

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**SAMESUN OF VERMONT**

**And**

**Case 03-CA-262602**

**JONATHAN DICKEN KIRSCHTEN,  
AN INDIVIDUAL**

**GENERAL COUNSEL'S BRIEF  
TO THE ADMINISTRATIVE LAW JUDGE**

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## **I. Preliminary Statement**

This case is a straightforward one – Samesun of Vermont (Respondent) promoted Charging Party Jonathan Dicken Kirschten (Kirschten) on June 5. The promotion came with a substantial wage increase. Kirschten told his coworker about his wage increase and encouraged her to ask for a raise. On June 17, she did just that. Once she disclosed Kirschten’s wage increase, Respondent abruptly ended the meeting, summoned Kirschten to the office, and discharged him.

Kirschten filed the charge in this case on July 6, 2020. Region Three issued complaint on October 2, 2020. An Amended Complaint issued on October 13, 2020. This case was heard over the zoom platform by Administrative Law Judge (ALJ) Arthur Amchan on December 1, 2020.

## **II. Facts**

### **a. Background**

Respondent operates a solar sales and installation company in Rutland, Vermont. (GC Ex. 1(f), 1(h)). Kirschten worked for Respondent as an installer and later foreman from April 2019 until June 2020. (Tr. 20-21).<sup>1</sup> In early June 2020 Respondent’s vice president, Khanti Munro, learned that one of the two foremen, Matt Cooper, wanted to step down from his foreman role. In order to facilitate this, Munro and Respondent’s co-owners Marlene and Phillip Allen agreed to offer a promotion to Kirschten. (Tr. 78-80). Kirschten was chosen because he was the most senior and knowledgeable installer, and because Respondent was in the middle of an important project and needed a foreman.<sup>2</sup> (Tr. 81-82).

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<sup>1</sup> References to the transcript will be made as (Tr. \_) and to the General Counsel’s Exhibits as (GC Ex. \_).

<sup>2</sup> Despite its claims of concern about Kirschten’s capability, Respondent did not present any evidence that it asked Cooper to stay on through the end of the project, and Munro testified that Respondent preferred to promote from within rather than hire a foreman from outside the company. (Tr. 78).

Respondent met with Kirschten on June 5 and offered him the interim foreman position. (Tr. 23-24, 80). Kirschten resisted, citing conflict between himself and Respondent's project manager Tyler Crowe. (Tr. 22-23). However, after further persuasion from Allen, Kirschten agreed to take the position on a trial basis. (Tr. 23-24, 39-40, 81). He testified he was told that if it did not work out, he could return to his position as an installer. (Tr. 24). Respondent also agreed, after some negotiating, to increase Kirschten's wage rate from \$20.00 per hour to \$24.00 per hour. (Tr. 24). Munro also suggested that Kirschten meet with Crowe to bury the hatchet, which he did the following day. (Tr. 23).

Kirschten's short tenure as a foreman involved some disagreement. On June 11, Munro sent a message to a WhatsApp chat group consisting of himself, Kirschten, Jones, and others.<sup>3</sup> (Tr. 26-29; GC Ex. 3). Munro requested that a particular employee not be allowed to do a certain task until some retraining was done. Kirschten responded asking Munro not to throw anyone under the bus. (GC Ex. 3). In a subsequent phone call with Munro, Kirschten vented his frustrations and Munro said to cool off and they would work it out. (Tr. 30). Kirschten then sent a message to the WhatsApp group stating he now had more information and apologized for overreacting. (GC Ex. 3). The following day, June 12, Munro came to the jobsite and he and Kirschten discussed the issue further. They had what Kirschten testified was a "very brief but calm and productive conversation" during which Munro told Kirschten to cool down, and Kirschten agreed with Munro that he would be more successful in communicating if he was calmer. (Tr. 30-31).

