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**Darden Restaurants, Inc.; GMRI, Inc.; Yard House USA, Inc.; Yard House Northridge, LLC and Filberto Martinez.** Case 31–CA–158487

September 25, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN  
AND KAPLAN

On August 18, 2016, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The Respondents filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The judge found, applying the Board’s decisions in *D. R. Horton*, 357 NLRB 2277 (2012), enf. denied in relevant part, 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part, 808 F.3d 1013 (5th Cir. 2015), that Respondent GMRI, Inc. violated Section 8(a)(1) of the National Labor Relations Act by maintaining a Dispute Resolution Process (DRP) that requires employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial. The judge also found that Respondents Darden Restaurants, Inc., GMRI, Inc., Yard House USA, Inc., and Yard House Northridge, LLC violated Section 8(a)(1) of the Act by enforcing the DRP.

Recently, the Supreme Court issued a decision in *Epic Systems Corp. v. Lewis*, 584 U.S. \_\_\_, 138 S.Ct. 1612 (2018), a consolidated proceeding that included review of court decisions below in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration violate the National Labor Relations Act. Id. at \_\_\_, 138 S.Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant

<sup>1</sup> We therefore find no need to address other issues raised by the Respondent’s exceptions. We note that the Respondents, in their exceptions brief, assert that “no employee could reasonably misinterpret the DRP as

to the Federal Arbitration Act. Id. at \_\_\_, 138 S.Ct. at 1619, 1632.

The Board has considered the decision and the record in light of the exceptions and briefs. In light of the Supreme Court’s decision in *Epic Systems*, which overrules the Board’s holding in *Murphy Oil*, we conclude that the complaint must be dismissed.<sup>1</sup>

ORDER

The complaint is dismissed.

Dated, Washington, D.C. September 25, 2018

\_\_\_\_\_  
John F. Ring, Chairman

\_\_\_\_\_  
Lauren McFerran, Member

\_\_\_\_\_  
Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

*Eric Brooks, Esq.*, for the General Counsel.  
*Matthew Matern, Esq.*, (*Matern Law Group*), counsel for the Charging Party.

*Anthony Martin, Esq.*, (*Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*), counsel for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. The parties herein waived a hearing and submitted this case directly to me by way of a Joint Motion and Submission of Stipulation of Facts and Exhibits dated June 28, 2016, and by Order Granting Joint Motion, Approving Stipulations of Fact, Reassigning ALJ and Setting Due Date for Briefs dated June 29, 2016, Associate Chief Judge Gerald Etchingham approved the Joint Motion. The parties agree that the following Stipulations of Fact are true for this matter only, although they do not concede the relevancy of these facts:

1. On August 20, 2015, the Charging Party filed the charge and copies were served by U.S. mail on Respondent Darden, Respondent GMRI, Respondent Yard House USA, and Respondent Yard House Northridge on August 21, 2015.

2. On February 26, 2016, the Acting Regional Director for Region 31 issued a complaint and notice of hearing, and a copy

prohibiting Sec. 7 activity, including the filing of unfair labor practice charges with the Board.” No such violation was alleged or found here.

was served by U.S. mail on Respondent Darden, Respondent GMRI, Respondent Yard House USA, and Respondent Yard House Northridge on the same day.

3. On March 11, 2016, Respondent Darden, Respondent GMRI, Respondent Yard House USA, and Respondent Yard House Northridge filed their Answers to the Complaint.

4. (a) At all material times, Respondent Darden has been a Florida corporation and through its direct and indirect ownership of various subsidiaries has a place of business in Los Angeles, California, where it has been engaged in operating public restaurants selling food and beverages.

(b) In the calendar year ending December 31, 2015, Respondent Darden through its direct and indirect ownership of various subsidiaries has derived gross revenues in excess of \$500,000 and has purchased and received for its California location, goods valued in excess of \$5000 directly from points outside the State of California.

(c) At all material times, Respondent Darden has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5. (a) At all material times, Respondent GMRI has been a Florida corporation, and through its direct and indirect ownership of various subsidiaries, has a place of business in Los Angeles, California, where it has been engaged in operating public restaurants selling food and beverages.

