

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Ralphs Grocery Company

and

Case Nos. 31-CA-27160
31-CA-27475
31-CA-27685

United Food and Commercial Workers
Union, Local No. 135,

United Food and Commercial Workers
Union, Local No. 324,

United Food and Commercial Workers
Union, Local No. 770,

United Food and Commercial Workers
Union, Local No. 1036,

United Food and Commercial Workers
Union, Local No. 1167,

United Food and Commercial Workers
Union, Local No. 1428, and

United Food and Commercial Workers
Union, Local No. 1442

CHARGING PARTIES' BRIEF IN SUPPORT OF
THE HONORABLE WILLIAM G. KOCOL'S DECISION
-AND-
IN OPPOSITION TO RESPONDENT'S EXCEPTIONS

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I. INTRODUCTION

This case involves a seven-year dispute between Ralphs Grocery Company and United Food and Commercial Workers Local Unions in Southern California over Ralphs' persistent refusal to comply with the Unions' requests for information. The requests related to the Company's unlawful rehiring of locked out employees under false names, false Social Security numbers, false W-4s and false I-9 forms from October 12, 2003 through February 26, 2004.

In the Unions' efforts to represent its members who were subject to illegal treatment by Ralphs for observing the lockout, they requested documents including those generated from Ralphs' internal investigation and audit of the illegal conduct. Ralphs refused. The Company then proceeded to engage in procedural battles throughout the Board proceedings, including delaying compliance with (1) the Act, (2) orders by the Board, and even (3) orders by the Ninth Circuit Court of Appeals. Ralphs attempts to do this once again.

Through its exceptions, the Company presents a distorted reality of the facts of the case and applicable case law to further delay the disclosure of documents it *still* claims to be "privileged" – documents it has disclosed to the U.S. Attorney's Office, and documents which the USAO has since *disclosed to other parties*. But Ralphs is still fighting tooth and nail to keep evidence of both facts out. It cannot be permitted to continue such antics. Ralphs must take responsibility for its unlawful actions through compliance with the Act and disclosure of the requested documents.

II. STATEMENT OF FACTS

A. Background – Ralphs’ Unlawful Acts

On October 12, 2003, Ralphs locked out over 19,000 employees from about 325 of its stores pending negotiations with the Unions for a new collective bargaining agreement. During this time, Ralphs rehired *more than 1,000 bargaining unit employees* under false names, false Social Security numbers, false W-4s and false I-9 forms. This triggered a two-year investigation by the U.S. Attorney’s Office (hereinafter “USAO”) starting in January 2004.

In response to the USAO investigation, in 2004, Ralphs requested that its attorneys conduct an internal investigation and audit of its lockout hiring activities. This internal investigation generated hundreds of witness statements and other documents related to Ralphs’ conduct during the lockout.

During this period, Charging Parties requested documents from Ralphs, including the documents related to its internal investigation and audit. Ralphs refused. Charging Parties continued to request these same documents through October 2005, but Ralphs persistently refused to produce *anything*.

B. The Plea Agreement

On December 15, 2005, a federal grand jury indicted Ralphs for numerous felony counts related to the rehiring of employees under false names, false I-9 forms, false W-4s and false Social Security numbers. Then on June 30, 2006, to mitigate the serious felonies with which Ralphs had been charged, Ralphs entered into a Plea Agreement with the USAO. The Plea Agreement required that among other things, Ralphs produce all documents related to its internal investigation and audit. Specifically, it stated:

82. As part of its voluntary production under subparagraph 81(k)(i) above, RALPHS will produce to the USAO all documents, other tangible

evidence, and information *created, prepared, obtained, or discovered during, in connection with, or as a result of any and all investigations conducted by or on behalf of RALPHS, Kroger, or any other Kroger subsidiary or affiliate* into any of the hiring practices, events, acts, policies, practices, courses of conduct, statements, omissions, falsifications, concealment, or cover-ups set forth in subparagraph 81(k)(i)(d) above.

