Motor City Pawn Brokers Inc., The Aubrey Group Inc., and Aubrey Brothers, LLC, a single employer *and* Terrence Walker *and* Patricia Tilmon.
Cases 07–CA–179458 and 07–CA–179461

July 24, 2020

DECISION, ORDER, AND NOTICE TO SHOW CAUSE

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On October 22, 2018, Administrative Law Judge Elizabeth M. Tafe issued the attached decision, and on November 14, 2018, she issued an Errata. The Respondent filed exceptions and a supporting brief, the General Counsel and Charging Parties filed answering briefs, and the Respondent filed reply briefs. In addition, the Charging Parties filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings, and conclusions[2] only to the extent consistent with this Decision and Order.[3]

I. BACKGROUND

The Respondent operates several pawn brokerages in the Detroit metropolitan area. The General Counsel alleges that multiple provisions set forth in separate employment documents maintained by the Respondent violate Section 8(a)(1). Specifically, the allegations pertain to provisions found in the Respondent's Employment Agreement; the contract between the Company and employee and Employee Handbook Receipt (Contract and Receipt); the Employee Handbook; and an updated version of the handbook (Updated Handbook). The General Counsel further alleges that the Respondent unlawfully discharged four employees for refusing to sign documents that required them to agree to be bound by the allegedly unlawful rules.

We adopt the judge's findings that the Respondent violated Section 8(a)(1) by maintaining a mandatory arbitration agreement that interferes with employees' rights to file charges with, participate in, and access the Board and its processes;[4] the indemnity provisions of the Employment Agreement and the Contract and Receipt, which, inter alia, unlawfully require employees to defray the Respondent's costs of enforcing the unlawful arbitration agreement; the rule prohibiting unauthorized disclosure of the Employee Handbooks; and the rules in the Employee Agreement, Employee Handbook, and Updated Handbook restricting association with and solicitation of other employees.[5]

We additionally adopt the judge's findings that the Respondent unlawfully discharged employees Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for failing to sign the Employment Agreement and Contract and Receipt that required them to agree to be bound by the Respondent's work rules, including the unlawful arbitration and indemnity provisions. See *Alorica, Inc.*, 368 NLRB No. 25, slip op. at 1 fn. 3 (2019) (finding respondent violated Sec. 8(a)(1) by discharging employees for refusing to sign arbitration agreement that

[1] The General Counsel's motion to strike the Respondent's exceptions on the ground that they fail to meet the specificity requirements of Sec. 102.46 of the Board's Rules is denied. Although the Respondent's exceptions do not conform in all particulars to Sec. 102.46, they are not so deficient as to warrant striking.

[2] For the reasons stated by the judge, we dismiss the allegations that the Respondent unlawfully maintained its "Outside of Work Behavior" rule, its rule describing the acceptable use of social media, and its rule restricting recording in the workplace.

[3] We shall amend the judge's conclusions of law and remedy, and we shall substitute a new Order and notice to conform to the violations found and the Board's standard remedial language, and in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020).

[4] In finding that provisions of the Respondent's mandatory arbitration agreement are unlawful, we note that the Employee Agreement explicitly requires arbitration of disputes arising under the National Labor Relations Act, and that the Contract and Receipt requires arbitration as the exclusive method of resolving any statutory claim and includes an express waiver of the right to adjudicate any claim against the Respondent before any federal agency. Accordingly, because we find that the provisions are facially unlawful, there is no need to consider the Respondent's justification for the rules. See *Prime Healthcare Paradise Valley, LLC*, 368 NLRB No. 10, slip op. at 5 (2019), and cases cited there.

[5] With respect to the rules restricting association with and solicitation of other employees, we find them unlawful in accord with longstanding precedent governing employer restrictions on such employee conduct. *Boeing* did not disturb that precedent, which already strikes a balance between employee rights and employer interests. *UPMC, UPMC Presbyterian Shadyside,* 366 NLRB No. 142, slip op. 1 fn. 5 (2018). We do not rely on the judge's citation to *Hispanics United of Buffalo*, 359 NLRB 368 (2012), which was invalidated as a result of the Supreme Court's decision in *NLRB v. Noel Canning*, 573 U.S. 513 (2014).

Consistent with *UPMC Presbyterian Shadyside*, supra, Chairman Ring agrees that the Respondent's solicitation rule is unlawful under longstanding precedent *Boeing* did not disturb, but he would apply *Boeing* to the Respondent's rule restricting association with other employees. This rule, among other things, prohibits employees from associating with each other "for [their] own benefit," which reasonably encompasses a prohibition on acting in concert for the purpose of mutual aid or protection. Because this rule, when reasonably interpreted, would interfere with the exercise of Sec. 7 rights, and because that interference outweighs any legitimate justification, Chairman Ring would find the rule unlawful and place it in *Boeing* Category 3.

unlawfully restricted employee access to the Board and its processes).

However, for the reasons stated below, we reverse her findings that the Respondent unlawfully maintained the following rules prohibiting disclosure of confidential information, establishing employee standards of conduct, prohibiting disparagement of the Respondent, and limiting employee use of email and the Internet.[6]

A. Rules Prohibiting Disclosure of Confidential Information

The General Counsel alleged that the Respondent unlawfully maintained the following provisions in its Employment Agreement. [7]

> 3. *Confidentiality, Non-Competition and Non-Solicitation.*
>
> *a. Confidentiality***.** The relationship with Employer has been one and/or will be one of trust and confidence and there has been and/or will be available to Employee . . . information relating to trade secrets and proprietary interests of Employer, Related Entities . . . and their clients, ***employees*****,** independent contractors, ***vendors***, ***subcontractors***, ***business prospects***, and /or referral sources which include . . . records and information dealing with projects, ***business opportunitie****s*, intellectual property, data storage and custom design solutions, customer lists, customer information, customer matters; customer identities, ***business strategies***, ***business methods***, security methods, business procedures, business practices, services, concepts, ideas (whether tangible or intangible), formulae, applications, inventions, software, calculations, analyses, projects, plans, profit margins, prices, processes, operating. procedures [sic], designs, systems, source code, research, development activities, technical or scientific information, know—how [sic], products, financial information, access codes, and all information contained in or on the computer hard drives and/or servers of Employer, and other items relative thereto, whether or not copyrighted, patented or patentable (herein collectively and individually referred to as the "Confidential Information"). The Confidential Information, regardless of form, is, and shall always remain, the sole and exclusive property of Employer and/or related entities. Employee shall not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the Confidential Information.[8]

In addition, paragraphs regarding the "Non-Disclosure of Employer's Confidential Information" and "Other Information" state that the employee shall not disclose confidential information, information concerning the business of the Employer, or confidential information related to the employee's previous employers.

The Respondent also maintained the following provisions in its Employee Handbook and Updated Handbook.

> *Prohibited Activities (Standards of Conduct)*
>
> . . .
>
> Disclosure of Company trade secrets or any other confidential or proprietary information of the Company, its customers or fellow employees.
>
> *Workplace Expectations*
>
> . . . Confidential information, including . . . information about marketing plans, costs, earnings, documents, notes, files, lists and medical files, records, oral information, computer files or similar materials (except in the ordinary course of performing duties on behalf of Company) may not be removed from Company's premises without permission. Employees must not disclose confidential information, confidential financial data, or other non-public proprietary information of the Company, nor may employees share confidential information regarding business partners, vendors, or customers.
>
> This Confidentiality Policy does not apply, and will not be enforced, in any manner that would restrict, infringe upon or otherwise limit employees' rights under the National Labor Relations Act, including, without limitation the right to engage in concerted activities for the purpose of mutual aid and protection.

B. Rules Establishing Employee Standards of Conduct

The General Counsel alleged that the Respondent unlawfully maintained the following provisions in the Employee Handbook and Updated Handbook.

> *Prohibited Activities (Standards of Conduct)*
>
> . . .

[6] There is no allegation that the Respondent applied these rules to restrict protected activity or that the rules were promulgated in response to protected activity.

[7] The General Counsel now contends in its answering brief that these rules are lawful.

[8] The original provision does not contain bolded language. We have added the emphases here in order to highlight the specific language in the provision that is alleged to be unlawful.

> Use of obscene or otherwise ***inappropriate language*** **or** conduct in the work place
>
> Bad mouthing or spreading rumors. [Emphasis added.][9]
>
> . . .

The Handbook and Updated Handbook also include the following provisions.

> By agreeing to work at Motor City Pawn Brokers you have agreed to follow the Company's rules and to refrain from conduct which is detrimental to our goals.
>
> *Workplace Bullying*
>
> At Motor City Pawn Brokers we define bullying as unwanted, inappropriate, aggressive behavior, either direct or indirect, whether it be physical, verbal or in any other form. It involves a real or perceived power imbalance. Bullying can be conducted by one or more persons involved against others at the place of employment or can occur off Company property.
>
> . . .
>
> *Be Honest*
>
> I will conduct myself in a manner that will allow me to always be able to tell the truth and be at peace. I realize that I am above any theft, deception, lies or dishonesty
>
> . . .

C. Rules Prohibiting Disparagement of the Respondent

The General Counsel alleged that the Respondent unlawfully maintained the following provisions in its Employment Agreement.[10]

> 3. *Confidentiality, Non-Competition and Non-Solicitation.*
>
> . . .
>
> l. *Non-Disparagement*. Employee shall refrain from communicating orally, or in writing, or by any other manner whatsoever to any customer or third party, any disparaging claim, remark, allegation, statement, opinion, comment, innuendo or information of any kind or nature whatsoever, the effect of or intention of which is to cause embarrassment, disparagement, damage or injury to the reputation, business, or standing in the community of Customers, Employer and/or Related Entities, and their customers, members, managers, officers, owners, employees, independent contractors, agents, attorneys, or representatives, regardless of whether any such communication is or may be true or founded in facts.
>
> m. *Dealings with Customers*. . . . Employee shall not attempt to negative [sic] influence or otherwise discourage or dissuade any Customer or other party from maintaining its relationship with Employer.

The General Counsel also alleged that the Respondent unlawfully maintained the following provision in its Employee Handbook and Updated Handbook.

> *Prohibited Activities (Standards of Conduct)*
>
> . . .
>
> *Off-duty conduct which can affect the Company's credibility or reputation.*

D. Rules Limiting Employee Use of Email, the Internet, and Social Media

Finally, the General Counsel alleged that the Respondent unlawfully maintained the following provisions in its Employee Handbook and Updated Handbook.[11]

> *Internet Etiquette*
>
> When at work stick to work. . . . Computers, printers, fax machines and other equipment are to be used exclusively for the business activities of the Company. Users are permitted to access the Internet and electronic communications systems to assist in the performance of their jobs. The following behaviors are banned from Motor City Pawn Brokers:
>
> . . .
>
> - sending personal emails
> - chatting
>
> . . .
>
> - utilizing Facebook and other social networking sites
> - blogging . . .

[9] Only the bolded language is alleged to be unlawful.

[10] The additional prohibition in the "Dealing with Customers" section of the Employment Agreement stating "Employee shall not disclose the terms and conditions of this Agreement" was not alleged to be unlawful in the complaint and is not before us.

[11] The General Counsel attempted to withdraw the "Internet Etiquette" allegations after the hearing and requests that these allegations, along with the "Social Media is unacceptable" provision, be dismissed.

> *Social Media is unacceptable if it:*
>
> . . .
>
> Compromises or may compromise the confidentiality of proprietary, or other sensitive information of the Company, [its] officers, owners, employees, agents, contractors, clients, merchants, or representatives including, without limitation, the disclosure of trade secrets (including, without limitation, information regarding the development of products, processes, technology, systems, and know-how), financial records, internal business-related confidential communications and memoranda, client and merchant lists, client and merchant information, client and merchant account records, pricing records, business forms, and strategic planning information. . . .

II. ANALYSIS

In *Boeing Company*, the Board set out a new standard for determining whether a facially neutral work rule, reasonably interpreted, would unlawfully interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. 365 NLRB No. 154, slip op. at 3 (2017). The Board overruled the "reasonably construe" prong delineated in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), which held that a work rule that did not otherwise violate Section 8(a)(1) would be found unlawful if employees would reasonably construe it to prohibit Section 7 activity. Id., slip op. at 1, 2. Instead, the Board in *Boeing* held that

> when evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, *and* (ii) legitimate justifications associated with the rule.

Id., slip op. at 3 (emphasis in original). In conducting this evaluation, the Board will "strike the *proper balance* between . . . asserted business justifications behind the policies, on the one hand, and the invasion of employees' rights in light of the Act and its policy." Id., slip op. at 3 (emphasis in original) (quoting *NLRB v. Great Dane Trailers, Inc*., 388 U.S. 26, 33–34 (1967)). In considering the latter, the Board will rely on a reasonable employee's perspective. Id., slip op. at 16.

With this balancing in mind, and in an effort to provide guidance, the Board has created the following categories for work rules that fall under *Boeing*:

> *Category 1* will include rules that the Board designates as lawful to maintain, either because ([a]) the rule, when reasonably interpreted, does not prohibit or interfere with the exercise of NLRA rights; or ([b]) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. . . .
>
> *Category 2* will include rules that warrant individualized scrutiny in each case as to whether the rule would prohibit or interfere with NLRA rights, and if so, whether any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications.
>
> *Category 3* will include rules that the Board will designate as *unlawful* to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule.

Id., slip op. at 3–4 (emphasis in original). However, these categories "represent a classification of *results* from the Board's application of the new test" and "are not part of the test itself." Id., slip op. at 4 (emphasis in original).

In *LA Specialty Produce Co.*, 368 NLRB No. 93 (2019), the Board provided further guidance regarding how it will determine the legality of work rules under *Boeing*. As explained in *LA Specialty*, the General Counsel has the initial burden to prove that a facially neutral rule would, when read in context, be interpreted by a reasonable employee as potentially interfering with the exercise of Section 7 rights. Id., slip op. at 2. If that burden is not met, then the Board does not need to address the employer's legitimate justifications for the rule; the rule is lawful and fits within *Boeing* Category 1(a). Id.

If the General Counsel does meet the initial burden of proving that a reasonable employee would interpret a rule as potentially interfering with the exercise of Section 7 rights, the Board will balance that potential interference against the employer's legitimate justifications for the rule. Id., slip op. at 3. When the balance favors the employer's interests, the rule at issue will be lawful and will fit within *Boeing* Category 1(b). When the potential interference with Section 7 rights outweighs any possible employer justifications, the rule at issue will be unlawful and fit within *Boeing* Category 3. Finally, in some instances, "it will not be possible to draw any broad conclusions about the legality of a particular rule because the context of the rule and the competing rights and interests involved are specific to that rule and that employer." Id. These rules will fit within *Boeing* Category 2.

