

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**NEW YORK PARTY SHUTTLE, LLC,
d/b/a ONBOARD TOURS, WASHINGTON DC PARTY
SHUTTLE, LLC, d/b/a ONBOARD TOURS, ONBOARD
LAS VEGAS TOURS, LLC, d/b/a ONBOARD TOURS,
NYC GUIDED TOURS, LLC, and
PARTY SHUTTLE TOURS, LLC, a Single Employer, and
NEW YORK PARTY SHUTTLE, LLC, d/b/a ONBOARD
TOURS and its Alter Ego and/or *Golden State* Successor,
NYC GUIDED TOURS, LLC**

and

Case No. 02-CA-073340

FRED PFLANTZER, an Individual

**COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF TO
RESPONDENTS' ANSWERING BRIEF TO CROSS-EXCEPTION**

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**COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF TO
RESPONDENTS' ANSWERING BRIEF TO CROSS-EXCEPTION**

Respondents' Answering Brief repeats arguments that were previously rejected by the Board and Administrative Law Judge Chu, inexplicably asserts that Mr. Pflantzer somehow waived his right to reinstatement by successfully mitigating his damages during the continuing backpay period, and ignores credited record evidence and Board law establishing jurisdiction over Respondents. As such, Counsel for the General Counsel rests on the arguments articulated in its prior briefs and motions, and also, the reasoning set forth in the Board's decisions and orders in the unfair-labor-practice and compliance proceedings, the judge's ruling on the General Counsel's Motion to Strike Portions of Respondents' Answer (Tr. 8-11), and the judge's evidentiary rulings.¹

Therefore, Counsel for the General Counsel respectfully requests that the Board grant its limited cross-exception to the judge's decision and recommended Order and order Respondents to offer Pflantzer reinstatement to a substantially equivalent position as a tour guide at one of its currently operating companies, such as NYC Guided Tours or Washington DC Party Shuttle.

Dated at New York, NY this 31st day of October, 2019.

/s/ Nicole Lancia
Nicole Lancia
Eric Brooks
Counsel for the General Counsel
National Labor Relations Board, Region 2
26 Federal Plaza, Rm. 3614
New York, NY 10278

¹ Though Respondents highlight the judge's evidentiary ruling regarding Mr. Pflantzer's 2018 unredacted affidavit, it does not support their refusal to offer reinstatement. The judge correctly determined that Mr. Pflantzer's interim employment during a quarter of the backpay period for which no backpay was sought was irrelevant to the issue of the reasonableness of the Region's backpay calculations. (Tr. 1313-14.) That ruling has no bearing on Mr. Pflantzer's entitlement to an offer of reinstatement. Mr. Pflantzer's entitlement to a valid offer of reinstatement, as required in the Board's May 2, 2013 Decision and Order, is unrelated to his interim earnings and the amount of backpay owed, and Respondents' have cited no authority to the contrary.

CERTIFICATE OF SERVICE

The undersigned, an attorney for the General Counsel, hereby certifies that she caused a true and correct copy of the foregoing to be filed electronically with the National Labor Relations Board on October 31, 2019, and served electronically on the same date at the following addresses:

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Dated: October 31, 2019

Sincerely,

/s/ Nicole Lancia
Nicole Lancia
Counsel for the General Counsel