(emphasis added) *Plea Agreement for Defendant Ralphs Grocery Company at 12, 52, U.S. v. Ralphs Grocery Company, No. CR 05-1210-PA (C.D. Cal. June 30, 2006).*

The Plea Agreement also specified that Ralphs will produce “all interview reports, interview summaries, interview memoranda, and notes of interviews conducted by any private investigation firm or by any law firm during, in connection with, or as a result of any and all such investigations,” including any documents or tangible evidence previously withheld from the USAO on the grounds of a claim of attorney-client privilege or work product protection. *Plea Agreement for Defendant Ralphs Grocery Company at 12, 52, U.S. v. Ralphs Grocery Company, No. CR 05-1210-PA (C.D. Cal. June 30, 2006), p. 42, ¶ 82(a)-(b).*

Ralphs also entered into a Limited Waiver of Attorney-Client Privilege and Protections of Attorney Work Product Doctrine (hereinafter “Limited Waiver”) *as part of the Plea Agreement*. Under the Limited Waiver, Ralphs agreed to waive any attorney-client privilege and protections of attorney work product doctrine with regard to “material requested or inquired into by the [U.S. Attorney].” (GC Exh. 1(a)) In any event, there was no such limited waiver.

On July 26, 2006, Ralphs pled guilty.

C. Board Proceedings

On December 20, 2006, the Acting Regional Director of Region 31 of the National Labor Relations Board issued a complaint against Ralphs based on charges filed by Charging Parties earlier that year. Judge Lana H. Parke issued a decision on June 14, 2007, finding that Ralphs violated Section 8(a)(1) and (5) of the Act. Judge Parke, and later the Board, concluded that all of Ralphs’ conduct violated the Act with the

exception of its refusal to produce documents related to its internal investigation and audit to the Unions.

Despite Judge Parke's reference to and reliance on the Plea Agreement in her findings of fact and despite her admission of the Limited Waiver – *an exhibit to the Plea Agreement* – into evidence, she did not admit the Plea Agreement into the record; the Plea Agreement was instead placed in the Rejected Exhibits File. Judge Parke also failed to address the claim of privilege over the documents related to the investigation, and deferred such determinations to the Board. This, the Board later concluded, was an error.

Nevertheless, the Board, in its February 19, 2008 Order¹, concluded that there was no evidence that the USAO "requested or inquired into" the documents related to the internal investigation and audit – a condition of the waiver of privilege pursuant to the Limited Waiver. (GC Exh. 1(a) at 2) It erroneously neglected, however, to address Charging Parties' exception to Judge Parke's decision not to admit the Plea Agreement, despite the *explicit directions* therein from the USAO to Ralphs to produce the documents related to its internal investigation and audit. In other words, the Plea Agreement contained evidence that the USAO "requested or inquired into" the documents related to the Company's internal investigation and audit; evidence establishing Ralphs' waiver of its alleged attorney-client privilege over those documents.

¹ The Board Order also affirmed Judge Parke's other findings, including that Ralphs violated Sections 8(a)(1) and (5) of the Act by failing to disclose all other documents requested by Charging Parties. Further, the Board ordered Ralphs to post notices to its store, mail notices to employees no longer at those stores, disclose all documents previously requested by Charging Parties with the exception of the documents related to the internal investigation and audit, and then provide certification of its compliance thereto. Ralphs persistently delayed compliance with the Order until almost *two years after the initial Board Order*, when the Ninth Circuit Court of Appeals ordered compliance with the Board Order. *Judgment, National Labor Relations Board v. Ralphs Grocery Company*, No. 08-71507 (9th Cir. November 19, 2009).

The Board's February 19, 2008 Order was issued by a two-member Board. The Order was therefore vacated by the Ninth Circuit on August 23, 2010, pursuant to the Supreme Court's decision in *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635 (2010). The Ninth Circuit remanded the case to the Board for further proceedings and a new order, so the case was pending before the Board on exceptions once again.

D. After-Acquired Evidence

After the remand, Charging Parties reviewed pleadings filed in *United States of America v. Patrick Anthony McGowan, Charles Robert Vance, Scott Drew, Randall Paul Kruska, Karen Montoya*, Case No. CR-08-1116-PA (hereinafter "*McGowan*") – a separate criminal matter relating to Ralphs' unlawful rehiring of over 1,000 bargaining unit employees under false names, false Social Security numbers, false W-4s and false I-9 forms.

All of the defendants in the *McGowan* case were Ralphs senior executives charged with directing and orchestrating the Company's unlawful hiring practices. (GCX 1(c), Exh. A) The pleadings established that the USAO possessed documents relating to Ralphs' internal investigation and that it disclosed those documents to the *McGowan* defendants.

