UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

FUJI FOOD PRODUCTS, INC.

and Case 21–CA–095997

NANCY SANDRA GONZALEZ, an Individual

Cecelia F. Valentine, Esq., for the General Counsel.
Jason A. Geller, Esq., for the Respondent Company.
Matthew J. Matern, Esq., for the Charging Party.

DECISION

JEFFREY D. WEDEKIND, Administrative Law Judge. This is another case involving the alleged unlawful maintenance and enforcement of a mandatory-arbitration employment agreement. Nancy Sandra Gonzalez, the Charging Party, was initially hired by Fuji Food Products in July 2009. At that time, Fuji required her to sign a so-called "Confidential Information and Inventions Agreement" (CIIA). Among other things, the CIIA stated that she agreed, "as a condition of" and "in consideration for" Fuji's offer of employment, to resolve "all disputes relating to all aspects of the employer/employee relationship, . . . including, but not limited to . . . claims for wrongful discharge . . . [and] claims for violation of any federal . . . statute," by "final, conclusive and binding" arbitration. The CIIA did not, however, specifically address whether the disputes could be arbitrated on a class or collective basis.[1]

Gonzalez' employment with Fuji lasted about 3 months, until October 2009. However, she subsequently reapplied and was rehired a year later, in October 2010. At that time, Fuji no longer required new hires to sign the CIIA. Instead, Fuji required Gonzalez and other new hires to sign a document entitled "Employment Agreement" (EA). Unlike the CIIA, the EA did not include a mandatory arbitration provision.[2] Nor did it incorporate by reference the CIIA. Indeed, it stated that the EA "contains the entire agreement" between the parties concerning its subject matter and "takes priority over all previous agreements."

[1] The relevant provisions of the CIIA are fully set forth as Appendix A to this decision.

[2] The only provision of the EA mentioning arbitration was a clause stating that the prevailing party shall be awarded reasonable attorneys fees and other costs "if any legal action, arbitration, or other proceeding is brought."

However, Fuji never rescinded the CIIAs signed by other, current employees who were hired before October 2010, were likewise required to sign the CIIA at that time, and never signed the EA. Further, as discussed below, Fuji continued to enforce the CIIA that Gonzalez signed in 2009.

Gonzalez continued to work at Fuji for about 9 months, until her employment again ended in July 2011. About 11 months later, in June 2012, she filed a putative class-action complaint in Los Angeles Superior Court, on behalf of herself and other unnamed similarly situated current and former Fuji employees, alleging wage and hour violations under the California Labor Code. *Nancy Sandra Gonzalez v. Fuji Food Products, Inc*., Case No. BC487352.

Gonzalez subsequently offered to submit the foregoing claims to class arbitration. However, Fuji rejected this proposal. Instead, on December 28, 2012, Fuji formally moved the court to dismiss and compel arbitration of the claims on an individual rather than a class basis "pursuant to the terms of the [CIIA] entered into between [Gonzalez] and Fuji" in 2009. In support, Fuji cited, inter alia, the Federal Arbitration Act (FAA) and the Supreme Court's opinion in *Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp*., 559 U.S. 662 (2010), which held that the parties' intent in entering an arbitration agreement controls, and that consent to class arbitration may not be presumed where, as here, the arbitration agreement is silent on the issue.

Gonzalez opposed Fuji's motion to compel individual arbitration, which remains pending before the court. In addition, several months later, in August 2013, she filed a motion to amend the lawsuit to add three named former employees as class representatives. This motion likewise remains pending before the court.

In the meantime, Gonzalez also filed the instant unfair labor practice charges with the Board. She filed the original charge, alleging that Fuji had unlawfully enforced the CIIA to prohibit class arbitration, on January 7, 2013. She filed the amended charge, alleging that the CIIA was also unlawful on its face because it interfered with employee access to the Board, on July 2, 2013.

On July 8, 2013, the General Counsel issued a complaint incorporating both allegations. Fuji timely filed an answer denying the allegations and asserting numerous defenses, and the case was therefore scheduled for hearing. However, on March 24, 2014, following several pretrial conferences, the parties jointly requested that the case be decided without a hearing based on a stipulation of facts.[3] The motion was granted the following day, and the parties subsequently filed briefs on April 29, 2014.

