

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

**TRUMP RUFFIN COMMERCIAL, LLC, d/b/a
TRUMP INTERNATIONAL HOTEL LAS VEGAS**

and

**Cases 28-CA-161672
28-CA-166450**

**LOCAL JOINT EXECUTIVE BOARD OF
LAS VEGAS, affiliated with UNITE HERE
INTERNATIONAL UNION**

**ORDER GRANTING IN PART AND DENYING IN PART MOTIONS TO REVOKE
SUBPOENAS DUCES TECUM**

On March 2, 2016, the Regional Director for Region 28 of the Board issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in the above-captioned matter, and the Respondent filed a timely Answer to said complaint. Thereafter, the parties issued and served various subpoenas to the above-named entities or other entities or individuals, and the subpoenaed entities and/or individuals filed petitions to revoke said subpoenas, to wit:

- On April 5, Respondent filed a petition to revoke subpoena Duces Tecum No. B-1-R0692H issued by the General Counsel;
- On April 5, 2016, Cruz and Associates filed a petition to revoke subpoena Duces Tecum No. B-1-R07AMF issued by the General Counsel;
- On April 22, 2016 the General Counsel filed a petition to revoke in part subpoena Duces Tecum B-1-QYIQRF issued by the Respondent;
- On April 22, 2016, the Charging Party filed a petition to revoke subpoenas Duces Tecum Nos. B-1-QYJ0HP and B-1-QYIQRF issued by the Respondent;
- On May 19, 2016, the Charging Party filed a petition to revoke subpoena Duces Tecum No. B-1-QYITNV issued by the Respondent.

I will discuss the above motions in the order they appear above, but first I will discuss the legal framework regarding the basis for granting or denying motions to revoke subpoenas.

The Board is authorized under Section 11(1) of the National Labor Relations Act to subpoena "any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question." *NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 113 (5th Cir. 1982). Section 11(1) of the Act specifically provides that the Board shall revoke a subpoena only:

...if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Subpoenaed information must be produced if the information sought is "not plainly incompetent or irrelevant to any lawful purpose." *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943).

In this regard, I note that the Board and the courts have interpreted the concept of relevance, for subpoena purposes, quite broadly. Thus, subpoenaed information should be produced if it relates to any matter in question, or if it can provide background information or lead to other evidence potentially relevant to an allegation in the complaint. Board Rules, Section 102.31(b); *Perdue Farms*, 323 NLRB 345, 348 (1997), *affd.* in relevant part 144 F.3d 830, 833-834 (D.C. Cir. 1998) (the information needs to be only "reasonably relevant").

Although the General Counsel's authority to subpoena information is expansive, it is not unlimited, and a valid nexus must exist between the issues raised by the pleadings and the items sought by the subpoena. Additionally, I must give proper consideration to issues of privacy and confidentiality, particularly if the potential relevance of subpoenaed items is only marginal. Moreover, even if the sought-after evidence may arguably be relevant, I must also take into consideration, pursuant to the Federal Rules of Evidence (FRE) Section 403, whether the evidence's probative value may be outweighed by the danger that such evidence may cause unfair prejudice, undue delay, confuse the issues, or be cumulative in nature and ultimately burden the record and thus delay the hearing. These general principles apply not only to the subpoenas issued by the General Counsel, but also to the subpoenas issued by the other parties to the case. Keeping these principles in mind, I will address the various subpoenas and motions to revoke these.

1. Subpoena Duces Tecum No. B-1-R0692H issued by the General Counsel to Respondent

The General Counsel issued the above subpoena on or about March 29, 2016, and Respondent filed a timely motion to revoke on various grounds on April 5, 2016. The return date of the subpoena was the original trial date of April 12, 2016, which was subsequently postponed to June 14, 2016. The General Counsel's subpoena enumerates 54 paragraphs describing items or documents sought, some containing various subsections, as described below.

At the outset, I must express my significant skepticism, if not shock, about the need for such an extensive and all-encompassing subpoena in light of the limited scope of the allegations of the complaint. The complaint alleges that Respondent violated Section 8(a)(1) of the Act by making two (2) coercive statements, through an alleged labor consultant agent, Cruz and Associates ("Cruz"), whom Respondent had apparently retained as part of the representation election campaign, at a single meeting with employees that occurred on or about November 2015. The complaint further alleges that Respondent violated Section 8(a)(1) and (3) of the Act by reducing the number of hours worked by on-call employee Michael Marcus, resulting in his constructive discharge, and by refusing to grant employee Alma Zamarin's request for a transfer to a full-time position. That is it; there are no additional substantive allegations. In its answer, Respondent denied the substantive allegations of the complaint described above, as well as the Section 2(13) agency status of Cruz. Respondent also denied the Section 2(11) supervisory status—only for certain time periods—of some individuals alleged as supervisors in the

complaint.¹ With this background, I will now list the 54 enumerated paragraphs or items contained in the General Counsel's subpoena:

