

## APPENDIX 1

### COMPLIANCE CHECKLIST

There is certain information that a Board agent can obtain during the initial investigation stage of the case that will be helpful in addressing settlement and compliance issues when it becomes necessary. Below is a list of some of the data that the Board agent should consider obtaining when taking affidavits during the initial investigation.

#### **From the Charging Party:**

- Names, addresses, phone numbers, and social security numbers of all individuals who will be affected by the remedy (do not make social security number part of the affidavit).
- Job classification(s).
- Wage rates/overtime/in kind payments.
- Hours.
- Benefits.
- Bonuses and gifts.
- Copy of pay stub.
- Copy of any applicable collective-bargaining agreement.
- Get the name, address, and phone number of a family member or friend who will be able to contact the discriminatee.
- If salting case, get specific information as to how long the charging party/discriminatee would have remained in the employ of the employer.

#### **From the Charged-Party Employer:**

##### Corporation

Correct legal name

State of incorporation

Principal shareholders

Affiliations (d/b/a; a/k/a)

Articles of incorporation

Federal tax I.D. number

##### (Sole Proprietorship/Partnership)

Names of owner(s)

Percentage of ownership

Job titles

Partnership registration

Affiliations (d/b/a; a/k/a)

Business licenses

#### **From the Charged Party Union:**

Confirm identity of 9(a) representative.

Check recognition agreement.

Check name of entity signatory to collective-bargaining agreement.

Copy of constitution and bylaws.

Copy of hiring hall rules and regulations.

Officers names and titles.

### **Sources of Information**

There are several sources from which a Board agent can obtain information about the Employer and/or Union being investigated. Some of them are listed below for reference:

- Choicepoint search (a useful tool for locating discriminatees and identifying possible corporate alter egos; follow Regional procedure for the use of Choicepoint).
- Dun and Bradstreet reports can be obtained from the Library Section.
- Web sites—e.g., State Bureau of Corporations under Secretary of State site: [www.dos.state.ny.us](http://www.dos.state.ny.us)
- Search engines such as Google, Yahoo.
- Section II subpoena, as appropriate.
- Bank records (statements, corporate authorizations; signature cards, account applications, loan applications, loan commitments, promissory notes, deeds of trust and copies of cancelled checks (written and endorsements) and copies of instruments deposited, and endorsements.
- Credit card companies.
- Bonding companies (performance bonds).
- Accountants.
- Contractors.
- Suppliers.
- Customers.
- Visual observation of company site.
- Telephone directories or calls.
- U.S. Postal Service (change of address forms, post office box addresses to which mail is redirected, name and address of business post office box holder, location of residence or place of business).
- Secretary of State (corporate records including names and addresses of officers and directors, articles of incorporation, corporate charter, and status and history of the entity's corporate life).
- Uniform Commercial Code Records.
- Alcoholic Beverage Commission/State Liquor Authority.

- Department of Labor and Employment.
- State Electrical Boards.
- Business licenses.
- Building permits.
- Public utilities.
- Department of Motor Vehicles.

**From the Charged Party Union:**

Confirm who the 9(a) representative is:

Check recognition agreement.

Check signatory to collective-bargaining agreement.

Copies of Constitution and bylaws (international and local).

Copies of hiring hall rules and regulations.

Officers' names and titles.

Issues that may arise during the investigation, which will require special attention:

- Recidivism (see Sections 10504.7, 10616.2–10616.4, and 10622).
- Bankruptcy (see Section 10670).
- Dissipation of assets (see Sections 10674 and 10676).

**APPENDIX 2**

**Financial Questionnaire**

Case Name:

Case Number:

1. Name [Debtor] \_\_\_\_\_ Type: For Profit ( )  
Not for Profit ( )

2. Business Address \_\_\_\_\_  
Street City State

Note: Attach schedule of all business addresses.

3. Foreign \_\_\_\_\_ Domestic \_\_\_\_\_

4. State-Incorporation \_\_\_\_\_

Date-Incorporation \_\_\_\_\_

Licensed to do business in \_\_\_\_\_

5. Name Registered Agent \_\_\_\_\_

6. Address Registered Agent \_\_\_\_\_

7. Names and address of principal stockholders. Indicate the ownership of 75 percent of the stock of the Corporation. Number of shares owned by each.

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

(5) \_\_\_\_\_

(6) \_\_\_\_\_

(7) \_\_\_\_\_

(8) \_\_\_\_\_

8. (A) Names and addresses of current officers and number of shares held by each.

Term expires on \_\_\_\_\_

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

(5) \_\_\_\_\_

(B) Names and addresses of current members of Board of Directors.

Term expires on \_\_\_\_\_

(1) \_\_\_\_\_

(2) \_\_\_\_\_

- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_

9. (A) Registration on National or Local Stock Exchange(s). (Give details, including date of registration and/or delisting.)

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_

(B) Total authorized shares of each type issued and present market value per share of each type of stock.

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_

(C) Total outstanding shares of each type stock currently being held as Treasury Stock.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(D) Total outstanding shares of each type of stock. Amount of bonded debt and principal bondholders.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. List states and municipalities to which taxes have been paid and/or are being paid. Describe nature and amount of such taxes, state most recent year of payment thereof and whether tax payments are current.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Has this corporation filed U.S. Corporate Income Tax Returns during the last 3 years? Yes ( ) No ( )

To what I.R.S. Office(s)? \_\_\_\_\_  
What years? \_\_\_\_\_

Are Federal Taxes Current? Yes ( ) No ( )

12. Name and Address of:

(a) Corporation's independent certified public accountants

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(b) Corporate Attorney(s) retained by Corporation from:

\_\_\_\_\_ to \_\_\_\_\_

13. Does this Corporation have a Profit and Loss Statement and Balance Sheet for the most recent calendar or fiscal year and for specified past years? Past years ( ) ( ).

If (Yes), submit one copy of each.

Submit audited documents if available.

14. Does this Corporation maintain bank accounts: Give names and addresses of bank, savings and loan associations, and other such entities, within the United States or located elsewhere. Indicate name and number of accounts and current balances.

(A) Checking Account(s) \_\_\_\_\_

(B) Savings Account(s) \_\_\_\_\_

(C) Other Account(s) \_\_\_\_\_

(D) Savings and Loan Associations or other such Entities \_\_\_\_\_

(E) Trust Account(s) \_\_\_\_\_

(F) Other Account(s) \_\_\_\_\_

15. List all commercial paper, negotiable or nonnegotiable, in which the Corporation has any interest whatsoever, presently in transit or in the possession of any banking institution. Describe such paper and the Corporation's interest therein, and state its present location. List all accounts and loans receivable in excess of \$300 and specify if due from an officer, stockholder, or director.

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16. From personal knowledge of President, Vice President, or Chairman of the Board, for the last taxable year, indicate in round figures:

(A) Gross Income \$ \_\_\_\_\_

(B) Expenses (Fixed & Current) \$ \_\_\_\_\_

(C) Net Profit After Taxes \$ \_\_\_\_\_

(D) (List approximate totals):

Payables: \$ \_\_\_\_\_ Receivables: \$ \_\_\_\_\_

17. Is this Corporation presently:

(A) Active (answer No if inactive but still in existence): Yes ( ) No ( )

(B) Void and/or terminated by state authority: Yes ( ) No ( )

(C) Otherwise dissolved Yes ( ) No ( )

1. Date \_\_\_\_\_

2. By Whom \_\_\_\_\_

3. Reason \_\_\_\_\_

18. (A) List corporate salaries to and/or drawing of the following personnel for the last 3 taxable years:

(Year)	Specify Year (Year)	(Year)
1. _____	2. _____	3. _____

President \_\_\_\_\_

Chairman/Board \_\_\_\_\_

Secretary \_\_\_\_\_

Treasurer \_\_\_\_\_

(B) List five most highly compensated employees or officers other than above, describe position and set forth salary and/or bonus for last 3 taxable years:

(Year)	Specify Year (Year)	(Year)
1. _____	2. _____	3. _____

(1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

(5) \_\_\_\_\_

(C) Describe the nature of the compensation paid to the persons listed in (A) and (B) above and set forth any stock options, pensions, profit sharing, royalties, or other deferred compensation rights of said persons.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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19. List corporate commercial activity (fields of activity resulting in income):

Prime:

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_

20. List all other supplementary fields of activity in which this corporation is engaged, either directly, through subsidiaries, or affiliates, stating the name(s) and state(s) of incorporation of such subsidiaries or affiliates.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. Has this Corporation at any time been the subject of any proceeding under the provisions of any State Insolvency Law, or the Federal Bankruptcy Laws. If so, supply the following information as to each such proceeding:

(A) Date (Commencement) \_\_\_\_\_

(B) Date (Termination) \_\_\_\_\_

(C) Discharge or other disposition, if any, and operative effect thereof:

\_\_\_\_\_

(D) State Court (County) \_\_\_\_\_

Federal Court (District) \_\_\_\_\_

(E) Docket No. \_\_\_\_\_

22. (A) List all real estate and personality of an estimated value in excess of \$500,000, owned or under contract to be purchased by this Corporation and where located:

\_\_\_\_\_  
\_\_\_\_\_

(B) List and describe all judgments, recorded and unrecorded:

(1) Against the Corporation \_\_\_\_\_

\_\_\_\_\_

(2) In favor of the Corporation \_\_\_\_\_

\_\_\_\_\_

(C) List and describe all other encumbrances against real estate owned by the Corporation: (including but not limited to mortgages, recorded or unrecorded):

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(D) List and describe all other encumbrances (including but not limited to Security Interest, whether perfected or not) against any such personality owned by the Corporation as is listed in 22(A) above:

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(E) List and describe location of real estate, including real estate being purchased under contract, with name and address of seller and contract price:

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23. List all life insurance, now in force or any on all officers, directors, and/or "key" employees, setting forth fact amounts, names of life insurance companies and policy numbers where this Corporation has an "insurable interest," and/or is paying the premium or part of same. Where applicable indicate under which policy(s) this Corporation is a beneficiary, type policy(s), yearly premium, and location of policy(s).

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**APPENDIX 3**

[Send on Regional Letterhead]

**CUSTOMER NOTICE**

Dear \_\_\_\_\_:  
[Customer]

Records or information concerning your transactions held by the financial institution named in the attached subpoena are being sought by the National Labor Relations Board in accordance with the Right to Financial Privacy Act of 1978, 12 U.S.C. Sections 3401–3422, for the following purpose(s):

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[Describe Legitimate Law Enforcement Inquiry]

If you desire that such records or information not be made available, you must:

(1) Fill out the accompanying motion paper and sworn statement (as indicated by the instructions beneath each blank space) or write one of your own, stating that you are the customer whose records are being requested by the Government, and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

(2) File the motion and sworn statement by mailing or delivering them to the Clerk of any one of the following United States District Courts:

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[It would simplify the proceeding if you would include with your motion and sworn statement a copy of the attached summons, subpoena, or formal written request, as well as a copy of this notice.]

(3) Serve the Government authority requesting the records by mailing (by registered or certified mail) or by delivering a copy of your motion and sworn statement to

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(4) Be prepared to come to court and present your position in further detail.

(5) You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten (10) days from the date of service or fourteen (14) days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquires, in which event you will be notified after the transfer.

Very truly yours,

Dated:

[Include Name & Title of Official, Address  
& Telephone Number]

Enclosures: Subpoena  
Motion Form  
Sworn Statement Form



CERTIFICATE OF SERVICE

I have mailed or delivered a copy of this motion and the attached sworn statement to

\_\_\_\_\_  
[Name of Official Listed at Item 3 of Customer Notice]

on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[Signature]

IN THE UNITED STATES DISTRICT COURT

FOR THE \_\_\_\_\_  
[Name of district]

DISTRICT OF \_\_\_\_\_  
[State in which court is located]

\_\_\_\_\_  
[Customer's Name]

No. \_\_\_\_\_  
[Will be filled in by court clerk]

Movant,

v.

SWORN STATEMENT BY MOVANT

NATIONAL LABOR RELATIONS BOARD

Respondent.

I, \_\_\_\_\_, am presently/was previously a customer of  
[Customer's Name]

\_\_\_\_\_, and I am the customer whose records  
[Name of Financial Institution]

are being requested by the Government.

The financial records sought by the National Labor Relations Board are not relevant to the legitimate law enforcement inquiry stated in the Customer Notice that was sent to me because

\_\_\_\_\_, and/or

should not be disclosed because there has not been substantial compliance with the Right to Financial Privacy Act of 1978 in that \_\_\_\_\_

\_\_\_\_\_

and/or should not be disclosed on the following other legal basis: \_\_\_\_\_

\_\_\_\_\_

[You may draft your own sworn statement if you require additional space.]

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

\_\_\_\_\_, 20\_\_\_\_  
[Date]

\_\_\_\_\_  
[Signature]

**APPENDIX 4**

[Send on Regional Letterhead]

**CERTIFICATE OF COMPLIANCE WITH  
THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978**

To: \_\_\_\_\_  
[Name of Financial Institution]

Re: Request for information concerning \_\_\_\_\_  
[Account Number and Customer Name]

I hereby certify, pursuant to Section 1103(b) of the Right to Financial Privacy Act of 1978, 12 U.S.C. Sec. 3403(b), that the provisions of the Act have been complied with as to the above request for account information and that good-faith reliance upon this certificate relieves your institution and its agents and employees of any liability to the customer in connection with the disclosure of this account information.

