UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

20/20 COMMUNICATIONS, INC.

and Case 12-CA-165320

CHARLIE SMITH, AN INDIVIDUAL

John W. Plympton, Esq., for the General Counsel
Kevin Zwetsch and Ina Crawford, Esqs.,
(Ogletree, Deakins, Nash, Smoak & Stewart, P.C.)
for the Respondent, of Tampa, FL
Andrew Frisch, Esq., (Morgan & Morgan)
for the Charging Party, of Plantation, FL

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This matter is before me on a stipulated record. The Charging Party, Charlie Smith, filed unfair labor practice charges and amended charges against the Respondent, 20/20 Communications, Inc., on December 12, 2015 and February 17, 2016, respectively. The General Counsel issued the complaint on April 29, 2016. The complaint alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act)[1] by promulgating, maintaining and enforcing an agreement requiring its employees to waive their right to pursue class and collective employment related actions against it and submit such disputes to arbitration. The Respondent denies that the arbitration agreement at issue violates the Act and contends that the Act does not grant employees a right to access class procedures created by other laws, including the Federal Arbitration Act (FAA) and Fair Labor Standards Act (FLSA).

On July 28, 2016, the parties submitted a Joint Motion and Stipulated Record, requesting that the foregoing allegations be decided without a hearing based on a stipulated record. I granted the parties' motion on July 29, 2016 and, on August 10, 2016, the parties submitted their respective post-hearing briefs in this case.

On the entire record, after considering the stipulated record and briefs filed by the General Counsel and the Respondent, I make the following

[1] 29 U.S.C. §§ 158(a)(1), et seq.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business located in Fort Worth, Texas, employs employees, including Field Sales Managers, located throughout the United States and has been engaged in the business of providing sales support, marketing support and brand advocacy to clients throughout the United States.[2] In conducting its business operations, the Respondent receives annually at its Fort Worth facility goods and materials valued in excess of $50,000 directly from points outside the State of Texas. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Mutual Arbitration Agreement

Since on or before May 12, 2014, the Respondent has maintained in effect and enforced a Mutual Arbitration Agreement (MAA) with respect to all of its employees in the United States and its territories. The MAA is part of a series of electronic documents that the Charging Party and other newly hired employees must review as part of the on-boarding process. Those documents are viewed through an online portal. As part of the hiring process, newly hired employees, including the Charging Party, have been required to acknowledge receipt of the MAA before advancing to the next step of the on-line portion of the on-boarding process. The MAA includes the following pertinent provisions:

> 1. Except as provided below, Employee and Employer, on behalf of their affiliates, successors, heirs, and assigns, both agree that all disputes and claims between them, including those relating to Employee's employment with Employer, and any separation therefrom, and including claims by Employee against Employer's subsidiaries, affiliates and directors, employees, or agents, shall be determined exclusively by final and binding arbitration before a single, neutral arbitrator as described herein, and that judgment upon the arbitrator's award may be entered in any court of competent jurisdiction. Claims subject to arbitration under this Agreement include without limitation claims for discrimination, harassment, or retaliation; wages, overtime, benefits, or other compensation; breach of any express or implied contract; violation of public policy; personal injury; and tort claims including defamation, fraud, and emotional distress. Except as expressly provided herein, Employer and Employee voluntarily waive all rights to trial in court before a judge or jury on all claims between them.
>
> 2. The only disputes and actions excluded from this Agreement are: (a) claims by

[2] At the relevant times herein, Pat Thrianon and Kimberly Warren were employed as supervisors within the meaning of Section 2(11) of the Act.

Employee for workers' compensation of unemployment benefits; (b) claims by Employee for benefits under an Employer plan or program that provides its own process for dispute resolution; (c) claims by Employer or Employee for declaratory or injunctive relief relating to a confidentiality, non-solicitation, non-competition, or similar obligation (any such proceedings will be without prejudice to the parties' rights under this Agreement to obtain additional relief in arbitration with respect to such matters); (d) any other claim which by law cannot be subject to an arbitration agreement; and (e) actions to enforce this Agreement, such actions to be governed by the Federal Arbitration Act and the law of the state of Texas, both of which the parties agree shall to and govern this Agreement and its enforceability. To the extent there is an conflict between federal and Texas law, Texas law shall control. Additionally, by agreeing to submit the described claims to binding arbitration, Employee does not waive his or her right to file an administrative complaint with the appropriate administrative agency (*e.g.* the Equal Employment Opportunity Commission or state agencies of a similar nature), but knowingly and voluntarily waive the right to file, or seek or obtain relief in, a civil action of any nature seeking recovery and monetary damages or injunctive relief against Employer, except as described above.

