S204032

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

ARSHAVIR ISKANIAN,

Appellant,

vs.

CLS TRANSPORTATION LOS ANGELES, LLC, et al.,
Respondents,

After Decision By The Court Of Appeal,
Second Appellate District, Division Two
Case No. B235158
From the Superior Court for Los Angeles County
Assigned for All Purposes To Judge Robert Hess, Department 24
Case No. BC356521

RESPONDENT'S OBJECTION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; APPENDIX OF EXHIBITS VOLUME I, TABS 1-2

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY

On April 10, 2013, Appellant Arshavir Iskanian ("Iskanian") sought Judicial Notice of nine documents pursuant to California Evidence Code Sections 459 and 452(d) and (g), and California Rules of Court, rules 8.520(g) and 8.252(a). The thrust of Plaintiffs' request appears to be to demonstrate that the class waiver in the arbitration agreement has deprived employees of the ability to "vindicate their statutory rights." Iskanian's request should be denied because: (1) Iskanian selectively picked pleadings that approximately 60 former *Iskanian* class action members filed with the Superior Court for Los Angeles County in the *Kempler* action, thereby failing to provide the Court with a complete view of the Kempler action, and (2) the claims made in the pleadings of which Iskanian seeks judicial notice are disputed. In the alternative, the Court should also take judicial notice of CLS's related pleadings.

Additionally, the United States Supreme Court has very recently decided *American Express v. Italian Colors Restaurant* (June 20, 2013) (attached). In that case, the Court effectively dashes plaintiff's argument that without the class action vehicle plaintiffs would not be able to vindicate their rights. The case closely follows the logic of *AT&T Mobility v. Concepcion* in which the U.S. Supreme Court overruled this Court's decision in *Discover Bank*.

II. BACKGROUND FACTS

On April 10, 2013, Appellant Arshavir Iskanian filed a Request for Judicial Notice of nine documents pursuant to California Evidence Code Sections 459 and 452(d) and (g), and California Rules of Court, rules 8.520(g) and 8.252(a).

A. Undisputed Facts

The documents of which Iskanian seeks judicial notice, consist of pleadings filed in an action entitled *Kempler v. CLS Transportation Los Angeles, LLC,* pending before the Superior Court for Los Angeles County. The *Kempler* action was filed by 60 former Iskanian class members who filed Demands for Arbitration shortly after the Superior Court decertified the Iskanian class action on June 13, 2011. On December 16, 2011, the Superior Court deemed the *Kempler* action related to the Iskanian class action. In the arbitration cases, Plaintiffs' counsel are seeking trivial amounts in actual individual recovery and over $2 million in fees incurred in the *Iskanian* class action.

B. Disputed Facts

Through his Request for Judicial Notice, Iskanian contends that the pleadings of which he seeks judicial notice demonstrate that the approximately 60 former *Iskanian* class members who elected to arbitrate their claims after the Superior Court decertified the *Iskanian* class action, spent a "year-and-a-half trying in vain to access the arbitral forum to which they had been compelled." Iskanian further asserts that the pleadings of which he seeks judicial notice are relevant to show: (1) that those 60 former *Iskanian* class members effectively struggled to vindicate their rights; (2) were forced to file the *Kempler* action and repeatedly move for order from the trial court to impel CLS to engage in the arbitration process; and (3) CLS consistently refused to pay its share of the arbitration fees for a period of about seven months. **CLS disputes Iskanian's allegations. CLS also disputes that the pleadings offered by Iskanian support Iskanian's contentions.**

Iskanian curiously omitted CLS' related pleadings and oppositions, which would allow this Court to reach its own conclusion. Accordingly, CLS objects to Iskanian's Request for Judicial Notice.

III. LEGAL ARGUMENT

"Judicial notice" is the court's recognition of the existence of a matter of law or fact without the necessity of formal proof. Cal. Evid. Code § 450 *et seq.* "Judicial notice is ... better described as a substitute for (formal) proof, 'a judicial shortcut, a doing away with the formal necessity for evidence'." *Gravert v. DeLuse* (1970) 6 Cal.App.3d 576, 580. Thus, **judicial notice is limited to matters which are indisputably true**. A request for judicial notice can be defeated by showing the matter is reasonably subject to dispute. *Mack v. State Bd. Of Education* (1964) 224 Cal.App.2d 370, 373.

While the Court is required to take judicial notice of some matters such as state and federal law, the Court is not required to take judicial notice of court records. Rather, the Court may take judicial notice of the records of any federal or state court. Cal. Evid. Code § 452(d). Even then, not all matters contained in court records (e.g., pleadings, affidavits, etc.), are indisputably true. While the existence of any document in a court file may be judicially noticed, the truth of matters asserted in such documents is not subject to judicial notice. *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564-1569; *Arce v. Kaiser Found. Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 483-484; *see e.g., Fiorito v. Sup. Ct. (State Farm Fire & Cas. Co.)* (1990) 226 Cal.App.3d 433, 438 (court may not consider the contents of exhibits attached to pleadings that have been controverted by general denials).

Here, Iskanian requests that the Court take judicial notice of the pleadings only the former *Iskanian* class members filed with the Superior Court of California claiming that the contents of those pleadings show that (1) the employees who signed the arbitration agreement at issue in this appeal struggled to vindicate their rights when they sought arbitration; (2) those employees were "forced" to file the *Kempler* action and repeatedly

move for orders from the trial court to impel CLS to engage in the arbitration process; and (3) CLS consistently refused to pay its share of the arbitration fees. While the approximately 60 former Iskanian class members and their counsel (Initiative Legal Group) certainly made the arguments in those pleadings and related declarations now asserted by Iskanian here, those matters are not subject to judicial notice because they were vehemently disputed and refuted by CLS' Answer and related pleadings. Thus, CLS requests that the Court deny Iskanian's Request for Judicial Notice.

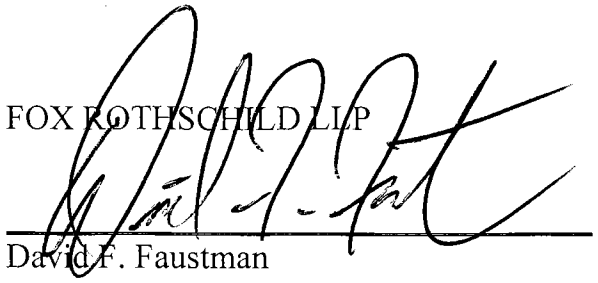
In the alternative, CLS requests that the Court take Judicial Notice of CLS' related pleadings pursuant to California Evidence Code Sections 459 and 452(d) and (g), and California Rules of Court, rules 8.520(g) and 8.252(a). Specifically, CLS' Answer to the *Kempler* Complaint, CLS' Oppositions to the Motions made in the *Kempler* action, and CLS' Opposition to 1 of the 61 pending Motions for Attorneys' Fees filed by the former *Iskanian* class action members after they each settled their claims in arbitration. A complete list of the specific documents of which CLS seeks judicial notice may be found in the Table of Contents inside the bound volume submitted herewith.

IV. CONCLUSION

CLS respectfully requests that the Court deny Iskanian's Request for Judicial Notice because Iskanian has sought judicial notice of pleadings filed only by the approximately 60 former class members in the *Kempler* action and curiously omitted the oppositions filed by CLS. In the alternative, CLS requests that the Court take Judicial Notice of CLS' related pleadings to ensure that the Court has a complete view of the *Kempler* action and result thereof so that it can reach its own conclusion on whether or not the arbitration agreement at issue in this appeal somehow prevented those former class members from vindicating their rights.

Date: June 28, 2013

FOX ROTHSCHILD LLP



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ATTACHMENT

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

AMERICAN EXPRESS CO. ET AL. *v.* ITALIAN COLORS RESTAURANT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 12–133. Argued February 27, 2013—Decided June 20, 2013

An agreement between petitioners, American Express and a subsidiary, and respondents, merchants who accept American Express cards, requires all of their disputes to be resolved by arbitration and provides that there "shall be no right or authority for any Claims to be arbitrated on a class action basis." Respondents nonetheless filed a class action, claiming that petitioners violated §1 of the Sherman Act and seeking treble damages for the class under §4 of the Clayton Act. Petitioners moved to compel individual arbitration under the Federal Arbitration Act (FAA), but respondents countered that the cost of expert analysis necessary to prove the antitrust claims would greatly exceed the maximum recovery for an individual plaintiff. The District Court granted the motion and dismissed the lawsuits. The Second Circuit reversed and remanded, holding that because of the prohibitive costs respondents would face if they had to arbitrate, the class-action waiver was unenforceable and arbitration could not proceed. The Circuit stood by its reversal when this Court remanded in light of *Stolt-Nielsen S. A.* v. *AnimalFeeds International Corp.*, 559 U. S. 662, which held that a party may not be compelled to submit to class arbitration absent an agreement to do so.

Held: The FAA does not permit courts to invalidate a contractual waiver of class arbitration on the ground that the plaintiff's cost of individually arbitrating a federal statutory claim exceeds the potential recovery. Pp. 3–10.

(a) The FAA reflects the overarching principle that arbitration is a matter of contract. See *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. ___, ___. Courts must "rigorously enforce" arbitration agreements according to their terms, *Dean Witter Reynolds, Inc.* v. *Byrd*,

Syllabus

470 U. S. 213, 221, even for claims alleging a violation of a federal statute, unless the FAA's mandate has been "'overridden by a contrary congressional command,'" *CompuCredit Corp.* v. *Greenwood*, 565 U. S. ___, ___. Pp. 3–4.

(b) No contrary congressional command requires rejection of the class-arbitration waiver here. The antitrust laws do not guarantee an affordable procedural path to the vindication of every claim, see *Rodriguez* v. *United States*, 480 U. S. 522, 525–526, or "evince an intention to preclude a waiver" of class-action procedure, *Mitsubishi Motors Corp.* v. *Soler-Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628. Nor does congressional approval of Federal Rule of Civil Procedure 23 establish an entitlement to class proceedings for the vindication of statutory rights. The Rule imposes stringent requirements for certification that exclude most claims, and this Court has rejected the assertion that the class-notice requirement must be dispensed with because the "prohibitively high cost" of compliance would "frustrate [plaintiff's] attempt to vindicate the policies underlying the antitrust" laws, *Eisen* v. *Carlisle & Jacquelin*, 417 U. S. 156, 167–168, 175–176. Pp. 4–5.

(c) The "effective vindication" exception that originated as dictum in *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, also does not invalidate the instant arbitration agreement. The exception comes from a desire to prevent "prospective waiver of a party's right to pursue statutory remedies," *id.*, at 637, n. 19; but the fact that it is not worth the expense involved in *proving* a statutory remedy does not constitute the elimination of the *right to pursue* that remedy. Cf. *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 32; *Vimar Seguros y Reaseguros, S. A.* v. *M/V Sky Reefer*, 515 U. S. 528, 530, 534. *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. ___, all but resolves this case. There, in finding that a law that conditioned enforcement of arbitration on the availability of class procedure interfered with fundamental arbitration attributes, *id.*, at ___, the Court specifically rejected the argument that class arbitration was necessary to prosecute claims "that might otherwise slip through the legal system," *id.*, at ___. Pp. 5–9.

