

To: James P. Hoffa, IBT General President

From: Joseph E. diGenova, Independent Investigations Officer

Re: Recommendation of Disciplinary Charges Against Former  
IBT Political Director Nicole Brener-Schmitz

Date: November 9, 2016

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**I. RECOMMENDATION**

Pursuant to ¶¶ 30 and 31 Of the Final Agreement and Order (Ex. 1, at 16-17), the Independent Investigations Officer recommends to the International General President that disciplinary charges be filed against former IBT Political Director Nicole Brener-Schmitz ("Brener-Schmitz"), who was an IBT member at the time of her offenses, for multiple violations of the IBT Constitution that evidenced a pattern of reproachful conduct throughout her employment, including:

1. From 2013 through 2015, she submitted 564 false receipts to the IBT for transportation within the D.C. area that it paid for her. For each of these charges she caused the union to pay, she altered information on the receipts she submitted. She falsely claimed all these charges were for a union purpose. She caused the IBT to pay for these personal expenses, embezzling in excess of \$11,000 in violation of 29 U.S.C. § 501 (c), and committing an act of racketeering, 18 U.S.C. §1961 (1), in violation of the Final

Agreement and Order in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.). (Ex. 1)

2. In submitting these 564 false receipts and correspondingly false expense reports in connection with those expenses, she caused the IBT to violate its record keeping obligations under federal criminal and civil law. 29 U.S.C. §§ 436, 439. In doing so, she was liable as a principal for these criminal acts. 18 U.S.C. §2(b).

3. On at least two separate occasions, in 2013 and 2015, she caused the IBT to extend interest free loans to her, each of which was over \$2,000, in violation of the IBT's legal obligations under 29 U.S.C. §503. Under 18 U.S.C. §2(b), she was as liable as the principal for these criminal acts.

4. She brought reproach upon the IBT through defrauding it by submitting personal checks to it to repay debts owed for illegal loans when she knew there were insufficient funds in her account to cover the checks she gave the IBT. The checks bounced. More than five days elapsed from the time some of her checks were refused to be honored before she made repayment to the IBT. These were felony offenses with the IBT as her victim. Code of the District of Columbia § 22-1510. Her conduct in doing this was reproachful.

5. She received \$4,000, in her personal account in July 2013, from the Chairman and Executive Director of an organization the IBT made donations to through D.R.I.V.E. She was involved in the IBT donation process for that organization. Prior to being deposed by the IIO in July, 2016, she never disclosed to the IBT that she personally had received this money from an officer of an organization for which she was recommending D.R.I.V.E. donations be made. This created a conflict of interest under the law and in violation of the IBT's Code of Conduct for its employees. (Ex. 4 at 12])

Through all her actions, she violated Articles II, §2(a) and XIX, §§ 7(b) (1), (2), (3), (5) and (11) of the IBT Constitution. (Ex. 3)

## **II. JURISDICTION**

Pursuant to Paragraph 32 of the Final Agreement and Order ("Final Order") in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.), the IIO designates this matter as within the original jurisdiction of the General President. The General President is required within 90 days of the IIO's referral of this matter, to file written findings with the Independent Review Officer, setting forth the specific action taken and the reasons for that action. Pursuant to ¶ 32 of the Final Order, copies of this report are being sent to each member of the General

Executive Board and the United States Attorney's Office, Southern District of New York. (Ex. 1 at 17-18) Pursuant to Article XIX, Section 1 (g) of the IBT Constitution, a former member may be charged for conduct committed while a member. (Ex. 3)

### **III. INVESTIGATIVE FINDINGS**

In May, 2008, the IBT hired Nicole Brener-Schmitz as an Election Project Coordinator. (Ex. 2 at 6) She became a member of Local 175 in West Virginia<sup>1</sup>. From the end of 2009 through December, 2014, she served as Federal Political and Field Director. (Ex. 2 at 6) In December, 2014, she was promoted to Political Director. (Ex. 2 at 5-6) Although she was an employee at will, the IBT entered into a separation agreement with Brener-Schmitz on September 26, 2016. The union had known for years of the illegal loans she caused it to extend to her and knew from an application the IRB filed in court in January, 2016, of her submission of false transportation receipts to it. The IBT terminated her employment pursuant to this agreement months after she had admitted she had received \$4,000 from an employee of an organization she processed D.R.I.V.E. contributions for. Despite knowing of this total conduct, including her admission of submitting over 500 false receipts which caused the IBT to pay over \$11,000 for her personal

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<sup>1</sup> Because IBT membership was recommended, Brener-Schmitz stated that she joined that Local based upon a suggestion that the Local associated with General Secretary-Treasurer Hall would be "the logical choice". (Ex. 2 at 9) She did not recall who made the suggestion. She joined the General Secretary-Treasurer's Local. (Ex. 2 at 9)

Uber charges, the IBT in its agreement promised not to disparage Brener-Schmitz. (Ex. 5 at 3) She was to receive her salary until October 9, 2016. (Ex. 5 at 1) She also resigned from her membership in the IBT, effective September 16, 2016. (Ex. 5 at 1) She did not make restitution to the IBT for the over \$11,000 in Uber rides she embezzled through her false receipt scheme.

#### **SUMMARY**

On May 30, 2008, Brener-Schmitz as part of her employment was issued an IBT credit card. (Ex. 6) In a letter to Brener-Schmitz, then General Secretary-Treasurer C. Thomas Keegel informed her that the card

[M]ay be used only when making payment for certain IBT business-related expenses in accordance with the guidelines set forth in the most recent IBT Travel and Business Related Expense Policies ("IBT Expense Policies"). **Under no circumstances may you use this card to pay for expenses of a personal nature.** The business nature of all charges on your credit card must be documented and entered on an expense report together with original receipts verifying each charge as required by the IBT Travel and Business Related Expense Policies. [...]

You will in all cases be held personally liable for any charges that are of a personal nature, and you may be held personally liable for charges that have not been properly documented or for which there are no supporting receipts.

(Ex. 6) [Emphasis in original]

On June 3, 2008, Brener-Schmitz signed a copy of that letter acknowledging she had read it and agreed to be bound by its

requirements and restrictions. (Ex. 6) Despite this, over several years she repeatedly used her IBT card for personal purchases, submitted false receipts and failed to file timely expense reports, as detailed below.

The IBT received the monthly credit card statement for employees who were issued IBT cards. (Ex. 14) The IBT would pay these charges. (Ex. 14) The employee was obligated to timely submit an expense report explaining the union purpose for each charge. According to the IBT policy, expense reports were required to be filed within 30 days of the completion of any meeting, travel or month<sup>2</sup>. (Exs. 4: 55 at 10-11) Throughout her employment, Brener-Schmitz routinely failed to file timely reports.

Each month, the IBT would pay all expenses she charged on the IBT card, despite her failing to provide it with the required timely explanations of charges. Since she was using her card for personal charges throughout the period, this pattern allowed her to have the IBT advance her credit for these improper charges. After months passed in which she did not file expense reports, on at least three occasions, the IBT reviewed her expenses and determined certain of her charges were not for proper union business. It then required her to pay back the challenged charges which she would eventually do. On two occasions, in 2013 and 2015,

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<sup>2</sup> Each month, the IBT paid its credit card bill which included all of Brener-Schmitz' personal charges. (Ex. 14)

this scheme resulted in her causing the IBT to extend loans to her over \$2,000, each in violation of federal criminal law. In some instances, she delayed her repayment to the union of the credit improperly extended to her by bouncing several checks she gave it to repay what she owed it.

Between July 18, 2013 and September 5, 2013, the IBT suspended the use of Brener-Schmitz' union credit card for her repeated, previous violations of IBT policy regarding timely filing of expense reports<sup>3</sup>. (Ex. 9) By a letter dated September 5, 2013, General Secretary-Treasurer Ken Hall reinstated her credit card privileges. (Ex. 10) In that letter he again reminded Brener-Schmitz of the requirements that she submit timely expense reports and not use her union card to pay for personal expenses. (Ex. 10) She again immediately violated those policies as she had done with the previous instructions she received from Keegel. The IBT let her engage in the pattern again for almost five months. On January 22, 2014, Brener-Schmitz was notified that effective January 27, 2014, due to her continued failure to submit timely expense reports detailing the union purposes for the card's use, her IBT issued

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<sup>3</sup> In a November 8, 2010 letter, General Secretary Keegel told Brener-Schmitz that "you are 6 months delinquent in submitting your outstanding expense reports" (Ex. 7)

In a May 6, 2011 letter, General Secretary Keegel told Brener-Schmitz that "your IBT issued credit card has been suspended effective Monday, May 9, 2011" Keegel noted that Brener-Schmitz did not respond to a previous notice. (Ex. 8)

card would be suspended again, this time for 90 days. (Ex. 11) She failed to submit the required expense reports she owed even after that notice. She finally submitted on May 30, 2014, the delinquent expense reports for which her card had been suspended in January. Brener-Schmitz was notified that her card was reinstated, effective June 1, 2014. (Exs. 12; 62)

Again, Brener-Schmitz almost immediately resumed her violations after her IBT card was restored for the second time. Her next misuse of her IBT card was on June 9, 2014. (Ex. 27) She failed to submit a timely report. This time the IBT tolerated the failure to file reports for almost a year before it finally acted. (Ex. 13) On June 12, 2015, General Secretary-Treasurer Hall notified Brener-Schmitz that her credit card was suspended for a third time, again due to her repeated failures to submit timely expense reports. (Ex. 13) That third suspension was to continue for six months. Hall also informed her that when her card privileges were reinstated, Brener-Schmitz would no longer be permitted to use her reinstated card for any Uber rides. (Ex. 13)

It was her repeated failures to submit timely expense reports identifying non-union charges and the union purposes for expenses charged to the union that allowed Brener-Schmitz to cause the union to illegally extend her interest free loans over \$2,000. On two separate occasions she caused the IBT to extend her such loans, each in violation of the union's legal obligations under 29 U.S.C.

§503, a criminal statute. She did this by using her union card for non-union expenses, despite the explicit prohibition under IBT policy against doing so. Also in violation of IBT policy she did not submit timely expense reports identifying these as non-union expenses. The union paid the improper charges so the debt she owed the credit card company became an amount she owed the union for her personal charges. The union would ignore her delinquencies for months at a time as the amounts of credit it was extending her increased.

As she persisted in the violations on repeated occasions, only after several months of her known delinquency in filing timely reports, the IBT would review her charged but unexplained expenses. It would challenge some of them. (Ex. 15) She accepted its determinations of the improper charges and eventually would pay back the credit the union had extended to her. (Ex. 2 at 186-187) Through this scheme she caused the union to make illegal interest free loans to her in excess of the statutory limit. Under 18 U.S.C. § 2(b), she was liable as a principal for causing the criminal offense.

