

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

D. R. HORTON, INC.

and

Case 12-CA-25764

MICHAEL CUDA, an Individual

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT
OF EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

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I. STATEMENT OF THE CASE¹

Counsel for the Acting General Counsel submits this brief in support of Acting General Counsel's exceptions to the Decision of Administrative Law Judge William N. Cates (the ALJ) in this matter. The Complaint alleges, inter alia, that D.R. Horton, Inc. (Respondent) violated Section 8(a)(1) and (4) of the Act by promulgating, maintaining, and enforcing individual arbitration agreements with its employees which prohibit consolidation of claims and class actions, and which require employees to submit all employment related disputes and claims to arbitration (subject to specific exceptions not related to the National Labor Relations Act), thus interfering with employee access to the National Labor Relations Board, and by requiring its employees to enter into these agreements as a condition of employment.² Respondent filed an Answer largely admitting the facts concerning the individual arbitration agreements, but denying that it engaged in any unfair labor practices.³

The hearing in this matter was held before the ALJ on November 8, 2010. The ALJ issued his decision on January 3, 2011. The Acting General Counsel takes no exception to the ALJ's conclusion that Respondent violated Section 8(a)(1) and (4) of the Act by maintaining a mandatory arbitration provision that employees reasonably

¹ In this brief, references to the transcript will be T-page number; references to the Administrative Law Judge's Decision will be ALJD-page and line numbers; references to General Counsel's exhibits will be GCX-exhibit number; references to Respondent's exhibits will be RX-exhibit number; and references to joint exhibits will be JX-exhibit number.

² An Order Consolidating Cases, Consolidated Complaint and Notice of Hearing was issued in Cases 12-CA-25764 and 12-CA-25766 on November 26, 2008. [GCX- 1(j)]. An Order Severing Cases, Approving Withdrawal of Certain Allegations of Complaint, and Approving Withdrawal of Charge in Case 12-CA-25766 was issued on April 20, 2009, withdrawing all allegations related to the latter case. [ALJD p.1, fn.1; GCX- 1(o)]. On April 22, the Regional Director issued an Amendment to Complaint alleging the filing and service of the second amended charge in Case 12-CA-25764. [GCX-1(q)].

³ On December 9, 2008, Respondent filed its Answer to Consolidated Complaint [GCX- 1(l)], and on May 5, 2009, Respondent filed its Answer to Amendment to Complaint [GCX- 1(s)].

could believe bars or restricts their right to file charges with the Board, in violation of Section 8(a)(4) and (1) of the Act. (ALJD p.5, L24 – p.6, L.37).

The issues herein, as raised by the Acting General Counsel's exceptions, are whether or not the ALJ erred by:

1. Failing to fully set forth relevant provisions of Respondent's "Mutual Arbitration Agreement" (MAA). (GC Exception 1).

2. Failing to find that on January 3, 2008, Respondent counsel Tricarico sent an electronic mail message to Charging Party Michael Cuda's attorney Charles Scalise, then of Morgan and Morgan, attaching a copy of the MAA and stating, "Attached is the arbitration agreement. Everyone in the Company has executed the same agreement." (GC Exception 2).

3. Failing to find that Respondent violated Section 8(a)(1) of the Act because it required employees to execute its MAA and thereby conditioned their employment on the waiver of the right to concertedly litigate employment claims. (GC Exception 3).

4. Failing to find that the MAA is analogous to a "yellow dog" contract and, without more, violates Section 8(a)(1) of the Act. (GC Exception 4).

5. Failing to find that the MAA is overbroad and violates Section 8(a)(1) of the Act because it could be read by a reasonable employee to prohibit him or her from engaging in protected Section 7 activity, i.e. from concertedly pursuing any covered employment claims on a class, collective or joint action basis in a state or federal court or other civil proceedings, and because it could be read by a reasonable employee to prohibit him or her from concertedly challenging the legality of the MAA itself in a tribunal outside of Respondent's dispute resolution process. (GC Exception 5).

6. Failing to find that the conduct of Charging Party Michael Cuda and his attorney in seeking class action relief only in Respondent's arbitration procedures tends to confirm that a reasonable employee would read the MAA as barring concerted resort to the courts for class, collective or joint action relief. (GC Exception 6).