\_\_\_\_\_

\_\_\_\_\_  
[Name and Title of Official]

Dated: \_\_\_\_\_  
[Signature]

NATIONAL LABOR RELATIONS BOARD

**APPENDIX 5**

<b>Employee</b>	<b>Hire Date or Begin B/P Period<sup>1</sup></b>	<b>Termination Date or B/P End Date<sup>2</sup></b>	<b>B/P weeks</b>	<b>B/P Factor<sup>3</sup></b>	<b>Employee B/P Share</b>
A	02/14/1997	10/12/1998	86.4	0.03239	3,238.58
B	10/22/1999	07/04/2000	36.6	0.01370	1,370.38
C	10/12/1997	07/04/2000	142.3	0.05332	5,331.62
D	05/05/1998	07/04/2000	113.0	0.04234	4,234.25
E	08/14/1998	09/14/1999	56.6	0.02120	2,119.80
F	02/14/1997	07/04/2000	176.6	0.06616	6,616.35
G	02/14/1997	07/04/2000	176.6	0.06616	6,616.35
H	02/14/1997	04/16/1997	8.7	0.00327	326.53
I	02/14/1997	07/04/2000	176.6	0.06616	6,616.35
J	05/05/2000	07/04/2000	8.6	0.00321	321.18
K	02/14/1997	07/04/2000	176.6	0.06616	6,616.35
L	02/14/1997	07/01/1999	123.9	0.04641	4,641.08
M	01/01/2000	07/04/2000	26.4	0.00990	990.31
N	02/14/1997	07/04/2000	176.6	0.06616	6,616.35
O	02/14/1997	08/04/1999	128.7	0.04823	4,823.08
P	09/14/1997	07/04/2000	146.3	0.05482	5,481.51
Q	02/14/1997	08/01/2000	180.6	0.06766	6,766.23
R	02/14/1997	07/04/2000	176.6	0.06616	6,616.35
S	04/16/1997	09/14/1997	21.6	0.00808	808.31
T	02/14/1997	07/04/2000	176.6	0.06616	6,616.35
U	02/14/1997	07/04/2000	176.6	0.06616	6,616.35
V	02/14/1997	07/04/2000	176.6	0.06616	6,616.35
			2,668.71	1.00	100,000.00

Backpay period began: 02/14/1997  
 ended: 07/04/2000

<sup>1</sup> Hire date or B/P begin date, whichever is later.

<sup>2</sup> Termination date or B/P period end date, whichever is earlier.

<sup>3</sup> Individual B/P factor is determined by dividing the employee's backpay weeks by total backpay weeks of all employees.

**APPENDIX 6**

**Interim Earnings Letter**

Re: [Case Number Only]

To Whom It May Concern:

We have been informed by \_\_\_\_\_, Social Security Number \_\_\_\_\_, one of the individuals involved in the above-captioned case, that he/she has been employed by you in the past.

In order to complete the information required to facilitate compliance with the [settlement agreement; administrative law judge's decision; order of the National Labor Relations Board; judgment of a U.S. court of appeals] in the above-captioned case, it is necessary that we receive certain information relative to his/her employment with your company. Will you, therefore, answer the following questions as soon as possible?

1. Hours worked per day: \_\_\_\_\_

Rate of pay: \_\_\_\_\_

Days worked per week: \_\_\_\_\_

2. The gross amount the employee earned **BY CALENDAR QUARTER**, as submitted to Social Security Administration. (Please list overtime separately.)

YEAR	QUARTER	EARNINGS	OVERTIME
20____	1.	\$ _____	\$ _____
	2.	\$ _____	\$ _____
	3.	\$ _____	\$ _____
	4.	\$ _____	\$ _____

YEAR	QUARTER	EARNINGS	OVERTIME
20____	1.	\$ _____	\$ _____
	2.	\$ _____	\$ _____
	3.	\$ _____	\$ _____
	4.	\$ _____	\$ _____

3. Date when employee began employment with your company:

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Date when employment ended: \_\_\_\_\_

Reason for leaving: \_\_\_\_\_

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4. Type of medical and life insurance coverage, if any, and the cost, if any, to this employee: \_\_\_\_\_

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For your convenience, we are enclosing a self-addressed, postage-paid envelope. You may use this letter for supplying the information requested.

Your cooperation in this matter will be greatly appreciated. We assure you that your firm is not involved in any way in this case.

Very truly yours,

[Name of Compliance Officer]  
Compliance Officer

Enclosure

Information Supplied by:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_

## APPENDIX 7

### Sample Letter to Respondent Setting Forth Backpay Calculations

Dear Respondent:

As you know, the [Board's order; circuit court of appeal's judgment] in the above-captioned case, issued on [date], requires that the persons named therein be reimbursed for the wages they lost because of their discharge.

On the basis of information appearing in your records, we have computed the amount each of the discriminatees would have earned had they not been discharged.

As a result of our interviews with the discriminatees, further investigations, reports submitted to us by the Social Security Administration, and other sources, we have determined the amounts of money actually earned by the discriminatees in other employment during the backpay period and the amounts of expenses they incurred seeking and holding such employment during the backpay period.

The relevant earnings of the discriminatees have been reduced in the computation by the amount of their relevant expenses. The resulting sum was subtracted from the amount of money each of the discriminatees would have earned at [Name of Company] had they not been discharged. The remaining amount is the backpay due each of the discriminatees by your firm.

The amount of money the discriminatees would have earned at your company during the backpay period, from January 1, 1992, through July 31, 1992, was computed on the following basis:

All were testers in the testing department prior to their discharge, and each was paid \$10 an hour. An appropriate measure of the hours each of them would have worked is the average hours worked by all testers who remained in the employ of the company during the backpay period, excepting employees who worked less than 24 hours a week in any given week. The average hours worked by such employees are set forth in the attached tabulation entitled "Average Hours Worked by Testers, January 1-July 1, 1992."

We have noted that there was a wage increase of 50-cents-per-hour granted on April 1, 1992, to all other testers. In addition, we have noted that all testers received an annual bonus in February.

Gross backpay was computed by calendar quarters and consists, for each discriminatee, of rate of pay, adjusted by the increase noted above, multiplied by the average hours shown on the attached table, with the bonus payment added. Earnings from interim employment reduced by expenses were deducted from gross backpay to reach net backpay due.

The entire computation of net backpay due each of the discriminatees is set forth in Appendix A, attached hereto.

The total amount of backpay and interest due each of the discriminatees is as follows:

[List names of discriminatees with amounts due each.]

Interest has been computed using the rates and method established by the Board, which we would be glad to further explain to you.

Please send checks to this office for the amounts indicated above, in the form of checks payable to the discriminatees. Taxes usually withheld from employee wages should be withheld, and transmitted to the appropriate tax authorities. These taxes do not apply to the interest that is due.

Payment of these amounts and your share of taxes as employer will be deemed full compliance with the backpay provisions of the [Board's order, court judgment], subject to the approval of the General Counsel.

If you have any questions, or if you wish to discuss this computation, may I suggest that we meet in my office on [date and time]. If this is inconvenient, kindly telephone me so that we may make other arrangements.

Very truly yours,

Regional Director



**APPENDIX 9**  
**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that I, \_\_\_\_\_,  
now serving in \_\_\_\_\_ the \_\_\_\_\_ whose  
Serial Number is \_\_\_\_\_, and whose Social Security Number is  
\_\_\_\_\_, and whose permanent address is \_\_\_\_\_, in  
\_\_\_\_\_, in the State of \_\_\_\_\_, do hereby  
constitute and appoint \_\_\_\_\_, residing at  
\_\_\_\_\_, \_\_\_\_\_ in  
\_\_\_\_\_, in the State of \_\_\_\_\_, as my  
lawful attorney to act on my behalf for the following purposes:

(a) To collect and receive all sums of money as are or may hereafter become due and payable to me under an award of backpay made or to be made by the National Labor Relations Board pursuant to the National Labor Relations Act under a certain case now pending before it; and to issue receipts therefore; and

(b) To endorse any checks or negotiable instruments and to make, execute, and deliver all receipts and any other documents that may be necessary or proper to collect and receive the above sums of money.

And, I, \_\_\_\_\_, give to \_\_\_\_\_, as my attorney, full power and authority to do and perform all acts and things required and necessary to be done for the above purposes as fully as I could do if I were personally present at the doing thereof, and I hereby ratify and confirm all that my attorney may or shall lawfully do or cause to be done by virtue of this power of attorney.

IN WITNESS WHEREOF, I have set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, in the State of \_\_\_\_\_.

\_\_\_\_\_  
[Signature of Claimant]

**APPENDIX 10**  
**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, the undersigned, do hereby certify that I am a duly commissioned, qualified, and authorized notary public in and for the STATE OF \_\_\_\_\_; and that the grantor in the foregoing Power of Attorney, who is personally well known to me, appeared before me this day within the territorial limits of my authority and executed said instrument and acknowledged that the execution of said instrument by [him or her] was [his or her] free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_\_, two thousand and \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

**ALTERNATE ACKNOWLEDGEMENT**

In the \_\_\_\_\_ [Army, Navy, etc.] of the United States at \_\_\_\_\_  
\_\_\_\_\_.

I, \_\_\_\_\_, the undersigned officer, do hereby certify that on this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared  
\_\_\_\_\_ Serial Number \_\_\_\_\_, whose home address  
is \_\_\_\_\_ and who is known to me to be a \_\_\_\_\_ in  
the \_\_\_\_\_ [insert Branch of the Armed Forces] of the United States,  
and to be the identical person who is described in, whose name is subscribed to, and who  
signed and executed the foregoing instrument, and [he or she] personally acknowledged  
to me that [he or she] signed and sealed the same, on the date it bears, as [his or her] true,  
free, and voluntary act and deed, for uses, purposes, and considerations therein set forth,  
and I, the undersigned, do further certify that I am at the date of this certificate a  
commissioned officer of the grade, branch of service, organization and official capacity  
stated below in the active service of the \_\_\_\_\_ [Insert Branch of the  
Armed Forces] of the United States.

[Signature] \_\_\_\_\_  
Name [Printed] \_\_\_\_\_  
[Grade and Branch] \_\_\_\_\_  
[Organization] \_\_\_\_\_  
[Capacity in Which Acting] \_\_\_\_\_  
[Home Address] \_\_\_\_\_

**APPENDIX 11**

**OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management**

MEMORANDUM OM 92-13

March 9, 1992

TO: All Regional Directors, Officers-in-Charge, and Resident Officers  
FROM: William G. Stack, Deputy Associate General Counsel  
SUBJECT: Remittance Control Procedures

Field offices receive checks and money orders from private parties for a variety of purposes, e.g., FOIA payment, court costs, backpay, etc. Routinely, these checks are forwarded to the Finance Section in Washington for deposit in the U.S. Treasury. At present, there is no system in place under which a field office is informed that a remitted check has been received by the Finance Section and deposited or under which the Finance Section is informed that a check has been sent from the field but not received.

In order to better track remittances from the field to the Finance Section, a new procedure has been designed and should be implemented immediately. The new record keeping and verification procedures for field remittances are fully explained in the attachment. New Forms NLRB-5472 and NLRB-5473 [omitted from this publication], which will be utilized in the new procedures, are also attached. You will note that the attachment speaks in terms of the "designated Regional Office employee" performing certain duties. Therefore, it is necessary for you to designate a staff member to assume the responsibility of implementing these new procedures. Because limited numbers of the forms will normally be used by a field office during the course of a year, each office will be responsible for photocopying sufficient numbers for its use.

Any questions concerning this memorandum should be directed to your Assistant General Counsel.

W. G. S.

Attachments  
cc: NLRBU

MEMORANDUM OM 92-13

**NATIONAL LABOR RELATIONS BOARD**  
**REMITTANCE COLLECTING, PROCESSING, AND RECONCILIATION**  
**PROCEDURE FOR THE REGIONAL OFFICES**

This procedure is to assure that all remittances payable to the NLRB received by Regional Offices are properly documented and deposited by the Finance Section and ultimately reconciled with the file in the receiving office. This procedure also provides an audit trail for each remittance collected.

*COLLECTING—Regional Office*

Upon receipt of a check or money order [no cash] for remittance involving FOIA, backpay, court costs, travel advance, jury duty, and other purpose [state on form], the designated Regional Office employee completes the two forms below and mails them to Headquarters, Finance Section, on a daily basis.

1. *NLRB Form 5472 “Remittance Control Form”*

This form captures all the relevant data from one check or money order as well as the Region number, the identity of the filer, and date sent. It is to be stapled to the front of the check and forwarded to the Headquarters, Finance Section, ATTN: Remittance Processing.

2. *NLRB Form 5473 “Remittance Control Log”*

This form captures the same relevant data from the check or money order as the form above plus the log date [date remittance is received]. This form is maintained at the Regional Office. The two columns on the far right are completed at the time of the reconciliation process.