In a separate scheme, Brener-Schmitz admitted to submitting from January 2013 through June 2015, 564 false receipts to the IBT for charges on her union card to Uber, allegedly for union

purposes<sup>4</sup>. (Ex. 2 at 144-149; 164-166) The false receipts caused the IBT not to seek repayment from her for the personal expenses she charged and it paid. Not one of these false Uber receipts she submitted to the IBT contained the actual information concerning the Uber charges she caused the IBT to pay. The IBT paid over \$11,000 for the charges she supported with false receipts. Under the IBT policy known to her, she was required to submit actual receipts for these rides with accurate information. (Exs. 6; 4 at 4-5) She engaged in a scheme to embezzle from the IBT based on the submission of false information and false documents she provided. She received a receipt from Uber for every one of these charges. She never submitted the actual receipt to the IBT. She only submitted those she fabricated. (Ex. 2 at 144-149)

Even after the third time her card was suspended in June, 2015, she continued to have outstanding delinquent expense reports for the earlier period. On August 17, 2015 the IRB issued a document request for, inter alia, expense records for Brener-Schmitz. (Ex. 16) That document request was received at the IRB on August 19, 2015 at 12:44 P.M. (Ex. 16) Later that day, Brener-Schmitz filed twelve expense reports, nine of which were filed at approximately 3:00 P.M. that afternoon. (Ex. 17) These related to

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<sup>4</sup> Between January 29, 2013 and July 16, 2013, Brener-Schmitz submitted 148 of the 564 false Uber receipts which contained only charged fare information, without providing the times, pick-up or drop-off location. (Ex. 92) For the remaining false Uber receipts she submitted, she added that additional information.

expenses she had charged on her union card from February 5, 2015 through June 11, 2015. (Ex. 17) Among those August filed expense reports, and ten additional ones she subsequently filed within a few days after August 19, were receipts for 74 Uber rides. (Ex. 17) Not one of these 74 receipts Brener-Schmitz submitted was an authentic Uber receipt.<sup>5</sup> (Ex. 2 at 144-149; 164-166) Instead, on each of the fabricated ones she submitted to the IBT she changed information she gave to the union, except the charged amount, which was also on the credit card statement the IBT had received. She did this to falsely justify the union having paid for them and to prevent it from seeking reimbursement from her for these personal expenses. In fact, she had done that for all of the 564 receipts reflected on the schedule of false receipts she submitted to the union. (Exs. 19-24)

In connection with the false Uber receipts she submitted in 2013 through 2015, she deliberately falsified records submitted to and kept by the union. She changed times and dates. Sometimes she made late night and early morning rides appear to be during work hours. She altered weekend rides to have them appear as if they occurred on weekdays. She altered unconnected rides that were days apart to create an appearance they were rides to and

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<sup>5</sup> The IRB obtained a subpoena from the Court for Uber's records for Brener-Schmitz' account. Uber produced a record of her rides. (Ex. 18) The Uber records list the times of the rides using 24-hour military time. The times have been converted to 12-hour am-pm (standard) time.

from a meeting on the same day. She submitted false receipts claiming cancellation fees were charges for completed trips. Every one of these Uber receipts she submitted had information that differed from the charge she had the union pay for. She also submitted false Uber receipts for non-Uber rides she had charged and for which the union had paid.

The IBT was legally required to report her reimbursed expenses on the Form LM-2. Under the law, the union, the General President and the Secretary-Treasurer needed to maintain accurate unaltered records supporting the entries on that form. In submitting false records in connection with her expenses, she, as she had with the loans, caused the IBT to violate its legal obligations. 29 U.S.C. § 436. In doing so, she was as liable as if she was a principal. 18 U.S.C. § 2(b).

Throughout this period, Brener-Schmitz needed money. Her bank records evidenced she was bouncing checks and running overdrafts. (Exs. 24; 88) She also was paying substantial fees for cash advances from the bank. (Exs. 24; 88) Given her financial situation, she needed to embezzle to pay for the personal rides. In addition, she admitted writing checks to the IBT when she knew there were insufficient funds in her account to cover them. On August 19, 2015, she wrote a check to the IBT for \$1,838.74 to pay back credit it had extended to her. (Ex. 2 at 109-112) The check

bounced. She did not repay the IBT until 14 days after it was dishonored. Under DC law, this was a felony. Code of the District of Columbia § 22-1510. (Ex. 29) The union was the victim of her intentional act. On June 17, 2013, she bounced a \$1,503.25 check she gave to the union to repay it for credit it had extended to her to pay for improper expenses she charged. That check she gave to the union when she knew there were insufficient funds to cover it also violated the D.C. statute. (Ex. 29) These were reproachful acts.

Brener-Schmitz also violated the conflict of interest provision in the IBT's Code of Conduct. (Ex. 4 at 10-12) On July 16, 2013, she received \$4,000 from the Chairman and Executive Director of an organization that D.R.I.V.E., the IBT's PAC, made and continued to make donations to. (Ex. 2 at 87; 93) She, as part of her job, was involved in the donation process within the IBT for the organization. (Ex. 2 at 206-207; Ex. 78) The money from the Chairman was wired to her personal account. (Ex. 2 at 93; Ex. 24) On the same day she received the wire transfer, she withdrew \$3,800 to repay the IBT for credit it had extended to her, based on her improper credit card charges it had paid. (Exs. 24; 64) At her IIO testimony, she claimed the money she received from the donee's officer was a loan. (Ex. 2 at 87; 93) Over the next three years, there were no repayments by her, interest charged or documents memorializing it that evidenced a loan. (Ex. 2 at

87; 93-95) On September 23, 2016, after her attorney was told the IIO was considering recommending charges be filed against her, including concerning her receipt of this money, she returned \$4,000 to the IBT donee's officer. (Ex. 30; Ex. 37) She had not disclosed her receipt of the donee's officer's money to the IBT at the time she received it and after. (Exs. 39; 79) In violation of IBT policy, she created a conflict of interest by obtaining a substantial personal benefit from an officer of an organization for which she exercised her judgment at the IBT concerning the disbursement of funds to. This was also reproachful conduct.

#### **IV. EMBEZZLEMENT OF UNION FUNDS THROUGH THE SUBMISSION OF FALSE UBER RECEIPTS**

Brener-Schmitz was required to submit timely expense reports accounting for her charges made on the union credit card with an explanation of the union purpose for each charge. (Ex. 2 at 73-75; Ex. 4 at 20; Ex. 6; Ex. 31) With those expense reports, she was required to submit original receipts for the credit card charges she sought the IBT to pay. (Ex. 2 at 73-81; Ex. 31)

During 2013-2015, Brener-Schmitz charged to the IBT card 564 Uber charges. Upon completion of any transaction, Uber charged her IBT credit card. (Ex. 14, Exs. 20-23; Exs. 26-28) Uber then emailed for each ride or other charge a detailed receipt to Brener-Schmitz' private Gmail account. The Uber receipts she received

showed the time of the ride, the distance, the pick-up and drop-off locations, the identity of the driver, the fare charged and the credit card number charged<sup>6</sup>. (Ex. 2 at 146-149; 152-154; Ex. 80) In case of cancellation charges she incurred, the receipts showed similar relevant information. At her sworn examination, Brener-Schmitz acknowledged that she received those receipts and still had them in her possession. (Ex. 2 at 146-147; 187) She never submitted one of these genuine receipts to the IBT. (Exs. 20-23; Ex. 2 at 143-149; 157-158)

Rather than submit the actual receipts she had received to the IBT as she was required to do, Brener-Schmitz created a template which she used to fabricate receipts on which she placed some, but not all of the information categories ordinarily included in an authentic Uber receipt. (Ex. 2 at 145) She manipulated the dates, times and locations on the Uber receipt she fabricated so the facts of the actual Uber rides and other Uber transactions she charged to her union card, were concealed from the IBT. (Ex. 2 at 146-149; 156-158) She also used false trip receipts she created to conceal she was having the IBT pay for cancellations of rides she had scheduled. (Exs. 64-65) She changed information from the actual rides so she could assign an apparently valid union purpose to transparently personal charges. She did not change the amounts,

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<sup>6</sup> Exhibit 80 is an example of an Uber receipt received by an Uber rider in Washington, D.C. since Brener-Schmitz' were fabricated.

because those amounts appeared on the credit card statement the IBT received (Exs. 26-28) She submitted these fabricated receipts to the IBT. On not one Uber receipt she submitted in this period was all the other information accurate. (Exs. 20-23) In not submitting the actual receipts but only her fabricated ones, Brener-Schmitz intentionally prevented the IBT from determining if the pick-up and drop-off locations on her falsified receipts were in fact true. Brener-Schmitz through this scheme caused the union to improperly pay over \$11,000 for her non-union expenses.

The following are examples of Brener-Schmitz' pattern of submission of the false Uber receipts to the IBT to embezzle union funds.

#### **Weekend Rides Changed to Weekdays**

For example, on or about March 9, 2015, Brener-Schmitz submitted an expense report and a false Uber receipt on which she reported a \$6.95 charge for an Uber ride<sup>7</sup>. (Ex. 32) The stated purpose for the ride was "taxi to IBT from AFL", on Monday, January 26, 2015, at 11:32 A.M. (Ex. 32) Uber records evidenced the ride was actually on Sunday, January 25, 2015, at 1:20 A.M. (Ex. 18) She falsified the receipt to conceal from the union that she had the IBT pay for an early morning weekend ride.

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<sup>7</sup> Unlike all of her other expense reports during this period, Brener-Schmitz' expense report (Ex. 32) was not date-stamped by the IBT Accounting Department. She signed her report on March 9, 2015.

On May 29, 2015, Brener-Schmitz filed an expense report and a false receipt which included a \$20.00 charge for an Uber ride on Monday, March 9, 2015, at 11:17 A.M., purportedly for a "Taxi From AFL to IBT". (Ex. 33) The IBT paid the charge. Uber's records showed that ride occurred on Sunday, March 8, 2015, at 3:12 P.M. (Ex. 18) She kept the amount on her fake receipt the same but falsified the other information submitted to the union to improperly justify the union's payment of her personal expense. She deliberately caused the IBT to pay for a Sunday afternoon ride that was not for the union purpose she falsely claimed. (Ex. 18)

On June 3, 2015, Brener-Schmitz filed an expense report which included a \$13.20 charge purportedly for a "Taxi to dmo dinner", and a false receipt reflecting an Uber ride on Monday, March 9, 2015, at 8:32 P.M., (Ex. 34) The IBT paid the charge. (Ex. 28) Uber's records showed that the ride occurred on Sunday, March 8, 2015, at 10:55 A.M. (Ex. 18) She falsified the other information on the receipt and report she submitted, including purpose, to conceal from the union it paid for her personal charge.

On August 19, 2015, Brener-Schmitz filed an expense report with a false receipt reflecting a \$22.23 Uber charge, purportedly for a "taxi back to IBT" for an Uber ride on Thursday, May 28, 2015, at 5:51 P.M. (Ex. 35) The IBT paid the charge. (Ex. 28) Uber's records showed that ride occurred on Saturday, May 30, 2015,

at 12:10 A.M. (Ex. 18) She falsified the purpose, the time and the date to conceal from the IBT she caused it to pay for a personal ride.

On August 19, 2015, Brener-Schmitz filed an expense report for credit card charges and a false receipt, purportedly for a meeting at "taxi to mtg: Russell", for a \$25.00 Uber ride on Friday, May 15, 2015, at 9:20 A.M.<sup>8</sup> (Ex. 36) The IBT paid the charge. Uber's records evidenced that charge was not for a completed Uber ride for a union purpose as she falsely represented to the union. Rather it was a cancellation fee for a ride Brener-Schmitz had scheduled but had not taken on early Saturday morning, May 16, 2015, at 6:33 A.M. (Ex. 18)

On that same expense report Brener-Schmitz included a \$35.00 expense, purportedly for a "taxi to DGA event", and a false receipt for an Uber ride on Thursday, May 14, 2015, at 5:26 P.M.<sup>9</sup> (Ex. 36) The IBT paid the charge. (Ex. 28) Uber's records evidenced that ride occurred on early Saturday, May 16, 2015, at 6:41 A.M. It was after the cancelled ride charge on that day that Brener-Schmitz had disguised as a weekday ride in another false receipt. She disguised this one to falsely appear as if the charge was for IBT business.

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<sup>8</sup> "Russell" appears to be the Russell Senate Office Building. (Ex. 81)

<sup>9</sup> "DGA" is the Democratic Governors' Association. (Ex. 2 at 163)

On May 29, 2015, Brener-Schmitz filed an expense report and a false receipt for a \$20.00 expense purportedly for a "Taxi from AFL to IBT", for an Uber ride on Friday, May 22, 2015, at 12:28 P.M., (Ex. 35) The IBT paid the charge. (Ex. 28) Uber's records showed that ride took place on Sunday, May 24, 2015, at 1:18 A.M. (Ex. 18) She falsified the information submitted to the union to deceive it into believing this was a business hours ride for a union purpose.

On August 19, 2015, Brener-Schmitz submitted an expense report and a false receipt which included a \$21.21 expense she charged on the IBT card for an Uber ride, purportedly for a "Taxi to HMP Mtg", three months earlier on Wednesday, May 27, 2015, at 1:40 P.M. (Ex. 35) The IBT paid the charge. (Ex. 28) Uber records evidenced that ride occurred on May 27, 2015, at 8:46 A.M. (Ex. 18) On the receipt that she submitted, she altered the time to make the ride appear it was for a union purpose. She submitted the false receipt to support her causing the union to improperly pay for her personal expense.