667 F. 3d 204, reversed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. KAGAN, J., filed a dissenting opinion, in which GINSBURG and BREYER, JJ., joined. SOTOMAYOR, J., took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 12–133

AMERICAN EXPRESS COMPANY, ET AL., PETITIONERS
v. ITALIAN COLORS RESTAURANT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 20, 2013]

JUSTICE SCALIA delivered the opinion of the Court.

We consider whether a contractual waiver of class arbitration is enforceable under the Federal Arbitration Act when the plaintiff's cost of individually arbitrating a federal statutory claim exceeds the potential recovery.

I

Respondents are merchants who accept American Express cards. Their agreement with petitioners—American Express and a wholly owned subsidiary—contains a clause that requires all disputes between the parties to be resolved by arbitration. The agreement also provides that "[t]here shall be no right or authority for any Claims to be arbitrated on a class action basis." *In re American Express Merchants' Litigation*, 667 F. 3d 204, 209 (CA2 2012).

Respondents brought a class action against petitioners for violations of the federal antitrust laws. According to respondents, American Express used its monopoly power in the market for charge cards to force merchants to accept credit cards at rates approximately 30% higher than

the fees for competing credit cards.[1] This tying arrangement, respondents said, violated §1 of the Sherman Act. They sought treble damages for the class under §4 of the Clayton Act.

Petitioners moved to compel individual arbitration under the Federal Arbitration Act (FAA), 9 U. S. C. §1 *et seq.* In resisting the motion, respondents submitted a declaration from an economist who estimated that the cost of an expert analysis necessary to prove the antitrust claims would be "at least several hundred thousand dollars, and might exceed $1 million," while the maximum recovery for an individual plaintiff would be $12,850, or $38,549 when trebled. App. 93. The District Court granted the motion and dismissed the lawsuits. The Court of Appeals reversed and remanded for further proceedings. It held that because respondents had established that "they would incur prohibitive costs if compelled to arbitrate under the class action waiver," the waiver was unenforceable and the arbitration could not proceed. *In re American Express Merchants' Litigation*, 554 F. 3d 300, 315–316 (CA2 2009).

We granted certiorari, vacated the judgment, and remanded for further consideration in light of *Stolt-Nielsen S. A.* v. *AnimalFeeds Int'l Corp.*, 559 U. S. 662 (2010), which held that a party may not be compelled to submit to class arbitration absent an agreement to do so. *American Express Co.* v. *Italian Colors Restaurant*, 559 U. S. 1103 (2010). The Court of Appeals stood by its reversal, stating that its earlier ruling did not compel class arbitration. *In re American Express Merchants' Litigation*, 634 F. 3d 187, 200 (CA2 2011). It then *sua sponte* reconsidered its ruling in light of *AT&T Mobility LLC* v. *Concepcion*, 563

[1] A charge card requires its holder to pay the full outstanding balance at the end of a billing cycle; a credit card requires payment of only a portion, with the balance subject to interest.

U. S. ___ (2011), which held that the FAA pre-empted a state law barring enforcement of a class-arbitration waiver. Finding *AT&T Mobility* inapplicable because it addressed pre-emption, the Court of Appeals reversed for the third time. 667 F. 3d, at 213. It then denied rehearing en banc with five judges dissenting. *In re American Express Merchants' Litigation*, 681 F. 3d 139 (CA2 2012). We granted certiorari, 568 U. S. ___ (2012), to consider the question "[w]hether the Federal Arbitration Act permits courts . . . to invalidate arbitration agreements on the ground that they do not permit class arbitration of a federal-law claim," Pet. for Cert. i.

II

Congress enacted the FAA in response to widespread judicial hostility to arbitration. See *AT&T Mobility, supra*, at ___ (slip op., at 4). As relevant here, the Act provides:

> "A written provision in any maritime transaction or contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2.

This text reflects the overarching principle that arbitration is a matter of contract. See *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. ___, ___ (2010) (slip op., at 3). And consistent with that text, courts must "rigorously enforce" arbitration agreements according to their terms, *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 221 (1985), including terms that "specify *with whom* [the parties] choose to arbitrate their disputes," *Stolt-Nielsen, supra*, at 683, and "the rules under which that arbitration will be conducted," *Volt Information Sciences, Inc.* v. *Board of*

Trustees of Leland Stanford Junior Univ., 489 U. S. 468, 479 (1989). That holds true for claims that allege a violation of a federal statute, unless the FAA's mandate has been "'overridden by a contrary congressional command.'" *CompuCredit Corp.* v. *Greenwood*, 565 U. S. ___, ___ (2012) (slip op., at 2–3) (quoting *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220, 226 (1987)).

III

No contrary congressional command requires us to reject the waiver of class arbitration here. Respondents argue that requiring them to litigate their claims individually—as they contracted to do—would contravene the policies of the antitrust laws. But the antitrust laws do not guarantee an affordable procedural path to the vindication of every claim. Congress has taken some measures to facilitate the litigation of antitrust claims—for example, it enacted a multiplied-damages remedy. See 15 U. S. C. §15 (treble damages). In enacting such measures, Congress has told us that it is willing to go, in certain respects, beyond the normal limits of law in advancing its goals of deterring and remedying unlawful trade practice. But to say that Congress must have intended whatever departures from those normal limits advance antitrust goals is simply irrational. "[N]o legislation pursues its purposes at all costs." *Rodriguez* v. *United States*, 480 U. S. 522, 525–526 (1987) (*per curiam*).

The antitrust laws do not "evinc[e] an intention to preclude a waiver" of class-action procedure. *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628 (1985). The Sherman and Clayton Acts make no mention of class actions. In fact, they were enacted decades before the advent of Federal Rule of Civil Procedure 23, which was "designed to allow an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano* v. *Yamasaki*,

442 U. S. 682, 700–701 (1979). The parties here agreed to arbitrate pursuant to that "usual rule," and it would be remarkable for a court to erase that expectation.

Nor does congressional approval of Rule 23 establish an entitlement to class proceedings for the vindication of statutory rights. To begin with, it is likely that such an entitlement, invalidating private arbitration agreements denying class adjudication, would be an "abridg[ment]" or modif[ication]" of a "substantive right" forbidden to the Rules, see 28 U. S. C. §2072(b). But there is no evidence of such an entitlement in any event. The Rule imposes stringent requirements for certification that in practice exclude most claims. And we have specifically rejected the assertion that one of those requirements (the class-notice requirement) must be dispensed with because the "prohibitively high cost" of compliance would "frustrate [plaintiff's] attempt to vindicate the policies underlying the antitrust" laws. *Eisen* v. *Carlisle & Jacquelin*, 417 U. S. 156, 166–168, 175–176 (1974). One might respond, perhaps, that federal law secures a nonwaivable *opportunity* to vindicate federal policies by satisfying the procedural strictures of Rule 23 or invoking some other informal class mechanism in arbitration. But we have already rejected that proposition in *AT&T Mobility*, 563 U. S., at ___ (slip op., at 9).

IV

Our finding of no "contrary congressional command" does not end the case. Respondents invoke a judge-made exception to the FAA which, they say, serves to harmonize competing federal policies by allowing courts to invalidate agreements that prevent the "effective vindication" of a federal statutory right. Enforcing the waiver of class arbitration bars effective vindication, respondents contend, because they have no economic incentive to pursue their antitrust claims individually in arbitration.

The "effective vindication" exception to which respondents allude originated as dictum in *Mitsubishi Motors*, where we expressed a willingness to invalidate, on "public policy" grounds, arbitration agreements that "operat[e] . . . as a prospective waiver of a party's *right to pursue* statutory remedies." 473 U. S., at 637, n. 19 (emphasis added). Dismissing concerns that the arbitral forum was inadequate, we said that "so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function." *Id.*, at 637. Subsequent cases have similarly asserted the existence of an "effective vindication" exception, see, *e.g.*, *14 Penn Plaza LLC* v. *Pyett*, 556 U. S. 247, 273–274 (2009); *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 28 (1991), but have similarly declined to apply it to invalidate the arbitration agreement at issue.[2]

And we do so again here. As we have described, the exception finds its origin in the desire to prevent "prospective waiver of a party's *right to pursue* statutory remedies," *Mitsubishi Motors*, *supra*, at 637, n. 19 (emphasis added). That would certainly cover a provision in an arbitration agreement forbidding the assertion of certain statutory rights. And it would perhaps cover filing and administrative fees attached to arbitration that are so high as to make access to the forum impracticable. See

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[2] Contrary to the dissent's claim, *post*, at 8–9, and n. 3 (opinion of KAGAN, J.), the Court in *Mitsubishi Motors* did not hold that federal statutory claims are subject to arbitration so long as the claimant may effectively vindicate his rights in the arbitral forum. The Court expressly stated that, "at this stage in the proceedings," it had "no occasion to speculate" on whether the arbitration agreement's potential deprivation of a claimant's right to pursue federal remedies may render that agreement unenforceable. 473 U. S., at 637, n. 19. Even the Court of Appeals in this case recognized the relevant language in *Mitsubishi Motors* as dicta. *In re American Express Merchants' Litigation*, 667 F. 3d 204, 214 (CA2 2012).

Green Tree Financial Corp.-Ala. v. *Randolph*, 531 U. S. 79, 90 (2000) ("It may well be that the existence of large arbitration costs could preclude a litigant . . . from effectively vindicating her federal statutory rights"). But the fact that it is not worth the expense involved in *proving* a statutory remedy does not constitute the elimination of the *right to pursue* that remedy. See 681 F. 3d, at 147 (Jacobs, C. J., dissenting from denial of rehearing en banc).[3] The class-action waiver merely limits arbitration to the two contracting parties. It no more eliminates those parties' right to pursue their statutory remedy than did federal law before its adoption of the class action for legal relief in 1938, see Fed. Rule Civ. Proc. 23, 28 U. S. C., p. 864 (1938 ed., Supp V); 7A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §1752, p. 18 (3d ed. 2005). Or, to put it differently, the individual suit that was considered adequate to assure "effective vindication" of a federal right before adoption of class-action procedures did not suddenly become "ineffective vindication" upon their adoption.[4]

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[3]The dissent contends that a class-action waiver may deny a party's right to pursue statutory remedies in the same way as a clause that bars a party from presenting economic testimony. See *post,* at 3, 9. That is a false comparison for several reasons: To begin with, it is not a given that such a clause would constitute an impermissible waiver; we have never considered the point. But more importantly, such a clause, assuming it makes vindication of the claim impossible, makes it impossible not just as a class action but even as an individual claim.

