

TO: James Hoffa, International General President
FROM: Independent Review Board
RE: Proposed Charges against former Local 439 Secretary-Treasurer
Samuel Rosas and former President Armando Alonzo
DATE: February 27, 2015

I. RECOMMENDATION

The Independent Review Board ("IRB") recommends to the IBT General President that charges be filed against former Local 439 Secretary-Treasurer and principal officer Samuel Rosas ("Rosas") for bringing reproach upon the IBT and abusing his fiduciary position through engaging in a pattern of criminal conduct, including racketeering acts. Rosas' misconduct included embezzlement, mail fraud, soliciting and receiving a thing of value from an employer, receiving an illegal loan from the Local and violating federal criminal statutes mandating the keeping of Local records.¹ It is also recommended that former Local 439 President Armando

¹ Article XIX, Section 7(b) of the IBT Constitution provides in pertinent part that the basis for disciplinary charges against IBT members and officers includes:

- (1) Violation of any specific provision of the Constitution, Local Union Bylaws . . .
- (2) Violation of oath of office . . .
- (3) Breaching a fiduciary obligation owed to any labor organization by any act of embezzlement or conversion of union's funds or property.
- (5) Conduct which is disruptive of, interferes with, or induces others to disrupt or interfere with, the performance of any union's legal or contractual obligations.
- (11) Committing any act of racketeering as defined by applicable law.
- (13) Accepting money or other things of value from an employer or any agent of an employer, in violation of applicable law.

(Ex. 3)

Alonzo, Jr. ("Alonzo") be charged with embezzlement, bringing reproach upon the IBT and violating the federal record keeping statutes. In addition, it is recommended that both Rosas and Alonzo be charged with bringing reproach upon the union through breaching their fiduciary duties and violating the Bylaws by causing the Local to make over \$845,000 in purchases without the Executive Board approvals the Bylaws required and over \$568,000 without required membership approvals.

II. SUMMARY

Local 439, located in Stockton, California, had approximately 4,379 members employed in various industries. (Ex. 22) Rosas was the Local's Secretary-Treasurer and principal officer from 2001 through December 31, 2014. Alonzo was the Local's President from 2009 through December 31, 2014.

A. Rosas

Rosas, the Local's former principal officer, brought reproach upon the IBT and abused his fiduciary position while Secretary-Treasurer through engaging in a pattern of criminal conduct including racketeering acts. Rosas repeatedly breached his fiduciary duties and embezzled from the Local when he caused the Local to pay for personal expenses.² Among other things, Rosas knowingly caused the Local to pay a business agent upon retirement over \$15,000 in payments the agent was not entitled to and to also give the retiree at Local expense a Hawaiian vacation costing \$3,484 without authority and without a union purpose. (Exs. 617, 65) In addition, Rosas

² An officer's embezzlement from a labor organization, 29 U.S.C. §501(c), is an act of racketeering under 18 U.S.C. §1961 and therefore is an act which every IBT member is enjoined from committing by the injunction in the March 14, 1989 Consent Order in United States v. IBT, 88 Civ. 4486. (Ex. 1)

caused the Local to pay personal expenses upon falsified receipts, pay for expenses he incurred that were covered by allowances he received and pay for his local area meals, hotel rooms and other personal expenses without any union purpose. (Exs. 75, 527, 66)

In other acts of racketeering, Rosas violated the mail fraud statute when he defrauded California of tax due and owing it from him with the assistance of the owner of a vendor from which Rosas caused the Local to make substantial unauthorized purchases. (Ex. 407; Ex. 8 at 396)³ The vendor, Stars and Stripes, was located in Illinois. (Ex. 346) Stars and Stripes employed members of a different Teamster Local. (Ex. 346) Rosas solicited the owner to make a false representation to California on a form filed with the state to assist Rosas in not paying tax due. (Ex. 8 at 396-397; Ex. 407) Mailings were involved in the scheme. (Ex. 8 at 396) In addition, since the false representation to the state was assistance the employer provided Rosas to defraud California, it was a thing of value Rosas solicited and received from an employer in violation of 18 U.S.C. §186(b).⁴ In addition, Rosas knowingly paid the owner for the motorcycle a price for it less than its market value in violation of the statute. (Ex. 8 at 358, 395; Ex. 14 at 69-70)

In addition, Rosas requested and received from the Local over \$2,000 in loans in violation of 29 U.S.C. §503 through a pattern of taking payments from the Local allegedly for advances on vacation he had not yet earned. (Ex. 383)⁵ As of July 2013, Rosas had an illegal loan totaling \$4,375.50 based upon these advances. (Ex. 383) Rosas concealed his misconduct.

³ The mail fraud statute, 18 U.S.C. §1341, is an act of racketeering under 18 U.S.C. §1961(a).

⁴ Pursuant to 29 U.S.C. §186(b)(1), a union officer's receipt of a thing of value from an employer with intent to influence the officer's actions or decisions is unlawful. Violating 29 U.S.C. §186(b)(1) is an act of racketeering under 18 U.S.C. §1961(a).

⁵ 29 U.S.C. §503 prohibits a labor organization from making a direct or indirect loan over \$2,000 to an officer or employee of such labor organization.

None of the money lent to Rosas was reported on the 2013 Form LM-2 as explicitly required. (Exs. 22, 532) Rosas under oath signed the false form attesting that it was true. (Ex. 22) In addition, Rosas, as did Alonzo, violated the criminal and civil provisions of 29 U.S.C. §§431, 436, 439, when he failed to have the Local maintain records of the disposition of its assets. (Exs. 272, 474)

B. Alonzo

Alonzo, the Local's former President, brought reproach upon the IBT, breached his fiduciary duties and embezzled from the Local when with Rosas he knowingly caused the Local to pay a retiring business agent over \$15,000 for unused vacation to which he was not entitled. (Ex. 617) In addition, Alonzo breached his fiduciary duties and embezzled when he caused the Local to pay for expenses that did not benefit the union. These personal expenses he caused the Local to pay included meals and hotel rooms in Stockton. (Exs. 310, 528) It also included Raiders tickets for himself and his guests. (Ex. 528) As noted above, he also violated his obligations under federal law concerning record keeping.

C. Rosas and Alonzo Spent Local Money in Violation of the Bylaws and Their Fiduciary Duties

In addition, over at least five years, Rosas and Alonzo engaged in pervasive violations of the Local's Bylaws that restricted their power to spend Local money and breached their fiduciary duties to the members. Between 2008 and 2013, in violation of the Bylaws Rosas and Alonzo caused the Local to spend \$845,853 without required Board approvals. (Ex. 78) These expenditures included purchases of cars and trucks, tickets to sporting events and costs in connection with parties and fishing trips. (Exs. 78, 566) In addition, between 2008 and 2013,

also in violation of the Bylaws, Rosas and Alonzo caused the Local to spend \$568,761 without required membership approvals for substantial non-routine expenditures, including those related to sporting events and merchandise purchases. (Exs. 348, 511)⁶ In doing so, they breached their fiduciary duties to the members, 29 U.S.C. §501(a), and violated Sections 14(B)(8) and 16(C) of the Bylaws. (Ex. 5 at 16, 22-23)

Relatedly, Rosas and Alonzo caused the Local to pay for over \$43,000 in expenditures Rosas charged to the Local's credit card and caused the Local to pay without submitting receipts and having the Local maintain receipts. (Exs. 352, 600) The Local's Bylaws, IBT policy and federal law all required the Local to have supporting documentation for all expenditures. (29 U.S.C. §§431, 436, 439; Ex. 552; Ex. 5 at 21; Ex. 4 at 2)

D. Rosas and Alonzo Failed to Have the Local Record the Disposition of Items It Owned in Violation of Federal Law

Furthermore, in violation of federal law, 29 U.S.C. §§431, 436, 439, Rosas and Alonzo failed to maintain required records to show the disposition of substantial amounts of merchandise they caused the Local to purchase including televisions, appliances, other electronics, liquor, gift cards and shirts. (Ex. 8 at 391; Ex. 10 at 47-48; Exs. 273, 474, 552)⁷

⁶ The Executive Board never adopted a policy as to what was a substantial expense requiring members' approval. (Ex. 8 at 34-38) For purposes of this report, purchases over \$1,000 were considered to be substantial.

⁷ Pursuant to 29 U.S.C. §431(b), all labor organizations must file annual reports containing, among other things, "assets and liabilities at the beginning and end of the fiscal year" and "other disbursements made by it including the purposes thereof." (Ex. 552) Title 29 U.S.C. §436 provides,

Every person required to file any report under [this subchapter] shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

They caused over \$72,000 in Local assets to be disposed of with no Local records reflecting the dispositions. (Exs. 542, 541, 396, 272, 564) Under Section 436 they were personally responsible to ensure the Local maintained such records and pursuant to Section 439, its violation could be prosecuted criminally. 29 U.S.C. §§436, 439.

III. JURISDICTION

Pursuant to Article XIX, Section 14(c) of the IBT Constitution, this matter is within the jurisdiction of the IBT General President. Paragraph G (e) of the March 14, 1989 Consent Order in United States v. IBT, 88 Civ. 4486 (S.D.N.Y.) and Paragraph I(6) of the Rules and Procedures for Operation of the Independent Review Board ("IRB Rules") require that within 90 days of the IRB's referral of a matter to the General President, the General President must file with the IRB written findings setting forth the specific action taken and the reasons for that action. Pursuant to Paragraph I(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB. Given recent IBT failure to comply with the Consent Decree deadlines, it is on notice that compliance is obligatory.

IV. INVESTIGATIVE FINDINGS

A. Former Local 439 Officers and Staff

After an election in late 2014, as of January 2, 2015, there was a new Executive Board at the Local.

1. Former Secretary-Treasurer Samuel Rosas

(Ex. 552) Title 29 U.S.C. §439(a) provides for criminal sanctions for willful violations of the subchapter. (Ex. 552)

Rosas began working full-time at the Local in 1999. (Ex. 8 at 6) The Board appointed him Secretary-Treasurer and principal officer in 2001. (Ex. 8 at 7-9)⁸ In 2013, the Local paid him \$97,243 in salary and \$6,000 in allowances. (Ex. 22) In addition, that year he had \$29,618 in disbursements for official business. (Ex. 22)

Since 2011, Rosas was a Trustee of Joint Council 7. (Exs. 37-38) In 2013, the Joint Council paid him \$10,465. (Ex. 39)

2. Former President Armando Alonzo, Jr.

Alonzo joined Local 439 in 1980. (Ex. 10 at 5) He became President beginning in January 2009. (Ex. 10 at 9) In 2013, the Local paid him \$91,418 in salary and \$13,800 in allowances. (Ex. 22) That year, Alonzo had \$21,973 in disbursements for union business. (Ex. 22)

3. Other Former Executive Board Members

The other ex-Board members were not employees of the Local. Rafael Cholula ("Cholula") had been the Local's Recording Secretary since 2012. (Ex. 21; Ex. 16 at 6-8) He worked for a Local employer. (Ex. 16 at 6)⁹ Daniel Lee ("Lee") had been the Local's Vice President since 2009. (Ex. 18) He worked for a Local employer. (Ex. 15 at 9) He had been a Local officer since 2000. (Ex. 15 at 6)¹⁰ The Local's Trustees were Chuck Tryon ("Tryon"), Joe Delgado ("Delgado") and Alex Parra ("Parra"). (Exs. 22, 36) Tryon and Parra were employed at Local 439 employers. Tryon had been a Trustee for approximately fifteen years. (Ex. 17 at 8)

⁸ Rosas joined the Local in 1994. (Ex. 7)

⁹ In 2013, the Local paid Cholula \$10,396 and he received \$5,100 in allowances. (Ex. 22) That year Cholula had \$776 in disbursements for union business. (Ex. 22)

¹⁰ In 2013, the Local paid Lee \$2,513 and he received \$5,100 in allowances. (Ex. 22) That year Lee had \$729 in disbursements for union business. (Ex. 22)

At a May 21, 2014 Executive Board meeting, the Board voted to appoint Parra a Trustee effective June 1, 2014. (Ex. 36) Delgado had been a Trustee since 2012. (Ex. 21)¹¹ Delgado is Alonzo's brother-in-law and continued as Trustee of the Local after he was ineligible to hold office beginning in June 2013. (Ex. 10 at 10; Ex. 13 at 9)¹²

Antonio Camacho ("Camacho") was a Trustee from January 1, 2009 until June 1, 2014 when he resigned. (Exs. 557, 367) On May 19, 2014, Camacho became a business agent. (Ex. 36)

4. Business Agents

Besides Camacho, the Local employed five business agents who were Local members but not Local officers: Rick Buzo ("Buzo"), Reuben Moreno, Robert Nicewonger, Mario Flores and Richard Andazola ("Andazola"). (Ex. 22) Albert De La Cruz ("De La Cruz") was a business agent who was suspended as of March 23, 2014 and fired as of November 15, 2014. (Ex. 14 at 11, 17) His termination letter was from the Executive Board. (Ex. 14 at 11)

B. Rosas and Alonzo Engaged in a Pattern of Violating the Bylaws and Breaching Their Fiduciary Duties to the Members by Violating Legal Restraints on their Power to Spend Local Money

Rosas and Alonzo violated legal restraints on their power to spend Local money. They routinely violated the Bylaws by failing to obtain the required Board approvals for Local expenditures they caused to be made. This included the purchases and sales of cars and trucks

¹¹ Delgado had previously been a Trustee for two three year terms ending in 1997 or 1998. (Ex. 13 at 7-8)

¹² Delgado retired from UPS in May 2013. (Ex. 8 at 168-169) Despite not working for an employer, he continued as a Local member paying his dues. (Ex. 7) Under the IBT Constitution, after he retired he was ineligible to be a Board member. Article II, Section 4(e) of the IBT Constitution provides that "officers who are not full time employees", not employed in the craft and not receiving a salary from the Local for performing work do not meet the requirements for holding office. (Ex. 3)

as well as loans to finance them. In addition, in connection with substantial purchases of non-routine items, such as tickets to sporting events, expenditures for fishing trips and Local parties, Rosas and Alonzo violated the Bylaws by failing to obtain both required Board and members' approvals. Between 2008 and 2013, Rosas and Alonzo caused the Local to spend at least \$845,853 without the required Board approvals. (Exs. 78, 77, 349, 566) Between 2008 and 2013, Rosas and Alonzo caused the Local to spend at least \$568,761 without the required members' approvals in connection with non-routine substantial expenditures such as tickets to sporting events, fishing trips and merchandise purchases. (Exs. 348, 511) In spending money without legal authority, Rosas and Alonzo breached their fiduciary duties to the members. Under Section 29 U.S.C. §501(a), officers are in a fiduciary relationship with the union and its members. As such, they are under an express obligation to spend the union's funds "... in accordance with its constitution and bylaws ..." (29 U.S.C. §501(a))

Furthermore, in violation of federal law, Rosas and Alonzo failed to maintain required records to show the disposition of substantial amounts of merchandise they caused the Local to purchase including televisions, appliances, other electronics, liquor, shirts and gift cards. (Ex. 8 at 391; Ex. 10 at 47-48; Exs. 273, 474, 564)

1. Rosas and Alonzo Engaged in a Pattern of Causing the Local to Make Car Purchases and Trade-Ins Without the Required Executive Board Approvals

a. Car Purchases and Trade-Ins

Section 16(C) of the Bylaws provides, "Upon authorization of the Local Union Executive Board, the principal executive officer is empowered to sell, exchange or lease automobiles or arrange financing thereof in [sic] behalf of the Local Union." (Ex. 5 at 22) In violation of this

Bylaw provision, without Board approvals between October 2008 and May 2014, Rosas and Alonzo caused the Local to purchase seven cars costing \$275,748. (Exs. 77, 80-87, 30-36)¹³ In 2008, 2010, 2012 and 2014, without the required authority, Rosas signed the car purchase agreements for five of these cars totaling \$176,726. (Exs. 77, 80-82, 87-87, 30, 32, 34, 36) In 2011, Alonzo without the required authority signed the car purchase agreements for two of these cars costing \$99,022. (Exs. 77, 83-84, 33)¹⁴

In addition, between February 2011 and May 2014, four Local cars were traded-in. (Exs. 77, 80-87) There were no required approvals obtained for the trade-ins of any of these cars. (Exs. 33-36)¹⁵ After 2008, the only two full time officers were Rosas and Alonzo.¹⁶ Without authority, Rosas explicitly authorized the trade-in of two cars and Alonzo also signed for the trade-in of two cars. (Exs. 77, 83-84, 86-87)

¹³ In May 2014, the Local purchased two vehicles and obtained required Executive Board approval one week after the purchase had been made. Such retroactive approval does not cure the Bylaw violation since the Local funds were already spent. United States v. IBT [Liguoris], 814 F. Supp. 1165, 1179 (S.D.N.Y. 1993) On May 14, 2014, the Local traded-in a 2011 Tahoe that business agent Cary Daughters had driven. (Exs. 77, 83) The same day, the Local purchased two used cars: a 2011 Chevrolet Equinox and a 2011 Chevrolet Malibu for \$26,489.60 and \$23,428.80 respectively. (Exs. 77, 80-81) Prior to these transactions, there were no Executive Board approvals to trade-in the one car and purchase the two cars as the Bylaws required. (Ex. 36) A week after the Local's Tahoe was traded-in and the two cars were purchased, the minutes of the May 21, 2014 Executive Board meeting contained the following statement, "There was a motion by Trustee Delgado and a second by Recording Secretary Cholula to approve the trading in of the Chevrolet Tahoe and purchase of the 2 economy cars and that motion carried." (Ex. 36) Approval after the horse has left the barn is not valid Executive Board approval. Liguoris, 814 F. Supp. at 1179.

¹⁴ Former Local 439 President Phillip Rushing also without authority signed the purchase agreement for one of the cars purchased in 2008. (Exs. 77, 86)

¹⁵ As noted above, the Executive Board approval for the trade-in of a 2011 Chevrolet Tahoe and purchase of two cars took place on May 14, 2014, a week after the transactions took place. (Exs. 77, 80-81, 83, 36)

¹⁶ Phillip Rushing was a full-time officer in 2008. (Exs. 515, 30)

On October 31, 2008, Rosas caused the Local to purchase a Chevrolet Pickup for then business agent De La Cruz for \$35,052. (Exs. 77, 87, 514) Rosas signed the purchase agreement for this truck. (Ex. 87) There was no Board approval. (Ex. 30)

On October 15, 2010, Rosas caused the Local to purchase a 2010 Chevrolet Tahoe for business agent Andazola by signing the \$43,910.96 purchase agreement on behalf of the Local. (Exs. 77, 85, 514) The Board did not authorize it. (Ex. 32)

On February 17, 2011, Alonzo caused the Local to purchase for \$49,597.65 a 2011 Chevrolet Tahoe for De La Cruz. (Exs. 77, 84, 514) The 2008 Pickup that De La Cruz had driven was traded-in. (Exs. 77, 87) Alonzo signed both the purchase and trade-in documents. (Exs. 84, 87) There were no Board approvals for either. (Ex. 33)

On February 18, 2011, Alonzo caused the Local to purchase for \$49,425.06 a 2011 Chevrolet Tahoe for then business agent Cary Daughters' ("Daughters") use. (Exs. 77, 83, 514) The 2008 pickup that Daughters had used was traded-in. (Exs. 77, 83, 86) Alonzo signed the purchase agreement and trade-in documents. (Exs. 83, 86) There were no Board approvals for either. (Ex. 33)

On December 20, 2012, Rosas caused the Local to purchase for \$47,844.72 a 2013 Chevrolet Pickup for his use. (Exs. 77, 82) Rosas signed the purchase agreement. (Ex. 82) There was no Executive Board approval. (Ex. 34) According to Local records, a Local 2011 Chevy Tahoe that De La Cruz had driven was "Traded for Sam's [Rosas] Car". (Exs. 84, 514) Without authority, Rosas signed for this trade-in. (Ex. 84)

On June 5, 2013, Rosas caused the Local to transfer title of a 2006 Ford F-150 pickup to former business agent Edward Speckman ("Speckman") who had retired the previous month.

(Exs. 79, 588) The 2006 Ford was sold to Speckman for \$3,500. (Ex. 79)¹⁷ In violation of Section 16(C) of the Bylaws, there was no prior Board approval for this sale. (Ex. 5 at 22; Ex. 35) Over three months later, the minutes of a Board meeting on September 25, 2013 noted, "There was a motion . . . to approve the selling of Ed Speckman's truck and that motion is carried." (Ex. 539)¹⁸ No sale price was disclosed in the minutes. (Ex. 539) There was no indication that the Board had been told that the truck had been sold to Speckman months earlier without approval. (Ex. 539) Moreover, retroactive approval did not cure the Bylaw violation. United States v. IBT [Liguoriti], 814 F. Supp. 1165, 1179 (S.D.N.Y. 1993).¹⁹

In making these purchases and dispositions of Local vehicles without the required authority Alonzo and Rosas violated the Bylaws and breached their fiduciary duties to the members.

b. Car Loans

Section 14(B)(3) of the Bylaws provided that the Board must approve all Local borrowing and Section 16(C) specifically required Board approval for financing the purchase of cars. (Ex. 5 at 15, 22)²⁰ In violation of the Bylaws, without the required Board approval, Rosas and Alonzo caused the Local to borrow \$235,547 to finance the purchase of seven cars. (Exs. 77, 80-87)

¹⁷ On June 5, 2013, Speckman paid \$3,500 to the Local. (Ex. 79)

¹⁸ The Local produced a document that was faxed on May 28, 2013 from Chase Chevrolet to Alonzo which stated that with an adjustment for 180,000 miles, the "Total Lending/Suggested Retail Value" was "\$5,675/\$7,875." (Ex. 408) Handwritten on that document was: "Trade In Value = \$3,500 This would be a very fair price to sell to your employee." (Ex. 408) Chase Chevrolet was the dealer from which Rosas and Alonzo made all the unapproved purchases since 2008. (Exs. 80-88)

¹⁹ This approval was not obtained until after the IRB's books and records notice dated September 19, 2013. (Ex. 516)

²⁰ Section 14(B)(3) of the Bylaws provides that the Local's Executive Board shall have the authority to:

On October 31, 2008, to purchase a Chevrolet pickup, Rosas caused the Local to secure a \$29,801 loan. (Exs. 77, 87) Rosas signed the loan agreement. (Ex. 87) There was no Board approval. (Ex. 5 at 15; Ex. 30)

On February 17, 2011, Alonzo caused the Local to borrow \$38,854.58 to buy a 2011 Chevrolet Tahoe for De La Cruz to drive. (Exs. 77, 84) The next day, on February 18, Alonzo caused the Local to borrow \$37,970.13 to purchase a 2011 Chevrolet Tahoe for Daughters to drive. (Exs. 77, 83) Alonzo signed both loan documents. (Exs. 83-84) There were no Board approvals. (Ex. 33)

When the officers purchased the 2013 pickup for Rosas to use, they caused the Local to borrow \$45,185.14. (Exs. 77, 82)²¹ Acting without Board approval, on December 20, 2012, Rosas signed the loan document. (Exs. 77, 82; Ex. 5 at 15; Ex. 34)

2. Rosas and Alonzo Caused the Local to Make Substantial Other Expenditures Without the Board and Membership Approvals the Bylaws Required

Between 2009 and 2014, Rosas and Alonzo were the two full-time officers with check signing authority at the Local. (Ex. 5 at 7-8; Ex. 8 at 7-8; Ex. 10 at 9)²² During that period, they caused the Local to routinely make expenditures without the members' and Board approvals

Loan and borrow monies directly and indirectly for such purposes and with such security, if any, as it seems appropriate, and with such arrangements for repayment as it deems appropriate, all to the extent provided by law;

(Ex. 5 at 15)

²¹ The amount financed for the purchase of this car was \$45,185.14. (Exs. 77, 82) With interest of \$2,659.58 over the life of the loan, the total cost of the car was \$47,844.72. (Exs. 77, 82)

²² Section B(B) of the Bylaws provided that checks were required to be signed by both the Secretary-Treasurer and the President. (Ex. 5 at 7-8)

required under the Bylaws. In doing so, they both violated the Bylaw restraints on their power to spend Local money and their fiduciary duties to the members.

Section 14(B)(8) of the Local's Bylaws provided that the Executive Board had the authority to:

[l]ease, purchase or otherwise acquire in any lawful manner for and on behalf of the organization, any and all real estate or other property, rights and privileges, whatsoever deemed necessary for the prosecution of its affairs, and which the organization is authorized to acquire, at its discretion pay there [sic] for either wholly or partly in money or otherwise. Specific authorization at a membership meeting shall be required for such expenditures, excepting for routine expenditures not of a substantial nature

(Ex. 5 at 16) The Executive Board had not adopted a policy defining a substantial expenditure under the Bylaws. (Ex. 8 at 34-37) For purpose of this report, expenditures in excess of \$1,000 were deemed substantial.

Rosas and Alonzo regularly caused the Local to purchase non-routine items of a substantial nature, including tickets to Raiders games, shirts and televisions, without the required Board and members' approvals. (Exs. 78, 511, 170-174, 349) Rosas and Alonzo also caused the Local to pay for holiday parties and fishing trips without the necessary approvals. (Exs. 78, 89-93, 228-232)

**a. Failure to Obtain Approvals for Expenditures Connected with Events
Rosas and Alonzo Organized**

From 2009 through 2013, Rosas and Alonzo caused the Local to spend \$350,291 on four annual events they ran without Board approvals. (Exs. 78, 566, 89-93, 170-174, 228-232, 426-

429)²³ For the same period, they caused the Local to spend over \$343,558 without the required members' approvals for these events. (Exs. 348)²⁴ These events were a holiday party, a Raiders game, a Labor Day Picnic and a fishing trip. (Ex. 566)

I. Holiday Parties

Each December from 2009 through 2013, the Local held a holiday party at the Hilton Hotel in Stockton ("Hilton"). (Exs. 566, 89-93) There were no membership approvals obtained in the years between 2009 and 2013 to spend Local funds for the substantial, non-routine expenses of the parties. (Ex. 25-29)²⁵ In two years, 2009 and 2013, the Executive Board approved the expenditure of \$25,000 for each year's holiday party. (Exs. 405, 406) In 2010, 2011 and 2012, Alonzo and Rosas did not obtain Board approval for any of the party expenditures. (Exs. 32-34) Between 2009 and 2013, they caused the Local to spend approximately \$153,668 in connection with the parties without Board approvals and \$178,624 without membership approvals. (Exs. 348, 566)²⁶

²³ As noted below, in some years there were some Executive Board approvals to spend a specific amount for an event. In this report, for those years, the amount the officers spent over the approved amount was included in the figure for expenditures without Executive Board approval.

²⁴ This amount consisted of expenditures over \$1,000 and included Stars and Stripes purchases for those events. (Ex. 348)

²⁵ Rosas claimed that because the holiday party was held each year, it was a routine expense that only required Board and not membership approval. (Ex. 8 at 276-277) Rosas testified that he was not sure that Board approval was obtained each year for the holiday party. (Ex. 8 at 276-277) A party held without required approvals does not become routine because of repeated annual violations. It is not a recurring routine expense such as rent, taxes and utilities. According to Merriam-Webster dictionary, routine is defined as, "a regular way of doing things in a particular order." (Ex. 581) Moreover, despite admitting he knew at least Board approval was required as described above, Rosas only secured it for a small portion of what he caused to be purchased.

