

## **DECLARATION OF RICHARD R. RENNER**

I, Richard R. Renner, under penalties of perjury declare that the following is true and correct:

1. I am making this declaration to record certain events leading up to or referencing my November 5, 2012, termination from employment by the National Whistleblowers Center, the National Whistleblower Legal Defense and Education Fund and Kohn, Kohn & Colapinto, LLP. This declaration is not meant to be a complete statement of all facts that might be relevant to proceedings in the future.

### **I. Summary.**

2. After NWC and KKC client Bradley Birkenfeld received a \$104 million IRS award, as announced at the NWC press conference on September 11, 2012, five of us staff members became concerned about the secrecy of the founding partners (Michael Kohn, Stephen Kohn and David Colapinto). We surprised the partners on October 9, 2012, by walking in on them for a group meeting to express our concerns about transparency and participation. I specifically mentioned the possibility of a staff union as a way we could accomplish our goals. On October 22, 2012, the five staff invited the five newcomers to our organization to a meeting to discuss formation of a staff union. NWC Deputy Director Estelle Kohn expressed anger at this meeting. The partners issued new directions against the staff calling their own meetings or talking about forming a union. They tricked me into coming to a “managers and supervisors” meeting and I walked out. They made an oral offer of a raise in exchange for giving up our demand for transparency and

the formation of a union. Then, on November 5, 2012, they fired all five of us, all at once, demanded we leave immediately, and cut us off from our email and electronic files. The timing, animus, manner of termination, shifting explanations and other circumstances point to a reprisal against our concerted activities as the real reasons for our terminations.

## **II. Background.**

3. I have been an attorney since November 6, 1981, when I was admitted to practice before the Supreme Court of Ohio. I am now admitted to practice before the Ohio and U.S. Supreme Courts, District of Columbia and Maryland Courts of Appeals, U.S. Courts of Appeals for the First, Second, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh and District of Columbia Circuits, and U.S. District Courts for the Northern and Southern Districts of Ohio, and the Districts of Colorado, the District of Columbia and Maryland.
4. My first job after law school was as a staff attorney for Southeastern Ohio Legal Services in Zanesville, Ohio. In early 1982, President Reagan proposed the complete elimination of federal funding for legal services for the poor. He succeeded in slashing the budget for legal services, and layoffs were imminent. My coworkers and I started a union organizing drive, and we affiliated with the National Organization of Legal Services Workers (NOLSW). Today, NOLSW is part of the United Auto Workers union. I was nevertheless laid off in 1982. I returned to SEOLS in 1987 in the New Philadelphia, Ohio, offices.
5. In May 1995, my partner and I established the private law office of Tate & Renner in

Dover, Ohio. My law partner, Al Tate, died in October 1995 of cancer, and Tate & Renner became the name of my solo law practice.

6. During the time I was principal of Tate & Renner, I paid off the mortgage on the Tate & Renner office building, hired three support staff, and had associate attorneys who worked for me for various times. In the Tate & Renner office building in Dover, Ohio, I had the largest office on the top floor, a library room, two other upstairs offices, a full kitchen, a copier room, a waiting room, and a front office with two work stations.

### **III. Charvat case.**

7. One of my first Tate & Renner cases was *Charvat v. Eastern Ohio Regional Waste Water Authority*, 96-ERA-37 (RD & O of ALJ, July 20, 1998). I filed the case with the Department of Labor in 1995. In the *Charvat* case, I was co-counsel with Michael D. Kohn, of the Washington, D.C., law office of Kohn, Kohn & Colapinto, and environmental specialist E. Dennis Muchnicki of Columbus, Ohio. The hearing in the *Charvat* case lasted 20 days, and resulted in a favorable Recommended Decision and Order and fee award. I also represented Mr. Charvat in a civil rights action in federal District Court, which the respondent unsuccessfully appealed to the Sixth Circuit in *Charvat v. Eastern Ohio Regional Waste Water Authority*, 246 F.3d 607 (6th Cir. 2001). The case settled in 2002, after we prevailed in this 2001 appeal. After the case settled, I made a donation to NWC of \$10,000.
8. While the *Charvat* case was pending, the NWC Board elected me to become a member of the Board. In 2002, the Board elected me Secretary of the Board. My service to NWC

remains one of my proudest professional accomplishments.

9. While working on the Charvat case, I had a discussion with Michael Kohn in which it was clear he was complaining about how much work he had to do. I suggested that he just hire more attorneys. Michael became serious. He looked at me and said that he had one requirement for employment: trust. At the time, I thought he meant that he had trouble finding someone that he could trust to uphold the whistleblower cause more than they cared about their own wealth. It struck me as strange that he would be so concerned about this trust when his office so readily accepted so many new interns. It would take me a while to figure out what he really meant – specifically until just recently.

#### **IV. Hiring at NWC and KKC.**

10. During the Spring of 2008, Stephen Kohn invited me to move to Washington to work for NWC and KKC. After serious consideration with my wife about the sacrifices involved in closing my private law office in Ohio and moving to Washington, DC, we decided that I should accept the offer. I believed that working with Mike, Steve and Dave would elevate my legal practice to the national pinnacle, and offer my wife and me the best opportunity for a worthy career that would eventually pay off with the success of large cases. I also believed I could play a role in helping NWC and KKC transition from the current partners to a larger organization that would be more integrated with other employment lawyers around the country, and offer career opportunities for a future generation of whistleblower advocates.
11. Stephen Kohn offered me a position as an attorney for KKC and as Legal Director of

NWC. We eventually reached an agreement in which I received a salary and various percentages of the cases I worked on. We discussed how my work with KKC could eventually lead to my becoming a partner of the firm.

