

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

TBC CORPORATION and  
TBC RETAIL GROUP, INC.,  
a wholly-owned subsidiary of  
TBC CORPORATION

and

Cases 12-CA-157478  
12-CA-170543

LUIS RODRIGUEZ, an Individual

**COUNSEL FOR THE GENERAL COUNSEL'S  
CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

On October 14, 2016, the Administrative Law Judge Michael A. Rosas (the ALJ) issued a Decision and Order in the above cases finding that Respondents, as a single employer, violated Section 8(a)(1) of the Act by maintaining and enforcing an arbitration agreement containing a class and collective action waiver, and a no solicitation rule. [ALJD p. 10, lines 36-45].<sup>1</sup> The facts of the cases are fully set forth in the parties' Joint Motion and Stipulated Record. [ALJD p. 2, lines 4-6 and JX 1].

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel herein files the following cross-exceptions to the Decision of the ALJ:

1. The ALJ erred by referring to Respondents as "TBC – Tire & Battery Corporation d/b/a TBC Corporation and TBC Retail Group, Inc., a wholly-owned subsidiary of TBC – Tire & Battery Corporation d/b/a TBC Corporation," and by failing to correctly state Respondents' names, as set forth in the Joint Motion and Stipulated Record, as "TBC Corporation and TBC

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<sup>1</sup> As used herein, "ALJD" refers to the Decision of ALJ Rosas and "JX" refers to Joint Exhibits, followed by the exhibit number and, where appropriate, the page and/or paragraph number..

Retail Group, Inc., a wholly owned subsidiary of TBC Corporation” in all places where they appear in his Decision.<sup>2</sup> [ALJD p. 1, caption and second sentence of text; ALJD p. 10, lines 31-34; ALJD, p. 11, lines 38-40; Appendix]. Although the names for Respondents used by the ALJ were used in the Consolidated Complaint, those names were corrected in the Joint Motion and Stipulated Record. [JX 1, p. 1 and fn. 1].

2. The ALJ erred by concluding that the date on which Respondents began violating Section 8(a)(1) of the Act by maintaining and enforcing an Arbitration Agreement requiring employees to resolve employment-related disputes exclusively through individual arbitration, and forego any right they have to resolve such disputes through class or collective action, was March 13, 2014, and by failing to find that said date was October 16, 2013. [ALJD p. 10, lines 36-39]. The undisputed evidence establishes that since October 16, 2013, Respondents have required all newly hired employees to sign the Arbitration Agreement. Thereafter, beginning on March 13, 2014, Respondents began requiring all employees hired before October 16, 2013, to sign the Arbitration Agreement as a condition of those employees’ continued employment. [ALJD p. 2, lines 30-43; JX 1, p. 4, paragraphs 12 and 14].

3. The ALJ erred by failing to specify in the recommended Order the requirement that Respondents file a motion to the U.S. District Court for the Middle District of Florida to vacate the order compelling arbitration issued by the District Court in *Corey Desimoni & James Reiter, individually & on behalf of all similar situated v. TBC Corporation*, Case No. 2:15-cv-366-UA-CM (M.D. Fla. 2015), which issued on July 7, 2016, as may be confirmed through Public Access to Court Electronic Records (PACER) at [www.pacer.gov](http://www.pacer.gov).

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<sup>2</sup> The same issue has been raised by Respondents in their exception 1.

4. The ALJ erred by failing to recommend the following proposed Notice to Employees, which more clearly and fully remedies Respondents' unfair labor practices, rather than his recommended Notice to Employees: (ALJD, Appendix).

## **APPENDIX A**

### **NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### **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 a policy that prohibits you from soliciting other employees on our property during your non-working time, including breaks and meal periods, and the non-working time of the employee who you are soliciting.

**WE WILL NOT** maintain a policy that requires you to get permission in order to engage in solicitation during non-working time.

**WE WILL NOT** maintain or enforce any arbitration agreement or other requirement that you would reasonably construe as a waiver of your rights to file and pursue class, collective, or representative action claims against us with respect to disputes about your wages, hours, or other terms and conditions of employment.

**WE WILL NOT**, in any like or related manner, interfere with your rights to engage in protected, concerted activity under Section 7 of the Act.

**WE WILL** rescind the unlawful Mutual Agreement to Arbitrate Claims and Waiver of Class/Collective Actions in all of its forms, or revise it in a lawful manner to make clear that it does not constitute a waiver of your right to maintain employment-related class, collective or representative action claims.

**WE WILL** notify all current and former employees in the United States and its territories who were required to sign or otherwise become bound by the unlawful Mutual Agreement to Arbitrate Claims and Waiver of Class/Collective Actions in all of its forms, in writing, that said Agreement has

been rescinded or revised in a lawful manner and, if revised, provide them with a copy of the lawfully revised arbitration agreement.

**WE WILL** notify the United States District Court for the Middle District of Florida (the District Court), with respect to the case of *Corey Desimoni & James Reiter, individually & on behalf of all similar situated, vs. TBC Corporation*, Case No. 2:15-cv-366-UA-CM (M.D. Fla. 2015), that we have rescinded or revised the mandatory Arbitration Agreement upon which we based our motion to dismiss that lawsuit and compel individual arbitration regarding the claims therein, and

**WE WILL** inform the Court that we no longer oppose the lawsuit *Corey Desimoni & James Reiter, individually & on behalf of all similar situated, vs. TBC Corporation*, Case No. 2:15-cv-366-UA-CM (M.D. Fla. 2015) on the basis of the Arbitration Agreement, and file a motion that the Court vacate its Order on Motion to Compel Arbitration issued on July 7, 2016.

**WE WILL** reimburse Luis Rodriguez and the other plaintiffs in *Corey Desimoni & James Reiter, individually & on behalf of all similar situated, vs. TBC Corporation*, Case No. 2:15-cv-366-UA-CM (M.D. Fla. 2015) for reasonable attorneys' fees and litigation expenses incurred in opposing our efforts to compel individual arbitration of their lawsuit against us.

**WE HAVE** revised our policy concerning employee solicitation. Our new policy concerning employee solicitation is set forth in the April 4, 2014, TBC Corporation Associate Handbook. Our new policy permits employees to solicit during non-working times of the employee soliciting and the employee being solicited, including breaks and meal periods, and does not require any prior approval to engage in such solicitation. Prior versions of our policy concerning employee solicitation are no longer in effect and will not be maintained or enforced.

**TBC CORPORATION AND TBC RETAIL  
GROUP, INC., a wholly owned subsidiary of  
TBC CORPORATION**

The Board's decision can be found at [www.nlr.gov/case/12-CA-157478](http://www.nlr.gov/case/12-CA-157478) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE, Washington, D.C. 20570, or by calling (202) 273-1940.

Counsel for the General Counsel urges the National Labor Relations Board to grant the General Counsel's cross-exceptions in their entirety.

DATED this 28th day of November 2016.

Respectfully submitted,

/s/ Dallas L. Manuel II

Dallas L. Manuel, II  
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**CERTIFICATE OF SERVICE**

I certify that a copy of Counsel for the General Counsel's Cross-Exceptions to the Administrative Law Judge's Decision, in TBC Corporation and TBC Retail Group, Inc., a wholly-owned subsidiary of TBC Corporation, Cases 12-CA-157478 and 12-CA-170543, has been served upon the persons named below by the following electronic means on this 28th day of November 2016:

**Gary W. Shiners**  
Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20570-0001

By electronic filing: [www.nlr.gov](http://www.nlr.gov)

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Signed:

/s/ Dallas L. Manuel II

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