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10 UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
11 REGION 32
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13 SERVICE EMPLOYEES
INTERNATIONAL UNION, UNITED
14 HEALTHCARE WORKERS- WEST,

15 Charging Party,
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17 And
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19 AMERICAN BAPTIST HOMES OF THE
WEST d/b/a PIEDMONT GARDENS ,
20

21 Respondent.
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Case Nos. 32-CA-25247
32-CA-25248
32-CA-25256
32-CA-25266
32-CA-25271 t 32-CA-25308
32-CA-25498

RESPONSE TO MOTION TO DISMISS

23 The Motion to Dismiss filed by American Baptist Homes is an improper attempt to
24 avoid its failure to raise this issue by way of Exceptions or Cross-Exceptions at any time. The
25 issue addressed in the Motion was never raised in Exceptions or Cross-Exceptions. The issue
26 was never raised in trial or in the Answer. Indeed, Respondent's Answer admits the operative
27 allegations of paragraphs 1, 2, 3 and 4. The Answer does not deny the preface to the Complaint
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1 which alleges that “the Acting General Counsel of the National Labor Relations Board . . . on
2 behalf of the Board, by the undersigned . . .”

3 The Employer admitted the validity of the complaint by failing to offer any affirmative
4 defense regarding the authority of the General Counsel to issue the complaint in this matter.

5 The DC Circuit made it clear that its decision would only apply where proper exceptions
6 were raised. See *SW General Inc. vs. NLRB*, 796 F.3d 67, 82-84 (D.C. Cir. 2015). Respondent
7 never did so and it is foreclosed from making that argument to the Board.

8 Furthermore, the Notice of Ratification issued by the General Counsel moots this
9 Motion. The Motion should be stricken or denied. Any defect has been cured by the Notice of
10 Ratification filed by the General Counsel on September 28, 2015.

11 The Motion is also untimely.

12 The Motion should be stricken or denied.

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14 Dated: October 23, 2015

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

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16 By: /S/ DAVID A. ROSENFELD
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**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda , State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On October 23, 2015, I served the following documents in the manner described below:

RESPONSE TO MOTION TO DISMISS

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 23, 2015, at Alameda, California.

/s/ Katrina Shaw

Katrina Shaw