*PROCESSING—Headquarters, Finance Section*

Upon receipt by the Finance Section of the Remittance Control Form stapled to the check or money order, the following data is entered into the automated Special Payments System, Remittance Subsystem:

- Date received,
- Office/Region number,
- Type of remittance (FOIA, backpay, etc.),
- Remitter/Payor (maximum of 40 characters),
- Check or money order number (maximum of 10 digits),
- Date of check, and
- Amount of check.

The Remittance Subsystem automatically updates the database with each entry.

The checks received will be deposited into the Agency deposit fund.

*RECONCILIATION—Headquarters, Finance Section*

On a biweekly basis, the Remittance Reconciliation Report will be produced by the Finance Section and forwarded by regular mail to the Regional Offices. This report may also be run on a weekly or monthly basis if preferred.

The Remittance Reconciliation Report contains the same relevant data as the control form and control log to provide a systematic reconciliation. It also contains the beginning and ending dates of the report period, date provided, and date processed.

*RECONCILIATION—Regional Office*

Upon receipt of the Remittance Reconciliation Report by the Regional Office, the designated employee reviews each line of the report and compares it with the entries in the Remittance Control Log. When matching check or money order data is located the “Date Processed” is written into the appropriate block on the log from the report followed by the initials of the employee. This same process is repeated until all entries in the report are completed.

If there are entries in the log that have not appeared on the biweekly report, please contact the Finance Officer on 202-273-4230 as soon as possible.

## APPENDIX 12

FORM NLRB-4775  
(2-02)

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**SETTLEMENT AGREEMENT**

### IN THE MATTER OF

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

**POSTING OF NOTICE**—Upon approval of this Agreement and receipt of the Notices from the Region, **which may include Notices in more than one language as deemed appropriate by the Regional Director**, the Charged Party will post immediately in conspicuous places in and about its plant/office, including all places where notices to employees/members are customarily posted, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice (**and versions in other languages as deemed appropriate by the Regional Director**) made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notices to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting. Further, in the event that the charged union maintains such bulletin boards at the facility of the employer where the alleged unfair labor practices occurred, the union shall also post Notices on each such bulletin board during the posting period.

**COMPLIANCE WITH NOTICE**—The Charged Party will comply with all the terms and provisions of said Notice.

**BACKPAY**—Within 14 days from approval of this agreement the Charged Party will make whole the employee(s) named below by payment to each of them of the amount opposite each name. The Charged Party will make appropriate withholdings for each named employee.

**SCOPE OF THE AGREEMENT**—This Agreement settles only the allegations in the above-captioned case(s), and does not constitute a settlement of any other case(s) or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this Agreement regardless of whether such matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

**REFUSAL TO ISSUE COMPLAINT**—In the event the Charging Party fails or refuses to become a party to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (*or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement*), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement shall be null and void if the General Counsel does not sustain the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above captioned case(s), as well as any answer(s) filed in response.

**PERFORMANCE**—Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

**NOTIFICATION OF COMPLIANCE**—The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above captioned case(s).

Charged Party		Charging Party	
By: Name and Title	Date	By: Name and Title	Date
Recommended By:	Date	Approved By:	Date
Board Agent		Regional Director	

The following Optional Paragraphs and Attachments have been placed in this Manual for your consideration and convenience and may be used in drafting an appropriate Settlement Agreement to resolve particular situations. Where appropriate a short explanation is included with the Paragraph or Attachment to explain where it would be utilized. The Regions may consult with the Contempt Litigation and Compliance Branch for assistance when dealing with Installment Agreements, Security Agreements, Promissory Notes, Assignments, Deeds of Trust, Mortgages, Security Bonds, and other types of guaranties in installment situations.

### **Optional Paragraphs for inclusion in the Settlement Agreement**

#### **MULTIPLE CHARGING PARTIES**

*[NOTE: The Settlement Agreement Form will need to be modified as follows when the settlement involves multiple Charged Parties.]*

*REFUSAL TO ISSUE COMPLAINT*—In the event any of the Charging Parties fails or refuses to become a party to this Agreement, and if in the Regional Director’s discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party, any Charging Party which becomes a party to this Agreement, and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement shall be null and void if the General Counsel does not sustain the Regional Director’s action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above-captioned case(s), as well as any answer(s) filed in response.

*PERFORMANCE*—Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if any of the Charging Parties do not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

*NOTIFICATION OF COMPLIANCE*—The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event any of the Charging Parties does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above-captioned case(s).

## CONSOLIDATED R AND C CASES

Simultaneous herewith and as a condition of this Agreement, the Charged Party and the Charging Party will execute the attached Stipulation to Set Aside Election in [Case Number].

### SPECIFIC ALLEGATIONS RESERVED FROM THE SETTLEMENT AGREEMENT

The allegations in the charge(s) in Case(s) [ ] that are reserved from this Agreement under “Scope of the Agreement” are as follows: (set the specific allegations that are not covered by the settlement).

### POSTING OF NOTICE

*A. Optional mailing paragraph to be used in addition to or in place of normal posting language.*

Upon approval of this Agreement, the Charged Party will duplicate and mail, at its own expense, a copy of the attached Notice to all current employees and former employees who were employed at any time since [date of earliest ulp]. Such Notices will be signed by a responsible official of the Charged Party, and the date of actual mailing shall be shown thereon. The Charged Party will furnish to the Regional Director written confirmation as to the date of mailing together with a list of names and addresses of employees to whom Notices were mailed.

*B. Optional mailing paragraph to be used in conjunction with normal posting language when Region has reason to believe the plant may close during the posting period.*

In the event that during the pendency of the 60-day Notice posting period the Charged Party goes out of business or closes the facility involved in this proceeding, the Charged Party will duplicate and mail, at its own expense, a copy of the attached Notice to all current employees and former employees who were employed at any time since [date of earliest ulp]. Such Notices will be signed by a responsible official of the Charged Party, and the date of actual mailing shall be shown thereon. The Charged Party will furnish to the Regional Director written confirmation as to the date of mailing together with a list of names and addresses of employees to whom Notices were mailed.

*C. Optional language for foreign language posting/ mailing. (Add following to end of the Posting of Notice paragraph.)*

Charged Party will post (mail) both English and (Spanish, etc.) Notices in the manner set forth above.

*D. Optional provision for specific posting locations (in bold).*

Upon approval of this Agreement and receipt of Notices from the Region, the Charged Party will post immediately **in the below-specified locations** for 60 consecutive days from the date of posting, copies of the attached Notice made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notice to the

Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting. Further, in the event that the charged union maintains a bulletin board at the facility of the employer where the alleged unfair labor practices occurred, the union shall also post Notices on such bulletin board during the posting period.

**Posting Locations: [List Specific Locations]**

*E. Optional Paragraph to be used when the violation was committed by electronic means, such as by the use of e-mail. The Board approved this type of remedial provision in Public Service of Oklahoma, 334 NLRB 487 (2001).*

The Charged Party shall also disseminate, on the first day of notice posting as required herein, a copy of this notice in electronic fashion on the same basis and to the same group or class of employees as were sent the *(describe the electronic message which is alleged to violate the Act)*.

**PERFORMANCE**

*Optional Nonadmissions clause:*

By entering into this Settlement Agreement the Charged Party does not admit that it has violated the National Labor Relations Act.

**JOINT AND SEVERAL LIABILITY**

*[NOTE: This Optional Paragraph may be used in circumstances where two or more Charged Parties are obligated to pay backpay. The language below is drafted under the assumption that there are two Charged Parties.]*

The Charged Parties assume joint and several liability for making whole (name(s) of individual(s)) by paying [(him) (her) (each of them)] a total of \$\_\_\_\_\_. Charged Parties will make appropriate withholdings for each named discriminatee. Within 14 days from approval of this Agreement, (Charged Party #1) will pay to (name(s) of individual(s)) (set forth 1/2 of the total amount due) and (Charged Party #2) will pay to (name(s) of individual(s)) (set forth 1/2 of the total amount due). (Charged Party #1) will pay an additional (1/2 of the total amount due) only upon being informed by the Regional Director that efforts to obtain payment from (Charged Party #2) have failed. (Charged Party #2) will pay an additional (1/2 of the total amount due) only upon being informed by the Regional Director that efforts to obtain payment from (Charged Party #1) have failed.

**OPTIONAL SIGNATURE BOX TEMPLATE FOR  
MULTIPLE CHARGING PARTIES**

<b>Charged Party</b>		<b>Charging Party</b>	
<b>By: Name and Title</b>	<b>Date</b>	<b>By: Name and Title</b>	<b>Date</b>
		<b>Charging Party</b>	
		<b>By: Name and Title</b>	<b>Date</b>
		<b>Charging Party</b>	
		<b>By: Name and Title</b>	<b>Date</b>
<b>Recommended By:</b>	<b>Date</b>	<b>Approved By:</b>	<b>Date</b>
<b>Board Agent</b>		<b>Regional Director</b>	

**BANKRUPTCY**

*[NOTE: This Optional language should be used in circumstances where the Charged Party has filed for bankruptcy.]*

The (Charged Party) (Trustee in Bankruptcy) agrees that the backpay amount(s) set forth (above) (in Attachment A) (is) (are) (specify the priority of the claim—i.e., an administrative claim under 11 U.S.C. Section 507(a)(1) and the (Charged Party) (Trustee in Bankruptcy) agrees that (it) (he/she) will not contest the allowance of a claim for the above-noted backpay amount(s) as (specify the priority of the claim—i.e., an administrative claim under 11. U.S.C. Section 507 (a)(1))).

All parties agree that this Agreement is subject to approval by the Bankruptcy Court.

All parties agree that the amounts agreed to herein, and liquidated hereby, will be submitted to the Bankruptcy Court for appropriate distribution along with other debts.

**SAMPLE DEFAULT LANGUAGE**

*[NOTE: This Optional Paragraph may be used in circumstances where the Region concludes that there is a substantial likelihood that the Charged Party will be unwilling or unable to fulfill its settlement obligations. This language may also be included where the settlement involves large sums of money or installment payments. The Board approved the use of similar language in SAE Young Westmont-Chicago, LLC, 333 NLRB No. 59 (2001) (not reported in Board volume); No. 01-2328 (7th Cir. 2001). See also Ernest Lee Tile Contractors, 330 NLRB No. 61 (2000) (not reported in Board volume).]*

The Charged Party/Respondent agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party/Respondent, including but not limited to, failure to make timely installment payments of moneys as set forth above, and after 14 days notice from the Regional Director of the National Labor Relations Board of such noncompliance without remedy by the Charged Party/Respondent, the

Regional Director may issue a complaint based upon the allegations of the charge(s) in the instant case(s) which were found to have merit, to wit; [ ], and/or reissue the complaint previously filed in the instant case(s). Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just issued complaint concerning the violations of the Act alleged therein. The Charged Party/Respondent understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment the Board shall issue an Order requiring the Charged Party/Respondent to show cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether the Charged Party/Respondent defaulted upon the terms of this settlement agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party/Respondent, on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is customary to remedy such violations, including but not limited to the remedial provisions of this Settlement Agreement. The parties further agree that the Board's order may be entered thereon ex parte and that, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's order, judgment may be entered thereon ex parte and without opposition from the [Charged Party] [Respondent].

### **BACKPAY**

*[NOTE: Optional BACKPAY paragraph for installment payments (see samples below for Backpay Installment Payment Agreement (with and without personal guarantee provisions) and optional security documents (promissory note (signed by third party), assignment of contract proceeds, real property mortgage, real property deed of trust, bond, and security agreement).]*

In accordance with the terms of the attached Backpay Installment Payment Agreement, Attachment 1, the Charged Party will make whole the employees named below by payment to each of them of the amount opposite each name. The Charged Party will make appropriate withholdings for each named employee.

Name of Employee

Amount

**Optional Attachments to the Settlement Agreement**

**BACKPAY INSTALLMENT PAYMENT AGREEMENT**

In full satisfaction of all monetary obligations it may have in Board Case No. \_\_\_\_\_, [Full Name of Charged Party] agrees to pay backpay in the total amount of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), in [monthly] [quarterly] installment payments beginning on \_\_\_\_\_ (date), and continuing every [month] [quarter] until fully paid, to each named employee on the date, and in the amount, set forth below:

*[Insert installment payment schedule (amounts, dates, [addresses] and employees).]*

All payments will be made [directly to the employees at the above addresses] [to the Board's offices located at \_\_\_\_\_]. [Full Name of Charged Party] will make appropriate withholdings for each named employee.

In consideration of the Board granting this installment payment schedule, [Full Name of Charged Party] further agrees that, in the event of any failure to make a scheduled payment, or to cure any such failure within fourteen (14) days, the total amount of backpay set forth above, less any amounts paid, shall become immediately due and payable.

***[Optional Default Provision: In consideration of the Board granting this installment payment schedule, [Full Name of Charged Party] further agrees that, in the event of any failure to make a scheduled payment, or to cure any such failure within fourteen (14) days, the total backpay shall be increased to the amount of***

\_\_\_\_\_ DOLLARS [\$\_\_\_\_\_], less any amounts paid, which shall become immediately due and payable.]