²⁶ As noted above, in this report purchases over \$1,000 were considered to be substantial requiring membership approval if not routine.

In the years 2009 through 2013, the Local averaged 4,294 members. (Exs. 18-22) During those years, the paid attendance at the holiday parties averaged 172. (Ex. 377)²⁷ The Local distributed an average of 207 tickets to each party. (Exs. 526, 98, 522-525)²⁸ According to the catering bills, an average of 224 entrees were served at the parties from 2011 through 2013. (Exs. 374-376)²⁹ The Local records had no explanation for the discrepancies.

2010 Holiday party

The 2010 party was on December 11. (Ex. 373) Rosas and Alonzo caused the Local to spend approximately \$31,818 in connection with it. (Ex. 90)³⁰ There were no Board and members' approvals for these expenditures. (Exs. 26, 32) According to the Local's records of tickets sales, 132 tickets were sold for \$60 each. (Exs. 377, 595)³¹

²⁷ The paid attendance at the holiday parties for 2009 through 2012 was obtained from the Local's General Ledger records which showed the amount the Local received from the sale of tickets to the holiday parties. (Ex. 377) The Local's Titan records showing the amounts received from the holiday tickets sales were consistent with the General Ledger for the years 2010 and 2011. (Exs. 377, 595, 596) For unknown reasons, the Titan records were inconsistent with the General Ledger for the years 2009 and 2012. (Exs. 377, 594, 597)

²⁸ The Local also produced spreadsheets described as "Records of Holiday Ticket Sales". (Exs. 98, 522-525) These spreadsheets did not always record a sale date for tickets attributed to specific people. (Exs. 98, 522-525) These records were used to determine the number of tickets distributed, not all of which were paid for. (Exs. 98, 522-525)

²⁹ For 2009 and 2010, the Local produced the catering contracts from the hotel, but failed to provide the final bill showing how many dinners were served. (Exs. 372-373) In 2011, 240 dinners were served; in 2012 and 2013, the number of dinners was 220 and 210 respectively. (Exs. 374-376)

³⁰ The Local's records reported under "other income" that \$7,920 was deposited for "Christmas Dinner Tickets" in 2010. (Ex. 95) Accordingly, the Local's net expenditures in connection with the 2010 holiday party were approximately \$23,898. (Ex. 90)

³¹ This paid ticket number was based upon the Local's General Ledger which showed the amount deposited from ticket sales for the holiday party. (Ex. 377) This amount was divided by the cost of each ticket to determine the number of tickets sold. The Local also produced another document entitled "Holiday Party Ticket Sales" showing that 165 tickets were distributed for the party. (Ex. 523) Not all of these tickets were described on this document as being paid for. (Ex. 523)

The Local paid the Hilton \$14,998.82 for this party. (Ex. 122) On November 24, 2010, Rosas and Alonzo caused the Local to spend \$5,443.53 at Costco to allegedly purchase party items. (Ex. 123)³² Jennifer Rosas' Costco membership card was used. (Ex. 463)³³ The items they purchased included four smoked salmon packages, eight fudge packages, two flatware caddies, eight travel pillows, two crockpots, two cake domes, four electric skillets, two slow cookers and 67 bottles of liquor. (Ex. 123) On December 8, 2010, Rosas and Alonzo caused the Local to spend another \$7,072 at Costco for an additional 121 items also allegedly for the party. (Ex. 117)³⁴ During that trip, Rosas and Alonzo caused the Local to purchase, among other items: seven televisions, four DVD players, two Nikon cameras, four lap desks, two irons, a Garmin GPS for \$559.96, three fur throws, two garment steamers and two toasters. (Ex. 117) The Local had no records showing it had received the items Rosas and Alonzo caused it to pay for at Costco. (Ex. 10 at 42-45; Ex. 12 at 47-48) The Secretary-Treasurer's Manual required that someone at the Local actually determine that items which were purchased came into the Local's control. (Ex. 4 at 73; Ex. 44 at 26) Nor were there any Local records showing the disposition of any of the items bought. (Ex. 474) Rosas and Alonzo ignored their legal obligation to maintain such records. (29 U.S.C. §§436, 439) This was not the only time. By their pattern of failing to keep records in violation of law, they created hurdles for IBT auditors, fellow Local

³² The check voucher for this check stated, "Mbrshp Appr. (Holiday Party)". (Ex. 123)

³³ According to records subpoenaed from Costco, the name on the Costco membership account number for this purchase was Jennifer Rosas who had a Costco membership card associated with a Costco business membership for Rondl and Associates. (Ex. 463) Rondl and Associates is a company which provides accounting and bookkeeping services. (Ex. 508)

³⁴ The check and check voucher for these purchases stated, "Membership Appreciation Holiday Party." (Ex. 117)

officers and others trying to determine if they were misappropriating items for personal use that were consumer products they caused the Local to purchase without approval, as detailed below.

2011 Holiday Party

The 2011 party was held on Saturday, December 10. (Ex. 374) Rosas and Alonzo caused the Local to spend approximately \$48,965 in connection with it. (Ex. 91)³⁵ There were no Board and members' approvals. (Exs. 26, 32) According to Local records, 159 tickets were sold for \$60 each. (Exs. 377)³⁶

The Local paid \$21,740.40 to the Hilton. (Ex. 140) According to the hotel's agreement, the party included a cash bar, hor d'oeuvres and dinner. (Ex. 374) A December 21, 2011 invoice from the Hilton showed 240 entrees were served. (Ex. 374) This was a significant increase both over the 159 tickets reflected in Local records as sold (Ex. 96), and the 221 distributed tickets identified on another Local document which included tickets not paid for. (Ex. 524) There were no explanations in the records for the additional meals Rosas and Alonzo caused the Local to pay for.

Rosas and Alonzo allegedly in connection with this party caused the Local to purchase over 371 items, costing at least \$15,785.08 that were described as "membership appreciation"

³⁵ The Local's records reported under "other income" that \$9,540 was deposited for "Christmas Dinner Tickets" in 2011. (Ex. 96) Accordingly, the Local's net expenditures in connection with the 2011 holiday party were approximately \$39,425. (Ex. 566)

³⁶ This paid ticket number was based upon the Local's General Ledger which showed the amount the Local received from ticket sales to the holiday party. (Ex. 377) The Local also produced another document entitled "Holiday Party Ticket Sales" this showed 221 tickets were distributed for the party. (Ex. 524) Not all of these tickets were described on this document as being paid for. (Ex. 524) As noted below, the Stockton Hilton charged the Local for 240 entrees at the holiday party. (Ex. 374)

or "for X-Mas party". (Exs. 133, 135, 137)³⁷ The number of prizes purchased was significantly higher than the number of entrees paid for or tickets distributed. (Exs. 524, 374) Using 240 attendees, this was a claimed expense of over \$65 per attendee for gifts for a party it cost \$60 to attend for those who paid, including dinner. (Exs. 374, 133, 135, 137) There were no Board and members' approvals for these purchases. (Exs. 27, 33) Most of these items were of no use to the Local and were personal consumer items. For example, on December 7, 2011, Rosas used a Local check to purchase 364 items at Costco for \$10,431.12, using Jennifer Rosas' Costco membership number. (Exs. 133, 463)³⁸ The items bought included three waffle makers, three griddlers, two mini choppers, two hand mixers, two blenders, two woks, two pizza stones, two three packs of sauté pans, two everyday pans, two spotlights, two wax warmers, two irons, two bakeware sets, two toasters, two popcorn makers, two tool boxes, two cake domes, four heated throws, six lunch boxes, six umbrella two packs, four bracelets, two 140 piece tool sets, four six piece tool sets and four cutting boards. (Ex. 133) Also on December 7, 2011, Rosas purchased at Local expense 62 bottles of liquor and nine bottles of vitamins. (Ex. 133)³⁹ The Local had no records showing it received any of these items. (Ex. 12 at 264-265) In addition, the Local had no records accounting for their disposition. (Ex. 474) Rosas and Alonzo violated their legal obligations to maintain such records. (29 U.S.C. 55436, 439; Ex. 552)

³⁷ This included \$10,431.12 spent at Costco for numerous items, \$4,968.18 spent at Magnolia Home Theater for five televisions and other electronics and \$388.78 Rosas spent at Target for two mountain bikes. (Exs. 133, 135, 137)

³⁸ The check voucher for these purchases stated, "Membership App. Holiday Party." (Ex. 133) As noted above, Jennifer Rosas' Costco membership number was associated with the Costco business account for Rondi and Associates. (Ex. 463)

³⁹ Liquor was allegedly raffled to members at the party. (Ex. 12 at 23-24) There was no Local record of anyone who received any liquor that year. (Ex. 474) The vitamins were unexplained.

On the same day of his Costco purchases, Rosas also caused the Local to spend an additional \$4,968.18 at Magnolia Home Theater. (Ex. 135)⁴⁰ Among other items, Rosas purchased four 40 inch Toshiba televisions for \$1,519.96. (Ex. 135) There were no Board and membership approvals for these purchases. (Exs. 26, 32) There were no records indicating anyone at the Local determined it received the purchased items. (Ex. 10 at 42-45; Ex. 12 at 48-49) In addition, in violation of federal law, the Local had no records of what happened to these televisions and the other electronic items Rosas purchased. (Ex. 474) Rosas and Alonzo had the responsibility to maintain such records. (29 U.S.C. §§436, 439; Ex. 552)

2012 Holiday Party

The 2012 party was held on Saturday, December 8. (Ex. 375) Rosas and Alonzo caused the Local to spend approximately \$46,950, allegedly in connection with it. (Ex. 92) They had no Board and members' approvals to spend this money. (Exs. 28, 34) The Local received \$11,400 in revenue from ticket sales. (Ex. 97)⁴¹ At \$75 per ticket, this represented 154 tickets sold. (Exs. 377, 97)⁴² According to Local records, 210 tickets were distributed to the holiday party. (Ex. 525)⁴³ The Local paid \$21,565.44 to the Hilton which charged the Local for 220 dinners served. (Exs. 416, 375)

⁴⁰ The check for this purchase stated "Membership Appr. Holiday Party." (Ex. 135) There was no notation on the receipt indicating the union purpose for the purchase. (Ex. 135)

⁴¹ Accordingly, the net amount the Local spent in connection with the 2012 holiday party was \$35,550. (Exs. 92, 97)

⁴² For reasons that are unclear, the Local's Titan records were inconsistent with the General Ledger records for 2012 for the holiday party ticket sales. (Exs. 97, 597) The Titan records showed that the Local sold 103 tickets. (Ex. 597)

⁴³ Of the 210 tickets, over ten percent were given away. According to a December 6, 2012 telephone poll, the Executive Board approved giving 36 free tickets to the holiday party: 16 to Local staff and volunteers, ten to

On December 6, Rosas and Alonzo signed a Local check to Costco for \$10,971.45. (Ex. 353) The description on the check was "Mbshp App. (12/08/12 Holiday Party)". (Ex. 353) There were no required Board and members' approvals for this. (Exs. 28, 34) Moreover, the Local, despite Alonzo and Rosas being obligated to ensure it had them, suspiciously had no receipts reflecting what was purchased at Costco for almost \$11,000 that day. In response to a subpoena, Costco produced documents regarding these purchases. (Ex. 463) These documents showed 326 items were purchased including 22 gift cards, three cameras, two pieces of luggage, eight DVD players, 16 tools, 14 pot and pan sets, four waffle makers and 79 bottles of alcohol. (Ex. 463) These purchases were made using Rosas' wife's Costco member number. (Ex. 463)⁴⁴ The Local had no records reflecting it received the items bought. Rosas and Alonzo failed to ensure the Local had records showing the disposition of these items. (Ex. 474)⁴⁵

On December 7, 2012 Rosas charged \$2,459.91 on his Local card at Best Buy/Magnolia Home Theater which the Local paid. (Ex. 157) He purchased eight televisions, including one 42" and two 39" televisions. (Ex. 157) A handwritten note on this receipt noted, "Gifts - Party". (Ex. 157) As with the Costco items, there were no Board and members' approvals for these non-routine substantial expenditures. In addition, the Local had no records regarding the disposal of these televisions as Alonzo and Rosas were required to have the Local make and maintain.

"Prop 32 Volunteers" and ten to "Distinguished Guests." (Exs. 351, 361) The difference between tickets sold and dinners paid for was 66 which meant that more tickets were given away than there was Board approval to give.

⁴⁴ As noted above, Jennifer Rosas' Costco number used for this purchase associated with the Costco business membership of Rondí and Associates. (Ex. 463)

⁴⁵ On November 27, 2012, the Local issued a different check to Costco for \$1,157.91 for 30 snowmen and penguin centerpieces allegedly for the Local's holiday party. (Ex. 573)

(Ex. 10 at 47-48; Ex. 474; Ex. 12 at 48-49, 266-267; 29 U.S.C. §§436, 439; Ex. 552) Such records were necessary to track the distribution of Local assets and ensure these items were used for a union purpose.

2013 Holiday Party

The 2013 party was held on Saturday, December 14. (Ex. 376) This was after the IRB investigation began in October. (Ex. 516) On November 20, 2013, the Board approved spending \$25,000 for the party. (Ex. 406) There was no members' approval for this substantial non-routine expenditure as the Bylaws required. (Ex. 29) Rosas and Alonzo without authority caused the Local to pay \$17,942 more than the amount approved. (Ex. 566) There was no membership approval for any of the \$35,111 spent in non-routine substantial purchases for the party. (Ex. 511) The Local paid \$24,505.71 to the Hilton. (Ex. 165) The Hilton charged for 210 dinners served. (Ex. 376) According to Local records, members paid for 137 of the 179 tickets distributed for the party. (Exs. 598, 98, 377) As in the past, there was a substantial discrepancy among the number of tickets sold, distributed and actual dinners the hotel represented it served and Rosas and Alonzo caused the Local to pay for. (Exs. 93, 97, 98, 376, 598)

ii. Oakland Raiders Games

Each year from 2009 through 2013, Alonzo and Rosas caused the Local to purchase tickets to Oakland Raiders football games. (Exs. 170-174) Most of these tickets were then resold to interested members as part of a package to attend that year's game. (Ex. 12 at 185-186)

Rosas claimed that "as a general rule" he submitted a budget for the game to the Board for approval. (Ex. 8 at 187) There was no documentary evidence supporting his claim. There

was no Board approval for any expenditures in connection with the Raider games in 2010, 2011 and 2012. (Exs. 32-34) In 2009 and in 2013, the Board authorized the Local to spend \$2,000 and \$5,000 respectively for the games. (Exs. 411, 412) In those two years, Alonzo and Rosas exceeded the Board approved amount by \$13,270 and \$12,424. (Ex. 566)⁴⁶ Between 2009 and 2013, Rosas and Alonzo spent \$87,747 without Board approvals in connection with the games. (Ex. 566) There were no members' approvals as required for any of the \$84,520.30 of non-routine substantial purchases Alonzo and Rosas caused the Local to make. (Exs. 348, 25-29)⁴⁷

2009 Raiders Game

On May 20, 2009, the Board authorized the Local to spend \$2,000 "for Raider game." (Ex. 412) On June 4, 2009, Rosas and Alonzo caused the Local to purchase 100 tickets to a game on October 18, 2009. (Ex. 180)⁴⁸ These and parking passes for three recreational vehicles

⁴⁶ In 2009, the Local spent \$15,270 in connection with the Raiders game. (Ex. 566) This was \$13,270 over the amount the Executive Board approved. (Ex. 566) In 2009, the Local took in \$7,844 from ticket sales for the Raiders game. (Ex. 566) Accordingly, the Local's net expenditures for the Raiders game that year was \$7,426, \$5,426 more than the Executive Board had approved. (Ex. 566)

In 2013, the Local spent \$17,424 in connection with the Raiders game. (Ex. 566) This was \$12,424 over the amount the Executive Board approved. (Ex. 566) In 2013, the Local took in \$11,375 from ticket sales for the Raiders game. (Ex. 566) Accordingly, the Local's net expenditure that year was \$6,049, \$1,049 more than the Executive Board had approved. (Ex. 566)

⁴⁷ When asked about members' approval for the purchase of Raiders tickets and tickets to other sports events, Alonzo testified that after the Board had approved the purchase either through a phone poll or at a meeting and then the minutes of the Board meeting were read at the next members' meeting. (Ex. 10 at 83) As noted above, there were no Board approvals to purchase tickets in 2010 and 2012. The minutes of the May 20, 2009 Board meeting, in which approval to spend \$2,000 for the Raiders game was reflected, were read at the September 16, 2009 membership meeting. (Ex. 412) The August 21, 2013 Board minutes, in which approval to spend \$5,000 was reflected, were read at the October 16, 2013 general membership meeting. (Exs. 29, 401) There were no votes at any membership meeting to approve the purchase of Raiders tickets. (Exs. 25-29) Reading Executive Board minutes at a membership meeting does not constitute membership approval for a particular expense mentioned in the minutes. See, In Re: Richard Berg and Eugenia Alvarez, GEB Decision at 5 (May 18, 2010) ("... matters that require Executive Board approval must be presented to the Board and explicitly approved.") (Ex. 619) The members need to approve it separately.

⁴⁸ The tickets cost \$61 each. (Ex. 180)

cost \$6,335. (Ex. 180) The Local spent \$15,270 for the 2009 game. (Ex. 170) In violation of the Bylaws, there was no members' approval for any Local funds that Rosas and Alonzo caused the Local to spend on the game. (Ex. 25) In addition, Rosas and Alonzo without authority caused the Local to spend \$13,270 more than the Board approved. (Exs. 566, 170)⁴⁹

According to the Local's Titan records, the Local sold 79 of the 100 tickets purchased for this game. (Exs. 170, 589)⁵⁰ The Local's tailgate list included 22 additional individuals as receiving tickets. (Exs. 170, 175) Local records did not show they paid. (Exs. 589, 175)

In connection with the 2009 game, Rosas and Alonzo caused the Local to pay \$2,902.98 for buses without the required approvals. (Ex. 181) In addition, without approval, Alonzo and Rosas caused the Local to purchase 150 jerseys from Stars and Stripes for \$2,522.60 allegedly for the game. (Ex. 184) These had "Teamsters Day at the Coliseum" and other writing on them. (Exs. 184, 198, 209) Each person who went on the trip to the Raiders game was to receive a shirt. (Ex. 12 at 30; Ex. 8 at 232-233) In 2009, Rosas and Alonzo caused the Local to purchase 50 more jerseys than it had purchased game tickets. (Ex. 184) They did not have the Local keep records, as they were legally required to do, recording the disposition of these jerseys. (Ex. 564)⁵¹ The Local had purchased 71 more shirts than the 79 tickets it had resold to members. (Ex. 184)

⁴⁹ According to Local records, the Local deposited \$7,844 from the ticket sales to this game. (Exs. 170, 566, 589) Accordingly, the Local spent \$7,426 more on the game than it took in. (Ex. 566)

⁵⁰ In addition to the Titan records showing the amount the Local received from tickets sales to the Raiders games, the Local also produced a Tailgate Party List for each Raiders game which listed names of individuals who attended the game and sometimes indicated if a ticket had been paid for. (Exs. 589-593, 175-178)

⁵¹ Grace Alonzo, Alonzo's wife, received a Local check dated October 26, 2009 for \$250 for which the check voucher stated "Raffle-Raider Game." (Ex. 188)

2010 Raiders Game

Rosas and Alonzo caused the Local to spend \$17,278 in connection with the 2010 game without required Board and members' approvals. (Exs. 171, 26, 32) By check dated May 7, 2010, Rosas and Alonzo caused the Local to purchase 100 tickets. (Ex. 191) These tickets and oversized vehicle passes cost \$6,335. (Ex. 191)⁵² By checks dated September 14 and September 22, 2010, Alonzo and Rosas caused the Local to purchase an additional 25 tickets and another vehicle pass for \$1,600. (Exs. 194-195)

The Local's Titan records showed that \$10,166 was paid to the Local for 104 tickets in 2010. (Exs. 590, 171)⁵³ Twenty-one tickets the two officers caused the Local to purchase were not resold to members. (Exs. 171, 590) Rosas and Alonzo were not listed as having paid for any tickets. (Exs. 171, 590) The Local's Tailgate list indicated 17 tickets of these 21 were distributed without a record reflecting these were paid for, including, as discussed below, five for Alonzo and six for Rosas. (Ex. 176) Out of the 125 tickets purchased, there was no record reflecting any disposition for four tickets. (Exs. 590, 176, 171)

On October 2, 2010, Rosas and Alonzo also caused the Local to spend \$1,663.59 at Costco allegedly for items for the game. (Ex. 196) These items included two waffle makers, two hand blenders, two cake domes, four NFL Snugglies, beer and liquor. (Ex. 196) Rosas and Alonzo failed to have the Local maintain records showing the disposition of these items. (Ex. 564)

⁵² The game tickets cost \$61 each. (Ex. 191)

⁵³ This Titan records showed that one person paid \$366 for 6 tickets which was the face value of the tickets. (Ex. 590) The Local generally charged its members \$100 for each ticket. (Ex. 590)

In addition, Rosas and Alonzo caused the Local to purchase for \$2,674.80 from Stars and Stripes 150 mock turtleneck shirts for the Raiders game. (Ex. 198) This was 25 more shirts than they caused the Local to purchase game tickets. There were no Local records reflecting the disposition of any of those 150 shirts. There was testimony claiming a member purchasing a ticket received a shirt but no records were kept showing this as required. (Ex. 12 at 30; Ex. 8 at 227) The disposition of the other 25 shirts was unexplained.

2011 Raiders Game

Rosas and Alonzo caused the Local to spend \$20,808 in connection with the 2011 game on October 2. (Exs. 172) There were no Board and members' approvals for the expenditures. (Exs. 27, 33) By check dated April 29, 2011, Alonzo and Rosas caused the Local to buy 100 tickets and three parking passes for \$6,335. (Ex. 203) On September 12, Alonzo charged \$1,830 on his Local credit card for 30 additional tickets. (Ex. 206)⁵⁴ The Local paid the charge. (Ex. 206)

The Local's Titan records showed the Local received \$10,700 for the resale of 107 tickets to this game. (Exs. 591, 172) The "Tailgate Party List" the Local provided described 18 additional tickets as being distributed without any indication of payment. (Ex. 177) The Local's records failed to reflect in any way the disposition of five of the 130 tickets purchased.

Despite having the Local buy 130 tickets, Rosas and Alonzo caused the Local to purchase from Stars and Stripes 170 mock turtlenecks and six mesh jerseys for the game for \$3,972.48. (Ex. 209) This was 46 more shirts than tickets. (Ex. 209) There were no records reflecting the

⁵⁴ At an Executive Board meeting on September 21, 2011, after this purchase, there was a motion to purchase 30 additional tickets to the Raider game. (Ex. 33) The minutes did not reflect any vote to approve this motion. (Ex. 33)

disposition of any shirts, including the surplus shirts, as the two officers were required to have the Local maintain. (Ex. 564) That year, 2011, was both a Local and an International election year. (Exs. 603, 614)

Rosas and Alonzo also caused the Local to spend without authority \$2,246.56 at Costco on September 30, allegedly for raffle items for the game. (Ex. 207)⁵⁵ Included in this purchase were eight umbrella packs, two safety kits, three drills, one waffle maker, three screwdrivers, four mini choppers, two blenders, three Hitachi 71 piece drill bit sets, nine lunchboxes, four packs of 24 Titleist golf balls, five hooded fleeces, two stadium seats, two backpacks, four thermal mugs, two sauté pan three pack sets and two other pans. (Ex. 207) The Local had no records showing the purchased items came into its possession. (Ex. 12 at 46-48, 267) Rosas and Alonzo failed to have the Local maintain records of the disposition of these items. (Ex. 474)

2012 Raiders Game

In 2012, Rosas and Alonzo caused the Local to spend \$23,964 in connection with a game on September 23. (Exs. 173) There were no Board and members' approvals for these expenditures. (Exs. 28, 34)⁵⁶ By check dated May 10, Rosas and Alonzo caused the Local to purchase 30 club tickets at \$136 each and 70 200 level tickets at \$51 each. (Ex. 212) These tickets and parking cost \$7,885. (Ex. 212) On July 17, Alonzo charged \$2,550 on his Local credit card for 50 additional \$51 tickets. (Ex. 216) The Local paid that also. (Ex. 216)

⁵⁵ The receipt for these purchases at Costco did not reflect any union purpose. (Ex. 207) The memo on the check Rosas and Alonzo signed stated, "Raider Game Raffles (10/2/11)". (Ex. 207)

⁵⁶ The minutes of the September 19, 2012 general membership meeting stated, "The members were given a report on the . . . Raider game." (Ex. 28) There was no vote to approve any expenditures. (Ex. 28)

Rosas and Alonzo caused the Local to purchase 150 tickets to the game. (Exs. 212, 216) The Local's Titan records reflected that 129 of these tickets were resold. (Ex. 592)⁵⁷ The Local's Tailgate list included notations for 17 additional tickets distributed without a sale reflected in the Titan records. (Exs. 178, 592) In addition, there were four more tickets the Local had purchased but had no record of being distributed. (Ex. 178)

Rosas and Alonzo caused the Local to purchase from Stars and Stripes, 200 mock turtleneck shirts for \$4,530.70 allegedly for the game. (Ex. 360) This was 50 more shirts than the Local purchased tickets. (Ex. 360) Rosas and Alonzo did not have the Local maintain records regarding the disposition of any of these 200 shirts. They provided no union purpose for the extra shirts. Assuming, because there are no records, that each ticket holder received a shirt, there was no explanation for what happened to the 50 surplus shirts Stars and Stripes was paid for. (Ex. 474)

In addition, Rosas and Alonzo also caused the Local to spend \$1,767.95 at Sports Authority for items allegedly to be raffled in connection with the 2012 game. (Ex. 219)⁵⁸ These included three bleacher back stadium seats, four duffle bags, six sets of mini speakers, seven coolers, an eye black stick, three NFL official games balls for \$89.99 each, three youth footballs and insect

⁵⁷ The Titan records reflected that club tickets were sold for \$140 each and other tickets were sold for \$100. (Ex. 592) The mark-up on club tickets for transportation, food and a shirt was \$4 a ticket. Alonzo and Rosas caused the Local to charge the members who purchased regular tickets a \$49 markup for the same benefits it was providing club ticket holders for \$4. Each shirt purchased allegedly for the game cost the Local between \$18 and \$22. (Ex. 360) There were no records showing the disposition of the 200 shirts or how the markups were decided on.

