

Oral Argument Not Yet Scheduled

No. 16-60375

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

ADECCO USA, INC.

Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD

Respondent/Cross-Petitioner

**ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

**BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD**

KIRA DELLINGER VOL
Supervisory Attorney

JEFFREY W. BURRITT
Attorney

National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-0656
(202) 273-2989

RICHARD F. GRIFFIN, JR.
General Counsel

JENNIFER ABRUZZO
Deputy General Counsel

JOHN H. FERGUSON
Associate General Counsel

LINDA DREEBEN
Deputy Associate General Counsel

National Labor Relations Board

STATEMENT REGARDING ORAL ARGUMENT

The Board does not believe that oral argument would be of any assistance to the Court in this matter. The Board's unfair-labor-practice finding based on the concerted-action waiver in the Company's arbitration agreement is indisputably controlled by *D.R. Horton, Inc. v. NLRB*, 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). The remaining unfair-labor-practice finding involves the application of well-settled legal principles to uncontested facts. If the Court believes, however, that argument is necessary, the Board requests to participate and submits that 10 minutes per side would be sufficient.

TABLE OF CONTENTS

Headings	Page(s)
Statement of jurisdiction	1
Statement of the issues	2
Statement of the case.....	3
I. Procedural history	3
II. The Board’s findings of fact	4
III. The Board’s conclusions and order	5
Summary of argument.....	7
Standard of review	8
Argument.....	9
I. Adecco violated Section 8(a)(1) of the NLRA by maintaining and enforcing an arbitration agreement that bars employees from pursuing work-related claims concertedly	9
II. Adecco violated Section 8(a)(1) of the NLRA by maintaining an arbitration agreement that employees reasonably would believe bars or restricts their right to file unfair-labor-practice charges	12
A. Reasonable employees would construe Adecco’s agreement as prohibiting or restricting their right to file Board charges	14
B. The Court lacks jurisdiction to consider certain of Adecco’s challenges to the Board’s Order	20
1. In any event, the opt-out provision in Adecco’s Agreement does not cure its interference with employees’ right to file Board charges.....	21
2. In any event, the Board is not seeking to “dictate” the terms of Adecco’s agreement.....	22

TABLE OF CONTENTS

Headings-Cont'd	Page(s)
3. In any event, Adecco's challenge to the Board's notice-posting requirement lacks merit	24
Conclusion	27

TABLE OF AUTHORITIES

Cases	Page(s)
<i>2 Sisters Food Group, Inc.</i> , 357 NLRB 1816 (2011).....	19
<i>Cellular Sales of Missouri, LLC v. NLRB</i> , 824 F.3d 772 (8th Cir. 2016)	10, 23
<i>Chamber of Commerce of the United States v. NLRB</i> , 721 F.3d 152 (4th Cir. 2013)	23
<i>Chet Monez Ford</i> , 241 NLRB 349 (1979), <i>enforced mem.</i> , 624 F.2d 193 (9th Cir. 1980)	25
<i>CompuCredit Corp. v. Greenwood</i> , 132 S. Ct. 665 (2012).....	15
<i>D.R. Horton, Inc.</i> , 357 NLRB 2277 (2012), <i>enforcement denied in relevant part</i> , 737 F.3d 344 (5th Cir. 2013)	5, 7, 9, 10, 11, 14, 23, 27
<i>EEOC v. CVS Pharmacy, Inc.</i> , 809 F.3d 335 (7th Cir. 2015)	18
<i>Fibreboard Paper Products Corp. v. NLRB</i> , 379 U.S. 203 (1964).....	22
<i>Flex Frac Logistics, LLC</i> , 358 NLRB 1131 (2012), <i>enforced</i> , 746 F.3d 205 (5th Cir. 2014)	13, 17, 19
<i>Hoffman Plastic Compounds, Inc. v. NLRB</i> , 535 U.S. 137 (2002).....	24
<i>J & R Flooring, Inc.</i> , 356 NLRB 11 (2010).....	24, 25

TABLE OF AUTHORITIES

Cases -Cont'd	Page(s)
<i>J. Vallery Electric, Inc. v. NLRB</i> , 337 F.3d 446 (5th Cir. 2003)	8
<i>Lafayette Park Hotel</i> , 326 NLRB 824 (1998), <i>enforced mem.</i> , 203 F.3d 52 (D.C. Cir. 1999).....	13, 17
<i>Lewis v. Epic Systems Corp.</i> , 823 F.3d 1147 (7th Cir. 2016)	10, 11
<i>Lutheran Heritage Village-Livonia</i> , 343 NLRB 646 (2004)	13
<i>Marshall Field & Co. v. NLRB</i> , 318 U.S. 253 (1943).....	21
<i>Merchants Truck Line, Inc. v. NLRB</i> , 577 F.2d 1011 (5th Cir. 1978)	8
<i>Mesker Door, Inc.</i> , 357 NLRB 591 (2011)	12
<i>Morris v. Ernst & Young, LLP</i> , 834 F.3d 975 (9th Cir. Aug. 22, 2016)	10, 11
<i>Murphy Oil USA, Inc.</i> , 361 NLRB No. 72, 2014 WL 5465454 (Oct. 28, 2014), <i>enforcement denied in relevant part</i> , 808 F.3d 1013 (5th Cir. 2015).....	5, 7, 9, 10, 11, 12, 13, 14, 17, 18, 19, 21, 23, 27
<i>NLRB v. Allied Aviation Fueling of Dallas LP</i> , 490 F.3d 374 (5th Cir. 2007)	8
<i>NLRB v. Falk Corp.</i> , 308 U.S. 453 (1940).....	25