[Optional Security Language: In order to ensure full payment under this Backpay Installment Payment Agreement, [Full Name of Charged Party] [Owner] [Principal] [Third Party Corporation (e.g., Single Employer/Successor/Alter Ego)] has executed the attached [Promissory Note] [Assignment of Contract Proceeds] [Real Property Mortgage] [Real Property Deed of Trust] [Bond] [Security Agreement (with Financing Statement)] as security for full payment.]

By: \_\_\_\_\_  
[Full Name of Charged Party] [Title]

Date: \_\_\_\_\_

**[Optional Personal or Third Party Guarantee Provision:** In the event [Full Name of Charged Party] fails to fully comply with the terms of this Backpay Installment Payment Agreement, the undersigned agrees to pay the total amount of the backpay set forth above, less all amounts paid pursuant to this Agreement by [Full Name of Charged Party].]

By: \_\_\_\_\_  
[Owner] [Principal] [Third Party Corporation (Single Employer/Successor/Disguised Continuance)]

Date: \_\_\_\_\_

**PROMISSORY NOTE**

*[NOTE: Promissory notes are negotiable instruments under the Uniform Commercial Code (UCC) and are an effective and efficient tool to guarantee payment of a backpay obligation by a third party, often the charged party's owner or another interested party.]*

[Total Amount]

Due:

[Owner] [Other Third Party], for value received, promises to pay to the order of the National Labor Relations Board, at its offices located at [Regional Address], the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) payable in \_\_\_\_\_ [monthly] [quarterly] installments of \$\_\_\_\_\_ each beginning \_\_\_\_\_ 1, 2002, and on the first day of each month thereafter, including the \_\_\_\_\_th and final payment due and payable on [date]. Each installment shall bear interest after maturity at the rate of Twelve Percent (12%) per annum.

It is agreed that if [Owner] [Other Third Party] fails to make any payment as provided above, the entire balance remaining unpaid shall, at the option of the holder hereof, without notice, be and become due and payable immediately.

Address \_\_\_\_\_  
\_\_\_\_\_ [Owner] [Other Third Party]  
\_\_\_\_\_



## DEED OF TRUST

*[NOTE: Public and Private Deeds of Trust recorded against real property owned by charged or responsible third party can be used to secure payment under a backpay installment payment plan or promissory note. Even where real property is already encumbered, execution (and recording) of a deed of trust creates a lien against real property that will have to be satisfied upon sale or refinancing of the real property.]*

[Public or Private]

Obtain current form from local legal stationary store and complete and record Deed of Trust with the assistance of the Contempt Litigation & Compliance Branch.

## MORTGAGE

*[NOTE: Mortgages are generally used in lieu of deeds of trust in some states and can be recorded against real property owned by charged or responsible third party to secure payment under a backpay installment payment plan or promissory note. Even where real property is already encumbered, execution (and recording) of a mortgage creates a lien against real property that will have to be satisfied upon sale or refinancing of the real property.]*

Obtain current form from local legal stationary store and complete and record Mortgage with the assistance of the Contempt Litigation & Compliance Branch.

## SECURITY AGREEMENT

*[NOTE: Security agreements (and financing statements) may be used to secure payment of backpay installment payment agreements when the charged party has otherwise unencumbered nonreal property (for example, accounts receivable, fixtures, and equipment) and where state UCC provisions (including filing requirements) have been complied with.]*

Obtain current form from local legal stationary store and complete and record Security Agreement (and Financing Statement) with the assistance of the Contempt Litigation & Compliance Branch.

## SURETY BOND

*[NOTE: Like letters of credit, surety bonds are unconditional promises by financial institutions to pay the settlement obligation of the charged party if the charged party fails to do so.]*

**Note:** The Bond will be drafted and signed by a reputable bonding company and may look like the following:

Bond

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That [Name of Charged Party], [Address], as Principal, and United States Surety Company, [Address], as surety, are held and firmly bound unto Region \_\_\_\_\_ of the National Labor Relations Board, as Obligee, in the initial penal sum of \_\_\_\_\_ DOLLARS [\$ \_\_\_\_\_], lawful money of the United States, for the payment of which, well and truly made, we bind ourselves, our

heirs, executors and administrators, successors, and assigns, jointly, severally, and firmly by these presents.

WHEREAS, the above bounded Principal has entered into a Backpay Installment Payment Agreement dated \_\_\_\_\_ (“Installment Agreement”) with the Obligees for Board Case No. \_\_\_\_\_. Pursuant to the terms of the Installment Agreement, the Principal is to make monthly installment payments of \$\_\_\_\_\_ to the Obligees on the 15th business day of each month for a period of \_\_\_\_\_ consecutive months beginning \_\_\_\_\_, 2002.

AND WHEREAS, the Obligees has required the Principal to provide a surety bond for the outstanding amount of the Installment Agreement in the event of an uncured default by the Principal in the payment of the Installment Agreement.

NOW, THEREFORE, the conditions of this bond are such that if said Principal shall make the payments to the Obligees in accordance with the Installment Agreement and as set forth herein below then the above obligation shall be void; otherwise to be and remain in full force and effect; subject, however, to the following express conditions precedent:

Whenever the Principal shall be declared by the Obligees to be in default of the payment terms of the Installment Agreement outlined hereinabove, the Surety may promptly remedy the default within 15 calendar days of having received notice from the Obligees, or shall promptly pay the Obligees the balance of the monthly payments due.

The penal sum of the bond is automatically reduced by \$\_\_\_\_\_ for each and every payment made by the Obligees pursuant to the Installment Agreement.

No right of action shall accrue on this bond to or for the use of any other person, corporation, or entity other than the Obligees named herein.

Notice to the Surety by the Obligees shall be in writing, by registered or certified mail to the address herein above.

Signed, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

[Name of Charged Party]

By: \_\_\_\_\_(Seal)

UNITED STATES SURETY COMPANY

By: \_\_\_\_\_(Seal)

[Name of Representative], Attorney-in-fact



5. The Employer and the Petitioner (Union) agree that the Notice of Election for the rerun election to be held as specified above, will explain that it is a rerun of the election held on [     ].

6. It is understood and agreed by the Employer and the Petitioner (Union) that all procedures subsequent to the conclusion of the counting of the ballots in the rerun election shall be in conformity with the Rules and Regulations of the Board, and in accordance with the terms and provisions of the (Stipulated Election Agreement as previously approved by the Regional Director) or (Decision and Direction of Election).

_____ [Employer]	_____ [Petitioner (Union)]
By _____	By _____
[Name]                      [Date]	[Name]                      [Date]
_____ [Title]	_____ [Title]

Recommended:

Dated: \_\_\_\_\_  
Board Agent, NLRB

Approved:

Dated: \_\_\_\_\_  
Regional Director, Region \_\_\_\_\_  
National Labor Relations Board

**APPENDIX 13**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION \_\_\_\_

Acme Mattress Co., et al.<sup>1</sup>

and

Case \_\_\_\_\_

Floyd A. Littlejohn,

an Individual

**STIPULATION**

The following matters are stipulated by and between respective counsel for both the Respondent and the General Counsel for the National Labor Relations Board:

1. The Respondent has not been able to reach agreement with the Board concerning the amount of backpay due Floyd A. Littlejohn (or the liability of \_\_\_\_\_ Co., as successor to \_\_\_\_\_ Co., for the backpay XYZ was ordered to pay Floyd Littlejohn herein) under the terms of this Order. Accordingly, the Respondent reserves the right to a hearing before an administrative law judge to determine the amount of backpay due in this case (or the compliance issue described herein). The Respondent further reserves its right to have the decision of the administrative law judge following such hearing, reviewed by the Board in due course, and its right to seek review of the Board determination by a Federal court of appeals. In the event the Respondent seeks such review, it is understood the only issue before the Board or court will be the amount of backpay due Floyd A. Littlejohn (or the compliance issue described herein), all other issues having been waived as set forth in paragraph 2, below.

2. The Respondent hereby waives its right under Section 10(e) and (f) of the Act (29 U.S.C. 160(e) and (f)) to contest either the propriety of the Board's Order issued on December 30, 20\_\_\_\_ or the findings of fact and conclusions of law underlying that Order.

3. The Regional Director for Region \_\_\_\_ may issue an order setting a date for hearing before an administrative law judge to determine the amount of backpay due in this case (or the compliance issue described in paragraph 2 hereof).

Dated: \_\_\_\_\_  
Respondent

Dated: \_\_\_\_\_  
Respondent

<sup>1</sup> The case caption should include any other respondents in the underlying proceeding. The stipulation should be executed by all respondents, absent unusual circumstances.

Recommended:

Dated: \_\_\_\_\_  
Board Agent, Region \_\_\_\_\_

Approved:

Dated: \_\_\_\_\_  
Regional Director, Region \_\_\_\_\_  
National Labor Relations Board

**APPENDIX 14**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region \_\_\_\_\_

ABC COMPANY

and

Case \_\_\_\_\_

XYZ UNION

STIPULATION CONSENTING TO AMOUNT OF BACKPAY,  
SCHEDULE FOR PAYMENT, AND THE ENTRY OF A  
SUPPLEMENTAL BOARD ORDER AND CONSENT JUDGMENT

IT IS HEREBY STIPULATED AND AGREED, by and between ABC Company (the Respondent), XYZ Union (the Union), and the General Counsel of the National Labor Relations Board, that:

1. On \_\_\_\_\_, the National Labor Relations Board (the Board), issued its Decision and Order [\_\_\_\_ NLRB \_\_\_\_] directing the Respondent to, inter alia, make whole employees \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ for any loss of earnings such employees may have suffered by reason of the Respondent's unfair labor practices in violation of Section 8(a)(3) of the National Labor Relations Act, as amended (the Act).

2. On \_\_\_\_\_, the United States Court of Appeals for the \_\_\_\_\_ Circuit entered its judgment in Civil No. \_\_\_\_\_, enforcing in full the Board's Order referred to above in paragraph 1.

3. A controversy having arisen concerning the amount of backpay due under the terms of the above Decision and Order of the Board, the Regional Director for Region \_\_\_\_\_, pursuant to authority conferred by the Board, issued a Compliance Specification and Notice of Hearing on \_\_\_\_\_, which was later supplemented by Amendments to Compliance Specification, issued on \_\_\_\_\_, and \_\_\_\_\_, receipt of which are hereby acknowledged, alleging that the above-named employees were due certain sums of money as a result of their losses occasioned by the Respondent's unfair labor practices.

4. On \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, respectively, the Respondent filed its Answer, Supplemental Answer, and Amended Answer, admitting in part, and denying in part, the allegations of the Compliance Specification and Amendments thereto.

**[Note: The Respondent's Answer, etc., if filed, should become a part of the record only if the Respondent insists; preferably, it should be withdrawn.]**

5. All parties hereto waive the filing of answer, hearing, Administrative Law Judge's Decisions, the filing of exceptions and briefs, oral argument before the Board, the making of findings of fact or conclusions of law by the Board, and all further and other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

**[Note: Delete "answer" if the Respondent insists that its Answer becomes part of the record.]**

6. This Stipulation, together with the Board's Decision and Order reported at \_\_\_\_\_ NLRB \_\_\_\_\_, the Court Judgment referred to above in paragraph 2, the Compliance Specification and Notice of Hearing and Amendments thereto referred to above in paragraph 3, [include affidavits of service of Compliance Specification and Notice of Hearing if service and receipt by the parties have not been acknowledged above in paragraph 3], the Answer [Supplemental Answer] [Amended Answer] referred to above in paragraph 4, [answer(s) only to be included if the Respondent insists], and Security Agreement, all of which documents are attached hereto, shall constitute the entire record herein.

7. Following the issuance of the Compliance Specification and Notice of Hearing and Amendments thereto referred to above in paragraph 3, the Respondent, the Union, and the General Counsel of the Board, acting through their respective counsel, reached agreement on the amount of backpay due and owing under the terms of the aforesaid Decision and Order of the Board, as enforced by the Court of Appeals for the \_\_\_\_\_ Circuit. Said agreement has been reduced to writing in this Stipulation and based upon it, the obligation of the Respondent to make whole employees under the Board's Decision and Order and the Judgment of the United States Court of Appeals for the \_\_\_\_\_ Circuit will be discharged by payment to the employees named in the Schedule below of the amounts set opposite their names in that Schedule, on the dates indicated, plus interest accrued to the date of payment, as set forth, minus the tax withholdings required by the Federal and State laws.

8. Upon this Stipulation and the record herein, as described in paragraph 6 above, and without any further notice of proceedings herein, the Board may enter a Supplemental Order forthwith providing as follows: The Respondent, ABC Company, its officers, agents, successors, and assigns, shall:

Take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended:

(a) Make whole the following employees for loss of pay suffered by reason of the discrimination against them, by payment to them of the amounts set forth opposite their respective names and at the times set forth in the schedule that follows. In consideration of timely payment of all but the final installment of the amounts due each employee in accordance with such schedule, plus interest, payment of said final installment is hereby waived; but if any installment other than the final installment is not paid on or before the date due, the full unpaid amount shall become immediately due and payable and the Board may, without further notice, institute proceedings against the Respondent for the collection of the full indebtedness remaining due, with additional interest due on the entire unpaid balance from the date of default until full payment is received, computed in

accordance with the formula set forth in *New Horizons for the Retarded, Inc.*, 283 NLRB 1173 (1987).