12. The founding partners of Kohn, Kohn & Colapinto are Michael Kohn, Stephen Kohn and David Colapinto. The three of them left their jobs with the Government Accountability Project (GAP) in a protest against GAP's use of illegal "hush money" settlements in which other GAP attorneys would negotiate settlement agreements for whistleblowers in which the whistleblowers would be prohibited from disclosing their concerns to anyone, even the government safety agencies.
13. The partners told me about how they got legal advice on how to structure the law firm with the non-profit National Whistleblowers Center, and an intermediary, the National Whistleblowers Legal Defense and Education Fund. The relationships among these three organizations allow the partners to use the benefits of each form of organization. The law firm can receive fees at commercial rates. The non-profit NWC can receive grants, donations and other tax advantages. The Fund can coordinate financial activities to maximize the benefits of each. The three founding partners control the operations of all three organizations.
14. Since August 2008, I have resided in the Washington, DC, area. From 2008 to November 5, 2012, I worked for the law offices of Kohn, Kohn & Colapinto, and also served as Legal Director of the National Whistleblower Center.
15. My duties at NWC included development of programs to serve the needs of

whistleblowers facing litigation, advising the Center on requests for legal assistance and referrals, reviewing cases for amicus participation, writing amicus briefs and advising Center staff on legislative initiatives to benefit whistleblowers. For KKC, I worked as an attorney representing whistleblowers either as solo counsel, or as co-counsel. I also shared in the review of intakes for the Attorney Referral Service of the National Whistleblower Legal Defense and Education Fund, and in the recruitment of attorneys for the referral service.

16. I did not hire, fire or discipline any other employees at KKC, the Fund, or at NWC. I had no role in recommending hiring, firing or discipline of any employees. I was never told that I had any such power or responsibility.

17. Work at NWC and KKC did not require adherence to any set schedule of work hours, other than meeting case deadlines and attending court hearings. Indeed, the partners themselves were sometimes absent from the office for days without explanation. Staff have always been allowed to set their own hours, take lunch whenever they can, take as long as they like for lunch, and meet with whomever they want at lunch or at any other time. We operated with an attitude that all of us were working for the cause. There was nothing like an office manual or written standard operating procedure.

18. In 2009, I became editor-in-chief of the Whistleblowers Protection Blog.

19. During most of 2009, my salary was about \$44,000 per year.

20. I received my salary in checks from the National Whistleblower Legal Defense and Education Fund, although I understood that the funds came from either KKC or NWC.

My health insurance card also reflects the National Whistleblower Legal Defense and Education Fund as the name of our group.

21. My office at KKC and NWC consisted of a desk in the same room as the KKC fax machine, the mail boxes, and another work station for an intern. The KKC partners told me that when construction was completed on their property on Florida Avenue in Washington, they planned to start construction of an expansion of the NWC building to make room for additional offices. One of those offices would be mine.

**V. My year without pay.**

22. During or about May or June 2010, I received a settlement of a fee claim in a whistleblower case pending before the U.S. Department of Labor. The settlement payment to me was \$45,000. I approached the KKC partners and proposed that I donate \$4,500 to NWC in appreciation for the contributions the Center makes to my career.

23. The partners responded around June 1, 2010, by inviting me to lunch. During this lunch (at the now defunct Georgetown Cafe), the partners expressed that KKC and NWC had both run out of money, but they expected to receive new revenue from settling some of our pending cases soon. They told me that KKC was actually operating at a loss.

24. They discussed how NWC had a pending application for an environmental grant. If NWC received this grant, they planned to make me director of NWC's environmental program. They asked me if I would forgo my salary for a few months until this grant came in. I responded by saying that I wanted to be one of the attorneys here who suffers during the hard times and shares in the rewards of the good times. The partners agreed

and expressed appreciation for my willingness to forgo my salary. They asked me to prepare a proposal for an agreement that would express my idea about sharing in the revenue of the good times. All three partners neglected to bring cash, so I paid for the lunch.

25. On or about June 8, 2010, I sent the partners my proposal for an agreement in which I would receive various percentages of firm proceeds depending on my level of participating in a case. For example, I proposed that for each month that I go without a salary, I would receive a minimum of 0.8% of the revenue from cases in which I participated (up to 20% maximum) and 0.2% of other cases (up to a 5% maximum). The partners did not sign off on my proposal, but they indicated that they were working on their own proposal for something comparable.
26. I continued working for KKC and NWC without pay from June, 2010, until October, 2011. NWC did not receive the environmental grant. By March, 2011, my wife was so upset at my lack of an income that we began marital counseling.
27. Around this time, I also began looking for alternate or additional employment. I made an application to the David A. Clarke School of Law's LLM program in clinical legal education. On April 18, 2011, David Colapinto wrote a letter of recommendation for me for this position. At the time, he told me that he wanted me to stay at NWC and KKC, but he understood that they did not have the funds to pay my salary.
28. On or about May 2, 2011, I received an offer to work as a Staff Attorney for CASA de Maryland, an immigrants rights group with headquarters in Hyattsville, Maryland. I

started that day. The position was a temporary one to fill in during the maternity leave of another staff attorney. My supervisor initially said she had authorization for only two weeks, but she soon expected to get authorization through September 2011, to cover the full maternity leave. However, my supervisor also told me that she was seeking budget authorization a new permanent staff attorney. The position was also part time. CASA paid me \$25 per hour for up to 40 hours per week. I informed all my coworkers, including the partners at KKC, about my new employment at CASA. I continued to work on NWC projects and NWC and KKC cases while working part-time at CASA. However, I could not be physically present at my NWC and KKC office nearly as much as before I worked at CASA. Working at CASA exposed me to a new style of combining the practice of law with organizing. One of our projects was to improve the quality of rental housing of our members. I began a series of rent escrow actions for tenants while the organizers led the tenants in organizing meetings, marches, rallies and press conferences. I saw that the combination of legal action with organizing produced results more quickly that I was accustomed to in whistleblower practice. During or around August 2011, my CASA supervisor received approval to offer me a permanent position, and she did offer it to me.

