

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

ON ASSIGNMENT STAFFING SERVICES, INC.

and

Case 32-CA-095025

ARNELLA M. FREEMAN, an Individual

MOTION FOR SUMMARY JUDGMENT

Comes now the Acting General Counsel for the National Labor Relations Board, herein called the Board, by the undersigned, and alleges as follows:

1. On December 14, 2012, Arnella M. Freeman (Charging Party) filed the unfair labor practice charge in Case 32-CA-095025, alleging that On Assignment Staffing Services, Inc. (Respondent) violated Section 8(a)(1) of the Act by promulgating and/or maintaining a rule prohibiting employees' participation in class actions. (A copy of the charge, marked as Exhibit 1, is attached hereto and made a part hereof, as are all of the documents marked as Exhibits and referred to hereinafter.)

2. On March 25, 2013, the Regional Director of the Thirty-Second Region of the Board issued and served a Complaint in Case 32-CA-095025, alleging that at all times material therein, Respondent promulgated, maintained and enforced a dispute resolution agreement (DRA) that was signed by its current and former employees employed at various locations throughout the United States. The Complaint cited the relevant language of the DRA and alleged that the promulgation, maintenance and enforcement of the DRA violated Section 8(a)(1) of the Act. (Exhibit 2)

3. On April 15, 2013, Respondent filed an Answer to the Complaint, admitting, as alleged in the Complaint, that Respondent promulgated, maintained and enforced the DRA that was signed by its current and former employees employed at various locations throughout the United States. (Exhibit 3)

4. In support of this Motion for Summary Judgment, the undersigned notes the following regarding the Complaint and Answer herein:

- (a) Respondent's Answer admits the following paragraphs of the Complaint:
 - (1) Paragraph 1: Filing and receipt of the charge.
 - (2) Paragraph 2(a) and 2(b): Jurisdictional facts.
 - (3) Paragraph 3: The conclusion that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
 - (4) Paragraph 4: The supervisory status within the meaning of Section 2(11) of the Act and the agency status within the meaning of Section 2(13) of the Act of Respondent's Vice President of Operations for the Nurse Travel Division.
 - (5) Paragraph 5(a): At all material times, Respondent promulgated, maintained and enforced the DRA, with the relevant language of the DRA cited therein.
 - (6) Paragraph 5(b): At all material times, Respondent promulgated, maintained and enforced the relevant language of the DRA cited in Paragraph 5(a) which was signed by its current and former employees employed at various locations throughout the United States.
- (b) Respondent's Answer denies the following paragraphs of the Complaint:
 - (1) Paragraph 6(a), 6(b) and 6(c): The legal conclusion that the provisions of the DRA cited in Paragraph 5(a) interfere with employees' Section 7 rights to engage in collective legal activity by binding employees to an irrevocable waiver of their rights to participate in collective and class litigation.

- (2) Paragraph 7: The legal conclusion that Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.
- (3) Paragraph 8: The legal conclusion that Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. Respondent's Answer does not raise any bona fide issue of fact, and denies only the legal conclusions to be drawn from the factual allegations pleaded in the Complaint and admitted in Respondent's Answer thereto. Moreover, even though Respondent has in its Answer denied the legal conclusions, it cannot be more clear that Respondent's promulgation, maintenance and enforcement of the DRA is unlawful under Board law as the language of the DRA binds employees to an irrevocable waiver of their Section 7 rights to participate in collective and class litigation. *D.R. Horton, Inc.*, 357 NLRB No. 184 (2012) (maintenance of a mandatory arbitration agreement prohibiting employees from filing collective or class employment-related claims in any forum restricts employees' rights under Section 7 of the Act to engage in concerted action for mutual aid or protection and, therefore, violates Section 8(a)(1) of the Act).