1. Documents as will show all job titles and/or positions held by Stella Maemoto, Josh Kutcher, and Sydney Jones with Respondent and the dates during which they held each job title and/or position.
2. Copies of any LM-10 reports filed by the Respondent with the United States Department of Labor.
3. Documents, including, but not limited to, contracts and agreements, between Juan Cruz and Respondent, that will show the scope of services to be provided by Juan Cruz for Respondent and/or the scope of Juan Cruz's authority to act on behalf of Respondent.
4. Documents, including, but not limited to, contracts and agreements, between Cruz & Associates and Respondent, that will show the scope of services to be provided by Cruz & Associates and/or Juan Cruz for Respondent and/or the scope of the authority of Cruz & Associates and/or Juan Cruz to act on behalf of Respondent.
5. Documents, including but not limited to, memoranda, letters, emails, text messages, notes, minutes, and agendas, as will show what was discussed and by whom, and any information otherwise gathered or disseminated, during meetings, conversations, and/or other communications between Juan Cruz and Respondent, and/or between Cruz & Associates and Respondent, regarding any of the following:
 - a. the scope of services to be provided by Juan Cruz for Respondent;
 - b. the scope of the authority of Juan Cruz to act on behalf of Respondent;
 - c. presentations by Juan Cruz to employees of Respondent; and/or
 - d. meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent.
6. Documents, including, but not limited to, memoranda, letters, emails, text messages, and notes, showing communications between Juan Cruz and Respondent, and/or between Cruz & Associates and Respondent, regarding any of the following:
 - a. the scope of services to be provided by Juan Cruz for Respondent;
 - b. the scope of the authority of Juan Cruz to act on behalf of Respondent;
 - c. presentations by Juan Cruz to employees of Respondent; and/or
 - d. meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent.
7. For the period of October 1 through December 31, 2015, documents, including, but not limited to, memoranda, notes, and video tapes, mentioning, describing, recording, documenting, and/or memorializing what happened and/or what was said during:

¹ In light of this, the breadth of the subpoena tends to lend credibility to Respondent's argument that the General Counsel may be in a "fishing expedition," which is simply not a valid purpose for a trial subpoena.

- a. presentations by Juan Cruz to employees of Respondent; and/or
- b. meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent.

8. For the period from October 1 through December 31, 2015, documents, including, but not limited to, outlines, scripts, and notes, used by Juan Cruz for conducting and/or preparing for any of the following:

- a. presentations by Juan Cruz to employees of Respondent; and/or
- b. meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent.

9. Documents disseminated to Respondent's employees during presentations by Juan Cruz to employees of Respondent and/or meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent during the period from October 1 through December 31, 2015.

10. Documents, including, but not limited to, rosters, attendance sheets, and sign-in sheets, documenting which employees of Respondent attended presentations by Juan Cruz to employees of Respondent and/or meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent during the period from October 1 through December 31, 2015.

11. Documents, including, but not limited to, correspondence and emails, as will show any instance, including the date(s), time(s), where a labor relations consultant(s), advisor(s), specialist(s), or persuader(s), visited Respondent's facility.

12. Documents, including, but not limited to, contracts or agreements, as will show the names, addresses, and contact information for any consultants, advisors, specialists, or persuaders, which Respondent has hired, used, or relied upon in any way, to assist Respondent to present its views to employees or to otherwise advise Respondent with respect to the Union's organizing drive.

13. Documents, including, but not limited to, memoranda, letters, emails, text messages, notes, minutes, and agendas, as will show what was discussed, what was said and by whom, and any information otherwise disseminated during all meetings, correspondence, or communications between Respondent and any entity or individual, in which the topic of unions or the Union's organizing drive was referenced or discussed.

14. Documents, including, but not limited to, memoranda, letters, emails, text messages, notes, minutes, and agendas, as will show what was discussed, what was said and by whom, and any information otherwise disseminated during all meetings, correspondence, or communications between Respondent and any Labor Relations Institute, in which the topic of unions or the Union's organizing drive was referenced or discussed.

15. Documents, including, but not limited to, memoranda, letters, emails, text messages, notes, minutes, and agendas, as will show what was discussed, what was said and by whom, and any information otherwise disseminated during all meetings, correspondence, or communications between or among Respondent's officers, supervisors, and/or agents which the topic of unions or the Union's organizing drive was referenced or discussed.

16. Documents, including, but not limited to, emails, text messages, notes, meeting minutes, and investigative reports, if any, as will show what was discussed, what was said and by whom, and dates of conversations, on the topics of (a) unions, (b) unionization, (c) the Union representation petition, (d) the Union organizing drive, and (e) employees' complaints to management about their pay rates and wages.

17. Documents as will show any communications or correspondence from or between Respondent and any third party regarding or referencing union or unionization at Respondent's facility.

18. Documents, including, but not limited to, correspondence, fliers, notices, letters, and memoranda, as will show any communications or correspondence between or among Respondent and employees regarding or referencing unions, the Union's organizing drive, or unionization.

