

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1

STARBUCKS CORPORATION,

Respondent,

v.

WORKERS UNITED affiliated with
SERVICE EMPLOYEES INTERNATIONAL
UNION,

Charging Party.

No. 01-CA-302321; 01-CA-307585

**STARBUCKS CORPORATION’S REQUEST FOR SPECIAL PERMISSION TO
APPEAL THE ADMINISTRATIVE LAW JUDGE’S ORDER ON PETITIONS TO
REVOKE SUBPOENA DUCES TECUM B-1-1ID2IE5, SUBPOENA DUCES TECUM B-
1-1IGZVA5¹, AND SUBPOENA AD TESTIFICANDUM NO. A-1-1IIISKD**

Pursuant to Section 102.26 of the National Labor Relations Board (the “Board”)’s Rules and Regulations, Respondent Starbucks Corporation (“Starbucks”) respectfully requests special permission to appeal (“Special Appeal”) Administrative Law Judge Kimberly Sorg-Graves’s (“ALJ”)’s May 5, 2023 Order on Petitions to Revoke Subpoena Duces Tecum B-1-1ID2IE5, Subpoena Duces Tecum B-1-1IGZVA5, and Subpoena Ad Testificandum No. A-1-1IIISKD (“Order”). A copy of the Special Appeal is attached as Exhibit 1, and a copy of the Order is attached as Exhibit 2. Copies of Subpoena *Duces Tecum* B-1-1ID2IE5, Subpoena *Duces Tecum* B-1-1IGZVA5, and Subpoena *Ad Testificandum* No. A-1-1IIISKD are attached as Exhibits 3, 4, and 5, and are collectively referred to as the “Subpoenas.” Starbucks’ Petitions to Revoke (“Petitions”)

¹ The ALJ erroneously referred to Subpoena Duces Tecum No. B-1-1IGZVA5 as Subpoena Duces Tecum No. B-1-1IGNN1T in her May 5, 2023 Order.

are attached as Exhibits 6, 7, and 8. Starbucks' Supplemental Memorandum in support of its Petitions to Revoke Subpoenas *Duces Tecum* B-1-1ID2IE5 and B-1-1IGZVA5 is attached as Exhibit 9. Counsel for the General Counsel's Opposition to the Petitions to Revoke ("Opposition") is attached as Exhibit 10.

As detailed in Starbucks' Special Appeal, the Board should grant Starbucks' request for special permission to appeal the Order for the following reasons. First, Request No. 7, which seeks the "Petition Store Playbook", requests documents that do not exist at or for the relevant Vernon, Connecticut store. Indeed, Ms. Twible, Store Manager, has no such document in her possession, custody, or control. To the extent a "Petition Store Playbook" exists outside of and separate from the Vernon store, such documents were not requested and even if they were, they are protected from disclosure by the attorney-client privilege and the work product doctrine. Further, the ALJ's Order requiring Starbucks to produce any documents in TIFF+ format to Counsel for the General Counsel ("CGC") at least four (4) business days prior to the hearing resumption date is inconsistent with black letter law because (a) pre-hearing discovery is improper and (b) production in TIFF+ format is standard practice. In addition, the ALJ's Order requiring Starbucks provide a custodian of records is improper "discovery on discovery" because (a) the CGC's request does not concern any substantive matters; (b) the CGC does not cite any specific concerns about the authenticity of the records; and (c) there is no single custodian of records. Finally, the Board should grant Starbucks' request for special permission to appeal the Order because Subpoena Ad Testificandum No. A-1-1IIISKD was improperly served on Renee Colburn ("Ms. Colburn").

Based on the foregoing and the grounds set out in the Appeal, Starbucks respectfully requests that the Board grant special permission to appeal the ALJ's Order.

Dated: June 13, 2023

Respectfully submitted,

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STARBUCKS CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2023, the foregoing STARBUCKS CORPORATION'S REQUEST FOR SPECIAL PERMISSION TO APPEAL THE ADMINISTRATIVE LAW JUDGE'S ORDER ON PETITIONS TO REVOKE SUBPOENA DUCES TECUM B-1-1ID2IE5, SUBPOENA DUCES TECUM B-1-1IGZVA5, AND SUBPOENA AD TESTIFICANDUM NO. A-1-1IIISKD was filed via Efile and a copy of the foregoing was served on the following via email:

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EXHIBIT 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1**

STARBUCKS CORPORATION,

Respondent,

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WORKERS UNITED affiliated with
SERVICE EMPLOYEES INTERNATIONAL
UNION,

Charging Party.

Case Nos. 01-CA-302321; 01-CA-307585

**STARBUCKS CORPORATION’S SPECIAL APPEAL FROM THE RULING OF THE
ADMINISTRATIVE LAW JUDGE’S ORDER ON PETITIONS TO REVOKE
SUBPOENA DUCES TECUM B-1-1ID2IE5, SUBPOENA DUCES TECUM B-1-
1IGZVA5¹, AND SUBPOENA AD TESTIFICANDUM NO. A-1-1IISKD**

Pursuant to Section 102.26 of the National Labor Relations Board (the “Board”)’s Rules and Regulations, Respondent Starbucks Corporation (“Starbucks”) respectfully files this appeal (“Special Appeal”) to Administrative Law Judge Kimberly Sorg-Graves (“ALJ”)’s May 5, 2023 Order (“Order”) on Petitions to Revoke Subpoena *Duces Tecum* B-1-1ID2IE5 (“Subpoena I”), Subpoena *Duces Tecum* B-1-1IGZVA5 (“Subpoena II”) (together, “Subpoenas”), and Subpoena *Ad Testificandum* No. A-1-1IISKD (“Subpoena AT”) (collectively, the “Subpoenas”). Starbucks requests the Board grant the Appeal because:

(1) Request No. 7 in Subpoena I, which seeks the “Petition Store Playbook”, requests a document that does not exist for Vernon store, and the Order to produce a custodian of records is improper discovery on discovery;

¹ The ALJ erroneously referred to Subpoena *Duces Tecum* No. B-1-1IGZVA5 as Subpoena *Duces Tecum* No. B-1-1IGNN1T in her May 5, 2023 Order.

(2) The ALJ's Order requiring Starbucks to produce any documents made available in only TIFF+ format to Counsel for the General Counsel ("CGC") at least four (4) business days before the hearing resumption date is inconsistent with black letter law because (a) pre-hearing discovery is improper; and (b) production in TIFF+ format is standard and therefore not grounds for an exception to that black letter law;

(3) Subpoena *Ad Testificandum* No. A-1-111ISKD was improperly served on Renee Colburn ("Ms. Colburn").

I. PROCEDURAL BACKGROUND

Workers United (the "Union") filed a representation petition (Case No. 01-RC-295710) on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbucks' store at 135 Talcottville Road, Vernon, Connecticut 06066 ("Vernon Store"). The National Labor Relations Board, Region 1 ("Region") conducted a mail ballot election, and ballots were counted on July 14, 2022. Subsequently, the Union was certified as the exclusive collective bargaining representative of Starbucks partners working in the positions of Baristas and Shift Supervisors on July 22, 2022.²

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged misconduct at the Vernon Store. The Union filed the first amended charge on September 22, 2022, and the second amended charge on November 21, 2022. The Region issued the Complaint on December 23, 2022, and the hearing was scheduled to begin April 11, 2023.

The Union filed charge 01-CA-307585 on November 21, 2022. The Union filed the first amended charge in case 01-CA-307585 on December 9, 2022; the second amended charge was filed on March 14, 2023; and the third amended charge was filed on March 28, 2023. Charges 01-

² Assistant Store Managers were permitted to vote under challenge as their eligibility was not determined prior to the election.

CA-302321 and 01-CA-307585 were consolidated in the Consolidated Complaint (“Complaint”) on March 28, 2023, with hearing set for April 11, 2023.

More than six (6) months after the initial charge was filed, on March 29, 2023, the CGC served Starbucks with Subpoena I, which included extensive requests for electronically stored information (“ESI”). Subpoena I required document production by 10 a.m. on April 11, 2023 the opening of the hearing. Regarding production of ESI, the instructions to the Subpoena stated:

Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained ***or in a reasonably usable form or forms.***

Subpoena Instruction & Definitions, No. 3 (emphasis added)

Electronically Stored Information (ESI) should be produced in the form or forms in which it is ordinarily maintained ***or in a reasonably usable form or forms.*** All spreadsheet and presentation files (e.g., Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (*i.e.*, in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

Subpoena Instruction & Definitions, No. 11 (emphasis added)

Subpoena I did not specify a particular method for delivery of the files, nor the particular format in which the documents should be produced. *See id.* Starbucks timely served its Petition to Revoke on March 27, 2023. (Exhibit C to Exhibit 1a).

On Thursday, April 6, 2023, CGC Charlotte Davis emailed counsel for Starbucks a courtesy copy of the Subpoena AT. The Subpoena AT was addressed to Ms. Colburn, with a request that Ms. Colburn appear before the ALJ in the hearing in this case on April 11, 2023—*three business days later*. The CGC never asked if counsel for Starbucks would accept service of the Subpoena on Ms. Colburn’s behalf, nor did counsel for Starbucks indicate that it would accept service. On Monday, April 10, 2023, 1:56 p.m., a copy of the Subpoena AT was delivered to the Vernon Store, via Certified Mail. Ms. Colburn is not assigned to and does not work at the Vernon Store and no one there was authorized to accept service on her behalf.

On April 11, 2023, at 8:00 am, Starbucks served its TIFF+ production on the CGC. Starbucks produced the documents two hours before the hearing was scheduled to commence; production was due at the start of the hearing. (Exhibit F to Exhibit 1a).

When the hearing commenced, the CGC identified alleged discovery issues, which the parties debated. Ultimately, the ALJ indefinitely adjourned the hearing over Starbucks' objections. On April 13, 2023, Starbucks filed its *Petition to Revoke Subpoena Ad Testificandum No. A-1-IIIISKD*. On April 17, 2023, Starbucks filed its *Supplemental Memorandum in Support of its Petition to Revoke Subpoena Duces Tecum No. B-1-IID2IE5 and B-1-IIGVA5, and in Opposition to Counsel for the General Counsel's Request for Pre-Trial Discovery*. The CGC filed opposing briefs. The ALJ issued her Order addressing the alleged discovery issues on May 5, 2023. As of the date of this filing, the hearing has not been rescheduled.

As set forth above, Starbucks submits this Special Appeal challenging specific rulings in the Order. The Board should grant Starbucks' Appeal; revoke Request No. 7 of the Subpoena I since no documents responsive to it exist at or were used by the Vernon store and revoke the requirement to have a custodian of records testify; revoke Instruction 11 in Subpoenas I and II, as far as it demands "native" production and find that Starbucks need not produce documents, even if produced in TIFF+ format, prior to renewed hearing date; find that the Subpoena AT was not properly served; and reverse the Order's rulings on these particular matters.

A. Statement of Law

A petition to revoke a subpoena *duces tecum* or *ad testificandum* must be granted if the subpoena is invalid for "any . . . reason sufficient in law." NLRB Rules and Regulations §102.66(f). Section 102.31(b) of the NLRB's Rules and Regulations further provides that an ALJ shall revoke a subpoena if its production requires documents or information that do not relate to any matter in question in the proceedings. Similarly, subpoenas must: (1) be for a legitimate purpose; (2) show

that the inquiry is relevant to that purpose; (3) be necessary in that the agency does not already possess the information requested; (4) comply with all administrative requirements; and (5) not prove to be unreasonably broad or burdensome. *See NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3d Cir. 1979); ULP Case Handling Manual (“CHM”) § 11792.1 (the requested information must “relate[] to any matter under investigation or in question”); *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). The CGC has failed to meet that standard.

For a subpoena request to be relevant, it must reasonably relate to or “touch” a matter under investigation or in question. *See ULP Casehandling Manual* (“CHM”) § 11792.1 (information requested must “relate [] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch [] a matter under investigation”); *NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3rd Cir.1979). In the context of a hearing (or adjudicative) subpoena, relevancy “is measured against the charges specified in the complaint. [Internal citations omitted; emphasis added.]” *Federal Trade Commission v. Anderson*, 631 F.2d 741, 745-46 (D.C. Cir. 1979). The Board does not allow “fishing expedition[s].” *See, e.g., Spartan Dep’t Stores*, 140 NLRB 608 n.2 (1963).

B. The CGC Is Not Entitled to Testimony of a Custodian of Records Regarding the Search for a “Petition Store Playbook”

The CGC’s Subpoena I directed to the “Custodian of Records, Starbucks Corporation, 135 Talcottville Road, Vernon, Connecticut 06066,” Number 7, requested “The Petition Store Playbook.” During the hearing, CGC was clear that they believed a document named “Petition[ed] Store Playbook” existed and had knowledge of its supposed contents, and specifically sought this

document by name.³ Respondent did not produce a “Petition Store Playbook” at the hearing because no document by this name exists, and specifically relevant to this proceeding, no document by that name was ever used in the Vernon store. Because CGC asked for the “Petition Store Playbook” by name in the Subpoena, and no document by this name exists or was used in the Vernon store, there was no document by this name to produce.⁴

The Order commands Respondent to either produce this non-existent document or to produce a Records Custodian to testify as to the search for the document. Order p. 12. Because there is no document entitled the “Petition (or Petitioned) Store Playbook,” the Order obligates Starbucks to produce the Records Custodian to testify as to the search.

This Order is inappropriate and unnecessary. To address the issue of whether the “Petition Store Playbook” existed and was used by the Vernon store, Starbucks will make the Vernon Store Manager available to testify at the hearing that no document by this name existed in the Vernon store. This should be sufficient testimony, from a sworn Company witness, to verify the non-existence of the document as it pertains to the Vernon store.⁵ Under these circumstances, ordering an official “records custodian” to testify is wholly inappropriate. Rather, this is improper “discovery on discovery,” and the Order must be overruled. Starbucks has complied with the CGC’s subpoena and there is simply no basis to compel the testimony of a “custodian of records.”

“Discovery on discovery” or “meta-discovery” is a phrase used by jurists to describe wasteful and improper efforts to expand discovery burdens and spin off separate litigation aimed

³ During oral arguments, CGC asserted, “[a]ll of these 8(a)(1) statements are part of a playbook that they have, which we know exists. ... we specifically requested the petitioned store playbook by name.” Tr. 32:17-25.

⁴ While the document requested does not exist, Starbucks maintains its position that a document created by or with in house or outside counsel providing legal advice on compliance with the NLRA would be protected from disclosure by the attorney-client privilege or work product privilege.

⁵ Starbucks believes the CGC may be attempting to use the subpoena in this case to cast a wide net to figure out if the “Petition Store Playbook” exists anywhere at Starbucks. While the CGC boldly insists that a “Petition[ed] Store Playbook” exists and makes claims as to what that document dictates within a petitioned store, no document named “Petition Store Playbook” or “Petitioned Store Playbook” exists, as represented by Counsel in the hearing.

at discovering a party's efforts to comply with their discovery obligations. *See, e.g., Hanan v. Corso*, No. 95-0292, 1998 U.S. Dist. LEXIS 11877, at *23 (D.D.C. Apr. 24, 1998) (“[D]iscovery is only permitted of information which is either relevant or likely to lead to admissible evidence. Fed. R. Civ. P. 26(b)(1). Plaintiff never explains why discovery about discovery meets that standard, no matter how liberally it is construed, nor any legal authority for the proposition that the federal courts deem the discovery process itself a fit subject for additional discovery.”); *Orillaneda v. French Culinary Inst.*, No. 07-CV-3206, 2011 U.S. Dist. LEXIS 105793, at **13-27 (S.D.N.Y. 2011) (explaining that a party is not entitled to conduct discovery about an adversary's document production, including search procedures).

Notwithstanding that there is technically no “discovery” in these proceedings,⁶ discovery is self-executing, and a party is not entitled to discovery solely to verify the other side's compliance therewith. The Federal Rules of Civil Procedure do not grant parties the right to take formal discovery to test the sufficiency of each other's preservation or production efforts, absent evidence of misconduct or deficiency. *See, e.g., Scherer v. FCA US, LLC*, No. 20-cv-2009, 2021 U.S. Dist. LEXIS 225930, at *8 (S.D. Cal. Nov. 23, 2021) (“Plaintiffs do not have a right to conduct discovery into Defendant's discovery methods.”); *Freedman v. Weatherford Int'l*, No. 12-Civ-2121, 2014 U.S. Dist. LEXIS 133950, at **9-10 (S.D.N.Y. Sept. 12, 2014) (plaintiff's request for “discovery on discovery” denied for failure to provide adequate factual basis for finding that defendant's original discovery production was deficient); *Larsen v. Coldwell Banker Real Estate Corp.*, No. 10-00401-AG, 2012 U.S. Dist. LEXIS 12901, at **20-22 (C.D. Cal. Feb. 2, 2012) (denying a request for a witness to answer questions under oath regarding its ESI preservation, collection, and processing because plaintiff had not shown any bad faith in

⁶ National Labor Relations Board Division of Judges Bench Book (Jan. 2022), § 7–200 Pretrial Discovery (“It is well established that pretrial discovery does not apply in Board proceedings.”).

defendant's production and the "isolated examples cited" of alleged inadequacies in production "fail[ed] to demonstrate that Defendants have not reasonably and in good faith produced the documents required."); *Hubbard v. Potter*, 247 F.R.D. 27, 31 (D.D.C. 2008) (denying request for discovery on discovery about defendant's "process of preserving, locating and producing documents" because plaintiff's claims that "the production made is so paltry that there must be more" and/or "speculation that there is more," that the court characterized as "chasing the theoretical possibility that additional documents exist," does not justify such "meta-discovery" and, if allowed, would create a situation where "discovery would never end").

Here, the CGC argues they "cannot trust the adequacy of the search because of Respondent's refusal to provide a custodian of record or custodians of record to explain their search." Tr. 49:2-4. This "argument" recurs throughout the CGC's Opposition, wherein they blankly assert there were "several" issues with the document production and no witnesses available to testify about how the files are created or kept, however they specifically describe these purported issues. The only "deficiency" described with particularity is that Starbucks did not produce the "Petitioned Store Playbook," as requested by name in the Subpoena, and as explained above, this document does not exist, and cannot be produced. Therefore, non-production of this document was not a "deficiency." Without more than general allegations of non-existent deficiencies, the CGC is improperly seeking "discovery on discovery" – delving into issues having nothing to do with the actual substantive issues. For the reasons above, the Order's instruction for discovery on discovery, including a Custodian of Record, must be denied.

C. The CGC Is Not Entitled to Pre-Trial Discovery or Native Files

1. The CGC Is Not Entitled to Pre-Trial Discovery

Starbucks also objects to the Order requiring subsequent productions be provided four (4) days in advance of the hearing date if the production is made in TIFF+ format. "It is well

established that pretrial discovery does not apply in Board proceedings.” National Labor Relations Board Division of Judges Bench Book (Jan. 2022), §7-200 Pretrial Discovery. There is no authority for placing such additional constraints on production, and the face of the relevant subpoena here states the date and time for production is April 11, 2023, 10:00 am, the start date of the hearing. *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 239, 98 S. Ct.2311, 2325, 57 L. Ed. 2d 159 (1978) (Th[e] special danger flowing from prehearing discovery in NLRB proceedings has been recognized by the courts for many years.) (collecting cases); *Spiegel Trucking Co.*, 225 NLRB 178, fn. 5 (1976) (“It is well settled that there is no prehearing discovery in a Board proceeding).

2. TIFF+ Production is “Reasonably Usable.”

Starbucks complied with the CGC’s Store Subpoenas and timely produced documents in a format recognized in black-letter law as “reasonably usable” and consistent with how Starbucks has produced documents and electronically stored information (“ESI”) in dozens of hearings with the Board over the past eleven months. *See* Fed. R. Civ. P. 34(b)(2)(E)(ii) (“If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.”).

Starbucks produced responsive documents in TIFF+ with a load file containing searchable text and metadata.⁷ For the past decade, this production format has been widely recognized by courts across the country as a “reasonably usable form” under Fed. R. Civ. P. 34(b)(2)(E)(ii).⁸ *See*,

⁷ TIFF+ information is designed to be loaded into a litigation support tool for searching, review and production. Both Starbucks’ eDiscovery vendor and the Board use the same litigation support tool, Relativity ([eDiscovery Solutions Relativity](#)).

⁸ Subsection E of Federal Rule of Evidence 34 (“Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes”) provides:

(E) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

e.g., *U.S. ex rel. Carter v. Bridgepoint Educ., Inc.*, 305 F.R.D. 225 (S.D. Cal. 2015) (denying motion for native-format production and noting the widespread use of TIFF images in discovery production); *Aguilar v. Immigration and Customs Enforcement Division*, 255 F.R.D. 350 (S.D.N.Y. 2008) (stating that even if native files are requested, it will produce memoranda, emails and electronic records in TIFF format accompanied by a load file containing searchable text and selected metadata); *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1, Principle 12, Cmt. 12.b., p. 173 (2018) (“Parties should not demand forms of production, including native files and metadata fields, for which they have no practical use or that do not materially aid in the discovery process....[I]n the majority of instances, TIFF+ is a “reasonably usable” form of production for most purposes and types of ESI under Rule 34(b)(2)(E)(ii).”); *see also, e.g.*, *Stipulation and Order Regarding the Format of Electronically Stored Information and Document Production*, Standing Order of Judge James M. Wicks, United States Magistrate Judge (E.D. N.Y.);⁹ *[Model] Agreement Regarding Discovery of Electronically Stored Information and [Proposed] Order* (W.D. Wash.);¹⁰ *Middle District Discovery: A Handbook on Civil Discovery Practice in the United State District Court for the Middle District of Florida* (M.D. Fla.);¹¹ *E-Discovery: Guidelines Addressing the Discovery of Electronically Stored Information* (D. Colo).¹²

There are no rules (or commentary) requiring native format productions. *See, e.g.*, *Chapman v. General Board*, 2010 U.S. Dist. Lexis 66618 (N.D. Ill. July 6, 2010) (holding that the

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- (ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and
 - (iii) A party need not produce the same electronically stored information in more than one form.

⁹ Available at https://www.nyed.uscourts.gov/pub/JMW_ESI.pdf.

¹⁰ Available at https://www.wawd.uscourts.gov/sites/wawd/files/ModelESIAgreement_CLEAN_2.1.23.pdf.

¹¹ Available at <https://www.flmd.uscourts.gov/sites/flmd/files/documents/florida-middle-district-courts-civil-discoveryhandbook.pdf>.

¹² Available at http://www.cod.uscourts.gov/Portals/0/Documents/Forms/CivilForms/E-Discovery_Guidelines.pdf.

Federal rules are “unsupportive” of the contention that Documents or ESI must be produced in native format). But many federal courts have also **ordered** the use of TIFF+ productions because there are inherent risks and significant disadvantages to production in “native” format – including the inability to Bates stamp, redact privileged content or personally identifiable information (“PII”), prevent document alteration, and prevent inadvertent disclosures to unauthorized third parties. *See, e.g., United Central Bank v. Kanan Fashions, Inc.*, 2010 U.S. Dist. LEXIS 83700 (N.D. Ill. Aug. 12, 2010) (ordering TIFF+ production instead of native-format production for ease of use, to prevent manipulation of the production, and to allow for easier redaction of confidential and personally sensitive information); *Wilson v. Conair Corp.*, 2015 WL 1994270 (E.D. Cal. Apr. 30, 2015) (ordering TIFF+ production where plaintiffs moved for native-form production); *National Jewish Health v. WebMD Health Services Group*, 305 F.R.D. 247 (D. Colo. 2014) (citing *Aguilar*, referenced above, for same proposition); *In re Priceline.com Inc. Sec. Litig.*, 233 F.R.D. 88 (D. Conn. 2005) (denying motion to compel native production and instead ordering production “in TIFF+ or PDF form with Bates numbering and appropriate confidentiality designations” in part because those formats were “the most secure format for production of documents”).

The Board’s own Rules and Regulations make plain that “[t]he Federal Rules of Civil Procedure are controlling, so far as is practicable.” Board Rules and Regulations, § 102.39. Subsection three of the Definitions and Instructions in the General Counsel’s Subpoena states: “Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.” Subsection 11 in the General Counsel’s Subpoena states: “Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.” This language follows Fed. R. Civ. P. 34(b)(2)(E)(ii). The General Counsel has also conceded that TIFF+

productions are the industry standard by requesting production in TIFF format. *See e.g.*, Case No. 02-CA-303077 and 02-CA-304431, Subpoena Duces Tecum B-l-1 IFTK3F, Instruction E, stating (emphasis supplied):

Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The NLRB prefers election production in TIFF or PDF format, accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (*i.e.*, a load file suitable for loading into Concordance or similar review platform).

In a recent Region 3 evidentiary hearing, Starbucks provided a declaration from “a recognized global leader in eDiscovery ...[that] provides these services to over 400 clients in over 25 jurisdictions, through offices around the world”¹³ that stated:

- TIFF+ productions are industry standard in modern litigation.
- TIFF+ format consists of page level images and document level extracted text files for each document, accompanied by a load file containing selected metadata.
- When TIFF+ productions are loaded into a Relativity database, both the contents and metadata of all documents are fully searchable and sortable.¹⁴
- Unlike native documents, TIFF+ productions include the ability to individually number/endorse pages, ease of redaction, and the ability to inhibit the capability to alter the imaged version of a document.
- TIFF+ productions meet a wider array of regulatory entity data production requirements which is why the Department of Justice, Securities and Exchange Commission, and Federal Trade Commission require production in TIFF+ format.

The GC did not refute that declaration in any manner. There, the General Counsel also did not refute that Starbucks has produced information in a TIFF+ format in dozens of other proceedings

¹³ Case Nos. 03-CA-295470; 03-CA-295474; 03-CA-295545; 03-CA-296995; 03-CA-299540; 03-CA-300849; 03-CA-300931; 03-CA-305237; 03-CA-307568; 03-CA-307756; 03-CA-308720; 03-CA-309434; 03-CA-309799; 03-CA-310302 03-CA-311237, *Starbucks Memorandum Regarding Form of Production of Evidence Produced in Response to Subpoena: TIFF+ Format is a “Reasonably Usable” Form*, Exhibit 2a, Declaration of Cory Osher, Vice President of Analytics and AI, UnitedLex Corporation.

¹⁴ It is undisputed the National Labor Relations Board has and uses Relativity and has used Relativity in ULP cases.

with the Board during the past approximately eleven months. Many of those cases involved multiple stores and multiple allegations, unlike here where there is a single site store and scant allegations of alleged 8(a) misconduct and only one discriminatee.

3. Starbucks Is Not Required to Re-Produce or Prospectively Produce Documents & ESI in Another Format

Starbucks is not legally obligated to re-produce or prospectively produce ESI in either PDF or native format that it has provided or can prospectively provide in TIFF+ format. *Cf. A & R Body Specialty & Collision Works, Inc. v. Progressive Cas. Ins. Co.*, No. 3:07CV929 WWE, 2014 WL 4437684, at *3 (D. Conn. Sept. 9, 2014), *adhered to on reconsideration*, No. 3:07CV929 WWE, 2014 WL 5859024 (D. Conn. Nov. 10, 2014) (“neither the letter nor the spirit of Rule 34 mandates that a party is entitled to production in its preferred format.”). The federal rules expressly state that a party does not have to produce the same information in more than one format if it was produced in a reasonably usable format. *See* Fed. R. Civ. P. 34(a)(b)(2)(E)(iii) (“A party need not produce the same electronically stored information in more than one form.”); *see also, e.g., U.S. ex rel. Carter v. Bridgepoint Educ., Inc.*, 305 F.R.D. at 245. Any reproduction would be contrary to the rules and would be unreasonably cumulative and duplicative. *See* Fed. R. Civ. P. 26(b)(C)(i). The General Counsel can obtain the information they seek by ingesting the load file provided to them on April 11, 2023, into their Relativity environment, which allows the General Counsel to both print TIFFs to PDF and access certain file types natively.¹⁵

Accordingly, Starbucks complied with the Subpoena by timely producing information in a TIFF+ format. Any contention that the General Counsel is entitled to other forms of production (or sanctions) is legally and factually unfounded.¹⁶

¹⁵ To the extent any Excel, PowerPoint, and/or audio-visual files are responsive to the General Counsel’s Subpoena, Starbucks produces native versions of those file types due the difficulty associated with imaging such file types.

¹⁶ In 2012, the American Bar Association amended Comment 8 to the Model Rule of Professional Conduct 1.1

D. The Subpoena Ad Testificandum Was Improperly Served on Ms. Colburn

The Subpoena AT must be revoked because it was improperly served. The subpoena was never properly served since Ms. Colburn was out on a leave at the time of service; service was made at the Vernon store where she does not work; and no personal service was made on her as required by the rules.

The Act requires that subpoenas be served personally, by registered or certified mail, or by delivery at the principal office or business address of the person being served. *See* Section 11(4) (“Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.”); *see also* NLRB Rules and Regulations Sec. 102.4 (“Subpoenas must be served upon the recipient personally, by registered or certified mail, by leaving a copy at the principal office or place of business of the person required to be served, by private delivery service, or by any other method

(“Competence”) to include a requirement of technical competency, stating:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Since then, 40 states have adopted identical language. *See* Tech Competence | LawSites (lawnext.com). The General Counsel’s conduct here, including by repeatedly pressing an unfounded objection that the production provided by Starbucks was “not reasonably usable” and that it must re-produce the same information in a different format is significantly prejudicial to Starbucks and creates an unwarranted eDiscovery sideshow that serves only to distract trial counsel from the merits of the proceeding. The General Counsel’s position also appears to not comply with the Board’s Ethics Office guidance on Comment 8 to Model Rule of Professional Conduct 1.1. *See* Rule 1.1 GC Memo (americanbar.org) (slide deck from the March 3, 2023 American Bar Association Midwinter Meeting of the Committee on Practice & Procedures Under the NLRA panel on “Technology 101 Model Rule 1.1 on the Ethical Duty to Stay Technologically Competent,” presented by Celeste Hilerio Echevarria, Special Ethics Counsel, Office of the General Counsel, Ethics Office, National Labor Relations Board, and others (emphasis in original):

“Being Tech Challenged is not an excuse. [...] [D]eliberate ignorance of technology is inexcusable [I]f a lawyer cannot master the technology suitable for that lawyer's practice, the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current or hire an outside technology consultant who understands the practice of law and associated ethical constraints.”).

Available at https://www.americanbar.org/content/dam/aba/events/labor_law/pp/2023/papers/pp-presentation-rule11-gc-memo-23-02.pdf.

of service authorized by law.”).

The CGC did not properly serve the Subpoena AT on Ms. Colburn. The Subpoena AT was neither personally served on Ms. Colburn, nor delivered at Ms. Colburn’s principal office or business address. The CGC attempted service on Ms. Colburn at the store location at issue in this case, despite being aware that Ms. Colburn does not work there. Accordingly, the Subpoena AT must be revoked. If the CGC seeks to have Ms. Colburn testify at the hearing, it may properly serve her with a valid subpoena. Accordingly, the Order pertaining to Subpoena AT should be overturned, and Subpoena AT revoked.

II. CONCLUSION

The ALJ erred in failing to grant Starbucks Petitions to Revoke because: (a) no “Petition Store Playbook” exists or was used by the Vernon, Connecticut store; (b) the CGC is not entitled to pre-trial discovery, native files, or a Custodian of Records; and (c) the Subpoena AT was never properly served on Ms. Colburn. Therefore, the Board should grant Starbucks Special Appeal and overturn the Orders regarding each matter addressed above.

Dated: June 13, 2023

Respectfully submitted,

/s/ Jacqueline Polito

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Attorneys for Respondent

STARBUCKS CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2023, the foregoing STARBUCKS CORPORATION'S SPECIAL APPEAL FROM THE RULING OF THE ADMINISTRATIVE LAW JUDGE'S ORDER ON PETITIONS TO REVOKE SUBPOENA DUCES TECUM B-1-1ID2IE5, SUBPOENA DUCES TECUM B-1-1IGZVA5, AND SUBPOENA AD TESTIFICANDUM NO. A-1-1IIISKD was filed via Efile and a copy of the foregoing was served on the following via email:

Laura A. Sacks,
Regional Director
National Labor Relations Board
Region 01
Thomas P. O'Neill Federal Building
10 Causeway Street - 10th floor Boston, MA 02222-1001
Email: laura.sacks@nrlrb.gov

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Charlotte Davis, Board Agent
Andyeliz Papaleo, Board Agent
National Labor Relations Board, Subregion 34
Abraham A. Ribicoff Building
450 Main St, Suite 410 Hartford, CT 06103-3503
Email: charlotte.davis@nrlb.gov
Email: andyeliz.papaleo@nrlb

Kimberly Sorg-Graves
Administrative Law Judge
National Labor Relations Board
1015 Half Street SE,
Washington, DC 20570-0001
Email: kimberly.sorg-graves@nrlb.gov

/s/ Lindsay M. Rinehart

Lindsay M. Rinehart

EXHIBIT 1a

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1 – SUBREGION 34**

STARBUCKS CORPORATION,

Case No. 01-CA-302321

And

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES
INTERNATIONAL,**

**STARBUCKS CORPORATION’S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS PETITION TO REVOKE SUBPOENA *DUCES TECUMNO*. B-1-
1ID2IE5 AND B-1-1IGZVA5, AND IN OPPOSITION TO COUNSEL FOR THE
GENERAL COUNSEL’S REQUEST FOR PRE-TRIAL DISCOVERY**

My name is Jacqueline Phipps Polito, and I hereby declare and certify:

1. I am one of the attorneys representing Respondent, Starbucks Corporation (“Starbucks”), in the above-captioned case. I am providing this declaration in support of Respondent’s Memorandum in further Support of its Petition to Revoke Subpoena Duces Tecum Nos. B-1-1ID2IE5 and B-1-1IGZVA5, and in Opposition to Counsel for the General Counsel’s Request for Pre-Trial Discovery.

2. The Complaint in this case, 01-CA-302321 was filed on December 23, 2022. The hearing was scheduled to commence on April 11, 2023.

3. Counsel for the General Counsel served Starbucks with a subpoena duces tecum numbered B-1-1ID2IE5 on March 20, 2023. A true and correct copy of the Subpoena is attached

as **Exhibit A.**

4. Counsel for the General Counsel served Starbucks with a subpoena deuces tecum numbered B-1-1IGZVA5 on April 3, 2023. A true and correct copy of the Subpoena is attached as **Exhibit B.**

5. Both Subpoenas called for Starbucks to produce responsive documents on April 11, 2023, by 10:00 A.M. Eastern.

6. Starbucks filed a Petition to Revoke Subpoena B-1-1ID2IE5 on March 27, 2023. A true and correct copy of the Petition to Revoke B-1-1ID2IE5 is attached hereto as **Exhibit C.**

7. Starbucks filed a Petition to Revoke Subpoena B-1-1IGZVA5 on April 10, 2023. A true and correct copy of both Petitions to Revoke Subpoena B-1-1IGZVA5 is attached hereto as **Exhibit D.**

8. On Friday, April 7, 2023, at 4:46pm EDT, CGC sent an email to Administrative Law Judge Kimberly R. Sorg-Graves (the “ALJ”) requesting to set a call “before our hearing starts on Tuesday” because the CGC “anticipate[ed]” having issues with Starbucks’ production and was “exploring the idea of seeking sanctions for non-compliance” with the Subpoena. A true and correct copy of this communication is attached hereto as **Exhibit E.**

9. Counsel for Starbucks responded on Friday, April 7, at 8:44 pm EDT, that they would be available for a conference on Monday, April 10, at 9:15am EDT, in advance of the hearing, but requested that “all arguments relating to the subpoena be placed on the record” when the hearing commenced on Tuesday, April 11. Counsel also noted that the CGC’s threat of sanctions and objections to subpoena responses that were not due for another three days was “wholly improper and highly prejudicial to Respondent.” A true and correct copy of this communication is attached hereto as **Exhibit E.**

10. Starbucks served its production in Tag Image File Format with a load file (TIFF+) format on the CGC at 8:06 A.M EDT on April 11th. A true and correct copy of the email correspondence confirming transmission of the production is attached hereto as **Exhibit F**.

11. As a courtesy, Starbucks included PDF versions of each document produced to the CGC. A true and correct copy of the email correspondence confirming transmission of the production is attached hereto as **Exhibit F**.

12. The hearing was set to commence at 10:00 A.M. EDT on April 11.

13. On April 11, prior to the opening of the hearing, the ALJ held both on and off the record discussions regarding the production A true and correct copy of the Hearing Transcript is attached hereto as **Exhibit G**.

14. Over Starbucks' objection, the ALJ delayed the start of the hearing for one hour while the CGC was given additional time to review the documents. **Exhibit G** at 6:2; 8:13-17; 23:4-6

15. After the start of the hearing, Starbucks provided an index of produced documents, in an effort to move the proceedings forward. A true and correct copy of the email correspondence confirming transmission of this index is attached hereto at **Exhibit H**.

16. After the delay in the proceedings, the parties returned to the hearing room, where CGC made several objections with respect to the production, including (**Exhibit G** at 33:20 - 35:23¹)

a. The production was incomplete;

¹ **Exhibit G** at 32:16-25: These statements are mis-attributed to Ms. Polito, but were in fact spoken by Ms. Davis.

- b. the Board's Relativity vendor needed 3 days to download the documents and send them back to CGC to review, so they needed additional time to review the records to prepare for the hearing;
- c. no custodian of records was produced;.
- d. a "Petition Store Playbook" as set forth in Request No. 7 of Subpoena B-1-1ID2IE5 was not produced;
- e. certain files relating to comparator data were allegedly missing.

17. CGC also represented to the ALJ that Starbucks had not provided a load file. **Exhibit G** at 25:12-15.

18. Starbucks provided a response to each of those issues and noted that the remedy for non-production is the CGC's right to recall a witness, not a delay in the hearing. **Exhibit G** at 37:8 – 40:2. The ALJ acknowledged that remedy at **Exhibit G** at 28:2-5.

19. Most important, Starbucks pointed out that the ALJ had not even issued a decision on the Petitions to Revoke that were filed. **Exhibit G** at 37:8-16.

20. As of today, April 17, the ALJ still has not issued a decision on Starbucks previously filed Petitions to Revoke.

21. CGC informed the ALJ that due to the alleged deficiency in production of documents, they intended on seeking enforcement of the various subpoenas in Federal Court. **Exhibit G** at 43:19-20.

22. The ALJ indefinitely adjourned the hearing over Starbucks' objection. **Exhibit G** at 47:6 – 48:15; 50:7-11.

23. On August 30, 2022, CGC in this matter served on Starbucks a letter in connection with Charge 01-CA-302321, which included a directive to preserve evidence. A true and correct

copy of this letter is attached hereto as **Exhibit I**.

24. Since March 2022 to the present, Regions have sent broad Preservation Letters and Request for Evidence Letters that contain detailed ESI language. A true and correct copy of one such letter served in 03-CA-285671 is attached hereto as **Exhibit J**.

25. CGC has, in some instances, requested production in TIFF+ format, as demonstrated in an email from Nicholas Allen, NLRB Field Attorney in Region 4, where he specifically requests that TIFF files be provided, so that the production can be searched in connection with the Complaint issued for Case No. 04-CA-294636, a true and correct copy of which is attached hereto as **Exhibit K**.

26. CGC have also served subpoenas on Starbucks acknowledging that TIFF+ is an acceptable form in which to produce documents. A true and correct copy of Subpoena B-1-1IBZH3V, served in 12-CA-295949 is hereto attached to as **Exhibit L**.

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

Executed on April 17, 2023, in Fairport, New York.

/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT A

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, Starbucks Corporation135 Talcottville Road, Vernon, Connecticut 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1D2IE5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CTDated: March 20, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

1. For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).
2. For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted on Respondent’s Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:
 - a. Documented Coaching or Written Warning
 - b. Final Written Warning or Separation
 - c. Attendance and Punctuality
 - d. Safety and Security Policy
 - e. Safe Security Standards
 - f. Employees access to management
 - g. Tuition Benefits
 - h. Pay Increases
 - i. Workers United
 - j. The Union
 - k. Representation petition
 - l. Organizing
 - m. Union pin
 - n. Aly Nogosek
3. Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent’s agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:
 - a. Documented Coaching or Written Warning
 - b. Final Written Warning or Separation
 - c. Attendance and Punctuality
 - d. Safety and Security Policy
 - e. Safe Security Standards
 - f. Employees access to management

- g. Tuition Benefits
 - h. Pay Increases
 - i. Workers United
 - j. The Union
 - k. Representation petition
 - l. Organizing
 - m. Union pin
 - n. Aly Nogosek
4. Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.
 5. Those documents from Respondent's corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.
 6. For the period between May 1, 2021 and the present, those documents showing internal communication between or among Sam Cullari, Erin Twible, and any other supervisor and/or agent about the initiatives of upholding attendance standards and/or the attendance culture initiative.
 7. The Petition Store Playbook.
 8. The full and complete personnel file and employment records, including but not limited to annual performance evaluations, promotions, and disciplinary records, and excluding any medical-related information, of Aly Nogosek.
 9. Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent's decision to issue a written warning to Aly Nogosek in August of 2022.
 10. Those documents that formed the basis of the Respondent's decision to issue a written warning to Aly Nogosek on about August of 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

11. Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent's decision to discharge Aly Nogosek on August 26, 2022.
12. Those documents that formed the basis of the Respondent's decision to discharge Aly Nogosek on August 26, 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.
13. For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:
 - a. Name of employee and last known address and telephone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.
14. For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:
 - a. Name of employee and last known address and telephone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

15. For the period between May 12, 2022 and the present, all documents, including but not limited to bargaining notes, agendas, minutes, and recordings, showing communication between Respondent's agents and/or representatives and the Union's agents and/or representatives concerning or pertaining to the decision to discharge Aly Nogosek.

EXHIBIT B

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

To Custodian of Records, Starbucks Corporation
135 Talcottville Road, Vernon, CT 06066

As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
of the National Labor Relations Board

at A.A. Ribicoff Federal Building, 450 Main Street, Suite 410

in the City of Hartford, Connecticut

on Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321 and 01-CA-307585
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1IGZVA5



Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CT

Dated: April 03, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

16. For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.
17. For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.
18. For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:
 - a. Name of employee and last known address and phone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.
19. Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.
20. Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.
21. Those documents showing any and all communications between and/or among Respondent's agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

EXHIBIT C

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

Case No. 01-CA-302321

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA DUCES TECUM NO. B-1-1ID2IE5**

By letter dated March 20, 2023, Charlotte Davis and Andyeliz Papaleo, Counsels for General Counsel for the National Labor Relations Board (“Board”) served on Starbucks Corporation (“Starbucks”) Subpoena Duces Tecum B-1-1ID2IE5, a copy of which is attached as **Exhibit A** (“Subpoena”). Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Starbucks respectfully petitions for an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbuck’s store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022 and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing is scheduled to begin on April 11, 2023.

On March 20, 2023, Starbucks counsel received an email containing a courtesy copy of the Subpoena Duces Tecum No. B-1-1ID2IE5 with requests for documents related to the alleged unfair labor practices at the Vernon Store. Starbucks now files the Petition to Revoke Subpoena Duces Tecum No. B-1-1ID2IE5 set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

A petition to revoke, if made prior to the hearing, must be filed with the Regional Director and the Regional Director will refer the petition to the Administrative Law Judge or the Board for ruling.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

It is well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *See NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3d Cir. 1979); ULP Case Handling Manual (“CHM”) § 11792.1 (noting that the requested information must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party requesting the documents has the affirmative burden of establishing their relevancy. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *duces tecum* must be granted if the subpoena is invalid for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b). This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

Any request that is vague and ambiguous, overbroad, or irrelevant should be revoked. Subpoenas must be carefully drafted; the Board does not allow a “fishing expedition.” *See, e.g., Spartan Dep’t Stores*, 140 NLRB 608 n.2 (1963) (Board upheld hearing officer’s decision not to enforce subpoena, finding “[m]oreover, in view of Intervenor’s failure to offer evidence or otherwise indicate that the testimony sought would tend to refute that already in the record, it is apparent that the subpoena in question was in furtherance of a ‘fishing expedition’ and intended to unduly delay the proceeding.”); *Hispanics United of Buffalo, Inc.*, 359 NLRB 368 n.2 (2012) (“[A]s to the information subpoenaed from the discriminatees, the Respondent failed to show that it was relevant to any issue in dispute. Accordingly, the subpoena was properly revoked as an unwarranted ‘fishing expedition.’”); *see also* CHM § 11796.

Further, “a subpoena *duces tecum* . . . should be drafted as narrowly and specifically as is practicable.” CHM § 11776. It “should describe all documents sought with respect to content and time period,” and “describe with sufficient particularity the evidence whose production is required,” evidence that must be relevant to an issue in the case, and tailored to the individuals, time period, and action at issue. Rules and Regulations § 102.31(b); *see also* CHM §§ 11776, 11782, 11796; *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *NLRB v. Carolina Food*

Processing, 81 F.3d 507 (4th Cir. 1996); *NLRB v. Trades Council*, 131 LRRM 3132, 3133-34 (3d Cir. 1989); *Brinks, Inc.*, 281 NLRB 468, 468-69 (1986). “[T]he use of the word ‘all’ in the description of records should be avoided wherever possible.” *Id.*

In summary, consistent with Rule 26(c), a subpoena must be revoked if it:

- Seeks information that is not reasonably relevant to the proceeding (see above);
- Is overbroad on its face or otherwise seeks protected information (NLRB Bench Book (“NBB”) § 8-320 (citing *Brinks, Inc.*, 281 NLRB at 469 (granting petitions to revoke the challenged portions of the employer’s subpoenas in their entirety where most of the challenged portions “generally were drafted without regard for the usual standards applicable to subpoenas or discovery” set forth in the Board’s Rules and Fed. R. Civ. P. 26 and 45)));
- Seeks confidential or proprietary information. *See, e.g., NLRB (ex rel. Int’l. Union of Elec., Radio and Mach. Workers) v. Dutch Boy, Inc.*, 98 LRRM (BNA) 2396, 2398-99 (W.D. Okla. 1978), *aff’d*, 606 F.2d 929 (10th Cir. 1979) (acknowledging that a showing that documents should be withheld on the basis of confidentiality or likely harm to business interests provides a legitimate basis to deny enforcement of a subpoena); or
- Constitutes an impermissible fishing expedition (NBB § 8-320) (citing *CNN Am., Inc.*, 353 NLRB 891 (2009), final decision and order issued 361 NLRB No. 47 (2014)), *see also* CHM § 11796; *United Ass’n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

To enforce a subpoena *duces tecum*, an administrative agency must establish that: (1) the inquiry is within its authority; (2) the demand for production is not too indefinite; and (3) the information sought is reasonably relevant to the agency’s authorized inquiry. *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). The standard also has been stated as follows: the agency must demonstrate that the demand is for a legitimate purpose, relevant to that purpose, and not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (D. Mass. 2007) (applying standard to NLRB subpoena). For a subpoena

request to be relevant, it must reasonably relate to or “touch” a matter under investigation or in question. *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1965). Section 102.31(b) of the NLRB’s Rules and Regulations provides an Administrative Law Judge or the Board, as the case may be, “will revoke the subpoena if, in their opinion, the evidence whose production is required does not relate to any matter . . . in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.” 29 C.F.R. § 102.31(b).

As described more fully below, the Subpoena at issue is exceedingly overbroad and legally invalid in several respects. Accordingly, for all the reasons set forth below, the Subpoena must be revoked or modified.

To the extent Starbucks has not responded to any specific request enumerated below, or part thereof, such may not be taken as an admission Starbucks accepts or admits the existence of any fact(s) set forth or assumed by the Subpoena, that any such response or objection enumerated below constitutes admissible evidence, or that the documents requested are properly required to be produced. Nothing contained herein shall be construed as an admission of the relevance of or the existence or nonexistence of any document. No actual or implied admissions whatsoever are intended by this Petition.

GENERAL OBJECTIONS

A. OBJECT AS OVERBROAD

Starbucks objects to requests which are not sufficiently restricted to a specific subject or purpose. Starbucks further objects to the Subpoena’s inclusion of information dating back to May 2020, which was *nearly two years* before Starbucks first learned of any organizing activity in the Vernon store. Such a time period is obviously overbroad.

B. OBJECT AS VAGUE

Starbucks objects to requests which do not describe in sufficient particularity the documents sought as required by Rules and Regulations §§102.66(c), 102.31(b).

C. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to requests for data or information and/or requests not relevant to any party's claim or defense or proportional to the needs of the case and, therefore, not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink's Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not "relevant to the subject matter involved in the pending action."); *see also* ULP Casehandling Manual 11792.1 and 11794 (explaining that the information sought must "relate[] to . . . a matter under investigation").

D. OBJECT AS IRRELEVANT BASED ON TIME PERIOD SOUGHT

Starbucks objects to requests for data or information outside the relevant time period applicable to this action. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB.

E. OBJECT AS AN INTRUSION ON PRIVACY RIGHTS

Starbucks objects to requests for personal and confidential information, the disclosure of which would result in an intrusion on the privacy rights of its Section 2(3) employees, which Starbucks refers to as its hourly partners ("partners"). Starbucks further objects to requests seeking confidential business information, proprietary business information, and/or trade secrets, which

are not relevant to any party's claim or defense, disproportionate to the needs of the case, and the disclosure of which will cause avoidable reputational harm to the Company. *See Penn. Power & Light Company*, 301 N.L.R.B. 1104, 1105 (N.L.R.B. 1991) (in the context of a request for information, the Board has held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not.")

F. OBJECT AS UNDULY BURDENSOME

Starbucks objects to requests with respect to which compliance is unduly burdensome. More specifically, Starbucks objects to requests that require Starbucks to conduct unreasonably burdensome and costly searches for information, including for electronically stored information, without any identification of, or agreement on, any search terms to be used. Search terms are an important tool parties use to identify potentially responsive documents in cases involving electronically stored information.

G. OBJECT AS SEEKING CONFIDENTIAL, PRIVILEGED INFORMATION

Starbucks generally objects to producing any documents that are protected from disclosure by the attorney-client privilege, work product doctrine, Federal Rule of Evidence 408, and/or similar privileges. *See, e.g., Brinks Inc.*, 281 NLRB at 469-470 (1986); *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988); *Kaiser Aluminum & Chem. Corp.*, 339 NLRB 829, 829 (2003). "The Board recognizes the fundamental principle that communications made in confidence between an attorney and his or her client for the purpose of seeking and obtaining legal advice are privileged." *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), enforced, 447 F.3d 821 (D.C. Cir. 2006). The Board also recognizes that the privilege protects both communications from the attorney to the client and communications from the client to the attorney. *Patrick Cudahy*, 288 NLRB at 971 (quoting *Upjohn Corp. v. U.S.*, 449 U.S. 383, 390 (1981)) ("[T]he privilege exists to protect not

only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice”). Additionally, the work-product doctrine protects documents and tangible things prepared in anticipation of litigation by or for a party representative, regardless of whether the representative is an attorney. The doctrine was first recognized in *Hickman v. Taylor*, 329 U.S. 495, 511 (1947), and is now codified in Fed. R. Civ. P. 26(b)(3).

H. OBJECT AS TO THE DEFINITIONS

Starbucks objects to the definition of “document” set forth in the subpoena because it would improperly expand the scope of discovery and could result in disproportional discovery. In responding, Starbucks will be guided by the following provision of Rule 26(b)(1) regarding the scope of permissible discovery:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b)(1).

I. OBJECT TO THE EXTENT THE REQUESTS DO NOT COMPORT WITH FEDERAL RULES

Starbucks objects to the Requests to the extent that they may be construed to require responses beyond those required by the Federal Rules of Civil Procedure, the applicable local rules of the District of Connecticut, or any standing order of that court. Similarly, Starbucks objects to the Board’s Requests to the extent that they seek documents or materials outside of Starbucks’ possession or control. Starbucks is only required to produce documents in its possession, custody, or control as they are maintained in the ordinary course of business. *See* Fed. R. Civ. P. 34(a)(1).

Furthermore, Starbucks objects to producing publicly available documents (including, without limitation, public securities filings) that are, due to their public availability, equally available to the requesting party.

SPECIFIC RESPONSES AND OBJECTIONS

All of the General Objections stated above are incorporated into the responses set forth below. Starbucks further responds and objects to those items listed in the Subpoena as follows:

Request No. 1: For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).

Response No. 1: In addition to being temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter “in question in the proceedings.” Rule 102.31(b). *See also, McDonald’s USA, LLC*, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be “reasonably relevant”). Notably, the only issue in question regarding an employee’s violation of Company policy is with regard to the written warning received by alleged discriminatee Aly Nogosek, and her subsequent termination. Indeed, Ms. Nogosek was disciplined for violations of Starbucks’ Attendance and Punctuality policy and was later terminated for a gross and egregious violation of Starbucks’ Safety and Security policy. As written, this request is not narrowly tailored to the issues. Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 2: For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted

on Respondent's Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality
- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Response No. 2: In addition to being temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter "in question in the proceedings." Rule 102.31(b). *See also, McDonald's USA* 363 NLRB at 15; and *Perdue Farms* 144 F.3d at 833–834. Notably, this request, as written seeks information on specific topics that are not relevant. For example, there are no allegations in the Complaint regarding "union pins." In addition, several of the topics are overly broad, e.g., "employee access to management," "tuition increases," "pay increases." Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 3: Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent's agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality

- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Response No. 3: Starbucks objects to this request as duplicative of Request No. 2. In addition, Starbucks objects to this request as inclusive of documents not related to any matter in question in the proceedings. This request, as written seeks information on specific topics that are not relevant. For example, there are no allegations in the Complaint regarding “union pins.” In addition, several of the topics are overly broad, e.g., “employee access to management,” “tuition increases,” “pay increases.” Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 4: Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.

Response No. 4: Starbucks objects to this request temporally overbroad and unduly burdensome. As written, this request seeks information not relevant to any party’s claim or defense or proportional to the needs of the case and, is therefore, not reasonably calculated to uncover admissible evidence. For example, the request, as written, would require Starbucks to produce any document relating to any time(s) that any “manager” (which is undefined) for any reason over the course of the last nearly two years. Relatedly, Starbucks objects to this request as vague and ambiguous to the extent it uses the phrase “other managers.” Without further information,

Starbucks cannot discern what this request is seeking.

Request No. 5: Those documents from Respondent's corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.

Response No. 5: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "contractor," "other source," and "other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request as temporally overbroad to the extent it seeks information dating back to May 2021 – i.e., nearly a year before Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 7: The Petition Store Playbook.

Response No. 7: Starbucks objects to this request as vague and ambiguous to the extent it uses the term "Petition Store Playbook" as no such document exists. Without further clarification, Starbucks cannot discern what this request is seeking.

Request No. 9: Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent's decision to issue a written warning to Aly Nogosek in August of 2022.

Response No. 9: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "any other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Further, Starbucks cannot produce materials for which it does not maintain custody or control, such as personal cell phones.

Request No. 10: Those documents that formed the basis of the Respondent's decision to issue a written warning to Aly Nogosek on about August of 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

Response No. 10: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 11: Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent's decision to discharge Aly Nogosek on August 26, 2022.

Response No. 11: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "any other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Further, Starbucks cannot produce records for which it does not maintain custody or control.

Request No. 12: Those documents that formed the basis of the Respondent's decision to discharge Aly Nogosek on August 26, 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

Response No. 12: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 13: For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;

- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Response No. 13: Starbucks objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to *any and all* employees disciplined for violating Starbucks' Attendance and Punctuality policy dating back to May 2020 – i.e., for the last *three years; nearly two years before* Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 14: For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Response No. 14: Starbucks objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to *any and all* employees disciplined for violating Starbucks' Safety and Security Policy or Safe Security Standards dating back to May 2020 – i.e., for the last *three years; nearly two years before* Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require

Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 15: For the period between May 12, 2022 and the present, all documents, including but not limited to bargaining notes, agendas, minutes, and recordings, showing communication between Respondent's agents and/or representatives and the Union's agents and/or representatives concerning or pertaining to the decision to discharge Aly Nogosek.

Response No. 15: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

For the reasons set forth above, Starbucks respectfully seeks an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

Dated: March 27, 2023

Respectfully submitted,

/s/ Jacqueline Phipps Polito
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Attorneys for Starbucks

CERTIFICATE OF SERVICE

I certify that on this 27th day of March, 2023, the foregoing PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-1-1ID2IE5 was filed via Efile and a copy of the foregoing was served on the following by email:

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National Labor Relations Board
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/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT D

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

**Case Nos. 01-CA-302321
01-CA-307585**

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA DUCES TECUM NO. B-1-1IGZVA5**

On April 3, 2023, Charlotte Davis and Andyeliz Papaleo, Counsels for General Counsel for the National Labor Relations Board (“Board”) served on Starbucks Corporation (“Starbucks”) Subpoena Duces Tecum B-1-1IGZVA5, a copy of which is attached as **Exhibit A** (“Subpoena”). Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Starbucks respectfully petitions for an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbucks’ store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022 and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing is scheduled to begin on April 11, 2023.

The charge in case 01-CA-307585 was filed by the Union on November 21, 2022, and the first amended charge was filed by the Union on December 9, 2022. The second amended charge was filed on March 14, 2023 and the third amended charge was filed on March 28, 2023.

Charge 01-CA-302321 and charge 01-CA-307585 were consolidated in the instant Consolidated Complaint on March 28, 2023.

On March 20, 2023, Starbucks' counsel received an email containing a courtesy copy of the Subpoena Duces Tecum No. B-1-1IGZVA5 with requests for documents related to the alleged unfair labor practices at the Vernon Store. Starbucks now files the Petition to Revoke Subpoena Duces Tecum No. B-1-1IGZVA5 set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

A petition to revoke, if made prior to the hearing, must be filed with the Regional Director and the Regional Director will refer the petition to the Administrative Law Judge or the Board for ruling.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

It is well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *See NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3d Cir. 1979); ULP Case Handling Manual (“CHM”) § 11792.1 (noting that the requested information must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party requesting the documents has the affirmative burden of establishing their relevancy. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *duces tecum* must be granted if the subpoena is invalid for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b). This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

Any request that is vague and ambiguous, overbroad, or irrelevant should be revoked. Subpoenas must be carefully drafted; the Board does not allow a “fishing expedition.” *See, e.g., Spartan Dep’t Stores*, 140 NLRB 608 n.2 (1963) (Board upheld hearing officer’s decision not to enforce subpoena, finding “[m]oreover, in view of Intervenor’s failure to offer evidence or otherwise indicate that the testimony sought would tend to refute that already in the record, it is apparent that the subpoena in question was in furtherance of a ‘fishing expedition’ and intended to unduly delay the proceeding.”); *Hispanics United of Buffalo, Inc.*, 359 NLRB 368 n.2 (2012) (“[A]s to the information subpoenaed from the discriminatees, the Respondent failed to show that it was relevant to any issue in dispute. Accordingly, the subpoena was properly revoked as an unwarranted ‘fishing expedition.’”); *see also* CHM § 11796.

Further, “a subpoena *duces tecum* . . . should be drafted as narrowly and specifically as is practicable.” CHM § 11776. It “should describe all documents sought with respect to content and

time period,” and “describe with sufficient particularity the evidence whose production is required,” evidence that must be relevant to an issue in the case, and tailored to the individuals, time period, and action at issue. Rules and Regulations § 102.31(b); *see also* CHM §§ 11776, 11782, 11796; *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *NLRB v. Carolina Food Processing*, 81 F.3d 507 (4th Cir. 1996); *NLRB v. Trades Council*, 131 LRRM 3132, 3133-34 (3d Cir. 1989); *Brinks, Inc.*, 281 NLRB 468, 468-69 (1986). “[T]he use of the word ‘all’ in the description of records should be avoided wherever possible.” *Id.*

In summary, consistent with Rule 26(c), a subpoena must be revoked if it:

- Seeks information that is not reasonably relevant to the proceeding (see above);
- Is overbroad on its face or otherwise seeks protected information (NLRB Bench Book (“NBB”) § 8-320 (citing *Brinks, Inc.*, 281 NLRB at 469 (granting petitions to revoke the challenged portions of the employer’s subpoenas in their entirety where most of the challenged portions “generally were drafted without regard for the usual standards applicable to subpoenas or discovery” set forth in the Board’s Rules and Fed. R. Civ. P. 26 and 45)));
- Seeks confidential or proprietary information. *See, e.g., NLRB (ex rel. Int’l. Union of Elec., Radio and Mach. Workers) v. Dutch Boy, Inc.*, 98 LRRM (BNA) 2396, 2398-99 (W.D. Okla. 1978), *aff’d*, 606 F.2d 929 (10th Cir. 1979) (acknowledging that a showing that documents should be withheld on the basis of confidentiality or likely harm to business interests provides a legitimate basis to deny enforcement of a subpoena); or
- Constitutes an impermissible fishing expedition (NBB § 8-320) (citing *CNN Am., Inc.*, 353 NLRB 891 (2009), final decision and order issued 361 NLRB No. 47 (2014)), *see also* CHM § 11796; *United Ass’n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

To enforce a subpoena *duces tecum*, an administrative agency must establish that: (1) the inquiry is within its authority; (2) the demand for production is not too indefinite; and (3) the information sought is reasonably relevant to the agency’s authorized inquiry. *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). The standard also has been stated as follows: the agency must

demonstrate that the demand is for a legitimate purpose, relevant to that purpose, and not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (D. Mass. 2007) (applying standard to NLRB subpoena). For a subpoena request to be relevant, it must reasonably relate to or “touch” a matter under investigation or in question. *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1965). Section 102.31(b) of the NLRB’s Rules and Regulations provides an Administrative Law Judge or the Board, as the case may be, “will revoke the subpoena if, in their opinion, the evidence whose production is required does not relate to any matter . . . in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.” 29 C.F.R. § 102.31(b).

As described more fully below, the Subpoena at issue is exceedingly overbroad and legally invalid in several respects. Accordingly, for all the reasons set forth below, the Subpoena must be revoked or modified.

To the extent Starbucks has not responded to any specific request enumerated below, or part thereof, such may not be taken as an admission Starbucks accepts or admits the existence of any fact(s) set forth or assumed by the Subpoena, that any such response or objection enumerated below constitutes admissible evidence, or that the documents requested are properly required to be produced. Nothing contained herein shall be construed as an admission of the relevance of or the existence or nonexistence of any document. No actual or implied admissions whatsoever are intended by this Petition.

GENERAL OBJECTIONS

A. OBJECT AS UNTIMELY

Starbucks objects to the subpoena as untimely. The hearing in these cases is scheduled to begin on **April 11, 2023**. Undersigned counsel did not receive a copy of Subpoena B-1-1IGZVA5, until **April 3, 2023** – i.e., *only eight days* before the opening of the hearing. The General Counsel’s Casehandling Manual states that subpoenas “should, where circumstances allow, normally be served at least 2 weeks prior to trial” to allow sufficient time to arrange for production of the witness or documents and for ruling on a petition to revoke before trial. NLRB Bench Book § 8–125; *see* NLRB Casehandling Manual (Part 1), Sec. 10340. Indeed, the Complaint and Notice of Hearing in this case was issued *nearly four months ago in December 2022*. Further, Counsel for the General Counsel already served a subpoena in this case on March 20, 2023. It is unreasonable for the Counsel for the General Counsel to now choose to issue yet another subpoena so close to the opening of the hearing. Eight days notice is simply not a reasonable amount of time for Respondent to be expected to comply with the subpoena and produce the numerous documents and videos requested, if any such documents even exist. *See* NLRB Bench Book § 8–125. The subpoena should be revoked in its entirety on this basis alone.

B. OBJECT AS OVERBROAD

Starbucks objects to requests which are not sufficiently restricted to a specific subject or purpose. Starbucks further objects to the Subpoenas inclusion of information dating back to August 2021, which was *nearly a year* before the election was held in the Vernon store. Such a time period is obviously overbroad.

C. OBJECT AS VAGUE

Starbucks objects to requests which do not describe in sufficient particularity the documents sought as required by Rules and Regulations §§102.66(c), 102.31(b).

D. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to requests for data or information and/or requests not relevant to any party's claim or defense or proportional to the needs of the case and, therefore, not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink's Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not "relevant to the subject matter involved in the pending action."); *see also* ULP Casehandling Manual 11792.1 and 11794 (explaining that the information sought must "relate[] to . . . a matter under investigation").

E. OBJECT AS IRRELEVANT BASED ON TIME PERIOD SOUGHT

Starbucks objects to requests for data or information outside the relevant time period applicable to this action. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB.

F. OBJECT AS AN INTRUSION ON PRIVACY RIGHTS

Starbucks objects to requests for personal and confidential information, the disclosure of which would result in an intrusion on the privacy rights of its Section 2(3) employees, which Starbucks refers to as its hourly partners ("partners"). Starbucks further objects to requests seeking confidential business information, proprietary business information, and/or trade secrets, which

are not relevant to any party's claim or defense, disproportionate to the needs of the case, and the disclosure of which will cause avoidable reputational harm to the Company. *See Penn. Power & Light Company*, 301 N.L.R.B. 1104, 1105 (N.L.R.B. 1991) (in the context of a request for information, the Board has held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not.")

G. OBJECT AS UNDULY BURDENSOME

Starbucks objects to requests with respect to which compliance is unduly burdensome. More specifically, Starbucks objects to requests that require Starbucks to conduct unreasonably burdensome and costly searches for information, including for electronically stored information, without any identification of, or agreement on, any search terms to be used. Search terms are an important tool parties use to identify potentially responsive documents in cases involving electronically stored information.

H. OBJECT AS SEEKING CONFIDENTIAL, PRIVILEGED INFORMATION

Starbucks generally objects to producing any documents that are protected from disclosure by the attorney-client privilege, work product doctrine, Federal Rule of Evidence 408, and/or similar privileges. *See, e.g., Brinks Inc.*, 281 NLRB at 469-470 (1986); *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988); *Kaiser Aluminum & Chem. Corp.*, 339 NLRB 829, 829 (2003). "The Board recognizes the fundamental principle that communications made in confidence between an attorney and his or her client for the purpose of seeking and obtaining legal advice are privileged." *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), enforced, 447 F.3d 821 (D.C. Cir. 2006). The Board also recognizes that the privilege protects both communications from the attorney to the client and communications from the client to the attorney. *Patrick Cudahy*, 288 NLRB at 971 (quoting *Upjohn Corp. v. U.S.*, 449 U.S. 383, 390 (1981)) ("[T]he privilege exists to protect not

only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice”). Additionally, the work-product doctrine protects documents and tangible things prepared in anticipation of litigation by or for a party representative, regardless of whether the representative is an attorney. The doctrine was first recognized in *Hickman v. Taylor*, 329 U.S. 495, 511 (1947), and is now codified in Fed. R. Civ. P. 26(b)(3).

I. OBJECT AS TO THE DEFINITIONS

Starbucks objects to the definition of “document” set forth in the subpoena because it would improperly expand the scope of discovery and could result in disproportional discovery. In responding, Starbucks will be guided by the following provision of Rule 26(b)(1) regarding the scope of permissible discovery:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b)(1).

J. OBJECT TO THE EXTENT THE REQUESTS DO NOT COMPORT WITH FEDERAL RULES

Starbucks objects to the requests to the extent that they may be construed to require responses beyond those required by the Federal Rules of Civil Procedure, the applicable local rules of the District of Connecticut, or any standing order of that court. Similarly, Starbucks objects to the Board’s requests to the extent that they seek documents or materials outside of Starbucks’ possession or control. Starbucks is only required to produce documents in its possession, custody, or control as they are maintained in the ordinary course of business. *See* Fed. R. Civ. P. 34(a)(1).

Furthermore, Starbucks objects to producing publicly available documents (including, without limitation, public securities filings) that are, due to their public availability, equally available to the requesting party.

K. OBJECT TO ANY DEMAND FOR “NATIVE” PRODUCTION

Starbucks specifically objects to any demand for the production of information in native format and instead will produce documents and ESI in TIFF+ format. For over a decade, federal courts and leading authorities have held a production in TIFF+ format is “reasonably usable” form of production under Fed.R.Civ.P. 34(b)(2)(E)(ii). *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1, Principle 12, Cmt. 12.b., p. 173 (2018) (“Parties should not demand forms of production, including native files and metadata fields, for which they have no practical use or that do not materially aid in the discovery process....[I]n the majority of instances, TIFF+ is a “reasonably usable” form of production for most purposes and types of ESI under Rule 34(b)(2)(E)(ii).”); *Carter v. Bridgepoint Education, Inc.*, 305 F.R.D. 225 (S.D. Cal. 2015) (denying plaintiffs’ motion for native-format production and noting the widespread use of TIFF images in discovery production); *Aguilar v. Immigration and Customs Enforcement Division*, 255 F.R.D. 350 (S.D.N.Y. 2008) (stating that even if native files are requested, it will produce memoranda, emails and electronic records in TIFF format accompanied by a load file containing searchable text and selected metadata). *See also*, *Stipulation and Order Regarding the Format of Electronically Stored Information and Document Production*, Standing Order of Judge James M. Wicks, United States Magistrate Judge (EDNY); *[Model] Agreement Regarding Discovery of Electronically Stored Information and [Proposed] Order* (W.D. Wash.); Middle District Discovery: A Handbook on Civil Discovery Practice in the United State District Court for the

Middle District of Florida (M.D. Fla.); *E-Discovery: Guidelines Addressing the Discovery of Electronically Stored Information* (D. Colo).

Furthermore, in a Recent Region 3 NLRB evidentiary hearing, Starbucks provided a Declaration from “a recognized global leader in eDiscovery ...[that] provides these services to over 400 clients in over 25 jurisdictions, through offices around the world”¹ that stated:

- TIFF+ productions are industry standard in modern litigation.
- TIFF+ format consists of page level images and document level extracted text files for each document, accompanied by a load file containing selected metadata.
- When TIFF+ productions are loaded into a Relativity database, both the contents and metadata of all documents are fully searchable and sortable.²
- Unlike native documents, TIFF+ productions include the ability to individually number/endorse pages, ease of redaction, and the ability to inhibit the capability to alter the imaged version of a document.
- TIFF+ productions meet a wider array of regulatory entity data production requirements which is why the Department of Justice, Securities and Exchange Commission, and Federal Trade Commission require production in TIFF+ format.

The Board did not refute that Declaration in any manner. In that case, the Board also did not refute that Starbucks has produced information in a TIFF+ format in dozens of other hearings with the Board during the past nine months.

¹ Case Nos. 03-CA-295470; 03-CA-295474; 03-CA-295545; 03-CA-296995; 03-CA-299540; 03-CA-300849; 03-CA-300931; 03-CA-305237; 03-CA-307568; 03-CA-307756; 03-CA-308720; 03-CA-309434; 03-CA-309799; 03-CA-310302 03-CA-311237, *Starbucks Memorandum Regarding Form of Production of Evidence Produced in Response to Subpoena: TIFF+ Format is a “Reasonably Usable” Form*, Exhibit 2, Declaration of Cory Osher, Vice President of Analytics and AI, UnitedLex Corporation.

² It is undisputed the Board has Relativity, and has used Relativity in ULP cases.

The Board itself has also conceded that TIFF+ productions are the industry standard, by requesting production in TIFF format. *See e.g.*, Case No. 02-CA-303077 & 02-CA-304431, Subpoena Duces Tecum B-I-1 IFTK3F, Instruction E, stating (emphasis supplied):

Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The NLRB prefers election production in TIFF or PDF format, accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Concordance or similar review platform.

Federal courts have also ordered the use of TIFF+ productions because there are inherent risks and significant disadvantages to production in “native” format – including the inability to Bates stamp, redact privileged content or personally identifiable information (“PII”), prevent document alteration, and prevent inadvertent disclosures to unauthorized third parties. *See, e.g., United Central Bank v. Kanan Fashions, Inc.*, 2010 U.S. Dist. LEXIS 83700 (N.D. Ill. Aug. 12, 2010) (ordering TIFF+ production instead of native-format production for ease of use, to prevent manipulation of the production, and to allow for easier redaction of confidential and personally sensitive information); *Wilson v. Conair Corp.*, 2015 WL 1994270 (E.D. Cal. Apr. 30, 2015) (ordering TIFF+ production where Plaintiffs moved for native-form production); *National Jewish Health v. WebMD Health Services Group*, 2014 WL 2118585 (D. Colo. May 21, 2014) (citing *Aguilar*, referenced above, for same proposition); *In re Priceline.com Inc. Sec. Litig.*, 233 F.R.D. 88 (D. Conn. 2005) (denying motion to compel native production and instead ordering production “in TIFF+ or PDF form with Bates numbering and appropriate confidentiality designations” in part because those formats were “the most secure format for production of documents”). There are no rules (or commentary) requiring native format productions. *See, e.g., Chapman v. General Board*, 2010 U.S. Dist. Lexis 66618 (N.D. Ill. July 6, 2010) (holding that the Federal rules are “unsupportive” of the contention that Documents or ESI must be produced in native format). And

the Board's own Rules and Regulations make plain that "[t]he Federal Rules of Civil Procedure are controlling, so far as is practicable." Board Rules and Regulations, § 102.39.

