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August 15, 2022

VIA E-MAIL

Lauren.Mcferran@nlrb.gov

Lauren M. McFerran, Chairman
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

VIA E-MAIL

Jennifer.Abruzzo@nlrb.gov

Jennifer A. Abruzzo, General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: *Starbucks Corporation*
Case No. 14-RC-289926, et al and Other Matters

Dear Chairman McFerran and General Counsel Abruzzo:

National Labor Relations Board personnel in NLRB Region 14 and elsewhere have engaged in highly improper, systemic misconduct involving Starbucks and Workers United. This misconduct includes Board agents (1) secretly coordinating with Union agents to arrange for “in-person” voting to take place in NLRB offices during NLRB-ordered “mail-ballot” elections, (2) giving Union agents confidential, non-public, real-time information regarding specific vote counts received which enabled the Union to target and influence employees (known as partners) who have not yet voted, (3) disenfranchising other partners who were not given the same opportunity to cast in-person votes in the NLRB’s offices, (4) collaborating with Union agents to cover up this misbehavior, and (5) otherwise collaborating with the Union to increase the number of pro-Union votes and affect the outcome of elections, among other things.

A career NLRB professional has truthfully reported events corroborating the misconduct described above. This individual is aware of documents outlining with specificity a concerted effort to tip the scales in voting to favor the Union in a Kansas City area (Overland Park) store election. The individual seeks to ensure such misconduct will not be perpetuated. The available information indicates that these types of misconduct have occurred in other NLRB regions and other NLRB cases.

In light of these types of misconduct by NLRB personnel, we request the Board immediately suspend all Starbucks mail-ballot elections nationwide—and stay the August 16, 2022 hearing in Case 14-RC-289926—until there has been a thorough investigation, the outcome has been made public, and safeguards to prevent future misconduct have been implemented. We also request a commitment that all pending and future elections involving Starbucks will be conducted

manually, with in-person voting in accordance with the Board's traditional safeguards. We further request the Board refrain from retaliating against any person or persons who may have provided or will provide information regarding the serious misconduct described herein. We may seek further remedial measures as more facts become available.

Since these issues involve the Board's authority over representation elections, this letter is also copied to Board Members John Ring, Marvin Kaplan, Gwynne Wilcox and David Prouty. We have also copied NLRB Inspector General David P. Berry, and by separate letter, have requested that Inspector General Berry fully investigate the election misconduct described below, in addition to conducting an investigation and audit regarding improprieties that may have occurred in other Starbucks cases throughout the country.

The election misconduct by NLRB personnel—which has been confirmed by the NLRB career professional who has come forward—is already memorialized in numerous documents, including emails between Board officials and Union representatives. This documentation shows that Board personnel have secretly colluded with the Union to affect multiple stages of the mail-ballot election process, including the providing, returning and counting of ballots. The purpose of this misconduct was to tip-the-scale in order to deliver the outcome sought by the Union. The result of the misconduct was to ignore—and bypass—the actual sentiments that Starbucks partners may have expressed in properly conducted elections. The election misconduct includes without limitation:

- **Secret In-Person Voting in NLRB Offices.** NLRB Region 14 in Case 14-RC-289926 involving Starbucks' Overland Park, Kansas store—the subject of the August 16, 2022 objections hearing we request be stayed—and NLRB Region 19 made secret arrangements with Union representatives for particular voters to vote “in-person” in NLRB offices, with no party observers present, during what to the parties agreed would be a “mail-ballot” election.
- **Providing the Union Duplicate—and Triplicate—Ballots.** Instead of mailing ballots in compliance with the stipulated election agreement in Case 14-RC-289926, NLRB Region 14 coordinated with the Union, and provided the Union and/or individual voters, with duplicate and, in some cases, triplicate, ballots.
- **Individualized Voting Arrangements for Select Voters.** Instead of requiring all Overland Park voters to adhere to the same mail-ballot procedures, or the common procedures for in-person voting, NLRB Region 14 made individualized arrangements for particular voters—handpicked by the Union—to vote in different ways and at particular times. Starbucks partners confirmed this in testimony during the trial in Case 14-CA-290968.
- **Disclosing Non-Public Real-Time Information to the Union Regarding Votes Received.** Throughout the Overland Park mail ballot voting period, NLRB Region 14 disclosed confidential, non-public, real-time information to the Union regarding whether

certain ballots were received on particular dates, and how many ballots were received, thereby improperly enabling the Union to monitor the status of voting and, through process of elimination, identify and specifically target individuals who had not yet voted, enabling the Union to target and attempt to influence the vote of partners who had not yet voted.

