

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

TRACY AUTO, L.P. DBA TRACY TOYOTA

and

**MACHINISTS AND MECHANICS LODGE NO.
2182, DISTRICT LODGE 190, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO**

**Cases 32-CA-260614
32-CA-262291
32-RC-260453**

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S
MOTION TO REQUIRE PRODUCTION OF DOCUMENTS PRIVILEGED BY THE
ATTORNEY WORK PRODUCT DOCTRINE**

Counsel for the General Counsel submits its opposition (the Opposition) to the Motion to Require Production Of Documents Privileged By the Attorney Work Product Doctrine (the Motion)¹ filed by Tracy Auto, L.P. DBA Tracy Toyota (Respondent). For the reasons below, Respondent's Motion should be denied in its entirety.

I. PROCEDURAL BACKGROUND

On November 30, 2020, Respondent issued subpoenas duces tecum B-1-1B22VOZ and B-1-1B230Q3 to employee witnesses Kevin Humeston (Humeston) and Tyrome Jackson (Jackson), respectively. Both subpoenas requested the same material. Item 8 in the subpoenas requested:

For the period of January 1, 2020 through the present, all DOCUMENTS, including, but not limited to, emails, text messages, letters, notes and any other form of communication between YOU and Jason Wong.

¹ A copy of the Motion is attached hereto as Exhibit A.

On December 14, 2020, Counsel for the General Counsel filed a petition to revoke on behalf of several employees who received subpoenas duces tecum from Respondent, including Humeston and Jackson. On December 29, 2020, Administrative Law Judge Mara-Louise Anzalone (the Judge) issued her Order Granting in Part And Denying in Part the General Counsel and Charging Party's Petitions to Revoke Various Subpoenas Duces Tecum. The Judge's order instructed employees to send their subpoenaed documents to Counsel for the General Counsel Wong for redaction and delivery to the Judge for review. On December 31, 2020, Counsel for the General Counsel forwarded to the Judge unredacted and redacted copies of Humeston's and Jackson's subpoenaed documents, which included their communications with Counsel for the General Counsel Wong, who submitted a privilege log asserting various privileges to those communications.

On January 4, 2021, the Judge issued her Order Regarding Documents Produced By Tyrome Jackson And Kevin Humeston (the Order). In her Order, the Judge found the majority of the redactions appropriate and instructed Counsel for the General Counsel to provide the redacted documents to Respondent, along with a copy of the respective privilege log for Humeston's and Jackson's communications with Counsel for the General Counsel Wong in preparation trial. On January 4, 2021, Counsel for the General Counsel provided those redacted documents to Respondent. The redactions were very few in the employees' communications with Counsel for the General Counsel Wong. Even with the redactions, Respondent was afforded access to view about 90% of Counsel for the General Counsel Wong's communications with the General Counsel's witnesses Humeston and Jackson in preparation for trial. On January 8, 2021, Respondent filed its Motion demanding the production of completely *unredacted* copies of Humeston's and Jackson's communications with Counsel for the General Counsel Wong in

preparation for trial. That same day, at the hearing in the above noted matter, the Judge requested that Counsel for the General Counsel file a written opposition or make oral arguments, at the next hearing date, if it opposed the Motion. Counsel for the General Counsel now opposes the Motion for the reasons below.

II. STATEMENT OF LAW

A. The Communications are Privileged Under the Attorney Work Product Doctrine

A motion to quash a third-party subpoena is governed by the provisions of Rule 45 of the Federal Rules of Civil Procedure. In particular, subsection (c)(3)(A)(iii) provides that a court may quash a subpoena if that subpoena “requires disclosure of privileged or other protected matter and no exception or waiver applies” *SEC v. Seahawk Deep Ocean Technology*, 166 FRD 268, 269 (D.Conn. 1996). Thus, even if requested documents are within the scope of a subpoena, the subpoena may be quashed or modified if it calls for privileged material. Where a subpoena is met by a valid, substantial claim of privilege, proper consideration must be accorded to the interests sought to be protected by the privilege. *U. S. v. Iozia*, 13 FRD 335, 338 (S.D.N.Y. 1952).

