UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

TRADER JOE'S EAST, INC.

Employer

and **Case 09-RC-309216**

TRADER JOE'S UNITED

Petitioner

REGIONAL DIRECTOR'S DECISION ON OBJECTIONS AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a stipulated election agreement, an election was conducted on January 25 and 26, 2023. The employees of Trader Joe's East (Employer) in the following unit voted on whether they wished to be represented by Trader Joe's United (Petitioner):

> All full-time and regular part-time crew and merchants employed by the Employer at its 4600 Shelbyville Road, Suite 111, Louisville, Kentucky facility (Store No. 628); excluding all mates, captains, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

The ballots were counted, and a Tally of Ballots was provided to the parties. Out of 106 eligible voters, 48 votes were cast for the Petitioner and 36 votes were cast against the Petitioner. There were seven challenged ballots, a number that was not sufficient to affect the results of the election.

The Employer timely filed six objections and, pursuant to the direction of the Acting Regional Director, a hearing was held on March 20-21 and 30-31, 2023. On May 26, 2023, the Hearing Officer issued a report recommending that I overrule all six objections. The Employer filed exceptions and a supporting brief, contending that the Hearing Officer erred in recommending that the objections be overruled. The Petitioner filed a brief in opposition to the Employer's exceptions.

I have carefully reviewed the Hearing Officer's rulings made at hearing and find that they are free from prejudicial error. After a thorough examination of the entire record of these proceedings, including the exceptions, arguments and briefs, as discussed below, I agree with the Hearing Officer's recommendation to overrule all of the Employer's objections. Accordingly, I am issuing a Certification of Representative. [1]/

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[1]/ The Petitioner's request that I impose a sanction on the Employer for filing these exceptions by requiring the Employer to pay for the Petitioner's attorney fees has been considered and is rejected. There is no evidence that the Employer is intentionally abusing Board processes.

THE OBJECTIONS

Objections 1 and 2

In Objection 1, the Employer contends that the Petitioner, through its agents, officers, and representatives, including the Petitioner attorney, Seth Goldstein, and employees Connor Hovey, Jayne White, Morgan Gillenwater, Angel Gross, Katrissca Howard, Phillip Hernandez, and Jaiah Ignacio unlawfully interfered with the conduct of the election by repeatedly approaching and cornering crew members [2]/ while they were working and while the polls were open, to intimidate them into voting for the Petitioner. In Objection 2, the Employer contends that during or about the time polls were open, the Petitioner, through its agents, officers, and representatives, unlawfully cornered and coerced and intimidated eligible voters by approaching those who were believed to support the Employer while they were working and directing those crew members not to vote. The Employer contends that this conduct outlined in Objections 1 and 2 created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and/or created a general atmosphere of fear and reprisal that rendered a free election impossible.

Although the Employer excepts to the Hearing Officer's recommendations to dismiss Objections 1 and 2, it offers no argument in its brief as to why it excepts. With regard to Objections 1 and 2, I agree that the record is devoid of any evidence of objectionable conduct by Jayne White, Phillip Hernandez, Jaiah Ignacio or any objectionable conduct occurring during the period when the polls were open. [3]/ The evidence presented at the hearing in conjunction with Objections 1 and 2 was that Goldstein and Hovey said "hi" to employees in the grocery store and wine shop of the Employer's facility on January 25, 2023; and they only conversed with known union supporter Lee Fortner. Additionally, the Employer's highest ranking onsite manager, Captain Craig Wood, testified that he saw some known union supporters engaging with a suspected anti-union employee – albeit with no testimony as to what was said. I agree with the Hearing Officer that the record evidence is woefully inadequate to support a finding that Seth Goldstein, Connor Hovey, Katrissca Howard or Angel Gross engaged in any objectionable conduct when they spoke to employees on the day of the election given the lack of any evidence as to what was said by these individuals and the lack of any evidence that what they said caused fear among employees or otherwise constituted some form of misconduct. I likewise agree with the Hearing Officer's conclusion that the record is devoid of any evidence that the Petitioner's agents told eligible voters not to vote or otherwise discouraged any eligible employees from voting.

Based on the foregoing, and for the reasons articulated by the Hearing Officer, I agree that the record evidence as it pertains to the Employer's Objections 1 and 2 falls well short of establishing objectionable conduct. Accordingly, I overrule Objections 1 and 2.

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[2]/ Employees are identified as "crew members" and I will use the terms "employee(s)" and "crew member(s)" interchangeably throughout this Decision.