On August 19, 2015, Brener-Schmitz submitted to the IBT an expense report and a false receipt for a \$22.23 charge, for a "Taxi to IBT" for an Uber ride purportedly on Wednesday, May 27, 2015, at 3:17 P.M. (Ex. 35) The IBT paid the charge. (Ex. 28) Uber records evidenced that ride occurred on Tuesday, May 26, 2015, at

6:41 P.M. (Ex. 18) On the receipt she falsely created she kept the actual amount and altered the time and day. She submitted the false receipt to support the union improperly paying her personal expense.

On the expense report Brener-Schmitz submitted, on August 19, 2015, was a \$39.39 expense and a false receipt for a "Taxi to SMP mtg", purportedly for an Uber ride on Friday, May 29, 2015 at 10:02 A.M. (Ex. 15) The IBT paid the charge. (Ex. 28) Uber's records showed that ride occurred on Sunday, May 31, 2015 at 10:24 A.M. (Ex. 18) She used the correct charge amount but altered the other information on the fabricated receipt to cause the union to improperly pay the personal charge through falsely representing it occurred during business hours for a union purpose.

On the expense reports with accompanying receipts she submitted on August 19, after the IRB requested her expense-related documents from the IBT there were multiple falsely explained Uber charges reflected. For example:

There was a \$25.00 charge for an Uber ride on Wednesday, May 13, 2015, at 10:41 A.M., which Brener-Schmitz claimed was for a "taxi to mtg Owens". (Ex. 36) The IBT paid the charge. (Ex. 28) The Uber records evidenced that the charge was for a ride Brener-Schmitz charged on Tuesday, May 12, 2015 at 6:34 P.M. (Ex. 18) As was her pattern, she submitted the false receipt with altered

information to claim a personal expense as a business one to embezzle money from the IBT.

On August 19, 2015, she also submitted a false receipt for a \$28.00 expense she charged to the IBT card for a purported Wednesday, May 20, 2015, Uber ride at 5:36 P.M. She claimed it was for a "taxi to Boilermakers Reception"<sup>10</sup>. (Ex. 36) The IBT paid the charge. (Ex. 28) The Uber records evidenced that charge was for a ride Brener-Schmitz charged on Thursday, May 21, 2015, at 5:33 P.M. (Ex. 18) Again, she hid from the IBT what she was actually having the union improperly pay for, evidencing her intent to embezzle.

On August 19, 2015, Brener-Schmitz submitted false receipts and another expense report with false entries that listed eleven Uber rides she charged to the IBT card purporting to be for union purposes<sup>11</sup>. (Ex. 35) The IBT paid the charges. (Ex. 28) Among these falsified Uber receipts reflected on the false reports she submitted was a \$28.00 expense she charged to the IBT card for a purported ride on Wednesday, May 20, 2015, for "taxi to Whip mtg"

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<sup>10</sup> Her expense report listed the Boilermakers event as having occurred on Tuesday, May 19, 2015. (Ex. 36)

<sup>11</sup> As discussed above, that Brener-Schmitz expense report number 15114532, was one of twelve she submitted on August 19 2015. (Exs. 17; 36) It contained 17 line items, each of which was for rides charged for both Uber and D.C. local cabs, for the period from May 12, 2015 through May 19, 2015. She filed two more reports on August 20, 2015 and five additional reports on August 25, 2015. (Ex. 17) The first IRB request to the IBT for documents related to Brener-Schmitz was delivered to the IBT, via express mail on August 17, 2015, and was received at IBT headquarters on August 19, 2015 at 12:44 P.M. (Ex. 16)

at 3:35 P.M. (Ex. 35) The IBT paid the charge. (Ex. 28) Uber's records indicated that the ride Brener-Schmitz charged occurred on Friday afternoon, May 22, 2015, at 2:51 P.M. (Ex. 18) She falsified the time and day of a ride she caused the IBT to pay in order to embezzle from the IBT.

With that same expense report, Brener-Schmitz submitted a falsified Uber receipt to support a \$24.00 charge for an Uber ride purportedly on Thursday, May 21, 2015, at 11:40 A.M. (Ex. 35) The IBT paid the charge. (Ex. 28) She claimed the union purpose was a "taxi from mtg: Rep. Barietta to IBT". (Ex. 35) According to Uber records, the expense occurred on Friday, May 22, 2015, at 5:56 P.M. (Ex. 18) Again, she falsified the date and time in the information she submitted to the IBT to support the charge, deceiving it as to her actual use.

That day she also submitted a falsified Uber receipt for a claimed \$10.82 ride on Thursday, May 28, 2015, at 2:01 P.M. (Ex. 35) On the expense report she stated the business purpose as a "taxi back to IBT". The IBT paid the charge. (Ex. 28) Uber's records showed that the ride occurred on Wednesday, May 27, 2015, at 6:04 P.M. (Ex. 18) She altered the date and time on the false receipt she submitted to the IBT to deceive the union into paying for her charge.

On August 19, 2015, Brener-Schmitz also submitted a falsified Uber receipt for a \$24.25 ride she purportedly took on Thursday, May 28, 2015, at 4:23 P.M. "taxi to Keelen event". Ex. 35) The IBT paid the charge. (Ex. 28) Uber records evidenced that contrary to her representation, she charged that ride on Friday, May 29, 2015, at 8:39 A.M. (Ex. 18) Again, she put false information as to time and date on the receipt she submitted to the IBT to falsely deceive it into paying her charge, concealing the actual details of her use.

**Miami Rides She Represented as Occurring in Washington D.C.<sup>12</sup>**

On May 29, 2015, Brener-Schmitz filed an expense report along with a false receipt she created for a \$46.22 ride she charged to the IBT card, purportedly on Monday, March 2, 2015, at 6:36 P.M., for a "Taxi to EL Donor dinner from airport" in Washington D.C.<sup>13</sup> (Ex. 40) The IBT paid the charge. (Ex. 28) Uber records evidenced that ride occurred in Miami, Florida on Monday, March 2, 2015, at 12:53 P.M. (Ex. 18) As was her pattern, she altered information she put on the receipt from the actual ride to deceive the IBT

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<sup>12</sup> The Uber records produced pursuant to IRB subpoena did not include as did the actual receipts Brener-Schmitz received but never submitted the pick-up and drop-off locations. Since she provided false receipts to the IBT, her hiding of the information allows the inference it was part of her embezzlement scheme. U.S. v. Rosen, 716 F.3d 691 at 702 (2d Cir., 2013) (corrupt concealment shows evidence of intent). The Uber records did identify what city a ride took place in.

<sup>13</sup> It appears "EL" is an acronym for Emily's List.

into believing that there was a union purpose for her personal expense.

She also submitted a false receipt for a \$4.00 expense she charged to the IBT card for an Uber ride, purportedly on Monday, March 2, 2015, at 9:12 P.M., claiming on her expense report it was for a "Taxi to El Donor dinner home with luggage". (Ex. 40) The IBT paid the charge. (Ex. 28) The Uber records evidenced that ride occurred in Miami on Sunday, March 1, 2015, at 9:41 P.M. (Ex. 18) She altered the time, date and place of the ride on the false receipt she submitted to the IBT to deceive it into believing there was a union purpose for her charge.

#### **Late Night Rides Concealed And Changed to Business Hours In Fabricated Receipts**

On Thursday, November 20, 2014, Brener-Schmitz filed an expense report and a false receipt for a \$16.00 expense she charged for an Uber ride, purportedly on Wednesday, October 8, 2014, at 5:43 P.M., for a "Taxi to CT event". (Ex. 41) The IBT paid the charge. (Ex. 27) Uber records evidenced that ride actually occurred that day at 11:10 P.M. (Ex. 18) On the receipt she falsely created she altered the time of the actual ride to deceive the IBT into believing the ride was within business hours.

On May 29, 2015, Brener-Schmitz filed an expense report which included a false receipt for a \$6.20 expense she charged to the IBT card for an Uber ride, purportedly on Thursday February 19, 2015, at 6:58 P.M., for a "Taxi From Stones Phones event" (Ex. 40) The IBT paid the charge. (Ex. 28) Uber records evidenced that ride occurred Tuesday, February, 17, 2015, at 10:15 P.M. (Ex. 18) On the false receipt she created to submit to the IBT she kept the amount the same but altered the day and time of the ride to be earlier than when she took it. She submitted the false receipt to deceive the union into believing her personal expense was for a union purpose.

On June 3, 2015, Brener-Schmitz filed an expense report along with a false receipt for a \$19.00 expense she charged for an Uber ride, purportedly on Wednesday, March 11, 2015, at 12:16 P.M., for a "taxi to Republican Main Street".<sup>14</sup> (Ex. 34) The IBT paid the charge. (Ex. 28) Uber records evidenced that ride occurred on Monday, March 9, 2015, at 10:43 P.M. (Ex. 18) On the false receipt she created to submit to the IBT she altered the time and date to deceive the IBT into believing that she was charging a ride that occurred during business hours for a union purpose.

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<sup>14</sup> According to the calendar submitted by the attorney for Brener-Schmitz, there was no "Republican Main Street" event scheduled for that day, or that entire week. (Ex. 49)

On May 29, 2015, Brener-Schmitz filed an expense report which included a false receipt for a \$17.00 expense she charged to the IBT card for an Uber ride, purportedly on Sunday, February 22, 2015, at 7:57 P.M., for a "taxi from DAGA dinner to home". (Ex. 40) The IBT paid the charge. (Ex. 28) Uber records evidenced that ride occurred very early Saturday morning, February 21, 2015, at 12:43 A.M. (Ex. 18) On the false receipt she created to submit to the IBT she altered the day and time. She submitted the false receipt to deceive the union into paying her personal expense.

One August 19, 2015, expense report included a false receipt for a \$15.00 expense she charged to the IBT card for an Uber ride purportedly on Friday, May 15, 2015, at 10:39 A.M., for a "Taxi back to IBT". (Ex. 36) The IBT paid the charge. (Ex. 28) Uber records evidenced that taxi ride occurred that day but at 11:54 P.M. (Ex. 18) She altered the time on the false receipt she submitted to deceive the IBT into paying her personal expenses disguised as a ride during business hours.

On August 19, 2015, Brener-Schmitz filed an expense report which included a false receipt for a \$25.25 expense charged for an Uber ride, purportedly on Wednesday, June 10, 2015, at 1:02 P.M., for a "Taxi back to IBT". (Ex. 42) The IBT paid the charge. (Ex. 28) Uber records reflected that ride occurred on Tuesday, June 9, 2015, at 11:54 P.M. (Ex. 18) On the false receipt she submitted to

the IBT she falsified the time and day, disguising a late night personal ride as one during business hours.

### **She Falsely Claimed Charges for Cancelled Uber Rides As Completed Rides**

In a previous instance on March 21, 2014, when Brener-Schmitz had claimed a charge for a cancelled ride as an IBT expense, the IBT challenged the claim<sup>15</sup>. (Ex. 43) Thereafter she avoided challenges by misrepresenting Uber cancellation fees charged to her IBT card, as charges for completed trips. She deceived the union as to the nature of her charges through providing it with false information about the charges. The IBT paid for each cancellation that she falsely claimed was a completed ride. The following are examples of her pattern of this deception:

On October 24, 2013, Brener-Schmitz submitted an expense report which included a \$10.00 expense charged to her IBT card and a false Uber receipt, purportedly for a completed trip on Tuesday, October 22, 2013, at 3:42 P.M., for "taxi to mtg: Rep. Gibson-Capital Hill Club". (Ex. 44) Uber's records showed that \$10.00 charge was a "cancelled by driver" charge. (Ex. 18) That fee was charged based upon a driver cancellation on Tuesday, October 22, 2013, at 10:34 P.M.<sup>16</sup> To deceive the IBT into paying that personal

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<sup>15</sup> In a March 21, 2014 IBT Travel Accounting Memo, Brener-Schmitz was asked to explain her January 7, 2014 Uber charge for a \$10.00 cancellation fee. (Ex. 43 + memo attached])

<sup>16</sup> According to Uber's policy, a driver cancellation fee is charged if the rider who ordered the car did not show up after five minutes from the arrival by the

fee, she falsified on her fake receipt the time and the nature of the charge.

