*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Rim Hospitality *and* Nelson Chico.** Case 21–CA–137250

August 8, 2018

DECISION AND ORDER

BY MEMBERS PEARCE, MCFERRAN, AND KAPLAN

On June 15, 2016, Administrative Law Judge Jeffrey D. Wedekind issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The judge found, applying the Board's decisions in *D. R. Horton, Inc.*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by maintaining and enforcing an "Agreement for Binding Arbitration" that, as applied, requires employees to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial.

Recently, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, 584 U.S. __, 138 S.Ct. 1612 (2018), a consolidated proceeding including review of court decisions below in *Lewis v. Epic Systems Corp.*, 823 F.3d 1147 (7th Cir. 2016), *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015). *Epic Systems* concerned the issue, common to all three cases, whether employer-employee agreements that contain class- and collective-action waivers and stipulate that employment disputes are to be resolved by individualized arbitration violate the National Labor Relations Act. Id. at __, 138 S.Ct. at 1619–1621, 1632. The Supreme Court held that such employment agreements do not violate this Act and that the agreements must be enforced as written pursuant to the Federal Arbitration Act. Id. at __, 138 S.Ct. at 1619, 1632.

The Board has considered the decision and the record in light of the exceptions and briefs. In light of the Supreme Court's decision in *Epic Systems*, which overrules the Board's holding in *Murphy Oil*, we conclude that the complaint must be dismissed.[1]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. August 8, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

*Laura Haddad, Esq.,* for the General Counsel.
*Douglas J. Melton, Esq. & Shane Cahill, Esq. (Long & Levit LLP),* for the Respondent.
*Roy Suh, Esq. (Matern Law Group),* for the Charging Party.

DECISION

JEFFREY D. WEDEKIND, Administrative Law Judge. This is another case involving a mandatory arbitration agreement. The Respondent is Rim Hospitality, a hotel management company. The Charging Party is Nelson Chico, who worked as a dishwasher for Respondent at the Doubletree Hotel by Hilton in downtown Los Angeles from October 2011, when Respondent took over management of the hotel from his previous employer (Crestline), until October 24, 2012, when he was terminated.

The subject agreement is a 2-page document entitled "Agreement for Binding Arbitration." It consists of five paragraphs. The first paragraph states that the employee agrees that all employment-related disputes will be subject to binding arbitration "[i]n consideration of" being employed and paid compensation and benefits by the Company and the Company's promise to arbitrate all employment-related disputes. The second and third paragraphs describe how arbitrations will be conducted and paid for and the authority of the arbitrator. The fourth paragraph states that the agreement does not prohibit the employee from pursuing administrative claims with a state or federal agency. The fifth and final paragraph states that the employee "acknowledge[s] and agree[s]" that he or she is executing the agreement "voluntarily and without any duress or undue influence by the Company or anyone else . . . ."

Chico signed Respondent's foregoing mandatory arbitration agreement at an orientation session for new hires on October 5,

[1] We therefore find no need to address other issues raised by the Respondent's exceptions.

2011. Nevertheless, on April 1, 2014, about 18 months after his termination, he filed a class action complaint against Respondent in California Superior Court alleging wage and other related violations of the California Labor Code, IWC Wage Orders, and the California Business and Professions Code.

Respondent responded by (1) removing the case to the U.S. District Court for the Central District of California, Case No.: 2:14-cv-05750-JFW-SS; and (2) filing a petition with thedistrict court on July 31, 2014, to compel individual arbitration of Chico's claims pursuant to the arbitration agreement. Although the agreement is silent regarding class or collective actions, Respondent argued that it nevertheless prohibits such actions, citing the Supreme Court's holding in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662 (2010), that an implicit agreement to authorize class arbitration may not be inferred from the contract's silence on the matter. The district court (John F. Walter, J.) agreed and issued an order on October 7, 2014, compelling Chico to individually arbitrate his claims (Jt. Exh. 17).

In the meantime, on September 22, 2014, Chico filed the unfair labor practice (ULP) charge in this proceeding. Following an investigation, on August 31, 2015, the Regional Director issued a complaint on the charge.