[4]Who can disagree with the dissent's assertion that "the effective-vindication rule asks about the world today, not the world as it might have looked when Congress passed a given statute"? *Post,* at 12. But time does not change the meaning of effectiveness, making ineffective vindication today what was effective vindication in the past. The dissent also says that the agreement bars other forms of cost sharing—existing before the Sherman Act—that could provide effective vindication. See *post,* at 11–12, and n. 5. Petitioners denied that, and that is not what the Court of Appeals decision under review here held. It held that, because other forms of cost sharing were not economically feasible

A pair of our cases brings home the point. In *Gilmer*, *supra*, we had no qualms in enforcing a class waiver in an arbitration agreement even though the federal statute at issue, the Age Discrimination in Employment Act, expressly permitted collective actions. We said that statutory permission did "'not mean that individual attempts at conciliation were intended to be barred.'" *Id.*, at 32. And in *Vimar Seguros y Reaseguros, S. A.* v. *M/V Sky Reefer*, 515 U. S. 528 (1995), we held that requiring arbitration in a foreign country was compatible with the federal Carriage of Goods by Sea Act. That legislation prohibited any agreement "'relieving'" or "'lessening'" the liability of a carrier for damaged goods, *id.*, at 530, 534 (quoting 46 U. S. C. App. §1303(8) (1988 ed.))—which is close to codification of an "effective vindication" exception. The Court rejected the argument that the "inconvenience and costs of proceeding" abroad "lessen[ed]" the defendants' liability, stating that "[i]t would be unwieldy and unsupported by the terms or policy of the statute to require courts to proceed case by case to tally the costs and burdens to particular plaintiffs in light of their means, the size of their claims, and the relative burden on the carrier." 515 U. S., at 532, 536. Such a "tally[ing] [of] the costs and burdens" is precisely what the dissent would impose upon federal courts here.

Truth to tell, our decision in *AT&T Mobility* all but resolves this case. There we invalidated a law conditioning enforcement of arbitration on the availability of class procedure because that law "interfere[d] with fundamental

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("the *only economically feasible* means for . . . enforcing [respondents'] statutory rights is *via a class action*"), the class-action waiver was unenforceable. 667 F. 3d, at 218 (emphasis added). (The dissent's assertion to the contrary cites not the opinion on appeal here, but an earlier opinion that was vacated. See *In re American Express Merchants' Litigation*, 554 F. 3d 300 (CA2 2009), vacated and remanded, 559 U. S. 1103 (2010).) That is the conclusion we reject.

attributes of arbitration." 563 U. S., at ___ (slip op., at 9). "[T]he switch from bilateral to class arbitration," we said, "sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment." *Id.*, at ___ (slip op., at 14). We specifically rejected the argument that class arbitration was necessary to prosecute claims "that might otherwise slip through the legal system." *Id.*, at ___ (slip op., at 17).[5]

* * *

The regime established by the Court of Appeals' decision would require—before a plaintiff can be held to contractually agreed bilateral arbitration—that a federal court determine (and the parties litigate) the legal requirements for success on the merits claim-by-claim and theory-by-theory, the evidence necessary to meet those requirements, the cost of developing that evidence, and the damages that would be recovered in the event of success. Such a preliminary litigating hurdle would undoubtedly destroy the prospect of speedy resolution that arbitration in general and bilateral arbitration in particular was meant to secure. The FAA does not sanction such a judicially created superstructure.

The judgment of the Court of Appeals is reversed.

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[5] In dismissing *AT&T Mobility* as a case involving pre-emption and not the effective-vindication exception, the dissent ignores what that case established—that the FAA's command to enforce arbitration agreements trumps any interest in ensuring the prosecution of low-value claims. The latter interest, we said, is "unrelated" to the FAA. 563 U. S., at ___ (slip op., at 17). Accordingly, the FAA does, contrary to the dissent's assertion, see *post,* at 5, favor the absence of litigation when that is the consequence of a class-action waiver, since its "'principal purpose'" is the enforcement of arbitration agreements according to their terms. 563 U. S., at ___ (slip op., at 9–10) (quoting *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 487 (1989)).

It is so ordered.

JUSTICE SOTOMAYOR took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 12–133

AMERICAN EXPRESS COMPANY, ET AL., PETITIONERS
v. ITALIAN COLORS RESTAURANT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 20, 2013]

JUSTICE THOMAS, concurring.

I join the Court's opinion in full. I write separately to note that the result here is also required by the plain meaning of the Federal Arbitration Act. In *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. ___ (2011), I explained that "the FAA requires that an agreement to arbitrate be enforced unless a party successfully challenges the formation of the arbitration agreement, such as by proving fraud or duress." *Id.*, at ___ (concurring opinion) (slip op., at 1–2). In this case, Italian Colors makes two arguments to support its conclusion that the arbitration agreement should not be enforced. First, it contends that enforcing the arbitration agreement "would contravene the policies of the antitrust laws." *Ante*, at 4. Second, it contends that a court may "invalidate agreements that prevent the 'effective vindication' of a federal statutory right." *Ante,* at 6. Neither argument "concern[s] whether the contract was properly made," *Concepcion*, *supra,* at ___ (THOMAS, J., concurring) (slip op., at 5–6). Because Italian Colors has not furnished "grounds . . . for the revocation of any contract," 9 U. S. C. §2, the arbitration agreement must be enforced. Italian Colors voluntarily entered into a contract containing a bilateral arbitration provision. It cannot now escape its obligations merely because the claim it wishes to bring might be economically infeasible.

SUPREME COURT OF THE UNITED STATES

No. 12–133

AMERICAN EXPRESS COMPANY, ET AL., PETITIONERS
v. ITALIAN COLORS RESTAURANT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 20, 2013]

JUSTICE KAGAN, with whom JUSTICE GINSBURG and JUSTICE BREYER join, dissenting.

Here is the nutshell version of this case, unfortunately obscured in the Court's decision. The owner of a small restaurant (Italian Colors) thinks that American Express (Amex) has used its monopoly power to force merchants to accept a form contract violating the antitrust laws. The restaurateur wants to challenge the allegedly unlawful provision (imposing a tying arrangement), but the same contract's arbitration clause prevents him from doing so. That term imposes a variety of procedural bars that would make pursuit of the antitrust claim a fool's errand. So if the arbitration clause is enforceable, Amex has insulated itself from antitrust liability—even if it has in fact violated the law. The monopolist gets to use its monopoly power to insist on a contract effectively depriving its victims of all legal recourse.

And here is the nutshell version of today's opinion, admirably flaunted rather than camouflaged: Too darn bad.

That answer is a betrayal of our precedents, and of federal statutes like the antitrust laws. Our decisions have developed a mechanism—called the effective-vindication rule—to prevent arbitration clauses from choking off a plaintiff's ability to enforce congressionally

created rights. That doctrine bars applying such a clause when (but only when) it operates to confer immunity from potentially meritorious federal claims. In so doing, the rule reconciles the Federal Arbitration Act (FAA) with all the rest of federal law—and indeed, promotes the most fundamental purposes of the FAA itself. As applied here, the rule would ensure that Amex's arbitration clause does not foreclose Italian Colors from vindicating its right to redress antitrust harm.

The majority barely tries to explain why it reaches a contrary result. It notes that we have not decided this exact case before—neglecting that the principle we have established fits this case hand in glove. And it concocts a special exemption for class-arbitration waivers—ignoring that this case concerns much more than that. Throughout, the majority disregards our decisions' central tenet: An arbitration clause may not thwart federal law, irrespective of exactly how it does so. Because the Court today prevents the effective vindication of federal statutory rights, I respectfully dissent.

I

Start with an uncontroversial proposition: We would refuse to enforce an exculpatory clause insulating a company from antitrust liability—say, "Merchants may bring no Sherman Act claims"—even if that clause were contained in an arbitration agreement. See *ante*, at 6. Congress created the Sherman Act's private cause of action not solely to compensate individuals, but to promote "the public interest in vigilant enforcement of the antitrust laws." *Lawlor* v. *National Screen Service Corp.*, 349 U. S. 322, 329 (1955). Accordingly, courts will not enforce a prospective waiver of the right to gain redress for an antitrust injury, whether in an arbitration agreement or any other contract. See *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 637, and n. 19

(1985). The same rule applies to other important federal statutory rights. See *14 Penn Plaza LLC* v. *Pyett*, 556 U. S. 247, 273 (2009) (Age Discrimination in Employment Act); *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697, 704 (1945) (Fair Labor Standards Act). But its necessity is nowhere more evident than in the antitrust context. Without the rule, a company could use its monopoly power to protect its monopoly power, by coercing agreement to contractual terms eliminating its antitrust liability.

If the rule were limited to baldly exculpatory provisions, however, a monopolist could devise numerous ways around it. Consider several alternatives that a party drafting an arbitration agreement could adopt to avoid antitrust liability, each of which would have the identical effect. On the front end: The agreement might set outlandish filing fees or establish an absurd (*e.g.*, one-day) statute of limitations, thus preventing a claimant from gaining access to the arbitral forum. On the back end: The agreement might remove the arbitrator's authority to grant meaningful relief, so that a judgment gets the claimant nothing worthwhile. And in the middle: The agreement might block the claimant from presenting the kind of proof that is necessary to establish the defendant's liability—say, by prohibiting any economic testimony (good luck proving an antitrust claim without that!). Or else the agreement might appoint as an arbitrator an obviously biased person—say, the CEO of Amex. The possibilities are endless—all less direct than an express exculpatory clause, but no less fatal. So the rule against prospective waivers of federal rights can work only if it applies not just to a contract clause explicitly barring a claim, but to others that operate to do so.

And sure enough, our cases establish this proposition: An arbitration clause will not be enforced if it prevents the effective vindication of federal statutory rights, however it achieves that result. The rule originated in *Mitsubishi*,

where we held that claims brought under the Sherman Act and other federal laws are generally subject to arbitration. 473 U. S., at 628. By agreeing to arbitrate such a claim, we explained, "a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." *Ibid.* But crucial to our decision was a limiting principle, designed to safeguard federal rights: An arbitration clause will be enforced only "so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum." *Id.*, at 637. If an arbitration provision "operated . . . as a prospective waiver of a party's right to pursue statutory remedies," we emphasized, we would "condemn[]" it. *Id.*, at 637, n. 19. Similarly, we stated that such a clause should be "set[] aside" if "proceedings in the contractual forum will be so gravely difficult" that the claimant "will for all practical purposes be deprived of his day in court." *Id.*, at 632 (internal quotation marks omitted). And in the decades since *Mitsubishi*, we have repeated its admonition time and again, instructing courts not to enforce an arbitration agreement that effectively (even if not explicitly) forecloses a plaintiff from remedying the violation of a federal statutory right. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 28 (1991); *Vimar Seguros y Reaseguros, S. A.* v. *M/V Sky Reefer*, 515 U. S. 528, 540 (1995); *14 Penn Plaza*, 556 U. S., at 266, 273–274.

Our decision in *Green Tree Financial Corp.-Ala.* v. *Randolph*, 531 U. S. 79 (2000), confirmed that this principle applies when an agreement thwarts federal law by making arbitration prohibitively expensive. The plaintiff there (seeking relief under the Truth in Lending Act) argued that an arbitration agreement was unenforceable because it "create[d] a risk" that she would have to "bear prohibitive arbitration costs" in the form of high filing and administrative fees. *Id.*, at 90 (internal quotation marks

omitted). We rejected that contention, but not because we doubted that such fees could prevent the effective vindication of statutory rights. To the contrary, we invoked our rule from *Mitsubishi*, making clear that it applied to the case before us. See 538 U. S., at 90. Indeed, we added a burden of proof: "[W]here, as here," we held, a party asserting a federal right "seeks to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive, that party bears the burden of showing the likelihood of incurring such costs." *Id.*, at 92. Randolph, we found, had failed to meet that burden: The evidence she offered was "too speculative." *Id.*, at 91. But even as we dismissed Randolph's suit, we reminded courts to protect against arbitration agreements that make federal claims too costly to bring.