SPECIFIC RESPONSES AND OBJECTIONS

The subpoena is untimely and Respondent is unable to comply with the request. All of the General Objections stated above are incorporated into the responses set forth below. In addition to being untimely and woefully inappropriate, Starbucks further responds and objects to those items listed in the Second Subpoena as follows:

Request No. 16: For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.

Response No. 16: Starbucks objects to this request as untimely, temporally overbroad and, as a result, necessarily inclusive of documents not related to any matter "in question in the proceedings." Rule 102.31(b). *See also, McDonald's USA, LLC*, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be "reasonably relevant"). As written, this request is not narrowly tailored to the issues. Alleged discriminate Aly Nogosek, was terminated *in August 2022* for leaving the safe open at the Vernon store. Maintenance records relating to the safe, if any, dating back to April 2022, i.e., *four months prior* to Nogosek's termination are simply not relevant.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as untimely and irrelevant.

Request No. 17: For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.

Response No. 17: In addition to being untimely, temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter "in question in the proceedings." *See* Rule 102.31(b). *See also, McDonald's USA* 363 NLRB at 15; and *Perdue Farms* 144 F.3d at 833–834. Again, alleged discriminate Aly Nogosek, was terminated *in August 2022* for leaving the safe open at the Vernon store. Around that same time, Nogosek was also discovered to have taken an inappropriate picture on the store's iPad. Any photos taken and stored on the iPad for *the entire year* preceding Nogosek's termination bear no relevance to the fact that Nogosek was, at the time since she left the safe open in August 2022, facing possible discipline for taking inappropriate pictures *in August 2022* on the store's iPad. Any other pictures are wholly irrelevant to the issues in the present case and constitute a fishing expedition. Moreover, Nogosek acknowledged that she took a picture and placed it on the iPad.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written as untimely, irrelevant, unnecessarily intrusive on the rights of other partners in the store, and intrusive on the business of Respondent.

Request No. 18: For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:

- a. Name of employee and last known address and phone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.

Response No. 18: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrase “electronic communication systems” which is undefined and unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks further objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to any and all employees disciplined for “misuse of electronic communication systems” (which is again, undefined and of unlimited scope) dating back to August 2021 – *i.e.*, a full year before Nogosek’s termination. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written as untimely and irrelevant. It is undisputed that Nogosek took a picture and put it on the iPad. Whether other partners did so is irrelevant to Nogosek’s termination which occurred as a result of her specific disciplinary history.

Request No. 19: Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.

Response No. 19: Starbucks objects to this request as untimely, unduly burdensome, irrelevant, overbroad and intended solely to burden Respondent. The request also infringes upon the rights of customers, partners and other third-parties who are not involved in this matter. Further, as written, this request seeks information not relevant to any party’s claim or defense or proportional to the needs of the case and, is therefore, not reasonably calculated to uncover admissible evidence. The allegations in the Consolidated Complaint relating to July 7, 2022 are that Starbucks: (a) removed union materials from the community board; (b) selectively enforced the third-place policy and the procedure addressing disruptive behaviors, by closing the Vernon Store to deny the Union access to the premises and chill employees’ union and protected concerted activities; and (c) selectively enforced the solicitation and distribution policy by telling employees they could not

post union-related materials on the community board. *See Consol. Compl.* ¶ 11. Surveillance footage from the day in question would undoubtedly include sensitive and/or private information that is neither relevant to the complaint, nor proportionate to the needs of the case. Indeed, requiring Starbucks to produce surveillance footage which would unnecessarily infringe on the privacy rights of its employees and customers is inappropriate and unnecessarily broad. This request should not be countenanced. Finally, Starbucks further objects to the extent that this request seeks sensitive, proprietary and confidential business information.

Request No. 20: Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.

Response No. 20: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrase “internal documents” which is undefined and unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request to the extent it purports to require Starbucks to produce any documents that may be protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 21: Those documents showing any and all communications between and/or among Respondent’s agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

Response No. 21: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrases “agents and/or representatives” and “union-related notes” neither of which is defined and both of which are unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request to the extent it purports to require Starbucks to produce any documents that may be protected from disclosure by the attorney-client privilege and/or work product doctrine.

For the reasons set forth above, Starbucks respectfully seeks an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

Dated: April 10, 2023

Respectfully submitted,

/s/ Jacqueline Phipps Polito

Jacqueline Phipps Polito
LITTLER MENDELSON, P.C.
375 Woodcliff Drive
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Fairport, NY 14450
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/s/ Lindsay M. Rinehart

Lindsay M. Rinehart
LITTLER MENDELSON, P.C.
One Century Tower
265 Church Street
Suite 300
New Haven, CT 06510
Telephone: 203.974.8700
Facsimile: 203.974.8799
lrinehart@littler.com

*Attorneys for Respondent
Starbucks Corporation*

CERTIFICATE OF SERVICE

I certify that on this 10th day of April, 2023, the foregoing PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-1-1IGZVA5 was filed via Efile and a copy of the foregoing was served on the following by email:

Laura A. Sacks, Regional Director
National Labor Relations Board
Region 01
Thomas P. O'Neill Federal Building
10 Causeway Street - 10th floor
Boston, MA 02222-1001
Email: laura.sacks@nrlb.gov

Michael Dolce, Esq.
Hayes Dolce
135 Delaware Avenue, Suite 502
Buffalo, NY 14202
Email: mdolce@hayesdolce.com

Cristina Gallo, Esq.
Sommer Omar, Esq.
Cohen, Weiss and Simon LLP
900 Third Avenue, Suite 2100
New York, NY 10022
Email: cgallo@cwsny.com
Email: somar@cwsny.com

Charlotte Davis, Board Agent
Andyeliz Papaleo, Board Agent
National Labor Relations Board, Subregion 34
Abraham A. Ribicoff Building
450 Main St, Suite 410
Hartford, CT 06103-3503
Email: charlotte.davis@nrlb.gov
Email: andyeliz.papaleo@nrlb.gov

/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT A

EXHIBIT A

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

To Custodian of Records, Starbucks Corporation
135 Talcottville Road, Vernon, CT 06066

As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
of the National Labor Relations Board

at A.A. Ribicoff Federal Building, 450 Main Street, Suite 410

in the City of Hartford, Connecticut

on Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321 and 01-CA-307585
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1IGZVA5



Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CT

Dated: April 03, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

16. For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.
17. For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.
18. For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:
 - a. Name of employee and last known address and phone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.
19. Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.
20. Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.
21. Those documents showing any and all communications between and/or among Respondent's agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

EXHIBIT E

From: [Davis, Charlotte S.](#)
To: [Sorg-Graves, Kimberly R.](#)
Cc: [DiGiovine, Lauren](#); [Rinehart, Lindsay](#); somar@cwsny.com; [Papaleo, Andyeliz](#); [Polito, Jacqueline Phipps](#); [Cristina E Gallo](#); [Strock, David](#)
Subject: RE: Starbucks, 01-CA-302321 et al.
Date: Sunday, April 9, 2023 7:01:30 AM
Attachments: [image001.jpg](#)

CAUTION: This email and any attachments may contain Controlled Unclassified Information (CUI). National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

Hi Judge, according to our e-litigation team, it takes about 2-3 business days before we can access the documents in Relativity. I'm told, however, that this is not a set timeline, and it depends on the size of production and our outside vendor's staffing/general availability. In our previous hearing with Respondent in early March, it took about a week for us to gain access to the subpoenaed documents.

Charlotte

From: Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>
Sent: Saturday, April 8, 2023 7:34 PM
To: Polito, Jacqueline Phipps <JPolito@littler.com>; Cristina E Gallo <CGallo@cwsny.com>; Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>
Cc: Strock, David <dstrock@littler.com>; Idigiovine@littler.com; Rinehart, Lindsay <LRinehart@littler.com>; somar@cwsny.com; Rachel S. Paster <RPaster@cwsny.com>
Subject: RE: Starbucks, 01-CA-302321

Ms. Polito, if Respondent is intending on producing documents only through Relativity, I need to be informed of that now. I invited different solutions to that problem in my earlier email, but noticed that no clarification was offered. Respondent has known since the issue was raised in one of our earliest conference calls that GC would need time to access documents in that format. If the documents will be produced on the day of hearing solely through Relativity, and GC will not be able to access them for a significant amount of time, I will adjust our hearing schedule upfront to prevent people from wasting time and to prevent a messy record.

Ms. Davis, please verify the amount of time your IT support is indicating that it will take you to have full access to documents produced through Relativity. Has that changed since our last communication?

I would appreciate a response over the weekend, but if all else fails, I will speak to on Monday at 9:15 am ET.

Judge Sorg-Graves

From: Polito, Jacqueline Phipps <JPolito@littler.com>

Sent: Friday, April 7, 2023 8:44 PM

To: Cristina E Gallo <CGallo@cwsny.com>; Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>

Cc: Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; Rinehart, Lindsay <LRinehart@littler.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>; DiGiovine, Lauren <LDiGiovine@littler.com>; Duplechain, Kimberly <KDuplechain@littler.com>

Subject: RE: Starbucks, 01-CA-302321

CAUTION: The sender of this message is external to the NLRB network. Please use care when clicking on links and responding with sensitive information. Forward suspicious emails to nlrbirc@nlrb.gov.

Good evening Judge,

Respondent is available Monday morning at 9:15 am. However, with due respect, given the unreasonable requests of CGC with respect to the subpoena, which is not returnable until April 11th, we request that all arguments relating to the subpoena be placed on the record to preserve Respondent's rights on appeal. As such, while we are available on Monday, we request that the arguments relating to the subpoena take place on April 11th when the hearing opens.

Moreover, for CGC to threaten sanctions in her email to your honor, before the subpoena responses are even due is wholly improper and highly prejudicial to Respondent.

Last, I have no idea why CGC suggests in her email to your honor, that any responses were due today, because they were not. Again, the subpoena is returnable on April 11th. We have no obligation to produce documents today or at any time before then.

Please let us know your preference as to whether you would like a discussion on Monday, outside of the record.

Since the Board has taken the liberty to include e-discovery counsel on these communications, we have included our counsel as well.

Respectfully submitted,

Jacqueline Phipps Polito

Office Managing Shareholder

585.203.3413 direct, 585.208.9162 mobile, 585.486.1774 fax

JPolito@littler.com

Littler

375 Woodcliff Drive, Suite 2D, Fairport, NY 14450

From: Cristina E Gallo <CGallo@cwsny.com>

Sent: Friday, April 7, 2023 6:35 PM

To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>

Cc: Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; Polito, Jacqueline Phipps <JPolito@littler.com>; Rinehart, Lindsay <L.Rinehart@littler.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>

Subject: RE: Starbucks, 01-CA-302321

Thank you, Judge. I am available until 1pm on Sunday and at 9:15am and 1:30pm on Monday. However, if times outside of that window on Sunday work for Respondent, then please feel free to proceed as I do not believe it is critical for the Charging Party to be represented on this call.

Thank you,
Cristina Gallo



Cristina E. Gallo

900 Third Avenue, Suite 2100

New York, NY 10022-4869

o 212.356.0226

c 917.748.6536

f 646.473.8226

cgallo@cwsny.com

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[Biography](#)

From: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>

Sent: Friday, April 7, 2023 6:04 PM

To: Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>

Cc: Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; jpolito@littler.com; Rinehart, Lindsay <L.Rinehart@littler.com>; Cristina E Gallo <CGallo@cwsny.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>

Subject: RE: Starbucks, 01-CA-302321

CAUTION: This email and any attachments may contain Controlled Unclassified Information

(CUI). National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

Thank you, Judge. I can be available anytime Sunday or anytime Monday for a call on behalf of general counsel.

Charlotte

From: Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>
Sent: Friday, April 7, 2023 5:28 PM
To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>
Cc: Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; jpolito@littler.com; Rinehart, Lindsay <L.Rinehart@littler.com>; Cristina E Gallo <CGallo@cwsny.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>
Subject: RE: Starbucks, 01-CA-302321

I am willing to do a call over the weekend if a responsible party from each party can make it. Otherwise, I can do a call at 9:15 a.m. on Monday. I will be at the airport so be patient if I am not immediately on the call. I have a layover midday and could do a call at 1:30 ET, but I would prefer to address this issue as early as possible. I don't know the estimated number of pages of production, but if Respondent has the ability to access the documents, then it can print them for production by the start of the hearing. If audio/video production needs to be made, that can also be saved in a format that will allow use at the hearing. I assume that Respondent counsel is not producing documents that they have no ability to review, and if they can review them, the can be saved in another format or printed.

Please respond as to each party's availability.

Judge Sorg-Graves

From: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>
Sent: Friday, April 7, 2023 4:46 PM
To: Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>
Cc: Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; jpolito@littler.com; Rinehart, Lindsay <L.Rinehart@littler.com>; Cristina E Gallo <CGallo@cwsny.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>
Subject: Starbucks, 01-CA-302321

Judge Sorg-Graves,

I'm writing to you to see if we could set up a call with you on Monday sometime before our hearing starts on Tuesday. We are anticipating having issues with subpoena production and are exploring the idea of seeking sanctions for non-compliance. Briefly, we are anticipating receiving documents through a program called Relativity but in a format that is not usable to us unless an outside vendor processes the data, which can take several days. Since we do not have any subpoena production today, we anticipate that production through Relativity will be unusable to us by the time the hearing starts on Tuesday, and we need notice of how we are going to get responsive documents before the trial. I am including our e-litigation team on this email, Tammy Farmer and David Gaston.

Thank you for your consideration.

Charlotte

Charlotte S. Davis

She/them
Attorney
National Labor Relations Board

**The NLRB is requiring that documents be filed through our website, www.nlr.gov.
For help, please see [Frequently Asked Questions](#) and [E-File Video](#).**

A.A. Ribicoff Federal Building
450 Main St, Suite 410
Hartford, CT 06103
Tel: 959-200-7365
Email: charlotte.davis@nlrb.gov
Main office telephone: 860-240-3522
Fax: 860-240-3564

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EXHIBIT F

From: [Davis, Charlotte S.](#)
To: [Polito, Jacqueline Phipps](#); [Christensen, Amber](#); [Farmer, Tammy L.](#)
Cc: [Rinehart, Lindsay](#); [Papaleo, Andyeliz](#)
Subject: RE: SBUX - Vernon, CT (01-CA0302321) - Production
Date: Tuesday, April 11, 2023 5:52:44 AM
Attachments: [image001.png](#)
[image002.png](#)

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Okay, just to be clear on the files, "Production VOL001.zip" contains the pdf conversions of "Starbucks (Vernon CT) VOL001.zip" and the later contains the Relativity pieces?

From: Polito, Jacqueline Phipps <JPolito@littler.com>
Sent: Tuesday, April 11, 2023 8:38 AM
To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Christensen, Amber <achristensen@littler.com>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>
Cc: Rinehart, Lindsay <LRinehart@littler.com>; Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>
Subject: RE: SBUX - Vernon, CT (01-CA0302321) - Production

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Charlotte,

Good morning. Tammy was included, I have copied in Andyeliz on this email. I do not believe another link is required.

You also received an email with the documents via biscom as pdf this morning.

Jackie

Jacqueline Phipps Polito

Office Managing Shareholder

585.203.3413 direct, 585.208.9162 mobile, 585.486.1774 fax

JPolito@littler.com

[Littler](#)

375 Woodcliff Drive, Suite 2D, Fairport, NY 14450

From: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>

Sent: Tuesday, April 11, 2023 8:30 AM

To: Christensen, Amber <AChristensen@littler.com>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>

Cc: Polito, Jacqueline Phipps <JPolito@littler.com>; Rinehart, Lindsay <LRinehart@littler.com>

Subject: RE: SBUX - Vernon, CT (01-CA0302321) - Production

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Thank you. Can you include Tammy Farmer and Andyeliz Papaleo on this so that both may be able to access these documents?

From: Christensen, Amber <AChristensen@littler.com>

Sent: Tuesday, April 11, 2023 8:06 AM

To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>

Cc: Polito, Jacqueline Phipps <JPolito@littler.com>; Rinehart, Lindsay <LRinehart@littler.com>

Subject: SBUX - Vernon, CT (01-CA0302321) - Production

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Good morning –

Production VOL001 password: dHnp74dbA9bf8P2\$

Thank you,

Amber Christensen

Sr. Paralegal

202.772.2537 direct, 816.898.7005 mobile, 202.842.0011 fax

AChristensen@littler.com



Labor & Employment Law Solutions | Local Everywhere

815 Connecticut Avenue, NW, Suite 400, Washington, DC 20006-4046

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EXHIBIT G

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

-----: Case No.:
In the Matter of: 01-CA-302321
STARBUCKS CORPORATION, : 01-CA-307585
Respondent, :
And :
WORKERS UNITED LABOR UNION :
INTERNATIONAL, AFFILIATED WITH :
SERVICE EMPLOYEES INTERNATIONAL :
UNION, :
Charging Party. :
-----:

Place: Hartford, Connecticut
Dates: April 11, 2023
Pages: 1 through 53
Volume: 1

OFFICIAL REPORTERS
BURKE COURT REPORTING, LLC
64 Magnolia Place
Wayne, NJ 07470
(973) 692-0660

-----: Case No.:

In the Matter of: 01-CA-302321

STARBUCKS CORPORATION, : 01-CA-307585

Respondent, :

And :

WORKERS UNITED LABOR UNION :

INTERNATIONAL, AFFILIATED WITH :

SERVICE EMPLOYEES INTERNATIONAL :

UNION, :

Charging Party. :

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A P P E A R A N C E S

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Andyeliz Papaleo, Board Agent

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A P P E A R A N C E S (Continued)

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On Behalf of the Charging Party:

Sommer Omar, Esq.

Cohen, Weiss and Simon, LLP

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somar@cwsny.com

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E X H I B I T S

EXHIBITS

IDENTIFIED

RECEIVED

General Counsel's

GC-1

8

8

Respondent's

R-1

10

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P R O C E E D I N G S

(Time Noted: 09:48 a.m.)

JUDGE SORG-GRAVES: Can we go on the record? The hearing will be in order. This is a formal hearing before the National Relation -- Labor Relations Board and Starbucks and United Labor Union International affiliated with Service Employees International Union, Case Nos. 01-CA-302321 and 01-CA-307585. The Administrative Law Judge presiding is Kimberly Sorg-Graves.

I'm assigned to the DC office of the Division of Judges. Any communication should be addressed to that office. Any request for extension of time or file documents should also -- shall be addressed to that office in chief -- in that office, Chief Judge Giannasi. Let's have General Counsel state your appearance for the record.

MS. DAVIS: Charlotte Davis. Pronouns, she/them.

MS. PAPALEO: Andyeliz Papaleo. Pronouns, she/her.

JUDGE SORG-GRAVES: Ms. Papaleo, P-O -- will you spell your name?

MS. PAPALEO: Papaleo.

JUDGE SORG-GRAVES: Papaleo?

MS. PAPALEO: Yes. First name is A-N-D-Y-E-L-I-Z, last name is P-A-P-A-L-E-O.

JUDGE SORG-GRAVES: Okay. And if you are just going to -- tell me what title you use in the sense of Ms., Mrs. When

1 you state your appearance, it would be helpful to me to know
2 how to refer to people while I speak, okay?

3 MS. PAPALEO: Ms.

4 JUDGE SORG-GRAVES: Okay. And for the Charging
5 Party?

6 MS. OMAR: Summer Omar, Ms.

7 JUDGE SORG-GRAVES: And for Respondent?

8 MS. POLITO: Jacqueline Polito. Good morning, Your
9 Honor.

10 JUDGE SORG-GRAVES: Good morning.

11 MS. RINEHART: Lindsey Rinehart, Ms.

12 MS. CULLARI: Sam Cullari, Ms.

13 JUDGE SORG-GRAVES: I note that Ms. Cullari is a
14 district manager for Respondents and not counsel, but my
15 understanding is she's representing the Respondent in this
16 hearing. Okay. And Ms. Davis, if you would put into the
17 record the formal papers?

18 MS. DAVIS: Yes, Your Honor. If I may approach? I'm
19 going to show you what I circulated last night.

20 MS. POLITO: She did just in a sequestration order.
21 (Indiscernible) witness' so --

22 JUDGE SORG-GRAVES: Well, I haven't done a
23 sequestration order yet. I usually get formal papers in.

24 MS. POLITO: Oh, I'm sorry. I thought you said that,
25 Judge. I thought you said sequestration order earlier.

1 JUDGE SORG-GRAVES: We will do it, but not yet.

2 MS. POLITO: Thank you.

3 MS. DAVIS: So this is what's been marked for
4 identification as GC Exhibit 1, which I circulated to all the
5 parties last night. Here's a paper copy. Contains the
6 complaint, the charges in this case, and index, the service
7 sheets. So I move to admit what's been marked as GC Exhibit 1.
8 (General Counsel's Exhibit 1 identified).

9 JUDGE SORG-GRAVES: Any objection, Ms. Omar?

10 MS. OMAR: No.

11 JUDGE SORG-GRAVES: Ms. Polito?

12 MS. POLITO: No, Judge.

13 JUDGE SORG-GRAVES: The formal papers, GC Exhibit 1
14 is admitted. And I understand just from pre-hearing
15 discussions that Ms. Polito would like to, I guess, supplement
16 what's on the record with records she believes are important to
17 have in the -- in the record.
18 (General Counsel's Exhibit 1 is admitted into evidence).

19 MS. POLITO: Yes, Your Honor. This morning, we
20 circulated our proposed formal papers to General Counsel and
21 the Union. One document is missing, so we'd like to supplement
22 that and then provide it to Your Honor if that's acceptable.

23 JUDGE SORG-GRAVES: Okay. And what additional
24 document was that? I looked through what was circulated
25 before, but what's the additional document?

1 MS. POLITO: I think it was a response --

2 JUDGE SORG-GRAVES: General Counsel's response.

3 MS. POLITO: General Counsel response to the motion
4 to dismiss we inadvertently excluded from our index. So I'd
5 like to add that back in, Your Honor.

6 JUDGE SORG-GRAVES: Okay. And the formal record will
7 include those documents, like the file, formal file already
8 includes those documents because they've been filed with the
9 Board. So I don't know that it's necessary, but it doesn't --
10 I mean, if it's already in your file, I don't have to have you
11 remove them.

12 I think it's sort of redundant to some extent, okay?
13 And same with the subpoena request. They'll already be in the
14 form -- what would be considered the formal file of the Board,
15 but it doesn't hurt to have them in again.

16 MS. POLITO: Okay.

17 JUDGE SORG-GRAVES: So I'm not going to -- I'll see
18 if there's any objections.

19 MS. DAVIS: Do you happen to have a paper copy of
20 that?

21 MS. POLITO: Do you want a paper copy of all the
22 formal papers?

23 MS. DAVIS: Whatever -- I haven't taken -- I didn't
24 see -- I haven't looked through them yet. I was looking at the
25 subpoena production.

1 MS. POLITO: Yeah.

2 MS. DAVIS: Do you not have one? I'm not trying to
3 put you on the spot here.

4 MS. POLITO: No. I don't have copies of all of the
5 formal papers because they're voluminous.

6 MS. DAVIS: Well, not the formal papers, but the
7 exhibit that you --

8 MS. POLITO: Exhibit that's missing?

9 MS. DAVIS: No, the one that you --

10 MS. POLITO: One we're referring to is Respondent's
11 formal papers. Respondent's Exhibit 1. You need something
12 like this, Charlotte, that you printed out? I didn't print it
13 out because I wanted to get it fixed before I printed it out.
14 (Respondent's Exhibit 1 identified).

15 MS. DAVIS: Okay.

16 MS. POLITO: So I can have that after lunch, Judge.
17 I'd like to fix that and then submit it if that's acceptable.

18 MS. DAVIS: Do they include -- well, let me -- can I
19 just have a moment to look through them, Your Honor? Thank
20 you.

21 MS. POLITO: Here's a --

22 MS. DAVIS: Oh, thank you.

23 MS. POLITO: I think that's a version of what I
24 emailed you, but it doesn't include the one that Christina had
25 mentioned.

1 MS. DAVIS: It's missing some things because I think
2 the PDF is 200 pages. Okay. Okay. Sommer, did you -- Sommer,
3 did you file the opposition to the motion for dismissal?

4 MS. OMAR: Yes, we did.

5 MS. DAVIS: Okay. I believe that's missing as well.
6 The Charging Party's opposition to the motion to dismiss.

7 MS. RINEHART: That, Charlotte, is included in the
8 actual PDF but was omitted on the index, so fix that -- we're
9 fixing that as well.

10 MS. DAVIS: Okay. Okay. I'd like to also include --
11 thank you. The cover letter for the first subpoena. Because I
12 believe that's material to some of the objections that were
13 brought up for at least the first subpoena.

14 JUDGE SORG-GRAVES: May I have copies of that?

15 MS. DAVIS: It's attached as I was planning to put in
16 the subpoenas as well. So I have no objection to the inclusion
17 of them to the record. So I marked this separately as GC-2.
18 We can just make it cover letter, if you don't mind me tearing
19 apart the exhibit.

20 MS. POLITO: It's entirely up to you. If you want me
21 to add it to ours for ease of reference, whatever you -- your
22 preferences are.

23 MS. DAVIS: If you add it to -- I think continued, it
24 all would be useful. So if you could add it, that would be
25 good.

1 MS. POLITO: Yeah.

2 MS. DAVIS: I'll give this to you.

3 MS. POLITO: Thank you. (Indiscernible).

4 MS. DAVIS: I would also like to include the subpoena
5 that we'd issued Renee Colburn. If we could put that -- the
6 Respondent's witness as well. If we're going to include a --
7 an exhibit file with all the subpoenas, and I'm assuming this
8 is Respondent's intention to include one exhibit file with all
9 the subpoenas, motions, and motions regarding summary judgment
10 or motions to dismiss, including -- and including the subpoena
11 back and forth, petitions to revoke, and oppositions. Then
12 just to be complete, to include that as well.

13 MS. POLITO: So Judge, here's an issue with the
14 subpoena relating to Ms. Colburn. It was emailed on Thursday
15 and it was just delivered today. So our five days to file the
16 petition to revoke starts running today. So we have until next
17 Monday to file a petition to revoke with respect to that
18 subpoena if in fact it's even been properly served.

19 So that's the issue with respect to Ms. Colburn. She
20 was also out on a leave of absence from Starbucks and she -- I
21 don't want to state anything further because there's other
22 people in the audience that I think should be sequestered. But
23 there are issues with respect to her subpoena and we still have
24 the opportunity to file a petition to revoke, which we intend
25 on filing.

1 JUDGE SORG-GRAVES: Okay. Let me look at General
2 Counsel's -- at least the -- the typical formal papers in. Let
3 me go ahead and do this question -- sequestration order. And
4 why don't we just do the -- we'll have all of the subpoenas
5 regarding documents in one and we'll do this witness subpoena.
6 Why don't you have it as GC-2, whatever you want to call it?
7 And we'll handle it that way.

8 And then if later we end up supplementing a response
9 from Respondent about that individual's availability or
10 something of that nature, we'll see. Okay. Well, counsel, so
11 that you understand that my sequestration order comes from
12 Greyhound lines. I've shortened it a little bit, okay? It's -
13 - the case number is 319 NLRB 554 in 1995 decision. A
14 sequestration order is being issued in this proceeding.

15 This means that all persons who are expected to be
16 called as witnesses in this proceeding, other than a person
17 designated as essential to the presentation of a party's case,
18 will be required to remain outside the courtroom whenever
19 testimony or other proceedings are taking place. The limited
20 exception applies to witnesses who are alleged discriminatees
21 in this matter.

22 They may be present in the courtroom at all times
23 other than when witnesses for the General Counsel or a Charging
24 Party are giving testimony regarding the same events that the
25 alleged discriminatees are expected to testify about. The

1 sequestration order is also -- prohibits all witnesses from
2 discussing with any other witness or possible witness the
3 testimony they have already given or will give.

4 Likewise, counsel for a party may not disclose to any
5 witness the testimony of any other witness. Counsel may,
6 however, inform his or her own witness of the content of
7 testimony given by any opposing party's witness to prepare to
8 rebut that testimony.

9 It is counsel's responsibility to make sure they and
10 their witnesses comply with this sequestration rule. Okay.
11 For the record, I know this was discussed earlier, but for the
12 General Counsel is -- are you designating the person essential
13 to the presentation of the party's case?

14 MS. DAVIS: Yes, Your Honor. I am designating Aly
15 Nogosek, who is our discriminatee in this matter.

16 JUDGE SORG-GRAVES: Okay. And is the -- the Union
17 asking for any person to be designated as essential?

18 MS. OMAR: Yes. Yadhira Alvarez.

19 MS. POLITO: Can you say the name again one more
20 time, please?

21 MS. OMAR: Yadhira Alvarez.

22 MS. POLITO: Thank you.

23 MS. DAVIS: That's Y-A-D-H-I-R-A.

24 MS. POLITO: Thank you.

25 MS. DAVIS: You're welcome.

1 JUDGE SORG-GRAVES: Okay. And for Respondent?

2 MS. POLITO: Ms. Sam Cullari. C-U-L-L-A-R-I,
3 district manager for Starbucks. Thank you, Your Honor.

4 JUDGE SORG-GRAVES: And I understand that she may not
5 be able to be present the whole time. Will you have a
6 substitute in her absence?

7 MS. POLITO: We will not, Judge.

8 JUDGE SORG-GRAVES: Okay. Okay. I asked the parties
9 to police the sequestration. If there's anybody who needs to
10 leave at this point, any witness that you have here, again,
11 please ask them to -- I don't know, Ms. Davis, is there a place
12 that --

13 MS. DAVIS: Yes. We have several rooms that we can
14 talk about. Can I just have a moment to --

15 JUDGE SORG-GRAVES: Yes. Let's go off the record.
16 (Brief Recess at 10:27 a.m./ Reconvened at 10:28 a.m.)

17 JUDGE SORG-GRAVES: Okay. Before we've moved to this
18 to discussing the sequestration order, we were talking about
19 the subpoena for the -- the manager of the actual store. That
20 -- that's the way I'm understanding it. This is the manager,
21 Ms. Davis, from the store where --

22 MS. DAVIS: No, no, no; it's a store manager from
23 Storrs, Connecticut who actually is the one who issued the
24 discipline to our Discriminatee.

25 JUDGE SORG-GRAVES: Okay. It is fair that, you know,

1 they should have time to respond to whether or not it's an
2 appropriate subpoena. I guess Ms. Polito, just briefly, why,
3 you know, if this is an individual who -- who was involved, why
4 would it not be relevant to have that individual here?

5 MS. POLITO: Thank you, Your Honor, for allowing me
6 the opportunity to address this issue. The only reason Ms.
7 Davis is aware that Ms. Colburn was not being called as a
8 witness is because I -- during one of our conversations, I
9 indicated that she was not being called as a witness.

10 She actually has no direct knowledge with respect to
11 why Ms. Nogosek was terminated. She was the person that
12 delivered the termination only. She was not a decision maker,
13 was not involved in the decision. And she's also been on a
14 leave of absence, and she's not the store manager for the
15 Vernon store.

16 I had shared this information with Ms. Davis and then
17 last Thursday via email, I got a subpoena via email, which is
18 improper way to serve. And then just this morning a subpoena
19 was delivered to the Vernon store for Ms. Colburn. Ms. Colburn
20 does not work in the Vernon store, so our position is that the
21 subpoena is improper, has not been served on Ms. Colburn.

22 And moreover, Your Honor, her testimony is not
23 relevant to any of the issues involved in this matter because
24 all she did was deliver the termination because the store
25 manager of Ms. Erin Twible was on vacation. And Ms. Twible

1 will be testifying this week, Your Honor.

2 MS. DAVIS: Your Honor, if I may respond. This is
3 all testimony that the witness could provide in addition to why
4 they were directed to issue this discharge. It's news to me
5 that this person had no direct knowledge supposedly of why our
6 discriminatee was discharged.

7 That's new. So we had issued a subpoena to the best
8 that we could and also provided a courtesy copy to Respondent
9 since they've been accepting service of formal documents to --
10 for all the -- for all portions of these cases in the
11 investigation of these cases.

12 So that was issued April 6th. So they've had several
13 days to consider the subpoena and have only now told me this
14 morning that they have no -- they have no intention of
15 providing Renee Colburn to testify.

16 MS. POLITO: Judge, it was improperly served. I
17 mean, it's not served. It wasn't even served to the store
18 until today. In fact, Ms. Colburn was on a leave of absence.
19 She hasn't even been served with a subpoena. So I have -- at -
20 - at best, I have five days from today.

21 At worst, I don't even think she's been served, so
22 I'm not even sure that I'm obligated to file a petition to
23 revoke at this point. She has not been served with a subpoena.
24 We do not intend on calling her. She's been on a leave of
25 absence. We have no intention of calling her out to this

1 particular hearing. And she's not been personally served.

2 JUDGE SORG-GRAVES: But -- she's on a leave of
3 absence, but she's still considered employed by Respondent?

4 MS. POLITO: She is still considered employed by
5 Respondent, correct, Your Honor.

6 JUDGE SORG-GRAVES: In a managerial position?

7 MS. POLITO: Correct, Your Honor.

8 JUDGE SORG-GRAVES: And it's at least come to your
9 knowledge there -- I would -- I mean, I would think that it
10 would be hard for Respondent to say that she wasn't served
11 today. Now, whether other service before was adequate that --
12 that may be of question, I don't know.

13 But even if -- even if she was served properly
14 because other things had been accepted that way, regardless, I
15 think the Respondent would still have a day or two with the
16 intervening weekend to give a -- I don't know what date did you
17 get -- you said Thursday by email?

18 MS. POLITO: It was emailed by third -- on Thursday.

19 JUDGE SORG-GRAVES: Okay. There would still be time
20 in the five business days to do a motion to revoke. And
21 generally as hearings open, I, you know, I will take a motion
22 to revoke, but you know, I would request the Respondent do it
23 as soon as possible. I understand we're sitting here.

24 MS. DAVIS: Your Honor, if I may be heard once more.
25 I -- I don't get the impression that Respondent is intending to

1 produce her at all, even if service was perfected. But I may -
2 - am I misunderstanding?

3 MS. POLITO: No, you're correct.

4 MS. DAVIS: So --

5 MS. POLITO: Which we shouldn't have to disclose who
6 we're producing as witnesses, but Your Honor, we have no -- we
7 -- we do not have any intention of producing Ms. Colburn.

8 JUDGE SORG-GRAVES: Okay. Well, you have no
9 intention of calling Ms. Colburn as your own witness, but if
10 she's subpoenaed, I -- I have no way knowing sitting here what
11 information she knew, and I can't take your statement as
12 testimony. So if it's eventually served, and then we will
13 eventually hear from her if she comes in and testifies as you
14 said, then she does.

15 But if it appears that by serving it on, you know,
16 Respondent is one business. I've been told that, and I've been
17 told that's why it's hard to have a custodian of record here.
18 So if it is one business and -- but it's spread out, you know,
19 sounds at least that she was adequately served today by serving
20 it upon the company. She is an agent of the company.

21 So you know, unless Ms. Davis tells me that, well,
22 whatever information she receives through whatever channel, she
23 decides she no longer wants to pursue that subpoena, then --
24 then that'll be that issue. If Respondent, you know, is
25 absolutely not going to produce her and General Counsel needs

1 to do subpoena enforcement, I guess we need that. Is that your
2 intention?

3 MS. POLITO: I don't know what our intention is right
4 now. Right now, she's not -- she was not even served as I
5 walked into the courtroom and she wasn't even served. The
6 store was served that she doesn't even work at. So again, just
7 for the record, Ms. Colburn has never been served with a
8 subpoena. Emailing me a subpoena less than five days before
9 trial does not comply with any rules.

10 JUDGE SORG-GRAVES: I -- I understand that.

11 MS. POLITO: And then the subpoena was served at the
12 Vernon store this morning for which Ms. Colburn does not work
13 yet. I learned that fact as I was walking into the courtroom
14 this morning. I have five days, assuming that the service is
15 correct, I have five days to file the petition to revoke, which
16 brings me till Monday.

17 JUDGE SORG-GRAVES: Okay.

18 MS. POLITO: And -- and I did not intend on calling
19 her. So I'm being candid with Your Honor and letting you and
20 Ms. Davis know that she was -- she was on a leave of absence.

21 JUDGE SORG-GRAVES: I understand.

22 MS. POLITO: I have no intention of calling her. I
23 think she's just returning to work this week from a significant
24 medical issue. And no, I am not intended on calling her to
25 testify in this matter because she's not a fact witness. She

1 simply delivered the termination because the store manager was
2 on vacation.

3 And I understand that you can't take my
4 representation because I'm just an attorney, but I can tell you
5 that as we get through the trial, we can see if Ms. Davis still
6 feels compelled to have to call her as a witness and then we
7 can leave the case open until we file our petition to revoke
8 next Monday and see if we have to call her by Zoom or Teams or
9 some other means before we close out the record.

10 JUDGE SORG-GRAVES: Okay.

11 MS. DAVIS: Your Honor, I'd like to respond to that.
12 Respondent has had full opportunity to accept service for all
13 the other documents. This is in fact told the region that they
14 want to accept service on behalf of their representatives as
15 the law firm to accept service instead of us bombarding them
16 with paperwork.

17 I understand the official rules of the subpoena, but
18 I also want to cut to the chase and say that if Respondent is
19 intending to never produce Renee Colborn despite any subpoenas
20 on her, I'd like to start the enforcement procedures now so we
21 can move the hearing along and prevent any additional delays.

22 JUDGE SORG-GRAVES: Okay. You know, ruling on
23 subpoenas is always an issue for me because I don't know the
24 facts, but I assume this manager went to the Vernon store to
25 issue the discharge.

1 MS. POLITO: That is correct, Judge. She delivered
2 the discharge.

3 JUDGE SORG-GRAVES: Okay.

4 MS. POLITO: She didn't have anything to do with the
5 --

6 JUDGE SORG-GRAVES: Okay. I get that.

7 MS. POLITO: But she did deliver the discharge.
8 That's correct.

9 JUDGE SORG-GRAVES: So, okay. She does -- I guess
10 when Respondent needs her to work in that , performance work in
11 that store, and I don't know if she's ever performed any other
12 work in -- or role in the future, but --

13 MS. DAVIS: She has, Your Honor. As far as we know.

14 JUDGE SORG-GRAVES: I'm going to at least concern --
15 consider her served as of today, okay? At least in my mind.
16 So then my -- my question again to Ms. Polito needs to ask,
17 right? Whether or not this individual will ever be produced,
18 okay? And if not, then GC can take the steps that GC feels it
19 needs to take, okay?

20 So let's leave that there, okay? I assume that at
21 some point we will have documents concerning that subpoena to
22 come into the record, but they don't have to go in right this
23 second, okay? And then far as production of paper documents or
24 -- or I'm sorry, paper, video, the other documents. I
25 understand that the Respondent has produced documents.

1 I assume it's a considerable amount. I was told
2 somewhere in the 2100-page range. I understand that Ms. Davis
3 has not had a chance to determine whether or not the subpoena
4 has been fully complied with. We did have pre-hearing
5 conversations about the subpoena and the motion to revoke
6 pretty much the entire subpoena.

7 And as I told Respondent during those conference
8 calls, the standard for relevance in Board proceedings is very
9 low. And that I did not find a reason to you know, wholesale
10 reject General Counsel's subpoena on relevance issues, time
11 period, requested issues, get back at the document. So I did
12 ask the parties to speak about it.

13 There were some very sort of specific questions in
14 Respondents motion to revoke on specific items of the request
15 and -- and what maybe wording meant. And it was my
16 understanding that the parties had come to at least some
17 understanding of those issues.

18 And so we'll leave that to when Ms. Davis has had the
19 opportunity to review the documents to raise whether or not
20 there is any issues at this point. At this point, I don't
21 think we know. Respondent may have fully complied. There is
22 the issue of asking questions about whether it's been fully
23 complied with.

24 And I understand that Respondent has indicated that
25 there is -- because of its structure and the way it maintains

1 documents, that there isn't one person who maintains all of the
2 records would have the access to reviewing and finding all the
3 records that were subpoenaed.

4 There would at least be somebody at the store,
5 individual store level, and one of the persons at higher
6 managerial levels, corporate levels. I did tell Ms. Polito
7 that I didn't think it was necessary to have, you know,
8 multiple people come and sit here that they -- for the trial.
9 But I do have to, I guess what I'm asking Respondent to do is
10 to identify those people, make sure you know who they are in
11 case Ms. Davis does have questions about production.

12 And I, you know, if necessary, we could do a zoom
13 portion of the hearing to allow Respondent to not have to drag
14 those people all the way here. But if questions need to be
15 answered, we will have to find answers to them. Whether we do
16 that as a virtual portion of the hearing in order -- it'll --
17 if that's Respondent's preference, if Respondent would prefer.
18 I know in conference calls, they preferred an in-person
19 hearing.

20 If they prefer those persons to be in front of me in
21 person, I'll do that as well. But to try to accommodate the
22 situation, I'll be willing to do Zoom if we need to, but I
23 think we're putting the cart before the horse here. Ms. Davis,
24 how long do you think you need or where do you want to go with
25 -- with your presentation of the case? Is this something that

1 you can review? We can start hearing witnesses.

2 MS. DAVIS: Your Honor, I -- some of our witnesses
3 have traveled to be here today, and so I'm in a tough spot
4 right now because we, they have made travel accommodations and
5 they have some scheduling limitations for the rest of this
6 week. That being said, I just got the privilege log sent by
7 email. Some -- there has been some redacted information in the
8 production as far as we could tell.

9 There -- we also don't know which documents are
10 pursuant to which subpoena paragraphs. The PDF we received is
11 not searchable, so we would have to do this all by hand. And
12 we had asked for the native files. It's actually fairly simple
13 in Relativity to produce the load file or -- or the file that
14 has been uploaded to Relativity. So they could have done that
15 but chose not to.

16 Instead, we received a conversion of the Relativity
17 documents. So this was an issue that we had been telling
18 Respondent about since Day 1 because it had come up in a
19 previous hearing and other regions have also dealt with this as
20 well. And we don't have the lead witness who we called to
21 testify here today.

22 Despite Respondent having the subpoena since April
23 6th, I had no idea that she would be on medical leave. So I'm
24 without a lead witness and without a roadmap to understand the
25 documents that I have, which as far as I can tell is

1 incomplete.

2 JUDGE SORG-GRAVES: Okay.

3 MS. POLITO: Judge, if I may.

4 JUDGE SORG-GRAVES: Go ahead, Ms. Polito.

5 MS. POLITO: I recognize that every hearing is
6 different and every hearing has a different judge assigned to
7 it. But the subpoenas were returnable this morning. I was up
8 at six o'clock this morning making sure that the documents went
9 over to Ms. Davis by 8:00 a.m. so that she would have them
10 before the hearing they were returnable today.

11 There is absolutely no basis not to proceed forward
12 right now. Ms. Colburn, the first time I got any indication
13 that they wanted her called was via email on Thursday, which
14 was not even five days' notice. Completely improper, not
15 served properly.

16 So to suggest that we should delay when we've taken
17 every effort to provide documents via Relativity, provide
18 documents via PDF, which we indicated that we were due as an
19 accommodation, which I've not done in any of -- of my other
20 hearings, so that we can move forward today.

21 I would just like to note for the record, we strongly
22 object to any type of continuous or any opportunity for counsel
23 to review records that were delivered two hours before the
24 hearing today.

25 JUDGE SORG-GRAVES: Okay. Well, regardless, I have

1 to let counsel review records at some point. And, you know,
2 that has to occur. What I don't want is a messy record where
3 she calls a witness, we -- and then she has to recall that
4 witness because she just now has had the opportunity to review
5 documents that are necessary for that witness.

6 That -- I guess that's, you know, the only way I
7 proceed at this point is with her having that liberty of
8 recalling witnesses if she needs to, because now she's had the
9 opportunity to review a document that she didn't have in hand
10 when she initially called.

11 So I guess -- Ms. Davis, you've had the documents, I
12 know you were reviewing them before we opened the record. How
13 long do you think that you would need to review documents in
14 order to at least just put on the witnesses that you have that
15 -- that are here and present?

16 And then, you know, I have no way of knowing whether
17 those are document having, you know, witnesses that you would
18 be showing a lot of documents to or not.

19 I guess I'm asking if you can proceed in any form at
20 this point with the liberty of going back and representing
21 those same witnesses if there's, you know, to the extent that
22 there's a document that you need to review with that witness
23 later. And, you know, how much time you would need before you
24 felt like you proceeded at least in that manner.

25 MS. DAVIS: Well, this would be proceeding without

1 calling Renee Colburn as a witness, who would be --

2 JUDGE SORG-GRAVES: Who you would've put -- initially
3 put on?

4 MS. DAVIS: Correct. Correct. I had no idea that
5 she wouldn't be showing up today. There's no indication that
6 she would not be here. So putting that on the table, I -- I
7 mean, we could go through each subpoena paragraph and if they
8 are willing to tell me which pages are pursuant to which
9 paragraph, that would be helpful in expediting the process so I
10 can get someone else at least on the stand today.

11 JUDGE SORG-GRAVES: And look -- okay. Ms. Polito, do
12 you know if the production was done in any particular order?

13 MS. POLITO: Your Honor, I can tell you that I've
14 never produced a record. Here's your Subpoena 1, here's the
15 documents in response to Subpoena Request number 1. I -- I
16 haven't done that. I've produced the documents. What I can do
17 is provide an index of the documents that will tell you at
18 least the title of the documents.

19 I've emailed the paralegal to see if you can do an
20 index of documents, but we're not under any obligation to say
21 Document 362 is responsive to Paragraph 3 of the subpoena. The
22 rules don't require us to do that. It's not a discovery
23 demand, it's a subpoena for documents. So we're not required
24 to do that. I don't have that -- I personally don't have that
25 available to give to counsel.

1 MS. DAVIS: Your Honor, if I may --

2 MS. POLITO: I can do the index, which I will say in
3 other cases has -- counsel for General Counsel I found to be
4 somewhat helpful.

5 MS. DAVIS: Your Honor, if I may, I -- we can go
6 through them one by one. So one, as far as we can tell, it's
7 incomplete. This is asking for handbooks and they were
8 redacted, the ones we received. Paragraph 2, I have no idea
9 what we received.

10 We received a scattering of -- of documents. As far
11 as I can tell, that's incomplete. Same with Paragraph 3. I
12 don't know if we have any of the internal documents that
13 underlie those -- sorry, not -- these aren't comparators, but
14 these are internal documents concerning meetings that were held
15 with employees.

16 I saw one document of notes, but I have no idea if
17 that's pursuant to this paragraph, and I also don't know if
18 that's complete. And it goes on. We have -- if they want to
19 make this more difficult, we can do that.

20 JUDGE SORG-GRAVES: Okay.

21 MS. DAVIS: And we did ask for an index upfront in
22 virtually every subpoena that we issue.

23 JUDGE SORG-GRAVES: I understand. Okay. Let's go --
24 let's do this at this point. Ms. Polito, this listing of the
25 documents, I don't know what you mean by titles, but how long

1 will that take to produce?

2 MS. POLITO: Probably not very long, Judge, because I
3 asked the -- when Ms. Davis asked me, I asked the paralegal to
4 work on it. I haven't checked my email while I'm sitting
5 there, but she's usually pretty quick about those things. It's
6 just taking the doc -- I -- I think counsel for General Counsel
7 can also do it. It's taking the Relativity production and then
8 developing an index which just lists the title of the
9 documents.

10 MS. DAVIS: Your Honor, that doesn't answer or
11 address my concern, which is whether or not each -- each
12 paragraph of the subpoena has been complied with. Has been --
13 that we got the documents that we requested. That's my main
14 concern, especially without any custodian of records being
15 present. We don't even know the names of the people who search
16 for documents.

17 JUDGE SORG-GRAVES: Okay. Let's take some time off
18 the record. And then Ms. Polito, just to the -- I guess I am
19 going to ask you to have a conversation with General Counsel to
20 the -- and go through each of the subpoena items and to the
21 extent that you know whether it was, you know, that
22 information, all that existed was presented, then let her know.

23 MS. POLITO: Okay.

24 JUDGE SORG-GRAVES: To the extent that you don't
25 know, then tell her you don't know, and then we'll know where

1 we're at. It's --

2 MS. POLITO: So, I guess, Judge, just for the record,
3 Respondent is not obligated, again, under the federal rules to
4 provide a specific response to a specific subpoena question.
5 And if counsel doesn't like our production, I think we're
6 headed to an enforcement action in federal court. We've
7 produced the records, we've looked at the records, we've
8 produced a voluminous amount of records.

9 Probably 90% will never even be used in this hearing.
10 Quite frankly, at the end of the day, we've -- we've taken
11 efforts, we've worked around the clock to get these records
12 produced. If counsel is not happy with the way that we've
13 produced them, I can only offer the index.

14 JUDGE SORG-GRAVES: Okay.

15 MS. POLITO: But I'm -- I'm not going to respond to
16 each subpoena request with a response, this is a document
17 responsive to this request. And so if Your Honor is ordering
18 me to do that, then I think we have to figure out what the next
19 steps are, Judge.

20 JUDGE SORG-GRAVES: My question for you is -- then
21 I'll ask, has Respondent complied with all the items in the
22 subpoena? All the numbered items and provided to the available
23 documents for each of those subpoena requests? Or is
24 Respondent refusing to do so in regards to some or all in
25 portion -- or some in total or others in portion?

1 MS. POLITO: My understanding is that we've produced
2 all records in response to the subpoena. That's my
3 understanding.

4 JUDGE SORG-GRAVES: Okay.

5 MS. POLITO: We're talking about some 8(a)(1)s and
6 we're talking about a termination relating to Ms. Nogosek.
7 That's all we're talking about in this hearing. The 8(a)(1)
8 witnesses, I -- I can't even imagine what documents they're
9 going to testify about.

10 There's -- there's no documents to testify about.
11 There's allegations about conversations that were allegedly
12 threats. So it's all testimonial evidence. And then there's
13 issues relating to Ms. Nogosek's termination. All of those
14 documents have been produced, Your Honor.

15 MS. DAVIS: With all due respect, Your Honor --

16 MS. POLITO: It's not a complicated track pattern.
17 If I may be heard, this is a coordinated effort that Starbucks
18 has to root out Union supporters. All of these 8(a)(1)
19 statements are part of a playbook that they have, which we know
20 exists.

21 And I don't believe -- I mean, I don't believe that
22 they produced it in their documents, I haven't seen it show up.
23 But we specifically requested the petitioned store playbook by
24 name. As far as we know, Respondent has such a playbook, but
25 have chosen not to present it.

1 JUDGE SORG-GRAVES: Okay. So I guess what the
2 problem is, is that Ms. Davis doesn't know exactly what all is
3 in there. And until she does and -- and then there is a faster
4 and easier way for her to look at that, then that would move us
5 forward. So let's take a break off the record and -- to spend
6 some time with the documents.

7 MS. DAVIS: Okay.

8 JUDGE SORG-GRAVES: Ms. Polito, get your list --
9 whatever this list of titles that you had sent to Ms. Davis.
10 Ms. Davis, take a little more time, look at what you have, see
11 if we're able to go forward and then come back and talk to me
12 in -- in an hour, okay?

13 MS. DAVIS: Yes, Your Honor.

14 JUDGE SORG-GRAVES: The problem is -- is we don't
15 know if it's there or not, okay?

16 MS. DAVIS: Yes, Your Honor.

17 (Brief Recess at 10:57 a.m./ Reconvened at 12:02 p.m.)

18 JUDGE SORG-GRAVES: We're back on record. Okay. Ms.
19 Davis, were you able to get a better look at the documents?

20 MS. DAVIS: Yes, Your Honor. I do believe the
21 subpoena -- production is incomplete for both subpoenas.

22 JUDGE SORG-GRAVES: And in what fashion or how -- how
23 did you come to this conclusion, I guess?

24 MS. DAVIS: So we received a list of titles of the
25 documents. Running through them, they seem responsive to at

1 least some of the paragraphs. I did not see anything for the
2 petitioned store playbook that we subpoenaed on March 20th.

3 To the extent that Respondent is arguing it does not
4 exist, we have information that is -- that contradicts that
5 representation. So we know the search to be incomplete at
6 least with respect to that document that we named in the
7 subpoena. For the other paragraphs, it's really just me
8 grasping in the dark to figure out what is provided that's
9 responsive.

10 The programming of Relativity has the capability of
11 being categorized by subpoena paragraph number. I don't know
12 if Respondent did that, but it would be easy for them to
13 produce if they did categorize their documents in Relativity to
14 -- to the subpoena paragraphs.

15 The other part that's difficult for me to assess is
16 for the internal documents leading up to the discharge of the
17 discriminatee. We have several conflicting documents. Some of
18 them may be responsive as additions of the discharge, but we
19 don't know if that's the case for the other disciplinary
20 documents we received for comparators.

21 So we asked for the internal investigations for those
22 as well. And I haven't seen any of those documents in the
23 production. Respondent did send us two unredacted copies of
24 the handbook, which I assume are complete. To the extent that
25 there are other guidelines that apply to the scenario, we do

1 not have those.

2 For example, I don't know if the handbook contains an
3 outline of the third place in -- which is what Starbucks called
4 the cafe -- calls its cafe areas in the store. We received a
5 portion of that policy during the investigation, but we do not
6 have the complete policy in which it is housed. And we do not
7 know if there are other policies related to that.

8 Similarly, we do not have guidelines that would've
9 been responsive to Paragraph 1 about the -- disrupting the cafe
10 area, of who may be in it, who may be shut out of the cafe, and
11 what the process is for handling situations like that. They
12 raised us as a defense for one of the allegations that -- in
13 the amended complaint, and we don't have those policies which
14 would be responsive to the subpoena.

15 Similarly, we do not have any of the metadata
16 accessible to us at this point in time, which would be
17 especially useful for seeing additions of documents that have
18 been created over time. The PDF that I can now see is
19 completely wiped of all of that information.

20 We have it in -- somewhere in Relativity in a text
21 file but we won't have that accessible to us until several
22 days. We've been told two to three business days but I don't
23 know what our vendor will actually do.

24 JUDGE SORG-GRAVES: Okay. Have you talked to the
25 vendor since the production came in?

1 MS. DAVIS: I personally have not, but our e-
2 litigation team is in contact with them now. And we're still
3 being told --

4 JUDGE SORG-GRAVES: These two to three days?

5 MS. DAVIS: That's correct, yes.

6 JUDGE SORG-GRAVES: Is there any particular reason?
7 It's not a particularly large production. It's just -- or does
8 it trickle in -- just as much as you know about this process?
9 Will the -- will you get it all at one time or will it come in
10 as they complete?

11 MS. DAVIS: As far as I know, it's the vendor's
12 staffing, scheduling, and what they're doing with other
13 clients. What they -- their own schedule dictates how long it
14 takes for them to upload the documents and categorize it the
15 way that makes it open to us.

16 They have to attach our user names to the system and
17 to those particular documents. They can't do that in advance.
18 They can only do that once they have the production. And that
19 takes them several days to do. I'm not sure how long it'll
20 take with the 2000 plus documents that Respondent produced.
21 Let me look at this in here.

22 Region 3 did create an outline of Relativity that we
23 can share with the parties. They had explained to this in the
24 motion for sanctions in Region 3 for Respondents for an issue -
25 - a similar issue concerning Relativity in that case with

1 Respondent's production. That would be case 03-CA-295470.

2 JUDGE SORG-GRAVES: Okay.

3 MS. POLITO: Judge, if I may for the record.

4 JUDGE SORG-GRAVES: Yes. At least address the
5 specific documents that she's raised concerns about whether
6 they're there or going to be produced or were intended to be
7 produced.

8 MS. POLITO: For the record, Respondents issued a
9 petition to revoke on March 22nd in response to the first
10 subpoena served by counsel for the General Counsel, there's
11 been no issue or no order issued with respect to the initial
12 petition to revoke.

13 Subsequent to that, counsel for the General Counsel
14 served another subpoena on us and a petition to revoke was
15 filed yesterday, April 10th within the five days. There's also
16 no issue being decided on that petition to revoke. As we
17 discussed earlier, testifying subpoena was served via email on
18 Thursday April 3rd, delivered to the store today, although not
19 signed by anyone at the store.

20 And as I understand from Your Honor's discussion
21 earlier, you indicated that you would view that as being served
22 today. So we have -- Respondent has five business days to file
23 a petition to revoke with respect to that testifying subpoena,
24 which we intend on doing.

25 In response to discussions, prior to the hearing

1 today, counsel for the General Counsel indicated that it takes
2 two to three business days from Relativity to access documents.
3 Those documents were accessed this morning and downloaded by
4 Ms. Davis. I don't know what that means for a vendor, but Ms.
5 Davis accessed those documents and downloaded them this morning
6 because you can tell through Relativity that that was done.

7 In addition to providing the Relativity documents in
8 an effort to move this rather small hearing, that again, only
9 involves several 8(a)(1)s and one termination forward. We also
10 provided counsel with PDF documents because of the size of the
11 documents.

12 In addition to that, after discussion this morning,
13 we created an index of the documents that were produced for
14 counsel. Again, despite the fact that we have no obligation to
15 do either the index or the PDF, but we did that this morning in
16 adequate faith effort to move this hearing forward.

17 In response, counsel keeps mentioning some petitioned
18 store playbook, which we have had prior discussions. I've
19 never heard of that, I don't know what it is, I don't know what
20 that document is. So no, I will not be producing a document
21 that I've never heard of, and I do not have it for production
22 today.

23 With respect to the other specific objections or
24 notations that counsel made on the record, we are taking the
25 position that we have produced the records in response to the

1 subpoena despite the fact that the court has not yet issued an
2 order on our petition to revoke. We have acted in good faith,
3 we have produced documents.

4 Before we left the courtroom today, if I didn't note
5 my objection, counsel was given an hour to review documents. I
6 object that counsel for the General Counsel was given an hour
7 to review documents. Counsel is not entitled to do that. The
8 subpoena was returnable today if the documents are returnable
9 today.

10 In that discussion before we left the courtroom,
11 counsel for General Counsel also made an argument to Your Honor
12 that this case is of all -- about Starbucks' union animus
13 nationally.

14 This case is not about anything other than the Vernon
15 Store where there's allegations in a complaint about specific
16 8(a)(1)s made -- allegedly statements made by Sam Cullari and
17 Erin Twible, both which will be here to testify, and the
18 termination of Ms. Nogosek, in addition to an amended complaint
19 for which the answer was due today alleging violations about
20 removal of items from a community board. That's all that this
21 complaint is about.

22 All of the documents responsive to those allegations
23 have been provided to counsel. We will not be providing any
24 additional documents, Your Honor, at this time. We've acted in
25 more than good faith, we've given more than what we're required

1 to do under federal statute, and we will be filing a petition
2 to revoke with respect to Renee Colburn.

3 JUDGE SORG-GRAVES: Okay. And -- no. In pre-hearing
4 conference calls, the parties were asked to discuss the
5 subpoena issues and to a good extent, they were told -- I was
6 told that they were resolved. The issue of the -- whether or
7 not GC would be able to access them, the Relativity was brought
8 up.

9 There was the request for the documents to be
10 presented to GC early Respondent has decided that they didn't
11 want to do that and -- and waited until today, but then doesn't
12 want to deal with the consequences of what that means.
13 Furthermore, over and over, Ms. Polito has told me the General
14 Counsel doesn't have the right to review documents, that this
15 is discovery.

16 That makes absolutely no logical sense. Why would
17 there be the subpoena process if General Counsel doesn't have
18 time to review those documents and look at them? There is a
19 case out there that even requires ALJs to give General Counsel
20 time to eat and sleep instead of making them stay up all night
21 to look at those documents.

22 So the procedure for this hearing and the no
23 discovery doesn't mean that General Counsel, one, doesn't get
24 the documents or, two, doesn't get time to review them and use
25 them during the hearing. I will point out that those documents

1 are all in possession of the Respondent, and Respondent has
2 time to review them and be familiar with them ahead of the
3 hearing.

4 And in this case, the initial subpoena, the main
5 subpoena for most documents was issued I know at least four
6 weeks. It's not five weeks before the hearing because it was
7 issued before my first conference call with the parties, which
8 is well beyond the period of time which is typical in these
9 proceedings, gave Respondent a significant amount of time to
10 comply with it.

11 I've been told that complying with it didn't require
12 the protection of tons of documents in -- in the litigation
13 world. Although 1200 or 2100 pages is -- is significant, I
14 think that in the world of litigation, not terribly
15 significant. With regards to, you know, if Respondent is
16 saying something doesn't exist, I guess we'll have to, you
17 know, have evidence put into the record if Ms. Davis has some
18 evidence as to that.

19 If -- and maybe solicit a different name to it or I
20 don't -- I'll have to look at how the request for the document
21 is -- is made in the subpoena. If the naming of it is -- is
22 the issue or if it doesn't actually exist, I don't know. Of
23 course I'd have no way of knowing. But, you know, we will need
24 to go forward. General Counsel will need to be able to view
25 and look at the records before witnesses are put on.

1 There's -- it makes absolutely no logical sense, this
2 argument that you keep giving to me that Respondent is not
3 granted time to look at those documents. Why -- why would the
4 procedure for subpoenaing documents even be in place? So
5 that's going to go nowhere with me.

6 What we're going to do, and I will issue a very
7 detailed subpoena since it's not worked out. I think it always
8 works out best for the parties to cooperate. We'll just have
9 to reschedule the hearing and we'll -- we'll go forward.
10 Unless Ms. Davis tells me she wants to put on witnesses without
11 documents, I will -- I'll do that if witnesses are here and we
12 want to put them on without documents.

13 But I would assume at some point we run into the
14 problem that General Counsel can't finish their case without
15 having the chance to review the documents first. And there is
16 the issue of the now, you know, the other subpoena for a
17 witness that I understand, Respondent gets the opportunity to
18 file its motion as to why that witness should not be produced.

19 I can't see why that would ever be granted in the
20 sense that this person did -- whether it was a very limited
21 role, did play a role in one of the allegations. Was
22 physically present, at least presented a document. I don't
23 know if the person said something or not, or it seems unlogical
24 that they didn't say anything and handed over the document and
25 turned around and walked out.

1 But maybe it was just very, very short. But that --
2 that'd be it. Still relevant to this case. And it is
3 individual that is in the terms of, you know, of these types of
4 proceedings in control of the Respondent, employed by
5 Respondent in a managerial position, will need to ultimately be
6 produced as a witness.

7 And so we know that witness isn't going to be here.
8 General Counsel told me that that was -- individual was
9 intended to be their first witness. But I will defer if we can
10 -- to Ms. Davis, if we can put anything on the record, we will.
11 Otherwise, if -- if it's not going to go forward.

12 Short of that we'll issue actual orders that'll be
13 along the same thing that I said during the conference call,
14 which is not really going to change unless what occurs for
15 Respondent other than what I'm asking them to do here, which is
16 to produce the subpoenaed documents. Unless, you know, some
17 other proceeding is required. Ms. Davis, how do you want to go
18 forward?

19 MS. DAVIS: We would like to proceed with enforcing
20 the subpoenas, Your Honor.

21 JUDGE SORG-GRAVES: Okay.

22 MS. DAVIS: Yes.

23 JUDGE SORG-GRAVES: Okay. I will issue orders
24 shortly. And along the lines that the relevancy standards for
25 board proceedings are very well, and to the extent that it's

1 relevant, then it needs to be produced and it needs to be
2 produced -- I understand it's produced in a way that respond --
3 that Respondent has produced it in a way that General Counsel
4 should be ultimately able to see it.

5 And time may end up resolving most of these issues if
6 General Counsel has the time to look through. But there may
7 still be specific issues that General Counsel wants to seek to
8 see whether Respondent-- I, again, ask General Counsel, once
9 you've had the chance to look through, maybe you'll find most
10 of it is actually there.

11 If it is just a matter of few things, then try to
12 reach out to Ms. Polito and see if you all can resolve it. If
13 you can't resolve it, then do what you do, okay? But I still
14 think that we should be close. I mean, I would assume that Ms.
15 Polito is indicating that they've presented documents that's in
16 response to a good portion of the subpoena.

17 And hopefully, there's not a whole lot missing when
18 you have the chance to actually look through it, okay? Is
19 there anything else specific, Ms. Davis, besides the things
20 that you've mentioned already that you --

21 MS. DAVIS: Just one more point as a follow up. The
22 purpose of having a custodian of records present would be to
23 establish that the search was thorough and complete and we know
24 it to be incomplete because of the lack of this one document
25 that we know exists by its -- that name for its presence and

1 other documents that we have. So if the court requires an
2 offer of proof, we're willing to do that, but we know the
3 search to be incomplete.

4 JUDGE SORG-GRAVES: Okay. So I understand that name
5 is referenced in other documents?

6 MS. DAVIS: Yes.

7 JUDGE SORG-GRAVES: Okay. Okay. Let's go off the
8 record and talk about timing. Okay.

9 (Brief Recess at 12:22 p.m./ Reconvened at 12:48 p.m.)

10 JUDGE SORG-GRAVES: Okay. Let's go back on the
11 record. Okay. Off the record, we discussed whether or not
12 General Counsel would want to move forward with whatever part
13 of the case that they could put on. Assuming as Ms. Polito has
14 assured me that most -- most all of the information that Ms. --
15 the General Counsel has requested has indeed been produced.
16 And, you know, the General Counsel should be able to proceed
17 with the hearing.

18 And General Counsel has indicated that they do not
19 wish to move forward sort of piecemeal and do what they can
20 with the hearing and just leave any failure to produce
21 documents to be decided later by some enforcement action and
22 then handling whatever remained at that time.

23 Ms. Polito I know has objected to any delay saying
24 that, you know, documents have been produced, we should be able
25 to move forward with this hearing. But General Counsel is

1 seeking an enforcement action instead of moving forward. And
2 so time-wise what we will do is I will issue an order involving
3 the subpoenas duces tecum, one that's been before me for a
4 while and we've discussed.

5 I thought we had mostly resolved, but appears not.
6 Another one that I believe I just got General Counsel's
7 response to the petition to revoke either yesterday or shortly.
8 Has it been --

9 MS. POLITO: Your -- Judge, I think it was our
10 petition to revoke was filed yesterday. I don't think that --

11 JUDGE SORG-GRAVES: Okay. We don't have a response
12 General Counsel yet.

13 MS. POLITO: Correct, Judge.

14 JUDGE SORG-GRAVES: Okay. Is General Counsel
15 planning?

16 MS. DAVIS: Yes, Your Honor.

17 JUDGE SORG-GRAVES: Okay. And then there is this
18 subpoena for managerial witness that's still employed as a
19 manager by Respondent and -- that I understand wasn't served
20 until today or arguably adequately served until today, which
21 Respondent is going to file a motion to revoke.

22 And then I would ask General Counsel to be preparing
23 a response as soon as possible thereafter so I can issue an
24 order on that issue. And then we will leave the hearing open,
25 I guess. We've indefinitely postponed until we deal with the

1 subpoena issues and I guess I will leave that to the region to
2 request to be put back on the schedule.

3 MS. POLITO: Your Honor, if I may say something for
4 the record?

5 JUDGE SORG-GRAVES: Please.

6 MS. POLITO: Respondent vehemently objects to the
7 Court's continuance of this action and this proceeding. In the
8 order consolidating cases, consolidated complaint, and notice
9 of hearing cases 01-CA-302321, 01-CA-307585. There are a mere
10 1, 2, 3, 4, 5, 6 allegations in the complaint. Three of them
11 relate to alleged conversations that Ms. Cullari and Ms. Twible
12 had with partners at the Vernon store.

13 The other allegation relates to Ms. Nogosek's
14 termination. And the last allegation relates to the removal of
15 community board materials. As I've indicated to the Court this
16 morning, we have worked diligently in providing counsel for the
17 General Counsel responsive documents to those allegations. We
18 have our witness here.

19 We are prepared to move forward today with this
20 hearing based on the documents that we have provided to counsel
21 for the General Counsel. It's extremely prejudicial to
22 Respondent to delay the hearing when we are prepared to move
23 forward.

24 It serves no purpose to delay this hearing other --
25 at all, and it's severely prejudicial. And counsel for the

1 General Counsel has not indicated any reason for not proceeding
2 forward other than identifying one document that counsel
3 counsel the General Counsel believes exists, which I have
4 represented to this court that I'm not aware of.

5 I guess I'm not saying it doesn't exist because maybe
6 it does, but I'm not aware of that document. It serves no
7 reason to delay this proceeding. The remedy available to the
8 counsel for General Counsel would be to recall witnesses or to
9 make a request to Your Honor for evidentiary sanctions should
10 Your Honor be inclined to do that during the course of this
11 proceeding.

12 But to delay this hearing is extremely prejudicial to
13 Respondent and in our opinion, completely inappropriate and we
14 object to it for those reasons. Thank you, Your Honor, for
15 giving me the opportunity to speak.

16 JUDGE SORG-GRAVES: Any response?

17 MS. DAVIS: Yes. Counsel for the General Counsel
18 completely disagrees. There's nothing that Respondent said
19 that shows any prejudice to Respondent that would result from
20 postponing the hearing indefinitely. One, Respondent had
21 adequate time to respond to the subpoenas and find all
22 responsive documents.

23 We referenced more than one document that we believed
24 is missing from the subpoena production today. And the
25 documents that would be germane to all of the allegations in

1 the complaint, or at least some of the allegations in the
2 complaint. Two, we cannot trust the adequacy of the search
3 because of Respondent's refusal to provide a custodian of
4 record or custodians of record to explain their search.

5 So it is impossible for us to find which documents
6 are responsive to the subpoena without piecing together the
7 puzzle ourselves. And then three, with respect to the ongoing
8 issue of Relativity, which was raised in their second petition
9 to revoke for the second subpoena, but not with the first.

10 In brief, although we did open up a file, it is as if
11 we're opening up a puzzle box and the files are not complete
12 files unless we have it processed in our system of Relativity.
13 In essence, we get a document that looks like this.

14 So we have a picture of the page, we have a text file
15 with how the document was sent, and we get some other document
16 that we can't open that supposedly explains how you put these
17 pieces together. So that's how the metadata is presented to
18 us.

19 Respondent had all the opportunity in the world to
20 release since March 20th to be able to figure out how to
21 produce documents to us in native format, which is germane to
22 this case because it appears that at least one discipline was
23 changed throughout the course of their deciding how to
24 discharge the discriminatee.

25 And it's possible that it's done with other -- other

1 employees who would be comparators. But we don't have those
2 documents either, and so those are missing from the subpoena
3 production as far as we can tell. So at this time, we do
4 object to Respondents assertions about what they have done,
5 what they haven't done, and we intend to proceed with enforcing
6 the subpoenas.

7 JUDGE SORG-GRAVES: Okay. I think we're just going
8 to go round and round in that same idea, okay? So what we will
9 do is indefinitely postpone until the subpoenas can be
10 enforced. It doesn't seem like we're going to get anywhere
11 until that happens.

12 Okay. And because there are outstanding issues of
13 timing for people to respond to subpoenas, you know, in the
14 sense of making a motion to revoke or respond to a motion to
15 revoke. I think it's going to take some time for that to
16 occur. Also, the issue of a custodian of record. Simply
17 because it hasn't been an issue in another hearing doesn't mean
18 it won't become an issue in this hearing.

19 There are times when it's necessary for custodian of
20 record to testify. And, I -- you know, and this issue has been
21 raised, and I think I did raise it on the conference call that
22 if we had custodian of records, if it was burdensome for
23 Respondent, to produce them all in person at the hearing, that
24 we could possibly deal with that via a virtual hearing so that
25 those individuals wouldn't be pulled away from their work when

1 we didn't know whether or not we would need them for sure.

2 But there's never been an offer that on the record by
3 Respondent to have them available that way. Instead, I think
4 Ms. Polito was that she didn't know who all did what in what
5 respect for the subpoena production. I think that would have
6 to be clarified and -- and dealt with at some point.

7 Custodians of records, the reasons why they bring subpoenaed
8 documents and are expected to appear is just for that.

9 To determine whether or not all responsive documents
10 have been searched and found and produced. I do understand
11 that in some ways this is a limited hearing, with one
12 discriminatee, 8(a)(1) statements, some other 8(a)(1) type of
13 activities or actions that are alleged in -- in the complaint.

14 But that being said, the union animus is at issue in
15 at least a few of those allegations about the discharge, the
16 removal of documents from some community board, I think it was
17 the reference. And some of the documents referenced by Ms.
18 Davis seem as if they may be relevant to that.

19 Therefore, General Counsel, I think, needs to have
20 its opportunity to argue that the documents that they've
21 subpoenaed are relevant and should be produced. And if that
22 has to occur in a federal proceeding, then that's where it'll
23 have to occur if my order doesn't resolve it, okay? And then
24 that's what we'll do. So let's go off the record. The hearing
25 is indefinitely postponed.

1
2 (Whereupon, at 12:40 p.m., the hearing in the above-entitled
3 matter was indefinitely postponed.)
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CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 1, in the matter of Starbucks Corporation versus Workers United, Case No. 01-CA-302321 and 01-CA-307585, at 450 Main St./A.A. Ribicoff Federal Building, Hearing Room B, Hartford, Connecticut 06103, on Tuesday, 11th April, 2023, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording from the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected file are missing.