The party claiming privilege has the burden to establish its existence. *Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1336, 1341 (D.C. Cir. 1984). The requester must then demonstrate his or her overriding need for the subpoenaed materials. The showing of need required to overcome a privilege depends upon the context in which the privilege is asserted, and the importance of the interests reflected in the privilege. A valid privilege is not overcome by mere speculation that the information sought might possibly be of some assistance or might furnish a basis for asserting a defense for which the requesting party has set forth no other evidence. *In re United States*, 565 F.2d 19, 23 (2d Cir. 1977), cert. denied

436 U.S. 962 (1978) (and cases cited therein); *U.S. v. Ortega*, 471 F.2d 1350, 1358 (2d Cir. 1972), cert. denied, 411 U.S. 948 (1973). In addition, in weighing the burdens imposed in connection with a subpoena, a court may consider a movant's non-party status. *SEC v. Seahawk*, 166 FRD at 269.

The attorney work product privilege, recognized by the Supreme Court in *Hickman v. Taylor*, 329 U.S. 495, 510 (1947), reflects the strong "public policy underlying the orderly prosecution and defense of legal claims." The privilege protects documents that reveal an attorney's mental impressions and legal theories and were prepared by the attorney in anticipation of litigation. *Nadler v. U.S. Department of Justice*, 955 F.2d 1479, 1491-1492 (11th Cir. 1992); *A. Michael's Piano, Inc. v. FTC*, 18 F.3d 138, 146 (2d Cir. 1994), cert. denied 513 U.S. 1015 (1994); *In re Grand Jury Proceedings v. U.S.*, 727 F.2d 941, 945 (10th Cir. 1984), cert. denied 469 U.S. 819 (1984).² In the seminal case of *Hickman v. Taylor*, 329 U.S. 495, 510-511 (1947); the Supreme Court explained:

it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. That is the historical and the necessary way in which lawyers act within the framework of our system of jurisprudence to promote justice and to protect their clients' interests. This work is reflected, or course, in interviews, statements, memoranda, correspondence,

² *Nadler* is a case arising under the Freedom of Information Act (FOIA). FOIA Exemption 5 permits the withholding of "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. Sec. 552(b)(5). This exemption incorporates into FOIA all the ordinary civil discovery privileges, including those asserted by the Board herein. See *Michael's Piano*, 18 F.3d at 146. However, although factual materials falling within the scope of a privilege such as attorney work product may generally be discovered upon a showing of "substantial need," under FOIA Exemption 5, the test is whether information "would routinely be disclosed in private litigation." *Id.* Since these materials would clearly be covered by Exemption 5 as work product and deliberative materials, they would not be routinely disclosed, and thus would be absolutely protected from compelled disclosure under the FOIA, as well as under normal NLRB procedures in an open unfair labor practice case.

briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways

The Court in *Hickman* held that the preservation of the privacy of an attorney's work product was of such importance to the functioning of our legal system "that a burden rests on the one who would invade that privacy to establish adequate reasons to justify production through a subpoena or court order." *Id.* at 512. More specifically, the Court found that the petitioner's "naked, general demand" for witness statements taken by opposing counsel in preparation for possible civil litigation was insufficient to overcome assertion of the privilege. Further, because the doctrine "is an intensely practical one, grounded in the realities of litigation in our adversary system," the doctrine protects materials prepared by agents for the attorney as well as those prepared by the attorney alone. *U.S. v. Nobles*, 422 U.S. 225, 238-239 (1975). Additionally, the privilege can be asserted in response to a third-party subpoena. *Tuite v. Henry*, 98 F.3d at 1416; *Winchester Capital Management Co. v. Manufacturers Hanover Trust Co.*, 144 FRD 170, 175-76 (D.Mass. 1992).