Munro presented a different account of this follow-up conversation. He places it after the weekend, on Monday, June 15 instead of Friday, June 12, while Kirschten testified that he did not

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<sup>3</sup> WhatsApp is a text messaging application which allows users to message other contacts who also have WhatsApp. It offers more robust encryption than regular text messaging. (Tr. 60).

have any conversations with Munro between June 12 and his discharge on June 17. Munro testified that Kirschten questioned his approach to a teaching moment and referred to Kirschten's statement not to throw anyone under the bus as "completely baseless." (Tr. 89). Munro testified that he "took it personally" that Kirschten questioned his judgment. (Tr. 115-116). At the end of the conversation, according to Munro, he told Kirschten they would continue the conversation, and asked him to give Respondent the benefit of the doubt. (Tr. 116). Munro testified that after telling Kirschten they would continue the conversation, he informed the Allens that he thought Kirschten should be discharged because his attitude was not improving. (Tr. 116).

**b. Kirschten Engaged in Protected Concerted Activity by Discussing Wages with a Coworker and was Discharged for Doing So**

With his pay increase, Kirschten knew he was now making more than two coworkers: Josh Jones, the other foreman who trained Kirschten as an installer; and Erin Ballantine, who ran Respondent's service department and also trained Kirschten to assist her.<sup>4</sup> (Tr. 24-25). Kirschten was uncomfortable with that and spoke to both Jones and Ballantine, disclosing his wage increase and encouraging them to seek a wage increase themselves.<sup>5</sup> (Tr. 24-26, 50). Jones met with Respondent and was awarded a wage increase within days of Kirschten's promotion. (Tr. 50).

Ballantine also sought a raise and scheduled a meeting with Respondent for June 17. (Tr. 50-51). She met in the conference room at Respondent's office with both the Allens and Munro. (Tr. 52). Phillip Allen, aware that Ballantine had asked for the meeting to discuss pay, told Ballantine to start the meeting off. (Tr. 53). She detailed her desire for a pay increase and the

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<sup>4</sup> Though Ballantine ran Respondents' service department, neither party contends that she was a supervisor. Ballantine was the only employee in the service department and did not supervise any other employees. (Tr. 48). Crowe or Munro would have to approve her requests to have another employee assist her when necessary. (Tr. 48-49).

<sup>5</sup> Kirschten was so adamant that he should not be paid more than the two more senior employees that on one occasion he gave Ballantine fifty dollars to make up the difference. (Tr. 25, 50-51).

justification for it. Then she mentioned that she was aware that Kirschten had gotten a raise and now made substantially more than she did. (Tr. 53-54). Specifically, Ballantine said that Kirschten had told her about his wage increase. (Tr. 96).

As soon as Ballantine revealed that Kirschten had told her about his wage increase, the tone of the meeting changed. Allen grew visibly angry. He turned to Munro and said, "I told you."<sup>6</sup> He then asked Ballantine to leave the room. (Tr. 54). She left the room and went back to her desk, from whence she could hear loud voices in the conference room but could not hear what was being said. (Tr. 55). After six or seven minutes, Munro came and asked her to come back into the conference room. (Tr. 54-55). When she did, Allen told her he was too upset to continue her meeting and they would need to reschedule. (Tr. 55).

Immediately after her meeting was canceled, Ballantine sent a text message to Kirschten to tell him what had happened. (Tr. 57-58, GC Ex. 2). She specifically mentioned that Allen said "I told you" when she mentioned Kirschten's wage increase, that Allen became angry, and that her meeting was abruptly canceled. (GC Ex. 2). Kirschten replied that he had just been summoned in for his own meeting. (GC Ex. 2).

Munro texted Kirschten at about 11:30am asking him to come in for a meeting at 12:30pm. (Tr. 32, GC Ex. 3). This was the first time Kirschten was told Respondent wanted to meet with him on June 17. (Tr. 33). Kirschten complied, coming to Respondent's office, which Ballantine had so recently departed, at the appointed time. (Tr. 32). Without preamble, Phillip Allen told

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<sup>6</sup> Respondent asserted for the first time at the hearing that Allen said "I told you" because he and Munro have discussed for years whether employees actually discuss their wages. (Tr. 86-87). This explanation has the whiff of convenience, especially since Munro did not mention the comment in the affidavit he provided during the investigation of the charge, only seeming to recall it after seeing the General Counsel's exhibits the morning of the hearing, prior to his testimony that afternoon. (Tr. 99-104, 106).

