

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

STERICYCLE, INC.

and

**Cases 32-CA-24230
32-CA-24326**

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AUTO TRUCK DRIVERS,
LINE DRIVERS, CAR HAULERS, AND HELPERS,
LOCAL NO. 70 OF ALAMEDA COUNTY, CALIFORNIA,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA**

**RESPONDENT'S MOTION TO DISMISS
THE CONSOLIDATED COMPLAINT**

The Union filed no fewer than seven (7) Unfair Labor Practice charges against the Respondent in connection with the election in this case. Most of those were dismissed, including two that were based on the terminations of employees within the purported bargaining unit, because the Union was unable to provide evidence to support them. Because the Board investigator refused to provide the Respondent with any of the evidence against it, the Respondent was unable to prove to the investigator's satisfaction, prior to the issuance of the Consolidated Complaint, that the vague charges made in the Consolidated Complaint were without foundation. The record shows that the Respondent never took any action due to union animus, that its actions were lawful in all respects, and that the attorneys representing the Union behaved unethically and should be disqualified. The Consolidated Complaint should be dismissed due to lack of competent supporting evidence.

A. The Respondent Has Continued to Perform Employee Evaluations, and the Board Cannot Supply Any Evidence to the Contrary.

Paragraph 7(a) of the Consolidated Complaint alleges, “On or about early February 2009, the Respondent delayed performing employee evaluations.” Complaint ¶ 7(a). This is simply false, and what’s more, *the Board knows it to be false*. On April 6 and on April 21, during the Board’s investigation of this charge, the Respondent provided the Board with copies of employee evaluations that had been done in January, March and April, on schedule. *See* attached performance evaluations and transmittal faxes (**Exhibit 1**). The Board nevertheless issued a Complaint on this baseless charge.

It is not possible for the Board to have evidence that there was any “delay” in performing employee evaluations because that is simply not the case, nor could the Board have any competent evidence to the contrary. This charge is without foundation and should be immediately dismissed.

B. The Respondent’s Decision to Avoid a Change in the Terms and Conditions of the Drivers’ Employment Was Required by Existing Law.

One of the allegations in the Consolidated Complaint is that “On or about early February 2009, Respondent ceased paying periodic wage increases.” Complaint, ¶ 7(b). This allegation is apparently based on a posting from February 11, 2009, that the Respondent created in order to address questions and misconceptions that were widespread throughout the staff. Among other things, the posting noted that all wages and conditions of employment needed to be negotiated by the union on behalf of the drivers as a single group, and “[t]hus, by law, no changes to your current wages, benefits

or work conditions will be made until negotiations are concluded.” A copy of the posting is attached (**Exhibit 2**).

As the Board knows, an employer may not change the terms or conditions of employment pending collective bargaining negotiations with an elected union. *See, e.g., Local Joint Exec. Bd. of Las Vegas v. NLRB*, 540 F.3d 1072, 1078-1079 (9th Cir. 2008) (citing *NLRB v. Katz*, 369 U.S. 736 (1962)) (“Section 8(d) requires employers to bargain collectively before introducing changes ‘with respect to wages, hours, and other terms and conditions of employment.’ An employer violates section 8(a)(5) by making any unilateral changes to the mandatory bargaining subjects covered by section 8(d).”). As of February, 2009, the Union had apparently won the election, but election objections were pending, and the Union had yet to be certified as the employees’ bargaining representative. The Respondent was therefore doubly constrained from taking action to change the workers’ status, as the Board acknowledges in *Holland American Wafer Co.*, 260 N.L.R.B. 267 (1982):

The Board has long held that, absent compelling economic considerations for doing so, an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the final determination has not yet been made. And where the final determination on the objections results in the certification of a representative, the Board has held the employer to have violated Section 8(a)(5) and (1) for having made such unilateral changes. Such changes have the effect of bypassing, undercutting, and undermining the union’s status as the statutory representative of the employees in the event a certification is issued. To hold otherwise would allow an employer to box the union in on future bargaining positions by implementing changes of policy and practice during the period when objections or determinative challenges to the election are pending.

260 N.L.R.B. at 270. The Respondent therefore took the utmost care to avoid committing an unfair labor practice by changing any terms and conditions of the workers' employment, such as implementing discretionary pay raises.

Stericycle does not have automatic wage increases; they are discretionary based on a variety of factors, including the company's and the employee's performance in the past year, and therefore are subject to the Katz doctrine. See p. 10 of Stericycle Employee Handbook (**Exhibit 3**) ("Completion of the performance appraisal does not automatically entitle you to a salary adjustment, since salary increases are awarded on a merit basis, embracing other factors such as economic conditions, job performance, achievement of goals, etc."). The Respondent explained all of this to the Board. See, e.g., excerpts from Stalberger testimony pages 527-528, 535-542, and transmittal email of March 26, 2009 (**Exhibit 4**):

Q: How does a person ... at San Leandro make those decisions, the managers, to pay increases?

A: Oh, okay, they're annual and the manager, trans manager or the plant manager in San Leandro would determine it based on the past year's performance, their merit increases.

Q: Is there a range that they're given?

A: Yes, anywhere from zero percent to five percent.

Transcript of Testimony [Respondent's California District Manager Thomas Stalberger], December 1, 2008, Case No. 32-RC-5603, p. 535.

Less than two months prior to the election, the Respondent did a complete re-evaluation of compensation and benefits for plant workers and drivers and made changes where appropriate. Those changes took effect at the San Leandro plant in December,

2008. Therefore, wage increases would not have been anticipated in February of 2009, when the Board asserts the violation occurred. The Company never stated that it would not do yearly evaluations, only that it did not expect to be granting new individual wage increases until a collective bargaining agreement was reached. *See Exhibit 2.* Yearly evaluations have continued as before. *See, e.g., Exhibit 1.*

During the investigation of this matter, the Board supplied citations to two cases it claimed supported the view that the Respondent's failure to grant wage increases until they are bargained-for by the union was unlawful. Neither of those cases supports the Board's position.

In Holland American Wafer Co., *supra*, the Board explicitly **declined** to affirm the ALJ's view that the withholding of a wage increase violated the Act: "In adopting the Administrative Law Judge's Decision *we find it unnecessary to determine whether Respondent's unilateral withholding of the January 1980 wage increase violated Sec. 8(a)(5) of the Act.* We have found that conduct related to and concurrent with the denial of the wage increase violates Sec. 8(a)(3) and (1) and we have provided appropriate remedial requirements." *Id.*, 260 NLRB at 267 (emphasis added); the Board also effected a modification to the proposed notice based on its refusal to affirm the ALJ's finding. The ALJ in Holland American had found that the granting of annual wage increases on a certain date was a past practice, and although the amount was discretionary, the ALJ believed the company should have granted the wage increases and bargained with the union about the amount of the raises, even though the union had not yet been certified as the employees' collective bargaining representative pending a final ruling on the employer's election objections. (The union in Holland American, it should be noted, had

explicitly communicated with the company and stated that it would neither oppose nor object to any such wage increases that might be granted. The Union did no such thing in the present case.)

The ALJ's view – which the Board expressly declined to affirm, as noted above – is in any event unsupportable given that a company is forced to decline bargaining in order to appeal a certification of the union as the workers' collective bargaining agent. There is simply no other way to obtain appeal of the Board's certification order than by refusing to bargain. “A straightforward refusal to bargain in order to challenge a Board certification is ... part of the statutory process by which representation case issues can be reviewed by the courts. See § 10(f) of the Act which requires a final board order as a predicate to court review. A certification of representative is not a final order subject to direct challenge. Similarly, Respondent's refusal to bargain is the statutory predicate for an appeal of the bargaining order.” California Gas Transport, Inc., 2007 NLRB LEXIS 389, *18 (2007); NLRB v. Blades Mfg. Corp., 344 F.2d 998, 1002 (8th Cir. 1965) (“We are equally conscious of the fact that Congress has not provided for a direct judicial review of a certification of a union as bargaining agent, but the attack on the election generally can only be reviewed as part of the record in an unfair labor practice hearing on a refusal to bargain charge as the Company proceeded here.”); *see also generally How to Take a Case Before the NLRB*, Garren, Fox and Truesdale (7th ed. ABA/BNA 2000), Ch. 10.VII.A, pp. 351-352.

The other case cited by the Board, United Rentals, 349 N.L.R.B. 853 (2007), is equally distinguishable. In United Rentals, the Board explicitly found that the Respondent's annual practice was to grant merit-based wage increases effective on a

specific date, April 1, of each year. Moreover, the discretion involved in granting the wage increases was severely curtailed by the use of a “merit matrix” to calculate a recommended wage increase based on certain criteria. Not only does the Respondent not grant raises on a plant-wide basis on a specific date, it grants much greater discretion to the supervisors to determine what the raise will be, based not only on merit but on Company performance, economic conditions, etc. “[I]f an employer ‘retains total discretion to grant [wage] increases based on any factors it chooses, we doubt that discontinuing the policy [will result] in a violation of section 8(a)(5)’.” Acme Die Casting v. NLRB, 93 F.3d 854, 857 (D.C. Cir. 1996), citing Daily News of Los Angeles v. NLRB, 73 F.3d 406, 412 n.3 (D.C. Cir. 1996). “Indeed, wage increases that ‘are fixed as to timing but discretionary in amount do not become part of the employees’ reasonable expectations and thus are not considered ‘terms and conditions’ of employment.” *Id.* (citation omitted).¹

The Board and the Union are obviously attempting to create a no-win situation for the Respondent. Since the Respondent declined to grant discretionary wage increases, it is burdened by this charge. If it had granted discretionary wage increases, it would be considered to have violated the Act by “boxing the union in” on future bargaining positions. If it had bargained with the union about the wage increases, it would have waived its own opportunity to challenge a potential certification order. The charge is without merit and should be immediately dismissed.

¹ The Board’s confusing and checkerboard history of approving or disapproving wage increases while election objections and other matters are being resolved has created an environment in which an employer and its labor counsel can only take a guess as to what the Board would, at any given moment, approve: “Predicting whether the Board will view a pattern of wage increases as established or discretionary has proven difficult not only for employers and employees, but for the Board’s own ALJs as well. In many of the Board decisions ... the Board overruled the ALJ’s findings that an employer’s wage increases were sufficiently regular to constitute an established practice.” Acme Die Casting, *supra*, 93 F.3d at 858 (citations omitted).

C. The Respondent Was Forced by a Lawsuit, Brought By These Same Union Attorneys, to Enforce Reporting Times.

One of the allegations in the Consolidated Complaint is that “On or about February 12, 2009, Respondent eliminated its practice of allowing employees to report to work before their designated start times.” Complaint, ¶ 7(c). The Union’s and the Board’s prosecution of this claim is outrageously hypocritical, because the Union’s own attorneys brought a wage and hour claim against the Respondent alleging failure to pay the workers for all of their time worked. For obvious reasons, the Respondent was forced to review its payroll policies in response, and this modest change was a direct result of the Union-funded lawsuit.

A brief summary of the facts follows. A more complete explication of the facts can be found in Section E, *infra*. In or around October 2008, a union organizer for the Union (Teamsters Local 70), Pilar Barton, organized a meeting of the Respondent’s drivers at Local 70’s headquarters. Jason Rabinowitz, Esq. of Beeson, Tayer & Bodine, the Union’s attorney, was also at this meeting. At this meeting, Ms. Barton encouraged the drivers to file a federal class action wage & hour lawsuit against the Respondent. The drivers were told that this lawsuit could create “leverage” in future collective bargaining negotiations. *See* Hearing Transcript pgs. 105-106, 110-112 (**Exhibit 4**). The Union then distributed an “Attorney Client Representation Agreement” to the assembled drivers. The drivers who signed this agreement consented to hire Mr. Rabinowitz and his firm to file and represent them in a federal class-action wage & hour lawsuit against the Respondent.

On November 14, 2008, Local 70 filed a petition with Region 32 of the NLRB for “all route drivers” at the Respondent’s San Leandro facility to vote on whether they wanted to be represented by Local 70. *See* 32-RC-5603 (**Exhibit 5**). Mr. Rabinowitz’s firm, Beeson, Tayer & Bodine, is listed as the Union’s counsel. Five days later, on November 19, 2008, Mr. Rabinowitz, on behalf of sixteen (16) drivers at the Respondent’s San Leandro plant, also filed a class action wage & hour lawsuit against the Respondent in the United States District Court for the Northern District of California. *See* Complaint (**Exhibit 6**). Local 70 was not a named plaintiff in the lawsuit, although the attorney representation agreements stated that the Union would be funding it.

The lawsuit alleges, among other things, that the Respondent failed to pay the plaintiffs all of the money they were owed. Although the primary allegations appear to center around meal breaks, the language of the suit is broader than that, alleging, as it does, “Defendant has systematically failed and refused to provide Plaintiffs with their earned wages. Specifically, *among other things*, Defendants docked Plaintiffs ½ pay hour each day for meal periods that were not, in fact, taken by Plaintiffs.” **Exhibit 6**, ¶ 41 (emphasis added).

When faced with a class action wage and hour lawsuit, any sensible employer will review its pay policies across the board, because any policy that does not meet the strict rules of federal and California wage law can lead to liability in such a lawsuit; only by nipping violations in the bud can extensive liability be avoided. The first thing the Respondent did was to enforce the Company requirement that drivers take meal breaks, since that was the primary allegation of the lawsuit.² But it also reviewed other possible

² Incredibly, the Union filed a ULP alleging that, “*Breaks and lunches must be taken on a daily basis while on route. Before, drivers could take breaks and lunches at the facility.*” ULP No. 32-CA-24326. The

areas that might lead to liability, and discovered that some drivers were reporting to work so early, they arrived even before any member of management. As a consequence, nobody could be sure if drivers were working before they punched in. If they were, the Respondent could unwittingly owe them money for that time, thus making it potentially liable for failure to pay wages and failure of required record-keeping.³ The Respondent's supervisor simply asked the drivers not to arrive and punch in more than five or ten minutes before the scheduled shift time. There was nothing new here, nor was anybody disciplined with respect to this request. See **Exhibit 7**, Affidavit of Bobby Tauala at p. 4; **Exhibit 8**, Affidavit of driver Victor Hales; **Exhibit 9**, Affidavit of driver Danny Whitney.

The Board properly dismissed the ULP alleging wrongful conduct when the Respondent began requiring the drivers to take meal and rest breaks at the times required by California law, because it recognized that the change was made not due to union animus, but in response to the Union-financed wage and hour lawsuit. The requirement that drivers avoid checking in more than a few minutes prior to their assigned times was

Union has missed no opportunity to put the Respondent in a no-win situation by complaining in the federal lawsuit about an existing policy, and then filing a ULP when the policy is changed in response to the lawsuit. On that allegation, at least, the Board refused to issue a Complaint. "With regard to the alleged requirement that drivers take breaks and lunches, the evidence was insufficient to establish that the Employer enforced this rule in order to discourage support for the Union. Rather it appears that a mandate to take breaks and lunches resulted from the Employer's attempts to comply with State of California wage and hour requirements." NLRB Letter to Jason Rabinowitz, Sept. 29, 2009, p. 2.

³ The Fair Labor Standards Act requires that employees be paid for any time that the employer "suffers or permits" the employee to work, regardless of whether the employee has punched in. See, e.g., Chao v. Gotham Registry, Inc., 514 F.3d 280, 288 (2d Cir. 2008) (citations omitted) ("An employer who has knowledge that an employee is working, and who does not desire the work be done, has a duty to make every effort to prevent its performance."); Mumbower v. Callicott, 526 F.2d 1183, 1188 (8th Cir. 1975) (citations omitted) ("[D]uties performed by an employee before and after scheduled hours, even if not requested, must be compensated if the employer 'knows or has reason to believe' the employee is continuing to work."). Because an employee cannot waive his rights under the FLSA, the employer has no option but to zealously enforce punch-in requirements, lest it find itself liable years later for time that the employee claims to have worked but did not report at the time.

enforced for precisely the same reason. This charge is also obviously without merit and should be dismissed.

D. Due Process Has Been Denied the Respondent Because the Board Has Refused to Provide the Respondent With the Evidence Against It.

On each occasion in which the Respondent was served with the charges at issue in this case, its counsel requested more detailed information because of the vagueness of the allegations. On each such occasion, that request was refused by the Board agent investigating the charges. *See* attached January 9, 2009 letter, and March 9, 2009 and June 3, 2009 emails (**Exhibit 10**). As a result, the Respondent was left to guess at what evidence might exist against it, and its response was undoubtedly and unavoidably incomplete. Had the Respondent been able to respond to detailed allegations, it would have been able to avoid the issuance of a Complaint, because the Respondent did not in fact commit any unlawful labor practice.

It is a basic and cardinal Constitutional right of any person to be confronted with the evidence to be presented against him. Constitutional due process requires notice that gives the defendant sufficient reasons for the action against it, in sufficient detail that the recipient can prepare a responsive defense. *Tripp v. Coler*, 640 F. Supp. 848, 857 (N.D. Ill. 1986), citing *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970) (hearing prior to termination of welfare benefits must include “adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses.”). “It is universally agreed that adequate notice lies at the heart of due process. Unless a person is adequately informed of the reasons for denial of a legal interest, a hearing serves no purpose – and resembles more a scene from Kafka than a

constitutional process.” Cosby v. Ward, 843 F.2d 967, 983 (7th Cir. 1988), quoting Gray Panthers v. Schweiker, 652 F.2d 146, 168 (D.C. Cir. 1980). “Without notice of the specific reasons for denial [of Medicare benefits], a claimant is reduced to guessing what evidence can or should be submitted in response and driven to responding to every possible argument against denial at the risk of missing the critical one altogether.” Gray Panthers, id., 652 F.2d at 169. Moreover, the notice must be provided “at a meaningful time”, not beyond the point at which the notice might actually prove useful. Cosby, supra, citing Armstrong v. Manzo, 380 U.S. 545, 552 (1965).

The Supreme Court, in Mathews v. Eldridge, 424 U.S. 319 (1976), outlined three factors for courts to consider when determining the requirements of due process in various situations. These factors are first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Cosby, id., 843 F.2d at 984 (emphasis added) (“Considering all of these factors, we believe that due process requires the state to provide [unemployment insurance] claimants with notice of exactly how their work searches have been inadequate *before* the claimants must face the claims adjudicators. As the district court observed, ‘everyone is entitled to know what he has supposedly done wrong, for otherwise he cannot make an intelligent presentation at a hearing’.”).

It is plain that the factors identified in Mathews v. Eldridge do not justify the Board’s persistent refusal to detail the allegations against the Respondent and the source of the Board’s evidence prior to issuing the Complaint. First, the Respondent has a

property interest not only in any potential fine imposed or back pay that may be awarded, but also in the cost of defending against a full-blown Complaint with accompanying hearing, rather than at the dramatically less expensive investigatory stage. The Respondent will not be able to avoid these latter costs even it wins at the hearing.

By contrast, the Board has no legitimate interest in refusing to provide this information, particularly the affidavits upon which it relies. The affidavits will eventually be produced at the hearing anyway, but only after, or minutes before, the affiant testifies, thus affording the Respondent no realistic way to anticipate the testimony, prepare effective cross-examination, or locate other witnesses who might contradict the affiant's testimony. There is simply no cogent reason why the affidavits could not be provided in the investigation stage of the proceedings, so that the Respondent could effectively contradict or explain any allegation made by the affiants. If the Board had not unreasonably refused to provide those affidavits, a resolution of the matter could likely have been reached prior to the issuance of a Complaint.

The unreasonableness of the Board's position, and the consequent unnecessary cost to the Respondent, is magnified by the Board's conduct when settlement of these charges was discussed. On September 17, 2009, the Board faxed a letter to the Respondent giving the Respondent less than 24 hours to accept or reject the Board's proposed settlement of the matter. *See* Tsiliacos letter dated September 17, 2009 (**Exhibit 11**). Although the letter indicated that the language of the proposed notice could be negotiated, the time parameters set by the Board made it realistically impossible to do so. When the Respondent requested additional time to consider it, the Board refused to grant it, indicating that a complaint would issue immediately. As a result, the

Respondent was forced to reject the settlement proposal, largely because of concerns over the language of the proposed notice. *See* September 18 letter from Fischer to Tsiliacos (**Exhibit 12**). (As noted above, the Respondent needed to discourage the drivers from reporting to work before management in order to ensure that it was complying with wage and hour law, as its compliance had just been challenged by a wage and hour lawsuit brought by the Union's own attorneys; it therefore could not agree to a notice promising not to discourage the drivers from reporting early to work.) After refusing to give the Respondent more than 24 hours to consider the Board's proposal, and after refusing to negotiate the language of the proposed notice, *the Board then took another ten (10) days to serve the Consolidated Complaint. See* attached emails between Fisher and Tsiliacos, September 18-29 (**Exhibit 13**).

Finally, as noted, the Board has inexplicably declined to dismiss charges that are obviously baseless. The employee evaluations have not been delayed, as the Board well knew; the Respondent declined to give discretionary pay raises due to the requirements of the Katz doctrine; and the need to have the drivers report in at approximately their designated start times was necessitated by the wage and hour law, not by any anti-union animus. In short, the Board's conduct reveals an insistence on filing obviously baseless charges, an unreasonable disinclination to take action that could have resolved the matters prior to the issuance of the Complaint, and an apparent intent to put the Respondent in a no-win situation.

As a result of the Board's conduct, the Respondent has been deprived of due process of law, and this Complaint should be dismissed.

E. The Union's Attorney Should Be Disqualified From Representing the Union in This Proceeding Because of His Manifestly Unethical Behavior.

As discussed above, the Union's attorney, Jason Rabinowitz, is also the attorney for drivers who filed a class action wage and hour lawsuit against the Respondent only five days after the Union's RC petition was filed. At the October 2008 meeting at Local 70's headquarters, in which the lawsuit was suggested as a means of "leverage" against the company in collective bargaining negotiations, the union organizer distributed an "Attorney Client Representation Agreement" to the assembled Stericycle drivers. The drivers who signed this agreement consented to hire Mr. Rabinowitz and his firm to file and represent them in a federal class-action wage & hour lawsuit against the Respondent. *See* Attorney Client Representation Agreement, **Exhibit 14**.

The Attorney-Client Representation Agreement explicitly states: "*Teamsters Local 70 ('Local 70') has agreed to the payment of all fees, costs, disbursements and litigation expenses.*" Mr. Rabinowitz informed the drivers that Local 70 was paying all of the fees, costs, disbursements, and litigation expenses associated with the lawsuit. Hearing Transcript pgs. 91-92, **Exhibit 4**. Based upon Local 70's overt sponsorship of the lawsuit, some of the drivers believed that by joining the lawsuit they would be joining Local 70 and subsequently have the chance to recover more than \$10,000 each in litigation proceeds. Hearing Transcript pgs. 129-130, 152, 159, 171, **Exhibit 4**. Stericycle drivers were instructed to return signed attorney-client representation agreements to either Union representative Barton or Local 70's lawyers.

Soon thereafter, Mr. Rabinowitz filed both the RC petition and the lawsuit, only five days apart. Mr. Rabinowitz's law firm was listed as counsel of record in both

lawsuits. Local 70 was *not* a named party to the lawsuit. Mr. Rabinowitz was now the attorney for Local 70 in its matters before the NLRB and separately for a group of drivers bringing suit against Stericycle for alleged violations of the federal wage and hour law.

On December 22, 2008, Bob Aiello and Ms. Barton, both representatives of Local 70, unexpectedly arrived at the Respondent's San Leandro facility. The two walked into a room where Tom Stalberger (Stericycle District Manager for California), Terry Hales (Stericycle Transportation Supervisor), Bobby Tauala (Stericycle Transportation Supervisor), Eloy Jimenez (Stericycle California District Transportation Manager), Sam Escobar (San Leandro Transportation Manager), and Bruno Katz (counsel for Stericycle), were meeting. Mr. Aiello and Ms. Barton announced that they had just met with Mr. Rabinowitz and now had the authority to offer Stericycle a "bailout" that would drop the drivers' federal class-action wage and hour lawsuit in exchange for: (1) a statewide neutrality agreement with Local 70, (2) immediate collective bargaining negotiations, and (3) withdrawal of all objections to Local 70's petition. The Respondent only later learned that Mr. Aiello, Ms. Barton, and Mr. Rabinowitz did not have permission from the plaintiffs in the lawsuit – Mr. Rabinowitz's clients – to propose a settlement offer of any kind to Stericycle. In fact, *neither Mr. Rabinowitz, nor anyone at his firm, had ever spoken with any of the drivers about settling their lawsuit.* Hearing Transcript pgs. 61-62, and 87-88, **Exhibit 4.**

The Respondent rejected the Union's offer and filed unfair labor practice charges objecting to this unethical settlement proposal (ULPs 32-CB-6575 & 32-CB-6732). On January 7, 2009, only five business days after Stericycle filed its first ULP, Mr. Rabinowitz sent letters to the sixteen (16) named plaintiffs in an attempt to disown

portions of the Attorney-Client Representation Agreement and re-define the fee relationship. See January 7, 2009 Rabinowitz letters, **Exhibit 15**. Though Mr. Rabinowitz produced and discussed the terms of the attorney-client representation agreement with Stericycle drivers in October 2008, Mr. Rabinowitz now claimed the agreement “mistakenly” indicated that the attorneys' fees that would be paid by Local 70. However, despite Mr. Rabinowitz’s disclaimers, none of the drivers had spent a single penny on their legal representation in their federal wage & hour lawsuit. Hearing Transcript pgs. 101, 163, 213, **Exhibit 4**.

On January 16, 2009, a representation election was held at the Stericycle facility in San Leandro that resulted in twenty three (23) votes in favor of Local 70, and twelve (12) in opposition. It was not until *after* this election that Local 70’s attorneys and Ms. Barton presented the sixteen (16) named plaintiffs with the opt-in agreements required for the federal lawsuit. Local 70’s attorneys and Ms. Barton also presented the sixteen (16) named plaintiffs with a revised attorney-client representation agreement that supposedly removed Local 70’s responsibility for the fees, costs, disbursements, and expenses of the federal lawsuit. Again, despite these changes, none of the drivers had then spent a single penny on their legal representation in their federal wage & hour lawsuit and, upon information and belief, none have done so to this day.

