

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

1621 ROUTE 22 WEST OPERATING
COMPANY, LLC, d/b/a SOMERSET
VALLEY REHABILITATION &
NURSING CENTER,

and

SEIU 1199 UNITED HEALTHCARE
WORKERS EAST, NEW JERSEY
REGION

Case Nos. 22-CA-069152
22-CA-074665

**RESPONSE OF RESPONDENT, 1621 ROUTE 22 WEST OPERATING COMPANY,
LLC d/b/a SOMERSET VALLEY REHABILITATION & NURSING CENTER, IN
OPPOSITION TO COUNSEL FOR THE ACTING GENERAL COUNSEL’S MOTION
TO STRIKE AND FOR PARTIAL SUMMARY JUDGMENT**

PRELIMINARY STATEMENT

Respondent, 1621 Route 22 West Operating Company, LLC, d/b/a Somerset Valley Rehabilitation & Nursing Center (“Somerset”), respectfully responds to the motion of counsel for the Acting General Counsel (“AGC”) to strike portions of Somerset’s Amended Answer (“Answer”) and Separate Defenses (“Defenses”) to the Compliance Specification and Notice of Hearing (“Compliance Specification”). Specifically, the AGC contends that five of Somerset’s Defenses are not supported by case law established by the National Labor Relations Board (“NLRB” or “Board”), and that specific paragraphs of Somerset’s Answer are contrary to Board law and otherwise not compliant with Section 102.56 of the Board’s Rules and Regulations.

The AGC’s motion should be denied. Contrary to the AGC’s allegations, and as explained further below, Somerset’s Defenses are entirely consistent with Board, Circuit Court, and Supreme Court case law, and the underlying policies of the National Labor Relations Act

(the “Act”), of making discriminatees whole only for actual losses occasioned by the unfair labor practices (“ULPs”) at issue. Moreover, the portions of Somerset’s Answer challenged by the Board are consistent with Board law and Somerset’s duty under Section 102.56 to specifically admit or deny matters of which it has knowledge, and to state with specificity the matters as to which Somerset lacks knowledge. Overall, the AGC’s motion appears to be an attempt to strike and/or obtain summary judgment as to specific allegations of the Compliance Specification before allowing Somerset a full and fair opportunity to test the allegations of the Compliance Specification of which Somerset currently lacks knowledge, including the allegations relating to the interim earnings, interim expenses, replacement benefits, and mitigation efforts of the two individuals named in the Board’s Order -- Maharanie Mangal (“Mangal”) and Irene D’Ovidio (“D’Ovidio”). Thus, with the exception of those portions of Somerset’s Answer in which Somerset admits the allegations of the Compliance Specification, on which there is no actual dispute, the AGC’s motion should be denied.

BACKGROUND

Based upon a series of charges and amendments in Case Nos. 22–CA–069152 and 22–CA–074665, the Acting General Counsel issued an Order Consolidating Cases, Third Amended Consolidated Complaint (“Complaint”), and Notice of Hearing on April 26, 2012. In pertinent part, the Complaint alleged that Somerset unlawfully eliminated its Licensed Practical Nurse (“LPN”) job classification and that, as the result of the elimination, Mangal and D’Ovidio were discharged from Somerset in 2011. 1621 Route 22 West Operating Company, LLC, 364 NLRB No. 43, p. 8 (July 13, 2016) (“Board Decision”). A hearing before the Administrative Law Judge (“ALJ”) took place on May 7-11, 2012, and the ALJ’s decision issued on January 13, 2013, sustaining the allegations of the Complaint. (Board Decision, pp. 1, 8). Exceptions and

opposition briefs were filed and briefed between March and August 2013, but the Board's decision did not issue until July 13, 2016, presumably because it lacked a valid quorum for a substantial period in the interim. (See Board Decision at 1 n.1). In pertinent part, the Board upheld the ALJ's decision directing reinstatement of Mangal and D'Ovidio. Somerset petitioned the Third Circuit for review, and that Court affirmed the Board's Order in an Opinion dated March 14, 2018. (AGC Motion, Exhibit 2). Promptly following the issuance of the Third Circuit's Mandate on May 7, 2018 (see AGC Motion, Exhibit 2), Somerset made unconditional offers of reinstatement to Mangal and D'Ovidio on May 21, 2018. Mangal declined her offer of reinstatement on May 25, 2018, and D'Ovidio declined her offer of reinstatement on May 30, 2018. (Exhibits A-D).

The Regional Director issued the Compliance Specification in this matter on December 22, 2020. (AGC Motion, Exhibit 3). Somerset timely answered the Compliance Specification on January 12, 2021. (AGC Motion, Exhibit 4). On January 21, 2021, Compliance Officer Rhonda Fricke emailed Somerset's counsel a letter setting forth purported deficiencies in Somerset's answer. (AGC Motion, Exhibit 5). Without conceding that its original answer was deficient, Somerset timely filed its Amended Answer ("Answer") on January 28, 2021. (AGC Motion, Exhibit 7).

Now, before Somerset has had the opportunity to obtain information necessary to test the Regional Director's allegations of the Compliance Specification, the AGC moves to strike five of Somerset's defenses, and it moves to strike and/or for summary judgment as to many of the denials set forth in Somerset's Answer. Because Somerset's Answer and Defenses are appropriate, the AGC's motion should be denied.

LEGAL ARGUMENT

A. Somerset's Defenses Should Not be Stricken

At the outset, the Board should reject the AGC's blanket request to strike five of Somerset's defenses. As shown below, all of these defenses are appropriate, and Somerset should be given a fair opportunity to obtain and develop pertinent evidence in support of them at the hearing.

1. Defense Nos. 8 and 9

In Defense No. 8, Somerset asks the Board to shorten the backpay periods for Mangal and D'Ovidio based on factors unique to this case and not attributable to Somerset, including the Board's lack of a valid quorum during a substantial portion of the backpay period, resulting in an approximately five-year delay between the underlying ULPs in 2011 and the issuance of the Board's final Decision on July 13, 2016. For these same reasons, Somerset, through its Defense No. 9, asks the Board to depart from application of the quarterly backpay formula prescribed in F.W. Woolworth Co., 90 NLRB 289 (1950), and instead calculate backpay by subtracting Mangal's and D'Ovidio's interim earnings during the entire backpay period from the gross backpay amounts during the entire backpay period.

The AGC takes exception to both defenses, arguing that "the Board is not required to place the consequences of its own delay, even if inordinate, upon wronged employees to the benefit of wrongdoing employers." (AGC Motion, p. 4) (quoting NLRB v. J.H. Rutter-Rex Mfg. Co., 396 U.S. 258, 264-65 (1969)). But "[w]hen applying its general remedial policy to the facts of this case, the Board [is] required to consider any unique circumstances that would make the remedy's 'application to [the] particular situation oppressive and therefore not calculated to effectuate a policy of the Act.'" NLRB v. Community Health Services, 812 F.3d 768, 779 (10th

Cir. 2016) (quoting NLRB v. Seven-Up Bottling Co. of Miami, 344 U.S. 344, 349 (1953)). Importantly, on multiple occasions, Circuit Courts have declined to enforce Board orders where undue administrative delay would make their enforcement inequitable. See, e.g., TNS, Inc. v. NLRB, 296 F.3d 384, 403-04 (6th Cir. 2002) (setting aside backpay award that had had potentially been mounting during eighteen-year delay, since there was no “reasonable way to hold the [employer] responsible for damages accruing over all of this time”); NLRB v. Mountain Country Food Stores, Inc., 931 F.2d 21, 22-23 (8th Cir. 1991) (declining to enforce Board order rendered obsolete after seven-year delay, and noting that other courts have similarly denied enforcement of orders rendered obsolete by administrative delay) (citing cases); Olivetti Office U.S.A, Inc. v. NLRB, 926 F.2d 181, 189 (2d Cir. 1991) (“we cannot turn a blind eye to the extensive administrative delay by the Board, and we believe that enforcement of the Board's remedy more than six years after the misconduct would truly ‘mock reality’”) (quoting Emhart Indus. v. NLRB, 907 F.2d 372, 380 (2d Cir. 1990)).

Here, the backpay period was significantly lengthened by unique circumstances not attributable to Somerset. Although the case was tried in May 2012 and the ALJ’s decision issued in January 2013, the Board did not decide the case until July 13, 2016, and the Board’s Order was not enforced by the Third Circuit until May 2018. In the interim, it appears from the compliance specification that Mangal took a part-time job in 2012 and ceased looking for higher-paying employment for several years thereafter. (See Compliance Specification, Exhibit A). D’Ovidio, meanwhile, returned to full-time schooling at the beginning of 2012, for which the Regional Director appropriately tolled the running of backpay from January 1, 2012, through May 31, 2014. (See Compliance Specification, para. 3(g)). At the conclusion of that tolling period, D’Ovidio was holding a much higher-paying position. (Compliance Specification,

Exhibit B).¹ Not surprisingly, then, when Mangal and D'Ovidio were finally offered reinstatement after the Third Circuit enforced the Board's Order in May 2018, both quickly declined. Under these circumstances, Somerset's Defenses Nos. 8 and 9 would not place the adverse consequences of the delayed issuance of its order upon Mangal and D'Ovidio, as the AGC suggests. Rather, these defenses would merely shorten the backpay period (Defense No. 8), or at a very minimum, depart from the traditional quarterly backpay formula (Defense No. 9), to reflect the reality of the situation when the Board ordered Mangal and D'Ovidio reinstated in June 2016. And that reality is that Mangal and D'Ovidio had moved on from Somerset and had either withdrawn from the full-time workforce (as appears to have been the case with Mangal), or moved into another career (as appears to be the case with D'Ovidio). Thus, the Board should not strike Somerset Defenses Nos. 8 or 9.

2. Defense No. 11

In Defense No. 11, Somerset asks the Board to disallow the \$9,724 in interim expenses it claims for D'Ovidio to the extent that she incurred these expenses solely for the purpose of holding interim employment that was substantially higher-paying than the employment she held with Somerset. In seeking to strike this defense, the AGC relies on the Board's decision in King Soopers, Inc., 364 NLRB No. 93 (2016). (AGC Motion, p. 5). King Soopers significantly modified the Board's longstanding practice of offsetting interim expenses from interim earnings. Under the Board's change announced in King Soopers, the Board now allows compensation for interim expenses regardless of interim earnings. 364 NLRB No. 93, at pp. 3-5. The Board recognized that this was a significant remedial change from prior practice first announced in

¹ To date, Somerset has not obtained any information from the Regional Director specifying the exact nature of Mangal's and D'Ovidio's interim employment.

1938 in Crosset Lumber Co., 8 NLRB 40, 497-98 (1938), enf'd, 102 F.2d 1003 (8th Cir. 1938). The Board justified the change primarily on the grounds that discriminatees who are unable to find interim employment, or who find interim employment at amounts lower than their interim wages, will not receive full compensation for the search-for-work and interim employment expenses. King Soopers, 364 NLRB No. 93, p. 5. The Board acknowledged but rejected the dissent's argument that its new remedial policy might provide more than make-whole relief, stating, "even if the Board's revised remedial policy might result in a limited number of discriminatees with unusually high interim earnings receiving additional reimbursement, this fact would not cause us to reject it." Id., p. 7.

Notably, King Soopers was decided on August 24, 2016, which was more than a month after the Board's Decision in this case on July 13, 2016, and nearly five years after the ULPs the Board found in this case. Although the Board in King Soopers announced that would apply its new policy retroactively to that case and all pending cases in whatever stage, it also acknowledged that there could be circumstances in which retroactive application would be unjust. King Soopers, 364 NLRB No. 93, pp. 8-9. This case presents such a circumstance. The Compliance Specification does not fully specify the nature of the \$9,724 in interim expenses it claims for D'Ovidio, but it claims these expenses commencing with the week ending June 7, 2014 (after the expiration of the tolling period to account for D'Ovidio's full-time schooling), and continuing through the week ending June 2, 2018 (after she declined Somerset's offer of reinstatement). (See Compliance Specification, Exhibit B). The interim expenses the Regional Director claims for D'Ovidio were all incurred during the period after D'Ovidio had returned to the workforce following an absence due to full-time schooling, and were all incurred in connection with substantially higher-paying employment than her employment with Somerset.

Indeed, the \$9,724 in interim expenses the Regional Director claims for D'Ovidio exceeds the \$8,778 in net backpay the Regional Director claims for her. (Compliance Specification, Exhibit B at 10). Under these circumstances, the \$9,724 in interim expenses the Regional Director seeks for D'Ovidio are not consistent with the Act's remedial policy of making employees whole for "actual losses" incurred as the result of ULPs. See, e.g., Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 200 (1941). Rather, an award of such expenses would only confer upon D'Ovidio an unwarranted windfall occasioned by a sharp change in the Board's remedial policy years after the underlying conduct found unlawful by the Board, and more than a month after the Board's Decision in this very case. Thus, the Board should not strike Somerset's Defense No. 11.

3. Defense Nos. 12 and 13

In Defense No. 12, Somerset asks the Board to disallow, in whole or in part, the amounts claimed by the Regional Director on behalf of D'Ovidio for allegedly lost 401(k) contributions on or after the second quarter of 2014 based on 401(k) or similar contributions made on her behalf in connection with subsequent employment. In Defense No. 13, Somerset asks the Board to offset D'Ovidio's allegedly lost 401(k) contributions against her substantially higher earnings in subsequent employment, to avoid providing her with a double recovery.

The AGC argues that both defenses are "contrary to current Board law." (AGC Motion, p. 6). The AGC contends that D'Ovidio is entitled "to be made whole for any lost 401(k) plan contributions without any such offset based either on her interim earnings or on similar contributions that may have been made on her behalf by an interim employer." (AGC Motion, p. 6). In fact, the AGC's position is contrary to current Board law. The NLRB's Casehandling Manual (Part Three) ("CHM") states that "Retirement benefits are not offset by interim wage earnings. Equivalent retirement benefits earned from interim employment are appropriately

offset against gross retirement benefits.” CHM, Sec. 10544.3 (emphasis added). Defense No. 12 falls squarely within this section of the Casehandling Manual in that it seeks to offset D’Ovidio’s alleged lost 401(k) benefits against equivalent benefits she earned during her interim employment. Thus, Defense No. 12 is appropriate and should not be stricken.

