

jurisdiction statute, 28 U.S.C. § 1345, and the terms of the FDCPA, 28 U.S.C. §§ 3002(2), 3013 and 3101(a)(1).²

As set forth in the Board's Application, Respondents are each New York corporations, with their principal places of business within the jurisdiction of the Southern District of New York. They have all been engaged in the business of residential and commercial waste collection, removal and disposal, in and around Westchester County, New York. Joseph F. Spiezio, III ("Spiezio") is the owner and principal officer of each of the Respondents. [App., para. 2]. The FDCPA provides for nationwide service of process and venue. 28 U.S.C. § 3004(b)(1). *Reese Bros., Inc. v. U.S. Postal Service*, 477 F.Supp. 2d 31, 39 (D.D.C. 2007).

II. FACTUAL BACKGROUND

A. Proceedings underlying the Board's claims

Rogan Brothers Sanitation, Inc. ("Rogan Brothers") was a domestic corporation with a principal office in Yonkers, New York, and was engaged in the business of waste removal and disposal. The debt upon which this action is based arises from two Court enforced Board Orders. The first was issued on December 9, 2011 against Rogan Brothers in *Rogan Bros. Sanitation, Inc.*, 357 NLRB 1655 (2011) [*Rogan Brothers I*], which held that the employer unlawfully terminated employees Joseph Smith, Anthony Mercado and Daniel Mattei because of their affiliation with International Brotherhood of Teamsters, Local 813 (the "Union"), in violation of Sections 8(a)(1) and (3) of the National Labor Relations Act [29 U.S.C. §§ 151-169] (the "Act"). The Board's Order directed Rogan Brothers to take affirmative remedial action, including reinstating Mercado and Mattei and paying backpay plus interest to all three employees. The United States Court of Appeals for the Second Circuit enforced the Board's Order on March 22,

² The FDCPA defines the term "United States" to include, *inter alia*, "an agency, department, commission, board, or other entity of the United States[.]" 28 U.S.C. § 3002(15)(B).

2012, and directed Rogan Brothers to remit to the Board's Region 2 the amount of \$15,616 owed to Smith and to reinstate and make whole Mercado and Mattei.

The second Board Order was issued on April 8, 2015 against Rogan Brothers and R&S Waste, for terminating Smith (a second time), Wayne Revell and Michael Roake because of their affiliation with the Union, again in violation of Section 8(a)(1) and (3) of the Act. The Order was issued against both Rogan Brothers and R&S Waste as a single employer under principles of federal labor law, during the time period March 1, 2011 through October 4, 2011, holding them jointly and severally liable for the unlawful terminations which occurred during that time period. *Rogan Bros. Sanitation, Inc. and R&S Waste Servs., LLC*, 362 NLRB No. 61 (2015) (*Rogan Brothers II*). The Board's Order directed Rogan Brothers and R&S Waste to, among other things, reinstate the employees and to make them whole by paying backpay plus interest. The Second Circuit enforced the Board's Order on June 7, 2016. To date, neither Rogan Brothers nor R&S Waste has complied with either of the Board's Court enforced Orders.

B. Compliance proceedings

Under the Board's procedures, both the amounts owed to remedy unfair labor practices pursuant to its Orders, and the liability of any additional parties, are litigated in a separate compliance proceeding before an agency administrative law judge. *See* 29 C.F.R. §102.54-102.55. If contested, the decision of the administrative law judge is subject to review by the five-member Board, or a panel thereof, in Washington, D.C., and then by a United States Court of Appeals.³

³ *See generally* *NLRB v. U.S. Air Conditioning Corp.*, 336 F.2d 275, 275 (6th Cir. 1964); *see also* *Sever v. NLRB*, 231 F.3d 1156, 1163-64 (9th Cir. 2000).

Following a compliance investigation and in conjunction with this application for prejudgment relief, on December 17, 2018, the Region issued a Compliance Specification and Notice of Hearing alleging that Respondent R&S Waste has been, at material times, a single employer and/or successor to Rogan Brothers under principles of federal labor law and is thus jointly and severally liable to remedy the unfair labor practices committed by Rogan Brothers in *Rogan Brothers I*. The Compliance Specification further alleges that Respondents Waste Services and ECSI America have been at material times, a single employer and/or single integrated enterprise under principles of federal labor law. Finally, the Compliance Specification alleges that the enterprise of Waste Services and ECSI is the alter ego of R&S Waste and that it is thus jointly and severally liable for R&S Waste's remedial obligations stemming from *Rogan Brothers I* and *Rogan Brothers II*.