⁵⁸ The receipt from Sports Authority contained the handwritten notation "Raffles" and the check stub for these purchases stated "Membership App. (Raider Game) 9/23/12". (Ex. 219)

repellent. (Ex. 219) Alonzo and Rosas did not have the Local maintain the required records for the disposition of these items. (Ex. 12 at 47-48, 267; Ex. 474)

2013 Raiders Game

Rosas and Alonzo caused the Local to spend \$17,424 in connection with the November 3, 2013 game including purchasing 110 tickets: 75 Level 200 tickets at \$50 each and 35 Club tickets at \$125 each. (Exs. 174, 221-227, 362-364) The Local paid \$8,289 for these tickets, two bus parking passes and a handling fee. (Exs. 221-223) Rosas purchased 100 of these tickets on his Local card. (Exs. 222-223)⁵⁹ Subsequently, after these purchases, on August 21, 2013, the Board approved spending \$5,000 for the game. (Ex. 35) By that point, Rosas and Alonzo had already caused the Local to spend \$7,039. (Ex. 174)⁶⁰ There was no membership approval to spend any Local money for the game. (Ex. 29)⁶¹ On August 21, 2013, Rosas purchased an additional 10 Club tickets at Local expense for \$1,250. (Ex. 223)

In addition to the tickets, the Local paid for other items allegedly associated with the game including the rental of four buses, food, alcohol and shirts. (Ex. 174)⁶² On October 31, 2013, Rosas charged \$2,427.21 on his Local credit card at Costco. (Ex. 227) The Local produced two copies of the receipt. (Ex. 227) It produced one with the handwritten notation "Raider

⁵⁹ This was 75 Level 200 tickets and 25 Club tickets. (Exs. 222-223)

⁶⁰ On July 17, 2013, Rosas charged \$3,237 on his credit card and on August 6, 2013 he charged \$3,625. (Ex. 222) These charges were paid by Local check on August 19, 2013. (Ex. 222) On January 23, 2013, Alonzo charged a \$100 deposit for Raiders tickets on his Local credit card which the Local paid on February 25, 2013. (Ex. 221)

⁶¹ The Local charged members \$100 for the Level 200 seats and \$125 for the Club seats. (Exs. 535, 593) The Local's records showed that the Local took in \$11,375 in ticket sales for this game for 106 tickets sold. (Exs. 535, 174) After accounting for the \$11,375 the Local took in for ticket sales for the 2013 Raiders game, the Local spent approximately \$6,049 in connection with the 2013 Oakland Raiders game. (Ex. 566)

⁶² The Local paid \$3,719.92 to Silverado Stages for a bus to the Raiders game. (Ex. 224)

Game". (Ex. 227) The second copy it produced had handwritten on the copy of the receipt for the same purchase, "Oakland Raider Game Food and Raffles." (Ex. 227) Rosas caused the Local to purchase 264 units of beer, 144 cans of soda, 36 bottles of liquor as well as cookies and candy. (Exs. 227, 174) Also included in Rosas' Costco purchase were 14 gift cards costing \$679.96, for movies and restaurants which could be used by any holder. (Ex. 227) There were no Local records indicating any of these purchases came into its possession. (Ex. 10 at 42-45; Ex. 12 at 26, 47-48, 267-268) Rosas and Alonzo did not have the Local keep records reflecting the disposition of these items, including the gift cards that were cash equivalents. (Exs. 474, 273)

Rosas and Alonzo also caused the Local to purchase 120 tee shirts from Stars and Stripes for \$1,485.66 allegedly for the game. (Ex. 363) The Local had purchased only 110 tickets. (Exs. 222-223) There were no required approvals obtained for this shirt purchase. There were no records reflecting that the shirts were received at the Local. (Ex. 10 at 42-45)⁶³ Rosas and Alonzo did not have the Local maintain records of the disposition of any of the shirts, including the 10 surplus ones. (Ex. 564; Ex. 10 at 43; Ex. 8 at 391)

iii. Fishing Trips

Between 2009 and 2013, Rosas and Alonzo caused the Local to spend at least \$33,232 in connection with fishing trips held each year. (Ex. 566) There were no members' approvals as required to spend \$24,620 in substantial expenditures for these trips. (Exs. 511, 25-29) In 2011,

⁶³ The Local's practice prior to the books and records examination was to not keep track of items received at the Local. (Ex. 10 at 42-45; Ex. 12 at 48) As described above at pages 24-29, before the IRB's books and records examination, in prior years the excess shirts purchased from Stars and Stripes for the Raiders games ranged from 25 to 50 shirts each year that were not accounted for.

the Board approved spending \$990 on a fishing trip. (Ex. 413)⁶⁴ There were no other Board approvals. (Exs. 31-35) Between 2009 and 2013, Rosas and Alonzo caused the Local to spend \$32,242 without Board approval for the trips. (Ex. 566)

For the fishing trip on August 11, 2012, Rosas and Alonzo without authority caused the Local to pay \$9,920, including the rental of three boats for \$6,800. (Ex. 231)⁶⁵ On August 7, 2012, Rosas charged \$812.92 on his Local card at Sports Authority for various items, including: six fishing poles, two tackle boxes and three children's fishing kits. (Ex. 267) The Local paid the charges. (Ex. 267) Rosas also caused the Local to purchase Raiders items that day at Sports Authority, including two stadium seat cushions and six coolers. (Ex. 267) The handwritten notation on this receipt was "Raffles - Fishing and Raider Game." (Ex. 267) There was no Board approval for the Local to pay for any of these items. (Ex. 34) There were neither records at the Local reflecting the disposition of these items as federal law required Rosas and Alonzo to maintain or that the Local had ever received the items. (Ex. 474; Ex. 10 at 42-45)

iv. Labor Day Picnics

Between 2009 and 2013, Rosas and Alonzo caused the Local to spend at least \$81,632 allegedly for Labor Day picnics. (Ex. 566) In no year did Rosas and Alonzo obtain members' approvals for any substantial non-routine expenditure for the picnics as they were required to do. (Exs. 25-29) They caused the Local to spend \$55,793 in such expenditures without members' approval. (Exs. 511, 25-29)

⁶⁴ In a Board poll dated August 11, 2011, the Executive Board approved spending \$990 for fillet knives and a gratuity for the crew. (Exs. 413, 606)

⁶⁵ The Local also paid \$400 in gratuities to the fishing center. (Ex. 252)

In 2009, the Board authorized spending \$5,000 for that year's picnic. (Ex. 412) Rosas and Alonzo caused the Local to spend \$13,016 for the picnic, \$8,016 more than the Board approved. (Ex. 566) Despite having sought some approval in 2009, from 2010 through 2013, Rosas and Alonzo caused the Local to spend for picnics without any Board approvals. (Exs. 32-35, 566)⁶⁶ Including the unauthorized spending in 2009, from 2009 through 2013, they spent \$76,632 on picnics without Board approval. (Ex. 566)

Rosas and Alonzo caused the Local to spend \$33,542 on the 2011 picnic. (Exs. 566, 428) They did not secure Board and membership approvals for these non-routine, substantial expenditures. (Exs. 25-29, 31-35)⁶⁷ Rosas caused the Local to purchase \$2,842.51 worth of items at Costco allegedly to raffle at the picnic. (Ex. 477) These included two youth snorkels, two microscopes, four packs of 24 Titleist golf balls, four lunch boxes, four DVD players, three rolling duffel bags, two heaters, three backpacks and three blenders. (Ex. 477) There were no records of the items being received at the Local. (Ex. 10 at 42-45; Ex. 12 at 26, 47-48, 267-268) Rosas and Alonzo failed to have the Local make and maintain records of the items' disposition as they were legally required to do. (Exs. 273, 474)

Rosas and Alonzo caused the Local to spend \$15,957 without approvals on the 2012 Labor Day picnic, including an August 31, \$3,698.12 purchase of items from Costco allegedly to be given to members at the picnic. (Exs. 429, 390)⁶⁸ These included four Mr. Potato Heads,

⁶⁶ From 2010 through 2013, there were no Board approvals to spend Local funds for a Labor Day picnic. (Exs. 32-35) This was despite, as the approval in 2009 showed, the two knew Board approval was required.

⁶⁷ That year, Rosas and Alonzo caused the Local to spend \$24,780 for substantial purchases over \$1,000 for the picnic. (Ex. 348)

⁶⁸ Alonzo's Costco membership number, which was associated with the Local's Costco business account, was used for these purchases. (Exs. 390, 463)

four Lego Brickmaster kits, five garment steamers, 12 Regal movie gift cards, six hair trimmers, four spice racks, four toaster ovens, two rice cookers and eight irons. (Ex. 390) There were no records of the items being received at the Local. (Ex. 12 at 26, 47-48, 267-268) Rosas and Alonzo also failed to have the Local make and maintain records of the disposition of these items. (Exs. 273, 474)

b. Rosas and Alonzo Failed to Obtain Executive Board and Membership Approvals for Purchases from Stars and Stripes

Between 2008 and 2013, Rosas and Alonzo caused the Local to pay \$314,301 to Stars and Stripes allegedly for items such as shirts, hats, tankards and bags. (Exs. 349, 544-550)⁶⁹ Between 2009 and 2013, the Executive Board approved only \$47,478.01 of these purchases. (Exs. 349, 544-550)⁷⁰ There was only membership approval for a purchase of \$20,000 in 2013. (Ex. 29) Between 2008 and 2013, Rosas and Alonzo caused the Local to spend \$270,593 in non-routine substantial purchases over \$1,000 from Stars and Stripes without membership approval and \$266,823 from Stars and Stripes without required Board approval. (Exs. 348, 349)⁷¹

For example, without any authorization, Rosas and Alonzo caused the Local to purchase 1,750 shirts for the 2011 picnic for \$13,113.29. (Ex. 466) That year, Rosas and Alonzo also caused the Local to purchase 315 additional shirts from that vendor for \$4,138.24 also allegedly

⁶⁹ Some of these purchases from Stars and Stripes were allegedly connected to the Holiday parties, Raiders games and Labor Day picnics. (Exs. 349, 511)

⁷⁰ This included \$20,000 approved at the October 16, 2013 Executive Board meeting for "... the purchase of shirts, hoodies and zip up jackets". (Ex. 35) This was after the IRB's books and records examination. (Ex. 516)

⁷¹ As noted above, substantial purchases were considered to be those over \$1,000. Between 2008 and 2013, the Local spent \$290,593 in substantial purchases from Stars and Stripes. (Ex. 348)

for the picnic. (Ex. 473) Alonzo and Rosas did not have the Local keep records to account for the disposition of the 2,065 shirts bought in 2011 worth over \$17,000. (Exs. 466, 473, 547, 564) There were both Local and International elections in 2011. (Exs. 603, 614) In contrast to the election year, in 2010 and 2012, the Local did not purchase anything from Stars and Stripes for the Labor Day picnic. (Exs. 427, 429)⁷²

C. Rosas and Alonzo Failed to Cause the Local to Maintain Records of the Disposition of Assets as Federal Law Required

In addition to Rosas and Alonzo purchasing items without authority in breach of their fiduciary duties under 29 U.S.C. §501(a) as described above, they repeatedly failed to have the Local record the disposition of Local assets as 29 U.S.C. §§431, 436, required them personally to ensure was done. Between 2009 and 2013, Rosas and Alonzo caused the Local to purchase at least \$72,012 in merchandise they claimed was to be raffled or given to members. (Exs. 542, 541, 272, 396)⁷³ The items allegedly to be raffled included negotiable gift cards, televisions, DVD players, liquor and personal appliances. (Exs. 542, 541, 272, 396)⁷⁴ As signatories on Forms LM-2, Alonzo and Rosas were required to ensure the Local maintained records contemporaneously reflecting the disposition of its assets. (29 U.S.C. §§431, 436, 439; Ex. 552) Alonzo and Rosas admitted that the Local did not keep any records of when items were

⁷² In 2010 and 2012, the Local made purchases from Stars and Stripes for other events. (Exs. 546, 548)

⁷³ For much of the merchandise, the Local had no records confirming the purchases were received. (Ex. 12 at 26, 47-48, 267-268)

⁷⁴ This \$72,162.53 amount included items purchased at Costco allegedly to be raffled or given as "membership appreciation", which included televisions, DVDs and gift cards, as well as televisions and gift cards purchased at vendors other than Costco. (Ex. 542) The items purchased at Costco totaled \$64,757.75; the televisions purchased somewhere other than Costco totaled \$6,019.78 and the gift cards not purchased at Costco totaled \$1,385. (Exs. 542, 396, 272)

allegedly raffled, what was raffled and who received those items until after the IRB's examination in October 2013. (Ex. 10 at 47; Exs. 273, 474, 516) Given the nature of the items purchased, Rosas and Alonzo created an environment at the Local that made it ripe for officer embezzlement. Even after the IRB examination, recordkeeping was still inadequate. For example, in 2013 the Local's record recorded that nine Regal gift cards were "comped" without disclosing to whom such cards were given, where, when and why. (Ex. 602)

1. Costco Purchases for Raffles

Between January 2009 and May 2013, Rosas and Alonzo caused the Local to purchase \$64,757 from Costco in items allegedly to give to members. (Ex. 541) Some of these purchases were made in connection with the holiday parties, Raiders games and Labor Day picnics discussed above. Rosas and Alonzo did not have the Local maintain records regarding the disposition of these items as they were required to do. (Ex. 474)⁷⁵

2. Televisions and DVD Players

Between December 2010 and May 2013, Rosas and Alonzo caused the Local to purchase 31 televisions for \$8,175.69. (Ex. 396)⁷⁶ The Local had no records reporting what happened to these, including to whom, when, why or where a television was transferred. (Ex. 474)⁷⁷ For

⁷⁵ As discussed above, after the IRB's books and records examination, the Local began to maintain records regarding who received raffle items. (Ex. 474)

⁷⁶ There was no membership approval for these television purchases most of which were substantial non-routine expenditures totaling over \$1,000 on one day at one store. (Ex. 396)

⁷⁷ Some of these televisions were purchased at Costco and are included in the total cost of the Costco raffle items described above. The cost of the televisions not purchased at Costco between December 2010 and May 2013 was \$6,019.78. (Ex. 396) These televisions were purchased at Best Buy. (Ex. 396)

example, on December 9, 2011, Rosas caused the Local to purchase 14 televisions and six DVD players for \$4,948.18. (Ex. 135)⁷⁸ Alonzo and Rosas did not ensure the Local had records reflecting the disposition of these items. (Ex. 474) Similarly, on December 7, 2012, Rosas caused the Local to purchase eight televisions for \$2,459.91. (Ex. 157)⁷⁹ Again, they failed to have the Local maintain records of their disposition. (Ex. 474)

3. Gift Cards

In the years 2009 through May 2013, Alonzo and Rosas caused the Local to purchase 190 gift cards costing \$5,592.85, without required Board approvals. (Exs. 272, 273) They failed to have the Local keep records reflecting the disposition of the cards. (Exs. 272, 273)⁸⁰ Gift cards were cash equivalents that could be used by whomever possessed them. (Ex. 509)⁸¹

On December 7, 2011, at Local expense Rosas purchased 24 discount gift cards for movie theaters, Cold Stone Creamery, Jamba Juice, Elephant Bar and Dewz Restaurant for \$995.70. (Ex. 388) The Local had no records reflecting it received them or what happened to these cards. (Ex. 273; Ex. 12 at 48-49)

On December 6, 2012, Rosas caused the Local to purchase 60 gift cards for \$615.14 for Elephant Bar Restaurant, Jamba Juice, Coldstone Creamery and Regal and AMC movie theaters.

⁷⁸ The notation on the check was "Membership Appr. Holiday Party." (Ex. 399)

⁷⁹ That day Rosas caused the Local to purchase one 42 inch, two 39 inch and five 32 inch televisions. (Ex. 157) The receipt he submitted to the Local for those purchases had a handwritten notation "Gifts - Party." (Ex. 157)

⁸⁰ Some of these gift cards were purchased at Costco and are included in the total cost of the Costco raffle items described above. The cost of the gift cards not purchased at Costco between January 2009 and May 2013 was \$1,385. (Ex. 272)

⁸¹ The IRS has recognized gift cards are a cash equivalent. (Ex. 509)

(Ex. 394) On October 31, 2013, Rosas purchased another 14 gift cards for \$679.86 using his Local card. (Ex. 391)⁸² For all the cards Rosas purchased, Rosas and Alonzo failed to have the Local maintain records reflecting the disposition of these cards. (Ex. 273)⁸³ There were no records reflecting the Local ever received them. (Ex. 10 at 42-45; Ex. 12 at 48-49; Ex. 8 at 391)

Using his Local card, on November 21, 2013, Rosas purchased 35 \$15 Safeway gift cards for \$525. (Ex. 306) He provided no union purpose for the purchase on the receipt he submitted to the Local. (Ex. 306) There was no record reflecting these cards came into the Local's possession. (Ex. 12 at 26, 47-48, 267-268) The Local had no records regarding the disposition of the gift cards that Rosas purchased. (Ex. 273)

4. No Records regarding the Disposition of Items Purchased from Stars and Stripes

As described above, Rosas and Alonzo caused the Local to purchase numerous items from Stars and Stripes without any authority. Rosas and Alonzo did not have the Local track the disposition of items purchased from Stars and Stripes, assuming it received them. (Ex. 564)

For example, on December 7, 2011, the Local issued a check for \$5,930 to Stars and Stripes which Rosas and Alonzo signed to purchase 500 16 ounce glass beer tankards with Local 439 and the Teamster logo printed on them. (Exs. 132, 547) The Local's records for this

⁸² These gift cards were the following: eight Regal Combo gift cards (\$199.92); two Papa Pavlos Restaurant gift cards (\$159.98); two Elephant Bar gift cards (\$159.98) and two Shlrashoni restaurant gift cards (\$159.98). (Ex. 391)

⁸³ On November 16, 2013, Rosas purchased more gift cards: four Elephant Bar restaurant gift cards; nine Regal Theater Combo gift cards and four Honey Baked Ham gift cards totalling \$864.83. (Ex. 402) This was after the IRB's books and records examination and the Local had records reflecting the disposition of the eight Elephant Bar and Honey Baked Ham cards. (Ex. 602) Rosas and Alonzo failed to have records for the nine Regal Theater cards. (Ex. 602) In the recipient column for the nine Regal Theater gift cards there was the notation "comped". (Ex. 602) Who was "comped" and for what union purpose was not included. (Ex. 602)

purchase was noted, "Items for Holiday Party". (Ex. 132) There were no Board and members' approvals for this purchase as required. (Exs. 27, 33) There were no records showing the tankards came into its possession. (Ex. 10 at 42-45)⁸⁴ The Local had none of the records Alonzo and Rosas were obligated to ensure it maintained detailing when, where, to whom and why the tankards were distributed. (Exs. 564, 474) The Local paid for 240 dinners at the 2011 holiday party and purchased 500 tankards. (Ex. 374) There were no records indicating what happened to any of the tankards. (Exs. 474, 564)⁸⁵ This year, when the Local also made the unique purchase of over two thousand shirts allegedly for the picnic, was both a Local and an International election year. (Exs. 603, 614)

In December 2012, the Local purchased from Stars and Stripes 500 black duffel bags embroidered with "Teamsters Local 439". (Ex. 151) On December 18, the Local issued a check Rosas and Alonzo signed for \$4,273.67 to Stars and Stripes. (Ex. 151) The memo notation on the check detail report stated "12th Ann. Holiday Party (1/2 of Inv. 17704)". (Ex. 151) Invoice 17704, which was for the bags, was dated December 3, 2012 for \$8,547.34. (Ex. 151) The Local issued a second check on March 1, 2013 to pay the other half of this invoice. (Ex. 152) The notation for the second check in the Local's check detail report was "Mbrship App.-Bags". (Ex. 152) The memo on this check stated "Inv. 17704." (Ex. 152) Stars and Stripes was subpoenaed. Its records for this invoice appeared to show that items on this invoice were shipped on December 3, 2012. (Ex. 151) There were no Board and members' approvals as required to

⁸⁴ The Local's practice was not to track whether it had actually received merchandise it purchased. (Ex. 10 at 42-45; Ex. 12 at 26, 47-48, 267-268)

⁸⁵ The inventory the Local created after an IRB request for an inventory of items on hand did not include any tankards. (Ex. 586)

purchase these bags. (Exs. 28, 34) There were no record reflecting how, when, where and to whom they were distributed. (Exs. 564, 474) Even assuming half were for the party, the reason for the other 250 was not explained in Local records.⁸⁶

By check dated November 19, 2013, Rosas and Alonzo caused the Local to purchase from Stars and Stripes another 400 glass tankard beer mugs with the Teamster logo and "Local 439, Stockton, CA" for \$4,369. (Ex. 169) The memo on the check voucher stated, "Inv. 21210 (Beer Mugs) Christmas Party". (Ex. 169) There were no members and Board approvals for this purchase as required. (Exs. 29-35) There was no union purpose given explaining the purchase which exceeded the number of attendees. (Ex. 376)⁸⁷ Rosas and Alonzo did not have the Local keep records reflecting the disposition or retention of these mugs. (Exs. 564, 474)

D. Rosas' Lack of Receipts

Similar to failing to account for the disposition of Local assets, on over 200 occasions Rosas and Alonzo caused the Local to spend money without it receiving any receipt as required in violation of the Bylaws and the legal obligation to document an expense. (Ex. 5 at 8, 20-21; Ex. 352)⁸⁸ Between January 2011 and October 2013, Rosas failed to submit receipts for at least

⁸⁶ In the past in connection with an election, Rosas had caused the Local to pay for merchandise distributed for political purposes. (Ex. 414)

⁸⁷ According to the hotel invoice, there were 210 entrees served at the 2013 Christmas party. (Ex.376)

⁸⁸ Section 10(A) of the Local's Bylaws provided that the Local's Secretary-Treasurer "... shall keep itemized records, showing the source of all monies received and spent . . ." (Ex. 5 at 8) Section 16(B) of the Bylaws entitled "Expenses" stated the following:

When a representative of the organization is engaged in activities in the interest of, or for the benefit of the organization and its members within the scope of his authority, the labor organization shall pay the expenses incurred therein, or reimburse the representative upon receipt of itemized vouchers from him or the supplier of such services.

(Ex. 5 at 20-21)

239 charges totaling \$43,423.84 that he had incurred on his Local credit card. (Exs. 352, 600)

Despite the absence of receipts, Rosas and Alonzo signed the checks which paid the credit cards bills for these. (Exs. 275-305, 530, 371, 279, 287)

Rosas submitted a letter dated April 9, 2014 to the IRB which listed 239 of his charges for which he acknowledged that the Local had no receipts. (Ex. 352)⁸⁹ The Local had paid these. (Exs. 352, 275-305, 530, 371, 600) The Local Bylaws, IBT policy and federal law required the Local to have supporting documentation for all expenditures. (Ex. 5 at 8, 20-21; Ex. 4 at 2; 29 U.S.C. §§431, 436, 439; Ex. 552)⁹⁰ No Local records reflected the union purposes for the expenditures for which receipts were missing. (Exs. 275-305, 530, 371)

Rosas and Alonzo signed the checks to have the Local pay these charges without required documentary support. (Exs. 275-305, 530, 371)⁹¹ The bookkeeper testified that she told Alonzo about Rosas' pattern of failing to submit receipts. (Ex. 12 at 17) Alonzo, ignoring his fiduciary and legal responsibilities, responded that Rosas "was the boss." (Ex. 12 at 17)

⁸⁹ During his sworn examination, Rosas acknowledged that he did not turn in some of those receipts to the Local. (Ex. 8 at 61) He claimed that he was "pretty sure" he submitted some of those receipts to the Local and suggested that the Local's bookkeeper misplaced them. (Ex. 8 at 61) In his April 9, 2014 letter, Rosas stated that he was in the process of obtaining copies of missing receipts related to hotel and airline charges and would submit them to the IRB. (Ex. 352) Rosas also wrote in his letter that, "if receipts are unavailable, I will supplement this response with further detail." (Ex. 352) Rosas did neither.

⁹⁰ The IBT's Manual for Secretary-Treasurers requires that, "at a minimum, all disbursements must be: . . . Supported by an Itemized invoice, receipt of statement detailing the items ordered or the services provided or to be provided." (Ex. 4 at 73)

⁹¹ Rosas and Alonzo were fully aware of the need for receipts. On January 29, 2013, Rosas and Alonzo issued a memo regarding the Local's credit card policy to all business agents. (Ex. 560) This policy emphasized that all receipts must be turned in to the Local each month and specified that receipts for charges on the Local's Visa card must be submitted by the end of the third week of each month. (Ex. 560) After the date of this memo, in the nine months between February 1, 2013 and October 31, 2013, Rosas failed to submit 42 receipts for items he charged on his Local credit card. (Exs. 352, 600) The total value of these was \$6,024.37. (Ex. 600) Rosas and Alonzo had the Local pay all those charges. (Exs. 296-305, 371)

Title 29 U.S.C. §431(b) requires a Local to file an annual form detailing mandated information with the Department of Labor. (Ex. 552) Included in that required information are all Local expenditures, all loans to officers and a statement of Local assets. (Ex. 552)⁹² Title 29 U.S.C. §436 provides,

Every person required to file any report under [this subchapter] shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

(Ex. 552) This required the Local to have "... accurate, contemporaneous records reflecting all union receipts and disbursements. ..." United States v. Budzanoski, 462 F. 2d 443, 450 (3rd Cir. 1972) cert. denied, 409 U.S. 949 (1972).

The Local and the officers who sign the Forms LM-2 are required under 29 U.S.C. §436 to ensure the Local has records "... contemporaneously made with the transactions involved from which the Secretary of Labor as the representative of the public, and the labor organization's members can check to verify and clarify any expenditures made by the labor organization." Hodgson v. United Mine Workers, 1971 WL 705 at *2 (D.D.C. April 13, 1971) (union's failure "... to maintain and keep supporting documents reflecting the date, purpose and specific amount of the disbursement, frequently in cash, and in many instances failed to obtain receipts from the ultimate recipients of funds disbursed" violated 29 U.S.C. §436);

⁹² Pursuant to 29 U.S.C. §431(b), all labor organizations must file annual reports containing, among other things, "assets and liabilities at the beginning and end of the fiscal year", "direct and indirect loans made to any officer ... which aggregated more than \$250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangement for repayment" and "other disbursements made by it including the purposes thereof." (Ex. 552)

United States v. Chittenden, 530 F.2d 41, 42 (5th Cir. 1976) (officer required to sign Form LM-2 is personally responsible for failure to keep required records under 29 U.S.C. §436).

All expenditures of Local funds must be reported on the Forms LM-2. (Ex. 510 at 15, 32) Accordingly, Rosas and Alonzo as the officers who signed the Forms LM-2, were required to maintain records of all such disbursements pursuant to 29 U.S.C. §436. Rosas swore to the truth of Forms LM-2 the Local filed for years 2009 through 2013. (Exs. 18-22) Alonzo signed the Forms LM-2 under oath for years 2010 through 2013. (Exs. 19-22) They violated and caused the Local to violate federal law. 29 U.S.C. §§431(b), 436, 439 and 440. As the Court explained in Budzanoski, *supra*, 462 F. 2d at 449-450, which involved a conviction for the falsification of union records that were required to be kept under the LMRDA, the law required a Local to retain,

(1) accurate, contemporaneous records reflecting all union receipts and disbursement; (2) supporting documents reflecting the entry of transactions into the union's accounts and their reproduction in the annual financial statement; and (3) any interim financial records that can serve to check that annual report.

