

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

INTERNATIONAL	)	Case No. 2023-LPA-001
BROTHERHOOD OF TEAMSTERS,	)	
	)	ORDER:
Complaining Party,	)	
	)	(1) DIRECTING COMPLAINING
and	)	PARTY INTERNATIONAL
	)	BROTHERHOOD OF TEAMSTERS
THREE HABITAT CONSULTING	)	TO RE-FILE AND SERVE
PALM SPRINGS LLC dba ONE	)	COMPLAINT;
PLANT PALM SPRINGS,	)	
	)	(2) DIRECTING LICENSEE THREE
Licensee,	)	HABITAT CONSULTING PALM
	)	SPRINGS LLC dba ONE PLANT
and	)	PALM SPRINGS AND
	)	CHALLENGED LABOR
PROFESSIONAL TECHNICAL	)	ORGANIZATION PROFESSIONAL
UNION, LOCAL 33,	)	TECHNICAL UNION, LOCAL 33 TO
	)	ANSWER COMPLAINT; AND
Challenged Labor Organization.	)	
	)	(3) DIRECTING GENERAL
	)	COUNSEL TO INVESTIGATE AND
	)	REPORT TO THE BOARD ITS
	)	DETERMINATION AND FINDINGS
	)	RE: LABOR PEACE AGREEMENT
	)	COMPLAINT
	)	
	)	Admin. Order No. 2023-02-P
	)	
	)	(March 30, 2023)
	)	

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**ORDER**

On March 15, 2023, complaining party International Brotherhood of Teamsters (Teamsters) filed a complaint with the Agricultural Labor Relations Board (ALRB or Board) pursuant to Business and Professions Code section 26051.5, subdivision (a)(5)(D). The complaint alleges Three Habitat Consulting Palm Springs

LLC dba One Plant Palm Springs (Three Habitat) is licensed to conduct commercial cannabis activity, or has applied for a license to conduct commercial cannabis activity, and has entered into a labor peace agreement with Professional Technical Union, Local 33 (Pro-Tech 33), an organization the Teamsters allege is not a bona fide labor organization.<sup>1</sup>

This is the first labor peace agreement complaint the Board has received since Business and Professions Code section 26051.5, subdivision (a)(5)(D) took effect last year. (See Assembly Bill No. 195 (2021-2022 Reg. Sess.), § 3 (AB 195).) In light of this, as well as the novel issues involved, we take this opportunity to set forth the relevant statutory background and offer guidance in terms of the applicable legal principles for the benefit of the parties here, as well as other interested stakeholders.<sup>2</sup> (See *United Farm Workers of America (Conchola)* (1980) 6 ALRB No. 16, p. 10 [providing guidance regarding novel legal issues].) In addition, we delegate authority to the General Counsel to conduct an investigation concerning the allegations of the Teamsters' complaint. But first, we find the Teamsters' complaint has not been properly served on Three Habitat and Pro-Tech 33, and hereby ORDER the Teamsters to re-file and serve its complaint in accordance with the relevant rules set forth herein. Three Habitat and Pro-Tech 33 then

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<sup>1</sup> According to the Cannabis Unified License Search page on the Department of Cannabis Control's (DCC) web site, Three Habitat holds a provisional license, no. C10-0000675-LIC, effective from January 14, 2020, to January 13, 2024. (See <<https://search.cannabis.ca.gov/results/14294>>.)

<sup>2</sup> We designate this order as precedential pursuant to Board regulation 20287 (Cal. Code Regs., tit. 8, § 20287) in order to provide guidance to interested stakeholders, in addition to the parties directly involved here.

are ORDERED to answer the complaint consistent with the instructions provided at the end of this order. Following its investigation, the General Counsel is ORDERED to report its findings to the Board, to which any party may respond, again consistent with the instructions we set forth.

## **RELEVANT LEGAL BACKGROUND**

### **I. Labor Peace Agreement Licensing Requirements Under the Medicinal and Adult-Use Cannabis Regulation and Safety Act**

Division 10 of the Business and Professions Code, codified at section 26000 et seq., was enacted following the approval of Proposition 64 in the November 2016 general election. (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) analysis of Prop. 64, p. 90, text of Prop. 64, p. 178.)<sup>3</sup> Originally called the “Control, Regulate and Tax Adult Use of Marijuana Act” in Proposition 64, the law was renamed the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) pursuant to subsequent legislative amendments. (Sen. Bill No. 94 (2017-2018 Reg. Sess.) § 4.)