On November 20, 2014, Brener-Schmitz submitted an expense report which included a \$10.00 expense she charged to her IBT card and a false Uber receipt, purportedly for a completed trip on Friday, October 10, 2014, at 11:48 A.M. for "taxi to SD briefing". (Ex. 41) Uber's records evidenced the \$10.00 was a cancellation fee charged on Friday, October 10, 2014, at 7:22 P.M. (Ex. 18) On the fake receipt she created she falsified the time and the nature of the charge to deceive the IBT into believing her charge was for a completed trip during business hours for a union purpose.

On April 2, 2015, Brener-Schmitz submitted an expense report which included a \$25.00 expense she charged to the IBT card and a false Uber receipt, purportedly for a completed trip on Monday, February 23, 2015, at 9:21 P.M. for "Blumenthal event to home".<sup>17</sup> (Ex. 46) Uber's records evidenced the \$25.00 was a cancellation fee charged on Monday, February 23, 2015, at 8:53 P.M. (Ex. 18) On the fake receipt she submitted she falsified the nature of the

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driver at the pick-up location. If the rider cancelled the trip, a fee is charged if that cancellation is made after five minutes of the driver's acceptance of the trip, so long as the driver was within five minutes of the estimated arrival time at the pick-up location. If a rider cancelled before five minutes, there would be no fee charged for the cancelled trip. Fees vary based on vehicle class requested and by city. (Ex. 45)

<sup>17</sup> The receipt Brener-Schmitz submitted with this report lists the date of this charge as February 25, 2015. (Ex. 46)

charge to deceive the IBT into believing it was a completed ride in connection with union business.

**Brener-Schmitz' Assertion She Did Not Have An Intent To Embezzle Because She Had A Good Faith Belief The IBT Owed Her An Equivalent Amount For Other Expenses**

During her sworn examination, Brener-Schmitz claimed that she manufactured false receipts for the personal Uber rides she charged to the union to offset the amount of alleged cash payments for cab rides she had taken for union business during the same period for which she did not seek reimbursement. (Ex. 2 at 144-151) She had no proof of the other rides she claimed or that she paid for them. She admitted she could have obtained receipts for these alleged rides, but chose not to. (Ex. 2 at 164-165) As explained further in a submission from her attorney, her defense was that at the time of her causing the IBT to pay for her personal Uber rides, she had a good faith belief that the union, unknown to it, owed her an amount roughly equivalent to what she caused it to improperly pay for the Uber rides for which she submitted the fake receipts. (Ex. 2 at 145-147) This belief, she claimed, prevented her from having an intent to embezzle the amounts she caused the union to improperly pay Uber based on the fake information she submitted. According to her, she was engaged in a self-help effort, through a scheme involving submission of false documents, to reclaim what the union unknowingly owed her.

There was an enormous factual hurdle to this claim that she could not meet. She had no proof of the unclaimed offsetting debt to her. She had no contemporaneous receipts for any of these alleged rides she took without seeking reimbursement. There was no evidence she took or paid for any of these claimed rides. Moreover, from her own records, it was evident she did not have sufficient cash available during this period to have paid for the rides in cash as she claimed she did.

She offered as evidence for these rides and the set-off amount a schedule she had created on her behalf. It was an attempt to match what she estimated were the costs of cabs to events that she claimed to have attended on the IBT's behalf. (Ex. 2 at 143-149; Ex. 82) The proof she offered of attending particular events was an IBT document which she purported was a master calendar for her department that reflected what events she actually attended. (Exs. 49; 76) In fact, that was not what the document reflected. It was not proof of her having gone to any meeting. In a sworn statement from Gary Witlen, an IBT attorney, he stated Brener-Schmitz' supervisor, Christie Bailey, explained that the calendar entries "do not necessarily reflect meetings that Ms. Brener-Schmitz actually attended, but, rather, enumerate meetings that were scheduled and that she [Brener-Schmitz] was tentatively planning to attend. ... Thus, the fact that a ... meeting was listed

on Exhibit 2 [the calendar] was not evidence that the meeting occurred, or that it was attended by Ms. Brener-Schmitz.” (Ex. 73 at 2-3) This document provided no proof of her having attended an event, let alone proof that she spent thousands of dollars of unreimbursed cash for cab rides she took for union purposes to events.

Brener-Schmitz caused the union to spend over \$11,000, on personal Uber charges she charged. (Ex. 19) To deceive the IBT, she submitted false receipts for these charges from January, 2013 to June, 2015. (Exs. 19-23) For her defense of lack of intent to embezzle to have even surface viability, she would have had to have spent during her Uber scheme a roughly equivalent amount on her alleged undocumented cash cab rides for union purposes to have a good faith belief of a right to a contemporaneous offset that negated her intent to embezzle. Again, that was not possible on the facts. Simply, she did not have the cash to spend on cabs. Her available cash was substantially less than the alleged union expenses she incurred but claimed she did not seek reimbursement for.

An analysis of Brener-Schmitz' bank records for her checking and savings accounts, indicated that she did not have over \$11,000 in cash during the Uber scheme period to pay for her claimed cash rides. To have a good faith belief between May 28, 2013 and May

1, 2015, of an equivalent unclaimed obligation the IBT owed to her, she would have had to spend on D.C. cab rides approximately \$11,495.43, in cash, the amount the IBT paid for her Uber rides. (Ex. 19) During that period, she only withdrew \$9,142.50 in cash. (Exs. 24; 50) Of that amount, she used \$3,312 to repay one of her loans from the IBT after her receipt of the undisclosed \$4,000, from the officer of an IBT donee organization. (Ex. 2 at 87; 93) Even if she spent every dollar of the remaining \$5,817.05, she withdrew on unreimbursed cab rides for union business, she still would have needed an additional approximately \$5,678.38, more in cash to spend on cabs she claims she took for a union purpose and paid for to make a *prima facie* claim she did not have an intent to embezzle because she in good faith engaged in self-help in taking a set-off. (Ex. 50) Her false explanation collapses under the weight of the facts.

She was completely without the ability to pay even \$6,000 in cash and not seek reimbursement. She was paying bank fees for being overdrawn. Between January, 2013 and June, 2015, the period of the Uber scheme, Brener-Schmitz incurred overdraft fees totaling \$2,240 and "NSF Returned Item Fees" of \$315, totaling \$2,555. (Ex. 24; Ex. 61) For example, on January 8, 2014, Brener-Schmitz' electronic rent payment for \$2,459.79, was dishonored due to insufficient funds. (Ex. 24; Ex. 60) On April 16, 2014,

Brener-Schmitz' rent check for \$2,600 also was dishonored due to insufficient funds. (Ex. 24) It is difficult to believe she would have been paying cash for cabs for union purposes for which she was not seeking reimbursement to which she was allegedly entitled when she was unable to pay her rent on two occasions in 2014.

There are additional reasons to find her claim of a good faith belief in an unclaimed, undocumented set off amount to which she was legally entitled incredible. Brener-Schmitz stated that a reason she used false Uber receipts was because on those occasions when she allegedly used cash for non-Uber rides, she would only receive a blank receipt, assuming she bothered to ask for one. (Ex. 2 at 164-165) She also claimed that she often did not ask for one because they were blank, and "[She didn't] need a bunch of blank receipts." (Ex. 2 at 164-165) Her alleged decision not to secure receipts did not exempt her from the IBT policy known to her that without the submission of accurate receipts an employee had no right to reimbursement. (Ex. 6) She knew that the IBT would only recognize a right to reimbursement if she supplied the proper documentation. (Exs. 4 at 5; 6) Moreover, on other occasions she had submitted to the IBT for cash reimbursement blank receipts from cabs which she had completed for non-Uber rides. (Ex. 2 at 163-166, 168-170, 190; Ex. 84) The IBT paid these amounts with this support. (Exs. 26-28) She knew from prior

experience with blank receipts she would be reimbursed if she completed and submitted them. Her claim that during her period of check bouncing and cash advance fee paying in her personal account, when she only withdrew \$5,817.05 cash from her accounts that did not go to the IBT to pay her other debts, that she paid approximately \$11,000, or even \$5,000, in cash for cab rides for which she could not be bothered to seek reimbursement is not believable. In sum, she did not have the money in cash to pay for the cabs she claims to have taken for union purpose and not sought reimbursement. She had no proof of any ride she took for a union purpose that obligated the IBT to reimburse her expenses. She could offer no evidence of what she attended for business and actually took a cab to. She deliberately, according to her, avoided obtaining receipts. Under IBT policy, it owed her nothing. In addition, since she spent years executing her scheme to deceive the IBT through the submission of false receipts, she is not credible. If she had submitted receipts as she did in the past, the IBT would have paid for cab rides for union purposes.

In addition to the undocumented alleged cash cab rides, she also claimed another alleged undocumented unreimbursed expense incurred for a union purpose supported her alleged good faith belief that in 2013, 2014 and up to June, 2015, she was entitled to the money the IBT was spending on her personal Uber charges as

a set-off for what it owed her. She claimed that she had an undocumented alleged \$5,000 hotel expense for union business in July and August, 2015, she had not submitted for reimbursement. (Ex. 2 at 217-218; Ex. 83) Brener-Schmitz claimed she spent \$5,000, for a hotel room in Seattle in connection with IBT business for nine nights from July 29, 2015 to August 7, 2015. (Exs. 48; 24; Ex. 2 at 216-222) These charges of over \$500 a night unknown to the IBT. She presented no hotel receipt to substantiate this over \$500 a night room cost. Moreover, when she was earlier actively embezzling from the IBT, she could not have been relying in 2013, 2014 and earlier in 2015 on her alleged right to reimbursement for this later undocumented charge to negate her intent to embezzle.

In addition, she had no documentary support for this alleged \$5,000 hotel bill. Moreover, she also admitted she did not have the necessary IBT authority to incur this charge, if it actually was incurred. (Ex. 2 at 217-218) Indeed, she admitted she deliberately did not secure authorization for this expense<sup>18</sup>. (Ex. 2 at 217-218) Her incurring an unauthorized charge would not have provided any right to reimbursement from the IBT. That it was undocumented and outside the relevant time period were equally

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<sup>18</sup> In connection with this trip, she did seek reimbursement for much smaller cash expenses for meals and transportation, totaling, \$400.93. (Ex. 48)

damaging to her claim of a good faith belief it formed a set-off to her earlier embezzlements<sup>19</sup>.

In sum, she knew that under the IBT policy there was no right to reimbursement absent her submission of accurate documents to support her claims. (Ex. 4 at 5) She had no good faith basis to believe she had a right to \$11,000 from any undocumented, unsubmitted expense to set off against her personal use of Uber. These alleged undocumented debts allegedly owed her were unknown to the IBT. This included her claim of the later undocumented hotel expense in Seattle. She had no authority from the IBT to incur the charge in Seattle. (Ex. 2 at 216-217) There was no obligation for the IBT to reimburse her if she spent her money without needed authorization. Chronology and lack of authority prevented the unproven Seattle charge from in any way being a defense to her earlier embezzlements.

Finally, she was not credible as a witness, so her undocumented set-off claims should not be believed. She proved she had little respect for the truth by having engaged in a three year scheme to submit false records to the IBT. When asked about

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<sup>19</sup> Her bank records reflect balances significantly below \$5,000 during this period. (Ex. 24) Her personal debit card statement does not reflect any charge for a hotel in Seattle. Her IBT card was suspended during this period. According to her bank record, her closing balance on August 11, 2015 was \$209.17. (Ex. 24)

the use of her IBT card to pay for inescapably personal items such as groceries, a cable bill, a spa session, and a wallet, she falsely claimed under oath that she had flagged those charges as personal for the IBT and immediately paid the union back. (Ex. 2 at 90; 92; 118-119) These claims were false. In each instance, only in response to IBT demands for repayment months after the charges were incurred, did she pay the union back for the improper charges which she had never brought to the IBT's attention. The following are examples:

At her IIO sworn examination, she claimed in connection with a purchase at a grocery store on her IBT card she "handed [the store] the wrong card" on February 18, 2013. (Ex. 2 at 139-140; Ex. 26) She falsely claimed to have repaid this expense to the IBT "immediately". (Ex. 2 at 92) IBT records established she did not repay the IBT for the credit it extended her for this grocery charge until five months later, in July, 2013, when it requested repayment from her for this obviously personal charge<sup>20</sup>. (Ex. 51; Ex. 52) She had not filed an expense report flagging it as a personal expense.