Kirschten that he was being discharged. He did not cite any reason. (Tr. 33-34). As Kirschten left, he asked whether he was still on the crew as an installer, per the June 5 agreement- that if Kirschten did not work out as a foreman, he would go back to working as an installer. The Allens indicated that Kirschten was no longer an installer either. (Tr. 33-34). After he left, Kirschten texted Ballantine to tell her he had been discharged. (Tr. 34, GC Ex. 2).

**c. Credibility**

The General Counsel's two witnesses gave consistent, straightforward, credible testimony. Kirschten testified unreservedly about his concerns with taking the foreman job and his displeasure with the resulting pay inequity. Ballantine's testimony about her June 17 meeting with Respondent was specific and clear. Their combined testimony demonstrates clearly that Kirschten engaged in protected activity, Respondent became aware that he did so, and Respondents' hostility toward that activity motivated its decision to discharge Kirschten. Their testimony is further bolstered by contemporaneous text messages that demonstrate the close timing between Respondent becoming aware of Kirschten's protected activity and his discharge.

Meanwhile, Respondent called Munro as its sole witness. Although both Phillip and Marlene Allen had firsthand knowledge of the circumstances surrounding Kirschten's promotion and discharge, neither of them testified to corroborate Munro's testimony. Moreover, Munro's testimony was hesitant and somewhat uncertain, especially when he was testifying about the date of his conversation with Kirschten after their WhatsApp exchange. (Tr. 116). Kirschten's clear testimony that the exchange happened the day following the WhatsApp conversation should be credited. (Tr. 30-31). Munro even testified that he would not have remembered the context of the "I told you" comment had he not looked at the General Counsel's exhibits in advance of his testimony. (Tr. 86, 102-104).

Taking into consideration each witnesses' demeanor, the content of their testimony, and the inherent probabilities based on the record as a whole, the General Counsel's witnesses should be credited. Where Munro's testimony conflicts with the testimony of the General Counsel's witnesses, his testimony should not be credited.

### **III. Analysis**

#### **a. Legal Standard**

Under *Wright Line*, 251 NLRB 1083 (1980), the General Counsel must demonstrate that the employee engaged in protected concerted activity, that the employer had knowledge of that activity, and that the employer harbored animus against such and that a causal relationship exists between the employee's protected activity and the employer's adverse action against them. See *Tschiggfrie Properties, LTD.*, 368 NLRB No. 120 (2019); See also, *Director, Office of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 278 (1994), clarifying *NLRB v. Transportation Management*, 462 U.S. 393, 395, 403 n.7 (1983).

Evidence that may establish a discriminatory motive – includes: (1) statements of animus directed to the employee or about the employee's protected activities; (2) close timing between discovery of the employee's protected activities and the discipline (see, e.g., *Traction Wholesale Center Co., Inc. v. NLRB*, 216 F.3d 92, 99 (D.C. Cir. 2000) (immediately after employer learned that union had obtained a majority of authorization cards from employees, it fired an employee who had signed a card)); (3) the existence of other unfair labor practices that demonstrate that the employer's animus has led to unlawful actions; or (4) evidence that the employer's asserted reason for the employee's discipline was pretextual, e.g., disparate treatment of the employee, shifting explanations provided for the adverse action, failure to investigate whether the employee engaged in the alleged misconduct, or providing a non-discriminatory explanation that defies logic or is clearly baseless (see, e.g., *Lucky Cab Company*, 360 NLRB No. 43 (Feb. 20, 2014); *Manor Care*

*Health Services–Easton*, 356 NLRB No. 39, slip op. at 3 (Dec. 1, 2010); *Greco & Haines, Inc.*, 306 NLRB 634, 634 (1992); *Wright Line*, 251 NLRB at 1088, n.12, citing *Shattuck Denn Mining Co. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Cincinnati Truck Center*, 315 NLRB 554, 556-557 (1994), *enf’d. sub nom. NLRB v. Transmart, Inc.*, 117 F.3d 1421 (6th Cir. 1997)). The Board has held that when relying on circumstantial evidence to demonstrate animus, the “totality of the circumstances” must show more than a ‘mere suspicion’ that protected activity was a motivating factor in the decision. *Cardinal Home Products*, 338 NLRB 1004, 1010 (2013).