Approximately 6 months later, on February 3, 2016, Chico and Respondent executed a non-Board Settlement Agreement and General Release. Respondent agreed therein to pay Chico $55,000 in return for releasing it from any and all of his claims, including those in his wage suit and his ULP charge (Jt. Exh. 18). Shortly after, on February 10, the district court dismissed Chico's suit (which had been stayed pending the outcome of arbitration) without prejudice due to the parties' failure to file a timely joint status report (Jt. Exh. 19). A few days later, on February 12, Chico submitted a request to the Regional Director to withdraw his ULP charge against Respondent in light of the recent settlement of his wage claims against Respondent. The Regional Director, however, denied the request.[1]

A hearing on the complaint allegations was held a few months later, on April 26, 2016. Thereafter, on June 3, the General Counsel and the Respondent filed briefs.[2]

THE ALLEGED UNFAIR LABOR PRACTICES

The General Counsel alleges that, by maintaining the mandatory arbitration agreement at the hotel and petitioning the court to compel individual arbitration of Chico's employment-related claims pursuant thereto, Respondent violated Section 8(a)(1) of the National Labor Relations Act. Although the last paragraph of the agreement states that signing is "voluntary," the General Counsel contends that Respondent required Chico and other employees to sign it as a condition of employment. Accordingly, the General Counsel contends that the agreement is clearly unlawful under the Board's decisions in *D. R. Horton*, 357 NLRB 2277 (2012), and *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), holding that an employer's maintenance and enforcement of a mandatory individual arbitration policy or agreement is unlawful where it is a condition of employment. Alternatively, the General Counsel contends that, even if the agreement is not a condition of employment, it is still unlawful because it prospectively waives the employees' right to engage in protected concerted activity. Finally, although the agreement itself is silent regarding class or collective actions, the General Counsel contends that it is nevertheless unlawful because it was applied to prohibit such actions.

Respondent denies that the arbitration agreement is a condition of employment, asserting that it is entirely voluntary as stated in the agreement. Respondent further argues that, notwithstanding the Board's decisions in *D. R. Horton* and *Murphy Oil*, its maintenance and enforcement of the agreement is lawful regardless of whether the agreement is voluntary or a condition of employment. Finally, it also asserts various other reasons why the complaint allegations should be dismissed.

I. WHETHER THE ARBITRATION AGREEMENT IS A CONDITION OF EMPLOYMENT

A preponderance of the evidence supports that General Counsel's contention that Respondent's mandatory arbitration agreement was a condition of employment at the hotel at the time Chico and other former Crestline employees signed it in October 2011. As indicated above, it is undisputed that Respondent presented the agreement to them at an "orientation" meeting where the Company's representatives described the Company's policies, procedures, and benefits. It is also undisputed that the agreement was included in the "new hire packet" with various other forms the representatives gave them to fill out or sign, including a W-4 and I-9. Finally, it is likewise undisputed that the Company's representatives did not tell Chico and the others that they did not have to sign the arbitration agreement (Tr. 23, 58–59). Cf. *Network Capital Funding Corp.*, 363 NLRB No. 106 (2016) (finding that employer's mandatory arbitration agreement was a condition of employment where the employer's representative distributed the agreement to new hires at an orientation session with other forms to sign and submit; the representative did not indicate in

[1] See Sec. 102.9 of the Board's Rules (a charge may be withdrawn, prior to the hearing, only with the consent of the Regional Director); and *Independent Stave Co*., 287 NLRB 740, 741 (1987) ("[I]t is well settled that 'the Board's power to prevent unfair labor practices is exclusive, and that its function is to be performed in the public interest and not in vindication of private rights' and 'the Board alone is vested with lawful discretion to determine whether a proceeding, when once instituted, may be abandoned.'") (citations omitted). See also *Flyte Tyme Worldwide*, 362 NLRB No. 46 (2015), final decision and order issued 363 NLRB No. 107 (2016), where the Board denied a motion to withdraw a similar charge after the judge's decision issued. Neither the Charging Party nor the Respondent directly challenges the Regional Director's determination. The Board's jurisdiction is likewise uncontested and established by the admitted and/or stipulated facts.