On Thursday, March 14, 2013, she charged \$205.26 on her union credit card to pay Comcast, a cable TV service provider. (Ex. 26)

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<sup>20</sup> At her sworn examination, Brener-Schmitz stated that this charge was an accident, and blamed her ex-husband for "digging in [her] purse and grabbed the [union] card." (Ex. 2 at 92-93)

Brener-Schmitz claimed it was an "accidental" use of her IBT card by her ex-husband. (Ex. 2 at 92, 98) At her deposition, she falsely claimed to have made "immediate" repayment for this expense. (Ex. 2 at 90; 92; 98; 118-119) Again, she did not submit a timely expense report as required that would have flagged the personal charge. The union paid it. (Ex. 26) IBT records established her reimbursement of this credit the IBT extended her was made four months later, in July, 2013, when the IBT challenged it. At the time she still had not filed an expense report declaring the charge as personal. (Ex. 53; Ex. 51)

On Friday, January 2, 2015, Brener-Schmitz' IBT card was used to charge \$16.87 at Metro K Supermarket. (Ex. 2 at 199) She failed to submit a timely expense report as required. (Ex. 54) At her sworn examination, Brener-Schmitz falsely stated that she did not shop at Metro K. (Ex. 2 at 197-198) She claimed this charge was fraudulent, and she had reported it to the credit card company. (Ex. 2 at 197-200) She also had told the IBT Travel auditor in April 2, 2015 that she had disputed the charge with the credit card company<sup>21</sup>. (Exs. 68-70) In fact, her bank records, obtained through a subpoena evidenced Brener-Schmitz before this January charge had used her debit card to make purchases at Metro

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<sup>21</sup> According to the IBT Travel and Business Related Expense Policies, in the case of fraudulent charges, it is the responsibility of the cardholder to notify the credit card company customer service department immediately, and it is also the cardholder's responsibility to follow-up to insure the fraudulent charges are credited to the cardholder's account. (Ex. 55 at 36)

K Supermarket on six different times between September 16, 2014 and December 15, 2014. (Ex. 71; Ex. 24) The IBT paid the January charge. (Ex. 17) She did not repay the IBT for this charge until over eight months later, on September 2, 2015.<sup>22</sup> (Ex. 54) She lied when she claimed under oath she did not shop at this store at or prior to the January purchase. As these false statements and her years of submitting fake receipts evidence, she was not a credible reporter of facts.

## **ANALYSIS**

### **A. Embezzlement**

The IBT Constitution prohibits embezzlement or conversion of union funds<sup>23</sup>. IBT Const. Art XIX, Section 7(b) (3). (Ex. 3 at 148) In addition, IBT members are specifically enjoined from committing embezzlement from the union, which is an act of racketeering. 18 U.S.C. § 1961(1). The standard for embezzlement under federal labor law, 29 U.S.C. § 501 (c), is instructive in interpreting the IBT Constitutional provisions. Investigations Officer v. Calagna, Decision of the Independent Administrator at 11 (May 9, 1991), aff'd, United States v. IBT, 777 F. Supp. 1123 (S.D.N.Y. 1991). The federal standard governed Brener-Schmitz'

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<sup>22</sup> There was no record of that dispute or a charge reversal in Brener-Schmitz's account statements. Brener-Schmitz stated that once she reimbursed the union for the charge, both she and the IBT no longer cared about the expense and her alleged fraud challenge was forgotten. (Ex. 2 at 199-200)

<sup>23</sup> The prior actions under the Consent Decree are the controlling precedent for interpreting the IBT Constitution, Final Agreement and Order, ¶ 49. (Ex. 1)

Consent Decree obligation not to commit an act of racketeering. 18 U.S.C. §1961(1). For Brener-Schmitz to be found to have embezzled union funds, it must be established that she acted with fraudulent intent to deprive the Union of its funds. See, United States v. Welch, 782 F.2d 1113, 1118 (8th Cir. 1984) (under any test, union officials violate Section 501(c) only when they possess fraudulent intent to deprive the Union of its funds"); Investigations Officer v. Caldwell, Decision of the Independent Administrator at 7 (February 9, 1993), aff'd, 831 F. Supp. 278, 283 (S.D.N.Y. 1993).

Determining whether a union employee had the requisite intent to embezzle should be done, "on the basis of 'all of the evidence considered together' and 'in light of all the surrounding circumstances.'" United States v. Welch, supra, 782 F.2d at 1119 (quoting United States v. Morissette, 342 U.S. 246, 275-76 (1951)). "[I]t is permissible to infer from circumstantial evidence the existence of intent." United States v. Local 560, 780 F.2d 267, 284 (3d Cir. 1985) (citation omitted)

The Court of Appeals for the Second Circuit stated that two evidentiary factors in determining the issue of fraudulent intent can be whether there was authorization from the union for the expenditure and a benefit to the union for the payments at issue. See, e.g., United States v. Butler, 954 F.2d 114, 118 (2d Cir. 1992). See also, United States v. IBT [Kenny, Moreno and Guillory],

slip op, at 10, (S.D.N.Y. 2014), affirmed, 600 Fed. Appx. 8; 2015 U.S. Lexis 774 (2d Cir., 2015). The payments to cover Brener-Schmitz' personal expenses served no Union purpose. They were not the result of any obligations the Union had. Only Brener-Schmitz benefited from these payments from the Union. Moreover, authorization was not possible because she never provided the union accurate information. Her across-the-board violations of IBT policies concerning the use of her union issued card and her submission of fabricated receipts containing false information evidenced her intent to embezzle.

Obviously, the payments of her personal expenses were not authorized. For an expenditure on an IBT card to be properly authorized the employee had to use it for a union purpose. The employee also needed to file a timely expense report with a true statement of the union purpose and submit an accurate original receipt. (Ex. 4 at 5) She did not do this. Rather, she repeatedly over years deceived the IBT into paying for her personal expenses.

From all of the circumstances surrounding Brener-Schmitz' conduct in causing the IBT to improperly pay her Uber charges from January, 2013 through June, 2015, including: her concealment of the actual details of the charges, submission of false receipts with altered information, false explanations on expense reports, her receipt of personal benefits with no union purpose and her violations of IBT policy requirements for reporting and

documenting with accurate records all her expenses, Brener-Schmitz' intent to embezzle was evident. Here, Brener-Schmitz submitted 564 false receipts with information altered from the actual charges to cause the IBT not to challenge payment for rides she charged to the union. The receipts were designed to deceive the IBT into using its assets for her personal benefit. Without the false receipts, the IBT would have been obligated to demand she repay the union for these improper charges she made on the IBT card.

On the false receipts she submitted, Brener-Schmitz deliberately falsified information the IBT used to determine if the rides were for a union purpose. This was further evidence of her intent to embezzle. See United States v. Stubin, 446 F. 2d 457, 459-60 (3<sup>rd</sup> Cir. 1971) (concealment of scheme through false entries in union books evidenced intent to embezzle); United States v. Haggerty, 419 F.2d at 1004-1005 (inference of intent to embezzle can be drawn from not having documents available for trustees to review transaction). That she altered information on false receipts to deceive the IBT as to when rides occurred was strong evidence of her intent to embezzle. She possessed all the original receipts yet she never submitted any. Not one of the Uber receipts of the 564 receipts she created and submitted accurately reflected all the information about the charge.

Brener-Schmitz's intent to embezzle was also shown by her multiple violations of the union's Policies which required her timely filing of accurate expense reports, submission of accurate original receipts and prohibited her use of the IBT card for personal purchases. United States v. IBT [Wilson, Dickens and Weber], 787 F. Supp. 345, 352 (S.D.N.Y. 1992) (" . . . failure to comply with [the Bylaws] gives rise to an inference of fraudulent intent."), aff'd, 978 F.2d 68 (2d Cir. 1992).

**V. BRENER-SCHMITZ CAUSED THE IBT TO MAINTAIN FALSE RECORDS IN VIOLATION OF FEDERAL LAW AND IBT REQUIREMENTS**

Brener-Schmitz violated federal law in submitting the false receipts to justify the IBT paying for her Uber rides. Her expenses the IBT paid were required to be reported on the Forms LM-2 and supported by accurate records. In addition, she violated IBT policy. According to the IBT Code of Conduct For International Union Officers, Employees and Representatives:

All International Union financial reports, accounting records, research reports, revenue reports, expense accounts, time sheets, and other documents must accurately, completely and clearly represent the relevant facts and the true nature of the International Union business transactions..

International Union funds, assets and resources may be used only for lawful and proper purposes. Funds may not be transferred, used or spent unless the stated purpose is, in fact, the actual purpose and the transfer, use or expenditure is consistent with established International Union policy and is properly authorized.

No false or artificial entries shall be made in the books and records of the International Union or any of its subsidiaries for any reason, and no officer, employee or representative shall engage in or tolerate any arrangement that results in such a prohibited act.

(Ex. 4 at 3)

As discussed above, from January, 2013 through June, 2015, Brener-Schmitz submitted 564 false receipts purportedly from the transportation company Uber for rides charged to her IBT credit card. Based on these false receipts and her expense reports, the IBT paid \$11,495.43, for these charges. (Exs. 19; 21-23) She submitted these false receipts and correspondingly false expense reports to the IBT to justify payment of her falsely claimed business expenses.

At her sworn examination, Brener-Schmitz admitted that although she received a receipt from Uber for each ride, she did not, as she was required to do, submit any of these original receipts to the union to support its paying her charges<sup>24</sup>. (Ex. 2 at 146-147; Exs. 20-23) As noted above, Brener-Schmitz explained she created a template to fabricate false Uber receipts to be submitted to the union. This allowed her to alter the information concerning the rides to disguise from the IBT the details of the rides it paid for on her behalf.<sup>25</sup> (Ex. 2 at 145-147)

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<sup>24</sup> She acknowledged she still possessed them. (Ex. 2 at 147])

<sup>25</sup> Earlier that year Brener-Schmitz was submitting different false Uber receipts to the IBT with even less information. Between January 29, 2013 and July 16, 2013, Brener-Schmitz submitted 148 altered Uber receipts that failed to list

Brener-Schmitz violated federal law and explicit IBT policy in submitting these fabricated Uber receipts and submitting correspondingly false expense reports to support her claims that union payment for the alleged Uber rides were for a union purpose from January, 2013 to June, 2015. In doing so, she caused the union, the General Secretary-Treasurer and the General President to violate their legal obligation to maintain accurate records that support union expenditures that were reflected in the Forms LM-2, the IBT filed.<sup>26</sup> In doing so, she committed numerous criminal acts in violation of 29 U.S.C. §§ 431, 436, 439; 18 U.S.C. § 2(b); 29 C.F.R. §403.<sup>27</sup>

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time and location information. From September 18, 2013 through June, 2015, the remaining 416 of her 564 total false Uber receipts listed the alleged time of the request for the ride, and pick-up and drop-off locations. (Exs. 19-23; 92)

<sup>26</sup> Her reimbursed expenses were reported on the Forms LM-2. For 2013 they were \$19,817 for 2014, they were \$11,605 and for 2015, they were \$17,573. (Exs. 56-58)

<sup>27</sup> Title 29 U.S.C. § 436 provides:

Every person required to file any report under this subchapter shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain. (Ex. 59)

Title 29 U.S. Code § 439 provides:

(a) Willful Violations Of Provisions Of Subchapter

Any person who willfully violates this subchapter shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(b) False Statements Or Representations Of Fact With Knowledge of Falsehood

Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report or other information required under the provisions of this subchapter shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(c) False Entry In Or Willful Concealment, ETC., Of Books And Records

Any person who willfully makes a false entry in or willfully conceals, withholds, or destroys any books, records, reports, or statements required to

Brener-Schmitz willfully caused the union, the General President and the General Secretary-Treasurer to submit inaccurate Forms LM-2 and to maintain false receipts among union records required to be kept. As a result, she was as liable as if she had committed those acts herself. 18 U.S.C. § 2(b). In causing the IBT not to meet its federal statutory record keeping obligations she violated the IBT Constitution<sup>28</sup>. Art. XIX, §7(b) (5).

