and Chief Executive Officer (CEO) of Respondent ODS is Brad "BJ" Balaban. (89:4-10) Ed Gehres is the General Manager and Chief Operating Officer (GM and COO). (87:14-24) Rene Martinez is the Director of Operations. (89:10-11) Lisa Monteiro is the Call Center Manager. (32:22-25) Mike Lowery is the Training and Performance Manager. (89:23-24) John Kalasi is the Fleet Manager or Fleet Supervisor who manages the vehicles and makes sure they are up and running. (90:1-3) Brian Wright is the Chauffer Supervisor. (90:3-7)

D. Respondent's "Causes For Termination" Policy

As Respondent stipulated, the "T. Causes for Termination"[3] policy was in Lyons' personnel file as a single page (it was not stapled to anything) and subparagraph "f." was highlighted in yellow. (160:15-21; 162:24-25; 163:1; GCX 2) This policy was found immediately behind Lyons' Termination Notice in his personnel file when the subpoenaed documents were presented to Counsel for the General Counsel (CGC). *Id*. The policy reads in pertinent part:

> T. Causes for Termination
>
> All employees must adhere to all policies and procedures and at any time management reserves the right to end employment relations with any employee at will for any reasonable violation of policies and procedures to include but not limited to:
>
> …
>
> f. Gross misconduct or unprofessional conduct towards management and staff.
>
> …

[3] Given that the policy is labeled with the letter "T." logic follows that it was part of a larger employee handbook, however, there were no other pages in the personnel file that Respondent produced to Counsel for the General Counsel (CGC), nor were any handbooks furnished by Respondent in response to the subpoena.

Respondent admitted the decision to discharge an employee is discretionary, despite this "Causes for Termination" policy. (193:16-25; 194:1-15)

E. Respondent's Policy Changes Concerning Sundance

It is undisputed that Sundance customers do not tip the drivers. (28:17-22; 121:1-20; 198:14-24) It is also undisputed that many charter drivers do not want to be assigned to Sundance shuttle service because they prefer to do walk-ups and reservations in order to make tips. (142:13-25; 198:14-24) The advantage of doing reservations and walk-ups is that the drivers can be engaged for multiple hours at a time. *Id*. For example, a single passenger could request limo service for four, five, or six hours. *Id*. Additionally, charter service has a higher price point per hour. (142:19-25; 143:1-2) On top of that, most American passengers tip 20% at the end of the ride. *Id*.

1. Sundance Policy Pre-April 2017

Prior to April 2017[4], if a charter driver was scheduled to work Sundance, he or she could drop off the passengers at Sundance and, while they were on their helicopter tour, the driver could go and take walk-ups from any of the hotels and casinos with whom Respondent ODS contracts. (36-37) Drivers were told when to be at Sundance or they were given a list of passengers with specific pick-up times; the rest of the time they were free to go stage and do walk-ups. (201:20-25) Many charter drivers did not like driving for Sundance because Sundance passengers did not typically tip. (38:14-25; 65:11-17; 111:8-11) As a result, many drivers were dropping off the Sundance passengers and then going and doing walk-ups. At times, when Sundance passengers were due to be picked up, the drivers would still be engaged with other passengers. (38:23-25; 39:1-9) This led to a policy-change in April. (66-68)

[4] All further dates are in 2017, unless otherwise noted.

2. Sundance Policy Post-April 2017

In April, Respondent ODS implemented a new policy that if drivers were scheduled for Sundance, they have to remain at Sundance for their entire shift. (39:6-18) Pursuant to this new policy, as of April, drivers scheduled to work Sundance cannot go take walk-ups on the Las Vegas Strip or make any other tips; they have to remain at Sundance all day regardless of how long the helicopter tours are (some of which go to the Grand Canyon). (201:13-19; 249:23-25; 250:1-5)

F. Paul Lyons: Workplace Leader and Employee Advocate

1. Work History

Respondent ODS hired Lyons on August 1, 2005 as a charter driver. (197:1-18; 198:1-4) The following year, 2006, Respondent ODS promoted Lyons to a Road Supervisor because it thought that he had leadership qualities and that the drivers listened to him. (*Id*.; 232:2-7) As a Road Supervisor, Lyons had authority to discipline, effectively recommend discipline, exercise independent judgment, and responsibly direct employees. (232-233) For example, in his capacity as Road Supervisor, he could decide whether or not to pull drivers off the door. *Id*. If drivers were causing problems or getting into arguments, or if he caught them "frontloading" (meaning not staying in the queue and cutting in front to take a passenger ahead of other drivers), Lyons could decide whether to just warn the driver, or make sure the driver was not loaded again, or take the driver off the door altogether. *Id*. While he was a Road Supervisor, Lyons disciplined and recommended discipline for a handful of employees, including Mike Lowery and Dan Holmgren. (*Id*.; 255:21-25; 256-257) As a result of Lyons' disciplinary recommendations, at least three of the employees were issued write-ups and one was suspended.

Lyons remained a supervisor until about September 2015, when Respondent ODS ended the Road Supervisor program. (197; 237) Lyons then returned to being a charter driver until the date of his discharge, May 24. (197:5-18)

Shortly before his discharge, Lyons worked Sunday through Thursday from 5:00 p.m. to 3:00 a.m. (10 hours per day, four days per week or "four-10's"). (199:12-16) Lyons' schedule had been reduced from five days to four days per week around end of 2016 or at the beginning of 2017. (199:17-25; 200:1-10) This reduction in hours/days took place across the board. (200:11-16)

Lyons was never disciplined for his attendance during his tenure with Respondent ODS. (257:23-25; 258:1-3) In 2016, Lyons only called out sick three or four times. (258:4-8) In 2017, Lyons did not call out sick at all.

