

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

KO HUTS, INC.

and

Case 14-CA-164874

MICHAEL TIFFANY, an Individual

**COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF TO THE ADMINISTRATIVE LAW JUDGE**

Upon a charge filed November 23, 2015, by Michael Tiffany, an Individual, (the Charging Party), a Complaint and Notice of Hearing (the Complaint) issued on February 16, 2016. The Complaint alleges that KO Huts, Inc. (Respondent), violated Section 8(a)(1) of the Act. Respondent filed an Answer on February 29, 2016. On March 14, 2016, the Charging Party, Respondent, and Counsel for the General Counsel (General Counsel) entered into a Joint Motion and Stipulation of Facts (Joint Motion), waived hearing in this matter, and agreed that briefs be submitted by April 18, 2016. On March 15, 2016, the General Counsel filed a motion to substitute Exhibit G of the Joint Motion. On that same date, the administrative law judge granted the motion.

Based upon the evidence in the Stipulated Facts, the General Counsel submits that Respondent has violated Section 8(a)(1) of the Act by requiring prospective and current employees, as a condition of employment, sign a waiver of the right to bring lawsuits pertaining to terms and conditions of employment collectively and as a class action, and Respondent further violated Section 8(a)(1) by filing and maintaining a court motion to enforce the waivers obtained from employees.

I. Stipulated Facts

Respondent KO Huts, Inc., a Kansas corporation, with an office and place of business in Wichita, Kansas, has been engaged in the operation of various Pizza Hut restaurants located in Kansas and Oklahoma, including a Pizza Hut restaurant in Enid, Oklahoma (Enid restaurant). (Stip. para. 1.4(a)). At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (Stip. para. 1.4(b-e)). Respondent's employees are not represented by any labor organization. (Stip. para. 1.5).

At all material times since May 25, 2015, Respondent has required all of its prospective employees at its various Pizza Hut restaurants located in Kansas and Oklahoma, including the Enid restaurant, to sign, as a condition of employment, a document titled "KO Huts, Inc. Agreement to Arbitrate" (Agreement). (Stip. para. 7(a); Exh. E). The Agreement provides, inter alia:

KO Huts, Inc. (KOH) and I agree to use binding arbitration, instead of going to court, for any claims that I may have against KOH. Without limitation, such claims include any concerning wages, expense reimbursement, compensation, leave, employment (including, but not limited to, any claims concerning harassment, discrimination, or retaliation) the arbitration shall occur only as an individual action and not as a class, collective, representative, private attorney general action or consolidated action.

KOH and I agree that any and all claims subject to arbitration under this Agreement to Arbitrate may be instituted and arbitrated only in an individual capacity, and not on behalf of or as part of any purported class, collective, representative, private attorney general action, or consolidated action (collectively referred to in this Agreement to Arbitrate as "Class Action"). Furthermore, KOH and I agree that neither party can initiate a Class Action in court or in arbitration in order to pursue any claims that are subject to arbitration under this Agreement to Arbitrate. Moreover, neither party can join a Class Action or participate as a member of a Class Action instituted by someone else in court or in arbitration in order to pursue any claims that are subject to arbitration under the Agreement to Arbitrate. It is the parties' intent to the fullest extent permitted by law to waive any and all rights to the application of Class Action procedures or remedies with respect to all claims subject to this Agreement to Arbitrate.

I understand that, by entering into this Agreement to Arbitrate, I am waiving my right to a jury trial and any right I may have to bring any employment-related claim covered by this agreement as a Class Action (as defined herein) or any class or representative action (either in court or in arbitration) or to participate in such an action.

(Stip. para. 7(b)).

At all material times, Pauline Morgan has held the position of Respondent's General Manager at its Enid Restaurant and has been a supervisor and agent of Respondent within the meanings of Sections 2(11) and 2(13) of the Act, respectively. (Stip. para. 6). On about May 26, 2015, the Charging Party completed and submitted new hire paperwork, which included the Agreement described above, as a condition of employment by Respondent at the Enid restaurant. (Stip. para. 9). By its General Manager Morgan, Respondent hired the Charging Party on about May 27, 2015 to work as a delivery driver at its Enid restaurant. (Stip. para. 10). On about July 20, 2015, the Charging Party's position at Respondent's Enid restaurant changed from delivery driver to dough preparation. (Stip. para. 11).