TABLE OF AUTHORITIES

Cases -Cont'd	Page(s)
<i>NLRB v. Houston Building Services, Inc.</i> , 128 F.3d 860 (5th Cir. 1997).....	20
<i>NLRB v. Northeastern Land Services, Ltd.</i> , 645 F.3d 475 (1st Cir. 2011).....	13
<i>NLRB v. Scrivener</i> , 405 U.S. 117 (1972).....	12
<i>NLRB v. United States Postal Service</i> , 477 F.3d 263 (5th Cir. 2007)	20, 26
<i>On Assignment Staffing Services, Inc.</i> , 362 NLRB No. 189, 2015 WL 5113231 (Aug. 27, 2015), <i>enforcement denied</i> , No. 15-60642, 2016 WL 3685206 (5th Cir. June 6, 2016)	5, 7, 9, 10, 11, 21, 22
<i>Patterson v. Raymours Furniture Co.</i> , 15-2820-CV, 2016 WL 4598542 (2d Cir. Sep. 7, 2016).....	10
<i>Ralph’s Grocery Co.</i> , 363 NLRB No. 128, 2016 WL 737041 (Feb. 23, 2016).....	16
<i>SolarCity Corp.</i> , 363 NLRB No. 63, 2015 WL 9315535 (Dec. 22, 2015)	12, 16
<i>Teamsters Local 115 v. NLRB</i> , 640 F.2d 392 (D.C. Cir. 1981).....	25
<i>Torrington Extend-A-Care Employee Association v. NLRB</i> , 17 F.3d 580 (2d Cir. 1994)	25
<i>U-Haul Co. of California</i> , 347 NLRB 375 (2006), <i>enforced mem.</i> , 255 F. App’x 527 (D.C. Cir. 2007)	13, 15, 17

TABLE OF AUTHORITIES

Cases -Cont'd	Page(s)
<i>United States v. Darrington</i> , 351 F.3d 632 (5th Cir. 2003)	10
<i>Universal Camera Corp. v. NLRB</i> , 340 U.S. 474 (1951).....	8
<i>Utility Vault Co.</i> , 345 NLRB 79 (2005)	13, 15
<i>Valmont Industries, Inc. v. NLRB</i> , 244 F.3d 454 (5th Cir. 2001)	8
<i>Virginia Electric & Power Co. v. NLRB</i> , 319 U.S. 533 (1943).....	26
<i>Woelke & Romero Framing, Inc. v. NLRB</i> , 456 U.S. 645 (1982).....	20
Statutes	Page(s)
National Labor Relations Act, as amended (29 U.S.C. § 151 et seq.)	
Section 7 (29 U.S.C. § 157)	3, 6, 7, 8, 11, 12, 13, 17, 18, 19, 22
Section 8(a)(1) (29 U.S.C. § 158(a)(1)).....	2, 3, 5, 7, 9, 11, 12, 13, 19
Section 10(a) (29 U.S.C. § 160(a))	2
Section 10(b) (29 U.S.C. § 160(b)).....	4
Section 10(c) (29 U.S.C. § 160(c))	22, 23
Section 10(e) (29 U.S.C. § 160(e))	2, 8, 20, 21
Section 10(f) (29 U.S.C. § 160(f))	2
Federal Arbitration Act, 9 U.S.C. § 1 et seq.	9

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-60375

ADECCO USA, INC.

Petitioner/Cross-Respondent

v.

NATIONAL LABOR RELATIONS BOARD

Respondent/Cross-Petitioner

**ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

**BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD**

STATEMENT OF JURISDICTION

This case is before the Court on a petition for review filed by Adecco USA, Inc. (“Adecco”), and a cross-application for enforcement filed by the Board, of a Board Order issued against Adecco, reported at 364 NLRB No. 9, 2016 WL

3014416 (May 24, 2016) (ROA.108-17).¹ The Board had jurisdiction over this matter under Section 10(a) of the National Labor Relations Act (“the NLRA,” 29 U.S.C. §§ 151, 160(a)). The Board’s Decision and Order is final under Section 10(e) and (f) of the NLRA, which provides the basis for this Court’s jurisdiction. 29 U.S.C. § 160(e) and (f). Venue is proper pursuant to Section 10(e) and (f) because Adecco transacts business in this circuit. The petition and cross-application were timely; the NLRA imposes no time limit on such filings.

STATEMENT OF THE ISSUES

1. Did the Board reasonably find that Adecco violated Section 8(a)(1) of the NLRA by maintaining and enforcing an arbitration agreement waiving employees’ right to maintain class or collective actions in any forum, arbitral or judicial?

2. Did the Board reasonably find that Adecco violated Section 8(a)(1) of the NLRA by maintaining an arbitration agreement that employees reasonably would believe bars or restricts their right to file unfair-labor-practice charges with the Board?

¹ “ROA.” refers to the administrative record on appeal, which the Board filed on July 26, 2016. References preceding a semicolon are to Board findings; those following, to supporting evidence. “Br.” refers to Adecco’s opening brief.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

Pursuant to a charge filed by Rajan Nanavati (ROA.18), the Board's General Counsel issued a complaint alleging that Adecco violated Section 8(a)(1) of the NLRA, 29 U.S.C. § 158(a)(1), by promulgating, maintaining, and enforcing an arbitration agreement that requires employees to waive their right, protected by Section 7 of the NLRA, 29 U.S.C. § 157, to pursue work-related claims concerted, and which employees reasonably would believe bars or restricts their right to file unfair-labor-practice charges with the Board. (ROA.108; 18, 21-29.) Adecco, in its answer, admitted all of the factual allegations in the complaint. (ROA.109; 30-32.) On the General Counsel's motion, the Board transferred the case to the Board and issued a Notice to Show Cause why summary judgment should not be granted. (ROA.109; 3-17, 65-66.) Adecco filed an answer to the Board's order to show cause and a cross-motion for summary judgment. (ROA.109; 81-107.)

On May 24, 2016, the Board (Chairman Pearce and Member McFerran; Member Miscimarra, dissenting), issued a Decision and Order granting the General Counsel's motion for summary judgment in part.² (ROA.109-12.)