Once the General Counsel’s prima facie case is established, an employer may prevail by showing that it would have engaged in the same adverse employment action even if the employee had not engaged in protected activity. An employer does not meet this burden simply by showing that a legitimate reason for the adverse employment action exists – it must demonstrate that it would have taken the same action absent any protected activity on the employees’ part. *Nolan Enterprises d/b/a Centerfold Club*, 370 NLRB No. 2 (July 31, 2020 ) citing *SMB Site Services, LLC*, 367 NLRB No. 147 (2019).

**b. Respondent Violated Section 8(a)(1) of the Act by Discharging Kirschten for Discussing Wages with a Coworker**

The record evidence demonstrates that Kirschten did in fact engage in protected concerted activity. Wage discussions, even those not meant expressly to induce group action, are “inherently concerted.” *Alternative Energy Applications, Inc.*, 361 NLRB 1203 (2014). Kirschten disclosed his wage increase to Ballantine and Jones because he believed there should be pay parity among them and to encourage them to seek raises for themselves. He and Ballantine continued to communicate about the issue when they discussed her plan to ask for a raise at her June 17 meeting. It is “well established that employees engage in protected activity when discussing wages with their coworkers.” *Strongsteel of Alabama, LLC*, 367 NLRB No. 90 (2019). Kirschten’s activity

was also concerted. He did not disclose his wage increase as part of a personal gripe about wages. Instead, motivated by his desire for a fair wage distribution among Respondent's employees, he disclosed his wage increase to Ballantine and Jones and encouraged them to ask for their own raises.

It is undisputed that Respondent was aware of Kirschten's protected concerted activity. Kirschten, Ballantine, and Munro all testified that during her meeting with Respondent, Ballantine disclosed that she knew Kirschten had gotten a raise and that Kirschten himself had told her this. Moreover, when Ballantine mentioned it Allen turned to Munro and said, "I told you." Munro testified that this was in reference to a longstanding discussion between himself and Allen about whether employees actually discussed their wages. If Munro's testimony on this point is credited, then it shows that Respondent took Ballantine's statement as confirmation that Kirschten discussed wages with another employee.<sup>7</sup>

Finally, the evidence shows that Respondent's hostility toward Kirschten's protected activity played a role in its decision to discharge him. Close timing between an employer's discovery of protected activity and the adverse employment action taken against an employee is evidence of animus. *Traction Wholesale Center Co., Inc. v. NLRB*, supra. Here, Respondent found out about Kirschten's protected activity at Ballantine's meeting, which started at about 11:00am on June 17. Ballantine testified, and contemporaneous text messages between Ballantine and Kirschten demonstrate, that at about 11:34am Ballantine texted Kirschten, telling him that as soon

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<sup>7</sup> Allen's statement "I told you" could easily have been a reference to Kirschten causing trouble for Respondent, which is supported by the fact that immediately after uttering the comment a visibly angry Allen asked Ballantine to leave the room, brought her back in a few minutes later to say he was too upset to continue her meeting, then discharged Kirschten shortly thereafter. In that case the statement is an expression of animus toward Kirschten's protected activity. See, e.g., *In re Tim Foley Plumbing Service, Inc.*, 337 NLRB 328 (2001).

as she mentioned she knew he had gotten a raise, Phillip Allen got angry and abruptly canceled her meeting. At 11:37am, Munro texted Kirschten asking him to come in for a meeting at 12:30pm that same day. At that meeting, Kirschten was discharged. The timing here is strong evidence that Kirschten was discharged because he discussed wages with Ballantine.