Pursuant to the Court enforced Board Orders in *Rogan Brothers I* and *Rogan Brothers II*, the Compliance Specification alleges the total amount of backpay due to employees Daniel Mattei, Anthony Mercado, Joseph Smith, Michael Roake, and Wayne Revell, including excess tax liability and interest, through December 1, 2018 is \$612,010. In this proceeding, the Board is entitled to a statutory surcharge of 10%, pursuant to 28 U.S.C. §3011, or \$61,201. The total amount the Board is claiming in this case is therefore \$673,211.

**III. FEDERAL LABOR LAW ESTABLISHES RESPONDENTS'
JOINT AND SEVERAL LIABILITY UNDER
ROGAN BROTHERS I AND ROGAN BROTHERS II**

A. The Board's Single Employer Doctrine

The Board applies the single employer doctrine to treat nominally independent enterprises as one "single employer" if they are "'part of a single integrated enterprise.'" *Lihli Fashions Corporation, Inc. v. NLRB*, 80 F.3d 743, 747 (2d Cir. 1996) (citations omitted);

Murray v. Miner, 74 F.3d 402, 404 fn. 1 (2d Cir. 1996); see also, *Radio & Television Broad. Technicians Local Union 1264 v. Broad. Serv. of Mobile, Inc.*, 380 U.S. 255, 85 S.Ct. 876, 13 L.Ed.2d 789 (1965). The single employer test examines “interrelation of operations, common management, centralized control of labor relations and common ownership” *Id.*, at 256. Not every factor needs to be present for a finding of single employer status, rather it “depends on all the circumstances of the case and is characterized by absence of an ‘arm’s length relationship found among unintegrated companies.”” *Lihli Fashions Corporation, Inc. v. NLRB*, 80 F.3d at 747 (quoting *NLRB v. Al Bryant*, 711 F.2d 543, 551 (3d Cir. 1983) (further citations omitted)).

B. Having Been Adjudged a Single Employer with Rogan Brothers, R&S Waste is Derivatively Liable for Rogan Brothers’ Remedial Obligations in Rogan Brothers I

The Second Circuit has long since approved the Board’s practice of imposing derivative liability in supplemental compliance proceedings on newly added parties that were not parties in the underlying unfair labor practice proceedings. See *Associated Gen. Contractors of Connecticut, Inc. v. NLRB*, 929 F.2d 910, 913 (2d Cir. 1991) (“We have approved the Board’s practice of imposing derivative liability on new parties in a supplemental proceeding without commencing a new unfair labor practice proceeding against those parties.”); see also *NLRB v. CCC Associates, Inc.*, 306 F.2d 534 (2d Cir. 1962).⁴ The Board has held that derivative liability

⁴ Indeed, the Board’s authority to determine derivative liability in the context of supplemental compliance proceedings has been long recognized by several courts. See, *NLRB v. Int’l Measurement & Control Co.*, 978 F.2d 334, 337 (7th Cir. 1992) (“Supplemental proceedings to recover from the distributees are normal under state law and entirely appropriate in labor law.”); *NLRB v. Resistflame Acquisition Co.*, No. 1:11-MC-00046, 2012 WL 3966295, at *2 (S.D. Ohio Sept. 11, 2012), report and recommendation adopted, No. 1:11-CV-00046, 2012 WL 4808463 (S.D. Ohio Oct. 10, 2012) (“courts in the Sixth Circuit have made post-hearing and post-board determination findings on the derivative liability of entities that were not parties to the initial proceedings”) citing *NLRB v. Deena Artware, Inc.*, 310 F.2d 470, 474 (6th Cir. 1962); *NLRB v. Shane Steel*, No. 07-X-50335, 2007 WL 1608009, at *1 (E.D. Mich. May 16, 2007); *NLRB v. M&V Painting, Inc.*, No. 97-cv-75019, 2001 WL 1829517, at *3 (E.D. Mich. June 15,

