

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

FUJI FOOD PRODUCTS, INC.

And

Case 21-CA-095997

NANCY SANDRA GONZALEZ, an Individual

**RESPONDENT FUJI FOOD PRODUCTS, INC.'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Pursuant to Section 102.46 of the Rules and Regulations of the National Relations Board (the "NLRB" or "Board"), Respondent Fuji Food Products, Inc. ("Respondent") excepts to the decision of the Administrative Law Judge ("ALJ"), dated July 15, 2014, as identified below.

Respondent respectfully excepts to:

1. The finding/conclusion that Respondent's pending motion to compel individual arbitration of Charging Party Nancy Gonzalez in state court is "clearly unlawful." [ALJ Decision, 3:3-5.]

2. The finding/conclusion that Respondent's motion to compel individual arbitration "clearly had an illegal objective." [ALJ Decision, 3:14-19.]

3. The finding/conclusion that *D.R. Horton*, 357 NLRB No. 184, is the controlling law applicable in this case. [ALJ Decision, 3:21-24.]

4. The failure to find/conclude that *D.R. Horton*, 357 NLRB No. 184, is no longer good law because the Fifth Circuit Court of Appeals overruled the Board's decision in *D.R. Horton* by upholding mandatory arbitration of class wide, collective and representative claims. [ALJ Decision, 3:21-24.]

5. The finding/conclusion that *D.R. Horton*, 357 NLRB No. 184, is the controlling law applicable in this case and does not conflict with the Federal Arbitration Act ("FAA") or U.S. Supreme Court precedent. [ALJ Decision, 3:27-35.]

6. The failure to find/conclude that *D.R. Horton*, 357 NLRB No. 184, is no longer good law in light of U.S. Supreme Court precedent. [ALJ Decision, 3:27-35.]

7. The failure to find/conclude that Charging Party had standing to file the underlying charge. [ALJ Decision, 4:6-23.]

8. The failure to find/conclude that Charging Party did not engage in concerted activity. [ALJ Decision, 4: fn. 9.]

9. The failure to find/conclude that Charging Party untimely filed. [ALJ Decision, 4:25-6:2.]

10. The finding/conclusion that the arbitration provision at issue in this case would reasonably lead employees to believe that they could not file charges with the Board. [ALJ Decision, 6:12-18.]

11. The failure to find/conclude Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) and 2(6) and (7) of the Act by requesting a state court to compel individual arbitration of the class-action wage and hour lawsuit filed by Charging Party, pursuant to mandatory arbitration provisions of the "Confidential Information and Inventions Agreement" ("CIIA") signed by Charging Party. [ALJ Decision, 6:22-29.]

12. The failure to find/conclude that Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) and 2(6) and (7) of the Act by maintaining

provisions in the CIIA which required employees to submit employment-related disputes to final and binding arbitration. [ALJ Decision, 6:22-24; 6:31-33.]

13. The ALJ's Remedy. [ALJ Decision, 6:35-40.]

14. The ALJ's recommended Order. [ALJ 7:5-8:17.]

DATED: August 14, 2014

Respectfully submitted,

MECKLER BULGER TILSON MARICK &
PEARSON LLP

By: 

DANIEL J. CRAWFORD
JUAN C. ARANEDA
Attorneys for Respondent
FUJI FOOD PRODUCTS, INC.

CERTIFICATE OF SERVICE

I hereby certify:

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is Meckler Bulger Tilson Marick & Pearson LLP, 575 Market Street, Suite 2200, San Francisco, CA 94105.

On August 12, 2014, I served the within:

**RESPONDENT FUJI FOOD PRODUCTS, INC.'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

On the parties and interested persons in said proceeding

[X] By enclosing the documents in a sealed envelope or package addressed to the persons at the addresses listed and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

[X] By forwarding a true and correct copy thereof electronically from e-mail address yorlenny.hernandez@mbtlaw.com to the persons at the e-mail address set forth below:

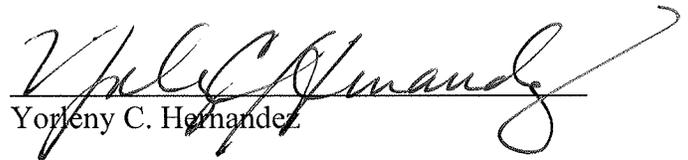
Matthew J. Matern Tagore Subramaniam MATERN LAW GROUP 1320 Rosecrans Avenue, Suite 200 Manhattan Beach, CA 90266	<i>Counsel for Charging Party Nancy Sandra Gonzalez</i> T: (310) 531-1900 F: (310) 531-1902 C: (310) 623-7509 E: matthewjmatern.mlg@gmail.com Tagore.mlg@gmail.com
Nancy Sandra Gonzalez c/o Matthew J. Matern Tagore Subramaniam MATERN LAW GROUP 1320 Rosecrans Avenue, Suite 200 Manhattan Beach, CA 90266	<i>Charging Party</i> T: (310) 531-1900 F: (310) 531-1902 C: (310) 623-7509 E: matthewjmatern.mlg@gmail.com Tagore.mlg@gmail.com

Olivia Garcia, Regional Director National Labor Relations Board Region 21 888 S Figueroa Street, Ninth Floor Los Angeles, CA 90017-5449	Regional Director (electronically served via NLRB website a time of filing)
Cecelia Valentine, Field Attorney National Labor Relations Board, Region 21 888 S. Figueroa Street, 9th Floor Los Angeles, CA 90017	T: (213) 894-6145 F: (213) 894-2778 E: cecilia.valentine@nlrb.gov

Additionally, on August 12, 2014, I electronically filed the above-mentioned document with the Board's Office of the Executive Secretary.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct.

Executed on this 12th day of August 2014 at San Francisco, California.


 Yorlenny C. Hernandez