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Via electronic filing

March 5, 2014

Mr. Gary Shinnars  
Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, NW  
Washington, DC 20570

Re: **Hitachi Capital America**  
**Case No. 34-CA-013011**

Dear Mr. Shinnars:

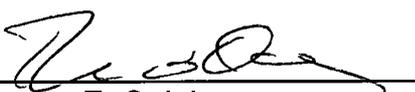
This responds to the letter of this same date submitted by the Respondent in this matter, invoking *Reliant Energy*, 339 NLRB 66 (2003). *Copper River of Boiling Springs, LLC*, 360 NLRB No. 60 (Feb. 28, 2014), upon which Respondent most recently relies, is clearly distinguishable from the instant case, for three main reasons.

First, the Board noted that the *Copper River* rule contains language that “limits the rule to unprotected conduct that would interfere with the Respondent’s legitimate business concerns.” *Id.* at note 3. Contrast that language to the overbroad language in the rule found unlawful by the judge in *Hitachi Capital*: the prohibition of “inappropriate behavior while on Company property.” This language is overbroad, plain and simple, as it simply encompasses too wide a range of protected activity.

Second, the employee in *Copper River*, Autumn Ballew, was not engaged in concerted activity, as was Kish in the instant case. The General Counsel clearly litigated the instant case on two separate but related theories, and prevailed before the judge on both. The rule was clearly applied to punish protected concerted conduct, unlike the rule at issue in *Copper River*.

Third, in *Copper River* the Chairman of the Board noted that even had the ALJ applied *Continental Group, Inc. Inc.*, 357 NLRB No. 39 (2011) (a case which Judge Landow properly applied in *Hitachi Capital*), he would have dismissed the allegation under that theory, reasoning that even if the *Copper River* rule (which had been applied) was overbroad, the employer in that case “established that it validly discharged her for interfering with its operations.” *Id.* at note 2. Here, by contrast, the judge properly found such a defense unavailing based upon the credited evidence. Contrary to Respondent’s contentions in this and its previous submissions pursuant to *Reliant Energy*, its rule remains unlawful on its face.

Respectfully submitted,



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Subregion 34  
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cc: Lawrence Peikes, Esq. (via email)  
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