19. Documents, including, but not limited to, memoranda, letters, notes, e-mails, and text messages, related to knowledge and/or suspicion of union activities and/or support by Marisela Olvera, Michael Campus and/or Alma Zamarin.

20. Documents, including, but not limited to, lists and notes, documenting Respondent's knowledge and/or suspicions concerning employees' union activities, employees' union sentiments, and/or the likelihood that employees would vote for union representation.

21. Documents, including, but not limited to, memoranda, letters, emails, text messages, notes, minutes, and agendas, as will show what was discussed and by whom, and any information otherwise gathered or disseminated, during meetings, conversations, and/or other communications between or among supervisors and/or agents of Respondent at which employees' union activities, employees' union sentiments, and/or the likelihood that employees would vote for union representation were mentioned and/or discussed.

22. Documents, including, but not limited to, memoranda, letters, emails, text messages, notes, minutes, and agendas, as will show what was discussed and by whom, and any information otherwise gathered or disseminated, during training sessions, meetings, conversations, and/or other communications between Cruz & Associates and/or Juan Cruz and Respondent during the period from June 1, 2015, to June 30, 2015.

23. Documents, including, but not limited to, job descriptions, appraisals, bulletins and memoranda, showing the job title, general and specific duties, authority, responsibilities, wages, hourly wage rates or salary, fringe benefits and work schedules of Marisela

Olvera, Michael Campus, and Alma Zamarin, including any changes or amendments thereto, and the dates of such changes.

24. Documents, including, but not limited to, the complete personnel file of Marisela Olvera, Michael Campus, and Alma Zamarin, as will show their date of application, hire, termination, promotions, demotions, suspensions, performance evaluations, job titles, job duties, job assignments, discipline history, and written memorializations of verbal disciplinary actions by Respondent.

25. Documents, including, but not limited to, applications, requests for transfer, and/or requests for promotion, showing Marisela Olvera's request for a transfer and/or promotion to an inspector position in Respondent's Housekeeping Department.

26. Documents, including, but not limited to, applications, requests for transfer, and/or requests for promotion, showing communications between or among supervisors and/or agents of Respondent related to Marisela Olvera's request for a transfer and/or a promotion to an inspector position in Respondent's Housekeeping Department.

27. Documents, including, but not limited to, memoranda, letters, emails, text messages, and notes, showing communications between or among supervisors and/or agents of Respondent related to the work schedule and/or hours of work of Michael Campus.

28. Documents as will show the names, job titles, status (full-time, part-time, or on-call), dates of employment, and seniority status of all employees in Respondent's In Suite Dining Department.

29. Documents showing the work schedules of employees in Respondent's In Suite Dining Department.

30. Documents showing the work schedule of Michael Campus for the duration of his employment with Respondent.

31. Documents showing the amount paid to Michael Campus by Respondent during each pay period for the duration of his employment with Respondent.

32. Documents, including, but not limited to, letters, emails, text messages, notes, related to the resignation of Michael Campus.

33. Documents showing all written communications and/or written statements prepared by Sydney Jones during the period from January 1, 2012, to the return date of this subpoena.

34. Documents, including, but not limited to, letters, emails, text messages, notes, showing and/or documenting communications between Sydney Jones and Respondent related to sales in the In Suite Dining Department, staffing in Respondent's In Suite

Dining Department, hours worked by employees in Respondent's In Suite Dining Department, and/or Michael Campus.

35. Documents, including, but not limited to, letters, emails, text messages, notes, showing and/or documenting communications between Sydney Jones and Juan Cruz and/or Cruz & Associates.

36. Documents, including, but not limited to, Avero Slingshot reports, as will show the following information for each pay period for Respondent's In Suite Dining Department:

- a. total number of employees who performed work;
- b. total number of hours cumulatively worked by all employees;
- c. total number of overtime hours cumulatively worked by all employees;
- d. total number of hours cumulatively worked by on-call employees;
- e. number of hours worked by each on-call employee;
- f. total number of items sold;
- g. average number of items sold each hour; and
- h. total amount of revenue generated.

37. Documents as will show the occupancy rate at Respondent's facility during each pay period.

38. Documents, including, but not limited to, memoranda and/or notices to employees, related to business demands and/or staffing levels in Respondent's In Suite Dining Department and/or approval of requests for time off for employees in Respondent's In Suite Dining Department.

39. Documents, including, but not limited to, memoranda, letters, emails, text messages, and notes, showing communications between or among Respondent's supervisors and/or agents related to business demands and/or staffing levels in Respondent's In Suite Dining Department and/or approval of requests for time off for employees in Respondent's In Suite Dining Department.