(b) In the calendar year ending December 31, 2015, Respondent GMRI through its direct and indirect ownership of various subsidiaries has derived gross revenues in excess of \$500,000 and has purchased and received for its California location, goods valued in excess of \$5000 directly from points outside the State of California.

(c) At all material times, Respondent GMRI has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. (a) At all material times, Respondent Yard House USA has been a Delaware corporation, and through its direct and indirect ownership of various subsidiaries, has a place of business in Los Angeles, California, where it has been engaged in operating public restaurants selling food and beverages.

(b) In the calendar year ending December 31, 2015, Respondent Yard House USA has derived gross revenues in excess of \$500,000 and has purchased and received for its California location, goods valued in excess of \$5000 directly from points outside the State of California.

(c) At all material times, Respondent Yard House USA has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

7. (a) At all material times, Respondent Yard House Northridge has been a California corporation with a place of business in Los Angeles, California, where it has been engaged in operating public restaurants selling food and beverages.

(b) In the calendar year ending December 31, 2015, Respondent Yard House Northridge has derived gross revenues in excess of \$500,000 and has purchased and received for its California location, goods valued in excess of \$5000 directly from points outside the State of California.

(c) At all material times, Respondent Yard House Northridge has been an employer engaged in commerce within the meaning

of Section 2(2), (6), and (7) of the Act.

8. Employees employed by the Respondents, including the Charging Party, are not represented by a labor organization.

9. At material times, Respondent Yard House Northridge, Respondent Yard House USA, and Respondent GMRI have required employees, including the Charging Party, to submit employment related and compensation related disputes to arbitration. The terms of the agreement are described in the Dispute Resolution Process (DRP). The DRP states that examples of legal claims covered by the DRP include but are not limited to: claims that arise out of the Civil Rights Act of 1964, Americans With Disabilities Act, Fair Labor Standards Act, Age Discrimination in Employment Act, and Family Medical Leave Act.

10. The DRP also states:

#### Class, Collective, and Representative Actions

There will be no right or authority for any dispute to be brought, heard or arbitrated by any person as a class action, collective action or on behalf of any other person or entity under the DRP. The arbitrator has no jurisdiction to certify any group of current or former employees, or applicants for employment, as a class or collective action in any arbitration proceeding.

11. Employees, including the Charging Party, must agree to abide by the terms of the DRP as a term and condition of employment.

12. The Charging Party signed the following acknowledgment on or about February 23, 2013:

This agreement contains the requirements, obligations, procedures and benefits of the Dispute Resolution Process (DRP). **"I acknowledge that I have received and/or have had the opportunity to read this arbitration agreement. I understand that this arbitration agreement requires that disputes that involve the matters subject to the agreement be submitted to mediation or arbitration pursuant to the arbitration agreement rather than to a judge or jury in court.** I agree as a condition of my employment, to submit any eligible disputes I may have to the DRP and to abide by the provisions outlined in the DRP. I understand this includes, for example, claims under state and federal laws relating to harassment or discrimination, as well as other employment-related claims as defined by the DRP. Finally, I understand that the Company is equally bound by all of the provisions of the DRP." (*Emphasis in original.*)

13. The Charging Party was employed at Respondents' Northridge, California facility from November 8, 2012, until May 28, 2013.

14. The DRP is a condition of employment of all employees who are employed by any of the Respondents.

15. On or about March 2, 2015, the Charging Party filed a class-action lawsuit in Case No. BC-574043, captioned *Filiberto Martinez, et al. v. Darden Restaurants, Inc., et al.*, (Superior Court of the State of California, County of Los Angeles), alleging that the Respondent Darden, Respondent Yard House Northridge, Respondent Yard House USA, and Respondent GMRI violated the California Labor Code, Industrial Welfare Commission Wage Orders, and the California Business and Professional Code.

16. On or about May 6, 2016, Charging Party and Respondent Darden, Respondent Yard House Northridge, Respondent Yard House USA, and Respondent GMRI jointly submitted a Joint Initial Status Conference Class Action Response Statement to the Superior Court.

