

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 32**

**SAFEWAY, INC. (TRACY DISTRIBUTION CENTER)**

**and**

**Case 32-CA-222546**

**TEAMSTERS LOCAL 439, INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

On January 15, 2019, Respondent Safeway, Inc. (Tracy Distribution Center) (Respondent) filed a Motion for Summary Judgment in Case 32-CA-222546 (Motion). Pursuant to Section 102.24(b) of the Board's Rules and Regulations, Counsel for the General Counsel files this timely Opposition respectfully urging the Board to deny Respondent's Motion because Respondent's Answer denies core allegations of the Complaint, which has put material issues and facts in dispute. Even if the Board accepts Respondent's legal theory as argued in the Motion, genuine issues of material fact exist regarding the apparent relevancy of the Union's information request. Thus, as will be shown below, summary judgment is inappropriate.

**I. INTRODUCTION**

On June 20, 2018, Teamsters Local 439, International Brotherhood of Teamsters (the Union) filed a charge alleging that Respondent violated Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act (the Act) when it refused to provide, and delayed in providing, relevant and necessary information to the Union. Complaint and Notice of Hearing (Complaint)

issued setting the matter for hearing before an ALJ. (Exhibit A.) Respondent filed an Answer to the Complaint denying allegations that go to the heart of the alleged violations on November 26, 2018. (Exhibit B.) The hearing is scheduled to begin on February 13, 2019.

The Complaint alleges that the Union on March 12, 2018, March 22, 2018, and June 7, 2018, sought thirteen items from Respondent regarding Respondent's use of lumpers, or non-unit employees who unload cargo from trucks at Respondent's Tracy, California facility. As stated in Respondent's Motion, the collective-bargaining agreement between the parties provides that only bargaining unit employees shall perform this type of "lumper" work with the exception of "[i]nbound freight loads that include unloading as part of the purchase agreement." The Complaint also alleges that Respondent delayed in providing some of the requested information.

The Counsel for the General Counsel's theory of the case is that the Union is entitled to this information by virtue of its right to protect the dissipation of unit work by policing this portion of the contract. As such, the information requested is presumptively relevant. Respondent, however, in its Answer and its Motion, makes plain that it disputes the relevancy of the information. Respondent also denies in its Answer that it delayed in furnishing information to the Union.

Respondent's Motion is grounded on its view that *Disneyland Park*, 350 NLRB 1256 (2007) controls the legal issues in this case. Although the Counsel for the General Counsel disagrees with this view, even assuming that *Disneyland Park* applies, genuine issues of material fact exist regarding the relevancy of the requested information that an ALJ must resolve.

## **II. RESPONDENT'S MOTION SHOULD BE DISMISSED BECAUSE GENUINE ISSUES OF MATERIAL FACTS EXIST**

Respondent has placed genuine issues of material fact at issue by denying core Complaint allegations in its Answer, and through the legal theory it argues in its Motion.

### **A. Respondent's Answer Denies Core Allegations of the Complaint**

Respondent's Motion should be denied as genuine issues of material fact exist as evidenced by Respondent's Answer.

Section 102.24(b) of the Board's Rules and Regulations provides that,

[t]he Board in its discretion may deny [a motion for summary judgment] where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist.

It is the burden of the moving party to establish by admissible evidence that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985) (citing *Stephens College*, 260 NLRB 1049, 1050 (1982)); see also Fed. R. Civ. P. 56(c) (relied upon by *Stephens College*, supra). In summary judgment proceedings, the pleadings and evidence are viewed in the light most favorable to the nonmoving party. *Eldeco, Inc.*, 336 NLRB 899,900 (2001). Notably, the Board has held that a denial of the complaint by way of an answer raises material issues of fact which would defeat a motion for summary judgment. *Southwest Louisiana Hospital d/b/a Lake Charles Memorial Hospital*, 240 NLRB 1330, 1331 n.4 (1979) ("a simple denial of unlawful conduct is sufficient to raise a material question").

Here, Respondent denies paragraphs 7(d), 8(a)-(c), 9, and 10 of the Complaint. (Exhibit B.) By denying all allegations regarding the relevancy of the Union's information request, or that it delayed in providing information, the Counsel for the General Counsel must present evidence to establish those allegations. This alone is a basis to deny Respondent's Motion.