Peter Holland

Pete Holland

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EXHIBIT H

From: [Polito, Jacqueline Phipps](#)
To: [Davis, Charlotte S.](#); [Papaleo, Andyeliz](#); somar@cwsny.com; cgallo@cwsny.com
Cc: [DiGiovine, Lauren](#); [Rinehart, Lindsay](#)
Subject: RE: Starbucks Corp., 01-CA-302321 et al., Index of Produced Documents
Date: Tuesday, April 11, 2023 8:22:06 AM
Attachments: [image001.png](#)
[image002.png](#)
[VOL001 Index \(002\).pdf](#)

Charlotte,

Attached is an Index of Produced Documents.

Jacqueline Phipps Polito

Office Managing Shareholder

585.203.3413 direct, 585.208.9162 mobile, 585.486.1774 fax

JPolito@littler.com

[Littler](#)

375 Woodcliff Drive, Suite 2D, Fairport, NY 14450

From: Rinehart, Lindsay <LRinehart@littler.com>

Sent: Tuesday, April 11, 2023 11:11 AM

To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; somar@cwsny.com; cgallo@cwsny.com

Cc: Polito, Jacqueline Phipps <JPolito@littler.com>; DiGiovine, Lauren <LDiGiovine@littler.com>

Subject: RE: Starbucks Corp., 01-CA-302321 et al.,

All:

Attached please find the unredacted version of the 2023 Partner Guide, as a substitution to the redacted version previously produced. An unredacted version of the 2020 Partner Guide was already sent to you earlier this morning.

Thank you,

Lindsay Rinehart

Attorney at Law

203.974.8717 direct, 203.907.5611 mobile

LRinehart@littler.com



Labor & Employment Law Solutions | Local Everywhere

265 Church St, One Century Tower, Suite 300, New Haven, CT 06510

From: Rinehart, Lindsay

Sent: Tuesday, April 11, 2023 10:26 AM

To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; somar@cwsny.com; cgallo@cwsny.com

Cc: Polito, Jacqueline Phipps <jpolito@littler.com>; DiGiovine, Lauren <LDiGiovine@littler.com>

Subject: Starbucks Corp., 01-CA-302321 et al.,

All:

Attached please find the unredacted version of the Partner Guide, as a substitution to the redacted version previously produced.

Thank you,

Lindsay Rinehart

Attorney at Law

203.974.8717 direct, 203.907.5611 mobile

LRinehart@littler.com



Labor & Employment Law Solutions | Local Everywhere

265 Church St, One Century Tower, Suite 300, New Haven, CT 06510

Bates No.	File Name
Starbucks_01-CA-302321_Hearing – 00005	Vernon O&C.msg
Starbucks_01-CA-302321_Hearing – 00006	Vernon full day.msg
Starbucks_01-CA-302321_Hearing – 00007	Vernon - 27448.msg
Starbucks_01-CA-302321_Hearing – 00008	Connects in Vernon 27448.msg
Starbucks_01-CA-302321_Hearing – 00009	Summer 1 PPV.msg
Starbucks_01-CA-302321_Hearing – 00001	ACP- Vernon PRSC cases.msg
Starbucks_01-CA-302321_Hearing – 00010	PR Consultations.msg
Starbucks_01-CA-302321_Hearing – 00002	Re Aly Safe 27448 .msg
Starbucks_01-CA-302321_Hearing – 00012	Accepted Vernon 27448.msg
Starbucks_01-CA-302321_Hearing – 00013	Accepted Office Time - Sam.msg
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Starbucks_01-CA-302321_Hearing – 00015	Re Aly Safe 27448 .msg
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Starbucks_01-CA-302321_Hearing – 00028	PR Consultations .msg
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	Accepted Coffee Master and Craft Training
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	Consultation case for Madison Halvorsen.msg
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Starbucks_01-CA-302321_Hearing – 00085	Madison Halvorsen WW.docx
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Starbucks_01-CA-302321_Hearing – 00091	Aly Nogosek Seperation Notice.docx
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	Case No. 220815-003058 - Attachment 1-
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Starbucks_01-CA-302321_Hearing – 00102	Case No. 220815-003058.pdf
	Case No. 220816-001567 - Attachment 1-
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Starbucks_01-CA-302321_Hearing – 00106	Case No. 220816-001567.pdf
	Partner Guide - Store Edition - US (Jan
Starbucks_01-CA-302321_Hearing – 00108	2023).pdf
Starbucks_01-CA-302321_Hearing – 00182	Starbucks Partner Guide 2020 (002).pdf
Starbucks_01-CA-302321_Hearing – 00262	STORE NUMBER 27448 HOLIDAY 2022.pdf
Starbucks_01-CA-302321_Hearing – 00533	STORE NUMBER 27448 SPRING 2022.pdf
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Starbucks_01-CA-302321_Hearing – 01273	STORE NUMBER 27448 WINTER 2022.pdf
Starbucks_01-CA-302321_Hearing – 01486	STORE NUMBER 27448 WINTER 2023.pdf
Starbucks_01-CA-302321_Hearing – 01752	Aly Nogosek SSC Partner File.pdf

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Starbucks_01-CA-302321_Hearing – 01808	GABRIELLA MOSIER.pdf
Starbucks_01-CA-302321_Hearing – 01825	GLAUDE DIAMOND .pdf
Starbucks_01-CA-302321_Hearing – 01840	IMANI HENDERSON .pdf
Starbucks_01-CA-302321_Hearing – 01858	JC MARRERO .pdf
Starbucks_01-CA-302321_Hearing – 01862	JENELLE PLESZ.pdf
Starbucks_01-CA-302321_Hearing – 01863	JET KOLAKOWSKI.pdf
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Starbucks_01-CA-302321_Hearing – 01876	LEMON GRUBER.pdf
Starbucks_01-CA-302321_Hearing – 01891	MAGGIE POPP.pdf
Starbucks_01-CA-302321_Hearing – 01901	MARC TOMKO.pdf
Starbucks_01-CA-302321_Hearing – 01913	SAOIRSE WARD.pdf
Starbucks_01-CA-302321_Hearing – 01931	PARTNER PRE CHECK LOGS.pdf
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Starbucks_01-CA-302321_Hearing – 02039	May 3 Benefits One Pager - US-CO.pdf
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Starbucks_01-CA-302321_Hearing – 02041	Excerpt.pdf
Starbucks_01-CA-302321_Hearing – 02045	Shift Supervisor Job Description.pdf
Starbucks_01-CA-302321_Hearing – 02047	27448 Fall - PPV Discussion Guide - US-CO.pdf
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Starbucks_01-CA-302321_Hearing – 02071	Representative.pdf
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	AFSCME Tweet, VernonSBWU Reply 2.png

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Starbucks_01-CA-302321_Hearing – 02079	Call ID 588863 Starbucks 27448 Call Opened.msg
Starbucks_01-CA-302321_Hearing – 02080	RE_ Legal Request for Documents - ULP Charge Vernon_ CT.msg
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Starbucks_01-CA-302321_Hearing – 02082	RE Call ID 588863 Starbucks 27448 Call Opened.msg
Starbucks_01-CA-302321_Hearing – 02083	Call ID 588863 Starbucks 27448 Call Opened.msg

EXHIBIT I



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 34
450 Main St Ste 410
Hartford, CT 06103-3078

Agency Website: www.nlrb.gov
Telephone: (860)240-3522
Fax: (860)240-3564



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NLRB
Mobile App

August 30, 2022

Sam Cullari, District Manager
Starbucks Corporation
135 Talcottville Road
Vernon, CT 06066

Howard Schultz, Interim CEO
Starbucks Corporation
2401 Utah Avenue South, Suite 800
Seattle, WA 98134

Re: Starbucks Corporation
Case 01-CA-302321

Dear Cullari, Mr. Schultz:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney CHARLOTTE DAVIS whose telephone number is (959)200-7365. If this Board agent is not available, you may contact Regional Attorney THOMAS E. QUIGLEY whose telephone number is (959)200-7376.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your

representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case **MUST** be filed through the Agency's website, www.nlr.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. To ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Controlled Unclassified Information (CUI): This National Labor Relations Board (NLRB) proceeding may contain Controlled Unclassified Information (CUI). Subsequent information in this proceeding may also constitute CUI. National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

* * *

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Laura A. Sacks
Regional Director



By:

Michael C. Cass
Officer in Charge

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 01-CA-302321
-----------	-----------------------------

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
--	--

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
------	-------	----------------	-------------

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
--------------------------------	-----------	----------------	------

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STARBUCKS CORPORATION

Charged Party

and

WORKERS UNITED

Charging Party

Case 01-CA-302321

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 30, 2022, I served the above-entitled document(s) by email and post-paid regular mail upon the following persons, addressed to them at the following addresses:

Sam Cullari, District Manager
Starbucks Corporation
135 Talcottville Road
Vernon, CT 06066

Howard Schultz, Interim CEO
Starbucks Corporation
2401 Utah Avenue South, Suite 800
Seattle, WA 98134

August 30, 2022

Date

Marcelina Cabrera, Designated Agent of
NLRB

Name

Marcelina Cabrera

Signature

EXHIBIT J



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 3
130 S. Elmwood Ave.
Suite 630
Buffalo, NY 14202-2829

Agency Website: www.nlrb.gov
Telephone: (716) 551-4931
Fax: (716) 551-4972

March 1, 2022

Alan I. Model, Esq.
Littler Mendelson, P.C.
One Newark Center
1085 Raymond Blvd., 8th Floor
Newark, NJ 07102-5235

Nina K. Markey, Esq.
Littler Mendelson, P.C.
Three Parkway
1601 Cherry Street, Suite 1400
Philadelphia, PA 19102

Noah G. Lipschultz, Esq.
Littler Mendelson, P.C.
1300 IDS Center
80 S 8th St Ste 1300
Minneapolis, MN 55402-2136

Re: Starbucks Corporation
Cases 03-CA-285671, 03-CA-290555, 03-
CA-291157, 03-CA-291196, 03-CA-
291197, 03-CA-291199, 03-CA-291202,
03-CA-291377, 03-CA-291378, 03-CA-
291379, 03-CA-291381, 03-CA-291386,
03-CA-291395, 03-CA-291399, 03-CA-
291408, 03-CA-291412, 03-CA-291416,
03-CA-291418, 03-CA-291423, 03-CA-
291431, and 03-CA-291434

Dear Mr. Model, Ms. Markey, Mr. Lipschultz:

As you know, we are currently investigating the unfair labor practice charges filed by Workers United in the above-referenced cases. During this investigation, we will gather evidence to enable the Regional Director to determine whether or not there is a reasonable cause to believe that the National Labor Relations Act has been violated. We look forward to receiving your client's evidence and arguments in response to these charges.

Please be mindful, as we are certain you are, of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in the possession, custody, or control of Starbucks Corporation.

Relevant information includes, but is not limited to, paper documents and ESI (e.g., SMS text messages, emails, and any data created by Taleo, Partner Hours, Microsoft Office, and any systems utilized by Starbucks Corporation in its relationship with Sedgewick Claims Management Services, Inc. Specific ESI at issue here covers all communications, including but not limited to,

SMS text messages and emails referencing alleged discriminatees Cassie Fleischer, Alexis Rizzo, Danka Dragic, Caroline Lerczak, William Westlake, Gianna Reeve, Kathryn Bergmann, James Skretta, Angel Krempa, Minwoo Park, Nicole Norton, Cory Johnson, Josh Pike, Kaitlyn Baganski, Colin Cochran, Jenna Black, Erin O'Hare, Rachel Cohen, Iliana Gomez, Brian Murray, and any known union supporters from August 23, 2021, to present.

Specific ESI at issue here also covers all communications, including but not limited to, SMS text messages and emails including those sent or originating from the following people from August 23, 2021, to present: Howard Schultz, Kevin Johnson, Rossann Williams, Shannon Garcia, Denise Nelson, Adam Modzel, Allyson Peck, Deanna Pusatier, Greta Case, Tricia Lowder, Kristina Mkrtumyan, Michaela Murphy, David LeFrois, Mark Szto, Shelby Young, Nathalie Cioffi, J. Carlos Rodriguez, Emily Filc, Melanie Joy, Chris Stewart, Kate Fenton, Kathleen Kelly, Holly Klein, Bonnie Elster, Ana Gutierrez, Tito Santiago, Tori Clow, Lori Ruffin, Andy Behrend, Robert Hunt, Jodi Keller, David Morales, Kim Roewer, Patricia Shanley, David Fiscus, David Almond, Joe DePonceau, Jonathan Prime, Christopher Wright, Julie Almond, Sonia Velasquez, Christine Winnett, Tina Zunner, Melissa Garcia, Tanner Rees, Ashlyn Tehoke, Taylor Alviar, Gavin Crawford, Louis Defoe, Sebastian Garcia, Mary Harris, Robert Hernberger, Ashley Justus, Marsh King, Matt Lavoie, Tiffany Mann, Lion Mendoza, Jack Morton, Romalie Murphy, Dimas Nava, Katherine Posey, Taylor Pringle, Alex Roux, Derek Sveen, Dustin Taylor, Richard Tran, and Sarah Tromp.

Relevant information also includes all ESI referencing alleged discriminatees' employment status, their terms and conditions of employment (including but not limited to hiring and staffing practices, resolution of facilities issues, training, availability, dress code policy, disciplines, employee scheduling, store operating hours, temporary store closures, permanent store closures, and the stationing of support managers in the Buffalo area stores) references to any of the allegations in the above-referenced charges, any union, organizing campaign, or references generally about unions from August 23, 2021, to present. Additionally, ESI consists of all computer software programs used for remote control, desktop sharing, online meetings, web conferencing, and file transfer between computers, including but not limited to, retention policy records for electronic communications, logging information such as access or activity logs, audits, and all of said program's associated metadata from August 23, 2021, to present.

Loss of information may result from routine operation of information systems through, among other processes, overwriting of information due to system or data updates, enforcing date limitations or enforcing volume limitations. To avoid this, we ask that you take the steps outlined below:

1. Identify all custodians and data stewards of relevant documents and ESI.
2. Notify such custodians and data stewards of their obligation to preserve relevant information with detailed instructions, if necessary, on how such preservation should be accomplished.
3. Regularly monitor compliance with preservation obligations.

4. Immediately suspend the recycling of back-up tapes, or other back-up media, where such media constitutes the sole source of relevant information.
5. Preserve hardware and software applications necessary to access and read ESI where such hardware and/or software is not readily available.

Regardless of the format in which information is ultimately produced, all ESI should be preserved in its native format or, if not currently available in its native format, the most searchable format in which it is currently maintained. If, for any reason, there are sources of relevant documents or ESI that you do not intend to preserve, please notify us immediately of your intent not to comply with your preservation obligations.

Thank you in advance for your attention to this matter, and please do not hesitate to contact us should you have any questions.

Very truly yours,

/s/ Jessica L. Cacaccio

Jessica L. Cacaccio
Field Attorney

/s/ Thomas A. Miller

Thomas A. Miller
Field Examiner

EXHIBIT K

From: [Allen, Nicholas S.](#)
To: [Buckingham, Alexandra](#); [Rodriguez, David](#); [Markey, Nina K.](#)
Cc: [Laborda Nelson, Alexa](#); [Param, Tara](#); [Devlin, Bridget](#)
Subject: RE: Starbucks Complaint 04-CA-294636
Date: Monday, March 20, 2023 5:47:59 AM
Attachments: [image001.png](#)
[image002.png](#)

CAUTION: This email and any attachments may contain Controlled Unclassified Information (CUI). National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

Alexandra,

Someone on you all's end may already have followed up on this issue, but my understanding is that the production was intended to include .tiff versions of these documents, as opposed to solely unsearchable .pdfs. I'm only seeing the latter, however. Could you confirm whether there should have been .tiff files as well, and if so whether they were inadvertently omitted or if I'm just missing them somewhere?

Sorry for the hassle, and thanks for your time.

Best regards,
Nicholas

Nicholas Allen
Field Attorney

National Labor Relations Board, Region 4
The Wanamaker Building
100 Penn Square East
Suite 403
Philadelphia, PA 19107
215-597-9711

From: Buckingham, Alexandra <ABuckingham@littler.com>
Sent: Monday, March 20, 2023 8:02 AM
To: Rodriguez, David <David.Rodriguez@nlrb.gov>; Allen, Nicholas S. <Nicholas.Allen@nlrb.gov>
Cc: Laborda Nelson, Alexa <ALabordaNelson@littler.com>; Param, Tara <TParam@littler.com>; Devlin, Bridget <BDevlin@littler.com>
Subject: Starbucks Complaint 04-CA-294636

CAUTION: The sender of this message is external to the NLRB network. Please use care when

clicking on links and responding with sensitive information. Forward suspicious emails to nrbirc@nlrb.gov.

Good Morning,

In connection with the above matter, the following productions of documents are being delivered via our secure FTP, Biscom:

Starbucks_04-CA-294636_Hearing – 00001-00915 (Password to decrypt this zip is V8w\$xBpa4d?4)

Starbucks_04-CA-294636_Hearing – 00916-00940

Starbucks_04-CA-294636_Hearing – 00941-01010

If you have not used this application before, you will need to register for an account to access the documents. When you register, the password will be of your own choosing.

The registration process is quick and fairly intuitive, but please let me know if you have any trouble accessing the documents. I have also attached instructions on how to use the application.

You should receive the notification shortly (it will come from the address "notify@littler.com").
Please note the delivery will auto-delete in 30 days.

Sincerely,

Alexandra Buckingham

Paralegal

617.378.6045 direct, 816.766.3571 mobile, 617.226.4530 fax

ABuckingham@littler.com

Littler

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1 International Pl, Suite 2700, Boston, MA 02110

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Littler Mendelson, P.C. is part of the international legal practice Littler Global, which operates worldwide through a number of separate legal entities. Please visit www.littler.com for more

information.

EXHIBIT L



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 12
201 E. Kennedy Blvd., Ste. 530
Tampa, FL 33602-5824

Agency Website: www.nlrb.gov
Telephone: (813) 228-2641
Fax: (813) 228-2874

March 15, 2023

Via First Class Mail and Email

Jedd Mendelson, Esq.
Littler Mendelson, P.C.
1085 Raymond Blvd., 8th Fl.
Newark, NJ 07102
jmendelson@littler.com

Caroline Page, Esq.
Littler Mendelson, P.C.
3424 Peachtree Rd. NE, Ste. 1200
Atlanta, GA 30326
cpage@littler.com

Charles A. Powell IV, Esq.
Littler Mendelson, P.C.
420 20th St. N, Ste. 2300
Birmingham, AL 35203
cpowell@littler.com

Re: Starbucks Corporation
Cases 12-CA-295949

Dear Mr. Mendelson, Ms. Page, and Mr. Powell:

Enclosed is a courtesy copy of a subpoena duces tecum that was served today upon Starbucks Corporation, the Respondent in this matter.

In order to prevent unnecessary delay at trial before the Administrative Law Judge, I propose that we make arrangements for you to provide all subpoenaed documents to me electronically prior to the hearing date, April 18, 2023.

March 15, 2023

If you have any questions about the subpoena, or would like to discuss ideas for streamlining the presentation of evidence at the hearing, including by offering joint exhibits, please let me know as soon as possible. Thank you in advance for your cooperation.

Very truly yours,

/s/ Caroline Leonard

Caroline Leonard, Esq.
Field Attorney

Enclosures

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of RecordsStarbucks Corporation, 19533 Highland Oaks Dr, Estero, FL 33928As requested by Caroline Leonard, Counsel for the General Counselwhose address is 201 E Kennedy Blvd, Ste 530, Tampa, FL 33602-5824

(Street)

(City)

(State)

(ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judgeof the National Labor Relations Boardat Residence Inn Gulf Coast Towncenter, Dolphin Conference Room, 10054 Gulf Center Drivein the City of Fort Myers, FLon Tuesday, April 18, 2023 at 9:30 AM or any adjournedor rescheduled date to testify in Starbucks Corporation, Case 12-CA-295949

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENTcc: Jedd Mendelson, Esq.
Littler Mendelson, P.C.
1085 Raymond Blvd, 8th Floor
Newark, NJ 07102
jmendelson@littler.comCaroline Page, Esq
Littler Mendelson, P.C.
3424 Peachtree Rd NE, Ste 1200
Atlanta, GA 30326
cpage@littler.comCharles A. Powell IV
Littler Mendelson, P.C.
420 20th Street North, Ste 2300
Birmingham, AL 35203
cpowell@littler.com

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1IBZH3V

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Tampa, FLDated: March 15, 2023

A handwritten signature in cursive script that reads "Lauren McFerran".

Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

ATTACHMENT TO SUBPOENA B-1-1IBZH3V

DEFINITIONS AND INSTRUCTIONS

- a. All documents produced in accordance with this subpoena should be furnished in an electronic file format, rather than in hard copy, unless otherwise impossible. When hard copy is required, photocopies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available at the time of production for the purpose of checking the accuracy of any such copies. Any copies of original documents which are different in any way from the original, whether by interlineations, receipt stamp, notations, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of the originals. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- b. All documents produced pursuant to this subpoena should be organized by the subpoena paragraph to which each document or set of documents is responsive. However, documents responsive to multiple subpoena paragraphs should only be produced once. In the event there are no documents responsive to a particular request, Respondent should affirmatively so state in writing.
- c. When used in this subpoena, the word “document” or “documents” means any existing printed, typewritten, handwritten or otherwise recorded material of whatever character, including electronically stored information (“ESI”) maintained on computer software, including, but not limited to, emails, text messages, letters, correspondence, memoranda, telegrams, mailgrams, minutes, notes, statements, affidavits, agreements, summaries, records of telephone conversations, telephone bills, recordings of personal conversations, interviews or meetings, transcripts, diaries, reports, charts, contracts, calendars, interoffice communications, books, records, tax records, bookkeeping and/or accounting work papers, canceled checks, check stubs, account statements, accounts receivable records, ledgers, journals, purchase orders, invoices, bills of lading, billing slips, delivery records, receiving records, photographs, microfilm, audio or video tapes, computer tapes or disks, and all data contained thereon that may be retrieved, including material stored on hard disks, and any carbon, photographic or other duplicate copy of such material in the possession of, control of, or available to the subpoenaed party or any attorney, agent, representative or other person acting in cooperation with, in concert with, or on behalf of the subpoenaed party.
- d. ESI refers to electronically stored information. ESI should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. Any reports generated by software programs used by the Employer which are available to be exported to a locally native file format (e.g., .doc(x), .xls(x), .pdf) should be provided in such native file format. Production of ESI should be as searchable and sortable as it would be for the Employer in the ordinary course of its business; all spreadsheets should be in .xls(x) format rather than .pdf.

- e. The NLRB considers “reasonably usable” productions of ESI to consist of ESI in native format. If the parties agree in advance, productions may be rendered to TIFF or PDF format (discussed below), accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Relativity or a similar review platform). Unless otherwise agreed, the load file should contain: a unique identifier (i.e., Bates number) for each item, custodian, source device, source and folder path, production path, modified date, modified time, to, from, cc, bcc, date sent, time sent, subject, date received, time received, and attachment information (i.e., attachment names and separate fields listing the beginning and ending Bates range(s) of attachment(s)). All images, paper documents scanned to images, or rendered ESI, shall be produced as 300 dpi single-page TIFF files, CCITT Group IV (2D Compression). Documents should be uniquely and sequentially Bates numbered with an endorsement burned into each image. All TIFF file names shall include the unique Bates number burned into the image. Each Bates number shall be a standard length, include leading zeros in the number, and be unique for each produced page. All hidden text (e.g., track changes, hidden columns, mark-ups, and notes) shall be expanded and rendered in the image file. For files that cannot be expanded, the native files shall be produced with the image file. All non-graphic embedded objects (Word documents, Excel spreadsheets, .wav files, etc.) that are found within a file shall be extracted and produced. For purposes of production, the embedded files shall be treated as attachments to the original file, with the parent/child relationship preserved. Where a production conforming to the above shall be produced, the NLRB requires a minimum twenty-one (21) day notice and a complete production fourteen (14) days in advance to process the produced information. If notice is not given and agreed upon in advance, the instructions of paragraph d above shall apply with respect to acceptable file formats instead.
- f. When used in this subpoena, the term “emails” refers to any electronic mail messages sent from one individual to one or more recipients (including the sender), including messages, attachments, and metadata. All attachments should be included with emails which are responsive to this request and should be labeled with the file name used for the attachment in the email. With respect to email “threads,” only the most recent message of each thread should be produced, provided that such messages include the content of all prior messages in each thread and all downthread attachments are incorporated in the production.
- g. When used in this subpoena, the term “text messages” refers to any messages sent from one individual to one or more recipients on any text-based mobile messaging/instant messaging platform (e.g. SMS, iMessage, Discord, Facebook Messenger, Google Chat, GroupMe, Microsoft Teams, Signal, Skype, Slack, Snapchat, Whatsapp, etc.). Text messages should be provided in legible, date-stamped screenshots if no searchable format is available.
- h. When used in this subpoena, the phrase “as will show” serves to limit the requested production to only as many documents as are necessary to demonstrate the requested information.

- i. When used in this subpoena, “Respondent” refers to Starbucks Corporation, its officers, agents, and representatives, and any predecessor entities.
- j. When used in this subpoena, “the Union” refers to Workers United, Southern Regional Joint Board.
- k. When used in this subpoena, “Respondent’s Estero facility” refers to the Starbucks store located at 19533 Highland Oaks Drive, Estero, Florida 33928.
- l. When used in this subpoena, “partner(s)” refers to the term Respondent uses to refer to persons employed by Respondent, and all such persons.
- m. When used in this subpoena, the word “person” or “persons” means natural persons, corporations, partnerships, sole proprietorships, associations, or any other kind of entity.
- n. Whenever used in this subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to parties shall be deemed to include any and all of their officers, agents and representatives; “they,” “their,” and “theirs” shall be deemed to encompass all masculine, feminine, and non-binary pronouns, including referring to individuals as well as groups of people; the disjunctive “or” shall be deemed to include the conjunctive “and” and vice versa; and each of the words “each,” “any,” “every,” and “all” shall be deemed to include each of the other words.
- o. Documents subpoenaed shall include all documents in Respondent’s physical possession, custody, or control, and all documents in the physical possession, custody, or control of the Respondent’s present or former supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with, Respondent.
- p. If any document responsive to any request herein is withheld from production on the asserted ground that it is privileged, identify and describe the author, recipient, date, and subject matter of the document.
- q. If any document responsive to any request herein was, but no longer is, in Respondent’s possession, custody, or control, identify the document; explain the circumstances by which the document ceased to be in Respondent’s possession, custody, or control; and identify all persons known or believed to have the document or a copy thereof in their possession, custody, or control.
- r. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons, identify the document; explain the circumstances surrounding the destruction, discarding, or disposal of the document, including the timing of the destruction, discharging, or disposal of the document; and

identify all persons known or believed to have the document or a copy thereof in their possession, custody, or control.

- s. This request is continuing in character, and if additional responsive documents come to the Respondent's attention following the date of production, such documents must be promptly produced.
- t. Sensitive personal identifying information (SPII) including social security numbers, dates of birth, and home addresses should be redacted prior to being produced.
- u. If any document responsive to this subpoena contains codes, classifications, or like abbreviations, all documents explaining or defining the codes, classifications, or abbreviations used in the document must also be produced.
- v. In lieu of producing the records requested in the "Documents to be Provided" section below at the hearing in this matter, Respondent may provide notice no later than 4:30 p.m. on April 4, 2023, that Respondent will make said records available at the National Labor Relations Board Miami Resident Office, to an Agent or Agents of the National Labor Relations Board for their inspection, copying, and use no later than April 11, 2023, and enter into a stipulation that all documents produced pursuant to this subpoena are authentic business records which may be received in evidence by the Administrative Law Judge hearing this matter.
- w. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

DOCUMENTS TO BE PRODUCED

1. Documents as will show all job positions held by Marissa Galbicsek, Megen Lockwald, Lindsey Lorette, and Howard Schultz, at any time during their employment by Respondent, and the dates for which they held each position.
2. Organizational charts and/or other documents as will show Respondent's managerial structure, hierarchy, or chain of command as it relates to Respondent's Estero facility and/or at any facilities in the same Respondent-designated district or area as Respondent's Estero facility for the time period of January 1, 2022, through May 6, 2022, including documents as will show all changes to the reporting protocols and chain of command during this period.
3. Documents, including but not limited to emails, text messages, memoranda, reports, notes, telephone logs, Retail Leader Communications, and Workplace messages/posts, as will show the date Respondent became aware of the Union organizing campaign at Respondent's Estero facility, including documents as will show how Respondent became aware of organizing activities.
4. Documents, including but not limited to emails, text messages, memoranda, reports, notes, telephone logs, Retail Leader Communications, and Workplace messages/posts as will show the date Respondent became aware of any pro-Union/pro-organizing material being posted or displayed on bulletin boards, in the backroom, and/or on or in employee lockers at Respondent's Estero facility, including documents as will show how Respondent became aware of the posted pro-Union/pro-organizing material.
5. For the period from January 1, 2022, through May 6, 2022, documents as will show all communications between Respondent and its employees at Respondent's Estero facility that address, mention or relate in any manner to communications from Howard Schultz to Starbucks partners, that mention or relate to unions, partner compensation, partner benefits, partner hours, and/or partner terms and conditions of employment.
6. For the period from January 1, 2022, through May 6, 2022, documents, including but not limited to emails, text messages, memoranda, letters, fliers, pamphlets, intranet postings, and other correspondence, as will show all communications between and/or among the Respondent's managers, supervisors, and/or agents concerning union organizing, the Union, and/or unions generally, limited to such communications which regard, mention, or in any way relate to Respondent's Estero facility.
7. For the period January 1, 2021, through the return date of this subpoena, documents as will show all training, instructions, or directions Respondent provided to its managers, supervisors, and agents at Respondent's Estero facility, for identifying, reporting, or responding to the Union and/or to organizing activities at Respondent's Estero facility.
8. Documents, including but not limited to emails, text messages, memoranda, notes, talking points, schedules, and calendar events, as will show the occurrence, date, location, contents of, and/or participants in, all conversations involving Lindsey Lorette and any employees at

Respondent's Estero facility between February 1, 2022, and May 6, 2022, which mention, relate to, or in any way regard any of the following topics:

- a. The Union or unions generally;
- b. Union organizing;
- c. Partner compensation;
- d. Partner benefits;
- e. Partner hours;
- f. Partner satisfaction and/or dissatisfaction and/or complaints about working conditions and/or other terms and conditions of employment.

9. Documents, including but not limited to emails, text messages, memoranda, notes, talking points, schedules, and calendar events, as will show the occurrence, date, location, contents of, and/or participants in, all conversations involving Marissa Galbicsek and any employees at Respondent's Estero facility between February 1, 2022, and May 6, 2022, which mention, relate to, or in any way regard any of the following topics:

- a. The Union or unions generally;
- b. Union organizing;
- c. Partner compensation;
- d. Partner benefits;
- e. Partner hours;
- f. Partner satisfaction and/or dissatisfaction and/or complaints about working conditions and/or other terms and conditions of employment.

10. Documents, including but not limited to emails, text messages, memoranda, notes, talking points, schedules, and calendar events, as will show the occurrence, date, location, contents of, and/or participants in, all conversations involving Megan Lockwald and any employees at Respondent's Estero facility between February 1, 2022, and May 6, 2022, which mention, relate to, or in any way regard any of the following topics:

- a. The Union or unions generally;
- b. Union organizing;
- c. Partner compensation;
- d. Partner benefits;
- e. Partner hours;
- f. Partner satisfaction and/or dissatisfaction and/or complaints about working conditions and/or other terms and conditions of employment.

11. All photographs of the inside of Respondent's Estero facility, including but not limited to the backroom, breakroom area, and public and employee-only areas where bulletin boards and whiteboards are located, which were taken at any time during the period September 1, 2021, through May 31, 2022.

12. Documents, including but not limited to partner guides, store operation manuals, Retail Leader Communications, Workplace messages/posts, emails, text messages, intranet postings, and

memoranda, as will show all community bulletin board use policies, practices, and procedures, including policies, practices, and procedures regarding posting and removing of items, and/or as will show all policies, practices, and procedures regarding posting, leaving, and/or displaying materials not issued by the Employer in the backroom and/or partner lockers, which have been in effect at Respondent's Estero facility and/or at any facilities in the same Respondent-designated district or area as Respondent's Estero facility at any time during the period January 1, 2021 and May 6, 2022. This request encompasses documents as will show all effective and/or revision date(s) of such policies, practices, and procedures, and the manner in which Respondent distributed or communicated such policies, practices, or procedures to managers, supervisors, and/or partners.

13. Documents, including, but not limited to personnel records, disciplinary actions, memoranda, emails, text messages, letters, and notes, as will show all instances of Respondent identifying, evaluating, and/or determining whether any materials posted or displayed in the break room, on employee lockers, and/or on bulletin boards located anywhere within Respondent's Estero facility were in violation of Respondent's policies, practices, and/or procedures regarding use of the same, at any time during the period January 1, 2021, through May 6, 2022.
14. Documents, including but not limited to personnel records, disciplinary actions, memoranda, emails, text messages, intranet postings, and other communications, as will show all instances of Respondent identifying, evaluating, and/or determining whether any materials posted or displayed in the break room, on employee lockers, and/or on bulletin boards located anywhere within any of Respondent's facilities located within the same Respondent-designated district or area as Respondent's Estero facility were in violation of Respondent's policies, practices, and/or procedures regarding use of the same, at any time during the period January 1, 2021, through May 6, 2022.
15. Documents, including but not limited to emails, text messages, intranet postings, fliers, talking points, meeting agendas, and memoranda, as will show all communications between Lindsey Lorette, Marissa Galbicsek, Megan Lockwald, and/or any other managers, supervisors, or agents of Respondent and partners at Respondent's Estero facility regarding the use of Respondent's community board, backroom area, and lockers for posting, leaving, and/or displaying of materials.
16. Documents as will show all instances of Respondent's managers, supervisors, or agents removing materials and/or asking partners to remove materials from bulletin boards, backroom area, and/or lockers, at Respondent's Estero facility and/or at any of Respondent's facilities located within the same Respondent-designated district or area as Respondent's Estero facility, including the dates, specific locations, and names of all persons involved in each instance.
17. Documents, including but not limited to emails, text messages, memoranda, notes, telephone logs, calendar events, meeting agendas, and talking points, that relate to or reflect Respondent's deliberations about, discussions about, directions to, instructions to, or suggestions to Marissa Galbicsek and/or Megan Lockwald to spend time at Respondent's Estero facility at any time during the period February 1, 2022, through May 6, 2022, including the following information:

- a. The name(s) of Respondent's manager(s), supervisor(s), or agents involved in such discussions, deliberations, directions, suggestions, or instructions about or to Marissa Galbicsek and Megan Lockwald spending work time at Respondent's Estero facility;
 - b. The date(s) and/or time(s) and/or duration of each instance when Marissa Galbicsek spent work time at Respondent's Estero facility;
 - c. The date(s) and/or time(s) and/or duration of each instance when Megan Lockwald spent work time at Respondent's Estero facility; and
 - d. The reason(s) or purpose(s) for each instance of Marissa Galbicsek and/or Megan Lockwald spending work time at Respondent's Estero facility.
18. Documents, including but not limited to emails, text messages, memoranda, notes, telephone logs, calendar events, meeting agendas, and talking points, that relate to or reflect Respondent's deliberations about, discussions about, directions to, instructions to, or suggestions to Marissa Galbicsek and/or Megan Lockwald to spend work time at any other facilities in the same Respondent-designated area or district as Respondent's Estero facility at any time during the period December 1, 2021, through August 31, 2022, including the following information:
- a. The name(s) of Respondent's manager(s), supervisor(s), or agents involved in such discussions, deliberations, directions, suggestions, or instructions about or to Marissa Galbicsek and Megan Lockwald spending work time at such other facilities;
 - b. The date(s) and/or time(s) and/or duration of each instance when Marissa Galbicsek spent work time at such other facilities;
 - c. The date(s) and/or time(s) and/or duration of each instance when Megan Lockwald spent work time at such other facilities; and
 - d. The reason(s) or purpose(s) for each instance of Marissa Galbicsek and/or Megan Lockwald spending work time at such other facilities.
19. Video or surveillance footage of the interior and/or exterior of Respondent's Estero facility for the period March 21, 2022, through March 23, 2022.
20. Video or surveillance footage of the interior and/or exterior of Respondent's Estero facility for the period May 1, 2022, through May 6, 2022.
21. Documents as will show Respondent's video or surveillance footage retention policies, practices, and procedures in effect at all Respondent facilities in the same Respondent-designated district or area as Respondent's Estero store at any time during the period September 1, 2021, through the return date of this subpoena, including the effective and/or revision date(s) of all such policies, procedures, and practices.
22. All "Daily Records Book" and/or "Daily Plans"¹ drafted and/or completed for Respondent's Estero facility for the periods January 1, 2022, through May 6, 2022.
23. Documents, including but not limited to partner guides, store operation manuals, emails, text messages, intranet postings, and memoranda, as will show all policies, practices, and procedures relating to drafting, completion, and/or submission of "Daily Records Book" and/or

¹ May also be referred to as "daily reports" by partners.

“Daily Plans” for Respondents’ facilities that have been in effect at any time during the period January 1, 2018, through the return date of this subpoena, including the effective and/or revision date(s) of all such policies, procedures, and practices.

24. Documents, including but not limited to emails, text messages, memoranda, reports, notes, schedules, calendar events, scripts, meeting agendas, and talking points, as will show all Partner Development Meetings, Connections meetings, and like conversations Respondent held with employees at Respondent’s Estero facility, limited to the period January 1, 2022, through May 6, 2022, including the following information for each such meeting or conversation:
 - a. Date;
 - b. Time;
 - c. Precise location with Respondent’s Estero facility;
 - d. Participants;
 - e. Other employees working at the time; and
 - f. What was said at each meeting.
25. Documents, including but not limited to partner guides, store operation manuals, emails, text messages, intranet postings, and memoranda, as will show all disciplinary policies, practices, and procedures applicable to employees at Respondent’s Estero facility and/or at any facilities within the same Respondent-designated district or area as Respondent’s Estero facility, at any time during the period January 1, 2021 and May 6, 2022, including documents as will show the effective and/or revision date(s) of such policies, practices, and procedures and the manner in which Respondent distributed or communicated such policies, practices, or procedures to employees.
26. The complete personnel records of Jonathan Colon (excluding medical records), including, but not limited to, all internal working files and all documents which mention, relate to, concern, and/or as will show job descriptions, reprimands, warnings (written or oral), discipline, suspensions, promotions, transfers, discharges, layoffs, resignations, wage increases or decreases, performance evaluations, comments, reviews, awards, and unemployment compensation.
27. The complete personnel records of Noah Dengler, including, but not limited to, all internal working files and all documents which mention, relate to, concern, and/or as will show job descriptions, reprimands, warnings (written or oral), discipline, suspensions, promotions, transfers, discharges, layoffs, resignations, wage increases or decreases, performance evaluations, comments, reviews, awards, and unemployment compensation.
28. Documents, including but not limited to witness statements, investigative reports, memoranda, daily reports, and video footage, that Respondent relied on and/or considered in deciding to discharge Jonathan Colon.
29. Documents, including but not limited to emails, text messages, memoranda, meeting agendas, notes, calendar events, and telephone logs as will show all verbal and written communications

exchanged between and among Respondent's managers, supervisors, and/or agents that relate to, mention, or discuss the decision to discipline and/or discharge Jonathan Colon effective April 8, 2022.

30. Documents, including but not limited to emails, text messages, scripts, talking points, notes, memoranda, or records, relating to, used, and/or referenced at any meetings held between Jonathan Colon and the Respondent's agents, supervisors, and/or managers regarding his discharge.
31. Documents, including but not limited to emails, text messages, scripts, talking points, notes, memoranda, or records, relating to, used, and/or referenced at any meetings held between Jonathan Colon and the Respondent's agents, supervisors, and/or managers regarding the Union or unions generally.
32. For the period from January 1, 2018, through the return date of this subpoena, documents as will show all investigations conducted, coachings, verbal counselings, oral and written warnings, suspensions, discharges and all other discipline issued to employees at Respondent's Estero facility or any other facility in the same Respondent-designated district or area as Respondent's Estero facility for failure to maintain a safe work environment, violations of Respondent's Safety and Security Standards, failure to set the security alarm, leaving a door of a Respondent facility unlocked and/or ajar, and/or for violating Respondent's "Store Closing Standards," together with the personnel file of each disciplined employee showing all other discipline issued to that employee and the reasons for the disciplines.
33. For the period from January 1, 2018, through the return date of the subpoena, all "Daily Records Book" and/or "Daily Plans" for Respondent's Estero facility or any other facility in the same Respondent-designated district or area as Respondent's Estero facility, which discuss, reflect, note, and/or report any violations of Respondent's Safety and Security Standards or "Store Closing Standards," employees failing to set the security alarm, and/or employees leaving the door of a Respondent facility unlocked and/or ajar.
34. Payroll records as will show all employees employed at Respondent's Estero facility during the payroll period ending on April 3, 2022, including employees on paid or unpaid leave who did not actively work during that payroll period, and the job applications and IRS W-4 forms for all such employees.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
South Trust Plaza
Region 12
201 East Kennedy Blvd, Suite 530
Tampa, FL 33602-5824
An Equal Opportunity Employer

OFFICIAL BUSINESS

RECEIVED

MAR 22 2023

BY:

Jedd Mendelson, Esq.
Littler Mendelson, P.C.
1085 Raymond Blvd., 8th Fl.
Newark, NJ 07102

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EXHIBIT 2a

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

STARBUCKS CORPORATION

and

WORKERS UNITED

Cases 03-CA-295470

03-CA-295474

03-CA-295545

03-CA-296995

03-CA-299540

03-CA-300849

03-CA-300931

03-CA-305237

03-CA-307568

03-CA-307756

03-CA-308720

03-CA-309434

03-CA-309799

03-CA-310302

03-CA-311237

**DECLARATION OF CORY OSHER OF UNITEDLEX CORPORATION IN SUPPORT
OF STARBUCKS' MEMORANDUM REGARDING FORM OF PRODUCTION**

I, Cory Osher of UnitedLex Corporation, declare under penalty of perjury as follows:

1. I am over 18 years of age and am competent to testify regarding, and have knowledge of, the matters set forth in this declaration for the above-captioned action.
2. I have over 22 years of experience in the field of Discovery/eDiscovery and have served in roles at an AM Law 50 law firm and an eDiscovery vendor.

3. I am employed by UnitedLex Corporation (“UnitedLex”) as Vice President of Analytics and AI. My duties at UnitedLex include leadership of the company’s operations regarding eDiscovery, Analytics, and AI, as well as technology, infrastructure and innovation. As part of my role, I am responsible for dealing with the challenges of collecting, processing, hosting, and reviewing large data volumes.

4. UnitedLex provides a wide range of professional eDiscovery services to corporations and law firms, including but not limited to document collection, data hosting, data processing, document review and document production. As a recognized global leader in eDiscovery and doing business since 2006, UnitedLex provides these legal services to over 400 clients in over 25 jurisdictions, through offices around the world. UnitedLex works with its clients to collect, process, review, and produce electronic data with industry-leading and defensible tools to meet varied needs and requirements.

5. UnitedLex has been retained by Starbucks Corporation (“Starbucks”) as a Discovery/eDiscovery vendor, including – at the direction of outside counsel in specific cases – to handle the collection, processing, culling, review, and production of electronically stored information (“ESI”). UnitedLex handled the production of information in this case, which consisted of 935 individual documents consisting of 7,323 pages, produced out of Relativity on March 20, 2023 in TIFF+ format (defined below).

6. To allow Starbucks to produce this information to the Board, UnitedLex zipped the production for this case and provided it to Starbucks’ outside counsel, Littler Mendelson P.C. (“Littler”) in a password-protected format.

7. It is common practice to transmit data with a password to protect it from unauthorized disclosure and for information security reasons.

8. After UnitedLex was informed the CGC had trouble accessing the production based upon a password issue, it promptly (the same day) reziped the production and provided a new password.

9. The documents in the production for this case were produced in TIFF+, except for 30 documents provided in native format¹.

10. The TIFF+ format consists of page-level images and document-level extracted text files for each document, accompanied by a load file containing selected metadata.

11. A TIFF+ format is designed to be loaded into a litigation support database, like Relativity.²

12. When TIFF+ productions are loaded into a Relativity database, both the contents and metadata of all documents are fully searchable and sortable.

13. Producing in TIFF+ format is the industry standard for document productions, not only for e-documents including emails, Microsoft Offices files (Word, PowerPoint) and other common data types, but also for hard-copy documents that are part of a collection that needs to be culled, searched, reviewed, tagged (as responsive, privileged, etc.), redacted, bates labelled, and ultimately produced. This is due to a number of reasons.

- a. TIFF+ productions are tool agnostic and can be viewed outside of a traditional review tool without the need of supporting native application for review.
- b. TIFF+ productions are common due to the ease of ingestion into industry standard hosting and review platforms without the cost and time of additional manipulation or preparation.

¹ Native files are provided for documents that do not image well (i.e. excel files or audio/video recordings).

² Relativity reports it has more than 300,000 users in 49 countries and that its customers include 198 of the AMLAW 200. See e.g., [Legal software co Relativity snaps up AI startup after private equity infusion | Reuters](#)

- c. All of the documents and data can be housed in one place for purposes of culling, searching, reviewing, tagging, redacting, bates labelling and ultimately producing such information (i.e., it would not make sense and would be unworkable to keep paper and quasi-paper documents in one place, and electronic data in another).
- d. All paper and quasi-paper documents are OCR'd to make them electronically searchable in a database.

14. TIFF+ productions are preferred not only because of the TIFF images but because they are a piece of a larger production that can easily be ingested into a hosting and review platform. A TIFF+ production includes:

- a. A bates labelled and confidentiality branded TIFF image of the produced document
- b. A text file that contains the extracted document text
- c. A TIFF Image cross reference or load file pairing the TIFF image with the associated bates number
- d. A metadata file or .dat is containing delimited metadata for easy parsing and loading into a hosting and review platform.

15. Additional benefits of TIFF+ productions include the ability to individually number/endorse pages, ease of redaction, and the ability to inhibit the capability to alter the imaged version of the document.

16. In my experience, TIFF+ productions meet a wider array of regulatory entity data production requirements than other production formats which is why it is an industry standard production format. For example, the Department of Justice, Securities and Exchange Commission and Federal Trade Commission require production in TIFF+ format.

17. As a leading eDiscovery vendor, running and delivering over 3,500 productions per year, over 90% of our production are done in TIFF+ format.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: March 23, 2023

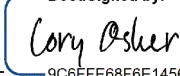
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By: _____
Name: Cory Osher
Title: *Vice President of Analytics and AI*
UnitedLex Corporation

EXHIBIT 2

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

STARBUCKS CORPORATION

and

**Cases 01-CA-302321
01-CA-307585**

**WORKERS UNITED affiliated with
SERVICE EMPLOYEES
INTERNATIONAL UNION**

**ORDER ON PETITIONS TO REVOKE
SUBPOENA DUCES TECUM B-1-1ID2IE5
SUBPOENA DUCES TECUM B-1-1IGNN1T
AND SUPPOENA AD TESTIFICANDUM NO. A-1-1HISKD**

I. BACKGROUND

Based on allegations filed by Workers United affiliated with Service Employees International Union (Union), the Regional Director for Region 1 (Region), of the National Labor Relations Board (Board) on December 23, 2022, issued a complaint and notice of hearing in Case 01-CA-203321 setting the hearing for April 11, 2023. On March 28, 2023, that case was ordered consolidated with Case 01-CA-307585, and a Consolidated Complaint (Consolidated Complaint) was issued containing three additional alleged violation of Section 8(a)(1) of the National Labor Relations Act occurring within the same store, timeframe, and by the same supervisors/agents of Respondent as the other alleged violations. The Consolidated Complaint alleges that Starbucks Corporation (“Respondent” or “Starbucks”) engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act with respect to alleged incidents that occurred in its Vernon, Connecticut store. The Consolidated Complaint contains allegations that on various dates between May 12 and August 26, 2022¹ supervisor(s) and/or agent(s) of Respondent: (1) conducted mandatory captive-audience one-on-one meetings with employees to discourage union activity; (2) by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they refrained from union activity; (3) threatened employees with loss of access to and communication with management if they selected the Union as their bargaining representative; (4) threatened employees with loss of a scheduled pay and tuition benefits for classes at Arizona State University if they selected the Union as their collective bargaining representative; (5) removed union literature from the community bulletin board; (6) selectively enforced the third-place policy and the procedure addressing disruptive behaviors, by closing the Vernon Store to deny the Union access to the premises and chill employees’ union and protected concerted activities; (7) selectively enforced the solicitation and distributions policy by telling employees

¹ All dates are in 2022 unless otherwise noted.

they could not post union-related materials on the community board; (8) issued a written warning to employee Nogosek; (9) discharged employee Nogosek; (6) applied discretionary discipline by discharging employee Nogosek without giving the Union notice and opportunity to bargaining. Respondent filed answers to the initial complaint and then to the Consolidated Complaint denying the unfair labor practice allegations and asserting 34 affirmative defenses.

On March 20, 2023, the Counsel for the General Counsel (“General Counsel”) issued Subpoena Duces Tecum B-1-1ID2IE5 (“Subpoena 1”) and on April 3, 2023, General Counsel issued Subpoena Duces Tecum B-1-1IGZVA5 (“Subpoena 2”). Both subpoenas contain identical sections on definitions and instructions along with enumerated document request paragraphs. The Subpoenas directed Respondent’s custodian(s) of records to appear at the trial in this matter and produce the various documents and records requested. Respondent filed timely petitions to revoke both subpoenas making the same general objections in both petitions except for two additional objections to Subpoena 2, discussed separately below. Both petitions include individual objections to several of enumerated paragraphs which are addressed below after discussion of Respondent’s general objections.

During pre-hearing conferenced calls, I directed the parties to discuss the outstanding subpoena issues and the parties reported that they had reached an understanding about the documents to be produced. As the hearing approached General Counsel raised concerns about the TIFF+ format in which Respondent intended to produce the documents, which as discussed more below, resulted in a dispute over the entire production and not over just specific requested items for which on the record rulings would have been feasible. In attempts to satisfy General Counsel, Respondent provided the documents in TIFF+ format and in unsearchable PDF files divorced of their meta data approximately 2 hours in advance of the scheduled start of the hearing. In response to General Counsel on going complaint that the production was not searchable, Respondent provided General Counsel with a computer-generated list that provided some information about the PDF files provided based on discussions before the record opened.

After reviewing the documents and discussions before and after the opening of the hearing, General Counsel still contended that the production was not in a form which allowed the review of the documents necessary to go forward in presenting the government’s case because the documents were divorced from their metadata, were not searchable, and were not grouped or categorized as responsive to specific subpoena requests as to allow for reasonably quick review.² After review of the list of pdf files produced, General Counsel believed the production to be incomplete but could not quickly assess to what extent and Respondent refused to produce any

² FRCP 34(b)(2)(E) states:

Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

- (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request; (emphasis added)
- (ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and
- (iii) A party need not produce the same electronically stored information in more than one form.

custodian³ of the records for General Counsel to question concerning the production. Furthermore, an issue arose about whether General Counsel had properly served one of Respondent's supervisors to appear at the hearing. Respondent refused to produce the supervisor as served and argued that the supervisor could provide no relevant testimony despite being the person who notified the discriminatee of their discharge. Respondent stated that the supervisor would not be produced.

Ultimately GC requested a recess to enforce its subpoenas which I granted. Both parties requested time to file motions to revoke subpoenas and replies which I granted.

II. SUBPOENAS DUCES TECUM

A. Legal Standards

Section 11(1) of the Act, 29 U.S.C. § 161(1), grants the Board power to subpoena evidence "that relates to any matter under investigation or in question." This subpoena power is broad and enables a party "to get information from those who best can give it and who are most interested in not doing so." *NLRB v. Fortune Bay Resort Casino*, 688 F. Supp. 2d 858, 864 (D. Minn. 2010). *Cf. United States v. Morton Salt Co.*, 388 U.S. 632, 642 (1950). "The Supreme Court has made it clear that the court's role in a proceeding to enforce an administrative subpoena is a strictly limited one. The seminal case is *Endicott Johnson v. Perkins*, 317 U.S. 501, 87 L. Ed. 424, 63 S. Ct. 339 (1943)." *Federal Trade Commission v. Texaco, Inc.*, 555 F.2d 862, 871-872 (D.C. Cir. 1976). The *Endicott* Court enforced a subpoena issued in a federal administrative proceeding, since the evidence sought by the subpoena was not "plainly incompetent or irrelevant to any lawful purpose" of the agency. *Supra*, at 509. Section 11(1) also sets forth the standard upon which a party may petition the Board to revoke a subpoena, and states that the Board shall revoke a subpoena,

if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required.⁴

Subpoenas issued pursuant to Section 11(1) are to be enforced if a "proceeding is pending before the Board of which it has jurisdiction and the evidence sought relates to or touches the matter under investigation." *NLRB v. Dutch Boy, Inc.*, 606 F.2d 929, 932 (10th Cir. 1979). Additionally, a subpoena is proper when it is designed to produce material concerning a defense, even if that

³ It is also well settled that if no responsive documents are produced or a dispute arises over the completeness of the production, the judge may request the subpoenaed party to describe its search efforts with sufficient specificity to evaluate whether it exercised due diligence. See, e.g., *Cascades Containerboard Packaging-Niagara*, 370 NLRB No. 76, slip op. at 13 (2021) (judge rejected respondent's assertion that it did not have possession of subpoenaed documents, as respondent failed to call a custodian of records to substantiate that it searched its own records for the documents or sought unsuccessfully to obtain them from its foreign parent corporation, notwithstanding respondent's prior assurance to the judge that it would present the custodian of records' testimony); and *Chipotle Services, LLC*, 363 NLRB 336, 342 (2015) (judge called a witness to question him about respondent's efforts toward subpoena compliance), enf. 849 F.3d 1161 (8th Cir. 2017).

⁴ See also Section 102.31(b) of the Board's Rules and Regulations.

defense may never arise. *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005, 1009 (1996) (citing *Dutch Boy, Inc.*, 606 F.2d at 933 n. 4.)

While it is well settled that the Federal Rules of Civil Procedure and Federal Rules of Evidence do not apply in proceedings before the Board, the Board may look to these materials for guidance when evaluating evidentiary and certain procedural issues. *Brinks, Inc.*, 281 NLRB 468, 468-469 (1986).

B. Analysis of Respondent's general objections in response to both Subpoenas A and B

Respondent's general objections can be disposed of in short order as most are not supported by specific evidence and are conclusory. See, *American Rock Salt Co., LLC v. Norfolk Southern Corp.*, 228 F.R.D. 426, 432 (W.D.N.Y. 2005) ("generalized objections that discovery requests are vague, overly broad, or unduly burdensome are not acceptable"). In its general objections, Respondent asserts that some of the subpoena requests are vague but does not cite any specific examples of words or phrases that are somehow unintelligible. Similarly, Respondent asserts that the Subpoena is burdensome generally, and complains that the document does not identify any detailed search terms. Finally, Starbucks asserts the Subpoena may require a response that goes beyond the Federal Rules of Evidence, or the applicable local rules, but points to no specific examples. Boilerplate objections such as these are ineffectual, "inadequate and tantamount to not making any objection at all." *EEOC v. Safeway Store, Inc.*, 2002 WL 31947153, *2-3 (N.D.Cal.2002). The Subpoena is neither vague, ambiguous, nor unintelligible. Instead, it states with particularity the documents sought, and the information to be obtained from such records. See *NLRB v. Brown Transport Corp.*, 620 F.Supp. 648, 654 (N. Dist. Ill. 1985) (rejecting a claim that records were not requested with particularity). From the face of the Subpoena, Respondent can identify the specific documents and information sought without the need for additional search terms. And, regarding the company's generalized claims that the Subpoena is burdensome, the test is whether compliance with a subpoena would threaten the normal operations of the business. *NLRB v. Brown Transportation Corp.*, 620 F. Supp. 648, 654 (N.D. Ill. 1985). Starbucks has made no such showing. Moreover, the size of Respondent's operations is no excuse for refusing to comply with a valid subpoena, as it is presumed that, by the very fact an employer has such a large number of employees, it is sufficiently equipped to handle the records of its workers. *Id.*

Starbucks also generally objects to the subpoenas, arguing that it seeks confidential or privileged information. However, a party moving to quash a subpoena, claiming the documents requested are proprietary or confidential, has the burden to establish that the information sought is confidential and that disclosure will result in a serious injury to the moving party. *Stewart v. Mitchell Transport*, 2002 WL 1558210, at *8 (D. Kan. 2002). "The claim 'must be expressly made and supported by a sufficient description of the nature of the documents, communications, or things not produced so as to enable the demanding party to contest the claim.'" *Id.* (quoting *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 697-698 (D. Nev. 1994). Here, Respondent has made no such showing, and therefore has not satisfied its burden.

In many of its responses to individual subpoena paragraphs in its petition to revoke Respondent objects that they seek documents protected from disclosure under the attorney-client

privilege and/or attorney work product doctrine. The subpoenas, on their faces, do not seek documents protected by the attorney-client privilege or work product doctrine. However, to the extent Starbucks believes, in good faith, that the subpoenas encompass documents protected from disclosure, it is incumbent upon Respondent to prepare a privilege log with sufficient detail to permit an assessment of such claims. *Island Architectural Woodwork, Inc.*, 2014 WL 3867966 *1, fn.3 (2014) (unpublished order); *NPC Int'l, Inc.*, 2017 WL 634713, at *7. Starbucks should also be prepared to produce such document(s) for an in-camera inspection at the hearing if necessary. *CNN America, Inc.*, 352 NLRB at 449; *Patrick Cudahy, Inc.*, 288 NLRB at 969; *Zolin*, 491 US at 568-69.

Similarly, any claims that the subpoenas seek documents covered by the attorney-client or work product privilege fail. On its face, the subpoenas seek no such documents. To the extent Starbucks believes, in good faith, that the subpoenas encompass documents protected from disclosure, it is incumbent upon Respondent to prepare a privilege log with sufficient detail to permit an assessment of such claims. *Island Architectural Woodwork, Inc.*, 2014 WL 3867966 *1, fn.3 (2014) (unpublished order) (Board notes that the subpoenas, on their face, do not seek privileged documents, and denies petition to revoke noting that “to the extent that the subpoenas encompass some documents that the Employers believe in good faith to be protected from disclosure, the Employers may submit a privilege log providing sufficient details to permit an assessment . . . of the Employers’ claims”); *NLRB v. NPC Int'l, Inc.*, No. 13-0010, 2017 WL 634713, at *7 (W.D. Tenn. 2017) (citing *NLRB v. Interbake Foods, Inc.*, 637 F.3d 492, 498 (4th Cir. 2011) (inherent in the Board’s authority to issue and revoke subpoenas is the authority to make substantive rulings on the grounds for objections to subpoenas including rulings on questions of privilege)); Fed. R. Civ. P. 26(b)(5)(A). Respondent should also be prepared to produce such documents for an in-camera inspection at the hearing if needed. See, e.g., *CNN America, Inc.*, 352 NLRB 448, 449 (2008) (ALJ appropriately exercised his discretion in ordering an in camera inspection of documents on the employer’s privilege and redaction logs); *Patrick Cudahy, Inc.*, 288 NLRB 968, 969 (1988) (upon claim of attorney-client privilege Board orders respondent to produce the documents in question, along with an index, for an in camera inspection); *United States v. Zolin*, 491 US 554, 568-569 (1989) (approving the practice of requiring parties who seek to avoid disclosure of documents to make the documents available for in camera inspection).

Respondent also objects generally to the subpoenas’ definition of the word “document” claiming it expands the scope of discovery and could result in “disproportional discovery.” However, the definition used in the subpoenas is not improper, and is simply a broad definition of the word “document” so as to encompass any relevant written, recorded, or graphic material. This argument also fails.

Starbucks objects to the subpoenas to the extent they seek documents or materials outside of its possession, custody, or control, as maintained in the ordinary course of business. However, Starbucks “is not required to produce evidence requested in the subpoenas that it does not possess, but . . . [it] is required to conduct a reasonable and diligent search for all requested evidence.” *Silverstar Delivery Limited*, 07-CA-199193, 2018 WL 1452624, at fn. 3 (Mar. 22, 2018) (unpublished order). This includes requesting that third parties provide Respondent with relevant documents and information that belongs to Respondent but that the third party

possesses. *Clear Channel Outdoor, Inc.*, 346 NLRB 696, 702 fn. 10 (2006) (“In responding to a subpoena, an individual is required to produce documents not only in his or her possession, but any documents that he or she had a legal right to obtain.”). “If the information does not exist, or if the other persons or companies decline to provide the information, the [Respondent] must affirmatively represent this fact to the [General Counsel]. *Winthrop Management*, No. 29-CA-188433, 2018 WL 834316, at fn. 2 (Feb. 8, 2018) (unpublished order). As for Respondent’s objection to producing documents that have already been provided to the General Counsel, to the extent Starbucks “has provided some of the requested material, it is not required to produce that information again, provided that [the company] accurately describes which documents under subpoena it has already provided, states whether those previously-supplied documents constitute all of the requested documents, and provides all of the information that was subpoenaed.” *Id.*

Without citing any specific examples, Starbucks objects to the subpoenas arguing that the disclosure of certain personal and confidential information would result in an intrusion of the privacy rights of its employees and/or customers. It is questionable whether Respondent has any standing to assert the privacy interests of its employees and/or customers. *NLRB v. North American Van Lines, Inc.*, 611 F.Supp. 760, 766 (N.D. Ind. 1985). However, even assuming such standing, any truly private information (such as account numbers, social security numbers, marital status, etc.) can be adequately protected by redaction. *Id.* at 768. Furthermore, the subpoenas requests specifically exclude medical information.

Respondent also generally objects to the time periods set forth in the subpoenas. At most, the subpoenas seek documents (such as Respondent’s policies related to allegations in the complaint, etc.) going back to May 1, 2021, in most cases, which is approximately 12 months before the first alleged unfair labor practice occurred. Other requests are limited to much shorter time periods, including some limited to specific dates, which supports a finding that the requests are tailored to seeking relevant information and are not overbroad. Accordingly, unless otherwise stated in response to a specific itemized request, I find that the even the longer time frames set for in the requests are not overly broad, as courts have enforced NLRB subpoenas covering much longer periods of time. See e.g., *NLRB v. Line*, 50 F.3d 311, 315 (5th Cir. 1995) (Fifth Circuit affirms judgement of district court enforcing NLRB subpoena seeking documents spanning a time period of five years); *NLRB v. Vista Del Sol Health Servs., Inc.*, 40 F. Supp. 3d 1238, 1262–1263 (C.D. Cal. 2014) (court enforces subpoena seeking company’s time records as well as policies regarding employees sleeping at work going back two years); *Wilmington Fabricators, Inc.*, 332 NLRB 57, 58 fn. 6 (2000) (events outside the Section 10(b) period may be treated as background evidence to establish animus); *Genpak LLC*, 372 NLRB No. 76, 2023.

Finally, in its general objections, without identifying any specific examples, Starbucks asserts that the subpoenas seek information that is not relevant to any party’s claim or defense. However, a review of the subpoenas shows that the information requested “touches upon the matter under investigation, including potential defenses.” *Dutch Boy, Inc.*, 606 F.2d at 932. The subpoenas requests are relevant.

C. Analysis of Respondent’s general objections in response to Subpoena B

1. Objection that Subpoena B was untimely served

Respondent contends that Subpoena B should be revoked because it was served only eight days prior to the scheduled start of the hearing. Respondent relies upon the guidance in the NLRB Case Handling Manual (Part 1), Section 10340 which states that subpoenas “should, where circumstances allow, normally be served at least 2 weeks prior to trial” to allow for production and time for petitions to revoke and rulings thereon. While the Case Handling manual provides guidance, it is not part of the NLRB’s Rules and Regulations and is not Board precedent that must be followed. Appropriate cures for late served subpoenas are to revoke them in whole or part or to allow for additional time for production. Regardless, due to the postponement of the resumption of the hearing, Respondent has been given the opportunity to move to revoke the subpoenas and will have adequate time to produce the requested documents consistent with this order.

2. Objection to production in “native” format

Respondent objects to having to produce documents in native format and contends that its production in of documents in TIFF+⁵ format is a widely accepted practice and “is ‘reasonably usable’ form of production under Fed.R.Civ.P. 34(b)(2)(E)(ii).” Citing, *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1, Principle 12, Cmt. 12.b., p. 173 (2018). Respondent cites various federal courts’ rulings finding production via TIFF or TIFF+ appropriate. TIFF+ format consists of page level image files and document level extracted text files for each document, accompanied by a load file containing selected metadata. Thus, to search TIFF+ production and view the metadata attached to the electronic document it is necessary to re-merge these files through a program called Relativity. General Counsel raised in pre-hearing conference calls and again at hearing that the agency contracted with an outside vendor to accomplish this re-merger of the files, but the vendor indicated that it would take 2 or more days to accomplish that task and make the documents available for General Counsel’s use.

Respondent contends that it has produced documents in other NLRB hearings with no issues. General Counsel disputes this claim and notes cases in which the production has resulted in delays in the hearing and litigation over production issues. (See cases cited by the parties.) I find that some hearings have moved forward without any significant delays while other have been delayed over similar productions concerns at issue here.

While TIFF+ production is a “reasonably usable” format when time to access and review the documents exists in pre-trial discovery as the Federal Rules of Civil Procedure are meant to address, it may not be a reasonable format for hearings in which no pretrial discovery exists where all parties are not able to immediately access the information. Some delay in production or access to the production of documents can be remedied by allowing the recalling of witnesses, if necessary, when a document is produced. When, as here, full access to all the subpoenaed documents and their accompanying data is not immediately available, and the documents are produced in unsearchable files and are not categorized by subpoena requests as required by FRCP 34(b)(2)(E)(i), it has the potential to greatly affect the course of the hearing. Therefore, it

⁵ “TIFF+ format consists of page level images and document level extracted text files for each document, accompanied by a load file containing selected metadata.”

may be necessary to delay moving forward with a hearing when documents are produced TIFF+ format shortly before the opening of the hearing and are not immediately accessible to the receiving party.

Due to the recess of the hearing, the issue of accessing the documents already produce is moot. With regards to further production of documents in TIFF+ format consistent with this order, I order that they be produced at least four business days prior to the resumption date of the hearing to prevent further delays. See *Quickway Transportation*, 09-CA-251857, unpub. Board order (2021 NLRB LEXIS 432, 2021 WL 4893957), at 2. (Board finding no abuse of discretion where the administrative law judge issued an order to open the record solely to deal with subpoena issues and ordered the respondent to produce documents before the resumption of the hearing or the scheduled start of any testimony.)

D. Analysis of Specific objections to Subpoenas A and B

1. Objections common to multiple Subpoena A and B paragraphs

In its petition to revoke Respondent objects that Requests Nos. 5, 10, 12, 13, 14, 15, 18, 20, and 21 seek documents protected from disclosure under the attorney-client privilege and/or attorney work product doctrine. The subpoenas, on its face, do not seek documents protected by the attorney-client privilege or work product doctrine. However, to the extent Respondent believes, in good faith, that the subpoenas encompass documents protected from disclosure, it is incumbent upon Respondent to prepare a privilege log with sufficient detail to permit an assessment of such claims, as discussed more fully above. *Island Architectural Woodwork, Inc.*, 2014 WL 3867966 *1, fn.3 (2014) (unpublished order); *NPC Int'l, Inc.*, 2017 WL 634713, at *7. Starbucks should also be prepared to produce such document(s) for an in-camera inspection at the hearing if necessary. *CNN America, Inc.*, 352 NLRB at 449; *Patrick Cudahy, Inc.*, 288 NLRB at 969; *Zolin*, 491 US at 568-69.

Furthermore, Respondent objects to many of the paragraphs of the subpoenas asserting that it “is overbroad, not narrowly tailored, and seeks irrelevant information not reasonably calculated to uncover admissible evidence.” I note that General Counsel limits the requested information to the time frame for which I found reasonable and in some requests to a shorter time period. In most paragraphs, General Counsel also limits the “documents” requested to Respondent’s store location where the alleged violations purportedly occurred. Accordingly, unless otherwise noted below, I find that the requests on their face seek information that “relates to or touches upon” the allegations of the Consolidated Complaints, and therefore, must be produced.

2. Respondent’s individual objections to Subpoena A

a. Request No. 1:

For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes

thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).

Respondent contends that the request is “temporally overbroad” and that it is “inclusive of documents not related to any matter ‘in question in the proceedings.’” Citing, Rule 102.31(b). See also, McDonald’s USA, LLC, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be “reasonably relevant”). General Counsel contends that the time frame and breath of the request is necessary to fully evaluate the application of Respondent’s policies used to discipline and discharge the discriminatee and comparative discipline of employees before and after the union organizing drive started.

I find that this request is proper to the extent it relates to the documents requested, so long as the policies, rules, etc. in question were applicable to employees working at the Vernon Store, or were otherwise discussed, relied upon, or invoked during the incidents alleged in the Consolidated Complaint or in the issuance of the counseling, discipline, or discharge of any comparative employee. See *Tiberi v. CIGNA Ins. Co.*, 40 F.3d 110, 112 (5th Cir. 1994) (trial court has the discretion of either modifying an overbroad subpoena or quashing it in the entirety); *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 965 (D. Nev. 1994) (a trial court may, on its own initiative, modify a subpoena).

b. Request No. 2:

For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted on Respondent’s Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality
- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Respondent objects to Request No. 2 as being “temporally overbroad” and that it seeks information that is “not relevant.” General Counsel contends that the relevancy is apparent from

the allegations of the consolidated complaint and that certain information, such as information about the “union pin,” is relevant to establishing animus towards unionization. I find the listed topics relevant to the allegations. While, as discussed above, I find the stated time frame for information requested in 2(a)-2(h) concerning rules, policies, comparative discipline, etc. to be appropriate. The time period for the information requested in 2(i) through 2(n) appears to be too broad. Absent some showing from General Counsel that the union organizing drive started prior to January 1, 2022, I find that the appropriate period for production of information responsive to requests 2(i) through 2(n) is from January 1, 2022 through August 26, 2022.

c. Request No. 3:

Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent’s agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality
- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Respondent objects to this request at being “duplicative of Request No. 2 and renews its objection to the relevancy of the requested information. I find, as General Counsel asserts, that this request differs from Request No. 2 in that it seeks notes or memoranda about the information sought in Request No. 2. To the extent that Respondent’s search for information responsive to different requests, it need only produce the information once. Absent some showing from General Counsel that the union organizing drive started prior to January 1, 2022, I find that the appropriate period for production of information responsive to requests 2(i) through 2(n) is from January 1, 2022, through August 26, 2022.

d. Request No. 4:

Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.

Respondent contends that this request is “temporally overbroad and unduly burdensome” and seeks information “not relevant” to any claim or defenses in dispute. Respondent also contends that the phrase “other managers of Respondent” is too vague. General Counsel contends that the requests seek information to show animus towards unionization through increased numbers of managers/management officials being present at the Vernon Store during the union campaign as compared to before and after the campaign and that the term “other managers of Respondent” is understandable from context.

Because Respondent gives no explanation as to why the search for this information is unduly burdensome, I find, as discussed above, this general claim is insufficient upon which to revoke the request, especially when the store manager(s) at the Vernon Store could likely provide the list of Respondent’s managerial officials that were present at the store from which documents should be requested or searched. I find that the information sought is relevant, but the time frame is overbroad. Absent some showing by General Counsel that the union organizing drive commenced at the Vernon Store prior to January 1, 2022, I find the appropriate time frame for production to be from October 1, 2021, to October 30, 2022.⁶

e. Request No. 5:

Those documents from Respondent’s corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.

Respondent objects to the temporal scope because it extends well before Respondent was aware of the organizing drive. Respondent also contends that the terms “any other contractor or source” and “other supervisors or managers” are “vague and ambiguous.” General Counsel argues that Respondent’s training about how to respond to organizing drives is relevant even if it occurred before the drive started at the Vernon Store.

I find that training concerning union organizing that occurred within a year of the first alleged unfair labor practice during the Union’s organizing drive is relevant in this matter. I do not find General Counsel’s language, “any other supervisors or managers, and/or employees of Respondent,” to be vague or ambiguous, because it seeks information provided to managers, regardless of their descriptive titles, and employees “at the Vernon Store.” Respondent should be able to determine which managers and employees worked at the Vernon Store in the given period.

I agree with Respondent that the language “any other contractor or source” is vague and possibly overbroad. Therefore, I find that this request is proper to the extent it seeks documents provided by Respondent’s corporate management or any other contractor or source at the direction of or under contract with Respondent.