A. Rules Prohibiting Disclosure of Confidential Information

Applying *Boeing*, the judge found that the confidentiality rules set forth above in the Employment Agreement and both handbooks are unlawfully overbroad because

they "do not sufficiently define or distinguish among the terms 'proprietary,' 'confidential,' or so called 'trade secrets,'" and that the Respondent's business justifications, which include concerns that proprietary information may be disclosed to competitors, do not outweigh the rules' potential interference with employee rights.

We agree with the judge that employees have a Section 7 right to discuss among themselves, and with the public, information about their terms and conditions of employment for the purpose of mutual aid and protection. See *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565–566 (1978). However, we find that objectively reasonable employees, reading the provisions at issue here in context, would not interpret them to interfere with such rights. The catalogue of information identified as confidential in the Employment Agreement includes such examples as "business opportunities, intellectual property, data storage and custom design solutions, customer lists, . . . business strategies, business methods, security methods, . . . formulae, applications, inventions, software," and other specific examples of obviously proprietary business information. Similarly, the list of confidential information described in the Employee Handbook and the Updated Handbook includes "information about marketing plans, costs, earnings, documents, notes, files, lists and medical files, . . . computer files or similar materials." None of the examples listed in the Respondent's documents would lead employees to reasonably think that matters relating to their employment terms were encompassed within the Respondent's definition of confidential and proprietary information. See *Mediaone of Greater Florida*, 340 NLRB 277, 278 (2003) (finding that employees would not read a rule prohibiting disclosure of proprietary business information, which listed "customer and employee information, including organizational charts and databases" in a long list of nondisclosable "proprietary information," to prohibit them from sharing information about their employment terms); see also *National Indemnity Co.,* 368 NLRB No. 96, slip op. at 2–3 (2019) (finding lawful rule requiring employees to keep confidential non-public information "that might be of use to competitors or harmful to the [c]ompany or its customers if disclosed"). A reasonable employee would not read the handbooks' references to the "proprietary information . . . of employees" without taking into account the specific examples of confidential information listed in the documents.[12] Accordingly, we reverse the judge and dismiss the allegations regarding the above confidentiality rules because employees would reasonably understand, from the numerous examples of confidential information specified in the Employment Agreement and the Employee Handbooks, that they are limited to prohibiting disclosure of legitimately confidential and proprietary information rather than information pertaining to employees' terms and conditions of employment.[13]

B. Rules Establishing Employee Standards of Conduct

The judge concluded that the conduct rules described above would unlawfully interfere with employees' rights to discuss their working conditions and make "common cause" with others and, further, that the Respondent's general desire to maintain a civil work environment did not outweigh the potential interference with Section 7 activity. We disagree and reverse. The work rules at issue fall squarely into the category of lawful, commonsense, facially neutral rules that require employees to foster "harmonious interactions and relationships" in the workplace and adhere to basic standards of civility. See *Boeing,* supra, slip op. at 4 fn. 15. Accordingly, we reverse the judge and find the above rules lawful.[14]

C. Rules Prohibiting Disparagement of the Respondent

The judge found the nondisparagement rules described above unlawful after determining that they would have a reasonable tendency to interfere with employees' Section 7 right to seek outside support, including from customers and the public, concerning their terms and conditions of employment. Although she recognized that "it is understandable that the Respondent would want to control its image and the information made public, and that it would not want its customers to be dissuaded from maintaining their relationship with the Respondent," the judge summarily concluded that "these generalized explanations for the rules do not outweigh the important, long-recognized

[12] Moreover, the savings clause in the handbooks stating that "[t]his Confidentiality Policy does not apply, and will not be enforced, in any manner that would restrict, infringe upon or otherwise limit employees' rights under [the Act]," would further confirm to employees that these provisions do not prohibit them from disclosing their terms and conditions of employment or their contact or other applicable information for union and other protected activities. Although the judge discounts the effect of the savings clause by noting that it is several pages away from the allegedly unlawful provision listing prohibited activities under its Standards of Conduct and is not anywhere in the Employment Agreement, the savings clause expressly refers to, and immediately follows, the confidentiality policy in the Employee Handbook and Updated Handbook and would reasonably be understood as also applying to the similar confidentiality provision in the Employment Agreement. Even without the savings clause, however, a reasonable employee would understand from the context of the rules that they do not restrict their protected and union activities, as explained above.

[13] Under *Boeing*, we place the Respondent's confidentiality rules in Category 1(a). See, e.g., *LA Specialty*, supra, slip op. at 2.

Because the General Counsel has not shown that the rules, when read in context, would be interpreted by a reasonable employee to potentially interfere with the exercise of Sec. 7 rights, we need not address the employer's legitimate justifications for maintaining them.

[14] Under *Boeing*, we place the Respondent's civility rules in Category 1(a). See, e.g., *LA Specialty*, supra, slip op. at 2.

protected right of employees to seek support from third-parties." Because we find that the judge failed to adequately weigh the legitimate justifications for the Respondent's nondisparagement rules, we reverse the judge and find the nondisparagement rules lawful.

The Supreme Court long ago held that, notwithstanding the passage of the Act, employers have a legitimate justification in being able to depend on the loyalty of their employees. In *NLRB v. Electrical Workers Local 1229 (Jefferson Standard)*, the Supreme Court upheld the discharge of employees who distributed handbills attacking the quality of their employer's product and its business practices without relating their criticisms to a labor controversy. The Court explicitly acknowledged that "[t]here is no more elemental cause for discharge of an employee than disloyalty." 346 U.S. 464, 472 (1953). The Court also noted that, in providing employees the statutory right to engage in protected activities under the Act, Congress "did not weaken the underlying contractual bonds and loyalties of employer and employee." Id. The Court concluded that, even if the employees who made the disparaging comments about the employer did so in a concerted manner within the scope of Section 7, "the means used by the [employees] in conducting the attack have deprived the attackers of the protection of that section when read in the light and context of the purpose of the Act." Id. at 477–478.

Such fundamental bonds and loyalties integral to the employment relationship underscored by the Court in *Jefferson Standard* cannot be adequately protected if an employer is prohibited from maintaining facially neutral rules against disloyalty and disparagement. An employer has a legitimate interest in conveying to employees its expectation that they will perform their jobs in a manner that will do the employer proud, without sabotaging or otherwise impairing its operations. After all, the success—if not the continued existence—of an employer is often dependent on maintaining its reputation with current or prospective customers and preventing the harm to its commercial image from having its products or services publicly disparaged or misrepresented. At the same time, the employer has an interest in ensuring that employees are invested in building a collaborative work environment in which the employer, for whom they work and on whom they depend for their livelihood, can be most successful in advancing its business relationships.

The Board, too, has recognized employers' legitimate justifications in prohibiting employees from disparaging their employer or its products to the employer's customers and the public. For instance, in *Pathmark Stores,* the Board held that a grocery store could, because of its "legitimate interest in protecting its customer relationship," lawfully prohibit its employees from wearing clothing displaying the disparaging message "Don't Cheat About the Meat!" in protest of the store's use of prepackaged meat products. 342 NLRB 378, 379 (2004). Similarly, in *Noah's New York Bagels,* the Board upheld a ban on T-shirts containing the disparaging slogan, "If its [sic] not Union, its [sic] not Kosher." 324 NLRB 266, 275 (1997). The Respondent's nondisparagement rules are reasonably drafted to warn employees that similar disparaging statements about it or its customers to customers and the public would not be tolerated and could result in disciplinary action, including termination.[15]

In cases preceding *Boeing*, the Board found that certain nondisparagement and disloyalty rules unlawfully interfered with the exercise of NLRA rights. Because the Board analyzed the rules in those cases under the now-overruled "reasonably construe" standard, which did not take into consideration the legitimate justifications associated with the rules, those cases have been superseded. See, e.g., *Chipotle Services, LLC d/b/a Chipotle Mexican Grill*, 364 NLRB No. 72, slip op. at 1 fn. 3, 9 (2016), rev. denied 690 Fed. Appx. 277 (5th Cir. 2017); *Lily Transportation Corp.*, 362 NLRB 406, 406, 413 (2015); *Quicken Loans, Inc.*, 361 NLRB 904, 904 fn. 1 (2014), enfd. 830 F.3d 542 (D.C. Cir. 2016); *First Transit, Inc.*, 360 NLRB 619, 619 fn. 5 (2014); *Hills & Dales General Hospital*, 360 NLRB 611, 611–612 (2014); *Guardsmark, LLC*, 344 NLRB 809, 809 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007). Additionally, although courts of appeal have enforced or denied review of the Board's decisions in some of those cases, they did so because the Board had reasonably applied its pre-*Boeing* standard, under which the Board did not meaningfully consider the employer's legitimate justifications for its rules. See *Chipotle Services, LLC v. NLRB*, 690 Fed.Appx. 277, 278 (5th Cir. 2017) (per curiam) (stating that court review "is simply to decide if employees could reasonably construe" the rules at issue to chill protected speech); *Quicken Loans, Inc. v. NLRB*, 830 F.3d 542, 545 (D.C. Cir. 2016) (stating that a rule is invalid if employees would reasonably construe the language to prohibit Sec. 7 activity); *Guardsmark, LLC v. NLRB*, 475 F.3d 369, 374 (D.C. Cir. 2007) (same). But see *Southern New England Telephone Co. v. NLRB*, 793 F.3d 93, 97 (D.C. Cir. 2015) (denying enforcement of Board order and holding that employer lawfully prohibited employees from wearing

[15] Notably, the Respondent's nondisparagement rules do not restrict employee communications with other employees. Moreover, this is not a case of the Respondent applying one of its nondisparagement rules to employee Sec. 7 activity.

"Inmate/Prisoner" shirts that "may harm the employer's relationship with its customers or its public image"); *Medco Health Solutions of Las Vegas, Inc. v. NLRB*, 701 F.3d 710, 717 (D.C. Cir. 2012) (setting aside Board order in relevant part and remanding issue as to whether employer lawfully prohibited employees from wearing shirts criticizing an employee recognition program in front of an employer client because of "harm to customer relations").

We acknowledge that the Respondent's nondisparagement rules, similar to the nondisparagement rules the Board had found unlawful under its pre-*Boeing* precedent, would be reasonably interpreted to prohibit or interfere with the exercise of NLRA rights. However, under *Boeing*, that alone is insufficient to find the rules unlawful. We must also balance that adverse impact on Section 7 activity with the legitimate justifications associated with the rules. As described above, the legitimate justifications for the Respondent's nondisparagement rules are substantial.[16] Accordingly, we find the Respondent's nondisparagement rules lawful because the potential adverse impact on protected rights is outweighed by the justifications associated with the rules.[17]

D. Rules Limiting Employee Use of Email, Internet, and Social Media

1. Restrictions on employee use of the Respondent's equipment to send personal email during nonworking time

Applying the standard established in *Purple Communications, Inc.*, 361 NLRB 1050 (2014), the judge found that the prohibition on sending personal emails during nonworking time using the Respondent's equipment, as set forth in the Respondent's Internet Etiquette Rule, was an unlawful ban on employee use of the Respondent's email system.

Recently, the Board overruled *Purple Communications* and announced a new standard that applies retroactively to all pending cases. *Caesars Entertainment d/b/a Rio All-Suites Hotel & Casino*, 368 NLRB No. 143, slip op. at 8–9 (2019). In that decision, the Board held, in relevant part, that "an employer does not violate the Act by restricting the nonbusiness use of its IT resources *absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other*." Id., slip op. at 8 (emphasis added). The parties have not had an opportunity to address whether this exception to the rule of *Caesars Entertainment* applies to the facts of this case. Accordingly, having duly considered the matter, we sever and retain this complaint allegation, and we issue below a notice to show cause why the allegation should not be remanded to the administrative law judge for further proceedings consistent with the Board's decision in *Caesars Entertainment*.

2. Restrictions on employee use of the Internet and social media

The judge also found that the Internet Etiquette rule's ban on using the Respondent's equipment for "chatting," "utilizing Facebook and other social networking sites," and "blogging" would unlawfully interfere with employee communications protected by the Act.

The Board has not established that employees have a protected right to use an employer's electronic resources for Internet activity such as chatting, accessing social media, or blogging. *Purple Communications*, supra at 1050, 1063 (declining to find that employees had a Section 7 right to use an employer's non-email electronic communications systems). Accordingly, we reverse the judge's finding that the Respondent unlawfully prohibited employees from using its computers for such activity.

The judge further found that the rule in the handbooks stating that various subjects identified as confidential are "unacceptable" topics for social media was unlawfully overly broad. In reversing, we note that, unlike the Internet Etiquette rule, the Respondent's restrictions on the disclosure of confidential information on social media are not expressly limited to the Respondent's equipment. Nevertheless, employees would reasonably understand, based on the information expressly listed as confidential in the rule (including information about "product development . . . financial records, internal business-related confidential communications and memoranda, client and merchant lists . . . [and] account records, pricing records, business forms, and strategic planning information"), both that the rule is limited to obviously proprietary information and that it would not prohibit disclosure of information about employees' terms and conditions of employment or about contact or other applicable information for union and other protected activities. See *National Indemnity Co,* supra, slip op. at 2.

Accordingly, we reverse the judge and dismiss the allegations that the above Internet and social media rules are unlawful.[18]

[16] The judge stated that the Respondent has not asserted any specific justifications for the rules. But the legitimate justifications associated with the Respondent's nondisparagement rules are self-evident. As the Board recognized in *Boeing*, "the justifications associated with particular rules may be apparent from the rule itself or the Board's experience with particular types of workplace issues." 365 NLRB No. 154, slip op. at 15.

[17] Under *Boeing*, we place the Respondent's nondisparagement rules in Category 1(b). See, e.g., *LA Specialty*, supra, slip op. at 3.

[18] Under *Boeing*, we place the Respondent's Internet and social media rules in Category 1(a). See, e.g., *LA Specialty*, supra, slip op. at 2.

