

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

CIAMPA MANAGEMENT CORP.

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 32BJ

Case Nos. 29-CA-143160
29-CA-145558
29-CA-150763
29-CA-153487
29-CA-153936

COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S
PETITION TO REVOKE SUBPOENA DUCES TECUM

Pursuant to Section 102.31(b) of the Rules and Regulations of the National Labor Relations Board (the "Board"), Counsel for the General Counsel hereby opposes Respondent's Petition to Revoke Subpoena Duces Tecum (the "Petition"), which was filed on August 3, 2015, at 6:06 pm. Subpoena Duces Tecum No. B-1-NKAPP3 (the "Subpoena") was served upon the Respondent on July 24, 2015. A true copy of the Subpoena, the affidavit of service of the Subpoena, and the Domestic Return Receipt is attached hereto as Exhibit A. Respondent's Petition to Revoke, cover sheet, and e-file email confirmation to the Region are attached hereto as Exhibit B. For the reasons set forth below, the Respondent's Petition should be denied in its entirety on the ground that Respondent failed to serve the Petition to Revoke in the period prescribed by Section 102.31(b) of the Board's Rules and Regulations, and because the Petition presents no legitimate grounds upon which to revoke the Subpoena.

I. BACKGROUND

On December 16, 2014, the Union filed a charge in Case No. 29-CA-143160. This charge was later amended and alleges that Respondent interrogated employees regarding their Union activities, discriminated against employees in order to dissuade them from supporting the Union, more closely supervised employees because of their Union activities, and changed employees' benefits in retaliation for their Union activities.

On February 2, 2015, the Union filed a charge in Case No. 29-CA-145558, which was later amended, alleging that Respondent discharged employees Andres Galarza and Kevin Galarza because of their Union activities. On April 22, 2015, the Union filed a charge in Case No. 29-CA-150763 alleging that Respondent threatened employees with unspecified reprisals because of their support for the Union and because they filed charges with the NLRB, and further alleged that Respondent more strictly enforced work rules because employees supported the Union. On June 3, 2015, the Union filed a charge in 29-CA-153487 alleging that Respondent issued employees Jonathan Par and Luis Martin warnings in retaliation for their activities on behalf of the Union. On June 10, 2015, the Union filed a charge in 29-CA-153936, alleging that Respondent unlawfully promulgated rules restricting employees' communications with tenants.

On May 29, 2015, the Regional Director for Region 29 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, in Case Nos. 29-CA-143160, 29-CA-145558, and 29-CA-150763, alleging violations of 8(a)(1) and (3) of the Act. On June 12, 2015, the Regional Director for Region 29 issued an Amended Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-143160, 29-CA-145558, and 29-CA-150763.

Finally, on June 22, 2015, the Regional Director for Region 29 issued an Order Further Consolidating Cases and Amending Complaint, which added Case Nos. 29-CA-153487 and 29-CA-153936 to the Amended Complaint.

II. THE PETITION TO REVOKE SHOULD BE DENIED

A. The Petition Was Not Timely Filed

Respondent failed to file its Petition to Revoke within the five (5) day period required by Section 102.31(b) of the Board's Rules and Regulations. That Section provides, in pertinent part:

“Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subpoena shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. Such petition to revoke, if made prior to the hearing, shall be filed with the Regional Director. ”

With regard to the computation of time, Section 102.111(a) of the Board's Rules provides the following:

“In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed, is to be included. ”

Section 102.111(b) of the Board's Rules provides:

“When the Act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the official closing time of the receiving office on the last day of the time limit. ”

Appendix A to Section 102 provides that the closing time for the Brooklyn office is 5:30 pm.

Counsel for the General Counsel served subpoena B-1-NKAPP3 on Respondent by regular and certified mail on July 24, 2015. (Exhibit A, Affidavit of Service) The certified copy

was received by Respondent on July 27, 2015. (Exhibit A, Domestic Return Receipt) Thus, the 5 day period began on, and included, July 28, 2015. The fifth day was August 3, 2015. Thus, Respondent's Petition to Revoke should have been served on the Regional Director for Region 29 by 5:30 pm on Monday, August 3, 2015. Respondent failed to meet this deadline.

Instead, Respondent filed its Petition to Revoke via facsimile on the Regional Director at 6:06 pm on Monday, August 3, 2015, after the office was closed (Exhibit B, Fax Cover Page). Respondent then e-filed the Petition at 6:11 pm. (Exhibit B, E-file Confirmation E-mail to the Region.) Thus, the Petition to Revoke was not timely filed and should be denied on those grounds alone. However, even if the Petition is somehow deemed timely, it should be denied for substantive reasons as well.

B. Respondent Has Not Presented Any Valid Basis on Which to Revoke the Subpoena

Applicable Legal Standards

It is well settled that the applicable test for determining the appropriateness of an administrative subpoena is: 1) whether the inquiry is within the authority of the issuing agency; 2) whether the request is too indefinite; and 3) whether the information sought is reasonably relevant. *United States v. Morton Salt Company*, 338 U.S. 632 (1950); *United States v. Powell*, 379 U.S. 48, 57-78, 85 S.Ct. 248, 254-255 (1964); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 510 (4th Cir. 1996); *Equal Employment Opportunity Commission v. Maryland Cup Corporation*, 785 F.2d 471 (4th Cir. 1986)¹; *In re McVane*, 44 F.3d 1127 (2nd Cir. 1995).

¹ The courts' analysis in cases involving the enforcement of administrative subpoenas issued by the EEOC are relevant and applicable to the enforcement of subpoenas issued by the NLRB because the EEOC is authorized to issue subpoenas by Section 710 of Title VII, 42 U.S.C. Section 2000e-9, which incorporates by reference

The standard for determining relevance under the rules and case law governing proceedings before the National Labor Relations Board is very broad. Under the Board's Rules and Regulations, the subpoena shall be revoked on relevance grounds if it "does not relate to any matter under investigation or in question in the proceeding." Board's Rules and Regulations, §102.31(b). See also *United States v. Morton Salt Co.*, supra; *United States v. Powell*, supra (IRS need only establish that the subpoena was for a legitimate purpose and the subpoena was relevant for that purpose); *NLRB v. Williams*, 396 F.2d 247, 429 (7th Cir. 1968) (subpoena proper so long as the material called for relates to a matter under investigation or in question).

The United States Supreme Court has characterized the relevancy requirement as "not especially constraining." *EEOC v. Lockheed Martin Corporation*, 116 F.3d 110, 113, (4th Cir. 1997), quoting *EEOC v. Shell Oil*, 466 U.S. 54, 68, 104 S.Ct. 1621, 1631 (1983). In *Shell Oil*, the Court instructed that the term relevant "will be generously construed to afford the Commission access to virtually any material that might cast light on the allegations against the employer." *Id.*

The applicable test for determining the merit of a petition to revoke a government subpoena is whether the evidence desired by the subpoena is "plainly incompetent or irrelevant." If the evidence sought by the subpoena merely "relates to or touches the matter under investigation", a petition to revoke a subpoena must be denied. *Endicott Johnson Corporation*, 317 U.S. 501, 509 (1943).

Section 11 of the National Labor Relations Act. Thus, the statutory authority by which the NLRB and EEOC issue subpoenas and by which those subpoenas are enforced is identical.