17. On or about May 7, 2015, Respondent Darden, Respondent Yard House Northridge, Respondent Yard House USA, and Respondent GMRI, acting jointly<sup>1</sup>, filed a *Notice of Removal of Action Pursuant to 28 U.S.C. Sections 1332, 1441, and 1446*, Case No. 2:15-cv-3434 (U.S.D.C., C.D. Cal., herein the U.S.D.C.).

18. On or about May 8, 2015, Respondent Darden, Respondent Yard House Northridge, Respondent Yard House USA, and Respondent GMRI, acting jointly, submitted a *Motion to Compel Binding Arbitration; Memorandum of Points and Authorities* to the U.S.D.C.

19. On or about June 4, 2015, Charging Party submitted its *Opposition* to Respondents' Motion to Compel Arbitration to the U.S.D.C.

20. On or about June 5, 2015, Respondent Darden, Respondent Yard House Northridge, Respondent Yard House USA, and Respondent GMRI, acting jointly, submitted its *Reply* to the U.S.D.C.

21. On or about August 13, 2015, U.S.D.C. Judge George H. Wu issued his *Order* granting Respondent Darden, Respondent Yard House Northridge, Respondent Yard House USA, and Respondent GMRI's Motion to Compel Binding Arbitration.

22. Charging Party and Respondents filed a *Joint Status Conference Statement Regarding Arbitration*, in Case No. 2:15-cv-3434 (U.S.D.C., C.D. Cal.) dated February 18, 2016.

#### STATEMENT OF ISSUES IN THIS CASE:

Without waiving objections to the materiality or relevance based on the foregoing factual stipulations, the Parties agree and stipulate to the following issues presented in this matter:

1. Whether Respondent Yard House Northridge's, Respondent Yard House USA's, and Respondent GMRI's maintenance of the DRP interferes with, restrains, and coerces employees in the exercise of rights guaranteed under Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. Whether Respondent Yard House Northridge's, Respondent Yard House USA's, and Respondent GMRI's requirement that employees, including the Charging Party, sign the DRP as a condition of employment interferes with, restrains, and coerces employees in the exercise of rights guaranteed under Section 7 of the Act in violation of Section 8(a)(1) of the Act.

3. Whether Respondent Darden's, Respondent Yard House Northridge's, Respondent Yard House USA's, and Respondent GMRI's filing of its May 8, 2015 *Motion to Compel Binding Arbitration* of Charging Party's class action lawsuit interferes with, restrains, and coerces employees in the exercise of rights

guaranteed under Section 7 of the Act in violation of Section 8(a)(1) of the Act.

4. Whether Respondent Darden or Respondent Yard House USA are proper parties to this matter.

5. Whether the remedies sought by the General Counsel in this case are appropriate.

6. Whether the charges are time barred under Section 10(b) of the Act.

7. Whether the Board and/or Martinez are estopped from pursuing this particular matter.

The relevant portions of the DRP are as follows:

This document is the Dispute Resolution Process (DRP) agreement between the Employee and his/her employer ("the Company"), which is a direct or indirect subsidiary of Darden Restaurants, Inc. The DRP is governed by the Federal Arbitration Act (9 U.S.C. §§1 et seq.). The requirements, obligations, procedures and benefits in this booklet are binding on the Employee and the Company during and after the period of the Employee's employment. The mutual goal of DRP is to resolve eligible work related problems, concerns and disputes between the Employee and the Company in a prompt, fair and efficient way that protects the legal rights of both the employee and the company.

This agreement is used throughout the United States. The DRP is always to be used and interpreted consistently with applicable law. If any provision of the DRP is in conflict with applicable law, that provision may be severed or revised to make the DRP valid and enforceable. The severed or revised provision, will not affect the remaining provisions of the DRP. Additionally, the DRP *may* be updated from time to time as required by applicable law.