Id. at 450. Rosas' and Alonzo's failure to maintain required records exposed the Local to criminal and civil liability. 29 U.S.C. §§439, 440. New York Central and Hudson River Railroad v. United States, 212 U.S. 481, 492-96 (1909) (an entity can be liable for the criminal acts of an employee committed within the scope of his employment). Here, it was within the scope of Rosas' and Alonzo's employment to have the Local records accurately reflect the disbursement of the Local's funds and its assets. They failed to do so.

E. Rosas Engaged in a Pattern of Criminal Conduct

In addition to his violations of the criminal provisions for record keeping obligations discussed above, Rosas embezzled, received illegal loans, committed fraud and received a thing of value from an employer while principal officer of the Local.

1. Rosas Embezzled and Breached His Fiduciary Duties when He Caused the Local to Pay for Non-Union Expenses

Between 2009 and 2014, Rosas embezzled Local funds and breached his fiduciary duties by causing it to pay for expenses unrelated to union business. The evidence shows that Rosas used Local 439 as "a personal piggy bank" making withdrawals under false pretenses to pay non-union expenses. United States v. IRT [Liguoris], 814 F. Supp. at 1185. For example, Rosas and Alonzo without a union purpose caused the Local to pay a retiring business agent over \$15,000 in alleged unused vacation time to which the agent was not entitled. (Exs. 617, 6, 51-64) Rosas also embezzled when he caused the Local to pay \$3,484.21 for a Hawaiian vacation for the same ex-agent without the Board and members approvals the Bylaws required. (Exs. 65, 29, 35-36) There was no union purpose for this expenditure.

In addition, Rosas embezzled when he caused the Local to pay particular expenses he incurred that were covered by Local allowances he was receiving. (Ex. 66) Rosas also embezzled when he caused the Local to pay for personal expenses such as in town meals, multiple tickets to football games, hotel rooms and bar bills without a union purpose. These totaled at least \$15,680. (Exs. 617, 75, 527)

- a. Rosas and Alonzo Embezzled When They Caused the Local Without Authority to Pay a Retired Business Agent \$15,000 More for Unused Vacation Than He Was Entitled To and Rosas Also Embezzled When He Caused the Local to Give the Retired Agent at Local Expense a Trip to Hawaii**

In May 2013, Rosas and Alonzo embezzled Local funds, when they caused the Local to pay retiring business agent Speckman \$15,928.43 for 645.66 hours beyond what Speckman was entitled to. (Exs. 617, 51, 52-64)⁹³ In addition, in February 2014, Rosas embezzled when he caused the Local to purchase a \$3,484.21 Hawaiian vacation package for the retired Speckman. (Ex. 65)⁹⁴ There was no union purpose or benefit from either expenditure.

I. Limits the Executive Board Set on Accruing Vacation Pursuant to the Bylaws

Pursuant to Section 16(D) of the Local 439 Bylaws, only the Board had the authority to set the terms and conditions of employment for officers and employees, including vacation. (Ex. 5 at 22) The Board approved a written vacation policy on January 21, 2009. (Exs. 6, 31)⁹⁵ The Board approved a schedule of vacation based upon years of service and limited an employee's accrual of unused vacation to 250 hours. (Ex. 6)⁹⁶ In 2009, Rosas and Alonzo, as Board members, approved these compensation terms for employees thus limiting the accrued unused vacation an employee could carry forward to the next year. (Exs. 6, 31) Their initials appeared on the Board approved policy dated January 21, 2009 and they attended the Board meeting at which the vacation benefit was approved. (Exs. 6, 31)

⁹³ Speckman had worked at the Local since at least 2000. (Ex. 601)

⁹⁴ Rosas and Speckman were friends. (Ex. 12 at 126)

⁹⁵ The Local's prior vacation policies were more restrictive on the amount of vacation that could be carried over. The Local's vacation policy approved on January 10, 2001 provided that, "vacation not used must be cashed out at the end of each year." (Ex. 615) Rosas initialed this policy. (Ex. 615) The Local's vacation policy approved on May 17, 2006 provided that an employee could carry over a maximum of two weeks vacation. (Ex. 616) Rosas initialed this policy. (Ex. 616) The 2009 policy, which he also initialed, increased the amount of accrual possible from 100 to 250 hours. (Ex. 6)

⁹⁶ Under California law there is no right to carry unused vacation from a prior year into the next. If an employer allows that practice, it can set limits on the amount it allows. (Ex. 561)

ii. Rosas and Alonzo Embezzled When They Knowingly Caused the Local to Pay Speckman for Unused Vacation to Which He was Not Entitled

In violation of the explicit Board imposed 250 hour limit, Rosas permitted Speckman to carry forward 474 vacation hours into 2011, 654 vacation hours into 2012 and 724 vacation hours into 2013. (Ex. 47) Rosas knew these accruals exceeded the vacation compensation the Board set. (Ex. 8 at 339-340, 343-344, 347) He and Alonzo did not disclose the accruals on the Forms LM-2 as they were required to do. (Exs. 20-21) Disclosure would have revealed their violation of the compensation limits to non-fulitime officers and the members.⁹⁷

Speckman retired effective May 31, 2013. (Ex. 588) At the end of May 2013, Rosas and Alonzo caused the Local to pay Speckman \$15,928.43 for 645.66 hours more than he was entitled to be paid for as compensation for unused vacation. (Exs. 617, 51, 62-64, 6)⁹⁸ They did this without authority and for no union purpose. The vacation entitlement the Board set allowed for an employee to carry forward a maximum of 250 hours vacation into the next year. (Ex. 6) In the year Speckman retired, Rosas and Alonzo caused the Local to pay Speckman \$34,327.32 for 1,391.46 vacation hours. (Exs. 617, 51-64)⁹⁹ As explained below, this was \$15,928.43 more than he was entitled to because he was paid for 645.66 more vacation hours than he should have been. The 645.66 hours included 474 hours Speckman was credited with

⁹⁷ They were also not disclosed as liabilities on the monthly Trustees Reports filed with the IBT. (Exs. 421-422)

⁹⁸ The \$15,928.43 amount was determined by multiplying the 645.66 hours he was not entitled to by his hourly rate of \$24.67. Speckman's hourly rate of \$24.67 in May 2013 was obtained by dividing the gross amount of his paycheck by the number of hours for which he was paid.

⁹⁹ The Local's Quickbooks records showed that Speckman either took or cashed out 1,341.77 vacation hours in 2013. (Ex. 49) In an August 13, 2014 letter, the Local's certified public accountant stated that the vacation shown on the Local's Quickbooks records were not accurate. (Ex. 50) The Local's checks and check stubs showed Speckman was actually paid more, for 1,391.46 hours vacation in 2013. (Exs. 617, 51, 52-64)

having accrued beyond the 250 hour limit the Board set on accrued vacation hours permitted to be carried forward. (Exs. 617, 6, 51-64; Ex. 12 at 132-133)¹⁰⁰

The maximum number of accrued vacation hours Speckman was entitled to be paid for through May 2013 was 745.80 as outlined below. Throughout 2013, Speckman was either paid for or cashed out 1,391.46 vacation hours, including 661.46 hours paid to him by three checks, one dated May 29, 2013 and two dated May 31, 2013. (Exs. 51-64, 617)

At the start of 2013, Speckman was entitled to 350 vacation hours that had been accrued in 2012 but were not credited to him under the Local's vacation policy until January 2013. (Exs. 6, 47, 51) In addition, pursuant to the Board's vote on accrued vacation, he was entitled to carry forward into 2013 a maximum of 250 hours he had previously accrued. (Ex. 6)¹⁰¹ He had accrued these 250 hours. (Ex. 47) In addition to the 600 hours carried forward from 2012, Speckman also accrued 145.80 more vacation hours during 2013 for working between January and May.¹⁰² Thus, the maximum vacation hours Speckman was entitled to be paid for through May 2013 was 745.80 hours. Despite this, in 2013, Rosas and Alonzo, the Local's only two full-time officers and its check signatories, knowingly allowed Speckman to either take or cash out 1,391.46 vacation hours. (Exs. 617, 51-64) Accordingly, they caused the

¹⁰⁰ It is unclear where the additional 171.66 hours Rosas and Alonzo caused the Local to pay Speckman came from. It was not supplied in the Local's records.

¹⁰¹ According to the Local's vacation schedule for Speckman, instead of the 250 hours he was entitled to under the Local's vacation policy, Speckman was permitted to carry over 724 hours, 474 hours beyond the policy. (Ex. 47)

¹⁰² In 2013, Speckman accrued vacation hours at the rate of 29.16 hours per month, 350 per year. (Ex. 6) Five months at this rate was 145.80 hours.

Local to pay Speckman \$15,928.43 for 645.66 vacation hours that he was not entitled to. (Exs. 617, 51)

In 2013 prior to May 1, Speckman had either used or cashed in 330 vacation hours worth \$9,374.50. (Exs. 617, 51-56) This was paid to him through seven checks. (Exs. 51-56) Rosas signed all of these and Alonzo signed six. (Exs. 51-56)¹⁰³ The stubs for six of these checks showed that Speckman was credited with more time than the 745.80 vacation hours which was the maximum amount he was entitled to. (Exs. 51-55)¹⁰⁴ For example, the check stub for the check Rosas and Alonzo signed dated March 6, 2013 showed that Speckman had 1,044 vacation hours available to him. (Exs. 51-52) Under the Local's vacation policy, the officers would have known that was mathematically impossible. The maximum possible was never to exceed 250 accrued hours, plus the available hours earned in the immediately prior year and the vacation hours earned in the current year.

The Local's bookkeeper testified Rosas and Alonzo instructed her to pay Speckman for all his vacation hours at his retirement which was effective May 31, 2013. (Ex. 12 at 133; Ex. 588) Rosas and Alonzo told her, "Cash him out; his vacation has accrued." (Ex. 12 at 133) The unused vacation hours Speckman was paid for on May 29 and May 31, 2013 included hours beyond the Local's cap on accrued vacation. (Ex. 12 at 132-133; Exs. 6, 51) In the last month of Speckman's employment, the Local issued an additional 11 vacation checks to him. (Exs. 51, 57-64) These represented payment to Speckman for 1,061.46 unused vacation hours beyond the

¹⁰³ On one check dated April 24, 2013, Alonzo's facsimile signature was on the check. (Ex. 56)

¹⁰⁴ Speckman's check stubs for the following dates in 2013 showed the following vacation amounts available to him: March 6, 2013, 1044 hours; March 13, 994 hours; March 20, 944 hours; March 27, 894 hours; April 3, 844 hours; April 10, 794 hours and April 24, 744 hours. (Exs. 51-56)

hours for which he had been paid in 2013 before May. (Exs. 51, 57-64) Alonzo signed ten of these checks and Rosas signed seven. (Exs. 51, 57-64) In that month, Rosas and Alonzo caused the Local to pay Speckman for 645.66 more hours than he was entitled to. (Ex. 617)

The last three vacation checks Rosas and Alonzo signed for Speckman were: May 29 for \$986.80 for 40 unused vacation hours; a check dated May 31 for \$7,449.68 for 304 unused vacation hours and also on May 31 one for \$7,831.74 for another 317.46 unused vacation hours. (Exs. 51, 62-64)¹⁰⁵ The two May 31 checks Rosas and Alonzo signed noted on each check and on the check stubs, the amount of unused vacation hours for which Speckman was being paid. (Exs. 63-64) This came after both officers had signed multiple checks paying Speckman for vacation that he was entitled to before May. (Exs. 51-62) In 2013 prior to May 31, Alonzo had signed 14 of the 16 vacation payment checks issued to Speckman and Rosas 12. (Exs. 51-62) Thus, knowing that they had already issued numerous checks for unused vacation to Speckman since January, Rosas and Alonzo signed the two final checks, which they knew or should have known, were payments Speckman was not entitled to amounting to an additional 621.46 unused vacation hours substantially beyond what he could have any right to. (Exs. 63-64)¹⁰⁶ They knew or closed their eyes to knowing they were having the Local pay Speckman substantially above what the maximum under any circumstances he could be entitled to.

The final three checks represented payment to Speckman for 661.46 unused vacation hours. (Exs. 51, 62-64) Speckman was not entitled to 645.66 of these hours, including 424

¹⁰⁵ The net amount of the May 29, 2013 check, which included holiday pay, was \$991.45. (Ex. 62) The net amounts of the May 31, 2013 checks were \$6,050.85 and \$6,349.20 respectively. (Exs. 63-64)

¹⁰⁶ These two final checks were for 304 and 317.46 vacation hours. (Exs. 63-64)

accrued vacation hours for which Rosas and Alonzo were paying him in excess of the 250 hours limit on carried over unused vacation time the Board explicitly set.¹⁰⁷ There also was no basis for the additional 171.66 hours they paid him for.

Over the years, Rosas and Alonzo concealed the vacation accruals by not reporting as required accrued vacation as a liability on the Forms LM-2. (Exs. 20-21) The 2012 Form LM-2 filed on March 30, 2013 completely omitted it. (Ex. 21) It was also not reported on IBT Trustees Reports. (Ex. 423) According to the Local's records, Speckman had accrued 724 vacation hours into 2013 worth \$17,861, yet the December 2012 Trustees Report did not include any vacation liability from him and other Local employees. (Exs. 47, 423)¹⁰⁸ Thus, Rosas and Alonzo not only hid it from the members and fellow Board members but did not alert the Trustees or the IBT to the liabilities.

iii. Rosas Also Embezzled When He Caused the Local to Pay for a Vacation for Speckman

On February 10, 2014, Rosas incurred a \$3,484.21 charge on his Local card for a Hawaiian vacation package from March 22 through March 28, 2014. (Ex. 65) The receipt listed as the primary and secondary travelers Speckman and his wife, including their dates of birth. (Ex. 65) Rosas stated this trip was a retirement gift to Speckman. (Ex. 8 at 176) Speckman had retired in May 2013, nine months before Rosas' purchase. (Ex. 588)¹⁰⁹ This was not

¹⁰⁷ Earlier in 2013, Speckman had either taken vacation time off or had cashed in 730 vacation hours. (Ex. 51) The total number of vacation hours Speckman took as time off or cashed in in 2013 was 1,391.46. (Exs. 51, 617) As described above, Speckman was entitled to 745.80 vacation hours in 2013.

¹⁰⁸ At Speckman's December 2012 hourly rate of \$24.67, 724 hours equaled \$17,861.08. (Ex. 48) The December 2012 Trustees Report included without any detail a payroll liability of \$2,402.51. (Ex. 423) This was much less than the value of the vacation Speckman carried over.

¹⁰⁹ Beginning in January 2014, the Local began to pay Speckman for 45 hours a month. (Ex. 409)

compensation for services rendered. There were no Executive Board and members' approvals for Rosas' non-routine substantial expenditure as the Bylaws required. (Ex. 5 at 16; Ex. 35; Ex. 8 at 177)¹¹⁰ Rosas had no authority to spend this money and there was also no union purpose for the expenditure.

Rosas claimed he discussed the vacation for Speckman with the Board. (Ex. 8 at 177) In the minutes, there was no reflection of any Board discussion. (Exs. 35-36) In any event, discussion was not approval. There was no approval of Speckman's gift reported in any Board meeting minutes or telephone polls. (Exs. 35-36)

Former Recording Secretary Cholula recalled "some discussion" about a Hawaii trip for Speckman for his retirement but did not recall a vote to approve its purchase. (Ex. 16 at 24-25) He acknowledged if a vote to approve had occurred, he would have recorded it in the minutes. (Ex. 16 at 26)

In any event, the Executive Board would not have had authority to make a substantial gift from union funds to an ex-employee without a union benefit. Moreover, such approval would not have been sufficient under the Bylaws to authorize the expenditure. Membership approval was also required for this non-routine expenditure. (Ex. 5 at 16) The membership minutes did not contain any approval for the Local purchase of a vacation for Speckman. (Ex. 29)¹¹¹ The Recording Secretary would have reflected any such vote in the minutes. (Ex. 16 at

¹¹⁰ Section 14(B)(8) of the Bylaws requires Executive Board approval for expenditures and membership approval except for "routine expenditures not of a substantial nature." (Ex. 5 at 16) A trip to Hawaii for an ex-employee was not routine. In addition, Section 16(D) of the Bylaws requires Executive Board approval for fringe benefits for Local employees. (Ex. 5 at 22)

¹¹¹ Rosas testified that if members approved the vacation for Speckman, "... as a general practice, it should be reflected in the minutes." (Ex. 8 at 177)

26-27) In addition to the testimony of the Recording Secretary about his practice to record all votes, the absence of a vote being recorded in any Board and membership minutes was strong evidence it did not occur. United States v. IBT [Liguoritis], 814 F. Supp. at 1169.

Besides acting without authority, Rosas knew there was no union benefit to cause the Local to buy a vacation for Speckman and his wife after Speckman's retirement. Any gift Rosas wanted to give his friend was a personal expense. By his conduct, Rosas embezzled.

b. Rosas Embezzled When He Caused the Local to Pay for Particular Expenses He Incurred That Were Also Covered By Allowances He Received

Pursuant to Section 16(A) of the Local's Bylaws, when traveling out of town for union business, officers received a per diem allowance to cover meal expenses. (Ex. 12 at 193; Ex. 8 at 182-183; Ex. 5 at 20- 21)¹¹² The Bylaws specifically prohibited an employee being reimbursed for expenses covered by the allowance. (Ex. 5 at 20-21) Despite receiving this allowance, Rosas charged eleven food and drink charges costing \$499.75 to the Local that he incurred for expenses that the allowance covered. (Exs. 66-74, 513, 604) Rosas caused the Local to pay twice for these charges: once to Rosas and once to the credit card company. This was

¹¹² Section 16(A) of the Local's Bylaws provided the following:

... officers and representatives may be granted an allowance (both for in-town and out-of-town work, respectively, which in the case of out-of-town work shall include hotel and meal expenditures) in such amount (daily, weekly or monthly) as the Local Union Executive Board may determine and there shall be no need to make a daily or other accounting to the Local Union membership. ...

Where allowances are provided, officers and employees may not be reimbursed for additional expenses for items intended to be covered by the allowance without specific additional authorization by the Executive Board and approval by the membership. In no event shall an officer or employee receive more than one payment for the same expense.

(Ex. 5 at 21)

embezzlement. United States v. IBT [Vitale], 775 F. Supp. 90, 99 (S.D.N.Y. 1991) aff'd, United States v. IBT, Docket No. 91-6154, slip op. (2d Cir. October 31, 1991) (Ex. 620)

When Rosas was in New Orleans from October 28 through November 3, 2011, he received an allowance of \$100 per day for meals. (Exs. 66, 69) Rosas stayed at the Ritz Carlton. (Exs. 69, 513) During this hotel stay, Rosas incurred on a Local card \$578.04 and \$1,273.11 charges for his room and other expenses. (Ex. 69) In violation of the Local's Bylaws, Department of Labor guidelines and IBT policy, when he sought the Local to pay these charges, Rosas did not submit any receipts including the hotel bill. (Ex. 5 at 21; Ex. 4 at 73; Ex. 40 at 2; Ex. 352) Yet, the Local paid. (Ex. 69) Not submitting the required receipts enabled Rosas to conceal he was causing the Local to pay twice for the same food charges. The IRB obtained these receipts through subpoena. (Ex. 513) The cost of the room was \$339.87. (Ex. 513)¹¹³ In addition, these receipts showed Rosas charged \$225.47 for three in room meals and an honor bar charge. (Ex. 513)¹¹⁴ The allowance he had received covered these charges. During his IRB sworn examination, Rosas admitted that he should not have had the Local pay the charges he submitted because the allowance covered them. (Ex. 8 at 183-185) He kept the allowance. (Ex. 553) Even after his testimony he made no restitution. (Exs. 553, 554)¹¹⁵ In connection with the charges, Rosas' intent to embezzle was evidenced by his failure to submit any receipts

¹¹³ It was the Local's practice to allow particularized payments for hotel rooms despite the Bylaws stating the rooms should be paid by the per diem. (Ex. 5 at 21) For purposes of this report, the Local practice, although in explicit violation of the Bylaws, was used as the standard. If this practice is to continue, the Board should seek amendment of the Bylaws.

¹¹⁴ The three in room dining charges were as follows: \$61.44 on October 28, 2011; \$82.99 on October 30, 2011 and \$66.77 on November 2, 2011. (Ex. 513) The honor bar charge was \$14.27 on October 29, 2011. (Ex. 513)

¹¹⁵ The Local's records from 2009 through February 4, 2015, did not reflect that Rosas made any reimbursement to the Local for allowances he received. (Ex. 553)

as required. (Ex. 5 at 21) A receipt would have disclosed he was seeking payment for charges the allowance covered. It was further evidenced by his keeping the allowance, including after he admitted to improperly keeping it. (Ex. 553; Ex. 8 at 97-99, 103-104, 284) His intent to embezzle was further evidenced by his double dipping on other occasions.

For example, from September 28 through October 1, 2010, Rosas received an allowance of \$100 per day to cover meals while attending UWG negotiations in Los Angeles. (Exs. 68, 6) During that period, Rosas stayed at the Hilton Los Angeles/San Gabriel. (Ex. 68) Despite the allowance he received covering meals, Rosas charged \$51 in food and beverages at that hotel that the Local paid. (Ex. 68) He pocketed the allowance. (Ex. 553) Again, on June 5, 2010, Rosas caused the Local to pay a \$35.90 meal charge at a restaurant at the Embassy Suites Hotel in Los Angeles. (Ex. 71) He had received an allowance to pay for this. (Ex. 67) By causing the Local to improperly pay the charge, he again pocketed the allowance. On another trip, Rosas received an allowance of \$100 a day for two days to attend a Food and Drug Council meeting in Las Vegas from December 12 to December 15, 2010. (Ex. 70) He charged \$387.10 to his Local credit card for his stay at Caesars. (Ex. 70) He did not submit any receipt for these charges as required. (Ex. 5 at 21; Ex. 352) Despite that, the Local paid the full charge. (Ex. 70) His failure to comply with the Bylaw requirement to submit a receipt enabled him to conceal his double dipping. Rosas' hotel bill from Caesars was obtained by subpoena. (Ex. 604) In addition to the room charges, the hotel bill showed that on December 14, Rosas charged \$30.94 to his room for a restaurant expense his allowance covered. (Ex. 604) Rosas kept the allowance he did not use. (Ex. 553) Rosas' failure to submit the receipt to the Local as required concealed that he

caused the Local to pay for a meal the allowance covered. This violation of the Bylaws for his personal benefit was additional evidence of Rosas' intent to embezzle.

In another example, on June 21, 2013, Rosas received an allowance to cover food costs while attending a Joint Council 7 seminar in Lake Tahoe. (Exs. 67, 74)¹¹⁶ On June 25, Rosas charged \$59.11 on a Local card at the Hard Rock Café in Lake Tahoe. (Ex. 74) Rosas indicated on the receipt that Grover, the President of Stars and Stripes, and Rome Aloise ("Aloise"), an International Vice President and Joint Council 7 President, were present. (Ex. 74) The Local paid the bill. (Ex. 74) Rosas kept the allowance covering his share. (Ex. 553) Moreover, evidencing Rosas' intent to embezzle, he submitted false information to the Local. Wigmore on Evidence, 4th Ed. §278. Aloise stated under oath that he was not present on that date at this restaurant with Rosas and Grover. (Ex. 368) In addition to the double dipping for himself, Rosas had no union purpose to cause the Local to pay for a meal with Grover, a vendor to the Local, in connection with a Joint Council function. The falsification of the record, the double dipping, the objective lack of union purpose and Rosas' failure to note contemporaneously the union purpose as required all evidenced his intent to defraud.

In another example, Rosas received three days allowance for September 17 through September 19, 2012. (Exs. 67, 73) Despite receiving the allowance for meals, on September 17, Rosas charged \$126.89 for a meal at Downtown Rookies in Visalia, California. (Ex. 73) No one

¹¹⁶ Rosas received per diem for five days: for June 22, 2013 for a Joint Council hearing in San Francisco and for June 23 through June 26 for a Joint Council Seminar. (Exs. 67, 74)

else was listed as present. (Ex. 73) The Local paid and Rosas kept the allowance. (Exs. 73, 553)¹¹⁷

Similarly, Rosas also embezzled through causing the Local to pay particular expenses he incurred that were covered by an in-town expense allowance he received. The Board set the Local's credit card policy which stated, "Each agent is provided an expense allowance each month, and therefore, incidental expenses, (in most cases) under \$10, should not be charged to the credit card." (Ex. 6) Rosas and Alonzo each received a \$500 per month expense allowance for such expenses. (Ex. 6) Rosas acknowledged that he violated the Local's policy when he submitted charges under \$10 to the Local for payment. (Ex. 8 at 103) His pattern of double dipping on his out of town expenses when he also received an allowance was further evidence of his intent to embezzle by double dipping on his in town allowance.

Despite receiving this \$500 per month allowance, Rosas repeatedly in violation of the credit card policy charged items under \$10 on his Local card for which the Local paid and he kept the allowance. For example, on December 7, 2012, the day before the holiday party, Rosas charged \$9.56 at the Stockton Hilton on the Local's card. (Ex. 295; Ex. 8 at 302) He gave no explanation of the union purpose for the charge.¹¹⁸ During his sworn examination, Rosas testified that his charge related in an unspecified way to the holiday party. (Ex. 8 at 303) In other examples for which the in town allowance covered the charge, Rosas charged \$6.00 and \$7.50 for parking on February 5 and March 14, 2013. (Exs. 297, 299) On December 21, 2013, Rosas charged \$8.00 for parking on his Local card. (Ex. 307) On January 30, 2014, Rosas

¹¹⁷ A handwritten notation on this receipt stated, "Prop 32." (Ex. 73)

¹¹⁸ The receipt submitted to the Local had a handwritten note, "Christmas party." (Ex. 295)

charged \$6.79 at Rancho San Miguel on his Local card. (Ex. 308) Rosas did not submit a receipt to the Local for this last expense. (Ex. 308) In addition to Rosas charging items under \$10 on his Local credit card, Rosas paid cash for and received reimbursement for a \$10 parking fee incurred on February 13, 2014, which the allowance covered. (Ex. 8 at 301-302; Ex. 6) The Local paid for all these charges Rosas incurred despite that all were covered under the allowance Rosas received.

Rosas knew he received an allowance covering expenses of \$10 or less. (Ex. 8 at 284) He received \$500 for this each month. He knew the obvious: that he should not cause the Local to also pay charges of \$10 or less while he pocketed the allowance. (Ex. 8 at 149) For example, Rosas testified that, when on July 1, 2013 Alonzo requested and received reimbursement from the Local for \$5.13 that he had paid in cash for keys, this expense was covered by Alonzo's expense allowance and reimbursement was improper. (Ex. 8 at 94; Ex. 10 at 90-91; Ex. 611)

c. Rosas' In Town Meals without a Union Purpose

For the Local to pay for an officer's meals and other expenses incurred, the Bylaws provide:

When a representative of the organization is engaged in activities in the interest of, or for the benefit of the organization and its members within the scope of his authority, the labor organization shall pay the expenses incurred therein, or reimburse the representative upon receipt of itemized vouchers from him or the supplier of such services.

(Ex. 5 at 21) Between January 3, 2011 and March 12, 2014, Rosas caused the Local to pay at least \$11,854 for 188 restaurant charges he incurred in area restaurants without a union purposes. (Ex. 75) There were no union benefits from these charges which on their face were personal.

