

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 32

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UFCW LOCAL 5 (SAFEWAY STORES),  
Union-Respondent

and

Case 32-CB-219981

CHRISTOPHER RATANA-KELLEY,  
Employee-Charging Party,

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**CHRISTOPHER RATANA-KELLEY’S MOTION TO STRIKE  
UFCW LOCAL 5’S ANSWER AND AFFIRMATIVE DEFENSES**

**INTRODUCTION**

Charging Party Christopher Ratana-Kelley hereby moves to strike Respondent UFCW Local 5’s Answer and “affirmative defenses.” This Motion to Strike should be granted because Local 5 and its Counsel, David Rosenfeld, are making a mockery of this proceeding and the Board’s processes via their Answer and “affirmative defenses.” Local 5 and Mr. Rosenfeld are on an ideological tirade to deflect scrutiny of Local 5’s actions, and to delay and obstruct this case—which raises *two simple legal issues* about whether Local 5 met *its* financial disclosure obligations to nonmembers and objectors under *CWA v. Beck*, 487 U.S. 735 (1988).<sup>1</sup> (See Region 32’s Complaint, Ex. 1).

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<sup>1</sup> The first legal issue is described in General Counsel Memorandum 19-04, *Unions’ Duty to Properly Notify Employees of Their General Motors/Beck Rights and to Accept Dues Checkoff Revocations after Contract Expiration* (Feb. 22, 2019), concerning a union’s initial disclosure obligation to nonmembers. See, e.g., *California Saw & Knife Works*, 320 NLRB 224, 233 (1995) (unions must provide nonmembers with “sufficient information” to exercise their rights); compare *Food & Commercial Workers Local 700 (Kroger Limited Partnership)*, 361 NLRB 420 (2014) (adhering to the precedent in *California Saw & Knife* regarding the requirements for

## FACTS

Charging Party Christopher Ratana-Kelley is an “employee” under NLRA Section 152(3). He also happens to be a minor, a fact that is irrelevant under the NLRA’s definition of “employee.” Charging Party was employed by Safeway Stores in a bargaining unit represented by Local 5. Upon being hired and afterwards, Charging Party refused to join the Local 5, as is his right under NLRA Section 7 and cases like *NLRB v. Gen. Motors Corp.*, 373 U.S. 734 (1963). Although Charging Party was a nonmember, Local 5 failed to provide him with a good faith estimate or actual determination of the amount of fees he would owe if he became a *Beck* objector (which he subsequently did on or about April 10, 2018). After he became a *Beck* objector, the Union failed to justify its fee by not giving Charging Party a breakdown of its local expenditures. Those facts are the sum and substance of the Complaint Region 32 issued in this case. (*See* Complaint, Ex. 1; *see also* General Counsel Memorandum 19-04, Unions’ Duty to Properly Notify Employees of Their *General Motors/Beck* Rights and to Accept Dues Checkoff Revocations after Contract Expiration (Feb. 22 2019), concerning a union’s disclosure obligation to nonmembers).

In response to Region 32’s straightforward Complaint (Ex. 1), Local 5 and its Counsel filed a truly startling Answer that is a mockery and abuse of this entire process, baselessly accusing the Regional Director, the General Counsel, the ALJ and Board Members Ring, Kaplan and Emanuel of unethical conduct for either participating despite their allegedly unlawful

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initial *Beck* notices), order vacated by *Sands v. NLRB*, 825 F.3d 778 (D.C. Cir. 2016) with *Penrod v. NLRB*, 203 F.3d 41, 47 (D.C. Cir. 2000) (potential objectors must be told the percentage of dues chargeable to them, “for how else could they ‘gauge the propriety of the union’s fee,’” citing *Chicago Teacher’s Union, Local No. 1 v. Hudson*, 475 U.S. 292, 306 (1986)). The second issue is whether the Respondent violated the Act by failing to give Charging Party a proper breakdown of its local expenditures after he objected. *Teamsters Local 75 (Schreiber Foods)*, 365 NLRB No. 48, at slip op. \*3 (2017). None of these cases delved into the Charging Party’s thought processes, psychology, or internal family dynamics.

appointments or for not recusing themselves in advance. (Local 5 Answer, Ex. 2). Beyond impugning the character of each and every Board personnel even remotely connected to this case, Local 5's Answer also impugns the integrity of Charging Party, his Counsel and the successful public interest, charitable organization that employs those Counsel.<sup>2</sup> Even more bizarrely, the "twenty first affirmative defense" listed is that "The NLRB uses FedEx a notorious violator of the Act and other laws designed to protect workers. The Board and anyone representing charging party should be barred from using FedEx."

Highlighting the irrelevance and hyperbole of the Answer and "affirmative defenses," and the three subpoenas served by Local 5 on the Charging Party and his parents (see Ex. 3-5), Local 5's Answer impugns the Charging Party with the following frivolous and irrelevant contention: "SECOND AFFIRMATIVE DEFENSE -- The Complaint is barred because the Charging Party was unlawfully, illegally and improperly coerced into filing the charge. The Charging Party did not make a free choice to file the charge."