- **Mishandling Ballots.** Region 14 lost one ballot prior to the ballot count (only to find it the morning of the count) and a second ballot was lost during the ballot count, only to be found under a flap of a cardboard ballot box on the floor and out of view. Several ballots received the wrong time stamp. Seven determinative challenged ballots were unsecured and outside of view for at least 15 minutes. It is apparent that NLRB Region 14 does not maintain an adequate system for collecting and storing mail ballots and properly handling impounded ballots. And it is clear that these failures and shortcomings are not limited to Region 14. We remind you that Starbucks filed election objections in NLRB Region 3 and, upon investigation, NLRB Region 10 found Region 3 engaged in misconduct by failing to count seven ballots in its possession on the date of the ballot count. But for Starbucks' filing objections and another Region investigating, Region 3's misconduct would never have been exposed.
- **Concealment of Misconduct and Lack of Neutrality.** NLRB Region 14 took affirmative actions to conceal the misconduct described above—including preparation of self-serving documents to falsely portray the actions as being routine Board "protocol"—in order to improperly influence the election's outcome in a manner favorable to the Union, thus depriving all Starbucks partners their voice and vote in a fairly conducted election.
- **Similar Misconduct in Other Regions.** Other available information indicates that the same type of misconduct that has occurred in NLRB Region 14 and, as noted above, in Region 3 (Buffalo) has also occurred in NLRB Region 19 (Seattle). Until a thorough investigation is conducted it's anyone's guess how many elections in how many other regions have been similarly infected.
- **Board Misconduct and Lack of Neutrality in Unfair Labor Practice Cases.** The NLRB General Counsel and other Board personnel have repeatedly stated that Starbucks has committed more than one hundred "unfair labor practice" violations. These statements are contradicted by the fact that the Board to date has *not* made *any* finding regarding the merits of any Starbucks violation. Indeed, as set forth below, an Arizona federal court dismissed a petition for Section 10(j) injunctive relief in its entirety. The General Counsel and other Board personnel should cease misrepresenting the Board's own process.

The Board has repeatedly acknowledged that "mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections . . ." *Mission Industries*, 283 NLRB 1027, 1027 (1987); *see also Thompson Roofing, Inc.*, 291 NLRB 743, 743 fn. 1 (1988) (citing the greater vulnerability of mail-ballot elections to the destruction of laboratory

conditions as basis for requirement that voters sign and not print their name on the ballot envelope). In the cases described below, these weaknesses in the mail-ballot election process have been exploited – by Board personnel working in tandem with Union representatives – to the great detriment of Starbucks partners to whom the Board owed a commitment of neutrality and even-handedness regarding all election arrangements.

The undisclosed actions by Board personnel, in coordination with Union representatives, has enabled the Union and the Board—acting in concert—to engage in ballot harvesting among Union supporters.¹ Making matters worse, if this is even possible, are the facts that the election misconduct, and the secret, intentional, coordinated efforts to cover it up, occurred at the very moment Starbucks was attempting to work in good faith with Region 14 and the Union to ensure that all eligible voters who did not receive a mail ballot—regardless of their views concerning unionization—were given a fair opportunity to cast a mail ballot, as is their right.

Dating back to its decision in *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967), the Board set forth the following standard for conduct by its agents:

The Board in conducting representation elections must maintain and protect the integrity and neutrality of its procedures. The commission of an act by a Board Agent conducting an election which tends to destroy confidence in the Board's election process, or which could reasonably be interpreted as impugning the election standards we seek to maintain, is a sufficient basis for setting aside the election.

Id. at 966; *see also Professional Transportation, Inc.*, 370 NLRB No. 132, *1 (2021) (“It is well established that in conducting elections, the Board must maintain and protect the integrity and neutrality of its procedures. Accordingly, the Board, throughout its history, has zealously safeguarded the integrity of its elections against irregularity and even the appearance of irregularity.”).

We believe strongly in the Board's solemn obligation to be a *neutral* protector of the statutory rights of employees (including Starbucks partners) to vote against or in favor of unionizing. Because the rights to “refrain” from or favor union representation are *equal* under National Labor Relations Act, it is extremely serious misconduct when Board personnel improperly manipulate the election process to favor one side (followed by an effort to cover it up). Obviously, these actions undermine the integrity of the secret ballot election process.

There can be no doubt the systemic election misconduct described above impugns the integrity of the NLRB election process itself. If the NLRB does not respond by investigating and remedying these types of actions, we do not see how the Board can represent itself as a neutral agency adjudicating unfair labor practice disputes—and elections—in a manner that is fair,

¹ Starbucks raised and properly preserved this objection with respect to this election although dismissed by Region 29.

honest, and proper, without the appearance of impropriety.