As to Defense No. 13, while lost retirement benefits are generally not offset by interim wages, see CHM, Sec. 10544.3 the Board has held that certain cash payments by interim employers relating to retirement contributions can be offset against net backpay. United Enviro Systems, Inc., 323 NLRB 83, 84 (1997) (“In sum, we hold that the following amounts are proper deductions from net backpay: (1) payments from an interim employer's profit-sharing plan that a discriminatee, on termination of that interim employment, has received in cash; and (2) distributions from an interim employer's pension plan that a discriminatee, on termination of that interim employment, has the option of either receiving directly in cash or rolling over into a Section 401(k) plan.”). More broadly, since the remedial purpose of the Act is to make employees whole only for “actual losses,” Phelps Dodge, 313 U.S. at 200, Somerset should be given the opportunity to test the Regional Director’s allegations relating to D’Ovidio’s interim earnings, as some of the interim payments that D’Ovidio received from her interim employment may appropriately be classified as equivalent interim retirement benefits rather than interim wages. Thus, the Board should permit Somerset to maintain its Defense No. 13, at least until Somerset has had a fair opportunity to obtain information relating to D’Ovidio’s interim employment earnings.

B. The Board Should Deny the AGC’s Request to Strike Certain Paragraphs of Somerset’s Answer

Next, in paragraphs 12-51 of the AGC’s motion, the AGC moves to strike, and/or for summary judgment, as to certain of Somerset’s responses to the allegations of the Compliance

Specification. The NLRB wrongly asserts that portions of Somerset's Answer are not compliant with Section 102.56 of the Board's Rules and Regulations. To the contrary, Somerset's Answer complies in full with Sections 102.56(b) and (c) of the Board's Rules and Regulations, which provide as follows:

(b) Form and contents of answer. The answer to the specification must be in writing, signed and sworn to by the Respondent or by a duly authorized agent with appropriate power of attorney affixed, and contain the address of the Respondent. The answer must specifically admit, deny, or explain each allegation of the specification, unless the Respondent is without knowledge, in which case the Respondent must so state, such statement operating as a denial. Denials must fairly meet the substance of the allegations of the specification at issue. When a Respondent intends to deny only a part of an allegation, the Respondent must specify so much of it as is true and deny only the remainder. As to all matters within the knowledge of the Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial will not suffice. As to such matters, if the Respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer must specifically state the basis for such disagreement, setting forth in detail the Respondent's position and furnishing the appropriate supporting figures.

(c) Failure to answer or to plead specifically and in detail to backpay allegations of specification. If the Respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the Respondent, find the specification to be true and enter such order as may be appropriate. If the Respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure to deny is not adequately explained, such allegation will be deemed admitted as true, and may be so found by the Board without the taking of evidence supporting such allegation, and the Respondent will be precluded from introducing any evidence controverting the allegation.

29 C.F.R. § 102.56(b), (c) (emphasis added).

As shown below, those portions of Somerset's Answer challenged by the AGC are compliant with Sections 102.56(b) and (c). Thus, with the exception of those portions of

Somerset's Answer in which Somerset admits the allegations of the Compliance Specification, the AGC's motion for summary judgment should be denied.²

12. Paragraph 1(a) of the Compliance Specification

Regional Director's Allegations

The backpay shall be calculated in the manner prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as set forth in *New Horizons*, 2183 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 9 (2010), enf. denied on other grounds, 647 F. 3d 1137 (D.C. Cir. 2011).

Somerset's Answer

As to Paragraph 1(a). The allegations of Paragraph 1(a) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset denies the allegations of Paragraph 1(a) and refers specifically to Separate Defense Nos. 2-8 to the proper duration of the backpay period; and Separate Defense No. 9 relating to factors warranting a departure from the quarterly backpay formula set forth in F.W. Woolworth Co., 90 NLRB 289 (1950).

AGC's Motion

Paragraph 1(a) of the Specification alleges that backpay shall be calculated in the manner prescribed in *F.W. Woolworth Co.*, supra, with interest as set forth in *New Horizons*, [283] NLRB 1173 (1987),[,] compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 9 (2010), enf. denied on other grounds, 647 F.3d 1137 (D.C. Cir. 2011). By denying the applicability of these cases, Respondent impermissibly seeks to relitigate the Board's determination in the underlying [sic] unfair labor practice case. Accordingly, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 1(a) of the Specification.

² For the convenience of the Board, in response to each of the paragraphs 12-51 of the AGC's motion, Somerset sets forth below verbatim in single-spaced text (i) the allegations of the applicable paragraph of the Compliance Specification, (ii) the allegations of Somerset's Answer, and (iii) the AGC's arguments, before stating Somerset's position in response to the AGC's motion. Footnotes are omitted unless material to the arguments raised in the AGC's motion. Where included, footnotes copied from another source take on the numbering used in this response, with a bracketed notation to indicate the footnote number from the source document.

Somerset's Response to AGC's Motion

Somerset does not “deny the applicability of” the cases cited in Paragraph 1(a) of the Compliance Specification. Rather, insofar as Somerset is deemed required to respond to the legal conclusions set forth in this paragraph, Somerset denies the Regional Director’s vague and sweeping allegation that “the backpay shall be calculated” in accordance with those cases, which assumes that nothing else is to be considered in the calculation of backpay. To the contrary, as stated in Somerset’s response to this paragraph, other factors bear on the appropriate calculation of backpay, including the mitigation-related defenses set forth in Somerset’s Separate Defense Nos. 2-7;³ and the policy-related defenses set forth in Separate Defense Nos. 8-9. Somerset’s mitigation-related Defenses Nos. 2-7 are well-supported in Board law. See, e.g., Int’l Bhd. of Teamsters Local 25, 366 NLRB No. 99 (2018) (“The Board may toll backpay during any portion of the backpay period in which a discriminatee failed to mitigate her losses”); Millennium Maintenance & Electrical Contracting, 344 NLRB 516, 517 (2005) (affirmative defenses to mitigate liability include a “willful loss of interim earnings”); see also Phelps Dodge, 313 U.S. at 199-200 (Board may give appropriate weight to a “clearly unjustifiable refusal to take desirable new employment”); Tubari Ltd, Inc. v. NLRB, 959 F.2d 451, 453-54 (3d Cir. 1992) (“employer meets its burden on the mitigation issue by showing that the employee has withdrawn from the employment market”). And, for the reasons discussed more fully in Part A.1, above, Somerset’s

³ Somerset’s mitigation-related defenses include that Mangal and D’Ovidio (i) failed to exercise reasonable diligence in securing interim employment following their discharges (Separate Defense No. 2); (ii) withdrew from the employment market (Separate Defense No. 3); (iii) incurred willful losses in earnings (Separate Defense 4); (iii) incurred losses in earnings for reasons unrelated to Somerset (Separate Defense 5); (iv) Mangal accepted a part-time position and ceased looking for full-time employment, and therefore her backpay period should end no later than March 2012 (Separate Defense No. 6); and (v) D’Ovidio returned to school full-time, and therefore her backpay period should end no later than January 2012 (Separate Defense 7).

policy-related Defenses Nos. 8-9 are appropriate because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period and/or a departure from the quarterly backpay formula of F.W. Woolworth Co. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

13. Paragraph 1(b) of the Compliance Specification

Regional Director's Allegations

Daily compound interest for Mangal and D'Ovidio began to accrue on the first date of the backpay period and continues to accrue until the date the backpay is paid.

Somerset's Answer

As to Paragraph 1(b). The allegations of Paragraph 1(b) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset denies the allegations of Paragraph 1(b) and refers to the Separate Defense No. 15 relating to the need to reduce and recalculate the amounts claimed by the Regional Director on behalf of Mangal and D'Ovidio for interest in light of the Regional Director's overstatement of Mangal's and D'Ovidio's backpay entitlement, as set forth herein.

AGC's Motion

Paragraph 1(b) of the Specification alleges the accrual period for daily compound interest for Mangal and D'Ovidio. Respondent denies the allegation, arguing that because the Regional Director overstated the amount of backpay they are owed, the daily compound interest must be recalculated. Inasmuch as Respondent's Amended Answer is an impermissible attempt to relitigate the Board's previous legal determination that compound interest is due from the first date of the backpay period until the backpay is paid, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 1(b) of the Specification.

Somerset's Response to AGC's Motion

Somerset is not seeking to relitigate the Board's decision in Kentucky River Medical Center, 356 NLRB No. 9 (2010), enf. denied on other grounds, 647 F. 3d 1137 (D.C. Cir. 2011), relating to the running of daily compound interest. Rather, insofar as Somerset is deemed required to respond to the legal conclusions set forth in this paragraph, Somerset denies the

Regional Director's vague and sweeping allegation of this paragraph to the extent that they ask Somerset to admit to the specific interest amounts incorporated into Exhibit A, p. 11 and Exhibit B, p. 10, of the Compliance Specification. As stated in Somerset's Separate Defense No. 15, which Somerset incorporates by reference in its denial of the allegations of this paragraph, the interest amounts the Regional Director claims on behalf of Mangal and D'Ovidio must be reduced and recalculated in light of the Regional Director's overstatement of Mangal's and D'Ovidio's backpay entitlement, as set forth throughout Somerset's Answer. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

14. Paragraph 1(c) of the Compliance Specification

Regional Director's Allegations

An appropriate measure of the gross backpay owed Mangal and D'Ovidio is the amount they would have earned if they had been continually employed by Respondent during the backpay period, based on their average earnings prior to their unlawful discharges.

Somerset's Answer

As to Paragraph 1(c). The allegations of Paragraph 1(c) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset denies the allegations of Paragraph 1(c) and refers to the Separate Defense Nos. 2-8 relating to the proper duration of the backpay period.

AGC's Motion

Paragraph 1(c) of the Specification alleges that the discriminatees' gross backpay is the amount they would have earned, based on their average earnings, if they had been continuously employed by Respondent during the backpay period. Respondent denies this allegation, arguing that backpay for Mangal and D'Ovidio should be disallowed, in whole or in part, because: (i) they failed to exercise reasonable diligence in securing interim employment following their discharges (Respondent's Separate Defense 2); (ii) they withdrew from the employment market (Respondent's Separate Defense 3); (iii) they incurred willful losses in earnings (Respondent's Separate Defense 4); (iii) they incurred losses in earnings for reasons unrelated to Respondent (Respondent's Separate Defense 5) (iv) Mangal accepted a part-time position and ceased looking for full-time employment, and therefore her backpay period should end no later than March

2012 (Respondent's Separate Defense 6); (v) D'Ovidio returned to school full-time, and therefore her backpay period should end no later than January 2012 (Respondent's Separate Defense 7); (vi) due to the Board's lack of a quorum during a substantial portion of the backpay period, resulting in a delay in the Board's issuance of its June 13, 2016 decision and order (Respondent's Separate Defense 8).

Respondent's Amended Answer is deficient because it does not offer an alternative method to the one set forth in the Specification for calculating backpay, as required by Section 102.56(b) of the Board's Rules. Instead, Respondent offers defenses as to why the discriminatees' backpay should be tolled and/or reduced. Respondent's Separate Defenses 2-7 should be rejected because they bear on the question of whether the discriminatees made a good faith effort to mitigate their lost income, and not on the computation of gross backpay. *Int'l Bhd. of Teamsters Local 25*, 366 NLRB No. 99 (2018). Additionally, for the reasons discussed above, Respondent's Separate Defense 8, should also be stricken. Accordingly, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 1(c) of the Specification.

Somerset's Response to AGC's Motion

Somerset's Answer to this paragraph is sufficient. Insofar as Somerset is deemed required to respond to the legal conclusions set forth in this paragraph, Somerset denies the Regional Director's vague and sweeping allegation and refers to its Separate Defense Nos. 2-8 relating to the proper duration of the backpay period. The AGC criticizes Somerset for "not offering an alternative method to the one set forth in the Specification for calculating backpay," but the AGC ignores that this requirement applies only "as to all matters within the knowledge of the Respondent," 29 C.F.R. § 102.56(b); and it further ignores that, elsewhere in its Answer, Somerset offers alternate calculations based on matters within its knowledge. (See Somerset's Answers to Paragraphs 2(f), 3(f); Response to Paragraphs 23, 32 below).⁴ The AGC argues that

⁴ Elsewhere in Somerset's Answer, Somerset also admits to other factual matters within the scope of its knowledge upon which the Regional Director bases its gross backpay calculation, including: (i) the dates Mangal and D'Ovidio were discharged from Somerset, (ii) the dates Mangal and D'Ovidio were given unconditional offers of reinstatement, (iii) Mangal's and D'Ovidio's hourly rates at the time of their discharges; (iv) Mangal's and D'Ovidio's average bi-

Somerset's assertion of its mitigation-related defenses in Separate Defense Nos. 2-7 "should be rejected because they bear on the question of whether the discriminatees made a good faith effort to mitigate their lost income, and not on the computation of gross backpay"; but the case cited by the AGC holds that "[t]he Board may toll backpay during any portion of the backpay period in which a discriminatee failed to mitigate her losses." Int'l Bhd. of Teamsters Local 25, 366 NLRB No. 99, p.1 (2018). When backpay is "tolled," it necessarily impacts the backpay computation. The AGC's objection to this portion of Somerset's answer thus appears more semantic than substantive. Lastly, while the AGC attacks Somerset's Separate Defense No. 8, for the reasons discussed more fully in Part A.1, above, this defense is appropriate because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

15. Paragraph 1(d) of the Compliance Specification

Regional Director's Allegations

The gross backpay is computed for Mangal and D'Ovidio from the date of their discharges through the dates they declined valid offers of reinstatement.

Somerset's Answer

As to Paragraph 1(d). The allegations of Paragraph 1(d) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset denies the allegations of Paragraph 1(d) and refers to Separate Defense Nos. 2-8 for legal and factual considerations bearing on the proper duration of the backpay.

weekly hours worked prior to their discharges; (v) the Regional Director's use of Mangal's and D'Ovidio's average bi-weekly hours in the calculation of the gross backpay; and (vi) the fact that Mangal and D'Ovidio were included among the group of employees for whom Somerset provided 2% annual pay increases on their work anniversaries. (See Somerset's Answers to Paragraphs 2(a) - 2(e), 3(a) - 3(e); Response to Paragraphs 18-22, 27-31 below). As to such matters, Somerset has no "alternative" methodologies or numbers to provide.

AGC's Motion

Paragraph 1(d) of the Specification alleges that Mangal's and D'Ovidio's gross backpay is calculated from the date of their discharges through the dates they declined valid offers of reinstatement. Respondent denies the allegation, citing its Separate Defenses 2-8 "for legal and factual considerations bearing on the proper duration of the backpay." As discussed herein, Respondent's answer to paragraph 1(d) is deficient under Section 102.56(b) of the Board's Rules and Regulations because it seeks to relitigate established Board law,[] and because it denies the allegation while offering no alternative gross backpay formula or supporting figures. Additionally, General Counsel moves to strike the portion of Respondent's Answer that invokes its Separate Defenses 2-7 because that portion of Respondent's Answer relates to the question of whether the discriminatees made a good faith effort to mitigate their lost income, and not to the computation of gross backpay, as discussed herein. For the reasons discussed above, the General Counsel also moves to strike Respondent's Separate Defense 8.