2. Lyons' Protected Concerted Activities

Lyons and several other charter drivers were frustrated when they were assigned to Sundance shuttle service because it resulted in a significant reduction in their income. (198:14-25; 199:1-8) It is undisputed that Sundance shuttle passengers to not tip as well (if at all) in comparison to charter or walk-up passengers. *Id*. For example, the Australians, rather than giving a tip, would just say, "Cheers, mate," so the charter drivers regularly joked around and said, "Cheers, mate" to each other.

After Respondent ODS instituted its policy change in April, the charter drivers were not earning any tips on the days they were assigned to Sundance. (202:9-13) Lyons spoke to about 30-40 of his fellow drivers about this issue. (202:14-25; 203:1-3) Since they were regularly sent to Sundance early, they engaged in round table discussions and complained about the effect the policy change was having on their income. *Id*. For the drivers that had their schedules changed

from five days to four days around the beginning of 2017, being assigned to Sundance further reduced their earnings. The schedule and policy change compounded the problem. If a charter driver working four-10's is assigned to Sundance one of those four days, he can only make tips the remaining three days, whereas if that same driver were working five-8's and is assigned to work Sundance one of those days, the policy change does not have as much of an impact since that driver can earn tips the four remaining days.

As a result of April policy change and the subsequent discussions with his coworkers, Lyons sent two text messages to Respondent on May 5 complaining on behalf of his coworkers that they were sitting there waiting in the Sundance parking lot when they could be out taking walk-ups on a busy night. (GCX 7(a)-(b)) On May 21, Lyons also posted two Facebook posts on his wall complaining about the drivers' wages, hours, and working conditions since he and his fellow drivers were stuck at Sundance waiting for helicopter tours to be over when they could be out making tips and supplementing their income. (GCX 4; GCX 5) Several ODS employees commented and "reacted"[5] to the posts.

G. Respondent Had Knowledge of Lyons' Protected Concerted Activity

1. May 5: Text Messages to Martinez and Gehres

The evening of Friday, May 5, Lyons texted Director of Operations Rene Martinez (Martinez) and GM and COO Ed Gehres (Gehres) on behalf of other employees. (GCX 7(a)-(b); 204-205; 242-243) With the exception of their names (Rene and Ed), the content of the text messages are identical:

> [I]ts (sic) a limousine convention at Sundance Helicopters. We are sitting here for 3 hours on a Friday night (on a fight weekend) before we do anything. Can we get a little common sense over here? (GCX 7(a)-(b))

[5] "Reacted" refers to the six Facebook reaction buttons, which are: Like (thumbs-up image), Love (heart image), Haha (laughing emoji), Wow (gaping mouth emoji), Sad (crying emoji), Angry (red face/eyebrows furrowed emoji). (47:16-21)

Above the text is a picture Lyons sent them of Sundance's driveway showing at least six vehicles staged. (203:23-25) After speaking to about seven or eight other drivers in the Sundance lobby that evening, Lyons sent these text messages from the Sundance porch on behalf of the other drivers. (204-205; 243:4-16) Just prior to sending these texts, Lyons and his coworkers had discussed how they were sitting around waiting for three hours when they could be making $300 to $400 in tips the hotels were calling for limos since it was a busy Friday night as well as a fight weekend.[6] (205-206; 248:25; 249:1-2) Lyons' shift started at 5:00 p.m., and the helicopter tours were not due to return until 8:00 p.m. that evening. (199:12-16; 252:11-24) Neither Martinez nor Gehres responded to Lyons's text messages. (101:19-25; 102:1-6; 203:17-19)

2. May 21: Monteiro Sees Lyons' Facebook Posts

On Sunday, May 21, Call Center Manager Lisa Monteiro (Montiero) saw Lyons' Facebook posts. (45:2-5) The first Facebook post reads, "Handing out at the Morgue. We are sent here to sit around for three hours for no reason." (GCX 4; 207-208) Below the text is a non-descript picture of an empty lobby. *Id*. Nowhere in the post itself (neither in the text nor the picture) does "Sundance" appear. *Id*. Several ODS employees commented and reacted to the post, including: Hannah Pompa, Dante Depree, Mykle HoNda[7] (whose last name is actually Slava), Aristeo Nicolas Canales, Amy Buckwalter, and Elena Rajabi. *Id*.

The second Facebook post reads, "When its (sic) truly a crappy day at work and there is nothing you can do about it." (GCX 5; 208-209) Below the text is a picture of the front of Sundance's building from the parking lot, which shows Sundance's name/logo at the top of the building. *Id*. Several ODS employees commented and reacted to the post, including: Hannah

[6] The Canelo vs. Chavez Jr. boxing match was held that weekend at the T-Mobile Arena.
[7] Some of the employees' Facebook handles are different from their actual names. (48; 208;

Pompa, Mackensie Rose Espiritu, Lucky Devilan (whose name is actually Kevin Savage), Ken Amtman, Aristeo Nicolas Canales, and Amy Buckwalter. *Id*.

H. May 22: Monteiro Reports Lyons' Facebook Posts to Martinez

The very next day, Monday, May 22, Montiero reported at least one of the posts to Martinez in his office. (51:17-20; 53: 21-25; 54:1-10) Montiero also took screen-shots of Lyons' Facebook posts on her phone and emailed them to Martinez per his request. (54:22-25; 55:1-8)

I. May 23: Monteiro Reports Lyons' Facebook Posts to Management

On Tuesday, May 23, Monteiro raised Lyon's Facebook posts during a manager's meeting in the ODS conference room on the second floor during mid to late morning. (91-92; 155:18-25; 156:1-4) The meeting lasted about an hour. (157:7-10) After the managers' meeting concluded, Training and Performance Manager Mike Lowery (Lowery), Martinez, and Gehres further discussed Lyons' Facebook posts. (92:1-10) This additional discussion lasted about five to ten minutes. (93:10-11) Gehres testified that during this discussion, he authorized Martinez and Lowery to conduct an assessment and to discharge Lyons based on their evaluation, deciding between themselves which one of them would take the lead. (96:1-11, 23-25; 97:1-5) This is despite Gehres' testimony that Sundance never complained about Lyons. (99:8-10; 289:8-19) Gehres further testified there was no harm or economic loss suffered by Respondent ODS or Sundance as a result of Lyons' Facebook posts. *Id*.