Counsel for the General Counsel Wong's redacted communications with employee witnesses Humeston and Jackson involve his trial preparation and litigation strategy in the above noted matter. Counsel for the General Counsel Wong created those communications shortly before and during the hearing in the above noted matter. He generated those communications to prepare for litigation, including the General Counsel's case in chief and response to Respondent's anticipated defenses. The communications reveal Counsel for the General Counsel Wong's perceptions of the legal theory of the case, as well as his thought processes and mental impressions concerning the case. Some of those communications also reflect his pre-trial considerations, litigation strategy, and plans when calling the employees as witnesses. *United Technologies Corp. v. NLRB*, 632 F. Supp. 776, 780 (D.Conn. 1985) (memoranda prepared by a

Board agent that set forth the content of discussions with counsel for the charging party and witnesses and reflected pretrial considerations and strategies protected as attorney work product); *Heller v. U.S. Marshal's Serv.*, 655 F. Supp. 1088, 1092 (D.D.C. 1987) (attorney's notes protected because they contain "some perceptions of the . . . investigation"). For example, in several communications, Counsel for the General Counsel Wong asks Jackson and Humeston to review documents that would likely be presented to them at trial. In other communications, Counsel for the General Counsel Wong sent a spreadsheet he prepared for litigation to Jackson, asking him to review it and to be prepared to cover certain topics at trial. Additionally, other communications involve Counsel for the General Counsel Wong expressing his opinions and perception of various documents that would be used at trial.

Respondent cannot show that its litigation needs outweigh the protections afforded. Respondent simply states that it needs the privileged communications for impeachment purposes to show "bias" of the witnesses. It is unclear what Respondent even means by "bias." Jackson and Humeston are two of the former striking employees who Respondent is alleged to have discriminatorily refused to recall to work following the strike. If Respondent is asserting the two alleged discriminatees might be biased toward their own version of the facts, such bias would not be improper, as it is a bias possessed by every fact witness. Respondent is clearly engaged in a mere speculative "fishing expedition," as there is zero evidence that either Humeston or Jackson were improperly coached, which the Judge can attest to based on her own in camera viewing of the unredacted communications. Moreover, impeachment of the witnesses, even if it were to result, should have little impact on Respondent's case-in-chief and defenses. Respondent already possesses copies of the communications that are only about 10% redacted. Those minimally redacted copies provide Respondent with all the information it needs to fulfill its purported need

for the communications. Hence, for the reasons above, Respondent's Motion should be denied, because Respondent seeks unredacted communications that fall within the attorney work product doctrine and Respondent failed to establish that its need for the unredacted copies of those communications outweigh the protections afforded.

B. Respondent Has Not Complied with Established Administrative and Procedural Prerequisites

Respondent's Motion is simply its second attempt to circumvent the Board's established administrative and procedural prerequisites. According to the Board's Rules and Regulations, 29 C.F.R. Sec. 102.118, Board regional employees are expressly prohibited from disclosing, testifying about, or producing any agency records without the express written consent of the General Counsel.³ Counsel for the General Counsel Wong is subject to the supervision and control of the Board's General Counsel (29 U.S.C. 153(d)) and is required to comply with Sec. 102.118 of the Board's Rules and Regulations, as amended. In *United States ex rel. Touhy v. Ragen*, 340 U.S. 462, 468 (1951), the Supreme Court held that such regulations were necessary to provide a procedure for centralized decision-making concerning whether a subpoena or request for testimony or documents would be honored. The validity of such rules and regulations

³ Section 102.118 provides, in relevant part, that:

[N]o present or former Regional Director, field examiner, administrative law judge, attorney, specially designated agent, General Counsel, member of the Board or other officer or employee of the Agency shall produce or present any files, documents, reports, memoranda, or records of the Board or of the General Counsel, whether in response to a subpoena duces tecum or otherwise, without the written consent of the . . . General Counsel if the document is in a Regional Office of the Agency or is in Washington, D.C. and in the control of the General Counsel. Nor shall any such person testify in behalf of any party to any cause pending in any court . . . with respect to any information, fact or other matter coming to that person's knowledge in his or her official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Board or the General Counsel, whether in answer to a subpoena or otherwise, without the written consent of the . . . General Counsel if the person is in a Regional Office of the Agency or is in Washington, D.C. and subject to the supervision or control of the General Counsel

is well settled. *Davis v. Braswell Motor Freight Lines*, 363 F.2d 600 (5th Cir. 1966). The Supreme Court has instructed that no court should compel government employees to disobey “*Touhy*” regulations. *Touhy*, 340 U.S. at 468-70.