#### INTRODUCTION

Occasional differences may arise between the Company and an Employee, both during and after employment. The mutual goal is to resolve work-related problems, concerns and disputes in a prompt, fair and efficient way that protects the legal rights of both the Employee and the Company. To accomplish this goal, the Dispute Resolution Process (DRP) is comprised of a four-step process: Open Door, Peer Review, Mediation and Arbitration. The DRP, instead of court actions, is the sole means for resolving covered employment related disputes. Disputes eligible for DRP must be resolved only through DRP, with the final step being binding arbitration heard by an arbitrator. This means DRP-eligible disputes will not be resolved by a judge or jury. Neither the Company nor the Employee may bring DRP eligible disputes to court. The Company and the Employee waives all rights to bring a civil court action for these disputes.

#### What is covered under DRP?

the four Respondents are joint employers under current Board law and the Act. However, this does not prevent any party from raising this theory and/or arguing joint employer status in any other proceeding or civil litigation related to the DRP.

<sup>1</sup> "Acting jointly" refers to the fact that all four Respondents jointly asserted in litigation that Charging Party's lawsuit should be removed to federal court and that Charging Party was required to submit his wage and hour claims to arbitration under the terms of the DRP. Counsel for the General Counsel does not allege, and the parties do not stipulate, that

The Open Door, as described on page 4, is the first step in DRP and is always available to Employees or the Company to use to discuss any issues or resolve any disputes relating to their employment.

Steps two and three of DRP - Peer Review and Mediation-apply to all employment related disputes or claims brought by the Employee against the Company or the Company against the Employee other than those limited "Exceptions listed below." Some examples of disputes which are covered by the first three steps of DRP include, but are not limited to: disputes about compensation earned, termination, discrimination and harassment. Only disputes which state a legal claim may be submitted to Arbitration, which is the fourth and final step of DRP. The arbitrator has the authority to dismiss disputes that do not state a legal claim. Examples of legal claims covered by DRP include but are not limited to: claims that arise under the Civil Rights Act of 1964, Americans With Disabilities Act, Fair Labor Standards Act, Age Discrimination in Employment Act, and Family Medical Leave Act.

#### **What are the exceptions to DRP?**

The DRP is not available to resolve disputes:

related to Workers Compensation or Unemployment Insurance benefits; that are legally required by controlling federal law to be arbitrated or resolved under a different process;

claims for employee benefits under any benefit plan sponsored by the Company and covered by Employee Retirement Income Security Act of 1974 or funded by insurance, unfair competition, violation of trade secrets, any common law right or duty, or any federal, state or local ordinance or statute; or

regarding wage rates, wage scales or benefits, performance standards or ratings, work rules, food quality and service standards, or company policies and procedures, including whether to open or close operations; unless these disputes are brought pursuant to a specific federal or state statute, or other applicable legal standard.

#### **What are the exceptions to Arbitration?**

The final step of DRP- Arbitration -is not available to resolve disputes:

- that do not state a legal claim under applicable law;
- that by controlling federal law cannot be subjected to mandatory arbitration; or
- that are legally required under controlling federal law to be arbitrated or resolved under a different process.

#### **Class, Collective and Representative Actions**

There will be no right or authority for any dispute to be brought, heard or arbitrated by any person as a class action, collective action or on behalf of any other person or entity under the DRP. The arbitrator has no jurisdiction to certify any group of current or former employees, or applicants for employment, as a class or collective action in any arbitration proceeding.

#### **Other Actions**

The DRP does not prevent an Employee from exercising

statutorily protected rights to file any administrative charge or complaint with administrative agencies. Such administrative claims include, without limitation, claims or charges brought before the Equal Employment Opportunity Commission, the U.S. Department of Labor, and the National Labor Relations Board. Nothing in the DRP will preclude or excuse the Employee from bringing an administrative claim before any agency in order to fulfill the obligation to exhaust administrative remedies before making a claim in arbitration.