7. Failing to recommend that the Board order Respondent to: cease and desist from engaging in the unlawful conduct described in GC Exceptions 2 through 5. (GC Exception 7).

8. Failing to recommend that the Board order Respondent to cease and desist from maintaining **or enforcing** the MAA. (GC Exception 8).

9. Failing to recommend that the Board order Respondent to take affirmative action by rescinding the MAAs that have been executed by its former and current employees. (GC Exception 9).

10. Failing to recommend that the Board order Respondent that if it revises the MAA, it is required to make clear to employees in the revised agreement that the revised agreement not only (i) does not in any way bar or restrict their right to file charges with the Board (as the ALJ properly found), but also (ii) that the revised agreement is not intended to constitute a waiver of employees' collective rights under Section 7 of the Act to concertedly pursue any covered claim before a state or federal court on a class, collective or joint action basis; (iii) that Respondent recognizes the employees' right to concertedly challenge the validity of the forum waiver in the Agreement upon such grounds as may exist at law or in equity; and (iv) that no employee will be disciplined, discharged, or otherwise retaliated against for exercising his or her rights under Section 7 of the Act. (GC Exception 10).

11. Failing to recommend that Respondent be ordered to remedy its unfair labor practices on a corporate-wide basis. (GC Exception 11).

12. Failing to include language in the recommended Notice to Employees that is consistent with the remedies sought in GC Exceptions 6 through 9. (GC Exception 12).

The facts establishing GC Exceptions 1 and 2 are undisputed and are recited in the below Statement of Facts. GC Exceptions 3 through 12 are addressed in the below Argument.

II. STATEMENT OF FACTS

Respondent has an office and place of business in Deerfield Beach, Florida, and is engaged in the business of building and selling homes.

Jurisdiction is admitted and was found by the ALJ. [GCX- 1(j); GCX-1(l); ALJD-2).

Respondent stipulated, and it is undisputed, that since January 2006, on a corporate-wide basis, Respondent has required its employees to execute a Mutual Arbitration Agreement (MAA) as a condition of employment. [GCX- 1(j), paragraphs 4(a) through 4(c); GCX-1(l), paragraph 4; JX- 1, paragraph 2; GCX-2; JX-2; T 21-24, 28-29; ALJD p.2, L.23-38). Thus, at all material times, Respondent has maintained and enforced the MAA.

The relevant portions of the MAA are as follows:

Mutual Arbitration Agreement

As a condition of employment with D. R. Horton, Inc. or its subsidiaries or affiliates (collectively, the "Company"), and in order to avoid the burdens and delays associated with court actions, the undersigned employee ("Employee") and the Company voluntarily and knowingly enter into this Mutual Arbitration Agreement ("Agreement"):

1. Except as provided below, Employee and the Company, on behalf of their affiliates, successors, heirs, and assigns, agree that all disputes and claims between them, including those relating to Employee's employment with the Company and any separation therefrom, and including claims against the Company's affiliates, directors, employees, or agents, shall be determined exclusively by final and binding arbitration before a single, neutral arbitrator as described herein, and that judgment upon the arbitrator's award may be entered in any court of competent jurisdiction. Claims subject to arbitration under this Agreement include without limitation claims for discrimination or harassment; wages, benefits, or other compensation; breach of any express or implied contract; violation of public policy; personal injury; and tort claims including defamation, fraud, and emotional distress. Except as expressly provided herein, the Company and Employee voluntarily waive all rights to trial in court before a judge or jury on all claims between them.

2. Disputes and actions excluded from this Agreement are: (a) claims by Employee for workers' compensation or unemployment benefits; (b) claims for benefits under a Company plan or program that provides its own process for dispute resolution; (c) claims by either party for declaratory or injunctive relief relating to a confidentiality, non-competition, or similar obligation (any such proceedings will be without prejudice to the parties' rights under this Agreement to obtain additional relief in arbitration with respect to such matters); and (d) actions to compel arbitration or to enforce or vacate an arbitrator's award under this Agreement, such action to be governed by the Federal Arbitration Act and the provisions of Section 8 of this Agreement.

6. The parties intend that this Agreement will operate to allow them to resolve any disputes between them as quickly as possible. Thus, the arbitrator will not have the authority to consolidate the claims of other employees into a proceeding originally filed by either the Company or the Employee. The arbitrator may hear only Employee's individual claims and does not have the authority to fashion a proceeding as a class or collective action or to award relief to a group or class of employees in one arbitration proceeding.