Moreover, a litigant may not enforce a subpoena ad testificandum against an employee of a federal agency, such as the Board, that has enacted a *Touhy* regulation, where that agency has not actually given the employee permission to make the desired disclosure. *Houston Business Journal, Inc. v. Office of the Comptroller*, 86 F.3d 1208, 1212 fn. 4 (D.C. Cir. 1996). Rather, the request for testimony must proceed solely through the agency’s regulation. See also *In re Boeh*, 25 F.3d 761, 763-67 (9th Cir. 1994), cert. denied, 513 U.S. 1109 (1995); *Moore v. Armour Pharmaceutical Co.*, 927 F.2d 1194, 1197 (11th Cir. 1991); *Davis Enters v. EPA*, 877 F.2d 1181, 1186 (3d Cir. 1989), cert. denied 493 U.S. 1070 (1990).

Here, Respondent’s Motion requests that Humeston and Jackson produce unredacted copies of Counsel for the General Counsel Wong’s litigation communications with them. Those communications are agency records that are part of the Agency’s litigation file in the above noted matter, which is currently an open case presently being litigated. The Judge previously quashed the subpoena ad testificandum that Respondent issued to Counsel for the General Counsel Wong for the production of numerous employee affidavits and statements, including that of Humeston and Jackson. That subpoena was quashed, in part, because Respondent failed to even submit a Section 102.118 request to the Board’s General Counsel. Similarly, Respondent failed to submit a Section 102.118 request when it subpoenaed Humeston and Jackson to produce Counsel for the General Counsel Wong’s litigation communications with them, nor did it make such a request before filing its Motion to obtain unredacted copies of those communications. Respondent’s current Motion is simply an end-run around Section 102.118,

which prohibits Counsel for the General Counsel Wong from disclosing the requested litigation communications, much less unredacted copies of those communications, without authorization from the General Counsel. Accordingly, the Counsel for the General Counsel's Opposition should be granted in its entirety solely on the basis of Respondent's repeated failure to follow the required administrative procedures.

C. The Motion is Just Another Untimely Attempt to Obtain *Jencks* Statements.

The Motion is simply Respondent's second attempt to obtain *Jencks*⁴ statements that it failed to request at the proper time, prior to its cross-examination of the witnesses, and instead requested in a belated motion, which the Judge properly denied. Respondent's Motion should again be denied to the extent that it seeks the production of *Jencks* statements at a time when there is no legitimate purpose for Respondent to have such statements, which are normally protected from disclosure by Section 102.118 of the Board's Rules and Regulations. In NLRB proceedings, a written statement made by a General Counsel witness and signed or otherwise adopted or approved by the witness is commonly referred to as a *Jencks* statement. See *Jencks Act*, 18 U.S.C. §3500 (1957); *Jencks v. U.S.*, 353 U.S. 657, 662 (1957); Section 102.118(g) of the Board's Rules and Regulations. Although Section 102.118 of the Board's Rules and Regulations generally prohibits Counsel for the General Counsel from disclosing witness statements, there is a limited exception: Section 102.118(e) *Production of statement for cross-examination*. As the title indicates, "the plain meaning" of Section 102.118(e) "limits the purpose of disclosure to cross-examination." *Wal-Mart Stores, Inc.*, 339 NLRB 64, 64 (2003).

The Board explained:

⁴ See *Jencks Act*, 18 U.S.C. §3500 (1957); *Jencks v. U.S.*, 353 U.S. 657, 662 (1957); Section 102.118(g) of the Board's Rules and Regulations.