Having carefully considered the briefs and the entire stipulated record, for the reasons set forth below, I find that Fuji violated the Act as alleged.

[3] See Sec. 102.35(a)(9) of the Board's rules. Jurisdiction is admitted and well established.

I. Alleged Unlawful Enforcement of the CIIA

As indicated by the General Counsel, Fuji's pending motion to compel individual arbitration of Gonzalez' class-action wage and hour suit pursuant to the CIIA is clearly unlawful under the Board's decision in *D.R. Horton*, 357 NLRB No. 184 (Jan. 3, 2012) (holding that mandatory arbitration agreements requiring employees, as a condition of employment, to waive their right to pursue class or collective legal action in any forum, judicial or arbitral, violate Section 8(a)(1) of the Act). This is so notwithstanding that, unlike the "agreement" in *Horton*, the CIIA does not explicitly restrict the right to pursue class or collective relief in arbitration. See *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) (a facially valid rule or policy may nevertheless violate Section 8(a)(1) if it is applied to restrict the exercise of rights protected by the Act).[4]

Fuji argues that it had a First Amendment right to file the motion with the state court. However, the First Amendment does not protect the right to file lawsuits or motions that have an illegal objective under the NLRA. See *Allied Trades Council (Duane Reade)*, 342 NLRB 1010, 1013 fn. 4 (2004), citing *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731, 738 fn. 5 (1983). As indicated above, Fuji's motion to compel individual arbitration pursuant to the CIIA clearly had an illegal objective under the Board's decision in *Horton*.

Fuji also argues that the Board's holding in *Horton* is incorrect, citing the Fifth Circuit's opinion on appeal (737 F.3d 344 (Dec. 3, 2013)) and numerous other federal and state court opinions rejecting it. However, I am required to follow Board precedent unless and until it is reversed by the Supreme Court. See *Pathmark Stores*, 342 NLRB 378 fn. 1 (2004), and cases cited there.

Fuji also argues that *Horton* is no longer good law in light of the Supreme Court's post-*Horton* opinions in *CompuCredit Corp. v. Greenwood*, 132 S.Ct. 665 (Jan. 10, 2012); and *American Express Co. v. Italian Colors Restaurant*, 133 S.Ct. 2304 (June 20, 2013). However, the mandatory individual arbitration provisions at issue in those cases were contained in credit card use and acceptance agreements. The Court in those cases did not address the issue in the context of individual employment agreements and the well-established substantive right of employees under the NLRA to engage in concerted legal action against their employer. Moreover, there has been no indication from the Board itself that *Horton* is no longer good law in light of the Court's opinions.[5]

Fuji also argues that *Horton* is invalid because one of the participating members (Member Becker) was appointed by the President during an intrasession recess, citing the D.C. Circuit's 2013 opinion in *Noel Canning v. NLRB*, 705 F.3d 490. However, the Supreme Court has since rejected the D.C. Circuit's view that intra-session recesses are unconstitutional (---S.Ct.

[4] The General Counsel does not allege that the CIIA was unlawful on its face in light of the Supreme Court's opinion in *Stolt-Nielsen*, above.

[5] A cursory search of the NLRB's website and Westlaw reveals numerous similar cases that have been pending before Board since the Court's 2012 and 2013 opinions issued. Thus, the reasonable assumption is that the Board is marshalling its arguments in those cases to persuade the Court to uphold *Horton*. In any event, I will not presume otherwise.