29. Also around August, 2011, the Greenhouse case was settling and the KKC partners were telling me that they wanted me to come back to full time paid employment at KKC and NWC. Stephen Kohn told me that when the Greenhouse money came in, he wanted to give me a raise to \$50,000 – matching my CASA salary.

## **VI. The profit sharing plan.**

30. Stephen Kohn told me that he was planning on a profit sharing plan. He sketched out for me how he would propose that each of us would have a designated “market rate.” He said that my market rate would be between \$120,000 and \$250,000. If we received sufficient revenue, he would propose that the available resources be applied to bring up everyone's compensation as close to market rate as possible, going back in time to make up the shortfall between market rates and what we actually received. Once everyone's compensation had been restored to market rates, retroactively, the KKC partners would pocket any excess revenue. I continued to wait for this profit sharing plan to be written up – waiting until November 5, 2012 when I was terminated.
31. In late August, 2011, my supervisor at CASA fired one of my coworkers without cause. I decided then that I would leave CASA and return to full time employment with NWC and KKC. I resigned from CASA effective September 30, 2011, and I resumed full time employment at KKC and NWC on October 1, 2011. I began receiving my new salary of \$50,000 per year.
32. Sometime during the subsequent months, Stephen Kohn told me that I would now be the Director of the National Whistleblowers Legal Defense and Education Fund. The only difference was that I would begin recruiting attorneys to serve on the Attorney Referral Service (ARS), and I would play a more active role in making referrals to ARS members. These were duties that I already performed, and my increase in these responsibilities subsided as the press of case work continued. I did not receive a written job description for my position as Director of the National Whistleblowers Legal Defense and Education Fund. I did not receive any raise nor any other change in compensation.

33. Early in 2012, Stephen Kohn told me that someday I would have to make a choice between working for NWC or working for KKC. He had made other statements about how NWC was going to separate from KKC. I never was presented with such a choice.

**VII. The Birkenfeld award.**

34. During August 2012, our office received news that the IRS was making an award in first part of the Birkenfeld case. Steve and Dave had more frequent conferences with Brad Birkenfeld. They sent Owen Dunn to pick up or deliver letters. Eventually we learned that the IRS award would be \$104 million, but we were not to tell anyone until they made the announcement at a press conference. The NWC held that press conference on September 11, 2012, at the National Press Club. Naturally, it made big news as the largest individual whistleblower award in US history. That our firm accomplished this award during the time that Brad was serving his sentence for a felony made the success more remarkable.

35. During the press conference, there was a question about the firm's fees. Stephen Kohn answered that our fee agreement with Brad Birkenfeld was different than a typical contingent fee agreement, but he did not disclose the firm's fee – either at the press conference or to us privately.

36. On September 17, 2012, the KKC partners held a staff meeting with all KKC and NWC staff. Steve, joined with Mike and Dave, told us that they had a number of plans for the new revenue.

37. They were planning on bonuses and raises, and they would meet with each of us

individually in the next day or two to inform us of their decisions in that regard.

38. Although they would meet with us individually, Steve said that we were free to tell others about our compensation if we chose to share that information.
39. They also said that they had set aside enough money to fully fund the NWC through the end of 2013. That meant that we had a year and a half to raise the funds for 2014.
40. They disclosed that they had tax considerations that made it preferable for them to spend the proceeds in 2012 and reduce the amount left on hand at the end of 2012. They wanted to make these reductions to avoid paying taxes on whatever funds were left at the end of December 31, 2012.
41. They talked about buying the building next door to the KKC offices, at a cost of over one million dollars, to provide much needed additional office space. They said they might use the money to expand the NWC building (3238 P St. NW).
42. The partners also emphasized that they would not disclose the amount the firm received in the Birkenfeld case. They claimed it was not as much as we might think, but they did not want future prospective clients to use the Birkenfeld fee agreement as a bargaining point to drive down KKC's fees in future cases.
43. The partners said that this was only part of the Birkenfeld case, and that the firm's fees would be higher in a subsequent portion of the case. At that point, and with expected settlements in other cases, then the firm would have all the funds they wanted to pay what they really wanted to pay us, and pay for the new building and other infrastructure that we wanted.

44. One of those settlements was a component of the bullet-proof vest case that Erik has been working on for years. He expects an award of about half a million dollars to arrive in mid December, 2012.
45. The one or two days for our individual meetings dragged on to more than a week.
46. By this time, the partners hired two attorneys and three law graduates new to our office. At least two of them had fellowships from their law schools that paid them a stipend to work for a non-profit organization. In addition, the firm was paying them for an additional 15 hours per week, although they could work those extra 15 hours in advance, meaning that they would wait for subsequent weeks to eventually be paid for all the hours they actually worked. One of the new lawyers, Yejin, was hired to answer the telephone and process intakes. Another new attorney was assigned to the intern workstation in my office.
47. I had no role in hiring the new attorneys. I was surprised to learn that they were new employees at the time I met them.
48. During the time I was waiting for my meeting with the partners, I asked Mary Jane about whether we are past the one or two days the partners promised. Mary Jane told me that if she knew anything, she could not tell us.

**VIII. My bonus.**

49. The partners finally invited me to a meeting on September 25, 2012. I received a check in the amount of \$8998.88. It represented a bonus of \$15,000, less deductions.
50. As Steve handed me the check, he told me that he wished it could be more, but that is

what they could afford now. He reiterated how they expected to receive larger amounts from the subsequent stages of the Birkenfeld case, and they had other cases in which large awards were expected. Once they had one or two of those come in, then they would be in the position they want to pay market rates.