### **B. General Counsel is Entitled to Present Evidence to Demonstrate Its Theory that the Information Requested by the Union is Presumptively Relevant**

The relevance of an information request is analyzed against a liberal "discovery" standard

of relevance as distinguished from the standard of relevance in trial proceedings. *Boeing Co.*, 363 NLRB No. 63, slip op. at 3 (2015), citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432 fn. 6 (1967). The standard of relevance is construed “broadly to encompass any matter that bears on or that reasonably could lead to other matter[s] that could bear on, any issue...” *Id.*, citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, *Hickman v. Taylor*, 329 U.S. 495, 51 (1947). The information requested only has to have some bearing on the issues between the parties, and thus, “an employer must furnish information that is of even probable or potential relevance to the union’s duties.” *Id.*, citing *Pfizer Inc.*, 268 NLRB 916 (1984); *Conrock Co.*, 263 NLRB 1293, 1294 (1982).

Indeed, in assessing the relevance of requested information a union claims is necessary to investigate whether an employer has violated a collective-bargaining agreement, “the Board does not pass on the merits of the union’s claim... thus, the union need not demonstrate that the contract has been violated in order to obtain the desired information.” *United States Postal Service*, 364 NLRB No. 27, 5 (2016), citing *Island Creek Coal Co.*, 292 NLRB 480, 487 (1989), *enfd.* 899 F.2d 1222 (6th Cir. 1990). Further, an employer “is obligated to provide a union with requested information that is relevant to the union’s proper performance of its collective-bargaining obligations.” *Allways East Transportation, Inc. & Int’l Bhd. of Teamsters, Local 445*, 365 NLRB No. 71 (2017).

In *Boeing Co.*, *supra* at 3, the parties’ collective-bargaining agreement explicitly provided that the employer had the right to determine whether a condition existed necessitating a workforce reduction and how many employees would be involved in such a reduction. Even though the collective-bargaining agreement specifically granted the employer the right to determine when and how many employees would be affected by a workforce reduction, the

Board deemed the information requested by the union regarding the relocation and elimination of bargaining unit work to be presumptively relevant. *Id.*

Here, similar to *Boeing*, the information requested by the Union is presumptively relevant because it is necessary to its statutory duties to police the terms of the collective-bargaining agreement that protects unit work. The parties' collective-bargaining agreement provides that only bargaining unit employees shall operate equipment to unload freight except when inbound freight loads "include unloading as part of the purchase agreement." In these limited circumstances, non-unit lumpers may unload freight when the purchase agreement between Respondent and a seller so provides. As such, Respondent's Motion cites prior arbitration decisions as a basis to limit the Union's requests for information to purchase orders or parts of purchase agreements between Respondent and sellers only, as a means of addressing potential violations of the contract. This argument is predicated on the supposition that Respondent only executes agreements with sellers that allow lumpers to unload freight. Consequently, the Union would only need to review those agreements to police the contract and preserve unit work. However, under *Boeing*, the Union is entitled to information necessary to determine whether Respondent is in fact removing bargaining unit work from the unit in violation of the contract by entering into agreements with other non-seller entities to allow lumpers to unload freight in place of bargaining unit employees. Indeed, Respondent's own Motion admits that Respondent engages non-seller transportation brokers to contract with independent trucking companies to pick up product from the vendor and deliver it to its distribution center. Motion, p. 7, line 5-7. Such contracts are not contemplated by the limited exception carved out in the collective-bargaining agreement. At a minimum, this fact is disputed and the Counsel for the General Counsel is entitled to introduce evidence on this point before an ALJ. As such, Counsel for the

General Counsel is entitled to put on evidence and testimony at hearing to provide evidence regarding the context for the information request to establish that the Union's information requests are presumptively relevant.