13. By signing this Agreement, Employee acknowledges that he or she is knowingly and voluntarily waiving the right to file a lawsuit or other civil proceeding relating to Employee's employment with Employer as well as the right to resolve disputes in a proceeding before a judge or jury, except as described above. Employee further acknowledges and agrees that this Agreement, while mutually binding on the parties, does not constitute a guarantee of continued employment for any fixed period or under any particular terms except those contained herein, and does not alter in any way the at-will nature of Employee's employment relationship

The MAA also includes a class and collective action waiver requiring employees to resolve all employment related disputes by individual arbitration:

6. Arbitration allows Employer and Employee to work directly with each other to resolve any problems as quickly and efficiently as possible. In this spirit, the parties agree that this Agreement prohibits the arbitrator from consolidating the claims of others into one proceeding, to the maximum extent permitted by law. This means that an arbitrator will hear only individual claims and does not have the authority to fashion a proceeding as a class or collective action or to award relief to a group of employees in one proceeding, to the maximum extent permitted by law. Employee will not be disciplined, discharged, or otherwise retaliated against for exercising his or her rights under Section 7 of the National Labor Relations Act. Employer may use this Agreement to defeat any attempt by Employee to file or join other employees in a class, collective or joint action lawsuit or arbitration, but Employer shall not retaliate against Employee for any such attempt.

Since May 12, 2014, the Charging Party and other similarly situated employees of the Respondent, including David Vine, could elect to opt out of the MAA within 15 days, through a procedure specified in the MAA, without being subject to adverse employment action:

> 10. Employee may opt-out of this Agreement by delivering, within 15 days of the date this Agreement is provided to Employee, a completed and signed Opt-Out Form to Employer's Director of Human Resources. An Opt-Out Form is available from the Human Resources office. If Employee does not deliver the form within 15 days, and if Employee accepts or continues employment with Employer after that date, Employee will be deemed to have accepted the terms of this Agreement.

The Charging Party electronically signed the MAA during the onboarding hiring process on May 12, 2014. Vine also followed the same procedure upon commencing employment with the Respondent.[3] Neither choose to opt-out of the MAA.

B. Enforcement Of The Agreement

The Charging Party was employed by the Respondent as a Field Sales Manager from March 7, 2014 until March 12, 2015. On October 30, 2015, the Charging Party filed a complaint against the Respondent in United States District Court for the Middle District of Florida in Case 2:15-CV-687-FtM-99CM (the Florida case). On November 9, 2015, Vine, another former employee of the Respondent, opted into that proceeding. On November 19, 2015, the Respondent filed Defendant's Motion to Dismiss or in the Alternative, to Stay and Compel Arbitration in *Charlie Smith, on behalf of himself and those similarly situated v. 20/20 Communications, Inc.,* Case 2:15-cv-00687, filed in the United States District Court for the Middle District of Florida (the Florida enforcement case).

On December 1, 2015, counsel for the Charging Party filed Notice of Dismissal Without Prejudice in the Florida case. On December 2, 2015, the Florida case was dismissed without prejudice as to the Charging Party, but otherwise remains pending as to Vine.[4]

Between April 1, 2016 and May 13, 2016, Andrew Frisch of the Morgan and Morgan law firm filed separate arbitration cases with the American Arbitration Association, alleging violations of the FLSA, on behalf of eighteen individuals, including the Charging Party and Vine.