40. For the period from October 1, 2015, to the return date of this subpoena, documents, including, but not limited to, memoranda, letters, emails, text messages, and notes, showing and/or documenting communications between or among supervisors and/or agents of Respondent related to any of the following subjects:

- a. the posting of server positions at DJT;
- b. the decision to post server positions at DJT;
- c. the consideration of whether to post server positions at DJT;
- d. applicants for server positions at DJT;
- e. applications for server positions at DJT;
- f. the hire, promotion, and/or transfer of employees to fill server positions at DJT;
- g. interviews of employees for server positions at DJT;
- h. the decision to place postings for server positions at DJT on hold;

- i. the consideration of whether to place the posting for server positions at DJT on hold;
- j. the application of Alma Zamarin for a server position at DJT;
- k. the interview of Alma Zamarin for a server position at DJT;
- l. the decision not to transfer Alma Zamarin to a server position at DJT; and/or
- m. the consideration of whether to transfer Alma Zamarin to a server position at DJT.

41. Documents as will show and/or refer to who made the decisions to not transfer Alma Zamarin to a server position at DJT who had input into this decision, and what was said and by whom among Respondent's managers, supervisors, agents, employees, or other individuals regarding this decision, either before or after the failure to transfer occurred.

42. Documents, including, but not limited to, applications, and requests for transfer, showing Alma Zamarin's request for a transfer to a server position at DJT.

43. For the period from October 1, 2015, to the return date of this subpoena, documents, including, but not limited to, applications and/or requests for transfer, showing applications for, and/or requests for transfers to, server position at DJT.

44. For the period from October 1, 2015, to the return date of this subpoena, resumes, cover letters, and other materials submitted in support of applications, and/or requests for transfer to, server positions at DJT.

45. Documents showing the names, dates of employment, and positions held by individuals hired to work in server positions at DJT during the period from October 1, 2015, to the return date of this subpoena.

46. Documents, including, but not limited to, job descriptions, appraisals, bulletins and memoranda, showing the job title, general and specific duties, authority, responsibilities, wages, hourly wage rates or salary, fringe benefits and work schedules of all employees hired to work in server positions at DJT during the period from October 1, 2015, to the return date of this subpoena, including any changes or amendments thereto, and the dates of such changes.

47. Documents, including, but not limited to, the complete personnel file of all employees hired to work in server positions at DJT during the period from October 1, 2015, to the return date of this subpoena, as will show their date of application, hire, termination, promotions, demotions, suspensions, performance evaluations, job titles, job duties, job assignments, discipline history, and written memorializations of verbal disciplinary actions by Respondent.

48. For the period from October 1, 2015, to the return date of this subpoena, documents, including, but not limited to, memoranda, letters, emails, text messages, and notes, showing and/or documenting communications between Alma Zamarin and Respondent

related to her request for a transfer to a server position at DJT; her interview for such a position; and/or the decision not to grant her a transfer to such a position.

49. For the period from October 1, 2015, to the return date of this subpoena, personnel requisition forms for server positions at DJT.

50. Documents related to the placement of the posting of positions at Respondent's facility on hold after the issuance and/or approval of personnel requisition forms for such positions.

51. Documents, including, but not limited to, Avero Slingshot reports, as will show the following information for each pay period for DJT

- a. total number of employees who performed work;
- b. total number of hours cumulatively worked by all employees;
- c. total number of overtime hours cumulatively worked by all employees;
- d. total number of hours cumulatively worked by on-call employees;
- e. total number of items sold;
- f. average number of items sold each hour; and
- g. total amount of revenue generated.

52. For the period from October 1, 2015, to the return date of this subpoena, documents, including, but not limited to, Avero Slingshot reports, relied upon in considering whether to, and/or deciding, to post server positions at DJT and/or place postings for server positions at DJT on hold.

53. Documents as will show Respondent's policies and/or procedures relating to Respondent's employees, employee's skills and abilities, certification requirements, job performance, discipline, and violations or non-compliance of any such policies, including but not limited to copies of Respondent's employee handbook(s) and personnel reference manual(s).

54. Documents as will show the Respondent's rules, regulations, guidelines, policies and/or procedures specifically relating to the following:

- a. scheduling;
- b. staffing;
- c. layoffs;
- d. transfers;
- e. posting of positions; and
- f. placing posted positions on hold.

In its Response to Respondent's motion to revoke subpoena, the General Counsel indicates that Respondent has agreed to stipulate to the Section 2(13) agency status of Cruz for the purpose of acting as a consultant for Respondent and communicating with employees of Respondent on its behalf. Accordingly, the General Counsel withdrew paragraphs 2, 3, 4, 5a, 5b,

6a, 6b, and 12. I will address the remaining items, to the extent Respondent has moved to revoke them.

With regard to paragraphs 5c, 5d, 6c and 6d of the subpoena, I grant Respondent's motion to revoke to the extent the requested documents relate to any matters other than the Cruz's involvement in the November 2015 meeting with employees, as alleged in paragraph 5 of the complaint. Simply put, Cruz's participation in any other meetings or matters other than the November 2015 meeting with employees is outside the scope of the complaint and not relevant.

