

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERACTIVE COMMUNICATIONS)	
INTERNATIONAL, INC. d/b/a INCOMM ,)	
)	
Respondent,)	
)	Case No. 12-CA-155362
and)	
)	
KARINA NILDA RODRIGUEZ, an Individual,)	
)	
Charging Party.)	

**RESPONDENT INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC.’S
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE’S
MARCH 22, 2016 DECISION AND SUPPORTING BRIEF**

Pursuant to Section 102.46 of the Board’s Rules and Regulations, Respondent Interactive Communications International, Inc. d/b/a InComm (“Respondent”) files the following Exceptions to Administrative Law Judge Keltner W. Locke’s (“the ALJ”) March 22, 2016 Decision (“Decision”).

1. Respondent excepts to the ALJ’s statement that “This case began June 6, 2015, when the Charging Party . . . filed an unfair labor practice charge against the Respondent . . .” (Decision, p. 1, ¶ 1 of Procedural History.)
2. Respondent excepts to the ALJ’s finding that “Whether [Charging Party] engaged in protected activity would have no legal relevance except for the General Counsel’s argument . . . that the existence of such protected activity affects how an employee reasonably would understand what the managers said.” (Decision, p. 3 l. 31 – p. 4 l. 3.)
3. Respondent excepts to the ALJ’s finding that Charging Party engaged in protected concerted activity because “[t]he present record clearly shows that Rodriguez falls

- within the definition of an employee acting alone to initiate group action.” (Decision, p. 3, n. 2.)
4. Respondent excepts to the ALJ’s failure to find that Charging Party’s testimony at the hearing was deceitful regarding her statement that “I’m still not going to point people out,” for whom she was allegedly speaking. (Decision, p. 5, ll. 26–28.)
 5. Respondent excepts to the ALJ’s finding that Charging Party “clearly was engaged in protected activity when she sought to enlist the support of other employees and speak for them about working conditions.” (Decision, p. 6, ll. 12–14.)
 6. Respondent excepts to the ALJ’s refusal to “reach a conclusion about whether Rodriguez knew Barnett,” or to consider Charging Party’s denial in his credibility analysis. (Decision, p. 6, n. 4.)
 7. Respondent excepts to the ALJ’s finding that “[i]nstead of scheduling a time to meet with Rodriguez, Liles had brushed her off by telling her to talk to her supervisor, a supervisor who was too busy to talk.” (Decision, p. 7, ll. 44–45.)
 8. Respondent excepts to the ALJ’s finding that “Kitler’s reply began by paying lip service to Rodriguez’ concerns and then ignored them” (Decision, p. 8, ll. 3–4.)
 9. Respondent excepts to the ALJ’s finding that “[p]erhaps a student of bureaucratic finesse would admire how deftly Kitler had passed the buck, attributing the problem to Liles . . . but offering no help in solving it. In other people, Kitler’s email reasonably could elicit some degree of frustration” (Decision, p. 8, ll. 9–12.)
 10. Respondent excepts to the ALJ’s conclusion of law that “Respondent violated Section 8(a)(1) of the Act by prohibiting an employee from discussing terms and conditions of employment with other employees at any time on the Respondent’s property, and

- by threatening employees with discharge if the discussed terms and conditions of employment with other employees while on Respondent's property." (Decision, p. 18, l. 37 – p. 19, l. 1.)
11. Respondent excepts to the ALJ's findings "credit[ing] Rodriguez' testimony" and that "Jackson made the statements she attributed to him." (Decision, p. 17, l. 45 – p. 18, l. 1.)
 12. Respondent excepts to the ALJ's recommended order and accompanying appendix in its entirety. (Decision, p. 19–22.)
 13. Respondent excepts to the ALJ's failure to grant or otherwise rule on Respondent's Motion to Correct Transcript, which was properly e-filed with the NLRB Division of Judges on February 16, 2016. (See Attachment A.)

**BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46(b) of the Board’s Rules and Regulations, Respondent submits this brief in support of its exceptions to the ALJ’s decision.

I. Preliminary Statement

This matter was heard before the Honorable Keltner W. Locke, Administrative Law Judge, on January 13 and 14, 2016 in Jacksonville, Florida. The only issue raised by the complaint was whether Respondent’s managers made four specific statements, and if so, whether those statements interfered with, restrained, or coerced employees in the exercise of their Section 8(a)(1) rights. (Complaint, ¶¶ 4–6.) Respondent’s main defense to these allegations was to challenge the credibility of the Charging Party, Karina Rodriguez (“Charging Party”), who made these allegations as part of a desperate and self-serving campaign to delay or stop Respondent’s Annual Shift Bid process in which she was unlikely to receive a preferable shift for the following year. (Respondent’s Post-Hearing Brief, Section IV.B.)

The ALJ found that Respondent’s defense was largely successful. He repeatedly discounted Charging Party’s testimony, describing it as “sketchy,” “self-contradictory,” and “contrived,” and noted that her “interest in the outcome of this proceeding, which began with the unfair labor practice charge she filed, may have made her testimony a bit partisan.” (Decision, p. 3, ll. 16–19; p. 4, l. 17; p. 17, l. 28.) In sum, the ALJ found that Respondent’s witness, Patricia Kitler, was a more reliable witness than Charging Party, and he credited Kitler’s testimony to the extent that it conflicted with Charging Party’s testimony. (Decision, p. 6, ll. 21–22.)

The ALJ erred, however, by crediting Charging Party’s testimony regarding statements allegedly made by Klea Jackson, Respondent’s Director of Human Resources during a June 25,

2015 meeting. Even though Jackson did not testify at the hearing, the ALJ should have declined to credit Charging Party's sketchy and self-serving testimony regarding the implausible alleged statements made by Jackson. *See Sioux City Foundry Co.*, 323 NLRB 1071, 1071 (1997) (noting that "the Board may decline to credit the testimony of interested witnesses, even though such testimony is not contradicted").

The ALJ made two key errors regarding evidence that would have further eroded Charging Party's credibility and supported a decision to completely discredit her testimony. First, he revoked a portion of Respondent's subpoena *duces tecum* that sought correspondence between Charging Party and John M. Barnett, III, a former employee of Respondent and Charging Party's former co-worker, regarding Annual Shift Bids and an NLRB charge previously filed by Barnett. Second, he refused to reach a conclusion as to whether Charging Party was untruthful when she twice testified that she did not know Barnett even though they worked a few feet away from each other for months.

Respondent requests that the Board reverse the ALJ's decision to credit Charging Party's sketchy and self-contradictory testimony with respect to the June 25, 2015 meeting. In the alternative, and in light of the ALJ's refusal to consider plainly relevant evidence of Charging Party's untruthful and biased testimony, Respondent respectfully urges the Board to remand the case to the ALJ with instructions to enforce Respondent's subpoena *duces tecum* (with respect to requested item #2) and issue new credibility findings and conclusions of law based on the documents produced by Charging Party.