Again, the misconduct described in this letter was voluntarily reported by a career professional within the NLRB who was concerned by the failure to ensure appropriate neutrality and laboratory conditions when ascertaining employee sentiments for and against union representation in connection with a Board-conducted election. Under federal law, including 5 U.S.C. § 2302(b)(8) *et al.*, we urge you to ensure there is no form of retaliation of any sort undertaken against this employee or any employees for disclosing a violation of any law, rule, or federal regulation. The NLRB should celebrate the individual's belief in and commitment to honesty, fairness, and the NLRB's mission, as well as such individual's courage.

The evidence demonstrates that Region 14 and Union agents conspired to deny Starbucks' partners their Section 7 rights under the Act. And Region 14 and Union agents continue to obstruct Starbucks' efforts to gather even more admissible evidence of wrongdoing in their possession. We believe you will share our view that the election misconduct described in this letter is irreconcilable with the Board's standards and the Act. And that the numerous, documented examples of intentional election misconduct to date has understandably undermined the confidence that Starbucks partners, Starbucks itself—and employees, employers, and unions overall—are entitled to have in the integrity of the Board's election process under the Act.

Given the egregious nature of the election misconduct in connection with both the representation and unfair labor practice cases related to the Overland Park store as set forth in detail on the pages that follow, we respectfully request that the General Counsel stay the August 16 hearing. In the event the hearing is not stayed, we request you reconsider—and grant—Starbucks' June 28, 2022 request, made pursuant to Section 102.118 of the NLRB's Rules and Regulations, for the consent of the General Counsel to subpoena documents and electronically stored information (ESI), including emails, in the possession and control of the NLRB and its Region 14 agents for admission as evidence at the hearing now scheduled to begin on August 16, 2022 before Region 29 regarding the Objections to the Election filed by Starbucks Corporation on April 15, 2022. We believe that failure to do so will, in effect, implicate the General Counsel's office in the misconduct and cover-up. In addition, to restore confidence in the Board's election process, Starbucks requests the Board immediately take the following actions:

- Suspend all mail-ballot Starbucks elections nationwide—and stay the August 16 hearing in Case 14-RC-289926—until the Board conducts a thorough investigation into the misconduct and reports to the public on the outcome of such investigation,
- Conduct a thorough investigation to determine the likelihood of similar misconduct by Board personnel in past and pending Starbucks elections and unfair labor practice cases throughout the United States and publicly report the outcome of such investigation,
- Develop and implement safeguards to prevent further misconduct from occurring, including implementing procedures precluding any NLRB Region from coordinating with one party to the exclusion of the other regarding voting arrangements, prohibiting

individualized voting in NLRB offices by voters supplied by one party only, prohibiting the disclosure of non-public information about voting that would permit one party to engage in real-time monitoring regarding which, and how many, persons have cast ballots and for which side those persons have voted, and similar such improper conduct,

- Issue an order providing that all pending and future elections involving Starbucks be conducted manually with in-person voting in the presence of observers from both sides,
- Issue an order prohibiting any kind of retaliation or adverse action against any person or persons who may have provided information regarding the inappropriate and improper misconduct by NLRB personnel as described in this letter, or uncovered in the Board's subsequent investigation,
- Issue an order requiring that all persons who have knowledge or information regarding misconduct by NLRB personnel, including but not limited to election misconduct, come forward, including providing that any such persons may publicly disclose such information without fear of being subjected to any kind of retaliation or adverse action,
- Take steps to appropriately discipline all NLRB personnel found to have engaged in misconduct, and to report such findings and disciplinary actions to the public,
- Issue a public statement acknowledging the truth: all existing unfair labor practice cases only involve *allegations* which cannot be said to involve *any* findings of violations unless and until these cases are resolved by the Board.

The detailed information that follows more than justifies the above requests. As you know, you are required to take immediate steps to preserve, and prevent the destruction of, any and all information and data, including all information and data in the NLRB's computer systems and records, that reflect, relate or pertain to the misconduct described in this letter.

BACKGROUND—THE ELECTION IN REGION 14 (CASE 14-RC-289926)

On February 24, 2022, in Case 14-RC-289926, Starbucks, acting in good faith, executed its first Stipulated Election Agreement ("Election Agreement") with the Union, obviating the need for a hearing and moving the parties expeditiously to election. This case marked a turning point for Starbucks, the Union, and the NLRB as it reduced the NLRB's backlog and paved the way for hundreds of subsequent Starbucks Election Agreements across the country in which Starbucks partners (employees) would be able to cast votes and have their voices heard irrespective of their unionization beliefs.