No other purpose is stated, nor is there any hint that disclosure may be for other uses. Had the Board intended for additional uses, it would have stated those uses in the rule or provided for them through its decision. *Id.*

Consistent with the narrow exception allowing disclosure of witness statements for the limited purpose of cross-examination, Section 102.118(e) clearly establishes that witness statements are producible by Counsel for the General Counsel only after the witness has testified for the General Counsel, only upon Respondent's request, and only for use on cross-examination of the witness. Board's Rules and Regulations Section 102.118(e).⁵

Here, the Motion seeks unredacted copies of Counsel for the General Counsel Wong's trial preparation communications with Humeston and Jackson, who Respondent has already finished cross-examining. To the extent those communications include *Jencks* statements, Respondent failed to request those *Jencks* communications before it began, and even before it completed, its cross-examination of the two employees. To illustrate, included in the requested communications is an email from Counsel for the General Counsel Wong to Jackson, with the latter's affidavit attached. As discussed above, Respondent previously failed to request Jackson's affidavit and other *Jencks* materials before it began its cross-examination of him. It is now far too late for Respondent to obtain the affidavit and other *Jencks* materials because its opportunity to legally obtain those materials has long passed. For these reasons, Respondent's Motion should be denied to the extent that it requests *Jencks* statements.

III. CONCLUSION

For the reasons set forth above, Respondent's Motion should be denied in its entirety, and Humeston and Jackson should not be ordered to produce unredacted copies of their

⁵ A *Jencks* statement is not subject to production by subpoena in advance of trial. *H. B. Zachry Co.*, 310 NLRB 1037, 1037-1038 (1993). Nor is such statement or affidavit producible under the Freedom of Information Act (FOIA). See *Stride Rite Corp.*, 228 NLRB 224, 226 n. 3 (1977).

communications with Counsel for the General Counsel Wong concerning litigation in the above noted matter.

Dated at San Francisco, California this 12th day of January, 2021.

Respectfully submitted,

/s/ Jason Wong

JASON WONG
COUNSEL FOR THE GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
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TRACY AUTO, L.P. dba TRACY TOYOTA

Respondent

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MACHINISTS AND MECHANICS LODGE NO.
2182, DISTRICT LODGE 190, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
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Charging Party

**RESPONDENT'S MOTION TO REQUIRE PRODUCTION OF DOCUMENTS
WITHHELD PURSUANT TO GENERAL COUNSEL'S CLAIM OF PRIVILEGE
BASED ON ATTORNEY WORK PRODUCT REGARDING DOCUMENTS PRODUCED
BY TYROME JACKSON AND KEVIN HUMESTON**

As reflected in the ORDER REGARDING DOCUMENTS PRODUCED BY TYROME JACKSON AND KEVIN HUMESTON entered on January 4, 2021, General Counsel submitted privilege logs asserting attorney work product protection of communications between General Counsel and employees Tyrome Jackson and Kevin Humeston. *See* attached **Exhibit A** (Jackson Privilege Log) and **Exhibit B** (Humeston Privilege Log). Respondent hereby moves for an order requiring production of the documents listed on the privilege logs.

General Counsel claims attorney work-product protection of his communications with employees Tyrome Jackson and Kevin Humeston, asserting that such communications were prepared or obtained because of the prospect of litigation, citing Section 8-430 of the ALJ Bench

Respondent's Motion to Require Production of Documents Withheld Pursuant to General Counsel's Claim of Privilege Based on Attorney Work Product Regarding Documents Produced by Tyrome Jackson and Kevin Humeston
Cases 32-CA-260614, 32-CA-262291 and 32-RC-260453

Book. As the party asserting the work product protection, General Counsel bears the burden to establish that it applies. Public Service Co. of New Mexico, 364 NLRB No. 86, slip op. at 3 (2016).