AMENDED CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent has violated Section 8(a)(1) of the Act by maintaining the following rules and provisions in its Employment Agreement, Contract and Receipt, Employee Handbook, and Updated Handbook:

(a) Work rules that interfere with employees' rights to file charges with the Board, to participate in Board processes, or to access the Board's processes, as described in the mandatory arbitration provisions of the Employment Agreement, paragraphs 7, 10, and 12, and the Contract and Receipt.

(b) The Indemnity provisions of the Employment Agreement, paragraphs 6, 7, and 8, and the Contract and Receipt.

(c) The "Foreword" of the Employee Handbook and Updated Handbook defining the handbooks as confidential and prohibiting their disclosure.

(d) Work rules that interfere with employees' rights to communicate with, associate with, or solicit other employees, as described in the Employment Agreement at paragraphs (3)(f), (g), and (i).

3. The Respondent has violated Section 8(a)(1) by discharging employees Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar because they failed and refused to sign employment documents containing unlawful rules.

4. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

AMENDED REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order the Respondent to revise or rescind the work rules found unlawful and advise its employees in writing that it has done so in accordance with *Guardsmark, LLC*, 344 NLRB at 812 fn. 8, as set forth in the attached Order.

Further, having found that the Respondent violated Section 8(a)(1) by discharging employees Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. We also shall order that the Respondent make Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar whole, with interest, for any loss of earnings and other benefits that they may have suffered as a result of the unlawful discharges. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

Additionally, we shall order the Respondent to compensate Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s). *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

The Respondent shall also be required to expunge from its files any and all references to the discharges, and to notify Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Motor City Pawn Brokers Inc., The Aubrey Group Inc., and Aubrey Brothers, LLC, a single employer, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining mandatory arbitration provisions that prohibit employees from filing charges with the National Labor Relations Board or accessing the Board and its processes.

(b) Maintaining indemnity provisions that impose financial or legal risks on employees engaging in protected activities.

(c) Maintaining confidentiality and nondisclosure provisions that define the Employee Handbook and Updated Handbook as confidential and prohibit their disclosure.

(d) Maintaining overly broad work rules that restrict employee communications with, association with, or solicitation of other employees.

(e) Discharging employees because they fail or refuse to sign employment documents that contain unlawful work rules and provisions.

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

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

(a) Rescind the work rules and provisions set forth in paragraph 1(a) through (e) above or revise them to remove any language that prohibits or reasonably may be read to prohibit conduct protected by Section 7 of the Act.

(b) Furnish employees with inserts for the Employment Agreement, Contract and Receipt, Employee Handbook, and Updated Handbook that (1) advise that the unlawful provisions have been rescinded, or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or publish and distribute to employees revised Employment Agreements, Contract and Receipt documents, and Employee Handbooks that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions.

(c) Within 14 days from the date of this Order, offer Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar whole for any loss of earnings and other benefits suffered as a result of the unlawful discharges, in the manner set forth in the amended remedy section of this decision.

(e) Compensate Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(f) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter, notify Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar in writing that this has been done and that their discharges will not be used against them in any way.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at its Detroit, Warren, Ferndale, and Roseville, Michigan facilities copies of the attached notice marked "Appendix."[19] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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, the 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. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 2016.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 7 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.

IT IS FURTHER ORDERED that the portion of complaint paragraphs 10 and 13 relating to the Respondent's prohibition on sending personal emails during nonworking time using the Respondent's equipment, as set forth in the

[19] If the facilities involved in these proceedings are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in these proceedings are closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent's Internet Etiquette Rule, is severed and retained for further consideration.

Further,

NOTICE IS GIVEN that cause be shown, in writing, filed with the Board in Washington, D.C., on or before August 7, 2020 (with affidavit of service on the parties to this proceeding), why the Respondent's rule prohibiting employees from sending personal email on the Respondent's equipment should not be remanded to the administrative law judge for further proceedings consistent with the Board's decision in *Caesars Entertainment*, including reopening the record if necessary. Any briefs or statements in support of the response shall be filed on the same date.

Dated, Washington, D.C. July 24, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 mandatory arbitration provisions that prohibit you from filing charges with the National Labor Relations Board or accessing the Board and its processes.

WE WILL NOT maintain indemnity provisions that impose financial or legal risks on you for engaging in protected activities.

WE WILL NOT maintain confidentiality and nondisclosure provisions that define the Employee Handbook and Updated Handbook as confidential and prohibit you from disclosing them.

WE WILL NOT maintain overly broad work rules that restrict your communications with, association with, or solicitation of other employees.

WE WILL NOT discharge you for failing or refusing to sign employment documents that contain unlawful work rules and provisions.

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

WE WILL rescind or revise the work rules and provisions described above.

WE WILL furnish you with inserts for the Employment Agreement, Contract and Receipt, Employee Handbook, and Updated Handbook that (1) advise that the unlawful provisions have been rescinded, or (2) provide lawfully worded provisions on adhesive backing that will cover the unlawful provisions; or WE WILL publish and distribute revised employment agreements and handbooks that (1) do not contain the unlawful provisions, or (2) provide lawfully worded provisions.

WE WILL, within 14 days from the date of the Board's Order, offer Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest, and WE WILL also make such employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar, and WE WILL , within 3 days

thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

MOTOR CITY PAWN BROKERS INC., THE AUBREY GROUP INC., AND AUBREY BROTHERS LLC, A SINGLE-EMPLOYER

The Board's decision can be found at www.nlrb.gov/case/07-CA-179458 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.

Patricia A. Fedewa, Esq., for the General Counsel.
Jonathan B. Frank, Esq., James M. Reid, IV, Esq. and *Kaitlin A Brown, Esq. (Maddin Hauser Roth & Heller, PC),* for the Respondent.
Daniel C. Tai, Esq. and *Angela L. Walker, Esq. (Blanchard & Walker PLLC),* for Charging Parties.

DECISION

STATEMENT OF THE CASE

ELIZABETH M. TAFE, Administrative Law Judge. This case was tried in Detroit, Michigan, on July 27, 2017, and concluded by teleconference on August 14, 2017, pursuant to a complaint issued by the Regional Director of Region 7 on December 15, 2016, as amended at the hearing, and further amended upon the General Counsel's posthearing motion (the complaint). The complaint alleges that Motor City Pawn Brokers, Inc., The Aubrey Group, Inc., and Aubrey Brothers, LLC, A Single Employer (Motor City Pawn Brokers or the Respondent), violated Section 8(a)(1) of the Act by maintaining certain work rules contained in its employment agreements and personnel handbooks. The complaint further alleges that the Respondent unlawfully discharged four employees, including the two charging parties, because they failed or refused to sign the employment documents containing the allegedly unlawful rules. The Respondent timely answered the complaint, admitting maintenance of the contested rules, but denying all wrongdoing. Among its defenses, the Respondent asserts that the four employees were discharged because their refusal to sign the employment agreements was insubordination and that their actions did not amount to protected, concerted activity. The parties were given a full opportunity to participate in the hearing, to introduce relevant evidence, to call, examine, and cross-examine witnesses, and to file briefs and supplemental briefs.[1] On the entire record, including my observations of the demeanor of the witnesses, and after carefully considering the briefs and supplemental briefs filed by the General Counsel and the Respondent, I make the following findings, conclusions, and recommendations.

FINDINGS OF FACT

I. JURISDICTION

The Respondent's companies, Motor City Pawn Brokers, Inc., The Aubrey Group, Inc., and Aubrey Brothers, LLC, are corporate entities operating pawn brokerage businesses in Detroit and Warren, Michigan, Ferndale, Michigan, and Roseville, Michigan, respectively. The Respondent companies' businesses involve the assessment, appraisal, and receipt of personal property as collateral for personal loans, the sale of property related to satisfaction of loans, and the maintenance of several storefront operations. The Respondent companies admit and I find that they are a single-integrated business enterprise and a single employer under the Act as alleged in the complaint (complaint par. 3–4; GC Exh. 1(t) (Respondent's Answer); Tr. 11–12).[2] In conducting

[1] The legal landscape has shifted somewhat a number of times during the pendency of this case. As explained in detail in this decision, I apply the Board's present precedents.

On December 14, 2017, the Board issued its decision in *Boeing Co.*, 365 NLRB No. 154 (2017), which made retroactive the application of a new legal standard to pending cases that challenge the lawfulness of facially neutral workplace rules. The parties were granted the opportunity to identify any need to supplement the record and to file supplemental briefs. Both the Respondent and the General Counsel opined that the record was complete without reopening the record, and both filed supplemental legal briefs addressing the new legal standard. The Charging Parties did not file briefs. During supplemental briefing, I granted the General Counsel's unopposed motion to withdraw complaint allegations as set forth in his January 2, 2018 motion. The rules that remain in dispute are identified in pars. 8, 9, 10, and 11, of the complaint, as amended, and are described in detail below.

On May 21, 2018, in *Epic Systems Corp. v. Lewis, et al.*, 584 U.S. __, 138 S.Ct. 1612 (2018), the U.S. Supreme Court rejected the Board's position in *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), regarding the lawfulness of an employer's requirements in arbitration agreements that employees forego as a condition of employment their right to file class or collective actions in all forums, arbitral or judicial. Therefore, as discussed below, the complaint allegation related to the Respondent's requirement that all disputes by employees against the Respondent be conducted solely on an individual basis, as set forth in the Class Action Waiver provision in the Respondent's mandatory Employment Agreement (GC Exh. 2 at 5), is dismissed. *Epic Systems Corp.,* Id.

On August 1, 2018, the Board issued a notice inviting briefs in *Rio All-Suites Hotel and Casino*, 28–CA–060841, unpublished. Board order issued Aug. 1, 2018 (2018 WL 3703476), indicating its interest in reconsider the holding in *Purple Communications*, *Inc*., 361 NLRB 1050, 1063 (2014). As discussed below, I apply the current standard.

[2] The Board considers several nominally separate business entities to be a single employer where they comprise an integrated enterprise. *Radio Union v. Broadcast Service of Mobile*, 380 U.S. 255 (1965). The Board focuses on four factors in determining whether entities constitute a single employer: (1) common ownership or financial control; (2) interrelation of operations; (3) common control of labor relations; and (4) common management. *Bolivar-Tees, Inc.*, 349 NRB 720 (2007); see also *Rogan Bros. Sanitation*, 362 NLRB 547 (2015), and cases cited therein. All four

its operations in 2015, the Respondent as a single integrated entity derived gross revenues in excess of $500,000. In 2015, Respondent sold and shipped from its Detroit, Warren, Ferndale, and Roseville facilities, products, goods, and materials valued in excess of $5000 directly to points outside the State of Michigan. Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondent further admits that each of Respondent's companies separately is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Based on the above, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Factual Background

The Respondent operates a pawn brokerage business in the Detroit metropolitan area at four locations. In its four locations, the Respondent employs approximately 100 employees.

The Respondent maintains work rules set forth in various employment documents. In about February 2016, the Respondent introduced a new set of employment documents and required employees to affirm their agreement to the work rules by signing them in order to retain their jobs The General Counsel alleges that multiple provisions of the following four employment documents violate Section 8(a)(1) of the Act:

(1) *Employment Agreement*, a 6-page document (GC Exh. 2; Complaint par. 8);
(2) Contract between the Company and Employee and Employee Handbook Receipt, a 2-page document (GC Exh. 3; Complaint par. 9) (the Contract and Receipt);
(3) *Employee Handbook*, a 45-page document (GC Exh. 4; Complaint par. 10) (the Handbook); and
(4) *Employee Handbook*, a 46-page document (GC Exh. 15; Complaint par. 11) (the Updated Handbook).

The Respondent is a family-owned business established in 1990 that has enjoyed significant expansion from its original, single pawn shop location to at least four current locations with about 100 employees. Since at least 2011, Mark Aubrey has shared ownership of the business with his father and participates in managing the stores. Aubrey began working in this father's pawn shop when he was 17 years old. Although each location has a different store manager and one or two assistant managers, there is one district manager, Chris Farraj, who works closely with Aubrey to insure policies are enforced lawfully and consistently at each store. Among other employees, pawn brokers work at each store, and report to the store managers. Pawn brokers provide customer service, authenticate and appraise collateral property provided by customers, and establish loans against the collateral.

Before February 2016, the Respondent maintained a personnel handbook and asked employees to sign a non-competition agreement. Aubrey explained that several years before 2016, one of the Respondent's pawn brokers quit and, shortly thereafter, began working in a competitor pawn shop nearby. Aubrey believes that the former employee shared proprietary and confidential information about the Respondent's operations with the competitor, although the record does not establish what information may have been divulged. In any case, in early 2016, Aubrey sought legal advice and decided to update his employment documents, apparently in large part to attempt to prevent a similar situation where a pawn broker might leave his employ and share what he considered proprietary business information or practices with competitors. After legal counsel reviewed and revised Respondent's employee handbook and employment agreement, Aubrey decided to require all employees to sign new employment agreements in order to protect its investment in training employees and protect itself from disclosure of information about its business operations and strategies.

In February 2016, the Respondent distributed new employment documents to employees, which included (1) the Employment Agreement, (2) the Contract and Receipt, and (3) the Employee Handbook. Aubrey expected all of his employees to sign the new employee documents. Pawn brokers Gianluca Bartolucci, Ringo Salzar, Patricia Tilmon, and Terrence Walker did not sign the employment documents. The Respondent interpreted their failure and refusal to sign the employment documents as refusing to agree to abide by the Respondent's updated, mandatory work rules and unilaterally established contractual obligations, which the Respondent concluded was insubordination. All four employees were terminated. Although the record indicates that each of the employees failed to sign the employment documents separately and in somewhat different circumstances, the Respondent admits that the reason each of their employments was terminated was their failure to sign the documents, which the Respondent required them to do as a condition of continued employment. (R. Br. at 7–8; GC Exh. 8, 9.)