The Election Agreement called for a mail-ballot only election and provided, in relevant part:

- 4. ELECTION.** The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations

Board, SubRegion 17, by close of business 4:45 p.m. on **Wednesday, March 16, 2022**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region office by close of business 4:45 p.m. on **Wednesday, April 6, 2022**. The mail ballots will be counted at the SubRegional office located at 8600 S Farley St., Overland Park, KS at 2:00 p.m. on **Friday, April 8, 2022**. A meeting invitation for the videoconference will be sent to counsel for the parties prior to the count. No party may make a video or audio recording or save any image of the count.

Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region office by no later than 4:45 p.m. on **Wednesday, March 23, 2022**, in order to arrange for another mail ballot kit to be sent to that employee.

If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

On March 1, 2022, Starbucks timely filed and served its voter list. The next day, Starbucks filed and served an amended voter list, adding two partners on leaves of absence inadvertently omitted from the initial list. Region 14 purportedly mailed ballots on Wednesday, March 16, 2022 in accordance with the terms of the Election Agreement.

March 23, 2022

On March 23, 2022—the *last day partners* could request duplicate ballots from the Board—at 1:11 p.m., Union organizer Mari Orrego emailed Union attorney Gabe Frumkin informing him of four voters who allegedly had not received mail ballots: Alydia Claypool; Kelsey Stoermann; Carlee Stoermann; and Sage Quigley.² At 1:24 p.m., Frumkin forwarded Orrego’s email to Region 14 Field Examiner Amy Novara and requested replacement ballots for those four individuals, contrary to the parties’ agreed upon procedures for requesting duplicate mail ballot kits under the Election Agreement (“If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region office . . .”) Minutes later, at 1:33 p.m., Novara forwarded Frumkin’s email to NLRB Board Agent Melissa Nisly, advising her of *the Union’s requests* for duplicate ballots.

A few hours later, at 3:27 p.m., Frumkin emailed Novara with the case number, 14-RC-289926, and within five minutes Novara advised Frumkin she had forwarded his request to an election specialist. At 3:40 p.m., Frumkin again emailed Novara identifying three more voters who

² Notably, all four of these individuals testified for the General Counsel during the unfair labor practice trial in support of the Union.

allegedly had not received mail ballots: Michael Vestigo; Delia Twaddell; and Katie Kreutzjans. Frumkin requested more mail ballots but provided a mailing address only for Michael Vestigo's ballot.³ At 3:46 p.m., Novara emailed Nisly again informing her of the three additional individuals who did not receive mail ballots. Novara explained the Union's concern as at least seven of the eighteen ballots were allegedly missing. Novara was unaware of any past mail issues in the area and stated she hoped this was a fluke.

On Thursday, March 31, 2022, Frumkin called Novara and asked if three of the voters could come by, pick up replacement ballots, and vote in person. Frumkin claimed Region 19 allowed the Union to make these same arrangements in other Starbucks mail ballot only elections. This revelation by the Board agent who has come forward indicates that at least two NLRB Regions have worked with the Union to secure votes of pro-union voters. This warrants a search of the NLRB's system to identify other similar misconduct.

April 1, 2022

On Friday, April 1, 2022, Frumkin learned that Region 14 failed to mail two ballots and that a third ballot did not get delivered to Vestigo, and he expressed his frustration to Novara and Nisly. Novara called Frumkin and told him someone would be in the office the following week and to have his pro-union partners call her.

At 2:04 p.m., Novara emailed Nisly, copying Region 14 Supervisory Field Examiner (now Assistant Regional Director) Carla Coffman. Novara advised Coffman she had been working with Frumkin on allegedly missing ballots. Nisly, Novara, and Coffman agreed to prepare multiple duplicate ballot kits for pro-union partners. One ballot kit would be placed in the mail to the voter, while the second ballot kit would be kept at the Board's office so at least Vestigo, Quigley, and Claypool, and perhaps others, could make an appointment, visit the office, and vote in-person.

At 2:15 p.m., Novara emailed Frumkin and told him to have the individuals he wanted to vote to call her, and she would assist them with scheduling a time to visit the Overland Park Subregion 17 office to vote in person. At 2:22 p.m., Frumkin emailed Novara, thanked her for the information, and said he would provide the information to the organizer (presumably Orrego).

