

TO: James P. Hoffa, General President
FROM: Joseph E. diGenova, Independent Investigations Officer
DATE: October 31, 2016
RE: Proposed Charge Recommendation
Ken Hall, General Secretary-Treasurer

I. RECOMMENDATION

Pursuant to Paragraphs 30 and 31 of the Final Agreement and Order (“Order”), the Independent Investigations Officer (“IIO”) recommends to the General President that a charge be filed against Ken Hall (“Hall”), the General Secretary-Treasurer, for bringing reproach upon the IBT and violating its and his legal obligations by engaging in conduct that violated the permanent injunction entered in *United States v. International Brotherhood of Teamsters*, 88 Civ. 4486 (S.D.N.Y.). (Ex. 1 at 16-17) While an IBT officer, Hall obstructed and otherwise interfered with work of the IIO, a person appointed to effectuate the terms of the Order, as described in the below report.

II. JURISDICTION

Pursuant to ¶32 of the Order, the IIO designates this matter as in the original jurisdiction of the General President. (Ex. 1 at 17) The General President will promptly take action that is appropriate in the circumstances and shall, within ninety (90) days of the referral, file with the Independent Review Officer (“IRO”) written findings setting forth the specific action taken and the reason for the action. (Ex. 1 at 17)

III. INVESTIGATIVE FINDINGS

A. Ken Hall

Ken Hall is the International General Secretary-Treasurer. He has held that office since 2012. (Ex. 38) He is also the principal officer of Local 175, in South Charleston, West Virginia. (Ex. 40) He has been an IBT member since 1976. (Ex. 38) His salary in 2015 from the IBT was \$209,957. (Ex. 39)

B. The IIO's Power to Examine Union Documents Under The Final Agreement and Order

The Order provided in pertinent part in ¶30, that the IIO “shall exercise such investigative and disciplinary authority as previously exercised by the IRB, as set forth in the Consent Decree and the rules and procedures governing the Independent Disciplinary Officers.” (Ex. 1 at 16) The IIO also has the same investigative powers that the General President, General Secretary-Treasurer and General Executive Board possess under the IBT Constitution. (Ex. 1 at 16) Judge Edelstein, in discussing the scope of the IRB’s investigatory powers, held that the IRB’s powers to investigate possible wrongdoing in the union were unlimited like those of the General President’s. *United States v. IBT*, 803 F. Supp. 761, 791-92 (S.D.N.Y. 1992), *aff’d in relevant part*, 998 F.2d 1101 (2d Cir. 1993). Consequently, the IIO’s power to investigate is also unlimited. Obviously, the General Secretary-Treasurer and General President may review any union record they deem necessary to determine if an officer or employee engaged in prohibited conduct. The IIO has the same rights to review union records he deems necessary in the performance of his duties as the General President, General Secretary-Treasurer and the IRB had. (Ex. 1 at 16-17) The Order did not provide any right to the General Secretary-Treasurer to block the IIO from exercising his power to examine union records the IIO deemed necessary to review. This is what Hall has done in

connection with investigations the IIO is conducting into his conduct and that of other high ranking Teamster officials and employees. A member's intentional failure to provide to the IRB and the Investigations Officer information requested under the Consent Order was an obstructive act subject to discipline. *E.g. United States v. International Brotherhood of Teamsters [Calagna]*, 1991 U.S. Dist. LEXIS 11256 *8-9 (S.D.N.Y. 1991) *United States v. International Brotherhood of Teamsters [Hickey]*, 945 F. Supp. 96 (S.D.N.Y. 1996). Hall engaged in the same obstructive conduct when he refused to provide to the IIO, as he was obligated to do, properly demanded information in the IBT's possession. In doing so, he has hindered and obstructed the IIO in his performance of his duties under the Order in violation of the permanent injunction forbidding all IBT officers, members and agents from engaging in obstructive conduct.

In addition to the investigative power of the IIO described above, the applicable Rule the parties adopted and incorporated into the Order unambiguously provided:

The Independent Investigation Officer's investigatory authority shall include, but not be limited to, the authority: a) To cause the audit or examination of the books of the IBT or any affiliated IBT body at any time to the extent that the Independent Investigations Officer may determine necessary.

(Ex. 3 at 3 (Rule B(2)(a) (emphasis added))

It was not within the power of the union or any of its officers to shield IBT records from the IIO's review once notified of his decision to examine them. (Ex. 3 at 3 (Rule B(2)(a)), *United States v. International Brotherhood of Teamsters*, 735 F. Supp. 519 (S.D.N.Y. 1990) Despite this, General Secretary-Treasurer Hall intentionally failed to comply as required with two IIO notices of examination he received over six months ago.

C. The IIO Examination Notices and Hall's Interference with the IIO's Work

On March 4, 2016, the IIO sent IBT General Secretary-Treasurer Hall a notice for documents in the union's possession to be produced for his examination. (Ex. 5) These were for records in the IBT email system. (Ex. 5) These documents included emails of William C. Smith, III ("Smith"), Executive Assistant to the General President, and Nicole Brener-Schmitz ("Brener-Schmitz"), Political Director, for the period January 1, 2013 through the date of service. (Ex. 5) In addition, Hall's emails for the period from March 1, 2013 through June 30, 2013, and from May 1, 2014 through June 30, 2014, were to be provided to the IIO for examination. (Ex. 5) In lieu of the IIO examining the records on the IBT's premises, the union was allowed to provide copies. (Ex. 5) On July 13, 2016, the IIO instructed Hall, after he had delayed for months the production of the records the IIO notified him were to be examined, that his production needed to be completed by July 26. (Ex. 24) At a meeting on July 20, with Hall's agents at their request, the IIO extended the time for compliance until September 6, in light of their representations that Hall would stop obstructing and comply fully. (Ex. 27)

On March 11, 2016, the IIO sent IBT General Secretary-Treasurer Hall another notice of examination of union records. (Ex. 6) The records to be produced for examination were the emails of John Slatery ("Slatery"), Benefits Department Director, for the period June 30, 2014 to the date of service. (Ex. 6)¹ As with the March 4 examination notice, in lieu of a physical onsite

¹ The IRB had earlier instructed Hall to produce for its examination Slatery emails for the period when he was heavily involved in the bidding by OptumRX for IBT VEBA Trust contracts in 2013. (Exs. 33, 67) Hall's agent represented that the relevant emails were deleted from Slatery's account before it searched for the IRB request. (Exs. 35, 36) According to the IBT IT Director, there was no way to determine the date of the deletions or determine who made the deletions. (Ex. 43 at 69-75) The IBT IT Director testified that individuals' emails on the IBT system were not automatically deleted. (Ex. 43 at 40-41, 73-78) Someone had to intentionally delete them. Pursuant to the March 11 notice, Hall was also to produce a report generated from the IBT's system showing when emails were deleted from Slatery's account. (Ex. 6) The IBT IT Director testified the system was not capable of providing such a report. (Ex. 43 at 69-70) As a consequence, the failure to provide that report is not part of Hall's obstructive conduct.

examination of the records, Hall was allowed to produce copies of the documents to be examined. (Ex. 6) After being given several adjournments, Hall's lengthy failure to comply continued. (Exs. 13, 18, 22, 24, 27) On July 13, 2016, the IIO made an additional accommodation to Hall to allow him to produce the required records for examination by July 26. (Ex. 24) At a meeting on July 20 that Hall's agents had requested with the IIO, the IIO extended the time for Hall to comply with the March 11 notice until September 6. (Ex. 27)

As of October 30, 2016, Hall, in direct contravention of the Order, has failed to provide the IIO with all the IBT documents the IIO informed Hall that he had deemed necessary to examine. Hall was unambiguously legally obligated to provide those records to the IIO. Order at ¶ 30; Rule B (2)(a) (Ex. 1 at 16-17; Ex. 3 at 3) Other than the IIO's determination the documents requested were necessary for him to examine, there were no other limits on what the IIO may examine. Rule B(2)(a); *United States v. International Brotherhood of Teamsters*, *supra*, 735 F. Supp. 519; *United States v. IBT*, *supra*, 803 F. Supp. at 791-792. Indeed, the IIO has the same unlimited investigative powers as the General President, the General Secretary-Treasurer and the General Executive Board. (Ex. 1 at 16-17) In frivolous attempts to justify Hall's failure to comply as required, Hall through his agents invoked inapplicable broad reasons for shielding thousands of union records from the IIO's review, despite repeated IIO demands to produce them. (Exs. 7, 8, 10, 15, 16, 20, 23, 24, 29-31) For example, Hall asserted, *inter alia*, through his agents that the union documents he was refusing to allow the IIO to examine were not relevant to matters the IIO was investigating or were personal. (Exs. 7, 29-31)² None were acceptable grounds for not complying with the IIO's

² The IIO had not informed Hall or the union of the full details of what he was investigating and the substantial evidence of misconduct in his possession that prompted it. The IIO was under no obligation to inform the IBT of the scope of matters he was investigating. See, *United States v. IBT*, *supra*, 735 F. Supp. at 521. Allowing the union officers under investigation to determine what was relevant to the IIO's investigation would

instructions to Hall to produce records in the union's possession the IIO deemed necessary for examination. The requested documents were on the IBT's email system and the result of employees' use of that system. They were responsive to the IIO's March notices Hall received. His failure to produce them was in violation of his obligations under the Order.