With regard to paragraphs 7, 8, 9 and 10 of the subpoena, I deny Respondent's motion to revoke, as the documents or items requested pertain and are relevant to the issues raised in the complaint. With regard to paragraph 11, I grant Respondent's motion to the extent said paragraph refers to any meetings or visits other than the November 2015 meeting as alleged in paragraph 5 of the complaint. I would note, however, that this request would appear duplicative and thus redundant in light of the items previously requested.

With regard to paragraphs 13, 14, 15, 16, 17, and 18 of the subpoena, I grant Respondent's motion to revoke. While the General Counsel's objective in seeking these documents is not completely clear, it appears, based on its response to Respondent's motion, that it seeks evidence of animus by showing that Respondent and its consultant(s) conducted an "anti-union campaign" in the months preceding the events alleged in the complaint.² This is an invalid use by the General Counsel of its trial subpoena power for two reasons. First, we must presume that the General Counsel had sufficient and even significant evidence of animus *before* it issued complaint in this matter, otherwise a crucial and indispensable element of its prima facie case in the alleged Section 8(a)(3) violations would be missing, arguably depriving the General Counsel of its authority to issue complaint on this issue in the first place.³ It is well established that evidence of animus is normally derived through the public statements and/or conduct of the employer, and can also be inferred by other means, such as the timing of events. The General Counsel need not, and should not, resort to subpoenaing what would likely amount to thousands of internal communications regarding discussions about the topic of "unions" in the hope of finding evidence of something it already has—or should have.⁴ Second, there is a valid argument to be made that the internal discussions and deliberations by employers—as well as unions—regarding their strategies and tactics during an election campaign, as in the case of negotiations, should be kept private and confidential, except under extraordinary or unusual circumstances.⁵ The General Counsel should think carefully about opening this Pandora's Box, lest unions' campaign records be equally in play for employers to seek should this door be opened. Moreover an employer's "anti-union" views and campaign tactics are protected by Section 8(c) of the Act, not to mention the First Amendment, unless these views are expressed in a coercive or threatening manner. Private and confidential communications between managers

² According to the General Counsel's brief, an election was conducted a while back in which the union prevailed, and the union's certification as representative of Respondent's employees, is pending before the Board based on the Respondent's objections.

³ I would also note that animus is not necessary or relevant in establishing Section 8(a)(1) violations.

⁴ Indeed, the General Counsel, even with additional help, would likely be overwhelmed by the production of this large volume of documents (as also requested in other parts of the subpoena), which it would not be able to review in the space of 2-4 days, let alone a few hours. This would likely result in its request to delay or postpone the proceedings. I conclude such delay would be unnecessary and improper in these circumstances.

⁵ See, e.g., *Berbiglia, Inc.*, 233 NLRB 1476 (1977) and its progeny.

and or agents of employers in this context cannot by definition be coercive or threatening, and thus Section 8(c)—which states such statements or views “shall not constitute *or be* evidence of an unfair labor practice” --would appear to preclude the General Counsel from using these statements as evidence of animus, since animus is an essential element in establishing a violation of Section 8(a)(3). In sum, these paragraphs of the subpoena overreach and are overly broad, and I thus grant Respondent’s motion to revoke.

Regarding subpoena paragraph 19, I deny Respondent’s motion except as to documents related to Marisela Orvela, who is not alleged in the complaint. It appears, based on the General Counsel’s arguments, that Olvera was one of the recipients—or witnesses—to the alleged coercive conduct by Cruz alleged in paragraph 5 of the complaint. Respondent’s knowledge of Olvera’s union activities or sentiments is therefore irrelevant, since the coercive effect or impact of unlawful statements have nothing to do with, and is independent of, an employee’s union sentiments.

Regarding paragraphs 20, 21 and 22, I grant Respondent’s motion to revoke, as these requests are overly broad. With regard to 20 and 21, all employees’ sentiments about the union, and Respondent’s knowledge of these sentiments are not at issue in this case. There are only two individuals who the complaint alleges Respondent discriminated against, Campus and Zamarin. While Respondent’s knowledge about their disposition toward the union and Respondent’s disposition toward them for this reason is relevant, the subpoena should have been narrowly drafted to request documents pertaining to, or touching upon, these two individuals and those two issues. In its current form, the request is overly broad, and thus Respondent’s request is granted. Regarding paragraph 22, this request appears to be directed at the campaign strategy discussed between Respondent and Cruz, and is defective for the same reasons discussed above with regard to paragraphs 13 through 18. What occurred during the campaign is not at issue before me, and the General Counsel’s apparent disapproval of Respondent’s campaign stance does not grant it leave to use its subpoena power to obtain information not justified by the pleadings. Accordingly, I grant Respondent’s motion with regard to these paragraphs.

Regarding paragraphs 23 and 24, I deny Respondent’s motion except as to Olvera, for reasons discussed above.

Regarding paragraphs 25 and 26, I grant Respondent’s motion. Inasmuch Olvera is not named in the complaint, the relevance of this request is not apparent. Again, as discussed with regard to paragraph 19, the fact that Olvera may have been the subject or recipient of unlawful comments does not make documents related to her relevant.