The General Counsel alleges that the contested work rules in the employment documents, maintained by the Respondent and

factors need not be present. *Bolivar-Tees*, above; *Rogan Brothers*, above. Here, the Respondent has admitted that the Respondent companies are a single employer but has not admitted to all the underlying facts as alleged in the complaint to support this finding. I find there is sufficient evidence in the record to support this admission. This evidence includes: Mark Aubrey owns, or jointly owns with his father, all three entities, which evolved over time from one store originally owned by Aubrey's father; Aubrey works at, physically visits at least weekly, and generally oversees operations at each site, occasionally involving himself in day-to-day operations, although Aubrey tries to delegate operations to the managers; the entities share one district manager, Chris Farraj, who oversees the performance of managers and employees at each location; the entities have similar supervisory structures at each store, so that pawn brokers report to their store managers and assistant store managers, but occasionally deal directly with Farraj and Aubrey; Aubrey describes that all the stores are expected to adhere to the same ethical philosophy and business model, which he considers proprietary; the employment documents at issue in this case are effective at all three entities and all four locations, and, to some extent, the development of the employment documents reflected management's desire to effectuate uniform employment conditions in all three entities, in anticipation of further growth; the Respondent companies have responded to and proceeded in this case by filing answers together and are represented by the same legal counsel; and, other than the entities' corporate names and the fact that there are separate store locations, there is an absence of evidence on this record that the entities function independently.

in effect since about February 2016, as well as the further updated 2017 handbook, are "facially unlawful" because they consist of overly broad rules that reasonably tend to chill employees in the exercise of their Section 7 rights, in that the impacts of the rules on NLRA rights are not outweighed by the Respondent's legitimate justifications for the rules, as articulated. See *Boeing*, below. Further, the General Counsel argues that, because the employment documents contain unlawful rules, the Respondent's termination of the four employees for failing and refusing to sign the employment documents was unlawful.

The Respondent argues, however, that the rules are not shown to be unlawful because (1) it is not reasonable to conclude that they interfere with Section 7 rights; (2) the Respondent's justifications outweigh any potential effect on Section 7 rights; or (3) the rules have not been applied to interfere with Section 7 rights. The Respondent argues that, even if some rules are found unlawful, there can be no liability for the four terminations because (1) employees did not explain contemporaneously why they refused to sign the employment documents; (2) to the extent they explained their reasons for not signing the documents, these reasons were unrelated to the rules found unlawful; (3) three employees resigned rather than sign the documents; and/or (4) the employees did not engage in protected concerted activity.

Analysis

A. Legal Framework of Allegations of Unlawfully Maintained Rules

An employer violates Section 8(a)(1) of the Act when it maintains workplace rules or policies that would reasonably tend to chill employees in the exercise of their Section 7 rights. See *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). This applies to workplace rules found in employee personnel handbooks and employment agreements like those contested in this case. Specifically, the Board considers restrictions found in mandatory employment agreements, including arbitration agreements, to be workplace rules and evaluates them under their workplace rule doctrines. The Board has long held that the mere maintenance of unlawful rules may violate the Act without regard for whether the employer ever applied the rule for unlawful purposes. *Rio All-Suites Hotel & Casino*, 362 NLRB 1690, 1698 (2015), disfavored in part on other grounds, *Boeing*, below, slip op. at 19–20, fn. 89. The analytical framework for assessing whether the maintenance of workplace rules violates the Act is set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), as reformed and overruled in pertinent part by the Board in *Boeing Co.*, 365 NLRB No. 154 (2017).[3] Under *Boeing*, the Board confirmed the general framework of *Lutheran Heritage* and left unchanged certain elements of the legal standards set forth, but expressly overruled the established test for determining when a work rule that does not explicitly restrict rights protected by the Act (facially neutral rule) will be found to violate Section 8(a)(1). Thus, when evaluating whether a workplace rule is unlawful, the Board's inquiry still begins with determining whether "the rule *explicitly* restricts activities protected by Section 7," in which case the Board will find the rule unlawful. *Lutheran Heritage* at 646 (emphasis in the original); see *Boeing*, slip op. at 3–4. Similarly, the Board still finds to be unlawful facially neutral rules that were "promulgated in response to union activity" or "applied to restrict the exercise of Section 7 rights" *Lutheran Heritage* at 647; *Boeing*, slip op. at 7.

In *Boeing*, the Board reevaluated its approach to determining when an employer's mere maintenance of facially neutral rules will be found to violate the Act. The Board overruled its prior application of the related holding in *Lutheran Heritage* where facially neutral rules were found unlawful when employees "would reasonably construe" the rules to interfere with, coerce or restrain them in the exercise of Section 7 rights. In its place, the Board established a "balancing test," whereby, when evaluating the lawfulness of facially neutral workplace rules the Board will consider the employer's justification for the contested rule and weigh that justification against the potential impact of the rule, as reasonably interpreted, on employees' Section 7 rights. *Boeing,* slip op at 3, 15. Thus, when evaluating a facially neutral rule that, when reasonably interpreted, would potentially interfere with NLRA rights, the Board evaluates two things: (1) the nature and extent of the potential impact of the rule on Section 7 rights, and (2) legitimate justifications associated with the rule. Id. Focusing on a reasonable interpretation of the rule from the perspective of employees, the Board endeavors to strike the proper balance between the invasion of employee rights protected by the Act and the asserted business justifications for the rules. Id., slip op. at 15.

The Board also described that, as a result of applying this analysis, the Board would "delineate" three categories of workplace rules through the adjudicative process. Category 1 will include rules designated as lawful to maintain either because (i) when reasonably interpreted, the rule does not prohibit or interfere with NLRA rights, or (ii) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. Category 2 will include rules that warrant individualized scrutiny regarding whether the rule interferes with NLRA rights and if so, whether the justifications offered outweigh the rule's impact on protected conduct. Category 3 will include rules that the Board designates as unlawful because they would prohibit or limit protected conduct and the adverse impact on protected rights is not outweighed by justifications for the rule. *Boeing*, above, slip op. at 3–4, 15. This categorization system is meant to project clarity in rulings and predictable results, while still considering real-world complexities and recognizing unique characteristics of different work settings and industries. Id, slip op. at 10–11, 15–16.

In explaining its reasons for developing the *Boeing* balancing test for considering the lawfulness of facially neutral rules, the majority in *Boeing* expressed criticism for the Board's prior evaluation of "overly broad" and "ambiguous" rules. Id, slip op. at 2, 9–10, fn. 43, 13, fn. 68. These concepts still play a role in the analysis, however, as overly broad rules may expressly interfere

[3] *Boeing* regularly refers to having overruled *Lutheran Heritage*; however, at fn. 4, the Board defines "Lutheran Heritage" to mean prong 1 of the *Lutheran Heritage* test, i.e., the "reasonably construe" standard applied to facially neutral rules. Moreover, the reasoning and substantive discussion in the decision reveals that the rest of the *Lutheran Heritage* framework remains intact.

with Section 7 rights, and rules may be deemed facially neutral because their terms are either overly broad or ambiguous. Whether a workplace rule is overly broad or ambiguous may affect the analysis of both aspects of the balancing test, i.e., the evaluation of the nature and extent of the potential impact of the rule on NLRA rights, as reasonably understood by employees, and the employer's legitimate justifications associated with the rule. Therefore, ambiguity or over-breadth of terms informs, but does not alone determine, the lawfulness of work rules. Id.

In *Purple Communications*, *Inc.*, 361 NLRB 1050, 1063 (2014), the Board established a test to address the particularized circumstance of restrictions imposed on the use of employers' email systems for employee–to–employee communications. Under the test, the Board presumes that employees who have the rightful access to their employer's email systems in the course of their work have a right to use the email system for statutorily protected communications during nonworking time. An employer may rebut the presumption by showing that special circumstances necessary to maintain production and discipline justify the restrictions on employees' rights. Because limitations should be no more restrictive than is necessary to protect employer's interests, the Board emphasized in *Purple Communications* that it anticipated that special circumstances will rarely justify a total ban on all nonwork email use by employees. Id. The Board's reasoning in *Purple Communications* was based on a consideration of Board and Supreme Court precedents addressing the accommodation of employer property interests and employees' Section 7 rights, and in particular, *Republic Aviation*, 324 U.S. 793 (1945). The Board did not rely on the *Lutheran Heritage* "reasonably construe" standard in *Purple Communications*, and, therefore, the Board's determination that the balancing of the important interests raised by the limitation of employees' use of employer's email systems for employee–to–employee communication should be resolved with the legal presumption established in *Purple Communications* is not directly affected by its establishment of the *Boeing* balancing test in considering the lawfulness of facially neutral rules.[4]

The Supreme Court considered and reversed the Board's holding in *Murphy Oil USA, Inc.*, 361 NLRB 774 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), that found that class action waiver provisions in arbitration agreements that are required as a condition of employment violate Section 8(a)(1) of the Act, when they preclude the collective pursuit of employment claims in all forums, arbitral or judicial. *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S.Ct. 1612, 1619–1621, 1632 (2018), The Supreme Court held in *Epic Systems* that class action waiver provisions do not violate the Act and that the employment agreements containing them must be enforced as written pursuant to the Federal Arbitration Act. Id.

B. Do the Contested Rules Violate Section 8(a)(1)?

For the reasons discussed below, I find that the Respondent's maintenance of many of the contested workplace rules found in the Respondent's Employment Documents violate Section 8(a)(1).[5] I further find that the Respondent's maintenance of other work rules do not violate Section 8(a)(1) based on the standards and findings in *Boeing*, and these allegations will be dismissed.

1. Requirement that employees arbitrate disputes against Respondent and related limitations and definitions (Complaint pars 8 and 9)

The Employment Agreement (GC Exh. 2) states the following:

> 7. *Arbitration*. Except as permitted in Paragraph 6,[6] any dispute or controversy arising under, out of, in connection with, or in relation to this Agreement, any amendment hereof, the breach hereof, and/or any other claims that Employee may assert against Employer, including, without limitation, any claim for wages or fringe benefits, a claim of a breach of express or implied contract, or a claim alleging a violation of the Michigan Civil Rights Act, the Michigan Persons with Disabilities Civil Rights Act, Americans With Disabilities Act, Title VII of the Federal Civil Rights Act, Age Discrimination in Employment Act, the Family Medical Leave Act, the National Labor Relations Act**,** Whistle Blowers Protection Act, the Fair Labor Standards Act, Genetic Information Nondiscrimination Act, and/or Bullard-Plawecki Employee Right to Know Act shall be determined and settled by arbitration in the City of Southfield, in accordance with the Employment Arbitration Rules of the American Arbitration Association through a single arbitrator. [Emphasis added.] If the parties cannot agree to a single arbitrator, the parties shall each select an arbitrator that will work together to select the single arbitrator. The costs for arbitration• shall be split equally between the parties notwithstanding anything to the contrary in the employment rules of the American Arbitration Association. The arbitrator shall not have the power to change, modify, or otherwise alter the "At Will" nature of such employment relationship and the arbitrator's written determination shall be based solely upon the "At Will" nature of such employment relationship. Any award rendered therein shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. . . . [emphasis added]
>
> 10. *Class Action Waiver*. Any claim by Employee, including, but not limited to, any breach of this Agreement, amounts due

[4] *Boeing* did not disturb this precedent. See *UPMC*, 366 NLRB No. 142, slip op. at 1 fn. 5 (2018) ("[T]he Board in *Boeing* did not disturb longstanding precedent governing employer restrictions on solicitation and distribution, which already strikes a balance between employee rights and employer interests."); and *Rio All-Suites Hotel and Casino*, 28–CA–060841, unpublished. Board order issued Aug. 1, 2018 (2018 WL 3703476) (inviting briefs to address whether the Board should adhere to, modify, or overrule *Purple Communications*).

[5] Pars. 8 to 11 of the complaint contain the allegations related to the contested rules, organized by document. Pars. 8 to 10 of the complaint do not provide numbers itemizing each allegation. I have organized the allegations by issue below and I will refer to them by their section/subsection numbers as set forth in the employment documents, when necessary for clarity. I have also included language from the employment documents not alleged as unlawful when I have determined it necessary or helpful to understand the context of the disputed provisions.

[6] As discussed in more detail below, par. 6 of the employment agreement, inter alia, does not limit the Respondent's remedial relief to arbitrations but permits the Respondent to seek relief from alleged breaches of the agreement in court "without limitation."

> Employee, or for any other cause shall be brought in the Employee's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. . . .
>
> 12. *Claim Limitation*. Except for claims under the Fair Labor Standards Act, any claim arising out of a dispute that in any way relates to Employee's employment or this Agreement, shall not be brought by Employee unless the same is commenced within One Hundred Eighty (180) days following the incident giving rise to such dispute. If Employee fails to commence such a proceeding within the One Hundred Eighty (180) day period, any rights Employee may have to prosecute such a claim shall be extinguished and terminated. . . .
>
> 15. *Governing Law***.** This Agreement has been executed and delivered in the State of Michigan, and its interpretation, validity, and performance shall be construed and enforced in accordance with laws of such State, without regard to such State's conflict of law principles.

The Contract and Receipt (GC Exh. 3) states the following:

> . . . the exclusive method for resolving the dispute arising out of employment or in any way related to any alleged wrongful acts on the part of Company, its affiliates, directors, shareholders, agents, or employees ("Company Parties") relating to employment, including but not limited to, any claim for wages or fringe benefits, claims of breach of contract, wrongful discharge, tort claims, invasion of privacy, slander, defamation, and/or any statutory claim including but not limited to discrimination under Title VII of the Federal Civil Rights Act, Age Discrimination in Employment Act, Americans With Disabilities Act or Family Medical Leave Act, the Michigan Elliot-Larson Civil Rights Act, Persons With Disabilities Act, Whistle Blowers Protection Act and Bullard-Plawecki Employee Right to Know Act shall be through the procedures and policies of the American Arbitration Association ("AAA") utilizing a single arbitrator. . . I hereby waive my right to adjudicate any claim against the Company Parties before any federal or state court or agency. . . .
>
> I agree that any arbitration (or any judicial or administrative proceeding that is not allowed to be arbitrated by law) arising out of a dispute that directly or indirectly relates to the Company Parties shall not be brought unless the same is commenced within One Hundred and Eighty (180) days following the incident giving rise to such dispute. My failure to commence such proceeding within the One Hundred Eighty (180) day period shall result in the extinguishment of any rights I may have to prosecute such claims or actions and shall constitute an irrevocable waiver of any rights I have to prosecute such claims or actions. . . .

Regarding the complaint allegations that the class action waiver provisions in the Employment Agreement (GC Exh. 2 at 5) and in the Contract and Receipt (GC Exh. 3) violate the Act pursuant to *Murphy Oil*, above or *D. R. Horton*, 357 NLRB 2277, 2293 (2012), enf denied in relevant part 737 F.3d 344 (5th Cir. 2013), the parties raise no arguments or factual matters to distinguish these provisions from those considered in *Murphy Oil*. In light of the Supreme Court's ruling in *Epic Systems*, above, and in the absence of any arguments that would distinguish this case from the Supreme Court's ruling, I recommend that these allegations be dismissed.