Once the issuing agency makes a threshold showing that the subpoena is within the agency's authority, that the agency has satisfied statutory requirements of due process, and that the information sought is relevant and material to the investigation, the subpoena must be enforced unless the party being investigated demonstrates that the subpoena is unduly burdensome. *EEOC v. Maryland Cup Corporation*, 785 F.2d at 475, and cases cited therein. The burden of proving that an administrative subpoena is unduly burdensome or unreasonable is on the subpoenaed party, and this burden is not easily met. *Id.*, at 477; *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d at 513 (1996); *In re McVane v. FDIC*, 44 F.3d at 1135; *FTC v. Rockefeller*, 591 F.2d 182, 190 (2d Cir. 1979). The party subject to the subpoena must show that producing the document would "seriously disrupt" its normal business operations. *EEOC v. Maryland Cup Corporation*, 85 F.2d at 477. The courts consistently hold that a subpoena is not unduly burdensome merely because it requires the production of a large number of documents. *NLRB v. Carolina Food Processors*, 81 F.3d at 513, and cases cited therein.

General Counsel submits that the instant Subpoena meets all of the requisite tests and that Respondent failed to meet its burden of demonstrating that the Subpoena is unreasonable in any way that would warrant revocation. The Respondent's specific arguments regarding each requested item will be addressed in turn.

Respondent's Petition to Revoke

a) Subpoena Request No. 1

Respondent claims that Subpoena request No. 1, which seeks personnel and employment files of its employees, is unduly burdensome, unreasonable in scope, and seeks irrelevant

information. Respondent asserts that it should not be required to turn over any personnel or employment files for any employee other than the alleged discriminatees. Respondent does not provide a rationale for this claim.

With regard to Respondent's unduly burdensome argument, the burden of proving that an administrative subpoena is unduly burdensome or unreasonable is on the subpoenaed party. This burden of proof is not easily met. *Id.*, at 477; *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d at 513 (1996); *In re McVane v. FDIC*, 44 F.3d at 1135; *FTC v. Rockefeller*, 591 F.2d 182, 190 (2d Cir. 1979). The courts consistently hold that a subpoena is not unduly burdensome merely because it requires the production of a large number of documents. *NLRB v. Carolina Food Processors*, 81 F.3d at 513, and cases cited therein. Furthermore, Respondent's conclusory, unsupported assertions are insufficient grounds upon which to revoke the Subpoena. See, *NLRB v. Stanley Friedman*, 352 F.2d 545, 548 (1965). Here, Respondent offers nothing more than conclusory, unsupported assertions that the Subpoena is unduly burdensome. Respondent offers no evidence or other explanation as to how the production of these documents would disrupt its business operations.

With regard to its relevancy argument, Respondent's own defense proffered during the investigation and accompanying 10(j) proceeding has created the need for these documents. Respondent claims that it terminated the employment of Kevin Galarza and Andres Galarza because they committed various violations of purported work rules. Respondent also asserted that it issued disciplinary notices to Jonathan Par and Luis Martin because they too committed various violations of purported work rules. Respondent claims that these work rules have always been in place and that employees, in the past, have been disciplined pursuant to these work rules.

In order to determine whether these work rules existed and whether they were ever enforced, Counsel for the General Counsel would need to analyze all employees' disciplinary records. Furthermore, Counsel for the General Counsel must review more than just the files of the discriminatees in order to analyze whether the discriminatees were treated in a disparate manner. Personnel files are highly relevant to the 8(a)(3) allegations in this proceeding.

Finally, with regard to Respondent's claim regarding the scope of the request, there are only approximately 16 workers in Respondent's workforce. The gathering of 16 personnel files is not unduly burdensome or unreasonable in scope. During the investigation, Respondent asserted that it had fired employees as far back as 2008 for alleged violations of work rules. Counsel for the General Counsel's request does not go back that far and is limited to employees who worked in the last 2- ½ years only. Respondent has presented no valid grounds to revoke Subpoena request No.1 and the Petition to Revoke this request should be denied.

b) Subpoena Requests Nos. 2-5

Respondent asserts that Subpoena requests Nos. 2-5 should be revoked because the documentation has already been provided to the Counsel for the General Counsel. These requests seek documentation including warning notices, e-mails, and memoranda related to the disciplines of Andres Galarza, Kevin Galarza, Jonathan Par, and Luis Martin.

Counsel for the General Counsel has received only one warning for Andres Galarza, none for Kevin Galarza, two warnings for Jonathan Par, and one for Luis Martin. Counsel for the General Counsel has received no other documentary evidence responsive to this request. If

Respondent takes the position that no other documentary evidence exists that is responsive to these requests, Counsel asks that Respondent so state.

c) Subpoena Requests Nos. 6-9

Respondent asserts that Subpoena requests Nos. 6-9 should also be revoked because the documentation has already been provided to the Counsel for the General Counsel. These requests seek documentation, including memoranda and emails, regarding Respondent's deliberations on the decisions to discipline Jonathan Par and Luis Martin, and to terminate Andres and Kevin Galarza.

Again, Counsel for the General Counsel has been given four (4) warnings only. Counsel has received no other documentary evidence. If no such evidence exists that would satisfy this request, Counsel for the General asks that Respondent so state.

d) Subpoena Request No. 10

Respondent asserts that Subpoena request No. 10, which requests disciplinary documentation for all employees of Respondent since October 1, 2012, should be revoked because it is unduly burdensome, unreasonable in scope, overly broad, and seeks irrelevant information. Further, Respondent claims that since the unfair labor practices occurred in January 2015,² documentary evidence from any other time period is irrelevant. Respondent also claims that this evidence has already been provided to Counsel for the General Counsel.

² Respondent's claim that all the unfair labor practices occurred in January 2015 is untrue. Unfair labor practices are alleged to have taken place between October 2014 and June 2015. Respondent later incorrectly cites January 2014 as the date of unfair labor practices. This is clearly erroneous as there is no allegation concerning January of 2014.

Respondent's assertions are without merit. The documentary evidence sought by request No. 10 relates to the disparate treatment analysis. Again, Respondent claims that it disciplined Jonathan Par and Luis Martin, and terminated Kevin and Andres Galarza because they committed violations of various work rules. The disciplinary records of all of Respondent's employees for the past 2- ½ years is necessary to see 1) whether there were in fact any rules in place that Respondent was enforcing, and 2) whether Respondent treated the discriminatees in a disparate manner. This request is not overly broad or unduly burdensome. Respondent employs about sixteen (16) employees only. Respondent has not provided any evidence as to how compliance with the request would place any burden on Respondent. Again, Respondent's conclusory, unsupported assertions that the request is overly burdensome are insufficient grounds upon which to revoke the Subpoena. See, *NLRB v. Stanley Friedman*, 352 F.2d 545, 548 (1965).

In order to evaluate Respondent's defense that certain work rules had always been in place and uniformly enforced, it is crucial to review disciplinary records prior to January 2015. Finally, with regard to Respondent's claim that the General Counsel has been provided with documents relating to this request, this claim is patently untrue. Counsel for the General Counsel has received no disciplinary records for any employee at all other than the four warnings issued to the four discriminatees. Again, if it is Respondent's position that no such documentation exists, Counsel for the General Counsel asks that Respondent so state.

e) Subpoena Request No. 11

Respondent asserts that Subpoena request No. 11 should also be revoked as the documents were already provided to Counsel for the General Counsel. That requests seeks all employee handbooks and other documentation that set forth Respondent's work rules.