The Respondent filed timely objections to the election. On March 3, 2009, the Regional Director ordered a hearing on the Respondent’s objection that the Union’s free legal services as part of this class action wage and hour lawsuit were a prohibited pre-election benefit. During that hearing, Mr. Rabinowitz voluntarily offered the drivers’ January 7th fee-arrangement letters as exhibits for the hearing without the prior

permission or knowledge of his clients. Mr. Rabinowitz did not ask the presiding Administrative Law Judge for any form of protective order or seal to guard the confidentiality of the documents. Every plaintiff-driver present at the March 16, 2009, hearing agreed that they had received the letters from Mr. Rabinowitz, *but that they had never given him the authority to disclose them*. Hearing Transcript pgs. 138-139, 202-203, 211, **Exhibit 4**. Not a single one of them gave Mr. Rabinowitz permission to introduce this material into the public record as an exhibit at an NLRB hearing. *Id.*

It is apparent from these appalling facts that Mr. Rabinowitz has displayed a complete unconcern for the legal rights of the drivers that both he and the Union supposedly represent. Most egregiously, he authorized the Union to bargain away the drivers' rights under the wage and hour lawsuit in exchange for concessions, including a *statewide* neutrality agreement, that would have directly benefited only the Union, *without ever discussing this or obtaining authorization from the driver/plaintiffs themselves*. Similarly, he revealed their confidential fee agreements at a public hearing, again without ever discussing the matter or obtaining their authorization. It is plain that Mr. Rabinowitz's ethical commitment is solely to the Union,⁴ and not to the drivers that he and the Union supposedly represent. He has committed violations of California Rules of Professional Conduct Nos. 3-100 (client confidentiality), 3-300 and 3-310 (conflicts of interest), 1-320 (financial arrangements with non-lawyers), and 1-600(A) (legal services programs); *see also* Hildebrand v. State Bar of Cal., 36 Cal. 2d 504 (1950) (predecessor to Rule 1-600 was violated by joint venture whereby the Union recommended the attorneys' services to its members, the Union profited from increased membership, and the firm gained business through the Union's recommendations).

⁴ Indeed, Mr. Rabinowitz was married to Pilar Barton, the Union organizer, until November of 2008.

The Respondent brought these matters to the attention of the Board months ago, in a July 2 letter. **Exhibit 16.** The Board took no action until September 30, 2009, when the Board's Associate General Counsel, Richard Siegel, indicated that he will open an investigation into Mr. Rabinowitz's abuse of his clients' attorney-client confidentiality rights at the hearing on the Respondent's election objections, and recommended that the remaining allegations be addressed to the California Bar. **Exhibit 17.**

It is apparent that Mr. Rabinowitz is not ethically qualified to make charges against the Respondent or to appear before the Board in this proceeding. The Board's own rules provide that "Any attorney or other representative appearing or practicing before the Agency shall conform the standards of ethical and professional conduct required of practitioners before the courts ..." NLRB Rule 102.177(a). "Misconduct by an attorney or other representative at any stage of any Agency proceeding ... shall be grounds for discipline. Such misconduct of an aggravated character shall be grounds for suspension and/or disbarment from practice before the Agency and/or other sanctions." NLRB Rule 102.177(d). Mr. Rabinowitz's conduct reveals a flagrant disregard for the ethical standards established by the State of California and common law rules of practice such as the requirement of client confidentiality, the avoidance of conflicts of interest, and the obligation of every attorney to represent his client(s) zealously and to the best of his ability.

The charges brought by the Union, as represented by Mr. Rabinowitz, should be considered without merit and dismissed.

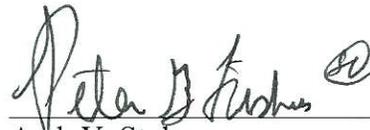
CONCLUSION

At every turn, the Union and the Board have sought to trap the Respondent into circumstances dictating that it will either be found in violation of the Act or be required to waive its substantive legal rights. Despite their best efforts, the Board was forced to dismiss the majority of unfair labor practice charges filed by the Union and its counsel, Jason Rabinowitz, whose unethical behavior has jeopardized the rights of the drivers whom the Union and Mr. Rabinowitz supposedly represent. The charges that have survived to the Complaint stage are plainly without merit, and had the Board not unreasonably refused to confront the Respondent with the evidence against it, they would have been dismissed prior to a Complaint being issued. The Respondent should not have to incur the costs involved with defending its actions at a full-blown hearing when this eventuality could have been avoided had the Respondent had not been denied due process. The Consolidated Complaint should be DISMISSED.

Respectfully submitted this 13th day of October, 2009.

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(404) 766-8823 (FAX)

STOKES, ROBERTS & WAGNER

A handwritten signature in cursive script, appearing to read "Peter G. Fischer" with a circled "P" or similar mark at the end. The signature is written above a horizontal line.

Arch Y. Stokes
Paul E. Wagner
Peter G. Fischer

ATTORNEYS FOR RESPONDENT,
Stericycle, Inc.

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

STERICYCLE, INC.

and

**Cases 32-CA-24230
32-CA-24326**

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AUTO TRUCK DRIVERS,
LINE DRIVERS, CAR HAULERS, AND HELPERS,
LOCAL NO. 70 OF ALAMEDA COUNTY, CALIFORNIA,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss NLRB Consolidated Complaint was sent to the following by U.S. mail, postage pre-paid as follows:

Jason Rabinowitz
Beeson Tayer & Bodine
1404 Franklin Street, 5th Floor
Oakland, CA 94612

This 13th day of October, 2009


Peter G. Fischer

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

STERICYCLE, INC.

and

**Cases 32-CA-24230
32-CA-24326**

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AUTO TRUCK DRIVERS,
LINE DRIVERS, CAR HAULERS, AND HELPERS,
LOCAL NO. 70 OF ALAMEDA COUNTY, CALIFORNIA,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA**

AFFIDAVIT OF SERVICE

I am employed in the County of Fulton, State of Georgia. I am over the age of eighteen years and not a party to the within action; my business address is 3593 Hemphill Street, Atlanta, Georgia 30337.

On October 13, 2009, I caused the following document(s) to be served:

- **RESPONDENT'S MOTION TO DISMISS THE CONSOLIDATED COMPLAINT WITH EXHIBITS,**

on the interested party below in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jason Rabinowitz
Beeson Tayer & Bodine
1404 Franklin Street, 5th Floor
Oakland, CA 94612

and

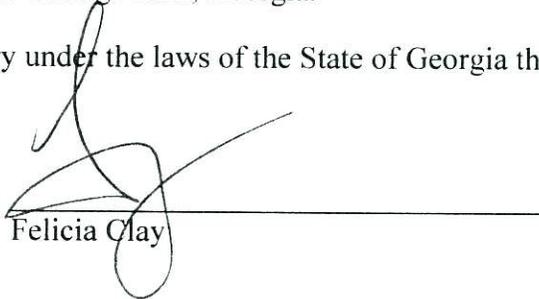
on the interested party below in this action by placing true copies thereof enclosed in a sealed envelope addressed as follows and via electronic filing through the NLRB website:

Alan B. Reichard, Regional Director
National Labor Relations Board, Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

- BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Atlanta, Georgia, in the ordinary course of business pursuant to Code of Civil Procedure Section 1013(a). I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY FACSIMILE: I served said document(s) to be transmitted by facsimile pursuant to Board's Rules and Regulations, Series 8, as amended, Section 102.24. The telephone number of the sending facsimile machine was (404) 766-8823. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.
- BY PERSONAL SERVICE: I caused to be hand-delivered said document(s) to the addressee(s) pursuant to Board's Rules and Regulations, Series 8, as amended, Section 102.24.
- BY EXPRESS MAIL: I caused said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure Section 1013(c).

Executed on October 20, 2009, at College Park, Georgia.

I declare under penalty of perjury under the laws of the State of Georgia that the foregoing is true and correct.


Felicia Clay

Attorneys for the Employer

3593 Hemphill Street
College Park, GA 30337
404.766.0076 Telephone
404.766.8823 Facsimile

510 Market Street, 3rd Floor
San Diego, CA 92101
619.232.4261 Telephone
619.232.4840 Facsimile

EXHIBIT 1



Peter G. Fischer
pfischer@sheastokes.com
Direct Dial

3593 Hemphill Street
Atlanta, Georgia 30337

Telephone (404) 766-0076
Facsimile (404) 766-8823

www.sheastokes.com

FAX TRANSMITTAL

DATE: April 6, 2009 TIME: 1730 hrs
TO: Nicholas Tsiliacos FAX: 510-637-3315 PHONE: 510-637-3297
NLRB, Region 32
FROM: Peter G. Fischer
BY:
RE: 32-CA-24351
32-CA-24356

OUR FILE:

ORIGINAL TO FOLLOW BY MAIL: No

TOTAL NUMBER OF PAGES (including this form): 9

MEMO: Signed Stericycle Performance Reviews as discussed last week.

This should be considered evidence that Stericycle has not, contrary to allegations, stopped giving drivers their annual performance reviews.

Peter Fischer

This facsimile contains CONFIDENTIAL INFORMATION WHICH ALSO MAY BE LEGALLY PRIVILEGED and which is intended only for the use of the addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via the U. S. Postal Service.

If you do not receive this transmittal completely or correctly, please contact this office.

STERICYCLE PERFORMANCE REVIEW

Employee Name: Marcos Chicas	S.S. No: 603-20-5243	Current Position:	Driver Class A	Employee Cost Center/Dept Name: San Leandro	Manager Name: Torry Hales
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Type of Performance Review

90 Day Orientation Period Performance Review
 Annual Review
 Transfer
 Promotion

For each quality rate and describe the performance of the employee in this present position.

EP Exceeds Performance Requirements
 Consistently achieves significant business results that far exceed job requirements. Demonstrates management expertise and mastery of leadership competencies.

FM Fully Meets Performance Requirements
 Achieves business results in line with, and occasionally above, job requirements. Demonstrates management skills and leadership competencies essential to position.

ME More is Expected
 Achieves inconsistent results on job requirements. Has not fully demonstrated management skills and leadership competencies required for position.

UN Unacceptable Performance
 Performance is below minimum standards. If Overall rating is "Unacceptable", Performance Deficiency Form is to be completed.

Performance Qualities	Strengths & Development Opportunities (Provide examples.)	Rating
JOB KNOWLEDGE: The information concerning work duties, which the employee should know for satisfactory, job performance.	Marcos understands what is needed for satisfactory work performance. Reader, Printer, Manifest,)	FM
QUALITY OF WORK: The ability to perform work duties correctly and accurately, within established time frames.	Marco quality of work is good (paper work complete, uses reader and printer).	FM
QUANTITY OF WORK: The amount of work an employee is able to accomplish in a work day.	Marcos supports the Bio systems group delivering carts in the peninsula and the north bay communicating with Bio systems	FM
ADAPTABILITY: The ability to do new or different jobs as required.	Marcos adapts to changes well and does not have a problem doing extra.	FM
WORKING RELATIONS: The ability to feel positively about and work cooperatively with others.	Marcos works well with all coworkers and displays strong work ethics daily.	FM
DEPENDABILITY: The ability to do required jobs properly and accurately with appropriate supervision.	Marcos is very dependable with his workload, he calls his supervisor when he has questions or unsure of a situation.	FM
SAFETY: The desire and ability of an employee to avoid injury to self and others.	Marcos maintains a safe and effective environment for himself and his peers.	FM
Continued on reverse side		

Operations

STERICYCLE PERFORMANCE REVIEW

<p>ATTENDANCE/PUNCTUALITY: on the job (at work station) and on time Returns from breaks and lunch on time, ready to work and begins working.</p> <p>Number of unexcused absences since last review: 0</p> <p>Number of unexcused tardiness since last review: 0</p>	<p>Marcos is always on time and is regular in attendance.</p>	<p>FM</p>
<p>CUSTOMER SERVICE: The desire and ability to identify and work to meet customer needs.</p>	<p>Marcos is well liked and provides good service towards all his customers.</p>	<p>FM</p>
<p>CARE OF EQUIPMENT: The desire and ability of an employee to take care of and properly maintain the equipment used in the job.</p>	<p>Marcos takes care of his equipment he carries all his equipment in his duffel bag and keeps his truck very clean.</p>	<p>FM</p>
<p>INITIATIVE AND INNOVATION: The expressed desire to learn new things or attain established goals.</p>	<p>Marcos always looks to his lead driver for information on how to service certain customer.</p>	<p>FM</p>
<p>Technical Skills : Skills to perform job specific functions</p>	<p>Marcos performs well with tools provided to him.</p>	<p>FM</p>
<p>Overall Appaisal: FM</p>		
<p>Development Plan:</p>		
<p>Strength/Opportunity: Marcos is a well-liked self-motivated individual with great potential. Development Plan:</p>		

We have discussed this performance review and evaluation with each other. I'm signing on 03/31/09, I have received Duplicate Counseling on 03/17/09

Marcos Checcis _____ Date 3/17/09
 Employee's Signature
 _____ Date 3/17/09
 Supervisor's Signature

NOTE: Employee's signature does not necessarily indicate agreement with this review, but confirms that the contents of it have been reviewed and discussed with the employee.

STERICYCLE PERFORMANCE REVIEW

ORIGINAL TO FILE // COPY TO EMPLOYEE

STERICYCLE PERFORMANCE REVIEW

Employee Name:	Steve Whitefield	S.S. No:	559-17-3128	Current Position:	Class A Route Driver	Employee Cost Center/Dept Name:	393945 SanLeandro	Manager Name:	Terry Hales
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Type of Performance Review

90 Day Orientation Period Performance Review Annual Review Transfer Promotion

For each quality rate and describe the performance of the employee in this present position.

EP Exceeds Performance Requirements
 ME More is Expected
 UN Unacceptable performance
 FM Fully Meets Performance Requirements

Consistently achieves significant business results that far exceed job requirements. Demonstrates management expertise and mastery of leadership competencies.

Achieves business results in line with, and occasionally above, job requirements. Demonstrates management skills and leadership competencies essential to position.

Achieves inconsistent results on job requirements. Has not fully demonstrated management skills and leadership competencies required for position.

Performance is below minimum standards. If Overall rating is "Unacceptable", Performance Deficiency Form is to be completed.

Performance Qualities	Strengths & Development Opportunities (Provide examples.)	Rating
JOB KNOWLEDGE: The information concerning work duties, which the employee should know for satisfactory, job performance.	Steve understands all aspects of his job duties and prepares himself well in advance for the next business day.	FM
QUALITY OF WORK: The ability to perform work duties correctly and accurately, within established time frames.	Steve's work quality has improved paper work is complete and error free (all manifest signed, appropriate boxes checked.)	FM
QUANTITY OF WORK: The amount of work an employee is able to accomplish in a work day.	Steve completes all work assignments (30 plus stops daily) given to him each day, he always notifies his supervisor when obstacles occur, he does not have a problem doing extra for his team.	EP
ADAPTABILITY: The ability to do new or different jobs as required.	Steve is capable of completing all assignment assigned to him and adapts to changes well.	FM
WORKING RELATIONS: The ability to feel positively about and work cooperatively with others.	Steve gets along well with all customers and co-workers, he always participates in drivers safety meeting	FM
DEPENDABILITY: The ability to do required jobs properly and accurately with appropriate supervision.	Steve can complete assignments given with little supervision.	FM

Operations

STERICYCLE PERFORMANCE REVIEW

<p>SAFETY: The desire and ability of an employee to avoid injury to self and others.</p> <p>Continued on reverse side</p>	<p>Steve is very safety oriented when around others.</p>	<p>FM</p>
<p>ATTENDANCE/PUNCTUALITY: on the job (at work station) and on time. Returns from breaks and lunch on time, ready to work and begins working.</p> <p>Number of unexcused absences since last review: 0</p> <p>Number of unexcused tardiness since last review: 0</p>	<p>Steve is always ready to work, his punctuality has improved his start times are consistently met</p>	<p>FM</p>
<p>CUSTOMER SERVICE: The desire and ability to identify and work to meet customer needs.</p>	<p>Steve shows the desire and the ability to meet the customer needs by making phone calls to his supervisor when he does not have the answers to questions or customer requests.</p>	<p>FM</p>
<p>CARE OF EQUIPMENT: The desire and ability of an employee to take care of and properly maintain the equipment used in the job.</p>	<p>Steve keeps his Vehicle extremely clean and orderly, he makes sure all Truck issues are noted on vehicle condition report and maintenance on his Vehicle are performed on schedule.</p>	<p>FM</p>
<p>INITIATIVE AND INNOVATION: The expressed desire to learn new things or attain established goals.</p>	<p>Steve consistently expressed the desire to learn new things</p>	<p>FM</p>

Development Plan:

Strength/Opportunity: Steve is dependable, works well with others, and provides good customer service. Development Plan:

Strength/Opportunity: Development Plan:

We have discussed this performance review and evaluation with each other. I am signing on 3/26/09, I have received duplicate counseling on originating date of 1-8-09

Employee's Signature: *[Signature]* Date: 1-8-09

Supervisor's Signature: *[Signature]* Date: 1/8/2009

STERICYCLE PERFORMANCE REVIEW

NOTE: Employee's signature does not necessarily indicate agreement with this review, but confirms that the contents of it have been reviewed and discussed with the employee.

ORIGINAL TO FILE // COPY TO EMPLOYEE

STERICYCLE PERFORMANCE REVIEW

Employee Name: Joel Ochoa	S. S. No: 605-09-6216	Current Position:	Driver Class A	Employee Cost Center/Dept Name: San Leandro	Manager Name: Terry Hales
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Type of Performance Review

90 Day Orientation Period
 Annual Review
 Transfer
 Promotion

For each quality rate and describe the performance of the employee in this present position.

EP Exceeds Performance Requirements Consistently achieves significant business results that far exceed job requirements. Demonstrates management expertise and mastery of leadership competencies. **ME More is Expected**
FM Fully Meets Performance Requirements Achieves business results in line with, and occasionally above, job requirements. Demonstrates management skills and leadership competencies essential to position. **UN Unacceptable Performance**
 Achieves inconsistent results on job requirements. Has not fully demonstrated management skills and leadership competencies required for position.
 Performance is below minimum standards. If Overall rating is 'Unacceptable', Performance Deficiency Form is to be completed.

Performance Qualities	Strengths & Development Opportunities (Provide examples.)	Rating
JOB KNOWLEDGE: The information concerning work duties, which the employee should know for satisfactory job performance.	Joel has knowledge of all aspects of his job, however he is unable to perform duties do to an ongoing back injury.	ME
QUALITY OF WORK: The ability to perform work duties correctly and accurately, within established time frames.	The quality of Joel's work as a route driver is satisfactory although on light duty he assistants in general office administration duties.	FM
QUANTITY OF WORK: The amount of work an employee is able to accomplish in a workday.	Do to his injury the quantity of work Joel can give is limited.	ME
ADAPTABILITY: The ability to do new or different jobs as required.	Joel adaptability I to any job assigned to him is excellent.	FM
WORKING RELATIONS: The ability to feel positively about and work cooperatively with others.	Joel gets along and works well with his peers as well as his supervisors.	FM
DEPENDABILITY: The ability to do required jobs properly and accurately with appropriate supervision.	Joel is a dependable individual, you can count on Joel to show up to work Ready to complete any assignments assigned to him.	FM
SAFETY: The desire and ability of an employee to avoid injury to self and others.	Joel's been on injury off and on for the duration of this review.	ME
Continued on reverse side		

Operations

STERICYCLE PERFORMANCE REVIEW

<p>ATTENDANCE/PUNCTUALITY: on the job (at work station) and on time. Returns from breaks and lunch on time, ready to work and begins working.</p> <p>Number of unexcused absences since last review: 0</p> <p>Number of unexcused tardiness since last review: 0</p>	<p>Joel has missed several days do to his injury.</p>	ME
<p>CUSTOMER SERVICE: The desire and ability to identify and work to meet customer needs.</p>	<p>Due to Joel's injury he is unable to service his customers as expected. Although he has excellent customer service.</p>	ME
<p>CARE OF EQUIPMENT: The desire and ability of an employee to take care of and properly maintain the equipment used in the job.</p>	<p>Joel has maintained general maintenance of the facility as well as our equipment (forklift, pallet jacks, etc).</p>	FM
<p>INITIATIVE AND INNOVATION: The expressed desire to learn new things or attain established goals.</p>	<p>Joel is always looking to learn more, he is very assertive if himself, very professional, trouble shoots, very resourceful, and team oriented. He also expressed an interest in becoming A Transportation Supervisor.</p>	FM
<p>Overall Appaisal:FM</p>		
<p>Development Plan:</p>		
<p>Strength/Opportunity: Dean does his job well with a positive attitude Dean can be a valuable asset to the company.</p>		

We have discussed this performance review and evaluation with each other.

Joel Dean
Employee's Signature

1/09/2009
Date

Dean Dean
Supervisor's Signature

1/9/2009
Date

NOTE: Employee's signature does not necessarily indicate agreement with this review, but confirms that the contents of it have been reviewed and discussed with the employee.

ORIGINAL TO FILE // COPY TO EMPLOYEE

*** TRANSMISSION REPORT ***

SID : SHEA STOKES

Number L1 : 484766882
Number L2 :

Date : 04-06-03 20:04

Date/Time	4-06 20:01
Dialled number	915106373315/999900
Durat.	3'03"
Mode	NORMAL
Pages	9
On	Line 1
Status	Correct



**Shea Stokes
Roberts & Wagner**
A Time Corporation

3283 Hartwood Street
Atlanta, Georgia 30337
Telephone (404) 766-0278
Facsimile (404) 766-2003
www.sheastokes.com

Peter G. Fischer
pfischer@sheastokes.com
Ored 316

FAX TRANSMITTAL

DATE: April 6, 2009 TIME: 1730 hrs

TO: Nicholas Tsilicacos FAX: 510-637-3315
NLRB, Region 33 PHONE: 510-637-1297

FROM: Peter G. Fischer

BY:

RE: 32-CA-24351
32-CA-24356

OUR FILE:

ORIGINAL TO FOLLOW BY MAIL: No

TOTAL NUMBER OF PAGES (including this form): 9

MEMO: Signed Stericycle Performance Reviews as discussed last week.

This should be considered evidence that Stericycle has not, contrary to allegations, stopped giving drivers their annual performance reviews.



This facsimile contains CONFIDENTIAL INFORMATION WHICH ALSO MAY BE LEGALLY PRIVILEGED and which is intended only for the use of the addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via the U. S. Postal Service.

If you do not receive this transmittal completely or correctly, please contact this office.

SPR0406-1131 1

Rebecca B. Hubbard

From: Peter G. Fischer
Sent: Tuesday, April 21, 2009 12:56 PM
To: 'Tsiliacos, Nicholas L.'
Cc: Arch Y. Stokes; Bruno W. Katz; Paul E. Wagner
Subject: Additional Annual Performance Evals
Attachments: Annual Performance Evals 21Apr09.PDF

Nick,

Attached are the most recent driver performance evals. As we described in our position statement, driver's received annual performance evaluations both before and after the election results were announced.

Peter

From: Tsiliacos, Nicholas L. [mailto:Nicholas.Tsiliacos@nlrb.gov]
Sent: Thursday, April 09, 2009 10:57 AM
To: Peter G. Fischer
Subject: RE: ULP 32-CB-6612

Peter:
Does the Company want a short form or long form dismissal letter?
Nick

From: Peter G. Fischer [mailto:pfischer@sheastokes.com]
Sent: Thursday, April 09, 2009 6:52 AM
To: Tsiliacos, Nicholas L.
Cc: Arch Y. Stokes; Bruno W. Katz; Paul E. Wagner; Ann Marie Mizel - Verizon
Subject: ULP 32-CB-6612

Mr. Tsiliacos,

We will not withdraw ULP 32-CB-6612 against Teamsters Local 70.

Thank you.

Peter Fischer
SHEA STOKES ROBERTS & WAGNER
Atlanta, GA

404.766.0076 (p)
404.766.8823 (f)
404.766.9674 (d)

PRIVILEGED COMMUNICATION
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STERICYCLE PERFORMANCE REVIEW

Employee Name: Victor Leon Hates	S. S. No: 560-15-3746	Current Position:	Driver Class A	Employee Cost Center/Dept Name: San Leandro	Manager Name: Bobby Tauala
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Type of Performance Review

90 Day Orientation Period
 Annual Review
 Transfer
 Promotion

For each quality rate and describe the performance of the employee in this present position.

EP Exceeds Performance Requirements
 Consistently achieves significant business results that far exceed job requirements. Demonstrates management expertise and mastery of leadership competencies.

FM Fully Meets Performance Requirements
 Achieves business results in line with, and occasionally above, job requirements. Demonstrates management skills and leadership competencies essential to position.

ME More is Expected
 Achieves inconsistent results on job requirements. Has not fully demonstrated management skills and leadership competencies required for position.

UN Unacceptable Performance
 Performance is below minimum standards. If Overall rating is 'Unacceptable', Performance Deficiency Form is to be completed.

Performance Qualities	Strengths & Development Opportunities (Provide examples.)	Rating
JOB KNOWLEDGE: The information concerning work duties, which the employee should know for satisfactory, job performance.	Victor excels in his knowledge of his job description, assignments, job performance, etc.	FM
QUALITY OF WORK: The ability to perform work duties correctly and accurately, within established time frames.	Victor exceeds in his quality of work, Victor completes his stops on a consistent basis within a reasonable time frame. This is in reflection from the re-routing.	FM
QUANTITY OF WORK: The amount of work an employee is able to accomplish in a workday.	Victor averages 16, 14 stops a day and he has minor down time due to the travel time but can improve on it.	FM
ADAPTABILITY: The ability to do new or different jobs as required.	Victor does not have any disputes doing extra stop. Victor has shown the ability to adapt to changes and trouble shoot problems when they occur.	FM
WORKING RELATIONS: The ability to feel positively about and work cooperatively with others.	Victor works well with coworkers as well as his customers, Victor is the only driver servicing Tracy and he has been doing a great job with this area considering it was transferred to our station from Fresno.	FM
DEPENDABILITY: The ability to do required jobs properly and accurately with appropriate supervision.	Victor has shown the ability to complete any task under any supervision under any circumstances.	FM
SAFETY: The desire and ability of an employee to avoid injury to self and others.	Victor maintains a safe and effective environment for himself and his peers.	FM
Continued on reverse side		

Operations

STERICYCLE PERFORMANCE REVIEW

<p>ATTENDANCE/PUNCTUALITY: on the job (at work station) and on time. Returns from breaks and lunch on time, ready to work and begins working.</p> <p>Number of unexcused absences since last review: 0</p> <p>Number of unexcused tardiness since last review: 0</p>	<p>Victor has been punctual and regular in attendance.</p>	FM
<p>CUSTOMER SERVICE: The desire and ability to identify and work to meet customer needs.</p>	<p>Victor has a good relationship with his customers and they are serviced on schedule. Victor notifies his supervisor if there is a problem meeting the schedule, and he shows good communication.</p>	FM
<p>CARE OF EQUIPMENT: The desire and ability of an employee to take care of and properly maintain the equipment used in the job.</p>	<p>Victor has maintained a thorough pre-trip and post-trip inspection on a daily basis. Victor takes care of all tools and equipment issued to him, and he reports any issues he may have with the vehicle at all times.</p>	FM
<p>INITIATIVE AND INNOVATION: The expressed desire to learn new things or attain established goals.</p>	<p>Victor does what it takes to keep route efficient as possible (route is in order, tracking labels made the night before) he punches in and inspects his truck in less than 15 minutes, is willing to educate his teammates in every aspect of the job requirement.</p>	FM

Overall Appaisal: FM

Development Plan: Victor's goal is to re-route & re-sequence his new customers in areas that fits his daily delivery routine and shift time frame. He will monitor and report the cycle begin date for any necessary changes. He will work closely with our bio track operators in customer service efficiency.