[2] Specific citations herein to the transcript, exhibits, and briefs are included where appropriate to aid review, and are not necessarily exclusive or exhaustive. In making credibility findings, all relevant and appropriate factors have been considered, including the demeanor and interests of the witnesses; whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts; inherent probabilities; and reasonable inferences that may be drawn from the record as a whole. See, e.g., *Daikichi Corp*., 335 NLRB 622, 633 (2001), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003); and *New Breed Leasing Corp. v. NLRB,* 111 F.3d 1460, 1465 (9th Cir. 1996), cert. denied 522 U.S. 948 (1997).

any way that the employees could remain employed without signing the agreement; the purpose of the orientation session was to instruct the new hires on the company's required operating procedures; and the employees "would reasonably have believed" in this context that signing the agreement was a condition of their employment). See also *Haynes Building Services, LLC*, 363 NLRB No. 125 (2016) (finding that employer's mandatory arbitration agreement was a condition of employment where the employer "created the reasonable impression," and the applicant's therefore "would reasonably understand," that signing the agreement was a condition of employment).[3]

Further, the agreement does not clearly state that signing is not required as a condition of employment. Although the last paragraph of the agreement states that signing is voluntary, the word "voluntary" has more than one possible meaning or definition. See, e.g., *Laborers Local 1184 (NVE Constructors),* 296 NLRB 1325, 1329 (1989) (discussing the meaning of the word "voluntary" in the legislative history of Sec. 8(f) of the Act), review denied 934 F.2d 1084 (9th Cir. 1991). See also *U.S. ex rel. Fine v. Chevron, U.S.A., Inc*., 72 F.3d 740, 745–747 (9th Cir. 1995) (Kozinski, J., concurring), cert. denied 517 U.S. 1233 (1996). Indeed, the Merriam-Webster online dictionary currently lists seven definitions, "rang[ing] from the metaphysical to the mechanical"[4]:

(1) proceeding from the will or from one's own choice or consent;
(2) unconstrained by interference (self-determining);
(3) done by design or intention (intentional);
(4) of, relating to, subject to, or regulated by the will (voluntary behavior);
(5) having power of free choice;
(6) provided or supported by voluntary action; and
(7) acting or done of one's own free will without valuable consideration or legal obligation.

This available range of possible definitions has not been lost on employers, particularly in the context of mandatory arbitration agreements. See, for example, *Waffle House, Inc.*, 363 NLRB No. 104 (2016), where the employer argued that its mandatory arbitration agreement was voluntary, even though the agreement expressly stated that signing was a mandatory condition of employment, because employees could decline employment and choose to work for a different employer;[5] and *San Fernando Post-Acute Hospital*, 363 NLRB No. 57 (2015), where the employer acknowledged that its mandatory arbitration agreement was a condition of employment, even though the agreement expressly stated that signing was voluntary. It follows that the range of possible definitions would also not be lost on employees in this context, and that, in the absence of any written or oral guidance otherwise, at least some would therefore reasonably interpret the word "voluntary" in the same mechanical manner, i.e. to simply mean that they were physically free not to sign and to look for a job elsewhere.

Respondent's posthearing brief (p. 5) argues that Chico "*did* understand the meaning of the word 'voluntary'," citing his testimony on cross-examination that he did so (Tr. 36). It also cites the stipulated fact that 25 of 367 employees (7%) have not signed the agreement since October 2011. However, counsel never asked Chico precisely what he understood the word "voluntary" to mean. Further, Chico credibly testified that he did not even read the last paragraph of the agreement at the time; rather, he only read the first half of the first paragraph (Tr. 40). As for the fact that some employees have not signed the agreement over the past 4–5 years, this does not establish that some of the former Crestline employees did not sign it in October 2011. Nor does it establish that none of the employees interpreted the word "voluntary" in the mechanical manner described above. In any event, the reasonableness test is an objective one; thus, the actual subjective manner in which Chico and others interpreted the agreement in October 2011 is not relevant or determinative. See also *AWG Ambassador, LLC*, 363 NLRB No. 137 (2016) (affirming judge's finding that employer's mandatory arbitration agreement, which stated that it was a condition of employment, was in fact a condition of employment, notwithstanding the employer's contention that multiple employees had refused to sign it and were not disciplined for doing so).

The General Counsel, however, has failed to establish that Respondent continued to maintain the agreement at the hotel as a condition of employment for new employees who were hired after the October 2011 takeover/transition from Crestline was completed. Jeannette Garcia, Respondent's HR manager at the hotel since March 2012, testified that all new employees since that time have been told which forms in the packet are or are not required to be signed, and that they do not have to sign the arbitration agreement (Tr. 80, 83). The General Counsel pre-