The Respondent's Florida enforcement case, filed in response to Florida case brought by the Charging Party and joined by Vine, is not an isolated event. On June 9, 2016, employee James Richmond filed a complaint alleging violations of the FLSA by the Respondent in the United States District Court for the Northern District of Illinois in Case 1:16-CV-06051 (the

[3] There is no record of Vine's onboarding information, but his assertion in joining the Florida case that he "likewise was subjected to the illegal pay practices at issue" is not disputed. (Jt. Exh. 6.)

[4] The court order in the Florida case clearly had a typographical error in further stating that the complaint, while dismissed without prejudice as to Smith, remained pending as to Smith. The order obviously was referring to continued pendency as to Vine, who was also added as an opt-in plaintiff at that time. (Jt. Exh. 9.)

Illinois case). On June 17, 2016, the Respondent filed a petition to compel arbitration in the United States District Court for the Northern District of Texas in Case 4:16-CV-488 (the Texas case) seeking to compel individual arbitration of Richmond's claims in the Illinois case. On August 18, 2016, the Respondent filed an amended complaint and petition in the Texas case. On June 24, 2016, Richmond filed an amended complaint against the Respondent in the Illinois case.[5]

LEGAL ANALYSIS

The complaint alleges that the class and collective action waiver contained in the MAA violates Section 8(a)(1) of the Act even though the agreement includes an opt-out procedure for employees who do not want to sign the agreement. It is further alleged that enforcement of the class action waiver in the MAA constitutes an additional violation. In support of the allegations, the General Counsel alleges that the administrative law judge is bound to follow extant agency precedent in *D. R. Horton, Inc.*, 357 NLRB No. 184 (2012). In that case, the Board held that Section 7 creates a substantive right for employees to pursue collective action and, thus, a required waiver of such right violates Section 8(a)(1) of the act.

The Respondent contends that the MAA does not violate the Act because: (1) the Board decision in *D. R. Horton* was overruled by several federal courts; (2) *D. R. Horton* was wrongly decided because the Act conflicts with several substantive statutes; (3) an employee may opt-out and is not required to sign the MAA as a condition of employment; and (4) Section 7 does not create a substantive right to pursue collective legal action in forums other than arbitration.

I. Board Precedent in *D. R. Horton, Inc.* Governs the MAA.

The Respondent maintains that the General Counsel and Charging Party cannot rely on Board decisions in *D. R. Horton* and *Murphy Oil* that were reversed by the federal courts upholdingclass action waivers. *D.R. Horton, Inc. v. NLRB*, 737 F.3d 344, 359-360 (5th Cir. 2013); *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013, 1016 (5th Cir. 2015). In *Murphy Oil*, the Board affirmed the holding in *D. R. Horton* and addressed the Fifth Circuit's rejection of the Board's decision by reiterating its position that the Board is not required to follow their decisions in other cases. *Murphy Oil*, 361 NLRB No.72, slip op. 2 fn. 17, citing *Enloe Medical Center v. NLRB*, 433 F.3d 834, 838 (D.C. Cir. 2005).

Only the Board or the Supreme Court can reverse extant Board precedent in *D.R. Horton* and *Murphy Oil. Waco, Inc.,* 273 NLRB 746, 749, fn. 14 (1984); *Iowa Beef Packers, Inc.,* 144 NLRB 615, 616-617 (1963), enf. granted in part, 331 F.2d 176 (1964). As such, unless and until the Supreme Court holds otherwise, an administrative law judge is bound to follow the Board's controlling precedent finding class action waivers unlawful. See, e.g., *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984); *Pathmark Stores*, 342 NLRB 378 n.1 (2004)

[5] On August 25, 2016, the General Counsel moved to reopen the record and amend the complaint to add allegations regarding the Respondent's enforcement efforts in the Texas case in response to the Illinois case. I denied the motion on August 29, 2016, but stated my intent to take administrative notice of the pleadings in the Texas case, both containing facts which the Respondent concedes, pursuant to Fed. R. of Evid. 201.

(finding that the administrative law judge has duty to apply established Board precedent which the Supreme Court has not reversed); *Chesapeake Energy Corp*., 362 NLRB No. 80 (2015) (rejecting the administrative law judge's deference of the Act to the FAA and finding that arbitration policies violated Section 8(a)(1)).