Strength/Opportunity: Victor's performance has improved a great deal, Victor has good work ethics, Victor has a positive attitude. Victor works well under pressure, Victor communicates & trouble shoots well, and emphasizes safety at all time.

We have discussed this performance review and evaluation with each other:

Employee's Signature Victor March 27, 2009
Date 3/27/09

Supervisor's Signature B. Tavelle
Date March 27, 2009
3.27.09

NOTE: Employee's signature does not necessarily indicate agreement with this review, but confirms that the contents of it have been reviewed and discussed with the employee.

ORIGINAL TO FILE // COPY TO EMPLOYEE

STERILIZATION PERFORMANCE REVIEW

STERICYCLE PERFORMANCE REVIEW

Employee Name:	Benjamin Hernandez	S.S. No:	609-78-5839	Current Position:	Driver Class A	Employee Cost Center/Dept Name:	San Leandro	Manager Name:	Bobby Tauala
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Type of Performance Review

- 90 Day Orientation Period Performance Review
 Annual Review
 Transfer
 Promotion

For each quality rate and describe the performance of the employee in this present position.

EP Exceeds Performance Requirements Consistently achieves significant business results that far exceed job requirements. Demonstrates management expertise and mastery of leadership competencies. **ME More is Expected** Achieves inconsistent results on job requirements. Has not fully demonstrated management skills and leadership competencies required for position.

FM Fully Meets Performance Requirements Achieves business results in line with, and occasionally above, job requirements. Demonstrates management skills and leadership competencies essential to position. **UN Unacceptable Performance** Performance is below minimum standards. If Overall rating is "Unacceptable", Performance Deficiency Form is to be completed.

Performance Qualities	Strengths & Development Opportunities (Provide examples.)	Rating
JOB KNOWLEDGE: The information concerning work duties, which the employee should know for satisfactory, job performance.	Benjamin excels in his knowledge of his job description, assignments, job performance, etc.	FM
QUALITY OF WORK: The ability to perform work duties correctly and accurately, within established time frames.	Benjamin exceeds in his quality of work, Benjamin completes his stops on a consistent basis within a reasonable time frame. This is in reflection from the re-routing.	EP
QUANTITY OF WORK: The amount of work an employee is able to accomplish in a workday.	Benjamin averages 16.64 stops a day and during my time here I have yet to receive a complaint of any miss-stops on his behalf.	EP
ADAPTABILITY: The ability to do new or different jobs as required.	Benjamin does not have any disputes doing extra stop, he has shown the ability to adapt to changes and trouble shoot problems when they occur.	FM
WORKING RELATIONS: The ability to feel positively about and work cooperatively with others.	Benjamin works well with his teammates as well as his customers, he has been servicing Oakland and he has been doing a great job with this area considering the fact there are multiple drivers in that area.	FM
DEPENDABILITY: The ability to do required jobs properly and accurately with appropriate supervision.	Benjamin has shown the ability to complete any task under any supervision under any circumstances.	FM
SAFETY: The desire and ability of an employee to avoid injury to self and others.	Benjamin maintains a safe and effective environment for himself and his peers.	FM

Operations

STERICYCLE PERFORMANCE REVIEW

Continued on reverse side		
<p>ATTENDANCE/PUNCTUALITY: on the job (at work station) and on time. Returns from breaks and lunch on time, ready to work and begins working.</p> <p>Number of unexcused absences since last review: 0</p> <p>Number of unexcused tardiness since last review: 0</p>	Benjamin has been punctual and regular in attendance.	FM
<p>CUSTOMER SERVICE: The desire and ability to identify and work to meet customer needs.</p>	Benjamin has a good relationship with his customers and they are serviced on schedule, he notifies office personnel if there is a problem meeting the service time. Benjamin shows good communication.	FM
<p>CARE OF EQUIPMENT: The desire and ability of an employee to take care of and properly maintain the equipment used in the job.</p>	Benjamin has maintained a thorough pre-trip and post-trip inspection on a daily basis, and he reports any issues he may have with the vehicle at all times. In regards to tools, he can show more team work with working with his counter parts at the plant if we are backed up on loading.	FM
<p>INITIATIVE AND INNOVATION: The expressed desire to learn new things or attain established goals.</p>	Benjamin does what it takes to keep route efficient as possible (route is in order, tracking labels made the night before) he punches in and inspects his truck in less than 15-20 minutes, and is willing to sacrifice his time to help out his fellow driver.	FM
<p>Overall Appaisal: FM</p> <p>Development Plan: The development plan for Benjamin is to train him on other routes. He is very comfortable with his route but can make the transition over to another route if he applies himself. Another is to get him more familiar with the PDT instead of just using the basic functions. I believe with more support and teaching, Benjamin can be a lead driver or a cell unit driver.</p>		
<p>Strength/Opportunity: Benjamin has shown he can work independently without any supervision. Benjamin emphasizes on safety and has a positive attitude. Benjamin has opportunity to become a lead driver if he applies himself in doing so.</p>		

We have discussed this performance review and evaluation with each other.

Employee's Signature: [Signature] Date: April 6, 2009

Supervisor's Signature: [Signature] Date: April 6, 2009

STERICYCLE PERFORMANCE REVIEW

NOTE: Employee's signature does not necessarily indicate agreement with this review, but confirms that the contents of it have been reviewed and discussed with the employee.

ORIGINAL TO FILE // COPY TO EMPLOYEE

STERICYCLE PERFORMANCE REVIEW

Employee Name:	Michael Haskell	S.S. No:	361-72-7252	Current Position:		Routes Manager	Employee Cost Center/Dept Name:	Stickney	Manager Name:	James Gard

Type of Performance Review

90 Day Orientation Period Performance Review
 Annual Review
 Transfer
 Promotion

For each quality rate and describe the performance of the employee in this present position.

EP Exceeds Performance Requirements ME More is Expected
 Consistently achieves significant business results that far exceed job requirements. Demonstrates management expertise and mastery of leadership competencies.

FM Fully Meets Performance Requirements UN Unacceptable Performance
 Achieves business results in line with, and occasionally above, job requirements. Demonstrates management skills and leadership competencies essential to position.

ME More is Expected
 Achieves inconsistent results on job requirements. Has not fully demonstrated management skills and leadership competencies required for position.

UN Unacceptable Performance
 Performance is below minimum standards. If Overall rating is "Unacceptable", Performance Deficiency Form is to be completed.

Performance Qualities	Strengths & Development Opportunities (Provide examples.)	Rating
JOB KNOWLEDGE: The information concerning work duties, which the employee should know for satisfactory, job performance.	Mike knows what he needs to do he just has a problem getting in and out of here in a timely manner	ME
QUALITY OF WORK: The ability to perform work duties correctly and accurately, within established time frames.	Mike could do a lot better in this area if he would start his route at a decent time of the morning	ME
QUANTITY OF WORK: The amount of work an employee is able to accomplish in a work day.	Mike does fine in this area again if he started at a decent time	ME
ADAPTABILITY: The ability to do new or different jobs as required.	Mike does great at this he has been thrown in a lot of different areas in Wisconsin over the last year to help them out	FM
WORKING RELATIONS: The ability to feel positively about and work cooperatively with others.	Mike needs to communicate with the other drivers that do the same hospitals that he does what that facility needs as far as containers	ME
DEPENDABILITY: The ability to do required jobs properly and accurately with appropriate supervision.	Mike gets his route done	FM
SAFETY: The desire and ability of an employee to avoid injury to self and others.	Mike could use more caution when out on routes than he is doing at Operations	ME

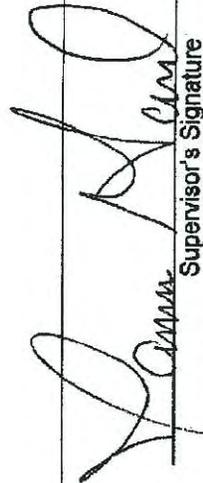
STERICYCLE PERFORMANCE REVIEW

Continued on reverse side	present	
ATTENDANCE/PUNCTUALITY: on the job (at work station) and on time. Returns from breaks and lunch on time, ready to work and begins working. Number of unexcused absences since last review: <u> 1 </u> Number of unexcused tardiness since last review: <u> 9 </u>	Again Mike needs to start his routes earlier than he is at present he also needs to start taking care of personal issues on his normal scheduled day off	ME
CUSTOMER SERVICE: The desire and ability to identify and work to meet customer needs.	I have not gotten any complaints from Mikes customers about his service just complaints about being missed because he does not start early enough to get everything done	ME
CARE OF EQUIPMENT: The desire and ability of an employee to take care of and properly maintain the equipment used in the job.	Mike does fine in this category	FM
INITIATIVE AND INNOVATION: The expressed desire to learn new things or attain established goals.	Mike will try and do anything I ask	FM
Technical Skills : Skills to perform job specific functions	Mike has the potential he just needs to work at defining it to the better	ME
Overall Appaisal: Development Plan: Strength/Opportunity:		
Strength/Opportunity:	Development Plan:	

We have discussed this performance review and evaluation with each other:


Employee's Signature

Date


Supervisor's Signature

Date

1-25-08

NOTE: Employee's signature does not necessarily indicate agreement with this review, but confirms that the contents of it have been reviewed and discussed with the employee.

STERICYCLE PERFORMANCE REVIEW

Employee Name: GARY DIMPFL	S.S. No: 354-40-2184	Current Position:	Employee Cost Center/Dept Name:	Manager Name:
		DRIVER		GAMES GARD

Type of Performance Review

90 Day Orientation Period
 Annual Review
 Transfer
 Promotion

For each quality rate and describe the performance of the employee in this present position.

EP Consistently achieves significant business results that far exceed job requirements. Demonstrates management expertise and mastery of leadership competencies.
ME More is Expected
FM Fully Meets requirements. Demonstrates management skills and leadership competencies essential to position.
UN Unacceptable Performance
Performance is below minimum standards. If Overall rating is "Unacceptable", Performance Deficiency Form is to be completed.

Performance Qualities	Strengths & Development Opportunities (Provide examples)	Rating
JOB KNOWLEDGE: The information concerning work duties, which the employee should know for satisfactory, job performance.		FM
QUALITY OF WORK: The ability to perform work duties correctly and accurately within established time frames.	TAKES TO LONG SOMETIMES ON GIVEN ROUTES	ME
QUANTITY OF WORK: The amount of work an employee is able to accomplish in a work day.		FM
ADAPTABILITY: The ability to do new or different jobs as required.		FM
WORKING RELATIONS: The ability to feel positively about and work cooperatively with others.		FM
DEPENDABILITY: The ability to do required jobs properly and accurately with appropriate supervision.		FM
SAFETY: The desire and ability of an employee to avoid injury to self and others.		FM
Continued on reverse side		

STERICYCLE PERFORMANCE REVIEW

ATTENDANCE/PUNCTUALITY: on the job (at work station) and on time. Returns from breaks and lunch on time, ready to work and begins working.			FM
Number of unexcused absences since last review: 0			
Number of unexcused tardiness since last review: 0			
CUSTOMER SERVICE: The desire and ability to identify and work to meet customer needs.			PM
CARE OF EQUIPMENT: The desire and ability of an employee to take care of and properly maintain the equipment used in the job.			PM
INITIATIVE AND INNOVATION: The expressed desire to learn new things or attain established goals.			PM
Technical Skills : Skills to perform job specific functions			PM
Overall Appraisal:			
Development Plan:	Development Plan		
Strength/Opportunity:	Development Plan:		

We have discussed this performance review and evaluation with each other:

Employee's Signature: *[Signature]*

Date: *11-1*

Supervisor's Signature: *[Signature]*

Date: *10-25-01*

NOTE: Employee's signature does not necessarily indicate agreement with this review, but confirms that the contents of it have been reviewed and discussed with the employee.

ORIGINAL TO FILE // COPY TO EMPLOYEE

STERICYCLE PERFORMANCE REVIEW

Employee Name:	Gary Dimpff	S.S. No.:	354-40-2184	Current Position:	Driver	Employee Cost Center/Dept Name:	Stickney	Manager Name:	James Gard

Type of Performance Review

- 90 Day Orientation Period
 Annual Review
 Transfer
 Promotion

For each quality rate and describe the performance of the employee in this present position.

EP Exceeds Performance Requirements
 Consistently achieves significant business results that far exceed job requirements. Demonstrates management expertise and mastery of leadership competencies.

ME More is Expected
 Achieves inconsistent results on job requirements. Has not fully demonstrated management skills and leadership competencies required for position.

UN Unacceptable Performance
 Performance is below minimum standards. If Overall rating is "Unacceptable", Performance Deficiency Form is to be completed.

Performance Qualities	Strengths & Development Opportunities (Provide examples.)	Rating
JOB KNOWLEDGE: The information concerning work duties, which the employee should know for satisfactory, job performance.	Gary has come back on days I still have a problem with his starting time	ME
QUALITY OF WORK: The ability to perform work duties correctly and accurately, within published time frames.	Gary still has a problem with getting to and doing the job in a timely manner	ME
QUANTITY OF WORK: The amount of work an employee is able to accomplish in a work day.	Gary does what ever I ask but needs to step up the pace	ME
ADAPTABILITY: The ability to do new or different jobs as required.	Gary does fine in this area	FM
WORKING RELATIONS: The ability to feel positively about and work cooperatively with others.	Gary has gotten a lot better in this area	FM
DEPENDABILITY: The ability to do required jobs properly and accurately with appropriate supervision.	Gary has improved greatly in this area	FM

STERICYCLE PERFORMANCE REVIEW

<p>SAFETY : The desire and ability of an employee to avoid injury to self and others.</p>	<p>Gary is fine in this area he lets me know when things are wrong so I can get them fixed as not to interfere with others work</p>	<p>FM</p>
Continued on reverse side		
<p>ATTENDANCE/PUNCTUALITY: on the job (at work station) and on time. Returns from breaks and lunch on time, ready to work and begins working.</p>	<p>Gary needs to work on getting here earlier so that when I send him on shuttles he is not sitting in traffic</p>	<p>ME</p>
<p>Number of unexcused absences since last review: <u> 0 </u></p> <p>Number of unexcused tardiness since last review: <u> 18 </u></p>		
<p>CUSTOMER SERVICE: The desire and ability to identify and work to meet customer needs.</p>	<p>Gary has improved in this area also</p>	<p>FM</p>
<p>CARE OF EQUIPMENT: The desire and ability of an employee to take care of and properly maintain the equipment used in the job.</p>	<p>Gary does fine in this area</p>	<p>FM</p>
<p>INITIATIVE AND INNOVATION: The expressed desire to learn new things or attain established goals.</p>	<p>Gary has gotten better in this area but there is still room for improvement</p>	<p>ME</p>
<p>Technical Skills : Skills to perform job specific functions</p> <ul style="list-style-type: none"> • 		<p>ME</p>
<p>Overall Appaisal:</p>		
<p>Development Plan:</p>		
<p>Strength/Opportunity: Gary is a good driver and takes care of his equipment .</p>	<p>Development Plan</p>	
<p>Strength/Opportunity:</p>	<p>Development Plan:</p>	

STERICYCLE PERFORMANCE REVIEW

We have discussed this performance review and evaluation with each other:

Employee's Signature *Bruce Dimpfel*

Date 12-27-04

Date

James Gard

Supervisor's Signature

James Gard

Date 12/27/04

Date

JTE: Employee's signature does not necessarily indicate agreement with this review, but confirms that the contents of it have been reviewed and discussed with the employee.

ORIGINAL TO FILE // COPY TO EMPLOYEE



We are writing to clear up some misinformation that has been spread since the union vote count. As always, we prefer to put these facts in writing:

Union's claim: Stericycle has frozen wages.

Truth: As the union is well aware, now that you have voted to be represented by the union, all matters of wages, benefits and conditions of employment must be negotiated with the union, and on your behalf as a single group. Thus, by law, no changes to your current wages, benefits or work conditions will be made until negotiations are concluded, and no changes may be made on an individual basis. It isn't Stericycle that has frozen wages. This was determined by the majority of you who chose this path.

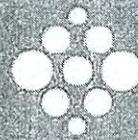
Union's claim: Threats of retaliation against those who voted for the union.

Truth: As we told you before the union vote, Stericycle does not, and will not retaliate against any employee based on their vote or based on who they support. Any kind of retaliation will not be tolerated. Stericycle also will not tolerate any retaliation by the union against employees based on their vote or who they support.

As we have always done, Stericycle will continue to run its business in the most effective and efficient way possible, including the determination of driver routes, the number of employees necessary, employee shift schedules, and the need for overtime.

Thank you,

Stericycle Management



Stericycle

EMPLOYEE HANDBOOK

Effective January 1, 2004

Experts in Infection Control and Healthcare Compliance Services

Team Member Development and Recognition

Team Member Evaluations

Performance appraisals evaluate your job performance and compare it to expected objectives and/or job standards. This can assist both you and your supervisor when gauging your effectiveness on the job. You will generally receive a performance appraisal at least once a year. In some cases, at the discretion of the supervisor, appraisals may be done more frequently. You are encouraged to comment on the evaluation and ask questions. If you are unable to meet the requirements of your position, it is understood that you could be reassigned or terminated from employment.

Completion of the performance appraisal process does not automatically entitle you to a salary adjustment, since salary increases are awarded on a merit basis, embracing other factor such as economic conditions, job performance, achievement of goals, etc.

Promotional Opportunities

We are committed to your career development and career progress. In fact many of our team members began their career in other Stericycle positions. We encourage you to learn about our business, operations and values. As you develop your knowledge and skills, you may have the opportunity, if the need arises, to advance within your location or another Stericycle location.

It is the policy of Stericycle that whenever there is a position open that the Company wants to fill on a regular basis, we will post that position on our Website: www.stericycle.com announcing the position and location. Stericycle does have the right to recruit outside the company concurrent with the internal job posting. We may decide that at a certain level we do not post internal job openings. The Website will contain a brief description of the job duties and the necessary qualifications for the vacancy. Positions are posted for a minimum of 5 days.

You may apply for a position by responding through the career page on the Stericycle web site. A Team Member on a formal disciplinary or performance improvement plan will not be considered.

Recognition

Our business is people. Our customers depend upon you for service and support. Although everyone works hard at being the best, we have created various programs that recognize the Team Members who do much more than what is expected and honor him/her for extraordinary service.

EXHIBIT 4

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

STERICYCLE, INC.,

Employer,

Case No. 32-RC-5603

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AUTO, TRUCK DRIVERS,
LINE DRIVERS, CAR HAULERS and
HELPERS, LOCAL NO. 70 OF
ALAMEDA COUNTY, CALIFORNIA,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN and HELPERS OF
AMERICA.

Petitioner.

VOLUME III

The above entitled matter came on for hearing pursuant to notice, before Christopher Roberts, Hearing Officer, at 1301 Clay Street, Oakland, California, on Monday, December 1, 2008, at 9:00 a.m.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 months ago.

2 Q Tell, if you will for the record, the answer to the
3 Hearing Officer's inquiry, which is a good inquiry, that we
4 should have covered beforehand, how the wages of the people
5 that work in San Leandro, or throughout your whole area are
6 determined?

7 A The wages in Stericycle are determined by our wage and
8 compensation department, which is part of our human resources
9 department based in the Chicago area, at our corporate
10 headquarters.

11 Q And do you know what factors go into determining those
12 wages?

13 A Yes, it's a market study of the wages of the employees
14 that work for similar type companies in that particular market.

15 Q That information is gathered, or not, by the human
16 resources people or the compensation people?

17 A Yes. The wage and compensation department gather that
18 information for each market and determine what a fair wage,
19 starting salary is for Stericycle employees.

20 Q Now, there's been some testimony today, sir, about the
21 incentive. What, if anything, do you know about that?

22 A I do know that the incentive pay is based on the four
23 items that were mentioned previously, the attendance, the
24 customer service, vehicle accidents, and employee injuries,
25 personal injuries. And that they are in writing, and that they

1 are consistent in every location in California that I'm
2 responsible for.

3 Q And do you know what factors go into that incentive pay?

4 A Yes, as I just stated, the attendance, customer service,
5 injuries, accidents, and --

6 Q But, I mean, any other?

7 A No.

8 Q And how is it analyzed and applied, if you know?

9 A Well, it's analyzed, of course, by the number of accidents
10 or injuries that may be -- that may occur during a particular
11 two-week period, because it's a bi-weekly program incentive
12 payout. The attendance, and whether or not an employee has a
13 complaint from a customer, or it's also taking into
14 consideration if they have a letter of compliment from a
15 customer.

16 Q Now, what, if anything, do you know about the subject of
17 excessive overtime?

18 A Could you be clearer?

19 Q Is there a policy that relates to overtime?

20 A There's nothing in writing, in our company, that says a
21 driver or plant worker, or any employee for that matter, cannot
22 go over a certain amount of overtime during a week.

23 Q Is there a practice? If there's not a policy, is there a
24 practice in that regard?

25 A Well, we tend, as a company, to manage our operations in a

1 those studies, what's done in those studies?

2 THE WITNESS: No, I've never been involved with one.

3 HEARING OFFICER ROBERTS: You just get the result?

4 THE WITNESS: Yes.

5 HEARING OFFICER ROBERTS: And you apply that?

6 THE WITNESS: I apply what the corporation instructs me
7 to.

8 HEARING OFFICER ROBERTS: And what about for wage
9 increases? There was testimony there was quite a range in what
10 the drivers were paid. How does a person -- if you know, how
11 does a person at San Leandro make those decisions, the
12 managers, to pay increases?

13 THE WITNESS: Oh, okay, they're annual and the manager,
14 trans manager, or the plant manager in San Leandro would
15 determine it based on the past year's performance, their merit
16 increases.

17 HEARING OFFICER ROBERTS: Is there a range that they're
18 given?

19 THE WITNESS: Yes, anywhere from zero percent to five
20 percent.

21 HEARING OFFICER ROBERTS: Is it zero percent to five
22 percent every year?

23 THE WITNESS: Yes.

24 HEARING OFFICER ROBERTS: And that's been for how many
25 years that you know of?

1 THE WITNESS: In California, here?

2 HEARING OFFICER ROBERTS: Yes.

3 THE WITNESS: Four years.

4 HEARING OFFICER ROBERTS: Okay. So who would make the
5 decision in San Leandro, as to what individual pay increases
6 would be given to employees?

7 THE WITNESS: Sam Escobar for the drivers and Henry
8 Gonzalez for the plant workers.

9 HEARING OFFICER ROBERTS: And who would make the decisions
10 in Fresno?

11 THE WITNESS: Our facility manager, named Dave Williams.

12 HEARING OFFICER ROBERTS: And in Rancho Cordova?

13 THE WITNESS: Our transportation supervisor, Eric Hultman.

14 HEARING OFFICER ROBERTS: And he works in Rancho Cordova?

15 THE WITNESS: Yes.

16 HEARING OFFICER ROBERTS: And for Redding?

17 THE WITNESS: Eric Hultman, in Rancho.

18 HEARING OFFICER ROBERTS: He would oversee the --

19 THE WITNESS: Yes.

20 HEARING OFFICER ROBERTS: -- wage increases for the
21 Redding employees?

22 THE WITNESS: Yes.

23 HEARING OFFICER ROBERTS: When those individual managers
24 make their decisions, do they have to have those wage increase
25 decisions approved by someone else, outside of where they're

1 working?

2 THE WITNESS: Eric Hultman would have Dave Williams, who's
3 also responsible -- ultimately responsible for Rancho and
4 Redding. Dave Williams is the facility manager in Fresno, he
5 would have the decision there to approve what Eric is
6 suggesting.

7 And then anything in California, by any manager, before it
8 goes to the human resources department, comes to me, for my
9 final approval.

10 HEARING OFFICER ROBERTS: And have you turned down any in
11 your four years?

12 THE WITNESS: Yes.

13 HEARING OFFICER ROBERTS: Can you give us any examples?

14 THE WITNESS: I haven't really turned them down, I've
15 asked them to be decreased, and there's some I've had --
16 there's some I've asked to be increased.

17 HEARING OFFICER ROBERTS: Okay.

18 THE WITNESS: In other words, the average of zero to five
19 is two and a half percent. If somebody submits to me a five
20 percent raise, I will need sufficient documentation for it.

21 HEARING OFFICER ROBERTS: What documentation is necessary
22 for a five percent as opposed to a 2.5 percent increase?

23 THE WITNESS: Performance. Performance report as to why
24 this person deserves five percent.

25 HEARING OFFICER ROBERTS: Is this a regular, annual

1 performance report that's given to everyone?

2 THE WITNESS: Yes, everybody has an annual review.

3 HEARING OFFICER ROBERTS: Are all of them sent to you?

4 THE WITNESS: Yes.

5 HEARING OFFICER ROBERTS: Would you look at the individual
6 performance reports for the five percent people?

7 THE WITNESS: Oh, absolutely. I would look at the
8 individual performance reports for the -- I never get a zero.
9 But there's some that I get a 1 to 2 percent and I look at
10 those, too.

11 HEARING OFFICER ROBERTS: Have you increased those on
12 occasion?

13 THE WITNESS: From time to time. If I know the employee
14 personally, or I've ridden with them, or I'll question the
15 manager why it's so low.

16 I would say 90 percent of what's submitted to me, between
17 90, 95 percent of what is submitted to me remains the same.
18 I tweak a few, yeah.

19 HEARING OFFICER ROBERTS: Well, those that you're
20 interested in changing, would you always talk with the manager
21 about it?

