

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INGREDION, INC. d/b/a PENFORD PRODUCTS CO.	)	
	)	
and	)	Case 18-CA-209797
	)	
BAKERY, CONFECTIONARY, TOBACCO WORKERS,	)	
AND GRAIN MILLERS LOCAL 100G	)	

**MOTION TO AMEND RESPONDENT’S ANSWER TO AMENDED COMPLAINT**

Pursuant to Section 102.23 of the National Labor Relations Board’s (“Board”) Rules and Regulations, Ingredion Incorporated (“Ingredion”), by counsel, respectfully requests that the Board grant its motion to amend its Answer to the Amended Complaint and Notice of Hearing (“Amended Complaint”). In support of this Motion, Ingredion states as follows:

1. A Complaint and Notice of Hearing on this matter issued on March 26, 2018 (“Complaint”), and Ingredion filed its Answer on April 6, 2018.
2. A hearing before an administrative law judge (ALJ) commenced on June 20, 2018. Counsel for the General Counsel of the Board verbally amended the Complaint on June 20, 2018, and Ingredion verbally filed its answer to the Amended Complaint that same day. The first two (2) days of the hearing occurred on June 20 and June 21, 2018. The remainder of the hearing has been continued and is scheduled to resume on August 29, 30, and 31, 2018.
3. On June 21, 2018, the Supreme Court of the United States issued its decision in Lucia v. Securities and Exchange Commission (June 21, 2018). The Court held that Securities and Exchange Commission (SEC) ALJs are “Officers of the United States” subject to the Appointments Clause. The Court further held that the SEC ALJ that heard and decided the case

against Lucia did not have the kind of appointment the Clause requires and the case was remanded in order that a new hearing be conducted before a constitutionally appointed ALJ.

4. Section 102.23 of the Board's Rules and Regulations provides that an answer "may, in the discretion of the Administrative Law Judge or the Board, upon motion, be amended." Ingredion requests that the Board grant its motion to amend its Answer to add the additional following affirmative defense: that the hearing being conducted by the Board's ALJ is invalid because the ALJ has not been constitutionally appointed as set forth in Lucia. Article II of the Appointments Clause requires that inferior officers of the United States be appointed by the President, the courts of law, or the heads of department. Just as is the case with the SEC ALJs, the Board's ALJs are inferior officers and their appointments have not been made in accordance with the Appointments Clause.

Respectfully submitted,

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Counsel for Ingredion Incorporated

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Motion has been served by electronic mail  
and U.S. mail, on this 2nd day of July, 2018, upon the following:

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