By signing this agreement, Employee acknowledges that he or she is knowingly and voluntarily waiving the right to file a lawsuit or other civil proceeding relating to Employee's employment with the Company as well as the right to resolve employment-related disputes in a proceeding before a judge or jury. Employee further acknowledges and agrees that this

Agreement, while mutually binding upon the parties, does not constitute a guarantee of continued employment for any fixed period or under any particular terms, and does not alter in any way the at-will nature of Employee's employment relationship.

(JX-2).⁴ The above-quoted portions of the MAA establish GC Exception 1.

In letters dated in February 2008, Michael Cuda, the Charging Party, and other employees of Respondent, including Brandon Borge, Michael Lusch, Charles Jobes, Ricardo Hernandez, a Mr. Dreher, and Mario Cabrera, through their attorneys, Richard Celler, Esq. of Morgan & Morgan, advised Respondent of their intent to commence arbitration claims against Respondent of behalf of classes of employees, claiming that Respondent had misclassified employees as exempt under the Fair Labor Standards Act. (JX- 4, JX-5, JX-6; ALJD p.3, L.8-17). There were also some pre-February 2008 communications between Charging Party Michael Cuda and Respondent concerning the MAA. Thus, on January 3, 2008, Respondent Michael Tricarico, Esq. (the ALJ incorrectly referred to Tricarico as "Tricarloo") of Ogletree, Deakins, Nash, Smoak & Stewart, had sent an electronic mail message to Charging Party Michael Cuda's attorney Charles Scalise, then of Morgan and Morgan, attaching a copy of the MAA and stating, "Attached is the arbitration agreement. Everyone in the Company has executed the same agreement." (GCX-2; T 21-24). Thus, Tricarico's electronic mail message to Scalise establishes that Respondent has required its employees to execute the MAA on a corporate-wide basis, as set forth in GC Exception 2.

By letters dated March 14 and 20, 2008, Respondent, through attorney Tricarico, advised Morgan & Morgan, counsel for Cuda and other employees, that paragraph 6 of

⁴ Paragraphs 3, 4, 5, 7 and 8 of the Agreement concern the arbitration procedure, and are omitted. The above-quoted final paragraph is unnumbered. (JX-2).

the Agreement prohibited the arbitration of collective claims and denied the validity of the efforts to initiate the arbitration procedure. (JX-8, JX-10; ALJD p.3, L.19-23).

III. ARGUMENT

A. The ALJ erred by failing to conclude that Respondent violated Section 8(a)(1) of the Act because its overly broad mandatory arbitration agreement constitutes a waiver of employees' rights to concertedly attempt to litigate employment claims in court or other civil proceedings, and because a reasonable employee could read the Agreement as prohibiting him or her from engaging in protected Section 7 activity by joining with other employees to concertedly challenging the legality of the Agreement in forums other than Respondent's dispute resolution process, including state or federal court. (GC Exceptions 3 through 6).

Section 7 of the Act guarantees employees the right to engage in concerted activities for the purpose of mutual aid and protection. In *Eastex, Inc. v. NLRB*, 437 US 556, 565-66 (1978), the Supreme Court held that the right of employees to act concertedly under Section 7 of the Act includes the right to be free from employer retaliation when employees seek to improve their working conditions through resort to administrative and judicial forums. However, in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991), the Supreme Court determined that an employer can require an employee, as a condition of employment, to channel his or her individual non-NLRA employment claims into a private arbitral forum for resolution. Thus, mandatory arbitration agreements are not per se unlawful. As long as such an arbitration agreement is worded to make it clear to employees that their rights to act concertedly and to challenge the agreement by pursuing class and collective claims, either in arbitration or in

court, will not be subject to discipline or retaliation by the employer, and that those rights are preserved, there is no violation of the Act.