Once the IIO notified Hall that he deemed the records called for in his requests necessary to be examined, Hall's obligation to produce was explicit in the Rule. (Ex. 3 at 3 (Rule B(2)(a)); See, *United States v. IBT*, supra, 735 F. Supp. 519.³ Hall deliberately failed to meet his unambiguous obligation under the Order. The General Secretary-Treasurer's intentional failure to produce for the IIO's examination all documents covered under the examination notices evidenced both his intent to obstruct the IIO's work and that he has obstructed it.⁴ Hall had no power to select which union documents he would allow the IIO to review. Such a right would completely undermine the Order's establishment of an Independent Investigations Officer. (Ex. 1 at 14) It would make the IIO no more than a tool of any incumbent administration limited to investigate only what it would allow him to and would give the administration the power to avoid IIO investigation of allegations of misconduct by its members. That this obstruction occurred when Hall and his agents knew the IIO was investigating the conduct of current high ranking Teamster

totally destroy the independence of the IIO from any current IBT administration which independence the Order mandates. (Ex. 1 at 14, 16, 20)

³ Moreover, as Rule B(2)(a) indicated, the IIO's powers were broader than any it explicitly stated. (Ex. 3 at 3)

⁴ From conversations with the IIO and his staff, applications for subpoenas the IRB and IIO filed with the court, charge reports and IRB and IIO document examination notices served on Hall, he and his agents were aware of some of the areas of the IIO's inquiries. (See for example, Exs. 33, 60, 61, 6, 85, 86, 87)

officers, fund trustees and union employees, including Hall, underscored the seriousness of Hall's hindering the IIO's work under the Order.⁵

D. Hall Acted in Violation of the Permanent Injunction in Shielding IBT Records from the IIO's Examination

In addition to the plain language of the Order and of Rule B(2)(a), the history behind the IIO's power to examine union records showed that the Secretary-Treasurer's current refusal to produce all records demanded for the IIO's examination, after being notified of the IIO's intent to examine them, was an intentional decision Hall made to violate the injunction by not complying with the Order and the Rules that bound him and the union. (Ex. 3 at 3) As a consequence, not only did he violate the permanent injunction that applied to him but he also caused the IBT to violate its legal obligations.

1. The Consent Decree –The Court Appointed Officers

The Consent Decree provided in Section F.12C(i)(a): "The Investigations Officer shall have the right: a) To examine books and records of the IBT and its affiliates, provided the entity to be examined receives three (3) business days advance notice in writing, and said entity has the right to have its representatives present during said examination." (Ex. 2 at 12) In an early stage of the Consent Order, the IBT refused to provide the Investigations Officer copies of records that were to be examined because the Consent Order did not make that an explicit obligation. On January 30, 1990, the District Court signed an order compelling the IBT to show cause why it should not be required to provide copies of IBT records to the Investigations Officer. United States

⁵ As to all matters the IIO represents are under investigation and for which charges have not yet been recommended, he has made no determination that the evidence would support any charge. The IIO is in the process of investigating. In deliberately keeping documents from him, Hall has hindered the IIO's ability to gather evidence on which to make any determinations.

v. IBT, supra, 803 F. Supp. at 772. The court stated in the order “that the ‘ability to obtain copies... is a reasonable and necessary incident to [the Investigations Officer’s] power under the Consent Order.’” *United States v. IBT, supra*, 803 F. Supp. at 772. The Consent Order placed no restriction on the union records that the Court appointed officer could examine. The Order and the Court recognized that such Investigations Officer examinations were akin to audits. The union subsequently complied and provided copies. Until Hall’s refusal here, the IBT had previously appeared to comply with all notices to examine its documents. (Ex. 63) Allowing the IBT, an audited party, to select what requested records the auditor will be allowed to review as Hall did here, makes the process a sham, shelters that party from investigation into possible misconduct and strips the IIO of the independence from the union administration for his investigations the Order provides.

Judge Edelstein found that earlier IBT refusal to provide copies of records to be examined to be an act taken to obstruct the Consent Order officers’ work. *Id.* at 769, 772, 785-788. Here, Hall’s misconduct indisputably obstructed the IIO’s efforts. Hall’s failure to allow the examination of union records that the IIO selected for review was conduct that inescapably hindered the IIO’s work in shielding from his review documents related to the conduct of high ranking IBT officials and employees he was investigating. Hall’s activities were designed to interfere with the IIO’s work under the Order. Among other things, Hall, a Trustee on a fund whose transactions he knew the IIO was reviewing, blocked the IIO’s examination of records relating to suspect transactions of that Trust. This action to derail investigations into his and other senior IBT officers’ conduct underscored the gravity of his refusal to comply. The scope of the IIO’s investigation was not fully known to Hall but his conduct in improperly denying the IIO access to records in areas known to him as being investigated evidenced a deep contempt of the

process the Order put into place. Apparently, he was driven into his violative conduct by his serious concern over what misconduct of his and other IBT officers and employees an examination of the records he refused to allow the IIO to review would evidence. As a result, for the first time in over two decades, an IBT official refused to comply with his unambiguous obligation to produce records a Consent Decree Officer deemed necessary to review. (Ex. 63)

2. Independent Review Board

The broad power to examine union records continued with the Independent Review Board. Section G (b) of the Consent Decree provided: “The Independent Review Board shall exercise such investigative authority as the General President and the General Secretary-Treasurer are presently authorized and empowered to exercise pursuant to the IBT Constitution, as well as any and all applicable provisions of law.” (Ex. 2 at 19) Judge Edelstein found under the IBT Constitution that the General President’s investigative power was unlimited. *United States v. IBT, supra*, 803 F. Supp. at 791-792. Moreover, the District Court and the Second Circuit approved the rules for the IRB which included the IRB’s explicit power to examine union records it selected. *United States v. IBT, supra*, 803 F. Supp. 761, *aff’d in relevant part*, 998 F.2d 1101 (2d Cir. 1993). The IRB’s Rule H3(a) stated:

The IRB’s authority shall include, but not be limited to, the authority:

- (a) To cause the audit or examination of the books of the IBT or any affiliated IBT body at any time to the extent that the IRB may determine necessary.

(Ex. 64 at 8) There were no union rights to resist IRB record examinations. Judge Edelstein noted in upholding the investigative power of the IRB under its Rules:

The Consent Decree, the 1991 IBT Constitution, and the Rules expressly recognize that: “The [IRB] shall exercise such investigative authority as the General President and the General Secretary-Treasurer are presently authorized and empowered to exercise pursuant to the IBT Constitution, as well as any and all applicable provisions of law.” Consent Decree, § G(b); 1991 IBT Constitution, Art. XIX, § 14(b)(3); Exhibit A, Rule H(1). The IBT Constitution grants the General President extraordinary disciplinary authority to supervise and investigate matters implicating union affairs. Article VI, Section 1(b) of the 1991 IBT Constitution provides that the General President “shall have general supervision over the affairs of the Union.” 1991 IBT Constitution, Art. VI, § 1(b).

No provision of the IBT Constitution limits this power. In fact, the IBT Constitution does not enumerate the investigative powers of either the General President or the General Secretary-Treasurer. Accordingly, the IRB’s investigatory power easily encompasses the powers specifically detailed in these Rules, including taking sworn in-person depositions, auditing or examining books of any IBT-affiliated entity, receiving notice of and having the right to attend all meetings of any IBT-affiliated entity, and establishing a toll-free telephone service to receive reports of corruption. Exhibit A, Rule H (2). Of course, given the General President’s and the General Secretary-Treasurer’s sweeping investigatory and disciplinary authority, the list of IRB powers specifically enumerated in these Rules is not exhaustive.

Id. at 791-792.

As the District Court, affirmed by the Second Circuit, held: “It is clear, however, that the powers specifically enumerated in these Rules falls comfortably within the scope of authority the 1991 IBT Constitution grants the General President and General Secretary-Treasurer.” *Id.* at 792.

3. Independent Investigations Officer

The IIO has the same power the IRB possessed to examine union records he determined were necessary to be reviewed. (Ex. 1 at 16) Paragraph 30 of the Court approved Order specifically granted the IIO the investigative authority of the IRB as well as the investigative powers of the General President, General Secretary-Treasurer and General Executive Board. (Ex. 1 at 16-17) The Rules governing the IIO were attached as an exhibit to the Order and incorporated into it. Rule B (2) (a) provided:

The Independent Investigation Officer's investigatory authority shall include, but not be limited to, the authority:

- a) To cause the audit or examination of the books of the IBT or any affiliated IBT body at any time to the extent that the Independent Investigations Officer may determine necessary.

(Ex. 3 at 3)

Hall and his agents were enjoined from: "obstructing, or otherwise interfering, directly or indirectly, with the work of any person appointed to effectuate the terms of this Final Order," (Ex. 1 at 3) Given the IIO's unambiguous authority under the Order and the Rules to examine IBT records he deemed necessary, the Secretary-Treasurer's and his agents' refusal to provide the records the IIO determined were necessary was an intentional violation of the permanent injunction in the Order the IBT entered into and pledged to comply with. (Ex. 1 at 3) The injunction covered Hall and his agents. (Ex. 1 at 3) Hall violated the injunction and caused the IBT to violate its legal obligations by obstructing the work of the IIO. Despite being given repeated opportunities to cure his misconduct, Hall has steadfastly refused to meet his obligations, proving his obstruction was intentional. (Exs. 22, 24, 26, 27, 32) Early in his obstructive efforts, the IIO notified Hall that his unjustified defiance of his legal obligations could result in a recommendation of a charge against him. (Ex. 9) Despite the warning, he continued to violate the injunction and interfered and hindered the IIO's work.

