UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SFTC, LLC d/b/a SANTA FE TORTILLA COMPANY

and **Case 28-CA-087842**

YOLANDA GALAVIZ, an Individual

and **Case 28-CA-095332**

COMITÉ DE TRABAJADORES DE SANTA FE TORTILLA

COUNSEL FOR THE ACTING GENERAL COUNSEL'S CROSS EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Counsel for the Acting General Counsel (General Counsel), pursuant to Section 102.46 of the Board's Rules and Regulations, files the following Cross Exceptions to Administrative Law Judge William G. Kocol's Decision, [JD(SF)-30-13] (ALJD), issued on June 25, 2013, in this matter:

1. The Administrative Law Judge's (ALJ) failure to properly consider the testimony and record evidence, and refusal to credit the General Counsel's employee witnesses, where their testimony conflicted with that of Plant Manager Gustavo Terrones and Assistant Plant Manger Alfredo Jasso regarding the individual one-on-one meetings in August 2012. (ALJD at 3-9) In support of this exception, the General Counsel relies upon the testimony of Gustavo Terrones (Tr. 105-205; 718-814), Alfredo Jasso (Tr. 210-295), Yolanda Galaviz (Tr. 309-384), Delfina Bruno (Tr. 384-469; 709-712), Yolanda Rivera (Tr. 469-524; 712-718), Jesus Saldana (Tr. 594-677), Juan Lopez (Tr. 567-589), Lilian Lopez (Tr. 524-567) and Gustavo Abel Lopez (Tr. 675-709), and the related record exhibits.

2. The ALJ erred by precluding the General Counsel from admitting relevant documents in the administrative record, and further erred in denying the General Counsel's request to place the documents in the rejected exhibit file. (Tr.759, 763-64) In support of this exception, the General Counsel relies upon the testimony of Gustavo Abel Lopez (Tr. 675-709), Arlette de la Mora (Tr. 295-309; 822-857), Jesus Saldana (Tr. 594-677), the associated record exhibits, the rulings of the ALJ during this testimony, and the oral argument by counsel.

3. The ALJ's failure to find that Respondent's statements to its employees, in the one on one meetings in August 2012, constituted violations of the Section 8(a)(1) of the Act, including but not limited to: (a) interrogating employees; (b) soliciting employee complaints and grievances; (c) promising to help employees solve their problems, improve their working conditions by effecting changes at work; (d) threatening employees with unspecified reprisals; (e) threatening employees with discharge; (f) threatening to require employees to document their medical conditions; (g) informing employees it would be futile to select the Union as their bargaining representative; (h) threatening to file a lawsuit against employees; (i) promulgating unlawful work rules; (j) telling employees that no one would assist them if they engaged in union or concerted activities; (k) creating an impression of surveillance; (l) promising benefits to employees if they refrained from engaging in protected activities. (ALJD at 3-9) In support of this exception, the General Counsel relies upon the testimony of Gustavo Terrones (Tr. 105-205; 718-814), Alfredo Jasso (Tr. 210-295), Yolanda Galaviz (Tr. 309-384), Delfina Bruno (Tr. 384-469; 709-712), Yolanda Rivera (Tr. 469-524; 712-718), Jesus Saldana (Tr. 594-677), Juan Lopez (Tr. 567-589), Lilian Lopez (Tr. 524-567) and Gustavo Abel Lopez (Tr. 675-709), and the related record exhibits.

4. The ALJ's failure to consider the unrebutted testimony that, prior to employees engaging in protected activity in the workplace, Respondent rejected employee requests for a wage increase, and that Respondent did not have a past practice of inviting employees to office to discuss their work place complaints. (ALJD at 5) In support of this exception, the General Counsel relies upon the testimony of Yolanda Galaviz (Tr. 309-384), Yolanda Rivera (469-524), and Delfina Bruno (384-469; 709-712), and the associated record exhibits.

5. The ALJ's erroneous decision to partially discredit Yolanda Galaviz's testimony by improperly concluding that the General Counsel posed leading questions to her in order to elicit testimony that Terrones asked her certain questions in the one-on-one meeting in August 2012. (ALJD at 9) In support of this exception, the General Counsel relies upon the testimony of Yolanda Galaviz (Tr. 309-384), and the associated record exhibits.

6. The ALJ's failure to consider the testimony of Gustavo Abel Lopez, a witness called by Respondent, as a basis for violations of Section 8(a)(1) alleged in the Complaint. In support of this exception, the General Counsel relies upon the testimony of Gustavo Abel Lopez (Tr. 675-709), and the associated record exhibits.

7. The ALJ's refusal to find that the testimony and exhibits in the administrative record supported additional findings that Respondent violated Section 8(a)(1) of the Act including but not limited to, instructing employees to document a coworker's protected conduct, and maintaining an overly-broad handbook provision (GC. 12, p. 16), even though these allegations were closely related to the extant Complaint allegations, and were fully litigated. (ALJD at 9 fn.6) In support of this exception, the General Counsel relies upon the testimony of Yolanda Galaviz (Tr. 309-384), Gustavo Terrones (Tr. 105-205; 718-814), Arlette de la Mora (Tr. 295-309; 822-857), and the associated record exhibits.

8. The ALJ's refusal to find that Respondent violated Sections 8(a)(1) and (3) of the Act by imposing stricter requirement and demanding medical notes from Jesus Saldana in August and December 2102, resulting in his suspension, as alleged in the Complaint. (ALJD at 12-18) This exception includes the ALJ's erroneous conclusion that Respondent would have engaged in the same action absent Saldana's protected and the ALJ's failure to analyze the record evidence. This exception also encompasses the ALJ's factual finding that Saldana informed Respondent of his name Luis Juarez in a "round about" manner in 2011. (ALJD at 17) In support of this exception, the General Counsel relies upon the testimony of Kenny Kalfin (Tr.20-105; 780-790), Gustavo Terrones (Tr. 105-205; 718-814), Alfred Jasso (210-295), Arlette de la Mora (Tr. 295-309; 822-857), and Jesus Saldana (Tr. 594-677), and the associated record exhibits.

9. The ALJ's refusal to find that Respondent violated Sections 8(a)(1) and (3) of the Act by suspending Jesus Saldana for five days in October 2012, as alleged in the Complaint. (ALJD at) This exception includes the ALJ's erroneous conclusion that Respondent would have suspended Saldana absent his protected activity and his refusal to consider the comparator record exhibits and related testimony in his decision. (ALJD at 12-18) In support of this exception, the General Counsel relies upon the testimony of Gustavo Terrones (Tr. 105-205; 718-814), Alfred Jasso (210-295), Arlette de la Mora (Tr. 295-309; 822-857), and Jesus Saldana (Tr. 594-677), and the associated record exhibits.

10. The ALJ's refusal to find that Respondent violated Sections 8(a)(1) and (3) of the Act by suspending Yolanda Rivera in September and November 2012, as alleged in the Complaint. (ALJD at 18-19) This exception includes the ALJ's erroneous conclusion that Respondent would have suspended Rivera absent her protected activity, and the ALJ's refusal to

consider and analyze material documentary evidence and related testimony. (ALJD at 18-19) In support of this exception, the General Counsel relies upon the testimony of Yolanda Rivera (Tr. 469-524; 712-718), Delfina Bruno (384-469; 709-712), and the associated record exhibits.

Respectfully submitted,

/s/ Sophia Alonso

Sophia Alonso
Counsel for the Acting General Counsel
National Labor Relations Board, Region 28
421 Gold Avenue, Suite 310
PO Box 567
Albuquerque, NM 87103
Sophia.Alonso@nlrb.gov