⁶ A period of approximately three months before the union organizing drive and three months after certification should be an adequate to evaluate whether a change in managerial presence occurred.

- f. Request No. 7:
The Petition Store Playbook.

Respondent contends that the request is vague and that no such document exists. I note that Respondent did not produce the custodian(s) of the records for General Counsel to question about the search conducted for this and other records. The Board has held that if a party asserts that there is “no evidence responsive to any portion of the subpoena exists, the custodian of records must provide sworn testimony to that effect, including a description of the [party’s] efforts to identify and locate such evidence.” *Ironworkers Local 433*, 21-CB-129959, unpub. Board order fn. 2, issued Feb. 4, 2015.

I find that the request for a particular document is not vague and that Respondent should produce the document requested or have the custodian(s) of record available to testify concerning Respondent’s search for such documents.

- g. Request No. 9:
Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent’s decision to issue a written warning Nogosek in August of 2022.

Request No. 11:

Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent’s decision to Nogosek on August 26, 2022.

Respondent objected to the language “any other supervisors or managers” as being vague. As discussed above, a full reading of the request shows that it seeks documents from listed individuals, specific manager titles, and “any other supervisors or managers” . . . of Respondent at the Vernon Store.” As discussed above, I find that this language is not vague when read in its entirety.

Respondent also asserts that it does not have control over some of the requested documents because its managers use their personal cell phones to communicate with employees. Respondent is required to conduct “a reasonable and diligent search” for all such requested evidence, and to “affirmatively” advise the subpoenaing party if no responsive evidence exists. *Consolidated Waste Services Corp.*, 12–CA–192990, unpub. Board order issued May 24, 2018 (2018 NLRB LEXIS 759, 2018 WL 2387581), at 1 n. 2; *Winthrop Management*, 29–CA–188433, unpub. Board order issued February 8, 2018 (2018 NLRB LEXIS 80, 2018 WL 834316), at 1 n. 2; and *KMAC, Inc.*, 18–CA–185912, unpub. Board order issued Dec. 22, 2017

(2017 NLRB LEXIS 651, 2017 WL 6555202), at 1 n. 2. When, as here, communications were made by an employer's supervisors or managers using their own personal equipment or accounts that are not within the employer's control, the employer is required to request the information from the supervisors and managers. If the information does not exist, or the supervisors or managers decline to provide the information, the employer must affirmatively represent this. *Id.*

Accordingly, I find that Respondent must take the proper steps to secure the requested information from their supervisors and/or managers as set forth in *Consolidated Waste Services Corp.*

h. Request No. 13:

For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Request No. 14:

For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

As discussed above, I find the time frames set for in the requests are not overly broad, as courts have enforced NLRB subpoenas covering similar or longer periods of time. See e.g., *NLRB v. Line*, 50 F.3d 311, 315 (5th Cir. 1995) (Fifth Circuit affirms judgement of district court enforcing NLRB subpoena seeking documents spanning a time period of five years); *NLRB v. Vista Del Sol Health Servs., Inc.*, 40 F. Supp. 3d 1238, 1262–1263 (C.D. Cal. 2014) (court enforces subpoena seeking company’s time records as well as policies regarding employees sleeping at work going back two years). Here the requests are limited to a single coffee shop, the Vernon Store. I do not find that the time period for seeking comparative discipline unreasonable given the likely number of employees employed at any one time.

i. Request No. 15:

This request was withdrawn by General Counsel.

3. Respondent’s individual objections to Subpoena B

a. Request No. 16:

For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.

Respondent contends that the request is temporally overbroad and seeks information that is not relevant. General Counsel asserts that information showing that the safe was known to malfunction and its maintenance history are relevant to the stated reason for discharging the discriminatee. I find that the information requested is reasonably relevant to an issue in question and that the time frame is not overbroad. See, *McDonald’s USA, LLC*, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be “reasonably relevant”).

b. Request No. 17:

For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.

Respondent contends that the request is temporally overbroad and seeks irrelevant information. Respondent also claims that the request is intrusive on the rights of other employees and Respondent’s business without any explanation or support for this conclusion. Therefore, I do not find that objection to have merit based upon the information provided. General Counsel contends that the request relates to written communications between the Store Manager and human resources about whether the discriminatee should be disciplined for taking a picture with the iPad, and therefore, that picture and whether other employees took pictures with the iPad is relevant for the reasons for the discriminatee’s discharge.

Based upon the assertions of General Counsel, I find that the requested documents reasonably relevant to the discharge allegation in the Consolidated Complaint. Furthermore, as discussed above, I find that the time frame starting 12 months before a discharge when considering the application of policies and comparison evidence is not overbroad.

c. Request No. 18:

For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:

- a. Name of employee and last known address and phone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.

Respondent contends that this request is vague and ambiguous insofar as it uses the phrase “electronic communication systems” and is temporally overbroad and unduly burdensome. General Counsel contends that this information is relevant to reasons considered by Respondent for discharging the discriminatee, including using the iPad to take a picture, and therefore, comparative evidence is relevant.

I agree that the phrase “electronic communication systems” is vague and likely overbroad as used in this request. As discussed above, I do not find the time period for considering comparative discipline overbroad. Accordingly, I limit the response documents to those documents showing any disciplines resulting from misuse of the iPad at the Vernon Store for the stated time period.

d. Request No. 19:

Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.

Respondent contends that this request is unduly burdensome, irrelevant, overbroad, and “infringes upon the rights of customers, partners and other third-parties who are not involved in this matter.” Respondent also “objects to the extent that this request seeks sensitive, proprietary and confidential business information.” Respondent provides no basis for any of these objections.

General Counsel contends that this evidence is needed to refute a likely defense of Respondent, involving a claim that the Vernon Store was closed temporarily due to activity that partially blocked the entrance to the store.

It is unclear what private or confidential information of employees, customers, or the Respondent would be shown on surveillance videos that show ingress and egress from the café or the drive thru. Furthermore, Respondent did not explain why it would be burdensome to produce four hours of surveillance videos from a particular date. I find the request appropriate. To the extent that Respondent raises any specific instances where private or confidential

information (i.e. names, account numbers, recipes or processes that would not regularly be visible to the public) is visible on a video(s), I may reconsider or consider whether portions of the video should be redacted, if possible.

e. Request No. 20:

Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.

Respondent contends that the term “internal documents” is too vague. General Counsel notes that Respondent did not object to the use of the same term in Request No. 3 to which it provided documents. The term “documents” is defined in the subpoena. To the extent that the term “internal” limits the requested documents to those maintain in Respondents internal document retention files or electronic systems, I find the request appropriate.

f. Request No. 21:

Those documents showing any and all communications between and/or among Respondent’s agents and/or representatives concerning the removal of union related notes on the community board on July 7, 2022.

Respondent objects to the phrase “agents and /or representatives” as vague to which General Counsel disagrees. I agree that the term “representatives” is vague in this context because it is unclear if it is meant to refer legal counsel or some other form of representative. The term “agents” is not ambiguous because there is a legal standard that establishes whether an individual is an agent of Respondent. To the extent that the request seeks documents showing communications between and/or among Respondent’s agents, I find the request is not vague and responsive documents must be produced.

B. SUBPOENA AD TESTIFICANDUM A-1-1IIISKD

1. Background

Upon learning from Respondent that Store Manager Colburn, who delivered the discharge notice to the discriminatee, would not be in attendance at the hearing, on April 6, 2023, General Counsel emailed a courtesy copy of the subpoena ad testificandum A-1-1IIISKD (Subpoena AT) to Respondent counsel and sent the subpoena by certified mail addressed to Colburn at the Vernon Store address. Respondent admitted to Colburn’s Section 2(11) supervisory status in its answer to the Consolidated Complaint. Colburn regularly works as the store manager for another one of Respondent’s stores in the area and occasionally works at the Vernon Store. At the time the hearing opened on April 11, 2023, Colburn was still employed as a store manager of Respondent in relatively close vicinity to the hearing, but she had just returned to work on April 11 from a medical leave which started on March 14, 2023. Respondent counsel was aware that the Subpoena AT was delivered to the Vernon Store sometime prior to the opening of the hearing on April 11. General Counsel first learned that Colburn had been on a medical leave at the hearing. After receiving the courtesy copy Respondent did not notify General Counsel or raise in a prehearing conference call on April 10 that Colburn may need an accommodation due to a medical condition.

Respondent contends that the subpoena was improperly served and is otherwise defective on its face, that it seeks irrelevant evidence, and is unduly burdensome to Colburn who had just returned from medical leave. Furthermore, Respondent counsel stated on the record that regardless of whether Colburn was properly served, Respondent did not intend to produce her to testify.

General Counsel contends that they first learned that Respondent did not intend to have Colburn present for the hearing on April 6. Based on that information General Counsel sent Respondent a courtesy copy of the Subpoena AT and mailed Subpoena AT to the Vernon Store, which was delivered on the afternoon of April 10. General Counsel contends that Subpoena AT was properly served and that Colburn's testimony is relevant to the discharge allegation because Colburn informed the discriminatee of the discharge.

2. Service of Subpoena AT

Respondent contends that Subpoena AT was not properly served because it was not delivered at the principal office or place of business of Colburn. Respondent relies upon Section 11(4) which states: "Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served." Respondent also notes that NLRB Rules and Regulations Sec. 102.4 states that "subpoenas must be served upon the recipient personally, by registered or certified mail, by leaving a copy at the principal office or place of business of the person required to be served, by private delivery service, or by any other method of service authorized by law." Based upon this language, Respondent counsel contends that proper service on Colburn could only occur at the store that is her principal place of work.

In affirming the Board's conclusion that service of process at the business location giving rise to the labor dispute satisfied the requirements of Section 11(4) of the Act, the Court of Appeals for the Fifth Circuit said in *NLRB v. Clark*, 468 F.2d 459, 463 (1972),... "the statute does not imply, as the respondents suggest, that if process is to be served upon an employer engaged in several enterprises, the server must determine the employer's most important or "principal" site of financial endeavor. Such a determination would be exceedingly precarious and far more technical than fair notice requires. Rather, service is appropriate at the principal place of business of that particular business giving rise to the labor dispute." See also, *Seligman & Assocs., Inc. & Younce*, 240 N.L.R.B. 110, 114 (1979).

While the type of service and facts here are not identical to those addressed by the Fifth Circuit in upholding the Board's ruling on the service of the charges, they are analogous. Here, Colburn is a Section 2(11) supervisor of Respondent. Respondent's counsel was given notice on April 6 that General Counsel was seeking to serve Subpoena AT on Colburn. General Counsel sent the subpoena by certified mail to Respondent's business location giving rise to the labor dispute. Colburn was known to occasionally work at that location as well as at least one another location. The subpoena was received, and Respondent's counsel was notified that it had been

received. Finally, Respondent counsel stated that Respondent did not intend on making the witness available regardless of the adequacy of the service.

I find it unnecessary for General Counsel to determine which of Respondent's numerous stores is Colburn's principal place of work and that proper service was accomplished by delivering the Subpoena AT by certified mail to the Vernon Store where the labor dispute involved in these matters arose.

3. Relevancy

Respondent asserts that testimony of Colburn is not relevant to the dispute because Colburn was simply asked to deliver the discharge notice but was not involved in the decision to discharge the discriminatee. General Counsel contends that she is relevant because she delivered the discharge and because she has worked periodically at the Vernon Store for several years, making her knowledgeable about Respondent's policies and practices, which testimony is relevant especially due to Respondent's refusal to provide a custodian of records.

I find that Colburn's testimony as to her role in the discharge and her knowledge of Respondent's policies are relevant to the issues in dispute.

4. Timeliness and Undue Burden arguments

Due to the postponement of the hearing Respondent's argument that the service of Subpoena AT did not provide for adequate time for Respondent to file a motion to quash and caused an undue burden on Colburn who was just returning from medical leave are moot.

I further note that Respondent was allowed to make arguments on the record about the adequacy of service, relevancy, and the undue burden. Respondent did not request time to make Colburn available due to the late notice or her medical condition but stated that Respondent would not make her available even if service had been perfected in Respondent's view. Because of the intervening time before the hearing will resume, I do not find that Subpoena AT untimely or unduly burdensome upon the witness.

5. Is Subpoena AT deficient on its face

6.


Respondent cites the decent in *Tct Stainless Steel, Inc. & Its Alter Ego Tempered & Specialty Metal & Loc. 283, Int'l Bhd. Of Teamsters*, No. 07-CA-179856, 2016 WL 7430472, at *1 (Dec. 21, 2016) to support its contention that Subpoena AT was deficient or defective on its face. To the contrary, the Board majority in *Tct Stainless Steel* denied the petition to revoke because there, as here, they found that identifying the case name and number on the subpoena is adequate. Because Subpoena DT identified the case name and number, I do not find that Subpoena AT was deficient or defective on its face.

Accordingly, it is HEREBY ORDERED that Respondent produce documents responsive to Subpoena Duces Tecum No. B-1-1ID2IE5 and Subpoena Duces Tecum No. B-1-1IGNN1T, as

modified herein, no later than four business days before the reopening of the hearing in this matter.

It is FURTHER ORDERED that Respondent make Store Manager Colburn available pursuant to Subpoena Ad Testificandum No. A-1-111SKD at the reopening of the hearing in this matter.

Dated: Washington DC
May 5, 2023

A handwritten signature in black ink that reads "Kimberly Sorg-Graves". The signature is written in a cursive, flowing style.

Kimberly Sorg-Graves
Administrative Law Judge

EXHIBIT 3



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 34
450 MAIN ST STE 410
HARTFORD, CT 06103-3078

Agency Website: www.nlr.gov
Telephone: (959)200-7365
Fax: (860)240-3564

March 20, 2023

Jacqueline Phipps Polito Esq.
Littler Mendelson, P.C.
375 Woodcliff Drive 2nd Floor
Fairport, NY 14450
Phone: (585) 203-3413
Mobile: (585) 208-9162
Fax: (585) 486-1774
Email: jpolito@littler.com

Re: Starbucks Corp., 01-CA-302321 (Vernon Store)

Dear Attorney Phipps Polito:

I am enclosing a courtesy copy of a Subpoena Duces Tecum that is being served on your client's Custodian of Records in connection with the above-captioned matter, which is scheduled for Tuesday, April 11, 2023. To help streamline the production process, I suggest that we discuss the subpoena before the hearing.

Please produce the documents electronically in native format to preserve all metadata. If this requires electronic production through Relativity, please let me know. Because it sometimes takes a few days for us to be able to access the documents through Relativity, producing the documents a few days earlier would allow us to access them by the Tuesday of the hearing. Please also provide Attorneys Andyeliz Papaleo, Andyeliz.Papaleo@nlrb.gov, and Tammy Farmer, Tammy.Farmer@nlrb.gov with access to the responsive documents.

When you produce the subpoenaed items, please be prepared to provide the following information regarding the production of electronically stored information, or ESI:

- **How was the search conducted?** Who conducted the searches? Did the managers and employees search their own files in response to the subpoena, or did counsel (or IT) use specific search criteria and review the results? What search software was used to locate ESI responsive to the subpoena? If keywords, and/or search terms, were used, what were they?
- **What sources of ESI were searched?** I will expect a search of all individuals ("custodians") who are most likely to possess ESI responsive to the subpoena and the identity and role of the custodians of relevant ESI. For all custodians of relevant ESI, I will expect a search of all ESI storage systems including, but not limited to, email

systems, cloud storage, server storage, computers, mobile devices, smart phones, and tablets. For each custodian's mobile device, computer, or other ESI storage system, what folders, archives and document and/or data management systems were searched? Did the search include text messages and other electronic communications hosted on third-party service providers, including both company and personal accounts, used by custodians for work-related communications?

- **What email was searched?** For each custodian's mailbox, what folders, archives and document management systems were searched? Did the search include both email stored on the company server for its email system, and email stored in personal folders and archives on individual computers? Did the search include email hosted on third-party service providers such as Google or Yahoo, including both company and personal accounts used by custodians for work-related communications?

If you have any questions regarding the subpoena or any other aspects of the case, please do not hesitate to contact me via email at charlotte.davis@nrlrb.gov or via telephone at 202-674-2176. Thank you.

Best regards,

/s/ Charlotte S. Davis
Charlotte S. Davis
Field Attorney
NLRB Subregion 34

Enclosure

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, Starbucks Corporation135 Talcottville Road, Vernon, Connecticut 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1D2IE5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CTDated: March 20, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

1. For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).
2. For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted on Respondent’s Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:
 - a. Documented Coaching or Written Warning
 - b. Final Written Warning or Separation
 - c. Attendance and Punctuality
 - d. Safety and Security Policy
 - e. Safe Security Standards
 - f. Employees access to management
 - g. Tuition Benefits
 - h. Pay Increases
 - i. Workers United
 - j. The Union
 - k. Representation petition
 - l. Organizing
 - m. Union pin
 - n. Aly Nogosek
3. Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent’s agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:
 - a. Documented Coaching or Written Warning
 - b. Final Written Warning or Separation
 - c. Attendance and Punctuality
 - d. Safety and Security Policy
 - e. Safe Security Standards
 - f. Employees access to management

- g. Tuition Benefits
 - h. Pay Increases
 - i. Workers United
 - j. The Union
 - k. Representation petition
 - l. Organizing
 - m. Union pin
 - n. Aly Nogosek
4. Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.
 5. Those documents from Respondent's corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.
 6. For the period between May 1, 2021 and the present, those documents showing internal communication between or among Sam Cullari, Erin Twible, and any other supervisor and/or agent about the initiatives of upholding attendance standards and/or the attendance culture initiative.
 7. The Petition Store Playbook.
 8. The full and complete personnel file and employment records, including but not limited to annual performance evaluations, promotions, and disciplinary records, and excluding any medical-related information, of Aly Nogosek.
 9. Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent's decision to issue a written warning to Aly Nogosek in August of 2022.
 10. Those documents that formed the basis of the Respondent's decision to issue a written warning to Aly Nogosek on about August of 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

11. Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent's decision to discharge Aly Nogosek on August 26, 2022.
12. Those documents that formed the basis of the Respondent's decision to discharge Aly Nogosek on August 26, 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.
13. For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:
 - a. Name of employee and last known address and telephone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.
14. For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:
 - a. Name of employee and last known address and telephone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

15. For the period between May 12, 2022 and the present, all documents, including but not limited to bargaining notes, agendas, minutes, and recordings, showing communication between Respondent's agents and/or representatives and the Union's agents and/or representatives concerning or pertaining to the decision to discharge Aly Nogosek.

EXHIBIT 4

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, Starbucks Corporation135 Talcottville Road, Vernon, CT 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
of the National Labor Relations Board

at A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321 and 01-CA-307585

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1IGZVA5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CTDated: April 03, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

16. For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.
17. For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.
18. For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:
 - a. Name of employee and last known address and phone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.
19. Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.
20. Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.
21. Those documents showing any and all communications between and/or among Respondent's agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

EXHIBIT 5

SUBPOENA**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Renee A. Colburn, Starbucks Corporation135 Talcottville Road, Vernon, CT 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410\ Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

or rescheduled date to testify in Starbucks Corporation
01-CA-302321 and 01-CA-307585
 (Case Name and Number)

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

A-1-111SKD

Under the seal of the National Labor Relations Board, and by direction of the
 Board, this Subpoena is

Issued at Hartford, CTDated: April 06, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

EXHIBIT 6

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

Case No. 01-CA-302321

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA DUCES TECUM NO. B-1-1ID2IE5**

By letter dated March 20, 2023, Charlotte Davis and Andyeliz Papaleo, Counsels for General Counsel for the National Labor Relations Board (“Board”) served on Starbucks Corporation (“Starbucks”) Subpoena Duces Tecum B-1-1ID2IE5, a copy of which is attached as **Exhibit A** (“Subpoena”). Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Starbucks respectfully petitions for an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbuck’s store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022 and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing is scheduled to begin on April 11, 2023.

On March 20, 2023, Starbucks counsel received an email containing a courtesy copy of the Subpoena Duces Tecum No. B-1-1ID2IE5 with requests for documents related to the alleged unfair labor practices at the Vernon Store. Starbucks now files the Petition to Revoke Subpoena Duces Tecum No. B-1-1ID2IE5 set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

A petition to revoke, if made prior to the hearing, must be filed with the Regional Director and the Regional Director will refer the petition to the Administrative Law Judge or the Board for ruling.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

It is well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *See NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3d Cir. 1979); ULP Case Handling Manual (“CHM”) § 11792.1 (noting that the requested information must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party requesting the documents has the affirmative burden of establishing their relevancy. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *duces tecum* must be granted if the subpoena is invalid for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b). This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

Any request that is vague and ambiguous, overbroad, or irrelevant should be revoked. Subpoenas must be carefully drafted; the Board does not allow a “fishing expedition.” *See, e.g., Spartan Dep’t Stores*, 140 NLRB 608 n.2 (1963) (Board upheld hearing officer’s decision not to enforce subpoena, finding “[m]oreover, in view of Intervenor’s failure to offer evidence or otherwise indicate that the testimony sought would tend to refute that already in the record, it is apparent that the subpoena in question was in furtherance of a ‘fishing expedition’ and intended to unduly delay the proceeding.”); *Hispanics United of Buffalo, Inc.*, 359 NLRB 368 n.2 (2012) (“[A]s to the information subpoenaed from the discriminatees, the Respondent failed to show that it was relevant to any issue in dispute. Accordingly, the subpoena was properly revoked as an unwarranted ‘fishing expedition.’”); *see also* CHM § 11796.

Further, “a subpoena *duces tecum* . . . should be drafted as narrowly and specifically as is practicable.” CHM § 11776. It “should describe all documents sought with respect to content and time period,” and “describe with sufficient particularity the evidence whose production is required,” evidence that must be relevant to an issue in the case, and tailored to the individuals, time period, and action at issue. Rules and Regulations § 102.31(b); *see also* CHM §§ 11776, 11782, 11796; *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *NLRB v. Carolina Food*

Processing, 81 F.3d 507 (4th Cir. 1996); *NLRB v. Trades Council*, 131 LRRM 3132, 3133-34 (3d Cir. 1989); *Brinks, Inc.*, 281 NLRB 468, 468-69 (1986). “[T]he use of the word ‘all’ in the description of records should be avoided wherever possible.” *Id.*

In summary, consistent with Rule 26(c), a subpoena must be revoked if it:

- Seeks information that is not reasonably relevant to the proceeding (see above);
- Is overbroad on its face or otherwise seeks protected information (NLRB Bench Book (“NBB”) § 8-320 (citing *Brinks, Inc.*, 281 NLRB at 469 (granting petitions to revoke the challenged portions of the employer’s subpoenas in their entirety where most of the challenged portions “generally were drafted without regard for the usual standards applicable to subpoenas or discovery” set forth in the Board’s Rules and Fed. R. Civ. P. 26 and 45)));
- Seeks confidential or proprietary information. *See, e.g., NLRB (ex rel. Int’l. Union of Elec., Radio and Mach. Workers) v. Dutch Boy, Inc.*, 98 LRRM (BNA) 2396, 2398-99 (W.D. Okla. 1978), *aff’d*, 606 F.2d 929 (10th Cir. 1979) (acknowledging that a showing that documents should be withheld on the basis of confidentiality or likely harm to business interests provides a legitimate basis to deny enforcement of a subpoena); or
- Constitutes an impermissible fishing expedition (NBB § 8-320) (citing *CNN Am., Inc.*, 353 NLRB 891 (2009), final decision and order issued 361 NLRB No. 47 (2014)), *see also* CHM § 11796; *United Ass’n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

To enforce a subpoena *duces tecum*, an administrative agency must establish that: (1) the inquiry is within its authority; (2) the demand for production is not too indefinite; and (3) the information sought is reasonably relevant to the agency’s authorized inquiry. *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). The standard also has been stated as follows: the agency must demonstrate that the demand is for a legitimate purpose, relevant to that purpose, and not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (D. Mass. 2007) (applying standard to NLRB subpoena). For a subpoena

request to be relevant, it must reasonably relate to or “touch” a matter under investigation or in question. *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1965). Section 102.31(b) of the NLRB’s Rules and Regulations provides an Administrative Law Judge or the Board, as the case may be, “will revoke the subpoena if, in their opinion, the evidence whose production is required does not relate to any matter . . . in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.” 29 C.F.R. § 102.31(b).

As described more fully below, the Subpoena at issue is exceedingly overbroad and legally invalid in several respects. Accordingly, for all the reasons set forth below, the Subpoena must be revoked or modified.

To the extent Starbucks has not responded to any specific request enumerated below, or part thereof, such may not be taken as an admission Starbucks accepts or admits the existence of any fact(s) set forth or assumed by the Subpoena, that any such response or objection enumerated below constitutes admissible evidence, or that the documents requested are properly required to be produced. Nothing contained herein shall be construed as an admission of the relevance of or the existence or nonexistence of any document. No actual or implied admissions whatsoever are intended by this Petition.

GENERAL OBJECTIONS

A. OBJECT AS OVERBROAD

Starbucks objects to requests which are not sufficiently restricted to a specific subject or purpose. Starbucks further objects to the Subpoena’s inclusion of information dating back to May 2020, which was *nearly two years* before Starbucks first learned of any organizing activity in the Vernon store. Such a time period is obviously overbroad.

B. OBJECT AS VAGUE

Starbucks objects to requests which do not describe in sufficient particularity the documents sought as required by Rules and Regulations §§102.66(c), 102.31(b).

C. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to requests for data or information and/or requests not relevant to any party's claim or defense or proportional to the needs of the case and, therefore, not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink's Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not "relevant to the subject matter involved in the pending action."); *see also* ULP Casehandling Manuel 11792.1 and 11794 (explaining that the information sought must "relate[] to . . . a matter under investigation").

D. OBJECT AS IRRELEVANT BASED ON TIME PERIOD SOUGHT

Starbucks objects to requests for data or information outside the relevant time period applicable to this action. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB.

E. OBJECT AS AN INTRUSION ON PRIVACY RIGHTS

Starbucks objects to requests for personal and confidential information, the disclosure of which would result in an intrusion on the privacy rights of its Section 2(3) employees, which Starbucks refers to as its hourly partners ("partners"). Starbucks further objects to requests seeking confidential business information, proprietary business information, and/or trade secrets, which

are not relevant to any party's claim or defense, disproportionate to the needs of the case, and the disclosure of which will cause avoidable reputational harm to the Company. *See Penn. Power & Light Company*, 301 N.L.R.B. 1104, 1105 (N.L.R.B. 1991) (in the context of a request for information, the Board has held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not.")

F. OBJECT AS UNDULY BURDENSOME

Starbucks objects to requests with respect to which compliance is unduly burdensome. More specifically, Starbucks objects to requests that require Starbucks to conduct unreasonably burdensome and costly searches for information, including for electronically stored information, without any identification of, or agreement on, any search terms to be used. Search terms are an important tool parties use to identify potentially responsive documents in cases involving electronically stored information.

G. OBJECT AS SEEKING CONFIDENTIAL, PRIVILEGED INFORMATION

Starbucks generally objects to producing any documents that are protected from disclosure by the attorney-client privilege, work product doctrine, Federal Rule of Evidence 408, and/or similar privileges. *See, e.g., Brinks Inc.*, 281 NLRB at 469-470 (1986); *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988); *Kaiser Aluminum & Chem. Corp.*, 339 NLRB 829, 829 (2003). "The Board recognizes the fundamental principle that communications made in confidence between an attorney and his or her client for the purpose of seeking and obtaining legal advice are privileged." *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), enforced, 447 F.3d 821 (D.C. Cir. 2006). The Board also recognizes that the privilege protects both communications from the attorney to the client and communications from the client to the attorney. *Patrick Cudahy*, 288 NLRB at 971 (quoting *Upjohn Corp. v. U.S.*, 449 U.S. 383, 390 (1981)) ("[T]he privilege exists to protect not

only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice”). Additionally, the work-product doctrine protects documents and tangible things prepared in anticipation of litigation by or for a party representative, regardless of whether the representative is an attorney. The doctrine was first recognized in *Hickman v. Taylor*, 329 U.S. 495, 511 (1947), and is now codified in Fed. R. Civ. P. 26(b)(3).

H. OBJECT AS TO THE DEFINITIONS

Starbucks objects to the definition of “document” set forth in the subpoena because it would improperly expand the scope of discovery and could result in disproportional discovery. In responding, Starbucks will be guided by the following provision of Rule 26(b)(1) regarding the scope of permissible discovery:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b)(1).

I. OBJECT TO THE EXTENT THE REQUESTS DO NOT COMPORT WITH FEDERAL RULES

Starbucks objects to the Requests to the extent that they may be construed to require responses beyond those required by the Federal Rules of Civil Procedure, the applicable local rules of the District of Connecticut, or any standing order of that court. Similarly, Starbucks objects to the Board’s Requests to the extent that they seek documents or materials outside of Starbucks’ possession or control. Starbucks is only required to produce documents in its possession, custody, or control as they are maintained in the ordinary course of business. *See* Fed. R. Civ. P. 34(a)(1).

Furthermore, Starbucks objects to producing publicly available documents (including, without limitation, public securities filings) that are, due to their public availability, equally available to the requesting party.

SPECIFIC RESPONSES AND OBJECTIONS

All of the General Objections stated above are incorporated into the responses set forth below. Starbucks further responds and objects to those items listed in the Subpoena as follows:

Request No. 1: For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).

Response No. 1: In addition to being temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter “in question in the proceedings.” Rule 102.31(b). *See also, McDonald’s USA, LLC*, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be “reasonably relevant”). Notably, the only issue in question regarding an employee’s violation of Company policy is with regard to the written warning received by alleged discriminatee Aly Nogosek, and her subsequent termination. Indeed, Ms. Nogosek was disciplined for violations of Starbucks’ Attendance and Punctuality policy and was later terminated for a gross and egregious violation of Starbucks’ Safety and Security policy. As written, this request is not narrowly tailored to the issues. Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 2: For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted

on Respondent's Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality
- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Response No. 2: In addition to being temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter "in question in the proceedings." Rule 102.31(b). *See also, McDonald's USA* 363 NLRB at 15; and *Perdue Farms* 144 F.3d at 833–834. Notably, this request, as written seeks information on specific topics that are not relevant. For example, there are no allegations in the Complaint regarding "union pins." In addition, several of the topics are overly broad, e.g., "employee access to management," "tuition increases," "pay increases." Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 3: Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent's agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality

- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Response No. 3: Starbucks objects to this request as duplicative of Request No. 2. In addition, Starbucks objects to this request as inclusive of documents not related to any matter in question in the proceedings. This request, as written seeks information on specific topics that are not relevant. For example, there are no allegations in the Complaint regarding “union pins.” In addition, several of the topics are overly broad, e.g., “employee access to management,” “tuition increases,” “pay increases.” Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 4: Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.

Response No. 4: Starbucks objects to this request temporally overbroad and unduly burdensome. As written, this request seeks information not relevant to any party’s claim or defense or proportional to the needs of the case and, is therefore, not reasonably calculated to uncover admissible evidence. For example, the request, as written, would require Starbucks to produce any document relating to any time(s) that any “manager” (which is undefined) for any reason over the course of the last nearly two years. Relatedly, Starbucks objects to this request as vague and ambiguous to the extent it uses the phrase “other managers.” Without further information,

Starbucks cannot discern what this request is seeking.

Request No. 5: Those documents from Respondent's corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.

Response No. 5: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "contractor," "other source," and "other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request as temporally overbroad to the extent it seeks information dating back to May 2021 – i.e., nearly a year before Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 7: The Petition Store Playbook.

Response No. 7: Starbucks objects to this request as vague and ambiguous to the extent it uses the term "Petition Store Playbook" as no such document exists. Without further clarification, Starbucks cannot discern what this request is seeking.

Request No. 9: Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent's decision to issue a written warning to Aly Nogosek in August of 2022.

Response No. 9: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "any other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Further, Starbucks cannot produce materials for which it does not maintain custody or control, such as personal cell phones.

Request No. 10: Those documents that formed the basis of the Respondent's decision to issue a written warning to Aly Nogosek on about August of 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

Response No. 10: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 11: Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent's decision to discharge Aly Nogosek on August 26, 2022.

Response No. 11: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "any other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Further, Starbucks cannot produce records for which it does not maintain custody or control.

Request No. 12: Those documents that formed the basis of the Respondent's decision to discharge Aly Nogosek on August 26, 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

Response No. 12: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 13: For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;

- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Response No. 13: Starbucks objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to *any and all* employees disciplined for violating Starbucks' Attendance and Punctuality policy dating back to May 2020 – i.e., for the last *three years; nearly two years before* Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 14: For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Response No. 14: Starbucks objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to *any and all* employees disciplined for violating Starbucks' Safety and Security Policy or Safe Security Standards dating back to May 2020 – i.e., for the last *three years; nearly two years before* Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require

Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 15: For the period between May 12, 2022 and the present, all documents, including but not limited to bargaining notes, agendas, minutes, and recordings, showing communication between Respondent's agents and/or representatives and the Union's agents and/or representatives concerning or pertaining to the decision to discharge Aly Nogosek.

Response No. 15: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

For the reasons set forth above, Starbucks respectfully seeks an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

Dated: March 27, 2023

Respectfully submitted,

/s/ Jacqueline Phipps Polito
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Attorneys for Starbucks

CERTIFICATE OF SERVICE

I certify that on this 27th day of March, 2023, the foregoing PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-1-1ID2IE5 was filed via Efile and a copy of the foregoing was served on the following by email:

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National Labor Relations Board
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/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT 7

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

**Case Nos. 01-CA-302321
01-CA-307585**

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA DUCES TECUM NO. B-1-1IGZVA5**

On April 3, 2023, Charlotte Davis and Andyeliz Papaleo, Counsels for General Counsel for the National Labor Relations Board (“Board”) served on Starbucks Corporation (“Starbucks”) Subpoena Duces Tecum B-1-1IGZVA5, a copy of which is attached as **Exhibit A** (“Subpoena”). Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Starbucks respectfully petitions for an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbucks’ store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022 and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing is scheduled to begin on April 11, 2023.

The charge in case 01-CA-307585 was filed by the Union on November 21, 2022, and the first amended charge was filed by the Union on December 9, 2022. The second amended charge was filed on March 14, 2023 and the third amended charge was filed on March 28, 2023.

Charge 01-CA-302321 and charge 01-CA-307585 were consolidated in the instant Consolidated Complaint on March 28, 2023.

On March 20, 2023, Starbucks' counsel received an email containing a courtesy copy of the Subpoena Duces Tecum No. B-1-1IGZVA5 with requests for documents related to the alleged unfair labor practices at the Vernon Store. Starbucks now files the Petition to Revoke Subpoena Duces Tecum No. B-1-1IGZVA5 set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

A petition to revoke, if made prior to the hearing, must be filed with the Regional Director and the Regional Director will refer the petition to the Administrative Law Judge or the Board for ruling.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

It is well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *See NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3d Cir. 1979); ULP Case Handling Manual (“CHM”) § 11792.1 (noting that the requested information must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party requesting the documents has the affirmative burden of establishing their relevancy. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *duces tecum* must be granted if the subpoena is invalid for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b). This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

Any request that is vague and ambiguous, overbroad, or irrelevant should be revoked. Subpoenas must be carefully drafted; the Board does not allow a “fishing expedition.” *See, e.g., Spartan Dep’t Stores*, 140 NLRB 608 n.2 (1963) (Board upheld hearing officer’s decision not to enforce subpoena, finding “[m]oreover, in view of Intervenor’s failure to offer evidence or otherwise indicate that the testimony sought would tend to refute that already in the record, it is apparent that the subpoena in question was in furtherance of a ‘fishing expedition’ and intended to unduly delay the proceeding.”); *Hispanics United of Buffalo, Inc.*, 359 NLRB 368 n.2 (2012) (“[A]s to the information subpoenaed from the discriminatees, the Respondent failed to show that it was relevant to any issue in dispute. Accordingly, the subpoena was properly revoked as an unwarranted ‘fishing expedition.’”); *see also* CHM § 11796.

Further, “a subpoena *duces tecum* . . . should be drafted as narrowly and specifically as is practicable.” CHM § 11776. It “should describe all documents sought with respect to content and

time period,” and “describe with sufficient particularity the evidence whose production is required,” evidence that must be relevant to an issue in the case, and tailored to the individuals, time period, and action at issue. Rules and Regulations § 102.31(b); *see also* CHM §§ 11776, 11782, 11796; *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *NLRB v. Carolina Food Processing*, 81 F.3d 507 (4th Cir. 1996); *NLRB v. Trades Council*, 131 LRRM 3132, 3133-34 (3d Cir. 1989); *Brinks, Inc.*, 281 NLRB 468, 468-69 (1986). “[T]he use of the word ‘all’ in the description of records should be avoided wherever possible.” *Id.*

In summary, consistent with Rule 26(c), a subpoena must be revoked if it:

- Seeks information that is not reasonably relevant to the proceeding (see above);
- Is overbroad on its face or otherwise seeks protected information (NLRB Bench Book (“NBB”) § 8-320 (citing *Brinks, Inc.*, 281 NLRB at 469 (granting petitions to revoke the challenged portions of the employer’s subpoenas in their entirety where most of the challenged portions “generally were drafted without regard for the usual standards applicable to subpoenas or discovery” set forth in the Board’s Rules and Fed. R. Civ. P. 26 and 45)));
- Seeks confidential or proprietary information. *See, e.g., NLRB (ex rel. Int’l. Union of Elec., Radio and Mach. Workers) v. Dutch Boy, Inc.*, 98 LRRM (BNA) 2396, 2398-99 (W.D. Okla. 1978), *aff’d*, 606 F.2d 929 (10th Cir. 1979) (acknowledging that a showing that documents should be withheld on the basis of confidentiality or likely harm to business interests provides a legitimate basis to deny enforcement of a subpoena); or
- Constitutes an impermissible fishing expedition (NBB § 8-320) (citing *CNN Am., Inc.*, 353 NLRB 891 (2009), final decision and order issued 361 NLRB No. 47 (2014)), *see also* CHM § 11796; *United Ass’n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

To enforce a subpoena *duces tecum*, an administrative agency must establish that: (1) the inquiry is within its authority; (2) the demand for production is not too indefinite; and (3) the information sought is reasonably relevant to the agency’s authorized inquiry. *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). The standard also has been stated as follows: the agency must

demonstrate that the demand is for a legitimate purpose, relevant to that purpose, and not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (D. Mass. 2007) (applying standard to NLRB subpoena). For a subpoena request to be relevant, it must reasonably relate to or “touch” a matter under investigation or in question. *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1965). Section 102.31(b) of the NLRB’s Rules and Regulations provides an Administrative Law Judge or the Board, as the case may be, “will revoke the subpoena if, in their opinion, the evidence whose production is required does not relate to any matter . . . in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.” 29 C.F.R. § 102.31(b).

As described more fully below, the Subpoena at issue is exceedingly overbroad and legally invalid in several respects. Accordingly, for all the reasons set forth below, the Subpoena must be revoked or modified.

To the extent Starbucks has not responded to any specific request enumerated below, or part thereof, such may not be taken as an admission Starbucks accepts or admits the existence of any fact(s) set forth or assumed by the Subpoena, that any such response or objection enumerated below constitutes admissible evidence, or that the documents requested are properly required to be produced. Nothing contained herein shall be construed as an admission of the relevance of or the existence or nonexistence of any document. No actual or implied admissions whatsoever are intended by this Petition.

GENERAL OBJECTIONS

A. OBJECT AS UNTIMELY

Starbucks objects to the subpoena as untimely. The hearing in these cases is scheduled to begin on **April 11, 2023**. Undersigned counsel did not receive a copy of Subpoena B-1-1IGZVA5, until **April 3, 2023** – i.e., *only eight days* before the opening of the hearing. The General Counsel’s Casehandling Manual states that subpoenas “should, where circumstances allow, normally be served at least 2 weeks prior to trial” to allow sufficient time to arrange for production of the witness or documents and for ruling on a petition to revoke before trial. NLRB Bench Book § 8–125; *see* NLRB Casehandling Manual (Part 1), Sec. 10340. Indeed, the Complaint and Notice of Hearing in this case was issued *nearly four months ago in December 2022*. Further, Counsel for the General Counsel already served a subpoena in this case on March 20, 2023. It is unreasonable for the Counsel for the General Counsel to now choose to issue yet another subpoena so close to the opening of the hearing. Eight days notice is simply not a reasonable amount of time for Respondent to be expected to comply with the subpoena and produce the numerous documents and videos requested, if any such documents even exist. *See* NLRB Bench Book § 8–125. The subpoena should be revoked in its entirety on this basis alone.

B. OBJECT AS OVERBROAD

Starbucks objects to requests which are not sufficiently restricted to a specific subject or purpose. Starbucks further objects to the Subpoenas inclusion of information dating back to August 2021, which was *nearly a year* before the election was held in the Vernon store. Such a time period is obviously overbroad.

C. OBJECT AS VAGUE

Starbucks objects to requests which do not describe in sufficient particularity the documents sought as required by Rules and Regulations §§102.66(c), 102.31(b).

D. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to requests for data or information and/or requests not relevant to any party's claim or defense or proportional to the needs of the case and, therefore, not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink's Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not "relevant to the subject matter involved in the pending action."); *see also* ULP Casehandling Manual 11792.1 and 11794 (explaining that the information sought must "relate[] to . . . a matter under investigation").

E. OBJECT AS IRRELEVANT BASED ON TIME PERIOD SOUGHT

Starbucks objects to requests for data or information outside the relevant time period applicable to this action. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB.

F. OBJECT AS AN INTRUSION ON PRIVACY RIGHTS

Starbucks objects to requests for personal and confidential information, the disclosure of which would result in an intrusion on the privacy rights of its Section 2(3) employees, which Starbucks refers to as its hourly partners ("partners"). Starbucks further objects to requests seeking confidential business information, proprietary business information, and/or trade secrets, which

are not relevant to any party's claim or defense, disproportionate to the needs of the case, and the disclosure of which will cause avoidable reputational harm to the Company. *See Penn. Power & Light Company*, 301 N.L.R.B. 1104, 1105 (N.L.R.B. 1991) (in the context of a request for information, the Board has held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not.")

G. OBJECT AS UNDULY BURDENSOME

Starbucks objects to requests with respect to which compliance is unduly burdensome. More specifically, Starbucks objects to requests that require Starbucks to conduct unreasonably burdensome and costly searches for information, including for electronically stored information, without any identification of, or agreement on, any search terms to be used. Search terms are an important tool parties use to identify potentially responsive documents in cases involving electronically stored information.

H. OBJECT AS SEEKING CONFIDENTIAL, PRIVILEGED INFORMATION

Starbucks generally objects to producing any documents that are protected from disclosure by the attorney-client privilege, work product doctrine, Federal Rule of Evidence 408, and/or similar privileges. *See, e.g., Brinks Inc.*, 281 NLRB at 469-470 (1986); *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988); *Kaiser Aluminum & Chem. Corp.*, 339 NLRB 829, 829 (2003). "The Board recognizes the fundamental principle that communications made in confidence between an attorney and his or her client for the purpose of seeking and obtaining legal advice are privileged." *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), enforced, 447 F.3d 821 (D.C. Cir. 2006). The Board also recognizes that the privilege protects both communications from the attorney to the client and communications from the client to the attorney. *Patrick Cudahy*, 288 NLRB at 971 (quoting *Upjohn Corp. v. U.S.*, 449 U.S. 383, 390 (1981)) ("[T]he privilege exists to protect not

only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice”). Additionally, the work-product doctrine protects documents and tangible things prepared in anticipation of litigation by or for a party representative, regardless of whether the representative is an attorney. The doctrine was first recognized in *Hickman v. Taylor*, 329 U.S. 495, 511 (1947), and is now codified in Fed. R. Civ. P. 26(b)(3).

I. OBJECT AS TO THE DEFINITIONS

Starbucks objects to the definition of “document” set forth in the subpoena because it would improperly expand the scope of discovery and could result in disproportional discovery. In responding, Starbucks will be guided by the following provision of Rule 26(b)(1) regarding the scope of permissible discovery:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b)(1).

J. OBJECT TO THE EXTENT THE REQUESTS DO NOT COMPORT WITH FEDERAL RULES

Starbucks objects to the requests to the extent that they may be construed to require responses beyond those required by the Federal Rules of Civil Procedure, the applicable local rules of the District of Connecticut, or any standing order of that court. Similarly, Starbucks objects to the Board’s requests to the extent that they seek documents or materials outside of Starbucks’ possession or control. Starbucks is only required to produce documents in its possession, custody, or control as they are maintained in the ordinary course of business. *See* Fed. R. Civ. P. 34(a)(1).

Furthermore, Starbucks objects to producing publicly available documents (including, without limitation, public securities filings) that are, due to their public availability, equally available to the requesting party.

K. OBJECT TO ANY DEMAND FOR “NATIVE” PRODUCTION

Starbucks specifically objects to any demand for the production of information in native format and instead will produce documents and ESI in TIFF+ format. For over a decade, federal courts and leading authorities have held a production in TIFF+ format is “reasonably usable” form of production under Fed.R.Civ.P. 34(b)(2)(E)(ii). *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1, Principle 12, Cmt. 12.b., p. 173 (2018) (“Parties should not demand forms of production, including native files and metadata fields, for which they have no practical use or that do not materially aid in the discovery process....[I]n the majority of instances, TIFF+ is a “reasonably usable” form of production for most purposes and types of ESI under Rule 34(b)(2)(E)(ii).”); *Carter v. Bridgepoint Education, Inc.*, 305 F.R.D. 225 (S.D. Cal. 2015) (denying plaintiffs’ motion for native-format production and noting the widespread use of TIFF images in discovery production); *Aguilar v. Immigration and Customs Enforcement Division*, 255 F.R.D. 350 (S.D.N.Y. 2008) (stating that even if native files are requested, it will produce memoranda, emails and electronic records in TIFF format accompanied by a load file containing searchable text and selected metadata). *See also, Stipulation and Order Regarding the Format of Electronically Stored Information and Document Production*, Standing Order of Judge James M. Wicks, United States Magistrate Judge (EDNY); *[Model] Agreement Regarding Discovery of Electronically Stored Information and [Proposed] Order* (W.D. Wash.); Middle District Discovery: A Handbook on Civil Discovery Practice in the United State District Court for the

Middle District of Florida (M.D. Fla.); *E-Discovery: Guidelines Addressing the Discovery of Electronically Stored Information* (D. Colo).

Furthermore, in a Recent Region 3 NLRB evidentiary hearing, Starbucks provided a Declaration from “a recognized global leader in eDiscovery ...[that] provides these services to over 400 clients in over 25 jurisdictions, through offices around the world”¹ that stated:

- TIFF+ productions are industry standard in modern litigation.
- TIFF+ format consists of page level images and document level extracted text files for each document, accompanied by a load file containing selected metadata.
- When TIFF+ productions are loaded into a Relativity database, both the contents and metadata of all documents are fully searchable and sortable.²
- Unlike native documents, TIFF+ productions include the ability to individually number/endorse pages, ease of redaction, and the ability to inhibit the capability to alter the imaged version of a document.
- TIFF+ productions meet a wider array of regulatory entity data production requirements which is why the Department of Justice, Securities and Exchange Commission, and Federal Trade Commission require production in TIFF+ format.

The Board did not refute that Declaration in any manner. In that case, the Board also did not refute that Starbucks has produced information in a TIFF+ format in dozens of other hearings with the Board during the past nine months.

¹ Case Nos. 03-CA-295470; 03-CA-295474; 03-CA-295545; 03-CA-296995; 03-CA-299540; 03-CA-300849; 03-CA-300931; 03-CA-305237; 03-CA-307568; 03-CA-307756; 03-CA-308720; 03-CA-309434; 03-CA-309799; 03-CA-310302 03-CA-311237, *Starbucks Memorandum Regarding Form of Production of Evidence Produced in Response to Subpoena: TIFF+ Format is a “Reasonably Usable” Form*, Exhibit 2, Declaration of Cory Osher, Vice President of Analytics and AI, UnitedLex Corporation.

² It is undisputed the Board has Relativity, and has used Relativity in ULP cases.

The Board itself has also conceded that TIFF+ productions are the industry standard, by requesting production in TIFF format. *See e.g.*, Case No. 02-CA-303077 & 02-CA-304431, Subpoena Duces Tecum B-1-1 IFTK3F, Instruction E, stating (emphasis supplied):

Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The NLRB *prefers* election production in TIFF or PDF format, accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Concordance or similar review platform.

Federal courts have also ordered the use of TIFF+ productions because there are inherent risks and significant disadvantages to production in “native” format – including the inability to Bates stamp, redact privileged content or personally identifiable information (“PII”), prevent document alteration, and prevent inadvertent disclosures to unauthorized third parties. *See, e.g., United Central Bank v. Kanan Fashions, Inc.*, 2010 U.S. Dist. LEXIS 83700 (N.D. Ill. Aug. 12, 2010) (ordering TIFF+ production instead of native-format production for ease of use, to prevent manipulation of the production, and to allow for easier redaction of confidential and personally sensitive information); *Wilson v. Conair Corp.*, 2015 WL 1994270 (E.D. Cal. Apr. 30, 2015) (ordering TIFF+ production where Plaintiffs moved for native-form production); *National Jewish Health v. WebMD Health Services Group*, 2014 WL 2118585 (D. Colo. May 21, 2014) (citing *Aguilar*, referenced above, for same proposition); *In re Priceline.com Inc. Sec. Litig.*, 233 F.R.D. 88 (D. Conn. 2005) (denying motion to compel native production and instead ordering production “in TIFF+ or PDF form with Bates numbering and appropriate confidentiality designations” in part because those formats were “the most secure format for production of documents”). There are no rules (or commentary) requiring native format productions. *See, e.g., Chapman v. General Board*, 2010 U.S. Dist. Lexis 66618 (N.D. Ill. July 6, 2010) (holding that the Federal rules are “unsupportive” of the contention that Documents or ESI must be produced in native format). And

the Board's own Rules and Regulations make plain that "[t]he Federal Rules of Civil Procedure are controlling, so far as is practicable." Board Rules and Regulations, § 102.39.

SPECIFIC RESPONSES AND OBJECTIONS

The subpoena is untimely and Respondent is unable to comply with the request. All of the General Objections stated above are incorporated into the responses set forth below. In addition to being untimely and woefully inappropriate, Starbucks further responds and objects to those items listed in the Second Subpoena as follows:

Request No. 16: For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.

Response No. 16: Starbucks objects to this request as untimely, temporally overbroad and, as a result, necessarily inclusive of documents not related to any matter "in question in the proceedings." Rule 102.31(b). *See also, McDonald's USA, LLC*, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be "reasonably relevant"). As written, this request is not narrowly tailored to the issues. Alleged discriminate Aly Nogosek, was terminated *in August 2022* for leaving the safe open at the Vernon store. Maintenance records relating to the safe, if any, dating back to April 2022, i.e., *four months prior* to Nogosek's termination are simply not relevant.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as untimely and irrelevant.

Request No. 17: For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.

Response No. 17: In addition to being untimely, temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter "in question in the proceedings." *See* Rule 102.31(b). *See also, McDonald's USA* 363 NLRB at 15; and *Perdue Farms* 144 F.3d at 833–834. Again, alleged discriminate Aly Nogosek, was terminated *in August 2022* for leaving the safe open at the Vernon store. Around that same time, Nogosek was also discovered to have taken an inappropriate picture on the store's iPad. Any photos taken and stored on the iPad for *the entire year* preceding Nogosek's termination bear no relevance to the fact that Nogosek was, at the time since she left the safe open in August 2022, facing possible discipline for taking inappropriate pictures *in August 2022* on the store's iPad. Any other pictures are wholly irrelevant to the issues in the present case and constitute a fishing expedition. Moreover, Nogosek acknowledged that she took a picture and placed it on the iPad.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written as untimely, irrelevant, unnecessarily intrusive on the rights of other partners in the store, and intrusive on the business of Respondent.

Request No. 18: For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:

- a. Name of employee and last known address and phone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.

Response No. 18: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrase “electronic communication systems” which is undefined and unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks further objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to any and all employees disciplined for “misuse of electronic communication systems” (which is again, undefined and of unlimited scope) dating back to August 2021 – *i.e.*, a full year before Nogosek’s termination. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written as untimely and irrelevant. It is undisputed that Nogosek took a picture and put it on the iPad. Whether other partners did so is irrelevant to Nogosek’s termination which occurred as a result of her specific disciplinary history.

Request No. 19: Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.

Response No. 19: Starbucks objects to this request as untimely, unduly burdensome, irrelevant, overbroad and intended solely to burden Respondent. The request also infringes upon the rights of customers, partners and other third-parties who are not involved in this matter. Further, as written, this request seeks information not relevant to any party’s claim or defense or proportional to the needs of the case and, is therefore, not reasonably calculated to uncover admissible evidence. The allegations in the Consolidated Complaint relating to July 7, 2022 are that Starbucks: (a) removed union materials from the community board; (b) selectively enforced the third-place policy and the procedure addressing disruptive behaviors, by closing the Vernon Store to deny the Union access to the premises and chill employees’ union and protected concerted activities; and (c) selectively enforced the solicitation and distribution policy by telling employees they could not

post union-related materials on the community board. *See Consol. Compl.* ¶ 11. Surveillance footage from the day in question would undoubtedly include sensitive and/or private information that is neither relevant to the complaint, nor proportionate to the needs of the case. Indeed, requiring Starbucks to produce surveillance footage which would unnecessarily infringe on the privacy rights of its employees and customers is inappropriate and unnecessarily broad. This request should not be countenanced. Finally, Starbucks further objects to the extent that this request seeks sensitive, proprietary and confidential business information.

Request No. 20: Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.

Response No. 20: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrase “internal documents” which is undefined and unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request to the extent it purports to require Starbucks to produce any documents that may be protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 21: Those documents showing any and all communications between and/or among Respondent’s agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

Response No. 21: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrases “agents and/or representatives” and “union-related notes” neither of which is defined and both of which are unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request to the extent it purports to require Starbucks to produce any documents that may be protected from disclosure by the attorney-client privilege and/or work product doctrine.

For the reasons set forth above, Starbucks respectfully seeks an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

Dated: April 10, 2023

Respectfully submitted,

/s/ Jacqueline Phipps Polito

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*Attorneys for Respondent
Starbucks Corporation*

CERTIFICATE OF SERVICE

I certify that on this 10th day of April, 2023, the foregoing PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-1-1IGZVA5 was filed via Efile and a copy of the foregoing was served on the following by email:

Laura A. Sacks, Regional Director
National Labor Relations Board
Region 01
Thomas P. O'Neill Federal Building
10 Causeway Street - 10th floor
Boston, MA 02222-1001
Email: laura.sacks@nrlrb.gov

Michael Dolce, Esq.
Hayes Dolce
135 Delaware Avenue, Suite 502
Buffalo, NY 14202
Email: mdolce@hayesdolce.com

Cristina Gallo, Esq.
Sommer Omar, Esq.
Cohen, Weiss and Simon LLP
900 Third Avenue, Suite 2100
New York, NY 10022
Email: cgallo@cwsny.com
Email: somar@cwsny.com

Charlotte Davis, Board Agent
Andyeliz Papaleo, Board Agent
National Labor Relations Board, Subregion 34
Abraham A. Ribicoff Building
450 Main St, Suite 410
Hartford, CT 06103-3503
Email: charlotte.davis@nrlrb.gov
Email: andyeliz.papaleo@nrlrb.gov

/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT A

EXHIBIT A

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, Starbucks Corporation135 Talcottville Road, Vernon, CT 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
of the National Labor Relations Board

at A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321 and 01-CA-307585

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1IGZVA5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CTDated: April 03, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

16. For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.
17. For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.
18. For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:
 - a. Name of employee and last known address and phone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.
19. Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.
20. Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.
21. Those documents showing any and all communications between and/or among Respondent's agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

EXHIBIT 8

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

**Case Nos. 01-CA-302321
01-CA-307585**

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-111SKD**

Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Respondent Starbucks Corporation (“Starbucks”) respectfully petitions for an order revoking Subpoena *Ad Testificandum* A-1-111SKD, a copy of which is attached as **Exhibit A** (“Subpoena”) in its entirety. Counsels for the General Counsel for the National Labor Relations Board (“Board”) Charlotte Davis and Andyeliz Papaleo improperly served the Subpoena for Starbucks Store Manager Renee A. Colburn on April 11, 2023.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbuck’s store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022, and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing was scheduled to begin April 11, 2023.

The charge in case 01-CA-307585 was filed by the Union on November 21, 2022. The first amended charge was filed by the Union on December 9, 2022; the second amended charge was filed on March 14, 2023; and the third amended charge was filed on March 28, 2023. Charge 01-CA-302321 and charge 01-CA-307585 were consolidated in the instant Consolidated Complaint on March 28, 2023. The hearing on the consolidated cases opened on April 11, 2023.

On Thursday, April 6, 2023, counsel for Starbucks received an email from Counsel for the General Counsel Charlotte Davis containing a courtesy copy of the Subpoena *Ad Testificandum* No. A-1-1IIISKD addressed to Store Manager Renee A. Colburn, with a request that Ms. Colburn appear before the Administrative Law Judge in the hearing in this case on April 11, 2023—*i.e., just three business days later*. Notably, at no time did the Counsel for the General Counsel ask if counsel for Starbucks would accept service of the Subpoena on Ms. Colburn's behalf, and at no time did counsel for Starbucks indicate that it would accept service. On Monday, April 10, 2023 at 1:56 p.m.¹ – *i.e., only twenty hours before the start of the hearing* – a copy of the Subpoena was received at the Vernon Store, which is not where Ms. Colburn works, via Certified Mail. It was signed for by a Starbucks partner.

Starbucks now files the Petition to Revoke Subpoena *Ad Testificandum* No. A-1-1IIISKD

¹ See USPS Tracking Report, attached as **Exhibit B**.

as set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

Petitions to revoke subpoenas filed during the hearing must be filed with the Administrative Law Judge.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

The Act requires that subpoenas be served personally, by registered or certified mail, or by delivery *at the principal office or business address of the person being served*. See Section 11(4) ("Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.") See also NLRB Rules and Regulations Sec. 102.4 ("Subpoenas must be served upon the recipient personally, by registered or certified mail, by leaving a copy at the principal office or place of business of the person required to be served, by private delivery service, or by any other method of service authorized by law.").

The Act also requires that subpoenas state with sufficient particularity the evidence being sought. *See* Sec. 11(1) of the Act (“the Board shall revoke[] such subpoena . . . if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required.”) *See Tct Stainless Steel, Inc. & Its Alter Ego Tempered & Specialty Metal & Loc. 283, Int’l Bhd. of Teamsters*, No. 07-CA-179856, 2016 WL 7430472, at *1 (Dec. 21, 2016) (in “Member Miscimarra’s view . . . consistent with his position in *Christus St. Vincent Regional Medical Center*, 28-CA-149798 (Aug. 24, 2015), *CCR Fire Protection, LLC*, 15-CA134356 (Feb. 23, 2015), and *International Union of Elevator Constructors (Otis Elevator)*, 29-CB-084077 (Aug. 29, 2014), the instant subpoenas *ad testificandum*, which only identify the case name and number, are deficient because they fail to state with sufficient particularity the evidence being sought.”)

It is also well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3rd Cir. 1979); ULP Casehandling Manual (“CHM”) § 11792.1 (information requested must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party issuing the subpoena has the affirmative burden of establishing the relevancy of the information sought. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *ad testificandum* must be granted if the subpoena is invalid

for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b)². This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

As described more fully below, the Subpoena at issue is legally invalid in several respects.

Accordingly, for all the reasons set forth below, the Subpoena must be revoked.

² See NLRB CHM Sec. 11782 (“Petitions to revoke may be based on the ground that the subpoena does not relate to any matter under investigation or at issue in a hearing, does not describe the evidence sought with sufficient particularity or if for any other reason sufficient in law the subpoena is otherwise invalid.”)

OBJECTIONS

A. OBJECT AS IMPROPERLY SERVED

Starbucks objects to the Subpoena because it was not properly served on the individual, Ms. Colburn. On Thursday, April 6, 2023, counsel for Starbucks received an email from Counsel for the General Counsel Charlotte Davis containing a courtesy copy of the Subpoena. At no time did the Counsel for the General Counsel ask if counsel for Starbucks would accept service of the Subpoena on Ms. Colburn's behalf, and at no time did counsel for Starbucks indicate that it would accept such service. *See Exhibit C.* A copy of the Subpoena was thereafter received at the Vernon Store via Certified Mail on Monday, April 10, 2023 at 1:56 p.m. Notably, while the Vernon Store is the one at issue in the Consolidated Complaint, Ms. Colburn does not work at the Vernon Store—Counsel for the General Counsel Charlotte Davis is aware of this fact. Indeed, during the April 11, 2023 hearing in this matter, Ms. Davis admitted knowing that Ms. Colburn does not work (and has not worked) at the store at which Ms. Davis attempted service, and identified Ms. Colburn as the Store Manager of a Starbucks café located in Storrs, Connecticut. Ms. Davis was, therefore, well aware of where Ms. Colburn works and yet, for some reason, chose not to serve Ms. Colburn at her place of business.

The Act requires that subpoenas be served personally, by registered or certified mail, or by delivery *at the principal office or business address of the person being served.* *See* Section 11(4) (“Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.”); *see also* NLRB Rules and Regulations Sec. 102.4 (“Subpoenas must be served upon the recipient personally, by registered or certified mail, by leaving a copy at the principal office or place of

business of the person required to be served, by private delivery service, or by any other method of service authorized by law.”). Counsel for the General Counsel did not properly serve the Subpoena on Ms. Colburn. The Subpoena was neither personally served on Ms. Colburn, nor delivered at Ms. Colburn’s principal office or business address. Ms. Davis chose to attempt service on Ms. Colburn at the store location at issue in this case, despite being well aware that Ms. Colburn does not work there. Such an act cannot be countenanced.

Further, Ms. Colburn was on a medical leave of absence (“LOA”) from March 14, 2023, through April 10, 2023. She was, therefore, on a LOA when the courtesy copy was received by counsel for Starbucks on April 6, 2023, and had only been back at work for mere hours before the subpoena was received at the Vernon Store via certified mail on April 10, 2023. The Subpoena should therefore be revoked in its entirety for being improperly served.

B. OBJECT AS UNTIMELY

Starbucks objects to the Subpoena as untimely. The hearing in these cases was scheduled to begin on **April 11, 2023**, and did, in fact open on that date. As discussed above, on April 6, 2023, *just three business days prior to the hearing*, counsel for Starbucks received an email from Counsel for the General Counsel Charlotte Davis containing a courtesy copy of the Subpoena addressed to Ms. Colburn. Counsel for the General Counsel did not ask if counsel for Starbucks would accept service of the Subpoena on Ms. Colburn’s behalf, and counsel for Starbucks did not at any time indicate that it would accept service. Accordingly, Ms. Colburn was not served on that date.

A copy of the Subpoena was thereafter received at the Vernon Store via Certified Mail on Monday, April 10, 2023, at 1:56 p.m., *only twenty hours before the start of the hearing*. The General Counsel’s Benchbook for ALJs provides, with a cite to the Casehandling Manual, that

subpoenas “should, where circumstances allow, normally be served at least 2 weeks prior to trial” to allow sufficient time to arrange for production of the witness or documents and for ruling on a petition to revoke before trial. NLRB Bench Book § 8– 125; *see* NLRB Casehandling Manual (Part 1), Sec. 10340. Indeed, the Complaint and Notice of Hearing in this case was issued ***nearly four months ago in December 2022***. Further, Counsel for the General Counsel already served subpoenas in this case on March 20, 2023, and again on April 3, 2023. It is unreasonable for Counsel for the General Counsel to attempt to serve another subpoena on a witness with so little knowledge relevant to the proceeding and so close to the opening of the hearing. The subpoena should be revoked on this basis alone.

C. OBJECT AS DEFICIENT/DEFECTIVE

Starbucks objects to the Subpoena because it is deficient and therefore defective on its face. Specifically, the Subpoena fails to describe with sufficient particularity the evidence sought as required by Section 11(1) of the Act and Section 102.31(b) of the Board’s Rules and Regulations. *See Brink’s Inc.*, at 468; *see also* NLRB CHM Sec. 11782 (“Petitions to revoke may be based on the ground that the subpoena . . . does not describe the evidence sought with sufficient particularity.”). The Subpoena does not provide any indication of what evidence is sought from Ms. Colburn, a Store Manager who works at a Starbucks store not at issue in this case. Indeed, the Subpoena merely calls for her attendance at the hearing, provides the time, location and case number. ***There was no cover letter accompanying the Subpoena and absolutely no mention of the issues in the case she will be asked to speak about or about her connection to these issues.*** *See Tct Stainless Steel, Inc. & Its Alter Ego Tempered & Specialty Metal & Loc. 283, Int’l Bhd. Of Teamsters*, No. 07-CA-179856, 2016 WL 7430472, at *1 (Dec. 21, 2016) (Member Miscimarra joined in the majority and additionally found subpoenas *ad testificandum* which only identify the

case name and number to be “deficient because they fail to state with sufficient particularity the evidence being sought.”).

The subpoena should accordingly be revoked because it is deficient and defective on its face.

D. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to the Subpoena because it seeks information not relevant to any party’s claim or defense and is not proportional to the needs of the case and, therefore, is not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink’s Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not “relevant to the subject matter involved in the pending action.”); *see also* ULP Casehandling Manuel 11792.1 and 11794 (explaining that the information sought must “relate[] to . . . a matter under investigation”).

As discussed on the record at the April 11, 2023 hearing in this matter, Ms. Colburn was not a decision maker with respect to the separation at issue in the hearing. She was merely tasked with delivering the Notice of Separation to alleged discriminate Aly Nogosek on April 26, 2022, solely because the Store Manager of the Vernon Store was on vacation at the time. The investigation into Nogosek’s violations of Starbucks’ Policies that resulted in her separation was already completed, and the decision to separate Nogosek was already made at the time Ms. Colburn was tasked with merely delivering the Notice of Separation to Nogosek. ***Ms. Colburn was not involved in any way in the investigation, nor was she involved in any way in the decision making.***

Calling Ms. Colburn to testify about her knowledge of the events is, therefore, neither proportional to the needs of the case nor reasonably calculated to uncover admissible evidence. Additionally, if Counsel for the General Counsel has reason to believe Ms. Colburn possesses evidence or knowledge that is – for some reason – absolutely necessary to this case, Starbucks is open to discussing an appropriate stipulation establishing the fact of her delivery of the Notice of Separation to Nogosek.

E. OBJECT AS UNDULY BURDENSOME

Starbucks objects to the Subpoena as unduly burdensome. More specifically, requiring Ms. Colburn to appear and testify at a hearing for this matter would be oppressive and unduly burdensome on her in light of the fact that she only recently returned to work after a medical LOA. Indeed, *Ms. Colburn was on a LOA from March 14, 2023, through Monday, April 10, 2023.* She was on an LOA when the courtesy copy was received by counsel for Starbucks on April 6, 2023, and *had only just returned to work for a few hours* when the subpoena was received at the Vernon Store (*where she does not work*) via certified mail on April 10, 2023. Ms. Colburn is returning to work after being out for nearly one month to address her own serious medical issues. Being called to testify in this case would impose unnecessary stress and undue burden on Ms. Colburn that far outweighs the value of her testimony in this case, particularly given her extremely limited involvement. The Subpoena should, therefore, be revoked for being unnecessarily and unduly burdensome on Ms. Colburn, who is only tangentially involved in this case, at best, and who is currently navigating through her own serious health issues which very recently required her to be on a LOA for nearly one month.

For the reasons set forth above, Starbucks respectfully seeks an order revoking the Subpoena on Ms. Colburn in its entirety.

Dated: April 13, 2023

Respectfully submitted,

/s/ Jacqueline Phipps Polito

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Attorneys for Starbucks

CERTIFICATE OF SERVICE

I certify that on this 13th day of April, 2023, the foregoing PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-111ISKD was filed via Efile and a copy of the foregoing was served on the following by email:

Kimberly Sorg-Graves, Administrative Law Judge
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001
Email: kimberly.sorg-graves@nrlrb.gov

Michael Dolce, Esq.
Hayes Dolce
135 Delaware Avenue, Suite 502
Buffalo, NY 14202
Email: mdolce@hayesdolce.com

Cristina Gallo, Esq.
Sommer Omar, Esq.
Cohen, Weiss and Simon LLP
900 Third Avenue, Suite 2100
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Email: somar@cwsny.com

Charlotte Davis, Board Agent
Andyeliz Papaleo, Board Agent
National Labor Relations Board, Subregion 34
Abraham A. Ribicoff Building
450 Main St, Suite 410
Hartford, CT 06103-3503
Email: charlotte.davis@nrlrb.gov
Email: andyeliz.papaleo@nrlrb.gov

/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT A

SUBPOENA**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Renee A. Colburn, Starbucks Corporation135 Talcottville Road, Vernon, CT 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410\ Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

or rescheduled date to testify in Starbucks Corporation
01-CA-302321 and 01-CA-307585
 (Case Name and Number)

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

A-1-111SKD

Under the seal of the National Labor Relations Board, and by direction of the
 Board, this Subpoena is

Issued at Hartford, CTDated: April 06, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

EXHIBIT B

Tracking Number:

Remove X

70170530000028695016

Copy Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

Your item was delivered to an individual at the address at 1:56 pm on April 10, 2023 in VERNON ROCKVILLE, CT 06066.

Get More Out of USPS Tracking:

USPS Tracking Plus[®]

Delivered

Delivered, Left with Individual

VERNON ROCKVILLE, CT 06066
April 10, 2023, 1:56 pm

Departed USPS Regional Facility

HARTFORD CT DISTRIBUTION CENTER
April 10, 2023, 2:51 am

In Transit to Next Facility

April 9, 2023

Arrived at USPS Regional Facility

HARTFORD CT DISTRIBUTION CENTER
April 7, 2023, 8:00 pm

Hide Tracking History

Feedback

Text & Email Updates



USPS Tracking Plus®



Your item is eligible for USPS Tracking Plus. This feature allows you to buy extended access to your tracking history and receive a statement via email upon request. Without this feature, your regular tracking history is only available on this site until April 7, 2025. To extend your access to this tracking history, select the length of time you would like and confirm your selection. You can only purchase extended history once, so all orders are final and are not eligible for a refund.

Note: For multiple tracking numbers, you can save and continue adding USPS Tracking Plus selections to your cart until you are ready to complete your purchase.

3 Years

\$3.75

5 Years

\$4.75

7 Years

\$5.75

10 Years

\$6.75

☐

I have read, understand, and agree to the **Terms and Conditions.**
(<https://www.usps.com/terms-conditions/tracking-plus.htm>)

Confirm Selection

Product Information



See Less

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

EXHIBIT C

From: [Davis, Charlotte S.](#)
To: [Polito, Jacqueline Phipps](#); [Rinehart, Lindsay](#)
Cc: [Papaleo, Andyeliz](#)
Subject: Subpoena ad testificandum for Renee A. Colburn
Date: Thursday, April 6, 2023 1:46:37 PM
Attachments: [SUB.01-CA-302321.AT Hearing Subpoena For Renee A. Colburn .pdf](#)

[EXTERNAL E-MAIL]

CAUTION: This email and any attachments may contain Controlled Unclassified Information (CUI). National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

Hi Attorneys Phipps Polito and Rinehart – please see attached ad test subpoena that is being mailed out today for Renee Colburn.

Charlotte

Charlotte S. Davis

She/them
Attorney
National Labor Relations Board

**The NLRB is requiring that documents be filed through our website, www.nlr.gov.
For help, please see [Frequently Asked Questions](#) and [E-File Video](#).**

A.A. Ribicoff Federal Building
450 Main St, Suite 410
Hartford, CT 06103
Tel: 959-200-7365
Email: charlotte.davis@nlrb.gov
Main office telephone: 860-240-3522
Fax: 860-240-3564

EXHIBIT 9

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1 – SUBREGION 34**

STARBUCKS CORPORATION,

Cases 01-CA-302321

And

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES
INTERNATIONAL,**

**STARBUCKS CORPORATION’S SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF ITS PETITION TO REVOKE SUBPOENA *DUCES TECUM* NO. B-1-
1ID2IE5 AND B-1-1IGZVA5, AND IN OPPOSITION TO COUNSEL FOR THE
GENERAL COUNSEL’S REQUEST FOR PRE-TRIAL DISCOVERY**

I. INTRODUCTION

Starbucks Corporation (“Starbucks” or “Respondent”) submits this Supplemental Memorandum in support of its Petition to Revoke to further address claims made by Counsel for the General Counsel (the “CGC”) and Administrative Law Judge alleging deficiencies in the response to the various Subpoenas issued by the Board.

II. PROCEDURAL HISTORY

Workers United (the “Union”), filed a representation petition (Case No. 01-RC-295710) on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbucks’ store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”). Region 1 conducted a mail ballot election, and ballots were counted on July 14, 2022. A majority of the ballots favored Union representation. Subsequently the Union was certified as the exclusive collective bargaining representative of the

Starbucks partners working in the positions of Baristas and Shift Supervisors on July 22, 2022.¹

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged misconduct at the Vernon Store. The first amended charge was filed on September 22, 2022, and the second amended charge was filed on November 21, 2022. Complaint issued on December 23, 2022, and the hearing was scheduled to begin April 11, 2023.