---, 2014 WL 2882090 (June 26, 2014)). Further, the Court's analysis suggests that recess appointments will be upheld if the recess lasted 10 days or longer. Member Becker was appointed during a 17-day intrasession recess.[6] Thus, his appointment appears to have been valid.[7]

Fuji also raises two other meritless defenses to the allegation. First, Fuji argues that Gonzalez lacked standing to file the underlying charge because she was not employed by Fuji at the time of the alleged unlawful conduct, and was therefore not protected by the NLRA. However, the statute places no limitation on who may file a charge. See Sec. 10 of the NLRA; and *NLRB v. Indiana & Michigan Electric Co*., 318 U.S. 9, 17 (1943). Nor does Section 102.9 of the Board's rules, which states that a charge may be filed by "any person." Further, it is well established that the term "employee" under the Act includes former employees of the employer. See Section 2(3) of the NLRA; *Redwood Empire, Inc*., 296 NLRB 369, 391 (1989); *Waco, Inc*., 273 NLRB 746, 747 fn. 8 (1984); *Little Rock Crate & Basket Co.*, 227 NLRB 1406 (1977); and *Briggs Mfg. Co*., 75 NLRB 569 (1947).[8]

Moreover, Gonzalez and the other named and unnamed former employees in the state court lawsuit could obviously benefit from a Board order requiring Fuji to cease and desist from enforcing the CIIA in the manner alleged. The circumstances here are therefore clearly distinguishable from the cases cited by Fuji arising under other federal employment statutes where courts have denied former employees standing to seek class injunctive or declaratory relief pursuant to FRCP 23. See *Dukes v. Wal-Mart Stores, Inc*., 603 F.3d 571, 623 (9th Cir. 2010), revd. on other grounds 131 S.Ct. 2541 (2011).[9]

Second, Fuji argues that the complaint allegations are barred by the statutory 6-month limitations period because Gonzalez failed to file the underlying charge until several years after she signed the CIIA. However, it is well established that the maintenance and enforcement of an unlawful rule, policy, or agreement constitutes a continuing violation for purposes of tolling the Section 10(b) statute of limitations. See, e.g., *Carney Hospital*, 350 NLRB 627, 640 (2007);

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[6] See *NLRB v. New Vista Nursing & Rehabilitation*, 719 F.3d 203, 218 (3d Cir. 2013) ("[Member Becker] was appointed during an intrasession break that began on March 26, 2010, and ended on April 12, 2010. This break lasted seventeen days and the Senate was indisputably not open for business.").

[7] Fuji's answer also challenges the complaint on the ground that the Acting General Counsel at the time was not properly appointed. However, Fuji appears to have abandoned this argument, presumably because there is no dispute that the current General Counsel was validly appointed and confirmed.

[8] Fuji does not contend that Gonzalez, or any of the three other former employees who have agreed to join her state court lawsuit as class representatives, abandoned the workforce when their employment ended. Cf. *Chemical Workers v. Pittsburgh Plate Glass*, 404 U.S. 157 (1971).

[9] Fuji also argues that Gonzalez was not engaged in concerted activity when she filed the lawsuit, as she was the sole named plaintiff and there is no evidence that she filed the lawsuit on the authority of any other employees, citing *Meyers Industries*, 281 NLRB 882 (1986), affd. 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 108 S.Ct. 2847 (1988). I need not reach this issue given that three other former employees subsequently agreed to join the suit as class representatives, and Fuji did not thereafter withdraw its motion to compel individual arbitration of the claims.

Register Guard, 351 NLRB 1110 fn. 2 (2007), enfd. in relevant part 571 F.3d 53 (D.C. Cir. 2009); and *Central Pennsylvania Regional Council of Carpenters*, 337 NLRB 1030 (2002), enfd. 352 F.3d 831 (3d Cir. 2003).

As indicated by Fuji, the continuing-violation theory is inapplicable where the maintenance and enforcement of an agreement outside the 6-month limitations period can only be found unlawful if the agreement was unlawfully executed within that period. See *Local Lodge 1424 v. NLRB (Bryan Mfg.),* 362 U.S. 411 (1960) (allegation that employer and union unlawfully maintained and enforced a facially lawful union security agreement outside the 10(b) period was barred because the allegation required the General Counsel to prove that the union lacked majority status, and that the agreement was therefore unlawful, at the time it was executed). And it is true that the Board in *Horton* only addressed and outlawed the maintenance and enforcement of mandatory individual arbitration agreements that employees had executed involuntarily, i.e. agreements that employees were required to execute as a condition of hire or continued employment.[10]

However, the CIIA states on its face that employees are required to sign it as a condition of employment. Thus, unlike the parties' enforcement of the union security provision in *Bryan Mfg*., Fuji's enforcement of the CIIA during the 10(b) period to require individual arbitration is not "perfectly lawful on the face of things," and proof that it is unlawful "plainly does not require resort to testimony about past events" (362 U.S. at 422 fn. 14).

