

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

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

**RESPONDENT'S REPLY TO THE COUNSEL FOR THE ACTING GENERAL
COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS
CONSOLIDATED COMPLAINT**

Respondent Hyundai Power Transformers USA, Inc. ("Respondent" or "HPT") replies to the Counsel for the Acting General Counsel's ("Complainant") Opposition to Respondent's Motion to Dismiss the Consolidated Complaint and Notice of Hearing as follows:

1. Complainant presents nothing new, content instead to parrot prior points; Complainant in repeating his rejected recipe requires restating our rationale.
2. Nothing in Complainant's Opposition alters the conclusion that this case should be dismissed based on lack of jurisdiction.
3. Whether the National Labor Relations Board ("NLRB") "intends" to appeal the Noel Canning v. NLRB, 705 F.3d 490 (D.C. Cir. 2013) decision is irrelevant; what matters is the current state of the law.
4. Complainant does not and cannot dispute that Noel Canning holds the "recess appointments" of NLRB members Terrence Flynn, Sharon Block, and Richard Griffin invalid,

and therefore, cannot legitimately dispute that the NLRB lacked the requisite quorum on March 28, 2013, the Complaint issue date.¹

5. Complainant cites inapplicable authorities in opposing dismissal.

a. Complainant cites **no authorities** involving an individual's appointment to the NLRB, or to any other independent federal agency with adjudicatory power which would otherwise fall within the ambit of the federal district courts under 28 U.S.C. § 1331.²

b. In fact, Noel Canning (the only case involving an actual appointment to the NLRB) expressly **discussed and rejected** the holdings and rationales set forth in Evans v. Stephens, 387 F.3d 1220 (11th Cir. 2004), U.S. v. Woodley, 751 F.2d 1008 (9th Cir. 1985), and U.S. v. Allocco, 305 F.2d 704 (2d. Cir. 1962), all of which Complainant's Opposition cited.³

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully requests that its Motion to Dismiss the Consolidated Complaint be granted.

¹ See Noel Canning, 705 F.3d at 506-07, 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).

² Compare Noel Canning (holding NLRB lacked to hear case when recess appointment of a NLRB member made for a vacancy not occurring during the same Senate adjournment as the appointment compromises the minimum three person quorum and thus declined to enforce NLRB decision); with Belgrove Post Acute Care Center, 359 NLRB No. 77 (Mar. 13, 2013)(refusal to bargain case where Board makes conclusory, unsupported assertion in footnote that the "[recess appointment] question remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act" citing cases Noel Canning rejected); Evans v. Stephens, 387 F.3d 1220 (11th Cir. 2004); U.S. v. Woodley, 751 F.2d 1008 (9th Cir. 1985); U.S. v. Allocco, 305 F.2d 704 (2d. Cir. 1962)(all involving recess appointments of Article III judges, and all discussed and rejected by the Noel Canning court).

³ See Noel Canning, 705 F.3d at 505, 509-11 (expressly rejecting the rationales set forth in Evans, Woodley and Allocco in analyzing recess appointment issue with respect to an appointment to the NLRB).

/s/ John J. Coleman, III

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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 15th day of May, 2013:

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