Indeed, throughout the process, Hall's failure to comply was permeated with evidence of bad faith. For example, after Hall through his agents initially raised concerns about complying with the examination notices, the IIO offered them an opportunity to discuss with his staff any suggestions that they may have had to limit the scope of the requests without interfering with the on-going IIO's investigations. (Exs. 4, 14, 16, 24, 26, 27) The IIO provided him through his agents

with examples of limitations that the IRB had agreed to for prior examination notices. (Exs. 9, 14) He informed Hall's agents that if an agreement could not be reached with his staff, he would be available to discuss the matter further. (Exs. 14, 4, 27) Flaunting his bad faith, Hall and his agents spurned that offer. Instead, they engaged in misconduct through unilaterally refusing to allow the IIO to review documents covered under the examination notices. The Secretary-Treasurer's rejection of the IIO's early offer to discuss in good faith with his staff possible limitations on the documents for examinations is persuasive evidence of the General Secretary-Treasurer's bad faith in concealing documents from the IIO. It evidenced he recognized he could not provide valid reasons for not complying with his obligation to allow the IIO to examine the records he deemed necessary. It evidenced his intent to hinder the IIO in the exercise of his duties. (Ex. 1 at 16)

Hall's failure to provide specific reasons for his shielding specific documents from review continued throughout the process. (Exs. 16, 18, 24, 27, 29-31) The inescapable conclusion was that the Secretary-Treasurer engaged in conduct to prevent the IIO from examining, among other things, the relationship among high ranking Teamsters, including himself and other fund trustees, and a facilitator for a vendor who received large contracts from Teamster funds. (Exs. 62, 54-55, 58-59)⁶ Some of these IBT officials frequently socialized with the facilitator, including on two European golf trips, one shortly after the contracts were awarded in 2013 to OptumRx. (Exs. 65, 67, Ex. 66 at 57, 150, 168) The vendor rewarded the facilitator for his services in assisting it to gain IBT business. (Ex. 44 at 28) As the vendor's business with the IBT increased, the facilitator's compensation from the vendor increased. (Ex. 44 at 28) IBT officers' and employees' stewardship over union resources and their relationship with the facilitator, who provided no service other than

⁶ The facilitator was Charles Bertucio. (Ex. 62)

access to IBT decision makers, were matters within the IIO's investigative authority. (Ex. 1 at 16-17)

4. Examples of Documents the Union Failed to Produce for Examination that Further Evidence Hall's Intent to Obstruct the IIO's Performance of his Duties

Over six months after receiving the notices, Hall continued to prevent the IIO from examining all requested emails for the named individuals within the date ranges given. (Exs. 29-31) The broad reasons Hall and his agents proffered in September for defying the IIO's examination notices and not allowing him to examine emails he deemed necessary included "IBT's negotiation and administration of contracts with third party employers", "personnel decisions made by the General Executive Board following deliberative process" and "personal and highly sensitive matters." (Exs. 29-31) Any requested document on the IBT email system in the particular accounts within the date ranges set forth in the notice was responsive to the IIO's demand as Hall would have known from reading the Rule. In any event, the IIO made him and his agents aware of it. (Ex. 27) Yet, Hall and his agents refused to allow the IIO to examine large numbers of emails they described falsely as "non-responsive" on logs of documents that Hall was preventing the IIO from examining. (Exs. 49-52) For every one of these documents Hall willfully shielded from IIO review, he violated the injunction against interfering with the IIO's work. (Ex. 1 at 16)

For example, Hall refused to allow the IIO to examine emails related to IBT employers from his and Smith's IBT email accounts that were demanded under the March 4 notice. (Exs. 29-31) Hall did this when he was fully aware that the IIO was investigating relationships of high ranking IBT officials with employers. Hall knew from evidence discussed in the Aloise report that Aloise, an IBT International Vice President and the Director of two IBT divisions, was accused of almost serial solicitation of favors from IBT employers in 2013, sometimes in the midst of active

contract negotiations. (Ex. 60 at 36-50) That report also showed that Smith appeared to have received a thing of value from one of the IBT employers Aloise solicited on his behalf. (Ex. 60 at 29-36) Hall's preventing the IIO from examining employer related emails raised serious hurdles to the IIO's ability to perform his duties under the Order, and to determine the extent of this illegal practice among top level officers and staff. (Ex. 1 at 16)

Moreover, based on the IIO's knowledge from other sources and information in other documents, it appeared that included in the thousands of emails Hall was refusing to allow the IIO to examine were emails and attachments related to other subjects the union and Hall knew the IIO was investigating. These included emails relating to the bidding process in 2013 for the contracts for providing Pharmacy Benefits Management ("PBM") services for the IBT VEBA trust awarded to OptumRx which Charles Bertucio ("Bertucio") represented, documents relating to IBT officers' and employees' relationships with Bertucio, documents relating to Brener-Schmitz's use of union resources, documents relating to what appeared to be special treatment she received from high level IBT officials despite her repeated serious violations of IBT policies designed to protect IBT assets, and documents that evidenced IBT officers' and employees' relationships with vendors and employers. (Exs. 53-59) Hall made a deliberate effort in violation of the Order to curtail the IIO's ability to investigate high ranking officers' and employees' conduct. (Ex. 1 at 16) It evidenced his bad faith behind his failures to comply. Some of the shielded documents directly concerned a trust for which Hall was one of the Trustees and for which the Trustees' actions in awarding contracts worth millions of dollars Hall knew were under investigation. (Exs. 54, 62)

Throughout, Hall and his agents were enjoined from interfering with the work of the IIO, a person appointed to effectuate the terms of the Order. (Ex. 1 at 3, 14) The Final Agreement and Order in Paragraph 2(d) enjoined:

All current and future members, officers, agents, representatives, employees, and persons holding positions of trust in the IBT ... from: . . .

(D) obstructing, or otherwise interfering, directly or indirectly, with the work of any person appointed to effectuate the terms of this Final Order;

(Ex. 1 at 3) Despite an explicit unambiguous obligation to allow the IIO to examine records he deemed necessary, Hall and his agents engaged in a prolonged violative campaign that still continues to avoid complying with his obligation under the Order.

In a letter dated March 30, 2016, regarding the March 4 notice, the IIO advised Hall's agents that "if the documents are not produced, a charge for failing to cooperate with the Independent Investigations Officer may be recommended against General Secretary-Treasurer Ken Hall to whom the document request was addressed." (Ex. 9) On June 28, 2016, again, Hall was alerted in a letter from the IIO that he and the IBT had until July 5 to produce all documents responsive to the March 4 notice and that regarding the March 11 notice, "you and the IBT are not in compliance with the obligation imposed on you under the Order and Rules." (Ex. 22) On July 27, the IIO again informed Hall's agents of the "noncompliance with the Final Order." (Ex. 27)

E. Hall's Last Document Productions

In response to the IIO's March 4 and March 11 examination notices, by letters dated September 2, 7 and 9, 2016, from Hall's counsel, the IIO received documents and two logs of documents, which purportedly listed the IBT records Hall was refusing to allow the IIO to examine, for each of the four individuals whose emails he was obligated to produce for IIO examination. (Exs. 29-31)⁷ One log was for documents allegedly covered by claims of intentionally unidentified

⁷ The examination notices required emails to be produced for four IBT employees: General Secretary-Treasurer Ken Hall, Executive Assistant to the General President William C. Smith, III, Benefits Department

privileges; the other log was described as allegedly “Withheld Non-Responsive” and listed more documents Hall was shielding from the IIO’s review. (Exs. 5, 6, 29-31, 45-52)

As explained above, there was no basis for shielding those documents falsely deemed “non-responsive” from the IIO’s review because the IIO had deemed them all necessary to be examined. Hall was obligated to produce all documents to the “extent” the IIO instructed. Rule B(2)(a) (Ex. 3 at 3) All these documents were within the IIO’s examination notices. (Exs. 5, 6) Hall and his agents were explicitly warned that their unilateral determinations of responsiveness did not permit Hall to block the IIO from reviewing those union documents. (Exs. 16, 18, 24, 27) As to the over 15,000 documents for which a privilege was asserted, Hall refused to identify what privilege he was asserting for any of the documents, evidencing his bad faith. (Exs. 45-48) He used overbroad and amorphous privilege claims to shield records from the IIO that he was required to provide.

In Hall’s September productions, despite the IIO repeatedly alerting him and his agents before the production that they could not continue to undermine the IIO’s work and prevent his examination of any documents within the examination notices, they defiantly continued to do so. (Exs. 24, 27, 28, 29-31) The March 4 and March 11 notices required the production of all documents for the four named individuals during specified time periods. (Exs. 5, 6) There were no subject matter limitations on the documents the IIO deemed necessary to examine pursuant to the notices. (Exs. 5, 6)⁸ What the IIO deemed necessary to examine, Hall was obligated to provide under the Rule. (Ex. 3 at 3) As an example of the warnings Hall was given, in an April 29

Director John Slatery and Political Director Nicole Brener-Schmitz. Hall’s productions for each individual are discussed below.

⁸ Since the March 4 and March 11 notices were issued, the IIO granted the IBT numerous extensions of time to comply with the notices. (Exs. 13, 14, 18, 22, 24, 27)

letter which described some defects in Hall's earlier productions in response to the March notices, the IIO advised Hall's counsel:

Your initial production unilaterally withheld material covered by requests. For example, "IBT Administration" is not an acceptable basis for withholding documents requested. On others, no reason for exclusion was given.

(Ex. 16)

By letter dated May 6, after citing the relevant provisions of the Order which gave the IIO authority to review IBT records, the IIO informed Hall and his agents that,

An audited party does not select what records the auditor reviews. The IBT must produce all responsive documents except those that are legally privileged. Any document withheld based upon a legal privilege should be identified on a log.

(Ex. 18)

Similarly, by letter dated July 13, IBT counsel and Hall were notified that,

The Final Agreement and Order provided no basis for the IBT and Mr. Hall to withhold documents. . . . Moreover, on the log of WC Smith's withheld documents, the IBT and Mr. Hall did not provide reasons for withholding any of 11,319 documents. In a final accommodation to Mr. Hall and the IBT, all withheld documents, with the exception of those covered by a legal privilege and those of Mr. Hall's emails previously identified as related to UPS negotiations, must be produced in un-redacted form by July 26. All documents withheld based upon a legally recognized privilege must be clearly described on a log including the basis for the privilege claim and the necessary information to assess the claim's validity including the names of all who received it.