² The Board (ROA.109, 114 n.2) unanimously dismissed the allegation that Adecco unlawfully promulgated the unlawful agreement, finding that the

II. THE BOARD'S FINDINGS OF FACT

Adecco provides temporary-employee staffing services throughout the country. (ROA.112; 21 (¶ 2(a)), 30 (¶ 2).) Since at least June 5, 2014, Adecco has required its employees nationwide to sign a “Dispute Resolution and Arbitration Agreement for Consultants/Associates” (the “Agreement”) as a condition of employment. (ROA.108; 22-23 (¶ 5(a) and (c)), 2(a)), 30 (¶¶ 7, 9.) The Agreement requires that Adecco and the signatory employee arbitrate “any and all disputes, claims or controversies” and that they do so “only in their individual capacity” (ROA.108; 28-29.) The Agreement also provides the following:

Regardless of any other terms of this . . . Agreement, claims may be brought before an administrative agency if applicable law permits access to such an agency notwithstanding the existence of an agreement to arbitrate. Such administrative claims may include without limitation claims or charges brought before the . . . National Labor Relations Board Nothing in this . . . Agreement shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party’s obligation to exhaust administrative remedies before making a claim in arbitration.

(ROA.108; 28.) Finally, the Agreement provides that, within 30 days of signing the Agreement, employees may opt out of its terms. (ROA.110; 29.)

Adecco employee Rajan Nanavati signed the Agreement on January 21, 2014. (ROA.109; 82, 104-05.) Nanavati later filed a class-action wage-and-

agreement had been promulgated well outside the 6-month limitations period for filing Board charges. *See* 29 U.S.C. § 160(b).

hour lawsuit against Adecco in California Superior Court. On November 21, 2014, Adecco sought to enforce the Agreement by filing a motion in the U.S. District Court for the Northern District of California to compel individual arbitration of Nanavati's claim. The District Court granted the Respondent's motion on April 13, 2015. (ROA.108 & n.1, 109 & n.2, 112; 7, 23-24 (¶ 6(a)-(c), 31 (¶ 13-15).)

III. THE BOARD'S CONCLUSIONS AND ORDER

In its Decision and Order, the Board found that Adecco violated Section 8(a)(1) by maintaining and enforcing the Agreement, which requires individual arbitration of work-related claims, pursuant to *D.R. Horton, Inc.*, 357 NLRB 2277 (2012), *enforcement denied in relevant part*, 737 F.3d 344 (5th Cir. 2013), *petition for reh'g en banc denied*, 5th Cir. No. 12-60031 (April 16, 2014), and *Murphy Oil USA, Inc.*, 361 NLRB No. 72, 2014 WL 5465454 (Oct. 28, 2014), *enforcement denied in relevant part*, 808 F.3d 1013 (5th Cir. 2015), *petition for reh'g en banc denied*, 5th Cir. No. 14-60800 (May 13, 2016), *petition for certiorari filed*, No. 16-307 (Sept. 9, 2016), as clarified in *On Assignment Staffing Services, Inc.*, 362 NLRB No. 189, 2015 WL 5113231 (Aug. 27, 2015), *enforcement denied*, No. 15-60642, 2016 WL 3685206 (5th Cir. June 6, 2016) (summary disposition). (ROA.109.) The Board further found that Adecco violated Section 8(a)(1) by maintaining the Agreement, which employees would reasonably believe bars or restricts the filing of Board charges. (ROA.110-11.)

To remedy those violations, the Board ordered Adecco to cease and desist from the unfair labor practices found and from any like or related interference with employees' Section 7 rights. (ROA.112-13.) Affirmatively, the Board ordered Adecco to rescind or revise the Agreement to make clear that it does not constitute a waiver of employees' right to maintain employment-related joint, class, or collective actions in all forums, and that it does not bar or restrict employees' right to file charges with the Board; notify all current and former employees who signed the Agreement that it has been rescinded or revised; notify the U.S. District Court for the District of Northern California that it has rescinded or revised the Agreement, and inform the court that it no longer opposes Nanavati's lawsuit on the basis of the Agreement; reimburse Nanavati and any other plaintiffs in the California Superior Court case for any reasonable attorneys' fees and litigation expenses that they incurred in opposing Adecco's motion to compel individual arbitration; post a remedial notice at its San Bruno, California facility and at all other facilities where the unlawful Agreement is or has been in effect; and distribute the remedial notice electronically if it customarily communicates with its employees by such means. (ROA.113.)

SUMMARY OF ARGUMENT

Applying its *D.R. Horton/Murphy Oil* rule, the Board found that Adecco violated Section 8(a)(1) of the NLRA by maintaining and enforcing the Agreement, which requires employees to bring employment-related claims exclusively in individual arbitration, unlawfully precluding collective action in any forum, whether arbitral or judicial. And applying its *On Assignment* decision, the Board rejected Adecco's argument that the Agreement falls outside the scope of *D.R. Horton* and *Murphy Oil* because it contains an opt-out procedure. This Court has rejected the Board's *D.R. Horton/Murphy Oil* rule, and the Board has petitioned the Supreme Court for certiorari in *Murphy Oil*. The Board recognizes that the Court cannot enforce those aspects of the Board's Order unless the en banc Court reconsiders, or the Supreme Court rejects, the Court's *Murphy Oil* decision.

The Board further found that Adecco's maintenance of the Agreement independently violates Section 8(a)(1) because employees would reasonably construe the Agreement as restricting their Section 7 right to file charges with the Board. As the Board found, employees would understand the Agreement's broad requirement that they arbitrate "all disputes, claims or controversies," as prohibiting them from filing charges with the Board. Though the Agreement provides that employees may file administrative claims with agencies including the Board, it does so amidst vague and confusing caveats that would lead a reasonable

employee to question whether he could pursue Board charges and, if so, whether he could pursue such charges collectively. That reasonably perceived bar or restriction on Board charges unlawfully chills employees' exercise of their Section 7 rights. (ROA.110.)