Further, Gonzalez had no apparent reason to file a charge over the matter within 6 months of signing the CIIA. As indicated above, the CIIA is completely silent regarding class or collective arbitration. And the Supreme Court's opinion in *Stolt-Nielsen* that silence cannot be interpreted as consent to class arbitration (an opinion which effectively rejected contrary California court decisions)[11] did not issue until April 2010, after Gonzalez' initial 3-month period of employment had ended. Thus, Gonzalez had no reason or basis to file a charge that the CIIA prohibited class or collective arbitration at the time she executed and was covered by it.

Nor would Gonzalez have had a reason or basis to file a charge when she was rehired in October 2010. As indicated above, she was only required to execute the EA at that time, which did not contain a mandatory arbitration provision and expressly stated that it contained "the entire agreement" between the parties concerning its subject matter and took "priority over all previous agreements."

In sum, the first time Gonzalez had a reason or basis to file a charge regarding the individual arbitration issue was in late December 2012, when Fuji cited the 2009 CIIA as support for its motion to dismiss the class-action lawsuit and compel individual arbitration. Thus, as she filed the charge less than a month later, it was clearly timely. See generally *Salem Electrical Co*., 331 NLRB 1575 (2000); and *Leach Corp*. 312 NLRB 990 (1993), enfd. 54 F.3d 802 (D.C.

[10] The Board in *Horton* did not address the Sec. 10(b) limitations issue, apparently because the defense was not raised by the respondent company in that case.

[11] See the Second Circuit's underlying opinion in *Stolt-Nielsen* (which the Supreme Court reversed), 548 F.3d 85, 101 fn. 15 (2008).

Cir. 1995) (6-month limitations period does not begin to run until a party has clear and unequivocal notice, either actual or constructive, of a violation).

Finally, as discussed below, the complaint here also alleges that the CIIA on its face unlawfully interferes with the right of employees to file charges with the Board with respect to any and all future employment disputes. This is a separate issue that the Board in *Horton* and prior cases has not in any way suggested turns on whether the employees executed the arbitration agreement involuntarily.[12]

II. Alleged Facial Overbreadth of the CIIA

It is well established that mandatory arbitration provisions are unlawful if they would reasonably lead employees to believe that they could not file charges with the Board. See *D.R. Horton,* 357 NLRB No. 184, at fn. 2, enfd. in relevant part 737 F.3d 344, 362 (5th Cir. 2013), and cases cited there. As indicated by the General Counsel, there is no basis to distinguish this precedent on the facts here. The CIIA provision on its face states that all employment disputes under federal law must be submitted to arbitration, and there is no exception for alleged unfair labor practices under the NLRA. Accordingly, it is clearly unlawful.

CONCLUSIONS OF LAW

Respondent Fuji Food Products, Inc. has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and 2(6) and (7) of the Act by the following conduct:

1. Requesting a state court, since December 28, 2012, to compel individual arbitration of the class-action wage and hour lawsuit filed against it by former employee Nancy Sandra Gonzalez, pursuant to the mandatory arbitration provisions of the "Confidential Information and Inventions Agreement" (CIIA) it required Gonzalez to sign as a condition of employment.

2. Maintaining, since at least January 2, 2013, provisions in the CIIA stating that employees must submit all employment-related disputes, including those arising under federal statutes, to final and binding arbitration.

REMEDY

The appropriate remedy for the violations found is an order requiring Fuji to cease and desist from its unlawful conduct and to take certain affirmative action. See, e.g., *Allied Trades Council,* and *Horton*, above. Interest on any monetary relief due shall be compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

[12] See also *BP Amoco Chemical-Chocolate Bayou*, 351 NLR 614 (2007); and *Hughes Christensen Co.*, 317 NLRB 633 (1995), enf. denied on other grounds 101 F.3d 28 (5th Cir. 1996), and cases cited there (upholding voluntary employee severance agreements that waive the right to file unfair labor practice charges over disputes that arose during employment, provided that the agreements do not also waive the right to file charges with respect to disputes arising in the future).