[3]/ Certain conduct attributed to Seth Goldstein, Connor Hovey, and Morgan Gillenwater will be discussed in conjunction with the other objections.

Objections 3a, 3b, 3c and 3d

In Objections 3a, 3b, 3c and 3d, the Employer contends that the Petitioner, through its agents, officers, and representatives, interfered with and restrained employees in the exercise of their Section 7 rights and tainted the results of the election through additional unlawful conduct that created an atmosphere of fear, coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and/or created a general atmosphere of fear and reprisal that rendered a free election impossible. The Employer alleges that examples of the Petitioner's inappropriate conduct engaged in while the polls were open include:

A. Through Petitioner Attorney, Seth Goldstein, harassing and intimidating crew members by shouting "solidarity" at them while they were working in the store in and around the no-electioneering area and then taunting them when they disagreed;

B. Through Petitioner attorney, Seth Goldstein, and Petitioner agents or representatives Connor Hovey, Jayne White and Morgan Gillenwater, by harassing and intimidating crew members, all of whom were eligible voters, in the store for up to an hour while they were working;

C. Through Petitioner attorney, Seth Goldstein, and agent or representative Connor Hovey by addressing a massed assembly of crew members, all of whom were eligible voters, on the Employer's premises while they were working and within 24 hours of the election;

D. Through Petitioner agents and/or representatives Angel Gross, Katrissca Howard, and Phillip Hernandez by harassing and intimidating crew members, all of whom were eligible voters, while they were working.

With regard to Objections 3a and 3c, the Employer contends that the Hearing Officer erred by failing to sanction Petitioner attorney/witness Goldstein for failing to appear on the first day of hearing pursuant to the Employer's subpoena. On the first day of hearing, when Attorney Goldstein failed to appear, the Hearing Officer permitted the Employer to make an offer of proof as to what Goldstein would have testified to had he appeared. The Employer's offer of proof was that Goldstein would have testified that, on the day of the election, he raised his fist and shouted "solidarity" at employee Verrill while she was working in the wine shop and that he and employee Hovey talked to a group of 3 to 5 employees while they were on the clock and working. On a subsequent day of hearing, the Hearing Officer reversed her earlier ruling and ruled that the Employer's offer of proof was invalid since it purported to represent the expected testimony of a witness aligned with an opposing party. It is notable, however, that Attorney Goldstein did ultimately appear and testify, and that Rebecca Verrill and Connor Hovey also gave testimony about the above matters, and all were subjected to cross examination. As such, it appears that no prejudice inured from Attorney Goldstein's failure to appear and provide testimony on the first day of the hearing and I find that neither the Hearing Officer's initial acceptance of the offer of proof, nor subsequent reversal of that decision constitute reversible error.

Relatedly, with regard to Objection 3a, the Employer also excepts to the Hearing Officer's imposition of an adverse inference related to the Employer's failure to produce employee Rebecca Verrill as a witness after the Petitioner sought to re-call her for additional examination after her initial testimony on the first day of hearing (after the Petitioner had the opportunity to review surveillance tape evidence provided by the Employer). The Employer argues in its exceptions that Verrill was a non-supervisory employee and that it could not require her to appear at the hearing, i.e., that sanctions were inappropriate. The issue about which Verrill testified involved the allegation that Petitioner Attorney Goldstein raised his fist and yelled "solidarity" while Verrill was working. Verrill testified that she responded that she was not part of the union group, to which Goldstein allegedly replied "oh, you're one of those." In crediting Goldstein's testimony on this point, i.e., that he did not recall saying "solidarity" in the wine shop and that he may have waved as he left the wine shop, the Hearing Officer observed that the surveillance video of the interaction supported Goldstein's testimony and contradicted Verrill's.

The Board protects its electoral processes from conduct which inhibits the free exercise of employee choice." *Boston Insulated Wire Co.*, 259 NLRB 1118 (1982). The Board prohibits electioneering "at or near the polls." *Claussen Baking Co.*, 134 NLRB 111, 112 (1964). That being said, the Board does not, invariably set aside elections based on such electioneering. *Boston Insulated Wire*, 259 NLRB at 1118. In determining whether electioneering warrants an inference that it interfered with employees' free choice, the Board considers (1) the nature and extent of electioneering, (2) whether it was conducted by a party or employees, (3) whether the conduct occurred in a designated no electioneering area, and (4) whether the conduct contravened instructions of a Board agent. *Id*. at 1119; see also *J. P. Mascaro & Sons*, 345 NLRB 637, 638 (2005). The Board has found various types of conduct that could be considered electioneering to be unobjectionable, including a union organizer shaking hands and speaking briefly with voters outside the polling place. *Del Ray Tortilleria*, 272 NLRB 1106, 1107–1108 (1984).