All prospective employees at Respondent's various places of business, including the Enid restaurant, are required to complete and sign new hire paperwork, which includes the Agreement described above. (Stip. para. 12). No applicant for employment may be hired and no employee may retain employment without signing the Agreement described above. (Stip. para. 13). Respondent maintains a copy of the signed Agreement in employee personnel files and records. (Stip. para. 14).

On October 21, 2015, the Charging Party filed a collective civil action under the Fair Labor Standards Act (FLSA) and the Oklahoma Minimum Wage Act (OMWA) against Respondent in the United States District Court, Western District of Oklahoma (Civil Act No. CIV-15-1190-HE) (the Lawsuit) to recover unpaid wages owed to himself and all similarly situated drivers employed by Respondent at its Pizza Hut restaurants. (Stip. para. 15; Exh. G).

On November 17, 2015, Respondent filed an Answer to the Charging Party's Lawsuit and a Counterclaim for Declaratory Judgment (Answer) on the basis that employees waived their right to concertedly bring collective claims or lawsuits pertaining to their wages, hours, and terms and conditions of employment by signing the Agreement. (Stip. para. 16(a); Exh. H). On November 19, 2015, Respondent filed a Motion to Compel Individual Arbitration and Stay Plaintiff's Claims (Motion to Compel) because the Charging Party had signed the Agreement. (Stip. para. 16(b); Exh. I).

Since the filing of the Charging Party's Lawsuit, Respondent has defended the Lawsuit by maintaining that such a claim or suit must be brought by employees individually, and not concertedly, jointly, or as a group, and Respondent has defended the Lawsuit by relying on the Agreement signed by the Charging Party and other employees as a bar to the Lawsuit collectively and as a class action. (Stip. para. 17).

II. Argument

A. Respondent violated Section 8(a)(1) of the Act by requiring prospective and current employees to execute the Agreement requiring claims and lawsuits regarding their employment be brought individually and not through joint, collective, or class legal actions. (Stip. II. 1.)

1. The Protected Concerted Activity

The Section 7 right at issue here is the right of employees, such as Charging Party Michael Tiffany and his co-workers, to engage in "concerted activities" for the purpose of their "mutual aid and protection." The activity engaged in here, by Charging Party is his filing of a collective civil action under the FLSA and a class action under the OMWA to recover for himself and similarly situated drivers unpaid wages resulting from the Respondent's method of determining reimbursement rates for incurred driving expenses, which legal action falls squarely within the rights protected by Section 7. The wages and accurate reimbursement of driving expenses incurred while laboring for Respondent is clearly a vitally important issue to employees and is the most basic of employees' terms and conditions of employment.

Under Section 8(a)(1) of the Act it is an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in” Section 7. 29 U.S.C. §158(a)(1). In *D.R. Horton, Inc.*, 357 NLRB 2277, 2279 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), the Board affirmed that “employees who join together to bring employment-related claims on a class wide or collective basis in court or before an arbitrator are exercising rights protected by Section 7 of the NLRA.” The Board in *Murphy Oil USA, Inc.*, 361 NLRB No. 72, slip op. at 7 (2014), enf. denied in relevant part *Murphy Oil USA, Inc., v. NLRB*, 808 F. 3d 1013 (5th Cir. 2015), reaffirmed the holding in *D.R. Horton*, stating, “the *D.R. Horton* Board was clearly correct when it observed that the ‘right to engage in collective action—including collective *legal* action—is the *core* substantive right protected by the NLRA and is the foundation on which the Act and Federal labor policy rest.” *D.R. Horton*, supra. at 2286 (emphasis added in part). Clearly, Charging Party’s Lawsuit is the very collective legal action found protected by the Board in *D.R. Horton* and *Murphy Oil*.