Under the MAUCRSA, an applicant for a license to conduct commercial cannabis activities and who has 20 or more employees must “provide a notarized statement that the applicant will enter into, or demonstrate that it has already entered into ... a labor peace agreement” with a bona fide labor organization. (Bus. & Prof. Code, §§ 26001, subd. (a), 26051.5, subd. (a)(5)(A)(i).) AB 195 reduces this employee threshold from 20 to 10 employees effective July 1, 2024. (Bus. & Prof. Code, § 26051.5,

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<sup>3</sup> Available on the California Secretary of State’s web site at <<https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf>>.

subd. (a)(5)(A)(i).)<sup>4</sup> AB 195 also establishes a process by which labor organizations, or any current or former employee of a licensee, may complain to the ALRB that a licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(D)(i).) Following receipt of such a complaint, the statute directs the Board to “consider all relevant evidence provided or obtained in rendering a decision” whether the challenged organization is a bona fide labor organization, and to issue a report to the DCC no later than 90 days after receipt of the complaint. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(D)(ii).)

If the Board finds the challenged organization is not a bona fide labor organization, the labor peace agreement between the licensee and organization “shall be null and void.” (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(D)(iii).) The DCC then is required to “promptly notify all licensees that have signed labor peace agreements with the [non-bona fide labor organization]” and provide those licensees a reasonable time, not to exceed 180 days, to enter into new labor peace agreements with bona fide labor organizations.” (*Ibid.*) A licensee’s failure to do so will be deemed a violation of the MAUCRSA’s licensing requirements. (*Ibid.*)

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<sup>4</sup> AB 195 further requires an applicant with 10 or more employees but less than 20 employees, and who has not yet entered into a labor peace agreement, to provide a notarized statement as a part of its application indicating it will enter into a labor peace agreement within 60 days of hiring its 20th employee, or by July 1, 2024, whichever is earlier. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(ii).) In addition, an applicant with less than 10 employees who has not yet entered into a labor peace agreement also must provide a notarized statement as a part of its application indicating it will enter into a labor peace agreement within 60 days of hiring its 10th employee or by July 1, 2024, whichever is later. (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(iii).)

## **II. Labor Peace Agreements and Bona Fide Labor Organizations**

To provide guidance and context to the parties involved here, affected stakeholders, and our General Counsel, we set forth the following legal principles relevant to our obligation to administer this complaint process under the MAUCRSA where it is alleged a licensee has entered into a labor peace agreement with an organization that is not a bona fide labor organization. Our starting point is simple: the statutory definition of a labor peace agreement. The MAUCRSA defines a labor peace agreement as:

... an agreement between a licensee and any bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(Bus. & Prof. Code, § 26001, subd. (aa).)

However, the MAUCRSA does not provide any specific definition for what constitutes a "bona fide labor organization." The MAUCRSA defines the term "labor organization" to include "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in

whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for employees.” (Bus. & Prof. Code, § 26051.5, subd. (a)(5)(E)(ii).) This definition largely tracks the statutory definition of “labor organization” found in the National Labor Relations Act (NLRA).<sup>5</sup> (29 U.S.C. § 152(5) [NLRA Section 2(5)].)

The National Labor Relations Board (NLRB) has interpreted the term “labor organization” broadly to include any organization in which (1) employees participate, (2) for the purpose, at least in part, of dealing with employers, (3) concerning grievances, labor disputes, or other terms and conditions of employment. (*Electromation, Inc.* (1992) 309 NLRB 990, 994, enfd. (7th Cir. 1994) 35 F.3d 1148, 1159; see *Alto Plastics Manufacturing Corp.* (1962) 136 NLRB 850, 851.) Thus, a new union that has not yet won representation rights may be found to be a labor organization under NLRA Section 2(5) if it otherwise meets the statutory criteria. (*Coinmach Laundry Corp.* (2002) 337 NLRB 1286.) Similarly, an organization that lacks a formal constitution or bylaws, or has not complied with certain Department of Labor filing requirements may be found to be a labor organization because such structural formalities are not a statutory prerequisite to labor organization status. (*Id.* at \*1286-1287.)

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<sup>5</sup> The NLRA is codified at 29 U.S.C. § 151 et seq.

The Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (ALRA), codified at Labor Code section 1140 et seq., similarly defines the term “labor organization” to include “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists, in whole or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work for agricultural employees.” (Lab. Code, § 1140.4, subd. (f); *Highland Ranch v. ALRB* (1981) 29 Cal.3d 848, 855-856 [noting “the ALRA was modeled largely upon the provisions of the NLRA,” and thus interpretations of the NLRA are “persuasive indicants of the appropriate interpretation of the state legislation”].)<sup>6</sup> Although our Board has not dealt with this issue in recent years, our precedent generally adopts the NLRB’s approach in determining labor organization status under the ALRA. (*Royal Packing Co.* (1979) 5 ALRB No. 31, p. 19; *Inland Ranch* (1979) 5 ALRB No. 42, ALO Dec. at pp. 11-12; *Miranda Mushroom Farms, Inc.* (1980) 6 ALRB No. 22, p. 12; see Lab. Code, § 1148.)