Finally, while Respondent purports, through its Separate Defenses, to state the basis for its disagreement with the allegation, nowhere in its Amended Answer does it set forth its position as to the applicable premise that gross backpay is computed for the discriminatees from the date of their discharge through the dates they decline valid offers of reinstatement, nor does it furnish the appropriate supporting figures.[⁵] Inasmuch as Respondent's Amended Answer is an attempt to relitigate the Board's previous legal determination, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 1(d) of the Specification.

Somerset's Response to AGC's Motion

Somerset's Answer to this paragraph is sufficient. Insofar as Somerset is deemed required to respond to the legal conclusions set forth in this paragraph, Somerset again denies the Regional Director's vague and sweeping allegation and refers again to its Separate Defenses Nos. 2-8 relating to the proper duration of the backpay period. Once again, the AGC takes issue with Somerset's reference to its mitigation-related Defenses Nos. 2-7, but again, these defenses

⁵ [Footnote 4 to the AGC's motion] Although in its Separate Defenses 6 and 7 Respondent suggests alternative dates for the end of Mangal's and D'Ovidio's respective backpay periods, the suggested alternative dates are not supported by any factual predicate articulated by Respondent, and for this reason summary judgment should be granted as to paragraph 1(d) of the Specification.

are properly invoked since the Board may toll backpay during any portion of the backpay period in which Mangal or D'Ovidio failed to mitigate their losses. Int'l Bhd. of Teamsters Local 25, 366 NLRB No. 99, p.1 (2018). And once again, the AGC attacks Somerset's reference to Separate Defense No. 8, but for the reasons discussed more fully in Part A.1, above, this defense is appropriate because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period.

The AGC further argues that "nowhere in its Amended Answer does it set forth its position as to the applicable premise that gross backpay is computed for the discriminatees from the date of their discharge through the dates they decline valid offers of reinstatement, nor does it furnish the appropriate supporting figures." To the contrary, Somerset articulates alternate end dates to the backpay period through its Separate Defenses Nos. 6-8, and furnishes alternate supporting figures (premised on Separate Defense Nos. 6-7) based on matters within its knowledge in response to Paragraphs 2(f) and 3(f) of the Answer. In footnote 4 to the AGC's motion, the AGC wrongly contends that the suggested alternative dates set forth in Somerset's Separate Defenses Nos. 6-7 "are not supported by any factual predicate articulated by Respondent." To the contrary, the factual predicates are directly articulated in those defenses themselves. In Separate Defense No. 6, Somerset states that "[t]he backpay period for Mangal should be cut off no later than March 2012 when, upon information and belief, she accepted a part-time position and ceased looking for full-time employment." In Separate Defense No. 7, Somerset states that "[t]he backpay period for D'Ovidio should be cut off no later than January 2012 when, upon information and belief, she returned to full-time schooling."

Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

16. Paragraph 1(e) and 1(f) of the Compliance Specification

Regional Director's Allegations

1(e) Net backpay of wages for each discriminatee during their respective backpay period is the difference between each employee's calendar quarter gross backpay less calendar quarter interim earnings.

1(f) Interim earnings are the wages the discriminatees received from interim employers during the backpay period and are computed on a quarterly basis.

Somerset's Answer

As to Paragraph 1(e). The allegations of Paragraph 1(e) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that net backpay of wages is measured as the difference between Mangal's and D'Ovidio's gross backpay less interim earnings, but Somerset denies that gross backpay amount is calculated through the date that Mangal and D'Ovidio were offered reinstatement (see Separate Defense Nos. 2-8 relating to the proper duration of the backpay period), and Somerset further denies that the proper measure of net backpay for Mangal and D'Ovidio is calculated on a quarterly basis (see Separate Defense No. 9 relating to factors warranting a departure from the quarterly backpay formula set forth in F.W. Woolworth Co., 90 NLRB 289 (1950)).

As to Paragraph 1(f). The allegations of Paragraph 1(f) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that interim earnings are based in part on the wages that Mangal and D'Ovidio earned from interim employment during the back pay period; but Somerset is entitled to a further credit beyond actual interim earnings, and/or the backpay period should be cut off, based on Mangal's and/or D'Ovidio's failure to exercise reasonable diligence in their efforts to secure interim employment; their withdrawal from the employment market; any losses willfully incurred; Mangal's failure to look for full-time employment after March 2012; D'Ovidio's return to full-time schooling; and other unique factors not attributable to Somerset (see Separate Defense Nos. 2-8); and Somerset further denies that interim earnings are computed on a quarterly basis (see Separate Defense No. 9 relating to factors warranting a departure from the quarterly backpay formula set forth in F.W. Woolworth Co., 90 NLRB 289 (1950)).

AGC's Motion

Paragraph 1(e) of the Specification alleges the formula for computing net backpay for each discriminatee. Respondent admits to the formula alleged by the General Counsel, but denies that gross backpay should be calculated through the date when each of the discriminatees was offered reinstatement and that net backpay

should be calculated on a quarterly basis, and cites its Separate Defenses 2-9. For the reasons discussed herein, Respondent's Separate Defenses 2-9 should be stricken. Moreover, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 1(e) of the Specification based on its attempt to relitigate the Board's decision in the underlying unfair labor practice charge.

Paragraph 1(f) of the Specification alleges that interim earnings are wages the discriminatees received from interim employers during the backpay period, and that they are computed on a quarterly basis. In its Amended Answer, Respondent admits that interim earnings are based "in part" on the wages the discriminatees earned from interim employment during the backpay period, but argues that it is entitled to "a further credit beyond actual interim earnings," and/or that Mangal's backpay period should "be cut off" based on the arguments set forth in its Separate Defenses 2-9. For the reasons discussed herein, Respondent's Separate Defenses 2-9 should be stricken. Moreover, to the extent that Respondent seeks to relitigate established Board law, as set forth in *F.W. Woolworth Co.*, supra, which provides that interim earnings are computed on a quarterly basis, its answer is deficient under Section 102.56(b). Accordingly, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 1(f) of the Specification.

Somerset's Response to AGC's Motion

Somerset's Answers to Paragraphs 1(e) and 1(f) are sufficient. Insofar as Somerset is deemed required to respond to the legal conclusions set forth in these paragraphs, Somerset appropriately invokes Separate Defenses Nos. 2-9 in response to the Regional Director's descriptions of the manner in which net backpay and interim earnings are calculated. In response, the AGC makes the wholly conclusory claim that Separate Defenses Nos. 2-9 "should be stricken," but all of these defenses are appropriate. As described more fully above, Somerset's mitigation-related Defenses Nos. 2-7 are entirely appropriate in response to the Regional Director's allegations of net backpay and interim earnings. See, e.g., Phelps Dodge, 313 U.S. at 198 (holding that "deductions should be made not only for actual earnings by the worker but also for losses which he willfully incurred"). And, for the reasons discussed more fully in Part A.1, above, Somerset's policy-related Defenses Nos. 8-9 are appropriate because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay

period and/or a departure from the quarterly backpay formula of F.W. Woolworth Co. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

17. Paragraphs 1(g) and 1(h) of the Compliance Specification

Regional Director's Allegations

1(g) Interim search-for-work and work-related expenses are necessary expenses incurred by each employee in seeking and holding interim employment.

1(h). Discriminatees are entitled to reimbursement of interim search-for-work and work-related expenses incurred in seeking and holding interim employment.

Somerset's Answer

As to Paragraph 1(g). The allegations of Paragraph 1(g) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that search-for-work and work-related expenses are reimbursable to the extent that they were necessarily incurred in seeking and securing interim employment that was comparable to the employment lost, but not if they were incurred solely for the purposes of holding interim employment that was substantially higher-paying than the employment that was lost (see Separate Defense Nos. 10, 11).

As to Paragraph 1(h). The allegations of Paragraph 1(h) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that Mangal and D'Ovidio are entitled to reimbursement for search-for-work and work-related expenses are reimbursable to the extent that they were necessarily incurred in seeking and securing interim employment that was comparable to the employment lost, but not if they were incurred solely for the purposes of holding interim employment that was substantially higher-paying than the employment that was lost (see Separate Defense Nos. 10, 11).

AGC's Motion

Paragraphs 1(g) and 1(h) of the Specification, respectively, allege that interim search-for-work and work-related expenses are necessary expenses incurred by each employee in seeking and holding interim employment, and that the discriminatees are entitled to reimbursement of such expenses. In its Amended Answer, Respondent admits that search-for-work and work-related expenses are reimbursable (paragraph 1(g)), and that the discriminatees are entitled to such reimbursement (paragraph 1(h)), but argues, citing its Separate Defenses 10 and 11, that the discriminatees are only entitled to such reimbursement if the expenses are incurred solely for the purpose of securing comparable employment, and not if

they were incurred solely for the purpose of holding interim employment that was higher-paying than the employment that was lost. Respondent cites no legal authority for its position. Accordingly, for the reasons discussed herein, the General Counsel moves to strike Respondent's Separate Defenses 10 and 11. Moreover, inasmuch as Respondent's Amended Answer is an attempt to relitigate established Board law, the General Counsel moves to strike and/or for summary judgment with respect to paragraphs 1(g) and (h) of the Specification.

Somerset's Response to AGC's Motion

Somerset's Answers to Paragraphs 1(g) and 1(h) are sufficient. Insofar as Somerset is deemed required to respond to the legal conclusions set forth in these paragraphs, Somerset appropriately invokes its Separate Defenses Nos. 10 and 11. In Separate Defense No. 10, Somerset states that the interim expenses claimed by the Regional Director on behalf of Mangal and D'Ovidio should be denied, in whole or in part, to the extent that they were not reasonably incurred by Mangal and/or D'Ovidio for the purposes of securing alternate employment. This defense is entirely consistent with the Board's remedial policy of awarding interim expenses only to make employees whole for the unfair labor practices, and not for expenses that the employee would have incurred regardless of the unfair labor practice. See Interstate Bakeries Corp., 360 NLRB 112, 112 n.3 (2014) (upholding award of moving expenses caused by unlawful relocation but declining to award prepaid mortgage insurance and hazard insurance, which the Board viewed as "more properly regarded as costs of homeownership prepaid at closing than as closing costs Rammage incurred because of his relocation"). And for the reasons discussed more fully in Part A.2, above, Separate Defense No. 11 -- in which Somerset asks the Board to deny the Regional Director's claim for interim expenses for D'Ovidio to the extent that these expenses were incurred solely for the purpose of holding interim employment that was substantially higher-paying than the employment that was lost -- is appropriate and consistent with longstanding Board law in place at the time D'Ovidio was discharged from Somerset.

In any event, the Regional Director provides no information in the Compliance Specification as to what the \$9,724 in interim expenses it claims for D'Ovidio were for, or how the Regional Director calculated them. Without giving Somerset the opportunity to understand the bases for the Regional Director's calculations, it is improper for the AGC to seek to deny Somerset the opportunity to refute them or present its Defense Nos. 10-11 in response to the Regional Director's claimed interim expenses. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

18. Paragraphs 2(a) of the Compliance Specification

Regional Director's Allegations

The backpay period for Mangal begins on October 17, 2011, the date Respondent terminated her employment.

Somerset's Answer

As to Paragraph 2(a). Somerset admits the allegations of Paragraph 2(a).

AGC's Motion

Paragraph 2(a) of the Specification alleges the start date of Mangal's backpay period. Based on Respondent's unqualified admission, the General Counsel seeks summary judgment with respect to this paragraph.

Somerset's Response to AGC's Motion

Somerset does not oppose summary judgment with respect to Paragraph 2(a).

19. Paragraphs 2(b) of the Compliance Specification

Regional Director's Allegations

The backpay period for Mangal ends on May 25, 2018, the date she declined Respondent's offer of reinstatement.

Somerset's Answer

As to Paragraph 2(b). Somerset admits that Mangal declined Somerset's offer of reinstatement on or around May 25, 2018, but otherwise denies the allegations of

Paragraph 2(b). In particular, as set forth in Separate Defense No. 6, the backpay period for Mangal should be cut off no later than March 2012 when, upon information and belief, she accepted a part-time position and ceased looking for full-time employment. The backpay period for Mangal should be further cut off based on its discovery of additional information not currently within the scope of Somerset's knowledge but which Somerset expects to learn in the course of pre-hearing proceedings and the hearing, including: Mangal's failure to exercise reasonable diligence in her efforts to secure interim employment; her withdrawal from the employment market; and any losses she willfully incurred. (See Separate Defense Nos. 2-5). It should be further cut off for the reasons discussed more fully in Separate Defense No. 8.

AGC's Motion

Paragraph 2(b) of the Specification alleges the end date of Mangal's backpay period as the date Mangal declined Respondent's offer of reinstatement. In its Amended Answer, Respondent admits that Mangal declined Respondent's offer of reinstatement on or around May 25, 2018, but otherwise denies the allegations. Citing its Separate Defenses 2-8, Respondent argues that Mangal's backpay period should "be cut off" no later than March 2012 when, it contends, she accepted a part-time position and stopped seeking full-time employment. For the reasons set forth herein, Respondent's Separate Defenses 2-8 should be stricken. Additionally, Respondent's Amended Answer is deficient because it seeks to relitigate established Board law with respect to the end date of the backpay period. Moreover, to the extent that Respondent's Amended Answer conflates the backpay period end date with allegations that Mangal's backpay should be tolled because she allegedly failed to adequately mitigate her wage losses, General Counsel moves to strike and/or for summary judgment with respect to paragraph 2(b) of the Specification.

Somerset's Response to AGC's Motion

Somerset's Answer to this paragraph is sufficient. The AGC takes exception to Somerset's assertion of its mitigation-related Defenses Nos. 2-6 as to Mangal, claiming that these defenses "conflate[] the backpay period end date with allegations that Mangal's backpay should be tolled because she allegedly failed to adequately mitigate her wage losses." Again, the AGC's argument on this point appears more semantic than substantive. When backpay is tolled or disallowed because the employee has withdrawn from the workforce, see Tubari, 959 F.2d at 453-54, incurred a willful loss of interim earnings, Millennium Maintenance & Electrical

Contracting, 344 NLRB at 517, or otherwise failed to mitigate her losses, Int'l Bhd. of Teamsters Local 25, 366 NLRB No. 99, the practical effect is the same as if the backpay period had ended or is tolled before an unconditional offer of reinstatement is made. The AGC further attacks Somerset's reference to Separate Defense No. 8, but again, for the reasons discussed more fully in Part A.1, above, this defense is appropriate because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

20. Paragraphs 2(c) of the Compliance Specification

Regional Director's Allegations

In the period prior to her unlawful discharge from January 1, 2011 through October 17, 2011, a representative period of time, Mangal worked an average of 81.29 hours per pay period.[]

Somerset's Answer

As to Paragraph 2(c). Somerset admits that Mangal worked an average of 81.29 hours per pay period for the bi-weekly pay periods ending January 8 through October 15, 2011. While the Regional Director's allegations that this period comprises a "representative period of time" is vague and ambiguous, Somerset accepts for purposes of the Compliance Specification the Regional Director's use of an 81.29 hour pay period for the calculation of gross back pay.