Applied as our precedents direct, the effective-vindication rule furthers the purposes not just of laws like the Sherman Act, but of the FAA itself. That statute reflects a federal policy favoring actual arbitration—that is, arbitration as a streamlined "method of resolving disputes," not as a foolproof way of killing off valid claims. *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 481 (1989). Put otherwise: What the FAA prefers to litigation is arbitration, not *de facto* immunity. The effective-vindication rule furthers the statute's goals by ensuring that arbitration remains a real, not faux, method of dispute resolution. With the rule, companies have good reason to adopt arbitral procedures that facilitate efficient and accurate handling of complaints. Without it, companies have every incentive to draft their agreements to extract backdoor waivers of statutory rights, making arbitration unavailable or pointless. So down one road: More arbitration, better enforcement of federal statutes. And down the other: Less arbitration, poorer enforcement of federal statutes. Which would you prefer? Or still more aptly: Which do you think Congress

would?

The answer becomes all the more obvious given the limits we have placed on the rule, which ensure that it does not diminish arbitration's benefits. The rule comes into play only when an agreement "operate[s] . . . as a prospective waiver"—that is, forecloses (not diminishes) a plaintiff's opportunity to gain relief for a statutory violation. *Mitsubishi*, 473 U. S., at 637, n. 19. So, for example, *Randolph* assessed whether fees in arbitration would be "prohibitive" (not high, excessive, or extravagant). 531 U. S., at 90. Moreover, the plaintiff must make that showing through concrete proof: "[S]peculative" risks, "unfounded assumptions," and "unsupported statements" will not suffice. *Id.*, at 90–91, and n. 6. With the inquiry that confined and the evidentiary requirements that high, courts have had no trouble assessing the matters the rule makes relevant. And for almost three decades, courts have followed our edict that arbitration clauses must usually prevail, declining to enforce them in only rare cases. See Brief for United States as *Amicus Curiae* 26–27. The effective-vindication rule has thus operated year in and year out without undermining, much less "destroy[ing]," the prospect of speedy dispute resolution that arbitration secures. *Ante*, at 9.

And this is just the kind of case the rule was meant to address. Italian Colors, as I have noted, alleges that Amex used its market power to impose a tying arrangement in violation of the Sherman Act. The antitrust laws, all parties agree, provide the restaurant with a cause of action and give it the chance to recover treble damages. Here, that would mean Italian Colors could take home up to $38,549. But a problem looms. As this case comes to us, the evidence shows that Italian Colors cannot prevail in arbitration without an economic analysis defining the relevant markets, establishing Amex's monopoly power, showing anticompetitive effects, and measuring damages.

And that expert report would cost between several hundred thousand and one million dollars.[1] So the expense involved in proving the claim in arbitration is ten times what Italian Colors could hope to gain, even in a best-case scenario. That counts as a "prohibitive" cost, in *Randolph*'s terminology, if anything does. No rational actor would bring a claim worth tens of thousands of dollars if doing so meant incurring costs in the hundreds of thousands.

An arbitration agreement could manage such a mismatch in many ways, but Amex's disdains them all. As the Court makes clear, the contract expressly prohibits class arbitration. But that is only part of the problem.[2] The agreement also disallows any kind of joinder or consolidation of claims or parties. And more: Its confidentiality provision prevents Italian Colors from informally arranging with other merchants to produce a common expert report. And still more: The agreement precludes any shifting of costs to Amex, even if Italian Colors prevails. And beyond all that: Amex refused to enter into any stipulations that would obviate or mitigate the need for

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[1] The evidence relating to these costs comes from an affidavit submitted by an economist experienced in proving similar antitrust claims. The Second Circuit found that Amex "ha[d] brought no serious challenge" to that factual showing. See, *e.g.*, 667 F. 3d 204, 210 (2012). And in this Court, Amex conceded that Italian Colors would need an expert economic report to prevail in arbitration. See Tr. of Oral Arg. 15. Perhaps that is not really true. A hallmark of arbitration is its use of procedures tailored to the type of dispute and amount in controversy; so arbitrators might properly decline to demand such a rigorous evidentiary showing in small antitrust cases. But that possibility cannot disturb the factual premise on which this case comes to us, and which the majority accepts: that Italian Colors's tying claim is an ordinary kind of antitrust claim; and that it is worth about a tenth the cost of arbitration.

[2] The majority contends that the class-action waiver is the only part we should consider. See *ante*, at 7–8, n. 4. I explain below why that assertion is wrong. See *infra*, at 11–12.

the economic analysis. In short, the agreement as applied in this case cuts off not just class arbitration, but any avenue for sharing, shifting, or shrinking necessary costs. Amex has put Italian Colors to this choice: Spend way, way, way more money than your claim is worth, or relinquish your Sherman Act rights.

So contra the majority, the court below got this case right. Italian Colors proved what the plaintiff in *Randolph* could not—that a standard-form agreement, taken as a whole, renders arbitration of a claim "prohibitively expensive." 531 U. S., at 92. The restaurant thus established that the contract "operate[s] . . . as a prospective waiver," and prevents the "effective[] . . . vindicat[ion]" of Sherman Act rights. *Mitsubishi*, 473 U. S., at 637, and n. 19. I would follow our precedents and decline to compel arbitration.

II

The majority is quite sure that the effective-vindication rule does not apply here, but has precious little to say about why. It starts by disparaging the rule as having "originated as dictum." *Ante,* at 6. But it does not rest on that swipe, and for good reason. As I have explained, see *supra,* at 3–4, the rule began as a core part of *Mitsubishi*: We held there that federal statutory claims are subject to arbitration "*so long as*" the claimant "effectively may vindicate its [rights] in the arbitral forum." 473 U. S., at 637 (emphasis added). The rule thus served as an essential condition of the decision's holding.[3] And in *Randolph*,

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[3]The majority is dead wrong when it says that *Mitsubishi* reserved judgment on "whether the arbitration agreement's potential deprivation of a claimant's right to pursue federal remedies may render that agreement unenforceable." *Ante*, at 6, n. 2. What the *Mitsubishi* Court had "no occasion to speculate on" was whether a particular agreement *in fact* eliminated the claimant's federal rights. 473 U. S., at 673, n. 19. But we stated expressly that if the agreement did so (as Amex's does),

we provided a standard for applying the rule when a claimant alleges "prohibitive costs" ("Where, as here," etc., see *supra,* at 5), and we then applied that standard to the parties before us. So whatever else the majority might think of the effective-vindication rule, it is not dictum.

The next paragraph of the Court's decision (the third of Part IV) is the key: It contains almost the whole of the majority's effort to explain why the effective-vindication rule does not stop Amex from compelling arbitration. The majority's first move is to describe *Mitsubishi* and *Randolph* as covering only discrete situations: The rule, the majority asserts, applies to arbitration agreements that eliminate the "right to pursue statutory remedies" by "forbidding the assertion" of the right (as addressed in *Mitsubishi*) or imposing filing and administrative fees "so high as to make access to the forum impracticable" (as addressed in *Randolph*). *Ante,* at 6 (emphasis deleted; internal quotation marks omitted). Those cases are not this case, the majority says: Here, the agreement's provisions went to the possibility of "*proving* a statutory remedy." *Ante,* at 7.

But the distinction the majority proffers, which excludes problems of proof, is one *Mitsubishi* and *Randolph* (and our decisions reaffirming them) foreclose. Those decisions establish what in some quarters is known as a principle: When an arbitration agreement prevents the effective vindication of federal rights, a party may go to court. That principle, by its nature, operates in diverse circumstances—not just the ones that happened to come before the Court. See *supra,* at 3–4. It doubtless covers the baldly exculpatory clause and prohibitive fees that the majority acknowledges would preclude an arbitration agreement's enforcement. But so too it covers the world of other provisions a clever drafter might devise to scuttle even the most

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we would invalidate it. *Ibid.*; see *supra,* at 4.

meritorious federal claims. Those provisions might deny entry to the forum in the first instance. Or they might deprive the claimant of any remedy. Or they might prevent the claimant from offering the necessary proof to prevail, as in my "no economic testimony" hypothetical—and in the actual circumstances of this case. See *supra,* at 3. The variations matter not at all. Whatever the precise mechanism, each "operate[s] . . . as a prospective waiver of a party's [federal] right[s]"—and so confers immunity on a wrongdoer. *Mitsubishi,* 473 U. S., at 637, n. 19. And that is what counts under our decisions.[4]

Nor can the majority escape the principle we have established by observing, as it does at one point, that Amex's agreement merely made arbitration "not worth the expense." *Ante,* at 7. That suggestion, after all, runs smack into *Randolph,* which likewise involved an allegation that arbitration, as specified in a contract, "would be prohibitively expensive." 531 U. S., at 92. Our decision there made clear that a provision raising a plaintiff's costs could foreclose consideration of federal claims, and so run afoul of the effective-vindication rule. The expense at issue in *Randolph* came from a filing fee combined with a per-diem payment for the arbitrator. But nothing about those particular costs is distinctive; and indeed, a rule confined to them would be weirdly idiosyncratic. Not surprisingly, then, *Randolph* gave no hint of distinguishing among the different ways an arbitration agreement can make a claim

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[4] *Gilmer* and *Vimar Seguros,* which the majority relies on, see *ante,* at 8, fail to advance its argument. The plaintiffs there did not claim, as Italian Colors does, that an arbitration clause altogether precluded them from vindicating their federal rights. They averred only that arbitration would be less convenient or effective than a proceeding in court. See *Gilmer* v. *Interstate/Johnson Lane Corp.,* 500 U. S. 20, 31–32 (1991); *Vimar Seguros y Reaseguros, S. A.* v. *M/V Sky Reefer,* 515 U. S. 528, 533 (1995). As I have explained, that kind of showing does not meet the effective-vindication rule's high bar. See *supra,* at 6.

too costly to bring. Its rationale applies whenever an agreement makes the vindication of federal claims impossibly expensive—whether by imposing fees or proscribing cost-sharing or adopting some other device.

That leaves the three last sentences in the majority's core paragraph. Here, the majority conjures a special reason to exclude "class-action waiver[s]" from the effective-vindication rule's compass. *Ante,* at 7–8, and n. 4. Rule 23, the majority notes, became law only in 1938—decades after the Sherman Act. The majority's conclusion: If federal law in the interim decades did not eliminate a plaintiff's rights under that Act, then neither does this agreement.

But that notion, first of all, rests on a false premise: that this case is only about a class-action waiver. See *ante,* at 7, n. 4 (confining the case to that issue). It is not, and indeed could not sensibly be. The effective-vindication rule asks whether an arbitration agreement *as a whole* precludes a claimant from enforcing federal statutory rights. No single provision is properly viewed in isolation, because an agreement can close off one avenue to pursue a claim while leaving others open. In this case, for example, the agreement could have prohibited class arbitration without offending the effective-vindication rule *if* it had provided an alternative mechanism to share, shift, or reduce the necessary costs. The agreement's problem is that it bars not just class actions, but also all mechanisms—many existing long before the Sherman Act, if that matters—for joinder or consolidation of claims, informal coordination among individual claimants, or amelioration of arbitral expenses. See *supra,* at 7. And contrary to the majority's assertion, the Second Circuit well understood that point: It considered, for example, whether Italian Colors could shift expert expenses to Amex if its claim prevailed (no) or could join with merchants bringing similar claims to produce a common expert report (no again).