E. Motions to Reopen the Record and for Reconsideration

On September 28, 2010, while the case was pending before the Board on exceptions, Charging Parties filed a Motion To Reopen And Supplement The Record with the Board pursuant to Section 102.48(d) of the Board Rules and Regulations. *No standing Board order had issued at that point.*

The only matter in dispute was whether Ralphs could still assert privilege over the documents related to its internal investigation and audit. The *McGowan* pleadings established that the answer to this question was "no."

On September 30, 2010, the Board adopted the February 29, 2008 Order of the two-member Board without addressing the Charging Parties' pending Motions.

Charging Parties filed a Motion For Reconsideration And To Reopen The Record immediately thereafter.

On April 17, 2012, the Board granted Charging Parties' Motions and remanded the proceeding to Chief Administrative Law Judge Robert A. Giannasi pursuant to Section 102.36 of the Board's rules and regulations. The Board further ordered that the designated administrative law judge shall "reopen the hearing on the matters raised in the motions, and prepare a supplemental decision setting forth findings of fact, conclusions of law, and a recommended Order." (GC Exh. 1(I))

On remand, Administrative Law Judge William G. Kocol – the designated administrative law judge – held a hearing on August 17, 2012 to review the matters raised by Charging Parties. The parties submitted post-hearing briefs. In his October 24, 2012 Decision, Judge Kocol correctly decided the following: (1) that Ralphs waived any privilege over the documents related to its internal investigation and audit, (2) that he would admit the *McGowan* pleadings, and (3) that he would admit the Plea Agreement pursuant to Charging Parties' motion for admission.

III. JUDGE KOCOL CORRECTLY DECIDED ALL MATTERS

A. **Judge Kocol correctly determined that *Wal-Mart* applies to the instant dispute.**

Judge Kocol correctly rejected Ralphs' contention that *Wal-Mart Stores*, 348 NLRB 833 (2006), is inapposite and does not apply to the current situation. Ralphs had contended in its post-hearing brief that the *McGowan* documents were inadmissible under Section 102.48(d)(1) of the Board's Rules and Regulations because they were not "newly discovered evidence." Judge Kocol responded by pointing out that none of the cases "cited by Ralphs involve[d] an issue of waiver of privilege." Kocol Decision at 5.

Wal-Mart, on the other hand, directly addressed waiver of privilege and evidence of privilege.

Judge Kocol concluded, “*Wal-Mart* is authority for allowing consideration of the Unions’ evidence of waiver even though that evidence occurred after the close of the hearing.” Kocol Decision at 7. He also aptly pointed out that both *Wal-Mart* and the instant case involved situations where the claim of privilege was still pending before the Board on exceptions when evidence of a waiver was uncovered. *Id.*

B. Judge Kocol properly concluded that Charging Parties timely filed their Motions pursuant to Section 102.48(d)(2) of the NLRB Rules and Regulations.

Judge Kocol properly determined that Charging Parties timely filed their Motion to Reopen and Supplement the Record on September 28, 2010. This was approximately one month after the Ninth Circuit vacated the earlier two-member Board decision on August 23, 2010. He also found that Charging Parties timely filed their Motion to Reopen and for Reconsideration on October 6, 2010, less than one week after the full Board issued its September 30, 2010 Order before even addressing or considering the Motions Charging Parties had previously filed.

C. Judge Kocol correctly concluded that Ralphs violated Sections 8(a)(1) and (5) of the Act.

1. Ralphs waived its privilege pursuant to the Plea Agreement and the Limited Waiver attached thereto.

Judge Kocol properly admitted the Plea Agreement entered into between Ralphs and the USAO. Charging Parties had excepted to Judge Parke’s exclusion of the Plea Agreement from the record. Charging Parties then reiterated that exception in their Motion for Reconsideration and to Reopen the Record by requesting that the Plea Agreement be part of the record. The Board gave Judge Kocol the authority to admit the Plea Agreement when it granted Charging Parties’ Motions on April 17, 2012, and

directed Judge Kocol to “reopen the hearing on *the matters raised in the motions.*” (emphasis added)(GC Exh. 1(I)) Admission of the Plea Agreement was one such matter raised in Charging Parties’ motion, and Judge Kocol correctly decided to admit it.

Judge Kocol also correctly concluded that the Plea Agreement was admissible as an “admission of a party-opponent” under FRE Rule 801(d)(2). With the Plea Agreement in the record, it is clear from paragraph 82 of the Agreement that the USAO requested and inquired into the documents related to Ralphs’ internal investigation and audit.

2. Ralphs’ privilege was further waived by the USAO’s disclosure of the investigation documents to the *McGowan* defendants.