This *apparently*, is the basis of Local 5's subpoena to the Charging Party and the two related subpoenas of his parents, Nos. B-1-14TNZTZ (to Jack Tarkoff) and B-1-14TNSVZ (to Siriwan Tarkoff) (See Exs. 3-5). Local 5 and its Counsel have raised their "affirmative defenses" to hijack this case—about two simple *Beck* financial disclosure issues—to engage in a

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<sup>2</sup> Despite Local 5's conspiratorial insinuations to the contrary, the National Right to Work Legal Defense Foundation, Inc. is a charitable, *bona fide*, IRS-approved, legal aid organization engaged in legitimate legal aid work. See e.g., *United Auto Workers v. National Right To Work Legal Defense Foundation, Inc.*, 584 F. Supp. 1219, 1223-24 (D.D.C. 1984), *affirmed*, 781 F.2d 928, 934-35 (D.C. Cir. 1986); *National Right to Work Legal Defense and Education Foundation, Inc. v. United States*, 487 F. Supp. 801, 808 (E.D.N.C. 1979). To Local 5's apparent chagrin, Foundation staff attorneys have successfully litigated a host of cases it does not like, such as *Janus v. AFSCME*, 138 S. Ct. 2448 (2018); *Communications Workers v. Beck*, 487 U.S. 735 (1988); and *Kent Hospital*, 367 NLRB No. 94 (March 1, 2019). And, in any event, all of Local 5's misdirection about these organizations is 100% irrelevant because neither the National Right to Work Committee or the National Right to Work Legal Defense Foundation has the slightest thing to do with the relevant facts of this case.

psychological, intra-family fishing expedition regarding the Charging Party's thought processes, his discussions with his parents, and his and/or his parents' discussions (if any) with his Counsel. Given this background, it is clear that the Answer and "affirmative defenses" filed by Local 5—to conjure a rationale for the three invasive subpoenas—must be stricken.<sup>3</sup>

### ARGUMENT

Local 5's Answer and "affirmative defenses" are a vexatious sham, and raise frivolous and dilatory "defenses" as a smokescreen to defeat the purpose of Sections 102.20 through 23 of the Rules and Regulations. Local 5 has served three irrelevant and vexatious subpoenas to the Charging Party and his family—who have nothing in the world to do with Local 5's *Beck* disclosure (or lack thereof)—precisely in accordance with its frivolous "affirmative defenses."

Board law prohibits a respondent from asserting a frivolous or boilerplate affirmative defense "with the mere hope of discovering evidence to support it," for that tactic would improperly turn any unfair labor practice proceeding into the vehicle for an "open-ended inquiry" or "fishing expedition" conducted by the respondent. *Flaum Appetizing Corp.*, 357 NLRB 2006, 2010 (2011). In this case, Local 5's pursuit of Charging Party's personal, intra-family communications and dynamics to argue that he is disqualified from being a Charging Party is beyond absurd, and is precisely the sort of sham tactic that *Flaum Appetizing* categorically rejected.

Here, as shown above, Local 5's Answer, "affirmative defenses" and the three subpoenas that rely upon those "defenses" do not relate to anything even conceivably relevant to Region 32's Complaint (Ex.1), because a fishing expedition into the thought processes, psychology and inter-family relationships of the Ratana-Kelley/Tarkoff family, and/or their relationship with the

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<sup>3</sup> It should be noted that the Charging Party and his parents have all filed petitions to revoke the subpoenas, which are pending decision at this time.

Charging Party's Counsel, is completely irrelevant if not scandalous. Charging Party is an employee under the Act, entitled to all the rights and remedies afforded him. That Local 5 and its Counsel don't like him is no grounds to allow their abusive Answer, "affirmative defenses" and subpoenas to stand.

Moreover, even assuming Local 5's bizarre and unfounded "affirmative defense" that the Charging Party was "coerced" into filing this charge was true, that defense is ultimately irrelevant. Such a contention about a Charging Party's motivations is not a recognized defense to what *the General Counsel* claims is required of Local 5 under the Act. (See Complaint, Ex.1 and General Counsel Memorandum 19-04, *Unions' Duty to Properly Notify Employees of Their General Motors/Beck Rights and to Accept Dues Checkoff Revocations after Contract Expiration* (Feb. 22, 2019)).

This ALJ hearing is being held on the basis of *Region 32's* complaint, which is based upon *its* factual findings conducted after an investigation. The General Counsel and Region 32 have determined to issue the Complaint to enforce the Act—not any private litigant's rights. The NLRA does not even require that charging parties have personal standing to file charges. *NLRB v. Ind. & Mich. Elec. Co.*, 318 U.S. 9, 17-18 (1943) ("When a Board complaint issues, the question is only the truth of its accusations. The charge does not even serve the purpose of a pleading. Dubious character, evil or unlawful motives or bad faith of the informer cannot deprive the Board of its jurisdiction to conduct the inquiry."). Of course, none of these psychological and intra-family issues posed by Local 5 to harass the Ratana-Kelley family are relevant here, as this case is simply one in which a grocery store employee (who happens to be a minor) was not given legally required financial information about Local 5's full dues vs. reduced financial core fee calculations. Local 5 cannot assert frivolous "affirmative defenses" to its own illegal conduct and

then use those defenses as an opportunity to conduct a fishing expedition into the Charging Party's family dynamics.

In this case, "ordinary rules of pleading" support striking "affirmative defenses" where a respondent has "articulated no factual support (or reason to believe it could obtain such factual support)" for the defense. *Flaum Appetizing Corp.*, 357 NLRB at 2011; NLRB Casehandling Manual, Part One, Unfair Labor Practice Proceedings, Sec. 10280.2 (addressing motions to strike an "improper or deficient answer" containing "scandalous or indecent matter"); see also *Triple A Fire Protection, Inc.*, 353 NLRB 838, 839-41 (2009) (granting motion to strike filed by charging party).