Based on Gehres' instruction, Lowery then reviewed Lyons' personnel file. (158:12-14) Lowery testified the decision to fire Lyons was made by the management team, however it is unclear from the conflicting testimony of Respondent's witnesses whether or not there were any further discussions or meetings held regarding what course of action would be taken against

Lyons. (92:19; 158-159; 165-167) That afternoon, around 1:00 p.m., Lowery called Lyons and told him to come in the following day to meet with him at 11:00 a.m. (163:11-19; 210-211)

J. May 24: Lowery and Monteiro Fired Lyons

Lyons was scheduled to work at 5:00 p.m. on Wednesday, May 24, but reported to work early, per Lowery's request. (210-212) Lyons arrived at about 10:45 a.m. and waited a short while before Lowery and Monteiro came downstairs and led him to Lowery's office on the first floor. The discharge meeting began around 11:00 a.m. and lasted no more than ten minutes. (164:5-9; 212:9-10) *Id*.

Lowery confronted Lyons about his Facebook posts and told him, "Don't deny it." (212) Lyons replied, "I don't deny it. Sundance costs us a lot of money." *Id*. To which Lowery said, "It's going to cost you a lot more money," before handing Lyons a Termination Notice to sign. (*Id*.; 164; GCX 6) Both men signed the form. *Id*. Under "REASON" the Termination Notice form cites:

> Gross misconduct violating standards of professionalism by posting Derogatory (sic) and demeaning comments specifically targeting ODS clientele and ODS on Social (sic) media (Facebook). Grounds for immediate dismissal. (GCX 6)

The form also states that Lyons was not given a verbal warning, a written warning, or a suspension prior to this. (*Id*.; 165:4-11) Lowery testified he filled out Lyons' Termination Notice that day without ever actually having seen the Facebook posts in question. (155:2-17; 163:3-10; GCX 6) At the end of the meeting Monteiro apologized to Lyons and told him that she did not know they were going to fire him and that he could list her as a reference when applying for new jobs. (212-213)

K. Lyons' Personnel File

Inside Lyons' personnel file were two screen shots of Lyons' Facebook posts from

May 21 on a Cricket phone[8]. (GCX 3(a)-(b)) Also in Lyons' personnel file was a single page of the employee handbook titled, "T. Causes for Termination" with subparagraph "f." highlighted in yellow, which was found immediately behind his Termination Notice. (GCX 2)

III. CREDIBILITY RESOLUTIONS: WHEN IN CONFLICT WITH THAT OF RESPONDENT'S WITNESSES, THE ALJ SHOULD CREDIT THE TESTIMONY OF THE GENERAL COUNSEL'S WITNESS

A. Legal Standard

Significant weight is given to an administrative law judge's (ALJ) credibility determination because the ALJ sees and hears witnesses firsthand. It is for this reason that a witness's demeanor, including their expressions, physical posture and appearance, manner of speech, and non-verbal communication, may convince the ALJ the witness is testifying truthfully or falsely. *Medeco Security Locks*, 322 NLRB 664 (1996); *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996). Accord *V&W Castings*, 231 NLRB 912, 913 (1977), enfd. 387 F.2d 1006 (9th Cir. 1978). Furthermore, the ALJ should consider the witnesses' demonstrated ability to recall *events*, not necessarily specific dates, along with the demeanor of each witness, the weight of the respective evidence (established and admitted), inherent probabilities, and reasonable inferences, which may be drawn from the record as a whole. *C-F Air Freight, Inc.*, 247 NLRB 403, 405 (1980).

A critical component of this case is witness credibility. Respondent's counsel repeatedly asked Respondent's witnesses leading questions, despite being admonished numerous times by Your Honor. (49; 64-65; 79-80; 109; 127-128; 178:4-17; 182:1-13; 191:1-5; 192:22-23;) Additionally, Respondent's witnesses consistently gave self-serving narratives even when no questions were pending or were non-responsive to the questions. (183:2-22) The glaring

[8] It remains a mystery as to who took these screen shots, who placed them in Lyons' personnel file, and when they were placed there since all of Respondent's witnesses denied responsibility and denied knowing who did it or when.

insufficiencies and evasiveness of Respondent's witnesses' testimony must be addressed before reconciling the facts of this case.

B. Respondent's Call Center Manager Monteiro Should Be Wholly Discredited

Monteiro testified she had not spoken about Lyons' Facebook posts with anyone other than Martinez. (54:11-16) However, Lowery testified he first heard about Lyons' posts from Monteiro at a managers' meeting on Tuesday, May 23. (155:18-25; 156:1-25) Additionally, despite being present for Lyons' discharge meeting, Monteiro testified she did not know why Lyons was terminated. (41:21-24) When in conflict, Lyons' testimony should be hers.