With regard to paragraphs 27, 28, 29, 30, 31, and 32, I deny Respondent’s motion. These documents all relate to Campus and are presumptively relevant.

With regard to paragraph 33, I grant Respondent’s motion. While the supervisory status of Sydney Jones may be at issue, a request for all written communications and/or written statements, going back to January 1, 2012, is overly broad. If the supervisory status of Jones is what is sought, a much narrowly drafted request zeroing in on the time period encompassed by the complaint would have been called for. Likewise, if the General Counsel seeks evidence of disparate treatment with regard to Campus, narrower language would have done the trick. As it stands, it is overly broad, and I thus grant Respondent’s motion.

With regard to paragraph 35, I grant Respondent's motion. The purpose of this paragraph appears to be, in accordance with the General Counsel's arguments, the same as in paragraphs 13-18, to seek evidence of animus and campaign tactics. To the extent that it seeks documents pertaining to communications regarding Campus or Zamarin, it should have been drafted in a much narrower fashion. As it stands, it is over broad, and thus I grant Respondent's motion.

With regard to paragraphs 36 through 46, inclusive, I deny Respondent's motion—except as described below. These documents and items appear related to Respondent's economic defense related to the allegations regarding Campus and Zamarin. Having said that, it is impossible to discern the specific or potential relevance of certain of the items requested on paragraph 36. Thus, paragraph 36f, requests "the total number of items sold;" and paragraph 36g request the "average number of items sold *each hour*" (emphasis provided). Quite simply, this is overreaching. I cannot imagine what the General Counsel would or could do with this information, so unless it can show that these specific requests are directly related to a defense raised or likely to be raised by Respondent, I do not see a need for these specific items.

With regard to paragraph 47, the General Counsel has agreed to forgo any information in the employee personnel files that is of a private or confidential nature, such as medical information, social security numbers, and the like. With such limitations and protections in place, I deny Respondent's motion, since the items requested may be relevant to the issue of disparate treatment and Respondent's defense.

With regard to paragraphs 48 through 52, inclusive, I deny Respondent's motion. These documents appear to be relevant to the issue of disparate treatment and Respondent's economic defense.

With regard to paragraph 53 and 54, I grant Respondent's motion. These requests appear to be overly broad, as well as vague and ambiguous. After repeated readings of paragraph 53, I could not readily ascertain what the General Counsel is seeking, or its specific purpose, an experience apparently shared by Respondent. It is not clear, for example, if the General Counsel is seeking job requirements and qualifications for certain positions at issue, which would be appropriate. If so, the General Counsel should have narrowly and specifically drafted its request. Likewise, paragraph 54 suffers from significant vagueness and a breadth that is all-encompassing. Read together, General Counsel might as well have asked for "all your rules and regulations about everything," which would apparently cover what the General Counsel seeks, but would be impermissibly broad—and far beyond what is justified by the relatively narrow scope of the complaint.

2. Subpoena No. B-1-R07AMF issued by the General Counsel to Cruz

The General Counsel issued the above subpoena on or about March 29, 2016 and Cruz timely filed a motion to revoke on April 5, 2016. Thereafter, the General Counsel withdrew paragraphs 1, 2, 3, 4a, 4b, 5a and 5b of its subpoena. The following paragraphs are still at issue:

4. Documents, including but not limited to, memoranda, letters, emails, text messages, notes, minutes, and agendas, as will show what was discussed and by whom, and any information otherwise gathered or disseminated, during meetings, conversations, and/or other communications between Juan Cruz and Respondent, and/or between Cruz & Associates and Respondent, regarding any of the following:

- c. presentations by Juan Cruz to employees of Respondent; and/or
- d. meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent.

5. Documents, including, but not limited to, memoranda, letters, emails, text messages, and notes, showing communications between Juan Cruz and Respondent, and/or between Cruz & Associates and Respondent, regarding any of the following:

- c. presentations by Juan Cruz to employees of Respondent; and/or
- d. meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent.

6. For the period of October 1 through December 31, 2015, documents, including, but not limited to, memoranda, notes, and video tapes, mentioning, describing, recording, documenting, and/or memorializing what happened and/or what was said during:

- a. presentations by Juan Cruz to employees of Respondent; and/or
- b. meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent.

7. For the period from October 1 through December 31, 2015, documents, including, but not limited to, outlines, scripts, and notes, used by Juan Cruz for conducting and/or preparing for any of the following:

- a. presentations by Juan Cruz to employees of Respondent; and/or
- b. meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent.

8. Documents disseminated to Respondent's employees during presentations by Juan Cruz to employees of Respondent and/or meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent during the period from October 1 through December 31, 2015.

9. Documents, including, but not limited to, rosters, attendance sheets, and sign-in sheets, documenting which employees of Respondent attended presentations by Juan Cruz to employees of Respondent and/or meetings, discussions, and/or other communications between Juan Cruz and employees of Respondent during the period from October 1 through December 31, 2015.