Contrary to Respondent's assertions, Counsel for the General Counsel has not been provided with any documents that are responsive to this request. Again, if it is Respondent's position that no such documentation exists, Counsel for the General Counsel asks that Respondent so state.

f) Subpoena Request Nos. 12 and 13

Respondent contends that Subpoena request Nos. 12 and 13 are unduly burdensome, unreasonable in scope, and because they seek irrelevant information. The request seeks all documents that will show communications regarding the Union between Respondent's managerial staff, and between Respondent and its employees. Respondent further claims that either such documents have already been provided to Counsel for the General Counsel or that the documents do not exist.

Respondent's argument to revoke these requests is purposefully contradictory and should be denied. Respondent either has documentation that satisfies this request or they do not. Respondent cannot give a purposefully ambiguous response to a subpoena request. Counsel for the General Counsel has not received any documents from Respondent showing communications regarding the Union between management officials or between management and employees. Respondent has failed to even identify what documents it claims it provided to the General Counsel. Respondent must take a position as to whether this documentation exists. If it does not, they should so state. Respondent has presented no valid grounds to revoke Subpoena requests No.12 and 13 and the Petition to Revoke these requests should be denied.

g) Subpoena Request No. 14

Respondent moves to revoke Subpoena request No. 14, which seeks surveillance and security footage of all doormen at Respondent's facility from October 1, 2012, to the present. Respondent asserts that this request is unduly burdensome, overly broad, unreasonable in scope, and seeks irrelevant information. Respondent further claims that the footage is irrelevant because the unfair labor practice occurred in January 2014 and because it only relates to the employment of a few individuals.

Respondent's own defense made this request necessary. During the 10(j) injunction proceedings that accompanied the instant case, Respondent provided photos from alleged surveillance footage of Andres and Kevin Galarza. Respondent purported to show that it had to terminate Kevin and Andres Galarza because they had used their cell phones while at work in January 2015. Surveillance footage of other doormen would shed light on whether other employees who were not terminated, had used their cell phones while at work. This evidence goes to the disparate treatment analysis to evaluate whether other employees engaged in the same conduct and whether they were disciplined. This evidence would also help to show whether Respondent in fact maintained and enforced its work rules.

Counsel for the General Counsel is willing to discuss ways to efficiently and expeditiously review the footage, and is willing to review the footage at Respondent's facility provided that we are able to obtain copies of the footage we deem relevant to the case. Respondent has failed to offer any evidence that producing this footage would be unduly burdensome. Thus, Respondent has presented no valid grounds to revoke Subpoena request No.14 and the Petition to Revoke this request should be denied.

h) Subpoena Request No. 15

Respondent moves to revoke Subpoena request No. 15, which seeks documents showing Respondent's managerial hierarchy, on the grounds that the request is irrelevant and because no records exist that satisfy the request.

Counsel for the General Counsel asserts that this request is based on Respondent's denial of Jose Merchan's supervisory status. Though Respondent admits that Merchan is the Superintendent of the Facility, they deny that he is a supervisor pursuant to Section 2(11) of the Act. Merchan is alleged in the complaint to have committed several 8(a)(1) violations. Thus, the request seeks highly relevant documentation. However, in light of Respondent's assertion that no such documentation exists, Counsel for the General Counsel hereby withdraws the request.

i) Subpoena Request No. 16

Respondent asserts that Subpoena request No. 16, which seeks personnel information for managerial employees, should be revoked because it is unduly burdensome, unreasonable in scope, overly broad, and seeks irrelevant information.

Again, Counsel for the General Counsel requests this information because Respondent has denied the supervisory status of Superintendent Jose Merchan. The information sought is highly relevant. The request is not overly broad or unduly burdensome as Respondent has only a few managerial employees employed at its Long Island City buildings. Respondent's Petition to Revoke this request should be denied.

j) Subpoena Requests Nos. 17 and 18

Respondent claims that Subpoena requests Nos. 17 and 18, which seek documentation showing Jose Merchan's involvement in work place decision-making, including discipline,

should be revoked because the request is unduly burdensome, unreasonable in scope, overly broad, and seeks irrelevant information. Respondent also claims that is information has already been provided to Counsel for the General Counsel.

This documentation is highly relevant as it goes to the heart of the analysis of whether Merchan is a Section 2(11) supervisor. Respondent has made no showing at all that this request is overly burdensome. With regard to Respondent's claim that Counsel has already been provided with documentation that satisfies this request, this is patently untrue. Counsel has received no documentation from Respondent that is responsive to this request. Respondent's Petition to Revoke should be denied as Respondent has presented no valid grounds upon which to revoke this request, and Respondent should be instructed to provide these documents.

k) Subpoena Requests Nos. 19 and 20

Respondent argues that Subpoena requests Nos. 19 and 20, which seek all memoranda and other documents signed by Superintendent Merchan and issued to employees, should be revoked as they are unduly burdensome, unreasonable in scope, overly broad, and seek irrelevant information. Respondent also claims that is information has already been provided to Counsel for the General Counsel.

Counsel for the General Counsel contends that the information sought is highly relevant and directly related to the issue of whether Superintendent Jose Merchan is a Section 2(11) supervisor. Again, Respondent offers no argument or evidence to support its claim that this request is overly broad or burdensome. With regard to Respondent's claim that Counsel has already been provided with documents that satisfy this request, again, this is patently untrue.

Counsel has received no documents from Respondent that are responsive to this request.

Respondent's Petition to Revoke should be denied and Respondent should be ordered to provide these documents.

l) Subpoena Requests Nos. 21 and 22

Respondent asserts that Subpoena requests Nos. 21 and 22, which seek all pledges of credit and other contracts signed by Merchan on behalf of Respondent, should be revoked as they are unduly burdensome, unreasonable in scope, overly broad, and seek irrelevant information. Respondent then claims that either this documentation was already provided to Counsel for the General Counsel OR that no such records exist.

With regard to its relevancy and burdensomeness argument, these documents relate directly to the 2(11) status of Jose Merchan, which Respondent denies. Thus, it is highly relevant and Respondent has not presented any evidence that production of this information would be unduly burdensome. With regard to Respondent's other claims, Respondent again presents a completely ambiguous argument that cannot provide a basis on which to revoke the request. On the one hand, Respondent argues that it already gave these documents to the General Counsel, which is completely untrue. Tellingly, Respondent does not identify what documents it purportedly gave to the General Counsel. On the other hand, Respondent claims this information may not exist. The requested documentation either exists or it does not. Respondent's Petition to Revoke should be denied and Respondent should be required to provide a definitive response as to whether documentation exists that is responsive to this request.

m) Subpoena Request No. 23

Respondent moves to quash Subpoena request No. 23, which seeks documents that will show Respondent's distribution of holiday bonuses from January 1, 2012, to the present, because it claims that the request is unduly burdensome, overly broad, and seeks irrelevant information. Respondent further claims that all documentation responsive to this request has been provided to Counsel for the General Counsel.