However, the Employment Agreement's explicit requirement that the employees arbitrate disputes that arise under the National Labor Relations Act, and related procedural limitations on such claims, violate the Act. The Board has consistently held that work rules, including those in mandatory employment agreements, violate Section 8(a)(1) when they prevent or interfere with employees' rights to file charges, to participate in Board proceedings, or to access the Board's processes. This is a core Section 7 right, one that must be enforced in order to uphold the integrity of the Board's ability to enforce the Act. See Section 8(a)(4) of the Act. See also *Ralph's Grocery Co.,* 363 NLRB No. 128, slip op. at 3 (2016), citing *Babcock & Wilcox Construction Co.,* 361 NLRB 1127, 1128–1129 (2014) (rules requiring employees to arbitrate NLRA claims impedes their access to the Board). Here, the Respondent includes all claims, without limitation, and *also* explicitly includes claims under the National Labor Relations Act, as claims that must be brought in arbitration pursuant to the Employment Agreement. Therefore, the Employment Agreement explicitly violates the Act, on its face. No balancing of the Respondent's justifications is required when the Respondent's rule explicitly violates the Act. See *Boeing*, above, and *Lutheran Heritage*, above.

In the Respondent's Contract and Receipt, the Respondent did not enumerate claims under the NLRA as examples of those that it would require to be arbitrated. Instead, the Respondent listed examples of types of claims that are subject to mandatory arbitration, such as other civil rights and antidiscrimination statutes, emphasizing that the exclusive method for all employee claims against the employer is mandatory arbitration. It further requires employees to expressly waive their right to adjudicate any claims against the employer before any Federal or State court or agency. Prior to the *Boeing* ruling, the Board has repeatedly found that requiring arbitration of a broadly inclusive description of all employment claims would interfere with the core Section 7 rights. *See U-Haul Co. of California*, 347 NLRB 375, 377–378 (2006), enfd. 255 FedAppx. 527 (D.C. Cir. 2007) (finding pursuant to the *Lutheran Heritage* reasonably construe standard in *Lutheran Heritage* that a rule that did not expressly affect NLRA claims interfered with Section 7 right to access to the Board processes.)[7] I find that the Board's reasoning in *U-Haul*, and its progeny, supports my finding that such a rule *potentially* interferes with core Section 7 rights. The Respondent has failed to assert or show any justification for the inclusion of NLRA claims in the arbitration agreement. Although the expected benefits of alternative dispute resolution, like arbitration, are well known, such as cost savings, predictability, or convenience, here, the Respondent has failed to

[7] But see *E.A. Renfroe & Co., Inc.*, 10–CA–171072, unpublished Board order issued Oct. 4, 2018 (2018 WL 4851368), issuing notice to show cause why Sec. 8(a)(1) finding in which the administrative law judge relied on *U-Haul*, above, should not be remanded to the judge in light of *Boeing*, above.

show that any asserted benefits of arbitration outweigh the potential impact on core Section 7 rights. Therefore, pursuant to the *Boeing* balancing test, I find the Contract and Receipt also violates Section 8(a)(1).

I find that the choice of law provision of the Employment Agreement, however, does not violate the Act. It is common practice for drafters of agreements to include a choice of law/conflict of laws provision, which may serve various purposes, but at the least, it may prevent a need for preliminary litigation regarding which laws apply. That the parties had agreed that the contract should be interpreted under the law of Michigan would not be controlling on the Board. I am unaware of any precedent establishing that a choice of law/conflicts of law provision in an employment contract would reasonably chill Section 7 rights. Nor has the General Counsel established that the choice of law/conflicts of law provision, when reasonably read by employees, would potentially interfere with Section 7 rights pursuant to the *Boeing* balancing test. This is the type of rule, as suggested in *Boeing*, that although found lawful on its face, might be found unlawful, if it were to be unlawfully applied. Therefore, I find that the General Counsel has not shown that this provision violates Section 8(a)(1), and I recommend dismissing the allegation.

I find that the Respondent's Employment Agreement and the Contract and Receipt violate Section 8(a)(1) to the extent they expressly and impliedly interfere with employees' right to file charges, to participate in Board proceedings, or to access the Board's processes. I recommend that the Board determine that these types of rules are Category 3 rules—rules that generally will be found to be unlawful. I further find that the choice of law provision has not been shown to violate Section 8(a)(1), and I recommend that the Board find these types of provisions be found to be Category 1 rules—rules that generally will be found to be lawful.

2. Requirement that employees agree to indemnify Respondent (Complaint pars 8 and 9)

In addition to the provisions described above, the Employment Agreement (GC Exh. 2) states the following:

> 6. *Remedies*. Employee acknowledges that any breach of this Agreement could cause irreparable damage to Employer including, without limitation, loss of Employees, loss of Customers, future growth,. profitability, strategic planning, reputation, and goodwill, and that, in the event of such breach, Employer' shall have the right, without being required to post bond or other 'security, to obtain equitable relief, including, without limitation; ex-parte injunctive relief and /or specific performance, to prevent the violation of Employee's obligations hereunder. It is expressly understood and agreed that nothing herein contained shall be construed as prohibiting Employer from electing to pursue any other remedies available for such breach or threatened breach or for any other default under this Agreement; including without limitation, the recovery of damages. In addition, Employer may join Employee as a party to a lawsuit in order to enforce its rights under any provision of this Agreement. In any action successfully brought by Employer against Employee to enforce this Agreement or any other agreement between the parties, Employer shall also be entitled to recover from Employee, the Employer's actual attorneys' fees and costs relating thereto except as prohibited by law. Notwithstanding anything to the contrary, this Agreement '(except for pars. 1 and 2) shall remain, enforceable and shall survive the termination of the employment relationship and shall not be deemed merged or extinguished by any act absent the express written consent of the parties.
>
> 7. *Arbitration*. (see above, describing requirement that employees arbitrate disputes against employer.)
>
> 8. *Indemnity*. Employee shall unconditionally and absolutely indemnify, defend and save harmless Employer from and against any and all claims, causes of action, demands, damages, liabilities, costs, actual attorneys' fees, losses, and expenses of every nature and kind whatsoever that in any way relate to Employee's breach of this Agreement and/or the addenda/offer letter attached hereto, intentional acts, and/or negligence (the "Liabilities"). Employee agrees to advance to Employer all costs, actual attorneys' fees, actual experts' fees, and similarly related expenses arising from the Liabilities immediately upon request so that the Employer is not required to pay such expenses out of its own funds. Employer shall have the right to select the attorneys of its choice to defend the Employer, at Employee's sole cost and expense, and to make all decisions and in every respect control the manner in which the Employer is defended.

In addition to the provisions described above, the Contract and Receipt (GC Exh. 3) states the following:

> The Company may file a suit in equity to enforce the terms and provisions hereof by obtaining the issuance of an injunction or ex -parte restraining order to enjoin and prohibit me from such breach or threatened breach hereof. In any action for equitable relief, the Company shall not be obligated to post a bond or any security as a condition to obtain the issuance of a restraining order, injunction or other equitable relief. I acknowledge that all of the provisions hereof are reasonable, and waive any defense on such basis. . . .
>
> . . . In any proceeding, the parties shall have the right to representation by counsel. The parties may mutually agree that the arbitration therein be stenographically recorded, provided that each party shall equally share the cost of creating and printing the record. Notwithstanding anything to the contrary in the AAA Rules of Employment or otherwise, the cost for arbitration shall initially be split equally between me and the Company, provided however that the prevailing party in any dispute between the parties will be entitled to its costs and expenses including attorney fees, court or arbitration costs and all other costs associated with such action. IF THE ARBITRATION PROVISION IS HELD TO BE INVALID, VOID, OR UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, THEN I KNOWINGLY AND WILLINGLY WAIVE MY RIGHT TO TRIAL BY JURY ON ANY MATTER DIRECTLYOR INDIRECTLY RELATING TO THE EMPLOYMENT RELATIONSHIP. (emphasis in original).

The General Counsel asserts that the indemnity provisions of the Employment Agreement and Contract and Receipt violate the Act because, in addition to impliedly requiring that NLRA

claims be submitted to arbitration, these provisions impose a significant financial burden to pursuing claims, and arguably present a threat of significant financial risk for engaging in protected, concerted activity. The Respondent argues that the indemnity requirements only apply if an employee breaches the agreement, suggesting that these rules would not chill the exercise of Section 7 rights. The Respondent explains that it has an interest in protecting itself from potential liability from third parties, related to breaches of the Employment Agreement.

These provisions are facially neutral rules, and I will apply the *Boeing* balancing test. I agree with the General Counsel that the extensive and broad indemnity provision potentially interferes with employees' Section 7 rights by placing a heavy financial burden on the pursuit of claims. The provisions are overbroad and vague, not clearly identifying what types of claims the provisions apply to. These provisions make plain that, while drafting these work rules to require employees to arbitrate all claims against the Respondent, the Respondent explicitly retained the right to seek redress in court if the Respondent chose to bring claims against employees—in other words, these work rules do not represent a mutual "agreement" to arbitrate. The Respondent through these work rules also explicitly shifts the potential cost of enforcing some of these rules against employees onto the employee. From the perspective of an employee, these provisions would chill a wide range of activities, including some protected concerted activities, due to the significant financial burden and risk of potentially violating the agreement. The Respondent asserts that the indemnity provisions are meant to "warn employees that they will be held liable for their negligent or intentional acts against the company . . ." (R. Sup. Br. at 12.) That statement affirms my finding that the over breadth of these indemnity provisions results in a clear tendency to chill employees in the exercise of Section 7 rights, as organizing a union or taking protected actions against an employer, such as a strike, might be understood as falling within an "intentional act" against the company. Although the Respondent may have an interest in shifting as much of the costs and risks of doing business to its employees as possible, it has not articulated or established on this record a sufficient justification to outweigh the substantial potential interference with Section 7 activity, including the bringing of claims or, as will be discussed below, the association with other employees for organizing activities or for mutual aid or protection. See *Boeing*, above.

Applying the *Boeing* balancing test, I find that the indemnity provisions of the Employment Agreement and the Contract and Receipt violate Section 8(a)(1). I recommend that the Board determine that these types of rules are Category 3 rules—rules that generally will be found to be unlawful.

3. Prohibitions and restrictions on employee disclosure of information identified by employer as confidential (Complaint pars 8, 10, and 11)

The Employment Agreement (GC Exh. 2) states the following:

> 3. *Confidentiality, Non-Competition and Non-Solicitation.*
>
> a. *Confidentiality.* The relationship with Employer has been and/or will be one oftrust and confidence and there has been and/or will be available to Employee certain written, oral, visual, and/or electronic information relating to trade secrets and proprietary interests of Employer, Related Entities (defined below), and their clients, employees, independent contractors, vendors, subcontractors, business prospects, and /or referral sources which include, but may not be limited to, records and information dealing with projects, business opportunities, intellectual property, data storage and custom design solutions, customer lists, customer information, customer matters; customer identities, business strategies, business methods, security methods, business procedures, business practices, services, concepts, ideas (whether tangible or intangible), formulae, applications, inventions, software, calculations, analyses, projects, plans, profit margins, prices, processes, operating. procedures, designs, systems, source code, research, development activities, technical or scientific information, know –how, products, financial information, access codes, and all information contained in or on the computer hard drives and/or servers of Employer, and other items relative thereto, whether or not copyrighted, patented or patentable (herein collectively and individually referred to as the "Confidential Information"). The Confidential Information, regardless of form, is, and shall always remain, the sole and exclusive property of Employer and /or Related Entities. Employee shall not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the Confidential Information.
>
> b. *Non-Disclosure of Employer's Confidential Information.* Employee shall not,whether during the term of this Agreement, or thereafter, regardless of the time, manner, reason or lack of same, directly or indirectly, disclose to any person, firm or corporation, or permit to be used, any Confidential Information, or divulge any other information concerning the business of Employer that it has or acquires 'during the period of Employee's engagement with Employer without the express written authorization from the Employer.
>
> c. *Non-Disclosure of Other Information*. Employee shall not, regardless of the time, manner, reason or lack of same, directly or indirectly, divulge or disclose to Employer, any of Employer's members, managers, employees, independent contractors or agents at any time, or otherwise disclose, divulge, or use within the scope of Employee's employment with Employer any confidential information belonging to or related in any way to any of Employee's previous employers or said employers' businesses, regardless of whether or not such information is covered by an agreement containing confidentiality or similar provisions.

The Employee Handbook (GC Exh. 4) and the Updated Handbook (GC Exh. 15) state the following:

> 1. "FOREWORD"
>
> . . . No part of this handbook may be reproduced or transmitted in any form or by any means, electronic or otherwise, including photocopying or recording, for any business/commercial venture without the express written permission of Motor City Pawn Brokers. The information contained in this handbook is strictly limited to use by the Motor City Pawn Brokers' employees. . . . Making an unauthorized disclosure of this handbook is

> a serious breach of the Motor City Pawn Brokers' standards of conduct and ethics and shall expose the disclosing party to disciplinary action and other liabilities as permitted under law. This handbook and the information in it should be treated as confidential. . . .
>
> 2. NON–DISCLOSURE
> The protection of confidential business information and trade secrets is vital to the interests and the success of Motor City Pawn Brokers. All employees are required to sign a non-disclosure agreement as a condition of employment. Employees who improperly use or disclose trade secrets or confidential business information will be subject to disciplinary action, up to and including termination of employment and legal actions, even if they do not actually benefit from the disclosed information.
>
> 3. "PROHIBITED ACTIVITIES (STANDARDS OF CONDUCT)" Motor City Pawn Brokers wishes to create a work environment that promotes job satisfaction, respect, responsibility, and value for all of our employees, clients, customers and other stakeholders. Every employee at Motor City Pawn Brokers has a shared responsibility toward improving the quality of the work environment. By agreeing to work at Motor City Pawn Brokers you have agreed to follow the Company's rules and to refrain from conduct which is detrimental to our goals. The prohibited conduct that is listed below is not an inclusive list, as the Company cannot, with foresight, determine what is inappropriate conduct under every circumstance. Moreover, the Company does not limit its right to discipline or discharge employees to the prohibited conduct listed below. Remember that, while we value our employees, the Company maintains the right to terminate its employees at any time and for any reason, with or without notice. . . .
>
> The following list contains examples of conduct considered improper which may result in discipline, up to and including termination. Again, note this is not a complete list and intended to be examples of misconduct, and that other behaviors may also result in discipline. . . .
>
> Disclosure of Company trade secrets or any other confidential or proprietary information of the Company, its customers or fellow employees. . . .