51. The partners told me that I was receiving this check as my bonus and there would be no change in my salary. I said thank you.
52. I asked the partners to reconsider their decision to conceal the amount of the firm's income. I pointed out that the staff did a good job of keeping the amount of the Birkenfeld award confidential until the press conference. The partners agreed that the staff had done a good job of maintaining confidentiality. I explained how my books at Tate & Renner were open to the staff because they had worked so long for me at below market rates. The partners made no indication of any willingness to reconsider their decision to keep their finances secret.
53. I also asked if the partners would now complete their partnership agreement. I knew that no one else could make partner until they had a completed agreement. The partners assured me that they wanted KKC to continue in perpetuity after they were gone. They explained to me that they had a agreement on the terms of the partnership agreement, but they needed all three of them to get life insurance to cover their estate's interest in the firm equity, and Steve had refused to get the required medical exam for the life insurance. They told me that completing the agreement was on their agenda again.

**IX. Concerted activity begins.**

54. In the subsequent days, my coworkers and I had a series of discussions about the bonuses we received, the lack of a general pay raise, the lack of transparency about finances, and the lack of participation in the decisions affecting us, such as hiring and building space. Eventually, five of us agreed that we should approach the partners together to raise our concerns. These five were Erik Snyder, Timothy Cheng, Lindsey Williams and Owen Dunn. Together, we represented all the employees of KKC, NWC and the Fund who were not managing partner (Mary Jane Wilmoth), the sister of two founding partners (Estelle Kohn), or the newly hired attorneys. We discussed how even in the private sector, when management claims an inability to pay market rates, the union would have a right to see the books. We had not decided to actually form a staff union, but we hoped that discussion of the possibility would help the partners see the benefits of being more transparent about their finances and plans, and more inclusive in decision making.
55. On the afternoon of October 9, 2012, all three partners were in the office. Erik, Tim, Lindsey, Owen and I gathered together and approached the partners in Steve's office. We all sat down together around the conference table next to Steve's office.
56. Steve asked if this was a union meeting, and he asked who the leader was. I was facing Steve and did not see Tim or Owen, but they immediately described how Owen raised his hand, and Tim pointed to Owen, and then everyone who saw it laughed.
57. Erik presented our concerns about transparency and participating. The partners immediately agreed to our request for monthly staff meetings.
58. However, they continued to resist any disclosure about their finances.

59. Dave said that only attorneys who make partner would receive financial information about KKC and the Fund.
60. I said there was another way that the finances could be disclosed. I explained how if the staff formed a union, then management's claim of an inability to pay market rates would entitle the union to see the books. I mentioned the Supreme Court's decision in *NLRB v. Truitt Manufacturing Co.*, 351 U.S. 149 (1956), as a case in which the Court compelled an employer to disclose its financial information to the union.
61. The partners were unaware of this law and they asked if I could provide some authority for that claim. I agreed to provide it.
62. Mike asked if attorneys could form a union. I told him I had done it before. He was visibly surprised and upset.
63. I said that the decision to hire the new fellows represented a choice about the allocation of resources and that the staff would like to be included in decisions that affected the allocation of resources that could also be used to bring us closer to market rates. Steve said we didn't have to worry about the fellows because they were paid next to nothing. The firm was paying their health insurance and just a bit more than what their law school programs paid.
64. We had some discussion about what market rates really are in Washington, DC. At least one of the partners, I don't recall which, expressed some belief that we were paid close to market rates for non-profits. Steve asked if we knew what GAP was paying staff attorneys. Erik said one GAP attorney disclosed a salary of between \$83,000 and

\$89,000.

65. The partners agreed to conduct a full staff meeting to discuss our concerns on October 18, 2012, at 4 pm.

66. The partners suggested that the meeting should be separate meetings for NWC and KKC.

I do not recall us reaching agreement on separate meetings, but I do recall staff expressing a need for all-hands meetings even if there are also separate meetings.

67. On October 10, 2012, I sent the following email to the partners:

From: "Richard Renner" <rr@kkc.com>  
To: "Michael Kohn" <mk@kkc.com>, sk@kkc.com,  
"David Colapinto" <dc@kkc.com>  
Subject: Transparency and participation  
Date sent: Wed, 10 Oct 2012 11:07:18 -0400  
Copies to: "Erik Snyder" <es@kkc.com>, "Timothy Cheng"  
<tc@kkc.com>, lmw@whistleblowers.org, Owen  
<[whistle@whistleblowers.org](mailto:whistle@whistleblowers.org)>

Dear Mike, Steve and Dave,

Thank you for meeting with us patiently yesterday. We appreciated the opportunity to present our concerns about participation and transparency as a group. We remain committed to the longevity of Kohn, Kohn & Colapinto and the National Whistleblowers Center, and we want to do our part to assist in the eventual transition to the next generation. We are particularly appreciative of our consensus to conduct monthly staff meetings.

You asked for citations to the caselaw that can require an employer to share financial information with a union. During collective labor bargaining, the parties are not required by law to reach agreement. They must, however, bargain in good faith. 29 U.S.C.A. § 158(d). To determine good faith, courts will look to the entire circumstances surrounding bargaining, including behavior away from the bargaining table. *NLRB v. Billion Motors*, 700 F.2d 454, (8th Cir. 1983). Most authorities agree that an absolute refusal to bargain constitutes bad faith. *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 78 S. Ct. 718, 2 L. Ed. 2d 823 (1958).