AGC's Motion

Paragraph 2(c) of the Specification alleges that Mangal worked an average of 81.29 hours per pay period during a representative time prior to her discharge. Based on Respondent's admission, the General Counsel seeks summary judgment with respect to this paragraph.

Somerset's Response to AGC's Motion

Somerset does not oppose summary judgment with respect to Paragraph 2(c).

21. Paragraphs 2(d) of the Compliance Specification

Regional Director's Allegations

Mangal's hourly pay rate at the time of her unlawful discharge was \$22.89 per hour.

Somerset's Answer

As to Paragraph 2(d). Somerset denies the allegations of Paragraph 2(d), except admits that Mangal's regular hourly rate of pay was \$22.89 per hour at the time of her discharge from Somerset.

AGC's Motion

Paragraph 2(d) of the Specification alleges that Mangal's hourly pay rate at the time of her unlawful discharge was \$22.89 per hour. In its Amended Answer, Respondent admits that Mangal's hourly pay rate was \$22.89 at the time of her discharge, but denies the remaining allegations. To the extent that Respondent impermissibly seeks to relitigate the question of whether Mangal's discharge was lawful, the General Counsel moves to strike Respondent's denial of the remaining allegations and seeks summary judgment regarding the remainder of the allegation in paragraph 2(d).

Somerset's Response to AGC's Motion

Somerset does not oppose summary judgment with respect to the allegations of Paragraph 2(c) regarding Mangal's regular hourly rate at the time of her discharge from Somerset. Regarding the remaining allegations, Somerset does not seek to "relitigate the question of whether Mangal's discharge was lawful," but Somerset believes that her discharge was lawful and is under no obligation to admit otherwise. The lawfulness vel non of Mangal's discharge is an issue that the Board has decided and is not an issue that needs to be adjudicated again in compliance proceedings. Requiring Somerset to admit wrongdoing as a condition of contesting the Regional Director's backpay calculations would implicate serious constitutional concerns, including those relating to compelled speech. Thus, Somerset's answer to this paragraph is appropriate and should not be stricken.

22. Paragraphs 2(e) of the Compliance Specification

Regional Director's Allegations

Mangal is entitled to an annual pay increase of 2 percent of her annual wage in about June of each year on her employment anniversary.

Somerset's Answer

As to Paragraph 2(e). The allegations of Paragraph 2(e) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset denies the allegations of Paragraph 2(e), except admits that Mangal's employment anniversary with Somerset fell within the month of June and that Somerset followed a practice of providing a 2% annual pay increase in bargaining unit members' hourly rates on their anniversary dates during the back pay period claimed by the Regional Director.

AGC's Motion

Paragraph 2(e) of the Specification alleges that Mangal is entitled to an annual two (2) percent pay increase on her employment anniversary in June. Based on Respondent's admission, the General Counsel moves for summary judgment with respect to paragraph 2(e) of the Specification.

Somerset's Response to AGC's Motion

Somerset does not oppose summary judgment with respect to the allegations of Paragraph 2(e).

23. Paragraphs 2(f) of the Compliance Specification

Regional Director's Allegations

Mangal's gross backpay was calculated by multiplying her average hours worked per pay period prior to her unlawful discharge, as described above in paragraph 2(c), by the hourly pay rates described above in paragraphs 2(d) – (e) and is set forth in **Exhibit A**.

Somerset's Answer

As to Paragraph 2(f). The allegations of Paragraph 2(f) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that the Regional Director purports to calculate Mangal's gross backpay as set forth in Exhibit A, which speaks for itself, but denies the propriety of the gross backpay calculation set forth therein. Subject to further modification based on (i) Somerset's discovery of additional information not currently within the scope of Somerset's knowledge but which Somerset expects to learn in the course of pre-hearing proceedings and the hearing relating to the duration of the backpay period (see Separate Defense Nos. 2-5), (ii)

Somerset’s legal argument relating to Separate Defense No. 8, and (iii) the accuracy of the Regional Director’s interim earnings and interim expense figures, Somerset’s alternate gross backpay, net backpay, and interim expense calculations for Mangal are premised on its Separate Defense No. 6 and are as follows:

YEAR	QUARTER	GROSS BACKPAY	INTERIM EARNINGS ^[6]	NET BACKPAY	INTERIM EXPENSES ^[6]
2011	4	\$9,377	0	\$9,377	--
2012	1	\$13,128	\$1,636	\$11,492	\$5.01
Total	--	\$22,505	\$1,636	\$20,689	\$5.01

Total: \$20,694.01

AGC’s Motion

Paragraph 2(f) of the Specification alleges the formula that was used to calculate Mangal’s gross backpay. In its Amended Answer, Respondent denies the propriety of the gross backpay calculation set forth in Exhibit A to the Specification, offers alternative gross backpay, net backpay, and interim expense figures for Mangal for the years 2011 and 2012, and invokes Separate Defenses 2-6 and 8. For the reasons discussed herein, Respondent’s Separate Defenses 2-6 and 8 should be stricken. Additionally, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 2(f) of the Specification because Respondent only furnished alternative figures for two (2) of the seven (7) years of Mangal’s backpay period.^[7]

Somerset’s Response to AGC’s Motion

Somerset’s Answer to this paragraph is sufficient. Insofar as Somerset is deemed required to respond to the legal conclusions set forth in this paragraph, Somerset denies the Regional Director’s vague and sweeping allegation and refers to its Separate Defense Nos. 2-6 and 8 relating to the proper duration of the backpay period. The AGC wrongly seeks to strike

⁶ [Footnote 1 to Somerset’s Answer] Interim Earnings, Net Backpay, and Interim Expense figures set forth herein assume the accuracy of the Interim Earnings and Interim Expense figures through the First Quarter of 2012 as set forth on Exhibit A to the Compliance Specification, even though Somerset currently lacks sufficient knowledge to verify the accuracy of these figures.

⁷ [Footnote 5 to the AGC’s motion] General Counsel respectfully requests that, in view of Respondent’s deficient answer, the Board preclude Respondent from introducing evidence to controvert the General Counsel’s computations as to the remaining five (5) years of the backpay period.

these defenses. But as noted above, Somerset properly invokes its mitigation-related Defenses Nos. 2-6 in response to the Regional Director's backpay calculations alleged in this paragraph. And for the reasons discussed more fully in Part A.1, above, Somerset's Defense No. 8 is appropriate because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period.

The AGC further seeks summary judgment as to paragraph 2(f) "because Respondent only furnished alternative figures for two (2) of the seven (7) years of Mangal's backpay period." In footnote 5 to its motion, the AGC even seeks to preclude Somerset from introducing evidence to controvert the AGC's computations as to the remaining five years. The AGC's position is wholly unfounded. A Respondent's obligation to supply alternative figures applies only "as to all matters within the knowledge of the Respondent." 29 C.F.R. § 102.56(b). In its response to the allegations of this paragraph, Somerset makes clear that its alternative damages calculations are limited to matters within the scope of its knowledge and expressly subject to further modification based, *inter alia*, on Somerset's discovery of additional information relating to Mangal's mitigation efforts and the accuracy of the Regional Director's interim earnings and interim expense figures. Moreover, as Somerset notes, even the alternative calculations it supplies assume the accuracy of the Regional Director's interim earnings and interim expense figures, although Somerset currently lacks sufficient knowledge to verify the accuracy of these figures. Thus, Somerset's answer to this paragraph is appropriate and should not be stricken.

24. Paragraphs 2(g) of the Compliance Specification

Regional Director's Allegations

Interim earnings for Mangal are her earnings from other employment obtained during the backpay period and are set forth in **Exhibit A**.

Somerset's Answer

As to Paragraph 2(g). Somerset lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 2(g), which relate to Mangal's interim earnings, and, accordingly, leaves the Regional Director to his proofs as to said allegations.

AGC's Motion

Paragraph 2(g) of the Specification alleges that interim earnings are Mangal's earnings from other employment obtained during the backpay period, as reflected in Exhibit A. In its Amended Answer, Respondent denies that it possesses sufficient knowledge to admit or deny the allegation, and therefore leaves the Regional Director to his proofs as to those allegations. To the extent that Respondent seeks to challenge the figures set forth in Exhibit D, its answer is sufficient. However, to the extent that Respondent seeks to challenge established Board law defining what constitutes interim earnings, the General Counsel moves to strike and for summary judgement with respect to paragraph 2(g) of the Specification.

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient to the extent that Somerset "seeks to challenge the figure set forth in Exhibit D" to the Compliance Specification. The AGC argues that Somerset's response to this paragraph would be insufficient "to the extent that Respondent seeks to challenge established Board law defining what constitutes interim earnings." However, as Somerset's response to Paragraph 2(g) does not challenge established Board law defining what constitutes interim earnings, based on the AGC's motion, Somerset's response to this paragraph is sufficient and should not be stricken.

25. Paragraphs 2(h) of the Compliance Specification

Regional Director's Allegations

Net backpay is the difference between Mangal's gross backpay and interim earnings, described above in paragraph 2(f) – (g), and is reflected in **Exhibit A**. No backpay is claimed for any quarter in which the interim earnings exceed gross backpay.

Somerset's Answer

As to Paragraph 2(h). Somerset denies the propriety of the Regional Director's gross backpay calculations set forth in Exhibit A for the reasons set out in response to Paragraph 2(f), and sets forth therein its alternative gross back calculation for Mangal. Somerset lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 2(h), since those require knowledge of Mangal's interim earnings. Accordingly, Somerset leaves the Regional Director to his proofs as to said allegations.

AGC's Motion

Paragraph 2(h) of the Specification alleges the formula for computing net backpay, as reflected in Exhibit A, and that no backpay is claimed for any quarter in which interim earnings exceed gross backpay. Respondent denies that it possesses sufficient knowledge to admit or deny the allegation, and therefore leaves the Regional Director to his proofs with respect to this allegation. To the extent that Respondent seeks to challenge established Board law governing the formula for computing net backpay, the General Counsel moves to strike and for summary judgement with respect to paragraph 2(h) of the Specification. However, to the extent that Respondent's Amended Answer seeks to challenge the figures set forth in Exhibit D, its response is sufficient.

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient to the extent that Somerset "seeks to challenge the figure set forth in Exhibit D" to the Compliance Specification. The AGC moves to strike and for summary judgment as to the allegations of this paragraph "[t]o the extent that Respondent seeks to challenge established Board law governing the formula for computing net backpay." Somerset's mitigation-related Defenses Nos. 2-6 and its policy-related Defenses Nos. 8-9 are directed, *inter alia*, to Paragraph 2(h). However, for the reasons stated above, Somerset's mitigation-related Defenses Nos. 2-6 are well-supported in Board law, and its policy-related Defenses Nos. 8-9 are appropriate based on factors unique to this case and not attributable to Somerset. (Part A.1, above). Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

26. Paragraphs 2(i) of the Compliance Specification

Regional Director's Allegations

Mangal is entitled to reimbursement of mileage expenses during the backpay period for additional mileage she incurred driving back and forth to work at her interim employment, as set forth weekly in **Exhibit A**.

- a. The mileage rates during the backpay period were:

2012 - 55.5 cents per mile
2013 - 56 cents per mile
2014 - 56 cents per mile
2015 - 57.5 cents per mile
2016 - 54 cents per mile
2017 - 53.5 cents per mile
2018 - 54.5 cents per mile

Somerset's Answer

As to Paragraph 2(i). Somerset lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 2(i) relating to Mangal's purported mileage expenses during the backpay period and, accordingly, leaves the Regional Director to his proofs as to said allegations. Somerset admits that the mileage rates for 2012-2018 are accurately stated in subparagraph (a) of Paragraph 2(i); but for the reasons set forth in response to Paragraph 2(f) above, Somerset denies that Mangal is entitled to mileage expenses after 2012 and is not in a position to admit or deny the Regional Director's allegations as to mileage expenses Ms. Mangal may have incurred in 2012.

AGC's Motion

Paragraph 2(i) of the Specification alleges that Mangal is entitled to reimbursement for mileage expenses she incurred during the backpay period for additional mileage she incurred driving back and forth to work at her interim employment, as set forth in Exhibit A, and sets forth the mileage rates during each year of the backpay period. Respondent admits to the mileage rates alleged, but denies that Mangal is entitled to mileage expenses after 2012. Additionally, Respondent maintains that it is not in a position to admit or deny the allegations as to any mileage expenses Mangal may have incurred in 2012. Based on Respondent's unqualified admission to the mileage rates alleged in paragraph 2(i), the General Counsel seeks summary judgment as to that portion of the allegation. The remainder of Respondent's Amended Answer constitutes a sufficient response. Consequently, the General Counsel does not seek summary judgment with respect to the remainder of paragraph 2(i) of the Specification.

Somerset's Response to AGC's Motion

Somerset does not oppose summary judgment as to the allegations of paragraph 2(i) relating to the mileage rates. The AGC agrees that Somerset's response to the remaining allegations of this paragraph is sufficient.

27. Paragraphs 3(a) of the Compliance Specification

Regional Director's Allegations

The backpay period for D'Ovidio begins on August 18, 2011, the date Respondent terminated her employment.

Somerset's Answer

As to Paragraph 3(a). Somerset admits the allegations of Paragraph 3(a).

AGC's Motion

Paragraph 3(a) of the Specification alleges the start date of D'Ovidio's backpay period. Based on Respondent's unqualified admission, the General Counsel seeks summary judgment with respect to paragraph 3(a) of the Specification.

Somerset's Response to AGC's Motion

Somerset does not oppose summary judgment with respect to Paragraph 3(a).

28. Paragraphs 3(b) of the Compliance Specification

Regional Director's Allegations

The backpay period for D'Ovidio ends on May 30, 2018, the date she declined Respondent's offer of reinstatement.

Somerset's Answer

As to Paragraph 3(b). Somerset admits that D'Ovidio declined Somerset's offer of reinstatement on or around May 30, 2018, but otherwise denies the allegations of Paragraph 3(b). In particular, as set forth in Separate Defense No. 7, the backpay period for D'Ovidio should be cut off no later than January 2012 when, upon information and belief, she returned to full-time schooling. The backpay period for D'Ovidio should be further cut off based on additional information not currently within the scope of Somerset's knowledge but which Somerset expects to learn in the course of pre-hearing proceedings and the hearing, including:

D'Ovidio's failure to exercise reasonable diligence in her efforts to secure interim employment; her withdrawal from the employment market; and any losses she willfully incurred. (See Separate Defense Nos. 2-5). It should be further cut off for the reasons discussed more fully in Separate Defense No. 8.