C. Respondent's GM/COO Gehres Should Be Wholly Discredited

Gehres' testimony was incredibly evasive. For example, he side-stepped any questions that may have implicated Respondent ODS' owner and CEO by claiming he did not recall:

> Q: Were you the final decision maker in terminating Mr. Lyons?
> A: I guess you could say that. Yes.
> Judge Etchingham: Sir, I don't want you to guess. You can estimate, but we don't want any guesses.
> The Witness: Okay. I don't remember exactly if I was the one who said yes, fire him.
> Q by Ms. Oviedo: Did you go to anyone else above you to discuss the discharge of Mr. Lyons?
> A: I don't recall.
> Q: Are you aware of whether or not the owner and CEO was aware about the discharge of Mr. Lyons?
> A: I don't recall.
> (93:21-25; 94:1-8)

Also, when CGC asked Gehres what was said during the Tuesday, May 23 discussion amongst Martinez and Lowrey, he was vague with respect to what was said:

> Q: …What did Rene and Mike tell you?
> A: With regards to the posts or just in general?
> Q: In regards to Mr. Lyons and the posts.
> A: So my recollection is that they brought to my attention that he had posted negative comments about our client on Facebook. I recall not being pleased with that. I recall that I asked them --
> Q: Let's focus on --

A: I'm sorry.
Q: -- what they told you. Let's focus on that first. Who said what?
A: If you're asking me to give you a blow by blow, I really -- I don't think I could.
(92:20-25; 93:1-7)

However, when Respondent's counsel asked Gehres what was said during that meeting, Gehres offered a full blown narrative that takes up a page and a half of the transcript. (104-105) Then on redirect, Gehres refused to answer very simple questions asked by CGC and instead made petulant remarks. For example:

Q: …[T]he drivers make a base rate and tips, correct?
A: There's nothing that says that Sundance drivers don't make tips.
Judge Etchingham: Sir, you need to --
Ms. Oviedo: That's not the question.
Judge Etchingham: -- respond directly to her question.
(131:16-22)

Also, many of Gehres' answers were purposely obtuse. For example:

Q: And they were sitting idle while they were waiting for the tour to return in land, correct?
A: The idle complaints are very infrequent.
Q: Okay. And when they're sitting idle, they have fewer opportunities to go and pick up walk-ups, correct?
A: Yes.
Q: Okay. So overall, that has an effect on their income, correct?
A: Not necessarily because on the days when they are assigned to Sundance they aren't really going out and doing walk-ups unless we know that there's going to be a long period of time when they're sitting. In which case to maximize the revenue for the company, we allow them to go out and get the walk-ups. It makes a little bit more for them. It makes a little bit more for us. It works both ways. But for the most part, if they're assigned to Sundance, we need them there because there's no telling when a helicopter might come back early or when something might come back late and it's very difficult to schedule. And that's why earlier when I talked about the --
Q: Okay. Okay.
A: -- I'm sorry.
Q: So if they have fewer opportunities to go do walk-ups that has an effect on their income, correct?
A: On the day that they're on Sundance, no, I would disagree with that statement.
(134:3-25;135:1-3)

Gehres' testimony completely ignores the fact that charter drivers lose out on tips when they are assigned to Sundance. He refused to answer logically and, instead, testified that Respondent ODS was acting in everyone's best interest. Accordingly, when in conflict, Your Honor should credit Lyons' testimony over Gehres'.

D. Respondent's Training/Performance Manager Lowery Should Be Wholly Discredited

Lowery became visibly perturbed in response to CGC's questions, and his answers became more and more evasive. For example:

> Q: And who else was present for that meeting?
> A: I'd have to look at the meeting notes to know precisely.
> Q: Was Mike -- I'm sorry, was Ed Gehres there?
> A: I believe so.
> Q: And was Rene Martinez there?
> A: Yes.
> Q: Anyone else you can recall?
> A: Not 100 percent without looking at the meeting notes.
> Q: Okay. And approximately how long did that meeting last?
> A: I'd have to look at the meeting notes.
> …
>
> Q: Do you recall having a second meeting regarding Paul Lyons?
> A: Not without any uncertainty.
> Q: Okay. What did Mr. Gehres say in regards to the Facebook posts at that meeting?
> A: I don't remember exact words.
> (156:24-25; 157-158)
> …
>
> Q: And approximately what time did the termination meeting take place?
> A: I don't know.
> Q: Morning, afternoon?
> A: Can't say with any certainty.
> (163-164)

Lowery could not even testify as to whether he fired Lyons in the morning or the afternoon, but he conveniently went into great detail (when there was no question pending) about what was in Lyons' personnel file several years ago. When CGC attempted to ask him a

question, Lowery interrupted her and gave self-serving narrative of the "multiple coachings" in Lyons' personnel file. (161:2-14) Lowery's narrative was not even responsive or relevant to the document about which he was being questioned. (Exhibit GCX 2 is Respondent's "Causes for Termination" policy and Lowery was referring to a signature sheet.) Also, Lowery conveniently claimed he remembered seeing GCX 2 in Lyons' personnel file the first time Lyons' had an incident with Sundance years and years ago, yet, he could not seem to remember events that had occurred much closer in time to the hearing, such as who was present during meetings, when they were held, or approximately how long they lasted. (162)

Also, when asked about Lyon's Facebook posts, Lowery testified that Lyons had called Sundance passengers "deadbeats."[9] However the Facebook posts themselves disprove this; the posts make no mention of that term. (156:5-17; GCX 4; GCX 5) Accordingly, when in direct conflict, Lyons' testimony should be credited over Lowery's.

E. Charging Party Lyons's Testimony Should Be Credited

Lyons testified credibly throughout the trial. He was able to recall events and conversations in detail and without assistance and without any apparent attempts to embellish or skew his testimony in his favor. He was often asked to testify about difficult topics and was consistent with his responses. (223-227) Unlike Respondent's witnesses who gave self-serving testimony, Lyons conceded that Respondent has a contract with Sundance and that sometimes drivers have to be there to make sure Sundance was serviced, even if that included Lyons himself, even if he did not like it and even though he did not make tips. (226-227) Lyons also conceded that the term "deadbeat" is derogatory. (241) Lyons also admitted that he could have

[9] Respondent alleged that Lyons was disciplined for calling Sundance passengers "deadbeats" over the radio in 2015, two years prior to his Facebook posts and subsequent discharge.

avoided driving for Sundance if he had switched from driving a limo to driving a sedan. (253:24-25; 254:1-5)

When in conflict with other witnesses' testimony, Lyons' testimony should be credited. For example, Lowery testified he had a discussion with Lyons at the Bellagio in 2017, however Lyons testified the discussion in question regarding pricing occurred in 2016. (186-187; 254) Lyons should be credited over Lowery.

