

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

FOUR SEASONS HEALTHCARE &
WELLNESS CENTER, LP, A CALIFORNIA
LIMITED PARTNERSHIP

Case No. 31-CA-169143

and

ANA CRUZ, AN INDIVIDUAL

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

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Dated: July 19, 2017

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), Respondent Four Seasons Healthcare & Wellness Centre, LP (“Respondent”) files the following exceptions to the Decision of Administrative Law Judge Ariel L. Sotolongo (“ALJ”) dated June 21, 2017 in the above-captioned matter. Respondent also submits a concurrently-filed Brief in Support of Respondent’s Exceptions, which is incorporated herein and contains further details regarding the grounds, arguments, and citations of authority in support of each exception.¹

1. Respondent excepts to the ALJ’s failure to fully and accurately describe and consider all aspects of Respondent’s (1) Alternative Dispute Resolution Policy and (2) Agreement to be Bound by Alternative Dispute Resolution Policy (together referred to as “ADR Policy”) in their entirety. [Decision 2:25-3:39; *see also* Jt. Exs. 1-2.]

2. Respondent excepts to the ALJ’s failure to accurately describe the Parties’ stipulated fact that Respondent has only “required some employees” to sign the ADR Policy. [Decision 3:41-4:4, 5:24-27; JM, ¶15.]

3. Respondent excepts to the ALJ’s finding that the facts and issues of this case are governed by the Board’s decisions in *D.R. Horton* and *Murphy Oil*, and their progeny. [Decision 5:15-17; *see also* Decision at Preamble.]

4. Respondent excepts to the ALJ’s conclusion that it is “well-established Board policy pursuant to *D.R. Horton* and *Murphy Oil*, as well as many subsequent cases, that any policies that bind or force employees to pursue individual arbitration in employment-related

¹ Throughout these exceptions, citations to the record shall be as follows: the ALJ’s decision shall be “Decision [Page]:[Lines]”; the Joint Motion to Transfer Proceedings to Division of Judges and Joint Stipulation of Facts shall be “JM”; and the Joint Exhibits shall be “Jt. Ex. [Number]”.

disputes in lieu of other forms of collective actions or remedies violate Section 8(a)(1) of the Act.” [Decision 5:27-32.]

5. Respondent excepts to the ALJ’s reliance on *D.R. Horton* and *Murphy Oil*, and their progeny, which are not valid and enforceable authority. [Decision 5:15-17, 5:27-32, and Preamble.]

6. Respondent excepts to the ALJ’s finding that he is “bound to follow Board precedent, not that of circuit courts which disagreed with the Board.” [Decision 6:2-4.]

7. Respondent excepts to the ALJ’s conclusion that “by maintaining and implementing such policies, as reflected in the Policy and Agreement, Respondent has violated Section 8(a)(1) of the Act.” [Decision 6:4-6.]

8. Respondent excepts to the ALJ’s conclusion that “by filing a court action and obtaining a judgment to enforce such Policy and Agreement, as Respondent admitted (in the stipulated facts) it did against employee Cruz, Respondent also violated Section 8(a)(1) of the Act.” [Decision 6:6-9.]

9. Respondent excepts to the ALJ’s reliance upon *Ralph’s Grocery Co.*, 363 NLRB No. 128 (2016), *Lincoln Eastern Management*, 364 NLRB No. 16 (2016), and *Solar City*, 363 NLRB No. 83 (2015), which are not valid and enforceable authority. [Decision 6:14-16, 6:23-7:7.]

10. Respondent excepts to the ALJ’s conclusion that the two “savings clauses” in the ADR Policy “do not ‘save’ the employer from violating Section 8(a)(1) of the Act” because “the scope or reach of the mandatory arbitration language is such that it overwhelms the arguably mitigating effect of the savings clause.” [Decision 6:23-7:7.]

11. Respondent excepts to the ALJ's conclusion that the "savings clauses" in the ADR Policy "are buried toward the end of both documents" and "constitute but a small fraction of the over-all text in these documents." [Decision 6:32-36.]

12. Respondent excepts to the ALJ's conclusion that the ADR Policy contains "conflicting messages" that present "an ambiguity that must be construed against Respondent as the promulgator of the rule." [Decision 6:36-39.]

13. Respondent excepts to the ALJ's conclusion that the ADR Policy's mention of the employee's right to file Board charges is illusory and employees would reasonably feel inhibited from filing Board charges. [Decision 7:3-7.]

14. Respondent excepts to the ALJ's failure to conclude that the ADR Policy is a valid and lawful contract that must be enforced according to its terms pursuant to the FAA, as interpreted by the U.S. Supreme Court. [Decision 7:9-26.]

15. Respondent excepts to the ALJ's failure to conclude that the FAA's savings clause does not apply in this case. [Decision 7:9-26.]

16. Respondent excepts to the ALJ's failure to conclude that the National Labor Relations Act does not contain an express congressional command that exempts the Board from following the U.S. Supreme Court's interpretation of the FAA. [Decision 7:9-26.]

17. Respondent excepts to the ALJ's failure to conclude that the ADR Policy does not infringe on Section 7 rights because it was optional and not required as a condition of employment. [Decision 7:9-26.]

18. Respondent excepts to the ALJ's conclusion that "Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing a mandatory arbitration agreement (Agreement

and Policy) that mandates individual arbitration and precludes class actions by employees for employment-related claims in any forum, arbitral or judicial.” [Decision 7:14-17.]

19. Respondent excepts to the ALJ’s conclusion that “Respondent violated Section 8(a)(1) of the Act by filing a notice of motion and motion to compel arbitration, dismiss plaintiffs class claims, and request for stay of proceedings in accordance with the terms of the Agreement and Policy in the Superior Court of the State of California, County of Los Angeles, in Case No. BC588960.” [Decision 7:19-22.]

20. Respondent excepts to the ALJ’s conclusion that “Respondent violated Section 8(a)(1) of the Act by maintaining and enforcing a mandatory arbitration agreement that employees could reasonably construe to preclude filing of charges with the Board.” [Decision 7:24-26.]

21. Respondent excepts to the entirety of the proposed remedy. [Decision 7:28-8:9.]

22. Respondent excepts to the ALJ’s recommended Order and proposed Notice to Employees in their entirety. [Decision 8:11-9:33 & Appendix.]

Dated: July 19, 2017

Respectfully Submitted,
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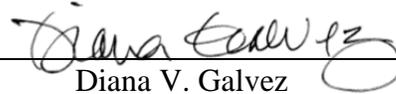
CERTIFICATE OF SERVICE

I hereby certify that, on July 19, 2017, I filed a copy of **Respondent's Exceptions To The Administrative Law Judge's Decision** using the NLRB's e-filing system and also served the following individuals via e-mail.

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I declare under penalty of perjury under the laws of the United States.


Diana V. Galvez