Rosas did not in Local records or in his testimony present evidence that the charges were necessary for union purposes. For at least 14 of these he did not submit any receipt and for most he failed to submit itemized receipts as the Bylaws required. (Ex. 5 at 21; Ex. 75) Without the proper documentation, he caused unauthorized Local payments of his expenses. In those instances when Rosas gave an explanation for the charge he gave vague, inadequate statements that did not explain the need for the charge and the union purpose. The circumstances surrounding these charges showed that Rosas had an intent to embezzle in causing the Local to pay them.

Bylaws Section 16(B) provided the Local would pay employees expenses that were incurred in the interest of or for the benefit of the members only upon the submission of itemized receipts from the employee or the suppliers of the goods and services. (Ex. 5 at 21) This was also IBT policy. (Ex. 4 at 73) Moreover, federal law required for union payment of restaurant charges a Local employee incurred and sought payment for that the employee submit the itemized receipt the restaurants provided. (Ex. 40)¹¹⁹ Rosas failure to comply with these requirements further evidenced his intent to embezzle. People v. Clausen, 52 P. 658, 659 (Cal. 1898) (failure to make required entries evidence of knowledge that believed entries showed actions were improper).

¹¹⁹ 29 U.S.C. 436. (Section 206 of the Labor Management Reporting and Disclosure Act ("LMRDA") In order to comply with the recordkeeping requirements of Section 206, the Local is required to maintain the following credit card information: 1) All credit card statements and payment information for amounts paid to credit card vendors; 2) All original, itemized receipts for each credit card charge, including itemized hotel invoices, transportation costs, and itemized meal receipts from restaurants; and 3) For group meal expenses, unions must also include: (a) a written explanation of the specific union business conducted...; (b) the full names and (c) titles of all persons incurring the food and beverage charges. OLMS Compliance Tip, Union Credit Card Policy, April 2010 (Ex. 40)

The Local's Bylaws authorized the Secretary Treasurer, in conjunction with the President, to disburse funds to pay the Local's bills. (Ex. 5 at 8)¹²⁰ Each month Rosas and Alonzo approved payment of charges on these cards by signing the checks to Visa and American Express for the amount of the monthly bills. (Ex. 12 at 13-17) Rosas and Alonzo routinely violated the Bylaw injunction by causing the Local to pay charges for themselves without the required itemized receipts. (Exs. 75, 310)¹²¹ As the few itemized receipts they submitted showed, such receipts were available to Rosas and Alonzo from the local restaurants. (Exs. 75, 310)

Yolanda Daughters ("Y. Daughters"), then the Local's bookkeeper, routinely collected receipts from the officers either on the day the expense was incurred or the next day. (Ex. 12 at 13-17)¹²² The Local's officers were to submit receipts as they were generated before the Local's credit card bill was received. (Ex. 12 at 13-17) When the officers submitted their receipts to Y. Daughters, they were also required under IBT, Local policy and federal law to name those present and provide sufficient other information to determine the union purpose for the expense. (Ex. 4 at 73; Ex. 5 at 21; Exs. 40, 43) Further evidencing their intent to defraud, both Alonzo and Rosas routinely failed to do what was required.

¹²⁰ Bylaws Sec. 8(C) provides in pertinent part: "The Principal Officer in conjunction with the President shall have the authority to disburse or order the disbursement of all monies necessary to pay the bills, obligations and indebtedness of the Local Union which have been properly incurred as provided herein. He shall have the authority to pay current operating expenses of the Local Union, including rents, utilities and maintenance of the Union Hall, and salaries and expenses of officers and employees." (Ex. 5 at 8)

¹²¹ Rosas had credit cards on Local accounts with both American Express and Visa. The statements were sent to the Local and the Local paid the bills.

¹²² Daughters was the bookkeeper for Local 439 from 2005 to 2014. (Ex. 12 at 11-12, 279-285) Prior to her marriage, her last name was Gomez.

De La Cruz, a former business agent, stated that it was the custom of the Local's officers and staff to charge the Local for restaurant expenses "at least three times per week, if not more." (Ex. 14 at 60) Rosas and Alonzo were the only full-time officers. De La Cruz explained that "most of the cases, we leave the Local at lunchtime to have lunch and charge the members for [the] meal." (Ex. 14 at 59) The pattern of Rosas' charges corroborated De La Cruz's description of the officers' practice. Under such circumstances, there was no benefit to the union for paying for an employees' lunches.

On at least 28 occasions between January 2011 and March 2014, Rosas caused the Local to pay for restaurant charges he incurred when Alonzo alone was listed as present with him. (Ex. 75) On nine of these occasions, the receipts Rosas submitted to the Local failed to provide any description of an alleged union purpose for the expense. (Ex. 75)

On Tuesday, January 18, 2011 at 12:41 p.m., Rosas charged \$43.35 at The Black Bear Diner. (Ex. 276)¹²³ The non-itemized receipt Rosas submitted listed Alonzo as present. (Ex. 276) Rosas failed to provide a union purpose for the lunch time expense. (Ex. 276) On its face, this was a personal expense with no Local benefit. The Local paid it. (Ex. 276) Rosas' intentional failure to provide the required information needed to justify lunch time restaurant meeting between Local employees evidenced his intent to embezzle.

On Thursday, November 17, 2011, at 12:46 p.m., Rosas charged \$41.70 at China Palace. (Ex. 285)¹²⁴ The non-itemized receipt Rosas submitted listed Alonzo as present. (Ex. 285) Rosas

¹²³ According to MapQuest, the Black Bear Diner is 23.16 miles from the Local, with 24 minutes travel time. The restaurant is 14.48 miles from Rosas' home, with 18 minutes travel time. (Ex. 347)

¹²⁴ According to MapQuest, China Palace is 3.06 miles from the Local, with 6 minutes travel time. (Ex. 347)

failed to provide a union purpose for the lunch expense. (Ex. 285) No reason was given as to why the meeting could not have been held at the Local office. On its face, this was a personal expense of no benefit to the Local. The Local paid it. (Ex. 285) That Rosas' failure to provide any of the required information as well as the nature of the expense evidenced his intent to embezzle.

On Saturday, April 7, 2012, at 10:23 a.m., Rosas charged \$27.62 at Nena's Mexican Restaurant. (Ex. 288)¹²⁵ The non-itemized receipt Rosas submitted listed Alonzo as present. (Ex. 288) Rosas noted the union purpose for this non-workday expense as "439 Bus." (Ex. 288) The intentionally vague description of union purpose was inadequate. It, along with his failure to provide the required documentation in violation of the Bylaws, evidenced Rosas' intent to embezzle.

On Friday, December 28, 2012, at 1:02 p.m., Rosas charged \$93.54 at BJ's Restaurant Brewhouse. (Ex. 296)¹²⁶ The non-itemized receipt Rosas submitted listed Alonzo as present for this lunchtime expense. (Ex. 296) Rosas stated the union purpose was "439 issues". (Ex. 296) What those issues were and why the discussion needed to take place at a restaurant at lunch time at members' expense instead of the union hall was not explained, as required. The vague description of union purpose was inadequate. It, along with the circumstances and his failure to provide the required documentation, evidenced Rosas' intent to embezzle.

The next workday, Rosas ate with Alonzo again at lunchtime at members' expense. (Ex. 296) On Monday, December 31, 2012, at 1:01 p.m., Rosas charged \$52.23 at BJ's Restaurant

¹²⁵ According to MapQuest, Nena's Mexican Restaurant is 1.75 miles from the Local, with 4 minutes travel time. (Ex. 347)

¹²⁶ According to MapQuest, BJ's Restaurant & Brewhouse is 5.4 miles from the Local, with 10 minutes travel time. (Ex. 347)

Brewhouse. (Ex. 296) The non-itemized receipt Rosas submitted listed Alonzo as present. (Ex. 296) Rosas failed to provide a union purpose for the expense or explanation why he needed to meet Alonzo at a restaurant instead of the office. (Ex. 296) On its face, this was a personal expense of no benefit to the Local. The Local paid it. (Ex. 296) Rosas' failure to provide any of the required information and the nature of the expense evidenced his intent to defraud.

On Tuesday, January 8, 2013, at 2:00 p.m., Rosas charged \$29.71 at Susy's Mexican Food. (Ex. 296)¹²⁷ The non-Itemized receipt Rosas submitted listed Alonzo as present. Rosas failed to provide an explanation of union purpose for the expense. (Ex. 296) On its face, this was a personal expense for two officers to eat lunch at members' expense and of no benefit to the Local. The Local paid it. (Ex. 296) Rosas' failure to provide any of the required information and the circumstances of the expense evidenced his intent to embezzle.

On Wednesday, January 9, 2013, at 7:49 p.m., Rosas charged \$15.70 at Restaurant El Grullens. (Ex. 296) Rosas submitted a non-Itemized receipt which listed Alonzo as present. (Ex. 296) Rosas intentionally omitted an explanation of union purpose. (Ex. 296) On its face, this was a personal expense incurred in town for an evening restaurant visit by two officers of no benefit to the Local. The Local paid it. (Ex. 296) Rosas' failure to provide any of the required information and the nature of the expense evidenced his intent to embezzle.

On Wednesday, March 6, 2013 at 12:33 p.m., Rosas charged \$31.41 at Angelina's. (Ex. 298) The receipt Rosas submitted listed Alonzo as present for the lunch time charge and noted the union purpose as "439 Bus." (Ex. 298) Angelina's shared a parking lot with the Local. These

¹²⁷ According to MapQuest, Susy's Mexican Food is 1.94 miles from the Local, with 4 minutes travel time. (Ex. 347)

were the Local's only two full-time officers and could have discussed any union business at the Local across the parking lot. Rosas provided no explanation why it was necessary to have a meeting in a restaurant. There was no reason for the members to pay for their lunch. Moreover, the vague description of union purpose was inadequate. Rosas' omission of required information and the circumstances of the expense evidenced Rosas' intent to embezzle.

On Thursday, July 25, 2013 at 11:32 a.m., Rosas charged \$55.47 at Las Casuelas. (Ex. 303) The non-itemized receipt Rosas submitted listed Alonzo as present. (Ex. 303) Rosas omitted any explanation as to union purpose for the expense and why any business needed to be done away from the Local. (Ex. 303) On its face, this was a personal expense for two officers to eat out at members' expense and of no benefit to the Local. The Local paid it. (Ex. 303) Rosas' failure to provide required information and the nature of the expense evidenced his intent to embezzle.

On Monday, September 23, 2013, at 11:26 a.m., Rosas charged \$28.62 at The Black Bear Diner. (Ex. 371) The non-itemized receipt Rosas submitted he listed Alonzo as present. (Ex. 371) Again, he provided no union purpose for the restaurant charge for the two employees. (Ex. 371) These were the Local's only two full-time officers and could have discussed any union business at the Local. On its face, this was a personal expense of no benefit to the Local. Rosas' failure to supply the information necessary before the Local was authorized to pay, his pattern of such charges and the nature of the charge evidenced his intent to defraud.

On Monday, October 14, 2013 at 1:06 p.m., Rosas charged \$63.04 at BJ's Restaurant Brewhouse. (Ex. 517) On the non-itemized receipt he submitted for the lunch time charge at members' expense listed Alonzo as present. (Ex. 517) Rosas noted the union purpose was "439 issues". (Ex. 517) What those issues were and why the discussion needed to take place at a

restaurant at lunch instead of the union hall were not explained, as required. The vague description of union purpose was part of a pattern to conceal required detail that would not support the Local paying for charges that on the surface appeared to be personal. This, along with his failure to provide the documentation the Bylaws required, evidenced Rosas' intent to embezzle.

On Wednesday, November 27, 2013, at 10:27 a.m. Rosas charged \$47.48 at Black Bear Diner. (Ex. 306) On the non-itemized receipt Rosas submitted he listed Alonzo as present. (Ex. 306) No union purpose was noted. (Ex. 306) These were the Local's only two full-time officers and could have discussed any union business at the Local. On its face, this was a personal expense of no benefit to the Local. Rosas' failure to supply the information necessary before the Local was authorized to pay or able to determine this was a union related charge evidenced his intent to embezzle.

On Friday, December 20, 2013, Rosas charged \$38.96 at The Creamery. (Ex. 307) The non-itemized receipt he submitted listed Alonzo as present and noted the union purpose as "439 Issues" (Ex. 307) What those issues were and why the discussion between the Local's only two full-time officers needed to take place at a restaurant instead of the union hall was not explained, as required. The vague description of union purpose was inadequate. The failure to supply required information and necessary documents here and on a constant basis, evidenced Rosas' intent to embezzle.

On Friday, January 14, 2011, at 1:06 p.m., Rosas charged \$49.15 at Golden Star Café. (Ex. 276)¹²⁸ The non-itemized receipt Rosas submitted for lunch among Local employees listed Alonzo and De La Cruz as present. (Ex. 276) Rosas did not to provide an explanation of the union purpose for the expense and why they needed to meet in a restaurant. (Ex. 276) On its face, this was a personal expense of no benefit to the Local. The Local paid it. (Ex. 276) Rosas' failure to provide the required information as well as the nature of the expense evidenced his intent to defraud.

On Saturday, May 21, 2011, at 11:53 a.m., Rosas charged \$23.33 at Flip's Burgers. (Ex. 342)¹²⁹ On the non-itemized receipt he submitted, he listed Alonzo as present. (Ex. 342) Rosas stated the union purpose for the expense as "439 Issues". (Ex. 342) What those issues were and why the discussion needed to take place at a restaurant instead of the union hall were not explained, as required. The vague description of union purpose was inadequate. It, along with his failure to provide the required documentation and the circumstance of a weekend lunch, evidenced Rosas' intent to embezzle.

On Tuesday, July 12, 2011, at 12:55 p.m., Rosas charged \$49.46 at Nena's Restaurant. (Ex. 280) The non-itemized receipt Rosas submitted listed Alonzo and De La Cruz as present. (Ex. 280) Rosas listed the union purpose as "Union issues". (Ex. 280) What those issues were, and why the discussion needed to take place at a restaurant on a workday instead of at the union hall were not explained, as required. Rosas' vague description of union purpose was inadequate and his failure to provide required information intended to cover up the lack of union purpose. It and

¹²⁸ According to MapQuest, Golden Star Cafe is 3.13 miles from the Local, with 6 minutes travel time. (Ex. 347)

¹²⁹ According to MapQuest, Flip's Burgers is 1.44 miles from the Local, with 3 minutes travel time. (Ex. 347)

the circumstances, along with his failure to provide the required documentation, evidenced Rosas' intent to defraud.

Below are some other examples of Rosas' personal use of the union card:

On Saturday, September 3, 2011, at 11:57 a.m., Rosas charged \$30.59 at Maria's Café. (Ex. 282)¹³⁰ The non-itemized receipt he submitted to the Local listed De La Cruz as present. (Ex. 282) Rosas stated the union purpose for the expense as "Bus. Mtg.". (Ex. 282) What the business issues were and why the discussion needed to take place at a restaurant on a non-workday instead of the union hall or on the telephone was not explained, as required. The vague description of union purpose was inadequate and intended to conceal the lack of union purpose. It, along with his failure to provide the required documentation and that it was a lunch with another employee in town, evidenced Rosas' intent to defraud.

On Saturday, October 13, 2012, at 7:22 p.m., Rosas charged \$29.30 at Restaurant El Grullens. (Ex. 294)¹³¹ The non-itemized receipt Rosas submitted to the Local listed De La Cruz as present. (Ex. 294) Rosas intentionally omitted any explanation of the union purpose for the Saturday evening restaurant expense. (Ex. 294) There was none. The Local paid the charge. (Ex. 294) Rosas' failure to provide the required information and documentation evidenced his intent to defraud.

¹³⁰ According to MapQuest, Maria's Café is 1.67 miles from the Local, with 3 minutes travel time. (Ex. 347)

¹³¹ According to MapQuest, El Grullens is 2.39 miles from the Local, with five minutes travel time, and 12.47 miles from Rosas' home, with 17 minutes travel time. (Ex. 347)

On Saturday, November 17, 2012, at 2:29 p.m., Rosas charged \$27.17 at Las Casuelas Restaurant in Manteca, where he lived. (Ex. 295)¹³² Rosas failed to provide any explanation of union purpose for the Saturday restaurant expense when he submitted it to the Local. (Ex. 295) There was none. The non-itemized receipt Rosas submitted to the Local listed De La Cruz as present. De La Cruz testified he was not present on that non-workday. (Ex. 14 at 48-49) The Local paid the charge. (Ex. 295)

On Wednesday, August 14, 2013, at 12:46 p.m., Rosas charged \$34.45 at Susy's Mexican Food. (Ex. 304) The non-itemized receipt Rosas submitted listed business agent Buzo as present. (Ex. 304) Rosas failed to provide an explanation of the union purpose for the lunch expense for two employees and why the meeting needed to be at a restaurant. (Ex. 304) On its face, this was a personal expense of no benefit to the Local. The Local paid it. (Ex. 304) Rosas' failure to provide any of the required information, the nature of the expense and his pattern of incurring such lunch time expenses without an explanation of union business conducted and why it was necessary to do work at a restaurant, evidenced his intent to embezzle.

On Monday, November 4, 2013, at 12:50 p.m., Rosas charged \$59.20 at DeVega Brothers Italian Cuisine. (Ex. 305)¹³³ The non-itemized receipt he submitted listed De La Cruz as present for this lunchtime charge. (Ex. 305) Rosas noted the union purpose as "Const. Issues". (Ex. 305) What issues needed to be discussed and why it was not done at the Local was not explained as

¹³² According to MapQuest, The Manteca Las Casuelas is 1.89 miles from Rosas' home, with 3 minutes travel time. (Ex. 347) The restaurant is 12.30 miles from the Local, with 20 minutes travel time. (Ex. 347)

¹³³ According to MapQuest, De Vega Brothers Italian Cuisine is 5.43 miles from the Local, with 11 minutes travel time. (Ex. 347)

required. According to De La Cruz, "It was -- what I was told was: Let's go have lunch and we'll construct -- I mean we'll talk about construction business, but it wasn't something that was necessary. I mean, it wasn't like a -- you know, a meeting that we had to have." (Ex. 14 at 58-59) There was no union purpose for the Local to pay for Rosas' and De La Cruz' lunches.

On Wednesday January 15, 2014 at 1:20 p.m., Rosas charged \$63.11 at Famous Dave's Pit BBQ. (Ex. 308)¹³⁴ Rosas submitted a non-itemized receipt which listed Alonzo and Speckman, a retired business agent occasionally doing work for the Local, as present for this lunch time charge at members' expense. (Ex. 308) Rosas failed to provide an explanation of union purpose for the expense and why they needed to meet at the restaurant. (Ex. 308) On its face, this was a personal expense for lunch for the three of no benefit to the Local. The Local paid it. (Ex. 308)

On Wednesday, December 19, 2012 at 9:21 p.m., Rosas charged \$46.26 at David's New York Style Pizza. (Ex. 296)¹³⁵ Rosas did not provide the Local an explanation as to the union purpose. (Ex. 296) On the non-itemized receipt he submitted, Rosas listed De La Cruz, Andazola and "+2" unnamed others as present. (Ex. 296) De La Cruz testified that he was not present for this evening restaurant visit. (Ex. 14 at 50) The time, the presence of unidentified persons, the lack of a stated purpose, the failure to submit an itemized receipt as required and falsely claiming De La Cruz was present all evidenced Rosas' intent to embezzle.

¹³⁴ According to MapQuest, Famous Dave's BBQ Pit is 23.36 miles from the Local, with 29 minutes travel time. (Ex. 347)

¹³⁵ According to MapQuest, David's New York Style Pizza is 6.73 miles from the Local, with 13 minutes travel time. (Ex. 347)

On Friday, November 2, 2012, at 1:05 p.m., Rosas charged \$32.52 at Angelina's. (Ex. 294) Angelina's shared a parking lot with the Local. (Ex. 8 at 170-171) The non-itemized receipt Rosas submitted failed to provide any information as to the union purpose for the lunchtime expense. (Ex. 294) On its face, this was a personal expense for Rosas to eat lunch and of no benefit to the Local. The Local paid it. (Ex. 294) Rosas' failure to provide any of the required information as well as the nature of the expense evidenced his intent to embezzle. There was no explanation why union business was being done at lunch time by Rosas alone at members' expense in a restaurant with which the Local shared a parking lot rather than at the Local.

On Friday, September 27, 2013, at 10:32 a.m., Rosas charged \$151.55 at El Forastero Restaurant. (Ex. 371)¹³⁶ The non-itemized receipt Rosas submitted did not list anyone else as present. Rosas did not provide an explanation as to union purpose for the expense. (Ex. 371) On its face, this was a personal expense of no benefit to the Local. The Local paid it. (Ex. 371) His failure to provide any of the required information, the nature of the expense and the pattern of such charges, evidenced his intent to defraud.

On Saturday, February 9, 2013, Rosas used his Local card to pay \$245.00 to the Waterloo Gun and Bocce Club, in Stockton, a bar and grill and event catering hall with bocce courts and an outdoor trap shooting range. (Exs. 297, 370) The non-itemized receipt Rosas submitted was printed at 21:51 (9:51 p.m.) and showed he added a \$35 tip to a bill of \$210. (Ex. 297) On the back of the receipt, Rosas wrote "Donation-Stockton Sportsmen Club." (Ex. 297) Rosas provided no other information. (Ex. 297) There was no explanation how an evening charge at a bar and a

¹³⁶ According to MapQuest, the El Forastero is .08 miles from the Local, around the corner. (Ex. 347)

tip for service was a donation to a different organization. Moreover, under Section 14(A) of the Bylaws, Rosas had no authority to make a donation without Board approval. (Ex. 5 at 14) This was a personal expense. No others were listed as present on Rosas' submission to the Local. (Ex. 297) He also failed to submit the itemized receipt as required further evidencing his intent to defraud.

At his IRB sworn examination, Rosas claimed he could not recall the names of any of the other persons present that he caused the Local to pay for. (Ex. 8 at 206) Rosas also claimed the expense was in connection with a "crab feed", a charitable dinner event for which Rosas had sought, through a telephone poll he conducted on February 7, 2013, Board approval to make a donation of \$320 to support the "Stockton Sports Club." (Ex. 8 at 204) On February 8, 2013, the Local issued a check to that Club for \$320, which was apparently not a donation as he represented but payments for some meals for him and some unknown individuals at the crab feed. (Ex. 529) Rosas had no authority to make his claimed additional contribution of \$245 beyond that. (Ex. 297) Rosas' initial explanation on the receipt for the \$245 credit card charge was intentionally false. Donations do not result in tips to the alleged donee. At Rosas' deposition, he claimed that he purchased "six or seven" aprons and "some drinks" and claimed that the portion of the expense attributable to the drinks was a further "donation". (Ex. 8 at 207-208) Rosas' buying drinks for himself and companions from a bar was under no circumstances a charitable contribution. There was no evidence the Local ever received any aprons for which it would not have had any use. Rosas could not explain how the purchase of aprons and drinks from the Waterloo Gun and Bocce Club would be a further donation to the Stockton Sportsman's Club benefit. Indeed, Rosas claimed he was uncertain as to what the Stockton Sportsman's Club was.

He caused the Local to pay this expense with a false explanation to conceal there was no union purpose. (Ex. 8 at 209) His intent to embezzle was further evidenced through his failure to provide necessary information about these charges at the time he submitted it to the Local and at the time he asked for Board approval of his initial claimed contribution.

According to its website, The Stockton Sportsmans Club is a hunting club that holds its meetings at the Waterloo Gun and Bocce Club. In 2015, its annual sustaining membership fee was \$450. (Ex. 369) The crab and shrimp feed was an annual event held in late January or early February. For 2015, tickets, which were not donations, cost \$45 each. (Ex. 369) In 2013, at \$40 or \$45 a ticket, the donation Rosas caused the Local to pay would have bought either 7 or 8 tickets.

On Sunday, January 26, 2014, Rosas made two charges, one for \$192.00 at 9:29 p.m. and the other for \$60.00 at 10:13 p.m. at the Waterloo Gun & Bocce Club. (Ex. 308) On the non-itemized receipt he submitted to the Local for the \$192.00 expense, Rosas did not identify any other persons in attendance. (Ex. 308) He listed the union purpose as "Stockton Sportsman Club Dinner/Donation". (Ex. 308) This appears to have been for tickets to eat at that year's crab feed. There was no Board approval for this claimed donation. (Ex. 36) For the \$60.00 expense, Rosas listed the union purpose for the expense as "Kitchen Supplies 4-aprons." (Ex. 308) The Local paid these expenses. (Ex. 308) There were no records of the Local ever receiving aprons for which, in any event, it had no need. Rosas' late Saturday night drinking and eating expenses at a bar were not for a union purpose and without authority.

On Tuesday, October 15, 2013 at 9:00 p.m., Rosas charged \$92.17 at Original Pete's Pizza. (Ex. 517)¹³⁷ The receipt Rosas submitted to the Local listed Business Agent Richard Andazola as present. Rosas noted the union purpose for the expense as "political action" and "P2 SEIU". (Ex. 517) The receipt was itemized. Among the items purchased, it listed three main-courses and three different beverages, a pint of draft beer, an iced tea and two glasses of Cabernet wine. (Ex. 517) There was no indication as required as to who the third person was. (Ex. 517) There was no explanation as to why this meal was necessary and why any discussion could not have been held at the Local. It was part of Rosas' pattern of charging in town meals to the Local and omitting to provide information to conceal it was a personal expense.

On Wednesday, December 11, 2013 at 8:55 p.m., Rosas charged \$67.89 at Nena's Mexican Restaurant. (Ex. 306) On the non-itemized receipt Rosas submitted, he did not note anyone else as present, provided no information as to what the union purpose was and did not explain why it was necessary for the members to pay for his meal in an area restaurant. (Ex. 306) On its face, this was a personal expense of no benefit to the Local that benefitted Rosas. There is no union purpose for a late night restaurant charge for an officer by himself. Rosas' failure to supply the required information also evidenced his intent to embezzle.

On Tuesday, December 31, 2013, New Year's Eve, at 9:08 p.m., Rosas charged \$83.51 at Original Pete's Pizza, Pasta & Grill. (Ex. 307) Rosas listed Geraldine Coseip and Jade Becker as present. (Ex. 307)¹³⁸ He did not identify who they were on the receipt. Rosas noted the union

¹³⁷ According to MapQuest, Original Pete's Pizza, Pasta & Grill, located in Elk Grove, Ca. is 36.95 miles from the Local, with 37 minutes travel time. (Ex. 347)

¹³⁸ Geraldine Coseip was a Local 439 member, employed full-time at a Local 439 employer. According to Rosas, Coseip has a degree in accounting, was an active member of the Local, and was the Local's "political coordinator". (Ex. 8 at 65-66) Rosas hired her to assist part time at the Local's office after the bookkeepers,

purpose as "Political Coord. Mtg." (Ex. 307)¹³⁹ The itemized receipt included as items "Kids Pizza" and two "Kids Soda". (Ex. 307) At his IRB sworn examination, Rosas claimed that the expense was incurred after he had traveled to Sacramento to pick up Coseip and her daughter, Jade Becker. (Ex. 8 at 151-153) According to Rosas, they stopped at the restaurant on the way back from a political coordinators meeting. (Ex. 8 at 151-153) Rosas acknowledged Coseip was a close friend with whom he was romantically involved. (Ex. 8 at 152) He claimed Coseip was the Local's political coordinator (Ex. 8 at 66, 151) No Local document confirmed this. There was no union purpose for the expense with his girlfriend and her child. (Ex. 8 at 152)

On Tuesday, December 17, 2013, at 8:57 p.m., Rosas charged \$40.65 at Dave Wong's Restaurant. (Ex. 307)¹⁴⁰ On the non-itemized receipt Rosas submitted, he listed his girlfriend, Coseip, as present. He noted the union purpose as "Christmas Party Work". (Ex. 307) The Local 439 holiday party in 2013 was days earlier on December 14. (Ex. 376) What the party work was days after the party and why it was necessary for Rosas and his friend to eat at members' expense was not explained. The nature of the expense, its date and lack of required information evidenced his fraudulent intent. There was no union purpose for this meal.