22 THE WITNESS: Absolutely, I'll call him on the phone and
23 discuss it.

24 HEARING OFFICER ROBERTS: And would you talk with anybody
25 else about it?

1 THE WITNESS: The only time I would talk to anybody else
2 about it would be if it's five percent and I sent it to the
3 person that I have to send it, anything over four percent I
4 have to send to my boss, who was the gentleman in this room
5 last week, Dan.

6 HEARING OFFICER ROBERTS: Who works in Illinois?

7 THE WITNESS: No, he actually -- his office is in Southern
8 California.

9 HEARING OFFICER ROBERTS: And what -- I'm sorry, what's
10 his full name and position?

11 THE WITNESS: Dan Ginetti, he's the Area Vice President
12 for the Western Area.

13 HEARING OFFICER ROBERTS: For labor relations or other
14 items?

15 THE WITNESS: For all operations.

16 HEARING OFFICER ROBERTS: All operations, okay.

17 And what's in the Western Region, what geographic area is
18 that?

19 THE WITNESS: He has everything west of the Mississippi,
20 and a few states, I understand, on the other side of the
21 Mississippi.

22 HEARING OFFICER ROBERTS: Okay. But his office is in
23 Southern California?

24 THE WITNESS: Yeah, Valencia.

25 HEARING OFFICER ROBERTS: And are there any events in

1 which you would talk with the employee about the amount of the
2 wage increase?

3 THE WITNESS: No.

4 HEARING OFFICER ROBERTS: Okay. In your tenure, have
5 there ever been wage increases in excess of five percent?

6 THE WITNESS: Not merit increases, no.

7 HEARING OFFICER ROBERTS: What kind of increase would it
8 be if it's more than five percent.

9 THE WITNESS: Could be a promotion increase.

10 HEARING OFFICER ROBERTS: To a different position?

11 THE WITNESS: Yes, and a different market area.

12 HEARING OFFICER ROBERTS: And what is -- what criteria
13 does the area vice president use when he's reviewing your
14 increases that are more than four percent?

15 THE WITNESS: He looks at what I have asked for from the
16 manager that's proposing the larger increase, and I forward it
17 to him.

18 HEARING OFFICER ROBERTS: How often does he approve it or
19 disapprove it?

20 THE WITNESS: I can't recall him rejecting it.

21 HEARING OFFICER ROBERTS: So upon your -- basically, on
22 the information you give him where it's four percent or more,
23 he's always approved it?

24 THE WITNESS: Yes.

25 HEARING OFFICER ROBERTS: But he has the authority to

1 disapprove it?

2 THE WITNESS: Yes.

3 HEARING OFFICER ROBERTS: Is there any method or procedure
4 for an employee to complain or grieve about getting a small pay
5 increase?

6 THE WITNESS: Yes.

7 HEARING OFFICER ROBERTS: Is there a written procedure?

8 THE WITNESS: There's a procedure in our One Team, One
9 Goal documentation, that gives them a number that they can
10 call.

11 HEARING OFFICER ROBERTS: About any type of complaint?

12 THE WITNESS: Yes, including that.

13 HEARING OFFICER ROBERTS: Do you know if any have called
14 or initiated anything in regard to the amount of their wage
15 increase, in your tenure?

16 THE WITNESS: As far as pay, no.

17 HEARING OFFICER ROBERTS: And do non-supervisory employees
18 have -- or do the drivers and plant workers have any kind of
19 stock option opportunities?

20 THE WITNESS: No. Other than -- well, it's not stock
21 options, it's the employee's stock ownership plan, that they
22 can purchase stock at 15 percent less than its market rate
23 twice a year.

24 HEARING OFFICER ROBERTS: I see. Regardless of whether
25 they're getting a zero percent increase or a five percent

1 increase?

2 THE WITNESS: That's right, it's a benefit.

3 HEARING OFFICER ROBERTS: Do you know if the company has
4 different pay increase ranges, other than zero to five percent,
5 for other areas in the United States?

6 THE WITNESS: No.

7 HEARING OFFICER ROBERTS: You're not aware or they don't?

8 THE WITNESS: I'm not aware.

9 HEARING OFFICER ROBERTS: Okay. And who is it who sets it
10 from zero to five, as opposed to setting it from zero to six,
11 who would decide that?

12 THE WITNESS: That would be our wage and compensation
13 department.

14 HEARING OFFICER ROBERTS: Okay. And do they change the
15 starting wage rates from time to time?

16 THE WITNESS: From time to time.

17 HEARING OFFICER ROBERTS: And that would be based on their
18 area surveys of wages, their feedback from their research?

19 THE WITNESS: Yes.

20 HEARING OFFICER ROBERTS: Have you ever told them you
21 think they're getting it wrong in some of these results, from
22 these surveys?

23 THE WITNESS: Yes.

24 HEARING OFFICER ROBERTS: Can you give us an example?

25 THE WITNESS: I did about three years ago, for the San

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

STERICYCLE, INC.,

Case No. 32-RC-5603

Employer,

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AUTO TRUCK DRIVERS,
CAR HAULERS AND HELPERS, LOCAL
NO. 70 OF ALAMEDA COUNTY,
CALIFORNIA, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS WAREHOUSEMEN AND
HELPERS OF AMERICA,

Union.

The above entitled matter came on for hearing pursuant to notice, before Jay R. Pollack, Administrative Law Judge, at 1301 Clay Street, Oakland, California, on Monday, March 16, 2009, at 9:03 a.m.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 testimony before I close up.

2 ADMINISTRATIVE LAW JUDGE POLLACK: Okay. I don't see what
3 difference it makes but, go ahead.

4 THE WITNESS: I don't know why I chose to do that. I just
5 did and it was a spontaneous decision.

6 Q BY MR. FISCHER: Did anyone at Local 70 tell you or
7 communicate to any of the Stericycle drivers that there was a
8 link between the federal wage and hour lawsuit and joining the
9 Union?

10 MR. RABINOWITZ: I object that it's vague and ambiguous.

11 ADMINISTRATIVE LAW JUDGE POLLACK: Overruled

12 THE WITNESS: Can you repeat that question again?

13 MR. FISCHER: Sure.

14 Q BY MR. FISCHER: Did anybody at Local 70 communicate with
15 you that there was a link between the federal wage and hour
16 lawsuit and joining the Union?

17 A I don't know if there was a link to it, I wouldn't call it
18 a link.

19 Q What would you call it?

20 A As a group we were told that, it wasn't just directed to
21 me, it was in a group meeting, I don't know if you would call
22 it a leverage to negotiate for when the negotiations started
23 for the Union. And we all heard it, it wasn't just directed to
24 me individual, it was directed to us as a group.

25 Q Were there individuals who were in that meeting that

1 didn't sign up for the wage and hour lawsuit?

2 A In that one meeting, in that meeting where the paper was
3 passed around and asked if anybody wanted to join? That one
4 meeting you're talking about?

5 Q No, I'm sorry the meeting to which you were just
6 referring?

7 A No, I think everybody had signed at that time.

8 MR. RABINOWITZ: Therefore I object and move to strike on
9 the grounds of privilege.

10 ADMINISTRATIVE LAW JUDGE POLLACK: Overruled. Let's go
11 ahead.

12 Q BY MR. FISCHER: So, when they communicated that it was
13 leverage, did they say -- what did they say it was leverage
14 for?

15 A Basically it was like a verbal agreement between the
16 people that did sign, to my understanding it was a verbal
17 agreement that we would be able to dismiss part or all of the
18 lawsuit in exchange for possibly, I guess it would be better
19 benefits, better working conditions and better pay. The
20 regular negotiations is when you negotiate for workers that
21 want a Union in their companies.

22 MR. RABINOWITZ: Just for the record, I would like to
23 state a standing objection to this testimony, given that the
24 witness has testified that those present were all plaintiffs in
25 the lawsuit, the Union representative and attorneys, therefore

1 Therefore, I strongly request that the Judge consider --

2 ADMINISTRATIVE LAW JUDGE POLLACK: Okay, let s proceed.

3 Let s get through this.

4 Q BY MR. FISCHER: Mr. Ochoa, at the meeting, the most
5 recent meeting that you were referring to, at this meeting, at
6 the Local 70 Union Hall, Ms. Pilar Barton was present, do you
7 remember what she said?

8 A At the most recent meeting that I was referring about?

9 Q Yes.

10 ADMINISTRATIVE LAW JUDGE POLLACK: Not what she said to
11 the attorneys, what she said to the employees.

12 THE WITNESS: She said to the employees was this lawsuit
13 can be used, like I expressed to you as a leverage, to
14 negotiate better working conditions, benefits and the whole
15 package again what the Union negotiates for.

16 Q BY MR. FISCHER: Did you understand what that meant when
17 she said that?

18 A Yes, I did.

19 MR. RABINOWITZ: Objection.

20 ADMINISTRATIVE LAW JUDGE POLLACK: Sustained.

21 Q BY MR. FISCHER: What else did Ms. Barton say?

22 ADMINISTRATIVE LAW JUDGE POLLACK: Again not what she said
23 to the attorneys, what she said to the employees?

24 THE WITNESS: That was it.

25 Q BY MR. FISCHER: About how long was this meeting?

1 A How long in time?

2 Q Yes.

3 A They usually don t last more than an hour.

4 Q Do you think a contract would be in place for collective
5 bargaining right after the election?

6 MR. RABINOWITZ: Objection, calls for legal conclusion.

7 ADMINISTRATIVE LAW JUDGE POLLACK: Sustained.

8 Q BY MR. FISCHER: What did you think the Union needed
9 leverage for?

10 A Just like what was said, you know, what we all wanted,
11 each of us needed different needs, some of us were about the
12 pay some of us were about the benefits, some of us were about
13 the basic workers rights being respected. So, I think it was
14 all a package of that. The leverage was to level all of that.

15 Q So, the information that was communicated by Ms. Barton to
16 the drivers was that the lawsuit was a tactic for new labor
17 negotiations?

18 MR. RABINOWITZ: I object that it mischaracterizes the
19 testimony, it s also vague and ambiguous.

20 MR. FISCHER: He can answer yes or no, Your Honor.

21 MR. RABINOWITZ: Well, I have an objection pending.
22 You re not the Judge.

23 ADMINISTRATIVE LAW JUDGE POLLACK: I ll overrule the
24 objection. Go ahead.

25 Q BY MR. FISCHER: Ms. Barton, at this meeting, communicated

1 to the workers, that leverage that the Union was encouraging
2 the federal wage and hour lawsuit for leverage against
3 Stericycle?

4 MR. RABINOWITZ: Well, I object that it s vague and
5 ambiguous. I also object --

6 ADMINISTRATIVE LAW JUDGE POLLACK: All right. Was she
7 saying that the lawsuit could be used as leverage in collective
8 bargaining?

9 THE WITNESS: That s what I understood.

10 ADMINISTRATIVE LAW JUDGE POLLACK: Okay.

11 Q BY MR. FISCHER: And Exhibit 6 was passed out, right?

12 A This is a -- so this is not --

13 Q That s six.

14 A This is six, yeah.

15 Q And then there were three individuals that weren t
16 present?

17 A Right, but that conversation happened after this was
18 signed, so it wasn t that day. This is the one I was referring
19 to, and there was another meeting where the lawyers were there
20 as well.

21 Q Did Ms. Barton encourage you to pick up extra copies of
22 that agreement?

23 A No, like I said, I volunteered and I took mental note of
24 the drivers by talking to them, that I know they were going to
25 the same thing that I was going at one time, and I took a

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

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and

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CAR HAULERS AND HELPERS, LOCAL
NO. 70 OF ALAMEDA COUNTY,
CALIFORNIA, INTERNATIONAL
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Union.

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1 it, if you have any questions you know who you could call.

2 Q Did he ask you any questions about the agreement?

3 A No, and he never returned it, that I know of.

4 ADMINISTRATIVE LAW JUDGE POLLACK: Is he related to you?

5 THE WITNESS: No, not at all. The same last name but it s
6 no relationship.

7 ADMINISTRATIVE LAW JUDGE POLLACK: Okay. Go ahead.

8 Q BY MR. FISCHER: Did Mr. Ochoa ask you to whom he would
9 give this agreement if he signed it?

10 A No, I don t remember him asking that.

11 Q Did you tell him to whom he should turn in this agreement?

12 A Basically he knew that it was in the next Union meeting.

13 Q How do you know that he knew that?

14 A Well, because stuff gets spread around pretty quick. I
15 didn t instruct him any further instructions. He knew that he
16 could have gave it to me and I would have did it if he asked me
17 to. He didn t. That s how I know.

18 Q Are you --

19 MR. FISCHER: Could we go back to Employer s 6 please --
20 can we show the witness Employer s 6 again?

21 Q BY MR. FISCHER: Mr. Ochoa, can you turn to the second
22 page of Employer s 6, under paragraph six it says, Teamsters
23 Local 70 has agreed to payment of all fees, costs,
24 disbursements and litigation expenses. Did you understand
25 that to be true?

1 A At the time that s what this contract said and we went
2 with what the contract said, so, I followed documents word by
3 word and that s what it says.

4 Q Did anybody explain that to you?

5 A We went over it in the meeting. I can t tell you --

6 MR. RABINOWITZ: I object to what was said in the meeting.

7 THE WITNESS: Okay.

8 Q BY MR. FISCHER: Did you sign this document?

9 A Yes, I did.

10 Q Did you sign this document believing Local 70 was going to
11 pay for the fees, costs and expenses of your federal class
12 action wage and hour lawsuit?

13 A Due to this contract, they led me to believe that, yes, to
14 the wording on this contract.

15 Q Did anybody at Local 70 tell you that was going to happen?

16 A No, this is just from what we read on this contract with
17 them.

18 Q So, at this meeting in the Union Hall, at Local 70's Union
19 Hall, nobody from Local 70 said anything about this agreement?

20 MR. RABINOWITZ: Objection, asked and answered, also he s
21 already stated that was a privileged meeting a6t which
22 attorneys were present.

23 MR. FISCHER: Your Honor, the communications between the
24 attorney and the client are privileged, not between the Union
25 and the workers, and this was at the Union Hall and I m asking

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1 A Because I see it.

2 Q Have you spoken to anybody else other than Joel Ochoa
3 about the lawsuit?

4 A No.

5 Q Has anybody from the Union spoken to you about the
6 lawsuit?

7 A No.

8 Q When Joel Ochoa told you this was for the money, did he
9 say how much money?

10 A No, he don t say how much but, I hear another guy, driver,
11 say between ten and twelve thousand dollars.

12 Q Do you know if that was per person?

13 MR. RABINOWITZ: Objection, lack of foundation.

14 MR. FISCHER: I m asking his knowledge, Your Honor.

15 ADMINISTRATIVE LAW JUDGE POLLACK: I know, but we d have
16 to find out who and when and where this conversation took
17 place.

18 MR. FISCHER: I understand and it s all going to start
19 with the first question.

20 ADMINISTRATIVE LAW JUDGE POLLACK: Go ahead.

21 Q BY MR. FISCHER: Who specifically?

22 A I have to remember. I m not sure but I think it was
23 Santos.

24 Q What s his full name?

25 A I don t know his last name, I just know his first name.

- 1 Q Is he a driver at Stericycle?
- 2 A Yes.
- 3 Q Who else do you remember talking about this?
- 4 A That s it.
- 5 Q So, you remember Santos telling you --
- 6 A It s in a conversation, yes.
- 7 Q Were you ever shown any other agreements, any other
- 8 papers?
- 9 A No.
- 10 Q Did you ever sign an agreement that looks like Exhibit 6,
- 11 that document?
- 12 A No.
- 13 Q Why not?
- 14 A Because I have to be sure, you know, what is going on with
- 15 that document.
- 16 Q How many pages were there in the document that Joel Ochoa
- 17 showed you?
- 18 A Two or three, maybe three.
- 19 Q If you can look at the document that s in front of you,
- 20 marked as Employer s -- that is Employer s Exhibit 6, do you
- 21 remember if there were more pages, more or less pages?
- 22 A No, just like that.
- 23 Q How many pages are there to Exhibit 6?
- 24 A Three.
- 25 Q How many pages do you remember the document that Joel

1 Q When you were talking about the lawsuit, did you talk
2 about the lawsuit as it related to the Union?

3 MR. RABINOWITZ: Objection, vague and ambiguous.

4 ADMINISTRATIVE LAW JUDGE POLLACK: Overruled.

5 Q BY MR. FISCHER: You said, when you were talking to him,
6 in order for the Union to come in, we had to start the wage and
7 hour lawsuit, didn t you?

8 MR. RABINOWITZ: Objection, leading.

9 ADMINISTRATIVE LAW JUDGE POLLACK: I m permitting him to
10 ask leading questions here.

11 Go ahead.

12 THE WITNESS: Can you say again?

13 Q BY MR. FISCHER: You said to Sam Escobar, in order for the
14 Union to come in, we had to start this wage and hour lawsuit?

15 A Yeah.

16 Q You also, Mr. Escobar also brought you a copy of that
17 document, didn t he, that s in front of you?

18 A No.

19 Q Mr. Escobar showed you that the attorneys for the wage and
20 hour lawsuit were the same as the attorneys for the Union,
21 didn t he?

22 A I don t understand clearly.

23 Q I will --

24 A I don t understand.

25 Q -- I will restate the question, no problem.

1 understand you re giving him latitude but, I think there s
2 another purpose there for him asking a leading question, which
3 is improper.

4 ADMINISTRATIVE LAW JUDGE POLLACK: Overruled.

5 Q BY MR. FISCHER: You felt like you had to sign this
6 document because the other drivers had signed this document,
7 didn t you?

8 A Yes.

9 Q Mr. Hernandez, you went to tell Mr. Escobar that you were
10 nervous to vote against the Union because you felt you were
11 going to be retaliated against by the drivers, didn t you?

12 MR. RABINOWITZ: Objection, relevance.

13 ADMINISTRATIVE LAW JUDGE POLLACK: Sustained.

14 Q BY MR. FISCHER: You felt you were going to be retaliated
15 against by the Union, didn t you?

16 MR. RABINOWITZ: Objection.

17 ADMINISTRATIVE LAW JUDGE POLLACK: Sustained.

18 MR. FISCHER: Your Honor, I m curious about why testimony
19 about his feeling bullied and pushed around is not relevant to
20 the election objection?

21 ADMINISTRATIVE LAW JUDGE POLLACK: Because it s not the
22 objection I have in front of me.

23 MR. FISCHER: I ll ask a separate way.

24 Q BY MR. FISCHER: Mr. Hernandez, when you spoke to
25 Mr. Escobar about the lawsuit, you told him that the Union was

1 Q Did you sign it?

2 A Yes.

3 Q Did she tell you why she wanted you to sign it?

4 A Yes, the manager before, somebody had put the paper in
5 Spanish.

6 Q Okay. So, you signed a version in Spanish, is that what
7 you re saying?

8 A Yeah, I signed the --

9 Q All right. And did she tell you why she wanted you to sign
10 a copy of this agreement?

11 A Yes, yes.

12 Q And what was the reason?

13 A Yeah, pretty much my company, I know that a lot of
14 pressure to the drivers, no break, no lunch, that was this
15 lawsuit.

16 Q Did she tell you that you had to sign this agreement if
17 the Union was going to come in and represent you?

18 A Yes.

19 Q Did you feel pressure from Ms. Barton to sign this
20 agreement?

21 A No, no.

22 Q Okay. But, she told you, you had to sign it or else the
23 Union wasn t going to come in to represent you?

24 A Yes, yeah, I understand.

25 Q And she told you that the Union was going to pay for this

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1 MR. KATZ: Let s see if we can ask this question again.

2 ADMINISTRATIVE LAW JUDGE POLLACK: Okay.

3 Q BY MR. KATZ: Ms. Barton, prior to December 22, 2008, did
4 you speak with any employees and tell them that you were going
5 to communicate to Stericycle that you were going to settle
6 their wage and hour lawsuit in exchange for a neutrality
7 agreement statewide?

8 A No.

9 Q Did you speak with any employees prior to December 22,
10 2008, and indicate to them that you had authority to settle
11 that lawsuit?

12 MR. RABINOWITZ: Objection, asked and answered.

13 ADMINISTRATIVE LAW JUDGE POLLACK: No, go ahead and answer
14 it.

15 THE WITNESS: Can you ask the question again?

16 MR. KATZ: Sure.

17 Q BY MR. KATZ: Prior to December 22, 2008, or prior to the
18 meeting on December 22, 2008, did you tell the employees that
19 you had -- did you ask for their permission to settle their
20 wage and hour lawsuit?

21 A No.

22 Q Did you get anything in writing giving you permission to
23 settle their wage and hour lawsuit?

24 A No.

25 Q Did you get anything verbally giving you permission to

1 settle their wage and hour lawsuit?

2 MR. RABINOWITZ: Objection, asked and answered.

3 THE WITNESS: No. Sorry. No.

4 ADMINISTRATIVE LAW JUDGE POLLACK: Go ahead and answer.

5 Thank you.

6 Q BY MR. KATZ: Did you speak with each and every one of the
7 people that are represented in the wage and hour lawsuit and
8 tell them that you were going to make this offer to Stericycle?

9 A No.

10 Q And you agree, you did represent to Stericycle you had
11 authority to make this wage and hour lawsuit go away, correct?

12 MR. RABINOWITZ: Objection, that s not -- that s already
13 been ruled on. That s not relevant to this.

14 ADMINISTRATIVE LAW JUDGE POLLACK: Okay. I ll sustain
15 that objection.

16 MR. FISCHER: Your Honor, I m just going on common sense
17 here. Why can she be authorized to testify regarding speaking
18 to the employees, which is obviously the subject of the
19 objection, but not answer one more question about did she
20 communicate to the management? It just doesn t pass the --

21 ADMINISTRATIVE LAW JUDGE POLLACK: Because I don t want to
22 re-litigate that conversation.

23 Q BY MR. KATZ: Did, Ms. Barton --

24 ADMINISTRATIVE LAW JUDGE POLLACK: You ve got your offer
25 of proof in the record. If I m wrong, I ll be reversed and

1 ADMINISTRATIVE LAW JUDGE POLLACK: He wants your reaction.

2 THE WITNESS: My reaction was I just wanted to find out if
3 it was absolutely true if she did or not, so I wanted a yes or
4 no answer, simple yes or simple no.

5 Q BY MR. FISCHER: Did you find out if it was true?

6 A I was told that it wasn't, and I was told it was, so that
7 the company said that they did and Ms. Barton says that they
8 didn't, so it was a yes and no. I didn't get the answer that I
9 wanted to satisfy or convince me.

10 Q Did you authorize Ms. Barton to make such an offer in
11 writing?

12 A I don't believe none of us did, again I believe it's a
13 whole group that did it and I don't even think I should have
14 the responsibility, it's a whole group and I think it's the
15 whole group that should have their signature before an action
16 like that comes about.

17 Q Did you authorize Ms. Barton to make such an offer
18 verbally?

19 A We didn't, no.

20 Q At any point in time did you give Ms. Barton or anybody at
21 Local 70, permission to negotiate a settlement in the wage and
22 hour lawsuit?

23 MR. RABINOWITZ: I object that it's asked and answered,
24 it's also irrelevant to Objection 3.

25 ADMINISTRATIVE LAW JUDGE POLLACK: I'll let him, answer.

1 Go ahead.

2 THE WITNESS: Can you ask that question one more time.

3 MR. FISCHER: Certainly.

4 Q BY MR. FISCHER: Did you give permission to anybody at
5 Local 70 to negotiate a settlement with Stericycle in exchange
6 for statewide neutrality agreement?

7 A That s not -- we didn t, no.

8 Q Did you give anybody at Joint Council 7 for the Teamsters
9 permission to settle your federal class action wage and hour
10 lawsuit?

11 A We didn t.

12 Q Did you give anything in writing?

13 A We didn t.

14 MR. RABINOWITZ: I object that it s asked and answered.
15 In writing is encompassed by did you authorize. You re just
16 wasting our time.

17 ADMINISTRATIVE LAW JUDGE POLLACK: All right. The
18 question has been asked and now you ve got your answer.

19 MR. FISCHER: Thank you.

20 Q Did you authorize Jason Rabinowitz, or Zachary Leeds, to
21 settle the federal class action wage and hour lawsuit in
22 exchange for a statewide neutrality agreement with Stericycle?

23 MR. RABINOWITZ: I object.

24 ADMINISTRATIVE LAW JUDGE POLLACK: Sustained.

25 MR. FISCHER: We re up to Employer s 9. Your Honor we d

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1 Q Have you, since this lawsuit was filed, have you paid any
2 costs or fees or expenses?

3 A No.

4 Q Have you had to pay any money for the federal wage and
5 hour lawsuit?

6 A No.

7 Q Has anybody communicated to you about how much you could
8 recover in a class action federal wage and hour lawsuit?

9 A Not at all.

10 Q Nobody has ever mentioned a number to you?

11 A I never even asked the question, I m not an eager person
12 about money or to find out but, I never asked the question and
13 nobody voluntarily gave me that information.

14 Q Did -- between the time that you signed the first
15 agreement and the second agreement, did Ms. Barton communicate
16 to you that the Union was going to pay for the fees and
17 expenses?

18 A No.

19 Q In between the time that you signed the first agreement
20 and the second agreement, did Ms. Barton communicate to you
21 anything about the federal wage and hour lawsuit?

22 A Communicate regarding that they were going to pay or just
23 communicated anything?

24 Q Anything?

25 A No. But we would ask questions, how s that going, and you

1 A Si, yes.

2 Q You understand that the -- what is your understanding
3 about who is paying for the lawyers?

4 A The lawyers.

5 Q The lawyers are?

6 A The lawyers, yeah.

7 Q Okay. And so do you have an understanding how the lawyers
8 expect to get paid for the lawsuit?

9 A What?

10 Q Should I explain? Do you know how the lawyers expect to
11 get paid for their work in the lawsuit, do you know that, do
12 you know the answer?

13 A (No response.)

14 Q Let me say another thing. Did you have an understanding
15 about whether the Union was paying for the lawyers or not?

16 A No.

17 Q Do you have -- were you told that you were -- that the
18 lawyers are working on a contingency basis, were you told that
19 the lawyers would be paid by the company if the case is
20 successful?

21 A (Witness speaks Spanish). I don't understand.

22 Q Okay. Did you understand that the lawyers were working
23 for free until you win the case?

24 A Yes.

25 Q Okay.

1 it, that Local 70 was paying all fees and costs?