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<sup>6</sup> While this definition expectedly concerns itself with the representation of agricultural employees in light of our Legislature’s intent to cover all such workers excluded from the coverage of the NLRA (see NLRA Section 2(3) [29 U.S.C. § 152(3)]), the complaint process the Legislature has delegated to us under the MAUCRSA does not limit itself as pertaining only to agricultural employers or labor organizations representing agricultural employees -- it applies to all applicants for licenses to conduct commercial cannabis activities in this state. (Bus. & Prof. Code, § 26051.5, subd. (a).)

While a broad interpretation of labor organization status under the ALRA and NLRA makes sense in light of the Congressional history and intent behind the statutory language (see *NLRB v. Cabot Carbon Co.* (1959) 360 U.S. 203, 211, fn. 7), we find such an approach does not comport with our Legislature’s intent in adopting the labor peace agreement licensing requirements under the MAUCRSA or in enacting AB 195. Two reasons, grounded in precedent and the statutory language, lead us to this conclusion.

First, Congress intended its broad definition of labor organization in NLRA Section 2(5) to include employee committees or groups dominated, sponsored, formed, or organized by employers. (*Cabot Carbon Co.*, *supra*, 360 U.S. at pp. 212-213; *Electromation, Inc.*, *supra*, 309 NLRB 990, 992-995.) This is necessary to give effect to the NLRA’s proscription against employer-organized groups. In this regard, it is an unfair labor practice for an employer to “dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it” (NLRA Section 8(a)(2) [29 U.S.C. § 158(a)(2)]; Lab. Code, § 153, subd. (b)), and the remedy for such an unfair labor practice is disbandment of the employer-dominated labor organization. (See *T-Mobile USA, Inc.* (2022) 372 NLRB No. 4, \*9; *Miranda Mushroom Farm, Inc.*, *supra*, 6 ALRB No. 22, p. 14 [“Disestablishment of a dominated union is the proper remedy to prevent any future interference with the employees’ free choice of representative and to remove the consequences of an employer’s unfair labor practices”].)

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We do not believe our Legislature intended to allow applicants for cannabis licenses to satisfy applicable licensing requirements by entering into labor peace agreements with employer-sponsored groups or organizations that do not truly exist for the purpose of representing employees for collective bargaining purposes. Indeed, the statutory definition of labor peace agreement includes references to a bona fide labor organization's efforts to "organize and represent" the applicant's employees, discussing with the employees "their right to representation," and further contemplates methods by which the bona fide labor organization may be elected or certified as the employees' exclusive bargaining representative. (Bus. & Prof. Code, § 26001, subd. (aa).)

Second, while the MAUCRSA defines the term labor organization specifically for purposes of Business and Professions Code section 26051.5, subdivision (a)(5), it does not separately define what constitutes a *bona fide* labor organization under the MAUCRSA.<sup>7</sup> Under settled rules of statutory construction, we must presume the Legislature intended the term "bona fide labor organization" to mean something different than what is encompassed in the provision generally defining the term "labor organization." (*Estate of Clementi* (2008) 166 Cal.App.4th 375, 381 ["[w]here different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning"], quoting *Briggs v. Eden Council*

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<sup>7</sup> The term "labor organization" without the "bona fide" qualifier is used twice in section 26051.5, subdivision (a)(5), and both instances involve describing the types of parties with standing to file complaints regarding labor peace agreement requirements with the DCC or our Board. (Bus. & Prof. Code, § 26051.5, subs. (a)(5)(C), (a)(5)(D)(i).)

*for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117.) Otherwise, the bona fide requirement is surplusage, and we must avoid any interpretation of the statute that renders this language meaningless. (*Estate of Clementi, supra*, 166 Cal.App.4th at p. 381, citing *People v. Hudson* (2006) 38 Cal.4th 1002, 1010.)

The NLRB has drawn a distinction between an organization that may fall within the NLRA Section 2(5) definition of labor organization and an organization that may be found to be a “bona fide collective bargaining representative.” (*Int’l Brotherhood of Service Station Operators of America* (1974) 215 NLRB 811, 814.) In that case, the NLRB found the respondent labor organization to be a labor organization within the meaning of NLRA Section 2(5), but proceeded to find it did not constitute a bona fide collective bargaining representative where the record established it was “indifferent to employee interests, unwilling or unable to represent the employees fairly, impartially and in good faith,” and “lack[ed] the capacity to act as the representative of the employees.” (*Id.* at \*815.)