II. STATEMENT OF FACTS

A. Background

1. Respondent's Relevant Business. Respondent engages in the business of servicing prepaid gift cards and other similar products. Respondent's call center located in Jacksonville, Florida manages inbound customer service telephone calls for the customers of Respondent's clients/retailers. (Tr. 48, ll. 17–19.) The vast majority of the employees in the Jacksonville Call Center, including Charging Party, are Customer Service Representatives (“CSRs”) who answer incoming phone calls from customers twenty-four (24) hours a day. (Tr. 163, ll. 2–9.) At the time of the hearing, the Jacksonville Call Center employed approximately 270 CSRs. (Tr. 163, ll. 2–3.) Scheduling CSRs' shift coverage is a challenging task, and therefore once an employee is assigned to a shift, that shift will generally not change, except for once a year during an annual mandatory shift bid. (Resp. Ex. 9; Resp. Ex. 11.)

2. Annual Shift Bids. All eligible employees are required to participate in the Annual Shift Bid process. (Resp. Ex. 9; Resp. Ex. 11.) The opportunity to choose a shift is based on employee performance during the relevant time period immediately preceding the specific bidding period: the highest performing employee gets to choose first, second highest performer bids second and so on until all eligible employees have chosen shifts. (Resp. Ex. 10; Resp. Ex. 12.) Performance is calculated based on four scored categories. The “Quality” component accounts for 40% of the overall performance score. “Talk Time” “Attendance” and “Schedule Adherence” each account for 20% of the overall score. (Resp. Ex. 9; Resp. Ex. 11.)

3. Respondent's unique communication system. Unlike those of more traditional employers (such as manufacturers), Respondent's Jacksonville employees normally receive announcements, Call Center updates, instructions, product information and similar data at their work stations/terminals, via Respondent's intranet. (Tr. 19, ll. 13–25; Tr. 20, l. 1.) And, also unlike many other employers, Respondent does not generally provide its Call Center employees

with their own company email accounts for purposes of communications. Instead, Call Center employees are simply advised to be mindful of Intranet updates and announcements while at work. (Tr. 19, l. 24 – Tr. 20, l. 1; Tr. 47, ll. 18–24.) Respondent follows these procedures to secure customers’ highly sensitive financial information.

4. *Charging Party’s work history at Respondent.* Charging Party has worked at the Jacksonville call center since July 15, 2013 as a bilingual CSR. (Tr. 16, ll. 11–22.)

B. The 2014 Shift Bid

Charging Party’s first Annual Shift Bid was in June 2014. As described above, CSRs were ranked according to a formula described in the shift bid announcement. (Resp. Ex. 9.) Though she was ranked 10th out 24 bilingual CSRs in 2014, Charging Party was one of 6 CSRs who refused to bid on shifts during their assigned times. (Resp. Ex. 10; Tr. 65, l. 24 – Tr. 66, l. 1; Tr. 169, l. 7–9.) Instead of bidding on shifts as she was required to do, Charging Party testified that she held out and was eventually offered a shift that “more closely met my needs.” (Tr. 66, ll. 5–11.) Charging party admitted that she initially held out of the 2014 shift bid because none of the schedules that she could have initially chosen “would work for me.” (Tr. 66, ll. 15–17.) Respondent eventually gave Charging Party the Monday through Friday shift, which would work for her, after “something open[ed] up all of a sudden” during the actual bidding period. (Tr. 66, ll. 18–24; Tr. 170, ll. 1–3.) Charging Party ultimately had the “good luck” to accept a suddenly-vacated shift. (Tr. 67, ll. 2–5.)

John Barnett was another CSR who had refused to participate in the shift bid process in 2014. (Tr. 170, ll. 6–8.) He and Charging Party had assigned cubicles a few feet away from each other for nearly three months in the summer of 2014, before and during the shift bid. (Tr. 193, ll. 20 – Tr. 195, ll. 6; Tr. 195, ll. 16–21; Tr. 197, ll. 1–12; Resp. Ex. 15.) Following his

refusal to participate during the 2014 bidding process, Barnett filed a charge in Case No. 12-CA-141723, claiming constructive discharge because of protected concerted activities; his charge was dismissed (and not appealed) on January 28, 2015. Referred to as a “related case” during the instant hearing (Tr. 12, ll. 19–23), a copy of the Regional Director’s actual dismissal letter is appended to this brief (as Attachment B), as it was to Respondent’s Brief to the ALJ.

C. The 2015 Shift Bid

Respondent announced the 2015 shift bid on the company’s intranet on June 8, 2015. (Resp. Ex. 11.) The announcement included detailed instructions for submitting bids, as well as an explanation of how rankings would be determined—the same formula used for the 2014 shift bid. (Id.; Resp. Ex. 9) The rankings were released on June 19, 2015. (Tr. 20, ll. 2–6; Resp. Ex. 16, p. 2.) Charging Party dropped from 10th out of 24 bilingual CSRs in 2014 to 18th out of 25 in 2015, solely due to her attendance and tardiness issues. (Tr. 168, ll. 24 – Tr. 169, ll. 3 [2014 ranking]; Tr. 173, l. 25 – Tr. 174, l. 3 [2015 ranking]; Resp. Ex. 6; Resp. Ex. 10; Resp. Ex. 12.) After a flurry of her own activity, Charging Party was eventually bumped up three (3) spots in the rankings. (Resp. Ex. 2.) From this new shift bid position, Charging Party chose a 9:00 a.m. to 6:00 p.m. Sunday through Thursday shift. (Id.)

Beginning on June 22, the Monday after shift bid rankings were released, Charging Party deluged her supervisor and Employee Relations Manager Patricia Kitler with a series of emailed questions, obviously designed to obscure and obstruct the shift bid process. (Resp. Ex. 16; G.C. Ex. 2.) Then, at 6:08 p.m. on June 23, 2015, Charging Party created a JIRA ticket on Respondent’s intranet. (Resp. Ex. 13.) JIRA tickets are “trouble tickets” normally used by CSRs to flag specific customer issues. (Tr. 176, ll. 16–18.) Charging Party used the JIRA ticket

system to leave a note asking coworkers to leave a comment on the JIRA ticket inquiring whether anybody else wanted their scorecards prior to the shift bid. (Resp. Ex. 13.)

Immediately after creating the JIRA ticket, Charging Party left a piece of paper in the break room with the JIRA ticket number on it and stating “comment if you need scorecard.” (Tr. 185, ll. 1–21; Resp. Ex. 14.) When she was notified of the sign nearly two hours later, Ms. Kitler emailed Customer Care Manager Eugenio Robleto at 7:48 p.m. directing him to remove the sign because “it was not approved.” (Resp. Ex. 14.)