6. The fact that Respondent does not condition employment on the signing of the DRA, insofar as the terms of the DRA provide an employee an opportunity to opt out of the DRA within ten days of having received it, does not alter the applicability of *D.R. Horton* to the present matter. Logically, and inherent to the nature of concerted activity, the statutory rights of employees who opt out of the DRA are nonetheless affected because such employees are prevented from acting in concert with employees who sign the DRA. Furthermore, individual contracts with employees requiring employees to resolve workplace grievances individually rather than concertedly are *per se* violations of the Act even when "entered into without

coercion” because they are a “restraint upon collective action.” *D.R. Horton at 6*, quoting *NLRB v. Stone*, 125 F.2d 752, 756 (7th Cir. 1942), enfg. *J.H. Stone & Sons*, 33 NLRB 1014 (1941). In short, Respondent cannot contract away employees’ rights to engage in protected concerted action, including collective pursuit of litigation or arbitration, that are guaranteed under Section 7 of the Act. *D.R. Horton at 6 and 14*, citing *National Licorice Co. v. NLRB*, 309 US 350, 364 (1940) (“employers cannot set at naught the National Labor Relations Act by inducing their workmen to agree not to demand performance of the duties which [the Act] imposes”).

7. Based on the foregoing, the legal issue regarding the lawfulness of the DRA can readily be determined solely based on the language of the DRA itself.

8. In its Answer, Respondent raises affirmative defenses challenging the composition of the Board in *D.R. Horton* and the Board’s current composition (Answer at 2, Aff. Defenses 2, 3). These challenges are without merit. It is correct that, contrary to *Noel Canning v. NLRB*, ___ F.3d ___, 2013 WL 276024 (D.C. Cir. Jan. 25, 2013) (petition for certiorari filed April 25, 2013), Presidential Recess Appointee Craig Becker, a Board Member who participated in *D.R. Horton*, was not appointed during an intersession recess of the Senate. And *Noel Canning* held that Members Griffin and Block, current Board Members serving alongside Chairman Pearce, were not validly appointed because they were appointed during an intrasession recess. However, Respondent’s reliance on *Noel Canning* is misplaced. The Board has filed 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 that have addressed the issues. Compare *Noel Canning v. NLRB*, 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.”¹ The Board’s conclusion is equally applicable here.

9. By letter dated June 3, 2013, Counsel for the Acting General Counsel memorialized telephone conversations that she had with Respondent’s attorney on May 20, 2013 and on May 24, 2013 during which Respondent’s attorney agreed that there were no factual issues preventing a motion for summary judgment. The letter requested that Respondent’s attorney contact Counsel for the Acting General Counsel by the close of business on June 5, 2013 if he disagreed with the memorializations contained in the June 3, 2013 letter.² (Exhibit 4)

10. To date, Respondent’s attorney has not notified Counsel for the Acting General Counsel that he disagrees with the memorializations contained in the aforementioned June 3, 2013 letter.

Where, as here, there are no factual issues warranting a hearing, it has long been the practice of the Board to grant Summary Judgment. *Henderson Trumbell Supply Corp.*, 205 NLRB 245 (1973); *Richmond, Division of Pak-Well*, 206 NLRB 260 (1973); *Tri-City Linen Supply*, 226 NLRB 669 (1976).

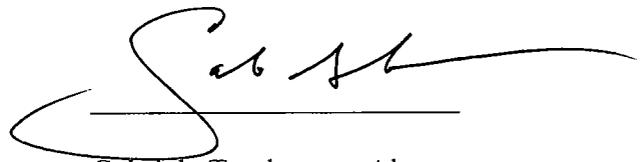
¹ The Third Circuit’s decision in *NLRB v. New Vista Nursing and Rehabilitation*, ___ F.3d ___, 2013 WL 2099742 (3d Cir. May 16, 2013) should not change this result. As noted above, there still remains a split in the circuits regarding the validity of intrasession recess appointments.

² During the May 20, 2013 telephone conversation, Respondent’s attorney also agreed there was no factual basis for Respondent’s fourth affirmative defense that the Complaint’s allegations are barred by Section 10(b) of the Act.

WHEREFORE, in view of the matters set forth above, and upon consideration of the documents attached hereto and incorporated in this Motion, and as Respondent's Answer raises no issues of fact or law requiring a hearing in this proceeding, the undersigned prays that the Board find and conclude that Respondent has violated Section 8(a)(1) of the Act and that it issue a Decision and Order in conformity with the allegations in the Complaint.

DATED AT Oakland, California this 13th day of June 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gabriela Teodorescu Alvaro', written over a horizontal line. The signature is stylized and cursive.