In deciding whose testimony to credit on this objection, the Hearing Officer relied upon her observation of the testimony and demeanor of the various witnesses in the overall context of the other evidence presented, most significantly the video of the incident in question. I note that it is well-established Board policy not to overturn a hearing officer's credibility resolutions unless the clear preponderance of all relevant evidence demonstrates that those findings are incorrect. *Independence Residences, Inc.,* 355 NLRB 724 (2010) fn. 1; *Ozark Refining and Casting,* 240 NLRB 475 (1979). I have carefully examined the record and find no evidentiary basis or support for reversing these, or any, credibility resolutions made by the Hearing Officer.

With regard to Objection 3a, I agree with the Hearing Officer's recommendation, giving deference to her credibility findings, that the conduct attributed to Goldstein did not occur as the Employer alleges. In reaching this conclusion, I find it unnecessary to decide whether it was appropriate to sanction Attorney Goldstein for failing to appear and give testimony on the first day of hearing or to draw an adverse inference from Verrill's failure to appear for additional testimony. While it may well have been within the Hearing Officer's discretion to impose a sanction for failure to comply with a subpoena, the report reflects she drew well-reasoned conclusions based upon her observation of the testimony and demeanor of multiple witnesses in

conjunction with other evidence. The Hearing Officer's recommendation on Objection 3a is well supported from her observation of the testimony of witnesses Goldstein, Hovey and Verrill in conjunction with her review of the video surveillance footage of the incident in question – which does not support Verrill's version of events. Her conclusions were not solely derived from drawing an adverse inference, and, moreover, even if I were to accept the Employer's offer of proof relating to this objection, I find that the conduct alleged would be insufficient to constitute objectionable behavior given that the conduct did not take place during the polling period, let alone in close proximity to the polls.

The Employer also excepts to the Hearing Officer's conclusion, with regard to Objection 3c, that Hovey and Goldstein did not conduct captive audience meetings. The Employer maintains that the Hearing Officer misapplied *Peerless Plywood Co.*, 107 NLRB 427 (1959) in concluding that Goldstein and Hovey's interactions with employees within 24 hours of the election did not rise to the level of captive audience meetings. The Employer also argues that the Union's conduct ran afoul of General Counsel Abruzzo's GC Memorandum 22-04 insofar as that memo expresses the position that speeches to employees when convened on paid time or while performing job duties run afoul of the Act.

Contrary to the Employer's arguments, I agree with the Hearing Officer that Attorney Goldstein and employee Hovey's brief interaction with four crew members, within 24 hours of the election, did not constitute a captive audience meeting as that term is defined in *Peerless Plywood,* but rather was a permissible "minor" conversation. *Electro Wire Products*, 242 NLRB 969 (1979); *Business Aviation, Inc.*, 202 NLRB 1025 (1973). The record evidence supports a finding that Goldstein and Hovey briefly interacted with up to four employees (of the 106 employees in the Unit) while they worked for a period of about 1 to 3 minutes within the 24-hour period prior to the election. This would hardly constitute a captive audience meeting. Likewise, GC Memorandum 22-04, while presently lacking the force of law, is totally inapposite here as it deals entirely with captive audience meetings and other mandatory meetings conducted by employers – not unions that are powerless to mandate such meetings of employees.

As was the case with Objections 1 and 2, the Employer excepts to the Hearing Officer's recommendations for Objections 3b and 3d, but offers no argument in its brief in support of these exceptions. It is unclear exactly which conduct the Employer objects to with regard to Objections 1 and 2 as opposed to Objections 3b and 3d, but, for the reasons discussed above in my analysis of Objections 1 and 2, I agree with the Hearing Officer's conclusions that the record evidence is woefully inadequate to support a finding that the Petitioner or its agents (or any third parties) harassed or intimidated eligible voters while they were working.

Based on the foregoing, and for the reasons articulated by the Hearing Officer, I agree that the record evidence as it pertains to the Employer's Objections 3a, 3b, 3c and 3d falls far short of establishing objectionable conduct such that the election must be set aside. Accordingly, I overrule Objections 3a, 3b, 3c and 3d.