On Friday night (April 1 at 6:41 p.m.), Nisly emailed Littler attorneys Kimberly J. Doud and Elizabeth Carter on behalf of Starbucks, former Interim Store Manager Amanda Pittman,⁴ and Union attorneys Frumkin, Dmitri Iglitzin and Robert Cervone, copying Novara, and informed them of an "inadvertent fumble on [her] part," where she used the wrong voter list to mail the ballots two weeks prior. Nisly told the parties she had "since corrected the error, sending out

³ Vestigo also testified for the General Counsel during the ULP Trial.

⁴ Amanda Pittman was no longer the Overland Park store manager on April 1, 2022. However, Region 14 continuously copied Pittman on emails and continues to serve mail and electronic filings on her despite numerous requests from Starbucks' attorneys to stop.

ballots to those voters who were added in the revised list.”

At 7:22 p.m., Frumkin replied to Nisly’s email, but notably intentionally removed Starbucks attorneys Doud and Carter, as well as Pittman, from his response. In his email, Frumkin advised Nisly he had spoken to Novara earlier that day about three individuals who had not received ballots as well as the two other individuals mentioned in Frumkin’s prior email who were never mailed any ballots. According to Frumkin’s email, Novara assured him at least these five individuals would be able to vote in person at the Board’s Subregion 17 office. Inexplicably, Frumkin asked Nisly ***how many voters have reached out to her and when will they be permitted to vote in person.***

The entire “process” created between Region 14 and the Union to circumvent the Election Agreement—and to create individualized voting arrangements for particular pro-union partners (providing the opportunity for in-person voting in the Board’s offices without any observers by either party)—occurred without Starbucks’ knowledge and/or consent. This misconduct converted the mail- ballot only election into an impromptu mixed mail/manual election for a handful of select individuals who were hand-picked and solicited by the Union, and with the NLRB giving improper support to a single party (the Union) with the obvious objective of influencing the election’s outcome in a manner most favorable to one side (the Union).

April 4, 2022

On Monday, April 4, 2022, at 9:05 a.m., Alydia Claypool called Novara and made an appointment to vote in person at 12:00 p.m. At 9:45 a.m. on April 4, 2022, Sage Quigley called Novara and made an appointment to vote in person at 1:15 p.m. Starbucks’ attorney was not made aware of these contacts.

At 9:54 a.m., Starbucks attorney Doud emailed Nisly in response to her April 1, 2022 email, including all the email’s original recipients (i.e., Carter, Pittman, Frumkin, Iglitzin, Cervone, and Novara), and asked her when the additional ballots were mailed. Neither the Union attorneys nor the NLRB Region 14 agents immediately responded.

At 3:08 p.m., Michael Vestigo called Novara and left a voicemail identifying himself as a former employee of the 75th street store in Overland Park, Kansas. He said he was recently terminated but was told he could still vote. He asked if he could set up an appointment to vote in person and advised Wednesday was good for him. At 4:30 p.m., Region 14 personnel called Vestigo and made an appointment for him to vote in person on Wednesday, April 6, 2022.

At 6:02 p.m., Nisly replied to Doud’s 9:54 a.m. email asking when the ballots were mailed. Nisly removed all the other email recipients from her reply and stated only: “The day of the email, April 1, 2022.”

The next morning, on April 5, 2022, at 7:41 a.m., Starbucks attorney Doud replied to Nisly’s email, adding Frumkin, Iglitzin, Cervone, and Novara back into the email chain, and also

included the Board's Regional Director for Region 14 Andrea Wilkes. Doud's reply provided:

Thank you for your response, Melissa. We have not had a chance to discuss with Union counsel. The ballot return date is tomorrow Wednesday April 6 (three business days after mailing). It seems unlikely the partners you identified in your email below will receive their ballots in time to fill them out and mail them back. The ballot count is currently scheduled for this Friday April 8. We are concerned about disenfranchising these partners. We want to ensure they have a reasonable amount of time to receive and mail back their ballots. We request the ballot count be rescheduled to an agreeable future date to allow this to occur. The ballots were mailed to the rest of the partners at this store on March 16. Those partners were provided 3 weeks to return their ballots (April 6). Therefore, we propose these partners be provided the same amount of time by extending the ballot return date to Friday April 22 and holding the ballot count on Monday April 25. I am unaware of this coming up in any other Starbucks campaigns and am open to your thoughts. Please advise if you need a formal filing in this regard. Look forward to hearing from you. Thank you.

At 12:51 p.m., Frumkin (knowing but not disclosing that he had secretly arranged with Region 14 personnel for in-person voting in the Board's offices by select partners) responded:

Good morning all:

The Union does not agree to extend the ballot return date. The election has generated a substantial amount of engagement amongst bargaining unit members, and the Union is confident that those bargaining unit members who wish to vote will be able to do so. Moreover, the election has generated sufficient public interest that delaying the vote count would be inappropriate.

