

**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.

**SOUTHERN STAR'S REPLY IN SUPPORT OF THE PARTIES'
JOINT MOTION FOR DISMISSAL OF ACTION**

On August 18, 2017, both parties to this Charge – Southern Star and Richard Willis – requested that the Board dismiss this action and withdraw Mr. Willis’s Charge. The Counsel for the General Counsel has now opposed the motion claiming that the alleged NLRB violation has not been remedied. This argument, like the General Counsel’s previous briefs in this matter, continues to blatantly ignore 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 thirteen times considered and each time rejected the argument that class or collective action waivers in employment agreements are unenforceable as violating the NLRA.¹ *See Logisticare Solutions, Inc. v. NLRB*, No. 16-60029, 2017 WL 3404648 (5th Cir. Aug. 9,

¹ Southern Star recognizes that the United States Supreme Court is due to resolve this issue soon; however, until that time, Fifth Circuit law controls here.

2017); *Convergys Corp. v. NLRB*, No. 15-60860, 2017 WL 3381432 (5th Cir. Aug. 7, 2017); *Acuity Specialty Prods., Inc. v. NLRB*, No. 16-60367, 668 F. App'x 298 (5th Cir. 2017); *Jack in the Box, Inc. v. NLRB*, 671 F. App'x 316 (5th Cir. 2016); *Citigroup Tech., Inc. v. NLRB*, 671 F. App'x 286 (5th Cir. 2016); *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. 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 General Counsel's assertion that any violation has not been remedied is without merit.

Next, the opposition ignores the fact that Southern Star implemented a revised Arbitration Agreement for all current employees and future applicants on June 24, 2016, which makes it clear that nothing in the Agreement prohibits employees from filing NLRB Charges. 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. As such, any violation based on the claim that the Arbitration Agreement prohibits employees from engaging in the protected concerted activity of filing charges with the Board has been remedied.

For all of these reasons, this matter is due to be dismissed as requested by both Southern Star and Richard Willis.

Respectfully submitted,

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

I, the undersigned, being duly sworn say that on **September 1, 2017**, 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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