SCHEDULE				
EMPLOYEE	DATE OF PAYMENT	BACKPAY	INTEREST	TOTAL

(b) Within 10 days of entry of the Board’s Supplemental Order, the Respondent shall provide the Board with a security interest in all real property, fixtures, equipment, machinery, vehicles, inventory, accounts receivable, and bank accounts owned by the Respondent or any of its affiliates; in the proceeds of such collateral; and, in all increases, substitutions, replacements, additions, and accessions to such collateral. To evidence such interest, the Respondent agrees to execute simultaneously herewith the annexed Security Agreement, mortgages, and financing statements. The Respondent shall be responsible for, and bear all expenses relating to, providing such security, including the recording thereof.

9. The United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its judgment enforcing the Supplemental Order of the Board, in the form set forth in paragraph 8 hereof. The Respondent waives all defenses to the entry of the judgment, including compliance with the Supplemental Order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words and figures set forth in paragraph 8 hereof. However, the Respondent shall be required to comply with the affirmative provisions of the Board’s Supplemental Order after entry of the judgment only to the extent that it has not already done so.

10. This Stipulation contains the entire agreement between the parties, there being no agreement of any kind, verbal or otherwise, that varies, alters, or adds to it.

11. This Stipulation, together with the other documents constituting the record, as described in paragraph 6 above, shall be filed with the Board. The Stipulation is subject to the approval of the Board and it shall be effective nunc pro tunc to the date of execution of the Stipulation, immediately upon approval by the Board.

Signed at \_\_\_\_\_, \_\_\_\_\_ Signed at \_\_\_\_\_, \_\_\_\_\_  
[City] [State] [City] [State]

ABC COMPANY

XYZ UNION

By: \_\_\_\_\_ By: \_\_\_\_\_  
[Name and Title] [Name and Title]

\_\_\_\_\_  
[Address] [Address]

\_\_\_\_\_, 20\_\_\_\_ \_\_\_\_\_, 20\_\_\_\_  
[Date] [Date]

Signed at \_\_\_\_\_, \_\_\_\_\_  
[City] [State]

Approval by the General Counsel recommended:

\_\_\_\_\_  
[Type Name]  
Attorney, Region \_\_\_\_\_  
National Labor Relations Board  
[Address]  
[Date]

Approved:

\_\_\_\_\_  
Office of the General Counsel  
National Labor Relations Board  
Washington, D.C. 20570

\_\_\_\_\_  
[Date]

## APPENDIX 15

### Sample Security Agreement

Pursuant to the Stipulation dated \_\_\_\_\_, and \_\_\_\_\_, 20\_\_\_\_, ABC Company (the Debtor) and the National Labor Relations Board (the Board), agree:

1. As collateral security for the payment of all monies due, or which may become due, under the Decision and Order of the Board [\_\_\_\_ NLRB \_\_\_\_], enforced by the Circuit Court of Appeals judgment of \_\_\_\_\_ in Civil No. \_\_\_\_\_ and the above-referenced Stipulation, and in consideration of the settlement of the pending litigation between the parties, Debtor grants to the Board a security interest in the following collateral owned by Debtor or its affiliates, including \_\_\_\_\_ and \_\_\_\_\_.

A. All real property, including but not limited to: \_\_\_\_\_ and \_\_\_\_\_ (legal description of properties should be included);

B. All fixtures, equipment, machinery, vehicles, inventory, accounts receivable, and bank accounts;

C. All proceeds from the above collateral; and,

D. All increases, substitutions, replacements, additions and accessions to the above collateral.

2. Debtor shall provide the Board with written notice, to the Board's Regional Office in \_\_\_\_\_, within 10 days thereof, of all material increases, substitutions, replacements, additions, and accessions to the above collateral; of any changes in the Debtor's place of business; and, of the opening of any new places of business, including businesses run by wholly-owned subsidiaries.

3. To the extent applicable, the Uniform Commercial Code of the State in which the collateral is located shall govern the security interests provided for herein. Debtor shall take such steps and execute and deliver such financing statements, mortgages, and other documents required by the Code, other applicable laws, or as the Board may from time-to-time request.

4. Excepting security interests recorded prior to \_\_\_\_\_, Debtor shall not pledge, mortgage, create, or suffer to exist a security interest in any of the above collateral in favor of any other party other than the Board or dispose of any of the above collateral without the prior written consent of the Board.

5. Debtor shall keep the collateral in good condition and repair, reasonable wear and tear excepted, and will permit the Board and its agents to inspect the collateral at any time. Debtor will insure the collateral against all hazards requested by the Board, in form and amount satisfactory to the Board. If Debtor fails to obtain insurance, the Board shall have the right to obtain it at Debtor's expense. Debtor assigns to the Board all right to receive proceeds of insurance not exceeding the unpaid balance due, directs any insurer to pay all proceeds directly to the Board, and authorizes the Board to endorse any draft for the proceeds.

6. Debtor shall pay when due all taxes that are or may become a lien on the property and shall defend the collateral against the claims and demands of all persons. Debtor shall notify the Board in writing within 5 days after service on it of any summons or other process or notice issued in any action, suit, proceeding, or in which any judgment, decree order, or determination may affect or result in any lien or charge on any of the above collateral.

7. All advances, charges, costs, and expenses, including attorneys' fees, incurred or paid by the Board in exercising any right, power, or remedy conferred by this agreement, or in the enforcement thereof, shall become part of the indebtedness secured hereunder and shall be paid to the Board by the Debtor immediately and without demand.

8. Upon default by Debtor in the performance of any covenant or agreement herein or in the discharge of its liability to the Board under the \_\_\_\_\_ Circuit's judgment in Civil No. \_\_\_\_\_ or the above-referenced Stipulation, the Board shall have all of the rights and remedies provided under the Uniform Commercial Code of \_\_\_\_\_, Federal Debt Collection Procedures Act of 1990 (28 U.S.C. § 3201), or other applicable law and all rights provided herein, all of which rights and remedies shall, to the full extent permitted by law, be cumulative. The Board may require Debtor to assemble the collateral and make it available to the Board at a place to be designated by the Board that is reasonably convenient to the Board and Debtor. Any notice of sale, disposition, or other intended action by the Board, mailed to Debtor at the address shown on the Board's records, at least 5 days prior to such action, shall constitute reasonable notice to Debtor. The waiver of any default hereunder shall not be a waiver of any subsequent default.

9. All obligations of Debtor hereunder shall bind its officers, agents, successors, and assigns.

This Agreement is executed on \_\_\_\_\_, 20\_\_\_\_\_.

NATIONAL LABOR RELATIONS BOARD

ABC COMPANY

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_

**APPENDIX 16**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION \_\_\_\_\_

Thorn Corporation  
and  
Rose Gardener, an Individual

Case No. \_\_\_\_-CA-\_\_\_\_\_

**COMPLIANCE STIPULATION**

**IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN** Thorn Corporation (Respondent) and Rose Gardener (Gardener) and Region \_\_\_\_\_ of the National Labor Relations Board [Region \_\_\_\_\_], that:

1. On \_\_\_\_\_, 20\_\_\_\_, the National Labor Relations Board (the Board), issued an Order adopting the Administrative Law Judge's recommended Decision in the above-captioned case. The Board Order directed Respondent, inter alia, to make Rose Gardener whole for any loss of earnings as a result of her being denied a full-time job on the second shift in October 20\_\_\_\_.

2. This Stipulation, together with the Board's Order and the Decision of the Administrative Law Judge, shall constitute the entire record herein.

3. Following issuance of the Board Order, Respondent, Gardener, and Region \_\_\_\_\_, reached agreement on the amount of backpay due and owing under the terms of the Order. Said agreement has been reduced to writing in this Stipulation and based upon it the backpay obligation of Respondent will be discharged by payment to Gardener the sum of \$93,633.00. This sum is comprised of \$80,188.00 in backpay and \$13,445.00 in interest.

4. Respondent will, upon notice that this Stipulation has been approved by the Regional Director, convey payment to Region \_\_\_\_\_ in the form of two checks, payable to Gardener, one in the amount of \$80,188.00 with normal Federal and state tax withholding, and one in the amount of \$13,445.00 without any withholdings. Respondent will issue Gardener an IRS Form W-2 for the backpay and an IRS Form 1099 for the interest at the appropriate time.

5. All parties agree that the backpay amounts specified above are correct and constitute the full backpay due pursuant to the Board's Order. All parties, therefore, hereby waive any right to a hearing or any other legal proceeding to dispute the accuracy of the amounts described above, or the findings of the Board and the Administrative Law Judge.

6. In the event of Respondent's noncompliance with the terms of this Compliance Stipulation, including but not limited to failure to make timely payment of money in the form set forth above, and after 14 days notice from the Regional Director of the National

Labor Relations Board of such noncompliance without remedy by Respondent, the Regional Director may issue a Compliance Specification reflecting the full remedy due, including but not limited to backpay and interest owing pursuant to the terms of this Compliance Stipulation, plus additional interest. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the Compliance Specification. In such event, the allegations of the Compliance Specification may be deemed to be true by the Board, Respondent will not contest the validity of any such allegations, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of the Compliance Specification. On receipt of said motion for summary judgment, the Board shall issue an Order requiring Respondent to show cause why said motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether Respondent defaulted upon the terms of this Compliance Stipulation. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Compliance Specification to be true and make findings of fact and conclusions of law consistent with those allegations adverse to Respondent, on all issues raised by the pleadings. The Board may then issue an Order providing a backpay remedy in accordance with the allegations of the Compliance Specification. The Board's Order may be entered thereon ex parte and, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's Order, judgment may be entered thereon ex parte and without opposition from Respondent.

7. This Stipulation contains the entire agreement between the parties concerning the backpay issue, there being no agreement of any kind, verbal or otherwise, that varies, alters, or adds to it.

Thorn Corporation

Rose Gardener, an Individual

By: \_\_\_\_\_ By: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Recommended:

Dated: \_\_\_\_\_

Compliance Officer, NLRB

Approved:

Dated: \_\_\_\_\_

Regional Director, Region \_\_\_\_\_  
National Labor Relations Board

**APPENDIX 17**

**Sample Compliance Specifications**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION \_\_\_\_\_

LEAD FOOT TRUCKING CO., INC.

and

JUSTIN TIME

Case No. \_\_\_\_-CA-\_\_\_\_\_

**COMPLIANCE SPECIFICATION AND NOTICE OF HEARING**

The National Labor Relations Board, (herein referred to as the Board), having on \_\_\_\_\_, 1999, issued its Decision and Order in Case \_\_\_\_-CA-\_\_\_\_\_, directing Lead Foot Trucking Co., Inc., Respondent herein, to offer Justin Time immediate reinstatement to his former job as a terminal manager, and make him whole for the losses he suffered as a result of the discrimination against him in violation of Section 8(a)(1) of the National Labor Relations Act; the United States Court of Appeals for the \_\_\_\_\_ Circuit having on \_\_\_\_\_, 2000, entered its judgment enforcing in full the provisions of the Board's Order; and a controversy having arisen over the amount of backpay due under the terms of the Board's Order; the Regional Director of the National Labor Relations Board for the \_\_\_\_\_ Region, hereby issues this Compliance Specification and Notice of Hearing and alleges that the backpay owing to Justin Time is as follows:

**WAGES**

1. Time's backpay period for wages begins on June 22, 1995, and ends on October 12, 2000.
2. (a) An appropriate measure of the gross backpay due Time is based on his annual salary at the time of his discharge.
  - (b) Time is also entitled to annual increases in salary.
  - (c) The amount of Time's annual increases is based on the average increases received by comparable terminal managers throughout the backpay period.
  - (d) Beginning September 1, 1996, and annually thereafter, comparable terminal managers received average annual increases of 3.79 percent.
  - (e) Set forth in Exhibit 1 is the annual salary Time would have earned based on an average annual salary increase of 3.79 percent for the period 1996 through 2000.
3. Exhibit 2 sets forth the amount of Time's weekly salary, including the annual 3.79 percent salary increases, and the number of weeks per quarter. This is the data used to calculate Time's quarterly gross backpay for wages.

4. Time's quarterly gross backpay totals for wages are set forth in Exhibit 5.

### **BONUSES**

5. (a) Time is entitled to annual bonuses, payable in December, based upon the bonus amounts Respondent paid to its other terminal managers.

(b) Exhibit 3 sets forth the bases upon which Respondent paid bonuses to its other terminal managers. The same bases were applied to calculate the bonuses that are owing to Time. Exhibit 3 also sets forth the appropriate amount for Time's annual bonuses.

(c) Time's annual bonuses are also set forth in the fourth quarter gross backpay calculations, contained in Exhibit 5, for each year during the period 1995 through 2000.

### **CAR ALLOWANCE**

6. (a) Time is entitled to reimbursement for the monthly car allowance which Respondent paid to the terminal manager, less the monthly car allowance he received from his interim employer, Dent Moving Systems.