More than six months after the Complaint was filed, on March 29, 2023, CGC served Starbucks with a subpoena *Duces Tecum* No. B-1-1ID2IE5 (the “Subpoena”), comprised of 15 overly broad requests, which ultimately comprised over 50 requests with subparts, including extensive requests for electronically stored information (“ESI”). Despite the broad nature of the Subpoena, it called for production of documents sixteen business days later, by 10 a.m. on April 11, 2023, the opening of the hearing. (**Exhibit 1 – Declaration of Jacqueline Phipps Polito ¶¶ 3-5**).

Regarding production of ESI, the instructions to the Subpoena stated:

Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained *or in a reasonably usable form or forms*.

Subpoena Instruction & Definitions, No. 3 (emphasis added).

Electronically Stored Information (ESI) should be produced in the form or forms in which it is ordinarily maintained *or in a reasonably usable form* or forms. All spreadsheet and presentation files (e.g., Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

Subpoena Instruction & Definitions, No. 11 (emphasis added).

Nowhere in the Subpoena did the CGC request a particular method for delivery of the files, or the particular format in which the documents should be produced. *See id.* Although the subpoena

¹ Assistant Store Managers were permitted to vote under challenge as their eligibility was not determined prior to the election.

was vague, overbroad, and set forth an insufficient time for compliance, Starbucks immediately began collecting responsive documents as it prepared its Petition to Revoke.²

On Friday, April 7, 2023³, at 4:46pm EDT, **four days before** the return date of the Subpoena, CGC sent an email to Administrative Law Judge Kimberly R. Sorg-Graves (the “ALJ”) requesting to set a call “before our hearing starts on Tuesday” because the CGC “anticipate[ed]” having issues with Starbucks’ production and was “exploring the idea of seeking sanctions for non-compliance” with the Subpoena. **(Exhibit E to Exhibit 1)**.

Counsel for Starbucks responded on Saturday, April 8, at 8:44 pm EDT, that they would be available for a conference on Monday, April 10, at 9:15am EDT, in advance of the hearing, but requested that “all arguments relating to the subpoena be placed on the record” when the hearing commenced on Tuesday, April 11. Counsel also noted that the CGC’s threat of sanctions and objections to subpoena responses that were not due for another three days was “wholly improper and highly prejudicial to Respondent.” *Id.*

On April 11, Starbucks served its TIFF+ production on the CGC and, as a courtesy, after the issue was raised with the ALJ on April 10th, included PDF versions of each document to the CGC.⁴ Starbucks served its responses at 8:00 a.m. on April 11th, two hours before the hearing was scheduled to commence, despite the production being due at the start of the hearing. **(Exhibit F to Exhibit 1)**

² On March 27, 2023, Starbucks filed its Petition to Revoke with the Regional Director. **(Exhibit C to Exhibit 1)**. At the time this memo is being filed, the ALJ has not yet ruled on Starbucks’ Petition to Revoke.

³ Friday, April 7 was a holiday both in the Christian and Jewish religions. Counsel was unable to respond to this demand due to the late request and the religious holiday over the weekend. Starbucks should not be penalized in any way for its counsel’s unavailability during this time, and the Judge’s inappropriate request.

⁴ Starbucks is not legally obligated to produce documents and ESI in more than one format (*e.g.*, either PDF or native format) when it has already provided them in TIFF format. *See* Fed. R. Civ. P. 34(a)(b)(2)(E)(iii) (“A party need not produce the same electronically stored information in more than one form.”).

On April 11th, prior to the opening of the hearing, the ALJ held on and off the record discussions regarding the production. Over Starbucks' objection, the ALJ delayed the start of the hearing for one hour while the CGC was given additional time to review the documents. During the delay, and solely in a further effort to keep the hearing moving forward, Starbucks provided an index of produced documents to CGC. **(Exhibit G to Exhibit 1)**

After the delay in the proceedings, the parties returned to the hearing room. At that time, CGC made several objections with respect to the production, including that: (a) the Board's Relativity vendor needed 3 days to download the documents and send them back to CGC to review, so they needed additional time to review the records to prepare for the hearing; (b) no custodian of records was produced; (c) a "Petition Store Playbook" as set forth in Request No. 7 of Subpoena B-1-1ID2IE5 was not produced; and (d) certain files relating to comparator data were allegedly missing. Starbucks provided a response to each of those issues and noted that the remedy for non-production is the CGC's right to recall a witness if documents were later produced, not a delay in the hearing. Starbucks further noted that there is no single custodian of records, and that a custodian of records had not been produced at any other hearing. Most important, Starbucks pointed out that the ALJ had not even issued a decision on the Petitions to Revoke that had been filed. **(Id.)**

CGC informed the ALJ that due to the alleged deficiency in production of documents, they intended on seeking enforcement of the various subpoenas in federal court. The ALJ indefinitely adjourned the hearing over Starbucks' strident objection. **(Id.)**

III. HAVING UNILATERALLY PROCLAIMED STARBUCKS MUST PRESERVE AND PRODUCE ESI IN A CONTEMPORARY FORMAT, THE BOARD CANNOT OBJECT TO SUCH PRODUCTIONS ON THE STATED DUE DATE OF A SUBPOENA.

On August 30, 2022, CGC in this matter served on Starbucks a letter in connection with Charge 01-CA-302321, which included a directive to preserve evidence (the “Charge Letter” – (Exhibit I to Exhibit 1), stating:

Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody, or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g., SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Since March 2022 to the present, Regions have included such preservation language in charge letters accompanying requests for evidence, and various CGC have served dozens of much broader Preservation Letters and Request for Evidence Letters that contained even more detailed ESI language⁵: For instance, such requests include:

- Starbucks had an “obligation to preserve all relevant documents and electronically stored information (ESI)” relating to the unfair labor practice charges filed by Workers United.
- “Relevant information includes, but is not limited to:
 - “paper documents and ESI (e.g., SMS text messages, emails, and any data created by Taleo, Partner Hours, Microsoft Office, and any systems utilized by Starbucks Corporation in its relationship with Sedgewick Claims Management Services, Inc.”
 - all electronic communications “originating” from 67 current and former Starbucks’ employees; and
 - “all ESI referencing alleged discriminatees’ employment status, their terms and conditions of employment (including but not limited to hiring and staffing practices, resolution of facilities issues, training, availability, dress code policy, disciplines, employee scheduling, store operating hours, temporary store closures, permanent store closures, and the stationing of support managers in the Buffalo

⁵ Such letters were served in Case Nos. 28-CA-289622, 28-CA-291044, and 28-CA-293522; 03-CA-285671, 03-CA-290555, 03-CA-291157, 03-CA-291196, 03-CA-291197, 03-CA-291199, 03-CA-291202, 03-CA-291377, 03-CA-291378, 03-CA-291379, 03-CA-291381, 03-CA-291386, 03-CA-291395, 03-CA-291399, 03-CA-291408, 03-CA-291412, 03-CA-291416, 03-CA-291418, 03-CA-291423, 03-CA-291431, and 03-CA-291434; 03-CA-292284; 03-CA-294303.

area stores) references to any of the allegations in the above-referenced charges, any union, organizing campaign, or references generally about unions.”

- “[E]lectronically stored information, e.g., electronic documents, emails, other messages transmitted on any text-based mobile messaging platform (e.g., SMS, iMessage, WhatsApp, Snapchat, Kik, etc.) or instant messaging platform (e.g., Skype, Slack, Facebook messenger, LinkedIn messenger, etc.), and any data created by proprietary software tools.”

(Exhibit J to Exhibit 1).

CGC have also served subpoenas demanding the production of ESI for hearings in virtually every ULP case filed by Workers United for which a Complaint has issued against Starbucks – including not only this case, but also in 03-CA-285671, where CGC served Subpoena No. B-1-1G5W8J5, a 40-page subpoena, which compromised over 300 separate requests, when including subparts, and 03-CA-295470, where CGC served Subpoena No. B-1-1I5XTHX, a 25-page subpoena, which compromised over 200 separate requests, when including subparts, and 28-CA-292201, where CGC served Subpoena No. B-1-1HJHJKN, which requested data for 80 separate stores.

Furthermore, CGC has, in some instances, requested production in TIFF+ format, as demonstrated in an email from Nicholas Allen, NLRB Field Attorney in Region 4, where he specifically requests that TIFF files be provided, so that the production can be searched in connection with the Complaint issued for Case No. 04-CA-294636 **(Exhibit K to Exhibit 1)**. CGC have also served subpoenas on Starbucks acknowledging that TIFF+ is an acceptable form in which to produce documents⁶ **(Exhibit L to Exhibit 1)**.

⁶ The language in B-1-1IBZH3V Definitions and Instructions Section (e) states that in order to produce in TIFF+ format, 21 days’ notice must be given and the production must be provided 14 days in advance of the hearing date, however, there is no authority for placing such additional constraints on production, and the face of the subpoena states the date and time for production as Tuesday, April 18, 2023, the start date of the hearing.

Having injected ESI into the NLRB’s administrative proceedings, it is completely disingenuous for CGC to now claim it cannot handle contemporary ESI productions on the timeline set by the Subpoenas they are responsible for serving,⁷ or that even though the Subpoenas specifically demanded the production of ESI, Starbucks should be “sanctioned” for having produced exactly what was demanded. Stated another way, the ALJ should not condone the *ipse dixit* that, on the one hand, CGC can unilaterally proclaim ESI is an important component of proving or disproving alleged unfair labor practices in Board proceedings and has to be preserved and produced in these cases, but on the other hand, the CGC can cry foul when Starbucks then produces exactly what was demanded – ESI in a contemporary format on the stated due date of a subpoena. They simply cannot have it both ways.

IV. A TIFF+ PRODUCTION IS A “REASONABLY USABLE” FORM OF PRODUCTION IN ACCORDANCE WITH FED. R. CIV. P. 34.

In the instant matter, Starbucks complied with the Subpoena and timely produced documents in TIFF format with a load file containing searchable text and metadata⁸ – a format widely recognized and well-established in black letter law as “reasonably usable.” Furthermore, this format is consistent with how Starbucks has produced documents and ESI in dozens of hearings with the Board over the past eleven months.

As explained above, the Subpoenas stated that “Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained *or in a reasonably usable form or forms.*” See Subpoena Instruction & Definitions, No. 3; *see also* Subpoena Instruction & Definitions, No. 11. Furthermore, the language in the Subpoenas is

⁷ Although the Complaint in this case was filed in December 2022, the NLRB did not issue its subpoena until almost three months later, a mere sixteen business days before the opening of the hearing on April 11, 2023.

⁸ TIFF+ information is designed to be loaded into a litigation support tool for searching, review and production. Both Starbucks’ eDiscovery vendor and the Board use the same litigation support tool, Relativity ([eDiscovery Solutions Relativity](#)).

consistent with the language contained in Rule 34(b), which states that, if no form of production is specified, ESI must be produced “in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms”. Fed. R. Civ. P. 34(b)(2)(E)(ii). Nowhere in the Subpoenas did CGC request a method for delivery of the files or the particular format in which the documents should be produced.

For over a decade, federal courts and leading authorities have held a production in TIFF+ format is a “reasonably usable” form of production under Fed. R. Civ. P. 34(b)(2)(E)(ii).⁹ *See, e.g., U.S. ex rel. Carter v. Bridgepoint Educ., Inc.*, 305 F.R.D. 225 (S.D. Cal. 2015) (denying motion for native-format production and noting the widespread use of TIFF images in discovery production); *Aguilar v. Immigration and Customs Enforcement Division*, 255 F.R.D. 350 (S.D.N.Y. 2008) (stating that even if native files are requested, it will produce memoranda, emails and electronic records in TIFF format accompanied by a load file containing searchable text and selected metadata); *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1, Principle 12, Cmt. 12.b., p. 173 (2018) (“Parties should not demand forms of production, including native files and metadata fields, for which they have no practical use or that do not materially aid in the discovery process....[I]n the majority of instances, TIFF+ is a “reasonably usable” form of production for most purposes and types of ESI under Rule 34(b)(2)(E)(ii).”); *see also, e.g.,*

⁹ Federal Rule of Evidence 34 (“Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes”) section E provides:

(E) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

- (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request.
- (ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and
- (iii) A party need not produce the same electronically stored information in more than one form.

Stipulation and Order Regarding the Format of Electronically Stored Information and Document Production, Standing Order of Judge James M. Wicks, United States Magistrate Judge (E.D. N.Y.);¹⁰ *[Model] Agreement Regarding Discovery of Electronically Stored Information and [Proposed] Order* (W.D. Wash.);¹¹ *Middle District Discovery: A Handbook on Civil Discovery Practice in the United State District Court for the Middle District of Florida* (M.D. Fla.);¹² *E-Discovery: Guidelines Addressing the Discovery of Electronically Stored Information* (D. Colo.).¹³

Indeed, as explained by a leading global eDiscovery vendor, TIFF+ productions are standard in modern litigation, and have been for over a decade.

- The TIFF+ format consists of page-level images and document-level extracted text files for each document, accompanied by a load file containing selected metadata.
- When TIFF+ productions are loaded into a Relativity database, both the contents and metadata of all documents are fully searchable and sortable.
- Producing in TIFF+ format is the industry standard for document productions, not only for e-documents including emails, Microsoft Offices files (Word, PowerPoint) and other common data types, but also for hard-copy documents that are part of a collection that needs to be culled, searched, reviewed, tagged (as responsive, privileged, etc.), redacted, bates labelled, and ultimately produced.
- Additional benefits of TIFF+ productions include the ability to individually number/endorse pages, ease of redaction, and the ability to inhibit the capability to alter the imaged version of the document.
- TIFF+ productions are an industry standard production format, which is required by the Department of Justice, Securities and Exchange Commission and Federal Trade.

See **Exhibit 2** at ¶¶ 6-10

The CGC is not entitled to dictate Starbucks' form of production, nor demand that Starbucks re-produce documents in multiple formats. *See* Fed. R. Civ. P. 34(a)(b)(2)(E)(iii) ("A party need not produce the same electronically stored information in more than one form."); *cf. A*

¹⁰ Available at https://www.nyed.uscourts.gov/pub/JMW_ESI.pdf.

¹¹ Available at https://www.wawd.uscourts.gov/sites/wawd/files/ModelESIAgreement_CLEAN_2.1.23.pdf.

¹² Available at <https://www.flmd.uscourts.gov/sites/flmd/files/documents/florida-middle-district-courts-civil-discoveryhandbook.pdf>.

¹³ Available at http://www.cod.uscourts.gov/Portals/0/Documents/Forms/CivilForms/E-Discovery_Guidelines.pdf.

& R Body Specialty & Collision Works, Inc. v. Progressive Cas. Ins. Co., No. 3:07CV929 WWE, 2014 WL 4437684, at *3 (D. Conn. Sept. 9, 2014), *adhered to on reconsideration*, No. 3:07CV929 WWE, 2014 WL 5859024 (D. Conn. Nov. 10, 2014) (“neither the letter nor the spirit of Rule 34 mandates that a party is entitled to production in its preferred format.”). Moreover, federal courts have **ordered** the use of TIFF+ productions because there are inherent risks and significant disadvantages to production in “native” format – including the inability to Bates stamp, redact privileged content or personally identifiable information (“PII”), prevent document alteration, and prevent inadvertent disclosures to unauthorized third parties. *See, e.g., United Central Bank v. Kanan Fashions, Inc.*, 2010 U.S. Dist. LEXIS 83700 (N.D. Ill. Aug. 12, 2010) (ordering TIFF+ production instead of native-format production for ease of use, to prevent manipulation of the production, and to allow for easier redaction of confidential and personally sensitive information); *Wilson v. Conair Corp.*, 2015 WL 1994270 (E.D. Cal. Apr. 30, 2015) (ordering TIFF+ production where Plaintiffs moved for native-form production); *National Jewish Health v. WebMD Health Services Group*, 305 F.R.D. 247 (D. Colo. 2014) (citing *Aguilar*, referenced above, for same proposition); *In re Priceline.com Inc. Sec. Litig.*, 233 F.R.D. 88 (D. Conn. 2005) (denying motion to compel native production and instead ordering production “in TIFF+ or PDF form with Bates numbering and appropriate confidentiality designations” in part because those formats were “the most secure format for production of documents”). There are no rules (or commentary) requiring native format productions or requiring that TIFF productions include a complete set of native files. *See, e.g., Chapman v. General Board*, 2010 U.S. Dist. Lexis 66618 (N.D. Ill. July 6, 2010) (holding that the federal rules are “unsupportive” of the contention that Documents or ESI must be produced in native format). And the Board’s own Rules and Regulations make plain that “[t]he

Federal Rules of Civil Procedure are controlling, so far as is practicable.” Board Rules and Regulations, § 102.39.

Accordingly, Starbucks production in TIFF+ format complied with the Subpoena and any contention that such format is not “reasonably usable” is both legally and factually unfounded.

V. IF THE CGC BELIEVES THAT STARBUCKS HAS NOT COMPLIED WITH THE NLRB SUBPOENA, SHE MUST SEEK ENFORCEMENT IN THE DISTRICT COURT.

The Act sets forth the statutorily approved, *and exclusive*, means by which the Board can seek enforcement of its subpoena: federal court. Thus, the failure of the Board to seek enforcement of the subpoena in the appropriate forum violates Starbucks’ due process rights and is non-compliant with clear Supreme Court precedent. To date, CGC has failed to seek such enforcement.

As the court explained in *NLRB v. Int’l Medication Systems, Ltd.*, just as an agency “could not, under our system of government, and consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment,” the NLRB may not “impose discovery sanctions, which may have more serious consequences than a fine, before the judicial questions have been asked and answered.” *NLRB v. Int’l Medication Systems*, 640 F. 2d 1110, 115-116 (9th Cir. 1981). Here, the draconian sanctions sought by the CGC, and granted by the Preclusion Order, obliterate Starbucks’ due process rights because they functionally prevent Starbucks from defending itself and make a hearing on the merits impossible. If the CGC continues to contend that Starbucks’ TIFF+ production is somehow deficient—although it is not—it must petition the federal district court for enforcement, as set forth by the Act § 11(2). The fact that the CGC informed the ALJ at the April 11 hearing that they intended on seeking enforcement of the various subpoenas in federal court is an acknowledgement that they understand that this is the proper venue for the issues at hand.

And while the Board has approved the use of limited, proportionate sanctions in cases where a party is recalcitrant in the face of a subpoena, the federal courts have shown skepticism of what is undeniably an end-run around the statutory enforcement mechanism provided by the Act. *NLRB v. Duval*, 357 U.S. 1, 9 (1958) (“Congress has provided, in § 11 (2), that the Board’s subpoenas may be enforced only by a United States District Court, and thus an effective means exists to revoke an illegal or oppressive subpoena duces tecum before the damage has been done.”). “Enforcement of the Board’s subpoenas is left to the courts.” *N.L.R.B. v. Am. Med. Response, Inc.*, 438 F.3d 188, 192 (2d Cir. 2006).

The reason for the district court’s jurisdiction is not only statutory but constitutional. The Supreme Court has long held that only a federal court can enforce an administrative subpoena, through its contempt power. *Brimson Interstate Commerce Commission v. Brimson*, 154 U.S. 447, 14 S.Ct. 1125 (1894). *Brimson* “is the basis of the well-established principle that agencies do not have power to enforce their own subpoenas, as they do not have ‘authority to compel obedience to [their] orders by a judgment of fine or imprisonment.’” *Atl. Richfield Co. v. U.S. Dep’t of Energy*, 769 F.2d 771, 793 (D.C. Cir. 1984). Thus, if enforcement of an NLRB subpoena becomes necessary, “the parties must then turn to the district courts to obtain it.... This reservation of authority to Article III courts protects against abuse of the subpoena power.” *N.L.R.B. v. Interbake Foods, LLC*, 637 F.3d 492, 498 (4th Cir. 2011).

The federal court enforcement mechanism crucially protects due process. Courts may not rubber stamp a NLRB judge’s petition for enforcement. “This type of deferral and blind ruling would amount to no less than an improper delegation of Article III power to the ALJ.” *N.L.R.B. v. Interbake Foods, LLC*, 637 F.3d 492, 501 (4th Cir. 2011). A district court that considers a subpoena from the government—a compulsory search and seizure—must determine whether “the subpoena

is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant.” *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). To comply with the Fourth Amendment’s prohibition on unreasonable search and seizure, courts must determine whether an administrative subpoena is “sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.” *In re Subpoena Duces Tecum*, 228 F.3d 341, 346–47 (4th Cir. 2000). To comply with the Fifth Amendment’s Due Process Clause, courts must provide the party opposing the subpoena an opportunity to raise “any appropriate defense,” including an objection based upon overbreadth, lack of specificity, or infringement of a cognizable privilege.” *Interbake Foods*, 637 F.3d at 499.

Because the district court’s role in protecting due process in administrative subpoenas is so vital, the circuit courts are split on whether an ALJ even has power to issue evidentiary sanctions—regardless of whether they comply with Board case law on proportionality. For example, the Ninth Circuit has consistently held that the use of *any* evidentiary sanctions by an ALJ violates due process. *National Labor Relations Board v. International Medication Systems, Ltd.*, 640 F.2d 1110 (9th Cir. 1981).

There, the NLRB issued a subpoena *duces tecum* calling for the respondent to produce personnel records for all of its employees. *Id.* at 1112-1113. The respondent complied with the subpoena in part, producing the records of some, but not all, of its employees. *Id.* at 1113. As a sanction for non-compliance, the ALJ issued a preclusion order barring the respondent from presenting certain rebuttal evidence at an administrative hearing before the ALJ. *Id.* at 1112. On appeal, the Ninth Circuit determined that it had been improper for the ALJ to bar the rebuttal evidence because the ALJ lacked the authority to issue a preclusion order. *Id.* at 1116. Specifically, the Ninth Circuit explained:

The [NLRB] “could not, under our system of government, and consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment.” Interstate Commerce Commission v. Brimson, 154 U.S. 447, 485 (1894). Nor, we believe, may the [NLRB] impose *discovery sanctions*, which may have more serious consequences than a fine, before the judicial questions have been asked and answered.

Although some courts have approved the NLRB’s use of limited evidentiary sanctions, such as precluding a party from introducing evidence it refused to produce in response to a valid subpoena, this circuit split highlights the questionable constitutional footing on which *any* evidentiary sanctions before the ALJ—even assuming they were warranted under Board law--rests. *See Perdue Farms, Inc., Cookin’ Good Div. v. N.L.R.B.*, 144 F.3d 830, 834 (D.C. Cir. 1998). Even recognizing that the circuits are split on whether an ALJ has authority to order evidentiary sanctions at all, the sanctions imposed here go well beyond those that have been approved by the courts and deprive Starbucks of all the hallmarks of formal adjudication under the Administrative Procedure Act. 5 U.S.C. § 556(d).

Any type of sanction that denies Starbucks the ability to introduce relevant evidence to defend itself against allegations of serious and far-reaching violation of federal law, is a more serious penalty than any contempt fine it would face if a federal district court held it in contempt. This would place the ALJ in a position higher than the district court. “Although courts can only impose rule 37(b)(2) sanctions after a ruling on all objections, and then only for disobedience of a judicial order compelling discovery,” an agency imposing such sanctions “asserts that for disobedience of its orders directing discovery, it can impose the sanctions first and let the judicial questions be asked later.” Williams, *Authority of Federal Agencies to Impose Discovery Sanctions: The FTC A Case in Point*, 65 Geo.L.J. 739, 756 (1977). Thus, any type of sanction entered by the ALJ would condemn Starbucks to a sham trial in which its most meaningful due process violations are taken away and it has no chance of proving what it has sought since the beginning to prove—

that the Region’s allegations are not based in fact. Starbucks must not be robbed of a chance at a fair hearing without any of the fundamental procedural protections that adhere when the Board seeks enforcement of its subpoenas in federal court.

VI. STARBUCKS IS NOT REQUIRED TO PROVIDE A “DISCOVERY RESPONSE” OF ITS PRODUCTION.

Federal rules and precedent make clear Starbucks is not required to provide a document-by-document “response” specifying each document’s responsiveness to the Document Requests in the Subpoena. *See e.g., Zakre v. Norddeutsche Landesbank Girozentrale*, 2004 WL 764895 (S.D.N.Y. 2004) (Having made a sortable, text-searchable production of ESI with a detailed metadata index, Defendant “is not further obligated to organize and label them to correspond with [Plaintiffs’] requests.”); *Echavarria v. Roach*, 2018 WL 6788525 (D. Mass. 2018) (“a party may meet this [R. 34(b)(2)(E)(i)] burden by showing that it produced emails as they are kept in the ordinary course of business by making family-complete productions that are either organized chronologically by custodian or by producing metadata that allows automated sorting”); *National Jewish Health v. WebMD Health Services Group*, 305 F.R.D. at 254 (an ESI production that is “searchable, sortable, paired with relevant metadata, and includes Concordance load files” is held to be “in compliance with Rule 34(b)(2)(e)(ii)”); *FDIC v. Giannoulis*, 2013 U.S. Dist. LEXIS 152092 (N.D. Ill. 2014) (where “Phase II production can be electronically sorted [...] using metadata”, requiring further that producing party “organize its production according to the [requesting party’s] numerous discovery requests would impose a substantial burden” and would not “serve any substantial purpose”).

As noted above, Starbucks’ entire production was in TIFF+ format, thus, the entire production (including paper and quasi-paper documents) is sortable and searchable, and all ESI contains metadata. Therefore, the CGC’s request for a discovery response identifying by paragraph

what each document is response to in the subpoena request, is improper and must be denied. *See, e.g., National Jewish Health, infra.*

VII. THERE IS NO BASIS ON WHICH TO ORDER STARBUCKS TO PRODUCE A CUSTODIAN OF RECORDS.

There is no basis on which to order Starbucks to produce a “custodian of records” to testify about Starbucks’ efforts to comply with the CGC’s Subpoena. To be clear, the CGC is not seeking the testimony of a traditional records custodian, a witness who testifies that the records produced are authentic company records. Indeed, CGC has not established nor even raised any concerns as to the authenticity of Starbucks’ document production.¹⁴ Furthermore, the CGC has not established that Starbucks’ production is not complete or that Starbucks has otherwise failed to comply with the Subpoena. Rather, the CGC improperly attempts to seek “discovery on discovery” — delving into issues having nothing to do with the actual substantive issues in this case. As discussed below, Starbucks has complied with the CGC’s subpoena and there is simply no basis to compel the testimony of a “custodian of records”.¹⁵

The CGC’s demand that its Subpoena requires Starbucks to produce a witness to testify about “discovery on discovery” issues is unwarranted and not enforceable. *See, e.g., NLRB v. Interbake Foods, LLC*, 637 F.3d 492, 498 (4th Cir. 2011); *NLRB v. Detroit Newspapers*, 185 F.3d 602, 603-04 (6th Cir. 1999); *NLRB v. Int’l Medication Sys., Ltd.*, 640 F.2d 1110, 1115-16 (9th Cir. 1981); *NLRB v. C.H. Sprague & Son Co.*, 428 F.2d 938, 942 (1st Cir. 1970). Moreover, Starbucks is not required to provide information or testimony in response to the CGC’s demands for

¹⁴ To the extent the CGC has any legitimate concerns about the authenticity of Starbucks’ document production, Starbucks is willing to provide a certification pursuant to Fed. R. Evid. 902(11), (13), and/or (14) that the records produced are, indeed, authentic.

¹⁵ Starbucks does not have a single “custodian of records”. Moreover, Starbucks maintains complex and numerous document management and information systems. Accordingly, Starbucks is not able to identify a single individual to testify about its systems or searches of its systems.

“discovery on discovery,” including such demands in the cover letter accompanying the Subpoena.¹⁶

“Discovery on discovery” or “meta-discovery” is a phrase used by jurists to describe wasteful and improper efforts to expand discovery burdens and spin off separate litigation aimed at discovering a party’s efforts to comply with their discovery obligations. *See, e.g., Hanan v. Corso*, No. 95-0292, 1998 U.S. Dist. LEXIS 11877, at *23 (D.D.C. Apr. 24, 1998) (“[D]iscovery is only permitted of information which is either relevant or likely to lead to admissible evidence. Fed. R. Civ. P. 26(b)(1). Plaintiff never explains why discovery about discovery meets that standard, no matter how liberally it is construed, nor any legal authority for the proposition that the federal courts deem the discovery process itself a fit subject for additional discovery.”); *Orillaneda v. French Culinary Inst.*, No. 07-CV-3206, 2011 U.S. Dist. LEXIS 105793, at **13-27 (S.D. N.Y. 2011); *Hubbard v. Potter*, 247 F.R.D. 27, 29 (D.D.C. 2008) (plaintiffs “seek another round of discovery, a stage in the litigation that can only be described as ‘meta-discovery,’ *i.e.*, discovery about the discovery”).

Notwithstanding that there is technically no “discovery” in these proceedings,¹⁷ discovery

¹⁶ The cover letter to the General Counsel’s Subpoena contains the following “discovery on discovery” requests: Please note that subpoena includes requests for the production of Electronically Stored Information (ESI). When we meet, we will need to address the following information regarding production of the subpoenaed ESI:

- **Whose ESI will be searched?** Execution of the subpoena requires a reasonable search of the ESI of all “custodians” who are most likely to possess communications covered by the subpoena. I am interested in discussing these custodians, their roles and their relevance to the subpoenaed materials.
- **What ESI will be searched?** For each custodian’s ESI, I will be asking what information systems, archives and document management systems will be searched. Will the search include both ESI stored on enterprise servers and ESI stored in personal folders and archives on individual machines? Will the search include ESI hosted by third-party service providers, including both company and personal accounts used by custodians for work-related communications? Will the search include shared information systems such as networked drives or tools intended for work related collaboration? How will mobile devices be contemplated in the search?
- **How will the search be conducted?** Finally, I will also be concerned with who will conduct the searches and what search tools and/or search terms will be used to locate responsive ESI.

¹⁷ National Labor Relations Board Division of Judges Bench Book (Jan. 2022), § 7–200 Pretrial Discovery (“It is well established that pretrial discovery does not apply in Board proceedings.”).

is self-executing, and a party is not entitled to discovery for the sole purpose of verifying the other side's compliance therewith, and the Federal Rules of Civil Procedure do not grant parties the right to take formal discovery to test the sufficiency of each other's preservation or production efforts, absent evidence of misconduct or deficiency. *See, e.g., Scherer v. FCA US, LLC*, No. 20-cv-2009, 2021 U.S. Dist. LEXIS 225930, at *8 (S.D. Cal. Nov. 23, 2021) ("Plaintiffs do not have a right to conduct discovery into Defendant's discovery methods."); *Freedman v. Weatherford Int'l*, No. 12-Civ-2121, 2014 U.S. Dist. LEXIS 133950, at **9-10 (S.D. N.Y. Sept. 12, 2014) (plaintiff's request for "discovery on discovery" denied for failure to provide adequate factual basis for finding that defendant's original discovery production was deficient); *Koninklijke Philips N.V. v. Hunt Control Sys., Inc.*, No. 11-3684, 2014 U.S. Dist. LEXIS 52347, at *10 (D. N.J. Apr. 16, 2014) (granting motion for protective order against deposition of IT witness where the moving party failed to show a "material deficiency" in the responding party's eDiscovery process, noting that the party's "alleged dissatisfaction with the results of [the] production" was at best "speculative and suggestive"); *Larsen v. Coldwell Banker Real Estate Corp.*, No. 10-00401-AG, 2012 U.S. Dist. LEXIS 12901, at **20-22 (C.D. Cal. Feb. 2, 2012) (denying a request for a witness to answer questions under oath regarding its ESI preservation, collection, and processing because plaintiff had not shown any bad faith in defendant's production and the "isolated examples cited" of alleged inadequacies in production "fail[ed] to demonstrate that Defendants have not reasonably and in good faith produced the documents required."); *Orillaneda*, 2011 U.S. Dist. LEXIS 105793, at *27 (finding plaintiff was not entitled to conduct "discovery that is solely relevant to the sufficiency of the adversary's document production" – including about the defendant's search procedures and/or whether defendant's search efforts were "adequate" – "without [Plaintiff] first identifying facts suggesting that the [defendant's discovery] production

is deficient,” and noting that “specific statements” are required to prove alleged discovery deficiency instead of “generalities”); *Hubbard*, 247 F.R.D. at 31 (denying request for discovery on discovery about defendant’s “process of preserving, locating and producing documents” because plaintiff’s claims that “the production made is so paltry that there must be more” and/or “speculation that there is more,” that the court characterized as “chasing the theoretical possibility that additional documents exist,” does not justify such “meta-discovery” and, if allowed, would create a situation where “discovery would never end”).

For the reasons above, the CGC’s request for a records custodian to testify and provide answers about Starbucks’ efforts to comply with the Subpoena must be denied.

VIII. BY GRANTING A CONTINUANCE, THE ALJ HAS IMPROPERLY GRANTED PRE-TRIAL DISCOVERY.

“It is well established that pretrial discovery does not apply in Board proceedings.” National Labor Relations Board Division of Judges Bench Book (Jan. 2022), § 7–200 Pretrial Discovery. Here, by granting the CJC a continuance before the record was opened in order to allow CGC the opportunity to review the records, the ALJ has *de facto* granted the CGC the ability to conduct pre-trial discovery in direct contravention of its own well-established and long-standing rules. *See Electromec Design and Development Co. v. NLRB*, 409 F.2d 631, 635 (9th Cir. 1969)(“The determination by the NLRB that there can be no discovery of information or evidence in advance of hearing on a charge on an unfair labor practice is a decision within the area of authority delegated to the NLRB.”); *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 239, 98 S. Ct. 2311, 2325, 57 L. Ed. 2d 159 (1978) (Th[e] special danger flowing from prehearing discovery in NLRB proceedings has been recognized by the courts for many years.) (collecting cases); *Spiegel Trucking Co.*, 225 NLRB 178, fn. 5 (1976) (“It is well settled that there is no prehearing discovery in a Board proceeding.”).

IX. CONCLUSION

Starbucks properly and timely produced documents in an appropriate format, one in which the Board has previously acknowledged is acceptable in other Starbucks cases, thus, there is no basis upon which to claim Starbucks' production in response to the Subpoena was not in a "reasonably usable form.",

If Starbucks has in some way failed to comply with the Subpoena – which it has not – the appropriate forum to adjudicate such a claim is not with the ALJ, but in an Article III federal district court. Likewise, it is for the federal district court to determine the appropriate sanction, and not within the purview of the ALJ. Thus, any sanction would be contrary to extant Board law, the Board's enabling statute, constitutional principles of separation of powers, the Administrative Procedure Act, the Fourth and Fifth Amendments to the United States Constitution, basic fairness, and common sense. For the same reasons, there is no authority on which to order Starbucks to provide a document by document discovery response to its production, produce a custodian of records to testify regarding the completeness of Starbucks' production, or provide pre-hearing discovery. Starbucks requests that the ALJ grant its previously filed Petition to Revoke, strike CGC's unfounded objections to the form of production, deny CGC's request for a custodian of record to testify about "discovery on discovery", and deny CGC's request for a document by document discovery response, because all of these requests are unreasonable and not relevant to the subject matter of the Complaint, which constitutes an impermissible fishing expedition, and qualifies as pre-trial discovery, which is specifically disallowed by the NLRB Bench Book.

Dated: April 17, 2023

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CERTIFICATE OF SERVICE

I certify that the foregoing STARBUCKS CORPORATION'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS PETITION TO REVOKE SUBPOENA *DUCES TECUM* NO. B-1-1ID2IE5 AND B-1-1IGZVA5, AND IN OPPOSITION TO COUNSEL FOR THE GENERAL COUNSEL'S REQUEST FOR PRE-TRIAL DISCOVERY was e-filed on April 17, 2023, through the Board's website and served via email to the following:

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Respectfully submitted,

/s/ Jacqueline Phipps Polito
Littler Mendelson, P.C.

*Attorneys for Respondent
Starbucks Corporation*

EXHIBIT 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1 – SUBREGION 34**

STARBUCKS CORPORATION,

Case No. 01-CA-302321

And

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES
INTERNATIONAL,**

**STARBUCKS CORPORATION’S SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS PETITION TO REVOKE SUBPOENA *DUCES TECUMNO*. B-1-
1ID2IE5 AND B-1-1IGZVA5, AND IN OPPOSITION TO COUNSEL FOR THE
GENERAL COUNSEL’S REQUEST FOR PRE-TRIAL DISCOVERY**

My name is Jacqueline Phipps Polito, and I hereby declare and certify:

1. I am one of the attorneys representing Respondent, Starbucks Corporation (“Starbucks”), in the above-captioned case. I am providing this declaration in support of Respondent’s Memorandum in further Support of its Petition to Revoke Subpoena Duces Tecum Nos. B-1-1ID2IE5 and B-1-1IGZVA5, and in Opposition to Counsel for the General Counsel’s Request for Pre-Trial Discovery.

2. The Complaint in this case, 01-CA-302321 was filed on December 23, 2022. The hearing was scheduled to commence on April 11, 2023.

3. Counsel for the General Counsel served Starbucks with a subpoena duces tecum numbered B-1-1ID2IE5 on March 20, 2023. A true and correct copy of the Subpoena is attached

as **Exhibit A.**

4. Counsel for the General Counsel served Starbucks with a subpoena deuces tecum numbered B-1-1IGZVA5 on April 3, 2023. A true and correct copy of the Subpoena is attached as **Exhibit B.**

5. Both Subpoenas called for Starbucks to produce responsive documents on April 11, 2023, by 10:00 A.M. Eastern.

6. Starbucks filed a Petition to Revoke Subpoena B-1-1ID2IE5 on March 27, 2023. A true and correct copy of the Petition to Revoke B-1-1ID2IE5 is attached hereto as **Exhibit C.**

7. Starbucks filed a Petition to Revoke Subpoena B-1-1IGZVA5 on April 10, 2023. A true and correct copy of both Petitions to Revoke Subpoena B-1-1IGZVA5 is attached hereto as **Exhibit D.**

8. On Friday, April 7, 2023, at 4:46pm EDT, CGC sent an email to Administrative Law Judge Kimberly R. Sorg-Graves (the “ALJ”) requesting to set a call “before our hearing starts on Tuesday” because the CGC “anticipate[ed]” having issues with Starbucks’ production and was “exploring the idea of seeking sanctions for non-compliance” with the Subpoena. A true and correct copy of this communication is attached hereto as **Exhibit E.**

9. Counsel for Starbucks responded on Friday, April 7, at 8:44 pm EDT, that they would be available for a conference on Monday, April 10, at 9:15am EDT, in advance of the hearing, but requested that “all arguments relating to the subpoena be placed on the record” when the hearing commenced on Tuesday, April 11. Counsel also noted that the CGC’s threat of sanctions and objections to subpoena responses that were not due for another three days was “wholly improper and highly prejudicial to Respondent.” A true and correct copy of this communication is attached hereto as **Exhibit E.**

10. Starbucks served its production in Tag Image File Format with a load file (TIFF+) format on the CGC at 8:06 A.M EDT on April 11th. A true and correct copy of the email correspondence confirming transmission of the production is attached hereto as **Exhibit F**.

11. As a courtesy, Starbucks included PDF versions of each document produced to the CGC. A true and correct copy of the email correspondence confirming transmission of the production is attached hereto as **Exhibit F**.

12. The hearing was set to commence at 10:00 A.M. EDT on April 11.

13. On April 11, prior to the opening of the hearing, the ALJ held both on and off the record discussions regarding the production A true and correct copy of the Hearing Transcript is attached hereto as **Exhibit G**.

14. Over Starbucks' objection, the ALJ delayed the start of the hearing for one hour while the CGC was given additional time to review the documents. **Exhibit G** at 6:2; 8:13-17; 23:4-6

15. After the start of the hearing, Starbucks provided an index of produced documents, in an effort to move the proceedings forward. A true and correct copy of the email correspondence confirming transmission of this index is attached hereto at **Exhibit H**.

16. After the delay in the proceedings, the parties returned to the hearing room, where CGC made several objections with respect to the production, including (**Exhibit G** at 33:20 - 35:23¹)

a. The production was incomplete;

¹ **Exhibit G** at 32:16-25: These statements are mis-attributed to Ms. Polito, but were in fact spoken by Ms. Davis.

- b. the Board's Relativity vendor needed 3 days to download the documents and send them back to CGC to review, so they needed additional time to review the records to prepare for the hearing;
- c. no custodian of records was produced;.
- d. a "Petition Store Playbook" as set forth in Request No. 7 of Subpoena B-1-1ID2IE5 was not produced;
- e. certain files relating to comparator data were allegedly missing.

17. CGC also represented to the ALJ that Starbucks had not provided a load file. **Exhibit G** at 25:12-15.

18. Starbucks provided a response to each of those issues and noted that the remedy for non-production is the CGC's right to recall a witness, not a delay in the hearing. **Exhibit G** at 37:8 – 40:2. The ALJ acknowledged that remedy at **Exhibit G** at 28:2-5.

19. Most important, Starbucks pointed out that the ALJ had not even issued a decision on the Petitions to Revoke that were filed. **Exhibit G** at 37:8-16.

20. As of today, April 17, the ALJ still has not issued a decision on Starbucks previously filed Petitions to Revoke.

21. CGC informed the ALJ that due to the alleged deficiency in production of documents, they intended on seeking enforcement of the various subpoenas in Federal Court. **Exhibit G** at 43:19-20.

22. The ALJ indefinitely adjourned the hearing over Starbucks' objection. **Exhibit G** at 47:6 – 48:15; 50:7-11.

23. On August 30, 2022, CGC in this matter served on Starbucks a letter in connection with Charge 01-CA-302321, which included a directive to preserve evidence. A true and correct

copy of this letter is attached hereto as **Exhibit I**.

24. Since March 2022 to the present, Regions have sent broad Preservation Letters and Request for Evidence Letters that contain detailed ESI language. A true and correct copy of one such letter served in 03-CA-285671 is attached hereto as **Exhibit J**.

25. CGC has, in some instances, requested production in TIFF+ format, as demonstrated in an email from Nicholas Allen, NLRB Field Attorney in Region 4, where he specifically requests that TIFF files be provided, so that the production can be searched in connection with the Complaint issued for Case No. 04-CA-294636, a true and correct copy of which is attached hereto as **Exhibit K**.

26. CGC have also served subpoenas on Starbucks acknowledging that TIFF+ is an acceptable form in which to produce documents. A true and correct copy of Subpoena B-1-1IBZH3V, served in 12-CA-295949 is hereto attached to as **Exhibit L**.

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

Executed on April 17, 2023, in Fairport, New York.

/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT A

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, Starbucks Corporation135 Talcottville Road, Vernon, Connecticut 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1D2IE5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CTDated: March 20, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

1. For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).
2. For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted on Respondent’s Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:
 - a. Documented Coaching or Written Warning
 - b. Final Written Warning or Separation
 - c. Attendance and Punctuality
 - d. Safety and Security Policy
 - e. Safe Security Standards
 - f. Employees access to management
 - g. Tuition Benefits
 - h. Pay Increases
 - i. Workers United
 - j. The Union
 - k. Representation petition
 - l. Organizing
 - m. Union pin
 - n. Aly Nogosek
3. Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent’s agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:
 - a. Documented Coaching or Written Warning
 - b. Final Written Warning or Separation
 - c. Attendance and Punctuality
 - d. Safety and Security Policy
 - e. Safe Security Standards
 - f. Employees access to management

- g. Tuition Benefits
 - h. Pay Increases
 - i. Workers United
 - j. The Union
 - k. Representation petition
 - l. Organizing
 - m. Union pin
 - n. Aly Nogosek
4. Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.
 5. Those documents from Respondent's corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.
 6. For the period between May 1, 2021 and the present, those documents showing internal communication between or among Sam Cullari, Erin Twible, and any other supervisor and/or agent about the initiatives of upholding attendance standards and/or the attendance culture initiative.
 7. The Petition Store Playbook.
 8. The full and complete personnel file and employment records, including but not limited to annual performance evaluations, promotions, and disciplinary records, and excluding any medical-related information, of Aly Nogosek.
 9. Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent's decision to issue a written warning to Aly Nogosek in August of 2022.
 10. Those documents that formed the basis of the Respondent's decision to issue a written warning to Aly Nogosek on about August of 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

11. Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent's decision to discharge Aly Nogosek on August 26, 2022.
12. Those documents that formed the basis of the Respondent's decision to discharge Aly Nogosek on August 26, 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.
13. For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:
 - a. Name of employee and last known address and telephone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.
14. For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:
 - a. Name of employee and last known address and telephone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

15. For the period between May 12, 2022 and the present, all documents, including but not limited to bargaining notes, agendas, minutes, and recordings, showing communication between Respondent's agents and/or representatives and the Union's agents and/or representatives concerning or pertaining to the decision to discharge Aly Nogosek.

EXHIBIT B

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, Starbucks Corporation135 Talcottville Road, Vernon, CT 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judgeof the National Labor Relations Boardat A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321 and 01-CA-307585

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1IGZVA5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CTDated: April 03, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

16. For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.
17. For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.
18. For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:
 - a. Name of employee and last known address and phone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.
19. Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.
20. Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.
21. Those documents showing any and all communications between and/or among Respondent's agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

EXHIBIT C

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

Case No. 01-CA-302321

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA DUCES TECUM NO. B-1-1ID2IE5**

By letter dated March 20, 2023, Charlotte Davis and Andyeliz Papaleo, Counsels for General Counsel for the National Labor Relations Board (“Board”) served on Starbucks Corporation (“Starbucks”) Subpoena Duces Tecum B-1-1ID2IE5, a copy of which is attached as **Exhibit A** (“Subpoena”). Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Starbucks respectfully petitions for an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbuck’s store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022 and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing is scheduled to begin on April 11, 2023.

On March 20, 2023, Starbucks counsel received an email containing a courtesy copy of the Subpoena Duces Tecum No. B-1-1ID2IE5 with requests for documents related to the alleged unfair labor practices at the Vernon Store. Starbucks now files the Petition to Revoke Subpoena Duces Tecum No. B-1-1ID2IE5 set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

A petition to revoke, if made prior to the hearing, must be filed with the Regional Director and the Regional Director will refer the petition to the Administrative Law Judge or the Board for ruling.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

It is well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *See NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3d Cir. 1979); ULP Case Handling Manual (“CHM”) § 11792.1 (noting that the requested information must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party requesting the documents has the affirmative burden of establishing their relevancy. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *duces tecum* must be granted if the subpoena is invalid for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b). This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

Any request that is vague and ambiguous, overbroad, or irrelevant should be revoked. Subpoenas must be carefully drafted; the Board does not allow a “fishing expedition.” *See, e.g., Spartan Dep’t Stores*, 140 NLRB 608 n.2 (1963) (Board upheld hearing officer’s decision not to enforce subpoena, finding “[m]oreover, in view of Intervenor’s failure to offer evidence or otherwise indicate that the testimony sought would tend to refute that already in the record, it is apparent that the subpoena in question was in furtherance of a ‘fishing expedition’ and intended to unduly delay the proceeding.”); *Hispanics United of Buffalo, Inc.*, 359 NLRB 368 n.2 (2012) (“[A]s to the information subpoenaed from the discriminatees, the Respondent failed to show that it was relevant to any issue in dispute. Accordingly, the subpoena was properly revoked as an unwarranted ‘fishing expedition.’”); *see also* CHM § 11796.

Further, “a subpoena *duces tecum* . . . should be drafted as narrowly and specifically as is practicable.” CHM § 11776. It “should describe all documents sought with respect to content and time period,” and “describe with sufficient particularity the evidence whose production is required,” evidence that must be relevant to an issue in the case, and tailored to the individuals, time period, and action at issue. Rules and Regulations § 102.31(b); *see also* CHM §§ 11776, 11782, 11796; *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *NLRB v. Carolina Food*

Processing, 81 F.3d 507 (4th Cir. 1996); *NLRB v. Trades Council*, 131 LRRM 3132, 3133-34 (3d Cir. 1989); *Brinks, Inc.*, 281 NLRB 468, 468-69 (1986). “[T]he use of the word ‘all’ in the description of records should be avoided wherever possible.” *Id.*

In summary, consistent with Rule 26(c), a subpoena must be revoked if it:

- Seeks information that is not reasonably relevant to the proceeding (see above);
- Is overbroad on its face or otherwise seeks protected information (NLRB Bench Book (“NBB”) § 8-320 (citing *Brinks, Inc.*, 281 NLRB at 469 (granting petitions to revoke the challenged portions of the employer’s subpoenas in their entirety where most of the challenged portions “generally were drafted without regard for the usual standards applicable to subpoenas or discovery” set forth in the Board’s Rules and Fed. R. Civ. P. 26 and 45)));
- Seeks confidential or proprietary information. *See, e.g., NLRB (ex rel. Int’l. Union of Elec., Radio and Mach. Workers) v. Dutch Boy, Inc.*, 98 LRRM (BNA) 2396, 2398-99 (W.D. Okla. 1978), *aff’d*, 606 F.2d 929 (10th Cir. 1979) (acknowledging that a showing that documents should be withheld on the basis of confidentiality or likely harm to business interests provides a legitimate basis to deny enforcement of a subpoena); or
- Constitutes an impermissible fishing expedition (NBB § 8-320) (citing *CNN Am., Inc.*, 353 NLRB 891 (2009), final decision and order issued 361 NLRB No. 47 (2014)), *see also* CHM § 11796; *United Ass’n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

To enforce a subpoena *duces tecum*, an administrative agency must establish that: (1) the inquiry is within its authority; (2) the demand for production is not too indefinite; and (3) the information sought is reasonably relevant to the agency’s authorized inquiry. *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). The standard also has been stated as follows: the agency must demonstrate that the demand is for a legitimate purpose, relevant to that purpose, and not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (D. Mass. 2007) (applying standard to NLRB subpoena). For a subpoena

request to be relevant, it must reasonably relate to or “touch” a matter under investigation or in question. *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1965). Section 102.31(b) of the NLRB’s Rules and Regulations provides an Administrative Law Judge or the Board, as the case may be, “will revoke the subpoena if, in their opinion, the evidence whose production is required does not relate to any matter . . . in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.” 29 C.F.R. § 102.31(b).

As described more fully below, the Subpoena at issue is exceedingly overbroad and legally invalid in several respects. Accordingly, for all the reasons set forth below, the Subpoena must be revoked or modified.

To the extent Starbucks has not responded to any specific request enumerated below, or part thereof, such may not be taken as an admission Starbucks accepts or admits the existence of any fact(s) set forth or assumed by the Subpoena, that any such response or objection enumerated below constitutes admissible evidence, or that the documents requested are properly required to be produced. Nothing contained herein shall be construed as an admission of the relevance of or the existence or nonexistence of any document. No actual or implied admissions whatsoever are intended by this Petition.

GENERAL OBJECTIONS

A. OBJECT AS OVERBROAD

Starbucks objects to requests which are not sufficiently restricted to a specific subject or purpose. Starbucks further objects to the Subpoena’s inclusion of information dating back to May 2020, which was *nearly two years* before Starbucks first learned of any organizing activity in the Vernon store. Such a time period is obviously overbroad.

B. OBJECT AS VAGUE

Starbucks objects to requests which do not describe in sufficient particularity the documents sought as required by Rules and Regulations §§102.66(c), 102.31(b).

C. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to requests for data or information and/or requests not relevant to any party's claim or defense or proportional to the needs of the case and, therefore, not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink's Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not "relevant to the subject matter involved in the pending action."); *see also* ULP Casehandling Manual 11792.1 and 11794 (explaining that the information sought must "relate[] to . . . a matter under investigation").

D. OBJECT AS IRRELEVANT BASED ON TIME PERIOD SOUGHT

Starbucks objects to requests for data or information outside the relevant time period applicable to this action. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB.

E. OBJECT AS AN INTRUSION ON PRIVACY RIGHTS

Starbucks objects to requests for personal and confidential information, the disclosure of which would result in an intrusion on the privacy rights of its Section 2(3) employees, which Starbucks refers to as its hourly partners ("partners"). Starbucks further objects to requests seeking confidential business information, proprietary business information, and/or trade secrets, which

are not relevant to any party's claim or defense, disproportionate to the needs of the case, and the disclosure of which will cause avoidable reputational harm to the Company. *See Penn. Power & Light Company*, 301 N.L.R.B. 1104, 1105 (N.L.R.B. 1991) (in the context of a request for information, the Board has held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not.")

F. OBJECT AS UNDULY BURDENSOME

Starbucks objects to requests with respect to which compliance is unduly burdensome. More specifically, Starbucks objects to requests that require Starbucks to conduct unreasonably burdensome and costly searches for information, including for electronically stored information, without any identification of, or agreement on, any search terms to be used. Search terms are an important tool parties use to identify potentially responsive documents in cases involving electronically stored information.

G. OBJECT AS SEEKING CONFIDENTIAL, PRIVILEGED INFORMATION

Starbucks generally objects to producing any documents that are protected from disclosure by the attorney-client privilege, work product doctrine, Federal Rule of Evidence 408, and/or similar privileges. *See, e.g., Brinks Inc.*, 281 NLRB at 469-470 (1986); *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988); *Kaiser Aluminum & Chem. Corp.*, 339 NLRB 829, 829 (2003). "The Board recognizes the fundamental principle that communications made in confidence between an attorney and his or her client for the purpose of seeking and obtaining legal advice are privileged." *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), enforced, 447 F.3d 821 (D.C. Cir. 2006). The Board also recognizes that the privilege protects both communications from the attorney to the client and communications from the client to the attorney. *Patrick Cudahy*, 288 NLRB at 971 (quoting *Upjohn Corp. v. U.S.*, 449 U.S. 383, 390 (1981)) ("[T]he privilege exists to protect not

only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice”). Additionally, the work-product doctrine protects documents and tangible things prepared in anticipation of litigation by or for a party representative, regardless of whether the representative is an attorney. The doctrine was first recognized in *Hickman v. Taylor*, 329 U.S. 495, 511 (1947), and is now codified in Fed. R. Civ. P. 26(b)(3).

H. OBJECT AS TO THE DEFINITIONS

Starbucks objects to the definition of “document” set forth in the subpoena because it would improperly expand the scope of discovery and could result in disproportional discovery. In responding, Starbucks will be guided by the following provision of Rule 26(b)(1) regarding the scope of permissible discovery:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b)(1).

I. OBJECT TO THE EXTENT THE REQUESTS DO NOT COMPORT WITH FEDERAL RULES

Starbucks objects to the Requests to the extent that they may be construed to require responses beyond those required by the Federal Rules of Civil Procedure, the applicable local rules of the District of Connecticut, or any standing order of that court. Similarly, Starbucks objects to the Board’s Requests to the extent that they seek documents or materials outside of Starbucks’ possession or control. Starbucks is only required to produce documents in its possession, custody, or control as they are maintained in the ordinary course of business. *See* Fed. R. Civ. P. 34(a)(1).

Furthermore, Starbucks objects to producing publicly available documents (including, without limitation, public securities filings) that are, due to their public availability, equally available to the requesting party.

SPECIFIC RESPONSES AND OBJECTIONS

All of the General Objections stated above are incorporated into the responses set forth below. Starbucks further responds and objects to those items listed in the Subpoena as follows:

Request No. 1: For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).

Response No. 1: In addition to being temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter “in question in the proceedings.” Rule 102.31(b). *See also, McDonald’s USA, LLC*, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be “reasonably relevant”). Notably, the only issue in question regarding an employee’s violation of Company policy is with regard to the written warning received by alleged discriminatee Aly Nogosek, and her subsequent termination. Indeed, Ms. Nogosek was disciplined for violations of Starbucks’ Attendance and Punctuality policy and was later terminated for a gross and egregious violation of Starbucks’ Safety and Security policy. As written, this request is not narrowly tailored to the issues. Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 2: For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted

on Respondent's Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality
- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Response No. 2: In addition to being temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter "in question in the proceedings." Rule 102.31(b). *See also, McDonald's USA* 363 NLRB at 15; and *Perdue Farms* 144 F.3d at 833–834. Notably, this request, as written seeks information on specific topics that are not relevant. For example, there are no allegations in the Complaint regarding "union pins." In addition, several of the topics are overly broad, e.g., "employee access to management," "tuition increases," "pay increases." Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 3: Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent's agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality

- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Response No. 3: Starbucks objects to this request as duplicative of Request No. 2. In addition, Starbucks objects to this request as inclusive of documents not related to any matter in question in the proceedings. This request, as written seeks information on specific topics that are not relevant. For example, there are no allegations in the Complaint regarding “union pins.” In addition, several of the topics are overly broad, e.g., “employee access to management,” “tuition increases,” “pay increases.” Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 4: Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.

Response No. 4: Starbucks objects to this request temporally overbroad and unduly burdensome. As written, this request seeks information not relevant to any party’s claim or defense or proportional to the needs of the case and, is therefore, not reasonably calculated to uncover admissible evidence. For example, the request, as written, would require Starbucks to produce any document relating to any time(s) that any “manager” (which is undefined) for any reason over the course of the last nearly two years. Relatedly, Starbucks objects to this request as vague and ambiguous to the extent it uses the phrase “other managers.” Without further information,

Starbucks cannot discern what this request is seeking.

Request No. 5: Those documents from Respondent's corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.

Response No. 5: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "contractor," "other source," and "other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request as temporally overbroad to the extent it seeks information dating back to May 2021 – i.e., nearly a year before Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 7: The Petition Store Playbook.

Response No. 7: Starbucks objects to this request as vague and ambiguous to the extent it uses the term "Petition Store Playbook" as no such document exists. Without further clarification, Starbucks cannot discern what this request is seeking.

Request No. 9: Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent's decision to issue a written warning to Aly Nogosek in August of 2022.

Response No. 9: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "any other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Further, Starbucks cannot produce materials for which it does not maintain custody or control, such as personal cell phones.

Request No. 10: Those documents that formed the basis of the Respondent's decision to issue a written warning to Aly Nogosek on about August of 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

Response No. 10: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 11: Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent's decision to discharge Aly Nogosek on August 26, 2022.

Response No. 11: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "any other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Further, Starbucks cannot produce records for which it does not maintain custody or control.

Request No. 12: Those documents that formed the basis of the Respondent's decision to discharge Aly Nogosek on August 26, 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

Response No. 12: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 13: For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;

- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Response No. 13: Starbucks objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to *any and all* employees disciplined for violating Starbucks' Attendance and Punctuality policy dating back to May 2020 – i.e., for the last *three years; nearly two years before* Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 14: For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Response No. 14: Starbucks objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to *any and all* employees disciplined for violating Starbucks' Safety and Security Policy or Safe Security Standards dating back to May 2020 – i.e., for the last *three years; nearly two years before* Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require

Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 15: For the period between May 12, 2022 and the present, all documents, including but not limited to bargaining notes, agendas, minutes, and recordings, showing communication between Respondent's agents and/or representatives and the Union's agents and/or representatives concerning or pertaining to the decision to discharge Aly Nogosek.

Response No. 15: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

For the reasons set forth above, Starbucks respectfully seeks an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

Dated: March 27, 2023

Respectfully submitted,

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Attorneys for Starbucks

CERTIFICATE OF SERVICE

I certify that on this 27th day of March, 2023, the foregoing PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-1-1ID2IE5 was filed via Efile and a copy of the foregoing was served on the following by email:

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/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT D

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

**Case Nos. 01-CA-302321
01-CA-307585**

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA DUCES TECUM NO. B-1-1IGZVA5**

On April 3, 2023, Charlotte Davis and Andyeliz Papaleo, Counsels for General Counsel for the National Labor Relations Board (“Board”) served on Starbucks Corporation (“Starbucks”) Subpoena Duces Tecum B-1-1IGZVA5, a copy of which is attached as **Exhibit A** (“Subpoena”). Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Starbucks respectfully petitions for an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbucks’ store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022 and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing is scheduled to begin on April 11, 2023.

The charge in case 01-CA-307585 was filed by the Union on November 21, 2022, and the first amended charge was filed by the Union on December 9, 2022. The second amended charge was filed on March 14, 2023 and the third amended charge was filed on March 28, 2023.

Charge 01-CA-302321 and charge 01-CA-307585 were consolidated in the instant Consolidated Complaint on March 28, 2023.

On March 20, 2023, Starbucks' counsel received an email containing a courtesy copy of the Subpoena Duces Tecum No. B-1-1IGZVA5 with requests for documents related to the alleged unfair labor practices at the Vernon Store. Starbucks now files the Petition to Revoke Subpoena Duces Tecum No. B-1-1IGZVA5 set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

A petition to revoke, if made prior to the hearing, must be filed with the Regional Director and the Regional Director will refer the petition to the Administrative Law Judge or the Board for ruling.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

It is well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *See NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3d Cir. 1979); ULP Case Handling Manual (“CHM”) § 11792.1 (noting that the requested information must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party requesting the documents has the affirmative burden of establishing their relevancy. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *duces tecum* must be granted if the subpoena is invalid for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b). This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

Any request that is vague and ambiguous, overbroad, or irrelevant should be revoked. Subpoenas must be carefully drafted; the Board does not allow a “fishing expedition.” *See, e.g., Spartan Dep’t Stores*, 140 NLRB 608 n.2 (1963) (Board upheld hearing officer’s decision not to enforce subpoena, finding “[m]oreover, in view of Intervenor’s failure to offer evidence or otherwise indicate that the testimony sought would tend to refute that already in the record, it is apparent that the subpoena in question was in furtherance of a ‘fishing expedition’ and intended to unduly delay the proceeding.”); *Hispanics United of Buffalo, Inc.*, 359 NLRB 368 n.2 (2012) (“[A]s to the information subpoenaed from the discriminatees, the Respondent failed to show that it was relevant to any issue in dispute. Accordingly, the subpoena was properly revoked as an unwarranted ‘fishing expedition.’”); *see also* CHM § 11796.

Further, “a subpoena *duces tecum* . . . should be drafted as narrowly and specifically as is practicable.” CHM § 11776. It “should describe all documents sought with respect to content and

time period,” and “describe with sufficient particularity the evidence whose production is required,” evidence that must be relevant to an issue in the case, and tailored to the individuals, time period, and action at issue. Rules and Regulations § 102.31(b); *see also* CHM §§ 11776, 11782, 11796; *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *NLRB v. Carolina Food Processing*, 81 F.3d 507 (4th Cir. 1996); *NLRB v. Trades Council*, 131 LRRM 3132, 3133-34 (3d Cir. 1989); *Brinks, Inc.*, 281 NLRB 468, 468-69 (1986). “[T]he use of the word ‘all’ in the description of records should be avoided wherever possible.” *Id.*

In summary, consistent with Rule 26(c), a subpoena must be revoked if it:

- Seeks information that is not reasonably relevant to the proceeding (see above);
- Is overbroad on its face or otherwise seeks protected information (NLRB Bench Book (“NBB”) § 8-320 (citing *Brinks, Inc.*, 281 NLRB at 469 (granting petitions to revoke the challenged portions of the employer’s subpoenas in their entirety where most of the challenged portions “generally were drafted without regard for the usual standards applicable to subpoenas or discovery” set forth in the Board’s Rules and Fed. R. Civ. P. 26 and 45)));
- Seeks confidential or proprietary information. *See, e.g., NLRB (ex rel. Int’l. Union of Elec., Radio and Mach. Workers) v. Dutch Boy, Inc.*, 98 LRRM (BNA) 2396, 2398-99 (W.D. Okla. 1978), *aff’d*, 606 F.2d 929 (10th Cir. 1979) (acknowledging that a showing that documents should be withheld on the basis of confidentiality or likely harm to business interests provides a legitimate basis to deny enforcement of a subpoena); or
- Constitutes an impermissible fishing expedition (NBB § 8-320) (citing *CNN Am., Inc.*, 353 NLRB 891 (2009), final decision and order issued 361 NLRB No. 47 (2014)), *see also* CHM § 11796; *United Ass’n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

To enforce a subpoena *duces tecum*, an administrative agency must establish that: (1) the inquiry is within its authority; (2) the demand for production is not too indefinite; and (3) the information sought is reasonably relevant to the agency’s authorized inquiry. *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). The standard also has been stated as follows: the agency must

demonstrate that the demand is for a legitimate purpose, relevant to that purpose, and not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (D. Mass. 2007) (applying standard to NLRB subpoena). For a subpoena request to be relevant, it must reasonably relate to or “touch” a matter under investigation or in question. *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1965). Section 102.31(b) of the NLRB’s Rules and Regulations provides an Administrative Law Judge or the Board, as the case may be, “will revoke the subpoena if, in their opinion, the evidence whose production is required does not relate to any matter . . . in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.” 29 C.F.R. § 102.31(b).

As described more fully below, the Subpoena at issue is exceedingly overbroad and legally invalid in several respects. Accordingly, for all the reasons set forth below, the Subpoena must be revoked or modified.

To the extent Starbucks has not responded to any specific request enumerated below, or part thereof, such may not be taken as an admission Starbucks accepts or admits the existence of any fact(s) set forth or assumed by the Subpoena, that any such response or objection enumerated below constitutes admissible evidence, or that the documents requested are properly required to be produced. Nothing contained herein shall be construed as an admission of the relevance of or the existence or nonexistence of any document. No actual or implied admissions whatsoever are intended by this Petition.

GENERAL OBJECTIONS

A. OBJECT AS UNTIMELY

Starbucks objects to the subpoena as untimely. The hearing in these cases is scheduled to begin on **April 11, 2023**. Undersigned counsel did not receive a copy of Subpoena B-1-1IGZVA5, until **April 3, 2023** – i.e., *only eight days* before the opening of the hearing. The General Counsel’s Casehandling Manual states that subpoenas “should, where circumstances allow, normally be served at least 2 weeks prior to trial” to allow sufficient time to arrange for production of the witness or documents and for ruling on a petition to revoke before trial. NLRB Bench Book § 8–125; *see* NLRB Casehandling Manual (Part 1), Sec. 10340. Indeed, the Complaint and Notice of Hearing in this case was issued *nearly four months ago in December 2022*. Further, Counsel for the General Counsel already served a subpoena in this case on March 20, 2023. It is unreasonable for the Counsel for the General Counsel to now choose to issue yet another subpoena so close to the opening of the hearing. Eight days notice is simply not a reasonable amount of time for Respondent to be expected to comply with the subpoena and produce the numerous documents and videos requested, if any such documents even exist. *See* NLRB Bench Book § 8–125. The subpoena should be revoked in its entirety on this basis alone.

B. OBJECT AS OVERBROAD

Starbucks objects to requests which are not sufficiently restricted to a specific subject or purpose. Starbucks further objects to the Subpoenas inclusion of information dating back to August 2021, which was *nearly a year* before the election was held in the Vernon store. Such a time period is obviously overbroad.

C. OBJECT AS VAGUE

Starbucks objects to requests which do not describe in sufficient particularity the documents sought as required by Rules and Regulations §§102.66(c), 102.31(b).

D. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to requests for data or information and/or requests not relevant to any party's claim or defense or proportional to the needs of the case and, therefore, not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink's Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not "relevant to the subject matter involved in the pending action."); *see also* ULP Casehandling Manual 11792.1 and 11794 (explaining that the information sought must "relate[] to . . . a matter under investigation").

E. OBJECT AS IRRELEVANT BASED ON TIME PERIOD SOUGHT

Starbucks objects to requests for data or information outside the relevant time period applicable to this action. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB.

F. OBJECT AS AN INTRUSION ON PRIVACY RIGHTS

Starbucks objects to requests for personal and confidential information, the disclosure of which would result in an intrusion on the privacy rights of its Section 2(3) employees, which Starbucks refers to as its hourly partners ("partners"). Starbucks further objects to requests seeking confidential business information, proprietary business information, and/or trade secrets, which

are not relevant to any party's claim or defense, disproportionate to the needs of the case, and the disclosure of which will cause avoidable reputational harm to the Company. *See Penn. Power & Light Company*, 301 N.L.R.B. 1104, 1105 (N.L.R.B. 1991) (in the context of a request for information, the Board has held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not.")

G. OBJECT AS UNDULY BURDENSOME

Starbucks objects to requests with respect to which compliance is unduly burdensome. More specifically, Starbucks objects to requests that require Starbucks to conduct unreasonably burdensome and costly searches for information, including for electronically stored information, without any identification of, or agreement on, any search terms to be used. Search terms are an important tool parties use to identify potentially responsive documents in cases involving electronically stored information.

H. OBJECT AS SEEKING CONFIDENTIAL, PRIVILEGED INFORMATION

Starbucks generally objects to producing any documents that are protected from disclosure by the attorney-client privilege, work product doctrine, Federal Rule of Evidence 408, and/or similar privileges. *See, e.g., Brinks Inc.*, 281 NLRB at 469-470 (1986); *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988); *Kaiser Aluminum & Chem. Corp.*, 339 NLRB 829, 829 (2003). "The Board recognizes the fundamental principle that communications made in confidence between an attorney and his or her client for the purpose of seeking and obtaining legal advice are privileged." *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), enforced, 447 F.3d 821 (D.C. Cir. 2006). The Board also recognizes that the privilege protects both communications from the attorney to the client and communications from the client to the attorney. *Patrick Cudahy*, 288 NLRB at 971 (quoting *Upjohn Corp. v. U.S.*, 449 U.S. 383, 390 (1981)) ("[T]he privilege exists to protect not

only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice”). Additionally, the work-product doctrine protects documents and tangible things prepared in anticipation of litigation by or for a party representative, regardless of whether the representative is an attorney. The doctrine was first recognized in *Hickman v. Taylor*, 329 U.S. 495, 511 (1947), and is now codified in Fed. R. Civ. P. 26(b)(3).

I. OBJECT AS TO THE DEFINITIONS

Starbucks objects to the definition of “document” set forth in the subpoena because it would improperly expand the scope of discovery and could result in disproportional discovery. In responding, Starbucks will be guided by the following provision of Rule 26(b)(1) regarding the scope of permissible discovery:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b)(1).

J. OBJECT TO THE EXTENT THE REQUESTS DO NOT COMPORT WITH FEDERAL RULES

Starbucks objects to the requests to the extent that they may be construed to require responses beyond those required by the Federal Rules of Civil Procedure, the applicable local rules of the District of Connecticut, or any standing order of that court. Similarly, Starbucks objects to the Board’s requests to the extent that they seek documents or materials outside of Starbucks’ possession or control. Starbucks is only required to produce documents in its possession, custody, or control as they are maintained in the ordinary course of business. *See* Fed. R. Civ. P. 34(a)(1).

Furthermore, Starbucks objects to producing publicly available documents (including, without limitation, public securities filings) that are, due to their public availability, equally available to the requesting party.

K. OBJECT TO ANY DEMAND FOR “NATIVE” PRODUCTION

Starbucks specifically objects to any demand for the production of information in native format and instead will produce documents and ESI in TIFF+ format. For over a decade, federal courts and leading authorities have held a production in TIFF+ format is “reasonably usable” form of production under Fed.R.Civ.P. 34(b)(2)(E)(ii). *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1, Principle 12, Cmt. 12.b., p. 173 (2018) (“Parties should not demand forms of production, including native files and metadata fields, for which they have no practical use or that do not materially aid in the discovery process....[I]n the majority of instances, TIFF+ is a “reasonably usable” form of production for most purposes and types of ESI under Rule 34(b)(2)(E)(ii).”); *Carter v. Bridgepoint Education, Inc.*, 305 F.R.D. 225 (S.D. Cal. 2015) (denying plaintiffs’ motion for native-format production and noting the widespread use of TIFF images in discovery production); *Aguilar v. Immigration and Customs Enforcement Division*, 255 F.R.D. 350 (S.D.N.Y. 2008) (stating that even if native files are requested, it will produce memoranda, emails and electronic records in TIFF format accompanied by a load file containing searchable text and selected metadata). *See also*, *Stipulation and Order Regarding the Format of Electronically Stored Information and Document Production*, Standing Order of Judge James M. Wicks, United States Magistrate Judge (EDNY); *[Model] Agreement Regarding Discovery of Electronically Stored Information and [Proposed] Order* (W.D. Wash.); Middle District Discovery: A Handbook on Civil Discovery Practice in the United State District Court for the

Middle District of Florida (M.D. Fla.); *E-Discovery: Guidelines Addressing the Discovery of Electronically Stored Information* (D. Colo).

Furthermore, in a Recent Region 3 NLRB evidentiary hearing, Starbucks provided a Declaration from “a recognized global leader in eDiscovery ...[that] provides these services to over 400 clients in over 25 jurisdictions, through offices around the world”¹ that stated:

- TIFF+ productions are industry standard in modern litigation.
- TIFF+ format consists of page level images and document level extracted text files for each document, accompanied by a load file containing selected metadata.
- When TIFF+ productions are loaded into a Relativity database, both the contents and metadata of all documents are fully searchable and sortable.²
- Unlike native documents, TIFF+ productions include the ability to individually number/endorse pages, ease of redaction, and the ability to inhibit the capability to alter the imaged version of a document.
- TIFF+ productions meet a wider array of regulatory entity data production requirements which is why the Department of Justice, Securities and Exchange Commission, and Federal Trade Commission require production in TIFF+ format.