This case is similar to *Alternative Energy Applications, Inc.*, supra. There, the Board held that the employer unlawfully discharged its employee for discussing wages. The Board found the employer's proffered rationale for discharging its employee was pretextual. *Alternative Energy Applications, Inc.*, 361 NLRB at 1203.

In *Alternative Energy Applications*, the record showed that during his two months of employment with the employer, the employee frequently complained. Many of his supervisors and coworkers testified they believed he was not a good worker and would not work out with the company. 361 NLRB at 1204. One coworker even testified to a verbal altercation with the charging party because he refused to perform a particular task. *Id.* In that case, the employer discovered the charging party had discussed his wages with coworkers when the mother of a coworker called the employer to complain that her son was not making enough money compared to the charging party. Later that month, the charging party put his foot through the floor of an attic, which the employer was in the process of insulating, after employees were specifically told not to walk on the attic floor. *Id.* The employer had to pay to have the floor repaired. *Id.* At the end of that month, the employer decided to discharge the charging party because "he did not fit the company 'philosophy'" and other employees complained about working with him. *Id.* Three of the employer's supervisors and managers testified that the charging party's discussion of wages with coworkers did not factor into the employer's decision to discharge him. However, in responding to an OSHA complaint the charging party filed after he was discharged, the employer had noted

that the charging party undercut morale among employees by disclosing his wage rate to another employee, causing them to complain. *Id.*

The ALJ in that case dismissed the allegation that the employer discharged the charging party for discussing wages because despite the employer's statement to OSHA, there was no direct evidence that the charging party disclosed his salary to other employees and that the employer had demonstrated the charging party was not a good fit with the company. The Board disagreed, noting that the employer's witness had in fact testified that he was aware the charging party discussed wages with coworkers and the General Counsel had carried the Wright Line burden. *Id.* at 1206. The Board then addressed the employer's rebuttal burden, finding that the employer did not meet its burden of demonstrating that it would have taken the same adverse employment action even absent protected activity by the charging party. As the Board noted, the employer may well have had legitimate reasons for discharging the charging party. However, given the evidence of an unlawful motive, that was not enough. *Id.* at 1207.

In this case as in *Alternative Energy Applications*, despite Respondent's complaints about his attitude and job performance, the evidence demonstrates that Kirschten discussed wages with his co-workers, Respondent knew of this, and he suffered an adverse employment action because of Respondent's hostility toward his protected activity. Also similar is that in this case, even if Respondent demonstrated a legitimate reason for discharging Kirschten, it cannot show that absent his protected activity it would have discharged him. Respondent's argument that Kirschten had a bad attitude that did not improve, does not withstand scrutiny.

First, Respondent was aware of Kirschten's attitude when it decided to promote him to foreman. Munro testified that he was unsure if Kirschten had the right attitude for the customer service aspect of the job but that he recommended him for the promotion to foreman anyway

because of his skill and in the hope that it would turn out okay. Nevertheless, Respondent contends that it offered the position to Kirschten, on a temporary basis, despite its doubts because it was in the midst of a large project that required a foreman.<sup>8</sup> Its concerns over Kirschten's attitude and his ability to get along with project manager Crowe did not stop Respondent from offering Kirschten the position.

Second, Kirschten's attitude arguably improved over the course of his stint as foreman. As Kirschten and Munro testified, during the June 5 meeting Munro suggested that Kirschten bury the hatchet with Crowe. Kirschten did just that, having lunch with Crowe the following day and having a long talk. Later, on about June 11, Kirschten responded to a WhatsApp message from Munro about not letting a particular employee do a certain task with a suggestion that Munro not "throw anyone under the bus." Munro took this as an affront and evidence that Kirschten did not trust Respondent. However, after a phone conversation, Kirschten cheerfully admitted via his own WhatsApp message that he had overreacted and apologized. He testified that he had an in-person conversation with Munro the following day, June 12, that went well, and boded well for the future. While Munro places the in-person conversation as occurring on June 15.