JIRA tickets cannot be deleted from Respondent’s intranet, and employees have the ability to comment on any JIRA ticket.¹ (Tr. 25, ll. 11–15.) Employees can find JIRA tickets in the system by searching for key words in the summary of the ticket or by entering the JIRA ticket number. (Tr. 56, ll. 2–7.) No employee ever commented on the JIRA ticket created by Charging Party, and there is no evidence that Charging Party ever discussed the JIRA ticket or her complaints in the JIRA ticket with any employee before or after she posted it. (Tr. 55, ll. 23–25; Tr. 61, ll. 5–19; Tr. 178, ll. 7–15; Resp. Ex. 13.)

D. Charging Party’s Posters

The next morning, around 9:00 a.m. on June 24, 2015, Charging Party posted four large neon-colored posters around the office.² (Tr. 57, ll. 23–24; G.C. Ex. 3(a)–3(d).) She taped two of the posters over the locked glass bulletin board in the break room; posted a third poster in the break room under a television; and a fourth poster in the stairwell to the parking lot. (Tr. 24, ll. 16–17; Tr. 27, ll. 7–9; Tr. 59, ll. 20–25.) Each poster contained the number for the aforementioned JIRA

¹ When Ms. Kitler learned of Charging Party’s JIRA ticket, she changed the status from “Open” to “Resolved,” changed the “Customer Name” from “Karina Rodriguez” to “NA” and indicated that the “Resolution” was “Completed.” Ms. Kitler did not alter the substance of Charging Party’s Description in the JIRA ticket, nor did Ms. Kitler alter Charging Party’s Comment to the JIRA ticket. (Resp. Ex. 13.)

² The Parties stipulated that the original neon colored posters, reduced/reproduced in G.C. Ex. 3(a)–3(d), are approximately 24 inches tall and 30 inches wide. (Tr. 28, ll. 20–22.) All told, that accounts for approximately 2,880 square inches—20 square feet—of brightly-colored postings.

ticket and the text “Comment for your scorecards,” “Months Evaluated for Shift Bid November – April.” (G.C. Ex. 3(a)–3(d).) Ms. Kitler’s un rebutted testimony was that “everybody” asks for permission before posting notices in the breakroom. (Tr. 181, ll. 7–9.) Even after Ms. Kitler informed her of Respondent’s policy, Charging Party never sought permission to post anything in the break room. (Tr. 192, ll. 3–5.)

E. The June 24, 2015 Meeting

Shortly after Charging Party’s shift began at 9:00 a.m., Manager Kelly Liles, Senior Manager Eugenio Robleto, and Ms. Kitler met with Charging Party in Mr. Liles’s office to discuss her unapproved posters. (Tr. 32, ll. 4–24.) Charging Party did not receive any discipline in any form for her unauthorized posters. (Tr. 130–131.)

F. The June 25, 2015 Meeting

Klea Jackson, Respondent’s Director of Human Resources happened to be in Jacksonville for previously scheduled meetings on June 25. (Tr. 190, ll. 16–19.) Because he had previously discussed company policies with Charging Party, he took the opportunity to meet with her while he was in Jacksonville. (Tr. 191, ll. 8–10.) Before noon, Mr. Jackson convened a meeting with Charging Party and Ms. Kitler in an empty office, in which Charging Party’s unapproved posters were discussed. (Tr. 190, ll. 1–14.)

III. Argument

This case hinges solely on Charging Party’s credibility. The ALJ repeatedly discredited Charging Party’s testimony and held that Respondent did not violate Section 8(a)(1) during the June 24, 2015 meeting because Charging Party’s testimony directly conflicted with that of Respondent’s credible witness, Patricia Kitler. However, the ALJ erroneously credited Charging Party’s “sketchy” “contrived” and “self-contradictory” testimony regarding the June 25, 2015

meeting because it was not directly contradicted by Kitler’s testimony and the other meeting participant, Klea Jackson (located in another state), did not testify at the hearing. (Decision, p. 17, ll. 28–31.) The ALJ also erred by refusing to consider relevant evidence regarding Charging Party’s overall credibility—evidence that would have supported a decision to completely discredit Charging Party’s testimony. Respondent therefore requests that the Board reverse the ALJ’s decision to credit Charging Party’s testimony regarding the June 25 meeting. In the alternative, Respondent urges the Board to remand this case to the Administrative Law Judge to consider the relevant evidence and issue new findings regarding Charging Party’s overall credibility on the subject of the June 25, 2015 meeting.

A. Respondent never engaged in protected concerted activity.

Even though the complaint does not allege that Charging Party ever actually engaged in protected concerted activity, the ALJ made conflicting statements in dicta regarding whether Charging Party’s activity was in fact protected. For instance, the ALJ noted “in passing” that Charging Party’s activity *was* protected concerted activity because it “falls within the definition of an employee acting alone to initiate group action.” (Decision, p. 3 n.2.) Later, the ALJ noted that “an employee’s request to examine her scorecards is not a complaint about wages, hours, or other working conditions, and no one reasonably would consider such a request to be a complaint.” (Decision, p. 12, ll. 10–12.) In other words, Charging Party’s instigations regarding her and other employees’ scorecards—on her posters, in the JIRA ticket, and in her conversations with Kitler and Jackson—was not *protected* activity, even if it was concerted.

The ALJ cited five cases for the proposition that Charging Party engaged in protected concerted activity as a lone employee acting to initiate group action. However, every one of those cases involved an employee’s attempt to initiate group action *with respect to protected*

activity. See, e.g., *Kvaerner Phila. Shipyard*, 346 NLRB 390 (2006) (attempting “to correct a perceived **error in the employees’ payroll deductions** for union dues and medical expenses”) (emphasis added); *Meyers Indus. (II)*, 281 NLRB 882, 883 n.16 (1986) (noting that the Wagner Act’s purpose was to “vindicate the exercise of associational rights for attaining improved **wages and working conditions**”) (emphasis added); *Globe Sec. Sys.*, 301 NLRB 1219 (1991) (employees were involved in “efforts to reform the Respondent’s **pay policy and other terms and conditions of employment**”) (emphasis added); and *Alaska Pulp Corp.*, 296 NLRB 1260 (1989), enfd. 944 F.2d 909 (9th Cir. 1991) (union employee’s letters to management and newspapers **urging support for a strike** was both “protected” and “concerted” activity) (emphasis added). Of course, the Board has been clear that an action could be concerted but not protected. See, e.g., *Fresh & Easy Neighborhood Mkt.*, 361 NLRB No. 12, pp. 3, 7 (2014) (holding that “employee conduct must be both ‘concerted’ and engaged in for the purpose of ‘mutual aid or protection,’” and noting that the concept of “mutual aid or protection” focuses on whether the employee “approached her coworkers with a concern **implicating the terms and conditions of their employment**”) (emphasis in original).