**C. Even if the Information Requested is Not Deemed to be Presumptively Relevant, Genuine Issues of Material Fact Remain under *Disneyland Park***

However, even under Respondent's theory of the case, if the information is not deemed to be presumptively relevant, genuine issues of material facts exist as to the relevance of the Union's information requests. If *Disneyland Park*, 350 NLRB 1256, 1258 (2007), applies to the instant case, as the Union is seeking information regarding third-party subcontracting agreements, the General Counsel is entitled to present evidence before an ALJ demonstrating that the relevance of the information requested should have been apparent to Respondent under the circumstances. See also *Allison Co.*, 330 NLRB 1363, 1367 fn. 23 (2000); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016, 1018-1019 (1979), *enfd.* in relevant part 615 F.2d 1100 (8th Cir. 1980). If requested information pertains to matters outside the bargaining unit and is not presumptively relevant, the information must still be provided if the surrounding circumstances put the employer on notice as to the relevance of the information. *Marathon Petroleum Co.*, 366 NLRB No. 125, 2 (2018), citing *National Extrusion & Mfg. Co.*, 357 NLRB 127 (2011). Where such a showing of relevance is required, the burden is "not exceptionally heavy." *Id.*, citing *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). To satisfy this burden, the Union must only demonstrate "a reasonable belief, supported by objective evidence, that the requested information is relevant." *Disneyland Park*, *supra* at 1258; see also *Knappton Maritime Corp.*, 292 NLRB 236, 238-239 (1988).

Indeed, in *Marathon Petroleum*, *supra* at 2, the Board found that the surrounding circumstances and direct evidence presented at hearing demonstrated the relevance of the union's

information requests regarding the employer's subcontracting with third parties. Similarly, in *United States Postal Service*, supra, the Board found that information requested by the union concerning potential subcontracting and outsourcing by the employer was relevant to the union's policing of its collective-bargaining agreement and was apparent at the time of the requests. In that case, the Board upheld the ALJ's decision, which stated that information requested to enable a union to assess whether a respondent has violated a collective-bargaining agreement by contracting out unit work "is relevant to a union's representative status and responsibilities." *United States Postal Service*, supra at 5; see also *AK Steel Corp.*, 324 NLRB 173, 184 (1997). Moreover, the Board has found that subcontracting of unit work impacts a bargaining unit even when unit employees do not suffer loss of employment or reduced hours or wages as a result of the contracting. *Id.*, citing *Mi Pueblo Foods*, 360 NLRB No. 116, slip op. at 1-3 (2014).

As such, to the extent that *Disneyland Park* applies, this raises a genuine issue of material fact as to whether the relevance of the Union's information requests should have been apparent to Respondent under the circumstances. The Board has held that a respondent can be apprised of the relevancy of requested information through the testimony of union officials at the unfair labor practice hearing. *Id.*; see also *National Grid USA Service Company Inc.*, 348 NLRB 1235, 1246-1247 (2006); *Ormet Aluminum Mill Products*, 335 NLRB 788, 802 (2001); *Barnard Engineering Co.*, 282 NLRB 617, 620 (1987). Indeed, in *Ormet Aluminum Mill Products*, supra, the Board found that the respondent employer was required to provide the union with requested information pertaining to subcontracting including the subcontracts themselves, all correspondence between the employer and the subcontractor, and all invoices from the subcontractor for a specified time period. Moreover, "the adequacy of information requests to apprise a respondent of the relevancy of the information must be judged in light of the entire

pattern of facts available to respondent.” *Id.*, citing *Ohio Power Co.*, 216 NLRB 987, 990-991 fn. 9 (1975), *enfd.* 531 F.2d 1381 (6th Cir. 1976). Thus, Counsel for the General Counsel is entitled to put on testimony and other evidence at hearing to demonstrate the relevancy of the information requested by the Union and to establish that the relevance should have been apparent to Respondent under the circumstances. While Respondent’s Motion points to correspondence between the parties and the arbitrator’s decisions, the Counsel for the General Counsel and the Charging Party Union is entitled to introduce other evidence and testimony. Indeed, at a minimum, it is entitled to introduce evidence to dispute Respondent’s interpretation of the arbitrator’s decisions, as argued in its Motion.

### III. CONCLUSION

Based on the above, Respondent’s motion for summary judgment should be denied because there are substantial and material issues of fact and law which may best be resolved at a hearing before an ALJ. See *Lake Charles Memorial Hospital*, 240 NLRB 1330, 1331 (1979). There are genuine issues of material fact and law with respect to whether the Union’s information requests are presumptively relevant, and to the extent that they are deemed not to be, whether the circumstances and pattern of facts available to Respondent should have made their relevancy apparent at the time of the requests. Thus, Board law precludes the granting of Respondent’s Motion and consequently, it should be denied.