Title 29 U.S.C. §431(b) required a Union to file an annual form detailing mandated information with the Department of Labor. Included in that required information were all Union expenditures and statements of Union assets and liabilities, including payment for employee expenses. (Exs. 55-58) Title 29 U.S.C. §436 required a Union to maintain and keep for five years all records necessary to provide the information required for the form. (Ex. 59) This included all records supporting the IBT's payments of expenses for

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be kept by any provision of this subchapter shall be fined not more than \$10,000 or imprisoned for not more than one year, or both.

(d) Personal Responsibility Of Individuals Required To Sign Reports  
Each individual required to sign reports under sections 431 and 433 of this title shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false. (Ex. 59)

Title 29 CFR § 403.7 provides:

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain. (Ex. 59)

<sup>28</sup> That section prohibits: Conduct which is disruptive of, interferes with, or induces others to disrupt or interfere with, the performance of any union's legal or contractual obligations. (Ex. 3 at 148-149) Art. XIX § 7(b) (5)

Brener-Schmitz. She caused the Union to violate the law in failing to keep adequate records of her expenditure of over \$11,000 in IBT funds on her Uber rides. (Ex. 56-58)

Title 29 U.S.C. §436 provides,

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

(Ex. 59) This required the Union to have “. . . accurate, contemporaneous records reflecting all union receipts and disbursements. . .” United States v. Budzanoski, 462 F. 2d 443, 450 (3<sup>rd</sup> Cir. 1972) cert. denied, 409 U.S. 949 (1972). The Union and the officers who sign the Forms LM-2 are required under 29 U.S.C. §436 to ensure the Union has records “. . . contemporaneously made with the transactions involved from which the Secretary of Labor as the representative of the public, and the labor organization’s members can check to verify and clarify any expenditures made by the labor organization.” Hodgson v. United Mine Workers, 1971 WL 705 at \*2 (D.D.C. April 13, 1971; United States v. Chittenden, 530 F.2d 41, 42 (5<sup>th</sup> Cir. 1976) (officer

required to sign Form LM-2 is personally responsible for failure to keep required records under 29 U.S.C. §436).

The Court in Budzanoski, supra, 462 F. 2d at 450, explained the law required a Union to retain,

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

She also in hundreds of instances violated the IBT Code of Conduct for Officers and Employees in providing intentionally false records to the IBT.<sup>29</sup>

**VI. BRENER-SCHMITZ CAUSED THE IBT TO EXTEND TO HER TWO ILLEGAL LOANS EACH IN EXCESS OF \$2,000 IN VIOLATION OF FEDERAL LAW**

Brener-Schmitz, throughout the period 2013 to 2015 was in need of money to pay her personal expenses as evidenced by her bounced checks, low balances, cash advances and overdrafts in her bank accounts<sup>30</sup>. (Exs. 24; 60-61) She used a scheme of delinquent

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<sup>29</sup> All International Union financial reports, accounting records, research reports, revenue reports, expense accounts, time sheets, and other documents must accurately, completely and clearly represent the relevant facts and the true nature of all International Union business transactions... (Ex. 4 at 3)

<sup>30</sup> In this period, her account records showed 59 overdrafts and 9 bounced checks to the IBT and to others. (Exs. 24; 60; 88) Her monthly closing balance in the account had averaged \$991.32. (Exs. 24; 89)

expense reports and personal use of the IBT card to cause the IBT to extend her credit to pay her personal expenses. In at least two instances she became indebted to the union for over \$2,000, in violation of 29 U.S.C. §503(a).<sup>31</sup> In violation of IBT policy, she would use her IBT credit card to make personal purchases. The union would pay her charges, transferring the debt she owed for these non-union purchases from the credit card company to itself. Knowing the administration would tolerate her non-compliance for several months at a time, she repeatedly in violation of stated IBT policy failed to submit timely expense reports to the IBT as required<sup>32</sup>. Then, only after months of her non-compliance would IBT personnel challenge her unexplained non-union expenses when her reports remained unsubmitted. Having been caught, she then would reimburse the IBT for the loans it had extended to her. (Exs. 20-21; 24; 64-65) As a result of this scheme, on at least two separate occasions, she owed the IBT over \$2,000, in interest

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<sup>31</sup> Title 29 U.S.C. §503(a) and (c) provide in pertinent part: "(a) No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of \$2,000.

(c) Any person who willfully violates this section shall be fined not more than \$5,000 or imprisoned for not more than one year, or both." (Ex. 59) Brener-Schmitz caused the union to violate the statute and she is responsible as a principal. 18 USC § 2(b). (Ex. 59) She is also liable under the IBT Constitution Art. XIX, §7 (a) (5) for causing the union to violate its legal obligations. (Ex. 3)

<sup>32</sup> In May, 2014, after suspending her IBT credit card twice before because of non-compliance, the IBT Secretary-Treasurer's office still tolerated her failure to file timely expense reports for at least six months. (Exs. 62; 63; 9-13)

free loans she caused it to illegally extend to her<sup>33</sup>. (Exs. 20-21; 24; 64-65)

### **The 2013 Illegal Loan**

Through her use of her union credit card for personal, non-union expenses for the ten months from September 2012 to July 15, 2013, Brener-Schmitz had an outstanding debt to the IBT of \$6,223.81. (Exs. 19-21; 64) As described in detail in the attached schedule, beginning with a \$97.39 charge for a Spa expense in Iowa on September 21, 2012, Brener-Schmitz incurred personal, non-union charges of \$5,737.81, which she caused the union to pay on her behalf<sup>34</sup>. (Exs. 20-23; 64) In a series of repayments, starting with her cash repayment of \$3,312.95 to the union, a bank check payable to the IBT in the amount of \$1,500 and a \$115.37 check to the IBT all on July 16, 2013, a cash repayment of \$35.77 on July 17, 2013, followed by her July 18, 2013, cash repayment of \$100.64 and her check for \$531.22, her check for \$508.22, on July 29, 2013 and her September 27, 2013 check for \$58.00, she reduced her debt to the IBT accordingly. (Exs. 51; 64; 66) In paying this amount, Brenner-Schmitz admitted she had an outstanding obligation to the union for that amount at that time.

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<sup>33</sup> If these were not extensions of credit, then Brener-Schmitz was engaged in another embezzlement scheme. She did not file required reports justifying her expenditures. She bought things without a union purpose. She only paid the union back when she was caught using the card to make non-union purposes. These circumstances evidenced an intent to embezzle.

<sup>34</sup> The amount of debt the IBT extended to her first surpassed the \$2,000 level on March 3, 2013, reaching its height of \$5,737.81 on June 28, 2013. (Exs. 20-23; 64)

### The 2015 Illegal Loan

As discussed above, Brener-Schmitz' credit card privilege was suspended for 123 days in 2014. (Exs. 11-12; 62) When it was restored, she almost immediately again commenced her loan scheme. (Exs. 12; 63) Again, the IBT Secretary-Treasurer's Office tolerated her being delinquent in filing required reports for over six months. (Ex. 63) She started using her IBT card for personal expenses on Friday, January 2, 2015, with a \$16.87 charge at Metro K Supermarket. (Ex. 68) Between January, 2015 and Monday, June 15, 2015, the date of the suspension of her credit card privileges, Brener-Schmitz continued to charge her IBT card for personal, unauthorized expenses. (Exs. 11-12; 23) The union paid the card company her accumulated improper charges of \$2,862.67, creating a debt for that amount she owed to the union for the credit it extended to her<sup>35</sup>. (Exs. 23; 65) She began to pay that amount back to the union starting on August 19, 2015 when she gave a \$151.37 check to the IBT. On September 9, 2015, Brener-Schmitz repaid \$370.09 more to the union with her personal check. On September 10, 2015, she repaid another \$1,838.74 of her debt, using a bank check payable to the IBT. (Exs. 65; 67) The IBT extensions of credit to her underlying this amount are detailed in the attached schedule. (Ex. 64-65) She admitted this obligation to the union

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<sup>35</sup> During this 2015 period, the amount of her debt to the union first surpassed the \$2,000 level on May 10, 2015, reaching its height of \$2,862.67 on June 15, 2015. (Exs. 23; 65)

when she repaid the credit she caused the union to extend to her.  
(Ex. 67)

Over years, Brener-Schmitz established a consistent pattern of violations of the IBT Code of Conduct through repeatedly using her union card to make purchases of goods and services without a union purpose<sup>36</sup>. (Exs. 20-23; 64-65) The union would always pay the charges. Since the timely expense report requirement was not enforced as to her, these monies were lent each month to Brener-Schmitz for her personal purchases because she did not disclose in timely filed expense reports that there was no union purpose for these charges. She would only make repayment many months later after someone in the union challenged her expenses. (Exs. 20-23; 64-67) In paying the union back for the improper charges, she admitted that through the charges she had incurred for a non-union purpose she had created an obligation she owed the union for extending her a credit for her personal expenses.

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<sup>36</sup> According to the IBT Code of Conduct For International Union Officers, Employees and Representatives:

International Union credit cards, cash and checks may never be used for personal business or activities. Time sheets, vouchers, expense records, leave requests and benefit claims must be accurate and complete. Inaccurate or incomplete documents can result in the improper and potentially fraudulent acquisition of International Union assets or property.

(Ex. 4 at 5)

### **Examples of IBT Extensions of Credit in The 2013 Loan**

The following are examples of the personal charges she made on the card for which the IBT extended her credit that were part of the 2013 loan:

While attending a political function in Dubuque, Iowa on September 21, 2012, Brener-Schmitz used her union credit card to charge a \$97.39 service from Potosa Spa. (Ex. 72) She did not file as required an expense report that would have disclosed the charge she caused the IBT to pay was not for a union purpose. Six months later, on April 11, 2013, only after the charge was challenged, Brener-Schmitz reimbursed the IBT for the credit it extended to her. (Exs. 67; 72) She could obtain the credit from the IBT because she did not submit timely expense reports, and, apparently, her charges were not reviewed monthly.

On February 21, 2013, Brener-Schmitz used her union card to charge \$1,009.69, for a stay at the Aloft Hotel in Charlotte. (Exs. 26; 64) The IBT paid the charge. (Ex. 26) That charge did not appear on any IBT expense report she submitted. In July, 2013, over five months later, Brener-Schmitz reimbursed the IBT for extending her that credit through its paying for her non-union expense. (Exs. 64; 66)

On Saturday, February 2, 2013, Brener-Schmitz used her IBT card to charge a \$26.00 Uber ride. (Exs. 26; 64) On Sunday, February 3, 2013, Brener-Schmitz used her union card to charge two

other Uber rides of \$28.00 and \$47.00.<sup>37</sup> (Exs. 26; 64) She did not submit any receipts for these rides. On Sunday, February 3, 2013, she also charged \$20.00 to her IBT card at the Washington D.C. Metro for a transportation ticket. (Exs. 26; 64) She failed to file a timely expense report as the IBT required disclosing these personal charges. She did not provide any evidence of a union purpose for these expenditures. Five months passed before these personal expenses were challenged when her delinquent reports were still not filed. She then repaid the IBT for the credit it had extended her in July, 2013. (Exs. 64; 66)

On Saturday, February 16, 2013, Brener-Schmitz used her union credit card to purchase \$4.66 worth of items at a Dunkin Donuts in Arlington, Virginia, where she resided. (Exs. 26; 64) On that same day, Brener-Schmitz also incurred a \$10.00 cancellation fee for an Uber ride on her IBT card. (Exs. 18; 26; 64) She did not file an expense report or submit any receipts as required for either charge. The IBT paid her charges. (Ex. 26) Over five months later, in July, 2013, after the IBT challenged the charges, she reimbursed the IBT for the credit it had extended her. (Exs. 64; 66)

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<sup>37</sup> These rides were not part of the over \$11,000 for which she submitted fabricated receipts.