may only be imposed where the party that committed the unfair labor practice and the new party are “sufficiently closely related.” See *Southeastern Envelope Co.*, 246 NLRB 423, 423 (1979), quoting *Coast Delivery Service, Inc.*, 198 NLRB 1026, 1027 (1972). The Second Circuit has held that where two entities are a single employer, they are “sufficiently closely related” to impose derivative liability under the Board’s *Southeastern Envelope* standard. See *Associated Gen. Contractors of Connecticut, Inc.*, 929 F.2d at 914-915 (“The exceedingly close relationship of [...] single employer status provides assurance that the proceeding against the original party was equivalent to a proceeding against the newly added party.”). Indeed, the single employer relationship is not at arms-length, and so where the newly added party had control of the original party through a single employer relationship during the original unfair labor practice proceedings, “the newly added party has had notice and an opportunity to contest the charge through its control of the original party.” See *id.*

In *Rogan Brothers II*, the Board has already found that R&S Waste and Rogan Brothers were a single employer from March 1, 2011 through October 4, 2011, and the Second Circuit specifically upheld that finding. *R&S Waste Servs., LLC v. NLRB*, 651 F. App’x 34, 35 (2d Cir. 2016). Further, the Board found that Spiezio, the principal of R&S Waste, exercised complete dominion over Rogan Brothers’ operations during the single employer period. *Rogan Bros. Sanitation, Inc.*, 362 NLRB No. 61, slip op. at 7. This single employer period encompasses the proceedings in *Rogan Brothers I*. Indeed, the unfair labor practice complaint, answer, motion for summary judgment, and opposition in *Rogan Brothers I* were all issued and filed between March

2001); *NLRB v. Alaska Pulp Corp.*, No. 95-042 (GK), 1995 WL 389722, at *6 (D.D.C. May 25, 1995) (“It is well established that the Board has the power to consider derivative liability of new parties who were not involved in the prior unfair-labor-practice proceeding.”). See generally *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945).

23, 2011 and June 20, 2011. As there was a complete absence of an arms-length relationship between R&S Waste and Rogan Brothers during the *Rogan Brothers I* unfair labor practice proceedings, and R&S Waste by Spiezio had complete control of Rogan Brothers throughout the proceedings, R&S Waste received ample notice and opportunity to contest the complaint and motion of summary judgment through its control of Rogan Brothers. For this reason, R&S Waste should be held derivatively liable for Rogan Brothers' remedial obligations in *Rogan Brothers I*.

C. R&S Waste is also liable as a *Golden State* successor to Rogan Brothers

In *Golden State Bottling Co., Inc. v. NLRB.*, 414 U.S. 168 (1973), the Supreme Court approved the Board's holding in *Perma Vinyl Corp.*, 164 NLRB 968 (1967), that an employer which acquires and operates a business in largely unchanged form, with knowledge of the predecessor's unfair labor practices, can be held jointly and severally liable for the predecessor's remedial obligations. As set forth in the Board's Application, Respondent R&S Waste, through its principal officer and owner Spiezio, orchestrated a takeover of Rogan Brothers' operations and assets through a consulting agreement and a self-serving security agreement between Rogan Brothers and two other companies that Spiezio owned and operated. Spiezio created R&S Waste to inherit the assets of Rogan Brothers upon Rogan Brothers' inevitable default of the security agreement. He then took control of Rogan Brothers' labor relations and finances, and continued the operation in essentially unchanged form, using the same employees, performing the same work, at the same yard, under the same conditions and under the same management. And, as the evidence demonstrates, not only did Spiezio know about Rogan Brothers' monetary debt to the Board from *Rogan Brothers I* during this time, but he actively and repeatedly tried to convince the Union to withdraw the unfair labor practice charges. As a *Golden State* successor to Rogan

Brothers then, R&S Waste is liable for the monetary remedy imposed by the Board against Rogan Brothers in *Rogan Brothers I*.

