UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COSTA MESA CARS, INC.; d/b/a
AUTONATION HONDA COSTA MESA; f/k/a
POWER HONDA COSTA MESA and
AUTONATION, INC., Respondents

And

Case 21-CA-123072

MICHAEL APPLEBAUM, an Individual

RESPONDENTS' EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Respondents Costa Mesa Cars, Inc. ("CMC") and AutoNation, Inc. ("AutoNation") ("Respondents"), through counsel and pursuant to the National Labor Relations Board's (the "Board") Rules 102.46 et. seq., file the following exceptions to the decision of Administrative Law Judge ("ALJ") Eleanor Laws dated March 14, 2016.

1. Respondents except to the ALJ's continued application of the Board's holdings in *D.R. Horton, Inc.* 357 NLRB No. 184 (2012) and *Murphy Oil USA, Inc.* 361 NLRB No. 72 (2014) that arbitration agreements between employers and employees waiving rights to pursue class or collective litigation violate Section 8(a)(1) of the National Labor Relations Act (the "Act") in light of the Court of Appeals for the Fifth Circuit's refusal to enforce the Board's decisions on that ground and the continued rejection of the Board's reasoning by other circuit courts based on binding precedent of the Supreme Court of the United States. *See Am. Express v. Italian Colors Rest.,* 133 S. Ct. 2304 (2013); *CompuCredit Corp v. Greenwood,* 132 S. Ct. 665 (2012); *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333 (2011); *Circuity City Stores, Inc. v. Adams*, 532 US 105 (2001); *Murphy Oil v.* NLRB 808 F.3d 1013, *en banc petition for*

hearing pending (5th Cir. 2015); *Owen v. Bristol Care, Inc.*, 702 F.3d 1050 (8th Cir. 2013); *Johnmohammadi v. Bloomingdale's Inc,*. 755 F.3d 1072 (9th Cir. 2014).

2. Respondents except to the ALJ's conclusion regarding violations of the Act as erroneous and contrary to the Federal Arbitration Act ("FAA"), as interpreted by the Supreme Court.

3. Respondents except to the ALJ's factually incomplete finding on page 2, lines 18-20 that AutoNation is the parent company of CMC. The factual record and evidence demonstrates that CMC is an indirectly owned subsidiary of AutoNation not a direct subsidiary of AutoNation.

4. Respondents except to the ALJ's conclusions on page 4, line 27 through page 5, line 3 and page 10, lines 20-27 that AutoNation maintained the arbitration agreement and engaged in conduct that results in it being a direct participant in the alleged unlawful actions of CMC.

5. Respondents except to the ALJ's factual finding and conclusion in footnote 7 on page 5 that Aaron Duport is an agent of AutoNation.

6. Respondents except to the ALJ's conclusion on page 11, lines 30-32 that the arbitration agreement executed by Charging Party Michael Applebaum ("Applebaum") was not voluntary.

7. Respondents except to the ALJ's conclusion on page 11, lines 38-40 that a voluntary waiver of the right to bring a class action lawsuit is nonetheless an impermissible waiver of rights under the Act.

8. Respondents except to the ALJ's conclusion that the statute of limitations defense is inapplicable and/or unmeritorious.

9. Respondents except to Conclusions of Law One Through Four as erroneous, contrary to the FAA and contrary to established precedent.

10. Respondents except to the decision in that the due process rights of Respondents and third-parties have been violated. First, this hearing was conducted after Charging Party sought to withdraw his complaint. Additionally, Respondents except to the remedy found on page 13, lines 25-35 as it involves third-parties (e.g. other indirectly owned dealerships) who have not been provided due process before the Board (e.g. receipt of a charge, complaint or participation in a hearing).

11. Respondents except to all of the remedies issued by the ALJ in that they violate previously issued Court orders or private agreements between one or both Respondents and Charging Party.

12. Respondents except to the ALJ's remedy and order in that the requirement of rescission of an arbitration agreement with a class action waiver contravenes the FAA and cannot be enforced by this proceeding.

WHEREFORE, for the reasons stated herein and in Respondents' brief in support of exceptions filed, Respondents pray that the Board dismiss the General Counsel's claim that the arbitration agreement executed by Charging Party violates section 8(a)(1) of the Act in its entirety.

To:

Respectfully submitted,

Dated: April 6, 2016

Respondents

By:

Lonnie Giamela
FISHER & PHILLIPS, LLP
Counsel for Respondents

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

AUTONATION, INC; COSTA MESA CARS INC. dba AUTONATION HONDA COSTA MESA FKA POWER HONDA COSTA MESA	)	Case No. 21-CA-123072
and	)	
MICHAEL APPLEBAUM, An Individual	)	

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2016, I e-filed the foregoing **RESPONDENTS' EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** using the Board's e-filing system, and immediately thereafter served it by mail upon the following:

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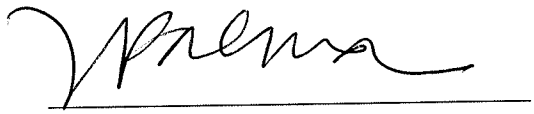
Dated this 11th day of April, 2016, at Los Angeles, California.



Vanessa Palma