See 554 F. 3d 300, 318 (2009). It is only in this Court that the case has become strangely narrow, as the majority stares at a single provision rather than considering, in the way the effective-vindication rule demands, how the entire contract operates.[5]

In any event, the age of the relevant procedural mechanisms (whether class actions or any other) does not matter, because the effective-vindication rule asks about the world today, not the world as it might have looked when Congress passed a given statute. Whether a particular procedural device preceded or post-dated a particular statute, the question remains the same: Does the arbitration agreement foreclose a party—right now—from effectively vindicating the substantive rights the statute provides? This case exhibits a whole raft of changes since Congress passed the Sherman Act, affecting both parties to the dispute—not just new procedural rules (like Rule 23), but also new evidentiary requirements (like the demand here for an expert report) and new contract provisions affecting arbitration (like this agreement's confidentiality clause). But what has stayed the same is this: Congress's intent that antitrust plaintiffs should be able to enforce their rights free of any prior waiver. See *supra,* at 2–3; *Mitsubishi*, 473 U. S., at 637, n. 19. The effective-vindication rule carries out that purpose by ensuring that

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[5]In defense of this focus, the majority quotes the Second Circuit as concluding that "the *only economically feasible* means" for Italian Colors to enforce its statutory rights "is via a class action." *Ante*, at 7–8, n. 4 (quoting 667 F. 3d, at 218; internal quotation marks omitted; emphasis added by the Court). But the Court of Appeals reached that conclusion only after finding that the agreement prohibited all *other* forms of cost-sharing and cost-shifting. See 554 F. 3d 300, 318 (2009). (That opinion was vacated on other grounds, but its analysis continued to inform—indeed, was essential to—the Second Circuit's final decision in the case. See 667 F. 3d, at 218.) The Second Circuit therefore did exactly what the majority refuses to do—look to the agreement as a whole to determine whether it permits the vindication of federal rights.

any arbitration agreement operating as such a waiver is unenforceable. And that requires courts to determine in the here and now—rather than in ye olde glory days—whether an agreement's provisions foreclose even meritorious antitrust claims.

Still, the majority takes one last stab: "Truth to tell," it claims, *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. ___ (2011), "all but resolves this case." *Ante,* at 8. In that decision, the majority recounts, this Court held that the FAA preempted a state "law conditioning enforcement of arbitration on the availability of class procedure." *Ibid.*; see 563 U. S., at ___ (slip op., at 9). According to the majority, that decision controls here because "[w]e specifically rejected the argument that class arbitration was necessary." *Ante*, at 9.

Where to begin? Well, maybe where I just left off: Italian Colors is not claiming that a class action is necessary—only that it have *some* means of vindicating a meritorious claim. And as I have shown, non-class options abound. See *supra,* at 11. The idea that *AT&T Mobility* controls here depends entirely on the majority's view that this case is "class action or bust." Were the majority to drop that pretense, it could make no claim for *AT&T Mobility*'s relevance.

And just as this case is not about class actions, *AT&T Mobility* was not—and could not have been—about the effective-vindication rule. Here is a tip-off: *AT&T Mobility* nowhere cited our effective-vindication precedents. That was so for two reasons. To begin with, the state law in question made class-action waivers unenforceable even when a party *could* feasibly vindicate her claim in an individual arbitration. The state rule was designed to preserve the broad-scale "deterrent effects of class actions," not merely to protect a particular plaintiff's right to assert her own claim. 563 U. S., at ___ (slip op., at 3). Indeed, the Court emphasized that the complaint in that

case was "most unlikely to go unresolved" because AT&T's agreement contained a host of features ensuring that "aggrieved customers who filed claims would be essentially guaranteed to be made whole." *Id.*, at ___ (slip op., at 17–18) (internal quotation marks and brackets omitted). So the Court professed that *AT&T Mobility* did not implicate the only thing (a party's ability to vindicate a meritorious claim) this case involves.

And if that is not enough, *AT&T Mobility* involved a *state* law, and therefore could not possibly implicate the effective-vindication rule. When a state rule allegedly conflicts with the FAA, we apply standard preemption principles, asking whether the state law frustrates the FAA's purposes and objectives. If the state rule does so—as the Court found in *AT&T Mobility*—the Supremacy Clause requires its invalidation. We have no earthly interest (quite the contrary) in vindicating that law. Our effective-vindication rule comes into play only when the FAA is alleged to conflict with another *federal* law, like the Sherman Act here. In that all-federal context, one law does not automatically bow to the other, and the effective-vindication rule serves as a way to reconcile any tension between them. Again, then, *AT&T Mobility* had no occasion to address the issue in this case. The relevant decisions are instead *Mitsubishi* and *Randolph*.

* * *

The Court today mistakes what this case is about. To a hammer, everything looks like a nail. And to a Court bent on diminishing the usefulness of Rule 23, everything looks like a class action, ready to be dismantled. So the Court does not consider that Amex's agreement bars not just class actions, but "other forms of cost-sharing . . . that could provide effective vindication." *Ante*, at 7, n. 4. In short, the Court does not consider—and does not decide—Italian Colors's (and similarly situated litigants') actual

argument about why the effective-vindication rule precludes this agreement's enforcement.

As a result, Amex's contract will succeed in depriving Italian Colors of any effective opportunity to challenge monopolistic conduct allegedly in violation of the Sherman Act. The FAA, the majority says, so requires. Do not be fooled. Only the Court so requires; the FAA was never meant to produce this outcome. The FAA conceived of arbitration as a "method of *resolving* disputes"—a way of using tailored and streamlined procedures to facilitate redress of injuries. *Rodriguez de Quijas*, 490 U. S., at 481 (emphasis added). In the hands of today's majority, arbitration threatens to become more nearly the opposite—a mechanism easily made to block the vindication of meritorious federal claims and insulate wrongdoers from liability. The Court thus undermines the FAA no less than it does the Sherman Act and other federal statutes providing rights of action. I respectfully dissent.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

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Plaintiffs,

vs.

CASE NO. BC473931

[Assigned to Hon. Robert L. Hess; Ordered Related to BC356521]

DEFENDANT, CLS TRANSPORTATION LOS ANGELES LLC'S ANSWER TO PLAINTIFFS' COMPLAINT

Complaint filed: November 18, 2011

CLS TRANSPORTATION LOS ANGELES LLC, a Delaware corporation and DOES 1 through 10, inclusive,

Defendants.

Defendant, CLS Transportation Los Angeles, LLC ("Defendant") responds as follows to the Complaint filed by Plaintiffs Greg Kempler, Adrien Warren, Anantray Sanathara, Angelo Garcia, Arthur Post, Avaavau Toailoa, Belinda Washington,Bennett Sloan, Bruce Gold, Carl Mueller, Carl Swartz, Cassandra Lindsey, Cleophus Collins, Daniel Araya, Daniel Rogers Millington, Jr., Darold Caldwell, David Baranco, David Montoya, Dawn Bingham, Edward Smith, Edwin Garcis, Elijha Norton, Flavio Silva, Frank G. Dubuy, Gerald Griffin, Glen Alston, Igor Kroo, James C. Denison, James Richmond, James Sterling, Jerry Boyd, Jiro Fumoto, Johnnie Evans, Jonathon Scott, Julius Funes, Karen Bailey, Karim Sharif, Kenny Cheng, Kung Ming Chang, Lamont Crawford, Leroy Clark, Luis Earnshaw, Marcial Sazo, Marquel Rose, Masood Shafii, Matthew Loatman, Miguel De La Mora, Myron Rogan, Neil Ben Yair, Pater Paull, Patrick Cooley, Rafael Candelaris, Raul Fuentes, Reginald Colwell, Robert Olmedo, Roger Perry, Scott Sullivan, Steve Maynard, Susan Stellman, Thomas Martin, Wayne Ikner, William Banker, And William Pinkerson ("Plaintiffs").

GENERAL DENIAL

Pursuant to Code of Civil Procedure section 431.30(d), Defendant generally denies each and every allegation contained in Plaintiffs' Complaint. Defendant specifically denies that Plaintiffs have suffered any injury, damage or loss by reason of any act or omission on its part, denies Plaintiffs have been damaged in any amount whatsoever, denies that Plaintiffs are entitled to rescission or specific performance, and denies that Plaintiffs are entitled to any other form of relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint fails to state a claim upon which relief may be granted.

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SECOND AFFIRMATIVE DEFENSE

(Comparative Fault)

Plaintiffs failed to exercise reasonable and ordinary care, caution or prudence to avoid incurring the damage alleged. The resulting alleged damages or injuries, if any, were proximately caused and contributed by the negligence of Plaintiffs or the intervening interference and/or negligence of other third parties.

THIRD AFFIRMATIVE DEFENSE

(Good Faith)

At all relevant times herein, Defendant acted in good faith by, among other things, attempting to arbitrate Plaintiffs' demands for arbitration on a consolidated basis.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiffs' claims are barred or at least reduced by their failure to mitigate damages.

Defendant currently has insufficient information upon which to form a belief as to whether it may have additional, yet unstated, affirmative defenses available to it. Defendant reserves the right to assert additional affirmative defenses in the event discovery indicates they would be appropriate.

WHEREFORE, Defendant prays for judgment in its favor as follows:

1. That Plaintiffs take nothing by their Complaint;
2. That the Complaint be dismissed with prejudice;
3. For costs of suit, including reasonable attorneys' fees as allowed by law; and
4. For such other and further relief as the Court finds just and proper.

Dated: January 20, 2012

FOX ROTHSCHILD LLP

By: _____

David F. Faustman
Yesenia M. Gallegos
Attorneys for Defendant

Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067
310.598-4150
310.556-9828

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1800 Century Park East, Suite 300, Los Angeles, California 90067-3005.

On January 20, 2012, I served the following document(s) described as DEFENDANT CLS TRANSPORTATION LOS ANGELES LLC'S ANSWER TO PLAINTIFFS' COMPLAINT on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Fox Rothschild LLP practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 20, 2012, at Los Angeles, California.