D. Waste Services and ECSI constitute a single employer and/or a single integrated enterprise

The evidence here demonstrates that, in June and July 2016, on the heels of the Second Circuit's enforcement of *Rogan Brothers II*, Spiezio completed Class A hauler license renewal applications for R&S Waste and Frontline Waste Management Corp. ("Frontline"), a company he had purchased years prior. The license applications reflect that the two companies performed the same business, shared the same business address, same management, accounting and sales team, the same dispatcher and the same instruments of indebtedness in the same amounts. Spiezio then submitted these applications to the Westchester County Solid Waste Commission with a letter noting his intention to change the name of both R&S Waste and Frontline to Waste Services. In November 2016, Spiezio changed Frontline's name to Waste Services, Inc., and certified to the New York Department of State that Waste Services f/k/a Frontline would operate under the assumed name "R&S Waste". Spiezio then merged the payrolls of all of his waste hauling companies, ECSI became the new policyholder for the companies' workers' compensation policy and R&S Waste "subcontracted" its solid waste removal labor services to ECSI, leaving R&S Waste and Waste Services with no employees.

In April 2017, Spiezio transferred all of R&S Waste vehicles to Waste Services, thereby divesting R&S Waste of its principal assets. Finally, ECSI's application for a new Class A hauler license submitted by Spiezio in April 2017 reveals that ECSI and Waste Services all share the same business purpose, the same business address, many of the same vehicles, the same owner, officers and managers, dispatcher, the same employees and the same instruments of indebtedness and the same debtholders. As entities with the same ownership, financial control,

management and operations, Waste Services and ECSI constitute a single employer and/or a single integrated enterprise under federal labor law principles.

E. The Waste Services/ECSI enterprise constitutes the alter ego of R&S Waste and thus liable for R&S Waste's remedial obligations under *Rogan Brothers I* and *Rogan Brothers II*.

Spiezio's corporate manipulations also demonstrate that the single integrated enterprise of Waste Services and ECSI constitutes the alter ego of R&S Waste, and it is therefore liable for R&S Waste's remedial obligations flowing from *Rogan Brothers I* and *Rogan Brothers II*. In determining whether an entity constitutes an alter ego of another, the Board evaluates whether the entities have "substantially identical management, business purpose, operation, equipment, customers, supervision, and ownership." *Lihli Fashions Corporation, Inc.*, 80 F.3d at 748. The focus, unlike the single employer analysis however, is on the disguised nature of the continued operation or an attempt to avoid labor obligations "through a sham transaction or technical change in operations." The Board also considers evidence of anti-union animus. *Goodman Piping*, 741 F.2d 10, 12 (2d Cir. 1984) (evidence of "anti-union animus or an intent to evade union obligations ... may be 'germane'" but it is not "necessary")(citation omitted).

The applications prepared and attested to by Spiezio confirm that the Waste Services/ECSI enterprise has the same ownership, management, labor relations, and operations that R&S Waste had. Indeed, Spiezio *is* the owner, management and labor relations of all three companies, and Spiezio ensured that the Waste Services/ECSI enterprise inherited R&S Waste's location, employees, customers and vehicles. The evidence also makes clear that Spiezio created the Waste Services/ECSI enterprise as a way of avoiding R&S Waste's remedial obligations from *Rogan Brothers I* and *Rogan Brothers II*, in addition to other liabilities.

Speizio's intent to avoid his obligations to the Union stemming from *Rogan Brothers I* was amply demonstrated by his repeated pleas to the Union to withdraw the unfair labor practice charges against Rogan Brothers in 2011, at a time when Speizio was exercising full control over both R&S Waste and Rogan Brothers, and at a time when the Region had already initiated unfair labor practice proceedings against Rogan Brothers in *Rogan Brothers I*. Speizio's intent to avoid his obligations to the Union in both *Rogan Brothers I* and *II* are demonstrated by his subsequent emails to the Westchester County Solid Waste Commission, imploring the Commission to remove any mention of Rogan Brothers' name in his public filings related to R&S Waste. These emails requesting the Commission doctor or destroy evidence of Rogan Brothers' relationship to R&S Waste come on the heels of the Union's initial charges underlying *Rogan Brothers II* and upon the Region's authorization and issuance of complaint against R&S Waste in *Rogan Brothers II*, all of which allege that R&S Waste is jointly and severally liable with Rogan Brothers for a multitude of unfair labor practices.