10. Documents, including, but not limited to, memoranda, letters, notes, e-mails, and text messages, related to knowledge and/or suspicion of union activities and/or support by Marisela Olvera, Michael Campus and/or Alma Zamarin.

11. Documents, including, but not limited to, memoranda, letters, notes, e-mails, and text messages, showing communications between Cruz & Associates and/or Juan Cruz and Respondent related to Marisela Olvera, Michael Campus and/or Alma Zamarin.

12. Documents, including, but not limited to, lists, charts and notes, documenting knowledge and/or suspicions concerning Respondent's employees' union activities, Respondent's

employees' union sentiments, and/or the likelihood that employees of Respondent would vote for union representation.

13. Documents, including, but not limited to, memoranda, letters, emails, text messages, notes, minutes, and agendas, as will show what was discussed and by whom, and any information otherwise gathered or disseminated, during meetings, conversations, and/or other communications between or among Cruz & Associates and/or Juan Cruz and supervisors and/or agents of Respondent at which employees' union activities, employees' union sentiments, and/or the likelihood that employees would vote for union representation were mentioned and/or discussed.

At the outset, I note that almost all of the above-enumerated subpoena paragraphs are identical to the ones previously discussed with regard to the General Counsel's subpoena to Respondent, and thus my rulings as to these will also be identical, to wit:

With regard to paragraphs 4c and 4d and 5c and 5d, these requests are identical to paragraphs 5c and 5d, and 6c and 6d, respectively, in the previous subpoena. Accordingly, my ruling is the same; the motion is granted to the extent the requested documents pertain to anything other than the November 2015 meeting, which is the subject of paragraph 5 of the complaint.

With regard to paragraphs 7a and 7b, as well as 8a and 8b, these paragraphs are the same as paragraphs 8a and 8b, and 9a and 9b, respectively, in the previously discussed subpoena. I denied Respondent's motion to revoke those paragraphs, and therefore deny Cruz's motion with respect to paragraphs 7a, 7b, 8a, and 8b.

Likewise, paragraph 8 and 9 correspond to paragraphs 9 and 10 in the previously discussed subpoena. I denied the motion to revoke those paragraphs, and therefore deny Cruz's motion to revoke paragraphs 8 and 9.

With regard to paragraph 10, this paragraph is the same as paragraph 19 in the previously discussed subpoena. I denied Respondent's motion to revoke said paragraph, except as it applies to Marisela Orvela. I do the same here; I deny Cruz's motion except as it applies to Orvela, which I grant.

With regard to paragraph 11, this appears to be the only paragraph in this subpoena that does not have a corresponding paragraph in the previously discussed subpoena. For the same reasons that are applicable to paragraph 10 above (and paragraph 19 in the previous subpoena), I deny Cruz's motion except as it applies to Orvela, which I grant.

With regard to paragraphs 12 and 13, they are identical to paragraphs 20 and 21 of the previously discussed subpoena. I granted Respondent's motion to revoke paragraphs 20 and 21, and for the same reasons grant Cruz's motion with respect to paragraphs 12 and 13.

3. Subpoena No. B-1-QYIQRF issued by Respondent to Michael Campus

This subpoena was issued by Respondent to Michael Campus, one of employees whom Respondent allegedly discriminated against, on or about April 1, 2016. Thereafter both the

Charging Party Union and the General Counsel filed motions to revoke. The subpoena seeks the following:

1. Documents, including, but not limited to emails, text messages, notes, correspondence, photographs, or recordings (audio, video, digital, or electronic) in your possession or control regarding the Hotel's alleged reduction of Your hours, Your resignation, and any other allegation contained in the Complaint.
2. Documents, Including, but not limited to, any personnel or employee record in Your possession or control relating to the duration, nature, scope, rate of pay, schedules, or hours worked by You during Your employment with Aria Resort & Casino in Las Vegas, Nevada from March 28, 2014 to the return date of this subpoena.

With regard to the paragraph 1, I deny the Charging Party's and General Counsel's motions, provided, however, that such documents or items in Campus' possession will not need to be made available until Campus has concluded his direct examination by the General Counsel and/or Charging Party during the trial. Moreover, I would note that Respondent is only entitled to evidence in Campus' possession that directly relates to and touches upon matters and issues raised in the complaint, that he may have provided the Charging Party or General Counsel in support of the allegations. In that regard, I would note that Respondent has the right to review any such evidence to determine whether it is consistent with Campus' testimony at trial or evidence provided in his Board affidavit(s). To the extent that there is any dispute as to whether any evidence in Campus' possession is relevant as described above, I will conduct an in camera inspection in order to make such determination.