Third, the evidence does not support Respondent's argument that it made the decision to discharge Kirschten before it knew of his protected activity.<sup>9</sup> Munro testified that after speaking to Kirschten on June 15, he brought his concerns to Phillip and Marlene Allen and the three of

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<sup>8</sup> Respondent does not explain why, if it had such serious doubts about Kirschten's ability, it did not simply require foreman Matt Cooper to stay on in his position through the end of that project, which would have allowed them time to search externally for a qualified foreman or further evaluate Kirschten for the position.

<sup>9</sup> Notably, Munro testified that Respondent had discharged employees because of their poor attitudes in the past. (Tr. 93). However, aside from this conclusory testimony Respondent provided no evidence of having done so, how many times it did so, when, who, or anything else to bolster the claim that Kirschten was treated the same as past discharged employees.

them decided to discharge Kirschten that day, prior to any knowledge he had discussed his wages with Ballantine. This timeline of events simply does not make sense. Even assuming Respondent did decide to discharge Kirschten on June 15, Munro did not explain why they waited two days not only to discharge him, but to even schedule a meeting with him. The totality of the circumstances here demonstrates more than a ‘mere suspicion’ that protected activity was a motivating factor in Respondent’s decision to discharge Kirschten. See *Cardinal Home Products*, supra. Indeed, the totality of the circumstances – the timing of Respondent canceling Ballantine’s meeting, immediately summoning Kirschten, and discharging him on the spot – lead to only one reasonable conclusion: Respondent’s decision to discharge Kirschten was motivated in part by its hostility toward his protected activity.

#### **IV. Conclusion**

The General Counsel has met its burden of showing that Respondent violated Section 8(a)(1) of the Act by discharging the Charging Party in retaliation for engaging in protected concerted activity. Respondent has not demonstrated that it would have taken the same action in the absence of any protected activity by the Charging Party. For the reasons set forth above, Respondent has violated the Act as alleged in the Complaint. Therefore, the relief requested in the Proposed Order should be granted.

Dated: January 5, 2021  
At Albany, New York

### **Proposed Conclusions of Law**

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent violated Section 8(a)(1) of the Act by discharging the Charging Party because he engaged in protected concerted activity.
3. Respondent's unfair labor practice affects commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## **Proposed Order**

Respondent Samesun of Vermont, by its officers, agents, supervisors, and assigns, shall:

1. Cease and desist from:
  - a. Discharging employees for engaging in protected concerted activities;
  - b. In any like or related manner interfering with, restraining, or coercing employees in violation of the rights guaranteed to you by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate policies of the Act:
  - a. Reinstatement Jonathan Dicken Kirschten to his position, or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and make him whole for any loss of wages and benefits he may have suffered as a result of his unlawful discharge;
  - b. Remove from all files any reference to the discharge of Jonathan Dicken Kirschten and notify him in writing that this has been done and that it will not be relied on for any future purpose;
  - c. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records and reports, and all such other records, including an electronic copy of such records if stored in electronic form, necessary to determine the amount of backpay due under the terms of this Order;
  - d. Within 14 days after service by the Region, post at Respondent's Rutland, Vermont facility copies of the attached notice to employees. Copies of the notice, on forms provided by the Regional Director for Region 3, after being

signed by Respondent's authorized representative(s), shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at its Rutland, Vermont facility since June 17, 2020;

- e. Within 21 days after service by the Region, file with the Regional Director a sworn statement of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

## PROPOSED NOTICE TO EMPLOYEES

### FEDERAL LAW GIVES YOU THE RIGHT TO:

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

**WE WILL NOT** interfere with, restrain, or coerce you in the exercise of the above rights.

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

**WE WILL NOT** discharge you for discussing your wages or other terms and conditions of employment.

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

**WE WILL** pay Jonathan Kirschten for the wages and other benefits he lost because we discharged him.

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

Samesun of Vermont

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(Employer)

Respectfully submitted,

/s/ Alicia E. Pender

**ALICIA E. PENDER**

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