The refusal to comply with an information request may constitute bad faith. For example, in *NLRB v. Truitt Manufacturing Co.*, 351 U.S. 149, 76 S. Ct. 753, 100 L. Ed. 1027 (1956), the employer committed an unfair labor practice when it refused to supply the union with information supporting its claim that it could not afford to pay a wage increase the union demanded.

The NLRB will find that the union satisfies the good-faith requirement for its information request where any of the union's reasons for seeking the information can be justified. *Island Creek Coal*, 292 NLRB 480 (1989); *Wachter Construction, Inc.*, 311 NLRB No. 26 (1993). This month's issue of *Labor Notes* states, on page 12, "Information rights is one of the few areas of labor law that is still solidly pro-union."

The staff remain desirous of spending a career to advance the whistleblower cause. We hope that all of us would agree that we should operate on standards of participation and transparency that are at least as high as they are for traditional labor management relations. We attach a recent Professionals for Non Profits survey of area salaries. While we are not presently making any request about compensation levels, we do believe that greater transparency will engender a better spirit of fairness. There was a question about comparing our compensation level with GAP's. We note that one GAP attorney posted an anonymous report showing their salary for an attorney was between \$83,000 and \$89,000. My hunch is that this attorney has less seniority than I do.

<http://www.glassdoor.com/Salary/GOVERNMENT-ACCOUNTABILITY-PROJECT-Salaries-E438595.htm>

We look forward to our next staff meeting on October 18, 2012, at 4 pm. If you have questions before then, you are welcome to share them with us. Thank you again for your thoughtful attention to our concerns.

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I am still waiting for a response to this email.

68. The partners rescheduled the October 18 staff meeting to October 26, 2012. They also

expressed that there would be several meetings and we should await word about which meetings each of us would be invited to.

**X. The lunch meeting to discuss a staff union.**

69. On October 22, 2012, the staff agreed to have a luncheon together with the newly hired attorneys to include them in our discussions with the partners and to invite them to join our concerted activities. We agreed to go to Harmony Restaurant at 12 noon.

70. On that day, at about that time, Mary Jane showed up at the NWC offices and started walking with us toward Harmony. She said cheerfully that she was a staff person too, and she heard this lunch was to welcome the new staff. I walked with her and told her that this meeting was to discuss formation of a staff union, and she was a confidential employee. She insisted that she was an employee too and she should be able to have lunch with us. I explained how in bargaining unit determinations, management is entitled to have a confidential employee who can be ordered not to disclose confidential management information to the other employees. I reminded her of the time she told me that she could not tell me what she knew about the partners' plans for raises and bonuses. She kept arguing with me that she still had an interest in what was going on. She said that Yejin had invited her. I told Mary Jane that Yejin had not understood the purpose of the lunch. I told Mary Jane that if she would renounce her confidential role with management and support the staff organizing, then I would feel comfortable having her at lunch. At this point, we were approaching the intersection of 33<sup>rd</sup> St and M St. near Harmony. Mary Jane's mood changed to being upset. She told me, "Well, I don't want to be fired," and she left. I concluded that Mary Jane was representing the partners and had

attempted to spy on our meeting to report back to the partners on what was said at our lunch.

71. The attenders of our October 22, 2012, lunch included the five of us who approached the partners on October 9 (Erik, Tim, Lindsey, Owen and myself), the four new attorneys (Chioma, Pia, Felipe and Yejin) and Dasha Galperin. Erik had to leave for a 1 pm conference call, and lunch was wrapping up shortly after 1 pm. A few of us continued to talk, but all of us were back to the office before 2 pm.
72. On my way back to my office, I called Estelle and Corinne Kohn's house. I wanted to talk to both of them because I value their friendship and respect. I could anticipate that news of our lunch would spread, and I wanted them to know that I wanted to continue our friendship. Corinne answered the phone. She was unusually curt with me. She told me that Estelle was sleeping. I told her I wanted to talk with her. I told her that I had attended a lunch to discuss a staff union. She told me that she already knew and that Estelle is the one I should be talking with. I told her I thought it was in the best interests of our organization and she ended our telephone discussion.
73. After returning to the office, I went to Mary Jane's office and asked her if she would like a report. She was unusually curt with me and said no.
74. After lunch, I used the KKC email system to send to all the lunch attenders a copy of my October 10, 2012, email to the partners about transparency and participation.

#### **XI. Estelle's animus and threat.**

75. On Tuesday, October 23, 2012, Estelle was back in the office after being away for a

medical procedure. While I was at the NWC office, I saw Owen talking with Estelle. I entered Estelle's office and I heard Estelle being upset about the staff lunch.

76. Estelle was upset that it took two hours. She was upset that Mary Jane had been excluded.

She didn't know why Dasha was included. She said that it was wrong to have KKC and NWC staff together. She said that if any of us had problems, we could always approach the partners as individuals. She said that she had interviewed the newly hired fellows.

77. Estelle said that we were lucky to have our jobs, that she had a stack of 30 resumes and we could all be replaced like that. After this remark by Estelle, Owen said he had to leave.

78. Estelle told me that she didn't see how I could organize a union when I was an NWC Board member. I told her I would resign from the Board.

79. I told her that if she felt employees should address their concerns individually, then she didn't really believe in union organizing. She disagreed and said that she supported me in getting our cards printed by a union printer. She felt I was personally disrespectful of her family for all they had done for me. She said that she didn't even know the amount the firm received and she was happy to get whatever salary they offered her.

