CERTIFICATE OF SERVICE

I hereby certify that the General Counsel's Brief in Support of Cross-Exceptions in the matter of Anheuser-Busch, LLC, Case 12-CA-09414, was electronically filed and served by electronic mail on November 14, 2013, as set forth below:

By Electronic Filing
Hon. Gary W. Shinners
Executive Secretary
National Labor Relations Board – Room 11602
11099 Fourteenth Street, N.W.
Washington, D.C. 20570-0001

By Electronic Mail
Thomas Royall Smith, Esq.
Jackson Lewis LLP
100 South Ashley Drive, Suite 2200
Tampa, FL 33602
Thomas.Smith@jacksonlewis.com

Jeffrey H. Klink, Esq.
2319 Oak Street
Jacksonville, FL 32204
jhklink@gmail.com

Joseph Egan, Esq.
Egan, Lev & Siwica
P.O. Box 2331
Orlando, FL 32804
jegan@eganlev.com

/s/ *Marinelly Maldonado*
Marinelly Maldonado
Counsel for the General Counsel
National Labor Relations Board, Region 12
51 SW 1st Avenue, Suite 1320
Miami, FL 33130
Tel. (305) 530-7034
Fax (305) 536-5320
marinelly.maldonado@nlrb.gov

III. CONCLUSION

Counsel for the General Counsel respectfully urges the Board to grant General Counsel's cross-exceptions in their entirety and to modify the ALJ's findings of fact, recommended Remedy, Order, and Notice to Employees accordingly.

DATED at Miami, Florida, this 14th day of November 2013.

Respectfully submitted,

/s/ *Marinelly Maldonado*

Marinelly Maldonado
Counsel for the General Counsel
National Labor Relations Board, Region 12
51 SW 1st Avenue, Suite 1320
Miami, FL 33130
Tel. (305) 530-7034
Fax (305) 536-5320
marinelly.maldonado@nlrb.gov

expenses related to opposing the unlawful portion of Respondent's Motion, and reimbursement of litigation expenses related to any other legal action taken by Respondent to enforce its DRP against Brown, plus interest.

Although the cited cases involve unlawful lawsuits initiated by respondents, in a recent decision an ALJ recommended that the Board order reimbursement of attorneys fees incurred in opposing and unlawful motion to dismiss a lawsuit, as exists in the instant case. *JP Morgan Chase & Co. and Chase Investment Services Corp., now doing business as JP Morgan Securities, LLC, Joint Employers, and JP Morgan Chase & Co. and JP Morgan Chase Bank, N.A., Joint Employers*, JD(NY)-40-13, slip op. at 15:11-19; 16:16-19; Appendix (August 21, 2013). The respondent in *JP Morgan* has filed exceptions and that case is currently pending before the Board.

Based on the above, Cross-Exception 2 should be granted and the ALJ's recommended Remedy, Order, and Notice to Employees should be modified accordingly.

Compel Arbitration that is based on Respondent's unilateral application of its DRP to unit employees therein, which was found by the ALJ to have violated Sections 8(a)(5) and (1) of the Act. (ALJD 9:17 to 10:41; ALJD 10:45to12:13; ALJD Appendix). Respondent's motion was filed in response to bargaining unit employee Brown's federal court lawsuit challenging his suspension and discharge by Respondent pursuant to Title VII of the Civil Rights Act of 1964. (ALJD 5:1-5).

Although General Counsel has not previously sought this remedy,[2] it is well settled that the Board has "broad discretionary" authority under Section 10(c) of the Act to fashion appropriate remedies that will best effectuate policies of the Act. See for example, *NLRB v. J.H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 262-263 (1969). It is also firmly established that remedial matters are traditionally within the Board's province and may be addressed by the Board even in the absence of exceptions. See for example, *Schnading Corp.*, 265 NLRB 147 (1982); *R.J.E. Leasing Corp.*, 262 NLRB 373 fn. 1 (1982) (modified decision). See also *Cleveland Cinemas Management Co., Ltd.*, 346 NLRB 785, fn. 3 (2006).