1. The concerted filing of a class action lawsuit or arbitral claim is protected activity.

The Board has consistently found the filing of collective and class action lawsuits regarding a variety of employment matters to constitute protected concerted activity under Section 7 of the Act. In *Trinity Trucking & Materials Corp.*, 221 NLRB 364, 365 (1975), enfd. mem. 567 F.2d 391 (7th Cir. 1977), cert. denied 438 U.S. 914 (1978), the Board held that the filing of a lawsuit by a group of employees alleging that their employer had failed to pay them contract scale was protected activity. In *Le Madri Restaurant*, 331 NLRB 269, 275-276 (2000), the Board found that an employer unlawfully discharged employees for engaging in Section 7 activity, including filing a lawsuit in federal court on behalf of other employees, alleging violations of federal and state labor laws. In *Mohave Electric Cooperative*, 327 NLRB 13 (1998), enfd. 206 F.3d 1183 (D.C. Cir. 2000), the Board determined that two employees were engaged in protected concerted activity when, pursuant to a common concern for their workplace safety, they both petitioned for injunctive relief against harassment by two officials of their employer's subcontractor. In *Novotel New York*, 321 NLRB 624, 633-636 (1996), the Board found that an opt-in class action lawsuit alleging employer violations of the Fair Labor Standards Act was protected concerted activity. In *Host International*, 290 NLRB 442, 442-443, 445 (1988), the Board found that an employee's filing of a civil federal court lawsuit concertedly with other employees, claiming that their employer had physically assaulted, searched, detained and interrogated them in violation of their constitutional and statutory rights, constituted Section 7 activity. In *United Parcel*

Service, 252 NLRB 1015, 1018, 1022, fn.26 (1980), enfd. 677 F.2d 421 (6th Cir. 1982), the Board found that the employer violated the Act by discharging an employee for filing a class action lawsuit regarding rest breaks. In *Saigon Gourmet*, 353 NLRB 1063, 1064 (2009), the Board found that concertedly asserting wage and hour claims is protected concerted activity.⁵

In summary, class action lawsuits that are filed by employees for mutual aid and protection implicate fundamental rights under the Act. The cornerstone principle of the Act is that employees are empowered to band together to advance their work-related interests on a collective basis. Not all class action lawsuits are protected by Section 7.⁶ However, a mandatory arbitration agreement that prohibits **all** class, collective and/or joint action grievances and lawsuits arising from employment necessarily inhibits protected concerted activity.

2. A mandatory arbitration agreement that could reasonably be read by an employee as prohibiting him or her from joining with other employees to file a class action lawsuit violates Section 8(a)(1) of the Act.

Because employees have a Section 7 right to concertedly seek to enforce their statutory employment rights before courts and other administrative tribunals, an employer's conditioning employment on an employee's waiving of his or her right to engage in concerted activity would violate fundamental employee rights. See e.g. *Barrow Utilities and Electric*, 308 NLRB 4, 11, fn. 5 (1992) (all variations of the "yellow dog contract" are unlawful); *Eddyleon Chocolate Co.*, 301 NLRB

⁵ See also *Tri-County Transportation*, 331 NLRB 1153, 1155 (2000) (concerted filing of unemployment claims is protected by Section 7);

⁶ For example, see *Elevator Constructors (Long Elevator)*, 289 NLRB 1095 (1988), enfd. 902 F.2d 1297 (8th Cir. 1990). [A grievance or lawsuit designed to violate the Act is coercive (and therefore is not protected concerted activity)].

887 (1991). For analogous reasons, a mandatory arbitration agreement that could reasonably be read by an employee as prohibiting him or her from joining with other employees to file a class action amounts to an overly broad employer rule and therefore violates Section 8(a)(1) of the Act.⁷

3. The Mutual Arbitration Agreement in this case is overly broad because a reasonable employee could read it as prohibiting him or her from joining with other employees in an attempt to pursue a class action lawsuit and as prohibiting him or her from concertedly challenging the Agreement.

The MAA's proscriptions are clear and unambiguous. It is undisputed that execution of the Agreement is a condition of employment, as plainly stated in the opening lines of the MAA. Paragraph 1 requires employees to bring all employment-related disputes under the Respondent's self-created arbitration procedure, with the very limited exceptions of those disputes described in Paragraph 2. (JX- 2). Paragraph 6 of the MAA makes it clear that employees are not allowed to bring class, collective or joint action claims inside the arbitral forum.

The final paragraph of the MAA expressly waives employees' rights to file lawsuits or other civil proceedings relating to their employment and their rights to resolve employment-related disputes in a proceeding before a judge or jury. This blanket prohibition necessarily prohibits employees from pursuing class, collective or joint action employment claims outside the arbitral forum, i.e. in a federal or state court, administrative agency, or other forum.