This makes intuitive sense. For instance, imagine that Charging Party had spray-painted Respondent’s doors with a message asking coworkers to unite against the naming of the new goldfish in a decorative bowl in Patricia Kitler’s office. Such actions might be “concerted” in that the spray-painted exhortations could be considered preparation for or an attempt to initiate group action. But the actions would not be “protected” because a complaint about Kitler’s goldfish’s name does not implicate the terms and conditions of the workers’ employment. Even if the complaint *did* involve terms and conditions of employment, the manner in which the

exhortation was made—spray-painting the Respondent’s doors—would be an improper means, taking it out of the confines of “protected” activity.

As the ALJ suggested, Charging Party’s actions in posting the JIRA ticket and hanging the oversized posters in unapproved locations was not protected activity because (a) those actions did not involve a complaint about wages, hours or other working conditions; and (b) the means that Charging Party used to push her self-serving campaign to postpone the shift bid—using the JIRA system and posting unapproved posters—were improper. (Decision, p. 12, ll. 10–12; p. 13, l. 42 – p. 14, l. 27.) Because Charging Party’s actions were not protected activity—even if they were concerted—the ALJ’s “disagreement” with Respondent’s argument that Charging Party never engaged in *protected* concerted activity is erroneous.

For these reasons, Respondent excepts to the ALJ’s characterizations of Charging Party’s actions as protected concerted activity. (Respondent’s Exceptions 3 and 5.)

B. The ALJ erred in refusing to admit and consider evidence regarding Charging Party’s knowledge of John Barnett and his prior NLRB charge.

Respondent’s management knew early on that Charging Party’s sole, driving motivation behind her scorecard complaints was to postpone or prevent the 2015 shift bid from going forward. (Tr. 175, ll. 2–11; Tr. 185, ll. 20–23.) In fact, Charging Party ultimately admitted during cross-examination that shift bid postponement was her “hope,” although she continued to ascribe altruistic reasons to her quest. (Tr. 68, ll. 19–22.) Charging Party’s motivation is crucial to Respondent’s defense that Charging Party’s allegations in the complaint and testimony at the hearing regarding Jackson’s statements in the June 25 meeting are not credible.

In order to prove its affirmative defense, Respondent served upon Charging Party NLRB Subpoena Duces Tecum No. B-1-P1UM3P on January 5, 2016 seeking, among other things:

(2) All documents and correspondence (including emails or texts) between Charging Party and . . . John M. Barnett, III between 6/23/14 and present, and related to either (1) the 2014 and 2015 Annual Shift Bids, or (2) the NLRB charge filed by Barnett in Case No. 12-CA-141723.

This information is relevant to show that Charging Party knew of Barnett’s unsuccessful attempt to circumvent the 2014 Annual Shift Bid, and thus needed to devise a new gambit to prevent or postpone the 2015 shift bid—particularly because her ranking dropped from 10th out of 24 employees in 2014 to 18th out of 25 employees in 2015 (Resp. Ex. 10; Resp. Ex. 12). In short, Charging Party’s motivation to bring the instant charge and testify untruthfully at the hearing was based on her knowledge that she would need to follow a different playbook than Barnett chose a year earlier in order to prevent or postpone the 2015 Annual Shift Bid.

On January 6, 2016, Counsel for the General Counsel (“CGC”) filed a Petition to Partially Revoke the relevant portion of Respondent’s subpoena *duces tecum*. In the Petition, CGC argued that “documents sought [relating to Barnett] are *plainly irrelevant because they have no possible bearing on* [the 8(a)(1) allegations] and are not calculated to point to other relevant evidence.” (Emphasis added). CGC notably did not assert that such documents *were non-existent*—she only claimed that they were “irrelevant.” A copy of CGC’s Petition to Partially Revoke Respondent’s Subpoena Duces Tecum (which attaches Respondent’s served Subpoena B-1-P1UM3P) is appended as Attachment C. The ALJ confirmed his ruling granting CGC’s Petition to Revoke as to these documents at the hearing. (Tr. 14, l. 20 – 15, l. 9.)

The information requested in Respondent’s subpoena *duces tecum* is also plainly relevant to the credibility of Charging Party’s hearing testimony. As the ALJ acknowledged, the parties

vehemently disagree as to whether Charging Party was truthful at the hearing when she flatly denied knowing Barnett. (Decision, p. 6 n.4.) Instead of resolving this conflict, the ALJ did not reach any conclusion about whether Charging Party knew Barnett, and he did not consider the issue in his credibility analysis. (Id.) This curious non-finding was erroneous in light of the fact that Barnett and Charging Party sat a few feet away from each other for nearly three months in the summer of 2014, before and during the shift bid (Tr. 193, ll. 20 – Tr. 195, ll. 6; Tr. 195, ll. 16–21; Tr. 197, ll. 1–12; Resp. Ex. 15), and Charging Party testified that she would speak about “anything” with her co-workers at her desk: “We talk about family, TV shows, anything, politics, the lottery.” (Tr. 45, ll. 16–21.)

It is utterly inconceivable that Charging Party did not know Barnett given those circumstances, and the fact that Charging Party began agitating against the Annual Shift Bid process just days after Barnett’s NLRB charge was dismissed. (See Attachment B, showing the Regional Director’s dismissal letter to Barnett, and Resp. Ex. 8 for Charging Party’s email screed against Respondent’s attendance policy on January 30, 2015.) January was apparently the pre-season for Charging Party’s 2015 shift bid obstruction campaign.

Charging Party knew Barnett. She used his unsuccessful 2014 shift bid refusal as a starting-point for her own 2015 shift bid obstruction. The communications subpoenaed by Respondent—which CGC simply argued are irrelevant, not non-existent—would prove this, and would show that Charging Party’s testimony at the hearing was completely untrustworthy, even where it was seemingly uncontradicted.³ The communications would decisively show that all of

³ The Board has repeatedly held that a witness’s uncontroverted testimony could be so incredible as to support a finding that the opposite of the witness’s testimony is true. *See, e.g., Grane Healthcare Co.*, 357 NLRB 1412 (2011) (“[T]he demeanor of a witness . . . may satisfy the tribunal, not only that the witness’ testimony is not true, but that the truth is the opposite of his story.”) (quoting *NLRB v. Walton Mfg.*, 369 U.S. 404, 408 (1962)).

her non-work activity in 2015 was part of a well-researched construct, designed to cover her self-centered plan in the cloth of Section 7.

For these reasons, Respondent excepts to the ALJ's refusal to "reach a conclusion about whether Rodriguez knew Barnett," or consider Charging Party's denial in his credibility analysis. (Respondent's Exception 6). Respondent also excepts to the ALJ's conclusion of law that Respondent violated Section 8(a)(1) of the Act, which he arrived at solely based on crediting Charging Party's testimony. (Respondent's Exceptions 10–12.) Respondent requests that the Board reverse the ALJ's conclusions or inferences that Charging Party's testimony was credible in any respect, and thus reverse his conclusion of law that Respondent violated Section 8(a)(1) of the Act. In the alternative, Respondent requests that the Board remand this case to the ALJ with instructions to enforce Respondent's subpoena *duces tecum* with respect to the requested Barnett documents, and issue new credibility determinations based on Charging Party's compliance with the item #2 of the subpoena *duces tecum*.

