

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14**

In the Matter of:	:	
	:	
	:	
	:	
CONVERGYS CORPORATION,	:	Cases 14-CA-075249 and
	:	14-CA-083936
	:	
And	:	
	:	
HOPE GRANT, An Individual.	:	

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**CONVERGYS CORPORATION'S  
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

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November 21, 2012

Pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, Convergys Corporation ("Convergys," the "Company," or the "Respondent") hereby files the following Exceptions to the Decision of Administrative Law Judge Arthur J. Amchan (the "ALJ") in this matter. Convergys respectfully takes the following exceptions to the ALJ's Decision:

1. The Company excepts to the ALJ's finding that *D.R. Horton* is not distinguishable from this case, because the waiver in *D.R. Horton*, unlike the instant case's waiver, was contained in an arbitration agreement and was signed by an employee not an applicant for employment. (ALJD p. 3, lines 9–11.)
2. The Company excepts to the ALJ's failure to acknowledge that *D.R. Horton* has been rejected by nearly every federal court that has had the opportunity to enforce it, and should therefore be disregarded or reconsidered by the Board.
3. The Company excepts to the ALJ's failure to acknowledge that Convergys' Waiver has been upheld in federal court, despite *D.R. Horton*, and that the ALJ's Decision therefore subjects Convergys to inconsistent judgments.
4. The Company excepts to the ALJ's failure to address the fact that *D.R. Horton* was decided without the required quorum of the Board, and thus the Board was without authority to issue it.
5. The Company excepts to the ALJ's finding that the National Labor Relations Act (the "NLRA" or the "Act") applies to applicants, who, under

long-standing Board precedent, are not “employees” covered by the Act. (ALJD p. 3, lines 24–26.)

6. The Company excepts to the ALJ’s failure to find that the NLRB has not been empowered by Congress to interpret the Fair Labor Standards Act (FLSA), and thus does not have the authority to determine whether the right to a collective action under the FLSA may be waived by employees.
7. The Company excepts to the ALJ’s failure to find that the right to bring a FLSA collective action is a procedural right that can be waived, which Appellate Courts throughout the country have repeatedly held to be the case.
8. The Company excepts to the ALJ’s holding that only Board and Supreme Court decisions are binding on him, as administrative agencies are bound by decisions of superior federal courts. (ALJD p. 2, lines 44–46.)
9. The Company excepts to the ALJ’s finding that even if employees are free to bring employment-related class or collective action lawsuits, employers violate the Act by seeking to have the suit dismissed based on the employees’ execution of a class or collective action waiver, because this finding is inconsistent with the language and purpose of Section 7 of the Act. (ALJD p. 3, lines 34–37.)
10. The Company excepts to the ALJ’s finding that an employer is not free to oppose a plaintiff’s motion for class certification based on the plaintiffs’ execution of a class or collective action waiver because this finding is

inconsistent with the language and purpose of Section 7 of the Act. (ALJD p. 3, lines 41–43.)

11. The Company excepts to the ALJ's Conclusions of Law in their entirety. (ALJD p. 4, lines 3-6.)
12. The Company excepts to the ALJ's Remedy and Order in their entirety. (ALJD p. 4, lines 10–39; p. 5, lines 1–19.)

Respectfully submitted,

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Dated: November 21, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing has been filed electronically and has been served upon the following individuals, electronically and by regular U.S. mail, this 21st day of November, 2012:

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