Where, as here, the "affirmative defenses" in support of Local 5's wild-eyed theories and subpoenas are insufficient as a matter of law, the defenses should be stricken from the Respondent's answer and no further proceedings on the defense should be held. See, e.g., *Greyhound Lines, Inc.*, 319 NLRB 554, 557 (1995) (affirming grant of motion to strike conflict of interest defense); *Murcel Mfg. Corp.*, 231 NLRB 623, 625-26 n.10 (1977) (affirming grant of motion to strike and stating: "the [ALJ] correctly exercised his discretion in striking Respondent's affirmative defenses related to alleged race and sex discrimination by the Union. See *N.L.R.B. v. Bancroft Manufacturing Company, Inc.*, 516 F.2d 436, 445-447 (C.A. 5, 1975); *The Firestone Tire & Rubber Company*, 187 NLRB 54, 61, fn. 25 (1970)"); cf. *Roadway Package Sys., Inc.*, 292 NLRB 376, 426-27 (1989) (holding that no hearing was required on respondent's affirmative defense and denying that defense as a matter of law).

Finally, *Flaum Appetizing* is based on "ordinary rules of pleading" and is not limited to compliance proceedings, as Local 5 may erroneously argue. Rather, the Board in *Flaum*

*Appetizing* reviewed federal case law governing civil proceedings and described the broad issue as follows:

The question before us here, then, is whether a party must articulate a basis for pleading an affirmative defense, thereby opening up an avenue through which to subpoena documents and examine witnesses in order to discover evidence to support its defense. Without such a requirement, a party can plead an affirmative defense with the mere hope of discovering evidence to support it. We do not believe generally applicable rules of pleading permit a pleading to be interposed for the purpose of engaging in such open-ended inquiry.

*Id.*, 357 NLRB at 2009.

Indeed, it was “ordinary rules of pleading,” not a specific requirement for pleadings in an NLRB compliance proceeding, that supported “striking the affirmative defenses . . . to the extent the Respondent articulated no factual support (or reason to believe it could obtain such factual support).” *Id.* at 2011. *Flaum Appetizing* fully accords with those federal pleading standards. Furthermore, regardless of how one characterizes the pleading standard reflected in *Flaum Appetizing*, it certainly does require a respondent, when challenged by a Complaint and Motion to Strike, to articulate a sufficient factual basis, prior to trial, for pursuing an affirmative defense with trial subpoenas, the precise issue here. In *Flaum Appetizing*, the insufficient factual basis for the respondent’s affirmative defense was exposed following the General Counsel’s filing of a motion for bill of particulars prior to trial. 357 NLRB at 2007-08. Here, the deficient legal and factual basis for Local 5’s “defenses” has been exposed by the Motion to Strike and by the Petitions to Revoke Subpoenas. Since Local 5 cannot offer a legally sufficient basis for its affirmative defenses under controlling Board law, they must be stricken and their corresponding subpoenas should be revoked in full.

## CONCLUSION

For the foregoing reasons, the Charging Party respectfully requests that the instant Motion to Strike Local 5's Answer and "affirmative defenses" be granted.

Respectfully submitted,

/s/ Aaron B. Solem  
Aaron B. Solem  
Glenn M. Taubman  
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Attorneys for Charging Party

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion to Strike Local 5's Answer and Affirmative Defenses was filed using the NLRB e-filing process with Region 32 and the NLRB Division of Judges, and served via e-mail on:

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Tracy Clark  
Counsel for the General Counsel  
National Labor Relations Board, Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103  
Tracy.Clark@nlrb.gov

this 23rd day of May, 2019.

/s/ Aaron B. Solem

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Aaron B. Solem  
Attorney for Charging Party

# Exhibit 1

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

**UNITED FOOD COMMERCIAL WORKERS,  
LOCAL 5 (SAFEWAY STORE)**

**and**

**Case 32-CB-219981**

**CHRISTOPHER RATANA-KELLEY, an Individual**

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by Christopher Ratana-Kelley, an Individual (Charging Party). 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 United Food and Commercial Workers, UFCW Local 5 (Respondent) has violated the Act as described below.

1.

The charge in this proceeding was filed by the Charging Party on May 8, 2018, and a copy was served on Respondent by U.S. mail on May 10, 2018.

2.

(a) At all material times, Safeway, (the Employer), a California corporation, with a place of business located at 3496 Camino Tassajara, Danville, California, herein called Employer Store 1211, has been operating a chain of retail grocery stores.

(b) During the twelve-month period ending May 31, 2018, the Employer, in conducting its business operations described in paragraph 2(a), derived gross revenues in excess of \$500,000.

(c) During the period described above in subparagraph 2(b), the Employer, in conducting its operations described above in subparagraph 2(a), purchased and received products, goods, and services valued in excess of \$5,000 which originated from points located outside the State of California.

3.

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

4.

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

5.

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

John Nunes	-	Union President
Jamie Moore	-	Union Representative
Jack Landes	-	Union Secretary-Treasurer

6.

(a) At all material times since November 8, 2017, Respondent has been the exclusive collective-bargaining representative of the following employees of the Employer (the Unit) pursuant to Section 9(a) of the Act:

All employees working in the Employer's retail food stores within the geographical jurisdiction of the Union; excluding supervisors within the meaning of the National Labor Relations Act.

(b) At all material times and since at least November 8, 2017, Respondent and the Employer have maintained and enforced a collective-bargaining agreement covering the terms and conditions of employment of the Unit, including the following provision (union-security provision):

On and after thirty (30) days of employment, or the date of execution of this Agreement, whichever is later, each employee shall become and remain a member of the Union as a condition of employment; provided, however, that the Employer shall not be obligated to discharge any employee in violation of the National Labor Relations Act, as amended. Upon written notification from the Union that an employee has failed to make timely tender to the Union of initiation fees and/or periodic dues, the Employer agrees to terminate said employee on the eighth (8th) day from such notice unless the Union notifies the Employer in writing that the employee has complied with the provisions hereof.

(c) Respondent expends the monies collected pursuant to the union-security provision described above in subparagraph 6(b) on activities germane to collective bargaining, contract administration, and grievance adjustment, herein called representational activities, and on activities not germane to collective bargaining, contract administration, and grievance adjustment, herein called nonrepresentational activities.