C. Additional Exceptions

i. The decision incorrectly states the date that Charging Party filed her charge. (Respondent's Exception 1.) The decision states that the "case began June 6, 2015, when the Charging Party . . . filed an unfair labor practice charge, against the Respondent" (Decision, p. 1, ¶ 1 of Procedural History.) The charge was actually filed on July 6, 2015, after the most recent Annual Shift Bid was conducted. (G.C. Ex. 1a)

ii. The dispute over whether Charging Party engaged in protected concerted activity is directly relevant to Charging Party's credibility. (Respondent's Exception 2.) Charging Party deeply wanted her words to be viewed as protected concerted activity, and she couched her language repeatedly in Section 7 language. However, as described above in Section III.A., her

personal gripes did not rise to the level of protected concerted activity. This is relevant because Charging Party attempted throughout her crusade to stop the 2015 shift bid to convince Respondent that her activities were protected. Charging Party's intention to convince Respondent of the "protected" nature of her activity is clearly relevant to the veracity of her spurious allegations in the complaint and in her hearing testimony. For these reasons, Respondent excepts to the ALJ's finding that "Whether [Charging Party] engaged in protected activity *would have no legal relevance* except for the General Counsel's argument . . . that the existence of such protected activity affects how an employee reasonably would understand what the managers said." (Decision, p. 3, l. 31 – p. 4, l. 3) (emphasis added.)

iii. *Charging Party's repeated refusal to admit that she was not speaking on behalf of any other coworkers was deceitful.* The ALJ highlighted Charging Party's untrustworthy testimony by quoting multiple instances where Charging Party obfuscated the facts regarding which, if any, employees authorized her to speak on their behalf. (Decision, p. 4, l. 17 – p. 6, l. 17.) The truth, as Charging Party ultimately admitted, is that not a single employee authorized her to speak on their behalf on any subject. (Decision, p. 4, l. 21.) But Charging Party thereafter refused to admit that she had not been truthful in telling that to Kitler in either of the meetings in question. (Decision, p. 4, l. 17 – p. 6, l. 17.) Because Charging Party's hearing testimony was unquestionably untruthful in these instances, Respondent excepts to the ALJ's failure to find that Charging Party's testimony "reflected an attempt to deceive." (Decision, p. 5, ll. 26–28.)

iv. *The ALJ's editorialized characterizations of communications between Respondent's management and Charging Party are unnecessary and unsupported by the evidence.* (Respondent's Exceptions 7–9.) Respondent excepts to the ALJ's findings that (a) "[i]nstead of scheduling a time to meet with Rodriguez, Liles had brushed her off by telling her

to talk to her supervisor, a supervisor who was too busy to talk” (Decision, p. 7, ll. 44–45); (b) “Kitler’s reply began by paying lip service to Rodriguez’ concerns and then ignored them” (Decision, p. 8, ll. 3–4); and (c) “[p]erhaps a student of bureaucratic finesse would admire how deftly Kitler had passed the buck, attributing the problem to Liles . . . but offering no help in solving it. In other people, Kitler’s email reasonably could elicit some degree of frustration” (Decision, p. 8, ll. 9–12.)

v. *The ALJ erred in failing to grant Respondent’s Motion to Correct Transcript.*

The unopposed Motion was timely filed and served on CGC. Thus, Respondent excepts to the ALJ’s failure to grant or otherwise rule on the Motion. (See Attachment A) (Respondent’s Exception 13.)

Respectfully Submitted,

/s/ Corey J. Goerd

Corey J. Goerd
James M. Walters
For FISHER & PHILLIPS LLP
Counsel for Respondent

Dated this 19th day of April, 2016.

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2016 I served the foregoing **RESPONDENT'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S MARCH 22, 2016 DECISION AND SUPPORTING BRIEF** on the following individuals by the following means:

By Electronic Filing:

Hon. Gary W. Shinnars
Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

By Electronic Mail (and an additional copy via first-class mail):

Caroline Leonard
Counsel for the General Counsel
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, Florida 33602
Caroline.leonard@nrlrb.gov

Karina Nilda Rodriguez
11471 Stinger Way
Jacksonville, Florida 32223-7377
karinarodriguez@love.com

/s/ Corey J. Goerd

Corey J. Goerd
Counsel for Respondent

ATTACHMENT A

Walters, Jim

From: JudgesDivision@nlrb.gov <e-Service@nlrb.gov>
Sent: Tuesday, February 16, 2016 11:50 AM
To: Walters, Jim
Subject: RE: 12-CA-155362-Motion

Confirmation Number: 1000054318

You have successfully accomplished the steps for E-Filing document(s) with the NLRB Division of Judges. This E-mail notes the official date and time of the receipt of your submission. Please save this E-mail for future reference.

Date Submitted: 2/16/2016 11:46:31 AM (GMT-05:00) Eastern Time (US & Canada)
Case Name: Interactive Communications International, Inc. d/b/a InComm
Case Number: 12-CA-155362
Filing Party: Charged Party / Respondent
Name: Walters, James M.
Email: jwalters@laborlawyers.com
Address: 1075 Peachtree Street, NE
Suite 3500
Atlanta, GA 30309
Telephone: (404) 240-4230
Fax: (442) 404-4249
Attachments: Motion: InComm - Motion to Correct Transcript.pdf

Your account profile is saved in the system. [Click here](#) to view your previous E-filings with NLRB and to use your saved profile to E-File additional documents to Cases or Inquiries. When you use this link to E-File documents your contact information will be pre-populated on the E-Filing page, no need to reenter your information.

DO NOT REPLY TO THIS MESSAGE. THIS IS A POST-ONLY NOTIFICATION.
MESSAGES SENT DIRECTLY TO THE EMAIL ADDRESS LISTED ABOVE WILL NOT BE READ.

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Confirmation

You have successfully E-Filed document(s). You will receive an E-mail acknowledgement from this office when it receives your submission. This E-mail will note the official date and time of the receipt of your submission. Please save this E-mail for future reference. Please print this page for your records.

NOTE: This confirms only that the document was filed. It does not constitute acceptance by the NLRB. Confirmation information

Confirmation Number: 1000054318

Date Submitted: 2/16/2016 11:46:31 AM (GMT-05:00) Eastern Time (US & Canada)

Case Number: 12-CA-155362

Case Name: Interactive Communications International, Inc. d/b/a InComm

Filing Party: Charged Party / Respondent

Submitted E-File To Office: Division of Judges

Contact Info:

Walters, James M.