#### **DISPUTE RESOLUTION PROCESS ACKNOWLEDGEMENT**

This agreement contains the requirements, obligations, procedures and benefits of the Dispute Resolution Process (DRP). **I acknowledge that I have received and/or have had the opportunity to read this arbitration agreement. I understand that this arbitration agreement requires that disputes that involve the matters subject to the agreement be submitted to mediation or arbitration pursuant to the arbitration agreement rather than to a judge or jury in court.** I agree as a condition of my employment, to submit any eligible disputes I may have to the DRP and to abide by the provisions outlined in the DRP. I understand this includes, for example, claims under state and federal laws relating to harassment or discrimination, as well as other employment-related claims as defined by the DRP. Finally I understand that the Company is equally bound to all of the provisions of the DRP. [Emphasis supplied]

[Space for signatures]

In addition to these stipulations, certain uncontradicted facts are set forth in the court documents of the Charging Parties' lawsuit and the Respondents' notice of removal and motion to compel binding arbitration. The DRP has been in effect since at least 1995 and the Charging Party executed the agreement in February 2012. The Charging Party's "Class Action Complaint" was for the alleged failure to provide required meal periods and rest periods, failure to pay overtime wages and minimum wages, failure to timely pay wages and to pay all wages due to employees who quit or were terminated and failure to maintain required records and to furnish accurate itemized statements. The court documents state that neither Darden, YH USA (Yard House USA, Inc.), nor YH LLC has any employees in the State of California and that GMRI, Inc. is "the only proper defendant. . . as the employer of record for Plaintiff." GMRI is a wholly owned subsidiary of Darden and Darden is the sole shareholder of GMRI. YH USA is a wholly owned subsidiary of GMRI and YH LLC is a wholly owned subsidiary of YH USA. Darden acquired YH USA on August 29, 2012, and from that time GMRI has been the employer of the employees at the locations involved herein. Prior to that date, YH USA was the employer at the location involved as well as all the Yard House restaurants throughout the country.

#### **Analysis**

Initially, I note that as the complaint does not allege that the Respondents violated the Act by maintaining a mandatory arbitration agreement that employees would reasonably believe bars them from filing charges with the Board and/or restricts their access to the Board's processes, I need not determine that issue.

The initial issue therefore is whether the maintenance of the DRP and the requirement that prospective employees sign it as a condition of employment violates Section 8(a)(1) of the Act, and I find that it clearly does.

This is another case in line with *D.R. Horton, Inc.*, 357 NLRB 2277 (2012), *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), and *Cellular Sales of Missouri, LLC*, 362 NLRB 241 (2015). The DRP requires the employees to utilize arbitration to determine any dispute and prohibits class, collective or consolidated actions. *Horton* applied the test as set forth in *Lutheran-Heritage Village- Livonia*, 343 NLRB 646 (2004), which stated that the initial inquiry is whether the rule at issue explicitly restricts activities that are protected by Section 7 of the Act; if so, it is unlawful. If not, the finding of a violation is dependent upon a showing of one of the following: employees would reasonably construe the rule to prohibit protected activity or the rule has been applied to restrict the exercise of this activity. The Board, in *Horton*, found that “employers may not compel employees to waive their NLRA right to collectively pursue litigation of employment claims in all forums arbitral and judicial “as a condition of employment. In *Murphy Oil*, supra, the Board stated that although *Horton* was rejected by the U.S. Court of Appeals for the Fifth Circuit and was viewed as unpersuasive by the Second and Eighth Circuits: “We have independently reexamined *D.R. Horton*, carefully considering the Respondent’s arguments, adverse judicial decisions, and the views of our dissenting colleagues. Today we reaffirm that decision. Its reasoning and result were correct...”