IV. ARGUMENT/LEGAL ANALYSIS

A. Respondent ODS and Respondent Desert Cab Are Jointly Liable

Respondent, for the first time, raised the issue of its correct legal name during the hearing, claiming that it is "ODS Chauffeured Transportation" rather than "Desert Cab, Inc. d/b/a ODS Chauffeured Transportation." Respondent failed to raise this in its Answer to the Complaint, and therefore this defense should be waived. (*See* Board's Rules and Regulations 29 C.F.R. § 102.20: Answer to complaint…allegations not denied deemed admitted.) Failing to raise this issue in its Answer unduly prejudiced CGC, who would have subpoenaed additional records and witnesses. Accordingly, Your Honor should find that Respondent ODS and Respondent Desert Cab are a single employer. Nevertheless, CGC will brief the matter below.

1. Legal Standard

Single employer status is characterized by the absence of an arm's-length relationship among seemingly independent companies. *Rogan Brothers*, 362 NLRB No. 61 (2015) citing *Bolivar-Tees, Inc.*, 349 NLRB 720 (2007). In determining whether separate entities constitute a single employer, the Board examines the following four factors: (1) common ownership or financial control; (2) interrelation of operations; (3) common control of labor relations; and (4) common management. *Id.*, *RBE Electronics of S.D.*, 320 NLRB 80, 80 (1995); *Spurlino*

Materials, LLC, 357 NLRB 1510, 1513 (2011); *Grane Healthcare Co*., 357 NLRB 1412, 1430 (2011), and cases cited. All four factors need not be present and no one factor is controlling, although the Board considers common control of labor relations a "significant indication of single employer status," *Bolivar-Tees, Inc*., 349 NLRB at 720.

2. Analysis

Satisfaction of the "interrelation of operations" factor requires evidence of functional integration between two companies, which often includes evidence of shared facilities, equipment, and personnel. See, e.g., *Dodge of Naperville, Inc.*, 357 NLRB 2252 (2012). Here, Respondent ODS and Respondent Desert Cab share the same address, the same building, the same parking lot, and the same maintenance personnel and tools. There is ample evidence of interrelation of operations. Accordingly, the second factor has been met.

As far as "common control of labor relations" is concerned, both companies use the same in-house attorney whose office is housed in the shared building and shares the same address. As such the third factor has been met.

As for the "common management" factor, the record reflects that Respondent Desert Cab supervisors handle any accidents or workman's compensation issues involving ODS employees or ODS vehicles 24 hours per day, 7 days per week. Accordingly the fourth factor has been met.

Given that at least three of the four factors have been satisfied, there is sufficient evidence to find that Respondent ODS and Respondent Desert Cab are a single employer and are therefore liable for the 8(a)(1) violations committed, including the unlawful discharge of Lyons.

B. Lyons: 2(11) Statutory Supervisor from 2006 to September 2015

1. Legal Standard

A statutory "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or [all] effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." 29 U.S.C.A. § 152. Employees are thus statutory supervisors if (1) their job duties include any of the twelve responsibilities outlined above, (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment," and (3) their authority is held "in the interest of the employer." *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573–574 (1994).

2. Analysis

From 2006 to 2015 Lyons was a statutory supervisor within the meaning of Section 2(11) of the Act during his tenure as a Road Supervisor. The record shows that as a Road Supervisor he had authority to discipline employees and recommend discipline, and that he actually exercised that authority. Accordingly, any discipline Lyons received while he was a statutory supervisor is irrelevant.

C. Respondent Maintained/Enforced an Overly-Broad and Discriminatory Rule that Employees Cannot Act Unprofessionally Towards Management & Staff

1. Legal Standard

The Board has held that a rule prohibiting negative conversations about associates and/or managers is unlawful. *Claremont Resort & Spa*, 344 NLRB 832 (2005) (The rule provided no clarification or examples of conduct that would violate its rule. The Board concluded the rule would reasonably be construed by employees to bar them from discussing with their coworkers complaints about their managers that affect working conditions, thereby causing employees to

refrain from engaging in protected activities.) Thus, a rule barring "unprofessional," "disrespectful," "negative," "inappropriate," or "rude" conduct toward an employer or its supervisors, without clarification or context making it clear that the rule does not encompass Section 7 protected criticisms, is overly broad. See e.g., *Casino San Pablo*, 361 NLRB No. 148, slip op. at 3 (2014).

2. Analysis

Respondent maintains and enforces a policy prohibiting employees from displaying or engaging in "unprofessional conduct towards management and staff," and employees are subject to discharge if they violate this policy. (GCX 2) Respondent also cited Lyons' for allegedly "violating standards of professionalism" in his Termination Notice. (GCX 6)

Since employees have a Section 7 right to criticize or protest their employer's policies or its treatment of employees, rules that would reasonably be read to bar criticism of an employer or its supervisors are overly broad. Here, Respondent's policy prohibiting "unprofessional" behavior would reasonably be understood to limit protected concerted activity. Accordingly, Respondent has violated Section 8(a)(1) of the Act by maintaining and enforcing a rule prohibiting "unprofessional conduct towards management and staff."

D. Respondent Terminated Lyons Because He Engaged In Protected Concerted Activity, In Violation of Section 8(a)(1) Of The Act

1. Legal Standards

Section 7 of the Act guarantees employees' rights to engage in concerted activities for the purpose of mutual aid or protection. Under Section 8(a)(1) of the Act, employers may not discharge its employees for exercising these rights. To establish a violation of the Act, CGC must make a *prima facie* case showing "sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision." *Wright Line*, 251 NLRB 1083, 1089

(1980), enfd., 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation. Management Corp*., 462 U.S. 393 (1983). The four elements required for a prima facie showing are: union or other protected concerted activity by the employee(s), employer knowledge of that activity, animus on the part of the employer, and adverse action. *Roadway Express*, 327 NLRB 25, 26 (1998). See, e.g., *Libertyville Toyota*, 360 NLRB No. 141, slip op. at 4 (2014), enfd. 801 F.3d 767 (7th Cir. 2015).