Objections 4 and 5

In Objection 4, the Employer contends that during the critical period before the election on January 25 and 26, 2023, the Petitioner, through its agents, officers, and/or representatives, interfered with and coerced eligible voters by engaging in a pattern of repeated harassing, coercive, and intimidating behavior towards eligible voters on social media, including, but not limited to: (a) creating a threatening atmosphere, including berating and denigrating crew members who disagreed with the Petitioner; (b) instructing eligible voters who did not support the Petitioner's organizing efforts to transfer out of the store; (c) discouraging eligible voters from exercising their protected right to express their views on unionization; and (d) repeatedly making unwelcome, intrusive, harassing, and intimidating comments to eligible voters. The Employer contends that the Petitioner's unlawful conduct created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and compromised the validity of the election.

In Objection 5, the Employer contends that during the critical period before the election on January 25 and 26, 2023, the Petitioner, through its agent and/or representative Connor Hovey, unlawfully coerced and intimidated eligible voters by sending threatening text messages to employees who he believed did not support the Petitioner. The Employer alleges that the Petitioner and Hovey's conduct created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and compromised the validity of the election.

The Employer contends that the Hearing Officer erred in recommending that the Petitioner did not intimidate eligible voters through social media and text messages. More specifically, the Employer contends that the Hearing Officer failed to appropriately analyze Facebook comments from employee union supporter Morgan Gillenwater directed toward co-worker Ruthie Knights under the appropriate third-party conduct standard. The Employer also maintains that the Hearing Officer erred in recommending that a text sent from Hovey to Verrill was not coercive, didn't threaten consequences for Verrill's opposition to unionization and was not disseminated to other employees.

Regarding third party conduct, the Board will only set aside an election if the misconduct "was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984). Concerning Objection 4, the evidence produced by the Employer consisted of a partial Facebook thread between employees Gillenwater and Knight (which did not show the beginning of the thread) wherein they disagreed about what the Petitioner could and could not do for employees. [4]/ There was no mention of any instances that could reasonably be construed as employees being berated, denigrated or harassed for not supporting the Petitioner. In a portion of the Facebook thread, the Petitioner supporter Gillenwater writes to Knight (referencing the hardships that their

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[4]/ There was also hearsay testimony to the effect that employee Darren Rappa was harassed on Facebook by a former employee, but I agree with the Hearing Officer that, in the absence of any direct evidence on this subject, the evidence was insufficient to establish that any objectionable conduct occurred.

co-workers have allegedly experienced at the hands of the Employer), "I understand that you may have not personally experienced these issues (im [sic] happy you haven't!) but to completely disregard them for that reason is not only disheartening but dangerous." I conclude that this statement cannot reasonably be interpreted as a threat (veiled or otherwise), rather it appears to be an employee's expression of her opinion as to the impact of employees disregarding another's adverse experiences with the Employer. I agree with the Hearing Officer's conclusion that this isolated incident does not constitute objectionable conduct.

With respect to a text message from Hovey to Verrill (Objection 5), again, the evidence produced by the Employer consists of a partial text sequence between union supporter Hovey and fellow employee Verrill (excluding the texts from Verrill which seem to have prompted the exchange in the first place) during the critical period. Hovey informs Verrill that he has heard that she is lying about him and the other organizers and asks (perhaps rhetorically) how can he trust her. Hovey informs Verrill that he knows she is working with management and that she had put employees' jobs in jeopardy. Hovey informs Verrill that management "ratted [her] out" and that she shouldn't trust them. Again, I agree with the Hearing Officer that the content of the text could not reasonably be interpreted as a threat and says nothing of adverse consequences for Verrill for opposing the Petitioner. I find that the record evidence fails to establish objectionable conduct regarding this allegation.

Discussing Objections 4 and 5 collectively, I conclude that the cases cited by the Employer pertaining to when threats are objectionable are inapposite here as the evidence is totally insufficient to support a conclusion that a reasonable person would interpret the discourse involving Gillenwater or Hovey as threatening in any way. Based on the foregoing, and for the reasons articulated by the Hearing Officer, I agree that the Employer did not satisfy its burden of establishing the Petitioner or its agents engaged in objectionable conduct. ("The burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one." *Delta Brands, Inc.*, 344 NLRB 252, 253, (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989)). Accordingly, I overrule Objections 4 and 5.

Objection 6

In Objection 6, the Employer contends that a number of employees reported that they felt harassed and/or intimidated during the critical period by some or all the foregoing conduct (presumably the conduct enumerated in the other objections) and that the Petitioner, through its agents, officers, and/or representatives, unlawfully interfered with the conduct of the election. The Employer alleges that the Petitioner's conduct created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and compromised the validity of the election.