**DATED AT** Oakland, California this 23rd day of January, 2019.

/s/ Coreen Kopper

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Coreen Kopper  
Counsel for General Counsel  
National Labor Relations Board  
Region 32  
1301 Clay St., Suite 300N  
Oakland, CA 94612-5224

**EXHIBIT A**

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**SAFeway, INC. (TRACY DISTRIBUTION  
CENTER)**

**and**

**Case 32-CA-222546**

**TEAMSTERS LOCAL 439, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by Teamsters Local 439, International Brotherhood of Teamsters (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Safeway Inc. (Tracy Distribution Center) (Respondent) has violated the Act as described below.

1.

The charge in this proceeding was filed by the Union on June 20, 2018, and a copy was served on Respondent by U.S. mail on June 22, 2018.

2.

(a) At all material times, Respondent has been a corporation with an office and distribution center in Tracy, California, (Tracy Distribution Center) and has been engaged in the distribution and retail sale of grocery items and related products.

(b) In conducting its operations described above in paragraph 2(a), during the 12-month period ending September 30, 2018, Respondent derived gross revenues valued in excess of \$500,000.

(c) In conducting its operations described above in paragraph 2(a), during the 12-month period ending September 30, 2018, Respondent purchased and received at its Tracy Distribution Center goods valued in excess of \$50,000 which originated from points outside the State of California.

3.

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5.

At all material times, the following individuals have held the positions set forth opposite their names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Jack Mixey	-	Assistant Director
Peggy Schumacher	-	Labor Relations Manager
Unnamed	-	Respondent's legal counsel

6.

(a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Warehouse employees, including GH/HBC Variety Warehouse employees, Grocery Warehouse employees, Frozen Food Warehouse employees, Meat Warehouse employees, Produce Warehouse employees, Clerical (CRT) employees, Maintenance employees, Salvage/Crate Yard

employees, Drivers and Transportation Department employees, Truck Repair Department employees, excluding all other office clerical employees, guards and supervisors, as defined in the Act.

(b) Since at least October 2, 2011, and at all material times, the Union has been the exclusive collective-bargaining representative of the Unit and has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from October 2, 2016 to April 1, 2021 (the Agreement).

(c) At all times since at least October 2, 2011, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(d) The Agreement, in Article II, Section A, provides in relevant part:

Only bargaining unit employees of the Company shall operate forklift equipment, tow motors and/or transporters of any kind within the Distribution, except in the following situations:

1. Inbound freight loads that include unloading as part of the purchasing agreement.

7.

(a) On March 12, 2018, the Union requested, in writing, that Respondent furnish the Union with the following information concerning Respondent's use of lumpers (lumpers unloading goods as part of a purchasing agreement):

- (1) A copy of all purchase orders for any goods delivered to the warehouse for the period January 1, 2016 to the present;"
- (2) A copy of all vendor agreements for the period January 1, 2016 to the present;
- (3) A copy of all company policies with respect to provisions or language to be included in vendor agreements or purchase orders for any goods for the period January 1, 2016 to present;

- (4) A list of all vendors with whom Safeway has purchase orders for any goods that provide that the vendor will provide the transportation and/or unloading of such goods delivered by the vendor for the period January 1, 2016 to present;
- (5) A list of all vendors for whom there has been no agreement that the vendor will be responsible for the transportation and/or unloading of such goods delivered by the vendor;
- (6) A copy of any internal company memoranda or policies regarding negotiations of agreements with vendors to provide transportation and/or unloading of goods provided by the vendor;
- (7) A copy of any agreement between Safeway and any lumber service which was in effect for the period January 1, 2016 to present;
- (8) A copy of any policy that Safeway has in effect with respect to lumpers who were on Safeway's property for the period January 1, 2016 to present;
- (9) A copy of all contracts with brokers and/or network of transportation companies that Safeway uses to deliver product to Tracy Distribution Center.

(b) On March 22, 2019, the Union reiterated its requests for the information described above in paragraph 7(a)(7) and 7(a)(9) and requested the following additional information regarding Respondent's use of lumpers:

- (1) If Safeway has any arrangements of any kind with brokers or uses brokers, please provide a list of those brokers;
- (2) [T]he dates during which Safeway has any arrangement or contract with those brokers; and
- (3) [A] list of the goods which have been purchased through the services of those brokers.