AGC's Motion

Paragraph 3(b) of the Specification alleges the end date of D'Ovidio's backpay period. In its Amended Answer, Respondent admits that D'Ovidio declined its offer of reinstatement on or around May 30, 2018, but otherwise denies the allegations and cites its Separate Defenses 2-8. For the reasons discussed herein, the General Counsel moves to strike Respondent's Separate Defenses 2-8. Respondent's answer is also deficient because it seeks to relitigate established Board law. For all of these reasons, and, as discussed herein, to the extent that Respondent's answer conflates its denial of the backpay period end date with allegations that D'Ovidio's backpay should be tolled because she allegedly abandoned the workforce when she returned to school full-time, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 3(b) of the Specification.

Somerset's Response to AGC's Motion

Somerset's Answer to this paragraph is sufficient. The AGC takes exception to Somerset's assertion of its mitigation-related Defenses Nos. 2-5, 7 as to D'Ovidio, claiming that Somerset "conflates its denial of the backpay period end date with allegations that D'Ovidio's backpay should be tolled because she allegedly abandoned the workforce when she returned to school full-time." But again, the AGC's argument on this point appears more semantic than substantive, for the reasons discussed more fully above. The AGC also attacks Somerset's reference to Separate Defense No. 8, but again, for the reasons discussed more fully in Part A.1, above, this defense is appropriate because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

29. Paragraphs 3(c) of the Compliance Specification

Regional Director's Allegations

In the period prior to her unlawful discharge from January 1, 2011 through October 17, 2011, a representative period of time, D'Ovidio worked an average of 70.81 hours per pay period.[]

Somerset's Answer

As to Paragraph 3(c). Somerset admits that D'Ovidio worked an average of 70.81 hours per pay period for the bi-weekly pay periods ending January 8, 2011, through August 6, 2011. While the Regional Director's allegations that this period comprises a "representative period of time" is vague and ambiguous, Somerset accepts for purposes of the Compliance Specification the Regional Director's use of an 70.81 hour pay period for the calculation of gross back pay.

AGC's Motion

Paragraph 3(c) of the Specification alleges that D'Ovidio worked an average of 70.81 hours per pay period during a representative period of time prior to her discharge. Based on Respondent unqualified admission, the General Counsel seeks summary judgment with respect to paragraph 3(c) of the Specification.

Somerset's Response to AGC's Motion

Somerset does not oppose summary judgment with respect to Paragraph 3(c).

30. Paragraphs 3(d) of the Compliance Specification

Regional Director's Allegations

D'Ovidio's hourly pay rate at the time of her unlawful discharge was \$27.59 per hour.

Somerset's Answer

As to Paragraph 3(d). Somerset denies the allegations of Paragraph 3(d), except admits that D'Ovidio's regular hourly rate of pay was \$27.59 per hour at the time of her discharge from Somerset.

AGC's Motion

Paragraph 3(d) of the Specification alleges that D'Ovidio's hourly pay rate at the time of her unlawful discharge was \$27.59 per hour. Respondent admits to the amount of D'Ovidio's hourly pay rate but denies the remaining allegations. To the extent that Respondent impermissibly seeks to relitigate the question of whether D'Ovidio's discharge was lawful, General Counsel moves to strike and/or for summary judgment with respect to paragraph 3(d) of the Specification.

Somerset's Response to AGC's Motion

Somerset does not oppose summary judgment with respect to the allegations of Paragraph 3(d) regarding D'Ovidio's regular hourly rate at the time of her discharge from Somerset. Regarding the remaining allegations, Somerset does not seek to "relitigate the question of whether D'Ovidio's discharge was lawful," but Somerset believes that her discharge was lawful and is under no obligation to admit otherwise. The lawfulness vel non of D'Ovidio's discharge is an issue that the Board has decided and is not an issue that needs to be adjudicated again in compliance proceedings. Requiring Somerset to admit wrongdoing as a condition of contesting the Regional Director's backpay calculations would implicate serious constitutional concerns, including those relating to compelled speech. Thus, Somerset's answer to this paragraph is appropriate and should not be stricken.

31. Paragraphs 3(e) of the Compliance Specification

Regional Director's Allegations

D'Ovidio is entitled to an annual pay increase of 2 percent of her annual wage amount in about August of each year on her employment anniversary.

Somerset's Answer

As to Paragraph 3(e). The allegations of Paragraph 2(e) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset denies the allegations of Paragraph 2(e), except admits that D'Ovidio's employment anniversary with Somerset fell within the month of August and that Somerset followed a practice of providing a 2% annual pay increase in bargaining unit members' hourly rates on their anniversary dates during the back pay period claimed by the Regional Director.

AGC's Motion

Paragraph 3(e) of the Specification alleges that D'Ovidio is entitled to an annual two (2) percent pay increase on her employment anniversary in August. Based on Respondent's admission, the General Counsel seeks summary judgment with respect to paragraph 3(e) of the Specification.

Somerset’s Response to AGC’s Motion

Somerset does not oppose summary judgment with respect to the allegations of Paragraph 3(e).

32. Paragraphs 3(f) of the Compliance Specification

Regional Director’s Allegations

D’Ovidio’s gross backpay was calculated by multiplying her average hours worked per pay period prior to her unlawful discharge, as described above in paragraph 3(c), by her hourly pay rate, as described above in paragraphs 3(d) – (e) and is set forth in **Exhibit B**.

Somerset’s Answer

As to Paragraph 3(f). The allegations of Paragraph 3(f) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that the Regional Director purports to calculate D’Ovidio’s gross backpay as set forth in Exhibit B, which speaks for itself, but denies the propriety of the gross backpay calculation set forth therein. Subject to further modification based on (i) Somerset’s discovery of additional information not currently within the scope of Somerset’s knowledge but which Somerset expects to learn in the course of pre-hearing proceedings and the hearing relating to the duration of the backpay period (see Separate Defense Nos. 2-5), (ii) Somerset’s legal argument relating to Separate Defense No. 8, and (iii) the accuracy of the Regional Director’s interim earnings and interim expense figures, Somerset’s alternate gross backpay, net backpay, and interim expense calculations for D’Ovidio are premised on its Separate Defense No. 7 and are as follows:

YEAR	QUARTER	GROSS BACKPAY	INTERIM EARNINGS ^[8]	NET BACKPAY	INTERIM EXPENSES ^[8]
2011	4	\$3,907	0	\$3,907	--
2012	1	0	0	0	0
Total	--	\$3,907	0	\$3,907	0

⁸ [Footnote 2 to Somerset’s Answer] Interim Earnings, Net Backpay, and Interim Expense figures set forth herein assume the accuracy of the Interim Earnings and Interim Expense figures through the First Quarter of 2012 as set forth on Exhibit B to the Compliance Specification, even though Somerset lacks sufficient knowledge to verify the accuracy of these figures.

Total: \$3,907

AGC's Motion

Paragraph 3(f) of the Specification alleges that D'Ovidio's gross backpay was calculated by multiplying her average hours worked per pay period before her discharge by her hourly pay rate, as described in paragraphs 3(d)-(e) and Exhibit B to the Specification. In its Amended Answer, Respondent denies the propriety of the gross backpay calculation set forth in Exhibit B and offers alternative gross backpay, net backpay, and interim expense calculations for D'Ovidio for the years 2011 and 2012, subject to further modification based on its Separate Defenses 2-5, 7, and 8. For the reasons discussed herein, Respondent's Separate Defenses 2-5, 7, and 8 should be stricken. Furthermore, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 3(f) of the Specification.⁹

Somerset's Response to AGC's Motion

Somerset's Answer to this paragraph is sufficient. Insofar as Somerset is deemed required to respond to the legal conclusions set forth in this paragraph, Somerset denies the Regional Director's vague and sweeping allegation and refers to its Separate Defenses Nos. 2-5, 7 and 8 relating to the proper duration of the backpay period. The AGC wrongly seeks to strike these defenses. But as noted above, Somerset properly invokes its mitigation-related Defenses Nos. 2-5 and 7 in response to the Regional Director's backpay calculations alleged in this paragraph. And for the reasons discussed more fully in Part A.1, above, Somerset's Defense No. 8 is appropriate because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period.

The AGC further seeks summary judgment as to paragraph 3(f) "because Respondent only furnished alternative figures for two (2) of the seven (7) years of D'Ovidio's backpay

⁹ [Footnote 6 to the AGC's motion] Although Respondent has supplied alternative figures, these figures only pertain to two (2) of the seven (7) years of D'Ovidio's backpay period. The General Counsel requests that the Board preclude Respondent from introducing evidence to controvert the General Counsel's computations as to the remaining five (5) years of the backpay period (2013, 2014, 2015, 2016, and 2017).

period.” In footnote 5 to its motion, the AGC even seeks to preclude Somerset from introducing evidence to controvert the AGC’s computations as to the remaining five years. The AGC’s position is wholly unfounded. A respondent’s obligation to supply alternative figures applies only “as to all matters within the knowledge of the Respondent.” 29 C.F.R. § 102.56(b). In its response to the allegations of this paragraph, Somerset makes clear that its alternative damages calculations are limited to matters within the scope of its knowledge and expressly subject to further modification based, inter alia, on Somerset’s discovery of additional information relating to D’Ovidio’s mitigation efforts and the accuracy of the Regional Director’s interim earnings and interim expense figures. Moreover, as Somerset notes, even the alternative calculations it supplies assume the accuracy of the Regional Director’s interim earnings and interim expense figures, although Somerset currently lacks sufficient knowledge to verify the accuracy of these figures. Thus, Somerset’s answer to this paragraph is appropriate and should not be stricken.

33. Paragraphs 3(g) of the Compliance Specification

Regional Director’s Allegations

There existed a period of time during the backpay period from January 1, 2012 through May 31, 2014 during which D’Ovidio was a full-time student and was either not working or was working part-time to accommodate school, and she was not searching for full-time work. This period of time was excluded from backpay, as set forth in **Exhibit B**.

Somerset’s Answer

As to Paragraph 3(g). Somerset lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 3(g), and, accordingly, leaves the Regional Director to his proofs as to said allegations.

AGC’s Motion

Paragraph 3(g) of the Specification alleges that a period of time during D’Ovidio’s backpay period during which she was a full-time student and was either not working or working part-time to accommodate school and therefore was not searching for full-time work was excluded from her backpay. Respondent

neither admits nor denies the allegation, arguing that it lacks knowledge sufficient to determine its truth or falsity and leave the Regional Director to his proofs as to the allegations. This constitutes a sufficient response. Therefore, the General Counsel does not seek summary judgment with respect to paragraph 3(g) of the Specification.

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient.

34. Paragraphs 3(h) of the Compliance Specification

Regional Director's Allegations

Interim earnings for D'Ovidio are her earnings from other employment obtained during the backpay period and are set forth in **Exhibit B** on a quarterly basis.

Somerset's Answer

As to Paragraph 3(h). Somerset lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 3(h), which relate to D'Ovidio's interim earnings, and, accordingly, leaves the Regional Director to his proofs as to said allegations.

AGC's Motion

Paragraph 3(h) of the Specification alleges that interim earnings are D'Ovidio's earnings during the backpay period from other employment, and are set forth in Exhibit B on a quarterly basis. In its Amended Answer, Respondent neither admits nor denies the allegation, and instead states that it lacks knowledge sufficient to form a belief as to the truth or falsity of the allegations and leaves the Regional Director to his proofs as to those allegations. To the extent that Respondent seeks to relitigate established Board law with respect to what constitutes interim earnings and/or that it is calculated on a quarterly basis, the General Counsel moves the Board to strike Respondent's Amended Answer and/or for summary judgment with respect to paragraph 3(h) of the Specification. To the extent, however, that Respondent merely seeks to contest the amount of interim earnings that General Counsel alleges Respondent owes, the General Counsel does not seek summary judgment with respect to paragraph 3(h).

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient to the extent that Somerset "merely seeks to contest the amount of interim earnings that General Counsel alleges Respondent owes." The AGC argues that Somerset's response to this paragraph would be insufficient "to the extent that Respondent seeks to re-litigate established Board law with respect to what constitutes interim earnings and/or that it is calculated on a quarterly basis." However, Somerset's response to Paragraph 3(h) does not challenge established Board law defining what constitutes interim earnings. Moreover, for the reasons stated in Part A.1 above, a departure from the quarterly backpay formula is warranted based on factors unique to this case and not attributable to Somerset. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

35. Paragraphs 3(i) of the Compliance Specification

Regional Director's Allegations

Net backpay is the difference between D'Ovidio's gross backpay and interim earnings, described above in paragraphs 3(f) – (h). No backpay is claimed for any quarter in which the interim earnings exceed gross backpay.

Somerset's Answer

As to Paragraph 3(i). Somerset denies the propriety of the Regional Director's gross backpay calculations set forth in Exhibit B for the reasons set out in response to Paragraph 3(f), and sets forth therein its alternative gross back calculation for D'Ovidio. Somerset lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 3(i), since those require knowledge of D'Ovidio's interim earnings. Accordingly, Somerset leaves the Regional Director to his proofs as to said allegations.

AGC's Motion

Paragraph 3(i) of the Specification alleges the formula for computing net backpay and that no backpay is claimed for any quarter in which the interim earnings exceed gross backpay. In its Amended Answer, Respondent denies the Regional Director's gross backpay calculations set forth in Exhibit B for the reasons

articulated in its Amended Answer to paragraph 3(f). As to the remaining allegations of paragraph 3(i), Respondent argues that it lacks sufficient knowledge to admit or deny them, since they require knowledge of D'Ovidio's interim earnings, and therefore leaves the Regional Director to his proofs with respect to that allegation. To the extent that Respondent seeks to relitigate established Board law with respect to the formula for computing net backpay, or that no backpay is claimed for any quarter in which the interim earnings exceed gross backpay, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 3(i). To the extent, however, that Respondent merely seeks to contest the computations in Exhibit B, which are incorporated by reference into paragraph 3(i), the General Counsel does not move to strike or for summary judgment.

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient to the extent that Somerset "merely seeks to contest the computations in Exhibit B, which are incorporated by reference into paragraph 3(i)." The AGC moves to strike and for summary judgment as to the allegations of this paragraph "[t]o the extent that Respondent seeks to relitigate established Board law with respect to the formula for computing net backpay, or that no backpay is claimed for any quarter in which the interim earnings exceed gross backpay." Somerset's mitigation-related Defenses Nos. 2-5, 7 and its policy-related Defenses Nos. 8-9 are directed, inter alia, to Paragraph 3(i). But for the reasons stated above, Somerset's mitigation-related Defenses Nos. 2-5, 7 are well-supported in Board law (Response to AGC Motion, para. 12); and its policy-related Defenses Nos. 8-9 are appropriate based on factors unique to this case and not attributable to Somerset. (Part A.1, above). Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

36. Paragraphs 3(j) of the Compliance Specification

Regional Director's Allegations

D'Ovidio is entitled to reimbursement of mileage expenses during the backpay period for additional mileage she incurred driving back and forth to work at her interim employment, as set forth weekly in **Exhibit B**.

a. The mileage rates during the backpay period were:

2012 -- 55.5 cents per mile
2013 – 56 cents per mile
2014 – 56 cents per mile
2015 – 57.5 cents per mile
2016 – 54 cents per mile
2017 – 53.5 cents per mile
2018 -- 54.5 cents per mile

Somerset's Answer

Paragraph 3(j) Somerset lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 3(j) relating to D'Ovidio's purported mileage expenses during the backpay period and, accordingly, leaves the Regional Director to his proofs as to said allegations. Somerset admits that the mileage rates for 2012-2018 are accurately stated in subparagraph (a) of Paragraph 3(j); but for the reasons set forth in response to Paragraph 3(i) above, Somerset denies that D'Ovidio is entitled to mileage expenses after 2012 and is not in a position to admit or deny the Regional Director's allegations as to mileage expenses D'Ovidio may have incurred in 2012.