On Sunday, February 17, 2013, Brener-Schmitz used her union card four times for \$83.95 in personal expenses<sup>38</sup>. (Exs. 26; 64) She charged Uber rides for \$15.00 and \$27.00, charged \$22.00 at a Washington D.C. bar, Madam's Organ, and \$29.95 at Buffalo Wild Wings-Arlington, Va. (Ex. 26; Ex. 64) The union paid these charges. (Ex. 26) These expenses never appeared on any expense report she filed. She submitted no receipts. The IBT audit department notified her on May 15, 2013, that there were charges on her union card that had not been accounted for in any of her expense reports. (Exs. 26; 52) Five months after incurring them, and two months after the IBT challenged them, Brener-Schmitz repaid the IBT in July for the credit it had extended her since February, 2013. (Exs. 64; 66)

On Monday, February 18, 2013, Brener-Schmitz incurred a \$199.45 personal expense on her union credit card at Harris-Teeter supermarket in Arlington, Virginia. (Exs. 26; 64) As was her practice, she failed to file a timely expense report. The IBT paid her charge. (Ex. 26) IBT records establish she did not reimburse the IBT for the credit it extended her until five months later, in July, 2013, when it eventually requested repayment for this obviously personal charge. (Exs. 64; 66)

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<sup>38</sup> Monday, February 18, 2013 was the national holiday, President's Day. (Ex. 85) That was a holiday for IBT employees. (Ex. 85)

Similarly, on Sunday, March 10, 2013, Brener-Schmitz charged \$34.21 on her union card at the Harris-Teeter supermarket in Arlington where she lived. (Exs. 26; 64) The union paid the charge. (Ex. 26) She did not immediately pay it back as she falsely claimed she did with all personal expenses. (Ex. 64) Again she failed to submit a timely required expense report. Brener-Schmitz did not reimburse the union for the credit it extended her until July, 2013, when the IBT finally challenged the obviously personal charge. At the time she still had not filed a report. (Exs. 64; 66) The IBT audit department had previously notified her on June 21, 2013, that this charge, among others, had not been accounted for in any of her expense reports. (Exs. 26; 53)

Later the same week as the above charge, on Thursday, March 14, 2013, she charged \$205.26, on her union card for Comcast, a cable TV service provider. (Exs. 26; 64) It was not paid back immediately as she claimed was her practice for all personal charges on the IBT card. (Ex. 2 at 90-91) Again, she did not submit a timely expense report as required. The union paid the charge. (Ex. 26) IBT records established she repaid this credit the IBT extended her four months later in July, 2013, only after the IBT finally challenged it. (Exs. 64; 66) At the time, she still had not filed an expense report.

### Examples of IBT Extensions of Credit in the 2015 Loan

The following are examples of personal charges she made on her IBT card for which the IBT extended her credit that were part of the 2015 loan:

On Wednesday, March 25, 2015, Brener-Schmitz charged \$276.10, on her union card for an expense for Frontier Airlines. (Exs. 28; 65) She never accounted for the charge on any IBT expense report as required. She never provided a union purpose. The IBT paid the charge. Brener-Schmitz repaid the union for this credit it extended her more than five months later, on September 10, 2015, as part of a \$1,838.74 payment to the IBT she made using a bank check. (Exs. 65; 67) It was another personal expense she did not immediately pay back as she falsely claimed.

From Friday, April 24, 2015 through Sunday, April 26, 2015, Brener-Schmitz attended a conference at the Ritz Carlton Hotel on Amelia Island, Florida. (Exs. 28; 65) The union paid for her attendance. (Ex. 28) She delinquently filed her expense report for this trip four months later, on August 20, 2015, the day after the IBT received the IRB's document request for her expense records. (Ex. 74) Attached to that report, was a copy of her hotel folio totaling \$1,416.76, included in that total were various charges Brener-Schmitz made to her room<sup>39</sup>. Also, there were

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<sup>39</sup> On Brener-Schmitz' expense report, these charges were listed as line items only, no itemized receipts were attached. At her sworn examination, she was asked about the much later "print date" on the folio and on the itemized receipts

additional charges in the hotel that Brener-Schmitz made on her IBT card after she checked out on April 26, 2015, for \$119.38 and \$31.03, at the hotel's Ocean Bar & Grill. (Exs. 28; 65; 74) Among those personal expenses charged to the union card was \$151.37, at the hotel's Lobby Lounge and Ocean Bar and Grill. (Ex. 74) The expense report she submitted had a handwritten notation "attached". Brener-Schmitz claimed that notation next to certain items on the Amelia Island folio meant that she had attached a repayment to the union for those items she had belatedly identified as not for a union purpose (Ex. 2 at 130-131) **Contrary** to her claim, IBT records do not show payments from her at that time.

Four months later, on September 9, 2015, Brener-Schmitz repaid the union \$370.09, for these expenses. (Ex. 67) Brener-Schmitz had not provided the required union purpose for these expenditures. The union had extended her credit for her non-union expenses for over four months.

On August 25, 2015, almost three months after her trip to the Greenbrier resort in West Virginia from Sunday, May 31, 2015 to Tuesday, June 2, 2015. Brener-Schmitz submitted an expense report for her stay<sup>40</sup>. (Ex. 75), The report listed the total hotel

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the IBT used to challenge her claims of union purpose. She said either she or the IBT had gone back and requested the itemized ones, she claimed she could not remember which one had requested it. (Ex. 2 at 129-130; Ex. 74)

<sup>40</sup> The IBT required that an employee receive travel authorization. Brener-Schmitz went to the Greenbrier resort without travel authorization. Her supervisor, Christy Bailey applied for post-occurrence approval in a memo dated August 19, 2015, to W.C. Smith. (Ex. 75) That was the day the IBT received the IRB document request for Brener-Schmitz' expense records. (Ex. 16)

folio amount of \$1,319.35 that she charged on her union card. Included in that total was a \$223.52 charge on May 31, 2015, for a wallet she purchased at a resort shop. (Ex. 75) This was a personal expense with no union purpose. (Ex. 2 at 117)

Also on May 31, 2015, there were charges at the Greenbrier for \$25.95, described as "Swimming Pool", for \$6.65 at "Twelve Oaks", one of the resort's bars, and for \$6.65 at "Slammin' Sammy's", a sports bar at the resort. (Ex. 75) All of these expenses were included in her total hotel charge from the Greenbrier that on her late-filed expense report she only listed. (Ex. 75) The union paid the full card charge. (Ex. 28) Brener-Schmitz delinquently submitted her expense report for these charges on August 25, 2015, four months after they were made and within a week of the IRB document demand. (Exs. 16; 75) Her expense report included a total the Greenbrier folio charge of \$1,319.35, including the personal charges.<sup>41</sup> (Ex. 75) On September 14, 2015, Brener-Schmitz was required to provide to Richard Bell, Executive Assistant to the General Secretary-Treasurer, explanations for her expenses incurred in connection with her Greenbrier resort charges for which she then had yet to file a report. (Ex. 15) She repaid

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<sup>41</sup> At that time, the IBT was aware that Brener-Schmitz' expenses were under IRB investigation. On August 17, 2015, the IRB served a notice of examination of books and records on the IBT seeking, *inter alia*, all credit card statements and expense reports for Brener-Schmitz. (Ex. 16) At her sworn examination, Brener-Schmitz claimed that she was notified of the request in "late September [2015]" (Ex. 2 at 123-124)

the union for these charges on September 10, 2015. (Exs. 65; 67) Brener-Schmitz did not disclose any of the charges as being personal until the IBT challenged her on them

One of Brener-Schmitz' expenses IBT staff questioned was her May 31, 2015 car rental of a car for her trip to the Greenbrier. (Exs. 15; 75) She obtained the car at Washington National Airport on May 31, 2015. (Ex. 75) She checked out of the Greenbrier on June 2, 2015<sup>42</sup>. (Ex. 75) She did not return the rental car until two days later on June 4, 2015, at Baltimore Washington International Airport ("BWI"). (Ex. 75) She kept the rental car at IBT expense for the additional two days beyond the union purpose. On her late filed expense report she submitted the full rental cost to the union. (Ex. 75) Brener-Schmitz' bank records evidenced that on June 3, 2015, she used her personal Bank of America debit card to purchase a ticket for \$205.10 from US Airways. (Ex. 24) According to IBT records, Brener-Schmitz was on vacation from June 4, 2015 through June 8, 2015. (Ex. 76) On September 10, 2015, the IBT required her to repay the \$261.47 for the credit it had extended to her months earlier to keep the rental car for personal use for the extra days<sup>43</sup>. (Exs. 65; 67)

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<sup>42</sup> The Greenbrier was 249 miles from Washington National Airport. (Ex. 77)

<sup>43</sup> That repayment was also part of the payment Brener-Schmitz made using a bank check after her personal check to the IBT bounced. (Ex. 67)

## Analysis

Section 503 requires that the violation be willful. As Judge Edelstein, quoting the Independent Administrator, noted in discussing a violation of this statute in United States v. International Brotherhood of Teamsters, (Burke and Wolchok), 817 F. Supp 337, 346 (SDNY 1993), aff'd, 14 F.3d 183 (2d Cir 1994), "the willfulness of the violative conduct," lies in "whether the respondent willfully engaged in conduct that violated the statute." Here Brener-Schmitz misused her union card to create debts she owed to the union by causing the IBT to pay for purchases she improperly charged not related to union business. She knew the IBT was paying the credit card company for her non-union purchases. Those payments created her obligation to repay those indirect loans from the union<sup>44</sup>. She failed to file timely expense reports that would justify her use of the card as required, keeping the credit extended open for longer periods of time. Despite her false claims of immediate reimbursement of personal expenses, she only paid these debts when the IBT required her to repay it for the money she owed it resulting from its covering of her non-union purchases. In violations of the statute she increased her

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<sup>44</sup> If it was not an extension of credit, then Brener-Schmitz in making improper personal purchases she caused the IBT to pay for was engaged in an embezzlement scheme. Her intent to embezzle would have been established by her failure to repay until caught and her failure to follow IBT policies designed to protect union assets.

indebtedness to the union to over \$2,000 on two occasions. (Exs. 64; 65) To do so, she repeatedly violated the IBT policies that employees were not to use their IBT credit card for non-union purchases and that expense reports were to be timely submitted. Her conduct was willful under the statute. See United States v. IBT, (Ligurotis), 814 F. Supp. 1165, 1178-79 (SDNY 1993). She caused the union to extend her interest free loans over the legal limit. She, through causing the IBT to violate 18 U.S.C. § 503(a), was liable as a principal, 18 U.S.C. § 2(b).<sup>45</sup> In addition, in causing the union to violate its legal obligation not to extend loans to its employee over \$2,000, she violated Art. XVI, § 7(b) (5) of the IBT Constitution.

**VII. BRENER-SCHMITZ BROUGHT REPROACH UPON THE IBT THROUGH A PATTERN OF DEFRAUDING IT BY GIVING IT PERSONAL CHECKS TO REPAY HER LOANS WHEN SHE KNEW SHE HAD INSUFFICIENT FUNDS TO COVER THEM**

On at least two occasions, Brener-Schmitz committed a felony when she knew she had insufficient funds on deposit in her account to cover a check she wrote and gave to the IBT to pay back what she owed it. Through this, she defrauded the IBT. For example, on June 17, 2013, Brener-Schmitz uttered a check payable to the IBT

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<sup>45</sup> Title 18 USC § 2(b) provides:

"Whoever willfully causes an act to be done which if directly or performed by him or another would be an offense against the United States, is punishable as a principal." Each submission to the union of a false receipt and a false expense report was punishable by up to one year incarceration and a \$10,000 fine. 18 USC §439. (Ex. 59)

in the amount of \$1,503.25, as repayment for personal expenses she charged on her union credit card and for which she caused the IBT to extend her credit. (Ex. 60) On the day she wrote that check, her closing checking account balance was \$364.96. (Ex. 60) The check was returned to the IBT for insufficient funds on June 25, 2013. (Ex. 60) On that date, her closing account balance was \$28.64<sup>46</sup>. (Ex. 60; Ex. 90) On July 16, 2013, twenty-one days after her first check to the IBT was returned for insufficient funds, Brener-Schmitz made a cash payment of \$3,312.95 to the IBT. Part of the payment was to repay the obligation she pretended to cover with her bounced check. (Ex. 51) In intentionally providing the IBT with the first check drawn on an account in which she knew she did not have funds to cover, Brener-Schmitz committed a felony. D.C. Code § 22-1510<sup>47</sup>. (Ex. 29)

On August 19, 2015, Brener-Schmitz issued a check, payable to "Teamsters" for \$1,838.74. On the memo line she wrote, "Vegas + reimbursements + Greenbrier". On the day she wrote this check, her closing account balance was \$22.37. (Ex. 60) On August 27,

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<sup>46</sup> After that bounced check, Brener-Schmitz shortly thereafter issued three additional checks to the IBT, each of which was returned for insufficient funds. These three checks all dated July 11, 2013 and payable to the IBT, were for \$96.80; \$1,712.90; and \$1,503.25. They were returned for insufficient funds on July 15, 2013. (Ex. 60)

<sup>47</sup> On July 30, 2013, Brener-Schmitz issued another check for \$58.00, payable to the IBT as repayment for what she owed it because of personal charges on her union credit card. On the date of the check, she had a negative balance of \$-323.04. (Ex. 60) IBT records showed that check was denied by the bank for insufficient funds. (Ex. 60) Brener-Schmitz repaid that \$58.00 amount with a replacement check on September 27, 2013. (Ex. 60) Her conduct was a misdemeanor offense.