(Ex. 24)

In the IIO's July 27, 2016 letter sent after his July 20 meeting with Hall's attorneys, the IIO explicitly stated Hall's obligation to produce all responsive documents by September 6. (Ex. 27) In that letter, what documents were responsive was fully explained. (Ex. 27) Hall could have no claim of misunderstanding. The IIO wrote:

By “responsive documents” I mean “all documents answering the descriptions and time periods stated in the March 4 and March 11 Examination Notices,” except, as agreed previously, documents concerning the UPS negotiations, which need not be produced. Note, however, that as I stated at the meeting, our agreement was limited solely to the UPS contract and is not a basis for refusing to produce documents related to other contract negotiations.

(Ex. 27)

Neither Hall nor his agents ever contested the IIO’s statement of their obligation in that letter. Yet, despite the IIO’s explicit repeated written instructions, in Hall’s final production in September, Hall and his agents refused to allow the IIO to examine approximately 17,334 documents that were within the date ranges the IIO deemed necessary to examine. (Ex. 70) Hall blocked the IIO’s examination of those documents under a false claim the documents were non-responsive to the examination notices. (Exs. 29-31, 49-52, 70)⁹ Through this unjustified action, Hall and his agents acted to block the IIO’s investigations into the conduct of Hall and other senior IBT officers and employees. (Exs. 49-52, 57-59)

In addition, Hall continued to assert broad baseless grounds for the claims of non-responsiveness that he and his agents were previously expressly advised did not permit them to violate their obligations under the Order to allow the IIO to examine the documents. Hall and his agents were specifically informed in the IIO’s July 27 letter,

⁹ This figure does not include Hall documents related to UPS that the IIO agreed need not be produced. (Ex. 70) On its “non-responsive” logs the IBT did not identify any reason for withholding any of the documents. (Exs. 49-52) Accordingly, the number of Hall documents on the non-responsive log, less any documents that contained UPS in the subject or were to or from a UPS email, were included in the 17,334 withheld documents. (Ex. 70)

This 17,334 figure does not include the 15,278 additional documents Hall did not produce based upon some unnamed privilege. (Exs. 45-48, 70) The 15,278 number does not include documents on the Hall privilege log that appear to relate to UPS. (Ex. 70) As discussed below, there are also significant deficiencies in the privilege logs evidencing the use of baseless claims to block the IIO’s review of documents.

I view the IBT's production to date, which has invoked unilaterally proclaimed categories of exemption such as "contract negotiations" and "IBT administration" in withholding over 60 percent of the documents identified to be responsive, as noncompliance with the Final Order. It is my hope that you will rectify that by the new date.

(Ex. 27)

That hope was not met. Hall and his agents continued obstructing. Lawyer Viet Dinh's letters accompanying the September productions presented broad reasons that were not valid under the Order for not allowing the IIO to examine the documents he had deemed necessary to review. (Exs. 29-31) These included "documents pertaining to the IBT's legislative and political efforts", the "IBT's negotiation and administration of contracts with third-party employers", "documents of both a personal and extremely sensitive nature", "highly personal documents", "personnel decisions made by the General Executive Board following deliberative process" and "personal and highly sensitive matters". (Exs. 29-31)¹⁰ None of these excused Hall's failure to comply with his obligation to produce the documents the IIO deemed necessary for examination. As described

¹⁰ In IIO's July 27 letter, the IBT was advised that:

If there are specific non-privileged documents that you can identify as requiring special handling due to one of the concerns raised at our meeting, please identify them by Bates number and work with my staff to develop procedures for the documents to be reviewed in a way that respects the IBT's legitimate privacy concerns. I am happy to assist in these discussions if an impasse is reached.

(Ex. 27) Hall's agents never consulted with the IIO's staff as the IIO instructed but instead again, unilaterally shielded documents from the IIO's review. This is strong evidence of Hall's intent to interfere with the IIO's work. His bad faith throughout the process is encapsulated here. An inference should be drawn he failed to do so because he knew the shielding of the records was indefensible. United States v. Haggerty, 419 F.2d 1003, 1004-1005 (7th Cir. 1969) (inference of intent to hide transaction can be drawn from not having documents available for trustees to review the transaction). As detailed below, Hall's counsel stated in his September 2, 2016 letter which accompanied the Hall, Slatery and Brener-Schmitz productions, that Hall withheld "1,167 highly personal documents, that is, documents of both a personal and extremely sensitive nature." (Ex. 29) In his September 7 letter which accompanied the Smith production, IBT counsel stated that they would not allow the IIO to review emails on the IBT system created or received by IBT employees that they deemed concerned "personal and highly sensitive matters". (Ex. 30) No specific number was given for the Smith emails shielded on that basis. (Ex. 30) As described below, further evidencing his bad faith here, despite being asked to do so, Hall and his agents refused to identify the documents being shielded from IIO review on allegedly "personal" grounds. (Ex. 32)

below, Hall has continued in his violations of the injunction against interfering with the IIO's work despite the IIO extending him repeated opportunities to cure it.

Moreover, further showing Hall's deliberate violations of his obligations under the injunction, Hall willfully disregarded the IIO's limited agreement with his agents made at the IBT General Counsel's request that Hall be allowed to withhold Hall's emails related to UPS negotiations from the production. (Ex. 27) Despite that limited concession and in defiance of the IIO's clear instructions, Hall failed to allow the IIO to examine documents related to eleven other employers. (Exs. 29-30) Indeed, he did not limit the shielding to his emails but expanded it to block IIO review of Smith's as well. (Exs. 30-31) In doing this, he improperly interfered with the IIO's work. Hall and his agents twice were advised in writing that the IIO's agreement for Hall not to produce was specifically limited to Hall's emails regarding UPS negotiations. (Exs. 26, 27)

In a July 19 letter to Hall's counsel Dinh, the IIO stated:

Besides numerous adjournments, another accommodation I agreed to at the IBT General Counsel's request was that Hall's emails involving the UPS negotiations did not need to be produced based on the representation he was heavily involved in that contract negotiation during the periods covered in the examination notice. Your claim in your July 15 letter that the specific agreement as to UPS, reached on a specific factual representation from the union, extended to other employers is bizarre and false. What you are ignoring is that agreements have to be reached by both sides. It is another regrettable example of the union withholding responsive documents unilaterally.

(Ex. 26)

The IIO's July 27 letter, which memorialized the discussions at the July 20 meeting, explicitly reiterated that the agreement was limited solely to UPS. (Ex. 27) The July 27 letter stated, "Note, however, that as I stated at the meeting, our agreement was limited solely to the UPS contract and is not a basis for refusing to produce documents related to other contract negotiations."

(Ex. 27) Hall and his agents did not contradict the July 27 letter which memorialized the July 20 discussions. Under these circumstances, after meeting with the IIO at their request to discuss their obligations, their silence was acceptance of the IIO's memorialization. In any event, the July 27 letter stated the IIO's instruction to Hall as of that date with respect to his obligation to produce the documents the IIO had directed to be produced. (Ex. 27) Yet in direct contravention of the notices of examinations, the July 19 letter, the July 20 discussions and the July 27 letter, in September and until that date, Hall continued to shield from IIO examination emails regarding the "IBT's negotiation and administration of contracts" with eleven employers in addition to UPS in violation of the injunction. (Exs. 29-30)¹¹ Furthermore, Hall also refused to allow the IIO to review Smith's emails with four of these eleven employers. (Ex. 30) As Hall and his agents knew, the relationships of high ranking IBT officers and employees with Teamster employers were under IIO investigation. Indeed, Hall knew from the Aloise report that there was credible evidence that Smith, whose records he was shielding from examination, had received a thing of value from an IBT employer that Aloise solicited on Smith's behalf during contract negotiations. (Ex. 60 at 29-36) From the same report, Hall and his agents knew there was substantial evidence that Aloise, an International Officer and Director of two IBT divisions, solicited things of value from multiple

¹¹ Over six weeks after the IIO had sent Dinh a letter that summarized what the IIO had agreed to at the July 20 meeting (Ex. 27), in Dinh's September 2 letter, he wrote: "During the July 20 meeting, you agreed that the IBT could provide a list of companies with whom Mr. Hall negotiates and administers contracts, such that you could then inform the IBT "which ones you want and which ones you don't want." (Ex. 29) That claim made without any reference to the IIO's explicit instructions in his July 27 letter was part of Hall's intentional ignoring of his known obligations. This self-serving claim to justify obstruction was made substantially after Dinh had received the IIO's July 27 letter that memorialized the July 20 meeting and to which Dinh did not indicate any contemporaneous disagreement. Moreover that letter explicitly stated, whatever Dinh may have previously believed was discussed, what Hall's production obligations were. Once again, Hall's agents furthered his obstruction of the IIO's investigations through ignoring explained, known obligations.