The Board did not refute that Declaration in any manner. In that case, the Board also did not refute that Starbucks has produced information in a TIFF+ format in dozens of other hearings with the Board during the past nine months.

¹ Case Nos. 03-CA-295470; 03-CA-295474; 03-CA-295545; 03-CA-296995; 03-CA-299540; 03-CA-300849; 03-CA-300931; 03-CA-305237; 03-CA-307568; 03-CA-307756; 03-CA-308720; 03-CA-309434; 03-CA-309799; 03-CA-310302 03-CA-311237, *Starbucks Memorandum Regarding Form of Production of Evidence Produced in Response to Subpoena: TIFF+ Format is a “Reasonably Usable” Form*, Exhibit 2, Declaration of Cory Osher, Vice President of Analytics and AI, UnitedLex Corporation.

² It is undisputed the Board has Relativity, and has used Relativity in ULP cases.

The Board itself has also conceded that TIFF+ productions are the industry standard, by requesting production in TIFF format. *See e.g.*, Case No. 02-CA-303077 & 02-CA-304431, Subpoena Duces Tecum B-I-1 IFTK3F, Instruction E, stating (emphasis supplied):

Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The NLRB *prefers* election production in TIFF or PDF format, accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Concordance or similar review platform).

Federal courts have also ordered the use of TIFF+ productions because there are inherent risks and significant disadvantages to production in “native” format – including the inability to Bates stamp, redact privileged content or personally identifiable information (“PII”), prevent document alteration, and prevent inadvertent disclosures to unauthorized third parties. *See, e.g., United Central Bank v. Kanan Fashions, Inc.*, 2010 U.S. Dist. LEXIS 83700 (N.D. Ill. Aug. 12, 2010) (ordering TIFF+ production instead of native-format production for ease of use, to prevent manipulation of the production, and to allow for easier redaction of confidential and personally sensitive information); *Wilson v. Conair Corp.*, 2015 WL 1994270 (E.D. Cal. Apr. 30, 2015) (ordering TIFF+ production where Plaintiffs moved for native-form production); *National Jewish Health v. WebMD Health Services Group*, 2014 WL 2118585 (D. Colo. May 21, 2014) (citing *Aguilar*, referenced above, for same proposition); *In re Priceline.com Inc. Sec. Litig.*, 233 F.R.D. 88 (D. Conn. 2005) (denying motion to compel native production and instead ordering production “in TIFF+ or PDF form with Bates numbering and appropriate confidentiality designations” in part because those formats were “the most secure format for production of documents”). There are no rules (or commentary) requiring native format productions. *See, e.g., Chapman v. General Board*, 2010 U.S. Dist. Lexis 66618 (N.D. Ill. July 6, 2010) (holding that the Federal rules are “unsupportive” of the contention that Documents or ESI must be produced in native format). And

the Board's own Rules and Regulations make plain that "[t]he Federal Rules of Civil Procedure are controlling, so far as is practicable." Board Rules and Regulations, § 102.39.

SPECIFIC RESPONSES AND OBJECTIONS

The subpoena is untimely and Respondent is unable to comply with the request. All of the General Objections stated above are incorporated into the responses set forth below. In addition to being untimely and woefully inappropriate, Starbucks further responds and objects to those items listed in the Second Subpoena as follows:

Request No. 16: For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.

Response No. 16: Starbucks objects to this request as untimely, temporally overbroad and, as a result, necessarily inclusive of documents not related to any matter "in question in the proceedings." Rule 102.31(b). *See also, McDonald's USA, LLC*, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be "reasonably relevant"). As written, this request is not narrowly tailored to the issues. Alleged discriminate Aly Nogosek, was terminated *in August 2022* for leaving the safe open at the Vernon store. Maintenance records relating to the safe, if any, dating back to April 2022, i.e., *four months prior* to Nogosek's termination are simply not relevant.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as untimely and irrelevant.

Request No. 17: For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.

Response No. 17: In addition to being untimely, temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter "in question in the proceedings." *See* Rule 102.31(b). *See also, McDonald's USA* 363 NLRB at 15; and *Perdue Farms* 144 F.3d at 833–834. Again, alleged discriminate Aly Nogosek, was terminated *in August 2022* for leaving the safe open at the Vernon store. Around that same time, Nogosek was also discovered to have taken an inappropriate picture on the store's iPad. Any photos taken and stored on the iPad for *the entire year* preceding Nogosek's termination bear no relevance to the fact that Nogosek was, at the time since she left the safe open in August 2022, facing possible discipline for taking inappropriate pictures *in August 2022* on the store's iPad. Any other pictures are wholly irrelevant to the issues in the present case and constitute a fishing expedition. Moreover, Nogosek acknowledged that she took a picture and placed it on the iPad.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written as untimely, irrelevant, unnecessarily intrusive on the rights of other partners in the store, and intrusive on the business of Respondent.

Request No. 18: For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:

- a. Name of employee and last known address and phone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.

Response No. 18: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrase “electronic communication systems” which is undefined and unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks further objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to any and all employees disciplined for “misuse of electronic communication systems” (which is again, undefined and of unlimited scope) dating back to August 2021 – *i.e.*, a full year before Nogosek’s termination. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written as untimely and irrelevant. It is undisputed that Nogosek took a picture and put it on the iPad. Whether other partners did so is irrelevant to Nogosek’s termination which occurred as a result of her specific disciplinary history.

Request No. 19: Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.

Response No. 19: Starbucks objects to this request as untimely, unduly burdensome, irrelevant, overbroad and intended solely to burden Respondent. The request also infringes upon the rights of customers, partners and other third-parties who are not involved in this matter. Further, as written, this request seeks information not relevant to any party’s claim or defense or proportional to the needs of the case and, is therefore, not reasonably calculated to uncover admissible evidence. The allegations in the Consolidated Complaint relating to July 7, 2022 are that Starbucks: (a) removed union materials from the community board; (b) selectively enforced the third-place policy and the procedure addressing disruptive behaviors, by closing the Vernon Store to deny the Union access to the premises and chill employees’ union and protected concerted activities; and (c) selectively enforced the solicitation and distribution policy by telling employees they could not

post union-related materials on the community board. *See Consol. Compl.* ¶ 11. Surveillance footage from the day in question would undoubtedly include sensitive and/or private information that is neither relevant to the complaint, nor proportionate to the needs of the case. Indeed, requiring Starbucks to produce surveillance footage which would unnecessarily infringe on the privacy rights of its employees and customers is inappropriate and unnecessarily broad. This request should not be countenanced. Finally, Starbucks further objects to the extent that this request seeks sensitive, proprietary and confidential business information.

Request No. 20: Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.

Response No. 20: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrase “internal documents” which is undefined and unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request to the extent it purports to require Starbucks to produce any documents that may be protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 21: Those documents showing any and all communications between and/or among Respondent’s agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

Response No. 21: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrases “agents and/or representatives” and “union-related notes” neither of which is defined and both of which are unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request to the extent it purports to require Starbucks to produce any documents that may be protected from disclosure by the attorney-client privilege and/or work product doctrine.

For the reasons set forth above, Starbucks respectfully seeks an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

Dated: April 10, 2023

Respectfully submitted,

/s/ Jacqueline Phipps Polito

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*Attorneys for Respondent
Starbucks Corporation*

CERTIFICATE OF SERVICE

I certify that on this 10th day of April, 2023, the foregoing PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-1-1IGZVA5 was filed via Efile and a copy of the foregoing was served on the following by email:

Laura A. Sacks, Regional Director
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/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT A

EXHIBIT A

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, Starbucks Corporation135 Talcottville Road, Vernon, CT 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
of the National Labor Relations Board

at A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321 and 01-CA-307585

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1IGZVA5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CTDated: April 03, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

16. For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.
17. For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.
18. For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:
 - a. Name of employee and last known address and phone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.
19. Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.
20. Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.
21. Those documents showing any and all communications between and/or among Respondent's agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

EXHIBIT E

From: [Davis, Charlotte S.](#)
To: [Sorg-Graves, Kimberly R.](#)
Cc: [DiGiovine, Lauren](#); [Rinehart, Lindsay](#); somar@cwsny.com; [Papaleo, Andyeliz](#); [Polito, Jacqueline Phipps](#); [Cristina E Gallo](#); [Strock, David](#)
Subject: RE: Starbucks, 01-CA-302321 et al.
Date: Sunday, April 9, 2023 7:01:30 AM
Attachments: [image001.jpg](#)

CAUTION: This email and any attachments may contain Controlled Unclassified Information (CUI). National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

Hi Judge, according to our e-litigation team, it takes about 2-3 business days before we can access the documents in Relativity. I'm told, however, that this is not a set timeline, and it depends on the size of production and our outside vendor's staffing/general availability. In our previous hearing with Respondent in early March, it took about a week for us to gain access to the subpoenaed documents.

Charlotte

From: Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>
Sent: Saturday, April 8, 2023 7:34 PM
To: Polito, Jacqueline Phipps <JPolito@littler.com>; Cristina E Gallo <CGallo@cwsny.com>; Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>
Cc: Strock, David <dstrock@littler.com>; Idigiovine@littler.com; Rinehart, Lindsay <LRinehart@littler.com>; somar@cwsny.com; Rachel S. Paster <RPaster@cwsny.com>
Subject: RE: Starbucks, 01-CA-302321

Ms. Polito, if Respondent is intending on producing documents only through Relativity, I need to be informed of that now. I invited different solutions to that problem in my earlier email, but noticed that no clarification was offered. Respondent has known since the issue was raised in one of our earliest conference calls that GC would need time to access documents in that format. If the documents will be produced on the day of hearing solely through Relativity, and GC will not be able to access them for a significant amount of time, I will adjust our hearing schedule upfront to prevent people from wasting time and to prevent a messy record.

Ms. Davis, please verify the amount of time your IT support is indicating that it will take you to have full access to documents produced through Relativity. Has that changed since our last communication?

I would appreciate a response over the weekend, but if all else fails, I will speak to on Monday at 9:15 am ET.

Judge Sorg-Graves

From: Polito, Jacqueline Phipps <JPolito@littler.com>

Sent: Friday, April 7, 2023 8:44 PM

To: Cristina E Gallo <CGallo@cwsny.com>; Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>

Cc: Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; Rinehart, Lindsay <LRinehart@littler.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>; DiGiovine, Lauren <LDiGiovine@littler.com>; Duplechain, Kimberly <KDuplechain@littler.com>

Subject: RE: Starbucks, 01-CA-302321

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Good evening Judge,

Respondent is available Monday morning at 9:15 am. However, with due respect, given the unreasonable requests of CGC with respect to the subpoena, which is not returnable until April 11th, we request that all arguments relating to the subpoena be placed on the record to preserve Respondent's rights on appeal. As such, while we are available on Monday, we request that the arguments relating to the subpoena take place on April 11th when the hearing opens.

Moreover, for CGC to threaten sanctions in her email to your honor, before the subpoena responses are even due is wholly improper and highly prejudicial to Respondent.

Last, I have no idea why CGC suggests in her email to your honor, that any responses were due today, because they were not. Again, the subpoena is returnable on April 11th. We have no obligation to produce documents today or at any time before then.

Please let us know your preference as to whether you would like a discussion on Monday, outside of the record.

Since the Board has taken the liberty to include e-discovery counsel on these communications, we have included our counsel as well.

Respectfully submitted,

Jacqueline Phipps Polito

Office Managing Shareholder

585.203.3413 direct, 585.208.9162 mobile, 585.486.1774 fax

JPolito@littler.com

Littler

375 Woodcliff Drive, Suite 2D, Fairport, NY 14450

From: Cristina E Gallo <CGallo@cwsny.com>**Sent:** Friday, April 7, 2023 6:35 PM**To:** Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>**Cc:** Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; Polito, Jacqueline Phipps <JPolito@littler.com>; Rinehart, Lindsay <L.Rinehart@littler.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>**Subject:** RE: Starbucks, 01-CA-302321

Thank you, Judge. I am available until 1pm on Sunday and at 9:15am and 1:30pm on Monday. However, if times outside of that window on Sunday work for Respondent, then please feel free to proceed as I do not believe it is critical for the Charging Party to be represented on this call.

Thank you,
Cristina Gallo

**Cristina E. Gallo**

900 Third Avenue, Suite 2100

New York, NY 10022-4869

o 212.356.0226

c 917.748.6536

f 646.473.8226

cgallo@cwsny.com

www.cwsny.com

[Biography](#)

From: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>**Sent:** Friday, April 7, 2023 6:04 PM**To:** Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>**Cc:** Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; jpolito@littler.com; Rinehart, Lindsay <L.Rinehart@littler.com>; Cristina E Gallo <CGallo@cwsny.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>**Subject:** RE: Starbucks, 01-CA-302321

CAUTION: This email and any attachments may contain Controlled Unclassified Information

(CUI). National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

Thank you, Judge. I can be available anytime Sunday or anytime Monday for a call on behalf of general counsel.

Charlotte

From: Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>
Sent: Friday, April 7, 2023 5:28 PM
To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>
Cc: Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; jpolito@littler.com; Rinehart, Lindsay <L.Rinehart@littler.com>; Cristina E Gallo <CGallo@cwsny.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>
Subject: RE: Starbucks, 01-CA-302321

I am willing to do a call over the weekend if a responsible party from each party can make it. Otherwise, I can do a call at 9:15 a.m. on Monday. I will be at the airport so be patient if I am not immediately on the call. I have a layover midday and could do a call at 1:30 ET, but I would prefer to address this issue as early as possible. I don't know the estimated number of pages of production, but if Respondent has the ability to access the documents, then it can print them for production by the start of the hearing. If audio/video production needs to be made, that can also be saved in a format that will allow use at the hearing. I assume that Respondent counsel is not producing documents that they have no ability to review, and if they can review them, the can be saved in another format or printed.

Please respond as to each party's availability.

Judge Sorg-Graves

From: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>
Sent: Friday, April 7, 2023 4:46 PM
To: Sorg-Graves, Kimberly R. <Kimberly.Sorg-Graves@nlrb.gov>
Cc: Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; Brown, Barbara <Barbara.Brown@nlrb.gov>; jpolito@littler.com; Rinehart, Lindsay <L.Rinehart@littler.com>; Cristina E Gallo <CGallo@cwsny.com>; Sommer Omar <somar@cwsny.com>; Gaston, David <David.Gaston@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>
Subject: Starbucks, 01-CA-302321

Judge Sorg-Graves,

I'm writing to you to see if we could set up a call with you on Monday sometime before our hearing starts on Tuesday. We are anticipating having issues with subpoena production and are exploring the idea of seeking sanctions for non-compliance. Briefly, we are anticipating receiving documents through a program called Relativity but in a format that is not usable to us unless an outside vendor processes the data, which can take several days. Since we do not have any subpoena production today, we anticipate that production through Relativity will be unusable to us by the time the hearing starts on Tuesday, and we need notice of how we are going to get responsive documents before the trial. I am including our e-litigation team on this email, Tammy Farmer and David Gaston.

Thank you for your consideration.

Charlotte

Charlotte S. Davis

She/them
Attorney
National Labor Relations Board

**The NLRB is requiring that documents be filed through our website, www.nlr.gov.
For help, please see [Frequently Asked Questions](#) and [E-File Video](#).**

A.A. Ribicoff Federal Building
450 Main St, Suite 410
Hartford, CT 06103
Tel: 959-200-7365
Email: charlotte.davis@nlrb.gov
Main office telephone: 860-240-3522
Fax: 860-240-3564

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EXHIBIT F

From: [Davis, Charlotte S.](#)
To: [Polito, Jacqueline Phipps](#); [Christensen, Amber](#); [Farmer, Tammy L.](#)
Cc: [Rinehart, Lindsay](#); [Papaleo, Andyeliz](#)
Subject: RE: SBUX - Vernon, CT (01-CA0302321) - Production
Date: Tuesday, April 11, 2023 5:52:44 AM
Attachments: [image001.png](#)
[image002.png](#)

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Okay, just to be clear on the files, "Production VOL001.zip" contains the pdf conversions of "Starbucks (Vernon CT) VOL001.zip" and the later contains the Relativity pieces?

From: Polito, Jacqueline Phipps <JPolito@littler.com>
Sent: Tuesday, April 11, 2023 8:38 AM
To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Christensen, Amber <achristensen@littler.com>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>
Cc: Rinehart, Lindsay <LRinehart@littler.com>; Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>
Subject: RE: SBUX - Vernon, CT (01-CA0302321) - Production

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Charlotte,

Good morning. Tammy was included, I have copied in Andyeliz on this email. I do not believe another link is required.

You also received an email with the documents via biscom as pdf this morning.

Jackie

Jacqueline Phipps Polito

Office Managing Shareholder

585.203.3413 direct, 585.208.9162 mobile, 585.486.1774 fax

JPolito@littler.com

[Littler](#)

375 Woodcliff Drive, Suite 2D, Fairport, NY 14450

From: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>

Sent: Tuesday, April 11, 2023 8:30 AM

To: Christensen, Amber <AChristensen@littler.com>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>

Cc: Polito, Jacqueline Phipps <JPolito@littler.com>; Rinehart, Lindsay <LRinehart@littler.com>

Subject: RE: SBUX - Vernon, CT (01-CA0302321) - Production

CAUTION: This email and any attachments may contain Controlled Unclassified Information (CUI). National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

Thank you. Can you include Tammy Farmer and Andyeliz Papaleo on this so that both may be able to access these documents?

From: Christensen, Amber <AChristensen@littler.com>

Sent: Tuesday, April 11, 2023 8:06 AM

To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Farmer, Tammy L. <Tammy.Farmer@nlrb.gov>

Cc: Polito, Jacqueline Phipps <JPolito@littler.com>; Rinehart, Lindsay <LRinehart@littler.com>

Subject: SBUX - Vernon, CT (01-CA0302321) - Production

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Good morning –

Production VOL001 password: dHnp74dbA9bf8P2\$

Thank you,

Amber Christensen

Sr. Paralegal

202.772.2537 direct, 816.898.7005 mobile, 202.842.0011 fax

AChristensen@littler.com



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EXHIBIT G

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

-----: Case No.:
In the Matter of: 01-CA-302321
STARBUCKS CORPORATION, : 01-CA-307585

Respondent, :

And :

WORKERS UNITED LABOR UNION :

INTERNATIONAL, AFFILIATED WITH :

SERVICE EMPLOYEES INTERNATIONAL :

UNION, :

Charging Party. :
-----:

Place: Hartford, Connecticut
Dates: April 11, 2023
Pages: 1 through 53
Volume: 1

OFFICIAL REPORTERS
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64 Magnolia Place
Wayne, NJ 07470
(973) 692-0660

-----: Case No.:

In the Matter of: 01-CA-302321

STARBUCKS CORPORATION, : 01-CA-307585

Respondent, :

And :

WORKERS UNITED LABOR UNION :

INTERNATIONAL, AFFILIATED WITH :

SERVICE EMPLOYEES INTERNATIONAL :

UNION, :

Charging Party. :

-----:

21
22
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A P P E A R A N C E S

On Behalf of the General Counsel:

Charlotte Davis, Board Agent

National Labor Relations Board, Subregion 34

Abraham A. Ribicoff Building

450 Main St, Suite 410

Hartford, CT 06103-3503

Charlotte.davis@nlrb.com

Andyeliz Papaleo, Board Agent

National Labor Relations Board, Region 1

Thomas P. "Tip" O'Neill Federal Building

10 Causeway St.

Boston, MA 02222

On Behalf of the Respondent:

Jacqueline Phipps Polito, Atty

Littler Mendelson, P.C.

375 Woodcliff Drive 2nd Floor

Fairport, New York 14450

Phone: (585)203-3413

Mobile: (585)208-9162

Fax: (585)486-1774

jpolito@littler.com; starbucksnlrb@littler.com

A P P E A R A N C E S (Continued)

Lindsay M. Rinehart, Esq

LITTLER MENDELSON, P.C.

One Century Tower

265 Church Street

Suite 300

New Haven, CT 06510

Phone: (203)974-8700

Fax: (203)974-8799

irinehart@littler.com

On Behalf of the Charging Party:

Sommer Omar, Esq.

Cohen, Weiss and Simon, LLP

900 Third Avenue, Suite 2100

New York, NY 10022-4869

somar@cwsny.com

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E X H I B I T S

EXHIBITS

IDENTIFIED

RECEIVED

General Counsel's

GC-1

8

8

Respondent's

R-1

10

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P R O C E E D I N G S

(Time Noted: 09:48 a.m.)

JUDGE SORG-GRAVES: Can we go on the record? The hearing will be in order. This is a formal hearing before the National Relation -- Labor Relations Board and Starbucks and United Labor Union International affiliated with Service Employees International Union, Case Nos. 01-CA-302321 and 01-CA-307585. The Administrative Law Judge presiding is Kimberly Sorg-Graves.

I'm assigned to the DC office of the Division of Judges. Any communication should be addressed to that office. Any request for extension of time or file documents should also -- shall be addressed to that office in chief -- in that office, Chief Judge Giannasi. Let's have General Counsel state your appearance for the record.

MS. DAVIS: Charlotte Davis. Pronouns, she/them.

MS. PAPALEO: Andyeliz Papaleo. Pronouns, she/her.

JUDGE SORG-GRAVES: Ms. Papaleo, P-O -- will you spell your name?

MS. PAPALEO: Papaleo.

JUDGE SORG-GRAVES: Papaleo?

MS. PAPALEO: Yes. First name is A-N-D-Y-E-L-I-Z, last name is P-A-P-A-L-E-O.

JUDGE SORG-GRAVES: Okay. And if you are just going to -- tell me what title you use in the sense of Ms., Mrs. When

1 you state your appearance, it would be helpful to me to know
2 how to refer to people while I speak, okay?

3 MS. PAPALEO: Ms.

4 JUDGE SORG-GRAVES: Okay. And for the Charging
5 Party?

6 MS. OMAR: Summer Omar, Ms.

7 JUDGE SORG-GRAVES: And for Respondent?

8 MS. POLITO: Jacqueline Polito. Good morning, Your
9 Honor.

10 JUDGE SORG-GRAVES: Good morning.

11 MS. RINEHART: Lindsey Rinehart, Ms.

12 MS. CULLARI: Sam Cullari, Ms.

13 JUDGE SORG-GRAVES: I note that Ms. Cullari is a
14 district manager for Respondents and not counsel, but my
15 understanding is she's representing the Respondent in this
16 hearing. Okay. And Ms. Davis, if you would put into the
17 record the formal papers?

18 MS. DAVIS: Yes, Your Honor. If I may approach? I'm
19 going to show you what I circulated last night.

20 MS. POLITO: She did just in a sequestration order.
21 (Indiscernible) witness' so --

22 JUDGE SORG-GRAVES: Well, I haven't done a
23 sequestration order yet. I usually get formal papers in.

24 MS. POLITO: Oh, I'm sorry. I thought you said that,
25 Judge. I thought you said sequestration order earlier.

1 JUDGE SORG-GRAVES: We will do it, but not yet.

2 MS. POLITO: Thank you.

3 MS. DAVIS: So this is what's been marked for
4 identification as GC Exhibit 1, which I circulated to all the
5 parties last night. Here's a paper copy. Contains the
6 complaint, the charges in this case, and index, the service
7 sheets. So I move to admit what's been marked as GC Exhibit 1.
8 (General Counsel's Exhibit 1 identified).

9 JUDGE SORG-GRAVES: Any objection, Ms. Omar?

10 MS. OMAR: No.

11 JUDGE SORG-GRAVES: Ms. Polito?

12 MS. POLITO: No, Judge.

13 JUDGE SORG-GRAVES: The formal papers, GC Exhibit 1
14 is admitted. And I understand just from pre-hearing
15 discussions that Ms. Polito would like to, I guess, supplement
16 what's on the record with records she believes are important to
17 have in the -- in the record.
18 (General Counsel's Exhibit 1 is admitted into evidence).

19 MS. POLITO: Yes, Your Honor. This morning, we
20 circulated our proposed formal papers to General Counsel and
21 the Union. One document is missing, so we'd like to supplement
22 that and then provide it to Your Honor if that's acceptable.

23 JUDGE SORG-GRAVES: Okay. And what additional
24 document was that? I looked through what was circulated
25 before, but what's the additional document?

1 MS. POLITO: I think it was a response --

2 JUDGE SORG-GRAVES: General Counsel's response.

3 MS. POLITO: General Counsel response to the motion
4 to dismiss we inadvertently excluded from our index. So I'd
5 like to add that back in, Your Honor.

6 JUDGE SORG-GRAVES: Okay. And the formal record will
7 include those documents, like the file, formal file already
8 includes those documents because they've been filed with the
9 Board. So I don't know that it's necessary, but it doesn't --
10 I mean, if it's already in your file, I don't have to have you
11 remove them.

12 I think it's sort of redundant to some extent, okay?
13 And same with the subpoena request. They'll already be in the
14 form -- what would be considered the formal file of the Board,
15 but it doesn't hurt to have them in again.

16 MS. POLITO: Okay.

17 JUDGE SORG-GRAVES: So I'm not going to -- I'll see
18 if there's any objections.

19 MS. DAVIS: Do you happen to have a paper copy of
20 that?

21 MS. POLITO: Do you want a paper copy of all the
22 formal papers?

23 MS. DAVIS: Whatever -- I haven't taken -- I didn't
24 see -- I haven't looked through them yet. I was looking at the
25 subpoena production.

1 MS. POLITO: Yeah.

2 MS. DAVIS: Do you not have one? I'm not trying to
3 put you on the spot here.

4 MS. POLITO: No. I don't have copies of all of the
5 formal papers because they're voluminous.

6 MS. DAVIS: Well, not the formal papers, but the
7 exhibit that you --

8 MS. POLITO: Exhibit that's missing?

9 MS. DAVIS: No, the one that you --

10 MS. POLITO: One we're referring to is Respondent's
11 formal papers. Respondent's Exhibit 1. You need something
12 like this, Charlotte, that you printed out? I didn't print it
13 out because I wanted to get it fixed before I printed it out.
14 (Respondent's Exhibit 1 identified).

15 MS. DAVIS: Okay.

16 MS. POLITO: So I can have that after lunch, Judge.
17 I'd like to fix that and then submit it if that's acceptable.

18 MS. DAVIS: Do they include -- well, let me -- can I
19 just have a moment to look through them, Your Honor? Thank
20 you.

21 MS. POLITO: Here's a --

22 MS. DAVIS: Oh, thank you.

23 MS. POLITO: I think that's a version of what I
24 emailed you, but it doesn't include the one that Christina had
25 mentioned.

1 MS. DAVIS: It's missing some things because I think
2 the PDF is 200 pages. Okay. Okay. Sommer, did you -- Sommer,
3 did you file the opposition to the motion for dismissal?

4 MS. OMAR: Yes, we did.

5 MS. DAVIS: Okay. I believe that's missing as well.
6 The Charging Party's opposition to the motion to dismiss.

7 MS. RINEHART: That, Charlotte, is included in the
8 actual PDF but was omitted on the index, so fix that -- we're
9 fixing that as well.

10 MS. DAVIS: Okay. Okay. I'd like to also include --
11 thank you. The cover letter for the first subpoena. Because I
12 believe that's material to some of the objections that were
13 brought up for at least the first subpoena.

14 JUDGE SORG-GRAVES: May I have copies of that?

15 MS. DAVIS: It's attached as I was planning to put in
16 the subpoenas as well. So I have no objection to the inclusion
17 of them to the record. So I marked this separately as GC-2.
18 We can just make it cover letter, if you don't mind me tearing
19 apart the exhibit.

20 MS. POLITO: It's entirely up to you. If you want me
21 to add it to ours for ease of reference, whatever you -- your
22 preferences are.

23 MS. DAVIS: If you add it to -- I think continued, it
24 all would be useful. So if you could add it, that would be
25 good.

1 MS. POLITO: Yeah.

2 MS. DAVIS: I'll give this to you.

3 MS. POLITO: Thank you. (Indiscernible).

4 MS. DAVIS: I would also like to include the subpoena
5 that we'd issued Renee Colburn. If we could put that -- the
6 Respondent's witness as well. If we're going to include a --
7 an exhibit file with all the subpoenas, and I'm assuming this
8 is Respondent's intention to include one exhibit file with all
9 the subpoenas, motions, and motions regarding summary judgment
10 or motions to dismiss, including -- and including the subpoena
11 back and forth, petitions to revoke, and oppositions. Then
12 just to be complete, to include that as well.

13 MS. POLITO: So Judge, here's an issue with the
14 subpoena relating to Ms. Colburn. It was emailed on Thursday
15 and it was just delivered today. So our five days to file the
16 petition to revoke starts running today. So we have until next
17 Monday to file a petition to revoke with respect to that
18 subpoena if in fact it's even been properly served.

19 So that's the issue with respect to Ms. Colburn. She
20 was also out on a leave of absence from Starbucks and she -- I
21 don't want to state anything further because there's other
22 people in the audience that I think should be sequestered. But
23 there are issues with respect to her subpoena and we still have
24 the opportunity to file a petition to revoke, which we intend
25 on filing.

1 JUDGE SORG-GRAVES: Okay. Let me look at General
2 Counsel's -- at least the -- the typical formal papers in. Let
3 me go ahead and do this question -- sequestration order. And
4 why don't we just do the -- we'll have all of the subpoenas
5 regarding documents in one and we'll do this witness subpoena.
6 Why don't you have it as GC-2, whatever you want to call it?
7 And we'll handle it that way.

8 And then if later we end up supplementing a response
9 from Respondent about that individual's availability or
10 something of that nature, we'll see. Okay. Well, counsel, so
11 that you understand that my sequestration order comes from
12 Greyhound lines. I've shortened it a little bit, okay? It's -
13 - the case number is 319 NLRB 554 in 1995 decision. A
14 sequestration order is being issued in this proceeding.

15 This means that all persons who are expected to be
16 called as witnesses in this proceeding, other than a person
17 designated as essential to the presentation of a party's case,
18 will be required to remain outside the courtroom whenever
19 testimony or other proceedings are taking place. The limited
20 exception applies to witnesses who are alleged discriminatees
21 in this matter.

22 They may be present in the courtroom at all times
23 other than when witnesses for the General Counsel or a Charging
24 Party are giving testimony regarding the same events that the
25 alleged discriminatees are expected to testify about. The

1 sequestration order is also -- prohibits all witnesses from
2 discussing with any other witness or possible witness the
3 testimony they have already given or will give.

4 Likewise, counsel for a party may not disclose to any
5 witness the testimony of any other witness. Counsel may,
6 however, inform his or her own witness of the content of
7 testimony given by any opposing party's witness to prepare to
8 rebut that testimony.

9 It is counsel's responsibility to make sure they and
10 their witnesses comply with this sequestration rule. Okay.
11 For the record, I know this was discussed earlier, but for the
12 General Counsel is -- are you designating the person essential
13 to the presentation of the party's case?

14 MS. DAVIS: Yes, Your Honor. I am designating Aly
15 Nogosek, who is our discriminatee in this matter.

16 JUDGE SORG-GRAVES: Okay. And is the -- the Union
17 asking for any person to be designated as essential?

18 MS. OMAR: Yes. Yadhira Alvarez.

19 MS. POLITO: Can you say the name again one more
20 time, please?

21 MS. OMAR: Yadhira Alvarez.

22 MS. POLITO: Thank you.

23 MS. DAVIS: That's Y-A-D-H-I-R-A.

24 MS. POLITO: Thank you.

25 MS. DAVIS: You're welcome.

1 JUDGE SORG-GRAVES: Okay. And for Respondent?

2 MS. POLITO: Ms. Sam Cullari. C-U-L-L-A-R-I,
3 district manager for Starbucks. Thank you, Your Honor.

4 JUDGE SORG-GRAVES: And I understand that she may not
5 be able to be present the whole time. Will you have a
6 substitute in her absence?

7 MS. POLITO: We will not, Judge.

8 JUDGE SORG-GRAVES: Okay. Okay. I asked the parties
9 to police the sequestration. If there's anybody who needs to
10 leave at this point, any witness that you have here, again,
11 please ask them to -- I don't know, Ms. Davis, is there a place
12 that --

13 MS. DAVIS: Yes. We have several rooms that we can
14 talk about. Can I just have a moment to --

15 JUDGE SORG-GRAVES: Yes. Let's go off the record.
16 (Brief Recess at 10:27 a.m./ Reconvened at 10:28 a.m.)

17 JUDGE SORG-GRAVES: Okay. Before we've moved to this
18 to discussing the sequestration order, we were talking about
19 the subpoena for the -- the manager of the actual store. That
20 -- that's the way I'm understanding it. This is the manager,
21 Ms. Davis, from the store where --

22 MS. DAVIS: No, no, no; it's a store manager from
23 Storrs, Connecticut who actually is the one who issued the
24 discipline to our Discriminatee.

25 JUDGE SORG-GRAVES: Okay. It is fair that, you know,

1 they should have time to respond to whether or not it's an
2 appropriate subpoena. I guess Ms. Polito, just briefly, why,
3 you know, if this is an individual who -- who was involved, why
4 would it not be relevant to have that individual here?

5 MS. POLITO: Thank you, Your Honor, for allowing me
6 the opportunity to address this issue. The only reason Ms.
7 Davis is aware that Ms. Colburn was not being called as a
8 witness is because I -- during one of our conversations, I
9 indicated that she was not being called as a witness.

10 She actually has no direct knowledge with respect to
11 why Ms. Nogosek was terminated. She was the person that
12 delivered the termination only. She was not a decision maker,
13 was not involved in the decision. And she's also been on a
14 leave of absence, and she's not the store manager for the
15 Vernon store.

16 I had shared this information with Ms. Davis and then
17 last Thursday via email, I got a subpoena via email, which is
18 improper way to serve. And then just this morning a subpoena
19 was delivered to the Vernon store for Ms. Colburn. Ms. Colburn
20 does not work in the Vernon store, so our position is that the
21 subpoena is improper, has not been served on Ms. Colburn.

22 And moreover, Your Honor, her testimony is not
23 relevant to any of the issues involved in this matter because
24 all she did was deliver the termination because the store
25 manager of Ms. Erin Twible was on vacation. And Ms. Twible

1 will be testifying this week, Your Honor.

2 MS. DAVIS: Your Honor, if I may respond. This is
3 all testimony that the witness could provide in addition to why
4 they were directed to issue this discharge. It's news to me
5 that this person had no direct knowledge supposedly of why our
6 discriminatee was discharged.

7 That's new. So we had issued a subpoena to the best
8 that we could and also provided a courtesy copy to Respondent
9 since they've been accepting service of formal documents to --
10 for all the -- for all portions of these cases in the
11 investigation of these cases.

12 So that was issued April 6th. So they've had several
13 days to consider the subpoena and have only now told me this
14 morning that they have no -- they have no intention of
15 providing Renee Colburn to testify.

16 MS. POLITO: Judge, it was improperly served. I
17 mean, it's not served. It wasn't even served to the store
18 until today. In fact, Ms. Colburn was on a leave of absence.
19 She hasn't even been served with a subpoena. So I have -- at -
20 - at best, I have five days from today.

21 At worst, I don't even think she's been served, so
22 I'm not even sure that I'm obligated to file a petition to
23 revoke at this point. She has not been served with a subpoena.
24 We do not intend on calling her. She's been on a leave of
25 absence. We have no intention of calling her out to this

1 particular hearing. And she's not been personally served.

2 JUDGE SORG-GRAVES: But -- she's on a leave of
3 absence, but she's still considered employed by Respondent?

4 MS. POLITO: She is still considered employed by
5 Respondent, correct, Your Honor.

6 JUDGE SORG-GRAVES: In a managerial position?

7 MS. POLITO: Correct, Your Honor.

8 JUDGE SORG-GRAVES: And it's at least come to your
9 knowledge there -- I would -- I mean, I would think that it
10 would be hard for Respondent to say that she wasn't served
11 today. Now, whether other service before was adequate that --
12 that may be of question, I don't know.

13 But even if -- even if she was served properly
14 because other things had been accepted that way, regardless, I
15 think the Respondent would still have a day or two with the
16 intervening weekend to give a -- I don't know what date did you
17 get -- you said Thursday by email?

18 MS. POLITO: It was emailed by third -- on Thursday.

19 JUDGE SORG-GRAVES: Okay. There would still be time
20 in the five business days to do a motion to revoke. And
21 generally as hearings open, I, you know, I will take a motion
22 to revoke, but you know, I would request the Respondent do it
23 as soon as possible. I understand we're sitting here.

24 MS. DAVIS: Your Honor, if I may be heard once more.
25 I -- I don't get the impression that Respondent is intending to

1 produce her at all, even if service was perfected. But I may -
2 - am I misunderstanding?

3 MS. POLITO: No, you're correct.

4 MS. DAVIS: So --

5 MS. POLITO: Which we shouldn't have to disclose who
6 we're producing as witnesses, but Your Honor, we have no -- we
7 -- we do not have any intention of producing Ms. Colburn.

8 JUDGE SORG-GRAVES: Okay. Well, you have no
9 intention of calling Ms. Colburn as your own witness, but if
10 she's subpoenaed, I -- I have no way knowing sitting here what
11 information she knew, and I can't take your statement as
12 testimony. So if it's eventually served, and then we will
13 eventually hear from her if she comes in and testifies as you
14 said, then she does.

15 But if it appears that by serving it on, you know,
16 Respondent is one business. I've been told that, and I've been
17 told that's why it's hard to have a custodian of record here.
18 So if it is one business and -- but it's spread out, you know,
19 sounds at least that she was adequately served today by serving
20 it upon the company. She is an agent of the company.

21 So you know, unless Ms. Davis tells me that, well,
22 whatever information she receives through whatever channel, she
23 decides she no longer wants to pursue that subpoena, then --
24 then that'll be that issue. If Respondent, you know, is
25 absolutely not going to produce her and General Counsel needs

1 to do subpoena enforcement, I guess we need that. Is that your
2 intention?

3 MS. POLITO: I don't know what our intention is right
4 now. Right now, she's not -- she was not even served as I
5 walked into the courtroom and she wasn't even served. The
6 store was served that she doesn't even work at. So again, just
7 for the record, Ms. Colburn has never been served with a
8 subpoena. Emailing me a subpoena less than five days before
9 trial does not comply with any rules.

10 JUDGE SORG-GRAVES: I -- I understand that.

11 MS. POLITO: And then the subpoena was served at the
12 Vernon store this morning for which Ms. Colburn does not work
13 yet. I learned that fact as I was walking into the courtroom
14 this morning. I have five days, assuming that the service is
15 correct, I have five days to file the petition to revoke, which
16 brings me till Monday.

17 JUDGE SORG-GRAVES: Okay.

18 MS. POLITO: And -- and I did not intend on calling
19 her. So I'm being candid with Your Honor and letting you and
20 Ms. Davis know that she was -- she was on a leave of absence.

21 JUDGE SORG-GRAVES: I understand.

22 MS. POLITO: I have no intention of calling her. I
23 think she's just returning to work this week from a significant
24 medical issue. And no, I am not intended on calling her to
25 testify in this matter because she's not a fact witness. She

1 simply delivered the termination because the store manager was
2 on vacation.

3 And I understand that you can't take my
4 representation because I'm just an attorney, but I can tell you
5 that as we get through the trial, we can see if Ms. Davis still
6 feels compelled to have to call her as a witness and then we
7 can leave the case open until we file our petition to revoke
8 next Monday and see if we have to call her by Zoom or Teams or
9 some other means before we close out the record.

10 JUDGE SORG-GRAVES: Okay.

11 MS. DAVIS: Your Honor, I'd like to respond to that.
12 Respondent has had full opportunity to accept service for all
13 the other documents. This is in fact told the region that they
14 want to accept service on behalf of their representatives as
15 the law firm to accept service instead of us bombarding them
16 with paperwork.

17 I understand the official rules of the subpoena, but
18 I also want to cut to the chase and say that if Respondent is
19 intending to never produce Renee Colborn despite any subpoenas
20 on her, I'd like to start the enforcement procedures now so we
21 can move the hearing along and prevent any additional delays.

22 JUDGE SORG-GRAVES: Okay. You know, ruling on
23 subpoenas is always an issue for me because I don't know the
24 facts, but I assume this manager went to the Vernon store to
25 issue the discharge.

1 MS. POLITO: That is correct, Judge. She delivered
2 the discharge.

3 JUDGE SORG-GRAVES: Okay.

4 MS. POLITO: She didn't have anything to do with the
5 --

6 JUDGE SORG-GRAVES: Okay. I get that.

7 MS. POLITO: But she did deliver the discharge.
8 That's correct.

9 JUDGE SORG-GRAVES: So, okay. She does -- I guess
10 when Respondent needs her to work in that , performance work in
11 that store, and I don't know if she's ever performed any other
12 work in -- or role in the future, but --

13 MS. DAVIS: She has, Your Honor. As far as we know.

14 JUDGE SORG-GRAVES: I'm going to at least concern --
15 consider her served as of today, okay? At least in my mind.
16 So then my -- my question again to Ms. Polito needs to ask,
17 right? Whether or not this individual will ever be produced,
18 okay? And if not, then GC can take the steps that GC feels it
19 needs to take, okay?

20 So let's leave that there, okay? I assume that at
21 some point we will have documents concerning that subpoena to
22 come into the record, but they don't have to go in right this
23 second, okay? And then far as production of paper documents or
24 -- or I'm sorry, paper, video, the other documents. I
25 understand that the Respondent has produced documents.

1 I assume it's a considerable amount. I was told
2 somewhere in the 2100-page range. I understand that Ms. Davis
3 has not had a chance to determine whether or not the subpoena
4 has been fully complied with. We did have pre-hearing
5 conversations about the subpoena and the motion to revoke
6 pretty much the entire subpoena.

7 And as I told Respondent during those conference
8 calls, the standard for relevance in Board proceedings is very
9 low. And that I did not find a reason to you know, wholesale
10 reject General Counsel's subpoena on relevance issues, time
11 period, requested issues, get back at the document. So I did
12 ask the parties to speak about it.

13 There were some very sort of specific questions in
14 Respondents motion to revoke on specific items of the request
15 and -- and what maybe wording meant. And it was my
16 understanding that the parties had come to at least some
17 understanding of those issues.

18 And so we'll leave that to when Ms. Davis has had the
19 opportunity to review the documents to raise whether or not
20 there is any issues at this point. At this point, I don't
21 think we know. Respondent may have fully complied. There is
22 the issue of asking questions about whether it's been fully
23 complied with.

24 And I understand that Respondent has indicated that
25 there is -- because of its structure and the way it maintains

1 documents, that there isn't one person who maintains all of the
2 records would have the access to reviewing and finding all the
3 records that were subpoenaed.

4 There would at least be somebody at the store,
5 individual store level, and one of the persons at higher
6 managerial levels, corporate levels. I did tell Ms. Polito
7 that I didn't think it was necessary to have, you know,
8 multiple people come and sit here that they -- for the trial.
9 But I do have to, I guess what I'm asking Respondent to do is
10 to identify those people, make sure you know who they are in
11 case Ms. Davis does have questions about production.

12 And I, you know, if necessary, we could do a zoom
13 portion of the hearing to allow Respondent to not have to drag
14 those people all the way here. But if questions need to be
15 answered, we will have to find answers to them. Whether we do
16 that as a virtual portion of the hearing in order -- it'll --
17 if that's Respondent's preference, if Respondent would prefer.
18 I know in conference calls, they preferred an in-person
19 hearing.

20 If they prefer those persons to be in front of me in
21 person, I'll do that as well. But to try to accommodate the
22 situation, I'll be willing to do Zoom if we need to, but I
23 think we're putting the cart before the horse here. Ms. Davis,
24 how long do you think you need or where do you want to go with
25 -- with your presentation of the case? Is this something that

1 you can review? We can start hearing witnesses.

2 MS. DAVIS: Your Honor, I -- some of our witnesses
3 have traveled to be here today, and so I'm in a tough spot
4 right now because we, they have made travel accommodations and
5 they have some scheduling limitations for the rest of this
6 week. That being said, I just got the privilege log sent by
7 email. Some -- there has been some redacted information in the
8 production as far as we could tell.

9 There -- we also don't know which documents are
10 pursuant to which subpoena paragraphs. The PDF we received is
11 not searchable, so we would have to do this all by hand. And
12 we had asked for the native files. It's actually fairly simple
13 in Relativity to produce the load file or -- or the file that
14 has been uploaded to Relativity. So they could have done that
15 but chose not to.

16 Instead, we received a conversion of the Relativity
17 documents. So this was an issue that we had been telling
18 Respondent about since Day 1 because it had come up in a
19 previous hearing and other regions have also dealt with this as
20 well. And we don't have the lead witness who we called to
21 testify here today.

22 Despite Respondent having the subpoena since April
23 6th, I had no idea that she would be on medical leave. So I'm
24 without a lead witness and without a roadmap to understand the
25 documents that I have, which as far as I can tell is

1 incomplete.

2 JUDGE SORG-GRAVES: Okay.

3 MS. POLITO: Judge, if I may.

4 JUDGE SORG-GRAVES: Go ahead, Ms. Polito.

5 MS. POLITO: I recognize that every hearing is
6 different and every hearing has a different judge assigned to
7 it. But the subpoenas were returnable this morning. I was up
8 at six o'clock this morning making sure that the documents went
9 over to Ms. Davis by 8:00 a.m. so that she would have them
10 before the hearing they were returnable today.

11 There is absolutely no basis not to proceed forward
12 right now. Ms. Colburn, the first time I got any indication
13 that they wanted her called was via email on Thursday, which
14 was not even five days' notice. Completely improper, not
15 served properly.

16 So to suggest that we should delay when we've taken
17 every effort to provide documents via Relativity, provide
18 documents via PDF, which we indicated that we were due as an
19 accommodation, which I've not done in any of -- of my other
20 hearings, so that we can move forward today.

21 I would just like to note for the record, we strongly
22 object to any type of continuous or any opportunity for counsel
23 to review records that were delivered two hours before the
24 hearing today.

25 JUDGE SORG-GRAVES: Okay. Well, regardless, I have

1 to let counsel review records at some point. And, you know,
2 that has to occur. What I don't want is a messy record where
3 she calls a witness, we -- and then she has to recall that
4 witness because she just now has had the opportunity to review
5 documents that are necessary for that witness.

6 That -- I guess that's, you know, the only way I
7 proceed at this point is with her having that liberty of
8 recalling witnesses if she needs to, because now she's had the
9 opportunity to review a document that she didn't have in hand
10 when she initially called.

11 So I guess -- Ms. Davis, you've had the documents, I
12 know you were reviewing them before we opened the record. How
13 long do you think that you would need to review documents in
14 order to at least just put on the witnesses that you have that
15 -- that are here and present?

16 And then, you know, I have no way of knowing whether
17 those are document having, you know, witnesses that you would
18 be showing a lot of documents to or not.

19 I guess I'm asking if you can proceed in any form at
20 this point with the liberty of going back and representing
21 those same witnesses if there's, you know, to the extent that
22 there's a document that you need to review with that witness
23 later. And, you know, how much time you would need before you
24 felt like you proceeded at least in that manner.

25 MS. DAVIS: Well, this would be proceeding without

1 calling Renee Colburn as a witness, who would be --

2 JUDGE SORG-GRAVES: Who you would've put -- initially
3 put on?

4 MS. DAVIS: Correct. Correct. I had no idea that
5 she wouldn't be showing up today. There's no indication that
6 she would not be here. So putting that on the table, I -- I
7 mean, we could go through each subpoena paragraph and if they
8 are willing to tell me which pages are pursuant to which
9 paragraph, that would be helpful in expediting the process so I
10 can get someone else at least on the stand today.

11 JUDGE SORG-GRAVES: And look -- okay. Ms. Polito, do
12 you know if the production was done in any particular order?

13 MS. POLITO: Your Honor, I can tell you that I've
14 never produced a record. Here's your Subpoena 1, here's the
15 documents in response to Subpoena Request number 1. I -- I
16 haven't done that. I've produced the documents. What I can do
17 is provide an index of the documents that will tell you at
18 least the title of the documents.

19 I've emailed the paralegal to see if you can do an
20 index of documents, but we're not under any obligation to say
21 Document 362 is responsive to Paragraph 3 of the subpoena. The
22 rules don't require us to do that. It's not a discovery
23 demand, it's a subpoena for documents. So we're not required
24 to do that. I don't have that -- I personally don't have that
25 available to give to counsel.

1 MS. DAVIS: Your Honor, if I may --

2 MS. POLITO: I can do the index, which I will say in
3 other cases has -- counsel for General Counsel I found to be
4 somewhat helpful.

5 MS. DAVIS: Your Honor, if I may, I -- we can go
6 through them one by one. So one, as far as we can tell, it's
7 incomplete. This is asking for handbooks and they were
8 redacted, the ones we received. Paragraph 2, I have no idea
9 what we received.

10 We received a scattering of -- of documents. As far
11 as I can tell, that's incomplete. Same with Paragraph 3. I
12 don't know if we have any of the internal documents that
13 underlie those -- sorry, not -- these aren't comparators, but
14 these are internal documents concerning meetings that were held
15 with employees.

16 I saw one document of notes, but I have no idea if
17 that's pursuant to this paragraph, and I also don't know if
18 that's complete. And it goes on. We have -- if they want to
19 make this more difficult, we can do that.

20 JUDGE SORG-GRAVES: Okay.

21 MS. DAVIS: And we did ask for an index upfront in
22 virtually every subpoena that we issue.

23 JUDGE SORG-GRAVES: I understand. Okay. Let's go --
24 let's do this at this point. Ms. Polito, this listing of the
25 documents, I don't know what you mean by titles, but how long

1 will that take to produce?

2 MS. POLITO: Probably not very long, Judge, because I
3 asked the -- when Ms. Davis asked me, I asked the paralegal to
4 work on it. I haven't checked my email while I'm sitting
5 there, but she's usually pretty quick about those things. It's
6 just taking the doc -- I -- I think counsel for General Counsel
7 can also do it. It's taking the Relativity production and then
8 developing an index which just lists the title of the
9 documents.

10 MS. DAVIS: Your Honor, that doesn't answer or
11 address my concern, which is whether or not each -- each
12 paragraph of the subpoena has been complied with. Has been --
13 that we got the documents that we requested. That's my main
14 concern, especially without any custodian of records being
15 present. We don't even know the names of the people who search
16 for documents.

17 JUDGE SORG-GRAVES: Okay. Let's take some time off
18 the record. And then Ms. Polito, just to the -- I guess I am
19 going to ask you to have a conversation with General Counsel to
20 the -- and go through each of the subpoena items and to the
21 extent that you know whether it was, you know, that
22 information, all that existed was presented, then let her know.

23 MS. POLITO: Okay.

24 JUDGE SORG-GRAVES: To the extent that you don't
25 know, then tell her you don't know, and then we'll know where

1 we're at. It's --

2 MS. POLITO: So, I guess, Judge, just for the record,
3 Respondent is not obligated, again, under the federal rules to
4 provide a specific response to a specific subpoena question.
5 And if counsel doesn't like our production, I think we're
6 headed to an enforcement action in federal court. We've
7 produced the records, we've looked at the records, we've
8 produced a voluminous amount of records.

9 Probably 90% will never even be used in this hearing.
10 Quite frankly, at the end of the day, we've -- we've taken
11 efforts, we've worked around the clock to get these records
12 produced. If counsel is not happy with the way that we've
13 produced them, I can only offer the index.

14 JUDGE SORG-GRAVES: Okay.

15 MS. POLITO: But I'm -- I'm not going to respond to
16 each subpoena request with a response, this is a document
17 responsive to this request. And so if Your Honor is ordering
18 me to do that, then I think we have to figure out what the next
19 steps are, Judge.

20 JUDGE SORG-GRAVES: My question for you is -- then
21 I'll ask, has Respondent complied with all the items in the
22 subpoena? All the numbered items and provided to the available
23 documents for each of those subpoena requests? Or is
24 Respondent refusing to do so in regards to some or all in
25 portion -- or some in total or others in portion?

1 MS. POLITO: My understanding is that we've produced
2 all records in response to the subpoena. That's my
3 understanding.

4 JUDGE SORG-GRAVES: Okay.

5 MS. POLITO: We're talking about some 8(a)(1)s and
6 we're talking about a termination relating to Ms. Nogosek.
7 That's all we're talking about in this hearing. The 8(a)(1)
8 witnesses, I -- I can't even imagine what documents they're
9 going to testify about.

10 There's -- there's no documents to testify about.
11 There's allegations about conversations that were allegedly
12 threats. So it's all testimonial evidence. And then there's
13 issues relating to Ms. Nogosek's termination. All of those
14 documents have been produced, Your Honor.

15 MS. DAVIS: With all due respect, Your Honor --

16 MS. POLITO: It's not a complicated track pattern.
17 If I may be heard, this is a coordinated effort that Starbucks
18 has to root out Union supporters. All of these 8(a)(1)
19 statements are part of a playbook that they have, which we know
20 exists.

21 And I don't believe -- I mean, I don't believe that
22 they produced it in their documents, I haven't seen it show up.
23 But we specifically requested the petitioned store playbook by
24 name. As far as we know, Respondent has such a playbook, but
25 have chosen not to present it.

1 JUDGE SORG-GRAVES: Okay. So I guess what the
2 problem is, is that Ms. Davis doesn't know exactly what all is
3 in there. And until she does and -- and then there is a faster
4 and easier way for her to look at that, then that would move us
5 forward. So let's take a break off the record and -- to spend
6 some time with the documents.

7 MS. DAVIS: Okay.

8 JUDGE SORG-GRAVES: Ms. Polito, get your list --
9 whatever this list of titles that you had sent to Ms. Davis.
10 Ms. Davis, take a little more time, look at what you have, see
11 if we're able to go forward and then come back and talk to me
12 in -- in an hour, okay?

13 MS. DAVIS: Yes, Your Honor.

14 JUDGE SORG-GRAVES: The problem is -- is we don't
15 know if it's there or not, okay?

16 MS. DAVIS: Yes, Your Honor.

17 (Brief Recess at 10:57 a.m./ Reconvened at 12:02 p.m.)

18 JUDGE SORG-GRAVES: We're back on record. Okay. Ms.
19 Davis, were you able to get a better look at the documents?

20 MS. DAVIS: Yes, Your Honor. I do believe the
21 subpoena -- production is incomplete for both subpoenas.

22 JUDGE SORG-GRAVES: And in what fashion or how -- how
23 did you come to this conclusion, I guess?

24 MS. DAVIS: So we received a list of titles of the
25 documents. Running through them, they seem responsive to at

1 least some of the paragraphs. I did not see anything for the
2 petitioned store playbook that we subpoenaed on March 20th.

3 To the extent that Respondent is arguing it does not
4 exist, we have information that is -- that contradicts that
5 representation. So we know the search to be incomplete at
6 least with respect to that document that we named in the
7 subpoena. For the other paragraphs, it's really just me
8 grasping in the dark to figure out what is provided that's
9 responsive.

10 The programming of Relativity has the capability of
11 being categorized by subpoena paragraph number. I don't know
12 if Respondent did that, but it would be easy for them to
13 produce if they did categorize their documents in Relativity to
14 -- to the subpoena paragraphs.

15 The other part that's difficult for me to assess is
16 for the internal documents leading up to the discharge of the
17 discriminatee. We have several conflicting documents. Some of
18 them may be responsive as additions of the discharge, but we
19 don't know if that's the case for the other disciplinary
20 documents we received for comparators.

21 So we asked for the internal investigations for those
22 as well. And I haven't seen any of those documents in the
23 production. Respondent did send us two unredacted copies of
24 the handbook, which I assume are complete. To the extent that
25 there are other guidelines that apply to the scenario, we do

1 not have those.

2 For example, I don't know if the handbook contains an
3 outline of the third place in -- which is what Starbucks called
4 the cafe -- calls its cafe areas in the store. We received a
5 portion of that policy during the investigation, but we do not
6 have the complete policy in which it is housed. And we do not
7 know if there are other policies related to that.

8 Similarly, we do not have guidelines that would've
9 been responsive to Paragraph 1 about the -- disrupting the cafe
10 area, of who may be in it, who may be shut out of the cafe, and
11 what the process is for handling situations like that. They
12 raised us as a defense for one of the allegations that -- in
13 the amended complaint, and we don't have those policies which
14 would be responsive to the subpoena.

15 Similarly, we do not have any of the metadata
16 accessible to us at this point in time, which would be
17 especially useful for seeing additions of documents that have
18 been created over time. The PDF that I can now see is
19 completely wiped of all of that information.

20 We have it in -- somewhere in Relativity in a text
21 file but we won't have that accessible to us until several
22 days. We've been told two to three business days but I don't
23 know what our vendor will actually do.

24 JUDGE SORG-GRAVES: Okay. Have you talked to the
25 vendor since the production came in?

1 MS. DAVIS: I personally have not, but our e-
2 litigation team is in contact with them now. And we're still
3 being told --

4 JUDGE SORG-GRAVES: These two to three days?

5 MS. DAVIS: That's correct, yes.

6 JUDGE SORG-GRAVES: Is there any particular reason?
7 It's not a particularly large production. It's just -- or does
8 it trickle in -- just as much as you know about this process?
9 Will the -- will you get it all at one time or will it come in
10 as they complete?

11 MS. DAVIS: As far as I know, it's the vendor's
12 staffing, scheduling, and what they're doing with other
13 clients. What they -- their own schedule dictates how long it
14 takes for them to upload the documents and categorize it the
15 way that makes it open to us.

16 They have to attach our user names to the system and
17 to those particular documents. They can't do that in advance.
18 They can only do that once they have the production. And that
19 takes them several days to do. I'm not sure how long it'll
20 take with the 2000 plus documents that Respondent produced.
21 Let me look at this in here.

22 Region 3 did create an outline of Relativity that we
23 can share with the parties. They had explained to this in the
24 motion for sanctions in Region 3 for Respondents for an issue -
25 - a similar issue concerning Relativity in that case with

1 Respondent's production. That would be case 03-CA-295470.

2 JUDGE SORG-GRAVES: Okay.

3 MS. POLITO: Judge, if I may for the record.

4 JUDGE SORG-GRAVES: Yes. At least address the
5 specific documents that she's raised concerns about whether
6 they're there or going to be produced or were intended to be
7 produced.

8 MS. POLITO: For the record, Respondents issued a
9 petition to revoke on March 22nd in response to the first
10 subpoena served by counsel for the General Counsel, there's
11 been no issue or no order issued with respect to the initial
12 petition to revoke.

13 Subsequent to that, counsel for the General Counsel
14 served another subpoena on us and a petition to revoke was
15 filed yesterday, April 10th within the five days. There's also
16 no issue being decided on that petition to revoke. As we
17 discussed earlier, testifying subpoena was served via email on
18 Thursday April 3rd, delivered to the store today, although not
19 signed by anyone at the store.

20 And as I understand from Your Honor's discussion
21 earlier, you indicated that you would view that as being served
22 today. So we have -- Respondent has five business days to file
23 a petition to revoke with respect to that testifying subpoena,
24 which we intend on doing.

25 In response to discussions, prior to the hearing

1 today, counsel for the General Counsel indicated that it takes
2 two to three business days from Relativity to access documents.
3 Those documents were accessed this morning and downloaded by
4 Ms. Davis. I don't know what that means for a vendor, but Ms.
5 Davis accessed those documents and downloaded them this morning
6 because you can tell through Relativity that that was done.

7 In addition to providing the Relativity documents in
8 an effort to move this rather small hearing, that again, only
9 involves several 8(a)(1)s and one termination forward. We also
10 provided counsel with PDF documents because of the size of the
11 documents.

12 In addition to that, after discussion this morning,
13 we created an index of the documents that were produced for
14 counsel. Again, despite the fact that we have no obligation to
15 do either the index or the PDF, but we did that this morning in
16 adequate faith effort to move this hearing forward.

17 In response, counsel keeps mentioning some petitioned
18 store playbook, which we have had prior discussions. I've
19 never heard of that, I don't know what it is, I don't know what
20 that document is. So no, I will not be producing a document
21 that I've never heard of, and I do not have it for production
22 today.

23 With respect to the other specific objections or
24 notations that counsel made on the record, we are taking the
25 position that we have produced the records in response to the

1 subpoena despite the fact that the court has not yet issued an
2 order on our petition to revoke. We have acted in good faith,
3 we have produced documents.

4 Before we left the courtroom today, if I didn't note
5 my objection, counsel was given an hour to review documents. I
6 object that counsel for the General Counsel was given an hour
7 to review documents. Counsel is not entitled to do that. The
8 subpoena was returnable today if the documents are returnable
9 today.

10 In that discussion before we left the courtroom,
11 counsel for General Counsel also made an argument to Your Honor
12 that this case is of all -- about Starbucks' union animus
13 nationally.

14 This case is not about anything other than the Vernon
15 Store where there's allegations in a complaint about specific
16 8(a)(1)s made -- allegedly statements made by Sam Cullari and
17 Erin Twible, both which will be here to testify, and the
18 termination of Ms. Nogosek, in addition to an amended complaint
19 for which the answer was due today alleging violations about
20 removal of items from a community board. That's all that this
21 complaint is about.

22 All of the documents responsive to those allegations
23 have been provided to counsel. We will not be providing any
24 additional documents, Your Honor, at this time. We've acted in
25 more than good faith, we've given more than what we're required

1 to do under federal statute, and we will be filing a petition
2 to revoke with respect to Renee Colburn.

3 JUDGE SORG-GRAVES: Okay. And -- no. In pre-hearing
4 conference calls, the parties were asked to discuss the
5 subpoena issues and to a good extent, they were told -- I was
6 told that they were resolved. The issue of the -- whether or
7 not GC would be able to access them, the Relativity was brought
8 up.

9 There was the request for the documents to be
10 presented to GC early Respondent has decided that they didn't
11 want to do that and -- and waited until today, but then doesn't
12 want to deal with the consequences of what that means.
13 Furthermore, over and over, Ms. Polito has told me the General
14 Counsel doesn't have the right to review documents, that this
15 is discovery.

16 That makes absolutely no logical sense. Why would
17 there be the subpoena process if General Counsel doesn't have
18 time to review those documents and look at them? There is a
19 case out there that even requires ALJs to give General Counsel
20 time to eat and sleep instead of making them stay up all night
21 to look at those documents.

22 So the procedure for this hearing and the no
23 discovery doesn't mean that General Counsel, one, doesn't get
24 the documents or, two, doesn't get time to review them and use
25 them during the hearing. I will point out that those documents

1 are all in possession of the Respondent, and Respondent has
2 time to review them and be familiar with them ahead of the
3 hearing.

4 And in this case, the initial subpoena, the main
5 subpoena for most documents was issued I know at least four
6 weeks. It's not five weeks before the hearing because it was
7 issued before my first conference call with the parties, which
8 is well beyond the period of time which is typical in these
9 proceedings, gave Respondent a significant amount of time to
10 comply with it.

11 I've been told that complying with it didn't require
12 the protection of tons of documents in -- in the litigation
13 world. Although 1200 or 2100 pages is -- is significant, I
14 think that in the world of litigation, not terribly
15 significant. With regards to, you know, if Respondent is
16 saying something doesn't exist, I guess we'll have to, you
17 know, have evidence put into the record if Ms. Davis has some
18 evidence as to that.

19 If -- and maybe solicit a different name to it or I
20 don't -- I'll have to look at how the request for the document
21 is -- is made in the subpoena. If the naming of it is -- is
22 the issue or if it doesn't actually exist, I don't know. Of
23 course I'd have no way of knowing. But, you know, we will need
24 to go forward. General Counsel will need to be able to view
25 and look at the records before witnesses are put on.

1 There's -- it makes absolutely no logical sense, this
2 argument that you keep giving to me that Respondent is not
3 granted time to look at those documents. Why -- why would the
4 procedure for subpoenaing documents even be in place? So
5 that's going to go nowhere with me.

6 What we're going to do, and I will issue a very
7 detailed subpoena since it's not worked out. I think it always
8 works out best for the parties to cooperate. We'll just have
9 to reschedule the hearing and we'll -- we'll go forward.
10 Unless Ms. Davis tells me she wants to put on witnesses without
11 documents, I will -- I'll do that if witnesses are here and we
12 want to put them on without documents.

13 But I would assume at some point we run into the
14 problem that General Counsel can't finish their case without
15 having the chance to review the documents first. And there is
16 the issue of the now, you know, the other subpoena for a
17 witness that I understand, Respondent gets the opportunity to
18 file its motion as to why that witness should not be produced.

19 I can't see why that would ever be granted in the
20 sense that this person did -- whether it was a very limited
21 role, did play a role in one of the allegations. Was
22 physically present, at least presented a document. I don't
23 know if the person said something or not, or it seems unlogical
24 that they didn't say anything and handed over the document and
25 turned around and walked out.

1 But maybe it was just very, very short. But that --
2 that'd be it. Still relevant to this case. And it is
3 individual that is in the terms of, you know, of these types of
4 proceedings in control of the Respondent, employed by
5 Respondent in a managerial position, will need to ultimately be
6 produced as a witness.

7 And so we know that witness isn't going to be here.
8 General Counsel told me that that was -- individual was
9 intended to be their first witness. But I will defer if we can
10 -- to Ms. Davis, if we can put anything on the record, we will.
11 Otherwise, if -- if it's not going to go forward.

12 Short of that we'll issue actual orders that'll be
13 along the same thing that I said during the conference call,
14 which is not really going to change unless what occurs for
15 Respondent other than what I'm asking them to do here, which is
16 to produce the subpoenaed documents. Unless, you know, some
17 other proceeding is required. Ms. Davis, how do you want to go
18 forward?

19 MS. DAVIS: We would like to proceed with enforcing
20 the subpoenas, Your Honor.

21 JUDGE SORG-GRAVES: Okay.

22 MS. DAVIS: Yes.

23 JUDGE SORG-GRAVES: Okay. I will issue orders
24 shortly. And along the lines that the relevancy standards for
25 board proceedings are very well, and to the extent that it's

1 relevant, then it needs to be produced and it needs to be
2 produced -- I understand it's produced in a way that respond --
3 that Respondent has produced it in a way that General Counsel
4 should be ultimately able to see it.

5 And time may end up resolving most of these issues if
6 General Counsel has the time to look through. But there may
7 still be specific issues that General Counsel wants to seek to
8 see whether Respondent-- I, again, ask General Counsel, once
9 you've had the chance to look through, maybe you'll find most
10 of it is actually there.

11 If it is just a matter of few things, then try to
12 reach out to Ms. Polito and see if you all can resolve it. If
13 you can't resolve it, then do what you do, okay? But I still
14 think that we should be close. I mean, I would assume that Ms.
15 Polito is indicating that they've presented documents that's in
16 response to a good portion of the subpoena.

17 And hopefully, there's not a whole lot missing when
18 you have the chance to actually look through it, okay? Is
19 there anything else specific, Ms. Davis, besides the things
20 that you've mentioned already that you --

21 MS. DAVIS: Just one more point as a follow up. The
22 purpose of having a custodian of records present would be to
23 establish that the search was thorough and complete and we know
24 it to be incomplete because of the lack of this one document
25 that we know exists by its -- that name for its presence and

1 other documents that we have. So if the court requires an
2 offer of proof, we're willing to do that, but we know the
3 search to be incomplete.

4 JUDGE SORG-GRAVES: Okay. So I understand that name
5 is referenced in other documents?

6 MS. DAVIS: Yes.

7 JUDGE SORG-GRAVES: Okay. Okay. Let's go off the
8 record and talk about timing. Okay.

9 (Brief Recess at 12:22 p.m./ Reconvened at 12:48 p.m.)

10 JUDGE SORG-GRAVES: Okay. Let's go back on the
11 record. Okay. Off the record, we discussed whether or not
12 General Counsel would want to move forward with whatever part
13 of the case that they could put on. Assuming as Ms. Polito has
14 assured me that most -- most all of the information that Ms. --
15 the General Counsel has requested has indeed been produced.
16 And, you know, the General Counsel should be able to proceed
17 with the hearing.

18 And General Counsel has indicated that they do not
19 wish to move forward sort of piecemeal and do what they can
20 with the hearing and just leave any failure to produce
21 documents to be decided later by some enforcement action and
22 then handling whatever remained at that time.

23 Ms. Polito I know has objected to any delay saying
24 that, you know, documents have been produced, we should be able
25 to move forward with this hearing. But General Counsel is

1 seeking an enforcement action instead of moving forward. And
2 so time-wise what we will do is I will issue an order involving
3 the subpoenas duces tecum, one that's been before me for a
4 while and we've discussed.

5 I thought we had mostly resolved, but appears not.
6 Another one that I believe I just got General Counsel's
7 response to the petition to revoke either yesterday or shortly.
8 Has it been --

9 MS. POLITO: Your -- Judge, I think it was our
10 petition to revoke was filed yesterday. I don't think that --

11 JUDGE SORG-GRAVES: Okay. We don't have a response
12 General Counsel yet.

13 MS. POLITO: Correct, Judge.

14 JUDGE SORG-GRAVES: Okay. Is General Counsel
15 planning?

16 MS. DAVIS: Yes, Your Honor.

17 JUDGE SORG-GRAVES: Okay. And then there is this
18 subpoena for managerial witness that's still employed as a
19 manager by Respondent and -- that I understand wasn't served
20 until today or arguably adequately served until today, which
21 Respondent is going to file a motion to revoke.

22 And then I would ask General Counsel to be preparing
23 a response as soon as possible thereafter so I can issue an
24 order on that issue. And then we will leave the hearing open,
25 I guess. We've indefinitely postponed until we deal with the

1 subpoena issues and I guess I will leave that to the region to
2 request to be put back on the schedule.

3 MS. POLITO: Your Honor, if I may say something for
4 the record?

5 JUDGE SORG-GRAVES: Please.

6 MS. POLITO: Respondent vehemently objects to the
7 Court's continuance of this action and this proceeding. In the
8 order consolidating cases, consolidated complaint, and notice
9 of hearing cases 01-CA-302321, 01-CA-307585. There are a mere
10 1, 2, 3, 4, 5, 6 allegations in the complaint. Three of them
11 relate to alleged conversations that Ms. Cullari and Ms. Twible
12 had with partners at the Vernon store.

13 The other allegation relates to Ms. Nogosek's
14 termination. And the last allegation relates to the removal of
15 community board materials. As I've indicated to the Court this
16 morning, we have worked diligently in providing counsel for the
17 General Counsel responsive documents to those allegations. We
18 have our witness here.

19 We are prepared to move forward today with this
20 hearing based on the documents that we have provided to counsel
21 for the General Counsel. It's extremely prejudicial to
22 Respondent to delay the hearing when we are prepared to move
23 forward.

24 It serves no purpose to delay this hearing other --
25 at all, and it's severely prejudicial. And counsel for the

1 General Counsel has not indicated any reason for not proceeding
2 forward other than identifying one document that counsel
3 counsel the General Counsel believes exists, which I have
4 represented to this court that I'm not aware of.

5 I guess I'm not saying it doesn't exist because maybe
6 it does, but I'm not aware of that document. It serves no
7 reason to delay this proceeding. The remedy available to the
8 counsel for General Counsel would be to recall witnesses or to
9 make a request to Your Honor for evidentiary sanctions should
10 Your Honor be inclined to do that during the course of this
11 proceeding.

12 But to delay this hearing is extremely prejudicial to
13 Respondent and in our opinion, completely inappropriate and we
14 object to it for those reasons. Thank you, Your Honor, for
15 giving me the opportunity to speak.

16 JUDGE SORG-GRAVES: Any response?

17 MS. DAVIS: Yes. Counsel for the General Counsel
18 completely disagrees. There's nothing that Respondent said
19 that shows any prejudice to Respondent that would result from
20 postponing the hearing indefinitely. One, Respondent had
21 adequate time to respond to the subpoenas and find all
22 responsive documents.

23 We referenced more than one document that we believed
24 is missing from the subpoena production today. And the
25 documents that would be germane to all of the allegations in

1 the complaint, or at least some of the allegations in the
2 complaint. Two, we cannot trust the adequacy of the search
3 because of Respondent's refusal to provide a custodian of
4 record or custodians of record to explain their search.

5 So it is impossible for us to find which documents
6 are responsive to the subpoena without piecing together the
7 puzzle ourselves. And then three, with respect to the ongoing
8 issue of Relativity, which was raised in their second petition
9 to revoke for the second subpoena, but not with the first.

10 In brief, although we did open up a file, it is as if
11 we're opening up a puzzle box and the files are not complete
12 files unless we have it processed in our system of Relativity.
13 In essence, we get a document that looks like this.

14 So we have a picture of the page, we have a text file
15 with how the document was sent, and we get some other document
16 that we can't open that supposedly explains how you put these
17 pieces together. So that's how the metadata is presented to
18 us.

19 Respondent had all the opportunity in the world to
20 release since March 20th to be able to figure out how to
21 produce documents to us in native format, which is germane to
22 this case because it appears that at least one discipline was
23 changed throughout the course of their deciding how to
24 discharge the discriminatee.