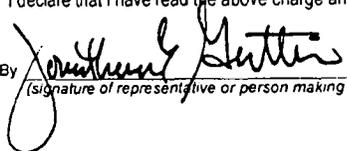
Gabriela Teodorescu Alvaro
Counsel for the Acting General Counsel
National Labor Relations Board
Region 32
Oakland Federal Building
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

DO NOT WRITE IN THIS SPACE	
Case 32-CA-095025	Date Filed 12/14/2012

2012 DEC 14 PM 2:03

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT a. Name of Employer On Assignment Staffing Services, Inc.		b. Tel No (415) 433-1940
d. Address (Street, city, state, and ZIP code) 26745 Malibu Hills Rd. Calabasas, CA 91301-5355		c. Cell No
e. Employer Representative Joshua J. Cliffe LITTLER MENDELSON, P.C. 650 California St., 20th Floor San Francisco, CA 94108-2693		f. Fax No (415) 399-8490
g. e-Mail jcliffe@littler.com		h. Number of workers employed Thousands
i. Type of Establishment (factory, mine, wholesaler, etc.) Temporary services employer	j. Identify principal product or service Health care	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Ms. Freeman is a nurse who has worked for On Assignment at several health care facilities in California between December 2011 and the present, including several located in Alameda County. On October 16, 2012, Ms. Freeman filed a class action lawsuit in the Superior Court for Alameda County alleging various violations of the California Labor Code, including a failure to timely pay wages and a failure to pay for all wages earned. Ms. Freeman has discussed the lawsuit and the claims asserted in the class action with several co-workers. At some time after the lawsuit was filed, On Assignment began implementing a nationwide arbitration policy that purports to prohibit participation in a class action, including the one filed by Freeman. Prohibition of class actions is an unfair labor practice pursuant sections 7 and 8(a)(1) of the NLRA. On Assignment's arbitration agreement purports to apply to all On Assignment employees like Freeman who do not otherwise opt out of the agreement and violates section 7 and 8(a)(1) of the NLRA as it applies to these employees.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Arnella M. Freeman		
4a. Address (Street and number, city, state, and ZIP code) 1517 Cedar Crescent Drive Mobile, AL 36605 (Ms. Freeman may be contacted through her Counsel)		4b. Tel No (251) 378-8783
		4c. Cell No (251) 459-5439
		4d. Fax No
		4e. e-Mail fshortielove@yahoo.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) N/A		
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel No (415) 381-5599
By  (signature of representative or person making charge)		Office, if any, Cell No
Jon Gertler, Counsel for Ms. Freeman (Print/type name and title or office, if any)		Fax No (415) 381-5572
Chavez & Gertler LLP, 42 Miller Ave Mill Valley, CA 94941 Address		e-Mail jon@chavezgertler.com
		12/13/12 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary, however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit # 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

ON ASSIGNMENT STAFFING SERVICES, INC.

Case 32-CA-095025

and

ARNELLA M. FREEMAN, an Individual

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by ARNELLA M. FREEMAN, an Individual (Freeman). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that ON ASSIGNMENT STAFFING SERVICES, INC. (Respondent) has violated the Act as described below:

1.

The charge in this proceeding was filed by Freeman on December 14, 2012, and a copy was served by regular mail on Respondent on December 17, 2012.

2.

(a) At all material times, Respondent, a Delaware corporation with an office and place of business in Cincinnati, Ohio, has been engaged in the business of providing staffing services to various employers located throughout the United States.

(b) In conducting its business operations during the 12-month period ending December 31, 2012, Respondent provided services valued in excess of \$50,000 in states other than the State of Ohio.

3.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4.

At all material times, Kristopher L. Cannon held the position of Respondent's Vice President of Operations for the Nurse Travel Division and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

5.

(a) Since October 2012, and at all material times, Respondent has promulgated, maintained and enforced a Dispute Resolution Agreement (DRA) containing the following language:

1. ARBITRATION OF CLAIMS... The Agreement applies to any dispute arising out of or related to Employee's employment with, or termination of employment from, Company. . . This Agreement is intended to apply to resolving disputes that otherwise would be resolved in a court of law, and therefore, except as stated below, **this Agreement requires that all disputes must be resolved only by an arbitrator through final and binding arbitration and not by a court or jury trial.**

Employment Claims...The Agreement also applies, without limitation, to disputes regarding the employment relationship, any city, county, state or federal wage-hour law, compensation, breaks and rest periods, training, termination, or harassment, and claims... arising under. . . Fair Labor Standards Act.