If the CGC makes the required initial showing, the burden shifts to the employer to prove by a preponderance of the evidence that it would have taken the same action even in the absence of the protected concerted activity. *Id*. The employer does not meet its burden merely by establishing that it had a legitimate reason for its action; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. See, *e.g.*, *Bruce Packing Co.*, 357 NLRB 1084, 1086-1087 (2011), enfd. in pertinent part 795 F.3d 18 (D.C. Cir. 2015).

If the evidence establishes that the proffered reasons for the employer's action are pretextual—*i.e.*, either false or not actually relied upon—the employer fails by definition to show that it would have taken the same action for those reasons, regardless of the protected conduct. See *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003), citing *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

The Board has found employees engaged in protected concerted activity when they engaged in wage discussions. Employee wage discussions are "inherently concerted," and as such are protected, regardless of whether they are engaged in with the *express* object of inducing group action. See, e.g., *Automatic Screw Products Co.*, 306 NLRB 1072, 1072 (1992), enfd. mem. 977 F.2d 582 (6th Cir. 1992); *Scientific-Atlanta, Inc.*, 278 NLRB 622, 624-625 (1986). This is because wages are a "vital term and condition of employment," and the "grist on which

concerted activity feeds"; discussions of wages are often preliminary to organizing or other action for mutual aid or protection. *Aroostook County Regional Ophthalmology* Center, 317 NLRB 218, 220 (1995) (citations omitted), enf. denied in part on other grounds 81 F.3d 209, 214 (D.C. Cir. 1996). See also *Trayco of S.C., Inc.*, 297 NLRB 630, 634-635 (1990), enf. denied mem. 927 F.2d 597 (4th Cir. 1991) (contemplation of group action not required when employee discussion is about wages); *Whittaker Corp.*, 289 NLRB 933, 933 (1988) (particularly with respect to wage discussions, "object of inducing group action need not be express"); *Alternative Energy Applications, Inc. & David Rivera-Chapman*, 361 NLRB No. 139 (2014).

There are numerous cases holding that wage discussions generally are a protected concerted activity. See e.g. *Elston Electronics Corp.*, 292 NLRB 510, 511 (1989) (Employee's "wage discussions with other employees and management officials constituted concerted activity"). Employee complaints about wages – even selfish complaints – can be protected concerted activity. If the right to engage in Section 7 activity "is to be a meaningful one employees must have the right to discuss wages as such discussion is essential." *Wilson Trophy Co.*, 307 NLRB 509, 511 (1992)(citing *A.L.S.A.C.*, 277 NLRB 1532 (1986); *Blue Cross-Blue Shield of Alabama*, 225 NLRB 1217 (1976); *Jeannette Corp.*, 217 NLRB 653 (1975), enfd. 532 F.2d 916 (3d Cir. 1977); *Falls River Savings Bank*, 247 NLRB 631 (1980)).

The Board has held that employee complaints made on Facebook about their wages or working conditions constitute protected concerted activity, even if the complaints are vulgar or harsh. See, *Triple Play Sports Bar & Grill*, 261 NLRB No. 31 (2014) (employee's Facebook discussion about how respondent was reducing their income was protected concerted activity)*;* *Bettie Page Clothing*, 361 NLRB No. 79 (2014), reaffirming 359 NLRB No. 96 (2013) (employees complaining about management on Facebook). *Richmond District Neighborhood*

361 NLRB No. 74 (2014) citing *Dries & Crump Mfg.*, 221 NLRB 309, 315 (1975); *Phoenix Transit System*, 337 NLRB 510, 514 (2002) (even most repulsive speech enjoys immunity provided it falls short of deliberate or reckless untruth; federal law gives license to use intemperate, abusive or insulting language without fear of restraint or penalty if the speaker believes such rhetoric to be an effective means to make a point). Protection is not denied to an employee regardless of the lack of merit or inaccuracy of the employee's statements, absent deliberate falsity or maliciousness, even where the employee's language is stinging and harsh. *CKS Tool & Engineering, Inc. of Bad Axe*, 332 NLRB 1578, 1586 (2000); *Delta Health Center, Inc.*, 310 NLRB 26 (1993).

2. Analysis

a. Lyons Engaged in Protected Concerted Activities

The Board has found that some discussions among employees are "inherently concerted" and thus, "protected, regardless of whether they are engaged in with the express object of inducing group action." *Hoodview Vending, Co.*, 362 NLRB No. 81, slip op. at 1 n.1 (2015). (quoting, in part, *Alternative Energy Applications, Inc.*, 361 NLRB No. 139, slip op at 4 n.10 (2014)). Lyons' in person and online discussions with his coworkers, as well as his complaints to management concerning their inability to make tips when they are required to remain at Sundance the whole time they are assigned to shuttle service, rather than being allowed to go take walk-ups during the helicopter tours, fall within the category of "inherently concerted" activity. See *Hoodview Vending, Co.*, 362 NLRB slip op. at 1 n.1 ("[J]ob security, *like wage discussions*, are 'inherently concerted,' and as such are protected[.]" (internal quotation marks omitted). (emphasis added)). Lyons' Facebook posts were made for the purpose of mutual aid and protection. Lyons posted his comments as part of an online conversation with fellow

employees, triggered by Respondent's Sundance policy change – a concern for all employees, who have a common interest in wages and hours and protection against a reduction in wages and hours.

b. Lyons Did Not Lose the Protection of the Act

The Board has held that sandwich makers did not lose the protection of the Act when they engaged in a protected publicity campaign which sought support for employees' desire for sick leave benefits, even though the posters showed images of Jimmy John's sandwiches and implied that the sandwiches would make the public ill, and the posters were distributed and posted in public places near the sandwich shops. *Miklin Enterprises, Inc. d/b/a Jimmy John's*, 361 NLRB No. 27 (2014). The poster displayed side-by-side pictures of a sandwich, one described as made by a healthy Jimmy John's worker and the other as made by a sick worker, and read:

> Can't Tell the Difference? That's too bad because Jimmy John's workers don't get paid sick days. Shoot, we can't even call in sick. We hope your immune system is ready because you are about to take the sandwich test . . . . Help Jimmy John's workers win sick days. *Id*.