[3] Chico testified that the HR director for Crestline was present at Respondent's orientation meeting and told him and the other Crestline employees that they had to fill out all the paperwork or they would be let go (Tr. 22). See also Jt. Exh. 14B, an August 21, 2014 declaration he gave in the court case ("I believed that I was required to sign the document as a condition of my employment with Rim because I was not told that it was optional. . . .I was told to fill out all the paperwork in order to continue working for Rim.") However, Respondent's Regional HR director at the time, Kari Schlagheck, denied that anyone told Chico or the others that they had to sign all the papers in the packet. Although Schlagheck admitted that Crestline's HR director was still on site at the time, she denied that he was present at Respondent's orientation meetings. Schlagheck testified that she and another HR person (Charlene Proche) conducted all of the "on-boarding" orientation meetings and that they never said the employees had to sign all the papers including the arbitration agreement. (Tr. 50–56.) Neither of these two accounts of the meeting is more credible than the other; both are equally believable and equally suspect considering all the usual factors (see fn. 2, above). Accordingly, the General Counsel failed to establish that Chico and others were told that they had to sign all the forms, including the arbitration agreement, at the October 5, 2011 orientation meeting. See generally *Central National Gotteman*, 303 NLRB 143, 145 (1991); and *Blue Flash Express*, 109 NLRB 591 (1954) (finding that the General Counsel failed to carry the burden of proof where conflicting testimony was equally credible).

[4] *U.S. ex rel. Griffith v. Conn,* 2015 WL 779047, at *4 (E.D. Ky. Feb. 24, 2015) (describing the seven similar definitions for the word "voluntary" in the 1976 edition of Webster's).

[5] See slip op. at 2 fn. 3. See also the dissenting opinion, slip op. at 3 fn. 1 (agreeing with the employer's argument).

sented no witnesses or other evidence to rebut this testimony. Nor does the General Counsel's posthearing brief offer any basis to discredit Garcia's uncontroverted testimony.

### II. WHETHER THE AGREEMENT IS UNLAWFUL REGARDLESS OF WHETHER IT IS A CONDITION OF EMPLOYMENT

As indicated above, the Board's decisions in *D. R. Horton* and *Murphy Oil* only outlawed mandatory individual arbitration agreements that are required as a condition of employment. However, the Board subsequently extended the ban to optional agreements in *On Assignment Staffing Services*, 362 NLRB No. 189, slip op. at 1 (2015), holding that such an agreement "is still unlawful because it requires employees to prospectively waive their Section 7 right to engage in concerted activity."

Respondent argues that the Board's decision in *On Assignment Staffing Services* is distinguishable because the mandatory arbitration agreement there automatically took effect 10 days after it was received by the employees unless they followed an "opt-out" procedure within that time as specified in the agreement. However, as indicated by the General Counsel, the Board has made clear in subsequent cases that the same analysis applies where the employees have the option whether to sign the agreement in the first place, i.e. whether to "opt in" rather than "opt out." See, e.g., *Bristol Farms*, 363 NLRB No. 45 (2015) (rejecting employer's argument that its proposed revised arbitration agreement was lawful because it expressly stated that signing the agreement was optional).

Thus, Respondent's agreement is unlawful even though the evidence fails to establish that it has been maintained as a condition of employment since the October 2011 takeover/transition from Crestline was completed.[6]

### III. WHETHER THE AGREEMENT IS UNLAWFUL EVEN THOUGH IT IS SILENT REGARDING CLASS OR COLLECTIVE ACTIONS

The Board has held in a number of cases that the maintenance of a mandatory arbitration agreement is unlawful, even if it is silent regarding class or collective claims, if the employer has applied the agreement to preclude employees from pursuing employment-related claims on a class or collective basis in any forum. See, e.g., *Haynes Bldg. Services, LLC*, 363 NLRB No. 125 (2016); *Fuji Food Products*, 363 NLRB No. 118 (2016); and *Employer's Resource,* 363 NLRB No. 59 (2015), citing *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004) (a workplace rule that does not explicitly restrict protected activity may be found unlawful if employees would reasonably construe the language to prohibit such activity, the rule was promulgated in response to protected activity, or the rule has been applied to restrict such activity). Here, as in those cases, it is undisputed that Respondent applied its mandatory arbitration agreement in this manner; specifically, by citing it to the district court as support for compelling individual arbitration of Chico's wage claims. Accordingly, Respondent's maintenance of the agreement violated the Act even though the agreement did not expressly prohibit such class or collective actions.[7]

### IV. WHETHER RESPONDENT UNLAWFULLY ENFORCED THE AGREEMENT IN CHICO'S WAGE SUIT

The Board in *Murphy Oil* held that enforcing a mandatory arbitration agreement in the above manner to compel individual arbitration of an employee's claims is itself a violation of the Act. It has reaffirmed this holding in numerous other cases since, including in circumstances similar to those here. See *Adrianas Insurance Services, Inc*., 364 NLRB No. 17, slip op. at 1 fn. 4 (2016); and *Fuji Food Products*, above, slip op. at 1 fn. 2, and cases cited there (rejecting the argument, reasserted by Respondent here, that finding such a violation unconstitutionally interferes with an employer's right to petition a court). Accordingly, Respondent's July 31, 2014 petition to compel individual arbitration of Chico's wage claims pursuant to the unlawful arbitration agreement was also unlawful.