On May 26, 2016, the United States Court of Appeals for the Seventh Circuit, in *Jacob Lewis v. Epic Systems Corporation* agreed with the Board and found that these restrictions on class, collective or representative proceedings violate the Act and affirmed the District Court’s decision to refuse to dismiss the employee’s claim based upon the arbitration agreement. The Court cited a number of Supreme Court rulings in making this finding: contracts “stipulating . . . the renunciation by the employees of rights guaranteed by the [NLRA]” are unlawful and may be declared to be unenforceable by the Board, *National Licorice Company v. NLRB*, 309 U.S. 350, 369 (1940); “Whenever private contracts conflict with [the Board’s] functions, they obviously must yield or the [NLRA] would be reduced to a futility.” *J.I. Case Co. v. NLRB*, 321 U.S. 332, 337 (1944); and Section 7’s “other concerted activities” have long been held to include “resort to administrative and judicial forums.” *Eastex, Inc. v. NLRB*, 437 U.S. 556, 566 (1978). The Court further stated:

Epic’s clause runs straight into the teeth of Section 7. The provision prohibits any collective, representative, or class legal proceedings. Section 7 provides that “employees shall have the right...to engage in...concerted activities for the purpose of collective bargaining or other mutual aid or protection.” A collective representative, or class legal proceeding is just such a “concerted activity.”

The Court concluded that a contract that limits Section 7 rights that is a condition of employment or of continued employment, interferes with and restrains employees in the exercise of those rights in violation of Section 8(a)(1) of the Act. And that is the situation in the instant matter. The DRP required employees to

forego any class, collective or consolidated actions and mandates that all arbitrations must be brought in an individual capacity. It therefore violates Section 8(a)(1) of the Act.

An additional issue is which of the Respondents are proper parties herein and are responsible for the unfair labor practices alleged herein. Although all four entities are listed as Respondents, I note that paragraph 9 of the complaint alleges that Respondents Yard House Northridge, Yard House USA, and GMRI, but not Darden, required employees to execute the DRP as a condition of employment. In addition, uncontradicted Declarations that are part of the Court documents state that since 2012, when the employees were transitioned from Yard House USA to GMRI, GMRI has been the employer of employees at all Yard House locations throughout the country, including the location where the Charging Party was employed, and since that transition, Yard House USA and Yard House Northridge have not employed any employees in the State of California. I therefore find that only Respondent GMRI violated Section 8(a)(1) of the Act by requiring its employees to agree to the DRP as a condition of employment.

It is next alleged that the Respondent’s Motion to Compel Binding Arbitration filed on May 8 interfered with the Charging Party’s rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. The Stipulation of Facts at paragraphs 17 and 18 states that on May 7 and 8 Respondents Darden, Yard House Northridge, Yard House USA, and GMRI, acting jointly, filed a notice of removal of action and motion to compel binding arbitration. Clearly, these Court filings had the purpose of having Martinez’ lawsuit dismissed and requiring him, instead, to arbitrate the dispute pursuant to the terms of the DRP. The law is clear that lawsuits which attempt to enforce contract provisions which violate the Act, constitute independent violations. *Bill Johnson’s Restaurants v. NLRB*, 461 U.S. 731, 747 (1983). By filing these Court actions on May 7 and 8 to dismiss Martinez’ Court action and require him to arbitrate his dispute pursuant to the terms of the DRP, the Respondents further sought to restrict his right to engage in protected concerted activity, in violation of Section 8(a)(1) of the Act. *Philmar Care, LLC*, 363 NLRB No. 57 (2015); *Employers Resource*, 363 NLRB No. 59 (2015).

The remaining issue is whether the charges herein are time barred by Section 10(b) of the Act. As the evidence establishes that the Respondent has continued to maintain the DRP, it constitutes a continuing violation that is not time barred by Section 10(b) of the Act. *Employers Resource*, supra, footnote 2.

#### CONCLUSIONS OF LAW

1. Respondents are each employers within the meaning of Section 2(2), (6), and (7) of the Act.

2. By requiring employees, and prospective employees, to sign the DRP, whereby they agree to individual arbitrations to resolve any labor dispute that they had with their employer, thereby waiving the right to maintain class or collective actions in all forums, Respondent GMRI violated Section 8(a)(1) of the Act.

3. By bringing Court actions on May 7 and May 8 the Respondents Darden, GMRI, Yard House USA, and Yard House Northridge violated Section 8(a)(1) of the Act.