(b) The quarterly amounts owing to Time for car allowance are set forth in Exhibit 4. These amounts are also set forth in the quarterly gross backpay calculations, contained in Exhibit 5, from the second quarter of 1995 through the third quarter of 2000.

### **INTERIM EARNINGS**

7. Calendar quarter net backpay is the difference between calendar quarter gross backpay and calendar quarter net interim earnings.

8. Time's interim earnings from his interim employment at Dent Moving Systems are set forth in Exhibit 5.

PLEASE TAKE NOTICE that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_ a.m. and consecutive days thereafter until concluded, at a place to be designated in \_\_\_\_\_, \_\_\_\_\_, a hearing will be conducted before a duly designated administrative law judge of the National Labor Relations Board on the allegations set forth in the above Specification, at which time you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, the Respondent shall, within 21 days from the date of the Specification, file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the Specification and shall immediately serve a copy thereof on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. A failure to timely file the answer will not

be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. When an answer is filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Specification are true.

To the extent that such answer fails to deny allegations of the Specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them.

DATED at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

Regional Director  
NATIONAL LABOR RELATIONS BOARD  
Region \_\_\_\_\_  
[Address]

**Sample Sections of Compliance Specification  
Involving Derivative Liability (Excludes Backpay Computation)**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION \_\_\_\_\_

ABC ELECTRIC COMPANY and ABC ELECTRIC CONSTRUCTION COMPANY, INC. and ANTHONY B. CURRENT, An Individual and XYZ, LOCAL UNION NO. 1
--

Case No. \_\_\_\_-CA-\_\_\_\_\_

**COMPLIANCE SPECIFICATION AND NOTICE OF HEARING**

The National Labor Relations Board, herein called the Board, issued its Decision and Order [\_\_\_\_ NLRB \_\_\_\_] on \_\_\_\_\_, \_\_\_\_\_, directing ABC Electric Company (herein individually called Respondent ABC) its officers, agents, successors, and assigns, to take certain affirmative action, including that of making [Named Discriminatees] whole for any loss of pay or other benefits they may have suffered as a result of Respondent ABC's unfair labor practices in violation of Section 8(a)(3) and (5) of the Act.

On \_\_\_\_\_, \_\_\_\_\_, the United States Court of Appeals for the \_\_\_\_\_ circuit in Case No. \_\_\_\_\_, entered its judgment enforcing the Board's Order.

As controversies presently exist over whether Respondent ABC Electric Construction Company, Inc. (herein individually called Respondent ABC Construction), is a successor and alter ego to Respondent ABC, and as to the liability of Respondent ABC Construction to fulfill the remedial obligations of the Board's Order as enforced; and over the amounts of backpay due [Named discriminates], and the amount of moneys due the Health and Welfare Fund, Pension Fund, Apprenticeship Fund, Accidental Life Fund, Long-Term Disability Fund, and District Pension Fund, under the Board's Order as enforced, the Regional Director of the National Labor Relations Board for Region \_\_\_\_, pursuant to the authority duly conferred upon him by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges as follows:

1. At all material times, and continuing until an unspecified time in \_\_\_\_\_, Respondent ABC, a corporation, with an office and place of business in \_\_\_\_\_, \_\_\_\_\_, was engaged in construction business as an electrical contractor.

2. Since about \_\_\_\_\_, and continuing to date, Respondent ABC Construction, with an office and place and business in \_\_\_\_\_, \_\_\_\_\_, has been engaged in the construction business as an electrical contractor.

3. At all times material herein Anthony B. Current (herein called Respondent Current) was the president of Respondent ABC and owned 100 percent of the stock in Respondent ABC. Since \_\_\_\_\_, Respondent Current has been a member of the Board of Directors of Respondent ABC Construction. Since \_\_\_\_\_, and for approximately \_\_\_\_ months thereafter, Respondent Current was the vice president of Respondent ABC Construction.

4. At all times material herein Sparky Current was the vice president of Respondent ABC. Since \_\_\_\_\_, Sparky Current has been the president of Respondent ABC Construction.

5. At all times since \_\_\_\_\_, Respondent ABC Construction has maintained the same business address, business telephone, business name, and goodwill of Respondent ABC.

6. At all times since \_\_\_\_\_, Respondent ABC Construction employed four of Respondent ABC's five employees, as Respondent ABC Construction's initial employee complement.

7. At all times since \_\_\_\_\_, Respondent ABC Construction used the bank endorsement stamp of Respondent ABC for banking deposits.

8. At all times since \_\_\_\_\_, Respondent ABC Construction repeatedly used Respondent ABC's payroll withholding account to pay Respondent ABC Construction's Federal employment taxes.

9. At all times since \_\_\_\_\_, Respondent ABC Construction has advertised itself as a continuance of a long-time venture, i.e., Respondent ABC.

10. At all times since \_\_\_\_\_, Respondent Current personally guaranteed Respondent ABC Construction's line of credit.

11. At all times since \_\_\_\_\_, Respondent ABC, Respondent Current and Elektra Current lent money to Respondent ABC Construction and/or Sparky Current without documentation or corporate resolution by Respondent ABC Construction. Since \_\_\_\_\_ Respondent ABC Construction has repaid loans to Respondent Current and Elektra Current without corporate resolutions by Respondent ABC Construction.

12. At all times since \_\_\_\_\_, Respondent Current's name has been on the signature card of Respondent ABC Construction's checking account.

13. Since \_\_\_\_\_, Respondent Current has repeatedly used Respondent ABC's Construction corporate checking account to pay the personal bills of Respondent Current.

14. At all times since \_\_\_\_\_, Respondent Current has not received a salary from Respondent ABC Construction.

15. Since \_\_\_\_\_, and continuing for approximately \_\_\_\_ months thereafter, Respondent ABC Construction used the corporate sign and logo of Respondent ABC.

16. Prior to \_\_\_\_\_, Sparky Current worked as the project manager of Respondent ABC.

17. Since \_\_\_\_\_, and continuing to date, Respondent ABC Construction has paid the litigation costs of Respondent Current and Respondent ABC without seeking reimbursement.

18. Since on or about \_\_\_\_\_, \_\_\_\_\_, Respondent Current, represented himself to \_\_\_\_\_, \_\_\_\_\_ Building Permit Department, as the secretary-treasurer of Respondent ABC Construction and its master license holder.

19. At all times material herein, Respondent Current has acted as the master electrician for Respondent ABC Construction, acted as general superintendent of field work, and has been described, by Sparky Current, as a supervisor for Respondent ABC Construction.

20. Since on or about \_\_\_\_\_, Respondent ABC Construction has used the same construction trailers and equipment as previously used by Respondent ABC.

21. At all times material herein, Respondent Current has negotiated with suppliers for Respondent ABC Construction.

22. At all times material herein, credit cards issued for Respondent ABC Construction's use were issued in the name of Respondent Current and used by Respondent Current for business lunches and dinners with suppliers, customers, and employees.

23. Since \_\_\_\_\_, and for approximately \_\_\_\_ months, Respondent ABC permitted Respondent ABC Construction to operate its business from Respondent ABC's business location without paying rent or reimbursement.

24. At all times material herein, Respondent Current has owned all the stock in Respondent ABC, exerted personal control over Respondent ABC's corporate activities, including daily labor relations, personally committed the unfair labor practices and personally decided to end Respondent ABC's existence. At all times material herein, Respondent Current has held himself out as the agent of Respondent ABC Construction and exerted personal control over the corporate activities and finances of Respondent ABC Construction.

25. By virtue of the conduct described above in paragraph 24 Anthony B. Current is an alter ego of Respondent ABC and Respondent ABC Construction and is personally responsible for remedying the unfair labor practices of Respondent ABC.

26. Since \_\_\_\_\_ and continuing to date, Respondent ABC Construction has continued to operate the business of Respondent ABC in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Respondent ABC.

27. Before engaging in the conduct described above in paragraph 26, Respondent ABC Construction was put on notice of Respondent ABC's actual liability in Board Case \_\_\_-CA-\_\_\_\_\_ by Respondent Current, an agent of Respondent ABC.

28. Based on the conduct and operations described above in paragraphs 1 through 27, Respondent ABC Construction has continued the employing entity with notice of Respondent ABC's actual liability to remedy its unfair labor practices, and is a successor to Respondent ABC.

29. About \_\_\_\_\_, Respondent ABC Construction was established by Respondent ABC, as a subordinate instrument to and a disguised continuation of Respondent ABC.

30. Based on the conduct described above in paragraphs 1 and 27, Respondent ABC Construction and Respondent ABC are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

**(EXHIBIT 1)**

**AVERAGE GROSS EARNINGS THAT JUSTIN TIME WOULD HAVE RECEIVED  
BASED ON COMPARATOR TERMINAL MANAGERS' ANNUAL INCREASES  
EFFECTIVE SEPTEMBER 1 OF EACH YEAR**

	<b>PERCENT OF RAISE</b>	<b>ANNUAL SALARY</b>	<b>WEEKLY SALARY</b>
1995		\$ 54,080.00	\$ 1,040.00
1996	3.79%	\$ 56,129.63	\$ 1,079.42
1997	3.79%	\$ 58,256.95	\$ 1,120.33
1998	3.79%	\$ 60,464.88	\$ 1,162.79
1999	3.79%	\$ 62,756.50	\$ 1,206.86
2000	3.79%	\$ 66,134.97	\$ 1,252.60

**(EXHIBIT 2)**

**QUARTERLY GROSS EARNINGS FOR JUSTIN TIME  
BACKPAY PERIOD 06/22/95-10/12/00**

	<b>NO. OF WEEKS</b>	<b>WEEKLY SALARY</b>	<b>GROSS BACKPAY</b>
QUARTER 95-2	1.4	\$ 1,040.00	\$ 1,456.00
QUARTER 95-3	13.0	\$ 1,040.00	\$ 13,520.00
QUARTER 95-4	13.0	\$ 1,040.00	\$ 13,520.00
QUARTER 96-1	13.0	\$ 1,040.00	\$ 13,520.00
QUARTER 96-2	13.0	\$ 1,040.00	\$ 13,520.00
QUARTER 96-3	9.0	\$ 1,040.00	\$ 9,360.00
	4.0	\$ 1,079.42	\$ 4,317.68
QUARTER 96-4	13.0	\$ 1,079.42	\$ 14,032.46
QUARTER 97-1	13.0	\$ 1,079.42	\$ 14,032.46
QUARTER 97-2	13.0	\$ 1,079.42	\$ 14,032.46
QUARTER 97-3	8.8	\$ 1,079.42	\$ 9,498.90
	4.2	\$ 1,120.33	\$ 4,705.39
QUARTER 97-4	13.0	\$ 1,120.33	\$ 14,564.29
QUARTER 98-1	13.0	\$ 1,120.33	\$ 14,564.29
QUARTER 98-2	13.0	\$ 1,120.33	\$ 14,564.29
QUARTER 98-3	8.8	\$ 1,120.33	\$ 9,858.90
	4.2	\$ 1,162.79	\$ 4,883.72
QUARTER 98-4	13.0	\$ 1,162.79	\$ 15,116.27
QUARTER 99-1	13.0	\$ 1,162.79	\$ 15,116.27
QUARTER 99-2	13.0	\$ 1,162.79	\$ 15,116.27
QUARTER 99-3	8.8	\$ 1,162.79	\$ 10,232.55
	4.2	\$ 1,206.86	\$ 5,068.81
QUARTER 99-4	13.0	\$ 1,206.86	\$ 15,689.18
QUARTER 00-1	13.0	\$ 1,206.86	\$ 15,689.18
QUARTER 00-2	13.0	\$ 1,206.86	\$ 15,689.18
QUARTER 00-3	8.8	\$ 1,206.86	\$ 10,620.37
	4.2	\$ 1,252.60	\$ 5,260.92
QUARTER 00-4	2.0	\$ 1,252.60	\$ 2,505.20

(EXHIBIT 3)

**BONUSES GIVEN TO TERMINAL MANAGER**

<b>YEAR</b>	<b>RATE</b>	<b>AMOUNT</b>	
1995	0%	\$ --	
1996	1 Week's Pay	\$ 1,079.42	BONUSES PAYABLE IN DECEMBER OF EACH YEAR
1997	1 Week's Pay	\$ 1,120.33	
1998	5.4%	\$ 3,265.10	
1999	10.2%	\$ 6,401.16	
2000	11.4%	\$ 7,425.39	

(EXHIBIT 4)

**MONTHLY CAR ALLOWANCE FOR JUSTIN TIME  
BACKPAY PERIOD 06/22/95-10/12/00**

	<b>MONTHLY RATE</b>	<b>NO. OF MONTHS</b>	<b>AMOUNT OWED</b>
QUARTER 95-2	\$ 350.00	1	\$ 350.00
QUARTER 95-3			
Lead Foot	\$ 350.00	3	\$ 1,050.00
Dent Moving	\$ 200.00	1	<u>\$ 200.00</u>
<i>DIFFERENCE</i>			\$ 850.00
QUARTERS 95-4 THROUGH 00-3			
Lead Foot	\$ 350.00	3	\$ 1,050.00
Dent Moving	\$ 200.00	3	<u>\$ 600.00</u>
<i>DIFFERENCE</i>			\$ 450.00