2015, the bank dishonored the check for insufficient funds and returned it to the IBT. Her closing bank balance on August 27, 2015 was \$125.12. (Exs. 25; 60; 91; Ex. 2 at 109-112) Brener-Schmitz admitted that at the time she gave the check to the IBT she knew she did not have sufficient funds in her checking account to cover it. (Ex. 2 at 109-112)<sup>48</sup> On September 10, 2015, 14 days after the check was dishonored, Brener-Schmitz purchased a Bank of America Cashier's Check for \$1,838.74, payable to "Teamsters", which she gave to the IBT. (Ex. 67) In giving the August 19 check to the IBT, Brener-Schmitz had committed a felony. (Ex. 67)

Under District of Columbia Code, Section 22-1510, writing checks in excess of \$1,000, when the maker knows she did not have sufficient funds on deposit to cover the check is a felony<sup>49</sup>.

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<sup>48</sup> She gave it to the IBT the same day the IBT received the IRB's document request. (Ex. 16) There was a flurry of activity that day to apparently attempt to cover up the IBT's lack of enforcement of its policies with respect to her. (Ex. 17)

<sup>49</sup> That section provides:

Any person within the District of Columbia who, with intent to defraud, shall make, draw, utter, or deliver any check, draft, order, or other instrument for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, order, or other instrument in full upon its presentation, shall, if the amount of such check, draft, order, or other instrument is \$1,000 or more, be guilty of a felony and fined not more than the amount set forth in § [22-3571.01](#) or imprisoned for not less than 1 year nor more than 3 years, or both; or if the amount of such check, draft, order, or other instrument has some value, be guilty of a misdemeanor and fined not more than the amount set forth in § [22-3571.01](#) or imprisoned not more than 180 days, or both. **As against the maker or drawer thereof the making, drawing, uttering, or delivering by such maker or drawer of a check, draft, order, or other instrument, payment of which is**

The IBT was the victim of Brener-Schmitz' criminal acts. Through those actions, she brought reproach upon the IBT. See, United States v. International Brotherhood of Teamsters [Friedman], 725 F. Supp. 162 (S.D.N.Y., 1989), aff'd, 905 F. 2d 610, (2d Cir., 1990); United States v. International Brotherhood of Teamsters [Piscopo and McGuire], 88 Civ. 4486 (LAP), 1012 U.S. Dist. LEXIS 176879, at 12-13 (S.D.N.Y., 2012) (criminal action of a person subject to the Consent Decree may be a basis for a charge of bringing reproach upon the union).

**VIII. BRENER-SCHMITZ CREATED AN UNDISCLOSED CONFLICT OF INTEREST WITH THE IBT WHEN SHE RECEIVED MONEY PERSONALLY FROM AN OFFICER OF A RECIPIENT OF D.R.I.V.E. DONATIONS WHICH FELL WITHIN HER IBT DUTIES**

John Soltz was Chairman and Executive Director of VoteVets, a PAC that had received approximately \$875,000.00 in contributions from the IBT since 2010<sup>50</sup>. (Exs. 86-87) Brener-Schmitz identified

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refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of the intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with the amount of protest fees, if any, within 5 days after receiving notice in person, or writing, that such check, draft, order, or other instrument has not been paid. The word "credit," as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of such check, draft, order, or other instrument. [Emphasis in original] (Ex. 29)

<sup>50</sup> VoteVets Political Action Committee is a federal political committee. VoteVets Action Fund is a 501(c) (4) organization. VoteVets Political Action and Vote Vets Action Fund are separate organizations. (Ex. 87)

Soltz as a "good friend". (Ex. 2 at 87) In 2013, Brener-Schmitz was involved in the approval process for D.R.I.V.E. contributions to VoteVets. (Exs. 78; 86) On July 16, 2013, after having recently bounced several checks to the IBT for a debt she owed the union for having it pay for her personal expenses she incurred through misusing her union card, she received \$4,000 in a wire transfer into her account from Soltz<sup>51</sup>. (Exs. 2 at 87; 93-95; 24) At her 2016 testimony, she claimed Soltz lent her the money. (Ex. 2 at 87, 93-95) There were no documents memorializing a loan. No interest was charged. (Ex. 37) She made no repayment of any amount until after her IIO testimony, over three years later. (Ex. 37) Among the contributions Brener-Schmitz caused the IBT to make to VoteVets was a \$5,000.00 contribution she initiated on August 21, 2013. (Exs. 78; 86) This contribution, unlike larger amounts, did not require a level of scrutiny outside the IBT<sup>52</sup>. On September 23, 2016, after her attorney was told the IIO was considering recommending a charge against her for this payment she wired \$4,000 to Soltz. (Ex. 30; Ex. 37)

There was no evidence to support Brener-Schmitz' claim this transfer of funds into her account was a loan and not a gift or

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<sup>51</sup> Checks she had given the IBT on June 17 and July 11, 2013 were dishonored. (Ex. 60)

<sup>52</sup> D.R.I.V.E. Contributions of \$10,000 or more required a permissibility review by an outside law firm. Contributions of \$25,000 or more required a poll vote by the IBT General Executive Board. (Ex. 86)

other payment to her. In either event, whether a loan or a gift, it was a thing of value she obtained from an officer of an organization which had received and continued to receive funds from the IBT's PAC. E.g., United States v. Roth, 333 F. 2d 450, (2d Cir., 1964) (an interest free loan is a thing of value); United States v. Carter, 311 F.2d 934, (6th Cir., 1963) (transfer of funds claimed to be a loan without any repayment or other indicia of being a loan evidenced a gift or payment).

Records subpoenaed from Bank of America for Brener-Schmitz' personal account indicated that a wire transfer of \$4,000.00, was received in her account on Saturday, July 13, 2013, and was posted as a deposit on July 16, 2013. (Ex. 24) That same day, Brener-Schmitz withdrew \$3,800.00, in cash from that account. (Ex. 24) On Tuesday, July 16, 2013, IBT records evidenced that Brener-Schmitz made a cash payment to the IBT of \$3,312.95. (Ex. 51) She had not disclosed to the IBT the receipt of funds she received personally from the VoteVets executive prior to her 2016 deposition. (Ex. 79) Brener-Schmitz' conduct violated the IBT conflict of interest policy, which stated:

International Union officers, employees and representatives must refrain from participating in any transaction in which they have interests that conflict or appear to conflict with the interests of the International Union or its members.[...]  
d.) Employees are to avoid any situations that may create a conflict or create the appearance of a conflict between their personal interests and those of the International Union

(Ex. 4 at 10-11)

It also violated the fiduciary duties that she as an employee agent owed to the union, her principal. By concealing that she received money from an executive of an organization the IBT directed PAC money to within her area of responsibility she violated her duty to "use reasonable efforts to give [her] principal information which is relevant to affairs entrusted to [her] and which ... the principal would desire to have." Restatement (Second) of Agency §381. It is the duty of an agent to share relevant information with a principal specifically the disclosure of any gift or anything of value received from a third party during the course of the agency relationship. Restatement (Third) of Agency, §8.02. The agent has a duty to disclose any conflicts that might exist between the principal's interest and the agent's interest which might make the agent act in [her] own best interest at the expense or the detriment of the principal. Jerlyn Yacht Sales, Inc. v. Wayne E. Roman Yacht Brokerage, 950 F.2d 60, 66-67 (1<sup>st</sup> Cir., 1991)

In receiving money from an executive of an organization for which she participated in the approval of donations from the IBT PAC, at a minimum, Brener-Schmitz created the appearance of a conflict of interest. She did not disclose it as required. Her conduct brought reproach upon the IBT.

## **STANDARD OF PROOF**

The standard of proof for establishing the charges against Brener-Schmitz 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."); the Final Agreement and Order, at Paragraph 35; United States v. IBT [Simpson], 931 F. Supp. 1074, 1089 (S.D.N.Y. 1996), aff'd, 120 F.3d 341 (2d Cir. 1997). (Ex. 1 at 126) <sup>53</sup>

## **IX. PROPOSED CHARGES**

Based upon the evidence summarized in the above Report, it is recommended that the following charges be filed against former IBT Political Director Nicole Brener-Schmitz:

### Charge One:

While an IBT employee, you embezzled and converted IBT funds to your own use, brought reproach upon the IBT, violated Federal law and committed an act of racketeering in violation of Articles

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<sup>53</sup> In addition, Article XIX, Section 1(e) of the IBT Constitution provides that internal union disciplinary charges must be proven by a preponderance of the evidence. (Ex. 3 at 138)

II, Section 2(a) XIX, Section 7(b) (1), (2), (3), (5) and (11) of the IBT Constitution, *to wit*:

As described in the above report, between approximately January 2013 and June 2015, while an IBT employee, you embezzled at least \$11,495.43 from the IBT, by causing the IBT through false representations you made to pay for expenses incurred without a union purpose.

Charge Two:

While an IBT employee, you brought reproach upon the IBT, interfered with its legal obligations, and exposed the IBT to the risk of civil and criminal penalties and violated the IBT's recordkeeping policies in violation of Articles II, Section 2(a) and XIX, Section 7(b) (1), (2) and (5) of the IBT Constitution, *to wit*:

As described in the above report, between January, 2013 and August, 2015, while an IBT employee, you brought reproach upon the IBT and violated Article II, Section 2(a) of the IBT Constitution when you submitted to the IBT at least 564 false receipts for charges you incurred on your IBT credit card. You also falsified expense reports you submitted. The union was required to maintain accurate records pursuant to 29 U.S.C. §§431, 436 and 439, and IBT policies. Your causing the IBT to fail to comply with its record keeping obligations under federal law and your failure to follow

IBT policies exposed the IBT to the risk of civil and criminal actions. 29 U.S.C. §§439, 440; 18 U.S.C. §2.

Charge Three:

While an IBT employee, you brought reproach upon the IBT and caused the IBT to violate its legal obligations in violation of the IBT Constitution, Article II, § 2(a) and Article XIX, §§ 7(b) (1), (2) and (5), to wit:

On at least two separate occasions, in 2013 and 2015, you caused the IBT to extend interest free loans to you, each of which was over \$2,000, in violation of the IBT's legal obligations under 29 U.S.C. §503, as described in the above report. Under 18 U.S.C. §2(b), you were as liable as the principal for these criminal acts.

Charge Four:

While an IBT employee, you brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b) (1), (2) and (5) by engaging in criminal conduct designed to defraud the IBT by knowingly writing checks to pay your obligations to it when you knew there were insufficient funds in your accounts to cover the checks. Your actions were felony violations of the Code of the District of Columbia, § 22-1510, to wit:

As described in the above report, while an IBT employee, you brought reproach upon the IBT through defrauding it by submitting

to it personal checks when you knew there were insufficient funds in your account to cover the checks you gave the IBT to pay it for your debts owed it for illegal loans. These were crimes with the IBT as your victim.

Charge Five:

While an IBT employee, you brought reproach upon the IBT when you created a conflict of interest under the law and in violation of the IBT's Code of Conduct for its employees, and in violation of Articles II, §2(a) and XIX, §§ 7(b)(1), (2) and (5) of the IBT Constitution, to wit:

As described in the above report, you received \$4,000 in your personal bank account from the executive of an organization that received donations from the IBT PAC, D.R.I.V.E. As part of your duties, you were involved in having donations from D.R.I.V.E. made to this organization. You did not disclose your personal receipt of money from the donee organization's executive to anyone at the IBT as required under its Code of Conduct and the law.