STANDARD OF REVIEW

The Board's findings of fact are conclusive if supported by substantial evidence on the record as a whole. 29 U.S.C. § 160(e); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *Valmont Indus., Inc. v. NLRB*, 244 F.3d 454, 463 (5th Cir. 2001). Under the substantial-evidence test, a reviewing court may not "displace the Board's choice between two fairly conflicting views, even though the court [may] justifiably have made a different choice had the matter been before it de novo." *Universal Camera*, 340 U.S. at 488; accord *NLRB v. Allied Aviation Fueling of Dallas LP*, 490 F.3d 374, 378 (5th Cir. 2007) (court does not reweigh evidence in determining whether factual findings supported by substantial evidence). As this Court observed, "[o]nly in the most rare and unusual cases will an appellate court conclude that a finding of fact made by the . . . Board is not supported by substantial evidence." *Merchants Truck Line, Inc. v. NLRB*, 577 F.2d 1011, 1014 n.3 (5th Cir. 1978). The Court's "deference extends to [its] review of both the Board's findings of fact and its application of law." *J. Vallery Elec., Inc. v. NLRB*, 337 F.3d 446, 450 (5th Cir. 2003).

ARGUMENT

I. ADECCO VIOLATED SECTION 8(a)(1) OF THE NLRA BY MAINTAINING AND ENFORCING AN ARBITRATION AGREEMENT THAT BARS EMPLOYEES FROM PURSUING WORK-RELATED CLAIMS CONCERTEDLY

Applying its *D.R. Horton/Murphy Oil* rule, the Board found that Adecco violated Section 8(a)(1) of the NLRA by maintaining and enforcing a mandatory agreement that required employees to bring employment-related claims exclusively in individual arbitration, unlawfully precluding collective action in any forum, whether arbitral or judicial. The Board recognizes that this Court rejected that rule in *D.R. Horton*, 737 F.3d at 355-62, and *Murphy Oil*, 808 F.3d at 1018, which held that the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq., mandates enforcement of arbitration agreements as written. The Board has petitioned the Supreme Court for certiorari in *Murphy Oil* to review that finding.³ *NLRB v. Murphy Oil USA, Inc.*, No. 16-307 (filed Sept. 9, 2016).⁴

³ Unlike the arbitration agreements in *D.R. Horton* and *Murphy Oil*, Adecco’s Agreement contains a provision allowing employees to opt-out. The Board reasonably held (ROA.110), for the reasons articulated in *On Assignment*, 2015 WL 5113231, at *1, 5-11, that the Agreement nonetheless violates Section 8(a)(1). *On Assignment* clarified that the *D.R. Horton/Murphy Oil* rule applies notwithstanding such opt-out provisions. *Id.* This Court granted summary reversal of *On Assignment* but did not reach the opt-out issue given its rejection of the Board’s underlying rule. 2016 WL 3685206.

⁴ Four other circuits have also ruled on this issue. The Second and Eighth Circuits joined this Court in rejecting the Board’s rationale and the Seventh and Ninth Circuits agreed with the Board. Petitions for certiorari have been filed with respect

The Board acknowledges that unless this Court reconsiders its *D.R. Horton/Murphy Oil* holding en banc, or the Supreme Court grants the Board's petition for certiorari in *Murphy Oil* (or another petition presenting the same issue) and rules in the Board's favor, the Court is precluded from enforcing the aspect of the Board's Order finding unlawful the concerted-action waiver in the Agreement pursuant to the *D.R. Horton/Murphy Oil* rule. *U.S. v. Darrington*, 351 F.3d 632, 634 (5th Cir. 2003).⁵ Accordingly, the Board will not reiterate at length here the rationale in support of its *D.R. Horton/Murphy Oil* rule, for finding that Adecco separately violated the NLRA by seeking to enforce the Agreement, or for extending that rule, in *On Assignment*, to include individual-arbitration agreements allowing employees to opt out.

to the Second, Seventh, and Ninth Circuit decisions. *See Patterson v. Raymours Furniture Co.*, No. 15-2820-CV, 2016 WL 4598542 (2d Cir. Sep. 7, 2016), *petition for cert. pending*, No. 16-388 (filed Sep. 22, 2016); *Cellular Sales of Mo., LLC v. NLRB*, 824 F.3d 772 (8th Cir. 2016); *Lewis v. Epic Sys. Corp.*, 823 F.3d 1147 (7th Cir. 2016), *petition for cert. pending*, No. 16-285 (filed Sept. 2, 2016); *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. Aug. 22, 2016), *petition for cert. pending*, No. 16-300 (filed Sept. 8, 2016).

Cases involving the *D.R. Horton/Murphy Oil* rule are pending in five additional circuits. *See, e.g., Rose Grp. v. NLRB*, 3d Cir. Nos. 15-4092 and 16-1212 (argued Oct. 5, 2016); *AT&T Mobility Servs., LLC v. NLRB*, 4th Cir. Nos. 16-1099 and 16-1159 (argument set for Dec. 7, 2016); *NLRB v. Alternative Entm't, Inc.*, 6th Cir. No. 16-1385 (argument set for Nov. 30, 2016); *Everglades Coll., Inc. v. NLRB*, 11th Cir. Nos. 16-10341, 16-10625 (briefing completed); *Price-Simms, Inc. v. NLRB*, D.C. Cir. Nos. 15- 1457 and 16-1010 (briefing completed).

⁵ While circuit law stands in the way of the panel's acceptance of the Board's arguments, it is open to the panel to suggest to the full Court the appropriateness of *en banc* review to reconsider circuit law. *See* 5th Cir. IOP 35.

Nonetheless, for the reasons set forth in the Board's decisions in *D.R. Horton*, *Murphy Oil*, and *On Assignment*, and in accordance with the decisions of the Seventh Circuit in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016), the Ninth Circuit in *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016), and the dissent of Judge Graves in *D.R. Horton*, 737 F.3d at 364, the Board respectfully maintains that it is entitled to enforcement of the portions of its Order based on Adecco's maintenance and enforcement of an individual-arbitration agreement. The Board reasonably determined that an individual arbitration agreement that violates Section 8(a)(1) of the NLRA by precluding employees from acting in concert to enforce their employment rights before either a court or an arbitrator is illegal under general contract law, and thus falls within the exception to enforcement delineated in the FAA's saving clause. Because the Agreement violates federal law, Adecco violated Section 8(a)(1) by maintaining and enforcing it.⁶

⁶ In *On Assignment*, the Board further reasonably determined that the presence of an opt-out provision does not render an individual-arbitration agreement lawful. 2015 WL 5113231, at *5-11. Whether voluntary or not, individual agreements may not prospectively waive employees' Section 7 rights. *Id.* at *8-9. Furthermore, the opt-out procedure itself burdens employees' exercise of Section 7 rights by forcing employees to take affirmative steps to retain their statutory rights or else lose those rights altogether, *id.* at *5-6, and by requiring employees who wish to retain those rights to "make 'an observable choice that demonstrates their support for or rejection of' concerted activity," *id.* at *6-7.