1075 Peachtree Street, NE

Suite 3500

Atlanta, GA 30309

(404) 240-4230

Fax: (442) 404-4249

Email: jwalters@laborlawyers.com

Attached E-File(s):

Motion InComm - Motion to Correct Transcript.pdf

BEFORE THE
 NATIONAL LABOR RELATIONS BOARD
 DIVISION OF JUDGES

INTERACTIVE COMMUNICATIONS)	
INTERNATIONAL, INC. d/b/a INCOMM,)	
)	
Respondent,)	
)	
and)	Case No. 12-CA-155362
)	
KARINA NILDA RODRIGUEZ,)	
)	
Charging Party.)	

MOTION TO CORRECT TRANSCRIPT

Comes now the Respondent, Interactive Communications International, Inc, d/b/a INCOMM, by its undersigned counsel, and files its Motion to Correct Transcript in the trial conducted in Jacksonville, Florida on January 13-14, 2016 as follows:

<u>PAGE(S)</u>	<u>LINE(S)</u>	<u>FROM</u>	<u>TO</u>
5	19	KILTER:	KITLER:
5	19	Patricia Kilter	Patricia Kitler
11	18	seniority	seniority who
13	10	that I	that, "I
13	11	my scorecards,	my scorecards,"
17	11	Eugenia Robleto	Eugenio Robleto
18	17	schedule appearance,	schedule adherence,
22	14	MS. KILTER:	MS. KITLER:
<i>(and seriatim)</i>			
70	10	your rates	your grades

76	10	December 4 th , 2015.	December 4 th , 2014.
79	23	only her	- only her -
96	4	was admittedly	was, admittedly
96	9	comment that	comment, that
96	10	charge that	charge, that
108	23	BY MS. LEONARD:	BY MR. WALTERS:
116	10	and the like or the	are like the
131	14	have to the	have the
151	13	minutes later	minutes late,
161	21	last words?	last word?
164	11	those monitors	those monitorings
167	13	clock time,	talk time,
170	14	have the Judge	ask the Judge
171	24	scheduled adherence?	schedule adherence?
172	24	card printout.	part printout.
183	17	be torn	be taken
187	17	have legal	had a legal
189	13	management come	management came
194	2	all total	all told
215	24	MS. KILTER	MS. KITLER

Respectfully submitted,



 JAMES M. WALTERS
 For FISHER & PHILLIPS LLP
 Counsel for Respondent

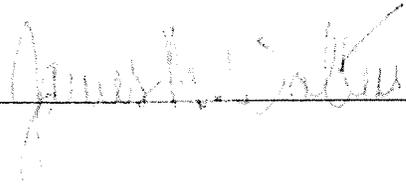
CERTIFICATE OF SERVICE

This is to certify that on the 16th day of February, 2016, the undersigned has caused copies of the foregoing **MOTION TO CORRECT TRANSCRIPT** to be transmitted via mail and/or U.S. Postal Service to the following individuals:

Caroline Leonard, Esq.
Counsel for General Counsel
NLRB Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602
caroline.leonard@nlrb.gov

Karina Nilda Rodriguez
Charging Party
11471 Stinger Way
Jacksonville, FL 32223
karinarodriguez@love.com

Letha J. Wheeler, CSR
Free State Reporting, Inc.
1378 Cape St. Claire Road
Annapolis, MD 21409

By:  _____

ATTACHMENT B



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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

Agency Website:
www.nlr.gov
Telephone: (813)228-2641
Fax: (813)228-2874

January 28, 2015

John M. Barnett III
144 E 5th St
Jacksonville, FL 32206-4530

Re: Incomm-Inc
Case 12-CA-141723

Dear Mr. Barnett:

We have carefully investigated and considered your charge that Incomm-Inc. (the Employer) has violated the National Labor Relations Act (the Act).

Decision to Dismiss: I have concluded that further proceedings are not warranted with regard to your charge which alleges that on or about July 1, 2014, the Employer discharged you because you engaged in protected concerted activities, in violation of Section 8(a)(1) of the Act.

The investigation revealed that in December 2013, you started working for the Employer's Jacksonville, Florida call center as a customer service representative through an employment agency. Your regular hours were from 8:00 a.m. to 5:00 p.m., Fridays through Tuesdays with regular days off on Wednesdays and Thursdays. You allege that on July 1, 2014, the Employer terminated your employment because you engaged in protected concerted activity.

You contend that during your employment you engaged in union activity – however there is no evidence that the Employer had knowledge of these activities nor is there any evidence to suggest that the Employer harbored animus toward any claimed union activity.

The evidence presented during the investigation was insufficient to establish that you engaged in protected concerted activity. Furthermore, even if you were engaged in protected concerted activity or union activity, the investigation failed to reveal evidence establishing that the Employer harbored animus toward such activity. In fact, in response to a letter you individually sent to the Employer related to the uniform Guidelines for Employee Selection Procedure, the Employer assured you that you would not be subjected to retaliation and encouraged you to report any suspected retaliation.

The investigation further disclosed that in June 2014, you were informed that you were required to bid for a new shift, but you refused to do so. On June 30, 2014, during a meeting with the Employer, you were again advised that you were required to bid for a shift, but you again declined to do so. The meeting ended when you were told that the discussion regarding shift bids would continue the following day. The evidence shows that on July 1, 2014, you did not report to work and instead you left a message for your supervisor stating that you could not report to work because you had to prepare a response to the bid issue. Shortly thereafter, you

received a telephone call from a supervisor of the employment agency who referred you to the Employer notifying you that the Employer was upset because you had not submitted a bid as requested. You informed the employment agency that you considered yourself terminated because the Employer was upset that you had not submitted a bid. The mere fact that you were informed that the Employer was upset because you had not submitted a bid, is insufficient to establish that you were constructively discharged. Instead, the evidence shows that you voluntarily terminated your employment with the Employer.

Accordingly, based on the totality of the evidence, there is insufficient evidence to establish that the Employer discharged you in retaliation for any protected concerted activity, in violation of Section 8(a)(1) of the Act, as alleged in the charge, and I am, therefore, refusing to issue complaint in this matter.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlr.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

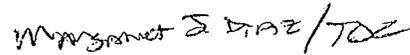
Appeal Due Date: The appeal is due on **February 11, 2015**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than February 10, 2015. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before February 11, 2015**. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after February 11, 2015, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an

appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



Margaret J. Diaz
Regional Director

i.t.