80. After I left Estelle's office on October 23, 2012, I submitted my letter of resignation from the NWC Board. I emailed it to the Board Chair, Gina Green. I included the partners, Mary Jane and Estelle as cc's on my email. My letter stated in part as follows:

[R]ecent events have led me to believe that I can better serve the long term interests of our organization if I resign from the Board to avoid any conflict of interests as I engage in certain concerted activities with my co-workers. Together, we seek to improve the

transparency of Kohn, Kohn & Colapinto, LLP, NWC and the National Whistleblowers Legal Defense and Education Fund. We seek to increase the level of staff participation in decisions that affect our wages, hours, terms and conditions of employment, our job security, and the long term growth of our movement. In these concerted activities, my position as a Board member and officer could raise concerns about a conflict of interests. To avoid even the appearance of such a conflict, I now resign as Secretary and as a member of the Board of Directors.

81. I promptly went to the partners' offices to tell them directly. Dave told me he was very disappointed.
82. Mike told me he was upset that I called his 87 year old mother. I told him that she made clear she did not want to talk to me and I would not call her again. Mike told me that he had way too much work to do to think about the staff. Mike was visibly upset and tried to continue typing on his computer as we talked. It was clear to me that he felt I had breached his trust. Now I understood that his idea of trust was not trust in my commitment to the cause, but rather something more personal.
83. On October 23, 2012, my name was removed from the list of NWC Board members on the NWC web page: [http://www.whistleblowers.org/index.php?option=com\\_advancedtags&view=tag&id=5&Itemid=76](http://www.whistleblowers.org/index.php?option=com_advancedtags&view=tag&id=5&Itemid=76)
84. On October 23, 2012, I received a copy of Owen's email to Steve complaining about Estelle's threat to find replacement employees. I do not recall Stephen Kohn, or any other management representative, asking me for my statement about what happened in Owen's and my October 23, 2012, conversation with Estelle Kohn.
85. On October 23 or 24, 2012, I learned that the partners had a meeting with the new hires and told them that they were not to have discussion with other staff during work hours.

86. The partners had never before imposed any such restrictions on staff, and had never before made any direction to us restricting us from personal conversations with each other during any set work hours.

87. The content and timing of this instruction from the partners made me think that the partners were beginning a campaign of reprisals to suppress our concerted activities toward transparency and participation.

## **XII. Our agenda.**

88. On October 24, 2012, Owen sent the partners an email that constituted the staff's collective input on an agenda for our October 26, 2012, staff meeting. Our agenda stated:

Issues common to all organizations:

Transparency. When we are working at below market rates, it would be fair to share the available information about what resources we have. Staff should have the same types of information that employers have to provide in collective bargaining.

Participation. It would be better if we could all participate in major decisions affecting us, like the decision to create new staff positions, office space, future planning and our job security, with meetings on these issues to be conducted at least monthly.

Career path planning. All staff should have a sense that we are all committed to making a viable career path that includes a living wage at each stage.

Non-retaliation. We recognize that recent changes are stressful. Still, we need to strive to avoid suggestions that staff would be replaced because they chose to engage in protected activities. We want to exemplify the fundamental mission of our organization.

National Whistleblowers Center (NWC) Agenda Items

NWC growth in the post-Birkenfeld era

Discuss potential goals for 2013

Discuss how to evaluate our progress towards goals and how

frequently we will have regular meetings

Discuss how to be consistent in our efforts to achieve goals  
(Constant changing of priorities is disruptive to both short and long term goals)

Discuss the services NWC receives from the Fund and establish budgets (e.g. what is our budget for blog articles?)

Internship program

How can we provide interns with more support, attention and supervision?

Given the high level of understanding required, maybe there should be a push to recruit more law students and less college students

Perhaps the internships need to be more focused all around, starting with the recruitment process, i.e. a Radio Intern, an ARS Intern, etc.

In addition to the legal training for interns, all new interns and staff should have instruction on general office procedures for KKC / NWC, whichever is relevant.

We should have an office manual that sets out our office policies and procedures.

Kohn, Kohn & Colapinto (KKC) Agenda Items

Status/next steps for the partners' partnership agreement?  
(important step for security/continuity of KKC)

We should stop taking new cases until the workload becomes more manageable (or increase focus on management/delegation of workload)

Internship Program (Same as above)

National Whistleblower Legal Defense & Education Fund (NWLDEF) Agenda Items

Discussion of creating an annual budget

Evaluation of the services provided to the NWC, including how/which costs should be billed (e.g. what is the value of a blog article?)

Discussion of the profit-sharing plan; how best to extend to all employees of all organizations

### **XIII. The managers and supervisors meeting.**

89. On the afternoon of October 25, 2012, Steve and Mike asked me to come to a meeting in Steve's office. They did not tell me what the meeting was about.
90. When I arrived, Steve, Dave and Mike were there with Estelle, Mary Jane and Lindsey. Steve began the meeting by welcoming us to the “first ever meeting of managers and supervisors” of all the organizations. He repeated this and explained he wanted to have a meeting of everyone who supervises in any of the organizations.
91. I interrupted and asked if I should attend when I was not a manager or supervisor.
92. Steve said that my attending the meeting does not mean that I agree I am a manager or supervisor and he would not hold it against me if I stayed.
93. Dave and Mike disagreed. Mike said that he hired me under the belief that I was a manager.
94. I said that I managed programs, not people.
95. Mike said that I was the supervisor of Pia and Chioma. I denied it. I said that I might review their work, but I had no power to hire, fire or discipline them.
96. I stood up to leave. Dave motioned to me to sit down. I did. Dave said he agreed with Mike that I was a manager and I should stay. I said I would not stay if doing so meant I agreed I was a manager. Dave asked to meet with Steve alone. I told Dave we all knew this was about bargaining unit determination and I would have no part of it. Dave invited me to leave and I did. Dave and Mike were visibly upset.
97. On the evening of October 25, 2012, Lindsey and Tim came to my home. It was a kind

act of friendship. They were concerned about whether I would stay at KKC and NWC and they made clear that they wanted me to stay. Tim told me that he was going to reach out to the partners to discuss how we could get our issues settled. He asked me to hold off on any actions I was considering until he could complete his efforts with the partners. I agreed.