Accordingly, based on the foregoing findings of fact and conclusions of law and the entire record, I issue the following recommended[13]

ORDER

The Respondent, Fuji Food Products, Inc., Santa Fe Springs, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Enforcing the Confidential Information and Inventions Agreement (CIIA) by filing motions to prevent current or former employees from pursuing concerted or collective legal action against it in any forum, judicial or arbitral, with respect to claims arising out of their employment.

(b) Maintaining a mandatory arbitration agreement at its facilities that employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board (NLRB).

(c) 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.

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

(a) Withdraw its December 28, 2012 motion to compel individual arbitration of the class-action claims in *Gonzalez v. Fuji Food Products, Inc*., Case No. BC487352, and notify Gonzalez in writing that it has done so.

(b) Reimburse Gonzalez for all reasonable expenses and legal fees incurred in opposing the foregoing motion to compel individual arbitration, with interest.

(c) Rescind or revise the CIIA to make clear that the agreement does not restrict employees' right to file charges with the NLRB.

(d) Notify all former and current employees who executed the CIIA and have been employed at its facilities at any time since January 2, 2013 of the rescinded or revised CIIA by providing them with a copy of the revised CIIA or by specifically notifying them in writing that the CIIA provisions have been rescinded for the reasons set forth in the Board's decision and order.

(e) Within 14 days after service by the Region, post at its facility in Santa Fe Springs, California, and any other facilities where it has maintained the unlawful CIIA provisions since

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended 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.

January 2, 2013, copies of the attached notice marked "Appendix B."[14] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities covered by the order, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at the facilities by the Respondent at any time since December 28, 2012.

(f) Within 21 days after service by the Region, file with the Regional Director 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., July 15, 2014

Jeffrey D. Wedekind
Administrative Law Judge

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

FUJI FOOD PRODUCTS, INC.
CONFIDENTIAL INFORMATION AND INVENTIONS AGREEMENT

As a condition of my employment with Fuji Food Products, Inc., its subsidiaries, affiliates, successors, or assigns (together, the "Company"), and in consideration of my employment with the Company and my receipt of the compensation now and hereafter paid to me by [the] Company, I agree to the following:

. . . .

10. Arbitration and Equitable Relief

10.1 Arbitration.

EXCEPT AS PROVIDED IN SECTION 10.2 BELOW, I AGREE THAT ANY DISPUTE OR CONTROVERSY ARISING OUT OF, RELATING TO, OR CONCERNING ANY INTERPRETATION, CONSTRUCTION, PERFORMANCE OR BREACH OF THIS AGREEMENT, SHALL BE SETTLED BY ARBITRATION TO BE HELD IN LOS ANGELES COUNTY, CALIFORNIA, IN ACCORDANCE WITH THE RULES THEN IN EFFECT OF JAMS. THE ARBITRATOR MAY GRANT INJUNCTIONS OR OTHER RELIEF IN SUCH DISPUTE OR CONTROVERSY. THE DECISION OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE AND BINDING ON THE PARTIES TO THE ARBITRATION. JUDGMENT MAY BE ENTERED ON THE ARBITRATOR'S DECISION IN ANY COURT HAVING JURISDICTION. THE COMPANY AND I SHALL EACH PAY ONE-HALF OF
THE COSTS AND EXPENSES OF SUCH ARBITRATION AND EACH OF US SHALL SEPARATELY PAY OUR COUNSEL FEES AND EXPENSES.