(EXHIBIT 6)

401(k) CONTRIBUTIONS THAT WOULD HAVE BEEN MADE

	TIME'S WEEKLY CONTRIB. 4%	LEAD FOOT CONTRIB. 2%	LEAD FOOT 25% MATCH OF TIME'S CONTRIB. EQUALS 1%	TOTAL	50% SKY ROCKET CO.	50% PLUMMET FUND
1995-2	\$ 41.60	\$ 20.80	\$ 10.40			
No. of Wks.	<u>1.4</u>	<u>1.4</u>	<u>1.4</u>			
TOTAL	\$ 58.24	\$ 29.12	\$ 14.56	\$ 101.92	\$ 50.96	\$ 50.96
1995-3	\$ 41.60	\$ 20.80	\$ 10.40			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 540.80	\$ 270.40	\$ 135.20	\$ 946.40	\$ 473.20	\$ 473.20
1995-4	\$ 41.60	\$ 20.80	\$ 10.40			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 540.80	\$ 270.40	\$ 135.20	\$ 946.40	\$ 473.20	\$ 473.20
1996-1	\$ 41.60	\$ 20.80	\$ 10.40			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 540.80	\$ 270.40	\$ 135.20	\$ 946.40	\$ 473.20	\$ 473.20
1996-2	\$ 41.60	\$ 20.80	\$ 10.40			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 540.80	\$ 270.40	\$ 135.20	\$ 946.40	\$ 473.20	\$ 473.20
1996-3 (Jul-Aug)	\$ 41.60	\$ 20.80	\$ 10.40			
No. of Wks.	<u>9</u>	<u>9</u>	<u>9</u>			
TOTAL	\$ 374.40	\$ 187.20	\$ 93.60	\$ 655.20	\$ 327.60	\$ 327.60
1996-3 (Sept.)	\$ 43.18	\$ 21.59	\$ 10.79			
No. of Wks.	<u>4</u>	<u>4</u>	<u>4</u>			
TOTAL	\$ 172.71	\$ 86.35	\$ 43.18	\$ 302.24	\$ 151.12	\$ 151.12
1996-4	\$ 43.18	\$ 21.59	\$ 10.79			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 561.30	\$ 280.65	\$ 140.32	\$ 982.27	\$ 491.14	\$ 491.14
1997-1	\$ 43.18	\$ 21.59	\$ 10.79			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 561.30	\$ 280.65	\$ 140.32	\$ 982.27	\$ 491.14	\$ 491.14
1997-2	\$ 43.18	\$ 21.59	\$ 10.79			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 561.30	\$ 280.65	\$ 140.32	\$ 982.27	\$ 491.14	\$ 491.14
1997-3 (Jul-Aug)	\$ 43.18	\$ 21.59	\$ 10.79			
No. of Wks.	<u>8.8</u>	<u>8.8</u>	<u>8.8</u>			
TOTAL	\$ 379.96	\$ 189.98	\$ 94.99	\$ 664.92	\$ 332.46	\$ 332.46

**401(k) CONTRIBUTIONS THAT WOULD HAVE BEEN MADE**

	<b>TIME'S WEEKLY CONTRIB. 4%</b>	<b>LEAD FOOT CONTRIB. 2%</b>	<b>LEAD FOOT 25% MATCH OF TIME'S CONTRIB. EQUALS 1%</b>	<b>TOTAL</b>	<b>50% SKY ROCKET CO.</b>	<b>50% PLUMMET FUND</b>
1997-3 (Sept.)	\$ 44.81	\$ 22.41	\$ 11.20			
No. of Wks.	<u>4.2</u>	<u>4.2</u>	<u>4.2</u>			
TOTAL	\$ 188.22	\$ 94.11	\$ 47.05	\$ 329.38	\$ 164.69	\$ 164.69
1997-4	\$ 44.81	\$ 22.41	\$ 11.20			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 582.57	\$ 291.29	\$ 145.64	\$1,019.50	\$ 509.75	\$ 509.75
1998-1	\$ 44.81	\$ 22.41	\$ 11.20			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 582.57	\$ 291.29	\$ 145.64	\$1,019.50	\$ 509.75	\$ 509.75
1998-2	\$ 44.81	\$ 22.41	\$ 11.20			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 582.57	\$ 291.29	\$ 145.64	\$1,019.50	\$ 509.75	\$ 509.75
1998-3 (Jul-Aug)	\$ 44.81	\$ 22.41	\$ 11.20			
No. of Wks.	<u>8.8</u>	<u>8.8</u>	<u>8.8</u>			
TOTAL	\$ 394.36	\$ 197.18	\$ 98.59	\$ 690.12	\$ 345.06	\$ 345.06
1998-3 (Sept.)	\$ 46.51	\$ 23.26	\$ 11.63			
No. of Wks.	<u>4.2</u>	<u>4.2</u>	<u>4.2</u>			
TOTAL	\$ 195.35	\$ 97.67	\$ 48.84	\$ 341.86	\$ 170.93	\$ 170.93
1998-4	\$ 46.51	\$ 23.26	\$ 11.63			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 604.65	\$ 302.33	\$ 151.16	\$1,058.14	\$ 529.07	\$ 529.07
1999-1	\$ 46.51	\$ 23.26	\$ 11.63			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 604.65	\$ 302.33	\$ 151.16	\$1,058.14	\$ 529.07	\$ 529.07
1999-2	\$ 46.51	\$ 23.26	\$ 11.63			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 604.65	\$ 302.33	\$ 151.16	\$1,058.14	\$ 529.07	\$ 529.07
1999-3 (Jul-Aug)	\$ 46.51	\$ 23.26	\$ 11.63			
No. of Wks.	<u>8.8</u>	<u>8.8</u>	<u>8.8</u>			
TOTAL	\$ 409.30	\$ 204.65	\$ 102.33	\$ 716.28	\$ 358.14	\$ 358.14
1999-3 (Sept.)	\$ 48.27	\$ 24.14	\$ 12.07			
No. of Wks.	<u>4.2</u>	<u>4.2</u>	<u>4.2</u>			
TOTAL	\$ 202.75	\$ 101.38	\$ 50.69	\$ 354.82	\$ 177.41	\$ 177.41

**401(k) CONTRIBUTIONS THAT WOULD HAVE BEEN MADE**

	<b>TIME'S WEEKLY CONTRIB. 4%</b>	<b>LEAD FOOT CONTRIB. 2%</b>	<b>LEAD FOOT 25% MATCH OF TIME'S CONTRIB. EQUALS 1%</b>	<b>TOTAL</b>	<b>50% SKY ROCKET CO.</b>	<b>50% PLUMMET FUND</b>
1999-4	\$ 48.27	\$ 24.14	\$ 12.07			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 627.57	\$ 313.78	\$ 156.89	\$1,098.24	\$ 549.12	\$ 549.12
2000-1	\$ 48.27	\$ 24.14	\$ 12.07			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 627.57	\$ 313.78	\$ 156.89	\$1,098.24	\$ 549.12	\$ 549.12
2000-2	\$ 48.27	\$ 24.14	\$ 12.07			
No. of Wks.	<u>13</u>	<u>13</u>	<u>13</u>			
TOTAL	\$ 627.57	\$ 313.78	\$ 156.89	\$1,098.24	\$ 549.12	\$ 549.12
2000-3 (Jul-Aug)	\$ 48.27	\$ 24.14	\$ 12.07			
No. of Wks.	<u>8.8</u>	<u>8.8</u>	<u>8.8</u>			
TOTAL	\$ 424.81	\$ 212.41	\$ 106.20	\$ 743.43	\$ 371.71	\$ 371.71
2000-3 (Sept.)	\$ 50.10	\$ 25.05	\$ 12.53			
No. of Wks.	<u>4.2</u>	<u>4.2</u>	<u>4.2</u>			
TOTAL	\$ 210.44	\$ 105.22	\$ 52.61	\$ 368.26	\$ 184.13	\$ 184.13
2000-4	\$ 50.10	\$ 25.05	\$ 12.53			
No. of Wks.	<u>2</u>	<u>2</u>	<u>2</u>			
TOTAL	\$ 100.21	\$ 50.10	\$ 25.05	\$ 175.36	\$ 87.68	\$ 87.68
<b>GRAND TOTAL</b>	<b>\$12,402.20</b>	<b>\$ 6,201.10</b>	<b>\$ 3,100.55</b>	<b>\$21,703.85</b>	<b>\$10,851.93</b>	<b>\$10,851.93</b>

**(EXHIBIT 7)**

**TAKE-A-DIVE INVESTMENTS**

<b>FUND NAME</b>	<b>DATE</b>	<b>QTD RETURNS</b>	<b>FUND NAME</b>	<b>DATE</b>	<b>QTD RETURNS</b>
Sky Rocket Company	03/31/95	7.0433	Plummet Fund	03/31/95	8.4431
Sky Rocket Company	06/30/95	16.0384	Plummet Fund	06/30/95	15.7719
Sky Rocket Company	09/29/95	11.8429	Plummet Fund	09/29/95	10.5988
Sky Rocket Company	12/29/95	0.4978	Plummet Fund	12/29/95	-1.4618
Sky Rocket Company	03/29/96	5.6092	Plummet Fund	03/29/96	1.7911
Sky Rocket Company	06/28/96	4.4882	Plummet Fund	06/28/96	1.0002
Sky Rocket Company	09/30/96	2.6375	Plummet Fund	09/30/96	1.6711
Sky Rocket Company	12/31/96	3.1300	Plummet Fund	12/31/96	6.8500
Sky Rocket Company	03/31/97	-2.7200	Plummet Fund	03/31/97	-0.5600
Sky Rocket Company	06/30/97	15.7000	Plummet Fund	06/30/97	16.5500
Sky Rocket Company	09/30/97	9.5700	Plummet Fund	09/30/97	9.6700
Sky Rocket Company	12/31/97	-3.5800	Plummet Fund	12/31/97	-0.4000
Sky Rocket Company	03/31/98	12.8000	Plummet Fund	03/31/98	14.2200
Sky Rocket Company	06/30/98	1.5700	Plummet Fund	06/30/98	3.3700
Sky Rocket Company	09/30/98	-8.3400	Plummet Fund	09/30/98	-11.0500
Sky Rocket Company	12/31/98	21.1600	Plummet Fund	12/31/98	27.2200
Sky Rocket Company	03/31/99	9.0000	Plummet Fund	03/31/99	7.3900
Sky Rocket Company	06/30/99	9.5600	Plummet Fund	06/30/99	5.9300
Sky Rocket Company	09/30/99	3.9900	Plummet Fund	09/30/99	-5.9700
Sky Rocket Company	12/31/99	44.5200	Plummet Fund	12/31/99	15.9700
Sky Rocket Company	03/31/00	18.7800	Plummet Fund	03/31/00	4.8500
Sky Rocket Company	06/30/00	-8.1800	Plummet Fund	06/30/00	-3.9600
Sky Rocket Company	09/30/00	2.7100	Plummet Fund	09/30/00	-0.5800
Sky Rocket Company	12/31/00	-16.3700	Plummet Fund	12/31/00	-9.4000





## APPENDIX 18

Mr. Henry Trustee  
One Central Avenue, Suite 100  
Whitefish, Montana 59937

Re: [Bankruptcy Case Name and Number]  
[NLRB Case Number]

Dear Mr. Trustee:

I write in response to your suggestion that the Board's pending unfair labor practice proceeding is automatically stayed by operation of Bankruptcy Code Section 362, (11 U.S.C. § 362). Contrary to your contention, it is settled that Board unfair labor practice proceedings are excepted from the automatic stay.<sup>1</sup> Section 362(b)(4) provides that the automatic stay does not apply to actions of "a governmental unit to enforce [its] . . . regulatory power." The courts have found that "the NLRB is a governmental unit," and its actions are "undertaken to enforce the federal law regulating the relationship between employer and employee." *NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 942 (6th Cir. 1986) (quoting *NLRB v. Evans Plumbing Co.*, 639 F.2d 291, 293 (5th Cir. 1981)). "[I]t is clear that NLRB actions are generally not affected by the automatic bankruptcy stay." *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 832–833, 834 (9th Cir. 1991).<sup>2</sup> Accordingly, the Board may prosecute an unfair labor practice case, proceed to a final decision, and liquidate the backpay amount, as long as it does not seek collection outside the Bankruptcy Court.<sup>3</sup>

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<sup>1</sup> *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23, 24 (1st Cir. 1983); *NLRB v. E.D.P. Med. Computer Systems*, 6 F.3d 951, 957 (2d Cir. 1993); *NLRB v. 15th Ave. Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992); *NLRB v. Evans Plumbing Co.*, 639 F.2d 291, 293 (5th Cir. 1981); *NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 941 fn. 6 (6th Cir. 1986) (quoted with approval in *U.S. v. Nicolet, Inc.*, 857 F.2d 202, 209 (3d Cir. 1988)); *NLRB v. P\*I\*E Nationwide, Inc.*, 923 F.2d 506, 512 (7th Cir. 1991); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 832–833, 834 (9th Cir. 1991); *In re Adams Delivery Service*, 24 B.R. 589, 592–593 (Bankr. 9th Cir. 1982); *In re D. M. Barber, Inc.*, 13 B.R. 962 (Bankr. N.D. Tex. 1981); *Matter of Nicholas, Inc.*, 55 B.R. 212, 214 (Bankr. D.N.J. 1985); *In re Rath Packing Co.*, 38 B.R. 552, 560–561 (Bankr. N.D. Iowa 1984); *In re S.T.R. Corp.*, 66 B.R. 49, 51–52 (Bankr. N.D. Ohio 1986).