98. Also on evening of October 25, 2012, Steve Kohn sent out this email:

From: Stephen Kohn [mailto:smk@kkc.com]  
To: Timothy Cheng [mailto:tc@kkc.com], Mary Jane Wilmoth [mailto:mjw@kkc.com], sk@kkc.com, mk@kkc.com, dc@kkc.com, rr@kkc.com, es@kkc.com, yj@kkc.com, fbg@kkc.com, ek@whistleblowers.org, lmw@whistleblowers.org, whistle@whistleblowers.org, pw@whistleblowers.org, cc@whistleblowers.org, dg@whistleblowers.org  
Sent: Thu, 25 Oct 2012 19:40:27 -0500  
Subject: Re: Staff Meeting

Dear Staff: Due to scheduling conflicts, we have re-scheduled the staff meeting for 4:30pm on Friday. The meeting is mandatory for all. Thanks [sic] you. Steve Kohn

Stephen M. Kohn  
3233 P Street, N.W.  
Washington, D.C. 20007  
(202) 342-6980  
(202) 342-6984 (fax)  
sk@kkc.com

**XIV. The staff meeting gets postponed again.**

99. On October 26, 2012, Steve and Mike gathered with the staff for a 4:30 pm meeting.

100. Yejin was not present. Steve said she had resigned earlier that day.

101. Dave was not present. All the rest of the staff was present.

102. When the meeting began, Steve explained that Dave had some medical symptoms the night before that required immediate attention. Dave was in the hospital.
103. Under the circumstances, Steve said that it was inappropriate to conduct the staff meeting we had intended. We circulated a sheet of paper folded into quarters like a card and passed it around to write in get well wishes for Dave.
104. After the truncated staff meeting, Tim asked to meet me. He told me that the partners had this offer to make: they would pay me an additional bonus of \$20,000. I did not understand it at the time, but Tim later clarified for me that the \$20,000 represents a raise, for which the 2013 payment (of the raise) would be made in a lump sum in 2012 to help with the partners' taxes this year. My new salary reflecting the regular payment of the raise would begin in 2014.
105. In exchange, Tim told me that the the agreement would involve the staff giving up the union drive and giving up the request for disclosure of the books.
106. I wanted to assess how my coworkers were feeling before deciding how to respond.
107. The office was closed on October 29 and 30 for Hurricane Sandy.
108. On October 31, 2012, Tim told me that the partners would like an answer by the beginning of next week. I had a scheduled vacation on November 1 and 2 to travel to my daughter's wedding on November 3, 2012, in Durham, North Carolina.
109. During the work day on October 31, 2012, I found Steve and Mike pleasant and businesslike. On November 2, 2012, I received an email from Steve canceling his

RSVP to my daughter's wedding.

110. On November 5, 2012, Tim and I talked in the morning. I expressed my concern about the provision that we give up the union drive and the request for financial transparency. Tim shared my concern. He assured me that this agreement with the partners was not permanent, and the staff would continue their concerted activities as needed to address any issues that might arise in future work with the partners. With that understanding, I gave Tim my consent to accept the partners' offer.

111. I conducted a telephonic status conference for a client, with Mike Kohn while he was in Italy. It went cordially.

**XV. The termination meeting.**

112. On November 5, 2012, at about 4:30 pm, Mary Jane told me that Steve wanted to meet with me in the NWC conference room. I was working on a supporting declaration for an outside attorney's fee petition at the time. I left it on my screen and proceeded to the NWC conference room.

113. It took a few minutes, but Tim, Erik, Owen, Mary Jane and Steve arrived. Owen said that Lindsey was at a chiropractor appointment.

114. Steve began reading from a prepared large-type text. He said that NWC and the Fund had run out of money and was laying off its staff effective immediately.

115. He said that in light of Dave's health, KKC had decided to return to a partners-only model. He said that Dave's health condition was stress related and his doctors told him he needed a break from work and less work stress when he returns.

116. Steve said that Dave's medical condition prompted the partners to decide that the current model of employing staff attorneys was no longer the model they wanted.
117. Steve asked us to turn in our keys, collect our personal effects and leave. He told us that he would not touch the stuff in our offices and we could make an appointment to collect them later.
118. He told all of us that the partners were mindful of the effect of this on us, and they wanted to provide for our health care and severance. He said in the next day or two, we would receive a FedEx package with our last paycheck, information about continuing our health insurance, and a severance proposal. He hoped that we would find the severance generous, paying us more than we were entitled to. He said the severance agreement would require a release of all claims.
119. Steve said that there were some cases he would want me to take with me, and he would meet with me later about that, but not on the next day, Tuesday, November 6, 2012. He hoped Wednesday would be a good day for us to meet on the cases.
120. Steve said that otherwise, we were not to talk to any of the clients.
121. I took off two keys from my key ring and put them on the table in front of Mary Jane. I left the conference room, went to my office, found an empty box, collected what personal effects I could recognize.
122. I tried to save the declaration I was working on, but my computer would not let me. It would not let me access my email. Mary Jane told me I could have it force a quit to shut it down. I did. I left shortly after 5:00 pm.

123. Erik, Tim Owen and I went to Lindsey's apartment. There, she played for us Steve's short voicemail telling her that she was terminated as well.

124. When I got home, I discovered that my password no longer worked to access my KKC or NWC email.

**XVI. Steve's pretext.**

125. On Tuesday, November 6, 2012, I read the following article on the Blog of the Legal Times (BLT):

**'Significant' Layoffs Made at National Whistleblowers Center**

The National Whistleblowers Center laid off a "significant" number of staff yesterday in its Washington-based office, Executive Director Stephen Kohn confirmed today. He would not say how many employees were fired or from what positions, but said that the layoffs were due to lack of funds.