According to counsel's September 2 and September 7 letters, the additional eleven employers for which the IBT withheld documents were: Republic Waste, Cummins Engines, Sysco, Rite Aid, YRCW, ABF, Kroger, USF Reddaway, Anheuser Bush/InBev, Red Cross and Republic Air. (Exs. 29-31)

employers. (Ex. 60 at 27-28, 36-41) In addition, that the broader practices within the IBT of receiving payments and gifts from employers, vendors and others doing business generally with the IBT were matters under the IIO's investigation were evident to Hall from document requests he had received from the IIO. (Exs. 85, 87, 99) Furthermore, Smith ran the James R. Hoffa Memorial Scholarship Fund which received substantial contributions from employers, including Bertucio, and which, according to Aloise, engaged in heavy-handed conduct in soliciting contributions. (Ex. 69 at 34, 75-77; Ex. 71 at 138-140; Ex. 98)

Hall and his agents were on notice they could not block the IIO from reviewing documents he had determined were necessary to review. Their continuing to do so was in blatant defiance of their obligation under the injunction not to hinder his work. This misconduct evidenced Hall's bad faith which he further evidenced by failing to provide any reason for not producing particular documents. Any document within the notices that Hall refused to allow the IIO to examine was a *prima facie* violation of his obligation. His obstruction had been ongoing for many months. After the IIO received the current logs of what Hall had falsely labeled "non-responsive" with no reasons for this description for any document, on September 9, the IIO sent the following email to Hall's counsel:

for the "non-responsive" logs included with the 9/2 production, I didn't see any column or field describing the reason (or "category", to use the term in Mr. Dinh's September 2 letter) each document was deemed non-responsive. Was the omission deliberate? I gather the IBT has already made the determination for each document and noted it in Relativity as part of its review process, since Mr. Dinh provided exact figures for each category in his letter ("There are 13,176 ... documents [pertaining to the IBT's legislative and political efforts]"; "there are 184 documents [pertaining to the IBT's negotiation and administration of contracts]", there are "1,167 highly personal documents".) It would obviously "enable [us] to inquire further about" the withheld documents if we know why the document was withheld.

Is the IBT taking the position that it is unwilling to provide the category-“legislative and political”, contract negotiation (including which of the 10 contracts Mr. Dinh listed), or “highly personal”—for each document in the log? Or is the omission from the logs just a quirk of how Relativity generated them? (Or, third possibility, were the categories in fact already provided, and I just failed to notice?)

(Ex. 32)

Confirming their client’s obstruction was intentional, on September 14, 2016, Hall’s counsel replied:

All the logs that have now been provided include the sender, recipient(s), date sent, and subject for every listed email, which should constitute ample information for the Independent Investigations Officer to identify any further individual documents he believes should be produced.

(Ex. 32)

Hall through his agent ignored his unambiguous legal obligation to produce what the IIO demanded to examine. Rule B(2)(a) (Ex. 3 at 3) Instead, the agent engaged in Orwellian double speak on Hall’s behalf, attempting to improperly impose an obstructive hurdle to the IIO’s ability under the Order and Rule to examine union documents. The IIO did not have any obligation to ferret out particular documents of interest that Hall had concealed in the thousands of documents he improperly refused to allow the IIO to examine. Hall’s obligation to allow the IIO to examine those documents was explicit. Hall and his agents were in *prima facie* violation of their obligations. They further evidenced their lack of good faith by refusing to give reasons for their violative actions. Hall’s and his agent’s response did not address the issue raised in the September 9 email which was that no reason was given on the logs for their wrongful action in shielding documents which they were expressly required to allow be examined, which they misdescribed as “non-

responsive.” (Ex. 32) Evidently they could not proffer any reason for their violative actions that would pass any reasonable test.¹²

There was additional evidence of Hall’s intent to obstruct in his broad assertions of undefined privileges used to shield documents from the IIO’s review. The IIO’s July 27 letter to Hall’s counsel specifically stated, “I also expect . . . a detailed privilege log containing, for each document withheld, the information required by S.D.N.Y. Local Rule 26.2(a).” (Ex. 27)¹³ The IIO had previously informed Hall only documents for which there was a valid claim of a legally recognized privilege could be withheld. (Exs. 18, 24, 27) Without even identifying what particular privilege he was asserting covered any document, Hall and his agents shielded 15,278 documents from IIO review under the amorphous and intentionally uninformative label of “privileged.” (Exs. 45-48, 70) As described below, the privilege logs provided failed to comply with S.D.N.Y. Local Rule 26.2(a) by, among other things, failing to identify what privilege was being asserted and, in many instances, not describing the general subject matter of the document. (Exs. 45-48) This was but another obvious action by Hall to obstruct and hinder the work of the IIO.

Since the IIO has the same power to review IBT documents as the General President and General Secretary Treasurer, the IIO may examine, as they could, privileged documents. *Cf. Cobell*

¹² Moreover, the response was factually misleading since “every listed email” did not include the subject as asserted. For example, the Smith non-responsive log contained the following in the “email subject” column for some emails: “RE:”, “Fwd: fyi”, “Fwd: Attached Image”, “Re: RE:” and “A couple of things.” (Ex. 58) Moreover, as all email users know, often subject lines provide little information about actual messages. The IIO would have been irresponsible in accepting the subjects under investigation determining to limit what documents he could review.

¹³ The IIO’s July 27 letter to Hall’s counsel quoted the Local Rule which included the requirements that, “The person asserting the privilege shall identify the nature of the privilege (including work product) which is being claimed. . .” and “[t]he following information shall be provided . . . [f]or documents: (i) the type of document, e.g. letter or memorandum; (ii) the general subject matter of the document; (iii) the date of the document; and (iv) the author of the document, the addressees of the document, and any other recipients, and, where not apparent, the relationship of the author, addressees, and recipients to each other.” (Ex. 27)

v. Norton, 213 F.R.D. 69, 74-75 (D.D.C. 2003) (pursuant to order which granted court appointed monitor “access to any Interior offices or employees to gather information necessary or proper to fulfill his duties”, monitor had access to privileged documents); *See, Commodity Future Trading Commission v. Weintraub*, 471 US 343, 356-358 (1985) (bankruptcy Trustee with same powers as corporate board can waive attorney client privilege); *See, In re China Medical Technologies*, 539 B.R. 643 (S.D.N.Y 2015). The IIO has refrained from exercising that power. (Ex. 27) Hall and his agents improperly used claims of unidentified privileges to shield numerous documents from the IIO as discussed below, evidencing the depth of their intent to obstruct. (Exs. 45-48, 53-56) The IIO, as a result, may be forced to change his policy because of Hall’s abuse of the courtesy extended the union and deem it necessary to examine privileged documents in the IBT’s possession.

The improper claims of unidentified privileges was a tactic Hall improperly used to prevent the IIO from examining IBT documents covered by his examination requests. (Exs. 45-48, 53-56) The IIO had to that point stated he would allow the IBT to withhold documents that were covered by a legally recognized privilege. (Exs. 18, 24, 27) A review of the privilege logs Hall produced showed they reflected many emails that did not list an attorney as the sender or recipient. For example, the Hall privilege log listed as not being produced a June 23, 2014 email from Hall’s Executive Secretary, Linda Benzer, to Hall with the subject: “FW: Hilton Hotels and Resorts Confirmation #3129323014.” (Exs. 56, 41) The subject did not suggest it was a privileged legal communication. No attorney was listed as the sender or the recipient. (Ex. 54) There was no indication what privilege was claimed. (Ex. 54) In another example, the Hall privilege log included a June 20, 2014 email from Hall to Vice President Kellie Shamblin at IBT Local 175 with the subject matter: “FWD: IRB Charge Against LU 710 Secretary-Treasurer Pat Flynn.” (Exs. 56, 42) Shamblin was not an attorney. No attorney was listed as the sender or recipient. An IRB report

was not a privileged document. Hall refused to state what privilege claim he was asserting to conceal this document from the IIO.

The privilege logs reflected other emails that were not produced that on the surface did not involve legal advice. For example, the Smith privilege log contained two emails dated January 2, 2013 at 15:00 and 18:43, respectively from Bradley Raymond, the General Counsel, to Smith with the subjects “Happy New Year” and “Re: Happy New Year.” (Ex. 54)¹⁴ The Smith privilege log also included at least four emails dated May 29 or May 30, 2013, with the subject “RE: Cheiron’s Final Report Recommending Optum Rx (the incumbent).” (Ex. 54) Cheiron was an actuarial advisor to the IBT. It was not providing legal advice. These emails were from Slatery, Smith and VEBA Trustees Rome Aloise and John Murphy. (Ex. 54) None of whom was acting as a lawyer for the IBT. No attorney was listed as a recipient. Hall refused to identify the privilege he alleged covered these documents. Hall was well aware that the 2013 contract bids on which Cheiron, an actuary which believed it had a special relationship with Hall, advised the IBT VEBA Trustees and which Hall as a Trustee approved, were under IIO investigation. (Exs. 62, 96)

The logs asserting unidentified privileges also reflected documents concerning communications with non-IBT employees that would defeat a claim of attorney-client privilege. (Exs. 45-48) For example, the Slatery privilege log included an April 24, 2015 email from Slatery to another IBT employee, a Cheiron employee and an outside consultant to the IBT’s VEBA Trust, with the subject “RE: Draft Agenda for 5/11 Meeting.” (Ex. 55) The subject suggested it was not a communication seeking or communicating legal advice. The inclusion of the Cheiron employee

¹⁴ If there is some legal advice hidden in the messages under those subject headings, it proves the emptiness of Hall’s claim the IIO should have been able to determine if IBT emails were related to his investigations merely based on the subject lines. (Ex. 32)

and an outside consultant provided evidence it was not privileged. Hall refused to inform the IIO what privilege he asserted for this IBT employee's communication with third parties. This was part of Hall's pattern of using frivolous privilege claims to hinder the IIO's investigations into senior IBT officials' conduct.

1. William C. Smith III Documents

Hall's production for Smith, the General President's Executive Assistant, further evidenced his intent to hinder the IIO's work. For Smith, Hall produced 8,548 documents and shielded 8,989 documents from the IIO's review. (Exs. 70, 45, 49)¹⁵ Of those Hall blocked the IIO from examining, he and his agents falsely asserted that 2,074 within the demanded date range were "non-responsive." (Exs. 70, 49) He also failed to produce 6,915 based upon claims of unidentified privileges. (Exs. 70, 45) Accordingly, Hall withheld 51.26%, of Smith's emails that the March 4 examination notice required to be produced without presenting any legitimate justification for these *prima facie* violations of the injunction despite having had six months to respond. (Exs. 70, 45, 49) As described above, the log of not-produced documents for Smith because of Hall's false claim they were "non-responsive" did not contain any reason for Hall's violative conduct in blocking IIO examination of any of these emails that the IIO had deemed necessary to examine.