The Updated Handbook (GC Exh. 15 at 27) also contains the following rule:

> *Workplace Expectations*
> Confidential information, including without limitation, information about marketing plans, costs, earnings, documents, notes, files, lists and medical files, records, oral information, computer files or similar materials (except in the ordinary course of performing duties on behalf of Company) may not be removed from Company's premises without permission. Employees must not disclose confidential information, confidential financial data, or other non-public proprietary information of the Company, nor may employees share confidential information regarding business partners, vendors, or customers.

It is well settled that employees have a statutorily protected right to communicate about their wages and terms and conditions of employment with third parties, including union representatives, government officials, other businesses, and the public. *Trinity Protection Services*, 357 NLRB 1382 (2011). This includes divulging some business-related information, when it is related to wages or terms and conditions of employment or otherwise related to a labor dispute. Id. Employees also have a protected right to discuss their terms and conditions of employment with other employees. The Respondent's over inclusive confidentiality rules prohibiting disclosure of information it deems confidential potentially interferes with these protected rights. Although the Respondent has offered anecdotal evidence that a former employee once divulged proprietary information to a competitor as a reason for its need for these rules, this justification, even if established by objective evidence, does not establish why the Respondent requires the overly broad rules it has drafted. These rules do not sufficiently define or distinguish among the terms "proprietary," "confidential," or so called "trade secrets," so that the rules reasonably would chill employees in their Section 7 rights. I find, pursuant to the Boeing balancing test, that the Respondent's justification for its confidentiality rules do not outweigh the potential interference on Section 7 rights.

The Respondent also argues that the Employment Agreement (and presumably the Contract and Receipt) should not be interpreted to affect Section 7 rights, because it refers to the Employee Handbook, which contains a clause in a section dealing with "confidentiality expectations" stating, "[t]his Confidentiality Policy does not apply, and will not be enforced, in any manner that would restrict, infringe upon or otherwise limit employees' rights under the National Labor Relations Act, including, without limitation the right to engage in concerted activities for the purpose of mutual aid and protection. The Company will enforce this Policy in accordance with applicable international, national, country (sic.), federal, state and local laws." GC Exh. 10 at 27–28. The Respondent urges that this savings clause makes its confidentiality and nondisclosure rules lawful.[8] This argument is unpersuasive. First, this savings clause is found two-thirds of the way into a 45-page document and is not set forth in a manner that would make it readily identifiable to a reader. Notably, it is not found in proximity to the list of prohibited conduct, including nondisclosure of confidential information that the complaint alleges to be unlawful, which is 15 pages away (GC Exh. 10 at 10–12, 27–28). Nor is the savings clause contained in the Employment Agreement or Contract and Receipt that the Respondent required employees to sign. In this context, employees would not reasonably understand that the savings statement applied to other references to confidentiality, nondisclosure, or other rules in the employment documents. Moreover, on its face, the savings clause only refers to the Confidentiality Policy listed at GC Exh. 10 at 27, which is not one of the confidentiality provisions alleged as unlawful in the complaint.

[8] Neither I nor the Board is bound by guidance material published by the General Counsel, which the Respondent relies on here.

Based on the above, I find that the Respondent's maintenance of the overly broad confidentiality rules alleged as unlawful in the complaint violate Section 8(a)(1). I recommend that the Board determine that these types of rules are Category 2 rules—rules that generally will require contextual scrutiny to determine their lawfulness.

4. Respondent's prohibitions and limitations affecting communication, solicitation, and association with other employees (Complaint pars. 8, 10, 11)

In addition to information discussed above, the Employment Agreement (GC Exh. 2 at 2–3) states the following:

> 3. *Confidentiality, Non-Competition and Non-Solicitation.*
>
> . . .
>
> f. *Prohibited Association.* For purposes of this Agreement, "Prohibited Association" means any and all situations whereby Employee is acting directly or indirectly, for Employee's own benefit or for the benefit of any other person, firm, or business organization, or as a partner, stockholder, officer, director, proprietor, employee, consultant, representative, independent contractor, agent of a third party, member and/or manager including, without limitation, through any entity or person.
>
> g. *Solicit.* For purposes of this Agreement, "Solicit" shall mean any contact, communication, dialogue, or undertaking whether the same is initiated by Employee or by any former or current employee, independent contractor, customer, or referral source of Employer and/or Related Entities (defined below), whether for business, employment, retention, social or other purposes. . . .
>
> i. *Employees.* For purposes of this Agreement, the term "Employees" shall mean any individuals employed or retained as an independent contractor by Employer and/or Related Entities (defined below) at any time during the Period. During the Period, Employee shall not employ or Solicit any Employees, Solicit for purposes of employment or association, and/or induce any Employees to terminate such employment or association, or otherwise engage any Employees or permit such engagement to the extent Employee has the authority to prevent same.
>
> . . .

In addition to the provisions discussed above, the Employee Handbook (GC Exh. 4) and Updated Handbook (GC Exh. 15) list the following proscribed conduct in their respective "Prohibited Activities (Standards of Conduct)" sections:

> Solicitation of fellow employees on Company premises
>
> . . .
>
> Use of obscene or otherwise inappropriate language or conduct in the work place. …
> Bad mouthing or spreading rumors.
>
> . . .

The Updated Handbook (GC Exh. 15 at 22) also contains the following rules:

> *Workplace Bullying*
> At Motor City Pawn Brokers we define bullying as unwanted, inappropriate, aggressive behavior, either direct or indirect, whether it be physical, verbal or in any other form. It involves a real or perceived power imbalance. Bullying can be conducted by one or more persons involved against others at the place of employment or can occur off Company property

The Respondent's rules prohibiting association and solicitation are significantly overbroad rules that unlawfully interfere with employees' right to associate and communicate with other employees. Restrictions on solicitation, without limitations or exceptions for nonwork time or nonwork areas have long been found contrary to the purposes of the Act. *Republic Aviation,* 324 U.S. 739 (1945). The Respondent asserts that its primary concern in establishing the no solicitation rules was the recruitment of its employees by former employees or competitors to resign and work for a competitor. However, the language of the no-solicitation rules is much broader than that, and clearly encompasses protected associational activities protected by the Act. Moreover, the Respondent's asserted concern regarding "solicitation" of its current employees for work with a competitor is addressed directly by a noncompete provision of the Employment Agreement (GC Exh. 2 at 3). This overly broad rule directly interferes with Section 7 rights, and so the rule is not facially neutral; therefore, the *Boeing* balancing test does not apply.

The General Counsel argues that the Respondent's prohibitions of "inappropriate language or conduct"[9] and "badmouthing or spreading rumors," as well as its workplace bullying provision violate the Act. The General Counsel argues that by using the qualifier "inappropriate," the Respondent has retained too much authority to determine what violates the rule, rending it overly broad. See *Lily Transportation Corp.*, 362 NLRB 406 (2015) The General Counsel argues that the rule prohibiting "badmouthing and spreading rumors" violates the Act, because it encompasses protected speech. The General Counsel similarly argues that the workplace bullying provision is overly broad, encompassing protected speech or activities. Id. These are facially neutral rules in that they do not expressly interfere with Section 7 rights, but, in their over breadth, they have the potential to interfere with Section 7 rights. Therefore, the *Boeing* balancing test applies. The Respondent articulates a general desire to encourage a civil and safe working environment, however, it has not established any particularized needs for these rules.

Employees are entitled to pressure each other, to lobby each other, and to raise or discuss with each other controversial issues concerning terms and conditions of employment. They are entitled to try to persuade each other to either join or not join a union, and to either engage in or refrain from other protected concerted activities. Sometimes, these discussions can be uncomfortable or unpleasant, but that alone does not make them unprotected. See, e.g., *Hispanics United of Buffalo*, 359 NLRB 368, 370 (2012); see *Linn v. United Plant Guards*, 383 U.S. 53, 61 (1966). Here, the Respondent's overly broad, facially neutral rules have a tendency to chill those protected activities, by prohibiting "inappropriate" words or conduct. I find that they have the potential to

[9] This provision is not alleged to be unlawful; it is included as context and reference.

interfere with important Section 7 rights. The Respondent's general desire to maintain a civil work environment is a legitimate justification for these rules. I find that on balance, the Respondent's articulated justification for these overly broad rules does not outweigh employees' demonstrable right to associate and engage in discussions about working conditions. In making this finding, I have considered that the Board stated in *Boeing* that certain "civility" rules would generally be considered lawful. 365 NLRB No. 154, slip op. at 4, fn. 15. Here, however, the rules are not just workplace civility rules, but encompass communication and association among employees.

Based on the above, and applying the *Boeing* balancing test, I find that the Respondent's prohibitions of "inappropriate" language and conduct in the Employee Handbook and the Updated Handbook, including the workplace bully provision, and the prohibition against "badmouthing and spreading rumors" violate Section 8(a)(1). I recommend that the Board determine that these types of rules are Category 2 rules—rules that generally will require contextual scrutiny to determine their lawfulness.

5. Respondent's prohibitions and limitations on communications and associations with customers and the public(Complaint par 8, 10 and 11)

In addition to information discussed above, the Employment Agreement (GC Exh. 2 at 2–3) states the following:

> 3. *Confidentiality, Non-Competition and Non-Solicitation.*
>
> . . .
>
> l. *Non-Disparagement.* Employee shall refrain from communicating orally, or in writing, or by any other manner whatsoever to any customer or third party, any disparaging claim, remark, allegation, statement, opinion, comment, innuendo or information of any kind or nature whatsoever, the effect of or intention of which is to cause embarrassment, disparagement, damage or injury to the reputation, business, or standing in the community of Customers, Employer and/or Related Entities, and their customers, members, managers, officers, owners, employees, independent contractors, agents, attorneys, or representatives, regardless of whether any such communication is or may be true or founded in facts.
>
> m. *Dealings with Customers* Employee shall not disclose the terms and conditions of this Agreement with Customers, including, without limitation, any payments terms or other information. Employee shall not attempt to negative influence or otherwise discourage or dissuade any Customer or other party from maintaining its relationship with Employer

In addition to the provisions discussed above, the Employee Handbook (GC Exh. 4 at 11) and Updated Handbook (GC Exh. 15 at 12) list the following proscribed conduct in their respective "Prohibited Activities (Standards of Conduct)" sections:

> Off-duty conduct which can affect the Company's credibility or reputation.
>
> Outside employment which interferes with your ability to perform your job at this Company, including, but not limited to, that with a competitor of the Company.[10]

The Updated Handbook (GC Exh. 15 at 30-32) also contains the following rules:

> *Outside of Work Behavior*
>
> . . . Motor City Pawn Brokers may terminate workers engaging in criminal activity outside the workplace, when off-duty conduct reflects unfavorably on the employee, fellow employees and/or the Company generally, and when an employee's off-duty work activities are such as to create critical comment of the Company by the general public. Any slander of the Company, representing the Company or themselves as an employee in any negative or demeaning way will result in termination.
>
> This "Outside Work Behavior" Policy does not apply, and will not be enforced, in any manner that would restrict, infringe upon or otherwise limit employees' rights under the National Labor Relations Act, including without limitation the right to engage in concerted activities for the purpose of mutual aid and protection. The Company will enforce this Policy in accordance with all applicable international, national, country, federal, state and local laws.

The Board has long recognized that Section 7 protects employees' rights to seek support from and speak with third parties, including customers, concerning labor disputes and other workplace concerns. See, e.g., *First Transit Inc.*, 360 NLRB 619 (2014), and *Karl Knauz Motors, Inc.*, 358 NLRB 1754 (2012), and cases cited therein. Although the Board recognizes that there are limits to what an employee might say to a customer or the public about the employer, specifically, they are not protected when they engage in disparagement of the employer's product or to engage in malice, the Board also recognizes that sometimes these protected discussions with third parties may result in putting the employer in a bad light, without a loss of protection of the Act.

Here, the Respondent's rules limiting employee communications to third parties about the employer are extraordinarily broad and are not consistent with employees' protected right to seek outside support concerning their terms and conditions of employment. These are facially neutral rules, in that they do not expressly interfere with Section 7 rights. However, in encompassing the right to reach out to third parties about their working conditions, these rules have a reasonable tendency to interfere with employees' Section 7 rights. The Respondent has not asserted any specific justification for these rules, although it is understandable that the Respondent would want to control its image and the information made public, and that it would not want its customers to be dissuaded from maintaining their relationship with the Respondent. However, these generalized explanations for the rules do not outweigh the important, long-recognized protected right of employees to seek support from third parties, including customers or the public in labor disputes. Thus, on balance, I find that these rules in the Employee Handbook violated Section 8(a)(1) pursuant to the *Boeing* balancing test.

In the Updated Handbook, GC Exh. 15 at 30–32, the

[10] This provision is not alleged to be unlawful; it is included as context and reference.

Respondent prohibits certain outside of work behavior in general, overbroad terms that could encompass protected activities of association and communication with unions, other employees, or third parties. In contrast to other rule provisions, however, this rule also contains a proviso identifying that it will not be applied to "restrict, infringe upon, or otherwise limit employees' rights under the National Labor Relations Act, including, without limitation the right to engage in concerted activities for the purpose of mutual aid and protection." I find that, in context, this proviso saves the otherwise overly broad terms of the provision by explaining to employees specific limits to the overly broad rules. In context, with this proviso immediately following the broad limitations on "outside work activities," which otherwise would potentially interfere with Section 7 rights, I find that this rule in the Updated Handbook, does not have a reasonable tendency to interfere with Section 7 rights, because the proviso advises employees that the rule will not be applied against employees' activities protected by the Act.

I recommend that the Board determine that these types of rules are Category 2 rules—rules that generally will require contextual scrutiny to determine their lawfulness.