Judge Kocol correctly decided to admit the *McGowan* pleadings despite the hearsay statements contained therein.² This was based on long-established jurisprudence recognizing the admissibility of hearsay evidence before administrative agencies where the evidence is rationally probative and “corroborated by something more than the slightest amount of other evidence.” Kocol Decision at 8. The Board, like federal courts, consistently relies on its discretion to consider hearsay evidence. *Id.* In accordance with this practice, Judge Kocol admits each of the *McGowan* documents for the following reasons:

Document 1: This was the indictment against Ralphs. It contained passages highlighting false statements made by certain *McGowan* defendants during Ralphs’ internal investigation and audit. Judge Kocol found the document “tend[ed] to show that the Government ha[d] learned of the information provided to Ralphs’ lawyers

² Charging Parties dispute Judge Kocol’s conclusion that the *McGowan* pleadings did not constitute residual hearsay or public records, both of which would render the documents exempt from the hearsay exclusion under the exceptions of FRE Rules 807 and 803(8). Charging Parties address this contention in its Cross Exceptions and the Brief in Support of Cross Exceptions filed herewith.

during its internal audit of hiring during the lockout” and that “the Government obtained this information from Ralphs...” Kocol Decision at 8.

Document 2: This was a letter written by an Assistant U.S. Attorney to individual counsel for the *McGowan* defendants. It described Compact Discs that the Assistant U.S. Attorney provided pursuant to a discovery request. Judge Kocol found the document to be reliable because it contained statements “made by the U.S. Attorney’s office, an officer of the court, in compliance with its legal obligations to provide such information,” revealing that the disclosed information was generated “as a result of Ralphs’ internal audit.” Since there was no evidence that the *McGowan* defendants challenged the Assistant U.S. Attorney’s assertions therein, Judge Kocol admitted the document as reliable hearsay. *Id.* at 9.

Document 3: This was a motion from the attorney for *McGowan* defendant Drew summarizing documents that had been received through discovery. The documents explicitly mentioned that the defendant had received a substantial number of documents responsive to the request for “All Documents relating to Ralphs’ Internal Investigation.” Judge Kocol admitted the document as reliable hearsay since “the document was filed with the court and was signed by an attorney as an officer of the court” and it is “highly unlikely that the defendant would admit to receipt of internal audit material if this were not true.” Kocol Decision at 9. From this document, Judge Kocol also concluded that Defendant Drew requested information concerning Ralphs’ internal investigation and that the Government provided that information to him. *Id.*

Document 4: This was a response signed by an Assistant U.S. Attorney and filed with the U.S. District court stating that Defendant Drew had requested information related to Ralphs’ internal investigation and that the Government had provided such information. Judge Kocol found it to be reliable hearsay for the reasons stated above,

and because it showed that the Government received information from Ralphs, which it then provided to Defendant Drew. *Id.* at 10.

Document 5 and 6: These documents were the Government's trial memorandum and Defendant Drew's response to the memorandum, respectively. Judge Kocol found them reliable since both documents were signed by officers of the court and both were filed with the U.S. District Court. The documents, read together, confirmed that both the USAO and Defendant Drew had seen documents related to Ralphs' internal investigation *Id.* at 10-11.

Judge Kocol properly concluded that the relevant statements in Documents 1 through 6 established that Ralphs "disclosed the contents of its internal investigation to the Government and the Government has, in turn, disclosed the contents to other persons." Kocol Decision at 11. In accordance with this finding, Judge Kocol correctly found that Ralphs has therefore *waived any claim of privilege* it may have had to avoid disclosing the documents to Charging Parties. Ralphs could no longer so contend.

IV. THE BOARD SHOULD DENY RESPONDENT'S EXCEPTIONS

Ralphs basis its exceptions and its supporting brief on a distorted reality of the facts in this case and the applicable law.

A. Judge Kocol properly relied on after-acquired evidence to conclude that respondent previously waived its privilege.

Ralphs presents the same arguments on exception already rejected by Judge Kocol; specifically, it argues unsuccessfully that *Wal-Mart*, 348 NLRB No. 46 (2006), and the proposition for which it stands – that the waiver of attorney-client privilege in a separate proceeding *at any point* during ongoing Board proceedings precludes the one asserting the privilege from doing so for purposes of the Board proceedings – is

inapplicable to the current situation. For the same reasons asserted by Judge Kocol in his Decision, Ralphs' arguments fail once again.