If after the vote count the Employer believes that those voters who were not originally sent ballots a) were not able to vote and b) that their votes could be determinative in the outcome of the election, the Employer may have cause to file an objection.

Sincerely,

Gabe Frumkin

It is now clear why Union attorney Frumkin opposed any extension of the ballot return date – because the Board created individualized voting procedures for particular voters designated by the Union, who were able to submit ballots in person, with the Region encouraging and approving these arrangements. Therefore, it is not surprising that at 3:53 p.m., Region 14 Supervisory Field Examiner (now Assistant Regional Director) Carla Coffman adopted the

Union's stated position without further explanation:

Good afternoon,

While we understand the concerns raised by the Employer, and noting the Union's opposition, we do not believe that there is any basis to postpone the count at this time.

Thank you,

Carla

At 5:35 p.m., Starbucks attorney Doud replied:

Thank you for your email. My concern rests with the potential disenfranchisement of these voters. I don't see the harm in moving the ballot count for a period of days to ensure election integrity.

Kimberly Doud

Neither the Union nor the Region ever responded.

The Ballot Count

At the outset of the ballot count on April 8, 2022, Starbucks attorney Doud objected that the ballot count could not proceed considering the voter disenfranchisement. Notably, at the time, Starbucks attorney Doud was unaware of the extent of the disenfranchisement or the lengths to which Region 14 and the Union had gone to manipulate the election voting arrangements in favor of the Union. Nonetheless, the ballot count proceeded as scheduled via Zoom and over these objections. Four NLRB agents from Region 14 attended: Novara; Coffman; Nisly; and Susan Wade-Wilhot. Nisly handled the opening and tallying of the ballots.

To Starbucks' surprise, the ballots of Alydia Claypool and Sage Quigley, represented as having been mailed on April 1, 2022, were nevertheless present for the ballot count—*without postmarks*. Instead of truthfully describing how the Region came into possession of these ballots, Novara stated "Board protocol" supposedly permitted at least two voters to deviate from the parties' agreed upon procedures for obtaining and returning ballots as set forth in the Election Agreement. No mention was made of any special arrangements for Michael Vestigo or others.

Additional irregularities occurred during the ballot count itself, further undermining the integrity of an already undermined election. Regarding Calvin Culey's ballot, Nisly admitted she had lost custody of their ballot for an unspecified length of time prior to the ballot count and then "found it" the morning of the ballot count. Nisly stated she had no idea how Culey's ballot appeared at the Board's Subregion 17 office. Another ballot belonging to Hope Gregg did not contain any postmark. Ballots of six more eligible voters never arrived at all. Those six voters were unjustly

denied the opportunity to vote in person despite Frumkin and Region 14 personnel secretly giving such right to vote in person to pro-union voters.

During the ballot count, Nisly proceeded to lose yet another ballot when she placed seven ballots into a cardboard box labelled “ULTA” and used the box to mix the ballots. She then removed *six* ballots from the box, placed those six ballots on her desk, and placed the box onto the floor outside of the view of the camera and anyone attending the ballot count. Nisly opened and counted only six ballots. She then began looking for the missing seventh ballot. Nisly eventually found the missing ballot under the flap of the cardboard box on the floor and then opened the seventh ballot.

The tally at that point was six votes for the Union, one vote against the Union, and seven unopened, determinative challenged ballots. Nisly began preparing a list of the challenged ballots. Thereafter, she took all seven unsecured, challenged ballots and left the room for at least 15 to 20 minutes to purportedly photocopy each challenged ballot. The determinative challenged ballots were outside of the presence of parties’ representatives and unsecured for the entire time while Nisly was absent from the room.

Finally, Nisly prepared the tally of the ballots and told the parties she would sign their names to the tally of ballots and write “via videoconference” after their names because the parties’ representatives were not present to sign in person. Starbucks attorney Doud objected and told Nisly she did not consent to signing the tally underneath the certification of the election results. Despite repeated objections, Nisly improperly affixed Doud’s name to the tally of ballots.

EFFORTS TO CONCEAL MISCONDUCT

File Memoranda

On the same day as the improper, incorrect and irregular ballot count, Coffman created self-serving memoranda regarding the procedures the NLRB and the Union created for the improper in-person voting in this election.