While concerted activity under Section 7 often requires activity of more than one employee to be protected, a lone employee’s conduct is concerted and protected where the employee’s activities are intended to incite or induce concerted action, or where a lone employee is raising a group concern to an employer. *Meyers Industries*, 268 NLRB 493, 497 (1984), reaffirmed *Meyers Industries (Meyers II)*, 281 NLRB 882, 887 (1986), affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). It is this potential “to initiate or to induce or to prepare for group action,” in the phrase of *Meyers II*, supra—collectively seeking legal redress—that satisfies the concert requirement of Section 7. *D.R. Horton*, supra at 2279. In *Beyoglu*, 362 NLRB No. 152 (2015), the Board made clear, “the filing of an employment-related class or collective action by an individual is an attempt to initiate, to induce, or to prepare for group action and is therefore conduct protected by Section 7.” *Id.*, at slip op. 2. (Individual employee filed an FLSA claim on behalf of co-workers in federal court, even though the only co-worker invited by the employee declined to join the lawsuit.) Here, as

in *D.R. Horton*, the Charging Party individually filed the FLSA and OMWA lawsuit, but he did so on behalf of his similarly situated co-workers. Accordingly, any assertion that the Lawsuit is not concerted activity, because individually filed by the Charging Party has been addressed and rejected by the Board. *Id.*

2. Execution of the Agreement was a Condition of Employment

Respondent stipulated that it requires prospective and current employees, as a condition of employment at the time of completing new hire paperwork, to execute the Agreement and that no applicant for employment may be hired and no employee may retain employment without signing the Agreement. (Stip. paras. 12 and 13) Respondent's General Manager, Pauline Morgan, in her declaration which was attached to the Respondent's Motion to Compel (Stip. Exh. 1), declared that the offer of employment to the Charging Party, Michael Tiffany, was conditioned on his executing the Agreement. And, lastly, the Agreement explicitly states that employees' "acknowledge and agree that this Agreement to Arbitrate is made in exchange for my employment or continued employment " (Stip. Exh. E).

The *D.R. Horton* Board held that an employer violates Section 8(a)(1) of the Act "when it requires employees covered by the Act, as a condition of their employment, to sign an agreement that precludes them from filing joint, class, or collective claims addressing their wages, hours or other working conditions against the employer in any forum, arbitral or judicial." *Supra*. In evaluating the appropriateness of challenged rules and policies, including mandatory arbitration agreements like the one at issue here, the Board in *D.R. Horton*, *supra* at 2280, used the framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Under the *Lutheran Heritage Village* test, if a challenged rule, policy, or agreement explicitly restricts protected activity, the Board will find the rule unlawful. Alternatively, if the rule does not explicitly restrict Section 7 activity, the Board will find it unlawful if (1) employees would reasonably construe the language to prohibit section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights. *Id.* at

646-647; *U-Haul of California*, 347 NLRB 375, 377 (2006), enfd. 255 F. Appx. 527 (D.C. Cir. 2007). Mere maintenance of such a rule, even in the absence of specific enforcement or application, is coercive and a violation of Section 8(a)(1). See, *NLRB v. Northeastern Land Servs., Ltd.*, 645 F.3d 475, 478, 481-83 (1st Cir. 2011) (applying *Lutheran Heritage Village* to provision of an employment contract); *Cintas Corp. v. NLRB*, 482 F.3d 463, (D.C. Cir. 2007); *U-Haul Co.*, supra at 377-378.

The Agreement here is much like the arbitration agreement at issue in *Murphy Oil* in that both require employees to submit their employment-related legal claims, including those concerning wages, expense reimbursement, and compensation, to individual binding arbitration and prohibits employees from filing as a class, collective, representative, or consolidated action. The Agreement, like the one in *Murphy Oil*, “thus clearly and expressly bars employees from exercising their Section 7 right to pursue collective litigation of employment related claims in *all* forums.” supra at slip op. at 18. Moreover, employees would reasonably believe that such language prohibits collective action that otherwise is protected by Section 7 of the Act and as such, the Agreement in question is unlawful. *Murphy Oil*, supra, at slip op. 8-9. (“Insofar as an arbitration agreement prevents employees from exercising their Section 7 right to pursue legal claims concertedly the arbitration agreement amounts to a prospective waiver of a right guaranteed by the NLRA.”)