25 And it's possible that it's done with other -- other

1 employees who would be comparators. But we don't have those
2 documents either, and so those are missing from the subpoena
3 production as far as we can tell. So at this time, we do
4 object to Respondents assertions about what they have done,
5 what they haven't done, and we intend to proceed with enforcing
6 the subpoenas.

7 JUDGE SORG-GRAVES: Okay. I think we're just going
8 to go round and round in that same idea, okay? So what we will
9 do is indefinitely postpone until the subpoenas can be
10 enforced. It doesn't seem like we're going to get anywhere
11 until that happens.

12 Okay. And because there are outstanding issues of
13 timing for people to respond to subpoenas, you know, in the
14 sense of making a motion to revoke or respond to a motion to
15 revoke. I think it's going to take some time for that to
16 occur. Also, the issue of a custodian of record. Simply
17 because it hasn't been an issue in another hearing doesn't mean
18 it won't become an issue in this hearing.

19 There are times when it's necessary for custodian of
20 record to testify. And, I -- you know, and this issue has been
21 raised, and I think I did raise it on the conference call that
22 if we had custodian of records, if it was burdensome for
23 Respondent, to produce them all in person at the hearing, that
24 we could possibly deal with that via a virtual hearing so that
25 those individuals wouldn't be pulled away from their work when

1 we didn't know whether or not we would need them for sure.

2 But there's never been an offer that on the record by
3 Respondent to have them available that way. Instead, I think
4 Ms. Polito was that she didn't know who all did what in what
5 respect for the subpoena production. I think that would have
6 to be clarified and -- and dealt with at some point.

7 Custodians of records, the reasons why they bring subpoenaed
8 documents and are expected to appear is just for that.

9 To determine whether or not all responsive documents
10 have been searched and found and produced. I do understand
11 that in some ways this is a limited hearing, with one
12 discriminatee, 8(a)(1) statements, some other 8(a)(1) type of
13 activities or actions that are alleged in -- in the complaint.

14 But that being said, the union animus is at issue in
15 at least a few of those allegations about the discharge, the
16 removal of documents from some community board, I think it was
17 the reference. And some of the documents referenced by Ms.
18 Davis seem as if they may be relevant to that.

19 Therefore, General Counsel, I think, needs to have
20 its opportunity to argue that the documents that they've
21 subpoenaed are relevant and should be produced. And if that
22 has to occur in a federal proceeding, then that's where it'll
23 have to occur if my order doesn't resolve it, okay? And then
24 that's what we'll do. So let's go off the record. The hearing
25 is indefinitely postponed.

1
2 (Whereupon, at 12:40 p.m., the hearing in the above-entitled
3 matter was indefinitely postponed.)
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CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 1, in the matter of Starbucks Corporation versus Workers United, Case No. 01-CA-302321 and 01-CA-307585, at 450 Main St./A.A. Ribicoff Federal Building, Hearing Room B, Hartford, Connecticut 06103, on Tuesday, 11th April, 2023, was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the recording from the hearing, that the exhibits are complete and no exhibits received in evidence or in the rejected file are missing.

Peter Holland

Pete Holland

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EXHIBIT H

From: [Polito, Jacqueline Phipps](#)
To: [Davis, Charlotte S.](#); [Papaleo, Andyeliz](#); somar@cwsny.com; cgallo@cwsny.com
Cc: [DiGiovine, Lauren](#); [Rinehart, Lindsay](#)
Subject: RE: Starbucks Corp., 01-CA-302321 et al., Index of Produced Documents
Date: Tuesday, April 11, 2023 8:22:06 AM
Attachments: [image001.png](#)
[image002.png](#)
[VOL001 Index \(002\).pdf](#)

Charlotte,

Attached is an Index of Produced Documents.

Jacqueline Phipps Polito

Office Managing Shareholder

585.203.3413 direct, 585.208.9162 mobile, 585.486.1774 fax

JPolito@littler.com

[Littler](#)

375 Woodcliff Drive, Suite 2D, Fairport, NY 14450

From: Rinehart, Lindsay <LRinehart@littler.com>

Sent: Tuesday, April 11, 2023 11:11 AM

To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; somar@cwsny.com; cgallo@cwsny.com

Cc: Polito, Jacqueline Phipps <JPolito@littler.com>; DiGiovine, Lauren <LDiGiovine@littler.com>

Subject: RE: Starbucks Corp., 01-CA-302321 et al.,

All:

Attached please find the unredacted version of the 2023 Partner Guide, as a substitution to the redacted version previously produced. An unredacted version of the 2020 Partner Guide was already sent to you earlier this morning.

Thank you,

Lindsay Rinehart

Attorney at Law

203.974.8717 direct, 203.907.5611 mobile

LRinehart@littler.com



Labor & Employment Law Solutions | Local Everywhere

265 Church St, One Century Tower, Suite 300, New Haven, CT 06510

From: Rinehart, Lindsay

Sent: Tuesday, April 11, 2023 10:26 AM

To: Davis, Charlotte S. <Charlotte.Davis@nlrb.gov>; Papaleo, Andyeliz <Andyeliz.Papaleo@nlrb.gov>; somar@cwsny.com; cgallo@cwsny.com

Cc: Polito, Jacqueline Phipps <jpolito@littler.com>; DiGiovine, Lauren <LDiGiovine@littler.com>

Subject: Starbucks Corp., 01-CA-302321 et al.,

All:

Attached please find the unredacted version of the Partner Guide, as a substitution to the redacted version previously produced.

Thank you,

Lindsay Rinehart

Attorney at Law

203.974.8717 direct, 203.907.5611 mobile

LRinehart@littler.com



Labor & Employment Law Solutions | Local Everywhere

265 Church St, One Century Tower, Suite 300, New Haven, CT 06510

Bates No.	File Name
Starbucks_01-CA-302321_Hearing – 00005	Vernon O&C.msg
Starbucks_01-CA-302321_Hearing – 00006	Vernon full day.msg
Starbucks_01-CA-302321_Hearing – 00007	Vernon - 27448.msg
Starbucks_01-CA-302321_Hearing – 00008	Connects in Vernon 27448.msg
Starbucks_01-CA-302321_Hearing – 00009	Summer 1 PPV.msg
Starbucks_01-CA-302321_Hearing – 00001	ACP- Vernon PRSC cases.msg
Starbucks_01-CA-302321_Hearing – 00010	PR Consultations.msg
Starbucks_01-CA-302321_Hearing – 00002	Re Aly Safe 27448 .msg
Starbucks_01-CA-302321_Hearing – 00012	Accepted Vernon 27448.msg
Starbucks_01-CA-302321_Hearing – 00013	Accepted Office Time - Sam.msg
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Starbucks_01-CA-302321_Hearing – 00015	Re Aly Safe 27448 .msg
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	Accepted Coffee Master and Craft Training
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	Consultation case for Madison Halvorsen.msg
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Starbucks_01-CA-302321_Hearing – 00085	Madison Halvorsen WW.docx
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Starbucks_01-CA-302321_Hearing – 00091	Aly Nogosek Seperation Notice.docx
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	Case No. 220815-003058 - Attachment 1-
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Starbucks_01-CA-302321_Hearing – 00106	Case No. 220816-001567.pdf
	Partner Guide - Store Edition - US (Jan
Starbucks_01-CA-302321_Hearing – 00108	2023).pdf
Starbucks_01-CA-302321_Hearing – 00182	Starbucks Partner Guide 2020 (002).pdf
Starbucks_01-CA-302321_Hearing – 00262	STORE NUMBER 27448 HOLIDAY 2022.pdf
Starbucks_01-CA-302321_Hearing – 00533	STORE NUMBER 27448 SPRING 2022.pdf
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Starbucks_01-CA-302321_Hearing – 01273	STORE NUMBER 27448 WINTER 2022.pdf
Starbucks_01-CA-302321_Hearing – 01486	STORE NUMBER 27448 WINTER 2023.pdf
Starbucks_01-CA-302321_Hearing – 01752	Aly Nogosek SSC Partner File.pdf

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Starbucks_01-CA-302321_Hearing – 01808	GABRIELLA MOSIER.pdf
Starbucks_01-CA-302321_Hearing – 01825	GLAUDE DIAMOND .pdf
Starbucks_01-CA-302321_Hearing – 01840	IMANI HENDERSON .pdf
Starbucks_01-CA-302321_Hearing – 01858	JC MARRERO .pdf
Starbucks_01-CA-302321_Hearing – 01862	JENELLE PLESZ.pdf
Starbucks_01-CA-302321_Hearing – 01863	JET KOLAKOWSKI.pdf
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Starbucks_01-CA-302321_Hearing – 01876	LEMON GRUBER.pdf
Starbucks_01-CA-302321_Hearing – 01891	MAGGIE POPP.pdf
Starbucks_01-CA-302321_Hearing – 01901	MARC TOMKO.pdf
Starbucks_01-CA-302321_Hearing – 01913	SAOIRSE WARD.pdf
Starbucks_01-CA-302321_Hearing – 01931	PARTNER PRE CHECK LOGS.pdf
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Starbucks_01-CA-302321_Hearing – 02039	May 3 Benefits One Pager - US-CO.pdf
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Starbucks_01-CA-302321_Hearing – 02041	Excerpt.pdf
Starbucks_01-CA-302321_Hearing – 02045	Shift Supervisor Job Description.pdf
Starbucks_01-CA-302321_Hearing – 02047	27448 Fall - PPV Discussion Guide - US-CO.pdf
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Starbucks_01-CA-302321_Hearing – 02071	Representative.pdf
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	AFSCME Tweet, VernonSBWU Reply 2.png

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Starbucks_01-CA-302321_Hearing – 02079	Call ID 588863 Starbucks 27448 Call Opened.msg
Starbucks_01-CA-302321_Hearing – 02080	RE_ Legal Request for Documents - ULP Charge Vernon_ CT.msg
Starbucks_01-CA-302321_Hearing – 02081	RE Call ID 588863 Starbucks 27448 Call Opened.msg
Starbucks_01-CA-302321_Hearing – 02082	RE Call ID 588863 Starbucks 27448 Call Opened.msg
Starbucks_01-CA-302321_Hearing – 02083	Call ID 588863 Starbucks 27448 Call Opened.msg

EXHIBIT I



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 34
450 Main St Ste 410
Hartford, CT 06103-3078

Agency Website: www.nlrb.gov
Telephone: (860)240-3522
Fax: (860)240-3564



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NLRB
Mobile App

August 30, 2022

Sam Cullari, District Manager
Starbucks Corporation
135 Talcottville Road
Vernon, CT 06066

Howard Schultz, Interim CEO
Starbucks Corporation
2401 Utah Avenue South, Suite 800
Seattle, WA 98134

Re: Starbucks Corporation
Case 01-CA-302321

Dear Cullari, Mr. Schultz:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney CHARLOTTE DAVIS whose telephone number is (959)200-7365. If this Board agent is not available, you may contact Regional Attorney THOMAS E. QUIGLEY whose telephone number is (959)200-7376.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your

representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case **MUST** be filed through the Agency's website, www.nlr.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. To ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Controlled Unclassified Information (CUI): This National Labor Relations Board (NLRB) proceeding may contain Controlled Unclassified Information (CUI). Subsequent information in this proceeding may also constitute CUI. National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

* * *

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Laura A. Sacks
Regional Director



By:

Michael C. Cass
Officer in Charge

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 01-CA-302321
-----------	-----------------------------

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
--	--

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount): <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
------	-------	----------------	-------------

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
--------------------------------	-----------	----------------	------

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STARBUCKS CORPORATION

Charged Party

and

WORKERS UNITED

Charging Party

Case 01-CA-302321

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 30, 2022, I served the above-entitled document(s) by email and post-paid regular mail upon the following persons, addressed to them at the following addresses:

Sam Cullari, District Manager
Starbucks Corporation
135 Talcottville Road
Vernon, CT 06066

Howard Schultz, Interim CEO
Starbucks Corporation
2401 Utah Avenue South, Suite 800
Seattle, WA 98134

August 30, 2022

Date

Marcelina Cabrera, Designated Agent of
NLRB

Name

Marcelina Cabrera

Signature

EXHIBIT J



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 3
130 S. Elmwood Ave.
Suite 630
Buffalo, NY 14202-2829

Agency Website: www.nlrb.gov
Telephone: (716) 551-4931
Fax: (716) 551-4972

March 1, 2022

Alan I. Model, Esq.
Littler Mendelson, P.C.
One Newark Center
1085 Raymond Blvd., 8th Floor
Newark, NJ 07102-5235

Nina K. Markey, Esq.
Littler Mendelson, P.C.
Three Parkway
1601 Cherry Street, Suite 1400
Philadelphia, PA 19102

Noah G. Lipschultz, Esq.
Littler Mendelson, P.C.
1300 IDS Center
80 S 8th St Ste 1300
Minneapolis, MN 55402-2136

Re: Starbucks Corporation
Cases 03-CA-285671, 03-CA-290555, 03-
CA-291157, 03-CA-291196, 03-CA-
291197, 03-CA-291199, 03-CA-291202,
03-CA-291377, 03-CA-291378, 03-CA-
291379, 03-CA-291381, 03-CA-291386,
03-CA-291395, 03-CA-291399, 03-CA-
291408, 03-CA-291412, 03-CA-291416,
03-CA-291418, 03-CA-291423, 03-CA-
291431, and 03-CA-291434

Dear Mr. Model, Ms. Markey, Mr. Lipschultz:

As you know, we are currently investigating the unfair labor practice charges filed by Workers United in the above-referenced cases. During this investigation, we will gather evidence to enable the Regional Director to determine whether or not there is a reasonable cause to believe that the National Labor Relations Act has been violated. We look forward to receiving your client's evidence and arguments in response to these charges.

Please be mindful, as we are certain you are, of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in the possession, custody, or control of Starbucks Corporation.

Relevant information includes, but is not limited to, paper documents and ESI (e.g., SMS text messages, emails, and any data created by Taleo, Partner Hours, Microsoft Office, and any systems utilized by Starbucks Corporation in its relationship with Sedgewick Claims Management Services, Inc. Specific ESI at issue here covers all communications, including but not limited to,

SMS text messages and emails referencing alleged discriminatees Cassie Fleischer, Alexis Rizzo, Danka Dragic, Caroline Lerczak, William Westlake, Gianna Reeve, Kathryn Bergmann, James Skretta, Angel Krempa, Minwoo Park, Nicole Norton, Cory Johnson, Josh Pike, Kaitlyn Baganski, Colin Cochran, Jenna Black, Erin O'Hare, Rachel Cohen, Iliana Gomez, Brian Murray, and any known union supporters from August 23, 2021, to present.

Specific ESI at issue here also covers all communications, including but not limited to, SMS text messages and emails including those sent or originating from the following people from August 23, 2021, to present: Howard Schultz, Kevin Johnson, Rossann Williams, Shannon Garcia, Denise Nelson, Adam Modzel, Allyson Peck, Deanna Pusatier, Greta Case, Tricia Lowder, Kristina Mkrtumyan, Michaela Murphy, David LeFrois, Mark Szto, Shelby Young, Nathalie Cioffi, J. Carlos Rodriguez, Emily Filc, Melanie Joy, Chris Stewart, Kate Fenton, Kathleen Kelly, Holly Klein, Bonnie Elster, Ana Gutierrez, Tito Santiago, Tori Clow, Lori Ruffin, Andy Behrend, Robert Hunt, Jodi Keller, David Morales, Kim Roewer, Patricia Shanley, David Fiscus, David Almond, Joe DePonceau, Jonathan Prime, Christopher Wright, Julie Almond, Sonia Velasquez, Christine Winnett, Tina Zunner, Melissa Garcia, Tanner Rees, Ashlyn Tehoke, Taylor Alviar, Gavin Crawford, Louis Defoe, Sebastian Garcia, Mary Harris, Robert Hernberger, Ashley Justus, Marsh King, Matt Lavoie, Tiffany Mann, Lion Mendoza, Jack Morton, Romalie Murphy, Dimas Nava, Katherine Posey, Taylor Pringle, Alex Roux, Derek Sveen, Dustin Taylor, Richard Tran, and Sarah Tromp.

Relevant information also includes all ESI referencing alleged discriminatees' employment status, their terms and conditions of employment (including but not limited to hiring and staffing practices, resolution of facilities issues, training, availability, dress code policy, disciplines, employee scheduling, store operating hours, temporary store closures, permanent store closures, and the stationing of support managers in the Buffalo area stores) references to any of the allegations in the above-referenced charges, any union, organizing campaign, or references generally about unions from August 23, 2021, to present. Additionally, ESI consists of all computer software programs used for remote control, desktop sharing, online meetings, web conferencing, and file transfer between computers, including but not limited to, retention policy records for electronic communications, logging information such as access or activity logs, audits, and all of said program's associated metadata from August 23, 2021, to present.

Loss of information may result from routine operation of information systems through, among other processes, overwriting of information due to system or data updates, enforcing date limitations or enforcing volume limitations. To avoid this, we ask that you take the steps outlined below:

1. Identify all custodians and data stewards of relevant documents and ESI.
2. Notify such custodians and data stewards of their obligation to preserve relevant information with detailed instructions, if necessary, on how such preservation should be accomplished.
3. Regularly monitor compliance with preservation obligations.

4. Immediately suspend the recycling of back-up tapes, or other back-up media, where such media constitutes the sole source of relevant information.
5. Preserve hardware and software applications necessary to access and read ESI where such hardware and/or software is not readily available.

Regardless of the format in which information is ultimately produced, all ESI should be preserved in its native format or, if not currently available in its native format, the most searchable format in which it is currently maintained. If, for any reason, there are sources of relevant documents or ESI that you do not intend to preserve, please notify us immediately of your intent not to comply with your preservation obligations.

Thank you in advance for your attention to this matter, and please do not hesitate to contact us should you have any questions.

Very truly yours,

/s/ Jessica L. Cacaccio

Jessica L. Cacaccio
Field Attorney

/s/ Thomas A. Miller

Thomas A. Miller
Field Examiner

EXHIBIT K

From: [Allen, Nicholas S.](#)
To: [Buckingham, Alexandra](#); [Rodriguez, David](#); [Markey, Nina K.](#)
Cc: [Laborda Nelson, Alexa](#); [Param, Tara](#); [Devlin, Bridget](#)
Subject: RE: Starbucks Complaint 04-CA-294636
Date: Monday, March 20, 2023 5:47:59 AM
Attachments: [image001.png](#)
[image002.png](#)

CAUTION: This email and any attachments may contain Controlled Unclassified Information (CUI). National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

Alexandra,

Someone on you all's end may already have followed up on this issue, but my understanding is that the production was intended to include .tiff versions of these documents, as opposed to solely unsearchable .pdfs. I'm only seeing the latter, however. Could you confirm whether there should have been .tiff files as well, and if so whether they were inadvertently omitted or if I'm just missing them somewhere?

Sorry for the hassle, and thanks for your time.

Best regards,
Nicholas

Nicholas Allen
Field Attorney

National Labor Relations Board, Region 4
The Wanamaker Building
100 Penn Square East
Suite 403
Philadelphia, PA 19107
215-597-9711

From: Buckingham, Alexandra <ABuckingham@littler.com>
Sent: Monday, March 20, 2023 8:02 AM
To: Rodriguez, David <David.Rodriguez@nlrb.gov>; Allen, Nicholas S. <Nicholas.Allen@nlrb.gov>
Cc: Laborda Nelson, Alexa <ALabordaNelson@littler.com>; Param, Tara <TParam@littler.com>; Devlin, Bridget <BDevlin@littler.com>
Subject: Starbucks Complaint 04-CA-294636

CAUTION: The sender of this message is external to the NLRB network. Please use care when

clicking on links and responding with sensitive information. Forward suspicious emails to nrbirc@nlrb.gov.

Good Morning,

In connection with the above matter, the following productions of documents are being delivered via our secure FTP, Biscom:

Starbucks_04-CA-294636_Hearing – 00001-00915 (Password to decrypt this zip is V8w\$xBpa4d?4)

Starbucks_04-CA-294636_Hearing – 00916-00940

Starbucks_04-CA-294636_Hearing – 00941-01010

If you have not used this application before, you will need to register for an account to access the documents. When you register, the password will be of your own choosing.

The registration process is quick and fairly intuitive, but please let me know if you have any trouble accessing the documents. I have also attached instructions on how to use the application.

You should receive the notification shortly (it will come from the address "notify@littler.com").
Please note the delivery will auto-delete in 30 days.

Sincerely,

Alexandra Buckingham

Paralegal

617.378.6045 direct, 816.766.3571 mobile, 617.226.4530 fax

ABuckingham@littler.com

Littler

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1 International Pl, Suite 2700, Boston, MA 02110

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Littler Mendelson, P.C. is part of the international legal practice Littler Global, which operates worldwide through a number of separate legal entities. Please visit www.littler.com for more

information.

EXHIBIT L



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 12
201 E. Kennedy Blvd., Ste. 530
Tampa, FL 33602-5824

Agency Website: www.nlrb.gov
Telephone: (813) 228-2641
Fax: (813) 228-2874

March 15, 2023

Via First Class Mail and Email

Jedd Mendelson, Esq.
Littler Mendelson, P.C.
1085 Raymond Blvd., 8th Fl.
Newark, NJ 07102
jmendelson@littler.com

Caroline Page, Esq.
Littler Mendelson, P.C.
3424 Peachtree Rd. NE, Ste. 1200
Atlanta, GA 30326
cpage@littler.com

Charles A. Powell IV, Esq.
Littler Mendelson, P.C.
420 20th St. N, Ste. 2300
Birmingham, AL 35203
cpowell@littler.com

Re: Starbucks Corporation
Cases 12-CA-295949

Dear Mr. Mendelson, Ms. Page, and Mr. Powell:

Enclosed is a courtesy copy of a subpoena duces tecum that was served today upon Starbucks Corporation, the Respondent in this matter.

In order to prevent unnecessary delay at trial before the Administrative Law Judge, I propose that we make arrangements for you to provide all subpoenaed documents to me electronically prior to the hearing date, April 18, 2023.

March 15, 2023

If you have any questions about the subpoena, or would like to discuss ideas for streamlining the presentation of evidence at the hearing, including by offering joint exhibits, please let me know as soon as possible. Thank you in advance for your cooperation.

Very truly yours,

/s/ Caroline Leonard

Caroline Leonard, Esq.
Field Attorney

Enclosures

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of RecordsStarbucks Corporation, 19533 Highland Oaks Dr, Estero, FL 33928As requested by Caroline Leonard, Counsel for the General Counselwhose address is 201 E Kennedy Blvd, Ste 530, Tampa, FL 33602-5824

(Street)

(City)

(State)

(ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judgeof the National Labor Relations Boardat Residence Inn Gulf Coast Towncenter, Dolphin Conference Room, 10054 Gulf Center Drivein the City of Fort Myers, FLon Tuesday, April 18, 2023 at 9:30 AM or any adjournedor rescheduled date to testify in Starbucks Corporation, Case 12-CA-295949

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENTcc: Jedd Mendelson, Esq.
Littler Mendelson, P.C.
1085 Raymond Blvd, 8th Floor
Newark, NJ 07102
jmendelson@littler.comCaroline Page, Esq
Littler Mendelson, P.C.
3424 Peachtree Rd NE, Ste 1200
Atlanta, GA 30326
cpage@littler.comCharles A. Powell IV
Littler Mendelson, P.C.
420 20th Street North, Ste 2300
Birmingham, AL 35203
cpowell@littler.com

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1IBZH3V

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Tampa, FLDated: March 15, 2023

 A handwritten signature in cursive script that reads "Lauren McFerran".

Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

ATTACHMENT TO SUBPOENA B-1-1IBZH3V

DEFINITIONS AND INSTRUCTIONS

- a. All documents produced in accordance with this subpoena should be furnished in an electronic file format, rather than in hard copy, unless otherwise impossible. When hard copy is required, photocopies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available at the time of production for the purpose of checking the accuracy of any such copies. Any copies of original documents which are different in any way from the original, whether by interlineations, receipt stamp, notations, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of the originals. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- b. All documents produced pursuant to this subpoena should be organized by the subpoena paragraph to which each document or set of documents is responsive. However, documents responsive to multiple subpoena paragraphs should only be produced once. In the event there are no documents responsive to a particular request, Respondent should affirmatively so state in writing.
- c. When used in this subpoena, the word “document” or “documents” means any existing printed, typewritten, handwritten or otherwise recorded material of whatever character, including electronically stored information (“ESI”) maintained on computer software, including, but not limited to, emails, text messages, letters, correspondence, memoranda, telegrams, mailgrams, minutes, notes, statements, affidavits, agreements, summaries, records of telephone conversations, telephone bills, recordings of personal conversations, interviews or meetings, transcripts, diaries, reports, charts, contracts, calendars, interoffice communications, books, records, tax records, bookkeeping and/or accounting work papers, canceled checks, check stubs, account statements, accounts receivable records, ledgers, journals, purchase orders, invoices, bills of lading, billing slips, delivery records, receiving records, photographs, microfilm, audio or video tapes, computer tapes or disks, and all data contained thereon that may be retrieved, including material stored on hard disks, and any carbon, photographic or other duplicate copy of such material in the possession of, control of, or available to the subpoenaed party or any attorney, agent, representative or other person acting in cooperation with, in concert with, or on behalf of the subpoenaed party.
- d. ESI refers to electronically stored information. ESI should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. Any reports generated by software programs used by the Employer which are available to be exported to a locally native file format (e.g., .doc(x), .xls(x), .pdf) should be provided in such native file format. Production of ESI should be as searchable and sortable as it would be for the Employer in the ordinary course of its business; all spreadsheets should be in .xls(x) format rather than .pdf.

- e. The NLRB considers “reasonably usable” productions of ESI to consist of ESI in native format. If the parties agree in advance, productions may be rendered to TIFF or PDF format (discussed below), accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Relativity or a similar review platform). Unless otherwise agreed, the load file should contain: a unique identifier (i.e., Bates number) for each item, custodian, source device, source and folder path, production path, modified date, modified time, to, from, cc, bcc, date sent, time sent, subject, date received, time received, and attachment information (i.e., attachment names and separate fields listing the beginning and ending Bates range(s) of attachment(s)). All images, paper documents scanned to images, or rendered ESI, shall be produced as 300 dpi single-page TIFF files, CCITT Group IV (2D Compression). Documents should be uniquely and sequentially Bates numbered with an endorsement burned into each image. All TIFF file names shall include the unique Bates number burned into the image. Each Bates number shall be a standard length, include leading zeros in the number, and be unique for each produced page. All hidden text (e.g., track changes, hidden columns, mark-ups, and notes) shall be expanded and rendered in the image file. For files that cannot be expanded, the native files shall be produced with the image file. All non-graphic embedded objects (Word documents, Excel spreadsheets, .wav files, etc.) that are found within a file shall be extracted and produced. For purposes of production, the embedded files shall be treated as attachments to the original file, with the parent/child relationship preserved. Where a production conforming to the above shall be produced, the NLRB requires a minimum twenty-one (21) day notice and a complete production fourteen (14) days in advance to process the produced information. If notice is not given and agreed upon in advance, the instructions of paragraph d above shall apply with respect to acceptable file formats instead.
- f. When used in this subpoena, the term “emails” refers to any electronic mail messages sent from one individual to one or more recipients (including the sender), including messages, attachments, and metadata. All attachments should be included with emails which are responsive to this request and should be labeled with the file name used for the attachment in the email. With respect to email “threads,” only the most recent message of each thread should be produced, provided that such messages include the content of all prior messages in each thread and all downthread attachments are incorporated in the production.
- g. When used in this subpoena, the term “text messages” refers to any messages sent from one individual to one or more recipients on any text-based mobile messaging/instant messaging platform (e.g. SMS, iMessage, Discord, Facebook Messenger, Google Chat, GroupMe, Microsoft Teams, Signal, Skype, Slack, Snapchat, Whatsapp, etc.). Text messages should be provided in legible, date-stamped screenshots if no searchable format is available.
- h. When used in this subpoena, the phrase “as will show” serves to limit the requested production to only as many documents as are necessary to demonstrate the requested information.

- i. When used in this subpoena, “Respondent” refers to Starbucks Corporation, its officers, agents, and representatives, and any predecessor entities.
- j. When used in this subpoena, “the Union” refers to Workers United, Southern Regional Joint Board.
- k. When used in this subpoena, “Respondent’s Estero facility” refers to the Starbucks store located at 19533 Highland Oaks Drive, Estero, Florida 33928.
- l. When used in this subpoena, “partner(s)” refers to the term Respondent uses to refer to persons employed by Respondent, and all such persons.
- m. When used in this subpoena, the word “person” or “persons” means natural persons, corporations, partnerships, sole proprietorships, associations, or any other kind of entity.
- n. Whenever used in this subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to parties shall be deemed to include any and all of their officers, agents and representatives; “they,” “their,” and “theirs” shall be deemed to encompass all masculine, feminine, and non-binary pronouns, including referring to individuals as well as groups of people; the disjunctive “or” shall be deemed to include the conjunctive “and” and vice versa; and each of the words “each,” “any,” “every,” and “all” shall be deemed to include each of the other words.
- o. Documents subpoenaed shall include all documents in Respondent’s physical possession, custody, or control, and all documents in the physical possession, custody, or control of the Respondent’s present or former supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with, Respondent.
- p. If any document responsive to any request herein is withheld from production on the asserted ground that it is privileged, identify and describe the author, recipient, date, and subject matter of the document.
- q. If any document responsive to any request herein was, but no longer is, in Respondent’s possession, custody, or control, identify the document; explain the circumstances by which the document ceased to be in Respondent’s possession, custody, or control; and identify all persons known or believed to have the document or a copy thereof in their possession, custody, or control.
- r. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons, identify the document; explain the circumstances surrounding the destruction, discarding, or disposal of the document, including the timing of the destruction, discharging, or disposal of the document; and

identify all persons known or believed to have the document or a copy thereof in their possession, custody, or control.

- s. This request is continuing in character, and if additional responsive documents come to the Respondent's attention following the date of production, such documents must be promptly produced.
- t. Sensitive personal identifying information (SPII) including social security numbers, dates of birth, and home addresses should be redacted prior to being produced.
- u. If any document responsive to this subpoena contains codes, classifications, or like abbreviations, all documents explaining or defining the codes, classifications, or abbreviations used in the document must also be produced.
- v. In lieu of producing the records requested in the "Documents to be Provided" section below at the hearing in this matter, Respondent may provide notice no later than 4:30 p.m. on April 4, 2023, that Respondent will make said records available at the National Labor Relations Board Miami Resident Office, to an Agent or Agents of the National Labor Relations Board for their inspection, copying, and use no later than April 11, 2023, and enter into a stipulation that all documents produced pursuant to this subpoena are authentic business records which may be received in evidence by the Administrative Law Judge hearing this matter.
- w. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

DOCUMENTS TO BE PRODUCED

1. Documents as will show all job positions held by Marissa Galbicsek, Megen Lockwald, Lindsey Lorette, and Howard Schultz, at any time during their employment by Respondent, and the dates for which they held each position.
2. Organizational charts and/or other documents as will show Respondent's managerial structure, hierarchy, or chain of command as it relates to Respondent's Estero facility and/or at any facilities in the same Respondent-designated district or area as Respondent's Estero facility for the time period of January 1, 2022, through May 6, 2022, including documents as will show all changes to the reporting protocols and chain of command during this period.
3. Documents, including but not limited to emails, text messages, memoranda, reports, notes, telephone logs, Retail Leader Communications, and Workplace messages/posts, as will show the date Respondent became aware of the Union organizing campaign at Respondent's Estero facility, including documents as will show how Respondent became aware of organizing activities.
4. Documents, including but not limited to emails, text messages, memoranda, reports, notes, telephone logs, Retail Leader Communications, and Workplace messages/posts as will show the date Respondent became aware of any pro-Union/pro-organizing material being posted or displayed on bulletin boards, in the backroom, and/or on or in employee lockers at Respondent's Estero facility, including documents as will show how Respondent became aware of the posted pro-Union/pro-organizing material.
5. For the period from January 1, 2022, through May 6, 2022, documents as will show all communications between Respondent and its employees at Respondent's Estero facility that address, mention or relate in any manner to communications from Howard Schultz to Starbucks partners, that mention or relate to unions, partner compensation, partner benefits, partner hours, and/or partner terms and conditions of employment.
6. For the period from January 1, 2022, through May 6, 2022, documents, including but not limited to emails, text messages, memoranda, letters, fliers, pamphlets, intranet postings, and other correspondence, as will show all communications between and/or among the Respondent's managers, supervisors, and/or agents concerning union organizing, the Union, and/or unions generally, limited to such communications which regard, mention, or in any way relate to Respondent's Estero facility.
7. For the period January 1, 2021, through the return date of this subpoena, documents as will show all training, instructions, or directions Respondent provided to its managers, supervisors, and agents at Respondent's Estero facility, for identifying, reporting, or responding to the Union and/or to organizing activities at Respondent's Estero facility.
8. Documents, including but not limited to emails, text messages, memoranda, notes, talking points, schedules, and calendar events, as will show the occurrence, date, location, contents of, and/or participants in, all conversations involving Lindsey Lorette and any employees at

Respondent's Estero facility between February 1, 2022, and May 6, 2022, which mention, relate to, or in any way regard any of the following topics:

- a. The Union or unions generally;
- b. Union organizing;
- c. Partner compensation;
- d. Partner benefits;
- e. Partner hours;
- f. Partner satisfaction and/or dissatisfaction and/or complaints about working conditions and/or other terms and conditions of employment.

9. Documents, including but not limited to emails, text messages, memoranda, notes, talking points, schedules, and calendar events, as will show the occurrence, date, location, contents of, and/or participants in, all conversations involving Marissa Galbicsek and any employees at Respondent's Estero facility between February 1, 2022, and May 6, 2022, which mention, relate to, or in any way regard any of the following topics:

- a. The Union or unions generally;
- b. Union organizing;
- c. Partner compensation;
- d. Partner benefits;
- e. Partner hours;
- f. Partner satisfaction and/or dissatisfaction and/or complaints about working conditions and/or other terms and conditions of employment.

10. Documents, including but not limited to emails, text messages, memoranda, notes, talking points, schedules, and calendar events, as will show the occurrence, date, location, contents of, and/or participants in, all conversations involving Megan Lockwald and any employees at Respondent's Estero facility between February 1, 2022, and May 6, 2022, which mention, relate to, or in any way regard any of the following topics:

- a. The Union or unions generally;
- b. Union organizing;
- c. Partner compensation;
- d. Partner benefits;
- e. Partner hours;
- f. Partner satisfaction and/or dissatisfaction and/or complaints about working conditions and/or other terms and conditions of employment.

11. All photographs of the inside of Respondent's Estero facility, including but not limited to the backroom, breakroom area, and public and employee-only areas where bulletin boards and whiteboards are located, which were taken at any time during the period September 1, 2021, through May 31, 2022.

12. Documents, including but not limited to partner guides, store operation manuals, Retail Leader Communications, Workplace messages/posts, emails, text messages, intranet postings, and

memoranda, as will show all community bulletin board use policies, practices, and procedures, including policies, practices, and procedures regarding posting and removing of items, and/or as will show all policies, practices, and procedures regarding posting, leaving, and/or displaying materials not issued by the Employer in the backroom and/or partner lockers, which have been in effect at Respondent's Estero facility and/or at any facilities in the same Respondent-designated district or area as Respondent's Estero facility at any time during the period January 1, 2021 and May 6, 2022. This request encompasses documents as will show all effective and/or revision date(s) of such policies, practices, and procedures, and the manner in which Respondent distributed or communicated such policies, practices, or procedures to managers, supervisors, and/or partners.

13. Documents, including, but not limited to personnel records, disciplinary actions, memoranda, emails, text messages, letters, and notes, as will show all instances of Respondent identifying, evaluating, and/or determining whether any materials posted or displayed in the break room, on employee lockers, and/or on bulletin boards located anywhere within Respondent's Estero facility were in violation of Respondent's policies, practices, and/or procedures regarding use of the same, at any time during the period January 1, 2021, through May 6, 2022.
14. Documents, including but not limited to personnel records, disciplinary actions, memoranda, emails, text messages, intranet postings, and other communications, as will show all instances of Respondent identifying, evaluating, and/or determining whether any materials posted or displayed in the break room, on employee lockers, and/or on bulletin boards located anywhere within any of Respondent's facilities located within the same Respondent-designated district or area as Respondent's Estero facility were in violation of Respondent's policies, practices, and/or procedures regarding use of the same, at any time during the period January 1, 2021, through May 6, 2022.
15. Documents, including but not limited to emails, text messages, intranet postings, fliers, talking points, meeting agendas, and memoranda, as will show all communications between Lindsey Lorette, Marissa Galbicsek, Megan Lockwald, and/or any other managers, supervisors, or agents of Respondent and partners at Respondent's Estero facility regarding the use of Respondent's community board, backroom area, and lockers for posting, leaving, and/or displaying of materials.
16. Documents as will show all instances of Respondent's managers, supervisors, or agents removing materials and/or asking partners to remove materials from bulletin boards, backroom area, and/or lockers, at Respondent's Estero facility and/or at any of Respondent's facilities located within the same Respondent-designated district or area as Respondent's Estero facility, including the dates, specific locations, and names of all persons involved in each instance.
17. Documents, including but not limited to emails, text messages, memoranda, notes, telephone logs, calendar events, meeting agendas, and talking points, that relate to or reflect Respondent's deliberations about, discussions about, directions to, instructions to, or suggestions to Marissa Galbicsek and/or Megan Lockwald to spend time at Respondent's Estero facility at any time during the period February 1, 2022, through May 6, 2022, including the following information:

- a. The name(s) of Respondent's manager(s), supervisor(s), or agents involved in such discussions, deliberations, directions, suggestions, or instructions about or to Marissa Galbicsek and Megan Lockwald spending work time at Respondent's Estero facility;
 - b. The date(s) and/or time(s) and/or duration of each instance when Marissa Galbicsek spent work time at Respondent's Estero facility;
 - c. The date(s) and/or time(s) and/or duration of each instance when Megan Lockwald spent work time at Respondent's Estero facility; and
 - d. The reason(s) or purpose(s) for each instance of Marissa Galbicsek and/or Megan Lockwald spending work time at Respondent's Estero facility.
18. Documents, including but not limited to emails, text messages, memoranda, notes, telephone logs, calendar events, meeting agendas, and talking points, that relate to or reflect Respondent's deliberations about, discussions about, directions to, instructions to, or suggestions to Marissa Galbicsek and/or Megan Lockwald to spend work time at any other facilities in the same Respondent-designated area or district as Respondent's Estero facility at any time during the period December 1, 2021, through August 31, 2022, including the following information:
- a. The name(s) of Respondent's manager(s), supervisor(s), or agents involved in such discussions, deliberations, directions, suggestions, or instructions about or to Marissa Galbicsek and Megan Lockwald spending work time at such other facilities;
 - b. The date(s) and/or time(s) and/or duration of each instance when Marissa Galbicsek spent work time at such other facilities;
 - c. The date(s) and/or time(s) and/or duration of each instance when Megan Lockwald spent work time at such other facilities; and
 - d. The reason(s) or purpose(s) for each instance of Marissa Galbicsek and/or Megan Lockwald spending work time at such other facilities.
19. Video or surveillance footage of the interior and/or exterior of Respondent's Estero facility for the period March 21, 2022, through March 23, 2022.
20. Video or surveillance footage of the interior and/or exterior of Respondent's Estero facility for the period May 1, 2022, through May 6, 2022.
21. Documents as will show Respondent's video or surveillance footage retention policies, practices, and procedures in effect at all Respondent facilities in the same Respondent-designated district or area as Respondent's Estero store at any time during the period September 1, 2021, through the return date of this subpoena, including the effective and/or revision date(s) of all such policies, procedures, and practices.
22. All "Daily Records Book" and/or "Daily Plans"¹ drafted and/or completed for Respondent's Estero facility for the periods January 1, 2022, through May 6, 2022.
23. Documents, including but not limited to partner guides, store operation manuals, emails, text messages, intranet postings, and memoranda, as will show all policies, practices, and procedures relating to drafting, completion, and/or submission of "Daily Records Book" and/or

¹ May also be referred to as "daily reports" by partners.

“Daily Plans” for Respondents’ facilities that have been in effect at any time during the period January 1, 2018, through the return date of this subpoena, including the effective and/or revision date(s) of all such policies, procedures, and practices.

24. Documents, including but not limited to emails, text messages, memoranda, reports, notes, schedules, calendar events, scripts, meeting agendas, and talking points, as will show all Partner Development Meetings, Connections meetings, and like conversations Respondent held with employees at Respondent’s Estero facility, limited to the period January 1, 2022, through May 6, 2022, including the following information for each such meeting or conversation:
 - a. Date;
 - b. Time;
 - c. Precise location with Respondent’s Estero facility;
 - d. Participants;
 - e. Other employees working at the time; and
 - f. What was said at each meeting.
25. Documents, including but not limited to partner guides, store operation manuals, emails, text messages, intranet postings, and memoranda, as will show all disciplinary policies, practices, and procedures applicable to employees at Respondent’s Estero facility and/or at any facilities within the same Respondent-designated district or area as Respondent’s Estero facility, at any time during the period January 1, 2021 and May 6, 2022, including documents as will show the effective and/or revision date(s) of such policies, practices, and procedures and the manner in which Respondent distributed or communicated such policies, practices, or procedures to employees.
26. The complete personnel records of Jonathan Colon (excluding medical records), including, but not limited to, all internal working files and all documents which mention, relate to, concern, and/or as will show job descriptions, reprimands, warnings (written or oral), discipline, suspensions, promotions, transfers, discharges, layoffs, resignations, wage increases or decreases, performance evaluations, comments, reviews, awards, and unemployment compensation.
27. The complete personnel records of Noah Dengler, including, but not limited to, all internal working files and all documents which mention, relate to, concern, and/or as will show job descriptions, reprimands, warnings (written or oral), discipline, suspensions, promotions, transfers, discharges, layoffs, resignations, wage increases or decreases, performance evaluations, comments, reviews, awards, and unemployment compensation.
28. Documents, including but not limited to witness statements, investigative reports, memoranda, daily reports, and video footage, that Respondent relied on and/or considered in deciding to discharge Jonathan Colon.
29. Documents, including but not limited to emails, text messages, memoranda, meeting agendas, notes, calendar events, and telephone logs as will show all verbal and written communications

exchanged between and among Respondent's managers, supervisors, and/or agents that relate to, mention, or discuss the decision to discipline and/or discharge Jonathan Colon effective April 8, 2022.

30. Documents, including but not limited to emails, text messages, scripts, talking points, notes, memoranda, or records, relating to, used, and/or referenced at any meetings held between Jonathan Colon and the Respondent's agents, supervisors, and/or managers regarding his discharge.
31. Documents, including but not limited to emails, text messages, scripts, talking points, notes, memoranda, or records, relating to, used, and/or referenced at any meetings held between Jonathan Colon and the Respondent's agents, supervisors, and/or managers regarding the Union or unions generally.
32. For the period from January 1, 2018, through the return date of this subpoena, documents as will show all investigations conducted, coachings, verbal counselings, oral and written warnings, suspensions, discharges and all other discipline issued to employees at Respondent's Estero facility or any other facility in the same Respondent-designated district or area as Respondent's Estero facility for failure to maintain a safe work environment, violations of Respondent's Safety and Security Standards, failure to set the security alarm, leaving a door of a Respondent facility unlocked and/or ajar, and/or for violating Respondent's "Store Closing Standards," together with the personnel file of each disciplined employee showing all other discipline issued to that employee and the reasons for the disciplines.
33. For the period from January 1, 2018, through the return date of the subpoena, all "Daily Records Book" and/or "Daily Plans" for Respondent's Estero facility or any other facility in the same Respondent-designated district or area as Respondent's Estero facility, which discuss, reflect, note, and/or report any violations of Respondent's Safety and Security Standards or "Store Closing Standards," employees failing to set the security alarm, and/or employees leaving the door of a Respondent facility unlocked and/or ajar.
34. Payroll records as will show all employees employed at Respondent's Estero facility during the payroll period ending on April 3, 2022, including employees on paid or unpaid leave who did not actively work during that payroll period, and the job applications and IRS W-4 forms for all such employees.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
South Trust Plaza
Region 12
201 East Kennedy Blvd, Suite 530
Tampa, FL 33602-5824
An Equal Opportunity Employer

OFFICIAL BUSINESS

RECEIVED

MAR 22 2023

BY:

Jedd Mendelson, Esq.
Littler Mendelson, P.C.
1085 Raymond Blvd., 8th Fl.
Newark, NJ 07102

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EXHIBIT 2

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1 – SUBREGION 34**

STARBUCKS CORPORATION,

Cases 01-CA-302321

And

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES
INTERNATIONAL,**

**DECLARATION OF CORY OSHER OF UNITEDLEX CORPORATION IN SUPPORT
OF STARBUCKS' STARBUCKS CORPORATION'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF ITS PETITION TO REVOKE SUBPOENA *DUCES
TECUM* NO. B-1-1ID2IE5 AND B-1-1IGZVA5, AND IN OPPOSITION TO COUNSEL
FOR THE GENERAL COUNSEL'S REQUEST FOR PRE-TRIAL DISCOVERY**

I, Cory Osher of UnitedLex Corporation, declare under penalty of perjury as follows:

1. I am over 18 years of age and am competent to testify regarding, and have knowledge of, the matters set forth in this declaration for the above-captioned action.
2. I have over 22 years of experience in the field of Discovery/eDiscovery and have served in roles at an AM Law 50 law firm and an eDiscovery vendor.
3. I am employed by UnitedLex Corporation ("UnitedLex") as Vice President of Analytics and AI. My duties at UnitedLex include leadership of the company's operations regarding eDiscovery, Analytics, and AI, as well as technology, infrastructure and innovation. As

part of my role, I am responsible for dealing with the challenges of collecting, processing, hosting, and reviewing large data volumes.

4. UnitedLex provides a wide range of professional eDiscovery services to corporations and law firms, including but not limited to document collection, data hosting, data processing, document review and document production. As a recognized global leader in eDiscovery and doing business since 2006, UnitedLex provides these legal services to over 400 clients in over 25 jurisdictions, through offices around the world. UnitedLex works with its clients to collect, process, review, and produce electronic data with industry-leading and defensible tools to meet varied needs and requirements.

5. UnitedLex has been retained by Starbucks Corporation (“Starbucks”) as a Discovery/eDiscovery vendor, including – at the direction of outside counsel in specific cases – to handle the collection, processing, culling, review, and production of electronically stored information (“ESI”).

6. A TIFF+ format consists of page-level images and document-level extracted text files for each document, accompanied by a load file containing selected metadata.

7. A TIFF+ format is designed to be loaded into a litigation support database, like Relativity.¹

8. When TIFF+ productions are loaded into a Relativity database, both the contents and metadata of all documents are fully searchable and sortable.

9. Producing in TIFF+ format is the industry standard for document productions, not only for e-documents including emails, Microsoft Offices files (Word, PowerPoint) and other common data types, but also for hard-copy documents that are part of a collection that needs to

¹ Relativity reports it has more than 300,000 users in 49 countries and that its customers include 198 of the AMLAW 200. See e.g., [Legal software co Relativity snaps up AI startup after private equity infusion | Reuters](#)

be culled, searched, reviewed, tagged (as responsive, privileged, etc.), redacted, bates labelled, and ultimately produced. This is due to a number of reasons.

- a. TIFF+ productions are tool agnostic and can be viewed outside of a traditional review tool without the need of supporting native application for review.
 - b. TIFF+ productions are common due to the ease of ingestion into industry standard hosting and review platforms without the cost and time of additional manipulation or preparation.
 - c. All of the documents and data can be housed in one place for purposes of culling, searching, reviewing, tagging, redacting, bates labelling and ultimately producing such information (i.e., it would not make sense and would be unworkable to keep paper and quasi-paper documents in one place, and electronic data in another).
 - d. All paper and quasi-paper documents are OCR'd² to make them electronically searchable in a database.
10. TIFF+ productions are preferred not only because of the TIFF images but because they are a piece of a larger production that can easily be ingested into a hosting and review platform. A TIFF+ production includes:
- a. A bates labelled and confidentiality branded TIFF image of the produced document
 - b. A text file that contains the extracted document text
 - c. A TIFF Image cross reference or load file pairing the TIFF image with the associated bates number
 - d. A metadata file or .dat is containing delimited metadata for easy parsing and loading into a hosting and review platform.

² OCR stands for "Optical Character Recognition" and involves the conversion of typed, handwritten or printed text into machine-encoded text.

11. Additional benefits of TIFF+ productions include the ability to individually number/endorse pages, ease of redaction, and the ability to inhibit the capability to alter the imaged version of the document.

12. In my experience, TIFF+ productions meet a wider array of regulatory entity data production requirements than other production formats which is why it is an industry standard production format. For example, the Department of Justice, Securities and Exchange Commission, and Federal Trade Commission require production in TIFF+ format.

13. As a leading eDiscovery vendor, running and delivering over 3,500 productions per year, over 90% of our production are done in TIFF+ format.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: April 17, 2023

By:

DocuSigned by:



9C6FFE68F6E1456...

Name: Cory Osher

Title: *Vice President of Analytics and AI*
UnitedLex Corporation

EXHIBIT 10

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

And

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL
UNION**

**Cases 01-CA-302321
01-CA-307585**

**COUNSELS FOR THE GENERAL COUNSEL’S OPPOSITION TO
RESPONDENT’S PETITIONS TO REVOKE
SUBPOENAS DUCES TECUM B-1-1ID2IE5 & B-1-1IGZVA5
AND SUBPOENA AD TESTIFICANDUM A-1-1IISKD**

I. INTRODUCTION

In connection with the hearing being held pursuant to the Complaint and Notice of Hearing issued on December 23, 2022, and consolidated on March 28, 2023, (“the Complaint”), Counsels for the General Counsel issued two subpoenas duces tecum and a subpoena ad testificandum, all of which Respondent has petitioned to revoke:

- Subpoena duces tecum B-1-1ID2IE5 (“SDT#1,” attached as Exhibit A) issued on March 20, 2023, and Respondent submitted its first petition to revoke on March 27, 2023 (PRV#1, attached as Exhibit B);
- Subpoena duces tecum B-1-1IGZVA5 (“SDT#2,” attached as Exhibit C) issued on April 3, 2023; and Respondent filed its second petition to revoke on April 10, 2023 (PRV#2, attached as Exhibit D); and
- Subpoena ad testificandum A-1-1IISKD (SAT, attached as Exhibit E) issued on April 6, 2023, to which Respondent filed its third petition to revoke (PRV#3, attached as Exhibit F) on April 13, 2023, after the hearing opened.

After Respondent’s first petition to revoke, on March 28 and April 3, Counsels for the General Counsel met over videoconference and telephone with Respondent to discuss subpoena

production. When Respondent asserted early on in these discussions that there was no single custodian of records, but potentially several custodians, Counsels for the General Counsel asked how the searches for each item were conducted. Despite efforts to resolve subpoena production early on, by the date of the hearing there were several issues with production of documents, there was no custodian of record present to testify about production, and no witness to testify pursuant to the SAT. Your Honor postponed the hearing indefinitely to allow for resolution of these subpoena issues and granted Counsels for the General Counsel the opportunity to submit our opposition to Respondent's petitions.

Since the hearing, on April 18, Respondent filed a supplemental memorandum largely repeating its previous claims and conflating the subpoena disputes about the completeness of production with the form and timing of production. We oppose Respondent's supplemental memorandum in full, as well as their Petitions, and reserve our right to seek sanctions when necessary.

II. BACKGROUND

The allegations in the Complaint relate to Respondent's unlawful actions at its retail store located in Vernon, Connecticut ("the Vernon Store"), as part of its nationwide campaign to destroy its workers' organizing efforts. As the Complaint alleges, Respondent unlawfully disciplined and then unlawfully discharged an employee, Aly Nogosek, because they engaged in union and other protected concerted activities, and without first providing the Union with notice and an opportunity to bargain over the serious, discretionary discipline. The Complaint also alleges that Respondent held essentially mandatory, one-on-one captive-audience meetings with employees at which managers solicited complaints and grievances, promised increased benefits and improved work conditions if they refrained from union organizing activity; and threatened

employees with the loss of scheduled pay increases, tuition benefits, and access to management if they joined or supported the Union. Further, Respondent unlawfully removed union materials from the Vernon Store's community board; selectively enforced its solicitation and distribution policy by telling employees they could not post union-related materials on the community board; and selectively enforced its policies by closing the Vernon Store to deny the Union access to the premises, all to discourage employees from organizing.

III. GENERAL LEGAL PRINCIPALS

The Board's power to subpoena is broad. Section 11(1) of the Act authorizes the Board to subpoena "any evidence of any person being investigated or proceeded against that relates to any matter under investigation in question."¹ This includes evidence concerning anticipated defenses.² "The 'relevancy' standard used in determining whether an administrative subpoena should be enforced is a very broad one,"³ and one that enables the Board "to get information from those who best can give it and who are most interested in not doing so."⁴ The test of materiality and relevance of a document is whether it "might throw light" on the inquiry.⁵ If the subpoenaed documents touch on "a matter under investigation, it is within the scope of Section 11(2) of the National Labor Relations Act even though the material may not be considered 'evidence' as the term is employed in the courtroom."⁶ The "essential requirement for both the issuance and enforcement of a Board subpoena is that the production of evidence...must relate to

¹ *NLRB v. GHR Energy Corp.*, 707 F.2d 110, 113 (5th Cir. 1982).

² *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005, 1008-1009 (9th Cir. 1996).

³ *NLRB v. Chicago Tribune Co.*, 1988 WL 28599 at *2 (N.D. Ill. Mar. 23, 1988) (citing *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1967)).

⁴ Casehandling Manual Sec. 11792.1, citing *U.S. v. Morton Salt Co.*, 338 U.S. 632, 642 (1950).

⁵ *United States v. Ryan*, 455 F.2d 728, 733 (9th Cir. 1972); *United States v. Egenberg*, 443 F.2d 512, 515 (3d Cir. 1971); *Foster v. United States*, 265 F.2d 183, 187 (2d Cir. 1959), cert denied 360 U.S. 912 (1959).

⁶ *Rohlen*, 385 F.2d at 57.

a ‘matter under investigation or in question.’”⁷ Duly issued subpoenas are thus entitled to enforcement provided that they are not unreasonably burdensome and that the information sought is not “plainly incompetent or irrelevant to any lawful purpose.”⁸

The measure for revoking a subpoena is fairly high. The Board may revoke a subpoena if the material sought “does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence such production is required.”⁹ If a party objects to a subpoena, they must show by specific evidence why the material sought does not relate to the disputed issues.¹⁰ To avoid production, the objecting party cannot rely on bare assertions but must specifically identify and show why each objection has merit.¹¹ As explained below, Respondent failed to provide any specificity for why the subpoenas should be revoked.

IV. RESPONDENT’S GENERAL OBJECTIONS IN PRV#1 AND 2 HAVE NO MERIT

Respondent’s PRV#1 and PRV#2 both contain general and specific objections. Though the bulk of this Opposition will discuss Respondent’s specific objections, some comment on the general objections is warranted.

PRV#1 and PRV#2 contain a nearly identical laundry list of general objections to SDT#1 and SDT#2, including overbreadth, vagueness, irrelevance based on subject matter and time period, and unspecified privacy rights. The lack of specificity of these general objections is

⁷ *Id.* at 55-56.

⁸ *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501,509 (1943).

⁹ Section 11(1) of the Act; NLRB Rules and Regulations, Sec. 102.31(b).

¹⁰ *NLRB v. Dutch Boy, Inc.*, F.2d 929, 933 (10th Cir. 1979).

¹¹ *Id.*

sufficient to deny them for the simple reason that context matters. It is impossible, for example, to address vagueness as a general matter.

In addition to the nearly identical list of general objections, PRV#2 adds general objections to timeliness (which is now moot, as the hearing has been indefinitely postponed) and the requested form of production. Regarding timeliness, Respondent has been on notice that the Region sought most of the requested documents, because the Region had asked for most of these items in letters dated October 18, 2022, and March 6, 2023, during the investigation of the underlying charges.

Regarding the form of production, Respondent objects to providing *any* electronic documents in “native” format, meaning the format in which the document is kept in the ordinary course of business, despite the instructions in SDT#1 and 2 expressly seeking native-format documents. If an email is kept as an email, for example, it should be produced as the email file to preserve otherwise invisible information about the email called “metadata,” including the date and time the email was drafted, modified, and sent and by whom.

Instead, Respondent claims that a Tagged Image File Format + (or TIFF+), which separates metadata from the file, should suffice – as though an email should be produced as a picture of an email (or a series of several pictures, depending on the length of the email) along with a “load file” containing whatever metadata Respondent selected to include. TIFF+ pairs the unsearchable picture of the file (i.e., the “TIFF”) with selected extracted text that is indexed by a vendor and can be searchable (i.e., the “+”) if the receiver also has access to the same technology for pairing the images with the extracted text. Because this objection was notably absent in Respondent’s PRV#1, it should be denied as untimely to the extent Respondent seeks to extend this objection to SDT#1.

Counsels for the General Counsel do not object, however, to receiving TIFF+ altogether, so long as the production is *based* on native documents and furnished in *usable* form the day it is due. The easiest way to do this is with native-format documents. As we have made clear in multiple calls and in the cover letter for SDT#1, TIFF+ documents are not usable the day they are received because it takes our vendor two to three days to process the production. Additionally, seeking native-format documents means that production should include *all* – not some – metadata of those documents.

Since Respondent raised this TIFF+ issue only as a general objection, it is nearly impossible to respond with specific reasons for seeking native-format documents or explain why all metadata are relevant as a general matter. Seeking surveillance footage in native format, for example, is important for reasons that are different from seeking the native format of documents discussing the reasons for Respondent's decision to discharge our discriminatee: Native-format footage is used to *verify* the time and date the footage was taken or modified, and a native-format separation letter could contain in-line commentary, attachments, contributing authors, and other useful information. The common theme, however, for needing documents in native format is to understand how it came to exist and how it has been stored. In other words, the native format of documents is especially critical *in the absence of testimony from a custodian of records to testify about how these records are created or kept*.

Respondent has given us no reason why producing in native format would be costly or unduly burdensome; in fact, the TIFF+ files *should be based on native files*. (It is unclear whether Respondent used native files as the baseline in its recent production in our case, as some TIFF+ documents appear to be based on pdfs created after the original document was created.) Not once has Respondent argued that *finding* the native-format versions of files would be an

issue or with the costs of producing them, in contrast to the defendant in *In re Priceline.com Inc. Sec. Litig.*, which respondent cited. There the court found that the cost of recovering files from over 200 back up discs at \$200 - \$700 per disc warranted producing files from a few discs initially with further discussion about discovery to be had at a later date if necessary.¹² But in that case, unlike ours, the native-format files were not easily accessible to defendant absent litigation. It is worth noting that *In re Priceline.com Inc. Sec. Litig.* preceded amendments made to Fed. R.Civ.P. 34, including changes to 34(b)(2)(E)(ii), which in its current iteration states that “[i]f a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.” Here, Respondent appears instead to take issue with our ability to *access* those files in native format at all and has provided no explanation for why the native-format version of electronically stored material should be withheld.

Further, Respondent appears to argue that TIFF+ has not only been acceptable in other NLRB litigation but also has been supposedly preferred. This cannot be further from the truth.

1. Respondent’s reference to the Region 3 case, 03-CA-295470 et al., as somehow supportive of Respondent’s actions is simply baffling. Region 3 sought the native-format production as we have in this case, objected to Respondent’s petition to revoke, and sought sanctions not once, *but twice*, for Respondent’s failure to produce responsive documents in a usable format the day of the hearing and for “cherry-picking items to produce in the most incremental, glacial fashion imaginable.”

2. The Region 2 instructions cited by Respondent are incomplete. The full instruction paragraph states the following:

¹² 233 F.R.D. 88 (D. Conn. 2005).

- E. Electronically stored information (should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The NLRB prefers electronic productions in TIFF or PDF format, accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Concordance or a similar review platform). Unless otherwise agreed, the load file should contain: a unique identifier (i.e., Bates number) for each item, custodian, source device, source path production path, modified date, modified time, to, from, cc, bcc, date sent, time sent, subject, date received, time received and attachment information (i.e., attachment names and separate fields listing the beginning and ending bates ranges of attachments). Where available, message ID and thread ID should also be produced.¹³

It is unsurprising to find some variation in the wording of instructions between the regions with subpoenas, but what matters here is the information *requested in the load file*. Whereas Region 2 listed the categories of metadata to be preserved and produced, we requested the native format. Respondent has not offered this instructions paragraph as a compromise but instead has refused to identify the categories of metadata it is willing to produce and is cherry-picking metadata among the documents it is willing to produce. Moreover, Fed. R.Civ.P. 34(b)(2)(E)(i) goes on to state that if the producing party refuses to produce documents as they are kept in the usual course of business, they must organize and label them to correspond with the categories in the request – *which Respondent repeatedly has also refused to do*.

3. In its supplemental memorandum, Respondent's inclusion of the email from the lead attorney in Region 4, case 04-CA-294636, is also provided totally out of context. Region 4 had subpoenaed documents in the form in which they are ordinarily maintained or in a reasonably usable form. By that point in litigation, however, Respondent notified Region 4 that it would produce through Relativity but had provided only an unsearchable pdf. The email is

¹³ Subpoena duces tecum B-1-1IFTK3F from 02-CA-307077 et al.

Attorney Allen’s follow up for Respondent’s failure to produce in the form Respondent had initially represented it would produce. Further, during that trial, Respondent provided documents in a rolling fashion (as it had in Region 3, 03-CA-295470 et al.) without any explanation for why it was finding responsive documents the last day of a seven-day hearing.

Lastly, Respondent cites to cases that do not support its stubborn refusal to provide any custodian of records to describe the searches or why production through Relativity is supposedly usable the day it is received in raw form instead of the day it is processed. In *Carter v. Bridgepoint Education, Inc.*, although the Judge denied plaintiff’s motion for native-format production, it did so in part because plaintiffs did not “demand Native production with express precision,” but rather initially instructed defendant to produce “each original document with non-identical copies and drafts of that documents.”¹⁴ The Judge further noted that “TIFF, even if regarded as an alternative form, is a suitable and proper response to a *generic* request for ‘original documents,’ especially absent an explicit reference to [Electronically Stored Information] ESI” (emphasis added).¹⁵

Here, the Region 1 instructions for SDT#1 and SDT#2 are not generic with regard to ESI, but rather make an explicit reference to ESI and the manner of production of such. Paragraph 11 of the Subpoenas “Instructions & Definitions” specifically directs that:

Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

¹⁴ 305, F.D.R. 225, 245 (S.D. Cal. 2015).

¹⁵ *Id.*

Fed. R.Civ.P. 34(b)(1)(C) allows a party to request a particular format for the production of ESI, and that is exactly what Counsels for the General Counsel have done here.¹⁶ Absent a showing that the requested form of production is unduly burdensome, Respondent's blanket refusal to produce ESI in native format is merely obstructionist, and this general objection is without merit. Again, Counsels for the General Counsel do not object to ever receiving documents through Relativity but instead refute the assertion that that form of production is usable the day it is received instead of the day it is processed. Additionally, we object to any missing metadata in the load files and insist that any TIFF+ production be based on native-format documents.

V. RESPONDENT'S SPECIFIC OBJECTIONS IN PRV#1 AND 2 HAVE NO MERIT

For ease of reading, the numbered requests of the SDT#2 begin at the end of the numbered requests of SDT#1. (No specific objections were raised for requests nos. 6 and 8.)

Respondent has objected to production of documents responsive to Requests Nos. 5, 10, 12, 13, 14, 15, 18, 20, and 21, on the basis that these requests are seeking documents protected by attorney-client privilege or work-product doctrine. If there are responsive documents that Respondent believes are protected, Respondent should provide a privilege log identifying such documents so that Your Honor may review those documents in-camera. Without this log, this argument should be rejected in its entirety, as these requests are facially neutral. Additionally,

¹⁶ See *In re Porsche Cars North America, Inc. Plastic Coolant Tubes Products Liability Litigation*, 279 F.R.D. 447, 449 (S.D. Ohio 2012) ("Pursuant to Rule 34(b)(1)(C), a requesting party is entitled to specify the form or forms in which electronically stored information is to be produced.")

Respondent has not met its burden to show that any responsive documents have been created for the purpose of litigation and not as records in the ordinary course of business.

Request No. 1

For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).

Respondent objects to the scope of topics and the temporal breadth of this request. The documents sought, however, will provide necessary context for the rules under which employees were disciplined in the past compared to the rules or policies Respondent enforced after the Union won the election. Further, this paragraph encompasses the policies or rules cited in paragraph 11 in the Complaint, as consolidated on March 28, 2023.

Request No. 2

For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted on Respondent’s Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality
- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases

- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Respondent objects to the scope of topics and temporal breadth of this request. The list of topic areas directly pertains to paragraphs 7 through 12 of the Complaint, and in most cases, it is facially obvious, based on the Complaint paragraphs, why they are sought. Whether Respondent's agents and/or representatives discussed the union pin with employees relates to not only general animus but also specific animus with respect to the discriminatee. During the investigation, the Region had disclosed to Respondent that Aly Nogosek, the discriminatee, had designed the union pin for the organizing campaign at the Vernon Store.

Request No. 3

Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent's agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality
- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Respondent objects to this request as duplicative of Request No. 2 and repeats its objections to Request No. 2 here. In brief (and without limiting either request), whereas Request No. 2 seeks Respondent's communications with employees, Request No. 3 seeks internal documents memorializing Respondent's meetings with employees. To the extent that documents are responsive to both paragraphs, we ask that Respondent make note of the overlap instead of producing the document again. Whether Respondent's agents and/or representatives memorialized their meetings with employees on the listed topics relates to paragraphs 7 through 12 of the Complaint.

Request No. 4

Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.

Respondent objects to this paragraph for its temporal scope, for supposedly being unduly burdensome, and for somehow being vague with the term "other managers."

Respondent's objection to the temporal scope of this paragraph is without merit because the comparison of the frequency of managers' visits to the Vernon Store before and after the organizing campaign pertains to animus. Although Respondent also objects to this request as supposedly being unduly burdensome, Respondent provides no details as to how responding to this request would seriously disrupt its business. Fewer than 10 managers likely visited the Vernon Store during this timeframe, and providing timesheets and calendar entries, for example, is probably straightforward. Additionally, Respondent's objection regarding the term "other managers" is bizarre. The request contains a list of named individuals and then named positions

before reaching the term “other managers.” David Martinez, for example, is one such other manager who visited the Vernon Store during this period.

Request No. 5

Those documents from Respondent’s corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.

Respondent again objects to the temporal scope and to commonly used terms as somehow vague and ambiguous, including “other supervisors or managers.” Respondent also objects to any disclosure of documents protected by attorney-client privilege or work product.

As in the above request, Respondent’s objection to the temporal scope of this paragraph is without merit because Respondent’s corporate training for supervisors at the Vernon Store in responding to union campaigns directly pertains to animus. The request also uses terms by their commonly known definitions despite Respondent’s strange objections to understanding the clear meaning of “any other contractor or source” (which Respondent misquotes as “contractor” and “other source”) and of “any other supervisors or managers.”

Request No. 7: The Petition Store Playbook.

Respondent objects to this request as somehow vague and ambiguous, even though there is no more specific way to ask for a document other than to ask for it by name. Respondent has previously provided documents referencing the Petition Store Playbook. If Respondent maintains that there is no Petition Store Playbook, a custodian of records should be made available to testify to that effect, including a description of Respondent’s efforts to identify and locate such

evidence,¹⁷ but Respondent has also refused to provide any custodian of records. This is not a basis for revoking a subpoena, but instead is one basis for seeking enforcement.

Requests

No. 9

Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent's decision to issue a written warning to Aly Nogosek in August of 2022.

No. 11

Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent's decision to discharge Aly Nogosek on August 26, 2022.

Respondent objects to the term "any other supervisors or managers" for being supposedly vague and ambiguous in both request nos. 9 and 11. The plain meanings of these words should suffice. One supervisor, for example, who is not listed but who would fall within the meaning of the term is David Martinez.

Respondent further objects to request nos. 9 and 11 on the basis that responsive items are outside of Respondent's custody or control. Although Respondent does not explain which documents it is referring to, the Region's investigation revealed that store managers typically use

¹⁷ See e.g., *Ironworkers Local 433*, 21-CB-129959, unpub. Board order issued Feb. 4, 2015.

their personal cell phones in communicating with employees about work and in their roles as managers. If Respondent is claiming that it has no access to those communications, Respondent should still request that information from the supervisors and managers. If the information does not exist, or if the supervisor or manager declines to provide the information, we ask that Respondent present a custodian of records to represent that it conducted a reasonable and diligent search.¹⁸

Requests

No. 10

Those documents that formed the basis of the Respondent's decision to issue a written warning to Aly Nogosek on about August of 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

No. 12

Those documents that formed the basis of the Respondent's decision to discharge Aly Nogosek on August 26, 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

The only objection raised by Respondent to these requests is that they seek documents protected by attorney-client privilege or work-product doctrine. As previously stated, if Respondent believes any responsive documents are protected then they should provide a privilege log identifying such documents for Your Honor's in-camera inspection.

¹⁸ See *Consolidated Waste Services Corp.*, 12-CA-192990, unpub. Board order issued May 24, 2018.

Requests

No. 13

For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

No. 14

For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Although Respondent objects to these requests seeking disciplinary records for all employees, the request is narrowly tailored to those receiving discipline for particular infractions at the Vernon Store. The purpose of these paragraphs is to compare how Respondent treated the

discriminatee in this case with how it treated other employees at the Vernon Store. At the time of the election in 2022, there were about 30 employees on the voter list. Respondent is a large corporation with a centralized human resources department overseeing the disciplinary records of all employees in all its stores. These requests seek a small fraction of those records in a narrow timeframe for the purpose of assessing how Respondent handled disciplines at the Vernon Store before and after the organizing campaign.

Request No. 15

For the period between May 12, 2022 and the present, all documents, including but not limited to bargaining notes, agendas, minutes, and recordings, showing communication between Respondent's agents and/or representatives and the Union's agents and/or representatives concerning or pertaining to the decision to discharge Aly Nogosek.

Based on Respondent's amended answer, admitting to paragraph 15 of the Consolidated Complaint (but denying the alleged unlawfulness of those facts), we withdraw this request.

Request No. 16

For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.

Whether the safe was known to malfunction and Respondent's diligence in repairing the safe relate to whether the stated reason for discharging the discriminatee is pretextual. The timeframe in this request is narrowly tailored to be close in time with Respondent's discharge of the discriminatee.

Request No. 17

For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.

Respondent raised the photo described in this objection as a potential reason for Respondent's decision to discharge Nogosek for the first time in a call with Counsel for the General Counsel. This photo is also referenced in the Store Manager's communications with Respondent's centralized human resources department in their discussions concerning disciplining Nogosek. Whether other employees have taken photographs on the same iPad in the Vernon Store and the content of any such photographs relates to whether Respondent consistently enforces its policies regarding the iPad. This paragraph seeks a narrow timeframe of photographs on a singular device. Additionally, Respondent's assertion that Nogosek took the photograph is odd, because Nogosek's hands appear in the photograph and could not simultaneously take the photograph absent some kind of timer or magical third hand. The more likely explanation is that one of the other two individuals in the photograph used their hands to take the photograph. To the extent Respondent claims that Nogosek took the photograph and put it on the iPad, those assertions are in dispute – further showing the relevance of this request.

Request No. 18

For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:

- a. Name of employee and last known address and phone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.

Respondent objects to the supposed vagueness or ambiguity of the phrase “electronic communication systems.” If the plain meaning of the phrase were somehow unclear, the phrase “including the iPad” should clarify this request sufficiently. Respondent’s assertions about Nogosek’s supposed admissions, which are in dispute, are also misplaced as the request relates to whether Respondent investigated this discriminatee differently than other employees – a factor in determining animus.

Request No. 19

Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.

Respondent lists virtually every objection to this request, despite the very narrow timeframe and subject matter. During the investigation, Respondent had claimed that the Vernon Store was temporarily closed that day due to participants supposedly blocking the entrance of the Vernon Store and “berating” customers. This request directly seeks surveillance footage of the time period during the day on the date of the event to test Respondent’s anticipated defense. Respondent also objects to the extent production discloses private information of employees or customers – but provides no explanation as to what this means. Regarding employees, Respondent has provided us with surveillance footage of employees inside the Vernon Store on a different date as they worked around the safe behind the coffee bar in the café area, and so Respondent has likely waived whatever privacy right it claims to be protecting with respect to employees. Regarding customer information, Respondent has provided other aspects of customer information to the Region, including the date, time, and content of orders, and so may have waived its privacy interests with respect to certain customer information. If there is a specific issue with the surveillance footage, Respondent should have described it in the petition instead of

requiring a guessing game into what potential customer information could possibly be revealed in this footage.

Request No. 20

Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.