With regard to its relevancy and burdensomeness argument, this request directly relates to the allegation concerning the denial of holiday bonuses to Andres and Kevin Galarza, and Luis Martin. It is necessary to see how Respondent distributed holiday bonuses in the past in order to evaluate whether the discriminatees were treated in a disparate manner when they were denied holiday bonuses in December 2014. Respondent has offered no evidence or explanation for how this request is unduly burdensome. With regard to its claim that this information was already provided, Counsel for the General Counsel has received no such documents.

n) Subpoena Request No. 25

Respondent moves to quash Subpoena request No. 25, which seeks documents that will show the pay dates of all employees for the period October 1, 2012, to the present, on the ground that the request is unduly burdensome, overly broad, and seeks irrelevant information. Respondent further claims that the purported unfair labor practice occurred in November/December 2014 and involved only the holidays of Thanksgiving and Christmas, and that, for this reason, any documentation requested prior to that time period is irrelevant.

Counsel for the General Counsel seeks documents that predate November/December 2014 in order to evaluate how Respondent paid employees during holidays in the past. Such

documents will shed light on what Respondent's past practice was with regard to paying employees during holidays and whether the instant discriminatees were treated in a disparate manner. Respondent has presented no evidence that compliance with this request would be unduly burdensome. Respondent only employs about sixteen workers. This request seeks highly relevant information and should not be revoked.

o) Subpoena Request No. 26

Respondent moves to quash Subpoena request No. 26, which seeks timecards for all employees for the period October 1, 2012, to the present. Respondent claims that none of the alleged discriminatees were employed by Respondent prior to 2013 and thus, any records prior to that date, for any employees other than the discriminatees, are irrelevant. Respondent also claims that the request is unduly burdensome, overly broad, and seeks irrelevant information.

Counsel for the General Counsel seeks these documents in order to evaluate Respondent's claim that it had a past practice of enforcing work rules and that it disciplined Jonathan Par and Luis Martin, and terminated Andres and Kevin Galarza, in part for lateness. Again, records that pre-date the discriminatees' discipline is crucial to evaluate whether Respondent treated the discriminatees in a disparate fashion. It is also crucial to analyze whether Respondent maintained rules regarding lateness and whether they were enforced uniformly against all workers. Thus, the request is highly relevant and Respondent offers no evidence that producing these records would be unduly burdensome. The fact that the discriminatees were not working for the Respondent in 2012 is immaterial.

p) Subpoena Request Nos. 27 and 28(a)

Respondent moves to quash Subpoena requests Nos. 27 and 28(a) which request documents pertaining to Respondent's meetings with employees regarding the Union. Respondent claims that either it already gave Counsel for the General Counsel this information or that these documents do not exist. Respondent also claims that this request is unduly burdensome, overly broad, and seeks irrelevant information.

Respondent's argument regarding request No. 27 will be addressed first. The request is highly relevant as it will establish Respondent's knowledge of employees' Union activities. Respondent conducted anti-Union meetings with certain employees during the Union campaign and may have distributed literature to those employees. Respondent has not provided Counsel with any documents from any of these meetings. Furthermore, Respondent again disingenuously fails to take a position on whether such documentation exists. Respondent's Petition to Revoke should be denied and Respondent should be required to definitively state whether or not it has documentation that is responsive to this request.

With regard to the request in 28(a), Respondent fails to present an argument in support of its motion to quash this request. Request 28(a) seeks all unredacted tenant complaints regarding Respondent's employees. This request is necessary in order to evaluate Respondent's defense that it disciplined and terminated the discriminatees because of tenant complaints. Respondent provided two (2) redacted tenant complaints during the accompanying 10(j) proceeding. Counsel for the General Counsel is entitled to unredacted copies of those tenant complaints, and any other complaints, in order to evaluate both the authenticity of the complaints and the Respondent's defense that it disciplined employees partly based on these complaints. Inasmuch as Respondent has failed to articulate any basis to quash this request, and because the request is highly relevant,

Respondent's Petition to Revoke should be denied and Respondent should be required to produce these documents.

q) Subpoena Requests Nos. 28(b) and (c)

Respondent moves to quash Subpoena request Nos. 28(b) and (c) which request documents regarding Respondent's deliberations on how to respond to tenant complaints about employees and Respondent's actual responses to tenant complaints regarding employees.

Respondent asserts that this request is overly broad and seeks irrelevant information. Respondent further asserts that certain discussions and deliberations regarding tenant complaints are subject to the attorney-client privilege.

Counsel for the General Counsel seeks these documents in order to evaluate Respondent's defense that it disciplined and/or terminated the discriminatees based on complaints of tenants. It is crucial to analyze how Respondent reacted to complaints lodged against various employees. This will help show whether or not Respondent treated alleged complaints against the discriminatees in a disparate fashion. With regard to Respondent's assertion of attorney client privilege, if privileged documentation exists, Respondent must identify the document or communication and should describe it, without revealing the privileged information, so that the document or communication may be evaluated. Based on the above, Respondent's Petition to Revoke should be denied.

r) Subpoena Request Nos. 29(a),(b) and (c)

Respondent moves to quash Subpoena request Nos. 29(a),(b), and (c) which request documents pertaining to communications between tenants and Respondent regarding employees'

working conditions. Respondent claims that these requests are unduly burdensome, overly broad, and seek irrelevant information. Furthermore, Respondent claims that it already gave Counsel for the General Counsel this documentation OR that this documentation does not exist.

Counsel for the General Counsel seeks these documents in order to evaluate Respondent's defense that it promulgated the rule limiting employees' communications with tenants in June 2015 because of tenant complaints about employees and not because of employees' protected activities or tenant support for the employees. Communications between Respondent and tenants will assist in analyzing this defense. With regard to Respondent's claim that they already provided this information to Counsel, again this is patently untrue. Counsel has received no documents in this regard. Respondent's Petition to Revoke should be denied and Respondent should be required to turn over the documents or affirmatively assert that no such documents exist.

VII. CONCLUSION

Based on the foregoing, Counsel for the General Counsel respectfully requests that Respondent's Petition to Revoke Subpoena Duces Tecum No. B-1-NKAPP3 be denied in its entirety.

Dated at Brooklyn, New York, this 5th day of August 2015.



Emily A. Cabrera
Counsel for the General Counsel
National Labor Relations Board
Region 29
2 MetroTech Center, 5th Floor
Brooklyn, New York 11201

EXHIBIT A

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Ciampa Management Corp., Custodian of Records, 241-02 Northern Blvd. Douglaston, NY 11363As requested by FRANCISCO GUZMAN, Counsel for General Counselwhose address is Two Metro Tech Center, Suite 5100, Brooklyn, NY 11201-3838
(Street) (City) (State) (ZIP)YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
of the National Labor Relations Boardat Hearing Room, Two Metro Tech Center, Suite 5100in the City of Brooklyn, NYon Tuesday, August 11, 2015 at 9:30 AM or any adjournedor rescheduled date to testify in Ciampa Management Corp.
29-CA-143160

(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(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-NKAPP3

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

Issued at Brooklyn, NYDated: July 24, 2015

 A handwritten signature in cursive, appearing to read "Paul H. Rouse".