Enclosure

cc: Tiffani Casey, Esq.
1075 Peachtree St NE Ste 3500
Atlanta, GA 30309-3900

James M. Walters, Esq.
Fisher & Phillips LLP
1075 Peachtree St., Ne
Suite 3500
Atlanta, GA 30309-3900

Incomm-Inc.
250 Williams St NW
5th Floor
Atlanta, GA 30303-1002

ATTACHMENT C

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

INTERACTIVE COMMUNICATIONS
INTERNATIONAL, INC., d/b/a INCOMM

and

Case 12-CA-155362

KARINA NILDA RODRIGUEZ

**GENERAL COUNSEL'S PETITION TO PARTIALLY REVOKE
RESPONDENT'S SUBPOENA DUCES TECUM TO KARINA NILDA RODRIGUEZ**

Counsel for the General Counsel respectfully files this Petition to Partially Revoke Subpoena Duces Tecum B-1-P1UM3P (the Subpoena), which was served on Karina Nilda Rodriguez, (Rodriguez), by an agent of Interactive Communications International, Inc., d/b/a InComm (Respondent) on January 5, 2016. The Subpoena requires Rodriguez, an unrepresented party in this proceeding, to appear before an Administrative Law Judge on January 13, 2016, and produce certain documents. This Petition seeks the revocation of Paragraphs 2 and 3 of the "Documents to be Produced" section of the Subpoena ("Paragraph 2" and "Paragraph 3," respectively) because they seek the production of documents and records that are wholly irrelevant to the matters at issue in this case. A copy of the Subpoena is attached hereto as Exhibit A.

Background

The Complaint, issued on October 29, 2015,¹ alleges that on or about June 24, 2015, Respondent's agent and supervisor Patricia Kitler (Kitler) prohibited employees from complaining to management about hours of work and other terms and conditions of employment

¹ The Complaint was amended on December 22, 2015, to clarify facts relating to the Board's jurisdiction over Respondent.

on behalf of other employees, and directed employees to make complaints about hours of work and other terms and conditions of employment only to supervisors, in violation of Section 8(a)(1) of the Act. The Complaint further alleges that the next day, on or about June 25, 2015, Respondent's agent and supervisor Klea Jackson (Jackson) prohibited employees from talking to their coworkers about their working conditions on company property, and threatened employees with discharge if they talked to their coworkers on company property, also in violation of Section 8(a)(1) of the Act.²

Basis for Revoking Subpoena Paragraphs 2 and 3

The Board's Rules and Regulations specify that a subpoena may be revoked if the evidence it is seeking to produce does not relate to any matter under investigation, if the subpoena has not described with sufficient particularity the evidence that is sought, or if the subpoena is invalid for any other reason under the law. Board's Rules and Regulations §102.31(b). Subpoenaed information need only be produced if it relates to a matter in question, can provide background information, or may lead to potentially relevant evidence. *Perdue Farms*, 323 NLRB 345, 348 (1997), *affd.* in relevant part 144 F.3d 830 (D.C. Cir. 1998). A subpoena should not be enforced if it is "plainly incompetent or irrelevant to any lawful purpose." *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501 (1943).

The documents sought in Respondent's Paragraphs 2 and 3 are plainly irrelevant because they have no possible bearing on whether Kitler and Jackson made the alleged unlawful statements, and are not calculated to point to other relevant evidence. Specifically, Paragraph 2 seeks all documents and correspondence between Rodriguez and a former contract employee of

² The General Counsel is not seeking to revoke Paragraph 1 of the Subpoena, which seeks the production of posters that Rodriguez hung on bulletin boards in the employee break room because the hanging of the posters led to the alleged violations of the Act. However, Counsel for the General Counsel notes that whether the act of hanging the posters was protected concerted activity is irrelevant to the matters raised by the Complaint. The only matter to be determined at the hearing is whether Kitler and Jackson made statements to employees that violated the Act.

Respondent, John M. Barnett III (Barnett), since June 23, 2014, related either to the 2014 and 2015 annual shift bids, or to the NLRB charge filed by Barnett against Respondent in Case 12-CA-141723. Barnett separated from employment nearly a year prior to the events in question in the instant matter, and his unrelated case, alleging separate events from those at issue here, has been closed since January 28, 2015.³ Paragraph 3 seeks all documentation related to income earned by Rodriguez from sources other than Respondent since July 1, 2015, even though no backpay is at issue in this matter. The documents sought in Paragraphs 2 and 3 will not shed any light on whether or not Kitler and Jackson made the statements attributed to them in the Complaint and are wholly irrelevant to the matters in issue.⁴ Furthermore, the documents sought in Paragraphs 2 and 3 will not lead to potentially relevant evidence.

In sum, Respondent's requests are clearly irrelevant to the litigation at hand, having no relation to either the Complaint allegations or any of Respondent's asserted defenses,⁵ and cannot be shown to have any potential to lead to further documents that may illuminate the sole issue: what Kitler and Jackson said to Rodriguez in June 2015. For the reasons set forth above, Counsel for the General Counsel respectfully requests that Paragraphs 2 and 3 of Subpoena Duces Tecum No. B-1-P1UM3P, served on Karina Nilda Rodriguez by Respondent, be revoked.

³ Barnett's charge alleged that he was constructively discharged by Respondent on July 1, 2014 because he engaged in protected, concerted activities. The Region dismissed the charge on January 28, 2015. Barnett did not appeal.

⁴ Moreover, even if there was a potential backpay remedy here, an alleged discriminatee's mitigation efforts are irrelevant in litigation on the merits of an alleged unlawful employment action, such as a discharge, because litigation about the amount of backpay owed is reserved for compliance proceedings.

⁵ Respondent asserts as part of its affirmative defenses that Rodriguez did not engage in protected concerted activity. As stated above, the Complaint does not allege that Rodriguez engaged in protected concerted activity and whether Rodriguez did or did not engage in protected concerted activity is not relevant to determining if Respondent violated the Act as alleged in the Complaint.

DATED at Tampa, Florida, this 7th day of January, 2016.

Respectfully submitted,

/s/Caroline Leonard

Caroline Leonard, Esq.

Counsel for the General Counsel

National Labor Relations Board, Region 12

201 E. Kennedy Blvd., Suite 530

Tampa, Florida 33602

Telephone No. (813) 228-2662

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document, General Counsel's Petition to Partially Revoke Respondent's Subpoena Duces Tecum to Karina Nilda Rodriguez, was served on January 7, 2016 as follows:

VIA Hand Delivery:

National Labor Relations Board
Margaret J. Diaz, Esq.
Director, Region 12
201 E. Kennedy Blvd., Ste. 530
Tampa, FL 33602

VIA Electronic Mail:

James W. Walters, Esq.
Fisher & Phillips, LLP
1075 Peachtree Street, NE, Suite 3500
Atlanta, Georgia 30309
jwalters@laborlawyers.com

Karina Nilda Rodriguez
11471 Stinger Way
Jacksonville, FL 32223
karinarodriguez@love.com

/s/Caroline Leonard
Caroline Leonard, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, Florida 33602
Telephone No. (813) 228-2662

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Karina Nilda Rodriguez11471 Stinger Way, Jacksonville, FL 32223-7377As requested by James M. Walters, Esq. Counsel for Respondentwhose address is 1075 Peachtree Street, NE, Suite 3500, Atlanta, GA 30309
(Street) (City) (State) (ZIP)YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE An Administrative Law Judge

of the National Labor Relations Board

at City Hall, 117 W. Duval Street, Committee Room Bin the City of Jacksonville, FLon January 13, 2016 at 10:00 a.m. or any adjournedor rescheduled date to testify in Interactive Communications International, Inc. d/b/a InComm
Case 12-CA-155362
(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 stapled attachment to Subpoena B-1-P1UM3P)

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-P1UM3P

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

Issued at Tamp, FloridaDated: November 6, 2015

 A handwritten signature in black ink, appearing to read "Paul H. Ryan".

