

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

SOUTHERN STAR, INC.

Respondent.

and

Case 16-ca-168143

RICHARD L. WILLIS, an Individual

Charging Party.

**RESPONDENT SOUTHERN STAR, INC.'S
ANSWERING BRIEF TO THE BOARD**

As expected – but still not any less shocking – the Counsel for the General Counsel’s Brief blatantly ignores controlling applicable law and instead relies on Board decisions that have been explicitly rejected by the Fifth Circuit Court of Appeals—the court that will ultimately decide this matter should the General Counsel’s arguments be accepted. Again, as made clear from the beginning of this matter, Southern Star will appeal any decision against it to the Fifth Circuit, which has at least eight times considered and each time rejected the argument that class or collective action waivers in employment agreements are unenforceable as violating the NLRA. *See Employers Res. v. NLRB*, No. 16-60034, 2016 WL 6471215 (5th Cir. Nov. 1, 2016); *Dismuke v. McClinton*, No. 16-50674, 2016 WL 6122763 (5th Cir. Oct. 19, 2016); *Citi Trends v. NLRB*, No. 15-60913, 2016 WL 4245458 (5th Cir. Aug. 10, 2016); *24 Hour Fitness USA, Inc. v. NLRB*, No. 16-60005, 2016 WL 3668038 (5th Cir. June 27, 2016); *PJ Cheese, Inc. v. NLRB*, No. 15-60610, 2016 WL 3457261 (5th Cir. June 16, 2016); *Chesapeake Energy*

Corp. v. NLRB, 633 F. App'x 613 (5th Cir. 2016); *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015); *D.R. Horton v. NLRB*, 737 F.3d 344 (5th Cir. 2013).

As a result of this well-established precedent, the Counsel for the General Counsel has no legal basis for asserting that Southern Star's class and collective action waiver violates the Act in any way. Notably, the Counsel for the General Counsel has offered no sufficient explanation as to why ignoring such controlling law is not an obvious act of defiance in contempt for the judicial process that exceeds the bounds of the Board's authority. Tellingly, while the Counsel for the General Counsel asserts that it is not required to follow Fifth Circuit decisions on this issue, in the same breath, it cites the Fifth Circuit's *D.R. Horton* decision in support of its argument regarding Southern Star's disclaimer language. (GC Brf. p. 5.) Simply put, any decision by the Board to disregard the Fifth Circuit's controlling precedent on this issue will be grounds for the Court to issue a writ and/or hold the Board in contempt for its nonacquiescence. *See Murphy Oil*, 808 F.3d at 1018.

Again, the Fifth Circuit has explicitly held, "an employer does not engage in unfair labor practices by maintaining and enforcing an arbitration agreement prohibiting employee class or collective actions and requiring employment-related claims to be resolved through individual arbitration." *Murphy Oil*, 808 F.3d at 1016. As a result, it could not be more clear that Southern Star did not – and does not – violate the Act in any way by promulgating and maintaining a policy requiring employees to sign an Arbitration Agreement that includes a class/collective action waiver. For all these reasons, the Complaint is without merit and due to be dismissed.

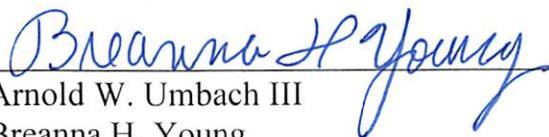
Next, Southern Star's Arbitration Agreement does not violate the Act by prohibiting employees from engaging in protected concerted activity or filing charges with the Board, and nothing in the Revised Arbitration Agreement or the Arbitration Agreement between Charging Party and Respondent could be reasonably construed to prohibit the exercise of any such substantive right under the Act. The Counsel for the General Counsel's Brief cites a Board holding "that unless the language specifically excludes NLRB proceedings, most employees without specialized legal knowledge will assume it prohibits access to the Board." (GC. Brf. pp. 4-5) (citing *Jack in the Box, Inc. & Dana Ocampo*, 364 NLRB No. 12 (May 24, 2016)); however, notably absent from the Brief is any reference to or mention of Southern Star's Revised Agreement which does just that. In fact, employees signing the Agreement acknowledged, "[N]othing about this agreement to arbitrate prevents me from filing a charge with or participating in proceedings before any governmental agency, such as the EEOC, DOL, NLRB, or state/local equivalent." (Stip. Ex. 4.) This Revised Agreement is in place with every current Southern Star employee. Accordingly, it is clear that Southern Star's Arbitration Agreement does not violate the Act by prohibiting employees from engaging in protected concerted activity of filing charges with the Board.

V. CONCLUSION

Southern Star's Arbitration Agreement does not restrict or prohibit the exercise of any statutory rights of its employees and to find otherwise is unreasonable. Indeed, neither of Southern Star's Arbitration Agreements (including the class/collective action waivers) restricts activities protected by Section 7 and neither is unlawful. Likewise,

nothing in the Arbitration Agreement between Southern Star and Charging Party and nothing in the Revised Agreement could be reasonably construed to prohibit the exercise of any substantive right under the NLRA. Because the provisions challenged by the General Counsel are not overly broad and do not violate Section 8(a)(1) of the NLRA, the Complaint is without merit and due to be dismissed. Finally, the Complaint is barred, in whole or in part, by the six-month statute of limitations period set forth in Section 10(b) of the Act.

Respectfully submitted,



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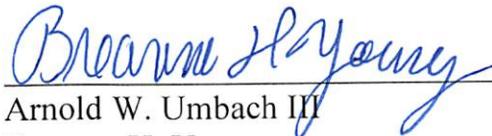
Charging Party.

**AFFIDAVIT OF SERVICE OF SOUTHERN STAR'S
INITIAL BRIEF TO THE BOARD**

I, the undersigned, being duly sworn say that on **December 15, 2016**, I electronically filed the above-entitled document via the Agency's website at www.nlr.gov, and served said document by **electronic mail**, upon the following persons, addressed to them at the following email addresses:

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