¹⁵ In its September 9 letter, the IBT stated that it produced 8,644 documents for Smith. (Ex. 31) However, 96 documents, Bates 0000001 to 0003143, were not documents responsive to the March 4 document request which required the production of Smith's emails from January 1, 2013 to the present. (Exs. 5, 70, 76, 105) The 96 documents were Smith's phone records and expenses for 2014 which had been previously produced to the IIO in response to another document request. It is unclear why they were produced again with the emails. Accordingly, the IBT produced 8,548 documents responsive to the March 4 notice. (Ex. 70)

The IBT after the July 20 meeting was to produce on a rolling basis. (Ex. 27) It did not. (Ex. 28) It was to have produced all documents by September 6. (Ex. 27) The IBT's September 9 letter regarding Smith stated that, "... there are 49 documents that the IBT has not produced because of technological complications rendering them unreadable. The IBT is working to resolve this problem, but in the interest of time has elected not to delay the entire production on this basis." (Ex. 31) Hall had no right to "elect" to delay the production. Hall still has not provided the 49 documents nor has he informed the IIO that the documents cannot be produced in any form.

(Ex. 49)¹⁶ That was further evidence Hall acted in bad faith with the intent to obstruct the IIO's work. For example, the September 7 letter from Hall's agents stated broadly that Smith documents were being withheld because they concerned "personal and highly sensitive matters." (Ex. 30) As they knew, that was not an acceptable reason for not complying with the Court approved rule to produce documents in the IBT's email system. (Exs. 9, 18, 24, 27) As described above, further evidencing their efforts to hinder the IIO's work, Hall and his agents refused to identify which documents were being withheld on that basis that might justify their violations. (Exs. 32, 30) The broad assertions that documents were personal or sensitive were meaningless. Such labels were useless in determining if there were an iota of good faith behind Hall's *prima facie* violative conduct in not allowing these documents from the IBT email system to be examined. Indeed, a document reflecting acceptance of a bribe from an IBT vendor or employer could fall within a personal and highly sensitive claim. Such claims could also be made to block examination of a document showing a personal relationship between an IBT officer and an employee which allowed improper conduct to continue. If there were a particular personal document of concern, as the IIO had informed Hall and his agents in writing in July, they were to discuss it with the IIO's staff or they could have flagged it for the IIO's personal review. (Ex. 27) They spurned that offer, again evidencing they were not acting in good faith. Hall had no right to shield union documents from the IIO's review, even if he thought the contents were personal. As is obvious, evidence of personal relationships among the actors is of investigative value. It is often motivation for misconduct, such as ignoring wrongdoings of other officers and employees. Moreover, the volume

¹⁶ On September 9, the IBT produced only one log for Smith which appeared to include privileged and allegedly non-responsive documents. After the IBT was informed of this problem, on September 14, the IBT produced two logs for Smith, one for allegedly privileged documents and the other for allegedly non-responsive documents.

of Smith documents Hall prevented the IIO from examining evidenced the baselessness of his action.

Furthermore, Hall was knowingly shielding from review Smith documents related to the IIO's investigations Hall knew about. (Exs. 62, 54, 58) It was evident he did so to obstruct the IIO's work. Hall and the IBT knew the IIO was investigating the relationship of Bertucio with IBT officials including General President Hoffa, Smith and Hall. (Exs. 62, 99) Yet, Hall withheld two emails from IBT employee Jessica Eby to Smith, dated June 22, 2015, with the subjects "Charlie Bertucio Payout" and "RE: Charlie Bertucio Payout." (Ex. 58) These emails within the demanded time period were on the "non-responsive" log of documents Hall and his agents were shielding from the IIO's review. (Exs. 45, 58) Hall gave no valid reason for violating his obligation to produce them other than his intentional misdesignation. (Exs. 45, 58) In addition, as another example, Hall also failed to provide the IIO with an email within the specified date range in the notice from Richard Leebove ("Leebove"), an IBT consultant, to Smith dated September 1, 2015, with the subject "Book". (Exs. 49, 58)¹⁷ This was also on the non-responsive log for Smith. (Exs. 49, 58) No reason other than the misdesignation was given to justify not allowing the IIO to examine it. (Exs. 49, 58) Leebove accompanied Hoffa, Smith, Bertucio and others on the European golf trips. (Ex. 65; Ex. 66 at 150-175; Ex. 44 at 29, 32) At the time of the Trustees' vote on the 2013 VEBA PBM bid, Leebove communicated with Aloise, displaying interest in Aloise's meeting with Hall scheduled shortly before the Trustees' vote on Optum's bid. (Exs. 67, 80, 81) The relationships between Bertucio, Teamster officials, and Teamster consultants was part of the

¹⁷ That day, September 1, 2015, Bertucio negotiated a check from Smith that was dated June 29, 2015, allegedly for a planned golf trip to Charleston for Smith, Hoffa, Bertucio, IBT vendor Edward Sullivan, Leebove and others. (Ex. 72; Ex. 66 at 178-183)

investigation of the conduct of Hoffa, Smith, Hall, the VEBA Trustees and others known to Hall and his agents. (Exs. 62, 99)

As another example of his violation of the injunction through his interference with the IIO's work, Hall also refused to allow the IIO to examine a September 9, 2015 email from Smith to Todd Thompson, Special Assistant to the IBT General President, with the subject "FW: NEW – 8-19-2015 IRB Doc Req re J. Slatery." (Ex. 54) This document was on the log for Smith of documents allegedly covered by unidentified claims of privilege. (Ex. 45) Neither Smith nor Thompson were lawyers for the IBT. (Ex. 39) No attorney was shown as a recipient of this email. (Ex. 54) On August 19, 2015, the IRB sent an examination notice to Hall which required the production of Slatery's emails for the period from July 1, 2012 to June 30, 2014. (Ex. 33)¹⁸ The Slatery emails the IRB had requested, *inter alia*, related to the period when the VEBA contract bidding was conducted. Hall never produced Slatery's emails concerning the bidding. On September 17, 2015, the IBT General Counsel represented on behalf of Hall to whom the notice was addressed, that these no longer existed on the IBT's email system when a search was done in response to the IRB request. (Ex. 36) The IBT system does not automatically delete emails. (Ex. 43 at 40-41; 73-78) The IBT could not produce information on what date the deletions of Slatery's emails occurred or who caused them. (Ex. 36; Ex. 43 at 69-71) Obviously, Hall would have known that any IBT actions relating to Slatery's emails at the time of the prior IRB request for Slatery's emails and the steps the IBT took in response to the prior IRB request for those emails

¹⁸ The IBT's response to the August 19 notice did not include most of Slatery's emails during the time period relevant to the VEBA Trust's selection of Optum Rx, for which Bertucio was the facilitator. (Exs. 34-37) The IBT's IT Director testified that there was no automatic deletion of emails. (Ex. 43 at 40-41, 73-78) Some Slatery emails during this period were obtained by subpoena from Cheiron. The union produced some that were in the email accounts of Slatery's subordinates. (Ex. 37)

that the IBT represented were deleted would be of interest to the IIO. Hall provided only a claim of an undescribed privilege for refusing to allow the IIO to examine this document which was dated within the time the IIO noticed for examination and directly concerned matters under investigation. In acting in this manner, he was deliberately interfering with the IIO's work.

Further demonstrating that Hall acted in bad faith in not allowing the IIO to examine the documents he deemed necessary, was that in his most recent document production he failed to produce documents that previously the IBT had produced. (Exs. 100, 102, 103) Hall now put them on a list of documents he refused to allow the IIO to examine. (Exs. 100, 102, 103) For example, in the April 2016 production of Smith's emails, the IBT produced a January 20, 2015 email from Leebove to Smith with the subject "Golf at Brewery." (Ex. 68)¹⁹ As the email described, this was a planned golf outing with the General President, the facilitator Bertucio and other IBT officials. (Ex. 68) Hall and his agents knew the relations among them were matters the IIO was investigating. During Smith's July 14, 2016 IIO sworn examination, he was questioned about playing golf with Leebove and Tarpinian while at the IBT's Brewery Conference in Fort Lauderdale. (Ex. 66 at 83-85) In the most recent document production after that, Hall transmogrified this January 20, 2015 email into one that now he was refusing to allow the IIO to review without providing any reason

¹⁹ The text of this email was as follows:

Willie,

Hope all is well.

Jim asked me to put together a golf outing for Wednesday, January 28th.

Will you be available? I think Stevie, Charlie, Tarp and me will play. Probably have two groups around 1:15.

Let me know.

Rich

(Ex. 68)

other than falsely claiming it was not responsive to the IIO's request for Smith's emails. (Ex. 58) That evidenced that with more knowledge about the IIO's investigations obtained over time, Hall expanded his violative conduct to shield from the IIO's review documents that he was required to provide.