Moreover, the federal courts diverge in their opinions regarding the issue. The Seventh and Ninth Circuits recently agreed with the Board's decision in *D.R. Horton* and deferred to the Board's interpretation of Section 7 as prohibiting employers from restraining employees in the pursuit of class action remedies. *Lewis v. Epic Sys. Corp.*, 823 F.3d 1147 (7th Cir. 2016); *Morris v. Ernst & Young,* __ F.3d __, Case No. 13-16599 (9th Cir. 8/22/16). Deference to the Board's interpretation of the Act is neither a novel nor new concept, even at the Supreme Court. *See, e.g.*, *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 536 (1992).

The Supreme Court has not overturned the Board precedent in *D. R. Horton* and *Murphy Oil* holding that class action waivers in arbitration agreements restricting the right of employees to engage in concerted activity are unlawful. Therefore, *D. R. Horton* remains controlling Board law. *Manor West, Inc.*, 311 NLRB 655, 667 fn. 43 (1993).

II. *D. R. Horton, Inc.* Was Not Wrongly Decided.

The Respondent further contends that the Board's decision in *D. R. Horton* was wrongly decided because it fails to accommodate Congress's policies advanced in other laws. See e.g., *Hoffman-La Roche, Inc. v. Sperling,* 493 U.S. 165, 173 (1989) (FLSA); *Ortiz v. Fireboard Corp.,* 527 U.S. 815, 845 (1999) (Rules Enabling Act); *AT&T Mobility v. Concepcion*, 131 S. Ct. 1740, 1746 (2011) (FAA); and *CompuCredit Corp. v. Greenwood*, 132 S.Ct. 665, 669 (2012) (same).

The General Counsel relies on the Board's holding in *D. R. Horton* that "the right to engage in collective action – including collective legal action – is the core substantive right protected by the [Act] and is the foundation on which the Act and Federal labor policy rest," citing *Murphy Oil,* supra, slip op. at 7, quoting *D.R. Horton,* supra, slip op. at 10. The General also notes the *Board's* consistent distinction of cases to the contrary. For example, *Concepcion* was decided in the context of a commercial arbitration agreement and the preemption of a state consumer protection law, not employees' substantive, federal collective action rights under Section 7 of the Act. 357 NLRB at 2288. The *D. R. Horton* Board explained that its holding did not conflict with the FAA because the intent of that statute was to leave substantive rights undisturbed and, thus, the right to join or pursue collective relief was a substantive Section 7 right. In *Murphy Oil,* the Board rejected the Fifth Circuit's reliance on *Concepcion's* holding that the FAA preempted a California State law finding class-action waivers in consumer contracts unconscionable. *Murphy Oil,* supra, slip op. at 9.

In any event, regardless as to whether the Board precedent was wrongly decided, I am bound to follow applicable Board law. *Chesapeake Energy Corp*. supra.

III. Respondent's Voluntary MAA Restricts Section 7 rights and Violates the Act.

The Respondent further alleges that the Board's decision in *D.R. Horton* is not applicable to the MAA because *D. R. Horton* only applies to mandatory class waivers,

"imposed upon" employees and "required" by employers "as a condition of employment." *357 NLRB*, supra, slip op. at 1. The Respondent argues that the MAA is voluntary and agreeing to its terms is not required as a condition of employment.

It is undisputed that the Charging Party signed the MAA and did not voluntarily opt out within 15 days thereafter. Nevertheless, recent Board decisions have further construed *D. R. Horton* to extend to arbitration agreements that are voluntary. See *On Assignment Staffing Services*, 362 NLRB No. 189, slip op. at 10 (2015). As such, whether the policy was mandatory or voluntary is not dispositive of whether such policy violates the Act. *On Assignment Staffing Services*, supra, slip. op. at 6 (finding the arbitration policy violated the Act even if employees could opt out of arbitration.); *Nijjar Realty, Inc., d/b/a Pama Management*, 363 NLRB No. 38, slip op. at 2 (2015) (rejecting employer's assertion that the opt-out provision of its arbitration agreement made the agreement lawful); *U.S. Xpress Enterprises, Inc*., 363 NLRB No. 46, slip op. at 1-2 (2015) (same).