AGC's Motion

Paragraph 3(j) of the Specification alleges that D'Ovidio is entitled to reimbursement of mileage expenses for additional mileage she incurred driving back and forth to work at her interim employment during the backpay period, as set forth in Exhibit B, and alleges the mileage rates during each year of her backpay period. In its Amended Answer, Respondent admits to the mileage rates. Although it argues that it lacks sufficient knowledge to admit or deny the allegations relating to D'Ovidio's mileage expenses, including any expenses she may have occurred in 2012, it denies that she is entitled to any such expenses after 2012. To the extent that Respondent merely seeks to contest the computations in Exhibit B, the General Counsel does not seek summary judgment. However, to the extent that Respondent seeks to relitigate established Board law with respect to the reimbursement of mileage expenses, the General Counsel moves to strike and/or for summary judgement with respect to paragraph 3(j) of the Specification.

Somerset's Response to AGC's Motion

The AGC does not seek summary judgment as to this paragraph “[t]o the extent that Respondent merely seeks to contest the computations in Exhibit B.” However, the AGC moves to strike and/or for summary judgment as to this paragraph “to the extent that Respondent seeks

to relitigate established Board law with respect to the reimbursement of mileage expenses.” As noted in Part A.2 above, based on longstanding Board law in place at the time D’Ovidio was discharged from Somerset, the Regional Director’s claim for interim expenses for D’Ovidio should be denied the extent that these expenses were incurred solely for the purpose of holding interim employment that was substantially higher-paying than the employment that was lost. Thus, Somerset’s answer to this paragraph is sufficient and should not be stricken.

37. Paragraphs 3(k) of the Compliance Specification

Regional Director’s Allegations

D’Ovidio is entitled to be made whole for the loss of 401(k) plan contributions that should have been deposited into her 401(k) account based on her gross backpay during the backpay period.

Somerset’s Answer

As to Paragraph 3(k). The allegations of Paragraph 3(k) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset denies the allegations of Paragraph 3(k) and refers to Separate Defense Nos. 2-5, 7, 8, relating to the need to cut off the back pay period for D’Ovidio; or alternatively, Separate Defense Nos. 12 and 13, relating to the need to disallow allegedly lost 401(k) contributions in whole or in part, based on 401(k) or similar contributions made on D’Ovidio’s behalf in connection with her subsequent employment, and/or the need to offset any allegedly lost 401(k) contributions on or after the second quarter of 2014 against her substantially higher earnings in subsequent employment, to avoid providing D’Ovidio with a double recovery.

AGC’s Motion

Paragraph 3(k) of the Specification alleges that D’Ovidio is entitled to be made whole for the loss of 401(k) plan contributions that should have been deposited into her account. In its Amended Answer, Respondent denies this allegation by invoking its Separate Defenses 2- 5, 7, 8, 12, and 13. For the reasons discussed herein, the General Counsel moves to strike Respondent’s Separate Defenses 2-5, 7, 8, 12 and 13. Additionally, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 3(k) of the Specification because Respondent’s Amended Answer is an attempt to relitigate established Board law.

Somerset's Response to AGC's Motion

Somerset's Answer to this paragraph is sufficient. Insofar as Somerset is deemed required to respond to the legal conclusions set forth in this paragraph, Somerset denies the Regional Director's vague and sweeping allegation and refers to its Separate Defenses Nos. 2-5, 7, 8, 12, and 13. While the AGC seeks to strike these defenses, Somerset properly invokes all of them. Somerset's mitigation-related Defenses Nos. 2-5 and 7 are proper, for the reasons discussed more fully above (Response to AGC Motion, para. 12), as they affect the backpay amounts from which to measure lost 401(k) contributions. Somerset's Defense No. 8 is proper, for the reasons discussed more fully in Part A.1, above, because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period from which to measure lost 401(k) contributions. And as discussed more fully in Part A.3, above, Somerset's Defenses Nos. 12 and 13 are entirely consistent with the Board's policy requiring that equivalent retirement benefits earned from interim employment are appropriately offset against gross retirement benefits (CHM, Sec. 10544.3), and with the general remedial policy under the Act of making employees whole for "actual losses" employees have incurred on account of a ULP, see, e.g., Phelps Dodge, 313 U.S. at 200. Thus, Somerset's Answer to this paragraph is sufficient and should not be stricken.

38. Paragraphs 3(l) of the Compliance Specification

Regional Director's Allegations

Based on records provided by Respondent, Respondent matched 25% of D'Ovidio's 401(k) contribution, up to a total of 3% of her gross salary.

Somerset's Answer

As to Paragraph 3(l). Somerset admits the allegations of Paragraph 3(l).

AGC's Motion

Paragraph 3(l) of the Specification alleges that Respondent matched 25% of D'Ovidio's 401(k) contribution, up to 3% of her gross salary. Based on Respondent's unqualified admission, the General Counsel seeks summary judgment with respect to paragraph 3(l) of the Specification.

Somerset's Response to AGC's Motion

Somerset does not oppose summary judgment with respect to Paragraph 3(l).

39. Paragraphs 3(m) of the Compliance Specification

Regional Director's Allegations

In addition to amounts that Respondent should have deposited and matched for D'Ovidio's 401(k), D'Ovidio is entitled to any investment earnings on these amounts.

Somerset's Answer

As to Paragraph 3(m). Somerset denies the allegations of Paragraph 3(m).

AGC's Motion

Paragraphs 3(m) of the Specification alleges that, in addition to amounts that Respondent should have deposited and matched for D'Ovidio's 401(k) plan, she is entitled to investment earnings on these amounts. Respondent denies this allegation without explanation, falling short of its obligations under Section 102.56(b) of the Board's Rules. Based on Respondent's failure to state the basis for its disagreement, to set forth its position as to the applicable premises in detail, and/or to furnish appropriate supporting figures, the General Counsel seeks summary judgment as to paragraph 3(m) of the Specification.

Somerset's Response to AGC's Motion

Somerset's response to Paragraph 3(m) is sufficient. In this paragraph, the Regional Director makes the broad and sweeping claim that D'Ovidio is "entitled to any investment earnings" on amounts that Somerset "should have deposited and matched for D'Ovidio's 401(k)." Somerset denies this allegation. The AGC wrongly contends that this denial "fall[s] short of its obligations under Section 102.56(b) of the Board's Rules." But the Board's rules

require only that “[t]he answer must specifically admit, deny, or explain each allegation of the specification, unless the Respondent is without knowledge, in which case the Respondent must so state.” 29 C.F.R. § 102.56(b). The AGC faults Somerset for its purported “failure to state the basis for its disagreement, to set forth its position as to the applicable premises in detail, and/or to furnish appropriate supporting figures.” But under the Board’s rules, the duty to provide such detail arises “if the Respondent disputes either the accuracy of the figures in the specification or the premises upon which they are based.” 29 C.F.R. § 102.56(b). The Regional Director does not provide any “figures” in Paragraph 3(m) and, therefore, the detail that the AGC contends is lacking was not required. In any event, Somerset’s disagreement with the Regional Director’s allegations of this paragraph is based on the fact that they are not consistent with the NLRB’s Casehandling Manual, which makes clear that the value of any lost 401(k) contributions “is dependent upon many different and highly individualized factors,” and that “it is generally necessary to determine individual contribution amounts, employer matching contributions, investment selections, and finally to chart the earnings/loss of each discriminatee’s 401(k) investments for the duration of the backpay period.” CHM Sec. 10544.3. While the Compliance Specification sets forth D’Ovidio’s individual contribution (5%) and employer matching contributions (25% of individual contributions up to 3% of her gross salary) -- which Somerset does not contest -- it does not provide any of the other “highly individualized” information such as D’Ovidio’s investment preferences and investment selections. Without this information, the Regional Director’s blanket assertion that D’Ovidio is entitled to any “investment earnings” is unsupported. Thus, Somerset’s answer to this paragraph is sufficient and should not be stricken.

40. Paragraphs 3(n) of the Compliance Specification

Regional Director’s Allegations

It is reasonable to use the S&P 500 to calculate D'Ovidio's lost investment earnings on quarterly basis, as shown in **Exhibit C**.

Somerset's Answer

As to Paragraph 3(n). Somerset denies the allegations of Paragraph 3(n).

AGC's Motion

Paragraph 3(n) of the Specification alleges that it is reasonable to use the S&P 500 to calculate D'Ovidio's lost investment earnings on a quarterly basis, as set forth in Exhibit C. Respondent denies this allegation without explanation, falling short of its obligations under Section 102.56(b) of the Board's Rules. Based on Respondent's failure to state the basis for its disagreement, to set forth its position as to the applicable premises in detail, and/or to furnish appropriate supporting figures, the General Counsel seeks summary judgment as to paragraph 3(n) of the Specification.

Somerset's Response to AGC's Motion

Somerset's response to Paragraph 3(n) is sufficient. In this paragraph, the Regional Director makes the broad and sweeping claim that "[i]t is reasonable to use the S&P 500 to calculate D'Ovidio's lost investment earnings on a quarterly basis." Somerset denies this allegation. Once again, the AGC wrongly contends that this denial "fall[s] short of its obligations under Section 102.56(b) of the Board's Rules." Again, however, Somerset was only required to "specifically admit, deny, or explain" the allegations of this paragraph; it was not required to "set forth its position as to the applicable premises in detail, and/or to furnish appropriate supporting figures," since in this portion of the Compliance Specification, the AGC did not provide any of its own "figures" to dispute. In any event, as set forth above in response to paragraph 39 of the AGC's motion, the Regional Director failed to include certain "individualized factors" discussed in the Casehandling Manual needed to determine whether it was "reasonable" to use the S&P 500 to calculate D'Ovidio's alleged lost investment earnings,

such as her own investment preferences. CHM Sec. 10544.3. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

41. Paragraphs 3(o) of the Compliance Specification

Regional Director's Allegations

The total amount of 401(k) contributions Respondent owes to D'Ovidio, is \$2,968, as reflected in **Exhibit C**, should be paid directly to D'Ovidio as backpay wages because she no longer participates in Respondent's 401(k) plan.[]

Somerset's Answer

As to Paragraph 3(o). Somerset denies the allegations of Paragraph 3(o).

AGC's Motion

Paragraph 3(o) of the Specification alleges that Respondent owes D'Ovidio \$2,968 in 401(k) contributions, as reflected in Exhibit C, which amount should be paid directly to her as backpay wages, with appropriate tax withholdings. Respondent denies this allegation without explanation, falling short of its obligations under Section 102.56(b) of the Board's Rules. Based on Respondent's failure to state the basis for its disagreement, to set forth its position as to the applicable premises in detail and/or to furnish the appropriate supporting figures, the General Counsel seeks summary judgment as to paragraph 3(o) of the Specification.

Somerset's Response to AGC's Motion

Somerset's response to Paragraph 3(o) is sufficient. Although the Regional Director contends in this paragraph that Somerset owes D'Ovidio \$2,968 in lost 401(k) contributions, the Regional Director fails to support this figure with an analysis of relevant "individualized factors" called for in the Casehandling Manual, including D'Ovidio's investment history and investment preferences. CHM Sec. 10544.3. And elsewhere in Somerset's Answer, Somerset asserts Separate Defenses Nos. 12 and 13 in response to the allegations of Paragraphs 3(k) to 3(o), in which Somerset makes clear that it is also challenging the amounts claimed by the Regional Director on behalf of D'Ovidio, in whole or in part, based on 401(k) or similar contributions

made on D'Ovidio's behalf in connection with her subsequent employment, and based on the need to avoid providing her with a double recovery. For the reasons discussed more fully in Part A.3, above, Separate Defenses Nos. 12 and 13 are appropriate. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

42. Paragraphs 4(a) of the Compliance Specification

Regional Director's Allegations

(a) In accordance with *Don Chavas, LLC*[], Mangal and D'Ovidio are entitled to be compensated for the adverse tax consequences of receiving a lump-sum backpay for a period over one year. If not for the unfair labor practice committed by Respondent, the backpay awards for Mangal and D'Ovidio would have been paid over more than one year rather than paid in the year Respondent makes final payment in these cases. The backpay for these cases should have been earned in 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018 rather than exclusively in 2020.

Somerset's Answer

As to Paragraph 4(a). The allegations of Paragraph 4(a) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset denies that Mangal and D'Ovidio are entitled to be compensated for adverse tax consequences of receiving a lump-sum backpay for a period over one year, since: (i) the Regional Director has already determined, as set out on Exhibit D, that D'Ovidio is not entitled to any compensation for negative tax consequences; and (ii) Mangal's backpay period covers a period shorter than one year (see Separate Defense No. 6; see also Somerset's responses to Paragraphs 2(a) - 2(j), above, and Separate Defense Nos. 2-5, 8, below). Even if Mangal is entitled to any compensation for negative tax consequences, the amounts the Regional Director claims for her for alleged adverse tax consequences must be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement, as set forth herein. (Separate Defense No. 14).

AGC's Motion

Paragraph 4(a) of the Specification alleges that, in accordance with *Don Chavas, LLC*, 359 NLRB No. 44 (2012), Mangal and D'Ovidio are entitled to be compensated for the adverse tax consequences of receiving a lump sum backpay award. Respondent denies their entitlement to such compensation and seeks a

reduction in the amount sought for Mangal. [¹⁰] To the extent that Respondent's Amended Answer seeks to relitigate *Don Chavas*, the General Counsel moves to strike and for summary judgement with respect to paragraph 4(a).

Somerset's Response to AGC's Motion

Somerset's response to Paragraph 4(a) is sufficient. Somerset is not seeking to relitigate Don Chavas. Somerset denies the allegations of this paragraph on factual grounds. Specifically, Somerset correctly notes that the Regional Director has calculated that no monies are due to D'Ovidio for adverse tax consequences under Don Chavas. Somerset further notes that, based on its Separate Defenses Nos. 2-6, 8, Mangal's backpay entitlement will span less than a year, and thus, she will not be eligible to be compensated for adverse tax consequences under Don Chavas. Somerset further notes that, even if Mangal is entitled to any compensation for negative tax consequences, the amounts the Regional Director claims for her for such tax consequences must be reduced and recalculated in light of the Regional Director's overall overstatement of Mangal's backpay entitlement. This is not an attempt to relitigate Don Chavas, and Somerset's answer to this paragraph is appropriate and should not be stricken.