Administrative Agency Claims. Claims may be brought before an administrative agency in cases where the law allows claims even when there is an agreement to arbitrate. Such administrative claims include without limitation claims or charges brought before the Equal Employment Opportunity Commission (www.eeoc.gov), the U.S. Department of Labor (www.dol.gov), the National Labor Relations Board (www.nlr.gov), or the Office of Federal Contract Compliance Programs (www.dol.gov/esa/ofccp). Nothing in this Agreement prevents or excuses a Party from bringing an administrative claim before any agency in order to fulfill the Party's obligation to exhaust administrative remedies before making a claim in arbitration.

4. CLASS ACTION WAIVER. There will be no right or authority for any dispute to be brought, heard or arbitrated as a class or collective action ("Class Action

Waiver”). Private attorneys general representative actions are not covered within the scope of this Agreement and may be maintained in a court of law, but an Employee may seek in arbitration individual remedies for him or herself under any applicable private attorney general representative action statute, and the arbitrator shall decide whether an Employee is an aggrieved person under any private attorney general statute. Although an Employee will not be retaliated against, disciplined or threatened with discipline as a result of his or her exercising his or her rights under Section 7 of the National Labor Relations Act by the filing of or participation in a class, collective or representative action in any forum, the Company may lawfully seek enforcement of this Agreement and the Class Action Waiver under the Federal Arbitration Act and seek dismissal of such class, collective or representative actions or claims. Any claim that all or part of the Class Action Waiver is unenforceable, unconscionable, void or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator.

7. APPLICATION TO EXISTING CLAIMS. This Agreement is intended broadly to apply to any existing controversy that has arisen from or that is related to Employee’s employment with Company, as is permitted under Section 2 of the Federal Arbitration Act.

8. PARTICIPATION IN THE Freeman CASE. If Employee is a named plaintiff, or has joined as a plaintiff, in *Arnella Freeman v. On Assignment Staffing Services, Inc. d/b/a On Assignment Consultants*, filed October 16, 2012, Alameda County Superior Court Case No. RG12652237 (“*Freeman* case”), this Agreement will not apply to Employee with respect to that case...

If Employee is not a named plaintiff in the *Freeman* case, has not joined as a plaintiff or is not part of a certified class in the *Freeman* case, but would like to potentially participate in that case as a class member or plaintiff, Employee may opt out of this Agreement by following the procedure set forth in Paragraph 10, below. **By not opting out of this Agreement, however, Employee will be giving up the right to represent others in litigation and the right to participate in any class, collective or representative action in a court of law, including the *Freeman* case.** If Employee chooses not to opt out of this Agreement, Employee will be able to arbitrate whatever individual claims Employee has against Company, including the same types of claims as those being litigated in the *Freeman* case.

9. TEN-DAY OPT-OUT PERIOD. If Employee does not want to be subject to this Agreement, Employee may opt out of this Agreement by signing Attachment A to the Agreement...

In order to be effective, the envelope containing the signed Attachment A must be post-marked by within 10 days of Employee’s receipt of this communication or the e-mail transmitting the pdf of the signed Attachment A, must be dated within 10 days of Employee’s receipt of this Agreement...

Should Employee not opt out of this Agreement within the 10-day period, Employee’s continued employment with Company will constitute Employee’s and Company’s mutual acceptance of the terms of this Agreement...

11. NO RETALIATION. An employee who timely opts out of the Agreement... will not be subjected to any adverse employment action as a consequence of that decision and may pursue available legal remedies without regard to this Agreement.

ATTACHMENT A, DISPUTE RESOLUTION AGREEMENT OPT-OUT FORM

I hereby certify that I do not want to participate in or be bound by the Company's Dispute Resolution Agreement.

(b) Since about October 2012, and at all material times, Respondent has promulgated, maintained and enforced this language of the DRA signed by its current and former employees employed at various locations throughout the United States, including at Eden Medical Center in Castro Valley, California.

