UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

HYUNDAI POWER TRANFORMERS USA, INC.	
and	**Case No. 15-CA-095044**
CHELSEY JEROME WOODS	

COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

On March 28, 2013, Region 15 of the National Labor Relations Board (the Board) issued a Complaint and Notice of Hearing (CNOH) alleging Hyundai Power Transformers USA, Inc. (Respondent) violated section 8(a)(1) of the National Labor Relations Act (the Act) when it implemented and maintained an overly broad confidentiality policy. On April 10, 2013, in addition to filing an Answer, Respondent filed a Motion to Dismiss the CNOH on the grounds that the Board lacks jurisdiction under the recent case *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013).

It is correct that in *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), the D.C. Circuit held that that the President's January 2012 appointments to the Board were not valid. However, the Board has publicly stated that it disagrees with the D.C. Circuit's *Noel Canning* decision, and on March 12, 2013, the Board announced that it, in consultation with the Department of Justice, intends to file a petition for certiorari with the United States Supreme Court seeking review of the D.C. Circuit's decision. Furthermore, in *Belgrove Post Acute Care Center*, 359 NLRB No. 77, slip op. 1, fn.1 (Mar. 13, 2013), the Board took note that in *Noel*

Canning, the D.C. Circuit Court itself recognized that its conclusions concerning the Presidential appointments had been rejected by the other circuit courts to address the issues. Compare *Noel Canning v. NLRB*, Nos. 12-1115, 12-1153, 2013 WL 276024, at *14-15, 19 (D.C. Cir. Jan. 25, 2013) with *Evans v. Stephens*, 387 F.3d 1220, 1226 (11th Cir. 2004) (en banc); *United States v. Woodley*, 751 F.2d 1008, 1012-13 (9th Cir. 1985) (en banc); *United States v. Allocco*, 305 F.2d 704, 709-15 (2d Cir. 1962). Thus in *Belgrove*, the Board concluded that because the "question [of the validity of the recess appointments] remains in litigation," until such time as it is ultimately resolved, "the Board is charged to fulfill its responsibilities under the Act." Accordingly, Respondent's Motion to Dismiss should be dismissed.

_____/s/Zachary Herlands_____

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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2013, I electronically filed a copy of the foregoing Counsel for the Acting General Counsel's Opposition to Respondent's Motion to Dismiss with the National Labor Relations Board and forwarded a copy by electronic mail to the following:

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