Speizio's creation of the Waste Services/ECSI enterprise on the heels of the Second Circuit's enforcement of the Board's Order in *Rogan Brothers II* further illustrates Speizio's intent to avoid any monetary obligations flowing from that Order. Finally, Speizio's application for R&S Waste's Class A hauler license renewal which specifically omitted information about R&S Waste's liability under *Rogan Brothers I* and *Rogan Brothers II* and his follow-up communication with the Solid Waste Commission requesting that none of the application's information be released under a freedom of information request without his prior approval after redacting information at will, illustrates his propensity for disguising the nature of his enterprises and concealing material facts about them.

As a disguised continuance of R&S Waste, the Waste Services/ECSI enterprise is its alter ego and thus liable for R&S Waste's remedial obligations pursuant to *Rogan Brothers I* and *Rogan Brothers II. Howard Johnson Co. v. Detroit Local Executive Board*, 417 U.S. 249, 259 n.5 (1974); *Las Villas Produce, Inc. and Carmelo P. Caldero*, 279 NLRB No. 120, *2 (1986).

IV. APPLICATION OF THE FEDERAL DEBT COLLECTION PROCEDURE ACT PERMITS PREJUDGMENT RELIEF IN THIS MATTER

A. The Board may utilize the FDCPA to ensure collection of the backpay remedy owed to the Board by Respondents

The FDCPA allows the United States to recover a judgment on a debt owed to it or to obtain a remedy in connection with such a claim before judgment on the debt. *See* 28 U.S.C. § 3001(a). The Board is considered a representative of the United States for purposes of the FDCPA. 28 U.S.C. § 3002(15)(B).⁵ A debt under the FDCPA is defined as “an amount that is owing to the United States on account of a direct loan,” *Id.* § 3002(3)(A), or on account of a “fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond, or other source of indebtedness to the United States.” *Id.* § 3002(3)(B). Debts owed to the Board . . . are debts owed to the United States and are therefore collectible through the procedures established by the FDCPA.⁶ *NLRB v. E.D.P. Medical Computer Systems, Inc.*, 6 F.3d at 954; *NLRB v. Shane Steel Processing, Inc.*, 2007 WL 1608009, at *1. This applies as well to debts owing by third parties who may be held

⁵ The FDCPA definition of “United States” includes “an agency, department, commission, board, or other entity of the United States.” *Id.* *See also NLRB v. E.D.P. Medical Computer Sys.*, 6 F.3d 951, 954 (2d Cir. 1993).

⁶ The Board's efforts to collect the indebtedness owed by the named Respondent-Debtors in this case are undertaken by the Board in its capacity as a public agent effectuating federal labor law policies. *Nathanson v. NLRB*, 344 U.S. 25, 27 (1952). The Board is the sole entity entitled to liquidate and enforce the Board's remedial relief orders, including backpay awards. *Id.*

derivatively liable to the Board as alter egos, single employers or otherwise. *Shane Steel*, 2007 WL 1608009, at *1; *M&V Painting, Inc.*, 2001 WL 1829517, at *3.

As shown above and in the Board's Application, the Board's monetary claim is calculated to be \$612,010 including interest added through December 1, 2018. With the statutory ten percent (10%) surcharge authorized under the FDCPA, 28 U.S.C. § 3011, the Board seeks to protect by way of attachment, a total of \$673,211 through these prejudgment proceedings. The Board additionally alleges in the pending administrative compliance proceeding that R&S Waste is jointly liable with Rogan Brothers for the monetary remedy imposed by *Rogan Brothers I* as a single employer or successor employer, that Waste Services and ECSI are a single employer and/or single integrated enterprise, and together they constitute the alter ego of R&S Waste, thereby jointly and severally liable for R&S Waste's remedial obligations in *Rogan Brothers I* and *Rogan Brothers II*.