7.

(a) At all material times since January 28, 2018, the Charging Party, a Unit employee covered by the union-security provision described above in paragraph 6(b), has not been a member of Respondent.

(b) On February 20, 2018, Respondent informed the Charging Party, in writing, that he had the right to refrain from union membership and to pay an initiation fee and regular monthly dues that is slightly less than the full initiation fee and regular monthly dues as a condition of employment, and an explanation of how to become a non-member and object to paying for Respondent's non-representational activities.

(c) On March 28, 2018, Respondent, by letter, notified the Charging Party that he would be subject to discharge if he did not comply with the union-security provision described above in paragraph 6(b) by paying membership dues and initiation fees.

(d) On April 10, 2018, the Charging Party, by letter, notified Respondent that he was requesting to become a *Beck* objector and requested information regarding the reduced amount of fees he would be required to pay under the union-security provision described above in paragraph 6(d).

8.

(a) Since February 20, 2018 through September 27, 2018, Respondent failed to provide the Charging Party a good faith determination of the sum amount of reduced fees and dues employees who decide not to become Union members, also known as *Beck* objectors, must pay in order to comply with the union-security provision described above in paragraph 6(b).

(b) Since April 11, 2018 through September 27, 2018, Respondent failed to provide the Charging Party with a breakdown of chargeable and non-chargeable expenditures for Respondent's local expenditures.

9.

By the conduct described above in paragraph 8, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A).

10.

The unfair labor practices of Respondents 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 April 8, 2019, or postmarked on or before April 7, 2019.** 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.

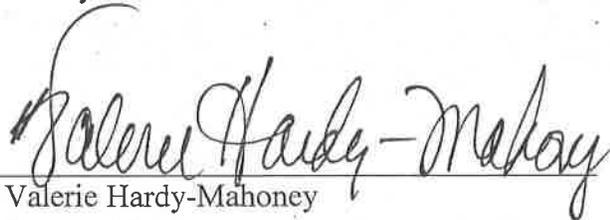
An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests 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 June 11, 2019, at 9:00 a.m., in the Oakland Regional Office of the Board, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, 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 25th day of March 2019.



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

Attachments

**NATIONAL LABOR RELATIONS BOARD  
NOTICE**

Case 32-CB-219981

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Workers, Local 5  
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Hayward, CA 94544

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## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

## Exhibit 2

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Attorneys for the Union, UNITED FOOD AND  
COMMERCIAL WORKERS LOCAL NO. 5

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 32

UNITED FOOD COMMERCIAL WORKERS  
LOCAL 5 (SAFEWAY STORES),

and

CHRISTOPHER RATANA-KELLEY, an  
Individual

Case 32-CB-219981

**FIRST AMENDED ANSWER  
TO COMPLAINT**

United Food and Commercial Workers Local 5, which is improperly named in the Complaint and does not exist as named in the Complaint, hereby answers the Complaint and Notice of Hearing as follows:

(1) As to paragraph 1, those allegations are denied on the ground that Christopher Ratana-Kelley did not file the charge on its own but rather was compelled to do it by outside forces.

(2) As to paragraph 2(a), Respondent denies this allegation on the ground that there was no employer known as Safeway or "Store 211." There is an entity known as Safeway, Inc., but Respondent does not have knowledge as to whether Safeway, Inc. is a California corporation or it is organized under the laws of some other state. Respondent specifically denies that there is any entity "Employer Store 211" and furthermore denies that "Employer Store 211, has been operating a chain of retail grocery stores." Safeway, Inc. has been operating a chain of stores which sells more than just groceries for example it sells gas. People do not eat gas.

(3) As to paragraph 2(b), because paragraph 2(a) is unclear as to whether the employer is Safeway, Safeway, Inc. or "Employer Store 211," Respondent denies the allegations of 2(b). Respondent does admit that Safeway, Inc. in conducting all its operations derives gross revenue in excess of \$500,000. Respondent denies that Safeway, Inc. has "derived gross revenues in excess of \$500,000" since the plural is not the correct word.

(4) As to paragraph 2(c), because the above allegation isn't clear as to who the employer is, Respondent denies the allegations of paragraph 2(c). Respondent does admit that Safeway, Inc. has "purchased and received products, goods, and services valued in excess of \$5,000 which originated from points located outside of the State of California" including China.

(5) As to paragraph 3, this allegation is denied on the ground that the current Labor Board is likely to arbitrarily change the definition of employer, engage on commerce, and "within the meaning of Section 2(2)(6) and (7) of the Act." Furthermore, because the allegations of who the employer is is unclear, Respondent cannot respond further. Respondent does admit that Safeway, Inc. does employ employees within the meaning of those Sections of the Act.

(6) As to paragraph 4, that allegation is denied. The caption suggests that the Respondent is “United Food Commercial Workers, Local 5 (Safeway Store).” There is no such labor organization with that name. The first paragraph alleges that there is a labor organization known as “United Food and Commercial Workers, UFCW Local 5.” The proper name is United Food and Commercial Workers Local No. 5, chartered by the United Food and Commercial Workers International Union, AFL-CIO.CLC. As to paragraph 4, Respondent admits that if properly named, it is currently a labor organization within the meaning of the Act. Respondent, however, denies the ultimate conclusion because the current Board is likely to change the definition of labor organization within the meaning of the Act because of the radical changes it has made to the Act.

(7) With respect to the allegations of paragraph 5, these are denied.  
With respect to the allegations of Paragraphs 6, 7, 8, 9 and 10, these allegations are denied.

Respondent does not concede that it has the burden of proof on any of these Affirmative Defenses:

**FIRST AFFIRMATIVE DEFENSE**

The Complaint is barred by Section 10(b).