II. ADECCO VIOLATED SECTION 8(a)(1) OF THE NLRA BY MAINTAINING AN ARBITRATION AGREEMENT THAT EMPLOYEES REASONABLY WOULD BELIEVE BARS OR RESTRICTS THEIR RIGHT TO FILE UNFAIR-LABOR-PRACTICE CHARGES

Section 7 of the NLRA, 29 U.S.C. § 157, guarantees employees “the right to self-organization, to form, join or assist labor organizations, . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection” Section 8(a)(1) of the NLRA, 29 U.S.C. § 158(a)(1), implements these guarantees by making it an unfair labor practice for an employer to “interfere with, restrain, or coerce, employees in the exercise of rights guaranteed in [S]ection 7.”

Unquestionably, Section 7 guarantees employees the right to file and pursue charges before the Board. In enacting the NLRA, Congress sought “complete freedom” for employees to do so. *NLRB v. Scrivener*, 405 U.S. 117, 121 (1972); *accord SolarCity Corp.*, 363 NLRB No. 63, 2015 WL 9315535, at *6 (Dec. 22, 2015) (“Preserving and protecting access to the Board is a fundamental goal of the [NLRA].”), *petition for review filed*, 5th Cir. No. 16-60001 (stayed pending Supreme Court proceedings in *Murphy Oil*, *Epic Systems*, and *Ernst and Young*, discussed above, p. 9 n.5). The “vital employee right” to file and pursue Board charges is “designed to safeguard the procedure for protecting all other employee rights guaranteed by Section 7.” *Mesker Door, Inc.*, 357 NLRB 591, 596 (2011);

see also Util. Vault Co., 345 NLRB 79, 82 (2005). The maintenance of a workplace rule that employees would “reasonably construe” as restricting that right therefore violates Section 8(a)(1). *Murphy Oil*, 808 F.3d at 1019; *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 646 (2004).

In determining whether employees would understand a rule as unlawfully restricting their rights, the Board reads the rule from the position of non-lawyer employees. *U-Haul Co. of Cal.*, 347 NLRB 375, 378 (2006), *enforced mem.*, 255 F. App’x 527 (D.C. Cir. 2007). Any ambiguity in a rule is construed against the employer as the rule’s promulgator. *Lafayette Park Hotel*, 326 NLRB 824, 828 (1998), *enforced mem.*, 203 F.3d 52 (D.C. Cir. 1999); *Flex Frac Logistics, LLC*, 358 NLRB 1131, 1132 (2012) (“Board law is settled that ambiguous employer rules – rules that reasonably could be read to have a coercive meaning – are construed against the employer.”), *enforced*, 746 F.3d 205 (5th Cir. 2014). “This principle follows from the [NLRA]’s goal of preventing employees from being chilled in the exercise of their Section 7 rights – whether or not that is the intent of the employer – instead of waiting until that chill is manifest, when the Board must undertake the difficult task of dispelling it.” *Flex Frac*, 358 NLRB at 1132; *see also NLRB v. Ne. Land Servs., Ltd.*, 645 F.3d 475, 483 (1st Cir. 2011) (affirming that “the Board’s rule is intended to be prophylactic and . . . is subject to deference”).

A. Reasonable Employees Would Construe Adecco's Agreement as Prohibiting or Restricting Their Right To File Board Charges

The Board reasonably found (ROA.110-11) that employees would construe Adecco's Agreement as barring or restricting their right to file Board charges. That finding follows from the Agreement's broad requirement (ROA.108) that employees arbitrate "any and all disputes, claims or controversies" arising out of their employment, and statement that, by signing, employees waive their right to have "any dispute, claim or controversy decided by judge or jury in court." It is consistent with this Court's decision in *Murphy Oil*, which found unlawful a similarly broad agreement. 808 F.3d at 1019. As the Court explained, "[t]he problem is that broad 'any claims' language can create '[t]he reasonable impression . . . that an employee is waiving not just [her] trial rights, but [her] administrative rights as well.'" *Id.* (quoting *D.R. Horton*, 737 F.3d at 363-64).

Adecco insists (Br. 35-36) that the Agreement's reference to "judge or jury in court" indicates that employees may file Board charges. But this Court, like the Board, has determined that employees may reasonably understand references to court actions as encompassing administrative claims, regardless of the technical meaning a lawyer might attribute to them. In *D.R. Horton*, the Court found that although an arbitration agreement stated that an employee waived the right to file a "lawsuit or other civil proceeding . . . before a judge or jury . . . the reasonable impression could be created that an employee is waiving not just his trial rights,

but his administrative rights as well.” 737 F.3d at 363. Likewise, in *U-Haul Co. of California*, the Board found a violation where the arbitration agreement covered “all disputes” related to employment, despite clarification that the agreement applied only “to disputes, claims or controversies that a court of law would be authorized to entertain.” 347 NLRB 375, 377 (2006), *enforced*, 255 Fed. App’x. 527 (D.C. Cir. 2007); *accord Util. Vault Co.*, 345 NLRB at 81 (Board found unlawful an agreement in which parties agreed that “legal claims . . . shall not be filed or pursued in court, and that [the employee was] forever giving up the right to have those claims decided by a jury”).⁷ In any event, as the Board explained in *U-Haul*, Board charges may – as in the present appeal – end up in court. 347 NLRB at 377.