The first memorandum related to Alydia Claypool and stated that on April 4, 2022, Novara contacted Coffman regarding a request from Claypool for a duplicate ballot. The memorandum stated that Claypool was one of two voters initially not mailed ballots until April 1 due to a mix up and “to franchise voters” they “utilized board protocol” to arrange for in-person voting. The memorandum further stated that voter 19D (Claypool) came into the Subregion 17 office in Overland Park, Kansas, voted “alone in an empty room,” and returned her completed ballot to NLRB personnel who recorded the time stamp of the receipt of the ballot. However, the memorandum indicates there was an error with the time stamp machine (which was not realized until April 6). As a result, the initial time stamp on the ballot was incorrect.

The second memorandum concerns Sage Quigley and stated that on April 4, 2022, Novara contacted Coffman regarding a request from Quigley for a duplicate ballot. The memorandum

provides Quigley was one of two voters initially not mailed ballots until April 1. Like Claypool's memorandum, this one also provides "in order to franchise" the voter, the voter was allowed to come in person for a pre-arranged appointment made on April 4 and vote in person. The memorandum stated Quigley voted "alone in office" and then returned the signed mail envelope. Again, the time stamp on the ballot was incorrect due to an error with the time stamp machine.

The third memorandum concerns Michael Vestigo and states on April 6, 2022, Novara notified Coffman of a duplicate mail ballot requested for Vestigo. The memorandum provides "per board protocol" Vestigo was allowed to pick up a new ballot on Wednesday, April 6, 2022, went "alone into an empty office," came out and gave NLRB personnel the completed ballot.⁵

Because observers were not present, no one can be sure who appeared to vote, whether NLRB personnel had inappropriate communications with the voters, told them how to vote, showed them how to vote, or engaged in other undisclosed misconduct.

MISCONDUCT IN OTHER REGIONS

The misconduct in Case 14-RC-289926 detailed above is by no means our only concern with the integrity of the NLRB's elections processes involving Starbucks. In addition to the disclosure regarding Region 19 engaging in similar misconduct, an election held for one of Starbucks' Buffalo stores was set aside due to election misconduct by Region 3 personnel.

Specifically, on March 16, 2022, Starbucks filed objections to the election in Case 03-RC-285929 because, among other things, Region 3 failed to account for timely mailed ballots. In response to Starbucks' objections, Region 10 investigated Region 3's handling of the case. On April 12, 2022, the Regional Director for Region 10 issued a Decision informing Starbucks and the Union that its investigation into Starbucks' objections uncovered that Region 3 engaged in misconduct by failing to count seven valid ballots in its possession, without explaining this failure, noting: "[t]he casefile contains no reason as to why the seven ballots that arrived on February 25 were not processed at the March 9 count." Region 10 found that the Region 3 "Board agent conducting the count should have presented these ballots to the parties during the count, but did not do so."

Region 10 refused Starbucks' request for a rerun election or hearing, but instead directed Region 3 personnel to process the seven mail ballot envelopes received on February 25 in a second ballot count. Significantly, Region 10 did not provide the parties with *any* information regarding the chain of custody for the seven ballots it found were received by Region 3 on February 25, 2022 and which Region 3 failed to open and count at the March 9, 2022 ballot count. The second

⁵ Novara also prepared and filed a memorandum regarding the calls she had with Claypool, Quigley, and Vestigo. Each memorandum, along with all the emails, telephone logs, and other responsive documents regarding the election at this store, is relevant, admissible evidence as they constitute Region 14 and the Union's admissions of election misconduct. Based on the timing of their creation, the memoranda further Region 14's elaborate efforts to cover up the misconduct in the weeks surrounding the election. These documents and electronically stored information may not be withheld from Starbucks, its partners, or the public any longer.

ballot count occurred on April 22, 2022 and resulted in a 10 to 10 tally of ballots.

On April 28, 2022, Starbucks filed objections to Region 3's misconduct of handling the ballots. Region 10 again investigated Starbucks' objections and issued its Decision on May 18, 2022. In its Decision, Region 10 sustained Starbucks' objections over Region 3's misconduct, set aside the prior election, and directed a rerun election. To this date, the parties do not know how or if Region 3 maintained custody and control over these ballots for a period of one month, from the date the ballots were received on February 25, 2022 until they were counted on April 22, 2022. Neither Region 3 or Region 10 ever informed the parties why they were not informed ballots existed in the file and/or not counted. But for filing objections and another Region investigating, the parties never would have known of this misconduct.

MISCONDUCT AND LACK OF NEUTRALITY IN ULP CASES

Starbucks has also encountered what we believe to be misconduct and the absence of neutrality in numerous unfair labor practice cases against Starbucks. Recent litigation in Tennessee, Michigan, New York, Colorado, and Arizona demonstrates that Regional offices are indiscriminately targeting Starbucks based on evidence known to be or with reasonable diligence would be known to be unreliable.