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.

EXHIBIT A

SUBPOENA DUCES TECUM B-1-P1UM3P
ATTACHMENT

DEFINITIONS AND INSTRUCTIONS

- 1) When used in this subpoena, the word "document" or "documents" means any existing printed, typewritten, handwritten or otherwise recorded material of whatever character, including, but not limited to, electronic mail, text messages, letters, correspondence, memoranda, telegrams, mailgrams, minutes, notes, statements, 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, accounts, accounts receivable records, ledgers, journals, purchase orders, invoices, 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.
- 2) "Respondent" refers to Interactive Communications International, Inc. d/b/a InComm, its officers, agents and representatives, and any predecessor entities.
- 3) "Respondent's facility" refers to Respondent's Call Center located at 8935 Freedom Commerce Parkway, Suite 200, Jacksonville, Florida 32256-8265.
- 4) The word "person" or "persons" means natural persons, corporations, partnerships, sole proprietorships, associations or any other kind of entity.
- 5) "Charging Party" means Karina Nilda Rodriguez.
- 6) "Annual Shift Bid" refers to process and protocol for the annual assigning/reassigning of weekly scheduled work shifts to Call Center Employees working at Respondent's facility.
- 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; references to parties shall be deemed to include any and all of their officers, agents and representatives; 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 each of the words "each," "any," "every," and "all" shall be deemed to include each of the other words.

- 8) Copies 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.
- 9) Documents subpoenaed shall include all documents in the Charging Party's physical possession, custody, or control, and all documents in the physical possession, custody, or control of the Charging Party's present or former supervisors, agents, attorneys, accountants, advisors, and any other persons and companies directly or indirectly connected with, Charging Party.
- 10) This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- 11) 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.
- 12) If any document responsive to any request herein was, but no longer is, in the Charging Party's possession, custody, or control, identify the document; explain the circumstances by which the document ceased to be in the Charging Party'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.
- 13) 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, discarding, 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.
- 14) "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. Production of ESI should be as searchable and sortable as it would be for Charging Party in the ordinary course of usage.

DOCUMENTS TO BE PRODUCED

1. Originals (or, if they no longer exist, copies) of the three (3) poster board notices, each measuring approximately 22" x 28" and in colors of green, pink and orange,

which Charging Party affixed to the bulletin boards and walls of the Break Room of Respondent's facility in June 2015.

2. All documents and correspondence (including emails or texts) between Charging Party and former Respondent contract employee John M. Barnett, III between June 23, 2014 and the present, and related to either (1) the 2014 and 2015 Annual Shift Bids, or (2) the NLRB charge filed by Barnett in Case No. 12-CA-141723.
3. All documentation related to income earned by Charging Party (from sources other than Respondent) during the period from July 1, 2015 to the present.

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Karina Nilda Rodriguez11471 Stinger Way, Jacksonville, FL 32223-7377As requested by James M. Walters, Esq. Counsel for Respondentwhose address is 1075 Peachtree Street, NE, Suite 3500, Atlanta, GA 30309
(Street) (City) (State) (ZIP)YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE An Administrative Law Judge
of the National Labor Relations Boardat City Hall, 117 W. Duval Street, Committee Room Bin the City of Jacksonville, FLon January 13, 2016 at 10:00 a.m. or any adjournedor rescheduled date to testify in Interactive Communications International, Inc. d/b/a InComm
Case 12-CA-155362
(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 stapled attachment to Subpoena B-1-P1UM3P)

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.

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

B-1-P1UM3PIssued at Tamp, FloridaDated: November 6, 2015

 A handwritten signature in blue ink, 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.

EXHIBIT A

SUBPOENA DUCES TECUM B-1-P1UM3P
ATTACHMENT

DEFINITIONS AND INSTRUCTIONS

- 1) When used in this subpoena, the word "document" or "documents" means any existing printed, typewritten, handwritten or otherwise recorded material of whatever character, including, but not limited to, electronic mail, text messages, letters, correspondence, memoranda, telegrams, mailgrams, minutes, notes, statements, agreements, summaries, records of telephone conversations, telephone bills, recordations 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, accounts, accounts receivable records, ledgers, journals, purchase orders, invoices, 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.
- 2) "Respondent" refers to Interactive Communications International, Inc. d/b/a InComm, its officers, agents and representatives, and any predecessor entities.
- 3) "Respondent's facility" refers to Respondent's Call Center located at 8935 Freedom Commerce Parkway, Suite 200, Jacksonville, Florida 32256-8265.
- 4) The word "person" or "persons" means natural persons, corporations, partnerships, sole proprietorships, associations or any other kind of entity.
- 5) "Charging Party" means Karina Nilda Rodriguez.
- 6) "Annual Shift Bid" refers to process and protocol for the annual assigning/reassigning of weekly scheduled work shifts to Call Center Employees working at Respondent's facility.
- 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; references to parties shall be deemed to include any and all of their officers, agents and representatives; 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 each of the words "each," "any," "every," and "all" shall be deemed to include each of the other words.

- 8) Copies 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.
- 9) Documents subpoenaed shall include all documents in the Charging Party's physical possession, custody, or control, and all documents in the physical possession, custody, or control of the Charging Party's present or former supervisors, agents, attorneys, accountants, advisors, and any other persons and companies directly or indirectly connected with, Charging Party.
- 10) This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- 11) 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.
- 12) If any document responsive to any request herein was, but no longer is, in the Charging Party's possession, custody, or control, identify the document; explain the circumstances by which the document ceased to be in the Charging Party'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.
- 13) 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, discarding, 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.
- 14) "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. Production of ESI should be as searchable and sortable as it would be for Charging Party in the ordinary course of usage.

DOCUMENTS TO BE PRODUCED

1. Originals (or, if they no longer exist, copies) of the three (3) poster board notices, each measuring approximately 22" x 28" and in colors of green, pink and orange,

which Charging Party affixed to the bulletin boards and walls of the Break Room of Respondent's facility in June 2015.

2. All documents and correspondence (including emails or texts) between Charging Party and former Respondent contract employee John M. Barnett, III between June 23, 2014 and the present, and related to either (1) the 2014 and 2015 Annual Shift Bids, or (2) the NLRB charge filed by Barnett in Case No. 12-CA-141723.
3. All documentation related to income earned by Charging Party (from sources other than Respondent) during the period from July 1, 2015 to the present.