**SECOND AFFIRMATIVE DEFENSE**

The Complaint is barred because the Charging Party was unlawfully, illegally and improperly coerced into filing the charge. The Charging Party did not make a free choice to file the charge.

**THIRD AFFIRMATIVE DEFENSE**

The Charge is barred by the doctrine of waiver, laches and estoppel.

**FOURTH AFFIRMATIVE DEFENSE**

The Complaint and the remedy sought are barred by the First Amendment of the United States Constitution.

**FIFTH AFFIRMATIVE DEFENSE**

The Complaint and the remedy sought are barred by the Thirteenth Amendment of the United States Constitution.

**SIXTH AFFIRMATIVE DEFENSE**

The Complaint and the remedy sought are barred by the Fourteenth Amendment and the Fifth Amendment of the United States Constitution.

**SEVENTH AFFIRMATIVE DEFENSE**

The Complaint and the remedy sought are barred by the Religious Freedom Restoration Act.

**EIGHTH AFFIRMATIVE DEFENSE**

The Complaint and the remedy sought are forced and compelled speech which is barred by the First Amendment of the United States Constitution.

**NINTH AFFIRMATIVE DEFENSE**

The Complaint should be barred since the current General Counsel of the National Labor Relations Board should not participate in this matter and should be recusing himself.

**TENTH AFFIRMATIVE DEFENSE**

The Complaint should be barred since the Regional Director of Region 32 should have recused herself.

**ELEVENTH AFFIRMATIVE DEFENSE**

The Complaint should be barred because the national right to work legal defense foundation inc., of which Aaron Solem is an attorney, is an employer dominated and assisted labor organization which is sponsored and controlled by employers for the purpose of busting Unions. It is an alter ego, joint employer and agent with the national right to work committee. It is also a racketeering enterprise because its operations violate 29 U.S.C. § 186 which is a predicate offense for a RICO action.

**TWELFTH AFFIRMATIVE DEFENSE**

The national right to work legal defense foundation inc. does not represent Christopher Ratana- Kelley.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The current National Labor Relations Board is improperly and illegally constituted.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Any Administrative Law Judge assigned to this matter was improperly appointed.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Members Ring, Emmanuel and Kaplan should recuse themselves.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The Complaint is barred by the California Constitution.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

The Complaint and the procedure of the National Labor Relations Board violate the Administrative Procedures Act and due process.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The Complaint and the remedy sought violate international labor law rights and treaties with other countries and sovereign nations.

**NINETEENTH AFFIRMATIVE DEFENSE**

The Complaint and the remedy violate Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) of the ILO and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) and various other International Conventions, International Instruments. A copy of the relevant provisions is attached as Exhibit A.

**TWENTIETH AFFIRMATIVE DEFENSE**

Charging Party has failed to exhaust all available remedies such as the grievance procedure and the internal union procedure.



## Exhibit 3

**SUBPOENA DUCES TECUM****UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

To Christopher Ratana-Kelley  
1601 Colchester Street, Danville, CA 94506

As requested by David A. Rosenfeld, Weinberg, Roger & Rosenfeld, Counsel for Respondent

whose address is 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501 CA 94501  
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge

of the National Labor Relations Board  
at the offices of the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300N

in the City of Oakland, California

on June 11, 2019 at 9:00 a.m. or any adjourned

or rescheduled date to testify in United Food Commercial Workers, Local 5 (Safeway Store)  
32-CB-219981  
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

**B-1-14TNP1D**

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Alameda, California

Dated: May 10, 2019



*John J. Ring*  
John Ring, Chairman

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

**RETURN OF SERVICE**

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

- by person
- by certified mail
- by registered mail
- by telegraph
- by leaving copy at principal office or place of business at

(Check method used.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on the named person on

\_\_\_\_\_  
(Month, day, and year)

\_\_\_\_\_  
(Name of person making service)

\_\_\_\_\_  
(Official title, if any)

**CERTIFICATION OF SERVICE**

I certify that named person was in attendance as a witness at

\_\_\_\_\_  
on

\_\_\_\_\_  
(Month, day or days, and year)

\_\_\_\_\_  
(Name of person certifying)

\_\_\_\_\_  
(Official title)

## DEFINITIONS AND INSTRUCTIONS

1. "Document" means any existing, printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants' or bookkeepers' work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
2. "Person" or "persons" means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.
3. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.
4. Electronically stored information ("ESI") should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. "Reasonably usable" productions of ESI consist of ESI rendered to TIFF or PDF format (discussed below), accompanied by text extracted from the original electronic files, and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Relativity or a similar review platform). Unless otherwise agreed, the load file should contain: a unique identifier (i.e., Bates number) for each item, custodian, source device, source and folder path, production path, modified date, modified time, to, from, cc, bcc, date sent, time sent, subject, date received, time received, and attachment information (i.e., attachment names and separate fields listing the beginning and ending Bates range(s) of attachment(s)). Where available, message ID and thread ID should also be produced.
5. All images, paper documents scanned to images, or rendered ESI, shall be produced as 300 dpi single-page TIFF files, CCITT Group IV (2D Compression). Documents should be uniquely and sequentially Bates numbered with an endorsement burned into each image. All TIFF file names shall include the unique Bates number burned into the image. Each Bates number shall be a standard length, include leading zeros in the number, and be unique for each produced page.
6. All spreadsheet and presentation files (e.g., Excel and PowerPoint) shall be produced in the unprocessed "as kept in the ordinary course of business" state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

7. All hidden text (e.g., track changes, hidden columns, mark-ups, and notes) shall be expanded and rendered in the image file. For files that cannot be expanded, the native files shall be produced with the image file. All non-graphic embedded objects (Word documents, Excel spreadsheets, .wav files, etc.) that are found within a file shall be extracted and produced. For purposes of production the embedded files shall be treated as attachments to the original file, with the parent/child relationship preserved.