⁷ See *U-Haul Company of California, Inc.*, 347 NLRB 375, 377-78 (2006), *enfd.* 2007 WL 4165670 (D.C. Cir. 2007) (employer interfered with employee rights by maintaining a mandatory arbitration policy that employees would reasonably construe to prohibit the filing of unfair labor practice charges with the Board).

By merely requiring employees to enter into the MAA, Respondent sent its employees a message that they are prohibited from engaging in Section 7 activity by making collective claims. This prohibition has the effect of chilling employees in the exercise of their Section 7 rights to concertedly pursue employment-related claims in state or federal courts or through “other civil proceedings” filed in administrative agencies. Although neither the Charging Party nor the other employees who attempted to initiate class action arbitration cases against Respondent regarding their Fair Labor Standards Act claims tried to bring a collective claim or lawsuit in a state or federal court, it appears that their failure to do so likely resulted from their conclusion, based on a reasonable reading of the plain language of the MAA, that such a lawsuit is strictly prohibited. The MAA’s restrictions on employee protected concerted activity, particularly as expressly stated in the final paragraph, are cast in absolute terms and apply even if two or more employees concertedly filed a joint, class or collective action lawsuit challenging the legality of the Agreement or other Respondent policies.

In summary, an employee can reasonably read this waiver as prohibiting not only individual lawsuits, but also as prohibiting him or her from joining with other employees to attempt to pursue a class action lawsuit. This overly broad prohibition is not only a reasonable reading of Respondent’s MAA, it is the only logical reading. There is no language in the MAA that assures the employees that they may exercise their Section 7 rights. Such an overbroad prohibition on the exercise of Section 7 rights operates as an ongoing restraint on the right of

employees to engage in concerted activity for mutual aid and protection, in violation of Section 8(a)(1) of the Act.

As noted above, Respondent has refused to arbitrate the class action grievances that its employees have sought to initiate. (JX-8, 10; ALJD p.3, L.8-23). Although Respondent cannot be required to arbitrate class action claims, it cannot lawfully at the same time bar employees from joining together to pursue class action claims in other forums.

Even under the limitations of a *Gilmer* mandatory arbitration agreement, employees are entitled to engage in Section 7 activity by, for example, bringing a class action lawsuit against an employer challenging the very nature of the waiver agreement. Respondent's recourse is to craft an appropriately narrow rule that permits its employees to exercise their collective rights protected by Section 7 of the Act. In that event Respondent would still be able to lawfully seek dismissal of any such class action claim based on a lawful *Gilmer* agreement.

Accordingly, the Acting General Counsel respectfully requests that the Board find that Respondent violated Section 8(a)(1) of the Act because its overbroad Mutual Arbitration Agreement prohibits employees from engaging in Section 7 activity.

B. Respondent should be ordered to take steps in addition to those required by the ALJ, in order to remedy the unfair labor practices established in GC Exceptions 3 through 6. (GC Exceptions 7 through 12).

The Board Order should require Respondent to cease and desist not only from maintaining the MAA, but also to cease and desist from enforcing that agreement. (ALJD p.7, L.8-10). In addition, the ALJ's recommended Board Order should be

clarified to require Respondent to rescind (not rescind or revise) the version of the MAA that has been executed by its current and former employees.

Similar to the ALJ's recommendation, the Board Order should also require Respondent to prospectively rescind the Mutual Arbitration Agreement, or to revise it, and to cease maintaining or enforcing a mandatory arbitration agreement that employees reasonably could believe bars or restricts their right to file charges with the Board. (ALJD p.7, L.8-20). However, the Board Order should require that if Respondent opts to revise the MAA, the revised agreement must include language that makes it clear to employees not only that (i) the revised agreement does not in any way bar or restrict their right to file charges with the Board, as the ALJ properly found, but also: (ii) that the revised agreement is not intended to constitute a waiver of employees' collective rights under Section 7 of the Act to concertedly pursue any covered claim before a state or federal court or other civil proceeding on a class, collective or joint action basis; (iii) that Respondent recognizes the employees' rights to concertedly challenge the validity of the forum waiver in the revised agreement upon such grounds as may exist at law or in equity; and (iv) that no employee will be disciplined, discharged, or otherwise retaliated against for exercising his or her rights under Section 7 of the Act.

