



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

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February 13, 2017

Gary Shinnars, Executive Secretary  
Office of Executive Secretary  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Re: *Montecito Heights Healthcare & Wellness  
Centre, LP*  
Case 31-CA-129747

Dear Mr. Shinnars:

Please consider this letter brief as Counsel for the General Counsel's Answering Brief to Respondent's Exceptions to the Administrative Law Judge's Decision ("ALJD") in the above-referenced case. Aside from the matters addressed below, the issues raised by Respondent in its exceptions have been thoroughly dealt with in the Administrative Law Judge's Decision, support for which is found in the record. Therefore, Counsel for the General Counsel's Answering Brief is limited to addressing Respondent's references to and reliance on facts not in the record.<sup>1</sup>

**I. Respondent's Contention that the ADR Policy Was Optional and Voluntary Is Unsupported by the Record (Exception 12)**

Respondent excepts to the ALJ's rejection of its argument that the Alternative Dispute Resolution Policy and Agreement to Be Bound By Alternative Dispute Resolution Policy ("ADR Policy") does not infringe on Section 7 rights because the "ADR Policy was optional and completely voluntary." (Resp. Br. 18). Respondent contends that "[i]t is undisputed that many

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<sup>1</sup> In this letter brief, the joint stipulation and joint exhibits to the record will be referred to as (Jt. Exh. [page number]; Jt. Stip. ¶[Number]). References to the ALJD will be designated by the page number and lines divided by a colon (i.e. ALJD page: lines). References to the Respondent's Brief ISO Exceptions to the ALJD will be designated by Resp. Br. [page number].

employees never signed the agreement and that no one was disciplined or rejected for hire if they refused to sign. In addition, there is no evidence that Respondent has ever enforced the ADR Policy against any employee.” (Resp. Br. 18). This argument is unsupported by the record. The record does not reflect that the ADR Policy was completely voluntary and optional. Moreover, the record does not contain evidence establishing whether or not employees were disciplined or rejected for hire if they refused to sign. Rather, with respect to whether the ADR Policy was voluntary, the parties stipulated to the following:

Since about December 6, 2013, Respondent, by distributing a packet of documents to employees, presented the Alternative Dispute Resolution Policy [ADR Policy] and Agreement to Be Bound By Alternative Dispute Resolution Policy to its employees and some of those employees signed the Agreement To Be Bound By Alternative Dispute Resolution Policy as a condition of continued employment and returned it to the Respondent.

(Jt. Stip.: ¶ 14(b)). Counsel for the General Counsel objects to Respondent’s misstatement of the record and the arguments it bases on facts not included in the record. The evidence reflects that the ADR Policy was a term and condition of employment for those employees presented with the Arbitration Program and who signed it based on the fact that the agreement did not provide the employees the option not to sign and because it contained the following language, “IN CONSIDERATION FOR AND AS A MATERIAL CONDITION OF EMPLOYMENT...IT IS AGREED THAT THE ALTERNATIVE DISPUTE RESOLUTION POLICY ATTACHED HERETO...IS THE EXCLUSIVE MEANS FOR RESOLVING COVERED DISPUTES.” Emphasis added. (Jt. Exh. 2 at p. 1-2). Moreover, Respondent stipulated that the ADR Policy was a condition of employment for those employees of Respondent who did sign the Agreement to Be Bound by Alternative Dispute Resolution Policy. (Jt. Stip.: ¶ 14(b)).

Even assuming that the ADR Policy was optional and voluntary, the ALJD correctly concluded that the ADR Policy would still violate the Act based upon the Board's ruling in *On Assignment Staffing Services*, 362 NLRB No. 189 (2015). (ALJD 3: 29-32). Thus, Respondent's exception is baseless and must be denied.

**II. Respondent's Attempt to Distinguish its ADR Policy from *On Assignment* Is Not Supported by the Record (Exception 12)**

Respondent excepts to the ALJD's reliance upon *On Assignment* and attempts to distinguish its ADR Policy from the facts in *On Assignment*: "[h]ere, unlike having to proactively opt-out of arbitration as in *On Assignment*, employees may simply avoid executing the ADR Policy without informing anyone about that decision." (Resp. Br.: 19). Because this asserted fact is not in the record, Respondent's exception should be denied.

**III. Conclusion**

Based upon the foregoing, it is respectfully submitted that Respondent's Exceptions to the Decision of the Administrative Law Judge are without merit and should be denied in their entirety. It is further submitted that the Administrative Law Judge's Decision should be affirmed and his recommended Order be adopted by the Board.

Very truly yours,

**/s/ Marissa Dagdagan**  
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