8. Respondent shall identify, collect, and produce any and all data which is responsive to this subpoena, which may be stored in audio or, video recordings, cell phone/PDA/Blackberry/smart phone data, tablet data, voicemail messaging data, instant messaging, text messaging, conference call data, video/audio conferencing (e.g, GoTo Meeting, WebEx), and related/similar technologies.

9. Photographs shall be produced as single-page JPG files with a resolution equivalent to the original image as they were captured/created.

10. Whenever used in this subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to parties shall be deemed to include any and all of their officers, agents and representatives; the masculine shall be, deemed to include the feminine and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and" and vice versa; and each of the words "each", "every", and "all" shall be deemed to include each of the other words.

11. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.

12. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

13. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.

14. This subpoena applies to documents in your possession, custody, or control.

15. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.

16. The terms "copy" or "copies" shall refer to exact and complete copies of original documents. Copies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available at the time of production for the purposes of verifying the accuracy of such copies. Any copies of original documents which are different in any way from the original, whether by interlineation, receipt, stamp, notations, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of originals.

17. Documents subpoenaed shall include all documents in your physical possession, custody, or control, your present or former supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with you.

18. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

19. If any document responsive to this subpoena is withheld from production on the asserted ground that it is privileged, identify and describe:

- a) The privilege claimed;
- b) The author;
- c) The recipient;
- d) The date of the original document; and
- e) The subject matter of the document.

20. All documents produced pursuant to this subpoena should be organized by the subpoena paragraph that each document or set of documents is responsive to, and labels referring to that subpoena paragraph should be affixed to each document or set of documents.

21. Any custodian of records of any entity subpoenaed shall be one or more designated agents with knowledge sufficient to testify in detail concerning the contents of documents to be produced.

22. If any document responsive to any request herein was, but no longer is, in your possession, custody or control, identify the document (stating its date, author, subject, recipients and intended recipients); explain the circumstances by which the document ceased to be in your possession, custody or control, and identify (stating the person's name, employer title, business address and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.

23. If any document responsive to any request herein was destroyed, discarded; or otherwise disposed of for whatever reasons, identify the document (stating its date, author, addressee(s), recipients and intended recipients, title and subject matter); explain the circumstances surrounding the destruction, discarding or disposal of the documents; including the timing of the destruction, discarding or disposal of the document, and identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.

24. Provide the following information regarding production of subpoenaed emails:

- a) Whose email was searched;
- b) What email was searched;
- c) For each custodian's mailbox, what folders, archives and document management systems were searched;
- d) Indicate whether the search included both email stored on Respondent's server for its company email system, and email stored in personal folders and archives on individual computers;

- e) Indicate whether the search include email hosted on third-party service providers such as Google or Yahoo, including both company and personal accounts used by custodians for work-related communications;
- f) How the search was conducted;
- g) Who conducted the searches, and what search software and/or search terms were used to locate emails.

25. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

26. "Employer" refers to Safeway Stores, a/k/a Safeway, Inc.

## **DOCUMENTS TO BE PRODUCED**

1. All documents which concern, mention or relate to the Employer;
2. All documents which concern, mention of relate to the National Right to Work Committee;
3. All documents which concern, mention of relate to the National Right to Work Legal Defense Foundation;
4. All communications between Christopher Ratana-Kelley and any other person concerning, mentioning or related to his employment by the Employer;
5. All communications between Siniwan N. Tarkoff and any other person concerning, mentioning or related to Christopher Ratana-Kelley's employment by the Employer;
6. All communications between Jack Tarkoff and any other person concerning, mentioning or related to Christopher Ratana-Kelley's employment by the Employer;
7. All documents which concern, mention or relate to any communication with his parents concerning his employment with the Employer;
8. All documents which concern, mention or relate to United Food & Commercial Workers Union Local 5.

## Exhibit 4

**SUBPOENA DUCES TECUM****UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**To Siriwan N. Tarkoff1601 Colchester Street, Danville, CA 94506As requested by David A. Rosenfeld, Weinberg, Roger & Rosenfeld, Counsel for Respondentwhose address is 1001 Marina Village Parkway, Suite 200 Alameda CA 94501  
(Street) (City) (State) (ZIP)YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judgeof the National Labor Relations Board  
at the offices of the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300Nin the City of Oakland, Californiaon June 11, 2019 at 9:00 a.m. or any adjournedor rescheduled date to testify in United Food Commercial Workers, Local 5 (Safeway Store)  
32-CB-219981  
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

**B-1-14TNSVZ**

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Alameda, CaliforniaDated: May 10, 2019

 A handwritten signature in black ink that reads "John F. Ring".
 

John Ring, Chairman

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

**RETURN OF SERVICE**

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

- by person
- by certified mail
- by registered mail
- by telegraph
- by leaving copy at principal office or place of business at

(Check method used.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

on the named person on

\_\_\_\_\_

(Month, day, and year)

\_\_\_\_\_

(Name of person making service)

\_\_\_\_\_

(Official title, if any)

**CERTIFICATION OF SERVICE**

I certify that named person was in attendance as a witness at

\_\_\_\_\_

on

(Month, day or days, and year)

\_\_\_\_\_

(Name of person certifying)

\_\_\_\_\_

(Official title)

## DEFINITIONS AND INSTRUCTIONS

1. "Document" means any existing, printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants' or bookkeepers' work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.

2. "Person" or "persons" means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.

3. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.