Chairman, National Labor Relations Board

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

DEFINITIONS AND INSTRUCTIONS

- a. "Document" means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants' or bookkeepers' work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
- b. "Respondent" means Ciampa Management Corp.
- c. "Respondent's facility" means the Packard Square buildings located at 41-34 Crescent Street, 41-18 Crescent Street and 41-21 24th Street located in Long Island City, Queens, New York.
- d. "The Union" or "Charging Party" means Service Employees International Union, Local 32BJ.
- e. "Person" or "persons" means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.
- f. "Period covered by this subpoena" means the period from October 2012, through present and the subpoena seeks only documents from that period unless another period is specified. This subpoena request is continuing in character and if additional responsive documents come to your attention after the date of production, such documents must be promptly produced.
- g. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.

- h. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.
- i. 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.
- j. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.
- k. This subpoena applies to documents in the possession, custody or control of Respondent, as well as your present or former agents, attorneys, accountants, advisors, investigators, and any other persons or companies directly or indirectly employed by or connected with you.
- l. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.
- m. As to any documents not produced in compliance with this subpoena on any ground or if any document requested was, through inadvertence or otherwise, destroyed or is no longer in your possession, please state:
 - 1. the author;
 - 2. the recipient;
 - 3. the name of each person to whom the original or a copy was sent;
 - 4. the date of the document;
 - 5. the subject matter of the document; and
 - 6. the circumstances under which the document was destroyed, withheld or is no longer in your possession.
- n. This request is continuing in character and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.
- o. This request seeks production of all documents described, including all drafts and non-identical or distribution copies.
- p. This request seeks production of responsive documents in their entirety, without abbreviation, redaction, deletion or expurgation.
- q. When used in this subpoena, the term "documents regarding" means all documents that, in whole or in part, discuss, describe, mention, pertain to, reflect, refer to or relate to the subpoenaed item.

- r. All documents produced pursuant to this subpoena are to be organized according to the subpoena paragraph to which the document(s) are responsive. Labels referring to that subpoena paragraph are to be affixed to each document or set of documents.
- s. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made, and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.
- t. Unless otherwise noted, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

For the purpose of reducing delay and expense, an agent of the National Labor Relations Board will be available to meet with you, or your designated legal representative, at a mutually agreed-upon time and place, prior to the return date of the subpoena, for the purpose of examining and/or copying the documents subpoenaed, and/ or to enter into stipulations concerning the contents of subpoenaed documents.

RIDER
DOCUMENTS TO BE PRODUCED

1. Complete personnel and employment files, including documents showing dates of employment, job titles, job duties, rates of pay, corrective action or discipline, and documents showing the reasons for corrective action or discipline, of all employees of Respondent including Doormen, Porters and Handymen for the period October 1, 2012, to the present.
2. Documents, including but not limited to, disciplinary notices, warnings, e-mails, documents memorializing conversations, and internal memoranda, related to employment actions and/or disciplines issued by Respondent to Andres Galarza.
3. Documents, including but not limited to, disciplinary notices, warnings, e-mails, documents memorializing conversations, and internal memoranda, related to employment actions and/or disciplines issued by Respondent to Kevin Galarza.
4. Documents, including but not limited to, disciplinary notices, warnings, e-mails, documents memorializing conversations, and internal memoranda, related to employment actions and/or disciplines issued by Respondent to Jonathan Par.
5. Documents, including but not limited to, disciplinary notices, warnings, e-mails, documents memorializing conversations, and internal memoranda, related to employment actions and/or disciplines issued by Respondent to Luis Martin.
6. (a) All documents which, in whole or in part, were used or relied on by Respondent in any way or formed the basis for the Employer's decision to terminate the employment of Kevin Galarza.

(b) All documents, including but not limited to internal memoranda, notes of meetings, notes of telephone conversations and e-mail, regarding the Respondent's deliberations on and/or decision to discharge the employment of Kevin Galarza on or about January 16, 2015.
7. (a) All documents which, in whole or in part, were used or relied on by Respondent in any way or formed the basis for the Employer's decision to terminate the employment of Andres Galarza.

(b) All documents, including but not limited to internal memoranda, notes of meetings, notes of telephone conversations and e-mail, regarding the Respondent's deliberations on and/or decision to discharge the employment of Andres Galarza on or about January 16, 2015.
8. (a) All documents which, in whole or in part, were used or relied on by Respondent in any way or formed the basis for the Employer's decision to discipline Jonathan Par on or about January 2015 and May 28, 2015.

(b) All documents, including but not limited to internal memoranda, notes of meetings, notes of telephone conversations and e-mail, regarding the Respondent's deliberations on and/or decision to discipline Jonathan Par on or about January 2015 and May 28, 2015.

9. (a) All documents which, in whole or in part, were used or relied on by Respondent in any way or formed the basis for the Employer's decision to discipline Luis Martin on or about March 1, 2015 and May 22, 2015

(b) All documents, including but not limited to internal memoranda, notes of meetings, notes of telephone conversations and e-mail, regarding the Respondent's deliberations on and/or decision to discipline Luis Martin on or about March 1, 2015 and May 22, 2015.
10. Documents, including but not limited to, written warnings, internal memorandum, e-mails, notes of oral discipline, that show all corrective action, including termination, issued to all employees at Respondent's facilities for any reason during the period October 1, 2012, to present.
11. Documents, including employee handbooks, notices, memoranda and e-mail, setting forth or describing all work rules, guidelines of conduct, policies and practices and disciplinary policies and practices mentioning or pertaining to the Employer's policies regarding time and attendance, employee absences and "no call / no show", including:
 - (a) documents establishing when such rules and policies were created or implemented;
 - (b) by whom such rules and policies were created and/or distributed;
 - (c) to whom such documents were distributed; and
 - (d) documents showing employees' receipt of such rules and policies.
12. Documents, including but not limited to e-mails and text messages, which reflect communications between Respondent's supervisors, managers and/or other Respondent agents regarding the Union during the period October 1, 2012, to present.
13. Documents, including but not limited to e-mails, text messages, and memoranda between Respondent's supervisors, managers and its employees regarding the Union during the period October 1, 2012, to present.
14. Surveillance and security footage that will show all doormen while on duty at the front desk of each Packard Square Building located at 41-34 Crescent Street, 41-18 Crescent Street and 41-21 24th Street located in Long Island City, Queens, New York from October 1, 2012, to present.
15. Documents, including but not limited to organizational charts, showing managerial and supervisory hierarchy of management at Respondent's facility.
16. Personnel files, payroll documents and any and all other documents showing job titles, job descriptions and/or responsibilities, wage rates and manner of payment, appraisals, overtime, vacations, insurance, pensions and/or 401(k) plans, bonuses, use of facilities, incentive plans, use of time clocks, and payments for time lost and attendance at training programs, for all supervisory and managerial employees of Respondent, including, but not limited to Jose Merchan.
17. Such documents as will show all involvement or participation, including but not limited to recommendations, by Jose Merchan in the following actions concerning employees of

Respondent: (a) hiring; (b) transferring; (c) suspending; (d) laying off; (e) recalling; (f) promoting; (g) discharging; (h) assigning work; (i) rewarding; (j) disciplining; (k) scheduling or granting time off; (l) assigning overtime; (m) training; (n) directing work; (o) evaluating work; and, (p) adjusting grievances.