Yolanda Daughters and Tatiana Mondragon-Cortez, no longer worked there. (Ex. 8 at 65-66) Jade Becker is Coseip's daughter. (Ex. 8 at 151) In a Teamster Local 439 press release from November 5, 2012 about a Teamster rally to defeat California Proposition 32, Rosas was quoted and Coseip, who also was quoted, was identified as a Local member and not Local 439's Political Coordinator. (Ex. 612)

¹³⁹ This is the restaurant where Rosas omitted the third person from his charge on October 15, 2013. (Ex. 517) On that receipt he also put as a reason "political action." (Ex. 517)

¹⁴⁰ According to MapQuest, Dave Wong's Restaurant is 6.31 miles from the Local, with 8 minutes travel time. (Ex. 347)

On January 30, 2014, Rosas charged \$222.43 at Papapavlos Restaurant. (Ex. 308)¹⁴¹ On the non-itemized receipt he submitted to the Local, he listed Alonzo, Alonzo's wife, Grace Alonzo, Coseip and Heather Keegel as present. (Ex. 308) Heather Keegel was an IBT TITAN Field Rep. (Ex. 531) Rosas listed the union purpose as "Meet. Discuss Training". (Ex. 308) According to Rosas, Grace Alonzo was going to be trained as a part-time TITAN operator at the Local. (Ex. 8 at 65) No such training was planned for Coseip. (Ex. 8 at 66) There was no union benefit to the Local to pay for a restaurant expense for the two officers and their escorts as well as an IBT employee to discuss training a potential part-time employee, rather than conduct any discussion about TITAN training at the Local's office, where the TITAN terminal was located. This was a personal expense that Rosas fraudulently charged the Local.

On Tuesday March 11, 2014, at 8:30 p.m. Rosas charged \$41.26 at Michael's New York Style Pizza. (Ex. 309)¹⁴² On the non-itemized receipt Rosas submitted to the Local, he listed "Geraldine C[oseip]" as present and stated the union purpose as the uninformative "439 issues". (Ex. 309) Rosas' meal with his girlfriend, who was not a Local 439 employee, served no union purpose. It was a personal benefit he had no authority to cause the Local to pay for. The person present and his failure to provide required information evidenced Rosas' intent to embezzle.

d. Additional Examples of Personal Charges Rosas Caused the Local to Pay

¹⁴¹ According to MapQuest, Papavaios Restaurant is 6.05 miles from the Local, with 12 minutes travel time. (Ex. 347)

¹⁴² According to MapQuest, Michael's New York Style Pizza is 5.16 miles from the Local, with 7 minutes travel time. (Ex. 347)

Rosas embezzled \$3,826 when he caused the Local to pay personal expenses including Raiders tickets, restaurant charges at Raiders games and hotel rooms in Stockton. (Ex. 527)

i. Rosas Embezzled When He Received Raiders Tickets for Himself and Others at Local Expense and Caused the Local to Pay Restaurant Charges in the Stadium

Between 2009 and 2013, Rosas embezzled \$746 in tickets to Raiders games and caused the Local to pay \$568 for restaurant charges inside the stadium during two games without a union purpose. (Exs. 527, 293, 362) There was no union benefit from these expenses. Former Vice President Lee, who was not a full-time Local employee, was unaware that Rosas and Alonzo received tickets at the Local's expense. (Ex. 15 at 29-32)¹⁴³ It was his understanding that Rosas and Alonzo paid for their tickets. (Ex. 15 at 29-30) There were no approvals, indeed no mentions in Board and members' meeting minutes that Rosas, Alonzo and their guests would attend at union expense Local social functions members paid for. (Exs. 25-29, 31-35) There were no Board approvals for Rosas taking Local property for his use.

Raiders Tickets

As described above (pages 22-30), between 2009 and 2013, Rosas and Alonzo organized a trip to a Raiders game each year. (Exs. 170-174) In 2010, 2011 and 2012, without required Board and membership approvals, the Local purchased Raiders tickets. (Exs. 25-29, 31-34, 170-174)¹⁴⁴ To attend those games, in the years 2009 through 2011, Local members purchased a

¹⁴³ Between January 2009 and December 2013, Lee attended all but two Executive Board meetings. (Exs. 31-35)

¹⁴⁴ As described above, in 2009 and 2013, the Board approved spending \$2,000 and \$5,000 respectively for the Raiders games. (Exs. 412, 411) There was no membership approval in those years as was required. (Ex. 5 at 16; Exs. 25, 29)

ticket package from the Local for \$100. (Exs. 589-591)¹⁴⁵ In the years 2012 and 2013, in addition to the regular tickets, the Local also purchased club seats for which the members paid \$140 and \$125 respectively. (Exs. 592-593) Rosas admitted that without paying he attended all the games for which the Local purchased tickets. (Ex. 8 at 230, 266) Rosas claimed he was working at these social events. (Ex. 8 at 231) There was no evidence of Rosas working at the games he caused the Local to buy tickets for without authority and that the Board ever authorized the purchase of tickets for him to use without charge. There was no explanation as to why, even if he was working, he was entitled to more than one ticket per game.

According to the Local's bookkeeper, when the tickets came to the Local, they went to Alonzo. (Ex. 12 at 185) She testified that Rosas and Alonzo took tickets for themselves. (Ex. 12 at 185-186) She was then given the remaining ones to distribute to members who purchased them. (Ex. 12 at 185-186) In the years 2009, 2010 and 2012, the Local's records reflected that Rosas received 11 free tickets to the games costing the Local \$746. (Exs. 527; 589, 590, 592, 175, 176; Ex. 12 at 188-189)¹⁴⁶ There was no union purpose for Rosas receiving multiple ticket packages to the games at Local expense.

2009 Raiders Game

Rosas caused the Local to purchase Raiders tickets without authorization in 2009. For the 2009 game, Rosas received four tickets the face value of which was \$244. (Exs. 175, 589,

¹⁴⁵ The ticket included transportation to and from the game, admission, a tailgate party and a shirt. (Ex. 8 at 227; Ex. 12 at 30)

¹⁴⁶ After the IRB's books and records examination during which the Local was asked to produce records regarding the Raiders tickets (Ex. 512), for the 2013 Raiders game, contrary to his past practice and evidencing his intent to embezzle in the past, Rosas purchased five club tickets. (Ex. 593)

180)¹⁴⁷ There was no union purpose recorded in Local records for Rosas receiving free multiple tickets. His intent to embezzle was evidenced from the nature of what the Local paid for, that his taking them without paying for them was unauthorized, not disclosed to the members or the Board and without a union purpose.

2010 Raiders Game

In 2010, there were no Board and members' approvals to purchase Raiders tickets as the Bylaws required. (Ex. 5 at 16; Exs. 32, 26) Rosas caused the Local to purchase the tickets. (Exs. 191, 194-195) In 2010, Rosas received six free tickets that cost the Local \$366. (Exs. 176, 191, 194-195, 595)¹⁴⁸ There was no Board approval for him to receive these. (Ex. 32) ¹⁴⁹ The nature of the expense, that the Local expenditures were unauthorized, that there was no Board authorization for Rosas to take free tickets, that there was no disclosure to the Board of his receipt of free tickets and there was no union purpose evidenced Rosas' intent to embezzle. Rosas' failure to document any union purpose for his receipt of multiple free tickets and what use he made of them was further evidence of his intent to embezzle.

2012 Raiders Game

¹⁴⁷ The shirt, transportation and tailgate are not included here. If they were, the total would be \$400, \$100 per ticket. (Ex. 589)

¹⁴⁸ If the total cost of the package Rosas received was valued at the cost members paid, he would have received a gift worth \$600. (Ex. 595)

¹⁴⁹ In addition, as described above at page 25, four other of the tickets the Local purchased that year were not accounted for.

In 2012, there were no Board and members' approvals for the Local to purchase Raiders tickets as the Bylaws required. (Ex. 5 at 16; Exs. 28, 34) Rosas caused the Local to purchase them without authorization. (Exs. 28, 34, 212, 216) The Local's records did not reflect Rosas purchased any tickets that year. (Ex. 592) For the 2012 Raiders game, Rosas received at least one ticket costing the Local \$136 since he attended the game. (Ex. 8 at 230; Ex. 293)¹⁵⁰ Four of the tickets the Local purchased were not accounted for. (Exs. 173, 178, 592)¹⁵¹ As described below, Rosas also charged \$321.25 at a restaurant in the stadium on the day of the game without a union purpose. (Ex. 293)

Rosas' Restaurant Charges at Raiders Games

On September 23, 2012, the day of the Raiders game, at 2:44 p.m., Rosas charged a \$321.25 expense on his union card at Aramark Oakland Coliseum. (Ex. 293) On the non-itemized receipt he submitted to the Local, Rosas did not provide the names of any other persons that might have been present for this expense. (Ex. 293) He listed the union purpose for the expense as the deliberately uninformative "Raider game". (Ex. 293) This was not a statement of a union purpose. The ticket packages the Local sold to members included food and drink. (Ex. 12 at 185-186) Expenses individuals incurred at the stadium, such as Rosas', were personal. This was Rosas' personal expense incurred at a football game for food, drink or souvenirs, with no benefit to the Local. (Ex. 293)

¹⁵⁰ Rosas was not included on the Tailgate list for the 2012 game. (Ex. 178) He attended the game since he purchased a meal in the stadium that day for \$321.25. (Ex. 293)

¹⁵¹ It appears that Rosas received at least one of these tickets.

On November 3, 2013, on the day of the Raiders game, Rosas, who was at the game with four others, charged two separate expenses, one for \$121.75 at the stadium food and beverage vendor, Aramark, and one for \$125.75, at 2:45 p.m., at the West Side Club at Oakland Colliseum. (Exs. 305, 362)¹⁵² Rosas did not list the names of any other persons as being related to these expenses. (Exs. 305, 362) He noted the alleged union purpose on both non-itemized receipts as "Raider game snacks/drinks". (Exs. 305, 362) These were personal expenses at a football game for Rosas and people he selected. There was no benefit to the Local from these charges. His failure to explain how it benefitted the Local and who received the benefits evidenced his intent to embezzle.

In addition to the free tickets and restaurant charge during Raiders games at Local expense, Rosas also caused the Local to pay an additional \$2,511 for additional personal charges, such as hotel rooms in Stockton. (Ex. 527)

II. Rosas' Bar Bill Charged to His Local Credit Card

Rosas also embezzled when he caused the Local to pay for a \$953.37 bar bill at the Hilton he charged on December 11, 2011. (Ex. 155) The party had been held on December 10. (Ex. 374)¹⁵³ The Local paid his charge without a receipt. (Exs. 286, 352) There was no union purpose for it. Rosas' failure to submit a receipt as the Bylaws required evidenced his intent to embezzle. (Ex. 5 at 16) Nothing in Local records showed the union purpose for his charge, who

¹⁵² This game was after the IRB's books and records examination on October 10-11, 2013. (Ex. 516) On October 31, 2013, Rosas purchased five tickets to the 2013 game. (Ex. 553)

¹⁵³ For unknown reasons this bar bill was listed as a transaction on Rosas' Local's credit card statement as on January 5, 2012. (Ex. 286) The actual charge documents showed it was opened on December 10 and closed out early in the morning of December 11, 2011. (Exs. 551, 555)

else was present and what was purchased.¹⁵⁴ Further evidencing his intent to embezzle, Rosas subsequently made false statements to the IRB on different occasions that this charge was for a deposit with the hotel for the next year's event. (Exs. 352, 551; Ex. 8 at 314-318)

In an April 9, 2014 memo to the IRB regarding his missing credit card receipts, Rosas described the charge as "Hilton Stockton deposit for Local's Christmas dinner event of \$953.37. . ." (Ex. 352) During his IRB sworn examination, Rosas initially testified that the \$953.37 charge was a deposit. (Ex. 8 at 314-318) The odd sum alone, \$953.37, would have alerted Rosas that this was not a deposit, if he had forgotten. (Ex. 286)

Rosas' written explanation and subsequent testimony were false, evidencing his intent to embezzle. Documents the Hilton produced pursuant to subpoena reflected that the \$953.37 charge was for a bar bill Rosas incurred after the Local's party on December 10. (Exs. 551, 155) According to these records, the charge was opened at 11:39 p.m. on December 10 and closed at 12:17 a.m. on December 11. (Exs. 551, 155) During that time, 82 alcoholic drinks and 40 orders of bar food were charged. (Exs. 155, 552) There was no information as to who received the food and drink. After being shown the subpoenaed documents, Rosas admitted that the \$953.37 charge was not a deposit as he had claimed under oath and represented to the IRB. (Ex. 8 at 315-316; Ex. 352) Rosas testified that he authorized the Local to pay this bar bill because it was in connection with the holiday party. (Ex. 8 at 318) He had no authority to do so. The Board had not approved it. (Ex. 33) In addition, his failure to provide contemporaneously the required information concerning attendees, items purchased and union purpose before the

¹⁵⁴ Handwritten on Rosas' credit card statement which included this charge was the notation, "Christmas Party." (Ex. 286)

Local paid the credit card bill containing the charge as well as his failure to submit the receipt evidenced his intent to embezzle through his concealment. There was no union benefit for this expense.

iii. Rosas' Hotel Rooms in Stockton

In each of the years 2010 through 2013, Rosas caused the Local to pay for at least one hotel room, sometimes more, for himself the night of a holiday party. (Exs. 527, 114, 138, 150, 605)¹⁵⁵ Rosas caused the Local to spend \$1,157 for these rooms. (Ex. 527) Rosas lived approximately 16 miles from the hotel. (Ex. 347, 584)¹⁵⁶ The union records did not reflect any union purpose for the charges. (Exs. 114, 138, 156, 168, 605) As described below, in 2013, more than one room was registered to Rosas. (Ex. 168) Rosas never explained the union purpose for these charges in Local records. Former Executive Board member Lee, who paid for a room at the hotel the night of the holiday party, testified that he was unaware that the Local paid for Rosas to stay. (Ex. 15 at 31-32) Rosas claimed that the Local paid for his hotel room because, "I was a big part of the event" and "... was responsible for hauling stuff to the event." (Ex. 8 at 280-281) There was no union purpose for the Local to pay for Rosas' hotel rooms after an in town social event. To the extent Rosas viewed his claimed duties as part of his job, he was paid a salary for that work.

2010 Hotel Room

¹⁵⁵ In 2013, Rosas caused the Local to pay for him to stay two nights at the Stockton Hilton at the time of the holiday party. (Exs. 605, 527)

¹⁵⁶ During the relevant period, Rosas' address on his Local paychecks was 1047 Magglore Lane in Manteca. (Ex. 567)

In 2010, the Local's holiday party was on December 11 at the Hilton. (Ex. 373) Rosas charged \$96.50 for a one night stay on his Local card with a check out date of December 12. (Ex. 114) The Local paid. (Ex. 113) Rosas provided no union purpose in the records. (Ex. 114) There was no benefit to the Local for Rosas' stay in a hotel after a social event when he lived minutes away.

During his IRB sworn examination several years later, Rosas claimed that he had the Local pay for his hotel room in 2010 because he worked the event, "... hauling stuff to the event, hauling stuff back to the Hall from the event." (Ex. 8 at 281) That was not a contemporaneous explanation of union purpose found in Local records as required. Rosas lived less than 20 miles from the party site. (Exs. 347, 584) Even if he worked, there was no explanation why he could not go home. Working late in town does not entitle an officer to hotel lodging at member expense without some further union reason. It was a social event. He had family members at the party. (Ex. 523) Moreover, if he was claiming it was compensation for working, he was unauthorized to make payments to himself above what the Board set. (Ex. 5 at 14) A claim this was unauthorized, undisclosed compensation was frivolous.¹⁵⁷ His failure to provide a contemporaneous explanation in the records as required,

¹⁵⁷ Section 16(A) of the Bylaws provides the following under "Allowances":

Recognizing that the officers and representatives of this organization do not work regularly scheduled hours and receive no compensation for overtime or premium pay; . . . and recognizing that they must participate in cultural, civic, legislative, political, fraternal, educational, charitable, social and other activities in addition to their specific duties as provided in the Constitution and these Bylaws, that such activities benefit the organization and its members and that the time spent in such activities is unpredictable and unascertainable, such officers and representatives may be granted an allowance (both for in-town and out of town work . . .) as the Local Union Executive Board may determine. . .

(Ex. 5 at 20-21)

his failure to disclose to the Board he was having the Local pay for lodging, the presence of his family at a social event, his nearby residence and the circumstance of the charge evidenced his intent to embezzle.

2011 Hotel Room

The Local's 2011 party was on December 10 at the Hilton. (Ex. 374) Rosas charged a room, food and beverages for \$126.72 on his Local card. (Ex. 138) His wife and daughter were at the party. (Ex. 524; Ex. 8 at 285) He noted no union purpose for this charge in the Local's records. (Ex. 138) The Local paid. (Ex. 138) Rosas lived less than 20 miles away. (Exs. 347, 584) Again, there was no union benefit to paying for Rosas' room after a social event at which family members were present near his home.¹⁵⁸

2012 Hotel Room

The party was held on December 8, 2012. (Ex. 375) Rosas charged \$850.76 on the Local's card which appeared to cover five rooms for him, his wife and four others. (Ex. 156)¹⁵⁹ It appears that the rate for one night was \$122.08. (Ex. 156) On the bill from the Hilton in Local records next to his wife's name was handwritten "help". (Ex. 156) There was no other description of union purpose for the charge Rosas caused the Local to pay. These were personal charges and his failure to provide required information evidenced his intent to embezzle through concealment.

¹⁵⁸ During his sworn examination, Rosas testified that the Local paid for his hotel room "... In connection with the holiday party that the members benefitted to attend." (Ex. 8 at 284-285)

¹⁵⁹ Handwritten on Rosas' hotel bill was that it included rooms for Aloise, an International Vice President; Ray Torres, at that time a member of Local 853; Joe Delgado, Alonzo's brother-in-law, who was then a Local 439 Trustee; Rick Andazola, a business agent; and Rosas' wife Jennifer. (Ex. 156; Ex. 8 at 294-295)

2013 Hotel Rooms

For the 2013 party, Rosas charged three rooms to his Local card. (Ex. 168) Two of the rooms were registered to him. (Ex. 168) The third was registered to Yauna Throne. (Ex. 168)¹⁶⁰ The cost to the Local was \$981.50. (Ex. 168) The distance from the hotel to Rosas' home was approximately 17 miles. (Exs. 347, 584)

For both of Rosas' rooms, check in was on Friday, December 13, the day before the party, and check out was December 15, a day after the party. (Ex. 168) Rosas made no indication in the Local's records as to who stayed in the rooms. (Ex. 168) There was no indication as to why the rooms were needed not only the night of the party but also the night before. (Ex. 168) Rosas provided no explanation in the Local's records of the union purpose for his causing the Local to pay for these rooms for the weekend. (Ex. 168) This concealment through omission evidenced his intent to embezzle.

Rosas caused the Local to pay \$812.13, which included \$220.77 in food and beverage charges, for his two rooms. (Ex. 168) Rosas provided no explanation in the Local's records of the union purposes for the meals. (Ex. 168) Nor who was present. (Ex. 168) He did not submit the receipts for the hotel meals as required. (Ex. 168; Ex. 5 at 21; Ex. 4 at 73; Exs. 40, 43)¹⁶¹ The Local paid for both the rooms and the meals. (Ex. 168)

¹⁶⁰ As discussed below, she is the wife of Local 439 member Maynard Throne. (Ex. 8 at 145)

¹⁶¹ The IBT Secretary-Treasurers Manual required that disbursement of funds be "[s]upported by an itemized invoice, receipt or statement detailing the items ordered or the services provided or to be provided." (Ex. 4 at 73) The Department of Labor's Office of Labor Management Standards has stated Locals are required to maintain "... All original itemized receipts for each credit card charge, including itemized hotel invoices, transportation costs and itemized meal receipts from restaurants." (Ex. 40 at 2)

In addition to the two rooms registered to himself, Rosas charged another room for \$169.37 at the Hilton on his Local card for the night of the party registered to Yauna Throne, Local 439 member Maynard Throne's wife. (Ex. 8 at 145; Ex. 168) Throne lived approximately 24 miles from the hotel. (Ex. 347) Rosas provided no union purpose for this charge contemporaneously in the Local records. (Ex. 168) Rosas subsequently testified that she was a volunteer for the party. (Ex. 8 at 145) He did not explain why there was no reason in the contemporaneous records nor what authority he had for the Local paying the cost of a volunteer's room. Nor did he indicate what she actually had done as a volunteer. Rosas' charges were unauthorized and without a union purpose.

iv. Other Personal Items

On August 31, 2013, Rosas charged \$91.19 at Mont Blanc North America on his Local card to repair his pen. (Ex. 304) The Local paid it. (Ex. 304; Ex. 8 at 156-158) There was no union purpose for this charge. This invoice had the false notation "office supply." (Ex. 304) When asked about this charge during his sworn examination, Rosas claimed the expense was for a union purpose because he used the Mont Blanc pen for union business and it "... was broken in the line of business and repaired so that I could continue to use it for the business of the Local and it sits in my desk every day." (Ex. 8 at 157, 158) The pen belonged to Rosas and not the Local. (Ex. 8 at 156) His choice to use his pen was not an explanation of union purpose for a Local expense to repair his personal property. The Local had no more responsibility for it than it would to replace a shirt Rosas stained with ink while working with his pen at the office. Moreover, his explanation conflicted with the false statement contemporaneously written on

the document he submitted to the Local. The nature of the expense and the false explanation on the receipt evidenced his intent to embezzle.

On December 27, 2013, Rosas made a \$49.74 purchase at Walgreens on his Local card. (Ex. 307) Handwritten on this receipt was "Supplies - Pictures", included in this purchase was campho-phenique gel, an ointment to reduce cold sores, for \$7.99 and four picture frames. (Ex. 307) The Local paid. (Exs. 307, 308) Rosas admitted that the ointment's purchase was personal and should not have been charged to the Local. (Ex. 8 at 148-149)¹⁶² In addition to the purchase being personal, Rosas' intent to embezzle was evidenced through his use of a Local card for a personal purchase in violation of IBT policy and his failure to provide an explanation for the particular purchase at the time. (Ex. 4 at 178) It also was consistent with his pattern of spending Local money for unauthorized items without a union purpose.

On May 31, 2013, the day of the Local's golf tournament, Rosas purchased golf balls for \$52.32 at The Reserve Golf Shop using his Local card. (Ex. 301) The Local paid. (Ex. 301) The handwritten note on this receipt was "Golf Tournament." (Ex. 301) That was not an adequate description of the union purpose for Rosas causing the Local to pay for items not for Local use. Rosas subsequently testified that at the Local's All Charities Golf Tournament he purchased golf balls as a gift for a member of the Steelworkers Union who was participating in the tournament. (Ex. 8 at 211-212) Rosas claimed he made the purchase as "a gesture." (Ex. 8 at 212) Rosas did not provide that information contemporaneously to the Local as required. There was no union reason for the Local to buy golf balls for Rosas to give as gifts to an individual of his

¹⁶² Rosas testified that the charge was "... inadvertent." (Ex. 8 at 149) As Rosas knew, the Local's credit card should not be used for personal charges even if the Local was reimbursed for the charge. (Ex. 4 at 178) Rosas claimed that the picture frames were for the Local. (Ex. 8 at 148)

choosing. (Ex. 301) There was no document establishing as required that he ever gave them to anyone. That purchase for the purpose he described was not a valid use of union funds. Rosas had no authority to do it. His failure to provide required information, and that the purchase was unauthorized and of no benefit to the Local evidenced his intent to embezzle.