THIS ARBITRATION CLAUSE CONSTITUTES WAIVER OF EMPLOYEE'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL ASPECTS OF THE EMPLOYER/ EMPLOYEE RELATIONSHIP (EXCEPT AS PROVIDED IN SECTION 10.2 BELOW), INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING CLAIMS:

I. ANY AND ALL CLAIMS FOR WRONGFUL DISCHARGE OF EMPLOYMENT; BREACH OF CONTRACT, BOTH EXPRESS AND IMPLIED; BREACH OF THE COVENANT OF GOOD FAITH AND FAIR
DEALING, BOTH EXPRESS AND IMPLIED; NEGLIGENT OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; NEGLIGENT
OR INTENTIONAL MISREPRESENTATION; NEGLIGENT OR INTENTIONAL INTERFERENCE WITH CONTRACT OR PROSPECTIVE ECONOMIC ADVANTAGE; AND DEFAMATION;

II. ANY AND ALL CLAIMS FOR VIOLATION OF ANY FEDERAL, STATE OR MUNICIPAL STATUTE, INCLUDING, BUT NOT LIMITED TO, TITLE VII OF

THE CIVIL RIGHTS ACT OF 1964, THE CIVIL RIGHTS ACT OF 1991, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE FAIR LABOR STANDARDS ACT, THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, AND LABOR CODE SECTION 201, ET. SEQ.;

III. ANY AND ALL CLAIMS ARISING OUT OF ANY OTHER LAWS AND REGULATIONS RELATING TO EMPLOYMENT OR EMPLOYMENT DISCRIMINATION.

10.2 Equitable Remedies

I AGREE THAT IT WOULD BE IMPOSSIBLE OR INADEQUATE TO MEASURE AND CALCULATE THE COMPANY'S DAMAGES FROM ANY BREACH OF THE COVENANTS SET FORTH IN SECTIONS 2, 3, 4, 5, AND 8 HEREIN. ACCORDINGLY, I AGREE THAT IF I BREACH ANY OF SUCH SECTIONS, THE COMPANY WILL HAVE AVAILABLE, IN ADDITION TO ANY OTHER RIGHT OR REMEDY AVAILABLE, THE RIGHT TO OBTAIN AN INJUNCTION FROM A COURT OF COMPETENT JURISDICTION RESTRAINING SUCH BREACH OR THREATENED BREACH AND TO SPECIFIC PERFORMANCE OF ANY SUCH PROVISION OF THIS AGREEMENT. I FURTHER AGREE THAT NO BOND OR OTHER SECURITY SHALL BE REQUIRED IN OBTAINING SUCH EQUITABLE RELIEF AND I HEREBY CONSENT TO THE ISSUANCE OF SUCH INJUNCTION AND TO THE ORDERING OF SPECIFIC PERFORMANCE.

10.3 Consideration

I UNDERSTAND THAT EACH PARTY'S PROMISE TO RESOLVE CLAIMS BY ARBITRATION IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT, RATHER THAN THROUGH THE COURTS, IS CONSIDERATION FOR THE OTHER PARTY'S LIKE PROMISE. I FURTHER UNDERSTAND THAT I AM OFFERED EMPLOYMENT IN CONSIDERATION OF MY PROMISE TO ARBITRATE CLAIMS.

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 enforce the Confidential Information and Inventions Agreement (CIIA) by filing motions to prevent you from pursuing concerted or collective legal action against us in any forum, judicial or arbitral, with respect to claims arising out of your employment.

WE WILL NOT maintain a mandatory arbitration agreement at our facilities that would reasonably be construed to bar or restrict your right to file unfair labor practice charges with the National Labor Relations Board (NLRB).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw our December 28, 2012 motion to compel individual arbitration of the class-action wage and hour claims filed against us in *Nancy Sandra Gonzalez v. Fuji Food Products, Inc*., Case No. BC487352, and notify Gonzalez in writing that we have done so.

WE WILL reimburse Gonzalez for all reasonable expenses and legal fees incurred in opposing our foregoing motion to compel individual arbitration, with interest.

WE WILL rescind or revise the CIIA to make clear that the agreement does not restrict your right to file charges with the NLRB.

WE WILL notify all former and current employees who executed the CIIA and have been employed at our facilities at any time since January 2, 2013 of the rescinded or revised CIIA by providing them with a copy of the revised CIIA or by specifically notifying them in writing that

the CIIA provisions have been rescinded for the reasons set forth in the Board's decision and order.

FUJI FOOD PRODUCTS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

888 South Figueroa Street, 9th Floor, Los Angeles, CA 90017-5449
(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-095997 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (213) 894-5184.