<sup>2</sup> The Board is exempt from the automatic stay regardless of whether the debtor seeks relief under Chapter 7 or 11 of the Bankruptcy Code. See, e.g., *NLRB v. Twin Cities Electric*, 907 F.2d 108 (9th Cir. 1990) (Chapter 7); *NLRB v. Edward Cooper Painting, Inc.*, supra at 937, 942 (Chapter 11 corporation liquidation); *In re D. M. Barber, Inc.*, supra (unspecified liquidation); *NLRB v. P\*I\*E Nationwide, Inc.*, supra at 506 (Chapter 11 reorganization); *NLRB v. Continental Hagen Corp.*, supra at 832 (Chapter 11).

<sup>3</sup> See *NLRB v. Continental Hagen Corp.*, supra at 834, 835 ("mere entry of a money judgment by a governmental unit is not affected by the automatic stay") (quoting *Penn Terra Ltd. v. Dept. of Env. Resources*, 733 F.2d 267, 275 (3d Cir. 1984) (emphasis in original)). Accord: *P\*I\*E Nationwide*, supra at 512; *Edward Cooper Painting*, supra at 943. The courts also have ruled that election proceedings are not proceedings "against" a debtor and, accordingly, are not subject to Section 362 of the Code. *In re Continental Airlines Corp.*, 50 BR 342, 350–358 (S.D.TX 1985); *In re American Buslines*, 151 F.Supp. 877 (D Neb. 1957).

**APPENDIX 19**

**Sample Request for Notice**

\_\_\_\_\_  
[Regional Director]  
National Labor Relations Board, Region \_\_\_\_  
[Address]  
[Telephone Number]

UNITED STATES BANKRUPTCY COURT  
\_\_\_\_\_ DISTRICT OF \_\_\_\_\_

In re: )  
 )  
Debtor. ) Case No. \_\_\_\_\_  
 )  
 )

**REQUEST FOR SPECIAL NOTICE**

Pursuant to Rule 2002 of the Bankruptcy Rules and applicable Local Rules, the National Labor Relations Board, Region \_\_\_\_\_, a creditor in the above-entitled bankruptcy case, hereby requests that all matters which must be noticed to creditors, any creditors' committees, and any other parties-in-interest, whether sent by the Court, the debtor, or any other party in the case, be sent to the address listed below, and that the following be added to the Court's Matrix/Master Mailing List:

\_\_\_\_\_  
[Regional Director]  
National Labor Relations Board, Region \_\_\_\_  
[Address]

By: \_\_\_\_\_  
[Regional Director]  
National Labor Relations Board, Region \_\_\_\_

Dated: \_\_\_\_\_

**APPENDIX 20**

**Sample Notice of Pendency of Unfair Labor Practice**

\_\_\_\_\_  
[Regional Director]  
National Labor Relations Board, Region \_\_\_\_  
[Address]  
[Telephone Number]

UNITED STATES BANKRUPTCY COURT  
\_\_\_\_\_ DISTRICT OF \_\_\_\_\_

\_\_\_\_\_) )  
In re: \_\_\_\_\_) )  
\_\_\_\_\_) )  
(Name) \_\_\_\_\_) Case No. \_\_\_\_\_  
\_\_\_\_\_) )  
Debtor \_\_\_\_\_) )  
\_\_\_\_\_)

**NOTICE OF PENDENCY OF  
UNFAIR LABOR PRACTICE LITIGATION**

TO: All potential purchasers

You are hereby notified of the pendency of unfair labor practice litigation against \_\_\_\_\_, the above-named debtor. Specifically, the \_\_\_\_\_, herein called the Union, has filed charges with the National Labor Relations Board in Case \_\_\_\_-CA-\_\_\_\_\_. On \_\_\_\_\_, 20\_\_\_\_, the Regional Director for the National Labor Relations Board, Region \_\_\_\_\_, issued a Complaint and Notice of Hearing against the debtor. Said Complaint alleges that the debtor violated Section 8(a)(1) and (5) of the National Labor Relations Act by closing its \_\_\_\_\_, \_\_\_\_\_ facility without affording the Union the opportunity to bargain [city] [state] with the debtor with respect to the effects of this conduct. A copy of said Complaint and Notice of Hearing, marked Appendix A, is attached hereto and made a part hereof.

Based upon the Complaint, if the allegations contained therein are successfully litigated and/or settled by the National Labor Relations Board, an appropriate remedy for such conduct would include, inter alia, an order requiring that the debtor make whole certain employees in the bargaining unit in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), bargain with the Union regarding the effects of

its aforesaid decision to close its \_\_\_\_\_, \_\_\_\_\_ facility, and post a Notice to  
[city] [state]

Employees. The exact amount of the claims would be liquidated by the National Labor Relations Board in a formal proceeding, absent agreement by the parties.

You are hereby notified that anyone who becomes a successor to said debtor with knowledge of the unfair labor practice proceedings, may be required, under the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq., to remedy any unfair labor practices found, by inter alia, making whole employees for losses suffered on account of any such unfair labor practices committed by the debtor. See *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

This notice is intended to advise potential purchasers of the debtor's assets of their potential liability, so that the price for the debtor's assets may be reflective thereof. This notice is not intended to be a complete statement concerning a successor employer's obligations or rights under the National Labor Relations Act.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Regional Director]  
National Labor Relations Board, Region \_\_\_\_  
[Address]

**APPENDIX 21**

**Sample Request for Disclosure Statement and Plan of Reorganization**

\_\_\_\_\_  
[Regional Director]  
National Labor Relations Board, Region \_\_\_\_  
[Address]  
[Telephone Number]

UNITED STATES BANKRUPTCY COURT  
\_\_\_\_\_ DISTRICT OF \_\_\_\_\_

\_\_\_\_\_) )  
In re: \_\_\_\_\_) )  
\_\_\_\_\_) )  
(Name) \_\_\_\_\_) )  
\_\_\_\_\_) )  
Debtor \_\_\_\_\_) )  
\_\_\_\_\_)

Case No. \_\_\_\_\_

**REQUEST FOR DISCLOSURE STATEMENT  
AND PLAN OF REORGANIZATION**

Pursuant to Rule 3017(a) of the Bankruptcy Rules and applicable Local Rules, the National Labor Relations Board, Region \_\_\_\_\_, a creditor in the above-captioned bankruptcy case, hereby requests that the Board be served with copies of any Disclosure Statement and Plan of Reorganization filed with this Court by any party in the case, at the address listed below:

\_\_\_\_\_  
[Regional Director]  
National Labor Relations Board, Region \_\_\_\_  
[Address]

By: \_\_\_\_\_  
[Regional Director]  
National Labor Relations Board, Region \_\_\_\_

Dated: \_\_\_\_\_

**APPENDIX 22**

**Notice to Potential Successor of Pendency of  
Unfair Labor Practice Proceedings**

Ms. Edwina Entrepreneur, President  
Smallcorp Company, Inc.  
1111 Acquisition Avenue  
Lake Success, New York

Re: NiceCo Enterprises, Inc.  
Case 00-CA-0000  
(C.A. 2, No. 84-0000)

Dear Ms. Entrepreneur:

We are advised that Smallcorp Company, Inc. is contemplating the acquisition of NiceCo Enterprises, Inc. [or of specific assets, etc.], which is a party respondent to litigation with the National Labor Relations Board currently pending before the United States Court of Appeals for the Second Circuit [or United States District Court, or Board, as appropriate]. This is to advise you of the instant proceedings involving NiceCo, which are more fully described in the enclosed [describe papers]. The [potential] backpay liability at issue is approximately [amount]. [Describe other relief being sought, e.g., reinstatement, if any]. (If applicable): Please note that any failure of Smallcorp to comply with (or violation of) the terms of the enclosed Restraining Order, particularly as set forth in paragraph(s) II thereof, may potentially result in the imposition of monetary or other sanctions, as set forth in paragraph(s) II of the Order, against Smallcorp or its agents. Should you have any questions concerning this matter, please feel free to contact [name] of this office at [telephone number]. Thank you for your attention.

Very truly yours,

---

Regional Director

**Sample HIPPA Authorization and  
Cover Letter for HIPPA Authorization**

**COVER LETTER FOR HIPAA AUTHORIZATION**

[DATE]

[DOCTOR'S NAME], M.D.

[ADDRESS]

[CITY, STATE, ZIP]

Re: [PATIENT'S NAME]

Dear Dr. [DOCTOR'S NAME] and [RECORDS CUSTODIAN]:

Please find enclosed an executed medical records authorization from [PATIENT'S NAME]. Your patient has authorized you to speak to me and my colleagues about [describe the information sought by the Region]. In addition, the patient has authorized you to disclose to me and my colleagues any and all records created or maintained in relation to said [treatment/examination/condition etc.].

The enclosed authorization meets the requirements of the Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. § 164.508, listed below:

1) A description of the desired information, sufficiently specific and meaningful for you to determine the scope of the request with reasonable certainty;

2) Your facility's name or other specific information identifying this facility as a member of a class who is authorized to make the requested disclosure;

3) The name of this federal agency, which identifies representatives of the agency as members of the class persons to whom the facility is authorized to make the disclosure;

4) A description of the purpose of the requested disclosure;

5) An expiration date or an expiration event clearly stated;

6) A statement that the expiration date has not passed, or the expiration event if specified, has not occurred;

7) A statement that the patient has the right to revoke the authorization in writing and listing any exceptions to the right to revoke;

8) Instructions on how the patient may revoke the authorization;

9) A statement that makes it clear that your facility may not condition treatment or payment on whether the patient signs the authorization; 5

10) A statement that information used or disclosed pursuant to the authorization may be subject to re-disclosure by the recipient and no longer protected by the privacy regulation;

11) The patient's signature and the date of the signature;

12) If signed by the personal representative for the patient, a description of his or her authority to act for the patient; and

13) If requesting psychotherapy notes, the authorization is not part of a compound authorization that also requests other types of information.

To my knowledge, the authorization has not been revoked and does not contain information that is materially false. Should you have any questions or need additional information, please feel free to contact me. Thank you.

Very truly yours,

Counsel

Enclosures 6

## **HIPAA AUTHORIZATION**

### AUTHORIZATION TO RELEASE PROTECTED HEALTH CARE INFORMATION

TO: [HEALTH CARE PROVIDER]

[ADDRESS]

[CITY, STATE, ZIP]

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) Privacy Regulations, 45 C.F.R. § 164.508, the provider listed above is hereby authorized to release to the National Labor Relations Board or any of its representatives, all medical records, including but not limited to: office notes, history, physical, consultation notes, discharge summaries, order and progress notes, laboratory results, nurses' notes, emergency room records, operative records, in-patient records and films of x-rays, MRIs or PET scans, pharmacy and drug records, medical bills and health insurance, Medicaid, or Medicare records, concerning [describe the medical condition or medical examination about which the Region seeks information], that are located at your institution, as well as all such records which you keep in the regular course of business that are found in my medical records file, wherever stored. I hereby authorize release of all records regarding mental health, psychiatric (other than psychotherapy notes which must be requested by separate authorization), chemical dependency or HIV. A photostatic copy hereof shall be as valid as the original.

The purpose of this authorization and request is to permit the National Labor Relations Board to obtain ALL medical information pertaining to [describe the information sought and state its relevance to the Board case]. This authorization expires upon the termination of any unfair labor practice proceeding based upon the charge [name of Charging Party] filed in Board Case No. [insert case number(s)] or, if the case does not go to trial, upon the closure of Board Case No. [insert case number(s)] by the NLRB's Region [insert Regional Office number] office in [city where office is located]. Neither of the aforementioned expiration events have occurred, as this matter is ongoing.

I hereby authorize my healthcare professionals to speak to [name(s) of Board attorney(s) or agent(s)] of Region [insert Regional Office number] of the National Labor Relations Board, located at [insert address of Regional Office], about [describe the information sought by the Region] and to provide testimony at deposition or trial about such matters as may be requested.

I have the right to revoke this authorization in writing by providing a signed, written notice of revocation to the health care provider listed above and to the National Labor Relations Board, except to the extent that the provider listed above has taken action in reliance on this authorization. Medical providers may not condition treatment or payment on whether the above-listed patient executes this authorization. The information disclosed pursuant to this authorization may be subject to re-disclosure and no longer protected by the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

\_\_\_\_\_ Social Security Number: \_\_\_\_\_

[PATIENT'S NAME]

Date of Signature: \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_