We find this distinction relevant to our inquiry under the MAUCRSA whether a licensee has entered into a labor peace agreement with an organization that does not constitute a bona fide labor organization. Thus, in addition to the emphasis placed on employee participation in order to be deemed a labor organization, to constitute a bona fide labor organization within the meaning of the MAUCRSA there must be evidence of a sincere and good faith intent to organize and represent employees as a collective bargaining representative, including the capacity or ability to do so. (See Black’s Law Dict. (11th ed. 2019) [defining “bona fide” to mean “[m]ade in good faith;

without fraud or deceit” and “[s]incere; genuine”]; see *Leach v. Home Savings & Loan Assoc.* (1986) 185 Cal.App.3d 1295, 1301-1302; *Social Technologies LLC v. Apple Inc.* (9th Cir. 2021) 4 F.4th 811, 817, fn. 8.) Evidence of an organization’s representative functions are highly probative in this regard (*Int’l Brotherhood of Service Station Operators of America, supra*, 215 NLRB 811, 815; see *Douglas Oil Co.* (1972) 197 NLRB 308, 311; *McDonald’s of Conga Park Cal., Inc.* (1966) 162 NLRB 367, 368), though we are mindful that new or grassroots organizations must not be excluded from this definition just because they have not yet won representation rights or do not currently represent employees. (See *Coinmach Laundry Corp., supra*, 337 NLRB 1286.)<sup>8</sup> We believe this approach reflects the Legislature’s intent in requiring licensees enter into labor peace agreements with bona fide labor organizations that truly exist for the purpose of organizing and representing employees for collective bargaining purposes, as opposed to employer-sponsored groups that may nonetheless fit within the broader statutory definition of a labor organization, and is more closely aligned with the purposes of the MAUCRSA’s labor peace agreement requirements.<sup>9</sup>

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<sup>8</sup> We recognize other factors may bear on the ultimate inquiry whether a labor organization constitutes a bona fide labor organization for purposes of the MAUCRSA, and we do not intend our guidance here to be understood as an exhaustive analysis on the subject.

<sup>9</sup> To be clear, our analysis whether an organization constitutes a bona fide labor organization under the MAUCRSA is confined solely to that law and does not affect our interpretation of Labor Code section 1140.4, subdivision (f) or precedent concerning whether an organization constitutes a labor organization under the ALRA.

## **THE TEAMSTERS' COMPLAINT WAS NOT PROPERLY SERVED**

Turning back now to the filing presently before us: the Teamsters labor peace agreement complaint against Three Habitat and Pro-Tech 33. The proof of service included with the complaint states it was served by regular U.S. mail (1) on Cogency Global, Inc., as agent for Three Habitat, at a New York mailing address, and (2) on Pro-Tech 33 at a mailing address in Oak Brook, Illinois. Neither mailing was to any specific individual, but rather only to the general address listed on the proof of service. We acknowledge the rules of service and filing as it relates to labor peace agreement complaints are not clear presently, as our proposed regulations governing these types of proceedings are not yet in effect. (Cf. Cal. Reg. Notice Register 2023, No. 12-Z, p. 308.)<sup>10</sup> That being said, we find service of the complaint fails to comply with general rules applicable to serving corporate entities and labor organizations, as discussed below.

### **I. Service on Three Habitat**

Three Habitat is a limited liability company. It has designated Cogency Global, Inc. as its agent for service of process. Where a corporation is designated as an entity's agent for service, Corporations Code section 515, subdivision (a) requires that corporation to identify the street address of any office it maintains in this state and the names of individuals employed there authorized to receive and accept service on behalf of the designating entity. (See Corp. Code, § 17701.16, subd. (b).) According to the

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<sup>10</sup> The Board recently issued a notice of proposed rulemaking regarding labor peace agreements and the complaint process delegated to us under MAUCRSA. (See Off. of Admin. Law, Reg. File No. Z2023-0313-01, available on the ALRB's web site at <<https://www.alrb.ca.gov/statutes-regulations/regulatory-activity/>>.)

Secretary of State's online business search web site<sup>11</sup> results for Three Habitat, Cogency Global is identified as Three Habitat's agent for service of process, and eight "Registered Corporate (1505) Agent Authorized Employee(s)" of Cogency Global are listed. Service of the complaint must be made to at least one of these registered corporate agents.