Kohn said that while they had arranged for pro bono lawyers or legal fellows supported by law schools to cover any cases the center is currently supporting, the layoffs and financial situation could affect their ability to take on new matters moving forward. He declined to say how many cases the center is supporting now.

Founded in 1988, the center has supported whistleblowers across the country and advocated for stronger whistleblower protection laws. The center also supports the National Whistleblower Legal Defense and Education Fund, which makes attorney referrals and provides direct legal representation.

According to Kohn, who serves pro bono as executive director, the center didn't secure renewal of a grant from the Open Society Institute, which he said had been the center's largest source of funding. Kohn declined to say how much they had received in the past, but an institute spokeswoman, Maria Archuleta, said today that the center had most recently received a two-year grant for \$200,000 that ended December 31. Archuleta confirmed that the grant was not renewed, but no one was available who could offer more information on that decision.

"It's very unfortunate we lost that major grant," Kohn said. "We

had to make hard choices."

At one time, the center's website listed at least a half-dozen other staff members. The website no longer publicly lists its staff.

Despite the layoffs, Kohn said that the center is open and operational. He said he would be focusing on finding new funding sources and hoped that after the election, potential donors would be more willing to contribute funds to a broader array of organizations.

Kohn is also a name partner at Washington's Kohn, Kohn & Colapinto, which handles whistleblower cases. The firm is not officially affiliated with the center, but fellow firm name partners Michael Kohn and David Colapinto are also involved in the center's leadership, with Kohn serving as president and Colapinto as general counsel. Neither could be reached for comment. All three are also listed as attorney-trustees for the National Whistleblower Legal Defense and Education Fund, according to the center's website.

Posted by Zoe Tillman on November 06, 2012 at 04:11 PM

126. I immediately recognized that Steve was not telling the truth to Ms. Tillman.

She completely missed the connection with the Birkenfeld award.

127. We were not laid off because of a lack of funds, but quite the opposite. Big money finally came in and the partners were retaliating against us because we asked them to open the books and let us participate in the decisions.

128. The partners had already told us that the funds for NWC's entire 2013 budget were set aside from the Birkenfeld revenue.

129. We had known for many months that the current OSI grant would expire at the end of 2012. Lindsey was working with Steve to lay the groundwork for a new grant application to a different OSI program. Indeed, Steve and Lindsey were working on requests to Brad Birkenfeld and Dean Zerbe to make large donations to NWC by the end

of this year.

130. If there really was an impending economic shortfall, the partners would have done what they have done in the past. They would call large donors for an emergency request. They would have asked me to forgo my salary. They would have made a public appeal.

131. If we had truly suffered an economic layoff, we would have been laid off effective on December 31, 2012, when the grant ended, and we would have received advance notice of the date of our layoff and an opportunity to get our work wrapped up before our last day.

#### **XVII. Conclusion.**

132. The timing, animus, manner of termination, shifting explanations and other circumstances point to a reprisal against our concerted efforts to raise concerns about transparency, participation and the illegality of the retaliation as the real reasons for our terminations. That we chose to raise our concerns concertedly, with an open suggestion of forming a staff union, provoked the particularly harsh reaction of a mass firing.

133. On Wednesday, November 7, 2012, at 11 am, I accompanied Lindsey to her appointment at KKC to retrieve her personal effects.

134. I had sent an email to Steve that morning telling him that I would accompany Lindsey and that I could collect more of my personal effects. I told him we could talk then about how we would make a transfer of some cases to me workable.

135. At 11 am, Mary Jane opened the door to let Lindsey in and then blocked me

as I approached. I told her that she would get an unfair labor practice for violating Weingarten rights if I could not accompany Lindsey. She motioned to Lindsey to leave and said she would get Steve.

136. There was a pile of Lindsey's things by the door. Steve said that Lindsey could get her stuff, and if she didn't want to meet alone, then they didn't have to meet. Steve also declined to meet with me about pending tasks in the clients' cases. Mary Jane handed me a USPS priority mail Tyvek with my name on it. I asked for my shoes under my desk and she got those for me. I told her I gave her an incorrect key and asked to swap it out for the KKC key. She agreed and got my keys so I could recover my personal key and return the KKC key.

137. Lindsey said the pile did not have all her possessions. Some were still at her NWC office. Steve invited us to NWC to get them.

138. At the NWC door, he also tried to exclude me. I again told him that it would be an unfair labor practice to deny Lindsey accompaniment of a coworker of her choice. Steve relented and let me enter.

139. Estelle and Corinne were sitting at the conference table with one or more interns. Estelle made a hostile remark to someone about how "he" (referring to me) probably had food in the kitchen.

140. Lindsey recovered her clothing and we went to her office.

141. I saw Megan at the NWC office.

142. The papers in Lindsey's office were newly arranged in stacks. Lindsey went

through her papers in her office to collect those that were about her personal business. She asked Steve for permission to take them, and Steve mostly gave permission. When Lindsey got to her business cards, Steve told her that she could take her personal cards, but her work contacts should stay. Lindsey went through the cards individually. There were about two full boxes of about 500 cards each. Lindsey's hands were shaking as she went through them. She took a few personal cards and left the large majority of the cards.

143. We left NWC and went to get her car. Lindsey drove her car to park in front of KKC. When we got to KKC, her pile had been moved outside the door and no one was present. We loaded the items into her car and Lindsey left. Lindsey told me that this experience was so degrading and she thanked me for attending with her.

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

Dated this 11th day of January, 2013.

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