In another example, the Smith log of falsely labeled non-responsive documents included a March 5, 2014 email from IBT building engineer Dale Woytko to Smith with the subject "FW: Sales Order # 136676- PO# JRHMSF Order Confirmation." (Ex. 58)²⁰ Smith and Woytko traveled at IBT expense to Florida during late January 2014 to a Professional Golf Association show with others allegedly to select in-person as a group gifts to be given to attendees at the Hoffa Scholarship Fund golf tournament in 2014. (Ex. 84; Ex. 71 at 149-151) Other than falsely claiming it was non-responsive, no reason was given for Hall's failure to produce this document that the IIO had deemed necessary to examine. (Ex. 58)

2. Ken Hall Documents

Hall's conduct with respect to his own documents further evidenced his hindrance of the IIO's work and his intent to obstruct. For himself, Hall produced 535 documents and refused to allow the IIO to examine 466. (Exs. 70, 47, 51) Of those that he shielded from IIO review, he falsely claimed 81 were "non-responsive". (Exs. 70, 51) He asserted 385 were covered by privileges he refused to identify. (Exs. 70, 47)²¹ Accordingly, Hall withheld 46.55%, of his emails

²⁰ Hall also refused to allow the IIO to examine the attachment to this email. (Ex. 58)

²¹ The above number for Hall's withheld documents did not include emails related to UPS that could be identified on the logs. (Ex. 70) As described above, the IBT did not identify on the logs why any document was not being produced. Accordingly, if a document had UPS as the subject of the email or was to or from a UPS.com email, that email was considered to be UPS related.

covered under the March 4 examination notice that were to be produced for the IIO's examination. (Exs. 70, 51)²² As with the others for which Hall did it, the shielding from IIO review of documents falsely labeled "non responsive" was a *prima facie* violation. It obstructed the IIO's work.

As for all the individuals, Hall failed to comply with the IIO's instructions to comply with S.D.N.Y. Local Rule 26.2(a) by refusing to provide on his privilege log what privilege was being asserted for the shielded documents. (Exs. 47, 27) Hall's improperly concealing the basis for his refusal to allow the IIO to examine those documents and refusing to provide the minimum information needed for the IIO to judge if there was a shred of good faith behind his *prima facie* violations in not providing his own documents was additional evidence of his intention to obstruct and hinder the IIO's work. *See, United States v. Rosen*, 716 F.3d 691, 702 (2d Cir. 2013) (corrupt concealment shows evidence of intent). For example, under a claim of unidentified privilege, Hall blocked IIO review of several emails from IBT Department Director/Secretary Hollis Hypes to himself and numerous other IBT employees that had the email subject line "Electronic Roster." (Ex. 56) Some of these emails were dated June 6, 13 and 20, 2014. (Ex. 56) On the surface, no rational assertion of any privilege would cover this. Consistent with Hall's improper use of privilege as a shield to block IIO review of documents he had noticed for examination, Hall refused to state what privilege he alleged protected these documents from being examined.

As another example of his obstruction, the Hall privilege log contained a May 9, 2014 email from Linda Benzer to Hall the subject of which was "Next Week's Itinerary." (Ex. 56)

²² The numbers of withheld documents on the two logs for Hall's emails were not consistent with the numbers provided in his agent Dinh's September 2, 2016 letter. That letter stated the IBT withheld 295 documents based upon privilege and withheld 243 documents on other grounds. (Ex. 29) In contrast to counsel's letter, the Hall privilege log contained 429 documents and the Hall "non-responsive log" contained 109 documents. (Exs. 70, 47, 51) The number of documents on the logs, less emails related to UPS, were used here in calculating the documents withheld.

Benzer was Hall's Executive Secretary. (Ex. 41) Neither she nor Hall were IBT lawyers. No privileged communication was apparent. Again, consistent with Hall's use of frivolous claims of unidentified privileges to shield documents from the IIO's examination, he refused to state what privilege was claimed. (Ex. 47) In another example, Hall also frivolously failed to produce under a claim of an unspecified privilege a March 12, 2014 email from IBT staff accountant James Gravette to Hall with the email subject line "March 2014 Department Division Expenses." (Ex. 56) Neither Hall nor Gravette were IBT attorneys. (Ex. 41) No attorney was shown on the log as a recipient of these emails. (Ex. 56) No legally privileged communication was implied in the subject line. Hall refused to provide the particular privilege he claimed justified his *prima facie* violation in preventing the IIO from examining this requested document. This evidenced how Hall and his agents were using baseless claims of privilege to shield documents from IIO review which actions improperly hindered him in his work in violation of their obligations under the permanent injunction.

3. John Slatery Documents

Hall's obstruction permeated his production to the IIO of the Slatery documents he was instructed to provide for the IIO's examination. For Slatery, the Benefits Department Director, Hall produced 35,885 documents and refused to allow the IIO to examine 18,701 the IIO deemed necessary to examine. (Exs. 70, 48, 52) In shielding these from the IIO's review, Hall falsely claimed 11,137 were "non-responsive." (Exs. 70, 52) Hall asserted 7,564 documents were privileged but, undercutting even any appearance of good faith for that claim, refused to identify what privilege he was asserting for each of the documents. (Exs. 70, 48) Accordingly, Hall shielded from the IIO 34.26%, of Slatery's emails that the IIO's March 11 examination notice required to be produced for the IIO's review. (Ex. 70)

Indeed, there are several examples of Hall and his agents refusing to allow the IIO to examine Slatery documents without a legally valid reason which documents they knew were related to the IIO's investigations. (Exs. 55, 59) The preventing the IIO from reviewing these was additional evidence Hall hindered and intended to hinder the IIO's work. Hall was apparently more concerned about concealing the misconduct of IBT senior officials the documents might evidence, than complying with his unambiguous legal obligations under the Order. For example, on July 26, 2014, which was during the golf trip to Ireland that Hoffa and Smith took with Bertucio, Ed Sullivan, Leebove and others, Leebove sent an email to Slatery and IBT employees Todd Thompson and Christine Bailey with the subject, "Ed Sullivan had a hole in one today." (Exs. 59, 74, 95; Ex. 44 at 29; Ex. 66 at 72, 167, 173)²³ Ed Sullivan was a vendor to the IBT who, among other things, worked with Bertucio "on selling the TEAMStar PDP plan." (Ex. 44 at 30-31) Hall refused to allow the IIO to examine five emails sent between July 26 and July 29, that had the subject "RE: Ed Sullivan had a hole in one today" or "FW: Ed Sullivan had a hole in one today." (Ex. 59) Hall blocked the IIO's review of these items despite what he knew of the matters under investigation. (Ex. 52) The emails not produced for examination included Slatery's reply to Leebove's email and Slatery's emails forwarding Leebove's email to six other IBT employees. (Ex. 59) Relationships of IBT employees, including Slatery, with Bertucio and Sullivan were known by Hall to be among the subjects of the IIO's investigations. (Exs. 62, 99)

Other Slatery emails Hall would not allow the IIO to examine also related to the IIO's investigations known to him. These included an October 9, 2015 email to Slatery from JoAnn Butler, an attorney at Cheiron, an actuarial advisor to the IBT on, among other things, the bidding

²³ The IBT produced the original email and the attached picture but withheld emails forwarding it and responding to it. (Ex. 74) Hall hid the messages in these emails from the IIO.

for the PBM contract for the VEBA Trust in 2013. (Ex. 59) The subject of the email was “Subpoena re: IBT VEBA Trust.” (Ex. 59) This document was listed on the log falsely labeled non-responsive, although within the specified date range in the IIO’s notice of examination. (Exs. 6, 59) Hall and his agents provided no justification for his *prima facie* violation in not producing it. As discussed above, someone at the IBT at an unknown time deleted Slatery’s emails from the period of the bidding on the VEBA contract, including those with Cheiron. (Exs. 33-37) They were not produced to the IRB for examination as demanded. (Exs. 33-37) Hall through his agent had represented those emails were deleted from Slatery’s IBT account before the earlier IRB document request for those emails had been received. (Ex. 36)²⁴ On October 6, 2015, Judge Preska signed a subpoena requiring Cheiron to produce IBT-related documents to the IRB in connection with the 2013 work on the VEBA fund. (Ex. 75) The application stating the relevance to the IIO investigation was public. (Ex. 62) The subpoena was served on Cheiron on October 7, two days before the email from Butler to Slatery that Hall blocked the IIO from examining. (Ex. 75) Among items the subpoena called for from Cheiron were emails with IBT employees, including Slatery,

²⁴ Other emails concerning matters under investigation have also, apparently, mysteriously disappeared from the IBT’s email system. For example, Hall failed to produce to the IIO emails the IIO knew had existed for Smith. The following were four known Smith emails from his IBT email account that Hall did not produce and which were not included on either the Smith privilege or falsely labeled non-responsive logs: a January 31, 2013 email at 6:56 am from Aloise to Smith; a January 31, 2013 email at 9:22 pm from Aloise to Smith; a January 31, 2013 email at 11:14 pm from Smith to Aloise and a February 3, 2013 email at 10:44 am from Aloise to Smith. (Exs. 88-91) These emails all related to Smith’s attendance at the Playboy Super Bowl party which an IBT employer had arranged for Smith at Aloise’s request to the employer during contract negotiations. Smith was questioned about three of these emails during his July 2016 sworn examination. (Ex. 66 at 117-118, 122-126) He swore that he did not delete any emails from his IBT account. (Ex. 66 at 22) He asserted he did not know why these emails were not produced. (Ex. 66 at 21-27, 118-122, 125-126) During his sworn examination, the IBT’s IT Director testified that the IBT’s email system did not have automatic deletions. (Ex. 43 at 73) These emails, which were on the system at some point and the account holder swore he did not delete, were not produced in Hall’s September production of Smith’s IBT emails. They were not included on the Smith logs of documents Hall was refusing to produce. Hall produced other Smith IBT emails from around this time including emails on January 28, January 29 and February 1. (Ex. 73) In addition, the Smith log of documents for which unidentified privileges were asserted included emails around this time, including two on January 31. (Ex. 54)

in 2013. (Ex. 75) After being served with the court ordered subpoena, for months Cheiron improperly resisted producing documents in response to the subpoena and complied only after a court order compelled it to do so. (Ex. 82) Hall and his agents would have known communications between the IBT and Cheiron about the subpoena fell within the IIO's request and would be a matter related to the IIO's investigations. Yet Hall improperly kept the documents from the IIO's examination. (Ex. 59) Hall also shielded from IIO review several other Slatery emails with the subject "Cheiron invoice" and a June 15, 2015 email from the director of Cheiron to Slatery with the subject "FW: Update on nothing yet." (Ex. 59) Hall provided no justification for these *prima facie* violations of his obligation to produce these documents. No valid ones could be given. This refusal to allow the IIO to examine them was more evidence of Hall's intent to hinder the IIO's work.