With regard to paragraph 2, I deny the General Counsel's and Charging Party's motions to revoke. In this regard, I note that Campus' employment by another employer during the time his hours were reduced by Respondent may be relevant to determine, for example, whether he would have been available to work those hours, and also relevant as to whether his resignation was induced by Respondent's conduct (constructive discharge) or was the result of his finding better opportunities elsewhere. I caution, however, that a fine distinction may exist as to whether such evidence would be more relevant to mitigation of damages and thus better suited to a compliance proceeding. Accordingly, I may limit testimony in this regard, and limit the production of evidence pursuant to subpoena to only that information that may be relevant as discussed above. To the extent there is any dispute as to the issue of relevance of particular documents, I will conduct an in camera inspection to make such determination.

4. Subpoena No. B-1-QYJ0HP issued by Respondent to the Charging Party

Respondent issued the above subpoena to the Charging Party on or about April 1, 2016, but not served until April 15, 2016, and the Charging Party filed a motion to revoke on April 22, 2016. The subpoena seeks the following:

1. Documents, including, but not limited to emails, text messages, notes, correspondence, photographs, or recordings (audio, video, digital, or electronic) in the possession or control of the Union, its employees, representatives, and/or agents regarding Alma Zamarin's application for a transfer into a full-time position, the Hotel's alleged failure to transfer her into a full-time position, and any other allegation contained in the Complaint.

2. Documents, including, but not limited to emails, text messages, notes, correspondence, photographs, or recordings (audio, video, digital, or electronic) in the possession or control of the Union, its employees, representatives, and/or agents regarding the Hotel's alleged reduction of Michael Campus' hours, his resignation, and any other allegation contained in the Complaint.

3. Documents, including, but not limited to emails, text messages, notes, correspondence, photographs, or recordings (audio, video, digital, or electronic) in the possession or control of the Union, its employees, representatives, and/or agents regarding any alleged communication, threat, comment, promise, or other statement made by Juan Cruz, Cruz & Associates, or any Cruz & Associates employee to Marisela Olvera or any other Hotel Employee in or around November 2015.

4. Documents, including, but not limited to emails, text messages, notes, correspondence, photographs, or recordings (audio, video, digital, or electronic), applications, requests for transfer, and/or requests for promotion in the possession or control of the Union, its employees, representatives, and/or agents regarding Marisela Olvera's alleged request for a transfer and/or promotion to an inspector position in Respondent's Housekeeping Department.

With regard to paragraphs 1 and 2, I deny the Charging Party's motion, provided, however, that such documents or items in its possession will not need to be made available until Campus and Zamarin have concluded their direct examination by the General Counsel and/or Charging Party during the trial. Moreover, I would note that Respondent is only entitled to evidence in the Charging Party's possession that directly relates to and touches upon matters and issues raised in the complaint, which may have been provided to the Charging Party in support of the allegations. In that regard, I would note that Respondent has the right to review any such evidence to determine whether it is consistent with Campus' and Zamira's testimony at trial or evidence provided in their Board affidavit(s). To the extent that there is any dispute as to whether any evidence in the Charging Party's possession is relevant as described above, I will conduct an in camera inspection in order to make such determination. Further, I find no privilege is applicable, since Respondent's does not seek any communications provided by the Charging Party to its counsel, or prepared by counsel in the course of this matter.

With regard to paragraphs 3 and 4, I grant the Charging party's motion to revoke. I note in this regard that Olvera is not named in the complaint, and thus any matters pertaining to such individual—or any others not named in the complaint—is not relevant and protected by their Section 7 rights. To the extent, however, that Olvera (or any other individual) provides testimony during the course of the trial, such evidence will be relevant and should be provided at the conclusion of such witness testimony during direct examination.

5. Subpoena No. B-1-QYITNV issued by Respondent to Alma Zamarin

The above subpoena was served on Zamarin on or about May 16, 2015, and the Charging Party filed its motion to revoke on May 19, 2016. The subpoena seeks the following.

1. Documents, including, but not limited to emails, text messages, notes, correspondence, photographs, or recordings (audio, video, digital, or electronic) in Your possession or control regarding Your application for a transfer into a full-time server position, the Hotel's alleged failure to transfer You into a full-time position, and any other allegation contained in the Complaint.

With regard to the paragraph 1, I deny the Charging Party's motion, provided, however, that such documents or items in Zamarin's possession will not need to be made available until she has concluded her direct examination by the General Counsel and/or Charging Party during the trial. Moreover, I would note that Respondent is only entitled to evidence in Zamarin's possession that directly relates to and touches upon matters and issues raised in the complaint, that she may have provided the Charging Party or General Counsel in support of the allegations. In that regard, I would note that Respondent has the right to review any such evidence to determine whether it is consistent with Zamarin's testimony at trial or evidence provided in her Board affidavit(s). To the extent that there is any dispute as to whether any evidence in Zamira's possession is relevant as described above, I will conduct an in camera inspection in order to make such determination.

Any additional related matters or issues not covered by this order will be discussed at the opening of the trial on June 14, 2016.

SO ORDERED.

Dated at San Francisco, California, this 9th day of June, 2016.



Ariel L. Sotolongo
Administrative Law Judge

Served by facsimile upon the following:

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