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2 UNITED STATES OF AMERICA  
3 BEFORE THE NATIONAL LABOR RELATIONS BOARD  
4 REGION 20  
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7 DESIGN TECHNOLOGY GROUP, LLC  
8 dba BETTIE PAGE CLOTHING

9 and

10 VANESSA MORRIS, an individual  
11

Case 20-CA-35511

12 **RESPONDENT'S ANSWERING BRIEF IN RESPONSE**  
13 **TO CHARGING PARTIES' CROSS-EXCEPTIONS**  
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1 INTRODUCTION

2 The Charging Parties’ Cross-Exceptions and supporting Brief amplify the  
3 insincerity of their conduct in this proceeding. In a transparent attempt to use NLRB  
4 proceedings as a vehicle for advertisement and self-promotion, Charging Parties once  
5 again ask the NLRB to compel the purchase of 1,000 books authored by their counsel and  
6 also to revise the ALJ’s decision to identify the book by name and author. This request  
7 was rejected when it was made months prior to the hearing, and the ALJ found it to be  
8 “frivolous” and a waste of time. To renew this request here lays bare the true motivation  
9 of Charging Parties and their counsel.

10 The other Cross-Exceptions requested by Charging Parties are either irrelevant to  
11 this case or constitute requests for the Board to change prior rules and decisions without a  
12 compelling basis under the circumstances of the current case. Respondent asks that the  
13 Board deny these Cross-Exceptions in their entirety.

14 ARGUMENT

15 **A. The Renewed Requests to Use the NLRB as Counsel’s Book Distributor Is**  
16 **Inappropriate**

17 Apparently still unable to sell his book through normal channels, counsel for  
18 Charging Parties once again has urged the Board to coerce Bettie Page Clothing to buy his  
19 workers rights handbook. The author of the workers rights book, David Rosenfeld, is the  
20 attorney representing Charging Parties. In late 2011, counsel filed a “Notice for Request  
21 for Remedy” requesting that the employer be made to buy 500 copies of his book. At the  
22 same time, Charging Parties also requested that General Counsel’s complaint be  
23 amended to specifically identify Mr. Rosenfeld and his book by name. Those requests  
24 were both denied months prior to trial. With respect to those requests, the ALJ stated in  
25 his decision that “both are frivolous and simply waste time and resources.” (ALJD, 2:18-  
26 20.)

27 Undeterred, Charging Parties have now doubled the request, asking the Board to  
28 require Respondent to buy 1,000 copies of Rosenfeld’s books. (Cross-Exception 10.)

1 Charging Parties also claim that the ALJ erred by failing to note the specific title and  
2 authors of the book in his decision. (Cross-Exception 3.) The transparent motivation for  
3 these Cross-Exceptions is troubling and further confirms the Charging Parties' insincerity  
4 in pursuing their claims.

5 Counsel apparently would like to receive recognition and publicity for his book  
6 and believes this proceeding to be an appropriate vehicle for advertisement and self-  
7 promotion. If counsel for the Charging Party is having difficulty selling his book,  
8 however, there are other methods to boost sales rather than forcing employers to buy  
9 them through NLRB proceedings. Bettie Page believes this action should never have  
10 been filed in the first place, and this renewed request for the same remedies that were  
11 previously rejected as frivolous further demonstrates that this action was initiated for  
12 less-than-noble reasons. Accordingly, these Cross-Exceptions should be rejected.

13 Additionally, the Board should consider these self-serving Cross-Exceptions in  
14 weighing the sham conduct of the Charging Parties, as they were advised pre-  
15 termination by Morris's mother (who works at Mr. Rosenfeld's law firm) to bring the  
16 handbook to the workplace. (Resp. Ex. 10, p. 2.) Neither of these actions was for the  
17 purpose of the mutual aid and protection of employees, and they should give the Board  
18 substantial pause as it assesses the sincerity of the "concerted activity" at issue here.

