



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

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August 16, 2017

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

Re: *Four Seasons Healthcare & Wellness  
Center, LP, A California Limited  
Partnership*  
Case 31-CA-169143

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 ALJD, 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 17)**

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

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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]; GC Exh. [page: 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].

completely voluntary.” (Resp. Br. 19). Respondent contends that “[i]t is undisputed that many employees never signed the agreement and that no one was disciplined or rejected for hire if they refused to sign.” (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 July 11, 2011, Respondent has required some employees, including the Charging Party, as a condition of employment, to sign the Agreement described above.

(Jt. Stip.: ¶ 15). 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**

**WITH THE COMPANY**...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. 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.: ¶ 15).<sup>2</sup> Thus, Respondent’s exception is baseless and must be denied.

## **II. Conclusion**

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<sup>2</sup> Even assuming *arguendo* that the ADR Policy was optional and voluntary, the ADR Policy would still violate the Act. See *Ralphs Grocery Co.*, 363 NLRB No. 128, slip op. at 3, fn. 8 (Feb. 23, 2016) citing *On Assignment Staffing Services*, 362 NLRB No. 189, slip op. at 5-8 (2015).

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.

Respectfully Submitted,

/s/ Nicholas J. Gordon  
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Re: Four Seasons Healthcare & Wellness Center, LP, a California limited partnership  
Case Number.: 31-CA-169143

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Counsel for the General Counsel's Answering Brief to Respondent's Exceptions to the Administrative Law Judge's Decision* was served on the 16<sup>th</sup> day of August, 2017

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National Labor Relations Board  
Office of the Executive Secretary

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