Claudia LeBrane

SERVICE LIST

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Attorneys for Defendant,
CLS TRANSPORTATION LOS ANGELES LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

GREG KEMPLER, ADRIEN WARREN, ANANTRAY SANATHARA, ANGELO GARCIA, ARTHUR POST, AVAAVAU TOAILOA, BELINDA WASHINGTON,BENNETT SLOAN, BRUCE GOLD, CARL MUELLER, CARL SWARTZ, CASSANDRA LINDSEY, CLEOPHUS COLLINS, DANIEL ARAYA, DANIEL ROGERS MILLINGTON, JR., DAROLD CALDWELL, DAVID BARANCO, DAVID MONTOYA, DAWN BINGHAM, EDWARD SMITH, EDWIN GARCIS, ELIJHA NORTON, FLAVIO SILVA, FRANK G. DUBUY, GERALD GRIFFIN, GLEN ALSTON, IGOR KROO, JAMES C. DENISON, JAMES RICHMOND, JAMES STERLING, JERRY BOYD, JIRO FUMOTO, JOHNNIE EVANS, JONATHON SCOTT, JULIUS FUNES, KAREN BAILEY, KARIM SHARIF, KENNY CHENG, KUNG MING CHANG, LAMONT CRAWFORD, LEROY CLARK, LUIS EARNSHAW, MARCIAL SAZO, MARQUEL ROSE, MASOOD SHAFII, MATTHEW LOATMAN, MIGUEL DE LA MORA, MYRON ROGAN, NEIL BEN YAIR, PATER PAULL, PATRICK COOLEY, RAFAEL CANDELARIS, RAUL FUENTES, REGINALD COLWELL, ROBERT OLMEDO, ROGER PERRY, SCOTT SULLIVAN, STEVE MAYNARD, SUSAN STELLMAN, THOMAS MARTIN, WAYNE IKNER, WILLIAM BANKER, AND WILLIAM PINKERSON

Plaintiffs,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, a Delaware corporation and DOES 1 through 10, inclusive,

Defendants.

Case No. BC 473931

[Assigned to Hon. Robert L. Hess; Ordered Related to BC356521

DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR AN ORDER COMPELLING SPECIFIC PERFORMANCE OF INDIVIDUAL ARBITRATION OR, IN THE ALTERNATIVE, SETTING ASIDE THE ARBITRATION AGREEMENT

[Filed Concurrently with: Declaration of David F. Faustman in Support Thereof; Declaration of Yesenia M. Gallegos in Support Thereof]

Date: February 7, 2012
Time: 8:30 a.m.
Dept.: 42

Date Complaint Filed: November 8, 2011
Trial Date: None

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I. INTRODUCTION

Through this motion, Plaintiffs' counsel is trying to abuse the contractual arbitration agreements by disingenuously accusing Defendant CLS of breaching those agreements. Through their motion for specific performance, Plaintiffs mischaracterize CLS' request to consolidate 63 demands for arbitration under C.C.P. § 1281.3 as an "inconsistent position" whereby CLS is now "refusing to arbitrate." ***There is no evidence, however, that CLS has ever refused to arbitrate.*** Thus, Plaintiffs motion, and the underlying Complaint alleging breach of the arbitration contract and seeking specific performance or rescission, are nonsensical and, at best, this gambit by Plaintiffs' counsel is obviously designed to make the arbitration process as costly and time consuming as possible.

On June 13, 2011, this Court granted CLS' Motion for Renewal of its Prior Motion For an Order Compelling Arbitration, Dismissing Class Claims, and Staying the Action Pending the Outcome of Arbitration in a *Iskanian v. CLS Transportation Los Angeles*. The Court granted the Motion based on new law rendered in *AT&T Mobility v. Conception*, 563 U.S. __ (April 27, 2011). Plaintiff Iskanian has appealed that Order in an effort to revive the class action for purported wage violations.

Meanwhile, Iskanian's counsel advised CLS of its intent to represent former purported class members in individual arbitrations. ***CLS suggested arbitrating the matters before a single arbitrator, but Plaintiffs' counsel refused. Instead, they filed 63 individual and identical demands for arbitration with the American Arbitration Association ("AAA") on behalf of 63 former class members***. AAA sent a letter to CLS' counsel seeking a non-refundable fee in the amount of $58,275.00 ($925.00 per plaintiff) to "commence administration" of the cases. CLS' counsel continued to meet and confer with class counsel about consolidation, but class counsel insisted on having 63 separate arbitrations, before separate arbitrators. AAA advised CLS' counsel to return to the trial court for relief if the parties could not reach a resolution. CLS immediately filed a motion to consolidate with this Court on October 27, 2011.

Ironically, one month after refusing to consolidate the 63 matters in arbitration and forcing CLS to file its motion, class counsel combined the claims of the 63 Plaintiffs into a single

lawsuit against CLS for purportedly breaching the parties' arbitration agreements. Shorty after filing that complaint, Plaintiffs filed this motion seeking an order requiring CLS to engage in 63 "separate arbitrations." Plaintiffs' motion for an order to compel specific performance should be denied, and the Court should consolidate the 63 individual arbitration cases and appoint a single arbitrator.

II. FACTS

A. Judicial History of the *Iskanian Class Action.*

1. Iskanian's Initial Complaints.

On August 4, 2006, Arshavir Iskanian ("Iskanian") filed a Class Action Complaint (Case No. BC356521) against CLS Transportation Los Angeles, LLC and Does 1-10 ("CLS"). The Complaint alleged six claims: (i) violation of Labor Code sections 510 and 1198 (unpaid overtime); violation of Labor Code sections 201 and 202 (wages not paid upon termination); (iii) violation of Labor Code section 226(a) (improper wage statements); (iv) violation of Labor Code section 226.7 (missed rest breaks); (v) violation of Labor Code section 512 and 226.7 (missed meal breaks); and (vi) violation of Business and Professions Code section 17200 (unfair competition). (Faustman Decl., ¶3, Ex. A.)

On November 21, 2007, Iskanian filed a second Complaint pursuant to the Private Attorney General Act ("PAGA") (Case No. BC381065) against CLS and others. The Complaint alleged the same claims as Case No. BC356521 less the unfair competition claim. This case also added two new claims: violation of Labor Code section 221 and 2802 (improper withholding of wages and non-indemnification of business expenses; and violation of Labor Code 351 (confiscation of gratuities). (Faustman Decl., ¶4, Ex. B.)

2. CLS' Initial Motion to Compel Arbitration.

On February 7, 2007, Defendant filed a Motion for an Order Compelling Arbitration, Dismissing the Class Claims, and Staying the Action Pending the Outcome of Arbitration. Rod Rave ("Mr. Rave"), Defendant's Vice President of Operations at the time, filed a declaration in support of Defendant's Motion. (Faustman Decl., ¶5, Ex. C.) The motion was based on CLS' "Proprietary Information and Arbitration Policy/Agreement" ("Arbitration Agreement") wherein Iskanian and CLS agreed to arbitrate any and all disputes relating Iskanian's employment and

separation. The Arbitration Agreement has a class action waiver clause which states: "EMPLOYEE and COMPANY expressly intend and agree that class action and representative action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Policy/Agreement; [] EMPLOYEE and COMPANY agree that each will not assert class action or representative action claims against the other in arbitration or otherwise; and [] each of EMPLOYEE and COMPANY shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person. (Faustman Decl., ¶5, Ex. C – Confidentiality Agreement)

On March 13, 2007, this Court granted CLS' motion. The order states: because Plaintiff and Defendant both executed a valid an enforceable arbitration agreement and class action waiver, Defendant's Motion for an Order Compelling Arbitration, Dismissing the Class Claims, and Staying the Action Pending the Outcome of Arbitration is GRANTED. Plaintiff's class claims are hereby dismissed with prejudice, and the remainder of the action is stayed pending the outcome of arbitration of Plaintiff's individual claims." (Faustman Decl., ¶6, Ex. D.) On May 14, 2007, Plaintiff appealed. (Faustman Decl., ¶7.)

On August 30, 2007, the California Supreme Court issued *Gentry v. Superior Ct.* (2007) 42 Cal.4th 443 ("*Gentry*"). (Faustman Decl., ¶8.) In response, on May 27, 2008, the Court of Appeal for the State of California, Second Appellate District, Division Two, issued an order, which directed this Court to "reconsider [its March 13, 2007 Order] in light of *Gentry*." The Court of Appeal further stated that "If either the arbitration agreement as a whole or the prohibition against representative or class action is void, the superior court is directed to vacate the order under review and proceed consistent with the opinion in Gentry." (Faustman Decl., ¶9, Ex. E.)

CLS' was forced to defend itself in litigation because the Court of Appeal rendered an Order effectively stating that *Gentry* governs, and that class action waivers are generally unconscionable. Litigating the issue further appeared futile. (Faustman Decl., ¶10.)

3. Iskanian's Consolidated FAC Was The Operative Pleading.

On August 28, 2008, this Court consolidated both of Iskanian's Complaints (case no. BC356521 and case No. BC381065). (Faustman Decl., ¶11.)

On September 12, 2008, Iskanian filed a Consolidated First Amended Complaint ("FAC") pursuant to PAGA (Case Nos. BC356521 & BC381065) against CLS and others. The Complaint alleged six claims: (i) violation of Labor Code sections 510 and 1198 (unpaid overtime); violation of Labor Code sections 201 and 202 (wages not paid upon termination); (iii) violation of Labor Code section 226(a) (improper wage statements); (iv) violation of Labor Code section 226.7 (missed rest breaks); (v) violation of Labor Code section 512 and 226.7 (missed meal breaks); and (vi) violation of Labor Code section 221 and 2802 (improper withholding of wages and non-indemnification of business expenses. The FAC remained the operative Complaint. (Faustman Decl., ¶12, Ex. F.)

4. The Iskanian Class Action Was Certified On August 29, 2009.

On August 29, 2009, the Court partially granted class representative Iskanian's motion for class certification by certifying five subclasses, consisting of 182 class members. Iskanian sought to represent a class of former and current limousine drivers who worked for CLS between January 1, 2005 and August 24, 2009, for purported wage and hour violations. (Faustman Decl., ¶13, Ex. G.)

B. This Court's Recent Order Of June 13, 2011, Dismissing the Class Claims and Compelling Iskanian to Arbitrate His Claims Against CLS.

On April 27, 2011, in *AT&T Mobility v. Conception*, 563 U.S. ___ (2011), the U.S. Supreme Court overruled *Discover Bank v. Superior Court*, 36 Cal.4th 148 (2005), held that class action waivers are enforceable, and ruled that arbitration agreements must be enforced "according to their terms." This holding obliterated the procedural history of this case and constituted new law that warranted renewal of CLS' Motion to compel. (Faustman Decl., ¶14, Ex. H.) In response, on May 16, 2011, CLS renewed its previous motion to compel arbitration. (*Id.* ¶15.) On June 13, 2011, this court granted CLS' motion based on new law rendered in *AT&T Mobility v. Conception*, 563 U.S. ___ (April 27, 2011). (*Id.* ¶16, Ex. I.)

C. Arshavir Iskanian's Appeal

On August 12, 2011, Iskanian filed a Notice of Appeal. (Faustman Decl., ¶18, Ex. J.)

D. 63 Former Iskanian Class Action Members Filed Demands for Arbitration.

Class counsel subsequently informed CLS that they sought to represent former class members individually. (Faustman Decl., ¶20, Ex. K.) Iskanian's counsel requested the personnel

files of these former class members, but refused to provide CLS with signed authorizations to release those documents. (Faustman Decl., ¶21, Ex. L.)

On September 28, 2011, Plaintiffs filed 63 individual demands for arbitration. Plaintiff's counsel, however, refused to acknowledge that these 63 individuals had thus opted out of the purported Iskanian class or to provide any confirmation that these individuals had actually engaged them as counsel. (*Id.* ¶22, Ex. M.) AAA acknowledged receipt of the 63 individual demands for arbitration, and sought a non-refundable fee from CLS in the amount of $58,275.00 ($925.00 per plaintiff) in order to "commence administration" of the 63 arbitrations. (*Id.* ¶23, Ex. N.)