18. Such documents as will show all involvement or participation, including but not limited to recommendations, by Jose Merchan in the following actions concerning employees of Respondent: (a) hiring; (b) transferring; (c) suspending; (d) laying off; (e) recalling; (f) promoting; (g) discharging; (h) assigning work; (i) rewarding; (j) disciplining; (k) scheduling or granting time off; (l) assigning overtime; (m) training; (n) directing work; (o) evaluating work; and, (p) adjusting grievances.
19. Such written notices, memoranda, e-mails, letters, instructions, directions or bulletins to employees that were prepared, initialed, signed, approved or reviewed by Jose Merchan during the period October 1, 2012, to present.
20. Such written notices, memoranda, e-mails, letters, instructions, directions or bulletins to employees that were prepared, initialed, signed, approved or reviewed by Jose Merchan during the period October 1, 2012, to present.
21. Documents showing pledges of credit, contracts and other agreements signed by or entered into by Jose Merchan on behalf of Respondent during the period October 1, 2012, to present.
22. Documents showing pledges of credit, contracts and other agreements signed by or entered into by Jose Merchan on behalf of Respondent during the period October 1, 2012, to present.
23. Documents that will show Respondent's distribution of holiday bonuses, including showing all employees who received holiday bonuses and how much each employee received for the period January 1, 2012, to the present.
24. Documents that will show Respondent's deliberations regarding the grant of holiday bonuses, who participated in those deliberations, who made the decision to grant holiday bonuses to employees and the criteria used and considered in Respondent's decision to grant holiday bonuses to employees for the period January 1, 2012, to the present.
25. Payroll records that will show the pay dates of all employees for each pay period from October 1, 2012, to present.
26. Documents including timecards or punch records that will show time records of all doormen from October 1, 2012, to present.
27. Documents, including memoranda and notes, mentioning, pertaining to Respondent's meeting with employees regarding the Union and which were generated in connection with any meetings that Respondent held with employees regarding the Union for the period October 1, 2012, to present.
28. (a) Documents, including correspondence and e-mails of tenant complaints regarding any of Respondent's employees for the period covered by this subpoena including unredacted e-

mails received by the e-mail address info@ciampaorganization.com from October 1, 2012, to present.

(b) Documents, including memoranda and notes, mentioning, pertaining to Respondent's internal discussion or deliberations regarding how to respond to tenant complaints any of Respondent's employees for the period from October 1, 2012, to present.

(c) Documents, including memoranda and notes, mentioning, pertaining to Respondent's responses to tenant complaints any of Respondent's employees for the period from October 1, 2012, to present.

29. (a) Documents, including e-mails, which will show all tenant communications with Respondent regarding the Union or employees' working conditions, including unredacted e-mails received by the e-mail address info@ciampaorganization.com from October 1, 2012, to present.

(b) Documents, including memoranda and notes, mentioning, pertaining to Respondent's internal discussion or deliberations regarding how to respond to tenant communications regarding the Union or employees' working conditions, for the period from October 1, 2012, to present.

(c) Documents, including memoranda and notes, mentioning, pertaining to Respondent's responses to tenant communications regarding the Union or employees' working conditions, for the period from October 1, 2012, to present.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CIAMPA MANAGEMENT CORP.

and

Case 29-CA-143160

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 32BJ

AFFIDAVIT OF SERVICE OF HEARING SUBPOENA DUCES TECUM B-1-NKAPP3

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 24, 2015, I served the above-entitled document(s) by **certified and regular mail** upon the following persons, addressed to them at the following addresses:

Ciampa Management Corp.
Custodian of Records
241-02 Northern Blvd.
Douglaston, NY 11362

Certified and regular

Regina Faul
Philipps Nizer LLP
666 5th, 29th Floor
New York, NY 10103-0001

Regular mail

July 24, 2015

Date

Liz Montesclaros
Designated Agent of NLRB

Name



Signature

7035 0640 0007 656 8083

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	
\$	
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$ _____
<input type="checkbox"/> Return Receipt (electronic)	\$ _____
<input type="checkbox"/> Certified Mail Restricted Delivery	\$ _____
<input type="checkbox"/> Adult Signature Required	\$ _____
<input type="checkbox"/> Adult Signature Restricted Delivery	\$ _____
Postage	
\$	
Total Postage and Fees	
\$	

Postmark
Here

Sent To _____
 Street and Apt. No., or PO Box No. _____
 City, State, ZIP+4® _____

Ciampa Management Corp.
Custodian of Records
241-02 Northern Blvd.
Douglaston, NY 11362

29-CA-143160 F. GURMAN

Certified Mail service provides the following benefits:

- A receipt (this portion of the Certified Mail label).
 - A unique identifier for your mailpiece.
 - Electronic verification of delivery or attempted delivery.
 - A record of delivery (including the recipient's signature) that is retained by the Postal Service™ for a specified period.
- Important Reminders:**
- You may purchase Certified Mail service with First-Class Mail®, First-Class Package Service®, or Priority Mail® service.
 - Certified Mail service is *not* available for international mail.
 - Insurance coverage is *not* available for purchase with Certified Mail service. However, the purchase of Certified Mail service does not change the insurance coverage automatically included with certain Priority Mail items.
 - For an additional fee, and with a proper endorsement on the mailpiece, you may request the following services:
 - Return receipt service, which provides a record of delivery (including the recipient's signature). You can request a hardcopy return receipt or an electronic version. For a hardcopy return receipt, complete PS Form 3811, *Domestic Return Receipt*; attach PS Form 3811 to your mailpiece;
 - Restricted delivery service, which provides delivery to the addressee specified by name, or to the addressee's authorized agent.
 - Adult signature service, which requires the signee to be at least 21 years of age (not available at retail).
 - Adult signature restricted delivery service, which requires the signee to be at least 21 years of age and provides delivery to the addressee specified by name, or to the addressee's authorized agent (not available at retail).
- for an electronic return receipt, see a retail associate for assistance. To receive a duplicate return receipt for no additional fee, present this USPS®-postmarked Certified Mail receipt to the retail associate.
- To ensure that your Certified Mail receipt is accepted as legal proof of mailing, it should bear a USPS postmark. If you would like a postmark on this Certified Mail receipt, please present your Certified Mail Item at a Post Office™ for postmarking. If you don't need a postmark on this Certified Mail receipt, detach the barcoded portion of this label, affix it to the mailpiece, apply appropriate postage, and deposit the mailpiece.
- IMPORTANT: Save this receipt for your records.**

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ciampa Management Corp.
Custodian of Records
241-02 Northern Blvd.
Douglaston, NY 11362

2. Article Number
(Transfer from service label)

7015 0640 0007 6656 8083

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

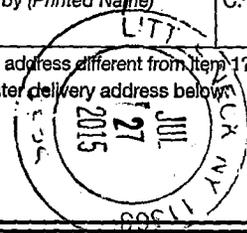
X L. Scarpone

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below No



3. Service Type

- Certified Mail®
- Registered
- Insured Mail
- Priority Mail Express™
- Return Receipt for Merchandise
- Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

UNITED STATES POSTAL SERVICE

NY 100
27 JUL 95



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

RECEIVED
JUL 29 PM 2:05
• Sender: Please print your name, address, and ZIP+4® in this box •

NATIONAL LABOR RELATIONS BOARD
REGION 29
TWO METROTECH CENTER STE 5100
FL 5
BROOKLYN, NY 11201

29-CA-143160 F Guzman



EXHIBIT B

Cabrera, Emily

From: Leon, Cecilia
Sent: Wednesday, August 05, 2015 3:15 PM
To: Cabrera, Emily
Subject: FW: PROD: Action Required - NxGen E-Filed Document Received for 29-CA-143160, Ciampa Management Corp.