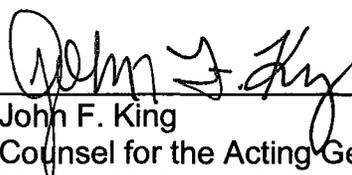
Finally, inasmuch as Respondent has maintained and enforced the MAA on a corporate-wide basis, the Board should order Respondent to remedy its unfair labor practices on a corporate-wide basis.

IV. CONCLUSION

The evidence and legal authority demonstrate that General Counsel's exceptions have merit and should be granted in their entirety. Respondent's mandatory arbitration agreement violates Section 8(a)(1) of the Act because Respondent requires employees to execute it as a condition of employment, and because the MAA can reasonably be read by employees to prohibit them from concertedly pursuing class, collective or joint action employment-related claims in federal or state court, or in other civil proceedings, and to prohibit them from concertedly challenging the legality of Respondent's mandatory arbitration agreement in tribunals outside of Respondent's arbitration process. Counsel for the Acting General Counsel respectfully urges the Board to grant General Counsel's exceptions in their entirety, including the remedial provisions sought and any other relief as the Board may deem appropriate. A recommended Notice to Employees is appended to this brief.

Dated at Miami, Florida this 14th day of March, 2011

Respectfully submitted,



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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 (SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT) GIVES EMPLOYEES THE RIGHT TO:

- Form, join or assist a union;
- Choose representatives to bargain with employees on their behalf;
- Act together with other employees for their benefit and protection;
- Choose not to engage in any of these protected activities.

ACCORDINGLY, we give you these assurances

WE WILL NOT maintain or enforce a mandatory arbitration agreement that you reasonably could believe bars or restricts your right to file and pursue charges with the National Labor Relations Board.

WE WILL NOT maintain or enforce a mandatory arbitration agreement that you reasonably could believe bars or restricts your right to attempt to file or litigate employment-related class action, collective action or joint action claims in federal or state court or in other civil proceedings.

WE WILL NOT maintain or enforce a mandatory arbitration agreement that you reasonably could believe bars or restricts your right to join together with other employees to collectively challenge the legality of the class action waiver in our mandatory arbitration policy.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the Mutual Arbitration Agreements that have been executed by our employees, and if we revise our mandatory arbitration agreement, in the revised agreement **WE WILL** make it clear that:

- (i) The agreement does not in any way bar or restrict your right to file and pursue charges with the National Labor Relations Board;
- (ii) The agreement does not constitute a waiver of employees' collective rights under Section 7 of the National Labor Relations Act, including employees' rights to

concertedly pursue any covered claim before a state or federal court or in other civil proceedings on a class, collective, or joint action basis;

(iii) We recognize employees' rights, based upon such grounds as may exist at law or in equity, to concertedly challenge the validity of the agreement to waive class, collective or joint action claims in our arbitration forum; and

(iv) No employee will be disciplined, discharged, or otherwise retaliated against for exercising their rights under Section 7 of the National Labor Relations Act.

WE WILL notify you in writing that we have rescinded the Mutual Arbitration Agreements that you have executed, and if we revise our mandatory arbitration agreement, **WE WILL** provide a copy of it to you in writing.

D.R. HORTON, INC.
(Employer)

DATED: _____ **BY:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: <http://www.nlr.gov>.

National Labor Relations Board, Region 12
201 East Kennedy Blvd., Suite 530
Tampa, FL 33602-5824

Telephone: (813) 228-2641
Hours: 8:00 a.m. to 4:30 p.m.

National Labor Relations Board, Region 12
550 Water Street, Suite 240
Jacksonville, FL 32202

Telephone: (904) 232-3768
Hours: 8:00 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, located at **201 East Kennedy Boulevard, Suite 530, Tampa, Florida 33602-5824.**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

D. R. HORTON, INC.

and

Case 12-CA-25764

MICHAEL CUDA, an Individual

CERTIFICATE OF SERVICE

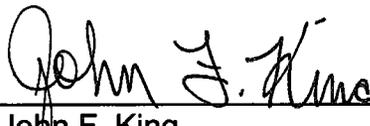
I hereby certify that the Acting General Counsel's Brief in Support of Exceptions was duly served upon the following individuals by electronic transmittal on March 14, 2011:

Hon. Lester Heltzer
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National Labor Relations Board
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