2 A Well, I didn't understand it, that Local 70 was paying for
3 it.

4 Q Well, that's what it said and that's what you read,
5 correct?

6 A Well, yeah.

7 Q All right. So, when you read it, you understood what the
8 word said, correct?

9 A Yes.

10 Q All right. And you in fact signed this agreement?

11 A Yes, I did.

12 Q When did you sign it?

13 A I can't recall the day.

14 Q Do you know what the month was when you signed it?

15 A I cannot give you the exact month, I don't remember. I
16 signed so many papers too, so.

17 Q Did you ever give authority to anyone at Local 70 to
18 negotiate away your lawsuit in exchange for a neutrality
19 agreement?

20 MR. RABINOWITZ: Objection, relevance.

21 ADMINISTRATIVE LAW JUDGE POLLACK: Overruled.

22 THE WITNESS: No, sir.

23 Q BY MR. KATZ: And when I ask authority, I mean both orally
24 and in writing, you understood that, correct?

25 A Yes, sir.

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1 this is still under oath?

2 THE WITNESS: Yes, I do.

3 Whereupon,

4 JOEL OCHOA

5 was recalled as a witness herein and, after having been
6 previously duly sworn, was examined and testified as follows:

7 ADMINISTRATIVE LAW JUDGE POLLACK: Okay.

8 MR. FISCHER: Can we please show the witness Union Exhibit
9 1k?

10 REDIRECT EXAMINATION

11 Q BY MR. FISCHER: Mr. Ochoa, you have previously testified
12 that this was a letter from your attorney to you, correct?

13 A Correct.

14 Q Before this, before you testified earlier today, just a
15 couple hours ago, had you given Mr. Rabinowitz permission to
16 bring this letter into court?

17 MR. RABINOWITZ: I object to the relevance of that
18 question.

19 ADMINISTRATIVE LAW JUDGE POLLACK: I don t see the
20 relevance either but go ahead, you can answer.

21 THE WITNESS: No.

22 Q BY MR. FISCHER: Had you spoken with anybody about
23 allowing this letter to come into a public forum?

24 MR. RABINOWITZ: Objection, same objection, now it s asked
25 and answered, it s irrelevant.

1 ADMINISTRATIVE LAW JUDGE POLLACK: I ll sustain the
2 objection.

3 Q BY MR. FISCHER: Did you give written permission to
4 anybody, to allow this letter to come into a public forum?

5 MR. RABINOWITZ: Again, the same objection, it s the third
6 time.

7 ADMINISTRATIVE LAW JUDGE POLLACK: Okay. Well, let s get
8 the answer and move on.

9 THE WITNESS: No.

10 Q BY MR. FISCHER: Mr. Ochoa, you just had a chance to hear
11 the testimony of Jose Ochoa?

12 A Yes.

13 Q Did hearing his testimony refresh your recollection of the
14 conversation?

15 A In a sense. In a sense, yes.

16 Q Did you mention money in connection with the agreement
17 when presenting it to him?

18 A Absolutely not. What I mentioned was our rights for the
19 meal time and breaks, no time, it was never about money and
20 never to any driver have I ever mentioned money. I stand on my
21 character which I m not eager about money, and I stand strong
22 and firmly in what I believe and what I am, and I never
23 mentioned money whatsoever. I did explain to him about the
24 meal times and breaks.

25 Q Did you mention to him -- did listening to his testimony

1 go any further.

2 MR. RABINOWITZ: Okay. Then just one -- I appreciate that
3 and on that basis I ll move on.

4 Q BY MR. RABINOWITZ: Vince, did anyone ever tell you that
5 you had to get in this lawsuit or else you couldn t be in the
6 Union?

7 A No.

8 Q Okay.

9 MR. RABINOWITZ: Nothing further. Thank you, Vince.

10 CROSS EXAMINATION

11 Q BY MR. KATZ: Mr. Burns, we ve met before, my name is
12 Bruno Katz.

13 A Yeah, I remember.

14 Q Yeah. From the last hearing that we had here?

15 A Yeah.

16 Q Okay. This exhibit that Mr. Rabinowitz just showed you, I
17 believe it would be a would be the first page?

18 A Correct.

19 Q Did you give consent for him to use this in this case
20 here?

21 MR. RABINOWITZ: Objection, relevance.

22 ADMINISTRATIVE LAW JUDGE POLLACK: You can answer that.

23 THE WITNESS: No.

24 Q BY MR. KATZ: When I say consent, you understood both oral
25 or written consent, correct?

- 1 A That s correct, yes.
- 2 Q All right. Mr. Burns, do you recall whether you ever saw
3 an attorney/client representation agreement in the Fall of
4 2008?
- 5 A You know what, I can t even recall.
- 6 Q All right. Can I show you Exhibit 6 please. Do you
7 recognize that document?
- 8 A Yeah, I recognize it.
- 9 Q Okay. What is that document?
- 10 A This is the client/attorney representation agreement.
- 11 Q When did you first see that document?
- 12 A September, October, something like that.
- 13 Q Okay. And how did it come about that you saw it?
- 14 A From the attorneys.
- 15 Q Okay. Did Pilar Barton talk to you about this document?
- 16 A No.
- 17 Q Do you know who Pilar Barton is?
- 18 A Oh but of course.
- 19 Q Okay. Who is she?
- 20 A That would be her sitting right there.
- 21 Q All right. Is she the Union organizer for Stericycle?
- 22 A Yes.
- 23 Q Did you read this document?
- 24 A Yeah, I read it.
- 25 Q Okay. Is this Exhibit 6, is that the full document that

1 THE WITNESS: No, sir.

2 Q BY MR. RABINOWITZ: Oh yeah, before this lawsuit came into
3 existence, did you support the Union?

4 A Yes, sir.

5 Q Okay.

6 MR. RABINOWITZ: Nothing further.

7 CROSS EXAMINATION

8 Q BY MR. KATZ: Willie, the document -- Mr. Rivera -- yeah,
9 the Union 1(1) that Mr. Rabinowitz just showed you, did you
10 give authorization, either orally or in writing, to waive your
11 attorney/client privilege to let him present this here today?

12 MR. RABINOWITZ: Objection, relevance, calls for a legal
13 conclusion.

14 ADMINISTRATIVE LAW JUDGE POLLACK: Do you want to just
15 rephrase it?

16 MR. KATZ: Yeah.

17 Q BY MR. KATZ: Did you give Mr. Rabinowitz permission, your
18 permission, to show this letter?

19 A No, sir.

20 Q And that s either orally or in writing, correct?

21 A Right.

22 Q All right. Now, Mr. Rivera, how did -- did you sign an
23 attorney/client representation agreement?

24 A Yes, sir.

25 Q How did you come about to get that agreement?

From: Peter G. Fischer
Sent: Thursday, March 26, 2009 4:49 PM
To: 'Tsiliacos, Nicholas L.'
Cc: Bruno W. Katz
Subject: Tom Stalberger Testimony

Nick,

Per our discussion on the phone a few minutes ago, the following are page numbers of the transcript testimony from the RC hearing for Tom Stalberger on how the wage increases and annual performance reviews were calculated before the campaign:

pgs. 148, 527-528, 535-542

You'll find a majority of the material is from Mr. Stalberger's testimony on December 1, 2008.

Please let me know if I can be of any further assistance.

Peter

PRIVILEGED COMMUNICATION
This e-mail and any attachments transmitted are legally privileged and confidential, and are intended only for the individual or entity to whom it is directed. If you are not the intended recipient, this email was sent to you strictly inadvertently. You are not to read, copy or distribute this email, and instead should delete this email and all copies and backups thereof. Thank you.

EXHIBIT 5

FORM EXEMPT UNDER 44 U.S.C.

INTERNET
FORM NLRB-502
(2-08)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE

Case No. 32-RC-5603	Date Filed 11/14/08
------------------------	------------------------

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)
- RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
 - RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
 - RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
 - UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
 - UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) In unit not previously certified. In unit previously certified in Case No. _____
 - AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer Stericycle, Inc.		Employer Representative to contact Sam Escobar	Tel. No. 510-562-1781
3. Address(es) of Establishment(s) Involved (Street and number, city, State, ZIP code) 1366 Doolittle Drive, San Leandro, CA 94577			Fax No.
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Waste processing warehouse	4b. Identify principal product or service waste materials		Cell No.
5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) Included All route drivers employed at the employer's facility at 1366 Doolittle Drive, San Leandro, CA.			6a. Number of Employees in Unit: 32
Excluded All other employees, employees of contractors/temporary agencies, and supervisors and guards as defined by the Act.			Proposed (By UC/AC)
6b. Is this petition supported by 30% or more of the employees in the unit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No *Not applicable in RM, UC, and AC			

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. Request for recognition as Bargaining Representative was made on (Date) **November 14, 2008** and Employer declined recognition on or about (Date) _____ (If no reply received, so state).

7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state.) None		Affiliation	
Address N/A		Tel. No.	Date of Recognition or Certification NOV 14 PM 4:13
		Cell No.	Fax No.
9. Expiration Date of Current Contract. If any (Month, Day, Year)		10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)	
11a. Is there now a strike or picketing at the Employer's establishment(s) Involved? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		11b. If so, approximately how many employees are participating? 32	

11c. The Employer has been picketed by or on behalf of (Insert Name) _____ a labor organization, of (Insert Address) _____ Since (Month, Day, Year) _____

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)			
Name	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number) Teamsters Local 70			
14a. Address (street and number, city, state, and ZIP code) 70 Hegenberger Road, Oakland, CA 94612		14b. Tel. No. EXT 510/569-9317	14c. Fax No. 510/569-1906
Attention: Pilar Barton		14d. Cell No. 510/325-5660	14e. e-Mail

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)
International Brotherhood of Teamsters, Change to Win Coalition

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) Zachary N. Leads	Signature 	Title (If any) Attorney
Address (street and number, city, state, and ZIP code) 1404 Franklin Street, 5th Floor, Oakland, CA 94612		Tel. No. (510) 625-9700
		Fax No. (510) 625-8275
		eMail zleads@beesonlayer.com
		Cell No. 510/325-3625

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

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

1 JASON RABINOWITZ, SBN 183822
2 ZACHARY N. LEEDS, SBN 257395
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Oakland, CA 94612
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zleeds@beesontayer.com»

7 Attorneys for Plaintiffs

8 UNITED STATES FEDERAL DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 JOEL OCHOA, SELVIN ZECENA, VICTOR
11 M. HERNANDEZ, SANTOS GONZALEZ,
12 VINCENT D.BURNS, JOEL LOMELI,
13 MIGUEL A. GARCIA, GUSTAVO
14 RODRIGUEZ, WILIAM R. RIVERA, JAVIER
15 ELIAS, JUAN VASQUEZ, JUAN ESPANA,
16 BENJAMIN HERNANDEZ, JULIO
17 SIGUENZA, MARCO CHICAS, AGUSTIN
18 LOPEZ, and all others similarly situated,

19 Plaintiffs,

20 v.

21 STERICYCLE, INC.,

22 Defendants

Case No.

008-0521

CLASS AND COLLECTIVE ACTION

FILED
NOV 19 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

EMC

23 Plaintiffs JOEL OCHOA, SELVIN ZECENA, VICTOR M. HERNANDEZ, SANTOS
24 GONZALEZ, VINCENT D.BURNS, JOEL LOMELI, MIGUEL A. GARCIA, GUSTAVO
25 RODRIGUEZ, WILIAM R. RIVERA, JAVIER ELIAS, JUAN VASQUEZ, JUAN ESPANA,
26 BENJAMIN HERNANDEZ, JULIO SIGUENZA, MARCO CHICAS, AGUSTIN LOPEZ on their
27 own behalf and on behalf of all other similarly situated and interested persons in the State of
28 California (collectively "Plaintiffs"), hereby complain and allege as follows:

INTRODUCTION

1. By this Complaint, Plaintiffs, on their own behalf and on behalf of all similarly situated employees of Defendant Stericycle, Inc. in the State of California, seek to remedy

GO 14 SEC. W
NOTICE OF ASSIGNMENT
TO MAGISTRATE JUDGE SENT

FILED
NOV 19 2008
Full
pad
iss
(8)

1 Defendant's failure to pay wages and provide meal and rest periods as required by law. This
2 Complaint is brought pursuant to the laws of the United States and the State of California seeking
3 unpaid wages, penalties, liquidated damages, restitution, attorney's fees and costs of suit.

4 **JURISDICTION**

5 2. This Court has jurisdiction over the subject matter of this action pursuant to 29 U.S.C.
6 §216, 28 U.S.C. §§1331 and 1337 as the controversy arises under the Fair Labor Standards Act of
7 1938 ("FLSA"), 29 U.S.C. section 201 *et seq.* In addition, this Court has the authority to determine
8 Plaintiffs' state claims pursuant to its supplemental jurisdiction under 28 U.S.C. section 1367.

9 **VENUE**

10 3. Venue is proper in the Northern District of California pursuant to 28 U.S. §1391(b)
11 because Defendant conducts business in this district and a substantial part of the acts, events, or
12 omissions giving rise to the action occurred in this district.

13 **INTRADISTRICT ASSIGNMENT**

14 4. Intra-district venue is appropriate in the Oakland Division as Defendant operates a
15 warehouse in San Leandro, California, where a substantial part of the acts, events, or omissions
16 alleged herein occurred.

17 **PARTIES**

18 5. Plaintiffs and the class they seek to represent are Route Drivers for Defendant
19 employed in the State of California. Plaintiffs are residents of the state of California.

20 6. Defendant Stericycle, Inc., upon information, is, and at all times material herein was, a
21 Delaware corporation engaged in the business of medical waste disposal nationwide and in the State
22 of California. On information and belief Defendant's principal place of business is in the state of
23 Illinois. Defendant is an employer within the meaning of the California Labor Code and the Fair
24 Labor Standards Act.

25 **CLASS ACTION ALLEGATIONS UNDER RULE 23**

26 7. Plaintiffs bring Causes of Action One through Six as a class action pursuant to Federal
27 Rule of Civil Procedure 23.
28

1 8. The class consists of all persons currently and formerly employed by Defendant as
2 Route Drivers and substantially equivalent positions who were denied required overtime pay and/or
3 were not provided meal periods and/or rest periods and/or denied wages during the relevant statutory
4 period.

5 9. This action may properly proceed as a class action under Rule 23 because the
6 questions of law and fact common to the class members predominate over any questions affecting
7 individual members and, on balance, a class action is superior to other methods available for
8 adjudicating the controversy. More specifically:

9 a. Numerosity: The plaintiff class is so numerous that the individual joinder of
10 all members is impractical under the circumstances of this case. While Plaintiffs do not know the
11 exact number of class members at this time, they are informed and believe, and thereon allege, that
12 more than one hundred persons have worked for Defendant as Route Drivers and substantially
13 equivalent positions during the relevant statutory periods. Such persons were not paid overtime
14 compensation as required by law and were not provided required rest and meal periods.

15 b. Common questions predominate: The right which is the subject of this action
16 is common to all of the current and former Route Drivers and substantially equivalent positions
17 employed by Defendant during the relevant statutory periods. In addition, there are questions of law
18 and fact presented herein which are common to the entire class of persons represented by Plaintiffs,
19 and Plaintiffs claims, as hereinafter set forth, are typical of the claims of all class members.

20 c. Typicality: The claims of the named Plaintiffs are typical of the claims of the
21 class members. Named Plaintiffs and the unnamed members of the class sustained damages arising
22 out of Defendant's common practice of failing to pay overtime compensation and provide rest and
23 meal periods as required by law. Named Plaintiffs, like other class members, routinely worked in
24 excess of forty (40) hours in a workweek during the relevant statutory period, and were not
25 compensated at the rate of time and one-half or, where appropriate, double their regular rate of pay
26 for those hours. Furthermore, named Plaintiffs, like other class members, were not regularly
27 provided rest and meal periods as allowed by law. Finally, named Plaintiffs performed the same
28 duties and had the same responsibilities as the other class members.

1 d. Adequacy: Named Plaintiffs are qualified to, and will, fairly and adequately
2 protect the interests of each class member. Named Plaintiffs have no interest that is adverse to the
3 interests of the other class members. Named Plaintiffs have retained competent counsel to represent
4 them and other class members.

5 e. Superiority: Class action adjudication is superior to other available methods
6 because class action will achieve economies of time, effort, and expense compared to separate
7 lawsuits, and avoid inconsistent outcomes, because the same issues can be adjudicated in the same
8 manner for the entire class. Named Plaintiffs are not aware of any pending litigation commenced by
9 any class member involving the same issues in this Complaint.

10 **COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA**

11 10. Plaintiffs also bring this action as a collective action pursuant 29 U.S.C. section 216(b)
12 on behalf of themselves and all other similarly situated current and former Route Drivers of
13 Defendant in the State of California to recover from Defendant unpaid overtime compensation,
14 liquidated damages and/or any other recovery authorized under the FLSA and other applicable law.

15 **FIRST CLASS CAUSE OF ACTION**
16 **UNPAID PREMIUM PAY FOR FAILURE TO PROVIDE REST PERIODS**
(Violation of California Labor Code § 226.7)

17 11. Plaintiffs re-allege and incorporate by reference the allegations set forth above as
18 though fully set forth herein.

19 12. The California Industrial Welfare Commission (“IWC”) is authorized by §§517 and
20 1173 of the Labor Code to promulgate orders regulating wages, hours, and conditions of employment
21 for employees throughout California.

22 13. Pursuant to this authority, the IWC promulgated Order No. 9-2001, regulating wages,
23 hours and working conditions in the transportation industry during periods of time relevant to this
24 action. Plaintiffs and those they seek to represent are employed in the transportation industry defined
25 by § 2(P) of IWC Order No. 9-2001.

26 14. At all times material hereto, Labor Code § 226.7 has prohibited employers from
27 suffering or permitting any employee to work without providing rest periods mandated by the IWC
28 Orders. Section 226.7 also requires an employer who suffers or permits an employee to work without
providing a rest period as specified in the applicable IWC Wage Order to pay the employee one (1)

1 additional hour of pay at the employee's regular rate of pay for each work day that the rest period is
2 not provided.

3 15. The IWC promulgated Wage Order No. 14-2001 regulating wages, hours and
4 conditions of employment in transportation occupations during the periods of time relevant to this
5 action. Section 12 of Wage Order No. 9-2001 requires employers to authorize and permit employees
6 with at least a ten (10) minute rest period for every four (4) hours of work or major fraction thereof.

7 16. Notwithstanding, Defendant has systematically failed and refused to allow Plaintiffs to
8 enjoy rest periods required by IWC Wage Order No. 9-2001 and Labor Code § 226.7.

9 17. As a direct result of Defendant's conduct as alleged herein, Plaintiffs have suffered
10 monetary damages and are entitled to recover one hour pay at straight time rate for each day
11 Defendant failed to provide the rest periods required by law.

12 18. Plaintiffs have retained the services of attorneys herein to maintain and prosecute this
13 action, and Plaintiffs are entitled to recovery of attorneys' fees incurred on Plaintiffs' behalf in the
14 prosecution of this action.

15 **SECOND CLASS CAUSE OF ACTION**
16 **UNPAID PREMIUM PAY FOR FAILURE TO PROVIDE MEAL PERIODS**
17 **(Violation of California Labor Code § 226.7)**

18 19. Plaintiffs re-allege and incorporate by reference the allegations set forth above, as
19 though fully set forth herein.

20 20. At all times material hereto, Labor Code § 226.7 has prohibited employers from
21 failing to provide employees with meal periods as mandated by the IWC Orders. Section 226.7 also
22 requires an employer who fails to provide a meal period as specified in the applicable IWC Wage
23 Order to pay the employee one (1) additional hour of pay at the employee's regular rate of pay for
24 each work day that the meal period is not provided.

25 21. Section 11 of Wage Order No. 9-2001 specifically prohibits employers from
26 employing employees "for a work period of more than five (5) hours without a meal period of not
27 less than 30 minutes [or] for a work period of more than ten (10) hours per day without providing the
28 employee with a second meal period of not less than 30 minutes"

22. Notwithstanding this requirement, Defendant has systematically failed to require
Plaintiffs to enjoy their full meal periods, take their meal periods during the time required, and take

1 additional meal periods after ten hours of work, as required by IWC Wage Order No. 9-2001 and
2 Labor Code § 226.7.

3 23. As a direct result of Defendant’s conduct as alleged herein, Plaintiffs have suffered
4 monetary damages and are entitled to recover one hour pay at straight time rate for each day
5 Defendant failed to provide the meal periods as required by law.

6 24. Plaintiffs have retained the services of attorneys herein to maintain and prosecute this
7 action, and Plaintiffs are entitled to a recovery of attorneys’ fees incurred on Plaintiffs’ behalf in the
8 prosecution of this action.

9 **THIRD CAUSE OF ACTION**
10 **FAILURE TO PAY EARNED WAGES**
11 **(Breach of Contract)**

12 25. Plaintiffs re-allege and incorporate by reference the allegations set forth in the
13 preceding paragraphs, as though fully set forth herein.

14 26. Defendants systematically failed to pay Plaintiffs their earned wages in breach of
15 contract and violation of law.

16 27. Among other things, Defendants’ docked Plaintiffs 1/2 hour of pay each day for meal
17 periods that were not, in fact, taken by Plaintiffs, thereby failing to pay Plaintiffs for time worked at
18 the agreed-upon rate.

19 28. Defendants were aware that Plaintiffs were not taking the meal period.

20 29. Each Plaintiff is entitled to recover all unpaid wages.

21 30. Plaintiffs have retained the services of attorneys herein to maintain and prosecute this
22 action, and Plaintiffs are entitled to recovery of attorneys’ fees incurred on Plaintiffs’ behalf in the
23 prosecution of this action.

24 **FOURTH CAUSE OF ACTION**
25 **FAILURE TO PAY EARNED WAGES**
26 **(Violation of Labor Code §216)**

27 31. Plaintiffs re-allege and incorporate by reference the allegations set forth in the
28 preceding paragraphs, as though fully set forth herein.

32. At all times material hereto, Labor Code § 216 prohibited any employer, or any agent,
manager, superintendent or officer thereof to falsely deny any amount due and owing to an employee
with the intent to secure for himself, his employer or other person such indebtedness or to defraud the

1 person to whom such indebtedness is due.

2 33. Defendants systematically failed to pay Plaintiffs their earned wages in violation of
3 law.

4 34. Among other things, Defendants' docked Plaintiffs 1/2 hour pay each day for meal
5 periods that were not, in fact, taken by Plaintiffs.

6 35. Defendants were aware that Plaintiffs were not taking the meal period and refused to
7 pay such amounts despite demands by employees with the intent to secure for himself, his employer
8 or other person such indebtedness or to defraud the person to whom such indebtedness is due.

9 36. Each Plaintiff is entitled to recover all unpaid wages.

10 37. Defendant, and all agents responsible for such actions, are criminally liable for such
11 actions.

12 38. Plaintiffs have retained the services of attorneys herein to maintain and prosecute this
13 action, and Plaintiffs are entitled to recovery of attorneys' fees incurred on Plaintiffs' behalf in the
14 prosecution of this action.

15 **FIFTH CAUSE OF ACTION**
16 **FAILURE TO PAY EARNED WAGES**
(Violation Of California Labor Code § 204)

17 39. Plaintiffs re-allege and incorporate by reference the allegations set forth in the
18 preceding paragraphs, as though fully set forth herein.

19 40. At all times material hereto, Labor Code § 204 has required employers to pay
20 employees all earned and unpaid wages no less than two times per month. At all times material to
21 this action, Plaintiffs were employed by Defendants and entitled to receive full payment of all earned
22 wages as set forth in Labor Code § 204.

23 41. Defendants have systematically failed and refused to provide Plaintiffs with their
24 earned wages. Specifically, among other things, Defendants' docked Plaintiffs 1/2 pay hour each day
25 for meal periods that were not, in fact, taken by Plaintiffs.

26 42. As a direct result of Defendants' conduct as alleged herein, Plaintiffs have suffered
27 monetary damages in an amount equal to the sum of their earned and unpaid regular and overtime
28 wages, plus interest thereon.

43. Plaintiffs have retained the services of attorneys herein to maintain and prosecute this

1 action, and Plaintiffs are entitled to recovery of attorneys' fees incurred on Plaintiffs' behalf in the
2 prosecution of this action.

3 **SIXTH CLASS CAUSE OF ACTION**
4 **FAILURE TO PAY MINIMUM WAGE**
5 **(Violation of California Labor Code § 1194)**

6 44. Plaintiffs re-allege and incorporate by reference the allegations set forth above, as
7 though fully set forth herein.

8 45. Section 1194 of the Labor Code and Section 4 of IWC Order 9-2001, an employer is
9 required to pay employees a set minimum wage.

10 46. At all times relevant to this action, Defendant regularly paid Plaintiffs zero dollars for
11 1/2 hour of work each day, which Defendant recorded as a meal period, but which, in fact, was not
12 taken as a meal period by Plaintiffs.

13 47. As a direct result of Defendants' conduct alleged herein, Plaintiffs suffered, and are
14 entitled to recover, pursuant to Labor Code §1194, monetary damages in an amount equal to the sum
15 of their unpaid wages, plus interest thereon.

16 48. Plaintiffs have retained the services of attorneys to maintain and prosecute this action,
17 and thus Plaintiffs are entitled to recover reasonable attorney's fees incurred in the prosecution of this
18 action pursuant to Labor Code §1194.

19 **SEVENTH CAUSE OF ACTION**
20 **PENALTY FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
21 **(Violation of California Labor Code § 226)**

22 49. Plaintiffs re-allege and incorporate by reference the allegations set forth in the
23 preceding paragraphs, as though fully set forth herein.

24 50. At all times material hereto, Labor Code Section 226 has required employers to
25 furnish each employee, at the time wages are paid, an accurate itemized statement in writing
26 showing, *inter alia*, gross wages, total hours worked, all deductions, net wages earned, and dates for
27 which the employee is being paid.

28 51. Defendants systematically failed to accurately itemize the total hours worked by
Plaintiffs on checks or vouchers issued for work performed. Among other things, Defendants'
inaccurately recorded meal and rest periods as having been taken by Plaintiffs, when, in fact,
Plaintiffs did not take meal and rest periods.

1 52. Defendant was aware that Plaintiffs were not taking the meal breaks.

2 53. As a proximate result of Defendants' conduct as alleged herein, each Plaintiff is
3 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
4 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
5 subsequent pay period, not exceeding four thousand dollars (\$4000) per employee.