4. Electronically stored information ("ESI") should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. "Reasonably usable" productions of ESI consist of ESI rendered to TIFF or PDF format (discussed below), accompanied by text extracted from the original electronic files, and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Relativity or a similar review platform). Unless otherwise agreed, the load file should contain: a unique identifier (i.e., Bates number) for each item, custodian, source device, source and folder path, production path, modified date, modified time, to, from, cc, bcc, date sent, time sent, subject, date received, time received, and attachment information (i.e., attachment names and separate fields listing the beginning and ending Bates range(s) of attachment(s)). Where available, message ID and thread ID should also be produced.

5. All images, paper documents scanned to images, or rendered ESI, shall be produced as 300 dpi single-page TIFF files, CCITT Group IV (2D Compression). Documents should be uniquely and sequentially Bates numbered with an endorsement burned into each image. All TIFF file names shall include the unique Bates number burned into the image. Each Bates number shall be a standard length, include leading zeros in the number, and be unique for each produced page.

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8. Respondent shall identify, collect, and produce any and all data which is responsive to this subpoena, which may be stored in audio or, video recordings, cell phone/PDA/Blackberry/smart phone data, tablet data, voicemail messaging data, instant messaging, text messaging, conference call data, video/audio conferencing (e.g, GoTo Meeting, WebEx), and related/similar technologies.

9. Photographs shall be produced as single-page JPG files with a resolution equivalent to the original image as they were captured/created.

10. Whenever used in this subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to parties shall be deemed to include any and all of their officers, agents and representatives; the masculine shall be, deemed to include the feminine and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and" and vice versa; and each of the words "each", "every", and "all" shall be deemed to include each of the other words.

11. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.

12. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

13. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.

14. This subpoena applies to documents in your possession, custody, or control.

15. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.

16. The terms "copy" or "copies" shall refer to exact and complete copies of original documents. Copies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available at the time of production for the purposes of verifying the accuracy of such copies. Any copies of original documents which are different in any way from the original, whether by interlineation, receipt, stamp, notations, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of originals.

17. Documents subpoenaed shall include all documents in your physical possession, custody, or control, your present or former supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with you.

18. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

19. If any document responsive to this subpoena is withheld from production on the asserted ground that it is privileged, identify and describe:

- a) The privilege claimed;
- b) The author;
- c) The recipient;
- d) The date of the original document; and
- e) The subject matter of the document.

20. All documents produced pursuant to this subpoena should be organized by the subpoena paragraph that each document or set of documents is responsive to, and labels referring to that subpoena paragraph should be affixed to each document or set of documents.

21. Any custodian of records of any entity subpoenaed shall be one or more designated agents with knowledge sufficient to testify in detail concerning the contents of documents to be produced.

22. If any document responsive to any request herein was, but no longer is, in your possession, custody or control, identify the document (stating its date, author, subject, recipients and intended recipients); explain the circumstances by which the document ceased to be in your possession, custody or control, and identify (stating the person's name, employer title, business address and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.

23. If any document responsive to any request herein was destroyed, discarded; or otherwise disposed of for whatever reasons, identify the document (stating its date, author, addressee(s), recipients and intended recipients, title and subject matter); explain the circumstances surrounding the destruction, discarding or disposal of the documents; including the timing of the destruction, discarding or disposal of the document, and identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.

24. Provide the following information regarding production of subpoenaed emails:

- a) Whose email was searched;
- b) What email was searched;
- c) For each custodian's mailbox, what folders, archives and document management systems were searched;
- d) Indicate whether the search included both email stored on Respondent's server for its company email system, and email stored in personal folders and archives on individual computers;

- e) Indicate whether the search include email hosted on third-party service providers such as Google or Yahoo, including both company and personal accounts used by custodians for work-related communications;
- f) How the search was conducted;
- g) Who conducted the searches, and what search software and/or search terms were used to locate emails.

25. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

26. "Employer" refers to Safeway Stores, a/k/a Safeway, Inc.

## **DOCUMENTS TO BE PRODUCED**

1. All documents which concern, mention or relate to the Employer;
2. All documents which concern, mention of relate to the National Right to Work Committee;
3. All documents which concern, mention of relate to the National Right to Work Legal Defense Foundation;
4. All communications between Christopher Ratana-Kelley and any other person concerning, mentioning or related to his employment by the Employer;
5. All communications between Siniwan N. Tarkoff and any other person concerning, mentioning or related to Christopher Ratana-Kelley's employment by the Employer;
6. All communications between Jack Tarkoff and any other person concerning, mentioning or related to Christopher Ratana-Kelley's employment by the Employer;
7. All documents which concern, mention or relate to any communication with his parents concerning his employment with the Employer;
8. All documents which concern, mention or relate to United Food & Commercial Workers Union Local 5.

## Exhibit 5

**SUBPOENA DUCES TECUM**

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

To Jack Tarkoff  
1601 Colchester Street, Danville, CA 94506

As requested by David A. Rosenfeld, Weinberg, Roger & Rosenfeld, Counsel for Respondent

whose address is 1001 Marina Village Parkway, Suite 200 Alameda CA 94501  
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge

at the offices of the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300N  
of the National Labor Relations Board

in the City of Oakland, California

on June 11, 2019 at 9:00 a.m. or any adjourned

or rescheduled date to testify in United Food Commercial Workers, Local 5 (Safeway Store)  
32-CB-219981  
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

**B-1-14TNZTZ**

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at

Dated:



*John F. Ring*  
John Ring, Chairman

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

**RETURN OF SERVICE**

I certify that, being a person over 18 years of age, I duly served a copy of this subpoena

- by person
- by certified mail
- by registered mail
- by telegraph
- by leaving copy at principal office or place of business at

(Check method used.)