Objection 6 is so broadly worded that it is unclear what conduct the Employer claims is objectionable. To the extent that the Employer intends to re-package its earlier objections in a different form, they are rejected here for the same reasons that I rejected them above. In its exceptions to the Hearing Officer's decision, the Employer contends that the Hearing Officer erred in concluding there was no connection between the union organizing campaign and a statement made by union supporter Gillenwater, a week before the election, to a single employee

(overheard by Verrill) that store leadership was "white, racist, Christian and republican" and graffiti of unknown origin found in the store prior to the critical period which stated, "Racist Mates and Captain." The Employer also relies upon hearsay testimony (indeed hearsay within hearsay) of Captain Wood that someone (the record does not reflect who) informed him that former employee Jada Jefferson had accused him of being a racist during the critical period. Here again, the record does not reflect that this statement had anything to do with the organizing campaign. The Employer also contends that the Hearing Officer erred in limiting questions pertaining to the graffiti to those necessary to establish the foundation for admissibility of a picture of the graffiti. The Employer was unable to ask questions about the extent of its dissemination.

The Board has found objectionable campaign propaganda calculated to inflame racial prejudice of employees. *Sewell Mfg. Co.*, 138 NLRB 66, 71–72 (1962); *YKK (USA) Inc*., 269 NLRB 82, 84 (1984). Statements denouncing racial prejudice, however, are not objectionable. See *Englewood Hospital*, 318 NLRB 806, 807 (1995); *Beatrice Grocery Products*, 287 NLRB 302 (1987). I agree with the Hearing Officer's conclusion that the record evidence regarding this objection, i.e., that a union supporter called the Employer's management "white, racist, Christian and republican" during the critical period and that some graffiti of unknown origin was found stating that the store's leadership was racist, is inadequate to constitute objectionable conduct. I note that the testimony about Gillenwater's statement came from Verrill, who acknowledged that she overheard the statement midway through a conversation, of which she was not a part, without having heard the earlier part of the conversation. There is no basis in the record to conclude that the statement had anything to do with the union organizing campaign. I further find the statements of a lone union supporter pertaining to the purported race, religion and predilections of the Employer's highest ranking onsite manager – drawing no apparent connection to the organizing campaign -- to be insufficient to constitute objectionable conduct.

I likewise note that there is no basis in the record to conclude that the graffiti was related to the Petitioner's organizing campaign. While *Dresser Industries*, 242 NLRB 74 (1979), cited by the Employer, does stand for the proposition that pre-petition conduct may be relevant to the consideration of whether conduct occurring during the critical period is objectionable, in *Dresser* the pre-petition conduct was indeed relevant to the conduct occurring during the critical period, while in the case at hand, the evidence is entirely insufficient to connect the dots between the pre-petition conduct and any arguable objectionable actions taken by the Petitioner. As such, I find that the Hearing Officer did not err in limiting the questioning about the picture of the graffiti to questions concerning foundation, given its dubious relevance to the objections at issue in this case.

Finally, the record does not establish any basis to connect Wood's hearsay evidence about Jada Jefferson's alleged statement that Wood was a racist to the Petitioner's organizing campaign. I also conclude that this allegation does not constitute objectionable conduct because it is unreliable hearsay evidence, insufficient for the purpose of establishing that Jefferson made the comment alleged.

Based on the foregoing, and for the reasons articulated by the Hearing Officer, I agree that the record evidence as it pertains to Objection 6 falls well short of establishing objectionable conduct such that the election must be set aside. Accordingly, I overrule Objection 6.

CONCLUSION

Based on the above and having carefully reviewed the entire record, the Hearing Officer's report and recommendations, the exceptions and the arguments made by the Employer and the Petitioner, I overrule the objections and I shall certify the Petitioner as the representative of the appropriate bargaining unit.

Inasmuch as the Tally of Ballots discloses that the Petitioner has received a majority of the ballots cast, I shall issue a Certification of Representative.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for Trader Joe's United and that it is the exclusive representative of all the employees in the following bargaining unit:

> All full-time and regular part-time crew and merchants employed by the Employer at its 4600 Shelbyville Road, Suite 111, Louisville, Kentucky facility (Store No. 628); excluding all mates, captains, office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

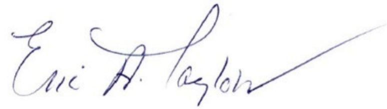
REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **January 31, 2024.** If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: January 17, 2024.