6.

(a) The provisions of the DRA described above in subparagraph 5(a), including but not limited to the "Arbitration of Claims" provision, interfere with employees' Section 7 rights to engage in collective legal activity by binding employees to an irrevocable waiver of their rights to participate in collective and class litigation.

(b) The provisions of the DRA described above in subparagraph 5(a), including but not limited to the "Class Action Waiver" provision, interfere with employees' Section 7 rights to engage in collective legal activity by binding employees to an irrevocable waiver of their rights to participate in collective and class litigation.

(c) The provisions of the DRA described above in subparagraph 5(a), including but not limited to the "Participation in the Freeman Case" provision, interfere with employees' Section 7 rights to engage in collective legal activity by binding employees to an irrevocable waiver of their rights to participate in collective and class litigation.

7.

By the conduct described above in paragraph 5, under the circumstances set forth above in paragraph 6, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

8.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, in view of the fact that Respondent has solicited all of its employees who are employed nationwide to sign the DRA, the Acting General Counsel seeks, as part of the remedy for the allegations in paragraphs 5 and 6, that Respondent be required to post at all its staffing offices nationwide any Notice To Employees that may issue in this proceeding and that Respondent send a copy of any Board Order and Notice To Employees via e-mail and regular mail to all of its employees nationwide who were solicited to sign the DRA.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Complaint. The answer must be **received by this office on or before April 8, 2013 or postmarked on or before April 7, 2013.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website

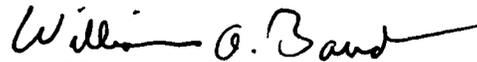
informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **3rd day of June 2013**, at 9:00 a.m., in the Oakland Regional Office of the Board, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, and continuing on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at

the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED AT Oakland, California this 25th day of March, 2013.



WILLIAM A. BAUDLER
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 32
1301 CLAY ST
STE 300N
OAKLAND, CA 94612-5224

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ARNELLA M. FREEMAN, an individual,
Charging Party

vs.

Case 32-CA-095025

ON ASSIGNMENT STAFFING SERVICES,
INC., Charged Party

RESPONDENT ON ASSIGNMENT STAFFING SERVICES, INC.'S
ANSWER TO COMPLAINT

Joshua J. Cliffe
Michael G. Pedhirney
LITTLER MENDELSON, P.C.
650 California Street, 20th Floor
San Francisco, CA 94108
Telephone: (415) 677-3146

*Counsel for On Assignment Staffing Services,
Inc.*

Exhibit # 3

RESPONDENT'S ANSWER TO COMPLAINT

COMES NOW ON ASSIGNMENT STAFFING SERVICES, INC., (hereinafter "Respondent"), in answer to the Complaint issued on March 25, 2013 in the above-captioned matter by Regional Director William A. Baudler on behalf of the Acting General Counsel of the National Labor Relations Board, and alleges as follows:

1. In response to Paragraph 1 of the Complaint, Respondent admits that it received the charge in this proceeding. Upon information and belief, Respondent admits that the charge was filed by Arnella M. Freeman on or about December 14, 2012. Except as so specifically admitted, Respondent denies each and every allegation contained in Paragraph 1 of the Complaint.

2. (a) In response to Paragraph 2(a) of the Complaint, Respondent admits the material allegations contained in Paragraph 2(a) of the Complaint.

(b) In response to Paragraph 2(b) of the Complaint, Respondent admits the material allegations contained in Paragraph 2(b) of the Complaint.

3. In response to Paragraph 3 of the Complaint, Respondent admits the material allegations contained in Paragraph 3 of the Complaint.

4. In response to Paragraph 4 of the Complaint, Respondent admits the material allegations contained in Paragraph 4 of the Complaint.

5. (a) In response to Paragraph 5(a) of the Complaint, Respondent admits the material allegations contained in Paragraph 5(a) of the Complaint.

(b) In response to Paragraph 5(b) of the Complaint, Respondent admits the material allegations contained in Paragraph 5(b) of the Complaint.

6. (a) In response to Paragraph 6(a) of the Complaint, Respondent denies each and every allegation contained therein.