### V. WHETHER THE ALLEGATIONS SHOULD BE DISMISSED FOR OTHER REASONS

As indicated above, Respondent also asserts various other reasons why the complaint allegations should be dismissed. Specifically, Respondent argues that Chico's class action suit did not constitute protected concerted activity under the Act; that Chico lacked standing to file the ULP charge; that Chico did not file the ULP charge within the 6-month limitations period after he signed the arbitration agreement; and that the complaint is barred under the doctrine of res judicata.

None have merit. The Board has repeatedly held that the filing of an employment-related class or collective action by an individual constitutes concerted activity under the Act; that former employees are protected by the Act and may file ULP charges over their former employer's post-termination maintenance and enforcement of an individual arbitration policy; and that a violation may be found where, as here, an unlawful provision has been maintained and/or enforced within 6 months of the charge, regardless of when the provision became effective or was first acknowledged by or enforced against the employee. See, e.g., *Cowabunga, Inc.*, 363 NLRB No. 133, slip op. at 2 (2016); *Flyte Tyme Worldwide*, 363 NLRB No. 107, slip op. at 1 fn. 4 (2016); *Fuji Food Products,* slip op. at 1 fn. 1, 7; and *Employer's Resource*, slip op at 1 fns. 2, 6, 7, and cases cited there.

The Board has also repeatedly held that court decisions in related or collateral private litigation such as Chico's wage suit against Respondent are not binding on the Board under the doctrines of res judicata or collateral estoppel as it was not a party to that litigation. See *Bloomingdales, Inc*., 363 NLRB No. 172, slip op. at 4 fn. 8 (2016), citing *Field Bridge Associ-*

[6] Respondent also argues that the Board's decisions in *D. R. Horton*, *Murphy Oil*, and *On Assignment Staffing* are wrong. However, administrative law judges must follow Board precedent unless and until it is overruled by the Supreme Court. *Pathmark Stores, Inc.*, 342 NLRB 378 fn. 1 (2004). Accordingly, Respondent's arguments regarding the merits of the Board's decisions are properly addressed to and by the Board and the reviewing courts.

[7] Consistent with the complaint (par. 4 (b)), the General Counsel's posthearing brief also argues that Respondent's maintenance of the mandatory arbitration agreement is unlawful because employees would reasonably construe it to prohibit class or collective claims. It is unnecessary to reach this allegation or argument given the finding above that Respondent's maintenance of the agreement is unlawful because it has been applied to prohibit such claims.

*ates*, 306 NLRB 322 (1992), enfd. sub nom. *Service Employees Local 32B-32J v. NLRB*, 982 F.2d 845, 850 (2d Cir. 1992), cert. denied 509 U.S. 904 (1993). ("The Board adheres to the general rule that if the Government was not a party to the prior private litigation, it is not barred from litigating an issue involving enforcement of Federal law which the private plaintiff has litigated unsuccessfully."). See also *UnitedHealth Group, Inc*., 363 NLRB No. 134, slip op. at 9 (2016).[8]

## CONCLUSIONS OF LAW

Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act by:

1. Maintaining a mandatory arbitration agreement at the hotel that, as applied, compels employees to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial; and

2. Seeking to enforce the foregoing mandatory arbitration agreement against Chico in his employment-related court suit from July 31, 2014 to February 3, 2016.

## REMEDY

Consistent with *D.R. Horton* and *Murphy Oil*, Respondent will be required to rescind or revise the Agreement for Binding Arbitration, and to notify Chico and other current and former hotel employees who signed or were subject to the agreement that they have done so.