Eric A. Taylor, Regional Director
Region 9, National Labor Relations Board
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Attachment: Copy of Objections

ATTACHMENT

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 09

Trader Joe's East Inc., **Employer,** **and** **Trader Joe's United,** **Petitioner.**	**Case No. 09-RC-309216**

OBJECTIONS TO ELECTION

Pursuant to Section 102.69(a)(8) of the Rules and Regulations of the National Labor Relations Board ("Board"), Trader Joe's East Inc. ("Trader Joe's") hereby files objections to conduct which affected the results of the election in the above-captioned matter as follows:

1. Trader Joe's United ("Union"), through its agents, officers, and representatives, including Union attorney, Seth Goldstein, and Connor Hovey, Jayne White, Morgan Gillenwater, Angel Gross, Katrissca Howard, Phillip Hernandez, and Jaiah Ignacio unlawfully interfered with the conduct of the election by repeatedly approaching and cornering Crew Members while they were working and while the polls were open, to intimidate Crew Members into voting for the Union. The Union's and the named Crew Members' (whether acting as agents of the Union or otherwise) unlawful conduct created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and/or created a general atmosphere of fear and reprisal that rendered a free election impossible.

2. On or about the dates of the election and during or about the time polls were open, the Union, through its agents, officers, and representatives, unlawfully cornered and coerced and

intimidated eligible voters by approaching Crew Members who were believed to support Trader Joe's while they were working and directing those Crew Members not to vote. This unlawful conduct created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and/or created a general atmosphere of fear and reprisal that rendered a free election impossible.

3. The Union, through its agents, officers, and representatives, interfered and restrained employees in the exercise of their Section 7 rights and tainted the results of the election through additional unlawful conduct that created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and/or created a general atmosphere of fear and reprisal that rendered a free election impossible. Examples of the Union's additional inappropriate conduct engaged in while the polls were open include:

(a) Through Union attorney, Seth Goldstein, harassing and intimidating Crew Members by shouting "solidarity" at them while they were working in the Store in and around the no-electioneering area and then taunting them when they disagreed;

(b) Through Union attorney, Seth Goldstein, and Union agents or representatives Connor Hovey, Jayne White and Morgan Gillenwater, by harassing and intimidating Crew Members, all of whom were eligible voters, in the Store for up to an hour while they were working;

(c) Through Union attorney, Seth Goldstein, and agent or representative Connor Hovey by addressing a massed assembly of Crew Members, all of whom were eligible voters, on Trader Joe's premises while they were working and within 24 hours of the election;

(d) Through Union agents and/or representatives Angel Gross, Katrissca Howard, and Phillip Hernandez by harassing and intimidating Crew Members, all of whom were eligible voters, while they were working.

4. During the critical period before the election on January 25 and 26, 2023, the Union, through its agents, officers, and/or representatives, interfered and coerced eligible voters by engaging in a pattern of repeated harassing, coercive, and intimidating behavior towards eligible voters on social media, including, but not limited to: (a) creating a threatening atmosphere, including berating and denigrating Crew Members who disagreed with the Union; (b) instructing eligible voters who did not support the Union's organizing efforts to transfer out of the Store; (c) discouraging eligible voters from exercising their protected right to express their views on unionization; and (d) repeatedly making unwelcome, intrusive, harassing, and intimidating comments to eligible voters. The Union's unlawful conduct created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and compromised the validity of the election.

5. During the critical period before the election on January 25 and 26, 2023, the Union, through its agent and/or representative Connor Hovey, unlawfully coerced and intimidated eligible voters by sending threatening text messages to Crew Members who he believed did not support the Union. The Union's and Hovey's unlawful conduct created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and compromised the validity of the election.

6. A number of employees reported that they felt harassed and/or intimidated during the critical period by some or all of the foregoing conduct, the Union, through its agents, officers, and/or representatives, unlawfully interfered with the conduct of the election The Union's

unlawful conduct created an atmosphere of fear and coercion and interfered with the laboratory conditions necessary to conduct a free and fair election and compromised the validity of the election.

For these reasons, and the additional reasons that the Region and Trader Joe's might discover, Trader Joe's requests that the results of the election in the above-captioned matter be set aside.

Dated: February 1, 2023

Respectfully submitted,

/s/ Christopher Murphy

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Attorney for Trader Joe's East Inc.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Employer's Objections to Election were filed today, February 1, 2023, using the NLRB's e-Filing system and was served by email upon the following:

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/s/ Kelcey J. Phillips
Kelcey J. Phillips