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November 12, 2020

VIA ELECTRONIC FILING

Molly C. Dwyer, Clerk
U.S. Court of Appeals
for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Nob Hill General Stores, Inc. v. NLRB
Case No. 19-72429, 19-72523
Response to Rule 28(j) Letter Submitted by Petitioner on November 9, 2020.

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THOMAS GOTTHEIL (1986-2019)
JERRY P.S. CHANG
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ABEL RODRIGUEZ
ANDREW D. WEAVER
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BISMA SHAHBAZ
SEAN W. McDONALD

Dear Clerk:

International Longshore & Warehouse Union v. NLRB, 978 F.3d 625 (9th Cir. 2020), supports the NLRB's Order. Although this Court relied on the plain language, it did so because the Board could "point to a contractual provision suggesting an intent to limit the scope [of the relevant language]." *Id.*, slip op. at 32. Here, the Union sought to enforce provisions of the contract applicable to all the unionized stores covered by the contract "notwithstanding" the fact that that the contract did not apply to the Santa Clara store until fifteen days after it opened. The word "notwithstanding" cannot be read to void the application of the contract to the current bargaining unit including requiring benefit contributions for those employees who transferred into the store.

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Nob Hill asserts that federal common law requires application of the principle that the word "notwithstanding" voids the contract in all respects to the Santa Clara store and voids all rights the Union may have to information about the store. This ignores the obligation of this Court to interpret the language according to the federal common law of collective bargaining agreements "which the courts must fashion from the policy of our national labor laws." *Textile Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448, 456 (1957).

Petitioner also cites *Davidson Hotel Co. v. NLRB*, 977 F.3d 1289 (D.C. Cir. 2020). Petitioner relies on the Board cases concerning this language, which is commonly called in labor relations an "after-acquired stores" clause. That argument reinforces the principle that this Court should interpret the contract according to the principles of *Lincoln Mills*, not an abstract reliance on the word "notwithstanding." The language was understood to assist the union in assuring that it would be able to more easily obtain majority status in any new stores and claim the contract applied consistent with the application of Board doctrines including establishing majority status governing recognition in such situations.

The Board is correct that it did not have to decide whether the Union's contention was correct but only that the information was relevant to that inquiry.

Sincerely,

A handwritten signature in blue ink that reads "David A. Rosenfeld". The signature is written in a cursive, slightly slanted style.

David A. Rosenfeld

DAR:dmt
148470\1123905

**CERTIFICATE OF COMPLIANCE PURSUANT TO F.R.A.P. 15(d) and
27(d)(2)(A))**

I hereby certify pursuant to Federal Rule of Appellate Procedure 15(d) and 27(d)(2)(A) that this **RESPONSE TO RULE 28(j) LETTER SUBMITTED BY PETITIONER ON NOVEMBER 9, 2020** complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 345 words. This **RESPONSE TO RULE 28(j) LETTER SUBMITTED BY PETITIONER ON NOVEMBER 9, 2020** with the typeface requirements of Federal Rule of Appellate Procedure and the typestyle requirements of Federal Rule of Appellate Procedure because it has been prepared with Microsoft Word 2010 in in Times New Roman font.