As recognized by the Board, the work product doctrine derives from the Supreme Court's decision in Hickman v. Taylor, 329 U.S. 495 (1947), and protects from disclosure written material prepared by a party or his representative in anticipation of litigation or for trial. The strong public policy underlying the work product doctrine is to aid the adversarial process by providing a certain degree of privacy to a lawyer in preparing for litigation. Central Telephone Company of Texas, 343 NLRB 987, 988 (2004). "Protection is needed because an attorney preparing for trial must assemble much material that is outside the attorney client privilege, such as witness statements, investigative reports, drafts, pleadings and trial memoranda." In re Sealed Case, 146 F.3d 881, 884 (D.C. Cir. 1998).

"Blanket or speculative assertions of confidentiality, standing alone, are insufficient. Mission Foods, 345 NLRB 788, 791-792 (2005)." Mondelez Glob., LLC 2017 WL 3485229 (2017). General Counsel fails to cite any relevant legal authority for the proposition that the attorney work product doctrine provides blanket protection against disclosure of *communications* between General Counsel and an employee. The cases cited by General Counsel in his email quoting from the ALJ Bench Book do not address communications. Rather, the cited cases examine attorney work product protection in the context of trial material prepared by or for an attorney such as interview notes and discharge memoranda (Public Service Co. of New Mexico, 364 NLRB No. 86 (2016)); and investigation notes and summary report prepared by a human resources specialist at the direction of counsel (Central Telephone Company of Texas, 343 NLRB 987, 988 (2004)).

Respondent's Motion to Require Production of Documents Withheld Pursuant to General Counsel's Claim of Privilege Based on Attorney Work Product Regarding Documents Produced by Tyrome Jackson and Kevin Humeston
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Even if—despite General Counsel's failure to provide relevant legal authority that the communications with the employees are protected attorney work product—the communications are deemed to be work product, disclosure should still be ordered. As provided in the ALJ Bench Book § 8-430:

Note that FRCP 26(b)(3)(A)(ii) provides for an exception upon a party's showing that it has "a substantial need for the materials" and "cannot, without undue hardship obtain their substantial equivalent by other means." For cases applying this exception, see *Central Telephone Company of Texas*, above (union failed to meet its burden with respect to the respondent's investigative notes as the respondent had provided the union with witness statements and the union was able to conduct its own witness interviews); and *Marian Manor for the Aged and Infirm, Inc.*, 333 NLRB 1084 (2001) (employer seeking copy of responses to union's survey of employer's nursing staff regarding supervisory indicia failed to show that it was unable to obtain the equivalent information by other means, including conducting its own survey of employees). See also *Kaiser Aluminum & Chemical Corp.*, 339 NLRB 829 (2003) (respondent failed to show substantial need for a copy of the position statement submitted by the charging party to the General Counsel in support of its charge during the investigation).

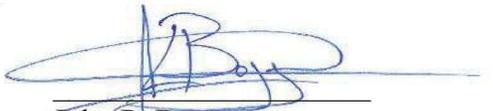
Respondent has no other means of obtaining the communications between the employees and General Counsel. They cannot be subpoenaed from the employees, as the General Counsel would seek to revoke the subpoena based on the work product protection, thereby placing the issue exactly in the same position as it is now. The material is relevant for impeachment purposes to show bias of the witnesses.

Moreover, there is no showing in the privilege logs produced by General Counsel that any of the communications disclose the "mental impressions, conclusion, opinions, or legal theories of a parties' attorney or other representative concerning the litigation." See Central Telephone Company of Texas, 343 NLRB 987, 988 (2004). Rather, General counsel's privilege log merely asserts the blanket objection that the communications were work product without describing why. See Fed. R. Civ. P. 26(b)(5)(A) ("When a party withholds information otherwise

Respondent's Motion to Require Production of Documents Withheld Pursuant to General Counsel's Claim of Privilege Based on Attorney Work Product Regarding Documents Produced by Tyrome Jackson and Kevin Humeston
Cases 32-CA-260614, 32-CA-262291 and 32-RC-260453

discoverable by claiming that it is privileged or subject to protection as trial-preparation material, the party must . . . describe the nature of the documents, communications, or tangible things not produced or disclosed--and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.”). The privilege logs fail to provide a description in a manner which would allow Respondent to assess the work product claim. CNN America., Inc. & Team Video Services, LLC, 2008 WL 5068926 (2008) (“[T]he privilege log should contain a specific explanation of the basis for the assertion of the privilege.”). Thus, the communications must be produced in accordance with the exception to the attorney work product doctrine. To the extent that the communications reflect General Counsel's mental impressions, conclusions, opinions, or legal theories, those portions may be redacted. See Quality Roofing Supply Co., 2011 WL 3625915 (2011).