43. Paragraphs 4(b) of the Compliance Specification

Regional Director's Allegations

In order to determine what the appropriate excess tax award should be, the amount of federal and state taxes must be determined for the backpay as if the monies were paid when they were earned throughout the backpay period. The excess tax liability was calculated as the difference between these two amounts.

¹⁰ [Footnote 7 to the AGC's motion] Respondent contends that the Regional Director has already determined, as set out in Exhibit D, that D'Ovidio is not entitled to any compensation for adverse tax consequences. The Regional Director has made no such determination. The amount of compensation for adverse tax consequences is subject to change based upon the year in which the payment is rendered. *Lou's Transp., Inc.*, 366 NLRB No. 140 (2018).

Somerset's Answer

As to Paragraph 4(b). The allegations of Paragraph 4(b) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that, as set forth in Exhibit D to the Compliance Specification, D'Ovidio is not entitled to compensation for adverse tax consequences; denies that Mangal is entitled to compensation for adverse tax consequences because her backpay period covers a period shorter than one year (see Separate Defense No. 6; see also Somerset's responses to Paragraphs 2(a) - 2(j), above, and Separate Defense Nos. 2-5, 8, below); and states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement, as set forth herein (Separate Defense No. 14).

AGC's Motion

Paragraph 4(b) of the Specification alleges that the amount of taxes due is determined for the backpay as if the monies had been paid when they were earned, and sets forth the formula for computing excess tax liability. Respondent denies that D'Ovidio and Mangal are entitled to compensation for adverse tax consequences and seeks a reduction in the amount sought for Mangal. Respondent's Amended Answer is deficient because it fails to state the basis for its disagreement with the allegation, and does not set forth its position as to the applicable premises in detail or provide an alternative formula for computing excess tax liability, as required by Section 102.56(b) of the Board's Rules. Moreover, by denying the first sentence of the allegation, Respondent impermissibly seeks to relitigate established Board law. Accordingly, General Counsel moves to strike and/or for summary judgment with respect to paragraph 4(b) of the Specification.

Somerset's Response to AGC's Motion

Somerset's response to Paragraph 4(b) is sufficient. The AGC contends that Somerset's response to this paragraph is deficient because it purportedly "fails to state the basis for is disagreement with the allegation" and purportedly "does not set forth its position as to the applicable premises in detail or provide an alternative formula for computing excess tax liability." To the contrary, Somerset agrees with the Regional Director's computations on Exhibit D to the Compliance Specification, showing that D'Ovidio is entitled to zero

compensation for adverse tax consequences. Moreover, as to Mangal, Somerset explains that she is not entitled to compensation for adverse tax consequences because, for the reasons discussed elsewhere in its Answer, her backpay entitlement will be for a period of less than a year. Somerset states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement. Thus, Somerset's response to this paragraph is appropriate and should not be stricken.

44. Paragraphs 4(c) of the Compliance Specification

Regional Director's Allegations

The amount of Taxable Income for each year is based on the calculations for backpay in this compliance specification for each of 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018, as set forth in **Exhibit D**. Using this Taxable Income for the various years, federal and state taxes were calculated using the federal and state tax rates for the appropriate years.[] The federal rates are based on each discriminatee's filing status as follows:

Mangal	Single
D'Ovidio	Married-Filing Jointly

Somerset's Answer

As to Paragraph 4(c). Somerset lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 4(c) relating to Mangal's and D'Ovidio's tax filing statuses and, accordingly, leaves the Regional Director to his proofs as to said allegations. The remaining allegations of Paragraph 4(c) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that, as set forth in Exhibit D to the Compliance Specification, D'Ovidio is not entitled to compensation for adverse tax consequences; denies that Mangal is entitled to compensation for adverse tax consequences because her backpay period covers a period shorter than one year (see Separate Defense No. 6; see also Somerset's responses to Paragraphs 2(a) - 2(j), above, and Separate Defense Nos. 2-5, 8, below); and states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement, as set forth herein (Separate Defense No. 14).

AGC's Motion

Paragraph 4(c) of the Specification alleges the basis for the calculations of the amount of taxable income owed for each of the backpay years, as set forth in Exhibit D. Respondent denies that the discriminatees are entitled to compensation for adverse tax consequences and argues in the alternative for a reduction in the amount sought for Mangal. For the reasons discussed herein, the General Counsel moves to strike Respondent's Separate Defense 8. To the extent that Respondent's denial simply seeks to challenge the figures set forth in Exhibit D, its response is sufficient. However, to the extent that Respondent seeks to relitigate established Board law, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 4(c) of the Specification.

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient "[t]o the extent that Respondent's denial simply seeks to challenge the figures set forth in Exhibit D." The AGC seeks to strike Somerset's Separate Defense No. 8, referenced in Somerset's response to this paragraph, but for the reasons discussed more fully in Part A.1, above, this defense is proper because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period from which to calculate adverse tax consequences. The AGC further moves to strike and/or for summary judgment with respect to Somerset's answer to Paragraph 4(c) "to the extent that Respondent seeks to relitigate established Board law," but as shown above, Somerset is not seeking to relitigate the formula for calculating adverse tax consequences set forth in Don Chavas. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

45. Paragraphs 4(d) of the Compliance Specification

Regional Director's Allegations

(d) The amount of taxes owed for 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018 would have been the amounts set forth in **Exhibit D**.

Somerset's Answer

As to Paragraph 4(d). Somerset admits that, as set forth in Exhibit D to the Compliance Specification, D'Ovidio is not entitled to compensation for adverse tax consequences; denies that Mangal is entitled to compensation for adverse tax consequences because her backpay period covers a period shorter than one year (see Separate Defense No. 6; see also Somerset's responses to Paragraphs 2(a) - 2(j), above, and Separate Defense Nos. 2-5, 8, below); and states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement, as set forth herein (Separate Defense No. 14).

AGC's Motion

Paragraph 4(d) of the Specification alleges the amount of taxes owed for each year of the backpay period. Respondent denies that the discriminatees are entitled to any compensation for adverse tax consequences and argues in the alternative for a reduction in the amount sought for Mangal. For the reasons set forth herein, the General Counsel moves to strike Respondent's Separate Defense 8. To the extent that Respondent's denial simply seeks to challenge the figures set forth in Exhibit D, its response is sufficient. However, to the extent that Respondent seeks to relitigate established Board law, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 4(d) of the Specification.

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient "[t]o the extent that Respondent's denial simply seeks to challenge the figures set forth in Exhibit D." The AGC seeks to strike Somerset's Separate Defense No. 8, referenced in Somerset's response to this paragraph; but for the reasons discussed more fully in Part A.1, above, this defense is proper because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period from which to calculate adverse tax consequences. The AGC further moves to strike and/or for summary judgment with respect to Somerset's answer to Paragraph 4(e) "to the extent that Respondent seeks to relitigate established Board law," but as shown above, Somerset is not seeking to relitigate the formula for calculating adverse tax

consequences set forth in Don Chavas. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

46. Paragraphs 4(e) of the Compliance Specification

Regional Director's Allegations

The total amount of the lump sum awards that are subject to this excess tax award for each discriminatee is summarized in **Exhibit D**.[] The lump sum amount is based on the backpay calculations described in this specification. The amount of taxes owed in 2020 is based on the current federal and state tax rates[] and on the fact that the discriminatees will be filing their income taxes as outlined in paragraph 10. The amount of federal and state taxes owed on the lump sum is calculated for each discriminatee as shown in **Exhibit D**.

Somerset's Answer

As to Paragraph 4(e). The allegations of Paragraph 4(e) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that, as set forth in Exhibit D to the Compliance Specification, D'Ovidio is not entitled to compensation for adverse tax consequences; denies that Mangal is entitled to compensation for adverse tax consequences because her backpay period covers a period shorter than one year. (See Separate Defense No. 6; see also Somerset's responses to Paragraphs 2(a) - 2(j), above, and Separate Defense Nos. 2-5, 8, below); and states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement, as set forth herein (Separate Defense No. 14).

AGC's Motion

Paragraph 4(e) of the Specification alleges the amount of the lump sum awards that is subject to the excess tax award and the basis for those amounts, as summarized in Exhibit C. Respondent denies that the discriminatees are entitled to compensation for adverse tax consequences and argues in the alternative that the amount sought for Mangal must be reduced. To the extent that Respondent's amended answer simply seeks to challenge the figures set forth in Exhibit D, its response is sufficient. For the reasons set forth herein, the General Counsel moves to strike Respondent's Separate Defense 8. To the extent that Respondent's Amended Answer seeks to relitigate *Don Chavas*, the General Counsel moves to strike and for summary judgement with respect to paragraph 4(a) of the Specification.

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient "[t]o the extent that Respondent's amended answer simply seeks to challenge the figures set forth in Exhibit D." The AGC seeks to strike Somerset's Separate Defense No. 8, referenced in Somerset's response to this paragraph; but for the reasons discussed more fully in Part A.1, above, this defense is proper because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period from which to calculate adverse tax consequences. The AGC further moves to strike and/or for summary judgment with respect to Somerset's answer to Paragraph 4(e) "[t]o the extent that Respondent's Amended Answer seeks to relitigate *Don Chavas*," but as shown above, Somerset is not seeking to relitigate Don Chavas. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

47. Paragraphs 4(f) of the Compliance Specification

Regional Director's Allegations

The adverse tax consequence for the discriminatees is the difference between the amount of taxes on lump sum amounts being paid in 2020 for federal and state taxes and the amount of federal and state taxes that would have been charged if these amounts were paid when the backpay was earned in 2011, 2012, 2013, 2014, 2015, 2016, 2017 and 2018, thus providing the excess tax liability for each discriminatee, as shown in Exhibit D.

Somerset's Answer

As to Paragraph 4(f). The allegations of Paragraph 4(f) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that, as set forth in Exhibit D to the Compliance Specification, D'Ovidio is not entitled to compensation for adverse tax consequences; denies that Mangal is entitled to compensation for adverse tax consequences because her backpay period covers a period shorter than one year (see Separate Defense No. 6; see also Somerset's responses to Paragraphs 2(a) - 2(j), above, and Separate Defense Nos. 2-5, 8, below); and states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the

Regional Director's overstatement of Mangal's backpay entitlement, as set forth herein (Separate Defense No. 14).

AGC's Motion

Paragraph 4(f) of the Specification alleges that the Board's decision in *Don Chavas* entitles discriminatees to compensation for the adverse tax consequences resulting from their receipt of a lump sum backpay award. Respondent denies that the discriminatees are entitled to such compensation and argues in the alternative for a reduction in the amount sought for Mangal. To the extent that Respondent's Amended Answer simply seeks to challenge the figures set forth in Exhibit D, its response is sufficient. However, to the extent that Respondent attempts to relitigate established Board law, General Counsel moves to strike and/or for summary judgment with respect to paragraph 4(f) of the Specification.

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient "[t]o the extent that Respondent's Amended Answer simply seeks to challenge the figures set forth in Exhibit D." The AGC seeks to strike Somerset's Separate Defense No. 8, referenced in Somerset's response to this paragraph; but for the reasons discussed more fully in Part A.1, above, this defense is proper because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period from which to calculate adverse tax consequences. The AGC further moves to strike and/or for summary judgment with respect to Somerset's answer to Paragraph 4(f) "to the extent that Respondent seeks to relitigate established Board law," but as shown above, Somerset is not seeking to relitigate the formula for calculating adverse tax consequences set forth in Don Chavas. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

48. Paragraphs 4(g) of the Compliance Specification

Regional Director's Allegations

The excess tax liability payment that is to be made to the discriminatees is also taxable income and causes additional tax liabilities. **Exhibit D** also include a calculation for these supplemental taxes. This amount is called the incremental tax

liability. The incremental tax includes all of the taxes that the discriminatees will owe on the excess tax payment. This incremental tax is calculated using the federal tax rate used for calculating taxes for the backpay award and the average state tax rate for 2020. These amounts are shown in **Exhibit D**.

Somerset's Answer

As to Paragraph 4(g). The allegations of Paragraph 4(e) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that, as set forth in Exhibit D to the Compliance Specification, D'Ovidio is not entitled to compensation for adverse tax consequences; denies that Mangal is entitled to compensation for adverse tax consequences because her backpay period covers a period shorter than one year (see Separate Defense No. 6; see also Somerset's responses to Paragraphs 2(a) - 2(j), above, and Separate Defense Nos. 2-5, 8, below); and states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement, as set forth herein (Separate Defense No. 14).

AGC's Motion

Paragraph 4(g) of the Specification alleges Respondent's incremental tax liability with respect to taxes that the discriminatees will owe on the excess tax payments. Respondent denies that the discriminatees are entitled to compensation for adverse tax consequences and argues in the alternative for a reduction in the amount sought for Mangal. For the reasons set forth herein, the General Counsel moves to strike Respondent's Separate Defense 8. To the extent that Respondent's Amended Answer simply seeks to challenge the figures set forth in Exhibit D, its response is sufficient. However, to the extent that Respondent attempts to relitigate established Board law, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 4(g) of the Specification.

Somerset's Response to AGC's Motion

The AGC agrees that Somerset's response to the allegations of this paragraph is sufficient "[t]o the extent that Respondent's Amended Answer simply seeks to challenge the figures set forth in Exhibit D." The AGC seeks to strike Somerset's Separate Defense No. 8, referenced in Somerset's response to this paragraph; but for the reasons discussed more fully in Part A.1, above, this defense is proper because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period from which to calculate adverse tax consequences.

The AGC further moves to strike and/or for summary judgment with respect to Somerset's answer to Paragraph 4(g) "to the extent that Respondent seeks to relitigate established Board law," but as shown above, Somerset is not seeking to relitigate the formula for calculating adverse tax consequences set forth in Don Chavas. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

49. Paragraphs 4(h) of the Compliance Specification

Regional Director's Allegations

The Total Excess Tax is the total tax consequence for the discriminatees receiving a lump-sum award covering a backpay period longer than one year.

Somerset's Answer

As to Paragraph 4(h). The allegations of Paragraph 4(e) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that, as set forth in Exhibit D to the Compliance Specification, D'Ovidio is not entitled to compensation for adverse tax consequences; denies that Mangal is entitled to compensation for adverse tax consequences because her backpay period covers a period shorter than one year (see Separate Defense No. 6; see also Somerset's responses to Paragraphs 2(a) - 2(j), above, and Separate Defense Nos. 2-5, 8, below); and states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement, as set forth herein (Separate Defense No. 14).