On December 30, 2011, Rosas charged \$249.52 at the Buckhorn Exchange Restaurant in Denver to his Local card. (Ex. 286) He did not submit an itemized receipt for this charge as he was required to do. (Ex. 5 at 21; Ex. 286) Rosas' handwritten notation on the top of this non-itemized receipt was "Sam R., Albert De La Cruz, Marc Grover +1" (Ex. 286; Ex. 8 at 362) The plus one was not identified in any Local records as required. (Ex. 4 at 178) The receipt would have been submitted shortly after the trip. No union purpose was noted in any Local record. The Local paid it. (Ex. 286) During his sworn examination, Rosas testified that the plus one was Ken, an employee of Stars and Stripes. (Ex. 8 at 363)

Besides his failure to supply necessary information, further evidencing Rosas' intent to embezzle, Rosas falsely claimed only a few days after the charge was incurred that De La Cruz was there on the receipt he submitted. (Ex. 286) De La Cruz did not travel to Denver and was not at that restaurant. (Ex. 14 at 46) During his IRB sworn examination, Rosas admitted De La Cruz was not present. (Ex. 8 at 362) Rosas claimed he made a mistake in putting his name on that receipt. (Ex. 8 at 362) This was one of several times Rosas caused the Local pay for a restaurant charge with Grover while falsifying the receipt by adding the name of someone who was not present. (Exs. 286, 295, 302; Ex. 8 at 362; Ex. 368)¹⁶³ That Rosas could have mistakenly

¹⁶³ The other instances were on Sunday, December 9, 2012 when Rosas had a meal at Scoma's Restaurant in San Francisco and wrote he was with Grover and Aloise and on June 25, 2013 at the Hard Rock Café Lake Tahoe when Rosas again wrote he was with Grover and Aloise. (Exs. 295, 302) Aloise denied being present at both these

believed De La Cruz traveled with him from Stockton to Denver and back is not credible. This meal was part of a trip Rosas made to Denver in a union vehicle with a union trailer to pick up a motorcycle he purchased from Grover, a memorable event. (Ex. 407) Rosas claimed that he picked up shirts the Local purchased in Colorado from Grover. (Ex. 8 at 361-364)

2. Rosas Engaged In a Scheme to Defraud California in Violation of the Mail Fraud Statute and Violated the Taft Hartley Act when He Solicited and Received Something of Value from the Owner of Stars and Stripes

a. Purchases from Stars and Stripes

Between October 2008 and December 2013, the Local spent \$314,301 for items such as shirts, hats, mugs and bags purchased from Stars and Stripes. (Ex. 349)¹⁶⁴ Stars and Stripes is located in Bridgeview, Illinois. (Ex. 346) Local 438M GCC/IBT, represented employees of Stars and Stripes. (Ex. 346) The owner of the company was Grover. (Ex. 8 at 348) Rosas and Grover were friends. (Ex. 14 at 70; Ex. 8 at 372, 299-301)¹⁶⁵ Between 2008 and 2013, Rosas caused the Local to pay Stars and Stripes \$270,593 for substantial purchases over \$1,000 without member approvals as required. (Ex. 348) In that same period, without Board approval, Rosas caused the Local to purchase \$266,823 worth of items from Stars and Stripes. (Ex. 349)¹⁶⁶

meals. (Ex. 368) Rosas also submitted a receipt for December 8, 2012 for a bar bill at the Hilton at which he claimed Grover and De La Cruz were present with him before the Local's party. (Ex. 295) De La Cruz denied being present for this charge. (Ex. 14 at 74)

¹⁶⁴ In 2011 alone, Rosas caused the Local to pay \$104,797 for merchandise from Stars and Stripes. (Ex. 349) That was a Local and International election year. (Exs. 603, 614)

¹⁶⁵ Rosas testified that Grover attended some of the Local's holiday parties as a guest. (Ex. 8 at 299-313) In addition, Rosas and Grover had meals and drinks at Local 439 expense. (Ex. 8 at 299-313) As described above, for at least four of these charges, Rosas falsified information on the receipts when he claimed that International Vice President Aloise or De La Cruz were present. (Exs. 74, 368, 295, 302, 363, 286; Ex. 14 at 46-47; Ex. 8 at 307, 362-363)

¹⁶⁶ In that period the Executive Board had approved purchases of \$47,478 from Stars and Stripes. (Ex. 349)

The Local had no records indicating that anyone confirmed any items it bought from Stars and Stripes were received at the Local as IBT policy required. (Ex. 4 at 73; Ex. 10 at 42-45) In addition, as described above, there were no records tracking the disposition of much of the quarter million dollars in merchandise purchased as Rosas and Alonzo were required to ensure the Local maintain. (Ex. 564; Ex. 10 at 42-45)¹⁶⁷

b. Rosas' Fraudulent Scheme and His Solicitation of a Thing of Value from an Employer

In December 2011, Rosas purchased a Harley Davidson motorcycle from Grover for \$13,000. (Ex. 556; Ex. 8 at 350, 386, 392)¹⁶⁸ Rosas acknowledged he paid Grover less than the market value for it. (Ex. 8 at 357-358) He admitted that this particular motorcycle was worth more than \$13,000 because it had extra chrome and upgrades. (Ex. 8 at 358) Rosas had told De La Cruz that because of the additional items Grover added to the motorcycle it was worth twice what Rosas paid. (Ex. 14 at 69) An officer knowingly purchasing an item from an employer for less than market price in itself violates of 18 U.S.C. §186(a) and (b).

Grover lived in Illinois and his company was there. (Exs. 424, 407) Rosas traveled to Denver, Colorado on December 29, 2011 to pick up the motorcycle from Grover. (Ex. 8 at 360-364) Rosas also claimed that on this trip he picked up shirts for the Local that Stars and Stripes had allegedly brought to Colorado. (Ex. 8 at 364) There were no Local records indicating that any other employee confirmed any shirts had been received from Rosas after this trip. (Ex. 10 at

¹⁶⁷ Under federal law, Rosas as Secretary-Treasurer was required to have records that accounted for the disposition of Local assets. 29 U.S.C. §§431, 436, 439.

¹⁶⁸ He paid \$10,000 in December 2011. (Ex. 556) Seven months later, Rosas sent Grover a \$3,000 check drawn on an account in the name of Rosas' wife and son. (Ex. 556)

42-45) For this trip Rosas used the Local truck assigned to him and the Local owned trailer to carry the bike back. (Ex. 8 at 361) Rosas caused the Local to pay \$314.33 for his gas to get Grover's motorcycle. (Ex. 464)

On January 5, 2012, Rosas signed under oath an "Application for Title or Registration" for the motorcycle to be registered in the State of California on which he misrepresented his purchase price as \$100. (Ex. 407)¹⁶⁹ Rosas admitted that he made an intentional false representation on the form submitted to the state because he was attempting to defraud California out of taxes he owed. (Ex. 8 at 393-396) He mailed the form to Grover in Illinois, along with a "Vehicle/Vessel Transfer and Reassignment Form", Rosas had also filled out. (Ex. 8 at 394-396)¹⁷⁰ On January 30, 2012, Grover signed the "Vehicle/Vessel Transfer and Reassignment Form" which also falsely represented the purchase price was \$100. (Ex. 407) Rosas testified that he "may" have told Grover that, "... I put down I paid \$100 to save on taxes." (Ex. 8 at 396) Those forms were filed with the state. (Ex. 407) With Grover's essential aid, Rosas defrauded California out of \$1,032 in state use tax he owed. (Ex. 562)¹⁷¹

Through their scheme to submit a material false statement to California to defraud it out of money and their use of the mails or interstate carrier service to implement their scheme,

¹⁶⁹ California Reg Form No. 343. (Ex 407)

¹⁷⁰ California Reg. Form 262. (Ex. 407)

¹⁷¹ The purchase price was \$13,000. (Ex. 556) The tax on that was \$1,040. (Ex. 562) Instead, Rosas paid \$8.00 in taxes on the false claim of the \$100 purchase price, cheating the state out of over \$1,000. (Ex. 407)

The IRB obtained the records from the California Department of Motor Vehicles with which they were filed. (Ex. 407) In a letter from his attorney copied to Rosas, Rosas had claimed he did not have a copy of a bill of sale because the transaction was "informal". (Ex. 556)

Rosas and his co-scherner Grover violated the federal mail fraud statute.¹⁷² Fountain v. United States, 357 F.3d 250, 255-256 (2d Cir. 2004); United States v. Porcelli, 865 F.2d 1352, 1360 (2d Cir. 1989) (prosecution under 18 U.S.C. §1341 for scheme to evade state sales tax); United States v. De Fiore, 720 F.2d 757, 761 (2d Cir. 1983) (Section 1341 applied to state tax violations).

Grover received no direct benefit from Rosas' fraud. He accommodated Rosas, who through his control of Local 439, was a substantial customer of Stars and Stripes. In addition to defrauding California, Rosas committed another criminal act when he solicited Grover's participation which was essential to Rosas' fraud. Title 29 U.S.C. §186(a) and (b) provide in pertinent part:

(a) It shall be unlawful for any employer . . . any person . . . who acts in the interest of any employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value –

* * *

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b) (1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any . . . thing of value prohibited by subsection (a) of this section.

¹⁷² Rosas mailed the form to Grover as a step in the scheme. (Ex. 8 at 394-396) The statute covers not only schemes that use the US Mail but also that use commercial interstate carriers such as UPS and Federal Express. 18 U.S.C. §1341. Even if he emailed it, it would still be the racketeering act of wire fraud. 18 U.S.C. §1343, 18 U.S.C. §1961(1).

Rosas, an employee of a labor organization engaged in an industry affecting commerce,¹⁷³ violated 29 U.S.C. §186(b) in soliciting and receiving from Grover, an agent of an employer, a thing of value with the intent to influence his decisions to use Local funds to make purchases from Grover's company, Stars and Stripes. Rosas had authorized the Local to purchase \$223,575 of merchandise from Stars and Stripes in the 40 months before Grover made the false representation to California for Rosas. (Ex. 555)¹⁷⁴ Rosas ordered an additional \$90,725 in merchandise from it in the 22 months afterwards. (Ex. 555) Of that last amount, \$70,222 was without approvals. (Ex. 555)¹⁷⁵ The false statement from Grover to California was a thing of value Rosas solicited since it helped Rosas in his scheme to defraud California out of \$1,000. (Exs. 407, 556, 562) Rosas' dual role as the authorizer of the Local's Stars and Stripes purchases and the beneficiary of the false statement was evident to Grover and showed Grover had the necessary intent to influence a union decision maker. United States v. DeBrouse, 652 F.2d 383, 387 (6th Cir. 1981). Rosas' request for a thing of value from a vendor that would directly benefit him evidenced he used his position to benefit himself. United States v. Pecora, 484 F.2d 1289, 1294 (3rd Cir. 1973); United States v. DeBrouse, 652 F.2d at 387. The thing of value Rosas demanded was the false representation he needed to defraud California out of use taxes. The employer complied, gave the union official what he solicited and the statute was violated.

¹⁷³ Among others, Local 439 represented UPS employees. (Ex. 609) The Interstate package industry has an impact on interstate commerce.

¹⁷⁴ This was the amount Local 439 paid to Stars and Stripes during the 40 month period from October 1, 2008 through January 29, 2011. (Ex. 555)

¹⁷⁵ This was the amount Local 439 paid to Stars and Stripes during the 22 month period from January 30, 2012 through December 5, 2013. (Ex. 555)

United States v. DeBrouse, 652 F.2d at 387.¹⁷⁶ This was in addition to the value Rosas received from the employer by receiving the motorcycle for less than the market value.

A thing of value may be intangible. United States v. Douglas, 634 F.3d 852, 858 (6th Cir. 2011) (thing of value is not limited to an item of monetary value). The agreement and participation of Grover, the employer's agent, in the falsification of the sales price of the item Rosas bought was of value to Rosas because it allowed him to save over \$1,000 in taxes.

After receiving the thing of value, Rosas continued to cause the Local to make \$90,725 in purchases from Stars and Stripes. (Ex. 555)¹⁷⁷ Rosas made \$70,222 of these purchases without required Board and members' approvals. (Ex. 555) He did so without having someone record what Stars and Stripes goods were actually received at the Local as he was required to do under the IBT's Secretary-Treasurer's Manual. (Ex. 4 at 73; Ex. 10 at 42-45) He failed to account, as he was required to do under federal law, 29 U.S.C. §§431, 436, 439, for the disposition of much of the merchandise allegedly purchased from Stars and Stripes. (Exs. 564, 552)¹⁷⁸ Indeed, as noted in pp. 37-39, Rosas often ordered more merchandise from Stars and Stripes than was necessary for the claimed union purpose.

3. Rosas Took Illegal Loans from the Local

¹⁷⁶ Employees of Stars and Stripes were represented by another Teamster Local, Local 458M GCC/IBT, and that was sufficient for a violation of 18 U.S.C. §186(a)(4). There was no requirement that the official soliciting the thing of value be one whose union currently represented the employer's employees. United States v. Burge, 990 F.2d 244, 250 (6th Cir. 1992).

¹⁷⁷ This was the amount the Local paid to Stars and Stripes after January 30, 2012 through December 5, 2013. (Ex. 555)

¹⁷⁸ Rosas in the past had been caught using food the Local purchased illegally in connection with an election. (Ex. 414)

Title 29 U.S.C. §503 makes it a criminal act for any officer or employee of a labor organization to borrow in excess of \$2,000 from the union.¹⁷⁹ Advances for unearned vacation are loans. (Ex. 532 at 10-12) United States v. IBT [Burke], 817 F. Supp. 337, 344 (S.D.N.Y. 1993) aff'd 14 F.3d 183, 184 (2d Cir. 1994); United States v. Briscoe, 65 F.3d 576, 587 (7th Cir. 1995) Rosas authorized and received over \$2,000 in prohibited loans to himself. (Ex. 12 at 142-144; Ex. 383)

Pursuant to the Local's policy, as of January 2009, Rosas earned six weeks vacation each year. (Exs. 6, 350) Section 14(B)(2) of the Bylaws defined one week as 50 hours. (Ex. 5 at 14-15) Accordingly, Rosas was entitled to 300 vacation hours each year. Under California law, vacation is available to be taken as earned. (Ex. 561) The Local's policy was more restrictive, requiring employees to wait until the following January to take vacation time earned during a year. For purposes of the analysis in this report, California law was applied so that once Rosas earned vacation time, he was credited with being able to use it. In 2013, Rosas received advances for vacation that he had not yet earned. (Ex. 383) These advances at times exceeded \$2,000 and were an illegal loan. (Ex. 383) As of July 2013, the illegal interest free loan from the Local to Rosas totaled \$4,375.50. (Ex. 383)

¹⁷⁹ 29 U.S.C. §503 provides the following:

a) No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of \$2,000. (b) No labor organization or employer shall directly or indirectly pay the fine of any officer or employee convicted of any willful violation of this chapter. (c) Any person who willfully violates this section shall be fined not more than \$5,000 or imprisoned for not more than one year, or both.

(Ex. 552)

In January 2013, under the Local's policy, Rosas was credited with 300 vacation hours earned in 2012. (Ex. 350) He had no other accrued vacation to carry forward into 2013. (Ex. 350) In 2012, Rosas previously had exchanged 205 of these 300 hours for pay against this unused vacation. (Exs. 382-383) That reduced the 300 hours. Consequently, Rosas had only 95 vacation hours available to him at the start of 2013. (Ex. 382-383)¹⁸⁰ In January 2013, the Local paid Rosas for 120 hours; the remaining 95 vacation hours he had earned in 2012. (Ex. 383) He earned 25 additional hours during January 2013. (Ex. 383)¹⁸¹ Between February 1 and July 31, 2013, Rosas received additional payments for 300 unused vacation hours. (Ex. 383)¹⁸² During that six month period, Rosas had earned 150 hours vacation. (Ex. 383) Accordingly, after crediting those earned, by the end of July 2013, Rosas had received advanced payment for 150 hours of vacation that he had not yet earned. (Ex. 383) His pay stubs reflected his

¹⁸⁰ The Local's vacation records showed that Rosas' 300 vacation hours credited in January 2013 were reduced by 180 hours, the amount the Local had recorded as his vacation advances at the end of 2012. (Ex. 350) Because the Local both failed to include 70 hours vacation Rosas cashed in in May 2012 and improperly increased the vacation cash out in February 2009 by 15 hours, the Local's records showed that Rosas had taken advances of 55 fewer hours than he had taken by the end of 2012. (Exs. 350, 382, 379) At the end of 2012, Rosas had taken 205 hours of the hours that would be credited to him in January 2013 under the Local's vacation policy, not the 180 hours as reflected in the Local's vacation schedule. (Exs. 350, 382, 383)

Rosas, who claimed he had never taken vacation in 2009 through 2013 but only cashed it out, had no accrued hours being carried from year to year. (Ex. 8 at 324; Ex. 350) The only hours he had were those earned the previous year which Local policy did not allow to be cashed out or used until the following year. (Ex. 6)

¹⁸¹ Rosas' 300 annual vacation hours were earned at a rate of 25 each month. (Ex. 6)

¹⁸² The Local's former bookkeeper testified that when Rosas requested to cash out 80 hours of vacation time on July 18, 2013, she told him that his vacation was in arrears under the Local's vacation policy. (Ex. 12 at 148-149) In response, Rosas told her that the Board had approved the payment to him. (Ex. 12 at 148) There was no such Board approval. (Ex. 12 at 149-150; Ex. 35)

indebtedness. (Ex. 567)¹⁸³ The \$4,375.50 in advances he had received were an illegal loan. (Ex. 383, 532)¹⁸⁴

His indebtedness was reflected on his pay stubs in negative hours and known to him. (Ex. 567) Yet, Rosas did not report any loan on the Local's 2013 Form LM-2 as explicitly required. (Ex. 22)¹⁸⁵ That resulted in his making a false statement under oath on the Form LM-2 he signed that there were no officer loans. (Ex. 22) In the five months August through December 2013, Rosas earned 125 vacation hours. (Ex. 383) When this was set off against the hours he had previously been advanced, Rosas had an outstanding loan of \$729.25 at the end of 2013 because he had been advanced payment for 25 vacation hours he not yet earned. (Ex. 383)

F. Alonzo Embezzled and Breached His Fiduciary Duties when He Caused the Local to Pay for Personal Expenses

In addition to assisting and abetting the embezzlement of Local funds with Rosas to pay Speckman over \$15,000 without authority and for no union purpose as described at pp. 43-49,

¹⁸³ For example, Rosas' paystub for his July 18, 2013 advance payment of 50 vacation hours showed his vacation balance as "-290". (Ex. 567) Rosas received another check that day which included an advance payment of an additional 10 vacation hours. (Ex. 567) The check stub for this check stated his available vacation was "-300". (Ex. 567)

¹⁸⁴ On February 5, 2013, Rosas was paid in advance for 50 vacation hours resulting in a loan to him of \$2,333.60. (Ex. 383) On March 21, 2013, Rosas received advance payment for 80 vacation hours resulting in loan to him totalling \$3,937.95. (Ex. 383) No interest was ever charged on Rosas' advances. On June 14, 2013, Rosas received advance payment for 80 vacation hours making the total amount of the loan to him \$4,083.80. (Ex. 383) On July 18, 2013 Rosas was paid in advance for 60 vacation hours. (Ex. 383) At that point, the loan to him was \$4,375.50. (Ex. 383)

¹⁸⁵ Rosas' June and July 2013 pay stubs showed negative vacation time balances. (Ex. 567) The Form LM-2 has a specific provision for "Loans Receivable". (Ex. 22) The Form LM-2 instructions require the following information to be provided, "[t]he name of each officer. . . whose total loan indebtedness to the labor organization . . . at any time during the reporting period exceeded \$250 . . ." (Ex. 532) The Form LM-2 instructions specifically states that "[a]dvances, including salary advances, are considered loans and must be reported in Schedule 2 (Loans Receivable). (Ex. 532)

Alonzo breached his fiduciary duties and embezzled from the Local by causing it to pay for personal expenses. These personal expenses included Alonzo's restaurant charges in the Stockton area for which there was no union purpose. Between January 2011 and March 2014 Alonzo caused the Local to pay for 67 such restaurant expenses, totaling \$3,808. (Ex. 310) In addition, between 2009 and 2013, Alonzo received at Local expense \$1,741 worth of Raiders tickets, tickets to the holiday party for himself and his family and in town Local hotel rooms without a union purpose. (Ex. 528) There was no union benefit for the Local to pay these expenses for social events for Alonzo.

1. Alonzo's In Town Meals with Only Officers and Employees Present

Alonzo frequently caused the Local to pay for his in-town meals without a union purpose. For example, between January 2011 and February 2014, Alonzo charged 28 restaurant expenses to the Local when Alonzo listed his brother-in-law Delgado as the only other person present. (Ex. 310) From January 2011 to December 31, 2014, Delgado was a Trustee. He was not employed by the Local. (Ex. 13 at 6-9) Delgado retired from UPS in May 2013. (Ex. 7) On their face, these charges appeared to be personal expenses. For 10 of these, Alonzo failed to note any union purpose on the receipts he submitted. (Ex. 310) None was apparent. On 17 other occasions, Alonzo noted "UPS" as the union purpose. (Ex. 310) There was no information as to what was discussed, why these discussions had to be at a restaurant, or any other information necessary to determine that what on its face was a personal expense was for a union purpose. When given, Alonzo's statements of union purpose for eating with his brother-in-law were intentionally vague and failed to meet the requirements of IBT policy, federal law, and the Bylaws.

For six charges with Delgado at Angelina's Restaurant which shared a parking lot with the Local, Alonzo caused the Local to pay \$271.47. (Exs. 310, 311, 334, 335, 338, 340; Ex. 8 at 170-171) Alonzo provided no explanation of union purpose for these. (Exs. 310, 334, 335, 338, 340)¹⁸⁶ Four occurred after Delgado had retired from his UPS job. On their face, these were personal expenses. The timing, circumstances and Alonzo's failure to provide the required information evidenced his intent to embezzle, evidencing his intent to embezzle.

On Saturday, January 8, 2011, at 6:17 p.m., Alonzo charged \$38.00 at Angelina's. On the non-itemized receipt he listed Delgado as present. (Ex. 311) He intentionally provided no union purpose for the Saturday night expense. (Ex. 311) The Local paid it. (Ex. 311) At this time, Delgado was employed at UPS and was also a Local 439 Trustee. Any union discussion could have been at the union offices across the parking lot or on the telephone. The intentional omission of required information evidenced Alonzo's intent to embezzle.

On Wednesday September 4, 2013, at 12:53 p.m., lunchtime, Alonzo charged \$36.80 at Angelina's noting Delgado was present. (Ex. 334)¹⁸⁷ He submitted a non-itemized receipt. (Ex. 334) Alonzo provided no union purpose for the expense. (Ex. 334) There was no reason for the Local to pay for their lunch. Angelina's shared a parking lot with the Local. (Ex. 8 at 170-171) Any business could have been conducted at the Local across the lot. There was no explanation as to why they could not have had any union discussion at the Local.

¹⁸⁶ One receipt had the handwritten notation "UPS" and another the notation "Trustee." (Exs. 326, 340)

¹⁸⁷ The receipt was dated Tuesday, September 3, 2013, but the credit card statement listed the transaction date as September 4, 2013. (Ex 334)

On Thursday, September 26, 2013, at 5:43 p.m., Alonzo charged \$54.87 at Angelina's. (Ex. 335) On the non-itemized receipt, Alonzo listed Delgado as present. (Ex. 335) Alonzo provided no union purpose for the expense. The Local paid it. (Ex. 335) At this time, Delgado was a Trustee, and unemployed in any craft. Alonzo provided no reason why this meeting with his brother-in-law needed to be held at a restaurant, at most, a two minute walk from the Local. This was a personal and not a union expense.

On Tuesday, November 26, 2013, at 5:45 p.m., Alonzo charged \$33.00 at Angelina's. (Ex. 338) On the non-itemized receipt he submitted, he listed Trustee Delgado as present. (Ex. 338)¹⁸⁸ Alonzo provided no union purpose for the expense. (Ex. 338) This was a personal expense with his brother-in-law. Any discussion of union business could have been done at the hall, a two minute walk from the restaurant.

Alonzo also listed his brother-in-law Delgado on other restaurant expenses Alonzo incurred and deliberately omitted providing union purposes for the expenses evidencing his knowledge such information needed to be concealed to justify payment. The following are examples:

On Monday, May 9, 2011, Alonzo charged \$12.72 at Flip's Burgers. (Ex. 314) On the non-itemized receipt he submitted, he listed Delgado as present. (Ex. 314) Alonzo did not provide any union purpose for the expense. (Ex. 314) There was no union benefit for what was a personal expense.

¹⁸⁸ Delgado, who was not a full-time Local employee, was ineligible to be Trustee without employment under the IBT Constitution. IBT Constitution, Art. II. (Ex. 3 at 13-17; Ex. 5 at 6)

On Sunday, September 2, 2012, Alonzo charged \$53.90 at Hacienda Sahuayo. The time on the non-itemized receipt was illegible. (Ex. 328) Alonzo listed Delgado as present for this non-workday expense. (Ex. 328) Alonzo provided no union purpose. (Ex. 328) On its face this was personal. The Local paid the charge. (Ex. 328) Along with the circumstances, as in other instances, Alonzo's intentional failure to provide the information the Bylaws and law required contemporaneously to judge whether this was a union expense evidenced his intent to embezzle.

On four other occasions, Alonzo incurred restaurant expenses on his union card for meetings with Delgado at The Creamery Restaurant. (Ex. 310)¹⁸⁹ On Thursday, February 17, 2011, at 12:53 p.m., Alonzo charged a \$54.60 lunchtime expense at The Creamery. (Ex. 315) He submitted a non-itemized receipt on which the union purpose for the expense was noted as the uninformative "UPS". (Ex. 315) Alonzo deliberately omitted detail he was required to provide and was necessary to determine if this was a valid union purpose for a charge with his relative.

On Thursday, January 10, 2013, at 1:00 p.m., Alonzo charged \$49.78 at The Creamery with Delgado. (Ex. 521) On the non-itemized receipt he submitted for the lunchtime expense Alonzo omitted any description of the union purpose for the expense. (Ex. 521) This was an admission that the charge, which on its face was personal, was not for union business. (Ex. 521)

On Friday, November 8, 2013, at 2:42 p.m., Alonzo charged a \$54.93 expense with Delgado at The Reserve 660, a restaurant at a Stockton golf course. (Ex. 337)¹⁹⁰ He submitted a non-itemized receipt. (Ex. 337) There was no reason for two officers to do union business at a

¹⁸⁹ According to MapQuest, The Creamery Restaurant is 5.45 miles from Local 439, with 11 minutes travel time. The restaurant is 8.01 miles from the UPS depot, with 13 minutes travel time. (Ex. 347)

¹⁹⁰ According to MapQuest, The Reserve 660 is 8.15 miles from the Local, with 14 minutes travel time. It is 14.18 miles from the UPS Hub, where Delgado worked, with 19 minutes travel time. (Ex. 347)

golf course in mid-afternoon of a workday. Alonzo gave no union purpose for the charge. (Ex. 337) As with all these charges, the circumstance of the charge and Alonzo's intentional failure to provide the required information evidenced his intent to embezzle.

On 15 other occasions, Alonzo and Rosas were together when Alonzo charged expenses to the Local's card. (Ex. 310)¹⁹¹ Alonzo and Rosas were the only two full-time officers of the Local. The following are some examples of Alonzo's charging the Local for restaurant visits when only he and Rosas were present and Alonzo deliberately omitted the union purpose for the expense he caused the Local to pay.

On Thursday, July 14, 2011, Alonzo charged \$40.75 at The Olive Garden for himself and Rosas. (Ex. 520)¹⁹² Alonzo submitted a non-itemized receipt and provided no union purpose for the expense. (Ex. 520) He gave no explanation as to why any meeting between the two full-time officers could not have been held at the Local. There was no reason for the members to be paying for Rosas' and Alonzo's refreshment. Alonzo's intent to defraud was evidenced from his intentional omission of any union purpose, his violation of the Bylaws and the circumstances of the charge.

On Wednesday, October 12, 2011 at 7:28 p.m., Alonzo charged \$71.81 at BJ's Restaurant & Brewhouse for himself and Rosas. (Ex. 319) On the non-itemized receipt Alonzo submitted to the Local, he gave no union purpose for the expense. (Ex. 319) He gave no reason why a meeting with Rosas needed to be held outside the Local. On its face it was a personal expense. Again,

¹⁹¹ Rosas had 28 instances of restaurant charges when only he and Alonzo were present. (Ex. 75)

¹⁹² The Olive Garden is 23.88 miles from the Local, with 25 minutes travel time. (Ex. 347) There was no time visible on the receipt. (Ex. 520)

the circumstance, his deliberate omission of any union purpose and his violation of the Bylaws requirement evidenced his intent to defraud.

On Thursday, October 31, 2013 at 2:34 p.m., Alonzo charged \$49.17 at Susy's Mexican Food for Rosas and himself. (Ex. 337) On the non-itemized receipt Alonzo submitted, he noted no union purpose for the expense. (Ex. 337) He gave no explanation why any meeting between the only two full-time officers needed to be held outside the Local. This was a personal expense as his omission of union purpose, although required, evidenced. Both the circumstance and Alonzo's failure to provide the information required for the Local to pay evidenced his intent to embezzle.

On Monday, November 19, 2013 at 3:13 p.m., Alonzo charged \$50.63 at Perko's Café for Rosas and himself. (Ex. 338)¹⁹³ On the non-itemized receipt Alonzo submitted, he noted no union purpose for the expense. (Ex. 338) He gave no explanation why any meeting between the two full-time officers needed to be held outside the Local. (Ex. 338) This was a personal expense. Both the circumstances and Alonzo's deliberate omission of a union purpose evidenced his intent to embezzle.