6 54. Pursuant to Section 226(g), Plaintiffs are also entitled to injunctive relief "to ensure
7 compliance with this section"

8 55. Plaintiffs have retained the services of attorneys herein to maintain and prosecute this
9 action, and Plaintiffs are entitled to recovery of attorneys' fees incurred on Plaintiffs' behalf in the
10 prosecution of this action.

11 **EIGHTH CLASS CAUSE OF ACTION**
12 **PENALTY FOR UNPAID WAGES TO SEVERED EMPLOYEES**
(Violation of California Labor Code § 201, 202 and 203)

13 56. Plaintiffs re-allege and incorporate by reference the allegations set above, as though
14 fully set forth herein.

15 57. At all times material hereto, Labor Code §§ 201 and 202 has required employers to
16 pay employees all earned and unpaid wages at the time of their severance from employment, whether
17 that severance is due to discharge or resignation.

18 58. Defendant failed to pay wages due Plaintiffs who were severed from employment,
19 specifically wages for failure to permit Plaintiffs to take rest and meal breaks, overtime wages, and
20 other unpaid wages, as set out above.

21 59. As a direct result of Defendant's conduct as alleged herein, Plaintiffs have suffered
22 monetary damages in an amount equal to the sum of their earned and unpaid wages, plus interest
23 thereon.

24 60. Plaintiffs are further entitled to an award of an additional sum as a penalty, pursuant to
25 the provisions of Labor Code § 203. Plaintiffs are entitled to recover from Defendant in addition to
26 their earned and unpaid wages, a penalty under Labor Code § 203 equal to thirty (30) days' wages,
27 plus interest thereon.

28 61. Plaintiffs have retained the services of attorneys herein to maintain and prosecute this
action, and Plaintiffs are entitled to recovery of attorneys' fees incurred on Plaintiffs' behalf in the

1 prosecution of this action.

2 **NINTH CLASS CAUSE OF ACTION**
3 **UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES**
4 **(Violation of California Business and Professions Code § 17200, *et seq.*)**

5 62. Plaintiffs re-allege and incorporate by reference the allegations set forth above, as
6 though fully set forth herein.

7 63. This claim is brought by Plaintiffs on behalf of themselves and the general public,
8 pursuant to Business & Professions Code § 17200 et seq. Plaintiffs are “persons” within the meaning
9 of Business & Professions Code § 17204, and therefore, have standing to bring this claim for
10 equitable relief.

11 64. Business & Professions Code § 17200 et seq. provides that unfair competition shall
12 mean and include any “unlawful business act or practice.” The conduct of Defendant, as alleged
13 herein, has and continues to be an unlawful business practice or act deleterious to Plaintiffs and all
14 individuals similarly situated, as well as to the general public. Specifically, since the commencement
15 of their employment, Plaintiffs were denied the requisite rest and meal periods as mandated by the
16 applicable IWC Wage Order and the Labor Code.

17 65. Through this conduct, Defendant has engaged in unlawful and unfair business
18 practices in violation of Business & Professions Code § 17200 et seq., depriving Plaintiffs and all
19 individuals similarly situated of rights, benefits and privileges guaranteed under the law.

20 66. As a direct result of Defendant’s conduct as alleged herein, Plaintiffs have been
21 unjustly deprived of their rest and meal periods, wages for missed meal and break periods, and
22 termination pay, as required by law. As a direct result of Defendant’s conduct as alleged herein,
23 Defendant has been unjustly enriched in an amount equal to Plaintiffs’ unpaid wages and work
24 performed in lieu of rest and meal periods.

25 67. Business & Professions Code § 17203 provides that the Court may restore to an
26 aggrieved party any money or property acquired by means of unlawful and/or unfair business
27 practices. Plaintiffs are entitled to restitution pursuant to this as alleged herein, according to proof.

28 68. Plaintiffs’ success in this action will enforce important rights affecting the public
interest and, in that regard, Plaintiffs sue on behalf of the public as well as themselves and all other
individuals similarly situated. Plaintiffs seek and are entitled to unpaid wages, penalties, an

1 injunction and any other appropriate equitable relief due to Defendant's failure to pay required wages
2 or provide lawful rest and meal periods.

3 69. Pursuant to Business & Professions Code §17203, injunctive relief is necessary to
4 prevent Defendant from continuing to engage in the unfair business practices as alleged herein.

5 70. Plaintiffs have retained the services of attorneys herein to maintain and prosecute this
6 action, and Plaintiffs are entitled to recovery of attorneys' fees incurred on Plaintiffs' behalf in the
7 prosecution of this action.

8 **TENTH CLASS CAUSE OF ACTION**
9 **INJUNCTIVE RELIEF**

10 71. Plaintiffs re-allege and incorporate by reference the allegations set above, as though
11 fully set forth herein.

12 72. The violations alleged above are continuing and ongoing.

13 73. Injunctive relief is necessary to ensure such violations cease and that Defendant
14 continues to adhere to the law after this action's resolution.

15 74. Plaintiffs therefore seek an injunction requiring Defendant to adhere to the law and
16 cease the violations, described above.

17 **COLLECTIVE CAUSE OF ACTION**
18 **FAILURE TO PAY OVERTIME COMPENSATION**
19 **(Violation of FLSA, 29 U.S.C. § 207)**

20 75. Plaintiffs reassert and re-allege the preceding paragraphs, inclusive as though fully set
21 forth herein and incorporate said paragraphs by reference.

22 76. At all times material hereto, the FLSA has required employers who work employees
23 more than forty (40) hours in a week to pay those employees at a rate of one and one-half their
24 regular rate for such hours. Defendant, an "employer" under the FLSA, required or permitted
25 Plaintiffs, each of whom are "employees" under the FLSA, to work in excess of forty (40) hours per
26 week. Notwithstanding, Defendant failed and refused to pay Plaintiffs for their overtime hours
27 worked at the rate of one and one-half times their regular rate.

28 77. In doing all the things described and alleged, Defendant deprived Plaintiffs of their
rights, privileges and immunities secured to them by federal law which clearly sets forth that
Plaintiffs are entitled to be paid for overtime hours worked in a work week by the regular pay day for

1 the period in which such work week ended. Defendant knew or should have known that its reckless
2 and/or willful and intentional failure and refusal to pay for the overtime worked by Plaintiffs in a
3 timely manner violates these rights, privileges and immunities.

4 78. As a direct and proximate result of Defendant's actions and inactions, Plaintiffs have
5 been damaged, and are entitled to damages in an amount according to proof, including but not limited
6 to, a sum equivalent to their unpaid overtime compensation, attorney's fees and costs, interest and
7 liquidated damages.

8 WHEREFORE, Plaintiffs pray for judgment as follows:

- 9 1. That this action be certified as a class action;
- 10 2. That Plaintiffs be appointed as the representative of the class;
- 11 3. That Counsel for Plaintiffs be appointed as class counsel;
- 12 4. Pursuant to Labor Code § 226.7, for a sum according to proof equal to one hour of pay
13 at straight time rate for each day Defendant failed to allow Plaintiffs to take rest periods;
- 14 5. Pursuant to Labor Code § 226.7, for an additional sum according to proof equal to one
15 hour of pay at straight time rate for each day Defendant failed to allow Plaintiffs to take a meal
16 period;
- 17 6. Pursuant to employment contract between Plaintiffs and Defendant, for an additional
18 sum equal to the sum of earned, unpaid wages to each Plaintiff, according to proof;
- 19 7. Pursuant to Labor Code § 216, for an additional sum equal to the sum of earned,
20 unpaid wages to each Plaintiff, according to proof;
- 21 8. Pursuant to Labor Code § 204 for an additional sum equal to the sum of earned,
22 unpaid wages to each Plaintiff, according to proof;
- 23 9. Pursuant to Labor Code § 1194, for an additional sum equal to the unpaid earned
24 minimum required wage to each Plaintiff, according to proof;
- 25 10. Pursuant to Labor Code § 226 for an additional sum according to proof, equal to fifty
26 dollars (\$50.00) for Defendants' initial failure to provide an accurate itemized wage statement and
27 one-hundred dollars (\$100.00) for each subsequent violation;
- 28 11. Pursuant to Labor Code § 203, for an additional sum according to proof equal to thirty
(30) days' wages, as a penalty for unpaid wages to severed employees;

1 12. Pursuant to Business and Professions Code § 17200, *et seq.*, for restitution equal to the
2 sum of unpaid wages to each Plaintiff, according to proof;

3 13. Pursuant to Labor Code § 218.6, for interest on all unpaid wages from the date such
4 sums were due to the date of judgment herein;

5 14. For appropriate injunctive relief; and

6 15. All losses and damages as may be allowed in accordance with the Federal Rules of
7 Civil Procedure, Rule 54, and 29 U.S.C. section 216(b) according to proof at trial;

8 16. Attorney's fees and costs pursuant to 29 U.S.C. section 216(b), the Labor Code, and
9 other provisions of law; and

10 17. For such other relief as the Court may award.

11 Dated: November 18, 2008

BEESON, TAYER & BODINE, APC

12
13 By: 
14 JASON RABINOWITZ
ZACHARY N. LEEDS
15 Attorneys for JOEL OCHOA, SELVIN
16 ZECENA, VICTOR M. HERNANDEZ,
17 SANTOS GONZALEZ, VINCENT D. BURNS,
18 JOEL LOMELI, MIGUEL A. GARCIA,
19 GUSTAVO RODRIGUEZ, WILLIAM R.
RIVERA, JAVIER ELIAS, JUAN VASQUEZ,
20 JUAN ESPANA, BENJAMIN HERNANDEZ,
21 JULIO SIGUENZA, MARCO CHICAS,
22 AGUSTIN LOPEZ and all others similarly
23 situated
24
25
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27
28

1 COUNTY OF ALAMEDA

CASE 32-CA-24351

3 STATE OF CALIFORNIA

5 AFFIDAVIT

7 I, Bobby Nafoa Tauala, being duly sworn upon my oath, hereby state as follows:

9 I have been given assurances that this affidavit will be considered confidential by the United
10 States Government and will not be disclosed unless it becomes necessary for the government
11 to produce the affidavit in connection with a formal proceeding.

13 My address is 42 Liebig Street, San Francisco, CA 94112

15 My telephone number is 415-349-4580

17 I have worked for Stericycle since November 8, 2008 as a transportation supervisor. Generally,
18 my duties are to supervise the day-to-day operations of thirty two drivers, customer services,
19 billing, etc. I have recently been given the authority to make recommendations to hire and fire
20 individuals. I have not received any poor performance evaluations or been written up for
21 misconduct of any kind.

23 I have never heard anyone in management threaten to fire any employee for the involvement in the
24 Union. I have never threatened anyone with being fired for being part of the union.

26 On February 12, 2009, Terry Hales and I held a driver's meeting in regards to acknowledging a
27 brief review of the driver's daily routine (job description). There were 12 bullet points that we felt
28 were very important. I posted a Route Driver Start Time Assigned Truck Schedule and the Route

BT (Initials)

1 Driver Acknowledgment. The drivers were switching truck assignments. For example, a driver
2 would come in and switch his truck assignment with other drivers based upon the load that he
3 thought he needed for his route that day. This would create confusion in dispatching and
4 assignments of the trucks that were picking up at the client's locations. So, Terry and I posted the
5 truck assignment schedule to remind the drivers of their truck assignments, their pre-scheduled
6 start times, and that they were expected to use the assigned trucks for efficiency.

7
8 The Route Driver Start Time Assigned Truck Schedule contained both a listing of Start Times and
9 Route End Times. These were the schedules that were already in place. This was to remind the
10 drivers to use their assigned trucks at the assigned times. Drivers were not expected to return at
11 any set time. The end time was listed as a guideline. Depending on the route, drivers generally
12 take about 5 to 10 hours to complete their shift. We held a driver's meeting in three different
13 sections the morning of February 12, 2009. The first section was of nine drivers. The second was
14 fifteen or seventeen and the last was approximately seven drivers. There were approximately
15 seven drivers out on vacation that day. All drivers understood this role from punching in too
16 early.

17
18 At these meetings Terry Hales and I reviewed the Route Driver Acknowledgement and Route
19 Driver Start Time Assigned Truck Schedule before they were posted. At each meeting we
20 informed the drivers that the start times were important for them to meet. The end times were
21 only as a guide for an eight hour shift and we understood that they were likely going to take longer
22 than the eight hours and come in after the posted end-time. The end time really doesn't matter any
23 way. You cannot be punished or disciplined for returning early or late from their route.
24 We also reminded them of a check-in time of 10am and 2pm by phone to indicate if a teammate
25 may need help on their route or to head back to the branch. This check-in time has been a
26 standard procedure since I have worked here. The drivers were really good about this process as
27 they consistently contacted their supervisors during this period, especially if there was an issue
28 with the customer.

1 We stressed the importance of taking your breaks and meal period during your shift but to take it
2 when out on route. We indicated that not only this was a company policy, but a mandatory
3 California law. Drivers were concerned about not getting their route done on time but we still
4 insisted that breaks and meal period must be taken and that any stops not completed will be
5 assigned the following day to be completed by a lead driver or get re-scheduled.
6 There is no policy in regards to sick calls. We do remind all drivers to try to call in early or give
7 us a heads up the day before. Terry and I asked as a courtesy, to call in (sick call) 8 hours before
8 your shift so we, as supervisors can make the necessary adjustments for route coverage on that
9 particular day. Some drivers were stating that they may not feel as bad until the early a.m. Terry
10 and I stated to the drivers it was a courtesy but if there is a 2 or 3 a.m. call, we will not answer the
11 phone but to make sure that they leave a message.

12
13 Stericycle uniforms are green and blue. We issue a complete uniform to them for their use on the
14 job. Terry and I regularly tell all employees should be wearing green collared shirts with blue
15 cargo pants which are provided by the company. Some drivers were still wearing the old grey,
16 white, and green uniforms. They indicated that they did not have the correct size or it was
17 uncomfortable. Terry and I took the liberty of ordering or reordering uniforms for those drivers
18 Juan Espania and Willian Rivera to name a couple and stated regardless of being uncomfortable,
19 you must wear the assigned company colors in San Leandro, CA. Hopefully these uniforms will
20 be arriving by this Friday March 13th 2009 by our vendor Aramark.

21 I specifically brought the uniform issue to their attention at this meeting because about a week or
22 two before our meeting, Eloy Jimenez and I approached Carlos Reyes in the parking lot where he
23 was only in partial uniform. We constantly remind all our drivers about being presentable when
24 representing Stericycle. There is rarely a cause for a driver to be reprimanded for being out of
25 uniform. It's just a simple conversation addressing the uniform code without warning unless it
26 becomes an ongoing issue which rarely happens. Carlos had a baby blue hooded sweat shirt on
27 with the blue cargo pants. I asked "Where is your top?" Carlos responded, "It's cold and wet".
28 Eloy asked "Were you given a Stericycle jacket?" Although we do not have a policy on Stericycle

1 jackets that I am not aware of, I took over from there and mentioned to him, "That's why we have
2 Stericycle jackets". Carlos and I walked in the employee entrance towards the rear of the building
3 and I mentioned to him, "Carlos, just wear your uniform at all times, even if your green shirt is
4 over your hood, we won't have to question you." Carlos answered "okay Bobby, it's cool." I did
5 not hear any negative response from Eloy or Carlos during this time indicating an issue with not
6 wearing a company jacket or that company funds were being wasted on him (Carlos) on any
7 employees. I also used the example of myself because the former manager Sam Escobar did not
8 tolerate me wearing a Corona shirt to work. Although I felt it was not a big deal because it was a
9 Friday and I was not going out on route. I was told to wear a plain black jacket for the remainder
10 of the day.

11 At the end of the meeting, all of the drivers present agreed and on signed-off on the 12 bullet point
12 driver's acknowledgement.

13
14 On February 17th 2009, I received an office call from Juan Vasquez indicating that he was
15 involved in an accident right down the street by the Shell gas station. When I arrived at the scene,
16 the first thing I said to Juan is "are you alright", Juan stated "yes". I said again, "Are you sure";
17 Juan stated again "yes, I'm alright". Juan told me that he forgot to set the airbrakes. I then told
18 Juan, I don't care about the vehicle as long as you are alright. I then told Juan to fill out his
19 accident report, take the necessary pictures, etc., and when done, to head back to the branch and
20 report to Terry Hales. In the meantime, my main concern was to get the vehicle out of the street as
21 it was blocking the left lane. I then called our vendor, Penske Trucking to tow our vehicle to our
22 processing plant to get the medical waste out of the truck and then be taken to Penske facility for
23 inspection and estimates. The last time I spoke to Juan was a day before (February 26th 2009) he
24 was terminated and he wanted to know what was going on in regards to his suspension. I
25 informed him I did not know anything and that he should contact his immediate supervisor Terry
26 Hales.

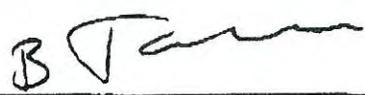
27 On February 24th, I was involved in the termination of Carlos Reyes with Terry Hales and Shawn
28 Ashkenazy. I was only aware of the specifics from Shawn's investigation and during the day of

1 Carlos incident or accident, he did not report it that day to Terry or me. During the meeting of
2 Carlos' termination, Shawn asked Carlos if there was anything he wanted to tell us. Carlos said
3 "no." Shawn asked again, whether there were any incidents that Carlos thought needed to be
4 reported. Again Carlos said "no." Shawn asked a third time if was there anything important he
5 would like to say to us, anything that may have happened during the week he wanted to bring to
6 our attention, etc. Carlos then mentioned he would like to talk to Terry and said that we already
7 knew. Shawn asked Terry if he wanted us to step out the office and Terry said "No." Carlos then
8 admitted to the accident or incident and mentioned that he didn't think it was an accident. At that
9 point, Shawn informed Carlos he was being terminated and thoroughly explained why he was
10 being terminated. Shawn informed Carlos Reyes that he was being terminated for not reporting
11 the accident or incident, failure to follow company policy to reporting investigative incident or
12 accident, and the accident is now filed as a police report (hit and run). Shawn also explained to
13 Carlos the actions he should have taken during an accident in occurrence to the training he
14 received and signed off during his first day of hire.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 12, 2009 at San Leandro, California.



Bobby Tauala



(Initials)

1 COUNTY OF ALAMEDA

CASE 32-CA-24351

2

32-CA-24230

3

4 STATE OF CALIFORNIA

5

6 AFFIDAVIT

7

8

I, Victor L. Hales, being duly sworn upon my oath, hereby state as follows:

9

10 I have been given assurances that this affidavit will be considered confidential by the United
11 States Government and will not be disclosed unless it becomes necessary for the government
12 to produce the affidavit in connection with a formal proceeding.

13

14 I have been working for Stericycle as a route driver for almost six years.

15

16 I have never heard Eloy Jimenez make any type of threatening statement. I have never
17 heard workers talk about managers making threatening statements. I have never heard anyone say
18 that people would be fired for their involvement with the Union. We were actually told us the
19 exact opposite. They actually had a meeting before the election where they announced that there
20 would not be any retaliation for being involved with the Union. That's what I heard and that's
21 what everyone heard.

22

23 I know that I'm supposed to be in Stericycle uniform at all times on the job. I've seen other
24 drivers in other types of personal hats. But managers usually correct them and give them a
25 Stericycle hat to wear on shift. I've come in with a Forty-Niners hat before. They have given me
26 a Stericycle hat to wear so that I could be in uniform. Lots of drivers are corrected for being out of
27 uniform. Managers will ask to make sure that they don't wear personal clothing on the route, and
28 then give out other Stericycle gear to wear instead. I've never heard of anyone being disciplined

V. H. (Initials)

EXHIBIT 9

1 COUNTY OF ALAMEDA

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3 STATE OF CALIFORNIA

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5 AFFIDAVIT

6
7 I, Danny Whitney, being duly sworn upon my oath, hereby state as follows:

8
9 I have been given assurances that this affidavit will be considered confidential by the United
10 States Government and will not be disclosed unless it becomes necessary for the government to
11 produce the affidavit in connection with a formal proceeding.

12
13 My address is 135 Violet Dr., Valero, CA 94589

14
15 My telephone number is 707-557-44758

16
17 I have been a driver for Stericycle for six years here at the San Leandro facility.

18
19 I have not heard Eloy Jimenez tell any drivers that they were going to be fired because of
20 the affiliation with the Union. I have never heard any of the management make any type of threats
21 or made any type of discipline for their affiliation with the Union. That is completely against what
22 I know of Eloy. I have not heard any of the drivers talk about being threatened by the
23 management for being involved with the Union.

24
25 I know that the policy on cell phones is that they are supposed to be used for company
26 business. You can use it from time to time for personal use, only every now and then on a limited
27 basis. But you are not supposed to abuse it. I remember in February when they reprogrammed
28 the phones. They had everyone turn in their cell-phone to be re-programmed. Everyone's phone

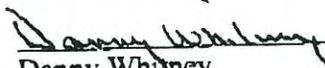
_____ (Initials)

1 had different numbers reprogrammed. They programmed all of the lead driver's contact info into
2 the phones. We can keep our phones on the weekend if we choose.

3
4 If you start your route at 4:00am, then you aren't supposed to come in until 4:00am. If you
5 come in at 3:30am. I know that you aren't supposed to come in until your scheduled start time.
6 There is no mandatory end time. It will take as long as it takes. Maybe 8, maybe 9, maybe 10
7 hours. The meeting was done in February to get the rules back in mind, and get things back in
8 order now that we were able to focus on our jobs and not worry about the election.
9 There haven't been any major changes to policies in the past few months that you know of.

10
11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed March 13, 2009 at San Leandro, California.

14
15 
16 Danny Whitney

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1 for uniform issues, just corrected. They always ask if we need anything for our uniforms.

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About a month ago we were told that we would only be able to contact our managers with our cell phones. It was posted. I know that there are driver's who abuse their cell phones for extensive amounts of time, some call out of the country. I didn't take it personal. We've had a lot of meetings where they told us not use the phones for personal reasons. The phones were being abused so they made it so that the phones can only call the managers.

I was in the meetings on February 12, 2009 where Terry and Bobby talked to all the drivers. I know that they told the drivers that there was a set start time and a finish time. The finish time is an estimate. We had a start time because guys would come in and then wait around on the clock before going out. We were told to show up on time for the start time. There is no way that end time could be anything other than an estimate. Bobby and Terry explained this at the meeting. There is stuff that happens on a route like traffic and changed pick-ups. All the drivers understood that we were to show up at set times and finish when we were done with our routes. Nothing mentioned at the meeting was a new policy. It was to remind the drivers of the policies already in place.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed March 12, 2009 at San Leandro, California.



Victor L. Hales

EXHIBIT 10



510 Market Street
San Diego, CA 92101

Telephone (619) 232-4261
Facsimile (619) 232-4840

www.sheastokes.com

Bruno W. Katz
bkatz@sheastokes.com
Direct Dial 619.300.7201

January 9, 2009

VIA E-MAIL AND FACSIMILE

Gary M. Connaughton
Attorney
National Labor Relations Board
Region 32 – Oakland Office
1301 Clay Street, Room 300N
Oakland, CA 94621-5211

Re: Stericycle, Inc. & Teamsters Local 70
Case 32-CA-24230

Dear Mr. Connaughton:

I am writing to provide you with Stericycle, Inc.'s ("Stericycle") statement of position in the above-referenced case.

We initially note that the Union's allegations are exceedingly vague. The Union has attributed a single alleged statement to Mr. Sam Escobar, but has not described where this was made, who supposedly was present or when it even occurred. Accordingly, Stericycle's ability to respond is limited by the Union's failure to provide the information necessary to support an unfair labor practice charge.

Nevertheless, Stericycle denies it has violated the National Labor Relations Act (the NLRA or "Act") in any way. The accusations contained in the charge are false. As described in the enclosed affidavit, Mr. Escobar, the transportation manager at the San Leandro facility, did not threaten Stericycle workers with a reduced wage or with prolonged collective bargaining negotiations should they vote in favor of union representation.

Mr. Escobar has communicated truthful, fact-based information to Stericycle workers. None of this information included or implied a threat of any kind. Mr. Escobar has communicated that despite the Union's campaign material, Local 70 cannot promise any wage or

Gary M. Connaughton
January 9, 2009
Page 2

benefit increases because those items would be subject to collective bargaining negotiation. Further, Mr. Escobar was asked to clarify that a representation election takes place before collective bargaining negotiations. Mr. Escobar said if the employees vote in favor of Local 70, an agreement will be negotiated. Nevertheless, it is unknown how long negotiations will take to be finalized. (See enclosure) All of Mr. Escobar's communications with Stericycle workers were truthful, non-threatening, and in compliance with the National Labor Relations Act. The allegations that form the basis for the ULP are unfounded. As such, the ULP should be dropped immediately.

Please do not hesitate to contact me if you have any further questions.

Very truly yours,

SHEA STOKES ROBERTS & WAGNER


Bruno W. Katz

Attachment

Declaration

Date: January 8, 2009

Time: 9:15 AM

Location: 1366 Doolittle Drive, Ca 94577

I, Sam Escobar, am the Transportation Manager for Stericycle, Inc. at the location above. I have never made any threats to any employee working for me at the above location. The Unfair Labor Practice allegations against me are completely false. At no time did I ever say that if an employee supported the union that their hourly wage would drop to \$16. In fact, I have always answered questions truthfully and honestly when employees ask me something.

What I have been saying is, that the Union can not promise any guaranteed wage increase because that is subject to negotiations. I also have been saying that the election takes place first before negotiations because some employees expressed confusion as to the order. I also have said if the election is a yes vote, both sides must engage in negotiations for an agreement and it is unknown how long negotiations will take to be finalized.

I declare under penalty of perjury, under the laws of the state of California and the United States of America, that the foregoing is true and correct.