E. Plaintiff's Counsel Refused To Consolidate The 63 Identical Demands For Arbitration, And Refused To Confirm Whether The 63 Plaintiffs Were Opting Out Of The Class Action Currently On Appeal.

In light of the fact that the 63 demands for arbitration are identical and raise identical procedural, legal and factual issues, between August 2, 2010 and September 16, 2011, CLS's counsel met and conferred with Plaintiffs' counsel and suggested that the parties consolidate the demands for arbitration before a single arbitrator for efficiency and in order to address preliminary and procedural issues before reaching the merits of each individual's claims. Iskanian's counsel refused. (Faustman Decl., ¶24, Ex. O.)

As Plaintiffs correctly point out in their moving papers, on October 10, 2011, CLS's counsel sent a letter to AAA advising it that if the 63 demands for arbitration were genuine, the claims and parties are identical and therefore, AAA should consolidate the demands before a single arbitrator with a substantially reduced fees, which under the Arbitration Agreement are borne entirely by CLS. (*Id.* ¶25, Ex. P.)

On October 12, 2011, AAA advised CLS's counsel that it could not address CLS's procedural concerns (whether claims should be consolidated, among others). AAA explained that in order to address CLS's preliminary concerns, it would need to tender the non-refundable fee in the amount of $58,275.00 ($925.00 per arbitration demand) so that AAA could assign arbitrators to each case, at which time CLS could raise the preliminary issues. (Gallegos Decl., ¶4.) AAA also advised CLS that Iskanian's counsel insisted on arbitrating 63 individual claims and was not amenable to any alternatives. (*Id.*, ¶4.)

Meanwhile, it has become palpably obvious that Iskanian's counsel is attempting to drive up costs for CLS and demanding that it tender the non-refundable fee in the amount of $58,275.00 for 63 individual arbitrations as a tactic to pressure CLS into settling the claims. (*See* Gallegos Decl., ¶5, Ex. R.) In fact, Plaintiffs counsel suggested that they would seek damages for "contempt of court" and/or for "sanctions" if CLS did not make the non-refundable payment to AAA. (*Id.* ¶3.) Yet, almost simultaneously, Plaintiffs' counsel made a settlement demand for an amount greater than the settlement demand he made when the 63 plaintiffs were part of a certified class action consisting of 183 class members. Plaintiffs' counsel rationale for the demand was only that CLS could expect to spend substantially more if forced to arbitrate 63 individual (albeit identical) matters before AAA. (*Id.* ¶5, Ex. R.)

F. CLS Promptly Filed A Motion To Consolidate On October 27, 2011.

On October 27, 2011, CLS promptly filed a Motion for Consolidation, which is scheduled to be heard on February 7, 2012. (Gallegos Decl., ¶¶8-11.)

G. Rather Than Wait For This Court's Decision On CLS' Motion To Consolidate, Plaintiffs Jointly Filed A Civil Complaint Against CLS.

One month after Plaintiffs vehemently refused to consolidate their 63 individual arbitrations, they voluntarily consolidated their claims for purposes of filing a civil complaint for breach of contract against CLS on November 18, 2011 (hereinafter "the *Kempler* Complaint"). (Gallegos Decl., ¶9.) Before CLS could even file its response to the Complaint, Plaintiffs impulsively filed the instant motion for an order compelling specific performance seeking an order requiring CLS to engage in 63 individual arbitrations. (Gallegos Decl., ¶¶9-11.) This tactic was presumably a preemptive attempt to derail CLS' motion. The Court ordered that both motions be heard at the same time.

III. LEGAL AUTHORITY

A. Plaintiffs Motion Should Be Denied Because CLS Has Never Refused To Arbitrate.

The California Code of Civil Procedure authorizes courts to issue injunctions in, among others, the following situations: (1) when a party to an action is doing, or threatens, or is about to do some act in violation of the rights of another party respecting the subject of the action, and tending to

render the judgment ineffectual (Cal. Civ. Proc. §526(a)(3)); (2) when pecuniary compensation would not afford adequate relief (Cal. Civ. Proc. §526(a)(4)); or (3) where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief (Cal. Civ. Proc. §526(a)(5)).

Here, Plaintiffs contend that they are entitled to equitable relief because CLS is interfering with their right to arbitrate, and has left them with no forum in which to collect compensatory damages. (Plaintiff's Motion, 8:27-9:27.) These arguments, however, are premised on their conclusion that CLS has outright "refused" to arbitrate Plaintiffs claims. There is no evidence in the record, however, supporting this conclusion.

It is undisputed that shortly after this Court issued its order of June 13, 2011, which decertified the *Iskanian class action* and compelled Iskanian to arbitrate his individual claims, 63 former class members filed individual demands for arbitration. CLS insisted that Plaintiffs file their demands with AAA as required by the arbitration agreement, and requested that Plaintiffs stipulate to consolidate their 63 individually filed demands for arbitration before a single arbitrator. Plaintiffs refused, which prompted CLS to promptly filed a "Motion for Consolidation" on October 27, 2011. The earliest hearing date that CLS could obtain was January 13, 2012, which the Court continued to February 7, 2012. (Gallegos Decl., ¶¶8-11.) These facts refute Plaintiffs' assertions that CLS is "interfering" with their right to arbitrate and that they have no forum in which to collect monetary damages. ***Once the Court entertains CLS' "Motion for Consolidation," Plaintiffs' instant motion will be moot and the parties will proceed to arbitration.***

B. The Court Should Consolidate Plaintiffs' 63 Individual Demands For Arbitration And Appoint A Single Arbitrator.

The California Code of Civil Procedure provides:

> A party to an arbitration agreement may petition the court to consolidate separate arbitration proceedings, and the court may order consolidation of separate arbitration proceedings when: (1) Separate arbitration agreements or proceedings exist between the same parties...; (2) The disputes arise from the same transactions or series of related transactions; and (3) There is common issue or issues of law or fact creating the possibility of conflicting rulings by more than one arbitrator or panel of arbitrators.

Cal. Civ. Proc. §1281.3; *see Garden Grove Community Church v. Pittsburgh-Des Moines Steel Co.* (1983) 140 Cal.App.3d 251, 261-262 (holding it was error to refuse to consolidate separate arbitrations between church and several parties with whom it had separately contracted for work on a common project where dispute necessarily had to be resolved upon common factual determinations).

The purpose of consolidation is to promote trial convenience and economy by avoiding duplication of procedure, particularly in the poof of issues common to multiple actions. *See Wouldridge v. Burns* (1968) 265 Cal.App.2d 82, 86; *see also See McClure, on Behalf of Caruthers v. Donovan* (1949) 33 Cal.2d 717, 711-23.

In this case, consolidation of the 63 arbitrations is warranted because consolidation will avoid repetitive trials of the same common issues, avoid unnecessary costs and delay, and avoid the substantial risk of inconsistent adjudications.

1. Consolidation Will Avoid Repetitive Trials Of The Same Common Issues.

All 63 Plaintiffs are former limousine drivers for CLS and former class members of the *Iskanian class action.* On September 28, 2011, these 63 individuals filed identical demands for arbitration with AAA. (Faustman Decl., ¶22, Ex. M.) The demands for arbitration are against the same defendants, plead identical claims, and request identical relief. (*Id.*) The demands for arbitration, therefore, present common and related issues of law and fact: (i) did CLS fail to pay minimum wage; (ii) did CLS fail to pay overtime; (iii) did CLS fail to pay all wages upon termination; (iv) did CLS fail to issue proper itemized wage statements; (v) did CLS fail to make rest periods available; (vi) did CLS fail to make meal periods available; (vii) did CLS fail to indemnify the plaintiffs for business expenses and/or withhold wages; (viii) did CLS withhold gratuities; (ix) did CLS engage in unfair competition; and (x) did CLS violate the Labor Code by refusing to provide personnel files when Plaintiff's counsel refused to provide signed authorizations. (*Id.* ¶22, Ex. M.)

If the 63 demands for arbitration proceed as individual claims, the parties will be forced to engage in repetitive arbitrations of the same issues for several months, which will drain the resources of the parties' and their respective law firms. Thus, a court order consolidating these matters would

not only avoid months worth of repetitive arbitrations addressing common issues of law and fact arising from the same set of facts, but would provide for a more efficient method of resolution.

2. Consolidation Will Avoid Unnecessary Costs And Delays.

A court order consolidating the arbitrations would be in furtherance of justice because it will avoid unnecessary costs and delays associated with arbitrating 63 individual actions. AAA advised CLS that it will not commence administration of the arbitrations unless CLS submitted a non-refundable administrative fee. (Gallegos Decl., ¶4.) Under AAA's Employment Arbitration and Mediation Procedures ("Employment Rules") each plaintiff must tender a non-refundable fee of $175.00, and the employer must tender a non-refundable fee of $925.00. (Gallegos Decl., ¶6.) Accordingly, pursuant to AAA's Employment Rules, if these 63 demands for arbitration proceed as individual claims, CLS would be forced to tender a non-refundable fee in the amount ***$58,275.00 ($925 x 63 individuals)*** before an arbitrator is even assigned to each case and is made available to address CLS' preliminary procedural issues (*e.g.,* whether some of the plaintiffs' new claims are barred by the statute of limitations, whether David Seelinger may be held personally liable, and whether plaintiffs are required to produce signed authorizations in order to receive a copy of their personnel and payroll records. (Faustman Decl., ¶24-25, Exs. O-P; Gallegos Decl., ¶4.)

Moreover, if this Court consolidates the arbitrations, it will avoid repetitive and overlapping written discovery conducted by or against the 63 plaintiffs, which will increase the cost of the arbitrations. Consolidation will also negate the needless expenditure of time and resources that would result by having 63 separate arbitrations in cases that clearly have common issue of law and fact as discussed in greater detail above. (Faustman Decl., ¶22, Ex. M.)

Thus, the Court should consolidate the arbitrations to avoid unnecessary costs and delays.

3. Consolidation Will Avoid The Substantial Risk Of Inconsistent Adjudications.

If the 63 demands for arbitration proceed as separate actions requiring 63 sets of administrative fees, requiring overlapping and repetitive discovery, requiring 63 arbitrators, and requiring 63 separate trials on common issues of law and fact, there is a substantial risk of inconsistent decisions. It is foreseeable that the 63 arbitrators would render inconsistent ruling in these actions particularly where there are at least 10 identical legal issues to be addressed in each

case. This scenario would lay the groundwork for the party that feels that it has received an unjust verdict contrary to that rendered in another action to appeal the decision. Such a course of action would lead to the expenditure of unnecessary time and resources that could be avoided if the actions were tried before a single arbitrator.

Consolidating these actions, therefore, will avoid the risk of inconsistent adjudications.

4. Consolidation Will Not Prejudice Any Party, And CLS Had Made This Motion In A Timely Manner.

Although Plaintiffs and their counsel refused to consolidate the 63 identical actions, to date, they have failed to articulate any facts demonstrating that consolidation would prejudice the Plaintiffs. (Faustman Decl., ¶24, Ex. O.) Interestingly, within weeks of refusing to consolidate their arbitrations, Plaintiffs' consolidated their claims for purposes of filing a single lawsuit against CLS (the *Kempler Complaint*) alleging breach of contract, and for purposes of filing the instant Motion for an Order Compelling Specific Performance. Clearly, Plaintiffs understand the value in consolidating claims. All parties would benefit from a consolidated arbitration because: (i) it would avoid repetitive trials; (ii) avoid several months worth of unnecessary costs and delay; (iii) avoid draining the resources of the parties and their counsel; and (iv) the parties have ample time in which to prepare for a consolidated arbitration.