The Board agreed with the ALJ that nothing in the poster was so disloyal, reckless, or maliciously untrue to cause employees to lose the Act's protection, despite the vulgar and graphic nature of the publicly displayed posters. In reaching its decision, the Board relied on *Jefferson Standard*, 346 U.S. 464 (1953), where the Supreme Court upheld the Board's decision that a broadcast company did not act unlawfully when it fired its technicians for distributing handbills that disparaged the quality of the company's programming and made no reference to working conditions, as well as related cases, such as *MasTec Advanced Technologies*, 357 NLRB No. 17 (2011) where the Board found that the employer unlawfully terminated technicians that

went on a news broadcast and announced that they had been told to lie to customers and upsell them on services that they did not need in order to avoid charge-backs.

In cases decided since *Jefferson Standard*, "the Board has held that employee communications to third parties in an effort to obtain their support are protected where the communication indicated it is related to an ongoing dispute between the employees and the employers and the communication is not so disloyal, reckless or maliciously untrue as to lose the Act's protection." *Mountain Shadows Golf Resort*, 330 NLRB 1238, 1240 (2000).

Lyons' Facebook posts satisfy the first prong of the test because they clearly relate to the employees' wage dispute resulting from Respondent's April policy change. As to the second prong of the test, the Facebook posts were neither maliciously untrue nor so disloyal and reckless as to warrant removal of the Act's protection.

First, Lyon's post referencing the "morgue" does not mention Sundance in the text of the post itself nor in the picture that appears below the text. (GCX 3(a)) It falls squarely into protected concerted activity; the "morgue" post refers to how "dead" it was or how "slow" it was because the drivers were stuck there all night waiting due to Respondent's policy change. Instead of sitting around for hours for a helicopter tour to return with nothing to do, the drivers could be out taking walk-ups and earning tips. Without any mention of Sundance, only fellow employees would recognize the picture of the empty lobby to be that of Sundance. Even if it did, the "morgue" comment does not arise to maliciously untrue and unprotected. "Statements are maliciously untrue and unprotected, if they are made with knowledge of their falsity or with reckless disregard for their truth or falsity. The mere fact that statements are false, misleading or inaccurate is insufficient to demonstrate that they are maliciously untrue." *MasTec*, 357 NLRB No. 17, slip op. at 5 (internal quotation marks and citations omitted).

As for the second post, the only reference to Sundance appears in the picture itself; however the text itself is Lyons expressing his frustration about feeling powerless to change their working conditions. (GCX 3(b)) There is nothing in either Facebook post that could be construed as "flagrantly disloyal, wholly incommensurate with any grievances they had, and manifested by public disparagement of the product [or service] and undermining of their reputation." *Veeder-Root Co.*, 237 NLRB 1175, 1177 (1978).

Certainly Lyons' posts were much tamer than the sandwich posters in *Miklin Enterprises, Inc.* Given that those posters were much closer to product disparagement than Lyons' posts, and yet the sandwich makers still did not lose the protection of the Act, Your Honor should find that Lyons similarly did not lose the protection of the Act.

c. Respondent Had Knowledge of Lyons' Protected Concerted Activities

Respondent had knowledge of Lyons' complaints regarding Respondent's Sundance policy change affecting employees' wages and hours. Specifically, Respondent was aware of Lyons' May 5 text messages to Gehres and Martinez, as well as his two May 21 Facebook posts.

d. Evidence of Animus: Highlighted Policy; Screen Shots; Discretion

As Respondent stipulated, the "Causes for Termination" policy was in Lyons' personnel file as a single page; it was not stapled or a part of any other document. Additionally, subparagraph "f." was highlighted. This policy was found immediately behind Lyons' Termination Notice in his personnel file when the subpoenaed documents were presented to CGC. None of the witnesses knew who had placed the single sheet in there, nor did they know who had highlighted the sub-paragraph that was cited in Lyons' Termination Notice.

As for the two screen shots of Lyons' Facebook posts — although they were in the personnel file produced by Respondent to CGC in response to the subpoena, none of

Respondent's witnesses knew where the screenshots had come from, who took them, or when they were placed in the file.

Respondent admitted the decision to discharge an employee is discretionary, despite its "Causes for Termination" policy. Respondent could have issued Lyons' progressive discipline (coaching, verbal, written, suspension, etc.), however it decided to skip straight to discharge. These actions point to animus.

e. Adverse Action: Lyons Was Discharged on May 24

On Wednesday, May 24 Respondent fired Lyons because he engaged in discussions with other drivers related to the most vital term and condition of their employment – their wages.

f. Respondent's Other Reasons for Firing Lyons Are Pretext and Respondent Cannot Meet Its Burden of Proving that It Would Have Discharged Lyons Regardless of His Protected Concerted Activities

The Board has long held that evidence of pretext includes providing shifting reasons for the adverse action. *MCPC, Inc.*, 360 NLRB No. 39, slip op. at 16 (2014); *Cincinnati Truck Ctr*., 315 NLRB 554, 556-557 (1994), enfd. sub nom. *NLRB v. Transmart*, 117 F.3d 1421 (6th Cir. 1997); *Active Transp*., 296 NLRB 431, 432 (1989), enfd. per curiam 924 F.2d 1057 (6th Cir. 1991).