B. Prejudgment relief is appropriate and applicable to all Respondents

1. The statutory requirements for prejudgment relief under the FDCPA

The requirements the Board must satisfy in order to be entitled to a prejudgment remedy under the FDCPA are outlined in 28 U.S.C. § 3101(b). Specifically relevant here, under 28 U.S.C. § 3101(b)(1), the Board must show reasonable cause to believe that the debtor:

(B) has or is about to assign, dispose, remove, conceal, ill treat, waste or destroy property with the effect of hindering, delaying or defrauding the United States; [or]

(C) has or is about to convert the debtor's property into money, securities, or evidence of debt in a manner prejudicial to the United States with the effect of hindering, delaying, or defrauding the United States. . . .

Section 3102(a)(1) of the FDCPA further provides:

Any property in the possession, custody, or control of the debtor and in which the debtor has a substantial nonexempt interest, except earnings, may be attached

pursuant to a writ of attachment in an action or proceeding against a debtor on a claim for a debt and may be held as security to satisfy such judgment, and interest and costs, as the United States may recover on such claim.

Issuance of protective orders under the FDCPA is authorized by Section 3013, which states that “[t]he court may at any time on its own initiative or the motion of any interested person, and after such notice as it may require, make an order . . . regulating, extending, or modifying the use of any enforcement procedure under this chapter.” 28 U.S.C. § 3013; *see also* All Writs Act, 28 U.S.C. § 1651.

2. The circumstances of this case warrant both prejudgment attachment and a protective restraining order

The Region’s investigation demonstrates Spiezio’s pattern of repeatedly concealing and/or transferring his businesses and their assets, in an effort to avoid Respondents’ monetary liability to the Board. His repeated requests to the Solid Waste Commission to remove James Rogan’s name from R&S Waste’s license and specific request that none of the information in R&S Waste’s Class A hauler renewal application be released without his prior approval; his failure to list the pending Board cases against R&S Waste (as well as a lawsuit brought by the Union trust funds under ERISA) in that renewal application as specifically required; the changes to his companies’ names; the transfer of his employees to ECSI; and the transfer of vehicles from R&S Waste to Waste Services at a time when Spiezio was well aware of R&S Waste’s financial liability to the Board, make it abundantly clear that Respondents are seeking to evade compliance with Court enforced Board Orders, and make it likely that Respondents will be rendered financially insolvent before the Board is able to liquidate the amount of backpay owing through the pending compliance proceedings.

The Board accordingly has reasonable cause to believe that Respondents have or will “assign, dispose, remove, conceal, ill-treat, waste, or destroy property” and/or “ha[ve] or [are]

about to convert the debtor's property into money, securities, or evidence of debt in a manner prejudicial to the United States" with the effect of "hindering, delaying, or defrauding the United States" as required by 28 U.S. C. § 3101(b)(1)(B), (C).

The Region's investigation shows that Respondents own several waste hauling vehicles, which are located in Mt. Vernon and/or Yonkers, New York, and whose identifying characteristics, including their license plate and VIN numbers are listed on Exhibit DD to the Affidavit of Compliance Officer Rachel Kurtzleben. Having established that the Board is entitled to prejudgment relief under the FDCPA, it is therefore appropriate for this Court to issue a writ attaching these vehicles, the value of which is not to exceed \$673,211 to be held as security to satisfy an eventual liquidated judgment in this matter.

In addition to prejudgment attachment, as noted above, Section 3013 of the FDCPA grants the Court broad discretion to modify the use of any enforcement procedure available under the FDCPA, including entering protective restraining orders. *NLRB v. Nichols & Wright*, Misc. No. 3:07-00077, 2007 WL 4404092, 183 LRRM 2274 (S.D. W.Va. Aug. 17, 2007)(protective restraining order); *NLRB v. Shane Steel Processing, Inc.*, 2007 WL 1608009, at *1 (prejudgment writ of garnishment and protective restraining order); *NLRB v. Berkley Court, Inc.*, No. 2:06-x-50810, 2006 WL 4753379, at *1 (E.D. Mich. Aug. 25, 2006)(protective restraining order); *NLRB v. Korn's Bakery, Inc., et al.*, No. 06-250, 2006 WL 4128538, 181 LRRM 2530 (E.D.N.Y. Aug. 10, 2006)(same); *NLRB v. Westchester Lace, Inc.*, No. 05-373, 2005 WL 3635943, 178 L.R.R.M. 2815 (D.N.J. Nov. 2, 2005) (prejudgment writ of garnishment and protective restraining order).