For example, in Arizona federal court, Case No. 2:22-cv-00676-JJT, the Regional Director for Region 28 sought Section 10(j) injunctive relief against Starbucks for allegedly surveilling employees engaged in Section 7 protected activity and retaliating and discriminating against three union supporters. During depositions in that case, two of the partners (Tyler Gillette and Alyssa Sanchez) provided sworn testimony utterly contradicting and effectively recanting affidavits they provided Region 28 while the third partner (Laila Dalton) provided deposition testimony proven false by store security video. To be clear, the video showed Dalton surreptitiously recording manager conversations of which she was not a part and for which she was not present, in violation of Starbucks' policy and likely Arizona state law.

After the depositions, instead of acknowledging his case was baseless, the Regional Director pressed forward. Not surprisingly, the Regional Director did not prevail on a single claim. By judgment entered on June 9, the court dismissed the Petition in its entirety. Despite the federal court ruling, Counsel for the General Counsel in Region 28 is continuing to pursue the underlying unfair labor practices.

In another case (NLRB No. 10-CA-291951), the NLRB General Counsel is prosecuting a complaint against Starbucks based on a routine question asked by a Starbucks attorney in an NLRB-conducted representation hearing. During that hearing, the NLRB Hearing Officer instructed witnesses not to discuss their testimony with other witnesses. Consistent with this instruction, the Starbucks attorney asked whether the next witness (who had been called by the Union) spoke with other witnesses who had testified in prior hearings. The NLRB Hearing Officer resolved an objection to the question by instructing the Starbucks attorney, "Go

forward”; and the General Counsel has now issued a complaint against Starbucks because its attorney complied with the instruction given by the NLRB’s own Hearing Officer.

More generally, the Board’s Regional Offices—and the Office of the General Counsel—have persistently stated publicly that Starbucks has engaged in more than one hundred “unfair labor practice” violations. In reality, the Board to date has *not* made *any* finding regarding the merits of any claimed Starbucks violation. Indeed, it is unlikely that the Board will resolve any unfair labor practice claims against Starbucks until (at the earliest) late 2022 or 2023. Indeed, as described above, the Arizona federal court dismissed in its entirety a petition for Section 10(j) injunctive relief based on alleged unfair labor practice claims against Starbucks because the court concluded the evidence against Starbucks was not credible. The General Counsel and other Board personnel should cease misrepresenting the Board’s own process, and Starbucks requests that the Board issue a public statement acknowledging the truth: all existing unfair labor practice cases only involve *allegations* which cannot be said to involve *any* findings of violations unless and until these cases are resolved by the Board.

Such actions undermine the public trust in the Board as an impartial agency responsible for even-handed administration and enforcement of the NLRA.

CONCLUSION

In *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 680-81 (1982), the Supreme Court stated that the National Labor Relations Act “is *not* intended to serve either party’s individual interest, but to foster *in a neutral manner* a system in which the conflict between these interests may be resolved” (emphasis added). The actions of the NLRB personnel described above are completely at odds with any sense of neutrality, and worse, the Board’s actions were calculated to influence the outcome of union representation elections in a manner favorable to one party—the Union.

At bottom, Region 14 and the Union unjustly denied Starbucks partners at its Overland Park store the opportunity to participate in a fair and free election. Starbucks partners in a prior Region 3 case were also denied their Section 7 rights to vote due to Region 3’s misconduct. It also appears that Region 19 and the Union have collaborated to afford pro-union voters special treatment to the detriment of all voters. Likewise, there has been Board misconduct associated with Region 28 which continues to pursue unfair labor practice charges despite a federal court ruling that there was no reasonable cause to believe Starbucks violated the rights of its partners.

Starbucks respects the rights of its partners to decide for themselves whether they wish to be represented by a union pursuant to Section 7 of the NLRA. But those rights can only be properly exercised—and realized—through a neutral, honest process overseen by the NLRB consistent with the NLRA and legal precedent. As you can see, this is not happening today. We urge you to grant the requests we make in this letter. It is the only way for the NLRB to effectively address these problems, which subvert the rights of Starbucks partners, and begin to deliver the fair, honest and transparent process required by the NLRA and to which Starbucks and our partners

Lauren McFerran, Chairman
Jennifer A. Abruzzo, General Counsel
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are entitled.

Given the nature of these matters, we hope this will receive the Board's immediate attention, and we ask that you let us know how the Board intends to respond.

Respectfully,

STARBUCKS CORPORATION



Zabrina Jenkins
Acting Executive Vice President and General Counsel

LITTLER MENDELSON, P.C.



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