Sam Escobar

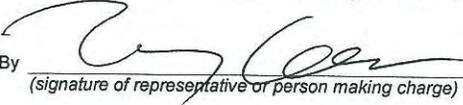
Transportation Manager

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 32-CA-24230	Date Filed 11-19-2008

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Stericycle, Inc.	b. Tel. No. 510/562-1781
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 1366 Doolittle Drive, San Leandro, CA 94577	e. Employer Representative Arch Y. Stokes Shea Stokes Roberts & Wagner 510 Market Street, 3rd Floor San Diego, CA 92101-7025
	g. e-Mail
	h. Number of workers employed 32
i. Type of Establishment (factory, mine, wholesaler, etc.) warehouse	j. Identify principal product or service medical waste
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the last six months, the Employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in section 7 of the Act and discriminated in regard to terms of employment in order to discourage membership in a labor organization.	
COPY SENT NLRB Date <u>11/20/08</u> By <u>E.L.</u>	
RECEIVED NLRB REGION 32 OAKLAND, CA 2008 NOV 19 PM 4:42	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Teamsters Local 70	
4a. Address (Street and number, city, state, and ZIP code) Teamsters Local 70 Pilar Barton 70 Hegenberger Road Oakland, CA 94612-0170	4b. Tel. No. 510/569-9317
	4c. Cell No.
	4d. Fax No. 510/569-1906
	4e. e-Mail ibt70@aol.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Zachary N. Leeds (Print/type name and title or office, if any)
Address 1404 Franklin Street, 5th Floor, Oakland, CA 94612	Tel. No. 510/625-9700
	Office, if any, Cell No. 510/325-3625
	Fax No. 510/625-8275
	e-Mail zleeds@beesontayer.com
	11/19/2008 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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

From: Tsiliacos, Nicholas L. [mailto:Nicholas.Tsiliacos@nrb.gov]
Sent: Monday, March 09, 2009 2:48 PM
To: Peter G. Fischer
Subject: RE: Confirm our Meeting

Peter, I cannot share with you any documents presented as *evidence* by the Union. I suspect you probably already have them, however.

From: Peter G. Fischer [mailto:pfischer@sheastokes.com]
Sent: Monday, March 09, 2009 9:10 AM
To: Tsiliacos, Nicholas L.
Subject: Confirm our Meeting

Nicolas,

Thank you for taking the chance to speak with me a few minutes ago. I look forward to meeting you on Thursday, March 12, 2009 at Stericycle's San Leandro facility at 11:00am to gather information for your on-going investigation. I understand your interest in speaking with Eloy Jimenez and Shaw Ashkenasy. We plan to provide you with complete and accurate testimony to aid your investigation. We may need to schedule a time for you to continue with additional interviews the following week after we have submitted our position statement.

So that the Stericycle employees can fully respond to these matters, I hoped you would send a copy of the documents that form the basis of the ULPs against Stericycle.

Thank you for your assistance.

Peter

PETER G. FISCHER
SHEA STOKES ROBERTS & WAGNER, ALC
404-766-0076
404-766-8823 (fax)

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From: Peter G. Fischer [mailto:pfischer@stokesroberts..com]
Sent: Tuesday, October 06, 2009 12:02 PM
To: Ann Marie Mizel - Verizon
Cc: Anne Marie Mizel
Subject: FW: Stericycle 32-CA-24411

From: Tsiliacos, Nicholas L. [mailto:Nicholas.Tsiliacos@nlrb.gov]
Sent: Wednesday, June 03, 2009 1:40 PM
To: Peter G. Fischer
Subject: RE: Stericycle 32-CA-24411

Peter

I cannot provide the Employer with copies of the Union 's evidence including affidavits. I can only reveal what I told you in the letter giving the date, occasion, and what is alleged to have been said. I can add that the conversation took place in the drivers' room. As to your second request, please see

Tra-Mar Communications, Inc.. 265 NLRB 664 (1982) FN5.

Regency Service Carts, Inc. And Shopmen's Local Union 345 NLRB 671 (2005)

Regency Service Carts, Inc. 325 NLRB 617 (1998)

Sea View Industries, Inc. 127 NLRB 1402 (1960)

M & B Headwear Co., Inc. 146 NLRB 1634 (1964) S & F Enterprises, Inc. 312 NLRB 770 (1993)

Hope this helps

The response is still due June 4, 2009

Nick

From: Peter G. Fischer [mailto:pfischer@sheastokes.com]
Sent: Wednesday, June 03, 2009 8:43 AM
To: Tsiliacos, Nicholas L.
Cc: Arch Y. Stokes
Subject: Stericycle 32-CA-24411

Nick,

Your May 28, 2009, letter requests additional information from Mr. Ginnetti regarding the above referenced ULP and Stericycle's legal position on what you say others have alleged he said.

Please provide the statements and evidence upon which the Union is basing its charge and the NLRB is basing its particular request. This will allow Stericycle the opportunity to fully and competently respond to the accusations levied against it.

Peter

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United States Government

NATIONAL LABOR RELATIONS BOARD
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

Tel: (510) 637-3297
FAX: (510) 637-3315
Sent by fax only

September 17, 2009

Peter G. Fischer, Esq.
Shea Stokes Roberts & Wagner
3593 Hemphill Street
Atlanta, Georgia 30337

Re: Stericycle, Inc.
Case 32-CA-24230
Case 32-CA-24326

Dear Mr. Fischer:

Attached please find a proposed Notice and Settlement Agreement regarding the above cases.

The Employer is given the opportunity to negotiate the language of any notice, and the location of that posting. This letter is soliciting that input. However, this matter must be completed by close of business Friday, September 18, 2009, otherwise complaint will issue. Of course, settlement efforts may continue even after the issuance of a complaint. If you call and I am not available, please speak with my supervisor, Valerie Hardy-Mahoney, at 510.637.3283.

Very truly yours,

Nicholas L. Tsiliacos
Board agent

EXHIBIT 12



3593 Hemphill Street
Atlanta, Georgia 30337

Telephone (404) 766-0076
Facsimile (404) 766-8823

Peter G. Fischer
pfischer@sheastokes.com
Direct Dial

www.sheastokes.com

September 18, 2009

VIA FACSIMILE & EMAIL 510.637.3315

Nicholas Tsiliacos
National Labor Relations Board
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

Re: Response to Settlement Proposal

Dear Mr. Tsiliacos:

As you know, the investigation of the ULPs pending against Stericycle has lasted over nine (9) months. Stericycle fully cooperated with this investigation by submitting more than 6000 pages of documents, twelve (12) affidavits, the deposition of Dan Ginnett and Tom Stalberger, and nine (9) position statements. Despite our consistent cooperation, yesterday evening, your office sent us a settlement document that said the Regional Director intends to issue a complaint on the following items unless we settle by 5:00 pm PDT today:

- a. 32-CA-24320, the Union alleged that Sam Escobar threatened to reduce wages, threatened to drag out negotiations, and interrogated an employee about his Union activities;
- b. 32-CA-24326, the Union alleged that Eloy Jimenez told an employee that he would find out and fire all drivers who voted for the Union;
- c. 32-CA-24326, the Union alleged Sam Escobar told drivers that wage and benefit increases would freeze and annual evaluations would not occur to punish drivers for selecting Union representation;
- d. 32-CA-24326, Stericycle suspended wage and benefit increases following the certification election to punish drivers for selecting Union representation;
- e. 32-CA-24326, the Union alleged that Stericycle changed its practice of allowing employees to arrive at the facility before their scheduled work time to punish drivers for selecting Union representation.

You told us that all other pending ULPs against Stericycle will be dismissed whether we choose to settle these matters or not.

Nicholas Tsiliacos
March 30, 2009
Page 2

Though Stericycle continues to believe that its actions complied with the Act, we are ready, willing, and able to discuss settlement at your convenience. Unfortunately, portions of your current settlement offer ask Stericycle to violate the Federal and California State wage & hour law.

Though we appreciate your offer, in light of the above, and in light of the time you have given us to respond, we must respectfully decline.

Sincerely,

STOKES ROBERTS & WAGNER

A handwritten signature in black ink, appearing to be 'Arch Y. Stokes', written over the printed name.

Arch Y. Stokes
Paul E. Wagner &
Peter G. Fischer

EXHIBIT 13

From: Tsiliacos, Nicholas L. [Nicholas.Tsiliacos@nlrb.gov]
Sent: Monday, September 21, 2009 11:06 AM
To: Peter G. Fischer
Subject: RE: Stericycle Settlement Proposal

Peter,

I did not see it until I came in this morning, but yes I have received it.

Nick

-----Original Message-----

From: Peter G. Fischer [<mailto:pfischer@stokesroberts.com>]
Sent: Monday, September 21, 2009 5:38 AM
To: Tsiliacos, Nicholas L.
Subject: RE: Stericycle Settlement Proposal

Nick,

Did you receive the letter I attached to the e-mail below?

You left a voice mail on my machine two hours after I sent this document that makes me believe that you did not receive it.

Please confirm.

Peter

-----Original Message-----

From: Peter G. Fischer
Sent: Friday, September 18, 2009 6:55 PM
To: 'Tsiliacos, Nicholas L.'
Cc: Arch Y. Stokes; Paul E. Wagner
Subject: Stericycle Settlement Proposal

Mr. Tsiliacos,

The attached letter is self-explanatory.

Peter

Peter G. Fischer
STOKES ROBERTS & WAGNER
Atlanta, GA

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From: Tsiliacos, Nicholas L. [Nicholas.Tsiliacos@nrb.gov]
Sent: Monday, September 21, 2009 12:14 PM
To: Peter G. Fischer
Subject: settlement proposal

Peter:

Do you mean just the term regarding the early reporting to work? Would the Employer settle with the other terms, if that were gone? Let me know, preferably, ASAP. Thanks.

Nick

From: Tsiliacos, Nicholas L. [Nicholas.Tsiliacos@nlrb.gov]
Sent: Monday, September 21, 2009 11:06 AM
To: Peter G. Fischer
Subject: RE: Stericycle Settlement Proposal

Peter,

I did not see it until I came in this morning, but yes I have received it.

Nick

-----Original Message-----

From: Peter G. Fischer [<mailto:pfischer@stokesroberts.com>]
Sent: Monday, September 21, 2009 5:38 AM
To: Tsiliacos, Nicholas L.
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Peter

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From: Peter G. Fischer
Sent: Friday, September 18, 2009 6:55 PM
To: 'Tsiliacos, Nicholas L.'
Cc: Arch Y. Stokes; Paul E. Wagner
Subject: Stericycle Settlement Proposal

Mr. Tsiliacos,

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Peter

Peter G. Fischer
STOKES ROBERTS & WAGNER
Atlanta, GA

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From: Peter G. Fischer
Sent: Tuesday, September 29, 2009 5:00 PM
To: Tsiliacos, Nicholas L.
Cc: Arch Y. Stokes; Paul E. Wagner
Subject: RE: Stericycle Settlement Proposal

Nick,

I left a message on your voice-mail a few minutes ago and attempted to call Ms. Hardy-Mahoney immediately thereafter.

On Sept. 21, you said that the Region "needed" to issue a complaint that evening on specific allegations found in 32-CA-24320 and 32-CA-24326 (Jimenez's "threats," Escobar's "threats," suspended raises, and "changing the show up early" practice) and planned to dismiss all other ULPs pending against Stericycle. In fact, you suspended settlement discussions because of the strict timeline you claimed your office was under.

We have not received any communications from you or the NLRB since September 21.

When can we expect you to issue the complaint?

Peter

-----Original Message-----

From: Tsiliacos, Nicholas L. [<mailto:Nicholas.Tsiliacos@nlrb.gov>]
Sent: Monday, September 21, 2009 11:06 AM
To: Peter G. Fischer
Subject: RE: Stericycle Settlement Proposal

Peter,

I did not see it until I came in this morning, but yes I have received it.

Nick

-----Original Message-----

From: Peter G. Fischer [<mailto:pfischer@stokesroberts.com>]
Sent: Monday, September 21, 2009 5:38 AM
To: Tsiliacos, Nicholas L.
Subject: RE: Stericycle Settlement Proposal

Nick,

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You left a voice mail on my machine two hours after I sent this document that makes me believe that you did not receive it.

Please confirm.

Peter

-----Original Message-----

From: Peter G. Fischer
Sent: Friday, September 18, 2009 6:55 PM
To: 'Tsiliacos, Nicholas L.'
Cc: Arch Y. Stokes; Paul E. Wagner
Subject: Stericycle Settlement Proposal

Mr. Tsiliacos,

The attached letter is self-explanatory.

Peter

Peter G. Fischer
STOKES ROBERTS & WAGNER
Atlanta, GA

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From: Peter G. Fischer
Sent: Monday, September 21, 2009 2:44 PM
To: Tsiliacos, Nicholas L.
Subject: RE: settlement proposal

Nick,

I just tried to give you a call regarding your message below. Please call back when you can for clarification.

Thanks.

Peter

From: Tsiliacos, Nicholas L. [mailto:Nicholas.Tsiliacos@nrb.gov]
Sent: Monday, September 21, 2009 12:14 PM
To: Peter G. Fischer
Subject: settlement proposal

Peter:

Do you mean just the term regarding the early reporting to work? Would the Employer settle with the other terms, if that were gone? Let me know, preferably, ASAP. Thanks.

Nick

From: Peter G. Fischer
Sent: Monday, September 21, 2009 8:38 AM
To: Tsiliacos, Nicholas L.
Subject: RE: Stericycle Settlement Proposal

Nick,

Did you receive the letter I attached to the e-mail below?

You left a voice mail on my machine two hours after I sent this document that makes me believe that you did not receive it.

Please confirm.

Peter

-----Original Message-----

From: Peter G. Fischer
Sent: Friday, September 18, 2009 6:55 PM
To: 'Tsiliacos, Nicholas L.'
Cc: Arch Y. Stokes; Paul E. Wagner
Subject: Stericycle Settlement Proposal

Mr. Tsiliacos,

The attached letter is self-explanatory.

Peter

Peter G. Fischer
STOKES ROBERTS & WAGNER
Atlanta, GA

Felicia Clay

From: Peter G. Fischer
Sent: Friday, September 18, 2009 6:55 PM
To: Tsiliacos, Nicholas L.
Cc: Arch Y. Stokes; Paul E. Wagner
Subject: Stericycle Settlement Proposal
Attachments: DOC001.PDF

Mr. Tsiliacos,

The attached letter is self-explanatory.

Peter

Peter G. Fischer
STOKES ROBERTS & WAGNER
Atlanta, GA

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From: Tsiliacos, Nicholas L. [Nicholas.Tsiliacos@nrb.gov]
Sent: Monday, September 21, 2009 12:14 PM
To: Peter G. Fischer
Subject: settlement proposal

Peter:

Do you mean just the term regarding the early reporting to work? Would the Employer settle with the other terms, if that were gone? Let me know, preferably, ASAP. Thanks.

Nick

ATTORNEY-CLIENT REPRESENTATION AGREEMENT

This **ATTORNEY-CLIENT REPRESENTATION AGREEMENT** (the "Agreement") is the written fee contract that California law requires lawyers to have with their clients. It is between **BEESON, TAYER & BODINE** ("we," "us") and _____ ("you").

1. CONDITIONS

This Agreement will not take effect, and we will have no obligation to provide legal services, until you return a signed copy of this Agreement.

2. SCOPE OF SERVICES

You are hiring us as your attorneys to represent you in the matter of your claims against Stericycle, Inc., arising out of its failure to pay wages and provide meal and rest periods in compliance with federal and state law. We will provide those legal services reasonably required to represent you. We will take reasonable steps to keep you informed of the progress of the matter and to respond to your inquiries. If a court action is filed, we will represent you until a settlement or judgment, by way of arbitration or trial, is reached.

After judgment we will not represent you on any appeal, or in any proceedings designed to execute on the judgment, without such additional compensation as we may agree upon in a separate Agreement.

Unless we make a different Agreement with you in writing, this Agreement will govern all future services we may perform for you.

3. CLIENT'S DUTIES

You agree to be truthful with us, to cooperate, to keep us informed of developments, to abide by this Agreement, to pay our bills for costs (if any) on time, and to keep us informed of your address, telephone number and whereabouts. You agree to appear, if we so request, for all depositions and court appearances and to generally cooperate fully with us in all matters related to the preparation and presentation of your claims.

4. LEGAL FEES, COSTS AND BILLING PRACTICES

We will only be compensated by you for legal services rendered if a recovery is obtained.

The attorney fees to be paid to us will be one third (33 1/3%) of the net recovery, or the amount of our actual accrued attorney fees, whichever is greater. "Net recovery" means the total of all amounts received by settlement, arbitration award or judgment, from which will be subtracted all unpaid costs and disbursements set forth in Paragraph 6.

In the event of our discharge or withdrawal, you agree that, upon payment of the settlement, arbitration award or judgment in your favor in this matter, we shall be entitled to be paid by you a reasonable fee for the legal services provided by us to

you. You acknowledge that our normal and customary hourly rate for legal services is \$350.00.

5. **NEGOTIABILITY OF FEES**

The rates set forth above are not set by law, but are negotiable between an attorney and client.

6. **COSTS AND LITIGATION EXPENSES**

Teamsters Local 70 ("Local 70") has agreed to the payment of all fees, costs, disbursements and litigation expenses.

You agree to reimburse LOCAL 70 for such advanced costs and expenses upon settlement, arbitration award or judgment. These items include, but are not limited to, attorney's fees, court fees, services of process charges, photocopy services, notary fees, computer-assisted legal research, long distance telephone charges, messenger and delivery fees, postage, in-office photocopying, facsimile charges, deposition costs, parking, mileage, investigation expenses, consultants' fees, expert witness fees and other similar items. All costs and expenses will be charged at our costs.

You authorize us to incur all reasonable costs and to hire any investigators, consultants or expert witnesses reasonably necessary in our judgment.

7. **APPROVAL NECESSARY FOR SETTLEMENT**

We will not make any settlement or compromise of any nature of any of your claims without your prior approval. You agree that you will not make any settlement or compromise of any nature of any of your claims without prior notice to us.

8. **LIMITATION OF REPRESENTATION**

We are representing you only on the matter described in Paragraph 2. Our representation does not include independent or related matters that may arise, including, among other things, claims for property damage, workers' compensation, disputes with a health care provider about the amount owed for their service, defense of cross complaints on other matters, or claims for reimbursement (subrogation) by any insurance company for benefits paid under an insurance policy. If such matters arise later, you agree with us that this Agreement does not apply to any such related legal matters, and we will negotiate a separate Agreement if you wish to retain us for that additional legal work.

Unless we agree with each other by a separate Agreement, you will not be liable to compensate us for any such independent or related legal matter which is not specifically covered by this Agreement.

9. **WAIVER OF POTENTIAL CONFLICT.** Client is informed that the Rules of Professional Conduct of the State Bar of California require, before an attorney may concurrently represent two or more clients interested in the same or related subject matter, that the attorney inform the clients in writing of the relevant

papers which you could properly execute, and to receive on your behalf any monies or other things of value to which you may be entitled because of any judgment recovered or any settlement received.

15. **EFFECTIVE DATE**

This Agreement will take effect when you have performed the conditions stated in Paragraph 1, but its effective date will be retroactive to the date we first performed services.

BEESON, TAYER & BODINE

Dated: _____

By: _____
Jason Rabinowitz

I have read and understood the foregoing terms and agree to them, as of the date BEESON, TAYER & BODINE first provided services. By signing this Agreement, I acknowledge receipt of a fully executed duplicate of this Agreement.

Dated: _____

Signature: _____

Name: _____

Address: _____

Telephone: (Home) _____

Telephone (Cell) _____

Email: _____

Social Security Number: _____

EXHIBIT 15

DUANE B. BEESON
NEIL BODINE
ROBERT BONSTALL
GEOFFREY PILLER
CATHERINE E. AROSTEGUI
JOHN C. PROVOST
ANDREW H. BAKER
JASON RABINOWITZ*
SHEILA K. SEXTON
MATTHEW MORBELLO**
DALE L. BRODSKY
TEAGUE P. PATERSON***
COSTA KERESTENZIS
DAVID WEINTRAUB
MARGARET A. GEDDES
SARAH SANDFORD-SMITH****
PETER M. MCENTEE
ZACHARY N. LEEDS***
HOLLY K. HERNDON*****
CHRISTINA Y. MEDINA
DAVID C. COLEMAN

BEESON, TAYER & BODINE

ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
1404 FRANKLIN STREET, FIFTH FLOOR
OAKLAND, CALIFORNIA 94612-3208
(510) 625-9700
FAX (510) 625-8275
WWW.BEESONTAYER.COM



SACRAMENTO OFFICE
520 CAPITOL MALL
SUITE 300
SACRAMENTO, CA 95814-4714
(916) 325-2100
FAX (916) 325-2120

DONALD S. TAYER
(1932-2001)

OF COUNSEL
JOSEPH C. WAXMAN

Sender's Email: jrabinowitz@beesontayer.com

January 7, 2009

*ALSO ADMITTED IN NEVADA AND HAWAII
**ALSO ADMITTED IN PENNSYLVANIA AND WASHINGTON
***ALSO ADMITTED IN NEW YORK
****ALSO ADMITTED IN HAWAII
*****ALSO ADMITTED IN RHODE ISLAND AND MICHIGAN

Vincent D. Burns
REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

I write regarding the wage and hour lawsuit against Stericycle Inc., in which you are a named plaintiff. As you know, this firm is representing the plaintiffs in the lawsuit. You may have seen a document that mistakenly stated that the Teamsters are advancing legal fees in the lawsuit. To the contrary, our law firm is handling the case on a contingency basis and the Teamsters are not paying the legal fees. The firm is handling the case on the same basis that we regularly handle such law suits. As is common in such cases, our intention is that our fees will be paid by the Company as part of a settlement or judgment when and if we prevail in the case on your behalf. Therefore, the Union is conferring no benefit on you or the other drivers through the lawsuit.

Please feel free to call Zachary Leeds or Robert Bonsall of this firm if you have any questions regarding the foregoing.

Very truly yours,

Jason Rabinowitz

JER/bjh

DUANE B. BEESON
NEIL BODINE
ROBERT BONSALE
GEOFFREY PILLER
CATHERINE E. AROSTEGUI
JOHN C. PROVOST
ANDREW H. BAKER
JASON RABINOWITZ*
SHEILA K. SEXTON
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BEESON, TAYER & BODINE

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DONALD S. TAYER
(1932-2001)

OF COUNSEL
JOSEPH C. WAXMAN

Sender's Email: jrabnowitz@beesontayer.com

January 7, 2009

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****ALSO ADMITTED IN HAWAII
*****ALSO ADMITTED IN RHODE ISLAND AND MICHIGAN

Marco Chicas

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

I write regarding the wage and hour lawsuit against Stericycle Inc., in which you are a named plaintiff. As you know, this firm is representing the plaintiffs in the lawsuit. You may have seen a document that mistakenly stated that the Teamsters are advancing legal fees in the lawsuit. To the contrary, our law firm is handling the case on a contingency basis and the Teamsters are not paying the legal fees. The firm is handling the case on the same basis that we regularly handle such law suits. As is common in such cases, our intention is that our fees will be paid by the Company as part of a settlement or judgment when and if we prevail in the case on your behalf. Therefore, the Union is conferring no benefit on you or the other drivers through the lawsuit.

Please feel free to call Zachary Leeds or Robert Bonsall of this firm if you have any questions regarding the foregoing.

Very truly yours,

Jason Rabinowitz

JER/bjh

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COSTA KERESTENZIS
DAVID WEINTRAUB
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SARAH SANDFORD-SMITH****
PETER M. MCENTEE
ZACHARY N. LEEDS***
HOLLY K. HERNDON*****
CHRISTINA Y. MEDINA
DAVID C. COLEMAN

BEESON, TAYER & BODINE

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A PROFESSIONAL CORPORATION

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OF COUNSEL
JOSEPH C. WAXMAN

Sender's Email: jrabinowitz@beesontayer.com

January 7, 2009

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Javier Elias

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

I write regarding the wage and hour lawsuit against Stericycle Inc., in which you are a named plaintiff. As you know, this firm is representing the plaintiffs in the lawsuit. You may have seen a document that mistakenly stated that the Teamsters are advancing legal fees in the lawsuit. To the contrary, our law firm is handling the case on a contingency basis and the Teamsters are not paying the legal fees. The firm is handling the case on the same basis that we regularly handle such law suits. As is common in such cases, our intention is that our fees will be paid by the Company as part of a settlement or judgment when and if we prevail in the case on your behalf. Therefore, the Union is conferring no benefit on you or the other drivers through the lawsuit.

Please feel free to call Zachary Leeds or Robert Bonsall of this firm if you have any questions regarding the foregoing.

Very truly yours,

Jason Rabinowitz

JER/bjh

DUANE B. BEESON
NEIL BODINE
ROBERT BONSALE
GEOFFREY PILLER
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(1932-2001)

—
OF COUNSEL
JOSEPH C. WAXMAN

Sender's Email: jrabinowitz@beesontayer.com

January 7, 2009

*ALSO ADMITTED IN NEVADA AND HAWAII
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****ALSO ADMITTED IN HAWAII
*****ALSO ADMITTED IN RHODE ISLAND AND MICHIGAN

Juan Espana

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

I write regarding the wage and hour lawsuit against Stericycle Inc., in which you are a named plaintiff. As you know, this firm is representing the plaintiffs in the lawsuit. You may have seen a document that mistakenly stated that the Teamsters are advancing legal fees in the lawsuit. To the contrary, our law firm is handling the case on a contingency basis and the Teamsters are not paying the legal fees. The firm is handling the case on the same basis that we regularly handle such law suits. As is common in such cases, our intention is that our fees will be paid by the Company as part of a settlement or judgment when and if we prevail in the case on your behalf. Therefore, the Union is conferring no benefit on you or the other drivers through the lawsuit.

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Very truly yours,

Jason Rabinowitz

JER/bjh

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Miguel A. Garcia

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

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Santos Gonzalez

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

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Benjamin Hernandez

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

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Jason Rabinowitz

JER/bjh

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Victor Hernandez

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

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Jason Rabinowitz

JER/bjh

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Joel Lomeli

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

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JER/bjh

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Agustin Lopez

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

I write regarding the wage and hour lawsuit against Stericycle Inc., in which you are a named plaintiff. As you know, this firm is representing the plaintiffs in the lawsuit. You may have seen a document that mistakenly stated that the Teamsters are advancing legal fees in the lawsuit. To the contrary, our law firm is handling the case on a contingency basis and the Teamsters are not paying the legal fees. The firm is handling the case on the same basis that we regularly handle such law suits. As is common in such cases, our intention is that our fees will be paid by the Company as part of a settlement or judgment when and if we prevail in the case on your behalf. Therefore, the Union is conferring no benefit on you or the other drivers through the lawsuit.

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Very truly yours,

Jason Rabinowitz

JER/bjh

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Joel Ochoa
REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

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Jason Rabinowitz

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William Rivera

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

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Jason Rabinowitz

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Gustavo Rodriguez

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

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Julio Siguenza

REDACTED

Re: *Stericycle, Inc., USDC Northern District Case No. 3:08-CV-05219 EMC*

Dear Plaintiff:

I write regarding the wage and hour lawsuit against Stericycle Inc., in which you are a named plaintiff. As you know, this firm is representing the plaintiffs in the lawsuit. You may have seen a document that mistakenly stated that the Teamsters are advancing legal fees in the lawsuit. To the contrary, our law firm is handling the case on a contingency basis and the Teamsters are not paying the legal fees. The firm is handling the case on the same basis that we regularly handle such law suits. As is common in such cases, our intention is that our fees will be paid by the Company as part of a settlement or judgment when and if we prevail in the case on your behalf. Therefore, the Union is conferring no benefit on you or the other drivers through the lawsuit.