(c) On June 7, 2018, in writing, the Union reiterated its request for the information described above in paragraphs 7(a)(7), 7(a)(9), 7(b)(1) through 7(b)(3), and requested the following additional information:

(1) A copy of all communications electronic or written between Safeway and all lumper services from January 1, 2017 to the present.

(d) The information requested by the Union, as described above in paragraphs 7(a)(1) through 7(a)(9), 7(b)(1) through 7(b)(3) and 7(c)(1), is necessary for, and relevant to, the Union's performance of its duties as the exclusive bargaining representative of the Unit.

(e) On April 26, 2018, Respondent provided certain document in response to the information requests described above in paragraphs 7(a)(1) and (7)(a)(2).

8.

(a) Since about March 22, 2018, Respondent delayed in furnishing the Union with the information described above in paragraphs 7(a)(1) and 7(a)(2), and it has failed and refused to furnish and/or delayed in furnishing the Union with the information described above in paragraphs 7(a)(3) through 7(a)(9).

(b) Since about June 7, 2018, Respondent has failed and refused to furnish and/or delayed in furnishing the Union with the information described above in paragraphs 7(b)(1) through 7(b)(3).

(c) Since about June 21, 2018, Respondent has failed and refused to furnish and/or delayed in furnishing the Union with the information described above in paragraph 7(c)(1).

9.

By the conduct described above in paragraph 8, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

10.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Complaint. The answer must be **received by this office on or before November 9, 2018, or postmarked on or before November 8, 2018.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional

means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on January 24, 2019, at 9:00 a.m. the Oakland Regional Office of the National Labor Relations Board located at 1301 Clay Street, Suite 300N, Oakland, California 94612, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

**DATED AT** Oakland, California, this 26<sup>th</sup> day of October 2018.

/s/ Valerie Hardy-Mahoney

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Valerie Hardy-Mahoney  
Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street Suite 300N  
Oakland, CA 94612-5224

Attachments

**EXHIBIT B**

**EXHIBIT B**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

SAFEWAY, INC. (TRACY DISTRIBUTION  
CENTER)

and

Case No. 32-CA-222546

TEAMSTERS LOCAL 439,  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS

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**RESPONDENT SAFEWAY, INC.'S ANSWER  
TO COMPLAINT AND NOTICE OF HEARING**

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NOW COMES Respondent Safeway, Inc. (herein "Respondent"), and in answer to the National Labor Relations Board's Complaint issued in the above-captioned matter on October 26, 2018, hereby states as follows.

**GENERAL DENIAL**

Except as otherwise expressly stated herein, Respondent denies each and every allegation contained in the Complaint, including, without limitation, any allegations contained in the preamble, headings, or subheadings of the Complaint, and Respondent specifically denies that it violated the National Labor Relations Act ("NLRA") in any of the manners alleged in the Complaint or in any other manner. Pursuant to Section 102.20 of the Board's rules, averments in the Complaint to which no responsive pleading is required shall be deemed as denied. Respondent expressly reserves the right to seek to amend and/or supplement its Answer as may be necessary.

**RESPONSES TO SPECIFIC ALLEGATIONS OF THE  
COMPLAINT**

1. Respondent admits the allegations contained in Paragraph 1, Paragraph 2 subparts (b) and (c), Paragraph 3, and Paragraph 4 of the Complaint. Respondent denies the

allegation in Paragraph 2(a) that the Tracy Distribution Center conducts retail sale of grocery items and related products to consumers, but otherwise admits the allegations contained in Paragraph 2(a).

2. Respondent denies the allegations contained in Paragraph 5 regarding Jack Mixey and Ms. Schumacher's job titles and Ms. Schumacher's her first name is not "Peggy" Respondent lacks sufficient knowledge or information at this time to form a belief about the truth of the allegation in Paragraph 5 that an "unnamed" individual has been Respondents' legal counsel at all material times because the allegation is vague and ambiguous and, for that reason, Respondent denies the allegation. Moreover, while it is not alleged that any of the named and unnamed individuals committed any unfair labor practices, Respondent denies that any unfair labor practices were committed by the such individuals, or anyone else.