\_\_\_\_\_

on the named person on

\_\_\_\_\_ (Month, day, and year)

\_\_\_\_\_ (Name of person making service)

\_\_\_\_\_ (Official title, if any)

**CERTIFICATION OF SERVICE**

I certify that named person was in attendance as a witness at

\_\_\_\_\_ on \_\_\_\_\_ (Month, day or days, and year)

\_\_\_\_\_ (Name of person certifying)

\_\_\_\_\_ (Official title)

## DEFINITIONS AND INSTRUCTIONS

1. "Document" means any existing, printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants' or bookkeepers' work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.

2. "Person" or "persons" means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.

3. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.

4. Electronically stored information ("ESI") should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. "Reasonably usable" productions of ESI consist of ESI rendered to TIFF or PDF format (discussed below), accompanied by text extracted from the original electronic files, and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Relativity or a similar review platform). Unless otherwise agreed, the load file should contain: a unique identifier (i.e., Bates number) for each item, custodian, source device, source and folder path, production path, modified date, modified time, to, from, cc, bcc, date sent, time sent, subject, date received, time received, and attachment information (i.e., attachment names and separate fields listing the beginning and ending Bates range(s) of attachment(s)). Where available, message ID and thread ID should also be produced.

5. All images, paper documents scanned to images, or rendered ESI, shall be produced as 300 dpi single-page TIFF files, CCITT Group IV (2D Compression). Documents should be uniquely and sequentially Bates numbered with an endorsement burned into each image. All TIFF file names shall include the unique Bates number burned into the image. Each Bates number shall be a standard length, include leading zeros in the number, and be unique for each produced page.

6. All spreadsheet and presentation files (e.g., Excel and PowerPoint) shall be produced in the unprocessed "as kept in the ordinary course of business" state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

7. All hidden text (e.g., track changes, hidden columns, mark-ups, and notes) shall be expanded and rendered in the image file. For files that cannot be expanded, the native files shall be produced with the image file. All non-graphic embedded objects (Word documents, Excel spreadsheets, .wav files, etc.) that are found within a file shall be extracted and produced. For purposes of production the embedded files shall be treated as attachments to the original file, with the parent/child relationship preserved.

8. Respondent shall identify, collect, and produce any and all data which is responsive to this subpoena, which may be stored in audio or, video recordings, cell phone/PDA/Blackberry/smart phone data, tablet data, voicemail messaging data, instant messaging, text messaging, conference call data, video/audio conferencing (e.g, GoTo Meeting, WebEx), and related/similar technologies.

9. Photographs shall be produced as single-page JPG files with a resolution equivalent to the original image as they were captured/created.

10. Whenever used in this subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to parties shall be deemed to include any and all of their officers, agents and representatives; the masculine shall be, deemed to include the feminine and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and" and vice versa; and each of the words "each", "every", and "all" shall be deemed to include each of the other words.

11. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.

12. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

13. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.

14. This subpoena applies to documents in your possession, custody, or control.

15. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.

16. The terms "copy" or "copies" shall refer to exact and complete copies of original documents. Copies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available at the time of production for the purposes of verifying the accuracy of such copies. Any copies of original documents which are different in any way from the original, whether by interlineation, receipt, stamp, notations, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of originals.

17. Documents subpoenaed shall include all documents in your physical possession, custody, or control, your present or former supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with you.

18. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

19. If any document responsive to this subpoena is withheld from production on the asserted ground that it is privileged, identify and describe:

- a) The privilege claimed;
- b) The author;
- c) The recipient;
- d) The date of the original document; and
- e) The subject matter of the document.

20. All documents produced pursuant to this subpoena should be organized by the subpoena paragraph that each document or set of documents is responsive to, and labels referring to that subpoena paragraph should be affixed to each document or set of documents.

21. Any custodian of records of any entity subpoenaed shall be one or more designated agents with knowledge sufficient to testify in detail concerning the contents of documents to be produced.

22. If any document responsive to any request herein was, but no longer is, in your possession, custody or control, identify the document (stating its date, author, subject, recipients and intended recipients); explain the circumstances by which the document ceased to be in your possession, custody or control, and identify (stating the person's name, employer title, business address and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.

23. If any document responsive to any request herein was destroyed, discarded; or otherwise disposed of for whatever reasons, identify the document (stating its date, author, addressee(s), recipients and intended recipients, title and subject matter); explain the circumstances surrounding the destruction, discarding or disposal of the documents; including the timing of the destruction, discarding or disposal of the document, and identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.

24. Provide the following information regarding production of subpoenaed emails:

- a) Whose email was searched;
- b) What email was searched;
- c) For each custodian's mailbox, what folders, archives and document management systems were searched;
- d) Indicate whether the search included both email stored on Respondent's server for its company email system, and email stored in personal folders and archives on individual computers;

- e) Indicate whether the search include email hosted on third-party service providers such as Google or Yahoo, including both company and personal accounts used by custodians for work-related communications;
- f) How the search was conducted;
- g) Who conducted the searches, and what search software and/or search terms were used to locate emails.

25. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

26. "Employer" refers to Safeway Stores, a/k/a Safeway, Inc.

## **DOCUMENTS TO BE PRODUCED**

1. All documents which concern, mention or relate to the Employer;
2. All documents which concern, mention of relate to the National Right to Work Committee;
3. All documents which concern, mention of relate to the National Right to Work Legal Defense Foundation;
4. All communications between Christopher Ratana-Kelley and any other person concerning, mentioning or related to his employment by the Employer;
5. All communications between Siniwan N. Tarkoff and any other person concerning, mentioning or related to Christopher Ratana-Kelley's employment by the Employer;
6. All communications between Jack Tarkoff and any other person concerning, mentioning or related to Christopher Ratana-Kelley's employment by the Employer;
7. All documents which concern, mention or relate to any communication with his parents concerning his employment with the Employer;
8. All documents which concern, mention or relate to United Food & Commercial Workers Union Local 5.