With respect to the manner of service, in the absence of currently effective regulations governing labor peace agreement complaints we look to the other processes we administer for guidance. We find Board regulation 20166 instructive as it relates to service of an unfair labor practice charge, a document that itself triggers the commencement of an administrative investigative process.<sup>12</sup> Pursuant to Board regulation 20166, an unfair labor practice charge "must be served personally or by a method that includes a return receipt."

Accordingly, we find service of a labor peace agreement complaint must be made on Three Habitat's appropriate agent(s) for service of process by personal delivery or a method that includes a return receipt.

## **II. Service on Pro-Tech 33**

Service on a labor organization generally must be made "on an officer or agent" of the labor organization. (See 29 U.S.C. § 185(d); Lab. Code, § 1165.3.) We also note subdivision (e) of Board regulation 20390, relating to decertification petitions, requires service of a petition "upon an officer or director of the incumbent union, or upon

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<sup>11</sup> Available at <<https://bizfileonline.sos.ca.gov/search/business>>.

<sup>12</sup> The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

an agent of the union authorized to receive service of papers.” According to the United States Department of Labor’s “union search” web site for searching LM-1, LM-2, LM-3, LM-4, and other reports, Pro-Tech 33 appears to have filed a LM-3 report for calendar year 2022.<sup>13</sup> This report, filed March 23, 2023, identifies the local as Professional Technical Employees Union, Local 33, as affiliated with the National Production Workers Union. The local’s president is identified as Joseph V. Senese, and a mailing address in Downers Grove, Illinois is provided.

Similar to our discussion regarding Three Habitat above, we find service of the labor peace agreement complaint must be made on an officer, director, or designated agent of Pro-Tech 33 by personal delivery or a method that includes a return receipt.<sup>14</sup>

### **ORDER**

Consistent with the foregoing discussion, the Teamsters are ORDERED to re-file and serve the labor peace agreement complaint. The complaint shall be filed electronically to <LaborPeaceAgreementComplaints@alrb.ca.gov> and shall include proof of service of the complaint on Three Habitat and Pro-Tech 33.<sup>15</sup> The 90-day deadline described in Business and Professions Code section 26051.5, subdivision

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<sup>13</sup> This LM-3 report is available at:  
<<https://olmsapps.dol.gov/query/orgReport.do?rptId=857844&rptForm=LM3Form>>.

<sup>14</sup> In the event service by these methods cannot be made, service may be effected using alternative methods as provided under Code of Civil Procedure section 415.10 et seq.

<sup>15</sup> See Advisory to Interested Parties Re: Notice of Implementation of AB 195 and Provisions Affecting the ALRB, Sept. 12, 2022, available at:  
<<https://www.alrb.ca.gov/wp-content/uploads/sites/196/2022/09/Advisory-to-Interested-Parties-AB-195.pdf?emrc=a69a77>>.

(a)(5)(D)(ii) shall commence upon the re-filing of the complaint with proper proof of service.

We further ORDER that Three Habitat and Pro-Tech 33 each shall file an answer to the complaint within 15 days after service of the complaint. (Cf. Board reg. 20170, subd. (b).) The answers shall be filed and served in accordance with Board regulations 20160-20169. (Cal. Code Regs., tit. 8, §§ 20160-20169.) The answers shall respond to the allegations of the complaint, and shall include all evidence and authority upon which Three Habitat and Pro-Tech 33 rely in asserting Pro-Tech 33's status as a bona fide labor organization and disputing the allegations of the Teamsters' complaint.

We further hereby delegate to the General Counsel authority to investigate the complaint filed by the Teamsters against Three Habitat and Pro-Tech 33 and to report to the Board its findings regarding whether Pro-Tech 33 is a bona fide labor organization under the MAUCRSA. The report shall be filed with the Executive Secretary for submission to the Board no later than 60 days after the complaint is re-filed and served. The report shall state the General Counsel's determination whether Pro-Tech 33 constitutes a bona fide labor organization. The report shall also state the findings upon which such a determination is made and all evidence and legal authority relied upon in reaching the determination. The report shall be served on all parties. All parties may have the opportunity to respond to the General Counsel's report. Any party that desires to respond to the General Counsel's report shall file such response with the Executive Secretary for submission to the Board within 10 days after the General Counsel files its report and shall serve its response on all parties. The Board will not consider any

evidence or argument not provided to the General Counsel in the course of its investigation or otherwise included in the complaint or any answers filed thereto.

IT IS SO ORDERED.

DATED: March 30, 2023

VICTORIA HASSID, Chair

ISADORE HALL III, Member

BARRY D. BROAD, Member

RALPH LIGHTSTONE, Member

CINTHIA N. FLORES, Member