The Board is seeking a protective restraining order here to prevent any continued concealment, transfer, or dissipation of assets by Respondents and to ensure that, to the extent

that the funds or property available through the prejudgment attachments are insufficient to satisfy the Board's monetary claim, other assets will be preserved. As set forth in the accompanying proposed protective restraining order, the Board asks that the Court impose, among other things, a requirement that Respondents each provide the Board with a list of assets and that they be precluded from, *inter alia*, selling, transferring, converting, dissipating, and/or disbursing assets without first setting aside sufficient funds to cover Respondents' monetary liability. Notwithstanding such proscriptions, the proposed protective restraining order would allow Respondents to expend monies on reasonably necessary and identifiable business expenses.

a. An *ex parte* application for prejudgment relief is both necessary and appropriate under the FDCPA.

The FDCPA itself explicitly contemplates that the type of relief sought by the Board herein will be considered by the Court and granted (assuming the Court concludes that the statutory requirements have been satisfied) on an *ex parte* basis. This reflects the commonsense understanding that notification to debtors of the filing of the Application, prior to granting of the requested relief, would undermine the effectiveness of the FDCPA by giving the debtors time to alienate, dissipate, and hide assets before the Court has the opportunity to consider and issue the Writ or protective order. As stated in 28 U.S.C. § 3004(c) notice to a debtor under the FDCPA, accordingly, is not required until "such time as counsel for the United States considers appropriate, but not later than the time a prejudgment or post-judgment remedy is put into effect under this chapter" at which time "counsel for the United States shall exercise reasonable diligence to serve on the debtor . . . the order granting such remedy and the notice required by Section 3101(d) or 3202(b)."

As required by Section 3101(d) of the FDCPA, 28 U.S.C. § 3101(d) the Board has prepared, for issuance by the Clerk of the Court, a Notice setting forth a description of the action and the procedures to be followed in this matter, and informing the Respondents of their right to a hearing, if they so desire, within five days of so notifying the Court. Not later than the time the Writ and Protective Restraining Order are put into effect, the Board will serve both as well as three copies of the "Clerk's Notice" and all applicable instructions required under the FDCPA⁷ on the named Respondents. Through these procedures all applicable due process rights are fully protected.

WHEREFORE, Petitioner respectfully requests that this Court grant the Board's Application, and pursuant to 28 U.S.C. § 3102, issue a prejudgment Writ of Attachment against all designated property of Respondents R&S Waste, Waste Services and ECSI in an amount not to exceed a total of \$673,211, and additionally that the Court issue a Protective Restraining Order, pursuant to 28 U.S.C. § 3013, *inter alia*, (1) restraining and enjoining Respondent-Debtors and all persons natural or corporate acting in concert or participation with them, from assigning, disposing, removing, and/or concealing assets, except as allowed under the Order, unless and until \$673,211 is deposited into a fiduciary account maintained in the U.S. Treasury, subject to modification and proper set off upon the receipt of any funds received or attached pursuant to the requested Writ of Attachment; and (2) requiring Respondents within 10 days of the Order, to provide the Board with a verified list of their assets that exceed \$500 in value. The monies in the Court's registry are to be held until such time as the Board's claim against Respondents is withdrawn, settled, or enforced by a court judgment.

⁷ See 28 U.S.C. § 3205(c)(3)(A)(B).

Respectfully submitted,

NATIONAL LABOR RELATIONS BOARD



Michael Bilik
michael.bilik@nlrb.gov
Field Attorney, NLRB Region 2
(212) 776-8665
26 Federal Plaza Ste 3614
New York, NY 10278

Helene D. Lerner
Supervisory Trial Attorney
Tel. (202) 273-3738
helene.lerner@nlrb.gov

Pia Winston, Trial Attorney
Tel. (202) 273-0111
pia.winston@nlrb.gov
Contempt, Compliance, &
Special Litigation Branch
Division of Legal Counsel
National Labor Relations Board
1015 Half Street, SE
Fourth Floor
Washington, D.C. 20003
Fax: (202) 273-4244

Dated at Washington, D.C.
this 17th day of December, 2018