The reimbursement of litigation expenses related to Brown's opposition to the portion of Respondent's Motion to Dismiss or Stay and Compel Arbitration that was found unlawful by the ALJ[3] is a standard remedy in cases where respondents have filed unlawful lawsuits or arbitrations under Board law. *Federal Security*, 359 NLRB No. 1 slip op at 4-14 (2012); *Operative Plasters, Local 200 (Standard Drywall)*, 357 NLRB No. 160 slip op at 3-4 (2011); *Allied Trades Council (Duane Reade, Inc.)*, 342 NLRB 1010, 1015 (2004). Since the ALJ concluded that Respondent violated Section 8(a)(1) and (5) when it filed its Motion to Dismiss or Stay and Compel Arbitration, Brown should be awarded the reimbursement of any litigation

[2] ALJD 6:42-44.
[3] ALJD 9:17 to 10:41.

employees of Anheuser-Busch Companies, Inc. or any of its subsidiaries ("Employee")." (ALJD 3:23 to ALJD 4:-5; JX 14, par. 7; JX 1, p.2, emphasis added).

Thus, contrary to the ALJ's finding, the DRP language in the Application for Employment form is not the same as the DRP language set forth in Respondent's DRP policy. (ALJD 4:7-9). The language in the Application for Employment form clearly states that "unless a written contract provides to the contrary" any claim an employee may have with Respondent will be subject to final and binding arbitration in accordance with Respondent's DRP. (JX 2, second page). As a member of the bargaining unit, Brown is not subject to final and binding arbitration in accordance with Respondent's DRP because at all material times throughout his employment, including at the time of his suspension and discharge by Respondent, he was covered by a written contract that is contrary to the DRP, the collective-bargaining agreement. In addition, Brown did not become subject to the DRP with respect to his federal court challenge to his suspension and discharge from his bargaining unit position.

Based on the above, the ALJ's findings of fact should be modified to correctly reflect the language of the employment application signed by Brown, and General Counsel's Cross-Exception 1 should be granted.

B. Respondent should be ordered to reimburse Charging Party Matthew Brown for attorney's fees and costs incurred related to his opposition to the unlawful portion of Respondent's Motion to Dismiss or Stay and Compel Arbitration that is based on Respondent's DRP, and to reimburse Brown for litigation expenses related to any other legal action taken by Respondent to enforce its DRP against Brown, plus interest.

Counsel for the General Counsel submits that the ALJ erred by failing to include in the remedy, recommended Board Order, and Notice to Employees, a requirement that Respondent reimburse Charging Party Matthew Brown for attorney's fees and costs he incurred that are related to his opposition to the portion of Respondent's unlawful Motion to Dismiss or Stay and

I. STATEMENT OF THE CASE

Counsel for the General Counsel respectfully submits this brief to the Board in support of General Counsel's cross-exceptions to the Decision of Administrative Law Judge William Nelson Cates (the ALJ) in this matter. Respondent filed exceptions to the ALJ's findings and conclusions that it committed unfair labor practices. General Counsel's Answering Brief is being filed simultaneously with General Counsel's Cross-Exceptions and this Brief in Support of Cross-Exceptions. The facts of this case are fully set forth in General Counsel's Answering Brief.

II. ARGUMENT

A. The language regarding the Dispute Resolution Program in Respondent's Application for Employment form used by Respondent since 2004 and signed by Charging Party Matthew Brown is not the same as the language in Respondent's Dispute Resolution Program Policy. The ALJ's findings of fact should be modified to correctly state the language of the employment application and General Counsel's Cross-Exception 1 should be granted.

Respondent's Application for Employment form, at page 2, states as follows regarding its Dispute Resolution Policy (DRP):

> I agree that if I become employed by the Company, and unless a written contract provides to the contrary, any claim I may have against the Company will be subject to final and binding arbitration in accordance with the Company's Dispute Resolution Program, and that arbitration will be the exclusive method I will have for final and binding resolution of any such claim.

(JX 2, second page).[1]

As the ALJ properly found, Respondent's DRP, under General Rules, in the section entitled "Covered Employees," states that it "applies to all salaried and non-union hourly

[1] The ALJ's Decision is identified herein by "ALJD," page and line. Respondent's Exceptions are identified by "RE" and the number of the exception. Transcript pages ("Tr.") are identified by the page, line, and name of the witness, where necessary for clarification. "GCX" refers to General Counsel's exhibits, and "JX" refers to the parties' Joint Exhibits.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ANHEUSER-BUSCH, LLC

and Case 12-CA-094114

MATTHEW C. BROWN, an Individual

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 947 AND
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, BREWERY, AND SOFT
DRINK WORKERS CONFERENCE, Parties in Interest

GENERAL COUNSEL'S BRIEF IN SUPPORT OF CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Marinelly Maldonado
Counsel for the General Counsel
National Labor Relations Board
Region 12
51 SW 1st Avenue, Suite 1320
Miami, FL 33130
Telephone No. (305) 530-7034
Facsimile No. (305) 536-5320
marinelly.maldonado@nlrb.gov