Here, Employees must waive the right to act concertedly in order to be hired, and this requirement is a term of employment. Prospective employees presented with Respondent’s new hire paperwork containing the Agreement will have no doubt that they must sign the waiver to be eligible for employment. The agreement compels employees to act individually and not in the interest of any other employees. Respondent’s Agreement requires employees to act alone, requiring them to relinquish the valuable right to join with other employees or on the authority of other employees as Section 7 provides. A Hobson’s choice of “agreeing” to waive Section 7

rights or forego employment is not a choice, but is the imposition of a mandatory term of employment and is coercive and restraining as prohibited by Section 8(a)(1) of the Act.

Respondent may argue that other language in the Agreement cures that portion prohibiting concerted, class or collective actions because the Agreement explicitly asserts that it does not prohibit filing, participating in, or pursuing action with an administrative agency including the NLRB. Explicitly guaranteeing the right to seek redress before the Board does not vitiate the need to preserve the core Section 7 right to engage in concerted activities, including pursuing legal action over terms and conditions jointly or collectively. *Murphy Oil*, supra. As the Board observed in *Murphy Oil*, despite a savings clause in the employer's agreement, "the right to 'commence, be a party to, or [act as a] class member in the action itself remains waived.'" *Id.* at slip op. 19. Moreover, the Respondent's exclusionary language is insufficient to clarify the inherent ambiguity created by the terms of the Agreement, 'most nonlawyer employees would not be sufficiently familiar with the limitation the Act imposes on mandatory arbitration for the language to be effective.'" *2 Sisters*, 357 NLRB No. 168 (2011), citing *U-Haul*, supra at 378. Despite the language explicitly addressing the right to participate in administrative agency proceedings including the NLRB, the Agreement still violates the Act under criteria 1 and 3 of the 3 part test in *Lutheran Heritage Village*, "(1) employees would reasonably construe the language to prohibit section 7 activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." *Supra* at 646-647.

B. Since the Agreement is unlawful and a violation of Section 8(a)(1), Respondent further violated Section 8(a)(1) by seeking to enforce the Agreement by filing of the Answer and Counterclaim and Respondent's Motion to Compel Arbitration (Stip. II. 2)

As a defense to the Charging Party's Lawsuit, Respondent filed with its Answer a counterclaim for declaratory judgment, and a Motion to Compel relying on the unlawful Agreement that the Charging Party was required to sign as a condition of employment. (Stip. paras 16a., 16b. and 17; Exhs. H and I). The Respondent's legal maneuvers, its Answer and

Motion to Compel, have the unlawful object of enforcing the unlawful waiver of collective and class actions. The sole purpose of the Answer and Motion to Compel is to enforce the unlawful language in the Agreement which waives employees' right to lead, join, or participate as a member of a class action, such as the FLSA and OMWA action brought by Charging Party Tiffany. In its counterclaim for declaratory judgment, Respondent urges the court to 1) compel arbitration, not court action, of the Lawsuit claims; 2) require the arbitration occur as an individual action and not as a collective or class action; and 3) require the Court alone to decide the scope of the arbitrator's authority. In its Motion to Compel, Respondent argues that 1) the Agreement is a contract to arbitrate which contracts are favored under federal and Oklahoma law; 2) is valid under state contract law; 3) encompasses the Charging Party's Lawsuit; 4) requires the Charging Party to arbitrate his claim individually and not as a class or collective action; and 5) the court must compel the Charging Party to arbitrate individually.

In *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731 (1983), the Supreme Court addressed the issue of when lawsuits may be enjoined as violations of Section 8(a)(1) setting forth a framework for evaluating violations where the lawsuit is ongoing and cases where the suit is concluded. The Court held that the Board may enjoin an ongoing suit brought for retaliatory reasons and that lacks a reasonable basis in law or fact. *Id.* at 748-749. With respect to concluded suits, the Court held that if it were unsuccessful or withdrawn by the plaintiff the Board could find a violation if the suit was brought in retaliation for protected activity. *Id.* at 747, 749. See also, *BE & K Construction Co., v. NLRB*, 536 U.S. 516 (2002), remanded at 351 NLRB 451 (2007). The *Bill Johnson* holding is relevant here because of the Court's statement in its footnote 5. The Court specifically stated that the principle it was enunciating was not intended to preclude the enjoining of suits that have "an objective that is illegal under federal law." *Id.* at 737, fn. 5. A lawsuit has an impermissible unlawful object where it seeks an end or result incompatible with Board law. *Id.*

