

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

The Neiman Marcus Group, Inc.

and

Case 31-CA-074295

Sheila Monjazebe, an Individual

GENERAL COUNSEL'S MOTION TO WITHDRAW COMPLAINT ALLEGATIONS AND
REQUEST FOR REMAND TO THE REGIONAL DIRECTOR

On November 30, 2012, the Regional Director issued a complaint alleging that Respondent violated Section 8(a)(1) of the Act by: maintaining a mandatory arbitration agreement and other documents that required employees to individually arbitrate employment-related disputes; requiring employees to sign its mandatory arbitration agreement; enforcing its mandatory arbitration agreement; and interfering with employees' right file charges with the National Labor Relations Board (Board).

On February 6, 2014, Administrative Law Judge Eleanor Laws (ALJ Laws) issued her Recommended Decision and Order finding that Respondent violated Section 8(a)(1) of the Act as alleged. On August 4, 2015, the Board issued a Decision and Order affirming the Administrative Law Judge.

On August 12, 2015, Respondent filed a Petition to Review the Board's Decision with the Fifth Circuit Court of Appeals. On June 20, 2016, the Fifth Circuit Court of Appeals placed the case in abeyance pending the Supreme Court's decision in *NLRB v. Murphy Oil, USA, Inc.*, No. 16-307.

On December 14, 2017, the Board issued *The Boeing Company*, which “overrule[d] the *Lutheran Heritage* ‘reasonably construe’ standard” and announced a new test to replace it. 365 NLRB No. 154, (2017). On May 21, 2018, the Supreme Court issued its decision in *Epic Systems, Murphy Oil, and Ernst & Young LLP v. Morris*, 138 S. Ct. 1612 (2018), holding that mandatory arbitration agreements must be enforced under the Federal Arbitration Act according to their terms, even if those terms required individual arbitration in lieu of collective or class-based claims in other forums.

Subsequently, the Board filed an unopposed motion with the Fifth Circuit Court of Appeals seeking an order summarily granting review of the portion of the Board’s order governed by the Supreme Court’s decision in *Epic Systems*. On June 11, 2018, the Court granted the Board’s motion and remanded back to the Board the remaining allegation, that Respondent’s arbitration agreement unlawfully prohibited employees from filing charges with the Board.

General Counsel now respectfully requests to withdraw the remaining allegation and that the matter be remanded to the Regional Director for further action consistent with *Boeing Co.* and subsequent cases applying *Boeing Co.* to arbitration policies that include a savings clause, including *Briad Wenco, LLC d/b/a Wendy's Restaurant*, 368 NLRB No. 72, slip op. at 2 (2019) and *Anderson Enterprises, Inc. d/b/a Royal Motor Sale*, 369 NLRB No. 70 (2020).

Dated at Los Angeles, California this 28th day of October 2020.

Respectfully submitted,

/s/ Jake Yocham
Jake Yocham
Counsel for the General Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *GENERAL COUNSEL'S MOTION TO WITHDRAW COMPLAINT ALLEGATIONS AND REQUEST FOR REMAND TO THE REGIONAL DIRECTOR* has been served this 28th day of October 2020 *by electronic mail and U.S.*

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