In *On Assignment Staffing Services*, the Board held that voluntary agreements are "contrary to the National Labor Relations Act and to fundamental principles of federal labor policy." Supra, slip op. at 7. The Board found that the opt-out procedure interferes with Section 7 rights by requiring employees to take affirmative steps and burdens the exercise of Section 7 rights. A policy requiring employees to obtain their employer's permission to engage in protected concerted activity is unlawful, even if the rule does not absolutely prohibit such activity and regardless of whether the rule is actually enforced. *Chromalloy Gas Turbine Corp.*, 331 NLRB 858, 858–859 (2000), enfd. 262 F.3d 184 (2d Cir. 2001); *Brunswick Corp*., 282 NLRB 794, 794–795 (1987). The Board also found that the respondent's opt-out procedure interfered with Section 7 rights because it required employees who wished to retain their right to pursue class or collective claims to "make 'an observable choice that demonstrated their support for or rejection of'" concerted activity. *On Assignment Staffing Services*, supra, slip op. at 6, citing *Allegheny Ludlum Corp.*, 333 NLRB 734, 740 (2001), enfd. 301 F.3d 167 (3d Cir. 2002).

Applying Board precedent to this case, the Respondent's MAA policy violates the Act. Although the MAA has an opt-out provision, employees have to take affirmative steps to opt out in order to exercise their Section 7 rights. Employees who want to opt out are required to sign and return the form it within 15 days of receipt of the policy. The Board has essentially deemed the additional action that must be taken to sidestep the MAA as an ineffective offset to the coercive nature of the MAA. The rationale there is that it is reasonable to expect that employees would not be inclined to affirmatively opt out of the MAA over concern of standing out as an employee who rejected the employer's request that they waive their Section 7 rights.

IV. The MAA Restrains Employees From Filing Unfair Labor Practices With The Board.

The Respondent also asserts that the MAA is lawful because employees can exercise their right to "refrain" from concerted activity. Relying on *Lutheran Heritage Village-Livonia,* 343 NLRB 646 (2004), the Respondent notes the absence of evidence that the MAA was adopted in response to union activity or other Section 7 activity.

It is true that federal courts and the Board have recognized the employee's right to

waive statutorily protected rights. *BE & K Constr. Co. v. NLRB*, 23 F.3d 1459, 1462 (8th Cir. 1994) (holding that the right to refrain from joining or assisting a union is an equally protected right with that of joining or forming a union). However, the Board already rejected the argument that an opt-out provision affords employees the unfettered freedom to enter into a class waiver, or refrain from doing so. *MasTec Services Co.*, 363 NLRB No. 81 (2015), enf. denied No. 16-60011 (per curiam) (5th Cir. July 11, 2016). Accordingly, even the voluntary nature of a class action waiver is deemed to restrict the Section 7 rights of employees.

V. Respondent's Motions to Compel Arbitration Violate the Act.

The Respondent successfully enforced the MAA as against the Charging Party and continues a similar effort against Vine in the Florida case. As a result, the Charging Party was preventing from pursuing his FLSA claims in Federal district court and relegated to arbitration. Under the circumstances, the Respondent's enforcement of the MAA constituted additional violations of Section 8(a)(1) of the Act. See *Murphy Oil*, supra at slip op. 27. Evidence of the Respondent's enforcement of the MAA in the Illinois and Texas cases, while not a part of the complaint, confirms that the Respondent's coercive actions in the Florida case are not isolated events.

Here, the Respondent insists that the right to engage in class or collective action is not a protected, concerted activity under Section 7 of the Act. The Respondent refers to the voluntary nature of the MAA in support of their contention that the Respondent did not interfere with, restrain or coerce the Charging Party or Vine from opting out of the right to participate in class or collective actions. Board precedent, however, holds otherwise and the Respondent's motions to compel arbitration in the Florida case violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent 20/20 Communications, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Since May 12, 2014, the Respondent has violated Section 8(a)(1) of the Act by maintaining and enforcing a Mutual Arbitration Agreement requiring employees to resolve employment-related disputes exclusively through individual arbitration, and forego any right they have to resolve such disputes through class or collective action.