Sensitivity: Personal

Flag Status: Completed

-----Original Message-----

From: nxgen@nlrb.gov [mailto:nxgen@nlrb.gov]
Sent: Monday, August 03, 2015 6:11 PM
To: ML-29BKN-Efile
Cc: ML-NxGenWorkFlow
Subject: PROD: Action Required - NxGen E-Filed Document Received for 29-CA-143160, Ciampa Management Corp.

This is to notify you that a new E-Filed Document has been received by your office for 29-CA-143160, Ciampa Management Corp. The E-Filing type is PRV and the associated Action is General.

PHILLIPS NIZER LLP

686 Fifth Avenue
New York, NY 10103-0084
212.977.9700
Fax 212.262.5152

Fax Cover Sheet

DATE: August 3, 2015

FROM: Regina Faul

NO. OF PAGES (including this page) NumberOfPages

TO:	<u>NAME</u>	<u>FIRM/COMPANY</u>	<u>PHONE NO.</u>	<u>FAX NO.</u>
	James G. Paulsen, Esq.	National Labor		718 330-7579
	Emily A. Cabrera, Esq.	Relations Board		

MESSAGE:

Please see the attached from Regina E. Faul, Esq.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 29

-----X
CIAMPA MANAGEMENT CORP.

and

Case: 29-CA-143160
29-CA-145558
29-CA-150763
29-CA-153487
29-CA-153936

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 32BJ

-----X

PETITION TO REVOKE SUBPOENA DUCES TECUM B-1-NKAPP3 PURSUANT TO
SECTION 102.31(b) OF THE
NATIONAL LABOR RELATIONS BOARD RULES AND REGULATIONS

To: James G. Paulsen, Esq.
Regional Director, Region 29
National Labor Relations Board
Two Metro Tech Center, 5th Floor
Brooklyn, New York 11201

Emily A. Cabrera, Esq.
Francisco Guzman, Esq.
Counsel for the General Counsel
National Labor Relations Board
Two Metro Tech Center, 5th Floor
Brooklyn, New York 11201

Pursuant to Section 102.31(b) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, Phillips Nizer LLP, attorneys for Ciampa Management Corp. (hereinafter referred to as "Respondent"), hereby petitions that the Subpoena Duces Tecum (with attached Rider) served upon Respondent by the Counsel for the General Counsel ("General Counsel") *i.e.*, Subpoena B-1-NKAPP3) be revoked for numerous reasons discussed below including, the Subpoena is unreasonable in scope, overly broad, seeks irrelevant information and unduly burdensome. A copy of the Subpoena (and its Rider) is attached as **Exhibit "A"** hereto.

In support of its petition, Respondent also asserts:

(a) By way of background, the underlying unfair practice charges were filed by Services Employees Union International Local 32BJ SEIU beginning on December 16, 2014. Specifically, a charge in Case No. 29-CA-143160, as amended, alleges that Respondent interrogated employees regarding their Union activities, discriminated against employees in order to dissuade them from supporting the Union, more loosely supervised employees because of their Union activities, and changed employees' benefits in retaliation of their Union activities. The charge in Case No. 29-CA-145558, as amended, alleges that Respondent discharged employees Andres and Kevin Galaraza because of their union activity. In Case No. 29-CA-150763, the charge alleges that Respondent threatened employees with unspecified reprisals because of their support for the Union and that Respondent more strictly enforced work rules because employees supported the Union. The charge in 29-CA-153487 alleges that Respondent issued employees Jonathan Par and Luis Martin warnings in retaliation for their activities on behalf of the Union. In Case 29-CA-153936, the charge alleges that Respondent promulgated rules involving communications with tenants. Respondent has denied all of the foregoing charges.

Respondent has cooperated with Counsel for the General Counsel in her investigation. Respondent has provided substantive information and copies of records. Additionally, Respondent's Superintendent (Jose Merchan) has been interviewed by Counsel for the General Counsel at the Regional office and has provided an affidavit prepared by Counsel for the General Counsel contemporaneous with his interview.

(c) The Subpoena's Rider (for the sake of brevity, "Subpoena") Request No. 1, seeks complete personnel and employment files of all employees of Respondent for the period October 1, 2012 to the present. This request is unduly burdensome, unreasonable in scope, seeks

irrelevant information and is overly broad given the number of employees who worked/work for Respondent since October 1, 2012. Accordingly, the Subpoena should be revoked insofar as it seeks any records other than those that relate to Kevin Galarza, Andres Galarza, Jonathan Par and Luis Martin.

(d) With respect to Subpoena Request Nos. 2 through 5, seeking disciplinary notes, warnings, e-mails, documents memorializing conversations regarding Andres Galarza, Kevin Galarza, Jonathan Par and Luis Martin, such information has been previously provided to Counsel of the General Counsel. Accordingly, the Subpoena should be revoked.

(e) With respect to Subpoena Request Nos. 6 through 9, seeking all documents used or relied on by Respondent in any way or formed the basis for Respondent's decision to termination and/or discipline Kevin and Andres Galarza, Jonathan Par and Luis Martin, such information has been previously provided to Counsel of the General Counsel. Accordingly, the Subpoena should be revoked.

(f) Subpoena Request No. 10 seeks all documents relating to disciplinary actions against any employee of Respondent for any reason from October 1, 2012 to the present. This request is unduly burdensome, unreasonable in scope, seeks irrelevant information and is overly broad given the number of employees who worked/work for Respondent since October 1, 2012. Further, the alleged unfair labor practices occurred beginning in or about January, 2015. As such, any records prior to this date is totally irrelevant. Further, any material documents relating this request have also been previously provided to Counsel of the General Counsel. Accordingly, the Subpoena should be revoked.

(g) With respect to Subpoena Request No. 11, seeking all employee handbooks, notices, memoranda and emails setting forth and describing all work rules, such information has

been previously provided to Counsel of the General Counsel. Accordingly, the Subpoena should be revoked.

(h) Subpoena Requests Nos. 12 and 13 seek all documents between Respondent and Respondent's supervisors, managers and/or other Respondent agents, regarding the Union from October 1, 2012 to the present. This request is unduly burdensome, unreasonable in scope and seeks irrelevant information. The purported unfair labor practice occurred in or about January, 2014. Therefore, any records prior to that time period is entirely irrelevant. Further, any material documents relating to this request have also been previously provided to Counsel of the General Counsel or no records exist that satisfy this request. Therefore, the Subpoena should be revoked.

(i) Subpoena Request No. 14 seeks surveillance and security footage of all doormen at Respondent's facilities from October 1, 2012 to the present. This request is unduly burdensome, unreasonable in scope, seeks irrelevant information and is overly broad given the countless hours of surveillance footage between October 1, 2012 to the present. Further, the purported unfair labor practice occurred in January, 2014 and only relates to the employment of a few individuals. Accordingly, the Subpoena should be revoked insofar as it seeks any records other than those that relate to Kevin Galarza, Andres Galarza, Jonathan Par and Luis Martin.