Many of Alonzo's other charges were also not for a union purpose. On Monday, March 21, 2011, at 12:29 p.m., Alonzo charged \$48.33 at The Creamery. (Ex. 313) On the non-itemized receipt he submitted, he listed business agents Nicewonger and Daughters as present. (Ex. 313) Alonzo provided no union purpose for the lunch time expense. (Ex. 313) There was no union

¹⁹³

Perko's Café is 2.48 miles from the Local, with 5 minutes travel time. (Ex. 347)

benefit for what was a personal expense among full time Local employees. His intentional omission of a proper purpose which he was required to supply evidenced there was none.

On Monday, March 28, 2011 at 12:53 p.m., Alonzo charged \$57.63 at Hacienda Sahuayo. (Ex. 313)¹⁹⁴ On the non-itemized receipt he submitted, Alonzo listed his friend, George Juarez, a retired member of Local 439, as present. (Ex. 313; Ex. 10 at 62) Alonzo provided no union purpose for the expense, which on its face was personal. The Local paid it. (Ex. 313)

On Tuesday, September 4, 2012 at 10:51 a.m., Alonzo charged \$33.64 at Susy's Mexican Food. (Ex. 328) The non-itemized receipt Alonzo submitted to the Local listed business agent Daughters as present. (Ex. 328) Alonzo did not provide a union purpose for the expense. The Local paid it. (Ex. 328)

On Tuesday, April 5, 2011, Alonzo charged \$57.48 at Stockton Joe's. (Ex. 313)¹⁹⁵ On the non-itemized receipt he submitted, he listed Rosas and business agent Andazola as present. (Ex. 313) Alonzo provided no union purpose for the lunch expense among full time Local employees. (Ex. 313) The Local paid it. (Ex. 313) His omission of information he knew was necessary to justify the expense is evidence of his intent to embezzle.

On Friday, May 20, 2011, at 11:15 a.m., Alonzo charged \$69.57 at Susy's Mexican Food. (Ex. 316) On the non-itemized receipt he submitted, Alonzo listed Rosas, Buzo, Nicewonger and Daughters as present. (Ex. 316) Alonzo provided no union purpose for the expense that he

¹⁹⁴ According to MapQuest, Hacienda Sahuayo is 0.39 miles from the Local, with 1 minute travel time. (Ex. 347)

¹⁹⁵ According to MapQuest, Stockton Joe's is 6.17 miles from the Local, with 12 minutes travel time. (Ex. 347)

caused the Local to pay. (Ex. 316) He gave no reason why the five full time employees could not have met at the Local.

On Tuesday, December 27, 2011, Alonzo charged \$24.24 at The Reserve, a restaurant at a Stockton golf course. (Ex. 322)¹⁹⁶ The time was illegible on the non-itemized receipt Alonzo submitted. (Ex. 322) He listed business agent Buzo, as the other person present. (Ex. 322) There was no union purpose noted. There was no reason for Local employees to be doing union business at a golf course. This in town charge was a personal expense.

On Friday, December 9, 2011, at 8:51 p.m., two days before the holiday party, Alonzo charged \$178.99 at Stockton Joe's. (Ex. 321) The non-itemized receipt he submitted listed Grover, the owner of Stars & Stripes, a vendor of shirts, hats and other items, and business agent De La Cruz as present. (Exs. 129, 321) Alonzo provided no union purpose for the charge. (Ex. 321) On its face it was a personal benefit. There was no reason for the Local to be paying for Alonzo and a business agent's charge with a vendor from Illinois, apparently in town for the Local's holiday party.

The following are examples of Alonzo's charging the Local for bar or restaurant expenses when he did not identify any others as present:

On Friday, April 27, 2012, at 7:43 p.m., Alonzo charged \$130.25 at Famous Dave's Pit BBQ. (Ex. 324) The non-itemized receipt Alonzo submitted to the Local did not list anyone else as present. (Ex. 324) Alonzo provided no union purpose for the Friday evening expense. (Ex. 324) The circumstance, his intentional omission of a union purpose and who else may have been

¹⁹⁶ According to MapQuest, The Reserve 660 is 8.15 miles from the Local, with 14 minutes travel time. (Ex. 347)

present, and Alonzo's intentional violation of the Bylaws by not providing required documents evidenced his intent to defraud.

On Wednesday, November 2, 2011, at 12:49 p.m., Alonzo charged \$38.88 at Hacienda Sahuayo. (Ex. 320) The records reflect that he did not provide a union purpose or note anyone else being present. (Ex. 320) There was no union purpose in paying for Alonzo to eat alone at lunchtime at members' expense. Despite Alonzo's failure to provide the required information to justify the expense, the Local paid it. (Ex. 320) His intentional omission of a claimed union purpose evidenced his intent to defraud.

On Sunday, March 18, 2012, Alonzo charged \$50.93 at Angelina's. (Ex. 323) The time was illegible on the non-itemized receipt he submitted. (Ex. 323) He did not list anyone else as present. (Ex. 323) Alonzo provided no union purpose for the non-workday expense for himself. A weekend meal for Alonzo either alone or with someone else would not be a valid union purpose. The circumstance of the meal and Alonzo's intentional failure to provide basic required information, including what the union purpose was, evidenced his intent to embezzle.

On Thursday, August 16, 2012, at 11:11 a.m., Alonzo charged \$65.90 at Lumberjack's Restaurant. (Ex. 328)¹⁹⁷ The non-itemized receipt Alonzo submitted to the local listed no one else as present. (Ex. 328) Alonzo's failure to provide a union purpose for the expense, which on its face was personal, was an admission this was not union related. (Ex. 328) He failed to provide the information and documentation he was required to. The Local paid it. (Ex. 328) There was no union purpose for the Local to pay for a late morning restaurant charge in town for an officer

¹⁹⁷ According to MapQuest, Lumberjack's Restaurant is 7.57 miles from the Local, with nine minutes travel time. (Ex. 347) The restaurant is 2.4 miles from Alonzo's home, with 4 minutes travel time. (Ex. 347)

by himself. Alonzo's intent to defraud was evidenced by his Bylaw violation and the circumstances.

On Monday, October 1, 2012, at 7:01 p.m., Alonzo charged \$26.98 at the Brookside Country Club, a golf course in Stockton. (Ex. 329)¹⁹⁸ The receipt Alonzo submitted to the Local listed no one else as present. (Ex. 329) The receipt indicated it was for three "premium" drinks. (Ex. 329) Alonzo did not provide a union purpose for the expense for drinking alone, which on its face was personal and of no benefit to the union. The Local paid it. (Ex. 329)

On Wednesday, December 19, 2012, at 7:41 p.m., Alonzo charged \$121.00 at Angellna's. (Ex. 521) Alonzo submitted a non-itemized receipt that listed no other persons present and noted the union purpose as "General Membership Meeting." (Ex. 521) The minutes of the December 19, 2012 membership meeting showed that a meeting was called to order at 7:01 p.m. and adjourned at 7:28 p.m.. (Ex. 28) Alonzo's justification did not provide sufficient detail to support the charge. There was no reason for the Local to pay for Alonzo's meal after a 27 minute meeting. Any union discussion could have been at the offices across the lot. Alonzo knew what information was required and deliberately failed to provide it evidencing his intent to defraud.

2. Alonzo's Additional Personal Expenses

In addition to his in town restaurant charges, Alonzo received 12 free tickets to the holiday party for him and his guests worth \$780, eight free tickets to Raiders games the face

¹⁹⁸ The receipt was dated October 1, 2012, but the credit card statement listed the transaction for October 4, 2012. (Ex. 329) According to MapQuest, The Brookside Country Club is 7.71 miles from the Local, with 13 minutes travel time. (Ex. 347)

value of which was \$488 and hotel rooms in Stockton in 2010 and 2012. (Ex. 528) The cost to the Local for these items was \$1,741. (Ex. 528)

a. Holiday Party Tickets for Alonzo and Family Members

In the years 2010 through 2012, there were no Board and members' approvals for the Local to spend any money for a holiday party. (Exs. 26-28, 32-34) Alonzo received free tickets to the holiday parties in 2009, 2011, 2012 and 2013 without the required Board approval for these. (Exs. 528, 522, 524, 525, 594, 596, 597, 598)¹⁹⁹ Neither Alonzo nor anyone else recorded a union purpose in Local records for the tickets he received without cost to him. Other members paid. (Exs. 594, 596, 597, 598) In addition to Alonzo, in 2009, 2011 and 2012, his wife Grace received free tickets to the parties. (Exs. 522, 524, 525) His parents, Armando, Sr. and Beverly, also each received a free ticket in 2009 and 2011. (Exs. 522, 524)²⁰⁰ In addition, his children, Alyssa, Nick and Nicole Alonzo, each received a free ticket in 2012. (Ex. 525)²⁰¹ The value of these 12 unauthorized free tickets for Alonzo and his family members was \$780. (Ex. 528) No union record reflected any union purpose for these expenses for attendance at social events. There was none. That Alonzo and his family were attending a

¹⁹⁹ As noted above, in one year, 2012, there was Executive Board approval for staff and helpers to receive a free ticket. (Ex. 351) That year Alonzo received six free tickets, five beyond the one, if any, the Board had authorized for him. There was no vote on giving free tickets to the full-time officers. These five tickets were worth \$375. (Ex. 528)

²⁰⁰ Alonzo testified that he believed Rosas gave comped tickets to his father, Armando, Sr. who was a retiree. (Ex. 10 at 49-50) Beverly Alonzo also received a comped ticket in 2012. (Ex. 525)

²⁰¹ Alyssa Alonzo is Alonzo's daughter. (Ex. 12 at 223) Nick Alonzo and Nicole Alonzo lived with Alonzo in the past and appear to also be his children. (Ex. 610)

Local social event without paying like members and their guests were required to do was never disclosed at any Board or membership meeting. (Exs. 24-36; Ex. 15 at 30)

b. Raiders Tickets

In 2009 and 2010, there were no Board and membership approvals for the Local to pay for Raiders tickets and costs in connection with the trips to the games which Alonzo and Rosas caused the Local to pay.²⁰² In the years 2009 and 2010, Alonzo received eight free tickets to attend the game at Local expense without Board approval. (Exs. 528, 589, 590, 175, 176; Ex. 12 at 178-183, 185-189) These tickets cost the Local \$488. (Ex. 528) Alonzo admitted that he attended the games without paying for a ticket. (Ex. 10 at 55-58) There was no disclosure to the members or the Board that he was getting multiple tickets to the games at members' expense. (Exs. 25-26, 31-32)

For the 2009 game, Alonzo received three free tickets worth \$183. (Exs. 528, 170, 175, 589)²⁰³ The Local's Tailgate List showed Alonzo received three "comped" tickets and paid for two others. (Exs. 175, 589) No purpose was noted in Local records for Alonzo receiving any free tickets that year. Nor was there Board approval. (Ex. 31)²⁰⁴ For the 2010 Raiders game, Alonzo

²⁰² In 2009, there was Board approval to spend \$2,000 for the Raiders game. (Ex. 412) The Local spent \$13,270 more than that amount. (Ex. 566) Moreover, there was no membership approval as required to spend any money for the Raiders game. (Ex. 31)

²⁰³ The total value of the package he received, as represented by the expense to members, was \$300. (Ex. 175)

²⁰⁴ The Board had to approve expenditures. Nor can there be a claim these were compensation for working. The Board needed to do that under the Bylaws and the Bylaws provided that Alonzo received an in town allowance for working irregular hours and attending events. (Ex. 5 at 14-15, 20-21)

received five free tickets worth \$305. (Exs. 176, 528, 590)²⁰⁵ No Local records reflected that he paid for those tickets. (Ex. 590)²⁰⁶ There was no Local approval for him to receive them. (Exs. 26, 32)

c. Alonzo's Restaurant Charges at Raiders Games

On September 23, 2012 at 11:48 a.m., the day of the Raiders game, Alonzo charged a \$77.75 expense on his union card at Aramark, a food and beverage vendor at Oakland Coliseum. (Ex. 329) On the non-itemized receipt Alonzo submitted to the Local, he listed his brother-in-law Delgado and members Pablo Cordova and Ernie Ins as present. (Ex. 329) Alonzo did not provide a valid union purpose for this expense, which on its face was personal. (Ex. 329) There was no benefit to the Local from Alonzo causing the Local to pay for refreshments for him, his brother-in-law and selected friends at a football game.

The following year, on November 3, 2013, on the day of the Raiders game, at 2:59 p.m. Alonzo charged a \$79.25 expense at The West Side Club, a bar/restaurant located on the Club Level inside the Oakland Coliseum. (Ex. 226) On the non-itemized receipt he submitted, Alonzo listed Richard Andazola, Alex Parra, Alex Carillo and Gerald Avila as present. (Ex. 226) Alonzo noted no union purpose for the expense, which on its face was personal. (Ex. 226) At his sworn examination, Alonzo stated that the expense was likely for "beverages" at halftime, but was not able to provide a valid union purpose for the expense. (Ex. 10 at 70-75) Indeed, most members attending did not have club seats. The packages sold to members included some

²⁰⁵ The total value of the package he received was measured by members' costs for the same was \$500. (Ex. 590)

²⁰⁶ For the 2013 Raiders game, which was after the IRB's books and records examination, Alonzo purchased eight club tickets. (Ex. 593)

food and drink. They had to buy anything beyond that. There was no union purpose that justified Alonzo buying some items for himself and selected members who had club level tickets at a football game.

d. Alonzo's Rooms in Stockton

Alonzo caused the Local to pay \$316 for hotel rooms for the 2010 and 2012 holiday parties without authorization and a union benefit. (Ex. 528)²⁰⁷ In those years, Alonzo lived approximately one and one half miles from the Hilton. (Ex. 10 at 28; Ex. 347) These rooms were charged on Alonzo's Local card. (Exs. 607-608) He did not supply a union purpose with the bills as required. (Exs. 607-608) Alonzo testified that he caused the Local to pay for his hotel rooms because he did not want to risk driving while intoxicated. (Ex. 10 at 28-30)²⁰⁸ That was a personal and not a union purpose for the expense. There was no Board authorization for the expenses. He had no obligation to the Local to get intoxicated. That was his choice. There was no union benefit to these charges. In addition, for the 2012 holiday party, Alonzo caused the Local to pay for a second room. (Ex. 608) Alonzo's mother and his three children received free tickets to the 2012 party. (Ex. 525) On the receipt for one room registered to him Alonzo wrote "Christmas Party". (Ex. 608) On the other receipt Alonzo wrote "Christmas Party George Juarez Retiree." (Ex. 608) There was no explanation of union purpose given for the room he claimed to be for Juarez, a friend. (Ex. 10 at 62; Ex. 608)

²⁰⁷ For the 2010 Holiday party, the Local paid \$96.50 for Alonzo's hotel room. (Ex. 607) For the 2012 Holiday party, the Local paid \$219.52 (\$109.76 each) for two hotel rooms registered to Alonzo. (Ex. 608)

²⁰⁸ When Rosas was asked about the reason for Alonzo's 2010 hotel room, Rosas responded that Alonzo was on the Christmas committee. (Ex. 8 at 297)

V. Analysis

The standard of proof for establishing a charge as proven is a preponderance of evidence. Rules and Procedures for Operation of the Independent Review Board, Para. J(6) ("[i]n order to be sustained, the proposed. . . charges . . . contained in the Investigative Report, must be supported by a preponderance of reliable evidence."); United States v. IBT [Simpson], 931 F. Supp. 1074, 1089 (S.D.N.Y. 1996), aff'd, 120 F.3d 341 (2d Cir. 1997). (Ex. 48 at 12)²⁰⁹

A. Rosas and Alonzo Embezzled Local 439 Funds

The IBT Constitution prohibits embezzlement and conversion of union funds. IBT Const. Art XIX, Section 7(b)(3). The standard for embezzlement under federal labor law, 29 U.S.C. § 501 (c), is instructive in interpreting the IBT Constitutional provisions. Investigations Officer v. Calagna, Decision of the Independent Administrator at 11 (May 9, 1991), aff'd, United States v. IBT, 777 F. Supp. 1123 (S.D.N.Y. 1991). For an individual to be found to have embezzled union funds, it must be established that he acted with fraudulent intent to deprive Local 439 of its funds. See, United States v. Welch, 728 F.2d 1113, 1118 (8th Cir. 1984) (under any test, union officials violate Section 501(c) only when they possess fraudulent intent to deprive the Union of its funds"); Investigations Officer v. Caldwell, Decision of the Independent Administrator at 7 (February 9, 1993), aff'd, 831 F. Supp. 278, 283 (S.D.N.Y. 1993).

Determining whether a union official had the requisite intent to embezzle is done, "on the basis of 'all of the evidence considered together' and 'in light of all the surrounding circumstances.'" United States v. Welch, supra, 728 F.2d at 1119 (quoting United States v. Morissette, 342 U.S. 246, 275-76 (1951)). "[I]t is permissible to infer from circumstantial

²⁰⁹ In addition, Article XIX, Section 1(e) of the IBT Constitution provides that internal union disciplinary charges must be proven by a preponderance of the evidence. (Ex. 3)

evidence the existence of intent." United States v. Local 560, 780 F.2d 267, 284 (3d Cir. 1985) (citation omitted)

The Court of Appeals for the Second Circuit has stated that key factors in determining the issue of fraudulent intent are whether there was authorization from the union for the expenditure and a benefit to the union for the payments at issue. See, e.g., United States v. Butler, 954 F.2d 114, 118 (2d Cir. 1992). Rosas' and Alonzo's charges were for personal and not union purposes. All charges not for a union purpose were not authorized under the Bylaws.

Rosas and Alonzo were fiduciaries with respect to Local 439 funds, 29 U.S.C. §501(a). As such, they had an obligation to only spend Local money for union purposes. Section 501(a) provides in pertinent part:

The officers, agents . . . of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder . . .

29 U.S.C. § 501(a). This section imposes a broad fiduciary obligation on Local officers. See United States v. Bane, 583 F.2d 832, 834-35 (6th Cir. 1978) cert. denied, 439 U.S. 1127 (1979). Section 501 addresses the misuse of union funds and property in all forms. See Stelling v. International Brotherhood of Electrical Workers, Local 1547, 587 F.2d 1379, 1386-87 (9th Cir. 1978).

B. Rosas' Intent to Embezzle

Rosas' fraudulent intent to embezzle was demonstrated from the circumstances surrounding his causing the Local to pay approximately \$35,593 for charges without a union purpose, including paying Speckman for \$15,928 in more unused vacation than he was entitled

to, Speckman's \$3,484 Hawaii vacation, \$11,854 for Local area meals, \$499 for out of town meals charged while receiving an allowance that covered such meals and \$3,826 in additional personal charges. (Exs. 618, 51, 65, 66, 527, 75) Personal matters, vaguely described as "union" issues, including charges with Rosas' girlfriend and her child, an outside vendor friend and Local employees for lunch together in town, were not union purposes. Even if sometimes business may have been discussed, the charges would still not be for a union purpose.

Rosas intentionally failed to provide the required statements of union purpose. His omissions were admissions there were none. Rosas claimed he chose to conduct union business in restaurants rather than at the Local's offices. (Ex. 8 at 32-33, 106-121) This was a personal choice and not for a union purpose. He received a personal benefit by causing the Local to pay these charges. He did not document the charges as required by the Bylaws, the IBT and Federal law. In addition to the evidence of intent from the violations of the Bylaws, and efforts to conceal by not providing necessary information, Rosas' listing false attendees and double-dipping illuminated his intent to defraud. On at least five occasions, Rosas wrote that an individual was present for a restaurant charge when that individual denied being present. (Exs. 295, 302, 368; Ex. 14 at 46, 48-49, 73-74)²¹⁰

Given the lack of evidence of any union purpose, Rosas and Alonzo were obligated to demonstrate how these facially personal charges benefitted the union. United States v. IBT

²¹⁰ Three of these restaurant charges were on December 30, 2011 at the Buckhorn Exchange in Denver, Saturday, November 17, 2012 at Las Casuelas and December 8, 2012 at the Hilton bar. (Exs. 295, 286) Rosas indicated that De La Cruz was present for these three charges. (Exs. 295, 286) De La Cruz denied being present for these three restaurant charges. (Ex. 14 at 46-49, 72-74) Similarly, Rosas indicated that Aloise was present for a December 9, 2012 charge at Scoma's Restaurant and a June 25, 2013 charge at the Hard Rock Café Lake Tahoe. (Exs. 295, 302) Aloise denied being present at these restaurants with Rosas on those dates. (Ex. 368)

[Kenny, Moreno and Gullory], slip op, at 10, (S.D.N.Y. 2014) aff'd, 2015 U.S. App. LEXIS 774 (2d Cir. January 20, 2015). Rosas and Alonzo failed to present any evidence to show that these challenged charges, which on their face appeared to be personal, were for a union purpose. When given at all, their vague descriptions of union purpose were not adequate.

Their intent to embezzle was further evidenced by their failure to submit itemized receipts, as the Bylaws explicitly required. (Ex. 5 at 6) These Bylaw violations assisted them concealing the true nature of the charges. United States v. IBT [Wilson, Dickens and Weber], 787 F. Supp. 345, 352 (S.D.N.Y. 1992) (failure to comply with [the Bylaws] gives rise to an inference of fraudulent intent) aff'd, 978 F.2d 68 (2d Cir. 1992). As described above, further evidencing his intent to embezzle, Rosas did not submit any receipt to the Local for several charges including the bar bill after the 2011 Christmas party, charges at the Ritz Carlton in New Orleans and at Caesars in Las Vegas. Rosas' Intent to embezzle was further demonstrated by his false written statement to the IRB, his false testimony during his IRB sworn examination about the bar bill and his inability in his testimony to provide union purposes for other charges.

C. Alonzo's Intent to Embezzle

Alonzo's fraudulent intent to embezzle was demonstrated from the circumstances surrounding his causing the Local to pay approximately \$21,478 for charges without a union purpose. (Exs. 621, 528, 310) Personal matters, vaguely described as "union" issues, including charges with Alonzo's spouse, brother-in-law and a retired friend were not union purposes. The intentional omission from many of his submissions for payment of the required information as to the union purpose of the charges was evidence he knew the truthful appropriate information would have disclosed he was embezzling. In addition, the lack of authorization for benefits to

himself such as the football tickets, hotel rooms and admission to parties evidenced his intent to embezzle.

At best, Alonzo claimed he chose to conduct union business in restaurants rather than at the Local's offices. (Ex. 10 at 39) There was no necessity to do so. He received a personal benefit by causing the Local to pay these charges. He did not document the charges as required by the Bylaws, the IBT and Federal law.

Given the lack of evidence of any union purpose, Alonzo was obligated to demonstrate how these facially personal charges benefitted the union. United States v. IBT [Kenny, Moreno and Guillory], supra at 10. Alonzo failed to present any evidence to show that these challenged charges, which on their face appeared to be personal, were necessary for a union purpose. When given at all, his vague descriptions of union purpose were not adequate.

In addition, both of their intents to embezzle were further evidenced by their failure to submit itemized receipts, as the Bylaws explicitly required. (Ex. 5 at 6) These Bylaw violations assisted them concealing the true nature of the charges. United States v. IBT [Wilson, Dickens and Weber], 787 F. Supp. 345, 352 (S.D.N.Y. 1992) (failure to comply with [the Bylaws] gives rise to an inference of fraudulent intent) aff'd, 978 F.2d 68 (2d Cir. 1992).

VI. PROPOSED CHARGES

It is recommended that Rosas and Alonzo be charged as follows:

A. Rosas and Alonzo

1. Charge One

While officers of Local 439 and the sole signatories of Local checks, you brought reproach upon the IBT, breached your fiduciary duties and violated the Local's Bylaws restrictions on the expenditure of Local funds in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution *to wit*:

Between approximately March 2008 and May 2014, while officers of Local 439, as detailed above, you caused the Local to spend \$845,853 for cars, events and merchandise without the Executive Board approvals Sections 14(B)(8) and 16(C) of the Local's Bylaws required. You also caused the Local to spend \$568,761 in substantial purchases for events and merchandise over \$1,000 without members' approvals as Section 14(B)(8) of the Bylaws required.

2. Charge Two

While officers and members of Local 439, you brought reproach upon the IBT, exposed the Local to the risk of civil and criminal penalties and interfered with the Local's legal and recordkeeping obligations under federal law in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(2) and (5) of the IBT Constitution, *to wit*:

Between approximately 2009 and 2013, while Secretary-Treasurer and President of Local 439 and required signatories on the Local's Form LM-2s, as described above, you failed to maintain records of the disposition of over \$72,000 in Local assets including televisions, other electronic items, liquor and gift cards the Local purchased. Such records were required to be maintained pursuant to 29 U.S.C. §431, 436 and 439. Your failure to comply with your record keeping obligations under federal law exposed the Local to the risk of civil and criminal actions. 29 U.S.C. §§439, 440.

B. Rosas

1. Charge Three

While the Secretary-Treasurer and a member of Local 439, you brought reproach upon the IBT and breached your fiduciary duties by engaging in a pattern of criminal conduct , including racketeering acts of embezzlement, mail fraud, soliciting and receiving a thing of value from an employer in violation of the Taft Hartley Act and receiving an illegal loan from the Local in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2), (3), (11) and (13) of the IBT Constitution, to wit:

While the Secretary-Treasurer of Local 439, as described above, you breached your fiduciary duties and embezzled approximately \$35,593 from the Local when you knowingly caused the Local to pay a business agent upon retirement \$15,928 in payments the agent was not entitled to; caused the Local to give the retired agent a Hawaiian vacation costing \$3,484 without authority and without a union purpose; caused the Local to pay approximately \$11,854 for Local area meals without a union purpose; caused the Local to pay for expenses you incurred that were covered by allowances you received and caused the Local to pay \$3,826 in additional personal charges.

In other acts of racketeering, as described above, you violated the mail fraud statute when you defrauded California of tax due and owing with the assistance of the owner of a vendor from which you caused the Local to make substantial unauthorized purchases. You solicited the owner of Stars and Stripes to make a false representation to California on a form filed with the state to assist you in not paying tax due. The assistance the employer provided

you to defraud California was a thing of value you solicited and received from an employer in violation of 18 U.S.C. §186(b). In addition, you knowingly paid the employer representative owner a price for a motorcycle less than its market value in violation of the statute. Stars and Stripes employed members of another Teamster Local.

In addition, as described above, you requested and received from the Local over \$2,000 in loans in violation of 29 U.S.C. §503 through a pattern of taking payments from the Local allegedly for advances on vacation you had not yet earned.

C. Alonzo

1. Charge Four

While President and a member of Local 439, you violated the IBT Constitution and breached your fiduciary duties to the Local and its members, brought reproach upon the IBT and embezzled in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1)(2) and (3) of the IBT Constitution, *to wit*:

While the President of Local 439, as described above, you breached your fiduciary duties and embezzled approximately \$21,478 from the Local when you knowingly caused the Local to pay a business agent upon retirement \$15,928 in payments the agent was not entitled to; caused the Local to pay approximately \$3,808 for Local area meals without a union purpose; and caused the Local to pay \$1,741 in additional personal charges.