## REMEDY

The appropriate remedy for the violations found is an order requiring Respondent to cease and desist from their unlawful conduct and to take certain affirmative action to effectuate the policies of the Act. Specifically, Respondent GMRI must rescind or revise the mandatory arbitration employment agreement, notify Martinez and other current and former employees who executed the agreement, and the Court that it has done so, and inform the Court that it no longer opposes class Martinez' action on the basis of the agreement. Respondents must also reimburse Martinez for all reasonable expenses and legal fees incurred in opposing its unlawful motion to compel individual arbitration of his class action suit, with interest computed and compounded daily in the manner prescribed in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010). See *Murphy Oil and Cellular Sales*.

On these finding of fact and conclusions of law and the entire record, I issue the following recommended<sup>2</sup>

## ORDER

Respondent, GMRI, Inc., its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Maintaining and/or enforcing an arbitration provision that requires employees as a condition of employment to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the DRP arbitration provision in all of its forms or revise it in all of its forms to make clear to employees that the arbitration provision does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums.

(b) Notify all current and former employees who were required to sign or otherwise become bound to the mandatory arbitration provision in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised provision.

In addition

Respondents GMRI, Inc., Darden Restaurants, Inc., Yard House USA, Inc., and Yard House Northridge LLC, its officers, agents, successors and assigns, shall

## 1. Cease and desist from

(a) Taking any action, in court or otherwise, to restrict or prevent its employees from bringing or maintaining a joint, collective or class action.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the United States District Court, C.D. Cal. In Case No. 2:15-cv-3434, that Respondent GMRI has rescinded or revised the mandatory arbitration provision upon which it based its motion to dismiss and compel individual arbitration of the claims of Filiberto Martinez and inform the court that it no longer opposes the lawsuit on the basis of that provision.

(b) In the manner set forth in *Murphy Oil*, 361 NLRB 774 (2014), and *Countrywide Financial Corp.*, 362 NLRB 1331 (2015), reimburse Martinez for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing the Respondent's motion to compel individual arbitration.

(c) Within 14 days the Respondent GMRI shall post at each of its facilities, copies of the attached notice marked "Appendix A," while each of the Respondents shall post at each of its facilities the attached notice marked "Appendix B." Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 20, 2015, and any current or former employees against whom the Respondent has enforced its mandatory arbitration agreement.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington D.C August 18, 2016

## APPENDIX A

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf

Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain and/or enforce an arbitration provision that as a condition of employment requires you to waive the right to maintain class or collective actions for employment-related claims in all forums, arbitral or judicial and WE WILL NOT bring a Court action to prevent you from participating in a class or collective action.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights listed above.

WE WILL rescind or revise the arbitration provision in all of its forms to make clear that it does not constitute a waiver of your right to maintain employment-related joint, class, or collective actions in all forums and WE WILL notify all current and former employees who were required to sign or otherwise become bound to the arbitration provision in all of its forms that the provision has been rescinded or revised and, if revised, WE WILL provide them a copy of the revised provision.

WE WILL notify the United States District Court, C.D. Cal, that we have rescinded or revised the arbitration provision upon which we based our motion to dismiss and compel individual arbitration of the claims of Filberto Martinez, and inform the court that we no longer oppose collective action on the basis of that provision.

WE WILL reimburse Filberto Martinez in Case No. No.2:15-cv-3434 for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing the Respondent's motion to compel individual arbitration.

GMRI, Inc.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/31-CA-158487](http://www.nlr.gov/case/31-CA-158487) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



APPENDIX B  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT bring a Court action in order to prevent you from bringing a class or collective action regarding your employment with us.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of your rights as guaranteed by Section 7 of the Act.

WE WILL notify the United States District Court, C.D. Cal, that GMRI has rescinded or revised the arbitration provision upon which we based our motion to dismiss and compel individual arbitration of the claims of Filberto Martinez and inform the court that we no longer oppose collective action on the basis of that provision.

WE WILL reimburse Filberto Martinez in Case No. No.2:15-cv-3434 for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing the motion to compel individual arbitration.

DARDEN RESTAURANTS, INC., YARD HOUSE USA, INC.  
AND YARD HOUSE NORTHRIDGE, LLC

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