Please feel free to call Zachary Leeds or Robert Bonsall of this firm if you have any questions regarding the foregoing.

Very truly yours,

Jason Rabinowitz

JER/bjh

DUANE B. BEESON
NEIL BODINE
ROBERT BONSAI
GEOFFREY PILLER
CATHERINE E. AROSTEGUI
JOHN C. PROVOST
ANDREW H. BAKER
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SHEILA K. SEXTON
MATTHEW MORBELLO**
DALE L. BRODSKY
TEAGUE P. PATERSON***
COSTA KERESTENZIS
DAVID WEINTRAUB
MARGARET A. GEDDES
SARAH SANDFORD-SMITH****
PETER M. McENTEE
ZACHARY N. LEEDS***
HOLLY K. HERNDON*****
CHRISTINA Y. MEDINA
DAVID C. COLEMAN

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JOSEPH C. WAXMAN

Sender's Email: jrabinowitz@beesontayer.com

January 7, 2009

*ALSO ADMITTED IN NEVADA AND HAWAII
**ALSO ADMITTED IN PENNSYLVANIA AND WASHINGTON
***ALSO ADMITTED IN NEW YORK
****ALSO ADMITTED IN HAWAII
*****ALSO ADMITTED IN RHODE ISLAND AND MICHIGAN

Juan Vasquez

REDACTED

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Selvin Zecena

REDACTED

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Dear Plaintiff:

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Jason Rabinowitz

JER/bjh

EXHIBIT 16



Peter G. Fischer
pfischer@sheastokes.com
Direct Dial (404) 766-9674
Direct Fax (404) 766-8823

July 2, 2009

Richard A. Siegel
Associate General Counsel
Division-Operations Management
National Labor Relations Board
1099 14th Street NW
Washington, DC 20570

***Re: Allegation of Attorney Misconduct (In re Stericycle Inc. & IBT,
Local 70)***

Dear Mr. Siegel:

This letter is to alert you to the misconduct of Jason Rabinowitz, Esq., attorney for the International Brotherhood of the Teamsters, Local 70 in his dealings before the Board in the following matters: 32-RC-5603, 32-CA-24326, 32-CA-24351, 32-CA-2424356, 32-CA-24411, 32-CA-24479, 32-CA-24600, 32-CB-6575, 32-CB-6612, 32-CB-6640, & 32-CB-6732. Specifically, Mr. Rabinowitz has engineered dramatic violations of conflict-of-interest rules, ignored ethical obligations to his clients, and unlawfully used the promise of a federal lawsuit – for which Local 70 paid the bill – as an enticement to vote in favor of the Union. In the meantime, he authorized Local 70 to barter away his clients' lawsuit in exchange for a recognition agreement, *all behind his own clients' backs*. Finally, he revealed confidential attorney-client documents without ever seeking or obtaining authority from his clients to do so. As discussed in more detail below, his conduct violates the ethical code of the Board and the professional standards for the State of California.

Facts

In or around October 2008, a union organizer for the International Brotherhood of the Teamsters, Local 70 [hereinafter Local 70 or the Union], Ms. Pilar Barton, organized a meeting of Stericycle drivers at Local 70's headquarters.

Atlanta

Ithaca

Los Angeles

Pittsburgh

San Diego

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Richard A. Siegel

July 2, 2009

Page 2

Jason Rabinowitz, Esq.¹ of Beeson, Tayer & Bodine, Local 70's attorney, was also at this meeting. At this meeting, Ms. Barton encouraged Stericycle drivers to file a federal class action wage & hour lawsuit against Stericycle. Stericycle drivers were told that this lawsuit could create "leverage" in future collective bargaining negotiations. (Hearing Transcript pgs. 105-106, and 110-112). Local 70 then distributed an "Attorney Client Representation Agreement" to the assembled Stericycle drivers. Stericycle drivers who signed this agreement consented to hire Mr. Rabinowitz and his firm to file and represent them in a federal class-action wage & hour lawsuit against Stericycle. (See Attachment 1).

The Attorney-Client Representation Agreement explicitly states: "*Teamsters Local 70 ("Local 70") has agreed to the payment of all fees, costs, disbursements and litigation expenses.*" Mr. Rabinowitz informed the Stericycle drivers that Local 70 was paying all of the fees, costs, disbursements, and litigation expenses associated with the lawsuit. (Hearing Transcript pgs. 91-92). Based upon Local 70's overt sponsorship of the lawsuit, some of the drivers believed that by joining the lawsuit they would be joining Local 70 and subsequently have the chance to recover more than \$10,000 each in litigation proceeds. (Hearing Transcripts pgs. 129-130, 152, 159, and 171). Stericycle drivers were instructed to return signed attorney-client representation agreements to either Ms. Barton or Local 70's lawyers.

Soon thereafter, Mr. Rabinowitz filed two separate legal actions on behalf of two distinct clients. On November 14, 2008, Local 70 filed a petition with Region 32 of the NLRB for "all route drivers" at the San Leandro facility to vote on whether they wanted to be represented by Local 70. (See 32-RC-5603). Mr. Jason Rabinowitz's firm (Beeson, Tayer & Bodine) is listed as Local 70's attorneys. On November 19, 2008, Mr. Rabinowitz, on behalf of sixteen (16) drivers, filed a class action wage & hour lawsuit against Stericycle in the United States District Court for the Northern District of California. (See Attachment 2). Local 70 was not a named plaintiff in the lawsuit. Mr. Rabinowitz was now the attorney for Local 70 in their matters before the NLRB and separately for a group of drivers bringing suit against Stericycle for alleged violations of the federal wage & hour law.

¹ Jason Rabinowitz and Pilar Barton were married to each other, but divorced in late 2008.

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July 2, 2009

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On December 22, 2008, Bob Aiello and Ms. Barton, both of Local 70, unexpectedly arrived at Stericycle's San Leandro facility. The two walked into a room where Tom Stalberger (Stericycle District Manager for California), Terry Hales (Stericycle Transportation Supervisor), Bobby Tauala (Stericycle Transportation Supervisor), Eloy Jimenez (Stericycle California District Transportation Manager), Sam Escobar (San Leandro Transportation Manager), and Bruno Katz (counsel for Stericycle), were meeting. Mr. Aiello and Ms. Barton announced that they had just met with Mr. Rabinowitz and now had the authority to offer Stericycle a "bailout" that would drop the drivers' federal class-action wage and hour lawsuit in exchange for: (1) a statewide neutrality agreement with Local 70, (2) immediate collective bargaining negotiations, and (3) withdrawal of all objections to Local 70's petition. Stericycle only later learned that Mr. Aiello, Ms. Barton, and Mr. Rabinowitz did not have permission from the sixteen (16) named plaintiffs to propose a settlement offer of any kind to Stericycle. In fact, *neither Mr. Rabinowitz, nor anyone at his firm, had ever spoken with any of the drivers about settling their lawsuit.* (Hearing Transcript pgs. 61-62, and 87-88).

Stericycle rejected the Union's offer and filed unfair labor practice charges ("ULP") objecting to this unethical settlement proposal (32-CB-6575 & 32-CB-6732). On January 7, 2009, only five business days after Stericycle filed its first ULP, Mr. Rabinowitz sent letters to the sixteen (16) named plaintiffs in an attempt to disown portions of the Attorney-Client Representation Agreement and re-define the fee relationship. (See Attachment 3). Though Mr. Rabinowitz produced and discussed the terms of the attorney-client representation agreement with Stericycle drivers in October 2008, Mr. Rabinowitz now claimed the agreement "mistakenly" indicated that the attorneys' fees that would be paid by Local 70. However, despite Mr. Rabinowitz's disclaimers, none of the drivers had spent a single penny on their legal representation in their federal wage & hour lawsuit (Hearing Transcript pgs. 101, 163, and 213).

On January 16, 2009, a representation election was held at the Stericycle facility in San Leandro that resulted in twenty three (23) votes in favor of Local 70 twelve (12) in opposition. However, it was not until after this election that Local 70's attorneys and Ms. Barton presented the sixteen (16) named plaintiffs with the

Richard A. Siegel

July 2, 2009

Page 4

opt-in agreements required for the federal lawsuit. Local 70's attorneys and Ms. Barton also presented the sixteen (16) named plaintiffs with a revised attorney-client representation agreement which supposedly removed Local 70's responsibility for the fees, costs, disbursements, and expenses of the federal lawsuit. Again, despite these changes, none of the drivers had spent a single penny on their legal representation in their federal wage & hour lawsuit and, to my knowledge, none have done so to this day.

Stericycle filed timely objections to the election. On March 3, 2009, the Regional Director ordered a hearing on Stericycle's objection that the Union's free legal services as part of this class action wage & hour lawsuit were a prohibited pre-election benefit. The hearing was held on March 16, 2009, at Region 32's Headquarters in Oakland, California. During that hearing, Mr. Rabinowitz voluntarily offered the drivers' January 7th, fee-arrangement letters as exhibits for the hearing without the prior permission or knowledge of his clients. Mr. Rabinowitz did not ask the presiding Administrative Law Judge for any form of protective order or seal to guard the confidentiality of the documents. Every plaintiff-driver present at the March 16, 2009, hearing agreed that they had received the fee letters from Mr. Rabinowitz, *but that they had never given him the authority to disclose the January 7, 2009, fee arrangement letters.* (Hearing Transcript pgs. 138-139, 202-203, and 211). None of them gave Mr. Rabinowitz any sort of permission to introduce this material into the public record as an exhibit at an NLRB hearing.

Misconduct

Mr. Rabinowitz's conduct raises several concerns under the California Rules of Professional Conduct that govern his professional and ethical responsibilities before the NLRB in this matter. These concerns warrant an investigation and subsequent disciplinary action.

1. Rules 3-300 and 3-310: Conflicts of Interest

California has established rules over both potential conflicts of interest and actual conflicts of interest. Depending on the severity of the conflict, either written disclosure or informed written consent is required. *See* Cal. R. Prof. Conduct 3-300 and 3-310.

Generally, an attorney cannot obtain interests adverse to a client. "A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to the client." Cal. R. Prof. Conduct 3-300. Though there are exceptions to this rule, any such exception requires a client's written informed consent. *Id.*

Further, California Rule of Professional Conduct 3-310 prohibits an attorney from representing or continuing to represent a client where:

...

(3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or

(4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

Cal. R. Prof. Conduct 3-310(B).

An exception to this rule may exist if the attorney provides written disclosure to the client before accepting representation - or continuing representation - of the client whose interests may be in conflict. Cal. R. Prof. Conduct 3-310(A)(1). Additionally, when a potential or actual conflict of interest arises, the attorney must take one step further and obtain the "informed written consent" from each client that he or she represents. Cal. R. Prof. Conduct 3-310(C). A conflict of interest arises when the "attorney is in a position to acquire confidential information from a non-client which may be useful in the attorney's representation of a client, and when an attorney puts himself in a position, without

Richard A. Siegel

July 2, 2009

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client consent, where he may be required to choose between or reconcile his interests with a client's conflicting interests." *Tri-Growth Centre City, Ltd. v. Silldorf, Burdman, Duignan & Eisenberg, et al.*, 216 Cal. App. 3d 1139, 1151 (1989).

Here, the Union and the plaintiffs in the federal suit have conflicting interests. The Union's goal is to strongarm Stericycle and/or its employees into union representation. The goal of the plaintiffs in the federal lawsuit is, according to their Complaint, to obtain allegedly owed back wages from Stericycle. There was a potential conflict of interest from the time the Union attorney decided to represent the plaintiffs, as the fees to fund this lawsuit were to be paid by the Union. At the very least, Mr. Rabinowitz should have made a written disclosure to the plaintiffs of this potential conflict of interest and also obtained the written informed consent of both the Union and the plaintiffs. This did not happen.

An actual conflict of interest arose when the Union attempted to settle the plaintiffs' suit with Mr. Rabinowitz' permission, but without the plaintiffs' permission. At a minimum, since the Union made the offer to Stericycle, the Union attorney has been on notice that the potential conflict has turned into an actual one. This actual conflict between the two clients' interests necessitated that the Union attorney obtain a second written informed consent from both its clients. No such consent was obtained.

In any event, this actual conflict cannot be waived by informed written consent. Based on the Union's offer, and the Union attorney's noticeable failure to deny that such an offer was made by the Union, it appears that the Union attorney's duty to the plaintiffs in the federal litigation has been compromised such that not even informed written consent could remedy this breach. When the interests of Mr. Rabinowitz' two clients came into conflict, the Union's interests were treated with priority and the individual drivers were left uninformed and potentially harmed.

2. Rule 1-600: Legal Service Programs

California Rule of Professional Conduct 1-600 prohibits an attorney from participating in a organization that furnishes, recommends, or pays for legal services, which allows any third person or organization (1) to interfere with the attorney's independence of professional judgment, (2) to interfere with the client-lawyer relationship, or (3) to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules. Cal. R. Prof. Conduct 1-600(A).

California State Law specifically prohibits the kind of union co-profit legal referral services found between Local 70 and Mr. Rabinowitz. *Hildebrand v. State Bar of Cal.* 36 Cal. 2d 504 (1950) [hereinafter *Hildebrand*]. In *Hildebrand*, the California Supreme Court found that the predecessor to Rule 1-600 had been violated when a set of attorneys and a union created a joint venture whereby the Union recommended the attorneys' services to its members, the Union received part of the profits from its referrals to the attorneys, the Union's goal was to profit from an increased membership, and the firm gained business through the Union's recommendations. *Id.* Mr. Rabinowitz's relationship with Local 70 in this case is clearly prohibited by law.

The facts in *Hildebrand* are instructive. The California Supreme Court found fault with the amount of pressure the Union exercised on its members to retain these attorneys. The Union recommended the attorneys to its members through its publications, circulars, and personal visits. *Id.* at 509. The Union members were not compelled to hire the attorneys, but the court thought it improper that the members were "subject to continuous and strong recommendation from the Brotherhood to do so." *Id.* The court also found fault with the attorneys' connection to the union, where the union's offering of the attorneys' services could "reasonably constitute an inducing cause of attracting membership into the Brotherhood and the payment of dues thereto." *Id.* at 510. In sum, the Court found a "common course of action arranged with the Brotherhood" and "participation in the basic plan of the Brotherhood as a general scheme for the solicitation of professional employment among members of the Brotherhood", violated the predecessor to Rule 1-600. *Id.* at 510 and 514. Here, Mr. Rabinowitz

could be implicated in a violation of this rule as well, given that there is strong evidence of a similar sort of collective scheme.

Further, Mr. Rabinowitz compromised his "independence of professional judgment" and "client-lawyer relationship" with the plaintiffs in the federal litigation. The Union's December 22nd offer to Stericycle management to settle the federal litigation is indicative of such an interference given that the Union would have no authority to settle a case on behalf of individuals it does not represent. The Union representatives were adamant that they "had the means" to make such a settlement happen, indicating that the Union was the decision-maker in the federal case, and not the plaintiffs.

Also, as set forth in the Agreement, Mr. Rabinowitz has a financial arrangement with the Union whereby the Union would indirectly receive a portion of whatever the plaintiffs would recover should they be successful in their federal case. Such an arrangement directly violates the prohibition codified in Rule 1-600.

3. Rule 1-320: Financial Arrangements with Non-Lawyers

California Rule of Professional Conduct 1-320 states that "[n]either a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer." Cal. R. Prof. Conduct 1-320(A). Additionally, "[a] member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law." Cal. R. Prof. Conduct 1-310.

Furthermore, a member of the California State Bar "shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member's law firm by a client." Cal. R. Prof. Conduct 1-320(B). "A member's offering of or giving a gift or gratuity to any person or entity having made a recommendation resulting in the employment of the member or the member's law firm shall not of itself violate this rule, provided that the gift or gratuity was not offered or given in consideration of any promise, agreement, or understanding that such a gift or gratuity would be forthcoming or that referrals would be made or encouraged in the future." Cal. R. Prof. Conduct 1-320(B).

Here, the Attorney-Client Agreement between the plaintiffs and Mr. Rabinowitz includes a financial arrangement that is prohibited under the rules. *See* Cal. State Bar Formal Opinion No. 1997-148. Specifically, the financial arrangement set forth under the Attorney-Client Agreement is one in which the Union will indirectly receive a portion of whatever recovery is had by the plaintiffs. If the driver-plaintiffs recover any monetary amount, the fees they pay to the Union attorney may be 33 $\frac{1}{3}$ % of this recovery. Out of this amount, the plaintiffs are also obligated to reimburse the Union for their advancement of this fee. Such an arrangement for the payment of fees – even if indirect – is improper, as the recovery still flows from the plaintiffs to the Union attorney and the Union. Courts disapprove of such "subterfuges to attempt to get away from the inhibition" codified in Rule 1-320. *See e.g., Cain v. Burns*, 131 Cal. App. 2d 439, 442 (1955) (decided under predecessor to Rule 1-320). "[A] mere change in payment arrangements cannot provide a subterfuge to avoid ethical rules that otherwise apply." Cal. State Bar Formal Op. No. 1997-148, ft. 14.

4. Rule 3-310(F): Payment of Fees by a Non-Client

Rule 3-310 governs the payment of a client's fees by a non-client. Generally, "[a] member shall not accept compensation for representing a client from one other than the client." Cal. R. Prof. Conduct 3-310(F). However, California does not consider all situations where third party pays the fees of a client as unlawful, provided that the correct steps are taken to disclose and receive consent for this conflict of interest. *Id.*

"The general purpose of this restriction is to ensure that no one other than the client has influence or control that would in any way impair the attorney's loyalty to the client." Los Angeles County Bar Association, Formal Op. 510 (2003). The attorney still has to preserve the client's confidentiality, as the "issues respecting interference with either the independent exercise of professional judgment or the attorney-client relationship are the same as with Rule 1-600." (Los Angeles County Bar Association, Formal Op. 500 (1999)). In a case with substantially similar facts to the one at hand, the court found that conflict waiver forms that acknowledged that the union would pay the plaintiff's attorney fees was

sufficient to interfere in the attorney-client relationship. *Sharp, et al. v. Next Entertainment, et al.*, 163 Cal. App. 4th 410, 431 (2008).

Here, although the Union is paying for the fees of the plaintiffs in the federal litigation, (which is proper if it were disclosed and the plaintiffs' informed written consent is obtained) evidence has already come to light that Mr. Rabinowitz's loyalty to his clients has been compromised. Mr. Rabinowitz has already breached his duty of confidentiality to his clients which is mandated under California Business and Professions Code §6068(e)(1). Therefore, no informed written consent can remedy the situation at hand. Had Mr. Rabinowitz exercised loyalty and upheld his duty to the plaintiffs in the federal litigation, the Union would have never made its December 22, 2008 offer, or disclosed privileged communications for the purposes of representing the Union's interests.

5. Rule 3-100: Confidential Information of a Client

One of the most well-known maxims of legal professional ethics is the commitment to keep all communications between an attorney and his clients confidential except under extreme and rare circumstances that might result in criminal conduct, death, or substantial bodily harm. In California, absent such extreme circumstances, an attorney may reveal the substance of his communications with his client only with the client's informed consent. Cal. R. Prof. Conduct 3-100(A).

In this case, Mr. Rabinowitz voluntarily offered sixteen (16) letters he wrote to his driver clients regarding their fee relationship, without even mentioning it to his clients, as exhibits in a public hearing. Those letters were accepted as evidence by the Administrative Law Judge. The letters were offered to further his representation of Teamsters, Local 70, not the clients to whom he was directing the letters and to whom he owed a duty of confidential communication in regards to their pending federal litigation before the United States District Court for the Northern District of California. The result was Mr. Rabinowitz's egregious and repeated breach of his professional relationship with the Stericycle drivers he claimed to represent.

Richard A. Siegel

July 2, 2009

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Conclusion

The workers' interests are being trampled by Mr. Rabinowitz. In particular, Mr. Rabinowitz's commitment to represent Local 70 at the expense of his other clients raises significant questions under the California Code of Professional Responsibility. Mr. Rabinowitz cannot have the best interests of both the drivers and Local 70 at heart if he allowed Local 70 to offer to drop the drivers' lawsuit to support the interests of the Union, without the drivers playing any part in that decision. Mr. Rabinowitz continued to abuse his professional relationship with the drivers when he willingly divulged the driver's attorney-client communications without permission to better support his arguments on behalf of Local 70. Mr. Rabinowitz has perpetuated a significant conflict of interest in representing both the Union and the drivers, to the great detriment of the drivers.

The Board should undertake an investigation into Mr. Rabinowitz's representation of both the Union and the members of the bargaining unit in a separate federal lawsuit that Mr. Rabinowitz has inextricably intertwined with the RC election and the Union's relations with Stericycle.

Please do not hesitate to contact me if you require additional information in support of this charge.

Sincerely,

Peter G. Fischer

PGF/fmc
Enclosures

cc: Region 32 Regional Director



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

September 30, 2009

Mr. Peter G. Fischer, Attorney at Law
Shea, Stokes, Roberts & Wagner
3593 Hemphill Street
Atlanta, Georgia 30337

Re: Misconduct Allegations Involving
Jason Rabinowitz, Esq.

Dear Mr. Fischer:

This is in response to your letter dated July 2, 2009, submitting allegations of misconduct against Jason Rabinowitz in connection with his representation of clients who work as drivers for Stericycle Inc.

Initially, although your letter is dated July 2, 2009, it was only delivered to me on September 10, 2009. And although your letter references attachments, there were no attachments to the letter I received. I have no knowledge about why there was a delay in delivering the letter to me or why the attachments were missing. I regret if this has caused any inconvenience for you.

Your letter raises a number of allegations of misconduct on the part of Mr. Rabinowitz. Most of these involve variations of conflict of interest issues with respect to his representation of the 16 drivers in connection with a class action suit filed on their behalf involving a wage and hour claim. Specifically you allege:

- 1) Mr. Rabinowitz violated California Rules 3-300 and 3-310 by representing the 16 drivers in the wage and hour suit while still retaining a representation with the Union because of the conflicting interests of the groups in the federal suit. According to your submission, an actual conflict of interest arose when the Union attempted to settle the plaintiffs' suit with the permission of Mr. Rabinowitz but without having obtained the permission of the plaintiffs.
- 2) Mr. Rabinowitz violated California Rule 1-600 because the representation agreement he negotiated with the 16 drivers for the federal suit provided for Teamsters Local 70 to pay certain costs of the suit, and because the Teamsters subsequent offer to settle the suit demonstrated that the representation arrangement allowed the Union to interfere with independence of professional judgment that Mr. Rabinowitz owed to the drivers and allowed the Union to interfere with the client-lawyer relationship.

- 3) Mr. Rabinowitz violated California Rule 1-320 because the financial arrangement he entered into with the drivers provides that a portion of any recovery received in the case would go to the Union to reimburse it for the advancement of fees it may have provided.
- 4) Mr. Rabinowitz violated California Rule 3-310(F) because the actions of the Union in offering to settle the federal suit, and by other alleged conduct by Mr. Rabinowitz, demonstrate that Mr. Rabinowitz did not uphold his duty of loyalty to the plaintiffs in the federal lawsuit.
- 5) Mr. Rabinowitz violated California Rule 3-100 by breaching the attorney-client privilege through his introduction in a Board proceeding of the 16 letters he wrote to his driver clients regarding their fee relationship. According to your submission, Mr. Rabinowitz took this action without having obtained their prior consent.

In my position as Associate General Counsel in the Division of Operations-Management, I act as the Investigating Officer of misconduct allegations filed pursuant to Section 102.177 of the Board's Rules and Regulations. Since you directed your allegations to me, I gather you are aware of my responsibility in administering Section 102.177. The Agency is very concerned about incidents of misconduct that occur during the course of Board proceedings. Indeed, Section 102.177 authorizes the Board to administer discipline, which could include disbarment from practicing before the Board, for misconduct of an aggravated character.

While the Board has a strong concern about misconduct that occurs during the processing of cases before the Agency, not every instance of misconduct that may have some relationship to a pending Board proceeding warrants action by the Agency. The Board's misconduct rules are designed to address misconduct that occurs in the processing of a Board case. But if misconduct occurs in a case pending in another forum, even if that other case bears some relationship to the pending Board case, the Board's misconduct rules generally would not apply to that situation.

Turning to the allegations you have submitted against Mr. Rabinowitz, the fifth allegation, involving his introduction of the letters involving fee arrangements occurred in the context of a Board case. Therefore, that allegation will be docketed and processed in accordance with the provisions of Section 102.177. However, with respect to the other allegations, they involve Mr. Rabinowitz's obligations to his clients, the 16 drivers, in the federal court litigation. While there was some relationship between conduct involved in those allegations and the organizing effort of the Union that led to the filing of the petition, nonetheless, the alleged misconduct and the applicable rule violations are tangential to the Board proceeding, and directly involve the federal court action. Accordingly, those allegations are not appropriately pursued through the Board's

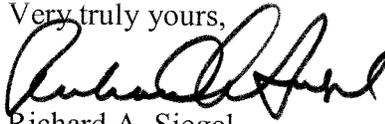
Mr. Peter G. Fischer, Attorney at Law
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misconduct procedures, Section 102.177. While it is your decision about whether to bring these matters to the attention of another forum, it appears that the appropriate authority to address these issues is the California Bar.

It is my intention to proceed with the docketing of your misconduct charge against Mr. Rabinowitz and to assign an agent to assist me in the investigation of the allegation. But consistent with the terms of this letter, the investigation will be limited to the issue of whether Mr. Rabinowitz violated his attorney-client privilege obligation by the introduction of the letters discussing his fee arrangement. If you do not desire to proceed with the investigation on this limited allegation, please notify me as soon as possible.

Again, I regret the delay that occurred in the delivery of your letter to me. I anticipate the agent assigned to assist me in the investigation will be contacting you soon to discuss the evidence that you believe should be considered with regard to the remaining misconduct allegation filed against Mr. Rabinowitz.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard A. Siegel". The signature is fluid and cursive, with a large initial "R" and "S".

Richard A. Siegel
Associate General Counsel
Division of Operations-Management