6. Respondent's limitations on use of email **(Complaint pars. 10 and 11)**

The Employee Handbook (GC Exh. 4 at 36) and the Updated Handbook (GC Exh. 15 at 37–6) contain the following rule provision:

> Internet Etiquette
> When at work stick to work. . . . Computers, printers, fax machines and other equipment are to be used exclusively for the business activities of the Company. Users are permitted to access the Internet and electronic communications systems to assist in the performance of their jobs. The following behaviors are banned from Motor City Pawn Brokers:
>
> . . .
>
> - sending personal email

Pursuant to the current legal standard established in *Purple Communications*, *Inc*., 361 NLRB 1050, 1063 (2014), the above rule is unlawful. Under the test, the Board presumes that employees who have the rightful access to their employer's email systems, in the course of their work, have a right to use the email system for statutorily protected communications during nonworking time. The above limitations on the use of email are overly broad, in that they do not account for this established right. The Board emphasized in *Purple Communications* that it anticipated that special circumstances will rarely justify a total ban on all nonwork email use by employees. Id. Here, the Respondent has provided no evidence of a particularized or compelling need to exclude employees from the use of Respondent's email for statutorily protected communication during nonwork time, such as during breaks. Therefore, based on the Board's current legal standard, this rule is unlawful.

7. Respondent's limitations on use of Internet and social media (Complaint pars. 10 and 11)

In addition to the provision above, the Employee Handbook (GC Exh. 4 at 36) and the Updated Handbook also contain the following rule provision (GC Exh. 15 at 37):

> *Internet Etiquette*
> When at work stick to work. . . . Computers, printers, fax machines and other equipment are to be used exclusively for the business activities of the Company. Users are permitted to access the Internet and electronic communications systems to assist in the performance of their jobs. The following behaviors are banned from Motor City Pawn Brokers:
>
> . . .
>
> - chatting
>
> . . .
>
> - utilizing Facebook and other social networking sites
> - blogging . . .

The Updated Handbook contains the following provision (GC Exh. 15 at 35):

> *Social Media is acceptable if it:*
> 1. Is permitted because of a protected legal right;[11] or
> 2. Has been approved in writing by the Company; or
> 3. Contains information consistent with the Company's website and published materials; or
> 4. Clearly identifies that an employee is not acting on behalf of the Company.
>
> . . .
>
> *Social Media is unacceptable if it*:
>
> . . .
>
> 2. Compromises or may compromise the confidentiality of proprietary, or other sensitive information of the Company, it's officers, owners, employees, agents, contractors, clients, merchants, or representatives including, without limitation, the disclosure of trade secrets (including, without limitation, information regarding the development of products, processes, technology, systems, and know-how), financial records, internal business-related confidential communications and memoranda, client and merchant lists, client and merchant information, client and merchant account records, pricing records, business forms, and strategic planning information; . . .

As discussed above, the Board has long-held that work rules interfering with employees' ability to engage in communication with fellow employees about their terms and conditions of employment, or that interfere with employees' ability to seek support from the public about their terms and conditions of employment, are unlawful. See, e.g., *Boch Honda*, 362 NLRB 706 (2015), and *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990). The above social media rules are facially neutral rules, in that they do not explicitly restrict or interfere with employees' Section 7 rights. As written, and in context, I find that the Employee Handbook and Updated Handbook rule prohibiting

[11] This provision is not alleged to be unlawful; it is included as context and reference.

employees from "chatting," "utilizing Facebook and other social networking sites," and "blogging", as well as the Updated Handbook's rule stating that various subjects identified as confidential are "unacceptable" topics for social media are overly broad rules, in that, from an employee's perspective, they have a tendency to chill Section 7 rights. Communication with other employees and the public about terms and conditions of employment is a core Section 7 right. The Respondent's general assertions regarding its interest in protecting information or controlling its image are insufficient to establish a justification that would outweigh the potential interference with these protected rights. Therefore, applying the *Boeing* balancing test, I find that these rules violate Section 8(a)(1).

In contrast, I find that the provision of the Updated Handbook rule explaining when social media is acceptable does not violate the Act, because the first item listed in the provision clearly states that social media is acceptable when "permitted because of a protected legal right." When read in context, employees would reasonably understand that the limitations alleged to be unlawful, which follow the first item and are listed in the disjunctive (i.e., "or"), are additional ways that social media would be acceptable to the Respondent, not overly broad rules interfering with their protected right to communication about terms and conditions of employment. Therefore, I find that this provision, in this context, does not potentially interfere with Section 7 rights and is lawful. *Boeing*, above. *Lutheran Heritage*, above.

I recommend that the Board determine that these types of rules are Category 2 rules—rules that generally will require contextual scrutiny to determine their lawfulness.

8. Respondent's prohibition on recording in workplace(Complaint par. 11)

The Updated Handbook contains the following provision (GC Exh. 15 at 38):

> . . . The Company has a strong interest in preserving the privacy of its customers and business practices, therefore, Recording Devices maybe used by employees in the work environment if
>
> 1. All parties that may be recorded have been informed in advance of the risk of being recorded;
> 2. All such parties affirmatively consent to the video/photo/audio recording; and
> 3. The Recording Device is in plain view of such-parties at all times.
>
> Employees who violate this Policy may be subject to disciplinary action, up to and including termination of employment with the Company, and criminal and/or civil liability for eavesdropping, invasion of privacy, and/or other violations of the law.

In *Boeing*, above, the Board found that Boeing's no-camera rule did not violate the Act. In so finding, the Board recognized an employee's right to record protected concerted activities and determined that the no-camera rule in some circumstances may potentially affect Section 7 rights, but that the adverse impact was comparatively slight. 365 NLRB No. 154, slip op. at 17. The Board concluded that the adverse impact on Section 7 rights was outweighed by Boeing's substantial and important justifications for the rule, which included national security interests, the need to protect proprietary interests of clients, including governments, and the nondisclosure of personally identifiable information. Id. slip op. at 17–18. The Board further found that, although Boeing's justifications for the no-camera rule was particularly compelling, the Board anticipated that no-camera rules, in general, would be assigned to Category 1 rules, meaning that they are the type of rules the Board will generally find to be lawful.

The record does not establish that the no-recording rules in this case would have any more of an impact on Section 7 rights than the no-camera rule in *Boeing*, above. Therefore, I rely on the Board's guidance in *Boeing* to determine that the no-recording rules in this case have a comparatively slight impact on Section 7 rights. Id. The Respondent asserts a need to protect its proprietary information and personal information of clients and employees, and to comply with state law. The Respondent asserts, without having provided any objective evidence, that the pawn industry is a highly regulated industry, and that, as a member of the financial industry, the pawn industry requires a high degree of security. The General Counsel argues that the lack of record evidence to support this assertion should be determinative. Some heightened security requirements would seem consistent with the business of pawn shops, including the need to protect client financial and collateral information. Even in the absence of compelling evidence akin to that in *Boeing*, however, I find, based on the Board's instruction in *Boeing* that no-camera rules are generally considered lawful, that the Respondent's rule in this case is lawful. I recommend, therefore, that this allegation be dismissed.

9. Respondent's requirements of honesty and commitment to Respondent **(**Complaint pars. 10 and 11)

The Updated Handbook states the following as one of its "Ten Commandments of Motor City Pawn" (GC Exh. 15 at 3).

> Be Honest
> I will conduct myself in a manner that will allow me to always be able to tell the truth and be at peace. I realize that I am above any theft, deception, lies or dishonesty. . . .

The Employee Handbook (GC Exh. 4 at 10–12) and the updated Handbook (GC Exh. 15 at 10–12) state the following in the section "Prohibited Activities (Standards of Conduct)," which, as noted above, identifies a non-exhaustive list of "examples of conduct considered improper":

> By agreeing to work at Motor City Pawn Brokers you have agreed to follow the Company's rules and to refrain from conduct which is detrimental to our goals. . . .
> Falsification of the hours worked by you or any other employee.[12]
> Falsification of any other employment related documents including, but not limited to, personnel files, employment review documents, intra-Company communication, *communications with those outside the Company*, expense records, etc.

[12] This provision is not alleged to be unlawful; it is included as context and reference.

The Respondent's broad statement that employees must refrain from conduct that is "detrimental to [Respondent's] goals," is an overly broad requirement of loyalty to the employer that would potentially interfere with employees' Section 7 rights to align with Unions or engage in other protected concerted activities that an employer might construe as disloyal. But the Respondent's assertions that it is vulnerable to employees leaving to work with competitors, and its general business expectations of commitment to an employer are insufficient justifications to outweigh the core activity protected by Section 7 of employees aligning with other employees and unions in opposition to employers, with respect to their attempts to improve terms and conditions of employment and engage in other activities for mutual aid or protection. Therefore, applying the *Boeing* balancing test, I find that this rule violates Section 8(a)(1).

The General Counsel also alleges that the provision prohibiting "Falsification of any other employment related documents, including but not limited to . . . communications with those outside the Company . . ." violates Section 8(a)(1). The General Counsel argues that this rule potentially interferes with employees' right to seek common cause with others. General or broad rules that prohibit false statements have been found unlawful by the Board, in that they unnecessarily intrude on employees' abilities to communicate freely about their terms and conditions of employment. *Lafayette Park Hotel*, above at 823; *Radisson Muehlebach Hotel*, 273 NLRB 1464 (1985). In context, however, I find that this provision would not potentially interfere with Section 7 rights, because when read in context, employees would not tend to read this provision to chill Section 7 right; rather, in a context where the Respondent is listing work-related documents that employees are expected to refrain from falsifying, "communications with those outside the Company" is reasonably read as communications made on behalf of the employer in the course of employment. All the other documents listed are work-related documents, the Respondent should be able to expect employees to refrain from falsifying in the course of their job duties. Therefore, in this context, these work rules are lawful.

In contrast, the Updated Handbook's general requirement to "Be Honest," even when in context, is an overly broad rule that would potentially interfere with employees' protected rights to seek common cause. Id. the Respondent has presented insufficient justification for a need for this overly broad rule. Although this rule is similar to the "civility" rules the Board has suggested would generally be found to be lawful as Category 1 rules under *Boeing*, above, slip op. at 4 fn. 15, this rule broadly implicates communication with other employees, government entities, and the public, and potentially interferes with or restricts protected communications. Based on the above, under the Boeing balancing test, I find that this rule violates Section 8(a)(1).

I recommend that the Board determine that these types of rules are Category 2 rules—rules that generally will require contextual scrutiny to determine their lawfulness.

C. Did the Respondent Unlawfully Terminate Four Employees Who Failed to Sign the Employment Agreement?

The General Counsel alleges that the Respondent unlawfully terminated the employment of four employees who failed or refused to sign the Employment Agreement and the Contract and Receipt, which contained multiple work rules that violated Section 8(a)(1). The General Counsel argues that these discharges violate Section 8(a)(1). The Respondent makes several arguments in its defense. First, the Respondent argues the two of the four alleged discriminatees are not entitled to remedies because they did not file charges, and the allegations raised regarding their terminations were raised during the investigation, but outside the Section 10(b) statute of limitations. Second, the Respondent argues that the rules are lawful, but even if found unlawful, the Respondent argues that the employees were terminated for insubordination when they failed and refused to sign the employment documents. In the absence of evidence of anti-union animus or animus toward protected concerted activity, the Respondent asserts that there can be no finding of unlawful termination. Although the Respondent clearly admits that each of the four employees was separated from employment for the sole reason that he or she failed or refused to sign the employment documents, the Respondent also raises an issue that, because the individual employees did not express to the Respondent specific disagreement with the purportedly unlawful rules, and because the real reason of at least two of them was disagreement with a non-compete provision that was not alleged to be unlawful, the employees are not entitled to reinstatement or backpay remedies.

There is no dispute that the allegations of unlawful termination of charging parties Terrence Walker and Patricia Tilmon were timely raised pursuant to Section 10(b) in initial charges filed on July 1, 2016 and served on July 6, 2016. It is unclear from the record when the allegations about Gianluca Bartolucci and Ringo Salzar discharges were first raised in the investigation, but they were first documented in the formal papers in an amended charge filed on September 15, 2016, and served on September 16, 2016. Bartolucci was terminated on February 16, 2016, and Salzar was terminated on March 8, 2016. Thus, Bartolucci's and Salzar's terminations occurred within 6 months of the initial, timely filed charges, but outside the 10(b) period for filing, had they been independent, unrelated violations. The Board will find otherwise untimely allegations to have been raised within the 10(b) limitations, when they are raised within 6 months of and are "closely related" to timely filed charges. *Redd-I*, 290 NLRB 1115 (1988). To determine whether allegations are closely related for this purpose, the Board considers (1) whether the allegations involve the same legal theories; (2) whether the allegations arise from the same factual situation or sequence of events, which would involve the same or similar conduct, usually over the same time period; and (3) whether the Respondent would raise the same or similar defenses, and therefore, whether a reasonable respondent would have preserved similar evidence related to the additional charge to that in the timely filed charge. Id. Here, all three factors weigh in favor of finding that the Bartolucci and Salzar allegations were appropriately raised, consistent with Section 10(b). First, the legal theory is the same. Second, the terminations arise from the same factual scenario, in that all involved the termination of employees in about February or early March of 2016 for the same reason—the failure to sign newly implemented employment documents. Third, the Respondent has asserted the same defenses for all four alleged discriminatees, i.e., that their mere failure to sign the documents caused their separation from employment. Factually,

it is undisputed that all four alleged discriminatees failed or refused to sign the documents. Therefore, I conclude that, pursuant to *Redd-I*, above, the allegations are properly before me.

I agree with the General Counsel's position that, pursuant to Board precedent, the requirement that employees sign the Employment Agreement and the Contract and Receipt, which references the Handbook was unlawful, in light of the multiple work rules in these documents that violate Section 8(a)(1). Signing these employment documents was clearly set forth as a condition of employment. The Respondent's arguments that it made clear that employees could return to work if they signed the documents, and that it provided time for the employees to consider whether they wished to sign the documents and to obtain legal advice, merely confirm that the signing of the documents was a condition of employment. The Respondent makes plain that the sole reason these employees were separated from employment was their failure to sign the documents. Because maintaining these documents, including the Employment Agreement and the Contract and Receipt, violated Section 8(a)(1), discharging the employees for their failure to sign them also violated Section 8(a)(1). *SF Markets* 363 NLRB No. 146, slip op. at 2 (2016). See also *Denson Electric Co.*, 133 NLRB 122, 129, 131 (1961) (employer cannot require employees to waive or relinquish their Sec. 7 rights as a condition of employment or a condition of reinstatement, and discharge for failure to relinquish Sec. 7 rights violates the Act); and *Kolkka Tables & Finnish-American Saunas*, 335 NLRB 844, 849 (2001) (employer's suspension of an employee who refused to order that violated Sec. 8(a)(1) also violated Sec. 8(a)(1)).

