

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

HYUNDAI POWER TRANSFORMERS USA, INC.)	
)	
and)	CASES 15-CA-090828
)	15-CA-095044
CHELSEY JEROME WOODS, an individual)	
)	
)	

**RESPONDENT HYUNDAI POWER TRANSFORMERS USA, INC'S
MOTION TO DISMISS CONSOLIDATED COMPLAINT
FOR LACK OF JURISDICTION**

Respondent Hyundai Power Transformers USA, Inc. ("Respondent" or "HPT") moves to dismiss the Consolidated Complaint and Notice of Hearing issued April 29, 2013, and states as follows:

1. On April 29, 2013, the Board lacked a quorum, and therefore, has no subject matter jurisdiction over the claims contained in the April 29, 2012 Consolidated Complaint; accordingly, the Consolidated Complaint should be dismissed.¹

2. Noel Canning v. National Labor Relations Board, 705 F.3d 490 (D.C. Cir. 2013) holds the **NLRB lacks jurisdiction to hear a case** when recess appointment of a Board member made for a vacancy not occurring during the same Senate adjournment as the appointment **compromises the minimum three person quorum**, and declines to enforce such a decision.²

¹ Respondent has previously filed a Motion to Dismiss with respect to the Board's Complaint (15-CA-095044) issued March 28, 2013 on identical grounds.

² See Noel Canning, 705 F.3d at 514; see New Process Steel, L.P. v. NLRB, 130 S.Ct. 2635, 2644-45 (2010)(Board must have three members serving to have a quorum).

3. Specifically, Noel Canning held the purported "recess appointments" of NLRB members Terrence Flynn, Sharon Block, and Richard Griffin were without constitutional authority, and accordingly, that the Board lacked a quorum beginning at least as early as January 4, 2012.³

4. Because Noel Canning makes the Block and Griffin appointments invalid, there was **only one (1) duly appointed Board member** (Mark Pearce) on April 29, 2013, this matter's Consolidated Complaint issue date, which is insufficient to satisfy a New Process quorum.⁴

5. Noel Canning thus demonstrates that the Board lacked authority and subject matter jurisdiction to issue the Complaint in this matter, and therefore, dismissal is warranted.

WHEREFORE, PREMISES CONSIDERED Respondent respectfully requests that this matter be dismissed.

/s/ John J. Coleman, III

John J. Coleman, III
Marcel L. Debruge
Kathryn M. Willis

Attorneys for Respondent
HYUNDAI POWER TRANSFORMERS
USA, INC.

OF COUNSEL:
BURR & FORMAN LLP
3400 Wachovia Tower
420 North 20th Street
Birmingham, Alabama 35203
Telephone: (205) 251-3000
Facsimile: (205) 458-5100

³ See Noel Canning, 705 F.3d at 506-07.

⁴ See www.nlr.gov/members-nlr-1935 (last visited April 9, 2013)(as of March 28, 2013, the Board purportedly consisted of the invalidly appointed Griffin and Block, along with Pearce); New Process Steel, L.P. v. NLRB, 130 S.Ct. 2635, 2644-45 (2010)(one Board member insufficient for quorum).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed via E-Filing, a copy has been served via email on M. Kathleen McKinney, Regional Director, and on Zachary E. Herlands, Counsel for the Acting General Counsel, and a copy has been served on Chelsey Jerome Woods (email unknown) via first-class United States mail, postage prepaid, on this the 13th day of May, 2013:

M. Kathleen McKinney, Regional Director
National Labor Relations Board
Region 15
600 S Maestri PL. 7th Floor
New Orleans, LA 70130-3408

Zachary E. Herlands
Counsel for the Acting General Counsel
National Labor Relations Board
Region 15
600 South Maestri Place, 7th Floor
New Orleans, LA 70310

Chelsey Jerome Woods
1001 Taylor Oaks Circle
Apt. 306
Montgomery, AL 36116

/s/ John J. Coleman, III

OF COUNSEL