AGC's Motion

Paragraph 4(h) of the Specification alleges that the total excess tax is Respondent's total tax consequence for the discriminatees' receipt of a lump sum award. Respondent denies that the discriminatees are entitled to such compensation and argues in the alternative for a reduction in the amount sought for Mangal. For the reasons discussed herein, the General Counsel moves to strike Respondent's Separate Defense 8. To the extent that Respondent seeks to relitigate established Board law, the General Counsel moves to strike and/or for summary judgment with respect to paragraph 4(h) of the Specification.

Somerset's Response to AGC's Motion

Somerset's response to this paragraph is sufficient. Somerset agrees with the Regional Director's computations on Exhibit D to the Compliance Specification, showing that D'Ovidio is entitled to zero compensation for adverse tax consequences. Moreover, as to Mangal, Somerset explains that she is not entitled to compensation for adverse tax consequences because, for the reasons discussed elsewhere in its Answer, her backpay entitlement will be for a period of less than a year. Somerset states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement. The AGC seeks to strike Somerset's Separate Defense No. 8, referenced in Somerset's response to this paragraph; but for the reasons discussed more fully in Part A.1, above, this defense is proper because factors unique to this case and not attributable to Somerset warrant a shortening of the backpay period from which to calculate adverse tax consequences. The AGC further moves to strike and/or for summary judgment with respect to Somerset's answer to Paragraph 4(h) "to the extent that Respondent seeks to relitigate established Board law," but as shown above, Somerset is not seeking to relitigate the formula for calculating adverse tax consequences set forth in Don Chavas. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

50. Paragraphs 4(i) of the Compliance Specification

Regional Director's Allegations

The Total Excess Tax owed to the discriminatees is determined by adding the Excess Taxes and the Incremental Taxes as shown in **Exhibit D**.

Somerset's Answer

As to Paragraph 4(i). The allegations of Paragraph 4(i) purport to state a legal conclusion to which no response is required. Insofar as a response is deemed required, Somerset admits that, as set forth in Exhibit D to the Compliance

Specification, D'Ovidio is not entitled to compensation for adverse tax consequences; denies that Mangal is entitled to compensation for adverse tax consequences because her backpay period covers a period shorter than one year (see Separate Defense No. 6; see also Somerset's responses to Paragraphs 2(a) - 2(j), above, and Separate Defense Nos. 2-5, 8, below); and states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement, as set forth herein (Separate Defense No. 14).

AGC's Motion

Paragraph 4(i) of the Specification alleges the formula for computing the total excess tax owed, as shown in Exhibit D. Respondent denies that the discriminatees are entitled to compensation for adverse tax consequences and argues in the alternative for a reduction in the amount sought for Mangal. For the reasons discussed herein, the General Counsel moves to strike Respondent's Separate Defense 8. The General Counsel does not seek summary judgment to the extent that Respondent challenges the amounts it owes as set forth in Exhibit D. However, to the extent that Respondent seeks to relitigate established Board law, General Counsel moves to strike and/or for summary judgment with respect to paragraph 4(i) of the Specification.

Somerset's Response to AGC's Motion

Somerset's response to this paragraph is sufficient. Somerset agrees with the Regional Director's computations on Exhibit D to the Compliance Specification, showing that D'Ovidio is entitled to zero compensation for adverse tax consequences. Moreover, as to Mangal, Somerset explains that she is not entitled to compensation for adverse tax consequences because, for the reasons discussed elsewhere in its Answer, her backpay entitlement will be for a period of less than a year. Somerset states in the alternative that the amounts the Regional Director claims for Mangal for alleged adverse tax consequences must in any event be reduced and recalculated in light of the Regional Director's overstatement of Mangal's backpay entitlement. The AGC seeks to strike Somerset's Separate Defense No. 8, referenced in Somerset's response to this paragraph; but for the reasons discussed more fully in Part A.1, above, this defense is proper because factors unique to this case and not attributable to Somerset warrant a shortening of the

backpay period from which to calculate adverse tax consequences. The AGC further moves to strike and/or for summary judgment with respect to Somerset's answer to Paragraph 4(i) "to the extent that Respondent seeks to relitigate established Board law," but as shown above, Somerset is not seeking to relitigate the formula for calculating adverse tax consequences set forth in Don Chavas. Thus, Somerset's answer to this paragraph is sufficient and should not be stricken.

51. Paragraphs 5 of the Compliance Specification

Regional Director's Allegations

Summarizing the facts and calculations specified above and in **Exhibits A through D**, Respondent is liable for the backpay due to each discriminatee as described above. The obligation of Respondent to make each discriminatee whole under the Board Order will be discharged by payment to each discriminatee of total backpay and expenses due, plus interest accrued to the date of payment and excess tax liability as described above in paragraphs 1 through 4 [], pursuant to such Order and Judgment minus tax withholding required by Federal and State laws. The Region Director, or his designee, reserves the right to amend any or all provisions of this Specification by inclusion of information now known to the Regional Director.

Somerset's Answer

As to Paragraph 5. The allegations of Paragraph 5 purport to state legal conclusions to which no response is required. Insofar as a response is deemed required, Somerset incorporates by reference its responses to the preceding paragraphs as if set forth herein, denies the allegations of Paragraph 5 to the extent inconsistent therewith, and otherwise denies all allegations of Paragraph 5.

AGC's Motion

Paragraph 5 of the Specification summarizes Respondent's liability and obligations as set forth in the Specification. In its Amended Answer, Respondent denies the allegations of paragraph 5, incorporating by reference its answers to the preceding paragraphs. To the extent that Respondent improperly seeks to relitigate established Board law, General Counsel moves to strike and/or for summary judgment with respect to paragraph 5 of the Specification, subject only to Respondent's right to attempt to meet its legal burden at trial by proving additional interim earnings and other facts that may mitigate the discriminatees' losses resulting from Respondent's unlawful actions.

Somerset's Response to AGC's Motion

Somerset's response to this paragraph is sufficient. Insofar as a response is deemed required to the legal conclusions set forth in this paragraph, Somerset incorporates by reference its responses to the preceding paragraphs of the Compliance Specification which, as noted above, are entirely sufficient and should not be stricken. For these same reasons, Somerset's response to Paragraph 5 is likewise sufficient and should not be stricken.

CONCLUSION

For each of the foregoing reasons, Somerset's Answer and Separate Defenses are entirely consistent with applicable law and Section 102.56 of the Board's Rules and Regulations. Thus, with the exception of those portions of Somerset's Answer in which Somerset admits the allegations of the Compliance Specification, on which there is no actual dispute, Somerset respectfully requests that the Board deny the AGC's motion to strike and/or for summary judgment.

Respectfully submitted,

K&L GATES LLP

/s/ Rosemary Alito

By: _____
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Attorneys for Respondent
1621 Route 22 West Operating Company,
LLC, d/b/a Somerset Valley Rehabilitation
& Nursing Center

Dated: March 16, 2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the aforesaid Response of Respondent, 1621 Route 22 West Operating Company, LLC, d/b/a Somerset Valley Rehabilitation & Nursing Center, in Opposition to Counsel for the Acting General Counsel’s Motion to Strike and for Partial Summary Judgment, were served on March 16, 2021, in the manner set forth below:

Elizabeth C. Person
Secretary to the Regional Director
National Labor Relations Board
Region One and Subregion 34
A.A. Ribicoff Federal Building
450 Main Street, Suite 410
Hartford, CT 06103

E-Mail (Elizabeth.Person@nlrb.gov)

Emily G. Goldman
Counsel for the Acting General Counsel
National Labor Relations Board
Region One and Subregion 34
A.A. Ribicoff Federal Building
450 Main Street, Suite 410
Hartford, CT 06103

E-Mail (Emily.Goldman@nlrb.gov)

Katherine H. Hansen, Esq.
Gladstein, Reif & Meginniss
817 Broadway, 6th Floor
New York, NY 10003

E-Mail (khansen@grmny.com)

/s/ George P. Barbatsuly

George P. Barbatsuly

EXHIBIT A

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

May 21, 2018

Maharanie Mangal
388 Talmage Ave
Bound Brook, NJ 08805

Re: Offer of Reinstatement

Dear Ms. Mangal:

Pursuant to the terms of a Judgment of the United States Court of Appeals for the Third Circuit, enforcing an Order of the National Labor Relations Board, you are hereby offered reinstatement to your former position of Licensed Practical Nurse at 1621 Route 22 West Operating Company, LLC, d/b/a, Somerset Valley Rehabilitation and Nursing Center ("Somerset"), without prejudice to your seniority or any other rights or privileges you previously enjoyed.

Please note that Somerset no longer maintains personnel files covering your prior service at this facility. Therefore, insofar as the personnel files that Somerset previously maintained relating to you contained references to the separation from your prior employment at Somerset, such references have been removed from Somerset's files and will not be used against you in any way.

Please contact Ashley Fredericks, Lead Regional Employment Coordinator, at 201-390-5977, at your earliest opportunity, but in no case later than thirty (30) days of your receipt of this letter, to advise whether you will accept the offer of reinstatement and to discuss the logistics of your reinstatement.

Sincerely,



Toya Casper
Administrator

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL US

Certified Mail Fee	\$
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$
Sent To	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Maharanie Mangal
388 Talmage Ave
Bound Brook NJ 08805

2. Article Number (Transfer from carrier label)

7017 3380 0000 4195 9841

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Maharanie Mangal Agent Addressee

B. Received by (Printed Name) C. Date of Delivery

Maharanie Mangal 5/24/18

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

maharanie

3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation®
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery

EXHIBIT B

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

May 21, 2018

Irene D'Ovidio
159 Oak St
Bridgewater, NJ 08807

Re: Offer of Reinstatement

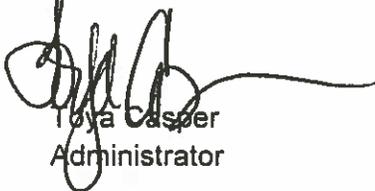
Dear Ms. D'Ovidio:

Pursuant to the terms of a Judgment of the United States Court of Appeals for the Third Circuit, enforcing an Order of the National Labor Relations Board, you are hereby offered reinstatement to your former position of Licensed Practical Nurse at 1621 Route 22 West Operating Company, LLC, d/b/a, Somerset Valley Rehabilitation and Nursing Center ("Somerset"), without prejudice to your seniority or any other rights or privileges you previously enjoyed.

Please note that Somerset no longer maintains personnel files covering your prior service at this facility. Therefore, insofar as the personnel files that Somerset previously maintained relating to you contained references to the separation from your prior employment at Somerset, such references have been removed from Somerset's files and will not be used against you in any way.

Please contact Ashley Fredericks, Lead Regional Employment Coordinator, at 201-390-5977, at your earliest opportunity, but in no case later than thirty (30) days of your receipt of this letter, to advise whether you will accept the offer of reinstatement and to discuss the logistics of your reinstatement.

Sincerely,



Tanya Casper
Administrator

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL US

Certified Mail Fee \$ _____

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage \$ _____

Total Postage and Fees \$ _____

Sent To _____

Street and Apt. No., or PO Box No. _____

City, State, ZIP+4® _____

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Irene D'Ovidio
159 Oak Street
Bridgewater NJ 08807

9590 9402 1873 6104 1843 97

7017 3380 0000 4195 9858

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name) Irene D'Ovidio

C. Date of Delivery 5/24/18

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type

Adult Signature

Adult Signature Restricted Delivery

Certified Mail®

Certified Mail Restricted Delivery

Collect on Delivery

Collect on Delivery Restricted Delivery

Priority Mail Express®

Registered Mail™

Registered Mail Restricted Delivery

Return Receipt for Merchandise

Signature Confirmation™

Signature Confirmation Restricted Delivery

EXHIBIT C

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

May 25, 2018

Maharanie Mangal
388 Talmage Ave
Bound Brook, NJ 08805

Re: Offer of Reinstatement

Dear Ms. Mangal:

Thank you for taking the time to speak with me today. As we discussed, this will confirm that you have declined our offer of reinstatement to your former position of Licensed Practical Nurse at 1621 Route 22 West Operating Company, LLC, d/b/a, Somerset Valley Rehabilitation and Nursing Center, which we made by letter to you dated May 21, 2018. I appreciate your contacting me to let me know of your decision. I wish you all the best in your future endeavors.

Sincerely,



Ashley Fredericks
Lead Regional Employment Coordinator

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee
\$ _____

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____

Postage
\$ _____

Total Postage and Fees
\$ _____

Sent To
Street and Apt. No., or PO Box No.
City, State, ZIP+4®

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

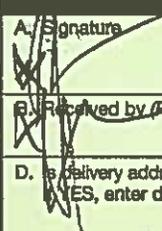
1. Article Addressed to:

Maharanie Mangal

9590 9402 2578 6336 4455 51

2. Article Number (Transfer from carrier label)
7017 3380 0000 4192 8434

COMPLETE THIS SECTION ON DELIVERY

A. Signature


B. Received by (Printed Name)

C. Date of Delivery
6/2/18

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

<input type="checkbox"/> Adult Signature	Priority Mail Express®
<input type="checkbox"/> Adult Signature Restricted	Registered Mail™
<input checked="" type="checkbox"/> Certified Mail®	Registered Mail Restricted
<input type="checkbox"/> Certified Mail Restricted Delivery	
<input type="checkbox"/> Collect on Delivery	
<input type="checkbox"/> Collect on Delivery Restricted Delivery	
<input type="checkbox"/> Insured Mail	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	

EXHIBIT D

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

May 30, 2018

Irene D'Ovidio
159 Oak Street
Bridgewater, NJ 08807

Re: Offer of Reinstatement

Dear Ms. D'Ovidio:

Thank you for taking the time to speak with me today. As we discussed, this will confirm that you have declined our offer of reinstatement to your former position of Licensed Practical Nurse at 1621 Route 22 West Operating Company, LLC, d/b/a, Somerset Valley Rehabilitation and Nursing Center, which we made by letter to you dated May 21, 2018. I appreciate your contacting me to let me know of your decision. I wish you all the best in your future endeavors.

Sincerely,



Ashley Fredericks
Lead Regional Employment Coordinator

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL US

Certified Mail Fee \$ _____

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ _____

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage \$ _____

Total Postage and Fees \$ _____

Sent To _____

Street and Apt. No., or PO Box No. _____

City, State, ZIP+4® _____

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Irene D'Ovidio

9590 9402 2578 6336 4455 44

7017 3380 0000 4192 8441

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name) _____

C. Date of Delivery 6/12/18

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Adult Signature Priority Mail Express®

Adult Signature Restricted Delivery Registered Mail™

Certified Mail® Registered Mail Restricted Delivery

Certified Mail Restricted Delivery Return Receipt for Merchandise

Collect on Delivery Signature Confirmation™

Collect on Delivery Restricted Delivery Signature Confirmation Restricted Delivery

Insured Mail (over \$500)