The Board has recently reaffirmed the *Bill Johnson* principle when it held that it is axiomatic that the enforcement of an unlawful rule violates the Act. In *Murphy Oil*, and reaffirmed in *Cowabunga, Inc.*, 363 NLRB No. 113 (Feb. 26, 2016), the Board held that “the employer’s motion in Federal district court to dismiss a collective FLSA action and to compel individual arbitration pursuant to its mandatory arbitration agreement violated Section 8(a)(1) because that enforcement action unlawfully restricted employees’ exercise of Section 7 rights.” *Id.*, at slip op. 3; *Murphy Oil*, *supra*, at slip op. 19. “The Board may properly restrain litigation efforts such as the Respondent’s motion to compel arbitration that have the illegal objective of limiting employees’ Sec. 7 rights and enforcing an unlawful contractual provision, even if the litigation was otherwise meritorious or reasonable.” *Cowabunga, Inc.*, *supra*, at slip op. 4 fn 6. See *Murphy Oil*, *supra*, at slip op. 20-21; *Convergys Corp.*, 363 NLRB No. 51, at slip op. 2 fn. 5 (2015).

Here, it is clear that the Respondent’s Answer and Motion to Compel have been filed for no other object than to enforce the unlawful waiver of collective and class action litigation. The purpose of the Respondent’s Answer and motion is to prevent employees from acting in concert through the Charging Party’s FLSA and OMWA Lawsuit and to compel employees to act individually. Such an objective is hostile and in direct conflict with the guarantees of Section 7. It would be contradictory were the Act to condemn the waiver of collective and class action lawsuits here but leave the Respondent free to seek enforcement through its court motions. Respondent’s filing and maintenance of its Answer and Motion to Compel should be enjoined as a clear violation of Section 8(a)(1) because those legal maneuvers seek the very ends that the Act endeavors to protect, class and collective actions by employees in order to affect their terms and conditions of employment. Accordingly, where the Respondent’s Answer and Motion to Compel have the sole purpose of enforcing the Agreement which has the illegal objective of restricting employees’ Section 7 right to engage in class and collective action, the Respondent further violates Section 8(a)(1) of the Act.

C. Respondent's Defenses

Respondent will most likely adopt the positions expressed by Members Johnson and Miscimarra in their dissent in the *Murphy Oil* proceeding as well as the Fifth Circuit's rulings in *D.R. Horton* and *Murphy Oil* and the rulings of federal courts that have rejected the Board's position. It is notable that this matter falls within the Tenth Circuit Court of Appeal's jurisdiction and that Court has not issued a decision in any case similar to the matter here¹. Inasmuch as those arguments have already been rejected by the Board and remain non-persuasive, they will not be repeated here.

Moreover, the interpretation and enforcement of the substantive right protected by the Act is, in the first instance, accorded to the Board – not to the federal courts – and it is the Board law that controls herein. *Iowa Beef Packers, Inc.*, 144 NLRB 615, 616-617 (1963). Further, as the Board has noted, "it is a judge's duty to apply established Board precedent which the Supreme Court has not reversed." *Id.* It is for the Board, not the judge, to determine whether that precedent should be varied." *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984). See also, *Convergys Corporation*, *supra*, at slip op. 7.

III. Conclusion and Remedy

Based on the foregoing, Counsel for the General Counsel respectfully submits that Respondent has violated Section 8(a)(1) of the Act as alleged in the Complaint. Through its conduct, Respondent infringed upon the rights of its employees to engage in concerted activities, including concerted legal actions. The General Counsel respectfully urges the Board to find that the Respondent violated Section 8(a)(1) of the Act as alleged and order all such relief as may be necessary and appropriate to effectuate the policies and purpose of the Act.