(b) In response to Paragraph 6(b) of the Complaint, Respondent denies each and every allegation contained therein.

(c) In response to Paragraph 6(c) of the Complaint, Respondent denies each and every allegation contained therein.

7. In response to Paragraph 7 of the Complaint, Respondent denies each and every allegation contained therein.

8. In response to Paragraph 8 of the Complaint, Respondent denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

As a FIRST, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that the National Labor Relations Board currently lacks legal authority to act on this matter due to the lack of a quorum of members of the National Labor Relations Board. *See Noel Canning v. NLRB*, 2013 U.S. App. LEXIS 1659 (D.C. Cir. Jan. 25, 2013).

As a SECOND, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that the National Labor Relations Board lacked legal authority to act when it issued the decision in *D.R. Horton*, 357 NLRB. No. 184 (January 3, 2012) due to the lack of a quorum of members of the National Labor Relations Board at the time the *D.R. Horton* decision was issued. *See Noel Canning*, 2013 U.S. App. LEXIS 1659.

As a THIRD, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that assuming, arguendo, any allegation in the Complaint is found to be a violation, the remedy requested is inappropriate as a matter of law.

As a FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that the National Labor Relations Board has no jurisdiction over those alleged unfair labor practices set forth in the Complaint which are barred by the six-month statute of limitations set forth in Section 10(b) of the Act.

As a FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE to the Complaint, Respondent alleges that the claims alleged in the Complaint are barred in whole or in part because the allegations upon which they are based are insufficient to state any violations of the Act.

Respondent reserves the right to assert any additional affirmative defenses it discovers during the course of these proceedings.

WHEREFORE, Respondent respectfully requests the Administrative Law Judge dismiss the Complaint in its entirety and grant Respondent all appropriate relief.

Dated: April 15, 2013

LITTLER MENDELSON
A Professional Corporation

By: 
JOSHUA J. CLIFFE
MICHAEL G. PEDHIRNEY
Attorneys for Respondent
ON ASSIGNMENT STAFFING SERVICES,
INC.

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United States Government

NATIONAL LABOR RELATIONS BOARD

Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5224

Gabriela Alvaro, Esq.
Telephone: (510) 637-3271
Fax No: (510) 637-3315

June 3, 2013

Joshua J. Cliffe, Esq.
Littler Mendelson PC
650 California Street
20th Floor
San Francisco, CA 94108-2693
Fax: (415) 743-6662

Re: On Assignment Staffing Services, Inc. / 32-CA-095025

SENT VIA US MAIL & FACSIMILE

Dear Mr. Cliffe,

During a telephone conversation on May 20, 2013, we discussed the above-referenced matter and agreed that there is no factual dispute which would prevent a motion for summary judgment or, alternatively, the matter being presented via a stipulated record. On May 24, 2013, via telephone, we revisited the matter when I informed you that the Region would that day issue an order postponing the hearing indefinitely and would in the near future file a motion for summary judgment. During that same May 24, 2013 telephone conversation, we agreed again that there is no factual dispute which would prevent a motion for summary judgment.

Furthermore, during our May 24, 2103 telephone conversation , you noted that you would call me before the end of that day in order to request that the Region reconsider its decision to file a motion for summary judgment if you, after reviewing the Complaint and the Answer, felt that the matter should be presented via a stipulated record. I did not hear from you that day (nor since that day) regarding any preference for the matter being presented via a stipulated record. On May 24, 2013, in accord with my notice to you of that day, the hearing date was indefinitely postponed pending the submission of the Region's Motion for Summary Judgment to the Board.

Exhibit # 4

Please contact me by the close of business on June 5, 2013 if you disagree with the memorializations contained herein.

Best regards,

A handwritten signature in black ink, appearing to read 'G. Alvaro', with a long horizontal flourish extending to the right.

Gabriela Alvaro, Esq.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

ON ASSIGNMENT STAFFING SERVICES, INC.

and

ARNELLA M. FREEMAN, an Individual

Case(s) 32-CA-095025

Date: June 13, 2013

AFFIDAVIT OF SERVICE OF MOTION FOR SUMMARY JUDGMENT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

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Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20005
VIA E-FILE

June 13, 2013

Date

Frances Hayden, Designated Agent of NLRB

Name



Signature