Although one provision of the Agreement indicates that employees can file administrative claims – including Board charges – in certain circumstances, the Board reasonably found (ROA.111) that an employee would find the provision’s terms confusing and would construe it, read as a whole, to restrict the right to file Board charges. The provision begins by making it clear that an employee may file claims with an administrative agency only if “applicable law permits access to

⁷ *Cf. CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665, 670-71 (2012) (explaining “most consumers would understand” that statutory references to “class action” and “court” convey the existence of an enforceable legal right, but not a requirement that adjudication must occur in a judicial forum).

such an agency notwithstanding the existence of an agreement to arbitrate.”

(ROA.111.) The Board found (ROA.111), as it did when confronting nearly identical language in *SolarCity*, 2015 WL 9315535, at *6 n.20, that such language “could not reasonably be understood by employees as having no effect on their right to file Board charges.” As the Board explained in *SolarCity*, “it would take specialized legal knowledge to determine whether employees’ right to file Board charges is permitted or precluded by” a caveat dependent on “applicable law.” 2015 WL 9315535, at *6 (internal quotation omitted); *see also Ralph’s Grocery Co.*, 363 NLRB No. 128, 2016 WL 737041 (Feb. 23, 2016) (finding explicit exemption of Board charges insufficient where agreement contained confusing caveat that charges are permissible when necessary to satisfy “any applicable statutory conditions precedent or jurisdictional prerequisites”), *pet. for review filed*, No. 16-71422 (9th Cir. May 12, 2016).

While the provision goes on to clarify that allowable administrative claims “may include” those brought before the Board, the very next sentence further specifies that nothing in the Agreement “shall be deemed to preclude or excuse a party from bringing an administrative claim before any agency in order to fulfill the party’s obligation to exhaust administrative remedies before making a claim in arbitration.” (ROA.108.) Although the concept of administrative exhaustion and its inapplicability to Board charges may be clear to the lawyers who drafted the

Agreement, the Board reasonably found that an employee would read that sentence as requiring that claims ultimately be resolved through arbitration, thus rendering any right to file Board charges futile or “illusory.” (ROA.111.) Adecco’s insistence (Br. 38-39) that employees would read the provision in light of “black-letter” law regarding administrative exhaustion is implausible and contrary to the established principle that work rules are to be analyzed from a non-lawyer’s perspective. *U-Haul Co. of Cal.*, 347 NLRB at 378.⁸

The Board’s determination that employees would be confused over whether they can file Board charges is in accord with *Murphy Oil*. In arguing otherwise, Adecco mischaracterizes *Murphy Oil* by asserting that this Court “held that an express carve-out stating that employees are permitted to file ULP charges with the Board will cure any allegedly ‘confusing’ or ‘incompatible’ language.” The Court made no such categorical holding, but instead explained that an express statement that employees may file Board charges “would assist . . . if incompatible or confusing language appears in the contract.” 808 F.3d at 1019. It went on to hold that a provision expressly stating that “nothing in this Agreement precludes

⁸ While Adecco discusses (Br. 38) what it “intended” by including the exhaustion provision, its intent is irrelevant to determining whether a reasonable employee would construe a provision as restricting the exercise of Section 7 rights. *See Flex Frac*, 358 NLRB at 1132 (intent of employer is irrelevant in determining whether workplace rule chills employees’ exercise of Section 7 rights); *Lafayette Park Hotel*, 326 NLRB at 828.

[employees] . . . from participating in proceedings to adjudicate unfair labor practice[] charges before the [Board]” made it “unreasonable for an employee to construe the Revised Arbitration Agreement as prohibiting the filing of Board charges.” *Id.* at 1019-20. In so finding, the Court also relied on the fact that “[t]he other clauses of the agreement d[id] not negate that language.” *Id.*

In any event, even if reasonable employees could navigate the various caveats in the administrative-claims provision to conclude that they may file Board charges, the Agreement is ambiguous as to whether they may exercise their Section 7 right to do so collectively. Nothing in the provision suggests any limitation of the Agreement’s express requirement that “any and all disputes” may only be brought in an employee’s “individual capacity.” Accordingly, a reasonable employee would have no reason to believe that restriction is not equally applicable to administrative claims. That “inherent ambiguity,” the Board found (ROA.111), would lead a reasonable employee not only to question whether the Agreement bars Board charges but, at the very least, to understand that the Agreement restricts her from filing such charges in concert with other employees.⁹

⁹ Adecco’s reliance (Br. 34-35) on *EEOC v. CVS Pharmacy, Inc.*, 809 F.3d 335, 342 n.4 (7th Cir. 2015), is misplaced. The severance agreement at issue there did not include confusing or vague language, such as Adecco’s, that would have muddied the CVS agreement’s provision carving out an employee’s right to “participate in a proceeding with any appropriate federal, state or local government agency enforcing discrimination laws.” *Id.* at 336-37. Accordingly, to the extent

Finally, Nanavati's filing of charges with the Board does not, as Adecco insists (Br. 32), "contradict" the Board's finding that the Agreement would be reasonably construed as prohibiting employees from filing Board charges. The Section 8(a)(1) standard is objective, measuring the tendency of the employer's action to restrict or coerce Section 7 rights. *See 2 Sisters Food Grp., Inc.*, 357 NLRB 1816, 1836 (2011). As the Court explained in upholding a similar finding in *Murphy Oil*, "the actual practice of employees is not determinative" of whether an employer has committed an unfair labor practice. 808 F.3d at 1019 (quoting *Flex Frac Logistics*, 746 F.3d at 209) (one employee's choice to file Board charges does not establish that employees would not reasonably construe an employer rule as interfering with their right to do so).

In sum, the Agreement repeatedly requires that employees individually arbitrate all claims. And its exemption of administrative claims contains several confusing and vague caveats and, in any event, suggests that administrative claims cannot be pursued collectively. Accordingly, it was reasonable for the Board to find that employees would believe that the Agreement bars or restricts their right to file Board charges. Moreover, that finding, which is entitled to deference, "effectuates the Congressional policy of vigorously safeguarding access to the

the Seventh Circuit applied a similar standard as does the Board under the NLRA, that case nonetheless contains no helpful analogy to this one.