Respondent objects to this request based on its supposed inability to understand the meaning of “internal documents,” which is a term that was not objectionable to Respondent in PRV#1 to request no. 3. Without explaining as to why this term is now too vague for Respondent, this objection should be rejected.

Request No. 21

Those documents showing any and all communications between and/or among Respondent’s agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

Respondent objects to the supposed vagueness or ambiguity of the phrases “agents and/or representatives” and “union-related notes.” In brief, after union supporters posted notes of encouragement for unionizing on the community board in the Vernon Store, the Store Manager and District Manager ripped off the posted notes. Because of the centralized corporate control over the Vernon Store (and every other store owned by Respondent), the internal communications concerning the removal of the pro-union notes relates to animus.

VI. RESPONDENT’S OBJECTIONS TO HAVING THE STORE MANAGER TESTIFY LACK MERIT

Respondent raises several objections to the SAT for the Store Manager Renee Colburn, who is an *admitted* supervisor in paragraph 4 of the Complaint – claiming she was improperly served at a location other than her place of business, that the SAT is deficient because it does not

state with sufficient particularity the evidence being sought through her testimony, that her testimony would be irrelevant, and that it was untimely.

Regarding the service of the SAT, Your Honor ruled that service was completed on April 11, the day of the hearing.

Regarding Respondent's contention that the SAT is somehow deficient for lacking particularity, the case Respondent cites, *TCT Stainless Steel, Inc.*¹⁹, stands for the *opposite* principle for which it is cited. The petition to revoke the subpoenas ad testificandum in that case was *denied in full* despite only identifying the case name and number on the face of the subpoenas, just like the one at issue here. Respondent cites to the *dissenting* view of Member Miscimarra, who nevertheless joined the majority in that case.

Although claiming Ms. Colburn's testimony is irrelevant, Respondent also describes her relevance to this case. Ms. Colburn is the supervisor who delivered the discharge document to the discriminatee. Respondent's bare assertions that she in no way was involved in the decision-making is testimony Ms. Colburn could provide if permitted to. Additionally, Ms. Colburn has worked periodically on and off at the Vernon Store for several years, making her knowledgeable about Respondent's policies and practices, which has become even more relevant with Respondent's staunch refusal to provide any custodian of records. At no point before the hearing did Respondent disclose that Ms. Colburn was on a medical leave of absence at the time the SAT to her was sent. That is a fact that could have been raised when Respondent's counsel received the SAT the week earlier in order to arrange for her testimony, but it is not a reason to revoke the SAT.

¹⁹ 07-CA-179856, unpub. Board order issued Dec. 21, 2016.

VII. CONCLUSION

As explained above, Counsels for the General Counsel contend that SDT#1 and 2 seek documents that are relevant and necessary to proving the Complaint allegations and to addressing and rebutting Respondent's anticipated defenses. While SDT#1 and 2 require a thorough search for responsive documents, they are specific and purposeful. Additionally, Respondent has failed to show why the subpoena seeking testimony of an admitted supervisor should be revoked. Counsels for the General Counsel oppose Respondent's Petitions in their entirety because Respondent has not met its burden of proof for revoking them.

Dated: April 18, 2023

/s/ Charlotte S. Davis

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/s/ Andyeliz Papaleo

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Boston, MA, 02222

EXHIBIT A

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, Starbucks Corporation135 Talcottville Road, Vernon, Connecticut 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1D2IE5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CTDated: March 20, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

1. For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).
2. For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted on Respondent’s Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:
 - a. Documented Coaching or Written Warning
 - b. Final Written Warning or Separation
 - c. Attendance and Punctuality
 - d. Safety and Security Policy
 - e. Safe Security Standards
 - f. Employees access to management
 - g. Tuition Benefits
 - h. Pay Increases
 - i. Workers United
 - j. The Union
 - k. Representation petition
 - l. Organizing
 - m. Union pin
 - n. Aly Nogosek
3. Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent’s agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:
 - a. Documented Coaching or Written Warning
 - b. Final Written Warning or Separation
 - c. Attendance and Punctuality
 - d. Safety and Security Policy
 - e. Safe Security Standards
 - f. Employees access to management

- g. Tuition Benefits
 - h. Pay Increases
 - i. Workers United
 - j. The Union
 - k. Representation petition
 - l. Organizing
 - m. Union pin
 - n. Aly Nogosek
4. Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.
 5. Those documents from Respondent's corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.
 6. For the period between May 1, 2021 and the present, those documents showing internal communication between or among Sam Cullari, Erin Twible, and any other supervisor and/or agent about the initiatives of upholding attendance standards and/or the attendance culture initiative.
 7. The Petition Store Playbook.
 8. The full and complete personnel file and employment records, including but not limited to annual performance evaluations, promotions, and disciplinary records, and excluding any medical-related information, of Aly Nogosek.
 9. Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent's decision to issue a written warning to Aly Nogosek in August of 2022.
 10. Those documents that formed the basis of the Respondent's decision to issue a written warning to Aly Nogosek on about August of 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

11. Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent's decision to discharge Aly Nogosek on August 26, 2022.
12. Those documents that formed the basis of the Respondent's decision to discharge Aly Nogosek on August 26, 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.
13. For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:
 - a. Name of employee and last known address and telephone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.
14. For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:
 - a. Name of employee and last known address and telephone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

15. For the period between May 12, 2022 and the present, all documents, including but not limited to bargaining notes, agendas, minutes, and recordings, showing communication between Respondent's agents and/or representatives and the Union's agents and/or representatives concerning or pertaining to the decision to discharge Aly Nogosek.

EXHIBIT B

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

Case No. 01-CA-302321

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA DUCES TECUM NO. B-1-1ID2IE5**

By letter dated March 20, 2023, Charlotte Davis and Andyeliz Papaleo, Counsels for General Counsel for the National Labor Relations Board (“Board”) served on Starbucks Corporation (“Starbucks”) Subpoena Duces Tecum B-1-1ID2IE5, a copy of which is attached as **Exhibit A** (“Subpoena”). Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Starbucks respectfully petitions for an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbuck’s store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022 and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing is scheduled to begin on April 11, 2023.

On March 20, 2023, Starbucks counsel received an email containing a courtesy copy of the Subpoena Duces Tecum No. B-1-1ID2IE5 with requests for documents related to the alleged unfair labor practices at the Vernon Store. Starbucks now files the Petition to Revoke Subpoena Duces Tecum No. B-1-1ID2IE5 set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

A petition to revoke, if made prior to the hearing, must be filed with the Regional Director and the Regional Director will refer the petition to the Administrative Law Judge or the Board for ruling.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

It is well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *See NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3d Cir. 1979); ULP Case Handling Manual (“CHM”) § 11792.1 (noting that the requested information must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party requesting the documents has the affirmative burden of establishing their relevancy. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *duces tecum* must be granted if the subpoena is invalid for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b). This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

Any request that is vague and ambiguous, overbroad, or irrelevant should be revoked. Subpoenas must be carefully drafted; the Board does not allow a “fishing expedition.” *See, e.g., Spartan Dep’t Stores*, 140 NLRB 608 n.2 (1963) (Board upheld hearing officer’s decision not to enforce subpoena, finding “[m]oreover, in view of Intervenor’s failure to offer evidence or otherwise indicate that the testimony sought would tend to refute that already in the record, it is apparent that the subpoena in question was in furtherance of a ‘fishing expedition’ and intended to unduly delay the proceeding.”); *Hispanics United of Buffalo, Inc.*, 359 NLRB 368 n.2 (2012) (“[A]s to the information subpoenaed from the discriminatees, the Respondent failed to show that it was relevant to any issue in dispute. Accordingly, the subpoena was properly revoked as an unwarranted ‘fishing expedition.’”); *see also* CHM § 11796.

Further, “a subpoena *duces tecum* . . . should be drafted as narrowly and specifically as is practicable.” CHM § 11776. It “should describe all documents sought with respect to content and time period,” and “describe with sufficient particularity the evidence whose production is required,” evidence that must be relevant to an issue in the case, and tailored to the individuals, time period, and action at issue. Rules and Regulations § 102.31(b); *see also* CHM §§ 11776, 11782, 11796; *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *NLRB v. Carolina Food*

Processing, 81 F.3d 507 (4th Cir. 1996); *NLRB v. Trades Council*, 131 LRRM 3132, 3133-34 (3d Cir. 1989); *Brinks, Inc.*, 281 NLRB 468, 468-69 (1986). “[T]he use of the word ‘all’ in the description of records should be avoided wherever possible.” *Id.*

In summary, consistent with Rule 26(c), a subpoena must be revoked if it:

- Seeks information that is not reasonably relevant to the proceeding (see above);
- Is overbroad on its face or otherwise seeks protected information (NLRB Bench Book (“NBB”) § 8-320 (citing *Brinks, Inc.*, 281 NLRB at 469 (granting petitions to revoke the challenged portions of the employer’s subpoenas in their entirety where most of the challenged portions “generally were drafted without regard for the usual standards applicable to subpoenas or discovery” set forth in the Board’s Rules and Fed. R. Civ. P. 26 and 45)));
- Seeks confidential or proprietary information. *See, e.g., NLRB (ex rel. Int’l. Union of Elec., Radio and Mach. Workers) v. Dutch Boy, Inc.*, 98 LRRM (BNA) 2396, 2398-99 (W.D. Okla. 1978), *aff’d*, 606 F.2d 929 (10th Cir. 1979) (acknowledging that a showing that documents should be withheld on the basis of confidentiality or likely harm to business interests provides a legitimate basis to deny enforcement of a subpoena); or
- Constitutes an impermissible fishing expedition (NBB § 8-320) (citing *CNN Am., Inc.*, 353 NLRB 891 (2009), final decision and order issued 361 NLRB No. 47 (2014)), *see also* CHM § 11796; *United Ass’n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

To enforce a subpoena *duces tecum*, an administrative agency must establish that: (1) the inquiry is within its authority; (2) the demand for production is not too indefinite; and (3) the information sought is reasonably relevant to the agency’s authorized inquiry. *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). The standard also has been stated as follows: the agency must demonstrate that the demand is for a legitimate purpose, relevant to that purpose, and not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (D. Mass. 2007) (applying standard to NLRB subpoena). For a subpoena

request to be relevant, it must reasonably relate to or “touch” a matter under investigation or in question. *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1965). Section 102.31(b) of the NLRB’s Rules and Regulations provides an Administrative Law Judge or the Board, as the case may be, “will revoke the subpoena if, in their opinion, the evidence whose production is required does not relate to any matter . . . in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.” 29 C.F.R. § 102.31(b).

As described more fully below, the Subpoena at issue is exceedingly overbroad and legally invalid in several respects. Accordingly, for all the reasons set forth below, the Subpoena must be revoked or modified.

To the extent Starbucks has not responded to any specific request enumerated below, or part thereof, such may not be taken as an admission Starbucks accepts or admits the existence of any fact(s) set forth or assumed by the Subpoena, that any such response or objection enumerated below constitutes admissible evidence, or that the documents requested are properly required to be produced. Nothing contained herein shall be construed as an admission of the relevance of or the existence or nonexistence of any document. No actual or implied admissions whatsoever are intended by this Petition.

GENERAL OBJECTIONS

A. OBJECT AS OVERBROAD

Starbucks objects to requests which are not sufficiently restricted to a specific subject or purpose. Starbucks further objects to the Subpoena’s inclusion of information dating back to May 2020, which was *nearly two years* before Starbucks first learned of any organizing activity in the Vernon store. Such a time period is obviously overbroad.

B. OBJECT AS VAGUE

Starbucks objects to requests which do not describe in sufficient particularity the documents sought as required by Rules and Regulations §§102.66(c), 102.31(b).

C. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to requests for data or information and/or requests not relevant to any party's claim or defense or proportional to the needs of the case and, therefore, not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink's Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not "relevant to the subject matter involved in the pending action."); *see also* ULP Casehandling Manual 11792.1 and 11794 (explaining that the information sought must "relate[] to . . . a matter under investigation").

D. OBJECT AS IRRELEVANT BASED ON TIME PERIOD SOUGHT

Starbucks objects to requests for data or information outside the relevant time period applicable to this action. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB.

E. OBJECT AS AN INTRUSION ON PRIVACY RIGHTS

Starbucks objects to requests for personal and confidential information, the disclosure of which would result in an intrusion on the privacy rights of its Section 2(3) employees, which Starbucks refers to as its hourly partners ("partners"). Starbucks further objects to requests seeking confidential business information, proprietary business information, and/or trade secrets, which

are not relevant to any party's claim or defense, disproportionate to the needs of the case, and the disclosure of which will cause avoidable reputational harm to the Company. *See Penn. Power & Light Company*, 301 N.L.R.B. 1104, 1105 (N.L.R.B. 1991) (in the context of a request for information, the Board has held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not.")

F. OBJECT AS UNDULY BURDENSOME

Starbucks objects to requests with respect to which compliance is unduly burdensome. More specifically, Starbucks objects to requests that require Starbucks to conduct unreasonably burdensome and costly searches for information, including for electronically stored information, without any identification of, or agreement on, any search terms to be used. Search terms are an important tool parties use to identify potentially responsive documents in cases involving electronically stored information.

G. OBJECT AS SEEKING CONFIDENTIAL, PRIVILEGED INFORMATION

Starbucks generally objects to producing any documents that are protected from disclosure by the attorney-client privilege, work product doctrine, Federal Rule of Evidence 408, and/or similar privileges. *See, e.g., Brinks Inc.*, 281 NLRB at 469-470 (1986); *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988); *Kaiser Aluminum & Chem. Corp.*, 339 NLRB 829, 829 (2003). "The Board recognizes the fundamental principle that communications made in confidence between an attorney and his or her client for the purpose of seeking and obtaining legal advice are privileged." *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), enforced, 447 F.3d 821 (D.C. Cir. 2006). The Board also recognizes that the privilege protects both communications from the attorney to the client and communications from the client to the attorney. *Patrick Cudahy*, 288 NLRB at 971 (quoting *Upjohn Corp. v. U.S.*, 449 U.S. 383, 390 (1981)) ("[T]he privilege exists to protect not

only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice”). Additionally, the work-product doctrine protects documents and tangible things prepared in anticipation of litigation by or for a party representative, regardless of whether the representative is an attorney. The doctrine was first recognized in *Hickman v. Taylor*, 329 U.S. 495, 511 (1947), and is now codified in Fed. R. Civ. P. 26(b)(3).

H. OBJECT AS TO THE DEFINITIONS

Starbucks objects to the definition of “document” set forth in the subpoena because it would improperly expand the scope of discovery and could result in disproportional discovery. In responding, Starbucks will be guided by the following provision of Rule 26(b)(1) regarding the scope of permissible discovery:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b)(1).

I. OBJECT TO THE EXTENT THE REQUESTS DO NOT COMPORT WITH FEDERAL RULES

Starbucks objects to the Requests to the extent that they may be construed to require responses beyond those required by the Federal Rules of Civil Procedure, the applicable local rules of the District of Connecticut, or any standing order of that court. Similarly, Starbucks objects to the Board’s Requests to the extent that they seek documents or materials outside of Starbucks’ possession or control. Starbucks is only required to produce documents in its possession, custody, or control as they are maintained in the ordinary course of business. *See* Fed. R. Civ. P. 34(a)(1).

Furthermore, Starbucks objects to producing publicly available documents (including, without limitation, public securities filings) that are, due to their public availability, equally available to the requesting party.

SPECIFIC RESPONSES AND OBJECTIONS

All of the General Objections stated above are incorporated into the responses set forth below. Starbucks further responds and objects to those items listed in the Subpoena as follows:

Request No. 1: For the period between May 12, 2021 and the present, those documents which set forth all rules, regulations and policies in effect, including but not limited to policies and procedures, employee manuals, employee handbooks, work rules and standards for employee behavior, personnel policies, memoranda and notices, including changes thereto and the dates of those changes, concerning or pertaining to disciplinary rules, rules of conduct, performance standards, applicable to all employees employed by Starbucks Corporation (herein “Respondent”) at its facility located at 135 Talcottville Road, Vernon, CT 06066 (herein “the Vernon Store”).

Response No. 1: In addition to being temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter “in question in the proceedings.” Rule 102.31(b). *See also, McDonald’s USA, LLC*, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be “reasonably relevant”). Notably, the only issue in question regarding an employee’s violation of Company policy is with regard to the written warning received by alleged discriminatee Aly Nogosek, and her subsequent termination. Indeed, Ms. Nogosek was disciplined for violations of Starbucks’ Attendance and Punctuality policy and was later terminated for a gross and egregious violation of Starbucks’ Safety and Security policy. As written, this request is not narrowly tailored to the issues. Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 2: For the period between May 12, 2021 and the present, all communications, including but not limited to memorandum, postings (electronic or physical, including those posted

on Respondent's Partner Hub), notes, memorialization of verbal discussions, correspondence, e-mails, text messages and instant messages, from Respondent to any employee employed at its Vernon Store regarding the following:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality
- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Response No. 2: In addition to being temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter "in question in the proceedings." Rule 102.31(b). *See also, McDonald's USA* 363 NLRB at 15; and *Perdue Farms* 144 F.3d at 833–834. Notably, this request, as written seeks information on specific topics that are not relevant. For example, there are no allegations in the Complaint regarding "union pins." In addition, several of the topics are overly broad, e.g., "employee access to management," "tuition increases," "pay increases." Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 3: Those internal documents, including but not limited to notes, memoranda, memorializations of oral communications, reports, text messages, and emails, pertaining to and/or concerning any meeting between Respondent's agents and/or representatives and any employee employed at the Vernon Store occurring at any time during the time period between May 12, 2022, and August 26, 2022, concerning any of the following topics:

- a. Documented Coaching or Written Warning
- b. Final Written Warning or Separation
- c. Attendance and Punctuality

- d. Safety and Security Policy
- e. Safe Security Standards
- f. Employees access to management
- g. Tuition Benefits
- h. Pay Increases
- i. Workers United
- j. The Union
- k. Representation petition
- l. Organizing
- m. Union pin
- n. Aly Nogosek

Response No. 3: Starbucks objects to this request as duplicative of Request No. 2. In addition, Starbucks objects to this request as inclusive of documents not related to any matter in question in the proceedings. This request, as written seeks information on specific topics that are not relevant. For example, there are no allegations in the Complaint regarding “union pins.” In addition, several of the topics are overly broad, e.g., “employee access to management,” “tuition increases,” “pay increases.” Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written and the General Counsel amend this request to describe with greater particularity the evidence whose production is required and its relevance to the allegations in the Complaint.

Request No. 4: Those documents that will show the dates that Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, and/or other managers of Respondent worked at and/or visited the Vernon Store, including calendar entries, work schedules, and COVID Check-In records, during the period between May 12, 2021 and the present.

Response No. 4: Starbucks objects to this request temporally overbroad and unduly burdensome. As written, this request seeks information not relevant to any party’s claim or defense or proportional to the needs of the case and, is therefore, not reasonably calculated to uncover admissible evidence. For example, the request, as written, would require Starbucks to produce any document relating to any time(s) that any “manager” (which is undefined) for any reason over the course of the last nearly two years. Relatedly, Starbucks objects to this request as vague and ambiguous to the extent it uses the phrase “other managers.” Without further information,

Starbucks cannot discern what this request is seeking.

Request No. 5: Those documents from Respondent's corporate management or any other contractor or source, showing training, instructions, and/or directives concerning identifying, reporting, and/or responding to union activities that were provided to or made available to Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store during the period between May 12, 2021 and the present.

Response No. 5: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "contractor," "other source," and "other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request as temporally overbroad to the extent it seeks information dating back to May 2021 – i.e., nearly a year before Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 7: The Petition Store Playbook.

Response No. 7: Starbucks objects to this request as vague and ambiguous to the extent it uses the term "Petition Store Playbook" as no such document exists. Without further clarification, Starbucks cannot discern what this request is seeking.

Request No. 9: Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to Respondent's decision to issue a written warning to Aly Nogosek in August of 2022.

Response No. 9: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms "any other supervisors or managers." Without further information, Starbucks cannot discern what this request is seeking. Further, Starbucks cannot produce materials for which it does not maintain custody or control, such as personal cell phones.

Request No. 10: Those documents that formed the basis of the Respondent’s decision to issue a written warning to Aly Nogosek on about August of 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

Response No. 10: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 11: Those documents showing all internal communications, including e-mails, text messages, instant messages, memos, memorialization of verbal discussions, and other writings between Sam Cullari, Erin Twible, Renee Colburn, assistant store managers, store managers, district managers, or any other supervisors or managers, and/or employees of Respondent at the Vernon Store, that mention, relate, or refer to, Respondent’s decision to discharge Aly Nogosek on August 26, 2022.

Response No. 11: Starbucks objects to this request as vague and ambiguous to the extent it uses the terms “any other supervisors or managers.” Without further information, Starbucks cannot discern what this request is seeking. Further, Starbucks cannot produce records for which it does not maintain custody or control.

Request No. 12: Those documents that formed the basis of the Respondent’s decision to discharge Aly Nogosek on August 26, 2022. This shall include, but is not limited to, any witness statements and/or other evidence gathered by Erin Twible and/or any other agent or supervisor, and any reports drafted with investigations findings.

Response No. 12: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 13: For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent’s Attendance and Punctuality policy and/or any reason relied upon in disciplining Nogosek on or about August 11, 2022, with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;

- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken,
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Response No. 13: Starbucks objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to *any and all* employees disciplined for violating Starbucks' Attendance and Punctuality policy dating back to May 2020 – i.e., for the last *three years; nearly two years before* Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 14: For the period between May 21, 2020 and the present, those documents showing discipline, up to and including discharge, issued to employees at the Vernon Store for violations of Respondent's Safety and Security Policy, Safe Security Standards, and/or any reason relied upon in discharging Nogosek with copies of documents that refer to, relate to, and/or formed the basis for such action. Please include the following for each individual:

- a. Name of employee and last known address and telephone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issued to each such employee.

Response No. 14: Starbucks objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to *any and all* employees disciplined for violating Starbucks' Safety and Security Policy or Safe Security Standards dating back to May 2020 – i.e., for the last *three years; nearly two years before* Starbucks learned of Union activity at the Vernon store. Finally, Starbucks objects to this request to the extent it purports to require

Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 15: For the period between May 12, 2022 and the present, all documents, including but not limited to bargaining notes, agendas, minutes, and recordings, showing communication between Respondent's agents and/or representatives and the Union's agents and/or representatives concerning or pertaining to the decision to discharge Aly Nogosek.

Response No. 15: Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

For the reasons set forth above, Starbucks respectfully seeks an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

Dated: March 27, 2023

Respectfully submitted,

/s/ Jacqueline Phipps Polito
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Attorneys for Starbucks

CERTIFICATE OF SERVICE

I certify that on this 27th day of March, 2023, the foregoing PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-1-1ID2IE5 was filed via Efile and a copy of the foregoing was served on the following by email:

Laura A. Sacks, Regional Director
National Labor Relations Board
Region 01
Thomas P. O'Neill Federal Building
10 Causeway Street - 10th floor
Boston, MA 02222-1001
Email: laura.sacks@nrlrb.gov

Richard A. Minter, Assistant Manager
Workers United Labor Union International,
affiliated with Service Employees International Union
22 South 22nd Street
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/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT C

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, Starbucks Corporation135 Talcottville Road, Vernon, CT 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410 Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
of the National Labor Relations Board

at A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

Starbucks Corporation
 or rescheduled date to testify in 01-CA-302321 and 01-CA-307585

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-1IGZVA5

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Hartford, CTDated: April 03, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

INSTRUCTIONS & DEFINITIONS

1. The term “document” as used herein shall include, but is not limited to, any electronically stored information, e-mail, text message, media message, memorialization of oral communication, paper, pamphlet, brochure, periodical, literature, letter, memorandum, magazine, telegram, telex, cable, facsimile transmission, other correspondence, report, audit, record, newspaper article, study, work schedule, payroll, ledger, time card, filing, tax return, handbook, note, meeting minutes, diary, working paper, chart, book, graph, spreadsheet, PowerPoint, call log, index, floppy disk, removable hard disk, computer generated tape, any magnetic medium, teletype, data sheet or data processing card, time sheet, computation, schedule, contract, invoice, receipt, cancelled check, analysis, summary, instruction, brief, pleading, or other litigation paper, transcript, or any accounting or draft or preliminary copy of any of the foregoing, together with any attachments, inclusions, enclosures, and annotations thereof or thereto, as well as any other tangible thing on which information is recorded in writing, sound, picture, punches, circuits, programs, or other manner, including supporting, underlying, or prefatory material, however produced or reproduced, to which you have had any access whether or not in your present possession, custody or control.

2. All requests for documents in the possession or control of Starbucks Corp. (Respondent) include those in the possession or control of or by Respondent and Respondent’s agents, servants, representatives, and counsel. “Control” also includes all those documents that Respondent can obtain that are responsive to this request. If a privilege is asserted with respect to any document, please identify that document and state the nature of the privilege.

3. Electronically stored information and e-mails should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

4. If you fail, refuse, or are unable to produce any documents requested, please provide the following information relative to each document not produced, stating in writing and with particularity:

- a. the date and form of the document;
- b. the subject matter of the document;
- c. the identity of the person who created the document and any and all persons to whom it was distributed;
- d. the asserted grounds for failure, refusal, or inability to produce the document, including citation of the statutory or decisional authority alleged to justify the failure or refusal to produce on grounds of privilege, or an account of the unsuccessful efforts made to locate documents as to which inability to produce is claimed;
- e. the identity, including address(es) and telephone number(s), of the individual(s) having present custody of the document; and

f. the paragraph or paragraphs of this Subpoena to which the document is responsive.

5. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.

6. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion, or expurgation.

7. Whenever used in this Subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense, and vice versa; the masculine shall be deemed to include the feminine, and vice versa; the disjunctive “or” shall be deemed to include the conjunctive “and,” and vice versa; and the words “each,” “every,” “any,” and “all” shall be deemed to include each of the other words.

8. References to entities or organizations shall be deemed to include any of their officers, agents, and representatives.

9. All documents produced pursuant to this Subpoena are to be organized according to the Subpoena paragraph to which the documents are responsive. Labels referring to that Subpoena paragraph are to be affixed to each document or set of documents.

10. Unless otherwise noted, this Subpoena does not supersede, revoke, or cancel any other subpoena issued in this proceeding.

11. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. All spreadsheet and presentation files (e.g. Excel, PowerPoint) shall be produced in the unprocessed “as kept in the ordinary course of business” state (i.e., in native format). The file produced should maintain the integrity of all source, custodian, application, embedded and related file system metadata.

12. To the extent that it has previously provided some of the material requested by this subpoena during the underlying investigation of this matter, Respondent is not required to produce that information again, provided that it accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, is willing to stipulate to the authenticity and completeness of the documents previously supplied and provides all of the documents under subpoena that have not yet been provided.

13. The term “Respondent” refers to Starbucks Corporation.

DOCUMENTS

16. For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.
17. For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.
18. For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:
 - a. Name of employee and last known address and phone number;
 - b. Dates of employment;
 - c. The complete personnel file, excluding medical records;
 - d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
 - e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
 - f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.
19. Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.
20. Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.
21. Those documents showing any and all communications between and/or among Respondent's agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

EXHIBIT D

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

**Case Nos. 01-CA-302321
01-CA-307585**

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA DUCES TECUM NO. B-1-1IGZVA5**

On April 3, 2023, Charlotte Davis and Andyeliz Papaleo, Counsels for General Counsel for the National Labor Relations Board (“Board”) served on Starbucks Corporation (“Starbucks”) Subpoena Duces Tecum B-1-1IGZVA5, a copy of which is attached as **Exhibit A** (“Subpoena”). Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Starbucks respectfully petitions for an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbucks’ store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022 and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing is scheduled to begin on April 11, 2023.

The charge in case 01-CA-307585 was filed by the Union on November 21, 2022, and the first amended charge was filed by the Union on December 9, 2022. The second amended charge was filed on March 14, 2023 and the third amended charge was filed on March 28, 2023.

Charge 01-CA-302321 and charge 01-CA-307585 were consolidated in the instant Consolidated Complaint on March 28, 2023.

On March 20, 2023, Starbucks' counsel received an email containing a courtesy copy of the Subpoena Duces Tecum No. B-1-1IGZVA5 with requests for documents related to the alleged unfair labor practices at the Vernon Store. Starbucks now files the Petition to Revoke Subpoena Duces Tecum No. B-1-1IGZVA5 set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

A petition to revoke, if made prior to the hearing, must be filed with the Regional Director and the Regional Director will refer the petition to the Administrative Law Judge or the Board for ruling.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

It is well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *See NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3d Cir. 1979); ULP Case Handling Manual (“CHM”) § 11792.1 (noting that the requested information must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party requesting the documents has the affirmative burden of establishing their relevancy. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *duces tecum* must be granted if the subpoena is invalid for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b). This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

Any request that is vague and ambiguous, overbroad, or irrelevant should be revoked. Subpoenas must be carefully drafted; the Board does not allow a “fishing expedition.” *See, e.g., Spartan Dep’t Stores*, 140 NLRB 608 n.2 (1963) (Board upheld hearing officer’s decision not to enforce subpoena, finding “[m]oreover, in view of Intervenor’s failure to offer evidence or otherwise indicate that the testimony sought would tend to refute that already in the record, it is apparent that the subpoena in question was in furtherance of a ‘fishing expedition’ and intended to unduly delay the proceeding.”); *Hispanics United of Buffalo, Inc.*, 359 NLRB 368 n.2 (2012) (“[A]s to the information subpoenaed from the discriminatees, the Respondent failed to show that it was relevant to any issue in dispute. Accordingly, the subpoena was properly revoked as an unwarranted ‘fishing expedition.’”); *see also* CHM § 11796.

Further, “a subpoena *duces tecum* . . . should be drafted as narrowly and specifically as is practicable.” CHM § 11776. It “should describe all documents sought with respect to content and

time period,” and “describe with sufficient particularity the evidence whose production is required,” evidence that must be relevant to an issue in the case, and tailored to the individuals, time period, and action at issue. Rules and Regulations § 102.31(b); *see also* CHM §§ 11776, 11782, 11796; *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186 (1946); *NLRB v. Carolina Food Processing*, 81 F.3d 507 (4th Cir. 1996); *NLRB v. Trades Council*, 131 LRRM 3132, 3133-34 (3d Cir. 1989); *Brinks, Inc.*, 281 NLRB 468, 468-69 (1986). “[T]he use of the word ‘all’ in the description of records should be avoided wherever possible.” *Id.*

In summary, consistent with Rule 26(c), a subpoena must be revoked if it:

- Seeks information that is not reasonably relevant to the proceeding (see above);
- Is overbroad on its face or otherwise seeks protected information (NLRB Bench Book (“NBB”) § 8-320 (citing *Brinks, Inc.*, 281 NLRB at 469 (granting petitions to revoke the challenged portions of the employer’s subpoenas in their entirety where most of the challenged portions “generally were drafted without regard for the usual standards applicable to subpoenas or discovery” set forth in the Board’s Rules and Fed. R. Civ. P. 26 and 45)));
- Seeks confidential or proprietary information. *See, e.g., NLRB (ex rel. Int’l. Union of Elec., Radio and Mach. Workers) v. Dutch Boy, Inc.*, 98 LRRM (BNA) 2396, 2398-99 (W.D. Okla. 1978), *aff’d*, 606 F.2d 929 (10th Cir. 1979) (acknowledging that a showing that documents should be withheld on the basis of confidentiality or likely harm to business interests provides a legitimate basis to deny enforcement of a subpoena); or
- Constitutes an impermissible fishing expedition (NBB § 8-320) (citing *CNN Am., Inc.*, 353 NLRB 891 (2009), final decision and order issued 361 NLRB No. 47 (2014)), *see also* CHM § 11796; *United Ass’n of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry*, 325 NLRB 1235, 1236 (1999).

To enforce a subpoena *duces tecum*, an administrative agency must establish that: (1) the inquiry is within its authority; (2) the demand for production is not too indefinite; and (3) the information sought is reasonably relevant to the agency’s authorized inquiry. *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)). The standard also has been stated as follows: the agency must

demonstrate that the demand is for a legitimate purpose, relevant to that purpose, and not unreasonably broad or burdensome. *EEOC v. Kronos, Inc.*, 620 F.3d 287, 298 n.4 (3d Cir. 2010); *see also United States v. Powell*, 379 U.S. 48, 57-58 (1964); *NLRB v. Champagne Drywall, Inc.*, 502 F. Supp. 2d 179 (D. Mass. 2007) (applying standard to NLRB subpoena). For a subpoena request to be relevant, it must reasonably relate to or “touch” a matter under investigation or in question. *NLRB v. Rohlen*, 385 F.2d 52, 55-56 (7th Cir. 1965). Section 102.31(b) of the NLRB’s Rules and Regulations provides an Administrative Law Judge or the Board, as the case may be, “will revoke the subpoena if, in their opinion, the evidence whose production is required does not relate to any matter . . . in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.” 29 C.F.R. § 102.31(b).

As described more fully below, the Subpoena at issue is exceedingly overbroad and legally invalid in several respects. Accordingly, for all the reasons set forth below, the Subpoena must be revoked or modified.

To the extent Starbucks has not responded to any specific request enumerated below, or part thereof, such may not be taken as an admission Starbucks accepts or admits the existence of any fact(s) set forth or assumed by the Subpoena, that any such response or objection enumerated below constitutes admissible evidence, or that the documents requested are properly required to be produced. Nothing contained herein shall be construed as an admission of the relevance of or the existence or nonexistence of any document. No actual or implied admissions whatsoever are intended by this Petition.

GENERAL OBJECTIONS

A. OBJECT AS UNTIMELY

Starbucks objects to the subpoena as untimely. The hearing in these cases is scheduled to begin on **April 11, 2023**. Undersigned counsel did not receive a copy of Subpoena B-1-1IGZVA5, until **April 3, 2023** – i.e., *only eight days* before the opening of the hearing. The General Counsel’s Casehandling Manual states that subpoenas “should, where circumstances allow, normally be served at least 2 weeks prior to trial” to allow sufficient time to arrange for production of the witness or documents and for ruling on a petition to revoke before trial. NLRB Bench Book § 8–125; *see* NLRB Casehandling Manual (Part 1), Sec. 10340. Indeed, the Complaint and Notice of Hearing in this case was issued *nearly four months ago in December 2022*. Further, Counsel for the General Counsel already served a subpoena in this case on March 20, 2023. It is unreasonable for the Counsel for the General Counsel to now choose to issue yet another subpoena so close to the opening of the hearing. Eight days notice is simply not a reasonable amount of time for Respondent to be expected to comply with the subpoena and produce the numerous documents and videos requested, if any such documents even exist. *See* NLRB Bench Book § 8–125. The subpoena should be revoked in its entirety on this basis alone.

B. OBJECT AS OVERBROAD

Starbucks objects to requests which are not sufficiently restricted to a specific subject or purpose. Starbucks further objects to the Subpoenas inclusion of information dating back to August 2021, which was *nearly a year* before the election was held in the Vernon store. Such a time period is obviously overbroad.

C. OBJECT AS VAGUE

Starbucks objects to requests which do not describe in sufficient particularity the documents sought as required by Rules and Regulations §§102.66(c), 102.31(b).

D. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to requests for data or information and/or requests not relevant to any party's claim or defense or proportional to the needs of the case and, therefore, not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink's Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not "relevant to the subject matter involved in the pending action."); *see also* ULP Casehandling Manual 11792.1 and 11794 (explaining that the information sought must "relate[] to . . . a matter under investigation").

E. OBJECT AS IRRELEVANT BASED ON TIME PERIOD SOUGHT

Starbucks objects to requests for data or information outside the relevant time period applicable to this action. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB.

F. OBJECT AS AN INTRUSION ON PRIVACY RIGHTS

Starbucks objects to requests for personal and confidential information, the disclosure of which would result in an intrusion on the privacy rights of its Section 2(3) employees, which Starbucks refers to as its hourly partners ("partners"). Starbucks further objects to requests seeking confidential business information, proprietary business information, and/or trade secrets, which

are not relevant to any party's claim or defense, disproportionate to the needs of the case, and the disclosure of which will cause avoidable reputational harm to the Company. *See Penn. Power & Light Company*, 301 N.L.R.B. 1104, 1105 (N.L.R.B. 1991) (in the context of a request for information, the Board has held that "[l]egitimate and substantial confidentiality and privacy claims will be upheld, but blanket claims of confidentiality will not.")

G. OBJECT AS UNDULY BURDENSOME

Starbucks objects to requests with respect to which compliance is unduly burdensome. More specifically, Starbucks objects to requests that require Starbucks to conduct unreasonably burdensome and costly searches for information, including for electronically stored information, without any identification of, or agreement on, any search terms to be used. Search terms are an important tool parties use to identify potentially responsive documents in cases involving electronically stored information.

H. OBJECT AS SEEKING CONFIDENTIAL, PRIVILEGED INFORMATION

Starbucks generally objects to producing any documents that are protected from disclosure by the attorney-client privilege, work product doctrine, Federal Rule of Evidence 408, and/or similar privileges. *See, e.g., Brinks Inc.*, 281 NLRB at 469-470 (1986); *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 (1988); *Kaiser Aluminum & Chem. Corp.*, 339 NLRB 829, 829 (2003). "The Board recognizes the fundamental principle that communications made in confidence between an attorney and his or her client for the purpose of seeking and obtaining legal advice are privileged." *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), enforced, 447 F.3d 821 (D.C. Cir. 2006). The Board also recognizes that the privilege protects both communications from the attorney to the client and communications from the client to the attorney. *Patrick Cudahy*, 288 NLRB at 971 (quoting *Upjohn Corp. v. U.S.*, 449 U.S. 383, 390 (1981)) ("[T]he privilege exists to protect not

only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice”). Additionally, the work-product doctrine protects documents and tangible things prepared in anticipation of litigation by or for a party representative, regardless of whether the representative is an attorney. The doctrine was first recognized in *Hickman v. Taylor*, 329 U.S. 495, 511 (1947), and is now codified in Fed. R. Civ. P. 26(b)(3).

I. OBJECT AS TO THE DEFINITIONS

Starbucks objects to the definition of “document” set forth in the subpoena because it would improperly expand the scope of discovery and could result in disproportional discovery. In responding, Starbucks will be guided by the following provision of Rule 26(b)(1) regarding the scope of permissible discovery:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b)(1).

J. OBJECT TO THE EXTENT THE REQUESTS DO NOT COMPORT WITH FEDERAL RULES

Starbucks objects to the requests to the extent that they may be construed to require responses beyond those required by the Federal Rules of Civil Procedure, the applicable local rules of the District of Connecticut, or any standing order of that court. Similarly, Starbucks objects to the Board’s requests to the extent that they seek documents or materials outside of Starbucks’ possession or control. Starbucks is only required to produce documents in its possession, custody, or control as they are maintained in the ordinary course of business. *See* Fed. R. Civ. P. 34(a)(1).

Furthermore, Starbucks objects to producing publicly available documents (including, without limitation, public securities filings) that are, due to their public availability, equally available to the requesting party.

K. OBJECT TO ANY DEMAND FOR “NATIVE” PRODUCTION

Starbucks specifically objects to any demand for the production of information in native format and instead will produce documents and ESI in TIFF+ format. For over a decade, federal courts and leading authorities have held a production in TIFF+ format is “reasonably usable” form of production under Fed.R.Civ.P. 34(b)(2)(E)(ii). *The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, 19 SEDONA CONF. J. 1, Principle 12, Cmt. 12.b., p. 173 (2018) (“Parties should not demand forms of production, including native files and metadata fields, for which they have no practical use or that do not materially aid in the discovery process....[I]n the majority of instances, TIFF+ is a “reasonably usable” form of production for most purposes and types of ESI under Rule 34(b)(2)(E)(ii).”); *Carter v. Bridgepoint Education, Inc.*, 305 F.R.D. 225 (S.D. Cal. 2015) (denying plaintiffs’ motion for native-format production and noting the widespread use of TIFF images in discovery production); *Aguilar v. Immigration and Customs Enforcement Division*, 255 F.R.D. 350 (S.D.N.Y. 2008) (stating that even if native files are requested, it will produce memoranda, emails and electronic records in TIFF format accompanied by a load file containing searchable text and selected metadata). *See also, Stipulation and Order Regarding the Format of Electronically Stored Information and Document Production*, Standing Order of Judge James M. Wicks, United States Magistrate Judge (EDNY); *[Model] Agreement Regarding Discovery of Electronically Stored Information and [Proposed] Order* (W.D. Wash.); Middle District Discovery: A Handbook on Civil Discovery Practice in the United State District Court for the

Middle District of Florida (M.D. Fla.); *E-Discovery: Guidelines Addressing the Discovery of Electronically Stored Information* (D. Colo).

Furthermore, in a Recent Region 3 NLRB evidentiary hearing, Starbucks provided a Declaration from “a recognized global leader in eDiscovery ...[that] provides these services to over 400 clients in over 25 jurisdictions, through offices around the world”¹ that stated:

- TIFF+ productions are industry standard in modern litigation.
- TIFF+ format consists of page level images and document level extracted text files for each document, accompanied by a load file containing selected metadata.
- When TIFF+ productions are loaded into a Relativity database, both the contents and metadata of all documents are fully searchable and sortable.²
- Unlike native documents, TIFF+ productions include the ability to individually number/endorse pages, ease of redaction, and the ability to inhibit the capability to alter the imaged version of a document.
- TIFF+ productions meet a wider array of regulatory entity data production requirements which is why the Department of Justice, Securities and Exchange Commission, and Federal Trade Commission require production in TIFF+ format.

The Board did not refute that Declaration in any manner. In that case, the Board also did not refute that Starbucks has produced information in a TIFF+ format in dozens of other hearings with the Board during the past nine months.

¹ Case Nos. 03-CA-295470; 03-CA-295474; 03-CA-295545; 03-CA-296995; 03-CA-299540; 03-CA-300849; 03-CA-300931; 03-CA-305237; 03-CA-307568; 03-CA-307756; 03-CA-308720; 03-CA-309434; 03-CA-309799; 03-CA-310302 03-CA-311237, *Starbucks Memorandum Regarding Form of Production of Evidence Produced in Response to Subpoena: TIFF+ Format is a “Reasonably Usable” Form*, Exhibit 2, Declaration of Cory Osher, Vice President of Analytics and AI, UnitedLex Corporation.

² It is undisputed the Board has Relativity, and has used Relativity in ULP cases.

The Board itself has also conceded that TIFF+ productions are the industry standard, by requesting production in TIFF format. *See e.g.*, Case No. 02-CA-303077 & 02-CA-304431, Subpoena Duces Tecum B-1-1 IFTK3F, Instruction E, stating (emphasis supplied):

Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms. The NLRB *prefers* election production in TIFF or PDF format, accompanied by text extracted from the original electronic files and a load file containing metadata extracted and stored in a standard industry format (i.e., a load file suitable for loading into Concordance or similar review platform).

Federal courts have also ordered the use of TIFF+ productions because there are inherent risks and significant disadvantages to production in “native” format – including the inability to Bates stamp, redact privileged content or personally identifiable information (“PII”), prevent document alteration, and prevent inadvertent disclosures to unauthorized third parties. *See, e.g., United Central Bank v. Kanan Fashions, Inc.*, 2010 U.S. Dist. LEXIS 83700 (N.D. Ill. Aug. 12, 2010) (ordering TIFF+ production instead of native-format production for ease of use, to prevent manipulation of the production, and to allow for easier redaction of confidential and personally sensitive information); *Wilson v. Conair Corp.*, 2015 WL 1994270 (E.D. Cal. Apr. 30, 2015) (ordering TIFF+ production where Plaintiffs moved for native-form production); *National Jewish Health v. WebMD Health Services Group*, 2014 WL 2118585 (D. Colo. May 21, 2014) (citing *Aguilar*, referenced above, for same proposition); *In re Priceline.com Inc. Sec. Litig.*, 233 F.R.D. 88 (D. Conn. 2005) (denying motion to compel native production and instead ordering production “in TIFF+ or PDF form with Bates numbering and appropriate confidentiality designations” in part because those formats were “the most secure format for production of documents”). There are no rules (or commentary) requiring native format productions. *See, e.g., Chapman v. General Board*, 2010 U.S. Dist. Lexis 66618 (N.D. Ill. July 6, 2010) (holding that the Federal rules are “unsupportive” of the contention that Documents or ESI must be produced in native format). And

the Board's own Rules and Regulations make plain that "[t]he Federal Rules of Civil Procedure are controlling, so far as is practicable." Board Rules and Regulations, § 102.39.

SPECIFIC RESPONSES AND OBJECTIONS

The subpoena is untimely and Respondent is unable to comply with the request. All of the General Objections stated above are incorporated into the responses set forth below. In addition to being untimely and woefully inappropriate, Starbucks further responds and objects to those items listed in the Second Subpoena as follows:

Request No. 16: For the period between April 1, 2022, and the present, those documents which show work requests, including to the Enterprise hotline, for repairing the safe and/or reporting issues with the safe at the Vernon Store.

Response No. 16: Starbucks objects to this request as untimely, temporally overbroad and, as a result, necessarily inclusive of documents not related to any matter "in question in the proceedings." Rule 102.31(b). *See also, McDonald's USA, LLC*, 363 NLRB No. 144, slip op. at 15 (2016); and *Perdue Farms v. NLRB*, 144 F.3d 830, 833–834 (D.C. Cir. 1998) (information must be "reasonably relevant"). As written, this request is not narrowly tailored to the issues. Alleged discriminate Aly Nogosek, was terminated *in August 2022* for leaving the safe open at the Vernon store. Maintenance records relating to the safe, if any, dating back to April 2022, i.e., *four months prior* to Nogosek's termination are simply not relevant.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as untimely and irrelevant.

Request No. 17: For the period between August 1, 2021, and the present, images taken and stored on the iPad used by employees at the Vernon Store.

Response No. 17: In addition to being untimely, temporally overbroad, Starbucks objects to this request as inclusive of documents not related to any matter "in question in the proceedings." *See* Rule 102.31(b). *See also, McDonald's USA* 363 NLRB at 15; and *Perdue Farms* 144 F.3d at 833–834. Again, alleged discriminate Aly Nogosek, was terminated *in August 2022* for leaving the safe open at the Vernon store. Around that same time, Nogosek was also discovered to have taken an inappropriate picture on the store's iPad. Any photos taken and stored on the iPad for *the entire year* preceding Nogosek's termination bear no relevance to the fact that Nogosek was, at the time since she left the safe open in August 2022, facing possible discipline for taking inappropriate pictures *in August 2022* on the store's iPad. Any other pictures are wholly irrelevant to the issues in the present case and constitute a fishing expedition. Moreover, Nogosek acknowledged that she took a picture and placed it on the iPad.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written as untimely, irrelevant, unnecessarily intrusive on the rights of other partners in the store, and intrusive on the business of Respondent.

Request No. 18: For the period between August 1, 2021, and the present, those documents showing any disciplines resulting from misuse of electronic communication systems, including the iPad, at the Vernon Store. Please include the following for each individual:

- a. Name of employee and last known address and phone number;
- b. Dates of employment;
- c. The complete personnel file, excluding medical records;
- d. Nature of action taken against employee, including those documents showing the reason(s) such action was taken;
- e. Any records related to the investigation conducted by Respondent before issuing the discipline; and
- f. Disciplinary records of employee, including copies of any written discipline issues to each such employee.

Response No. 18: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrase “electronic communication systems” which is undefined and unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks further objects to this request as temporally overbroad and unduly burdensome to the extent it seeks information relating to any and all employees disciplined for “misuse of electronic communication systems” (which is again, undefined and of unlimited scope) dating back to August 2021 – *i.e.*, a full year before Nogosek’s termination. Finally, Starbucks objects to this request to the extent it purports to require Starbucks to produce any documents that are protected from disclosure by the attorney-client privilege and/or work product doctrine.

Accordingly, Starbucks respectfully requests that the ALJ revoke the request as currently written as untimely and irrelevant. It is undisputed that Nogosek took a picture and put it on the iPad. Whether other partners did so is irrelevant to Nogosek’s termination which occurred as a result of her specific disciplinary history.

Request No. 19: Surveillance footage of the café area, including its ingress and egress, and/or the drive-through at the Vernon Store on July 7, 2022, during the hours of 10 a.m. and 2 p.m.

Response No. 19: Starbucks objects to this request as untimely, unduly burdensome, irrelevant, overbroad and intended solely to burden Respondent. The request also infringes upon the rights of customers, partners and other third-parties who are not involved in this matter. Further, as written, this request seeks information not relevant to any party’s claim or defense or proportional to the needs of the case and, is therefore, not reasonably calculated to uncover admissible evidence. The allegations in the Consolidated Complaint relating to July 7, 2022 are that Starbucks: (a) removed union materials from the community board; (b) selectively enforced the third-place policy and the procedure addressing disruptive behaviors, by closing the Vernon Store to deny the Union access to the premises and chill employees’ union and protected concerted activities; and (c) selectively enforced the solicitation and distribution policy by telling employees they could not

post union-related materials on the community board. *See Consol. Compl.* ¶ 11. Surveillance footage from the day in question would undoubtedly include sensitive and/or private information that is neither relevant to the complaint, nor proportionate to the needs of the case. Indeed, requiring Starbucks to produce surveillance footage which would unnecessarily infringe on the privacy rights of its employees and customers is inappropriate and unnecessarily broad. This request should not be countenanced. Finally, Starbucks further objects to the extent that this request seeks sensitive, proprietary and confidential business information.

Request No. 20: Internal documents showing the reasons for closing and reopening the Vernon Store on July 7, 2022, during normal business hours.

Response No. 20: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrase “internal documents” which is undefined and unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request to the extent it purports to require Starbucks to produce any documents that may be protected from disclosure by the attorney-client privilege and/or work product doctrine.

Request No. 21: Those documents showing any and all communications between and/or among Respondent’s agents and/or representatives concerning the removal of union-related notes on the community board on July 7, 2022.

Response No. 21: Starbucks objects to this request as untimely, vague and ambiguous insofar as it uses the phrases “agents and/or representatives” and “union-related notes” neither of which is defined and both of which are unlimited in scope. Without further information, Starbucks cannot discern what this request is seeking. Starbucks also objects to this request to the extent it purports to require Starbucks to produce any documents that may be protected from disclosure by the attorney-client privilege and/or work product doctrine.

For the reasons set forth above, Starbucks respectfully seeks an order revoking portions of the Subpoena, or, directing the Counsels for General Counsel to clarify or revise portions of their requests.

Dated: April 10, 2023

Respectfully submitted,

/s/ Jacqueline Phipps Polito

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*Attorneys for Respondent
Starbucks Corporation*

CERTIFICATE OF SERVICE

I certify that on this 10th day of April, 2023, the foregoing PETITION TO REVOKE SUBPOENA DUCES TECUM NO. B-1-1IGZVA5 was filed via Efile and a copy of the foregoing was served on the following by email:

Laura A. Sacks, Regional Director
National Labor Relations Board
Region 01
Thomas P. O'Neill Federal Building
10 Causeway Street - 10th floor
Boston, MA 02222-1001
Email: laura.sacks@nrlrb.gov

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Charlotte Davis, Board Agent
Andyeliz Papaleo, Board Agent
National Labor Relations Board, Subregion 34
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Hartford, CT 06103-3503
Email: charlotte.davis@nrlrb.gov
Email: andyeliz.papaleo@nrlrb.gov

/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT E

SUBPOENA**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Renee A. Colburn, Starbucks Corporation135 Talcottville Road, Vernon, CT 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410\ Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

or rescheduled date to testify in Starbucks Corporation
01-CA-302321 and 01-CA-307585
 (Case Name and Number)

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

A-1-111SKD

Under the seal of the National Labor Relations Board, and by direction of the
 Board, this Subpoena is

Issued at Hartford, CTDated: April 06, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

EXHIBIT F

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

**Case Nos. 01-CA-302321
01-CA-307585**

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL**

**RESPONDENT STARBUCKS CORPORATION’S PETITION TO
REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-111SKD**

Pursuant to Section 11(1) of the National Labor Relations Act (“Act”) and Section 102.31(b) of the Rules and Regulations of the Board, Respondent Starbucks Corporation (“Starbucks”) respectfully petitions for an order revoking Subpoena *Ad Testificandum* A-1-111SKD, a copy of which is attached as **Exhibit A** (“Subpoena”) in its entirety. Counsels for the General Counsel for the National Labor Relations Board (“Board”) Charlotte Davis and Andyeliz Papaleo improperly served the Subpoena for Starbucks Store Manager Renee A. Colburn on April 11, 2023.

PROCEDURAL BACKGROUND

Workers United (the “Union”) a subsidiary of the SEIU, filed a petition on May 12, 2022, seeking to represent a unit of all full-time and regular part-time Baristas and Shift Supervisors, and Assistant Store Managers at Starbuck’s store located at 135 Talcottville Road, Vernon, Connecticut 06066 (the “Vernon Store”) in Case No. 01-RC-295710. A mail ballot election was subsequently conducted for a proposed bargaining unit composed of Baristas and Shift Supervisors

on July 14, 2022. Returned ballots were counted on July 14, 2022, and a majority of those ballots counted (13-1) favored the Union.

On August 29, 2022, the Union filed charge 01-CA-302321, related to alleged conduct at the Vernon Store. The first amended charge was filed on September 22, 2022, and the second amended charge was filed on November 21, 2022. The Complaint was issued on December 23, 2022, and the hearing was scheduled to begin April 11, 2023.

The charge in case 01-CA-307585 was filed by the Union on November 21, 2022. The first amended charge was filed by the Union on December 9, 2022; the second amended charge was filed on March 14, 2023; and the third amended charge was filed on March 28, 2023. Charge 01-CA-302321 and charge 01-CA-307585 were consolidated in the instant Consolidated Complaint on March 28, 2023. The hearing on the consolidated cases opened on April 11, 2023.

On Thursday, April 6, 2023, counsel for Starbucks received an email from Counsel for the General Counsel Charlotte Davis containing a courtesy copy of the Subpoena *Ad Testificandum* No. A-1-1IIISKD addressed to Store Manager Renee A. Colburn, with a request that Ms. Colburn appear before the Administrative Law Judge in the hearing in this case on April 11, 2023—*i.e., just three business days later*. Notably, at no time did the Counsel for the General Counsel ask if counsel for Starbucks would accept service of the Subpoena on Ms. Colburn's behalf, and at no time did counsel for Starbucks indicate that it would accept service. On Monday, April 10, 2023 at 1:56 p.m.¹ – *i.e., only twenty hours before the start of the hearing* – a copy of the Subpoena was received at the Vernon Store, which is not where Ms. Colburn works, via Certified Mail. It was signed for by a Starbucks partner.

Starbucks now files the Petition to Revoke Subpoena *Ad Testificandum* No. A-1-1IIISKD

¹ See USPS Tracking Report, attached as **Exhibit B**.

as set forth below.

STANDARD OF REVIEW

Section 102.31(b) of the Board's Rules and Regulations provides in relevant part:

Any person served with a subpoena, whether *ad testificandum* or *duces tecum*, if that person does not intend to comply with the subpoena, must, within 5 business days after the date of service of the subpoena, petition in writing to revoke the subpoena.

...

Petitions to revoke subpoenas filed during the hearing must be filed with the Administrative Law Judge.

...

The Administrative Law Judge or the Board, as the case may be, will revoke the subpoena if in their opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 120.31(b).

The Act requires that subpoenas be served personally, by registered or certified mail, or by delivery *at the principal office or business address of the person being served*. See Section 11(4) ("Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.") See also NLRB Rules and Regulations Sec. 102.4 ("Subpoenas must be served upon the recipient personally, by registered or certified mail, by leaving a copy at the principal office or place of business of the person required to be served, by private delivery service, or by any other method of service authorized by law.").

The Act also requires that subpoenas state with sufficient particularity the evidence being sought. *See* Sec. 11(1) of the Act (“the Board shall revoke[] such subpoena . . . if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required.”) *See Tct Stainless Steel, Inc. & Its Alter Ego Tempered & Specialty Metal & Loc. 283, Int’l Bhd. of Teamsters*, No. 07-CA-179856, 2016 WL 7430472, at *1 (Dec. 21, 2016) (in “Member Miscimarra’s view . . . consistent with his position in *Christus St. Vincent Regional Medical Center*, 28-CA-149798 (Aug. 24, 2015), *CCR Fire Protection, LLC*, 15-CA134356 (Feb. 23, 2015), and *International Union of Elevator Constructors (Otis Elevator)*, 29-CB-084077 (Aug. 29, 2014), the instant subpoenas *ad testificandum*, which only identify the case name and number, are deficient because they fail to state with sufficient particularity the evidence being sought.”)

It is also well-established that documents sought by a subpoena must be relevant to the issues raised in the instant matter. *NLRB v. Interstate Dress Carriers*, 610 F.2d 99, 111 (3rd Cir. 1979); ULP Casehandling Manual (“CHM”) § 11792.1 (information requested must “relate[] to any matter under investigation or in question”); *id.* at 11794 (citing federal authorities for the proposition that the requested material must “touch[] a matter under investigation”). The party issuing the subpoena has the affirmative burden of establishing the relevancy of the information sought. *See NLRB v. Pinkerton, Inc.*, 621 F.2d 1322, 1326 (6th Cir. 1980); CHM § 11794 (“The testimony or documentary evidence sought by enforcement of a subpoena must be relevant to the matter under investigation or in question before the Board.”). If the requesting party fails to establish relevancy, then the disputed requests shall be revoked. Rules and Regulations § 102.31(b).

A petition to revoke a subpoena *ad testificandum* must be granted if the subpoena is invalid

for “any . . . reason sufficient in law.” Rules and Regulations § 102.31(b)². This phrase has been interpreted to include the reasons provided by the Federal Rules of Civil Procedure for limiting the scope of discovery in litigation. The Board looks specifically to Rule 26(b) for guidance on the proper scope of subpoenas. *Brinks Inc.*, 281 NLRB 468, 469 (1986). Rule 26(b) prohibits discovery into matters “unreasonably cumulative or duplicative, or . . . obtainable from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b). Rule 26(c) provides that, for good cause, a court may:

issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; . . . [or] (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters

Fed. R. Civ. P. 26(c). Discovery must not be “unreasonable nor unduly burdensome or expensive, considering the needs of the case”. Fed. R. Civ. P. 26(g)(1)(B)(iii).

Moreover, Rule 26(c) provides that:

for good cause shown . . . [a court] may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; (2) that the disclosure or discovery may be had only on specified terms and conditions . . . (4) that certain matters not be inquired into

Fed. R. Civ. P. 26(c).

As described more fully below, the Subpoena at issue is legally invalid in several respects.

Accordingly, for all the reasons set forth below, the Subpoena must be revoked.

² See NLRB CHM Sec. 11782 (“Petitions to revoke may be based on the ground that the subpoena does not relate to any matter under investigation or at issue in a hearing, does not describe the evidence sought with sufficient particularity or if for any other reason sufficient in law the subpoena is otherwise invalid.”)

OBJECTIONS

A. OBJECT AS IMPROPERLY SERVED

Starbucks objects to the Subpoena because it was not properly served on the individual, Ms. Colburn. On Thursday, April 6, 2023, counsel for Starbucks received an email from Counsel for the General Counsel Charlotte Davis containing a courtesy copy of the Subpoena. At no time did the Counsel for the General Counsel ask if counsel for Starbucks would accept service of the Subpoena on Ms. Colburn's behalf, and at no time did counsel for Starbucks indicate that it would accept such service. *See Exhibit C.* A copy of the Subpoena was thereafter received at the Vernon Store via Certified Mail on Monday, April 10, 2023 at 1:56 p.m. Notably, while the Vernon Store is the one at issue in the Consolidated Complaint, Ms. Colburn does not work at the Vernon Store—Counsel for the General Counsel Charlotte Davis is aware of this fact. Indeed, during the April 11, 2023 hearing in this matter, Ms. Davis admitted knowing that Ms. Colburn does not work (and has not worked) at the store at which Ms. Davis attempted service, and identified Ms. Colburn as the Store Manager of a Starbucks café located in Storrs, Connecticut. Ms. Davis was, therefore, well aware of where Ms. Colburn works and yet, for some reason, chose not to serve Ms. Colburn at her place of business.

The Act requires that subpoenas be served personally, by registered or certified mail, or by delivery *at the principal office or business address of the person being served.* *See* Section 11(4) (“Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.”); *see also* NLRB Rules and Regulations Sec. 102.4 (“Subpoenas must be served upon the recipient personally, by registered or certified mail, by leaving a copy at the principal office or place of

business of the person required to be served, by private delivery service, or by any other method of service authorized by law.”). Counsel for the General Counsel did not properly serve the Subpoena on Ms. Colburn. The Subpoena was neither personally served on Ms. Colburn, nor delivered at Ms. Colburn’s principal office or business address. Ms. Davis chose to attempt service on Ms. Colburn at the store location at issue in this case, despite being well aware that Ms. Colburn does not work there. Such an act cannot be countenanced.

Further, Ms. Colburn was on a medical leave of absence (“LOA”) from March 14, 2023, through April 10, 2023. She was, therefore, on a LOA when the courtesy copy was received by counsel for Starbucks on April 6, 2023, and had only been back at work for mere hours before the subpoena was received at the Vernon Store via certified mail on April 10, 2023. The Subpoena should therefore be revoked in its entirety for being improperly served.

B. OBJECT AS UNTIMELY

Starbucks objects to the Subpoena as untimely. The hearing in these cases was scheduled to begin on **April 11, 2023**, and did, in fact open on that date. As discussed above, on April 6, 2023, *just three business days prior to the hearing*, counsel for Starbucks received an email from Counsel for the General Counsel Charlotte Davis containing a courtesy copy of the Subpoena addressed to Ms. Colburn. Counsel for the General Counsel did not ask if counsel for Starbucks would accept service of the Subpoena on Ms. Colburn’s behalf, and counsel for Starbucks did not at any time indicate that it would accept service. Accordingly, Ms. Colburn was not served on that date.

A copy of the Subpoena was thereafter received at the Vernon Store via Certified Mail on Monday, April 10, 2023, at 1:56 p.m., *only twenty hours before the start of the hearing*. The General Counsel’s Benchbook for ALJs provides, with a cite to the Casehandling Manual, that

subpoenas “should, where circumstances allow, normally be served at least 2 weeks prior to trial” to allow sufficient time to arrange for production of the witness or documents and for ruling on a petition to revoke before trial. NLRB Bench Book § 8– 125; *see* NLRB Casehandling Manual (Part 1), Sec. 10340. Indeed, the Complaint and Notice of Hearing in this case was issued ***nearly four months ago in December 2022***. Further, Counsel for the General Counsel already served subpoenas in this case on March 20, 2023, and again on April 3, 2023. It is unreasonable for Counsel for the General Counsel to attempt to serve another subpoena on a witness with so little knowledge relevant to the proceeding and so close to the opening of the hearing. The subpoena should be revoked on this basis alone.

C. OBJECT AS DEFICIENT/DEFECTIVE

Starbucks objects to the Subpoena because it is deficient and therefore defective on its face. Specifically, the Subpoena fails to describe with sufficient particularity the evidence sought as required by Section 11(1) of the Act and Section 102.31(b) of the Board’s Rules and Regulations. *See Brink’s Inc.*, at 468; *see also* NLRB CHM Sec. 11782 (“Petitions to revoke may be based on the ground that the subpoena . . . does not describe the evidence sought with sufficient particularity.”). The Subpoena does not provide any indication of what evidence is sought from Ms. Colburn, a Store Manager who works at a Starbucks store not at issue in this case. Indeed, the Subpoena merely calls for her attendance at the hearing, provides the time, location and case number. ***There was no cover letter accompanying the Subpoena and absolutely no mention of the issues in the case she will be asked to speak about or about her connection to these issues.*** *See Tct Stainless Steel, Inc. & Its Alter Ego Tempered & Specialty Metal & Loc. 283, Int’l Bhd. Of Teamsters*, No. 07-CA-179856, 2016 WL 7430472, at *1 (Dec. 21, 2016) (Member Miscimarra joined in the majority and additionally found subpoenas *ad testificandum* which only identify the

case name and number to be “deficient because they fail to state with sufficient particularity the evidence being sought.”).

The subpoena should accordingly be revoked because it is deficient and defective on its face.

D. OBJECT AS IRRELEVANT BASED ON SUBJECT MATTER

Starbucks objects to the Subpoena because it seeks information not relevant to any party’s claim or defense and is not proportional to the needs of the case and, therefore, is not reasonably calculated to uncover admissible evidence. Indeed, consistent with well-settled NLRB precedent and standards, information sought must be legitimately related to the underlying matter(s) before the NLRB. *Brink’s Inc.*, 281 N.L.R.B. 468, 469 (N.L.R.B. 1986) (citing Fed. R. Civ. P. 26(b) (explaining that hearing officers, when ruling on petitions to revoke, should consult the Federal Rules of Civil Procedure, specifically Rule 26(b), which explains that objections may be made on the ground that the request is not “relevant to the subject matter involved in the pending action.”); *see also* ULP Casehandling Manuel 11792.1 and 11794 (explaining that the information sought must “relate[] to . . . a matter under investigation”).

As discussed on the record at the April 11, 2023 hearing in this matter, Ms. Colburn was not a decision maker with respect to the separation at issue in the hearing. She was merely tasked with delivering the Notice of Separation to alleged discriminate Aly Nogosek on April 26, 2022, solely because the Store Manager of the Vernon Store was on vacation at the time. The investigation into Nogosek’s violations of Starbucks’ Policies that resulted in her separation was already completed, and the decision to separate Nogosek was already made at the time Ms. Colburn was tasked with merely delivering the Notice of Separation to Nogosek. ***Ms. Colburn was not involved in any way in the investigation, nor was she involved in any way in the decision making.***

Calling Ms. Colburn to testify about her knowledge of the events is, therefore, neither proportional to the needs of the case nor reasonably calculated to uncover admissible evidence. Additionally, if Counsel for the General Counsel has reason to believe Ms. Colburn possesses evidence or knowledge that is – for some reason – absolutely necessary to this case, Starbucks is open to discussing an appropriate stipulation establishing the fact of her delivery of the Notice of Separation to Nogosek.

E. OBJECT AS UNDULY BURDENSOME

Starbucks objects to the Subpoena as unduly burdensome. More specifically, requiring Ms. Colburn to appear and testify at a hearing for this matter would be oppressive and unduly burdensome on her in light of the fact that she only recently returned to work after a medical LOA. Indeed, *Ms. Colburn was on a LOA from March 14, 2023, through Monday, April 10, 2023.* She was on an LOA when the courtesy copy was received by counsel for Starbucks on April 6, 2023, and *had only just returned to work for a few hours* when the subpoena was received at the Vernon Store (*where she does not work*) via certified mail on April 10, 2023. Ms. Colburn is returning to work after being out for nearly one month to address her own serious medical issues. Being called to testify in this case would impose unnecessary stress and undue burden on Ms. Colburn that far outweighs the value of her testimony in this case, particularly given her extremely limited involvement. The Subpoena should, therefore, be revoked for being unnecessarily and unduly burdensome on Ms. Colburn, who is only tangentially involved in this case, at best, and who is currently navigating through her own serious health issues which very recently required her to be on a LOA for nearly one month.

For the reasons set forth above, Starbucks respectfully seeks an order revoking the Subpoena on Ms. Colburn in its entirety.

Dated: April 13, 2023

Respectfully submitted,

/s/ Jacqueline Phipps Polito

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Attorneys for Starbucks

CERTIFICATE OF SERVICE

I certify that on this 13th day of April, 2023, the foregoing PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-111ISKD was filed via Efile and a copy of the foregoing was served on the following by email:

Kimberly Sorg-Graves, Administrative Law Judge
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001
Email: kimberly.sorg-graves@nrlrb.gov

Michael Dolce, Esq.
Hayes Dolce
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Cristina Gallo, Esq.
Sommer Omar, Esq.
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Charlotte Davis, Board Agent
Andyeliz Papaleo, Board Agent
National Labor Relations Board, Subregion 34
Abraham A. Ribicoff Building
450 Main St, Suite 410
Hartford, CT 06103-3503
Email: charlotte.davis@nrlrb.gov
Email: andyeliz.papaleo@nrlrb.gov

/s/ Jacqueline Phipps Polito
Jacqueline Phipps Polito

EXHIBIT A

SUBPOENA**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Renee A. Colburn, Starbucks Corporation135 Talcottville Road, Vernon, CT 06066As requested by Charlotte Davis and Andyeliz Papaleo, Counsels for the General Counsel

whose address is A.A. Ribicoff Federal Building
450 Main Street, Suite 410\ Hartford Connecticut 06103-3078
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
_____ of the National Labor Relations Board

at the A.A. Ribicoff Federal Building, 450 Main Street, Suite 410in the City of Hartford, Connecticuton Tuesday, April 11, 2023 at 10:00 AM or any adjourned

or rescheduled date to testify in Starbucks Corporation
01-CA-302321 and 01-CA-307585
 (Case Name and Number)

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(f) (representation proceedings) and 29 C.F.R. Section 102.2(a) and 102.2(b) (time computation and timeliness of filings). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

A-1-111SKD

Under the seal of the National Labor Relations Board, and by direction of the
 Board, this Subpoena is

Issued at Hartford, CTDated: April 06, 2023

Lauren McFerran
 Lauren McFerran, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

EXHIBIT B

Tracking Number:

Remove X

70170530000028695016

Copy Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

Your item was delivered to an individual at the address at 1:56 pm on April 10, 2023 in VERNON ROCKVILLE, CT 06066.

Get More Out of USPS Tracking:

USPS Tracking Plus[®]

Delivered

Delivered, Left with Individual

VERNON ROCKVILLE, CT 06066
April 10, 2023, 1:56 pm

Departed USPS Regional Facility

HARTFORD CT DISTRIBUTION CENTER
April 10, 2023, 2:51 am

In Transit to Next Facility

April 9, 2023

Arrived at USPS Regional Facility

HARTFORD CT DISTRIBUTION CENTER
April 7, 2023, 8:00 pm

Hide Tracking History

Feedback

Text & Email Updates



USPS Tracking Plus®



Your item is eligible for USPS Tracking Plus. This feature allows you to buy extended access to your tracking history and receive a statement via email upon request. Without this feature, your regular tracking history is only available on this site until April 7, 2025. To extend your access to this tracking history, select the length of time you would like and confirm your selection. You can only purchase extended history once, so all orders are final and are not eligible for a refund.

Note: For multiple tracking numbers, you can save and continue adding USPS Tracking Plus selections to your cart until you are ready to complete your purchase.

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\$3.75

5 Years

\$4.75

7 Years

\$5.75

10 Years

\$6.75

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Product Information



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FAQs

EXHIBIT C

From: [Davis, Charlotte S.](#)
To: [Polito, Jacqueline Phipps](#); [Rinehart, Lindsay](#)
Cc: [Papaleo, Andyeliz](#)
Subject: Subpoena ad testificandum for Renee A. Colburn
Date: Thursday, April 6, 2023 1:46:37 PM
Attachments: [SUB.01-CA-302321.AT Hearing Subpoena For Renee A. Colburn .pdf](#)

[EXTERNAL E-MAIL]

CAUTION: This email and any attachments may contain Controlled Unclassified Information (CUI). National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

Hi Attorneys Phipps Polito and Rinehart – please see attached ad test subpoena that is being mailed out today for Renee Colburn.

Charlotte

Charlotte S. Davis

She/them
Attorney
National Labor Relations Board

**The NLRB is requiring that documents be filed through our website, www.nlr.gov.
For help, please see [Frequently Asked Questions](#) and [E-File Video](#).**

A.A. Ribicoff Federal Building
450 Main St, Suite 410
Hartford, CT 06103
Tel: 959-200-7365
Email: charlotte.davis@nlrb.gov
Main office telephone: 860-240-3522
Fax: 860-240-3564

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01 – SUBREGION 34**

STARBUCKS CORPORATION

and

**WORKERS UNITED LABOR UNION
INTERNATIONAL, AFFILIATED WITH
SERVICE EMPLOYEES INTERNATIONAL
UNION**

**Cases 01-CA-302321
01-CA-307585**

**AFFIDAVIT OF SERVICE OF: COUNSEL FOR THE GENERAL COUNSEL’S
OPPOSITION TO RESPONDENT’S PETITIONS TO
REVOKE SUBPOENAS DUCES TECUM B-1-1ID2IE5
& B-1-1IGZVA5 AND SUBPOENA AD
TESTIFICANDUM A-1-1IISKD**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **April 18, 2023**, I served the above-entitled document(s) by **electronic mail**, as noted below, upon the following persons, addressed to them at the following addresses:

Judge Sorg-Graves
Email: kimberly.sorg-graves@nrlrb.gov

Jacqueline Phipps Polito, Atty.
Email: jpolito@littler.com

Lindsay Rinehart, Atty.
Email: lrinehart@littler.com

Cristina Gallo Esq.
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Sommer Omar Esq.
Email: somar@cwsny.com

Dated: April 18, 2023

/s/ Charlotte S. Davis

Field Attorney