The Respondent's additional defenses are unpersuasive. The Respondent's suggestion that the subjective intent of employees in refusing to sign the employment documents is a factor is not supported by Board precedent. It was the Respondent's requirement that they sign the unlawful documents that caused their discharges to be unlawful, not the employees' reasons for not signing them. Nor does the General Counsel need to establish that employees engaged in protected concerted activity in order to establish this violation of Section 8(a)(1). The General Counsel's theory of the case does not rely on a showing of unlawful discrimination against employees, but the maintenance of unlawful rules and the subsequent unlawful enforcement of a condition of employment that required employees to sign the employment documents agreeing to the unlawful rules. The Respondent's suggestions that the terminations were not unlawful because the employees failed to advise or engage in discussions with the Respondent about their reasons for not signing the employment documents is simply misplaced—contrary to the Respondent's arguments, which rely on precedent pursuant to Section 8(a)(5) of the Act, individual employees have no statutory obligation to bargain in good faith with employers pursuant to any Section of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent has violated Section 8(a)(1) of the Act by maintaining work rules that would reasonably tend to chill employees in the exercise of their Section 7 rights either by expressly prohibiting or restraining the exercise of NLRA rights, or by potentially impacting the exercise of those rights and the justifications for the work rules do not outweigh the potential impact on Section 7 rights; specifically, the Respondent has been violating the Act by maintaining the following rule provisions in its Employment Agreement, Contract and Receipt, Employee Handbook, and Updated Handbook:

(a) Work rules that interfere with, coerce or restrain employees' rights to file charges with the Board, to participate in Board processes, or to access the Board's processes, as described in the mandatory arbitration provisions of the Employment Agreement, pars. 7, 10, and 12, and the Contract and Receipt;

(b) Work rules that interfere with, coerce or restrain employees' exercise of rights protected by Section 7 of the Act by imposing substantial financial or legal risks to engaging in protected activities as described in the indemnity provisions of the Employment Agreement, paragraphs 6, 7, and 8, and the Contract and Receipt;

(c) Work rules that interfere with, coerce or restrain employees' right to disclose and discuss information related to their wages, and terms and conditions of employment, as described in the confidentiality and nondisclosure provisions of the Employment Agreement, paragraphs 3(a), (b), (c), the Handbook's and Updated Handbook's Forward, Nondisclosure, and Prohibited Activities (Standards of Conduct) sections, and the Updated Handbook's Workplace Expectations section.

(d) Work rules that interfere with, coerce or restrain employees' rights to engage in communication, solicitation, and association with other employees, as described in the Employment Agreement paragraphs (3)(f), (g), and (i), and the Handbook's and Updated Handbook's, Prohibited Activities (Standards of Conduct) section and the Updated Handbook's Workplace Bullying section.

(e) work rules that interfere with, coerce or restrain employees' rights to engage in communications and associations with customers and the public, as described in the Employment Agreement at paragraphs. 3(l) and (m), the Handbook's and Updated Handbook's Prohibited Activities (Standards of Conduct) section.

(f) work rules that interfere with, coerce or restrain employees' right to use the Respondent's email system for protected communications, as described in the Employee Handbook's and Updated Handbook's Internet Etiquette section.

(g) work rules that interfere with, coerce or restrain employees' right to communication in social media with other employees, government officials, or the public regarding protected subjects, such as wages and terms and conditions of employment as described in the Updated Handbook's section, "Social Media is Unacceptable if it:" at par. 2.

(h) work rules that interfere with, coerce or restrain employees' right to engage in protected concerted activities by requiring honesty and to refrain from actions detrimental to employer's goals, as described in the Updated Handbook's, Ten Commandments of Motor City Pawn section.

3. The Respondent has violated Section 8(a)(1) by discharging employees Terrence Walker, Patricia Tilmon, Gianluca Bartolucci and Ringo Salzar because they failed and refused to sign employment documents that contained unlawful rules.

4. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent did not violate the Act in any other manner alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent maintains unlawful rules in its Employment Agreement, Contract and Receipt, Employee Handbook, and Updated Handbook, the Respondent is required to revise or rescind the unlawful rules in all forms. This is the standard remedy to assure that employees may engage in protected activity without fear of being subjected to an unlawful rule. See *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), enfd. in relevant part 475 F.3d 369 (D.C. Cir. 2007). As stated there, the Respondent may comply with the order of rescission by reprinting the Employment Agreement, Contract and Receipt, Handbook, and Updated Handbook without the unlawful language or, in order to save the expense of reprinting the documents, it may supply its employees inserts stating that the unlawful rules have been rescinded or with lawfully worded rules on adhesive backing that will correct or cover the unlawfully broad rules, until it republishes documents without the unlawful provisions. Any copies that include the unlawful rules must include the inserts before being distributed to employees. Id. at 812 fn. 8. See also *Hills & Dales General Hospital*, 360 NLRB 611, 613 (2014) and *Rio All-Suites Hotel*, 362 NLRB 1690, 1695 (2015).

The Respondent, having unlawfully discharged Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar, must offer them reinstatement and make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). Respondent shall compensate them for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings, computed as described above. Respondent shall file a report with the Regional Director for Region 7 allocating backpay to the appropriate calendar quarters. Respondent shall also compensate Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year, *AdvoServ of New Jersey,* 363 NLRB No. 143 (2016).

I shall also order that the Respondent post the attached notice as indicated in the order and to mail copies of the attached notice to employees who have separated from employment with the Respondent since the date of the issuance of the employment documents, February 1, 2016. I include this specialized notice mailing remedy in consideration that some of the unlawful work rules are found in agreements employees were required to sign as a condition of employment, and these agreements appear to have obligations and risks that extend beyond the termination of employment.

I decline to order consequential damages, as requested by the General Counsel, as the Board has not authorized the award of consequential damages. See, e.g., *Guy Brewer 43 Inc.*, 363 NLRB No. 173, slip op. at 2 fn. 2 (2016).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, Motor City Pawn Brokers Inc., The Aubrey Group Inc., and Aubrey Brothers, LLC, a single employer, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a). The Respondent has violated Section 8(a)(1) of the Act by maintaining work rules that would reasonably tend to chill employees in the exercise of their Section 7 rights either by expressly prohibiting or restraining the exercise of NLRA rights, or by potentially impacting the exercise of those rights and the justifications for the work rules do not outweigh the potential impact on Section 7 rights; specifically, the Respondent shall cease and desist from violating the Act by maintaining the following rule provisions in its Employment Agreement, Contract and Receipt, Handbook, and Updated Handbook:

(i) Work rules that interfere with, coerce or restrain employees' rights to file charges with the Board, to participate in Board processes, or to access the Board's processes, as described in the mandatory arbitration provisions of the Employment Agreement, paragraphs 7, 10, and 12, and the Contract and Receipt;

(ii) Work rules that interfere with, coerce or restrain employees' exercise of rights protected by Section 7 of the Act by imposing substantial financial or legal risks to engaging in protected activities as described in the indemnity provisions of the Employment Agreement, paragraphs 6, 7, and 8, and the Contract and Receipt;

(iii) Work rules that interfere with, coerce, or restrain employees' right to disclose and discuss information related to their wages, and terms and conditions of employment, as described in the confidentiality and nondisclosure provisions of the Employment Agreement, paragraphs 3(a), (b), (c), the Handbook and Updated Handbook's Forward, Nondisclosure, and Prohibited Activities (Standards of Conduct) sections, and the Updated Handbook's Workplace Expectations section.

(iv) Work rules that interfere with, coerce or restrain employees' rights to engage in communication, solicitation, and association with other employees, as described in the Employment Agreement paragraphs (3)(f), (g), and (i), and the Employee Handbook's and Updated Handbook's Prohibited Activities (Standards of Conduct) section and the Updated Handbook's Workplace Bullying section.

(v) Work rules that interfere with, coerce or restrain employees' rights to engage in communications and associations with customers and the public, as described in the Employment Agreement at paragraphs 3(l) and (m), the Handbook's and

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, 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.

Updated Handbook's Prohibited Activities Prohibited Activities (Standards of Conduct) section.

(vi) Work rules that interfere with, coerce or restrain employees' rights to use the Respondent's email system for protected communications, as described in the Employee Handbook's and Updated Handbook's Internet Etiquette section.

(vii) Work rules that interfere with, coerce or restrain employees' rights to communication in social media with other employees, government officials, or the public regarding protected subjects, such as wages and terms and conditions of employment as described in the Updated Handbook's section, "Social Media is Unacceptable if it:" at par. 2.

(viii) Work rules that interfere with, coerce or restrain employees' rights to engage in protected concerted activities by requiring honesty and to refrain from actions detrimental to employer's goals, as described in the Updated Handbook's, Ten Commandments of Motor City Pawn section.

(b) Discharging employees because they fail or refuse to sign employment documents that contain unlawful work rules.

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

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

(a) Rescind the work rule provisions set forth in paragraph 1(a), above, or revise them to remove any language that prohibits or restrains the exercise of Section 7 rights, or that potentially impacts Section 7 rights and about which the rule's justifications do not outweigh the rule's impact on Section 7 rights.

(b) Notify all employees that the above rules have been rescinded or, if they have been revised, provide them a copy of the revised rules.

(c) Within 14 days from the date of the Board's Order, offer Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar whole for any loss of earnings and other benefits suffered as a result of the unlawful termination, in the manner set forth in the remedy section of the decision.

(e) Compensate Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(f) Compensate Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

(g) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges and within 3 days thereafter notify Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar in writing that this has been done and that their discharges will not be used against them in any way.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its Detroit, Warren, Ferndale, and Roseville Michigan facilities copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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, the 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. The Respondent shall duplicate and mail, at its own expense, a copy of the notice to all former employees employed by the Respondent at any time since February 1, 2016. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since February 1, 2016.

(j) Within 21 days after service by the Region, file with the Regional Director 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 at Washington, D.C., October 22, 2018

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

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain work rules that would reasonably tend to chill employees in the exercise of their Section 7 rights either by expressly prohibiting or restraining the exercise of NLRA rights, or by potentially impacting the exercise of those rights and the justifications for the work rules do not outweigh the potential impact on Section 7 rights; specifically, the Respondent has been violating the Act by maintaining the following rule provisions in its Employment Agreement, Contract and Receipt, Employee Handbook, and Updated Handbook:

WE WILL NOT maintain work rules that interfere with, coerce or restrain employees' rights to file charges with the Board, to participate in Board processes, or to access the Board's processes, as described in the mandatory arbitration provisions of the Employment Agreement, paragraphs 7, 10, and 12, and the Contract and Receipt;

WE WILL NOT maintain work rules that interfere with, coerce or restrain employees' exercise of rights protected by Section 7 of the Act by imposing substantial financial or legal risks to engaging in protected activities as described in the indemnity provisions of the Employment Agreement, pars 6, 7, and 8, and the Contract and Receipt;

WE WILL NOT maintain work rules that interfere with, coerce or restrain employees' rights to disclose and discuss information related to their wages, and terms and conditions of employment, as described in the confidentiality and nondisclosure provisions of the Employment Agreement, paragraphs 3(a), (b), (c), the Employee Handbook and Updated Handbook's Forward, Nondisclosure, and Prohibited Activities (Standards of Conduct) sections, and the Updated Handbook's Workplace Expectations section.

WE WILL NOT maintain work rules that interfere with, coerce or restrain employees' rights to engage in communication, solicitation, and association with other employees, as described in the Employment Agreement pars (3)(f), (g), and (i), and the Employee Handbook and Updated Handbook, Prohibited Activities (Standards of Conduct) section and the Updated Handbook Workplace Bullying section.

WE WILL NOT maintain work rules that interfere with, coerce or restrain employees' rights to engage in communications and associations with customers and the public, as described in the Employment Agreement at pars. 3(l) and (m), the Employee Handbook and Updated Handbook Prohibited Activities Prohibited Activities (Standards of Conduct) section.

WE WILL NOT maintain work rules that interfere with, coerce or restrain employees' rights to use the Respondent's email system for protected communications, as described in the Employee Handbook and Updated Handbook in the Internet Etiquette section.

WE WILL NOT maintain work rules that interfere with, coerce or restrain employees' right to communication in social media with other employees, government officials, or the public regarding protected subjects, such as wages and terms and conditions of employment as described in the Updated Handbook's section, "Social Media is Unacceptable if it:" at paragraph 2.

WE WILL NOT maintain work rules that interfere with, coerce or restrain employees' rights to engage in protected concerted activities by requiring honesty and to refrain from actions detrimental to employer's goals, as described in the Updated Handbook's, Ten Commandments of Motor City Pawn section.

WE WILL NOT discharge employees because they fail or refuse to sign employment documents that contain unlawful work rules.

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

WE WILL take the following affirmative action necessary to effectuate the policies of the Act.

WE WILL rescind the work rule provisions described above and as set forth in paragraph 1(a), or revise them to remove any language that prohibits or restrains the exercise of Section 7 rights, or that potentially impacts Section 7 rights and about which the rule's justifications do not outweigh the rule's impact on Section 7 rights.

WE WILL notify all employees that the above rules have been rescinded or, if they have been revised, provide them a copy of the revised rules.

WE WILL, within 14 days from the date of the Board's Order, offer Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar full reinstatement to their former jobs or, if that job no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar whole for any loss of earnings and other benefits suffered as a result of the unlawful termination, in the manner set forth in the remedy section of the decision.

WE WILL compensate Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 7, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL compensate Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar for his search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings.

WE WILL, within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges and within 3 days thereafter notify Terrence Walker, Patricia Tilmon, Gianluca Bartolucci, and Ringo Salzar in writing that this has been done and that the adverse evaluations and discharge will not be used against them in any way.

WE WILL preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

WE WILL, within 14 days after service by the Region, post at

our Detroit, Warren, Ferndale, and Roseville Michigan facilities copies of this Notice to Employees 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, the notices will be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if we customarily communicate with its employees by such means.

WE WILL duplicate and mail, at our own expense, a copy of the notice to all former employees employed by the Respondent at any time since February 1, 2016. In the event that during the pendency of these proceedings, we have gone out of business or closed the facilities involved in these proceedings, WE WILL duplicate and mail, at our own expense, a copy of the notice to all current employees and former employees at any time since February 1, 2016.

MOTOR CITY PAWN BROKERS INC., THE AUBREY GROUP INC., AND AUBREY BROTHERS LLC, A SINGLE EMPLOYER

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/07-CA-179461 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.