Ralphs desperately attempts to persuade the Board that *Wal-Mart* does not permit the Board to admit or consider evidence of a waiver of privilege that occurred *after the initial trial hearing* before the Administrative Law Judge; but that simply is not true. Rather, in *Walmart*, that is exactly what happened.

The Administrative Law Judge in *Wal-Mart* granted Wal-Mart's motion to quash the General Counsel's subpoena requesting documents related to the Company's Remedy System as protected by the attorney-client privilege. *Id.* at 2. The judge reiterated this ruling in his decision and recommended Order dated February 28, 2003. Then in January 2004, more than *10 months after* the initial decision issued, Wal-Mart produced documents related to the Remedy System – over which it had previously asserted privilege – in an unrelated State court proceeding. *Id.* at 2. Wal-Mart's document disclosure and the evidence thereof, contrary to what Ralphs would like the Board to believe, occurred *after the initial trial hearing*.

Ralphs offers a comprehensive explanation of how the Board defines "newly discovered evidence." Unfortunately for Ralphs, its efforts do not advance its contention one bit. The manner in which the Board is notified of a waiver of privilege is irrelevant. In *Wal-Mart*, the company introduced evidence of the waiver. In the instant case, Charging Parties introduced evidence of the initial waiver and the subsequent disclosure by the USAO of the previously allegedly privileged materials. According to Section 102.48(d)(1) of the Board's Rules and Regulations, that is a distinction without a difference. Wal-Mart may have conceded to the waiver, as Ralphs asserts, but that fact has no bearing on the instant case.

Similarly, the question of whether the party claiming privilege contested the evidence of a subsequent waiver of privilege prior to the admission of the evidence is another distinction without a difference. In accordance with *Walmart* once disputes involving the admissibility of evidence of a waiver of privilege are resolved and the evidence is admitted, “the attorney-client privilege is lost in all forums for proceedings running concurrent with or after the waiver occurs.” *Id.* at 3. The existence and effects of the waiver are determined *after* the evidence is introduced. *Walmart*, a case in which the Board admitted evidence of the disclosure of previously privileged documents while the matter was pending on exceptions before the Board, clearly stands for the proposition that such evidence, even if “after-created,” is admissible.

That is precisely the type of evidence Charging Parties requested the Board consider here; and that is precisely the type of evidence Judge Kocol admitted upon reopening the record. Ralphs’ “after-created” evidence rule *does not* bar the admission of the *McGowan* documents in this instance.

Ralphs further attempts to use *Wal-Mart* to argue that the *McGowan* documents are not admissible; but admissibility is based on an analysis of the rules of evidence and the reliability of the documents. Judge Kocol did just that. From his analysis, he concluded that the documents were reliable hearsay and admitted them on those bases. Importantly, Ralphs did not take exception to Judge Kocol’s conclusion that the *McGowan* documents were admissible as reliable hearsay.

Charging Parties merely offered after-acquired evidence to establish that Ralphs previously waived all claims of privilege over the documents related to the audit, and that the USAO produced those same documents to third parties further waiving any privilege. Judge Kocol understood this, analyzed the issues and concluded accordingly. Ralphs has failed to present any contrary authority. Ralphs’ exceptions must be denied.

B. Judge Kocol properly admitted and relied upon the Plea Agreement.

Ralphs contends that Judge Kocol's admission of the Plea Agreement was improper as a subsequent reconsideration of the same issue absent extraordinary circumstances. Respondent is mistaken.

Ralphs' misguided perception of the law seems to be based on a misunderstanding of the procedural status of this case. Ralphs' argument assumed that Charging Parties had asked the Board to decide a matter for which it had already issued a decision, but that was not the case. On September 28, 2010, when Charging Parties filed its Motion to Reopen and Supplement the Record, the case "was still pending before the Board on exceptions because the earlier two-member decision had been vacated as a result of *New Process Steel*." Kocol Decision at 6. At that point, no pending Board Order existed as a matter of law. Charging Parties' exceptions to Judge Parke's ruling on the waiver issue were still pending before the Board. Through the Motions, Charging Parties requested that the Board consider its exceptions in light of the newly discovered documents from the *McGowan* case.

In its Motions, Charging Parties specifically requested admission of the Plea Agreement into the record. Charging Parties stated:

In its exceptions, the Charging Parties have argued that the ALJ's decision to exclude the Plea Agreement was erroneous. The inclusion of the Plea Agreement into the record must be included, especially in light of the *McGowan* pleadings which are the subject of this Motion. As the Plea Agreement was the vehicle in which the USAO received the internal audit which in turn was produced to the *McGowan* defendants, *the Plea Agreement should also be part of the record and deemed as evidence* indicating that Ralphs waived its attorney-client privilege to the internal audit.