Board's processes" and ensures that employers not chill employees from filing Board charges. (ROA.111.)

B. The Court Lacks Jurisdiction To Consider Certain of Adecco's Challenges to the Board's Order

The Court lacks jurisdiction to consider Adecco's arguments that: (1) an employee could cure any confusion over whether the Agreement permits the filing of Board charges by opting out (Br. 32-33); (2) the finding that Adecco unlawfully restricted employees' access to Board processes is invalid because "[t]he Board lacks authority to dictate the terms of employee arbitration agreements" (Br. 40-43); and (3) the Board's notice-posting requirement is "arbitrary and capricious" (Br. 43-46). Adecco failed to present those arguments to the Board in its show-cause response (ROA.81-90), and did not file a motion for reconsideration of the Board's decision. Section 10(e) of the NLRA provides that "[n]o objection that has not been urged before the Board ... shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances." 29 U.S.C. § 160(e); *see Woelke & Romero Framing, Inc. v. NLRB*, 456 U.S. 645, 665-66 (1982) (10(e) bar is jurisdictional; "failure to object to the Board's decision in a petition for reconsideration or rehearing prevents consideration of the question by the courts"); *accord NLRB v. Houston Bldg. Servs., Inc.*, 128 F.3d 860, 863 (5th Cir. 1997) (10(e) bar is "mandatory, not discretionary"); *NLRB v. U.S. Postal Serv.*, 477 F.3d 263, 270 n.1 (5th Cir. 2007)

(failure to file motion for reconsideration barred Court's consideration). Adecco's failure to present those arguments to the Board thwarted Section 10(e)'s "salutary policy" of "affording the Board opportunity to consider on the merits questions to be urged upon review of its order." *Marshall Field & Co. v. NLRB*, 318 U.S. 253, 256 (1943). Accordingly, under Section 10(e) of the NLRA (*see* p. 16 n.4), the Court is barred from considering them. In any event, each of the three arguments also lacks merit.

1. In any event, the opt-out provision in Adecco's Agreement does not cure its interference with employees' right to file Board charges

Adecco argues (Br. 32) that "employee[s] can eliminate what the Board perceives as an obstacle to unfettered access to the Board" by opting out of the Agreement. But the Board has found that opt-out provisions do not serve to rehabilitate otherwise unlawful individual-arbitration agreements and, to the contrary, impose additional impermissible burdens on employees' NLRA rights. *See On Assignment Staffing Servs., Inc.*, 362 NLRB No. 189, 2015 WL 5113231 (Aug. 27, 2015), *enforcement denied on other grounds*, No. 15-60642, 2016 WL 3685206 (5th Cir. June 6, 2016) (summary disposition).¹⁰ Of particular relevance

¹⁰ In *On Assignment*, the Court granted the employer's motion to summarily reverse the Board's Order based on the Court's decisions in *D.R. Horton* and *Murphy Oil*. 2016 WL 3685206. The parties did not have occasion to brief the Board's rationale in *On Assignment*, which the Board has continued to apply in striking down individual-arbitration agreements containing opt-out provisions.

here, the Board explained that an opt-out procedure burdens employees' exercise of Section 7 rights by forcing employees to take affirmative steps to retain their statutory rights or else lose those rights altogether, and by requiring employees who wish to retain those rights to "make 'an observable choice that demonstrates their support for or rejection of' concerted activity." *Id.* at *5-7. Accordingly, even had Adecco raised this issue before the Board, the opt-out provision does not cure the Agreement's unlawful chilling effect on employees' right to file Board charges.

2. In any event, the Board is not seeking to "dictate" the terms of Adecco's Agreement

In addition to being untimely, Adecco's claim (Br. 40) that the Board is seeking to "dictate" the terms of its Agreement is simply inaccurate. The Board has not insisted that Adecco include any particular language in its Agreement, but has instead ordered Adecco to either rescind the Agreement or revise it "to make clear to employees that the Agreement does not . . . bar or restrict employees' right to file charges with the . . . Board." (ROA.113.) That order falls well within the Board's broad authority, conferred by Congress in Section 10(c) of the NLRA, to remedy unfair labor practices. 29 U.S.C. § 160(c) (Board may order violator "to cease and desist from such unfair labor practice, and to take such affirmative action . . . as will effectuate the policies of" the NLRA); *see also Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 216 (1964) (citation omitted) (Board's

remedial power under Section 10(c) is “a broad discretionary one, subject to limited judicial review”).

Indeed, in both *D.R. Horton* and *Murphy Oil*, upon finding that reasonable employees would construe the agreements at issue as prohibiting the filing of Board charges, this Court enforced Board orders requiring employers to rescind or revise their arbitration agreements, and expressly confirmed the Board’s authority to do so. *D.R. Horton*, 737 F.3d at 364 (“The Board’s finding that the Mutual Arbitration Agreement could be misconstrued was reasonable and the need for Horton to take the ordered corrective action was valid.”); *Murphy Oil*, 808 F.3d at 1019 (“We conclude that the Arbitration Agreement in effect for employees hired before March 2012 . . . violates the NLRA. The Board’s order that Murphy Oil take corrective action as to any employees that remain subject to that version of the contract is valid.”); *see also Cellular Sales of Mo., LLC v. NLRB*, 824 F.3d 772, 778 (2016) (enforcing Board Order requiring employer to take “corrective action with respect to any employees who remain subject to the arbitration agreement”).¹¹

¹¹ Adecco’s reliance (Br. 42) on *Chamber of Commerce of the U.S. v. NLRB*, 721 F.3d 152 (4th Cir. 2013), is also misplaced. In that case, the Fourth Circuit held that the Board exceeded its authority by requiring that employers *preemptively* post informational workplace notices advising employees of their rights under the NLRA. *Id.* at 162-64; *see also id.* at 157 n.5 (contrasting the informational notices at issue with the remedial notices that Board requires to be posted by employers found to have committed an unfair labor practice). That case has no effect on the Board’s remedial authority to require that a party rescind or revise an unlawful

Those decisions foreclose Adecco's suggestion (Br. 40-42) that, because the offending language appears in an arbitration agreement, the Board somehow lacks authority to remedy Adecco's unlawful restriction of employees' right to file Board charges.

