

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

KO HUTS, INC.

and

Case No. 14-CA-164874

MICHAEL TIFFANY, an Individual

**RESPONDENT'S EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and regulations, Respondent, KO Huts, Inc. ("KO Huts") submits the exceptions set forth below to the April 20, 2016, Decision of Arthur J. Amchan, Administrative Law Judge ("ALJ").

KO Huts takes exception:

1. To the ALJ's continued application of the Board's holdings in *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014) and *D.R. Horton*, 357 NLRB 2277 (2012), to find that KO Huts violated Section 8(a)(1) of the Act by utilizing an employment arbitration agreement that includes a provision whereby Michael Tiffany and KO Huts mutually agreed to resolve all disputes through individual arbitration (Decision, p. 4, lines 15-22, 43-47), as those decisions, on which the ALJ relied, are contrary to Supreme Court and Circuit Court authority interpreting the Federal Arbitration Act and are otherwise contrary to law.

2. To the ALJ's implicit reliance on the Board's holdings in *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014) and *D.R. Horton*, 357 NLRB 2277 (2012), to find that the procedural rights applicable in federal court actions involving the Fair Labor Standards Act and state wage and hour laws give rise to substantive rights under the National Labor Relations Act (Decision p. 15-22, 43-47), as those decisions and the ALJ's associated conclusions, are contrary to Board

precedent, Supreme Court and Circuit Court authority interpreting the procedural rules at issue, and are otherwise contrary to law.

3. To the ALJ's finding that the reliance on the Board's decision in *Beyoglu*, 362 NLRB No. 152 (2015), and conclusion that the Charging Party "engaged in protected concerted activity by filing a collective civil action under the FLSA and the Oklahoma Minimum Wage Statute" without any evidence as to Charging Party's intentions or that Charging Party consulted with any other employees prior to filing the civil action (Decision p. 4, lines 26-31), as that decision and the ALJ's associated conclusion misapplies controlling Board precedent and impermissibly expands the scope of Section 7 rights beyond what is provided by the Act.

4. To the ALJ's continued application of the Board's holdings in *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014), and *Cowabunga, Inc.*, 363 NLRB No. 133 (Feb. 26, 2016), to find that KO Huts violated Section 8(a)(1) by seeking to compel individual arbitration of Charging Party's claims in the civil action (Decision p. 4, lines 24-31, 43-47), as those decisions, and the ALJ's associated conclusions, are contrary to Supreme Court and Circuit Court authority interpreting the Federal Arbitration Act and are otherwise contrary to law.

5. To the ALJ's finding that KO Huts engaged in "unlawful litigation" and proposed Remedy awarding plaintiff all reasonable expenses and legal fees, with interest, incurred in opposing Respondent's motion to compel individual arbitration (Decision p. 5, lines 5-8), as that finding and remedy misapplies Supreme Court precedent, violates Respondent's First Amendment right to petition the government for redress of grievances, and is otherwise contrary to law.

6. To the ALJ's proposed Remedy awarding Charging Party "all reasonable expenses and legal fees, with interest, incurred in opposing" Respondent's motion to compel

arbitration (Decision p. 5, lines 6-8), as that aspect of the order exceeds the ALJ's statutory authority and is contrary to law.

7. To the ALJ's finding that KO Huts sought to "dismiss" Charging Party's collective FLSA action (Decision p. 4, line 25), and statement in his proposed Remedy that KO Huts filed a "motion to dismiss" Charging Party's FLSA action (Decision p. 5, lines 7-8), as KO Huts did not file a motion to dismiss, but instead filed a Motion to Compel Individual Arbitration and Stay Plaintiff's Claims.

8. To all aspects of the ALJ's proposed Remedy because it is based on the ALJ's erroneous conclusions as excepted herein.

9. To all aspects of the ALJ's proposed Order because it is based on the ALJ's erroneous conclusions as excepted herein.

Respectfully submitted,

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Certificate of Service

I hereby certify that on the 27th day of May, 2016, I electronically filed **Respondent's Exceptions to Administrative Law Judge's Decision** with the National Labor Relations Board's E-Filing System and served a copy of the foregoing via electronic mail to the following:

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