¹ Respondent may cite to *Hickey v. Brinker Int'l Payroll Co.*, 2014 WL 622883 (D. Colo. Feb. 18, 2014) as a case falling within the Tenth Circuit's jurisdiction, however, that case was heard by the U.S. District Court for Colorado, not the Court of Appeals and is not precedential. "With very limited exceptions, the Board's decisions are reviewable solely in the Federal courts of appeals, and the district courts accordingly play a limited role in the interpretation and enforcement of the National Labor Relations Act. See 29 U.S.C. §160(e)." *Murphy Oil*, *supra*, at slip op. 2 fn. 14.

Respondent readily admits that it has used and continues to use the Agreement at all of its facilities. (Stip. paras. 4, 7, 8, 12, 13, and 14). Accordingly, the Order should be posted at all of Respondent's facilities located in Kansas and Oklahoma and not just at the Enid, Oklahoma location.

In addition, General Counsel seeks an order precluding Respondent from maintaining those portions of the Agreement found to be unlawful. This would include not only cease-and-desist relief, but also notification to employees that it is rescinding the unlawful provisions. General Counsel also seeks an order precluding Respondent from enforcing those portions of its Agreement found to be unlawful. This would include not only cease-and-desist relief, but also an order requiring Respondent to notify all judicial and arbitral forums wherein the Agreement has been sought to be enforced that it no longer opposes the seeking of collective or class action type relief. In particular, if Respondent's Motion to Compel is granted pending issuance of the administrative law judge's decision here, to remedy the legal consequences of the employer's unlawful motion, and return employees to the *status quo ante*, Respondent should be required to move the appropriate court to vacate its order for individual arbitration. Under Board law, such remedies are appropriate. In *Loehmann's Plaza*, 305 NLRB 663, 671 (1991), the Board ordered the respondent to seek to have the injunction granted against the union withdrawn. In *Federal Security, Inc.*, 336 NLRB 703 (2001), remanded on other grounds, 2002 WL 31234984 (D.C. Cir. 2002), the Board ordered the respondent to take affirmative steps to file a motion with the court to withdraw its lawsuit and file a motion to vacate the default orders entered and those still operative.

In addition, consistent with the Board's usual practice in cases involving unlawful legal actions, Respondent should be ordered to reimburse employees for any attorney's fees and litigation expenses directly related to opposing the Respondent's unlawful motions to compel individual arbitration. See *Bill Johnson's Restaurants*, 461 U.S. at 747 ("If a violation is found,

the Board may order the employer to reimburse the employees whom he had wrongfully sued for their attorney's fees and other expenses" and "any other proper relief that would effectuate the policies of the Act"), on remand, 290 NLRB 29, 30 (1988). See also, *Murphy Oil*, supra, slip op. at 21; *Cowabunga, Inc.*, supra, at slip op 5.

General Counsel further seeks all other relief as proposed in the attached Notice to Employees.²

Dated at St. Louis, Missouri, this 18th day of April 2016

Respectfully submitted,



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² The proposed Notice to Employees, to be posted and distributed to all of Respondent's Kansas and Oklahoma facilities, is appended as "Attachment A."

ATTACHMENT A

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT maintain and/or enforce a mandatory arbitration agreement that requires applicants for employment and our employees, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the "KO Huts, Inc. Agreement to Arbitrate" (Agreement to Arbitrate) that is part of our application for employment, or revise it to make clear that the Agreement to Arbitrate does not constitute a waiver of your right to maintain employment-related joint, class, or collective actions in all forums.

WE WILL notify all applicants and current and former employees who were required to sign the Agreement to Arbitrate that the Agreement to Arbitrate has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

WE WILL notify the court in which Michael Tiffany filed a wage claim that we have rescinded or revised the mandatory arbitration agreement upon which we based our motion to compel individual arbitration and stay plaintiff's claims, and **WE WILL** inform the court that we no longer oppose the plaintiff's claim on the basis of that agreement.

WE WILL reimburse Michael Tiffany for any reasonable attorney's fees and litigation expenses that he may have incurred in opposing our motion to compel individual arbitration and stay his wage claims.

KO Huts, Inc.
(Respondent)

Dated: _____ **By:** _____
(Responsible Official) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Counsel for the General Counsel's Brief to the Administrative Law Judge was e-filed with the Division of Judges on April 18, 2016, and sent by electronic mail on April 18, 2016, to the following parties:

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