3. In any event, Adecco's challenge to the Board's notice-posting requirement lacks merit

Adecco's newly minted challenge to the notice-posting requirement also lacks merit. The Supreme Court has characterized the Board's remedial notices as a "significant" part of the Board's remedial scheme. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 152 (2002); *see also J & R Flooring, Inc.*, 356 NLRB 11, 12 (2010) (explaining notice posting has been "an essential element of the Board's remedies for unfair labor practices since the earliest cases under the [NLRA]"). Those notices "serve a number of important functions in advancing the Board's mission of enforcing employee rights and preventing unfair labor practices." *J & R Flooring, Inc.*, 356 NLRB at 12. They help to counteract the effect of unfair labor practices on employees by informing them of their rights under the NLRA and the Board's role in protecting the free exercise of those rights; inform employees of steps to be taken by the respondent to remedy its violations of the NLRA; provide assurances that future violations will not occur;

work rule, as Adecco claims, or to post a *remedial* notice tailored to address the specific violations found.

and deter future violations. *Id.* (citing *Teamsters Local 115 v. NLRB*, 640 F.2d 392, 399-401 (D.C. Cir. 1981); *NLRB v. Falk Corp.*, 308 U.S. 453, 462 (1940); *Chet Monez Ford*, 241 NLRB 349, 351 (1979), *enforced mem.*, 624 F.2d 193 (9th Cir. 1980)).

Adecco's suggestion (Br. 43) that the notice-posting requirement is punitive or otherwise disproportionate to the unfair labor practice found is off-base. The violation is not limited to Nanavanti in particular but rather is based on Adecco's maintenance of the Agreement with respect to all its employees nationwide. The Board's requirement that Adecco post the notice "where the unlawful agreement is or has been in effect," and distribute it electronically if it customarily communicates with its employees by such means is thus directly tailored to remedy that violation by ensuring that employees subject to the Agreement are adequately informed of their rights and the Board's remedy.¹² Moreover, at no time did Adecco attempt to present evidence to the Board supporting its suggestion that posting at locations where its employees work is burdensome or overbroad.

¹² Adecco's reliance (Br. 44) on *Torrington Extend-A-Care Employee Association v. NLRB*, 17 F.3d 580 (2d Cir. 1994), to suggest that it was incumbent on the Board to produce evidence supporting a nationwide posting, is misplaced. There, the court found insufficient the General Counsel's evidence supporting its request for a nationwide notice posting, finding that the employer committed violations at only 3% of its 985 nursing homes. *Id.* at 585-87.

Adecco's additional claim (Br. 44) that "[t]here is nothing in the record about other Adecco employees and their agreements, or what those agreements say," is incorrect. The complaint in this case asserted that since at least June 5, 2014, Adecco has required its employees nationwide to sign the Agreement when hired. (ROA.22-23 (¶ 5(a), (c).) Adecco admitted those allegations in its answer. (ROA.30 (¶¶ 7, 9.) Its bold conjecture (Br. 44) that "[p]erhaps some of [its own employees] have had their arbitration agreements amended," is particularly surprising because Adecco is in the best position to provide evidence of such amendments, yet offered none.

In short, Adecco has failed to timely allege, much less establish, any grounds to eliminate the Board's well-founded, traditional notice-posting requirement, or to limit the scope of its application in this case, which is concomitant with the reach of the unlawful Agreement. Nor has Adecco otherwise shown that the Board's remedial order is an unenforceable "patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the [NLRA]." *Virginia Elec. & Power Co. v. NLRB*, 319 U.S. 533, 540 (1943); accord *NLRB v. U.S. Postal Serv.*, 477 F.3d 263, 266 (5th Cir. 2007).

CONCLUSION

The Board respectfully requests that the Court enter a judgment enforcing the portions of the Board's Order remedying Adecco's unlawful maintenance of an arbitration agreement that employees reasonably would construe as barring resort to Board processes. The Board respectfully reaffirms its view that the Court should enter a judgment enforcing the portions of the Board's Order remedying violations based on the Board's *D.R. Horton/Murphy Oil* rule but acknowledges that, unless circuit law is reconsidered en banc or reversed by the Supreme Court, the panel is obliged to deny enforcement of those portions of the Board's Order.

RICHARD F. GRIFFIN, JR.
General Counsel

s/ Kira Dellinger Vol
KIRA DELLINGER VOL
Supervisory Attorney

JENNIFER ABRUZZO
Deputy General Counsel

s/ Jeffrey W. Burritt
JEFFREY W. BURRITT
Attorney

JOHN H. FERGUSON
Associate General Counsel

LINDA DREEBEN
Deputy Associate General Counsel

National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-0656
(202) 273-2989

National Labor Relations Board
November 2016

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

ADECCO USA, INC.)	
)	
Petitioner/Cross-Respondent)	
)	No. 16-60375
v.)	
)	Board Case No.
NATIONAL LABOR RELATIONS BOARD)	32-CA-142303
)	
Respondent/Cross-Petitioner)	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the Board certifies that its brief contains 6,410 words of proportionally-spaced, 14-point type, the word processing system used was Microsoft Word 2010, and the PDF file submitted to the Court has been scanned for viruses using Symantec Endpoint Protection version 12.1.6 and is virus-free according to that program.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Dated at Washington, DC
this 17th day of November, 2016

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

ADECCO USA, INC.)	
)	
Petitioner/Cross-Respondent)	
)	No. 16-60375
v.)	
)	Board Case No.
NATIONAL LABOR RELATIONS BOARD)	32-CA-142303
)	
Respondent/Cross-Petitioner)	

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2016, the foregoing document was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all those parties or their counsel of record through the CM/ECF system.

/s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated at Washington, DC
this 17th day of November, 2016