3. Respondent admits the allegations contained in Paragraph 6, subparts (a), (b), and (c) of the Complaint. Respondent admits the allegations contained in Paragraph 6(d), except clarifies that the quote to the Agreement is missing the word in bold – "any kind within the **Distribution Center**"

4. Respondent admits the allegations contained in Paragraph 7, subparts (a), (b), (c), and (e), except that the year for the March 22, 2018 letter is stated incorrectly in subpart (b). Respondent denies the allegations in Paragraph 7(d).

5. Respondent denies the allegation contained in Paragraph 8(a)-(c).

6. Respondent denies the allegations contained in Paragraphs 9 and 10 of the Complaint.

7. All allegations contained in the Complaint that are not specifically and expressly admitted in this Answer are denied by Respondent.

## AFFIRMATIVE DEFENSES

For its affirmative defenses against the Complaint, Respondent realleges those facts admitted and alleged above and further alleges:

1. The allegations of the Complaint do not support recovery under the National Labor Relations Act (NLRA) because they fail to state a claim.
2. Complainant has not satisfied the administrative pre-requisites to bringing the alleged action.
3. The General Counsel's allegations do not support recovery under the NLRA because they involve matters outside the relevant limitations period, and are untimely and/or barred by the six month statute of limitations set forth in §10(b) of the NLRA.
4. The Complaint is so vague and lacking in detail that Respondent is unable to understand the charges and issues to be considered at the trial.
5. The Charges underlying the Complaint are so vague and lacking in detail that Respondent is unable to understand the allegations.
6. The Complaint does not state what remedy is sought, so Respondent is unable to determine if the remedy sought exceeds the Board's authority.
7. Compelled or inevitable disclosure of Respondent's trade secrets, and other proprietary interests, without compensation or due process would constitute an unconstitutional taking in violation of the 5<sup>th</sup> Amendment in the United States Constitution.
8. Except for the purchase orders for inbound loads going back up to 30 days, the documents and information requested by the Union have no relevance to determining whether lumpers were appropriately used at the Tracy Distribution Center, and the Union has failed to show any such relevance. The Union, not the Respondent, has the burden of proof on any relevance issue. The Respondent has replied fully to the Union's information requests and clearly refuted the Union's alleged relevance arguments. In addition, such agreements are not

presumptively relevant under the NLRA.

9. Respondent reserves the right to assert additional affirmative defenses.

WHEREFORE, Respondent having fully answered the Complaint, prays that the Complaint be dismissed, and that the Board grant Respondent whatever other relief it deems just and fair.

DATED: November 26, 2018

KLEIN, HOCKEL, IEZZA & PATEL P.C.



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Jonathan Allan Klein, Esq.  
Attorney for Respondent Safeway, Inc.

## STATEMENT OF SERVICE

I hereby certify that I served the foregoing **RESPONDENT SAFEWAY, INC.'S ANSWER TO THE COMPLAINT AND NOTICE OF HEARING** as indicated below.

**(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy through Klein, Hockel, Iezza & Patel P.C.'s electronic mail system from edenman@khiplaw.com to the email addresses set forth below.

On the following parties in this action:

David A. Rosenfeld  
Weinberg, Roger & Rosenfeld  
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Valerie Hardy-Mahoney  
Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612  
Valerie.hardy-mahoney@nlrb.gov

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 26th day of November 2018 at San Francisco, California.



\_\_\_\_\_  
Ezra M. Denman, Paralegal

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

SAFeway, INC. (TRACY DISTRIBUTION  
CENTER)

and

TEAMSTERS LOCAL 439, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

Case 32-CA-222546

Date: January 23, 2019

**AFFIDAVIT OF SERVICE OF COUNSEL FOR THE GENERAL COUNSEL'S  
OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

Jonathan Allan Klein, Esq.  
Klein, Hockel, Iezza & Patel, P.C.  
455 Market Street, Suite 1480  
San Francisco, CA 94105  
VIA EMAIL: [jaklein@khiplaw.com](mailto:jaklein@khiplaw.com)

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Office of the Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001  
VIA E-FILE

January 23, 2019

Ida Lam, Designated Agent of NLRB

Name

/s/ Ida Lam

Signature