When an employer provides inconsistent or shifting reasons for its actions, a reasonable inference can be drawn that the reasons proffered are mere pretexts designed to mask an unlawful motive. See *GATX Logistics, Inc.*, 323 NLRB 328, 335 (1997), enfd. mem. 165 F.3d 32 (7th Cir. 1998) (published in full 160 F.3d 353 (7th Cir. 1998)); *Trader Horn of New Jersey, Inc.*, 316 NLRB 194, 199 (1995); *Dumbauld Corp.*, 298 NLRB 842, 848 (1990). *Howard Elec. Co.*, 285 NLRB 911, 913 (1987) ("[S]hifting defenses are strong evidence of the Respondent's discriminatory motive in discharging the employees in question[]." In finding discharge was

because of protected concerted activities because all the reasons respondent initially claimed for why it discharged employee were abandoned, and shifting explanations were made later). When a respondent has been incapable of maintain a consistent explanation for its conduct, but has resorted to shifting defenses, "it raises the inference that the employer is 'grasping for reasons to justify its unlawful conduct." *Meaden Screw Products Co.*, 336 NLRB 298, 302 (2001), citing *Royal Development Co. v. NLRB,* 703 F.2d 363, 372 (9th Cir. 1983). See also *Master Security Services*, 270 NLRB 543, 552 (1984) (animus demonstrated where an employer used a multiplicity of reasons to justify disciplinary action).

Such is the case here. Respondent ODS tried to come up with at least half a dozen supplemental reasons for why it discharged Lyons. Gehres claimed that Respondent fired Lyons not only because of the Facebook posts but also because of the rest of the evidence in his personnel file of not being a great team member. Respondent also suggested that it fired Lyons because he called out sick a lot, even though he did not call out sick at all in 2017 and only called out sick three or four times in 2016, and had never been disciplined for his attendance throughout his entire tenure. Respondent also claimed it fired Lyons because he allegedly called Sundance passengers deadbeats in 2015 because they did not tip. Respondent also pointed to Lyons being fired because he drove a lot of "Kellies" and he had a low book compared to his mileage and he was stealing from Respondent ODS. Respondent also tried to claim Lyons was fired because of an incident that occurred in 2016 at the Bellagio where Lyons allegedly over-quoted prices to potential customers. Additionally, Respondent alleged it fired Lyons because he was a subpar employee, yet Respondent ODS kept him in their employ for 11 years and retained him as a supervisor for about 8 of those years.

Yet, despite all of these reasons Respondent pointed to during the hearing, none were mentioned on Lyons' Termination Notice, nor were they brought up during his termination meeting. Respondent's shifting explanations evince animus.

g. Respondent Terminated Lyons Because He Engaged in Protected Concerted Activity, in Violation of Section 8(a)(1) of the Act

Regardless of Respondent's incredulous witnesses, and despite Respondent's attempt to come up with a multitude of reasons for why it fired Lyons, at the end of the day Lyons was fired for his Facebook posts. What it comes down to is whether or not his posts crossed the line and caused him to lose the protection of the Act. The facts and the case law support a finding that Lyons did not lose the protection of the Act.

Lyons' engaged in protected concerted activity. Respondent had knowledge of the concerted activity, and Lyons' discharge was motivated by his Facebook posts. Respondent cannot satisfy its burden of proving it should have fired Lyons regardless of his protected concerted activities, despite trying to throw in everything but the kitchen sink. Accordingly, CGC respectfully requests that Your Honor find Respondent violated Section 8(a)(1) of the Act by discharging Lyons because he engaged in protected concerted activities.

V. CONCLUSION

Based on the forgoing and the record evidence considered as a whole, Your Honor should find that Respondent violated the Act as alleged and issue an appropriate remedial order requiring Respondent to post an appropriate Notice to Employees, a proposed copy of which is attached; immediately reinstate Lyons to his former position without loss of seniority; make him whole for any loss of earnings and/or benefits he may have suffered (including reasonable consequential damages incurred by him as a result of Respondent's unlawful conduct), and expunge from his records any references to his termination.

Dated at Las Vegas, Nevada this 7th day of November 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that **COUNSEL FOR THE GENERAL COUNSEL'S POST-HEARING BRIEF TO THE ADMINISTRATIVE LAW JUDGE** in Desert Cab, Inc. d/b/a ODS Chauffeured Transportation, Case 28-CA-199576, was served via E-Gov, E-Filing, and E-Mail, on this 7th day of November 2017, on the following:

Via E-Gov, E-Filing:

Honorable Gerald Etchingham
Associate Chief Administrative Law Judge
NLRB – Division of Judges
901 Market Street, Suite 300
San Francisco, CA 94103-1779

Via Electronic Mail:

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(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain nor enforce a rule prohibiting you from engaging in unprofessional conduct towards management and staff.

WE WILL NOT discharge or discipline you if you engage in unprofessional conduct towards management and staff.

YOU HAVE THE RIGHT to post comments about the terms and conditions of your employment on social media and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT fire you because you exercise your right to bring issues and complaints to us on behalf of yourself and other employees.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL rescind the rule prohibiting you from engaging in unprofessional conduct towards management and staff.

WE WILL offer employee Paul Lyons immediate and full reinstatement to his former job, or if the job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and/or privileges previously enjoyed.

WE WILL pay employee Paul Lyons for the wages and other benefits he lost because we fired him, and **WE WILL** make him whole.

WE WILL remove from our files all references to the discharge of Paul Lyons and **WE WILL** notify him in writing that this has been done and that the discharge will not be used against him in any way.

DESERT CAB, INC. d/b/a
ODS CHAUFFEURED TRANSPORTATION
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

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Hours of Operation: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.