Respectfully Submitted,



John P. Boggs
FINE, BOGGS & PERKINS, LLP

Dated: January 8, 2021

Exhibit A

Privilege Log for Communications Between Jackson and Counsel Wong

Item	Regarding	Privilege
Texts between JW and TJ from 11/6/20 - 12/24/20 Bates 214 - 219	JW asking TJ to review and answer questions about certain documents that may appear at trial ; JW informing TJ about when he will likely testify; JW telling TJ he is doing well at trial; JW asking whether TJ received Respondent's SDT.	Work product
11/6/20 email from JW to TJ (Bates 225 - 237)	JW provide TJ with his affidavit.	Work product
11/19/20 email from JW to TJ (Bates 238 - 247)	JW asking TJ to review and answer some questions about certain documents Respondent will likely present at trial.	Work product
11/30/20 email from JW to TJ (Bates 247 - 249)	JW providing his spreadsheet to TJ, analyzing TJ's paystubs.	Work product
12/1/20 email from JW to TJ (Bates 249 - 251)	JW asking TJ to review a repair order to prepare for trial	Work product
12/7/20 email from JW to TJ (Bates 252 - 253)	JW asking TJ to review another employee's text message to prepare for trial	Work product

Exhibit B

Privilege Log for Communications Between Humeston and Counsel Wong

Item	Regarding	Privilege
12/14/20 email from JW to -KH. Bates 57 - 59; and 68 - 78	JW asking KH to review a chart to help GC prepare for trial	Work product

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EXHIBIT A

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Cases 32-CA-260614, 32-CA-262291 and 32-RC-260453

CERTIFICATE OF SERVICE

I, Kathryn M. Cherry, hereby declare and state:

1. I am engaged by the law firm of FINE, BOGGS & PERKINS LLP, whose address is 16870 West Bernardo Drive, Suite 360, San Diego, California. My email address is kcherry@employerlawyers.com. I am not a party to the cause, and I am over the age of eighteen years.

2. On January 8, 2021, I caused to be served the following document(s):

**RESPONDENT'S MOTION TO REQUIRE PRODUCTION OF DOCUMENTS
WITHHELD PURSUANT TO GENERAL COUNSEL'S CLAIM OF PRIVILEGE
BASED ON ATTORNEY WORK PRODUCT REGARDING DOCUMENTS PRODUCED
BY TYROME JACKSON AND KEVIN HUMESTON**

on the interested parties in this action by addressing true copies thereof as follows:

- BY MAIL:** I am readily familiar with the firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service and said correspondence is deposited with the United States Postal Service the same day, postage pre-paid, in a sealed envelope.
- BY ELECTRONIC SERVICE:** by electronically mailing a true and correct copy through Fine, Boggs & Perkins' electronic mail system from kcherry@employerlawyers.com to the email addresses set forth below.

William T. Hanley
Weinberg, Roger & Rosenfeld
1001 Marina Village Pkwy, Ste. 200
Alameda, CA 94501-6430

whanley@unioncounsel.net

Jason Wong
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Jason.Wong@nlrb.gov

I certify under penalty of perjury that the above is true and correct. Executed at San Diego, California on January 8, 2021.

/s/ Kathryn M. Cherry

Kathryn M. Cherry
Fine, Boggs & Perkins LLP
16870 W. Bernardo Drive, Suite 360
San Diego, CA 92127
Tel: (858) 451-1240
Fax: (858) 451-1241
kcherry@employerlawyers.com