(j) Subpoena Request No. 15 seeks documents showing managerial and supervisory hierarchy of management at Respondent's facility. This request seeks irrelevant information and is not material or necessary to the prosecution of this Case. Further, no records exist that satisfy this request. Accordingly, the Subpoena should be revoked.

(k) Subpoena Request No. 16 seeks "Personnel files, payroll documents and any and all other documents showing job titles, job descriptions and/or responsibilities, wage rates and

manner of payment, appraisals, overtime, vacations, insurance, pensions and/or 401(k) plans, bonuses, use of facilities, incentive plans, use of time clocks and payment for time lost and attendance at training programs, for all supervisory and managerial employees of Respondent.” This request is unduly burdensome, unreasonable in scope, seeks irrelevant information and is overly broad. Any information pertaining to the benefits and salary of supervisory and managerial employees of Respondent has absolutely nothing to do with any of the charges set forth in the Case. As such, the Subpoena should be revoked.

(l) Subpoena Request No. 17 and 18 seeks all documents “as will show all involvement or participation, including but not limited to recommendations, by Jose Merchan” relating to, *inter alia*, hiring, firing, transferring, suspending, and discharging of all employees. This request is unduly burdensome, unreasonable in scope, seeks irrelevant information and is overly broad. Any material documents relating to this request has also been previously provided to Counsel of the General Counsel. Accordingly, the Subpoena should be revoked.

(m) Subpoena Request Nos. 19 and 20 seeks “such written notices, memoranda, e-mails, letters, instructions, directions or bulletins to employees that were prepared, initialed, signed, approved or reviewed by Jose Merchan during the period October 1, 2012 to the present.” This request is unduly burdensome, unreasonable in scope and seeks irrelevant information. The purported unlawful labor practice occurred in or about January, 2014. As such, any documents responsive to this request prior to that date is entirely irrelevant and merely burdensome on Respondent. Further, any material documents or information relating to this request has also been previously provided to Counsel of the General Counsel. Accordingly, the Subpoena should be revoked.

(n) Subpoena Requests Nos. 21 and 22 seek all documents “showing pledges of credit, contracts and other agreements signed by or entered into by Jose Merchan on behalf of Respondent during the period October 1, 2012 to the present.” This request is unduly burdensome, unreasonable in scope and seeks irrelevant information. The purported unfair labor practice occurred in or about January, 2014. Therefore, any records prior to that time period are entirely irrelevant. Further, any material documents relating to this request have also been previously provided to Counsel of the General Counsel or no records exist that satisfy this request. Therefore, the Subpoena should be revoked.

(o) Subpoena Request No. 23 seeks “documents that will show Respondent’s distribution of holiday bonuses, including showing all employees who received holiday bonuses and how much each employees received for the period January 1, 2012 to the present.” This request is overly broad, unduly burdensome and seeks irrelevant information. The purported unlawful labor practice occurred in or about December, 2014. Any material documents relating to this request have also been previously provided to Counsel of the General Counsel. Any information pertaining to this request prior to this year is entirely irrelevant to this Case. Therefore, the Subpoena should be revoked insofar as it seeks any information relating to the receipt or delivery of holiday bonuses prior to December, 2014.

(p) Subpoena Request No. 25 seeks “payroll records that will show the pay dates of all employees for each pay period from October 1, 2012 to the present.” This request is overly broad, unduly burdensome and seeks irrelevant information. The purported unlawful labor practice occurred in or about November/December, 2014. Any information pertaining to this request prior to this year is entirely irrelevant to this Case. Further, the only allegation that relates to “pay dates” concerns when a few employees received their pay prior to the

Thanksgiving and Christmas holiday in 2014. Therefore, the Subpoena should be revoked insofar as it seeks any payroll information other than for the pay period immediately prior to Thanksgiving and Christmas, 2014.

(q) Subpoena Request No. 26 seeks “documents including timecards or punch records that will show time records of all doormen from October 1, 2012 to the present.” This request is overly broad, unduly burdensome and seeks irrelevant information. The purported unlawful labor practice occurred beginning in November, 2014 and relates to Respondent’s contention that Kevin Galarza, Andres Galarza, Jonathan Par and Luis Martin were often late to work. None of these individuals were employed prior to 2013. Therefore, any records prior to that date are entirely irrelevant to this Case. Therefore, the Subpoena should be revoked insofar as it seeks timecards or punch records other than for Kevin Galarza, Andres Galarza, Jonathan Par and Luis Martin.

(r) Subpoena Request Nos. 27 and 28(a) seeks all documents “pertaining to Respondent’s meeting with employees regarding the Union.” This request is unduly burdensome, unreasonable in scope and seeks irrelevant information. Further, any material documents relating to this request have also been previously provided to Counsel of the General Counsel or no records exist that satisfy this request. Therefore, the Subpoena should be revoked.

(s) Subpoena Request No. 28(b) and (c) seeks all documents “pertaining to Respondent’s internal discussions or deliberations regarding how to respond to tenant complaints any of Respondent’s employees for the period from October 1, 2012 to the present.” This request seeks overly burdensome and irrelevant information. The only factual allegation that concerns a memorandum distributed to employees occurred in or about June 1, 2015 following receipt of a tenant complaint. Therefore any documents pertaining to internal discussions or

deliberations prior to June, 2014 is entirely irrelevant. Further, certain discussions and deliberations concerning tenant complaints in or about June 1, 2015 are protected by the attorney-client privileged. Therefore, the Subpoena should be revoked insofar as it seeks documents other than non-privileged documents pertaining to tenant complaints that occurred in or about June 1, 2015 resulting in Respondent's distribution of a memorandum to employees.

(t) Subpoena Request No. 29(a) seeks all documents "which will show all tenant communications with Respondent regarding the Union employees working conditions. .from October 1, 2012." This request is unduly burdensome, unreasonable in scope and seeks irrelevant information. The purported unfair labor practice occurred in or about June, 2014. Therefore, any records prior to that time period is entirely irrelevant. Further, any material documents relating to this request have also been previously provided to Counsel of the General Counsel or no records exist that satisfy this request. Therefore, the Subpoena should be revoked.

(u) Subpoena Request No. 29(b), seeks all documents "pertaining to Respondent's internal discussion or deliberations regarding how to respond to tenants communication regarding the Union or employees' working conditions." This request is unduly burdensome, unreasonable in scope and seeks irrelevant information. Further, no records exist that satisfy this request. Therefore, the Subpoena should be revoked.

(v) Subpoena Request No. 29(c) seeks all documents "pertaining to Respondent's responses to tenant communications regarding the Union or employees' working conditions." This request is unduly burdensome, unreasonable in scope and seeks irrelevant information. Further, any material documents relating to this request have also been previously provided to Counsel of the General Counsel or no records exist that satisfy this request. Therefore, the Subpoena should be revoked.

For the above reasons, the undersigned respectfully requests that the Subpoena Duces
Tecum which is attached as **Exhibit A** hereto be revoked forthwith.

Respectfully submitted,

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