4. Nicole Brener-Schmitz Documents

There was further evidence of Hall's intent to obstruct in the documents he refused to allow the IIO to examine regarding Brener-Schmitz. For Brener-Schmitz, Hall produced 7,793 documents and refused to allow the IIO to examine 4,456. (Exs. 70, 46, 50) Of those he concealed, he falsely claimed 4,042, within the date range of the IIO's notice were "non-responsive." (Exs. 70, 50) He asserted 414 were covered by privileges he refused to identify. (Exs. 70, 46) Accordingly, he withheld 36.38% of Brener Schmitz's emails that the IIO's March 4 examination notice required to be produced. (Exs. 70, 5, 46, 50)²⁵

²⁵ As with Hall's, the numbers of Brener Schmitz's withheld documents described in Dinh's September 2 letter were not consistent with the logs provided. (Ex. 29) The privilege log reflected that 414 documents were withheld while Dinh's letter stated that 348 documents were withheld based upon privilege. (Exs. 29, 46) The non-responsive log for Brener Schmitz indicated that 4,042 were withheld and Dinh's letter indicated that 4,108 documents were allegedly non-responsive. (Exs. 29, 50)

Further evidencing his intent to interfere, Hall produced a log for which he was asserting unidentified privileges for Brener-Schmitz documents. (Ex. 46) That log did not comply with S.D.N.Y. Local Rule 26.2(a) which Hall was required to follow. (Exs. 46, 27) That rule required the privilege asserted for a document be identified and that the general subject matter of the document be provided on the log. (Ex. 27) Consistent with Hall's other baseless uses of privilege to block the IIO's review of documents, he refused to identify the privilege claimed for each document. (Ex. 46) For example, Hall refused to allow the IIO to examine a December 4, 2015 email sent at 00:09 from Brener-Schmitz, a non-lawyer, to Christine Bailey, her non-lawyer supervisor, with the subject line "Re: Fwd:". (Ex. 53) There was no indication that a privileged communication was involved. (Ex. 53) Hall refused to identify the privilege he claimed covered the document. Hall would have known Brener-Schmitz was under IIO investigation for multiple areas of financial misconduct, including but not limited to: causing the IBT to extend her credit over \$2,000 on several occasions in violation of the law as a result of her repeated violations of IBT policies; embezzling IBT funds over a period of years through submitting fake receipts; and receiving things of value from outsiders along with other IBT employees in connection with their IBT duties. (Exs. 61, 85-87) He also would have known that of concern to the IIO was the seemingly unusual tolerance in the General Secretary Treasurer's Department of her repeated violations of policies designed to protect IBT assets. (Exs. 61, 92-94)²⁶ The last of these periods of tolerance ended only after Hall received an IRB notice of examination for documents related to her expenses in August 2015. (Ex. 85) All Brener-Schmitz emails within the date range were responsive. (Ex. 5) In refusing to allow the IIO to examine them Hall committed additional

²⁶ After the IRB informed the IBT of its lack of enforcement of policies regarding expense reports, in April 2014, the IBT identified steps it had taken to ensure compliance. (Ex. 92) Known to Hall was how she continued to be allowed to violate those policies. (Exs. 93, 94, 104)

obstructive acts. At a minimum, Hall knew Brener-Schmitz's expenses were the subject of IIO investigation. (Exs. 85-86) Despite this, as an example of his bad faith here, he shielded from the IIO's review a January 6, 2016 email from Teamster Travel to Brener-Schmitz with the subject line: "Nicole B. Brener-Schmitz Review Your Fort Myers RSW FL itinerary for February 26." (Ex. 57) The Brener-Schmitz non-responsive log also included two emails with the subject "Please approve your timecard." (Ex. 57) Furthermore, three additional documents with file names "Rocha emails – brener-schmitz.pdf", "Geb 9-15.docx" and "NewMexico.xlsx" were also included on the Brener-Schmitz non-responsive log. (Ex. 57)²⁷ The log did not provide any reason for not producing any of these documents. (Ex. 57)

IV. IT IS NO DEFENSE TO HALL'S INTERFERENCE WITH THE IIO'S WORK IF HE RELIED ON ADVICE OF HIS LAWYER AGENTS TO DO SO

Hall and his agents were bound by the terms of the Final Agreement and Order. (Ex. 1 at 5) That Order enjoined Hall and his lawyers from obstructing and interfering with the IIO's work. (Ex. 1 at 3) As shown above, there was no ambiguity in the IIO's right to examine union records to the extent he deemed them necessary to examine. Despite that, Hall and his agents improperly blocked the IIO from doing so and refused to comply as required. Even "good faith reliance on advice of counsel" is not a defense to the "willful disobedience" of a court order." *United States v. Remini*, 967 F.2d 754, 757-58 (2d. Cir. 1992) Conspiring with counsel to improperly defy an individual's legal obligations, as evidenced here, is certainly not a defense.

Under the Order, the IBT, its officers and agents were bound by the injunction. (Ex. 1 at 3) A lawyer is the quintessential agent. Throughout his obstruction of the IIO's efforts, Hall was bound by the acts and words of his lawyers. *E.g., Pioneer Inv. Servs. v. Brunswick Assocs.*, 507

²⁷ The log did not include any email subject or date sent for these three documents. (Ex. 57)

U.S. 380, 396-97 (1993); *United States v. International Brotherhood of Teamsters*, 986 F. 2d 15, 20-21 (2d Cir. 1993) (lawyer client relationship one of agent principal). Hall was chargeable with all facts known and notices given to his attorneys. *Pioneer Inv. Servs. Co.*, *supra*, 507 U.S. at 396-397; *Polanco v. NCO Portfolio Management, Inc.*, 132 F. Supp. 3d 567, 584-85 (S.D.N.Y 2015). In refusing to follow his explicit unambiguous obligation under the Order and Rule to provide all documents that the IIO noticed to be examined, Hall violated the injunction prohibiting him from interfering with the work of the IIO.

The IIO gave Hall repeated opportunities to cure his violations and meet his obligation. (Exs. 9, 13, 14, 16, 18, 22, 24, 26, 27) Several times the IIO specifically alerted Hall directly or through his agent that his conduct was in violation of his obligation. (Exs. 22, 24, 27, 28) Hall ignored those opportunities to end his interference with the IIO's work and comply, belatedly, with his legal obligation. Even if Hall relied on the advice of his lawyer agents to violate his explicit obligation to allow the IIO to examine requested records by refusing to allow the IIO's review of documents he deemed necessary to examine, Hall violated his obligation not to interfere with and hinder the IIO's work. (Ex. 1 at 3 (¶2(d) of Order)) There was no ambiguity in that obligation. Despite this, in the face of explicit IIO reminders that Hall could not cull out union documents he was obligated to produce to prevent the IIO from examining them, he and his agents repeatedly violated their legal obligations. (Exs. 16, 18, 22, 24, 27) Hall well knew members who refused to provide information when required to provide it in sworn examinations taken pursuant to the Consent Order have repeatedly been disciplined. *E.g.*, *United States v. IBT [Calagna]*, *supra*, 1991 U.S. Dist. LEXIS at *8-9; *United States v. IBT [Hickey]*, 945 F. Supp. 96 (S.D.N.Y. 1996) Hall's refusal to provide required information in the form of the documents the IIO determined were necessary to be examined was an equally violative act.

Hall's violation of his obligations under the Final Agreement and Order and its Rules is analogous to a charge of criminal contempt for failure to comply with a subpoena. In those cases, a finding of intentional disregard of the obligation to produce documents was all that was necessary to find willfulness on the part of the party refusing to produce. *Nilva v. United States*, 352 U.S. 385, 392 (1957); *United States v. Voss*, 82 F.3d 1521 (10th Cir. 1996); *United States v. Remini*, *supra*, 967 F.2d at 757-758. Here, Hall exhibited willfulness in disregarding the IIO's examination notices.

V. STANDARD OF PROOF

The standard of proof for establishing the charge against Hall is a preponderance of evidence. Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings, Paragraph C ("to determine whether the proposed ... charges ...found in the Independent Investigations Officer's Investigative report, are supported by a preponderance of reliable evidence.") (Ex. 3 at 7); the Final Agreement and Order, at Paragraph 35 (Ex. 1 at 18-19); *United States v. IBT [Simpson]*, 931 F. Supp. 1074,. 1089 (S.D.N.Y 1996), *aff'd*, 120 F.3d 341 (2d Cir. 1997). 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. 97)

VI. PROPOSED CHARGE

Based upon the foregoing, it is recommended that Hall be charged as follows:

While the IBT General Secretary-Treasurer, you brought reproach upon the IBT, violated the injunction in Paragraph 2(D) of the Final Agreement and Order and interfered with the union's legal obligations by interfering with the work of the Independent Investigations Officer in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(2) and (5) of the IBT Constitution *to wit*:

While General Secretary-Treasurer of the IBT from March 2016 through October 30, 2016, as described in the above report, you violated the permanent injunction in *United States v. IBT*, 88 Civ. 4486, which forbade you as an IBT officer and member from obstructing or otherwise interfering, directly or indirectly, with the work of the Independent Investigations Officer, a person appointed to effectuate the terms of the Final Agreement and Order in that case. In doing so, you violated your legal obligations, brought reproach upon the IBT and caused the union to violate its legal obligations in violation of Article II and XIX of the IBT Constitution.