19 **B. There Is No Basis to Deny Bettie Page's Argument Regarding the Sham**  
20 **Conduct of Charging Parties**

21 Evidently offended by the ALJ's statement that their request for coerced book  
22 purchases was "frivolous and simply waste[d] time and resources," the Charging Parties  
23 include two Cross-Exceptions (Cross-Exceptions 4, 7), asking that this same label to be  
24 applied to arguments made by Bettie Page. Though the Charging Parties do not even  
25 address Bettie Page's argument that the conduct at issue was a sham designed to entrap  
26 the employer, they ask the Board to find that this argument was frivolous. The  
27 "Muhahahahaha" Facebook posts (*see* Resp. Ex. 10) are compelling evidence of this  
28 entrapment activity, and there is nothing frivolous about this argument. In fact, as

1 addressed by Bettie Page in response to General Counsel’s Answering Brief, neither  
2 General Counsel nor Charging Parties attempted to explain these posts, instead falling  
3 back on the ALJ’s *ipse dixit* conclusion that because the “fell into my crutches” line came  
4 from a *Monkees* show, it had nothing to do with the employees’ motivation with respect to  
5 the termination. There is no reason to make the findings requested with respect to the  
6 frivolous nature of these arguments, and these Cross-Exceptions should be denied.

7 **C. Charging Parties’ Litany of Additional Remedies Were Neither**  
8 **Requested at Trial Nor Do They Connect to the Issues Decided**

9 In several other Cross-Exceptions, Charging Parties ask the Board to impose a  
10 complicated set of remedies and notice procedures that make little sense in the context of  
11 this claim. While Bettie Page contends that the remedies offered by the ALJ were  
12 inappropriate in light of the sham conduct by the Charging Parties, the Cross-Exceptions  
13 raise an entirely new set of remedies that were never raised during trial or any time  
14 previously.

15 For example, in Cross-Exceptions 10-13, Charging Parties ask for Respondent to  
16 send notices electronically to all employees who were employed at any time in the past  
17 two years, because the employees might otherwise “assume the illegal conduct went  
18 unremedied,” and if the notices are sent electronically, the employees could post them on  
19 Facebook or through other social media. (Charging Party Brief, pp. 4-5.) Any decision of  
20 the Board, however, is a matter of public record and can easily be found by any current or  
21 former employee. The Board’s decision can be accessed and forwarded to any interested  
22 party. The requested remedies and notification procedures are simply an attempt to  
23 impose a greater burden without any meaningful basis.

24 **D. Cross-Exceptions Relating to “Boycotting” Have No Connection to This**  
25 **Case**

26 In Cross-Exception 2, Charging Parties urge the Board to find error due to the  
27 absence of a finding regarding “boycotting.” There were no facts, evidence, discussion,  
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1 argument, or even mention of “boycotting” during this proceeding. Claiming error due  
2 to the lack of a finding on this subject has no place here.

3 **E. Cross-Exceptions Based on Semantics Do Not Constitute Error**

4 Finally, Charging Parties take umbrage with the ALJ’s decision for not using the  
5 word “perjury” or “lying” as part of the ALJ’s credibility findings. While Bettie Page  
6 certainly disagrees with these findings, Charging Parties fail to explain why using these  
7 magic words would make any substantive difference in this case. This issue was not  
8 raised or requested earlier and is simply Charging Parties’ attempt to wordsmith the  
9 decision without resulting in any meaningful difference in outcome.

10  
11 DATED this 3rd day of July, 2012

Respectfully Submitted,

12 /s/ David R. Koch  
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2 **CERTIFICATE OF SERVICE**

3 I HEREBY CERTIFY that pursuant to 29 CFR 102.114, I caused to be served a true  
4 and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF IN**  
5 **RESPONSE TO CHARGING PARTIES' CROSS-EXCEPTIONS** by electronic mail to  
6 the following parties in this action:

7 Christy J. Kwon  
8 Yasmin Macariola  
9 Counsel for the Acting General Counsel  
10 National Labor Relations Board  
11 901 Market St., Suite 400  
12 San Francisco, CA 94103

13 David A. Rosenfeld, Esq.  
14 Lisl R. Duncan, Esq.  
15 Weinberg Roger & Rosenfeld  
16 1001 Marina Village Pkwy, Suite 200  
17 Alameda, CA 94501

18 I declare under penalty of perjury that the above is true and correct.

19 Executed on July 3, 2012 at Henderson, Nevada.

20 /s/ Andrea Eshenbaugh  
21 Andrea Eshenbaugh, an employee of  
22 Koch & Scow LLC  
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