3. The aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has violated the Act by maintaining and enforcing the Mutual Arbitration Agreement, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [6]

ORDER

The Respondent, 20/20 Communications, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing its Mutual Arbitration Agreement.

(b) Seeking court action to enforce the Mutual Arbitration Agreement that, either expressly or impliedly, or by Respondent's actions or practice, waives the right to maintain employment-related class or collective actions against the Respondent in all forums, whether arbitral or judicial, including the processes of the National Labor Relations Board.

(c) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their 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 or revise the Mutual Arbitration Agreement to make it clear to employees that the agreement does not constitute a waiver of their right to maintain employment related class or collective actions in all forums, or their right to access the National Labor Relations Board processes.

(b) Notify all employees at locations where the policy is in effect, that it will no longer maintain or enforce the provisions contained in the Mutual Arbitration Agreement that waives employees' right to bring or participate in class or collective actions.

(c) Notify arbitral or judicial panels, if any, where the Respondent has attempted to enjoin or otherwise prohibit employees from bringing or participating in class or collective actions, that it is withdrawing those objections and that it no longer seeking to compel arbitration pursuant to the Mutual Arbitration Agreement.

(d) Reimburse the Charging Party, Vine and/or other employees who joined Case 2:15-CV-687-FtM-99CM in the United States District Court for the Middle District of Florida (for any litigation expenses: (i) directly related to opposing Respondent's Motion to Dismiss or in the Alternative, to Stay and Compel Arbitration in *Charlie Smith, on behalf of himself and those similarly situated v.*

[6] 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.

20/20 Communications, Inc., Case 2:15-cv-00687, filed in the United States District Court for the Middle District of Florida; and/or (ii) resulting from any other legal action taken in response to Respondent's efforts to enforce the arbitration agreement; and/or (ii) resulting from any other legal action taken in response to Respondent's efforts to enforce the arbitration agreement.

(e) Within 14 days after service by the Region, post at all facilities where the Mutual Arbitration Agreement is maintained or enforced, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 12, 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 and former employees by such means. Respondent also shall duplicate and mail, at its expense, a copy of the notice to all former employees who were required to sign the mandatory and binding arbitration policy during their employment with the Respondent. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility 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 May 12, 2014.

(f) 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, Washington, D.C. September 6, 2016

Michael A. Rosas
Administrative Law Judge

[7] 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."

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 or enforce the Mutual Arbitration Agreement that requires our employees, as a condition of employment, to waive the right to maintain employment-related class or collective actions in all forums, whether judicial or arbitral.

WE WILL NOT maintain or enforce the Mutual Arbitration Agreement that interferes with your right to access the processes of, or to file charges with, the National Labor Relations Board.

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

WE WILL rescind or revise the Mutual Arbitration Agreement in all of its forms or revise it to make clear that it does not constitute a waiver of your right to maintain employment-related class or collective actions against the company in all forums, and that it does not constitute a waiver of your right to access the processes of, or file charges with, the National Labor Relations Board.

WE WILL notify any arbitral or judicial panel where we have attempted to prevent or enjoin you from commencing, or participating in, joint or class actions that we are withdrawing our objections to these actions.

WE WILL notify current and former employees who were required to sign the Mutual Arbitration Agreement of the rescinded or revised agreement, including providing them with a copy of the revised agreement or specific notification that the agreement has been rescinded.

WE WILL Reimburse Charlie Smith, David Vine and/or other employees who joined Case 2:15-CV-687-FtM-99CM in the United States District Court for the Middle District of Florida (for any litigation expenses: (i) directly related to opposing Respondent's motion to compel arbitration in *Charlie Smith, on behalf of himself and those similarly situated v. 20/20 Communications, Inc.,* Case 2:15-cv-00687, filed in the United States District Court for the Middle District of Florida;

and/or (ii) resulting from any other legal action taken in response to Respondent's efforts to enforce the arbitration agreement.

20/20 Communications, Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.
South Trust Plaza, 201 East Kennedy Boulevard, Ste 530, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-165320 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.

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

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2455.