As requested by the General Counsel, Respondent will also be required to reimburse Chico for all reasonable expenses and legal fees, with interest, incurred in opposing its petition to enforce the mandatory arbitration agreement to preclude Chico's class claims, to the extent the February 3, 2016 non-Board settlement between Respondent and Chico did not fully reimburse him for such amounts. Interest shall be computed and compounded daily as set forth in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010).[9]

Finally, Respondent will be required to post a notice to employees, in both English and Spanish, at the hotel. Respondent will be required to distribute the notice electronically as well, including by email, if it customarily communicates with employees by such means. See *J. Picini Flooring*, 356 NLRB 11, 14 (2010). Alternatively, in the event Respondent has gone out of business or ceased providing services at the hotel, it will be required to mail the notice. See, e.g., *SBM Management Services*, 362 NLRB No. 144, slip op. at 1 n. 3 (2015).[10]

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[11]

## ORDER

The National Labor Relations Board (NLRB) orders that the Respondent, Rim Hospitality, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and/or enforcing a mandatory arbitration agreement in a manner that requires employees to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

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

(a) Rescind the Agreement for Binding Arbitration in all of its forms, or revise it in all of its forms to make clear to employees that it does not waive their right to maintain employment-related joint, class, or collective actions in all forums.

(b) Notify all current and former employees at the Doubletree Hotel by Hilton in downtown Los Angeles who were required to sign or otherwise become bound to the mandatory arbitration agreement in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

(c) Reimburse Nelson Chico for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing the Respondent's petition to the U.S. District Court for the Central District of California to compel individual arbitration of his claims in Case No.: 2:14-cv-05750-JFW-SS, to the extent the subsequent settlement between Respondent and Chico did not fully reimburse him for such amounts.

(d) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix" in both English and Spanish at the hotel.[12] Copies of the notice, on forms provided

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[8] *NLRB v. Heyman*, 541 F.2d 796 (9th Cir. 1976), the primary case relied on by Respondent in support of its res judicata argument, is arguably distinguishable. See *Roadway Express,* 355 NLRB 197, 201 (2010) (distinguishing *Heyman* on the ground that the Board's unfair labor practice findings there depended entirely on the existence of a contract, and the courts' prior findings on that issue represented "a minimal intrusion into the Board's jurisdiction" as "no broad policy question" was implicated in that determination), enfd. per curiam 427 Fed. Appx. 838, 840 (11th Cir. 2011). In any event, as noted above, administrative law judges must follow Board precedent.

[9] See *Flyte Tyme Worldwide*, 362 NLRB No. 46 (2015), final decision and order issued 363 NLRB No. 107 (2016), where the Board ordered this reimbursement remedy even though the non-Board settlement purportedly covered attorneys' fees and litigation expenses, taxes, and interest. See also *Sidhal Industries, LLP*, 356 NLRB 422 fn. 2 (2010). The General Counsel also requests that the order include the standard requirement that Respondent notify the court that it has revised or rescinded the mandatory arbitration agreement, and that it no longer opposes Chico's class claims on the basis that they are barred by the agreement. However, as indicated above, the court case was dismissed following the parties' settlement of all the claims. Thus, there is no case involving the parties currently before the court, and no reason to believe there will be in the future. Cf. *Flyte Tyme Worldwide*, above (deleting this notification remedy from the judge's order in similar circumstances).

[10] Garcia testified at the April 26 hearing that Respondent expected to cease managing the hotel, the only remaining property it still manages, by the end of May (Tr. 78).

[11] If no exceptions are filed as provided by Section 102.46 of the Board's Rules, 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.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notices reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judg-

by the Region, after being signed by the Respondent's authorized representative(s), shall be posted 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, 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 ceased doing business at the hotel, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by it at that facility at any time since March 23, 2014.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 21 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. June 15, 2016

## APPENDIX

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 maintain and/or enforce a mandatory arbitration agreement in a manner that requires employees to waive the right to maintain class or collective actions for employment-related claims in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights listed above.

WE WILL rescind the Agreement for Binding Arbitration in all of its forms, or revise it in all of its forms to make clear to employees that it does not waive their right to maintain employment-related joint, class, or collective actions in all forums.

WE WILL notify all current and former employees at the Doubletree Hotel by Hilton in downtown Los Angeles who were required to sign or otherwise become bound to the mandatory arbitration agreement in any form that it has been rescinded or revised and, if revised, provide them a copy of the revised agreement.

WE WILL reimburse Nelson Chico for any reasonable attorneys' fees and litigation expenses that he may have incurred in opposing our petition to the U.S. District Court for the Central District of California to compel individual arbitration of his claims in Case No.: 2:14-cv-05750-JFW-SS, to the extent the subsequent settlement between us and Chico did not fully reimburse him for such amounts.

RIM HOSPITALITY

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-137250 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."