(emphasis added) Motion to Reopen at 5.

In the Board's Order granting Charging Parties' Motions and remanding the case to the designated Administrative Law Judge, it directed the Judge to "reopen the

hearing on the matters raised in the motions” – including Charging Parties request for admission of the Plea Agreement – “and prepare a supplemental decision setting forth... a recommended Order.” (GC Exh. 1(l)) Judge Kocol, the designated Administrative Law Judge – Judge Kocol – did just that. He reopened the hearing, considered Charging Parties motion to admit the Plea Agreement and other issues, then granted that Motion and admitted the Plea Agreement.

Acceptance of Ralphs’ argument would render Section 102.48(d)(1) meaningless. No party would be permitted to request that a record be reopened or a decision be reconsidered in the face of new evidence. Under Ralphs’ rationale, the Board in *Wal-Mart* could not have made any contrary determination in response to the evidence Wal-Mart presented in its motion to reopen.

Such an interpretation of the rule barring subsequent reconsiderations is overbroad and cannot stand. Ralphs’ exceptions must be denied.

V.

THE BOARD SHOULD VACATE THE PRIOR COMPLIANCE DETERMINATION

In his Decision, Judge Kocol issued a recommended Order that Ralphs do the following: (1) within 14 days, provide the Unions with the requested information, including information related to Ralphs’ internal investigation and audit; (2) within 14 days, post copies of the notice attached thereto at its facilities through California; and (3) within 21 days, file a sworn certification with the Regional Director of steps Ralphs has taken to comply with the Order.

On July 25, 2011, Charging Parties filed a request with the Board for review of the General Counsel’s decision denying its appeal of the Region’s March 3, 2011 Compliance Determination of the now vacated decision (the appeal was based on

substantial issues unrelated to the Board's remand). Charging Parties' appeal of the Region's prior compliance determination is still pending before the Board.

In light of Judge Kocol's recommended compliance Order, Charging Parties request that the Board vacate Charging Parties' pending appeal and the Region's prior Compliance Determination, which are now moot. This will allow matters of compliance to proceed in accordance with Judge Kocol's recommended Order and the subsequent related proceedings.

**VI.
CONCLUSION**

For all of the foregoing reasons, Charging Parties respectfully request that the Board adopt Judge Kocol's recommended Order and deny Ralphs' exceptions. Charging Parties further request that the Region's previous Compliance Determination and the Charging Parties' appeal of that determination pending before the Board be vacated so that a new Order may issue consistent with Judge Kocol's recommended Order.

Dated: December 11, 2012

Respectfully submitted,

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By: 

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PROOF OF SERVICE

*Ralphs Grocery Company -and-
United Food and Commercial Workers Union Locals 135, et al.
NLRB Case Nos. 31-CA-27160, 31, CA-27475 & 31-CA-27685*

DIANE ROSS certifies as follows:

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 6300 Wilshire Boulevard, Suite 2000, Los Angeles, California 90048-5268.

On December 11, 2012, I served the foregoing document(s) described as

**CHARGING PARTIES' BRIEF IN SUPPORT OF THE HONORABLE
WILLIAM G. KOCOL'S DECISION -AND- IN OPPOSITION TO
RESPONDENT'S EXCEPTIONS**

X **BY PLACING FOR COLLECTION AND MAILING:** By placing a true and correct copy (copies) thereof in an envelope (envelopes) addressed as follows:

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And by then sealing said envelope(s) and placing it (them) for collection and mailing on that same date following the ordinary business practices of Schwartz, Steinsapir, Dohrmann & Sommers LLP, at its place of business, located at 6300 Wilshire Boulevard, Suite 2000, Los Angeles, California 90048-5268. I am readily familiar with the business practices of Schwartz, Steinsapir, Dohrmann & Sommers LLP for collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to said practices the envelope(s) would be deposited with the United States Postal Service that same day, with postage thereon fully prepaid, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing in the affidavit. (C.C.P. §1013a(3))

X **BY E-MAIL:** By transmitting a copy of the above-described document(s) via e-mail to the individual(s) set forth above at the e-mail addresses indicated.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 11, 2012, at Los Angeles, California.



DIANE ROSS