C. The Court Should Appoint One Arbitrator

The Court may appoint and arbitrator where the arbitration agreement at issue does not provide a method for appointing an arbitrator and where the parties to the agreement cannot agree on a method of appointing an arbitrator. Cal. Civ. Proc. 1281.6.

> When a petition is made to the court to appoint a neutral arbitrator, the court shall nominate five persons from lists of persons supplied jointly by the parties to the arbitration **or** obtained from a government agency concerned with arbitration **or** private disinterested association concerned with arbitration. The parties to the agreement who seek arbitration and against whom arbitration is sought may within five days of receipt of notice of the nominees from the court jointly select the arbitrator whether or not the arbitrator is among the nominees. If the parties fail to select an arbitrator within the five-days period, the court shall appoint the arbitrator from the nominees.

Cal. Civ. Proc. 1281.6.

Further, the arbitration agreement specifically at issue in this case expressly states that if "the parties are unable to reach an agreement regarding the selection of an arbitrator ... the parties nevertheless agree that a neutral arbitrator (who shall be a retired judge) shall be selected or appointed in the manner provided under the then-effective provisions of the California Arbitration Act, California Code of Civil Procedure section 1282 et seq." (Faustman Decl., ¶5, Ex. C – *see* Confidentiality Agreement attached to Declaration of Rod Rave.)

Accordingly, CLS respectfully requests that this Court appoint a retired Superior Court judge to serve as the arbitrator in the consolidated arbitrations.

D. The Doctrine Of Judicial Estoppel Does Not Prevent CLS From Seeking An Order Consolidating The 63 Arbitrations.

Plaintiffs argue that the doctrine of judicial estoppel requires that CLS arbitrate 63 individual arbitrations and pay 63 separate fees to initiate those arbitrations because seeking to consolidate the arbitrations would be inconsistent with the position it took in the *Iskanian class action* when it successfully decertified the class and compelled Iskanian to arbitrate his individual claims. (Plaintiffs' Motion, 10:1-19.) Plaintiffs seek to manufacture an "inconsistency" where non exists.

In its motion to compel arbitration in the *Iskanian class action*, CLS argued that Iskanian should be compelled to arbitrate his individual claims because the arbitration agreement that he executed contained an ***enforceable class and representative action waiver***. (*See* Faustman Decl., ¶16, Ex. I.) This position, which was the result of new law rendered in *AT&T Mobility v. Concepcion*, is hardly inconsistent with CLS desire to consolidate the Plaintiffs 63 individual demands for arbitration. Consolidating the cases before a single arbitrator will neither turn the case into a class action nor a representative action. Rather, consolidation will merely avoid repetitive trials, the risk of inconsistent decisions, and will avoid unnecessary costs and delay.

Accordingly, the doctrine of judicial estoppel is inapplicable and cannot prevent CLS from seeking to consolidate the 63 individual demands for arbitration because CLS has not adopted inconsistent positions.

///

E. The Parties' Arbitration Cannot Be Rescinded: CLS Never Refused To Arbitrate And Therefore Cannot Be Equitably Estopped From Requiring Plaintiffs To Arbitrate; And Performance Of The Arbitration Agreement Is Not Impracticable.

Through this motion, Plaintiffs are attempting to wiggle out of a contractual arbitration agreement that they voluntarily signed by disingenuously accusing CLS of refusing to arbitrate as grounds for rescinding the arbitration agreement. As set forth below, however, Plaintiffs arguments fail to support a court order rescinding or setting aside the parties arbitration agreement.

1. Performance Of The Arbitration Agreement Is Not Impossible Or Impracticable.

Enforcement of a contract may be denied on the ground the performance of the contract has become impracticable. *Kennedy v. Lou Reece* (1965) 225 Cal.App.2d 717, 724 (citations omitted). However, facts that merely make performance of a contract harder or more costly than the parties contemplated do not constitute a ground for the successful interposition of the defense of "impracticability" unless the facts are of the gravest importance. *Kennedy*, 225 Cal.App.2d at 725; *see also Snow Mountain W. & P. Co. v. Kraner* (1923) 191 Cal. 312, 324-25 (Appellant was not absolved from his contract by the intervening obstacles because mere unexpected difficulty in performance does not render performance impossible).

Plaintiffs rely on *Kennedy* for the proposition that it has become impracticable to perform under the arbitration agreement because AAA advised CLS that it would not arbitrate claims on its behalf because CLS declined to pay AAA's requested non-refundable administration fee of $58,275.00 to "commence administration" of the 63 arbitrations. Yet *Kennedy* does not support Plaintiff's argument. The *Kennedy* case involved a contract to drill a well to a 400-foot depth. There, the driller sought to set aside the contract on the ground that it had become impracticable to perform the contract because it would be almost impossible and extremely expensive to drill through the rock formation he encountered at the 270-foot level. Yet, the evidence revealed that two other drillers had expressed their willingness to complete the well to the required 400-foot level for $5.00 per foot besides the cost of moving the drilling equipment, as opposed to the $3.50 per foot estimated cost under the contract. The Court held that these facts negated the necessary basis for a defense of impracticability. *Id.* at 726.

Here, the facts also negate Plaintiffs' attempt to use the defense of impracticability. The fact that AAA *may* not be the entity administering the arbitrations under CLS' arbitration agreement does not make performance impracticable because there are a multitude of other entities that could and would administer the arbitrations using AAA's employment arbitration rules, including ADR, the agency to which Plaintiffs admittedly initially submitted their demands for arbitration.

2. The Doctrine Of Equitable Estoppel Does Not Preclude Performance Of The Arbitration Agreement.

Equitable estoppel is based on misrepresentation of an existing fact. *Panno v. Russo* (1947) 82 Cal.App.2d 408, 412. "The doctrine of equitable estoppel is based on the theory that a party who by his declarations or conduct misleads another to his prejudice should be estopped from obtaining the benefits of his misconduct." *Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1567. Plaintiffs argue CLS should be estopped from seeking to consolidate the 63 demands for arbitration because that position is somehow inconsistent with the fact that CLS opposed class certification in the *Iskanian class action*. Plaintiffs go so far as to accuse CLS of "misrepresent[ing] its intentions" when it moved to compel arbitration in the *Iskanian class action*, and that by doing so, CLS prevented Plaintiffs from asserting their rights. Plaintiffs arguments are pure fantasy.

As set forth above, in the *Iskanian class action*, CLS argued that Iskanian should be compelled to arbitrate his individual claims because the voluntary arbitration agreement that he executed contained an ***enforceable class and representative action waiver***. (*See* Faustman Decl., ¶16, Es. I.) This position is not inconsistent with CLS desire to consolidate the Plaintiffs 63 individual demands for arbitration. Consolidating the cases before a single arbitrator will neither turn the arbitrations into a class action nor a representative action. Rather, it will merely make the arbitrations more manageable, less burdensome on the parties and their counsel, will avoid inconsistent decisions, and avoid unnecessary costs and delay. Further, there is no evidence whatsoever that CLS intentionally misrepresented its interest in arbitrating Iskanian's claims when it sought an order compelling Iskanian to arbitrate his individual claims, and no evidence that CLS has refused to arbitrate the claims of the 63 former class action members.

The doctrine of equitable estoppel, therefore, is an inapplicable defense to performance of the arbitration agreement.

IV. CONCLUSION

The Court should deny Plaintiffs' Motion to Compel Specific Performance because, contrary to Plaintiffs' assertion, Defendant CLS has never refused to arbitrate Plaintiffs claims. Rather, CLS reasonably seeks a court order consolidating the 63 individually filed demands for arbitration before proceeding to arbitration. Further, the Court should consolidate the 63 arbitrations and appoint a single arbitrator in order to avoid several months-worth of repetitive and costly arbitrations and avoid the substantial risk of inconsistent adjudications. Finally, neither the defense of impracticability nor the doctrine equitable estoppel support rescission of the parties arbitration agreement.

Dated: January 25, 2012

FOX ROTHSCHILD LLP

By _____

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Yesenia Gallegos
Attorneys for Defendant,
CLS Transportation Los Angeles LLC

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

GREG KEMPLER, ADRIEN WARREN, ANANTRAY SANATHARA, ANGELO GARCIA, ARTHUR POST, AVAAVAU TOAILOA, BELINDA WASHINGTON,BENNETT SLOAN, BRUCE GOLD, CARL MUELLER, CARL SWARTZ, CASSANDRA LINDSEY, CLEOPHUS COLLINS, DANIEL ARAYA, DANIEL ROGERS MILLINGTON, JR., DAROLD CALDWELL, DAVID BARANCO, DAVID MONTOYA, DAWN BINGHAM, EDWARD SMITH, EDWIN GARCIS, ELIJHA NORTON, FLAVIO SILVA, FRANK G. DUBUY, GERALD GRIFFIN, GLEN ALSTON, IGOR KROO, JAMES C. DENISON, JAMES RICHMOND, JAMES STERLING, JERRY BOYD, JIRO FUMOTO, JOHNNIE EVANS, JONATHON SCOTT, JULIUS FUNES, KAREN BAILEY, KARIM SHARIF, KENNY CHENG, KUNG MING CHANG, LAMONT CRAWFORD, LEROY CLARK, LUIS EARNSHAW, MARCIAL SAZO, MARQUEL ROSE, MASOOD SHAFII, MATTHEW LOATMAN, MIGUEL DE LA MORA, MYRON ROGAN, NEIL BEN YAIR, PATER PAULL, PATRICK COOLEY, RAFAEL CANDELARIS, RAUL FUENTES, REGINALD COLWELL, ROBERT OLMEDO, ROGER PERRY, SCOTT SULLIVAN, STEVE MAYNARD, SUSAN STELLMAN, THOMAS MARTIN, WAYNE IKNER, WILLIAM BANKER, AND WILLIAM PINKERSON

Plaintiffs,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, a Delaware corporation and DOES 1 through 10, inclusive,

Defendants.

Case No. BC 473931

[Assigned to Hon. Robert L. Hess; Ordered Related to BC356521

DECLARATION OF DAVID F. FAUSTMAN, ESQ. IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR AN ORDER COMPELLING SPECIFIC PERFORMANCE OF INDIVIDUAL ARBITRATION OR, IN THE ALTERNATIVE, SETTING ASIDE THE ARBITRATION AGREEMENT

[Filed Concurrently with: Defendant's Opposition; and Declaration of Yesenia M. Gallegos, Esq.]

Date: February 7, 2012
Time: 8:30 a.m.
Dept.: 24

Date Complaint Filed: November 8, 2011
Trial Date: None

DECLARATION OF DAVID FAUSTMAN

I, David Faustman, declare as follows:

1. I am a Partner with the law firm of Fox Rothschild LLP, counsel of record for Defendants in the above-captioned matter. I make this declaration in support of Defendant's motion for consolidation of arbitrations and motion for clarification of this Court's order of June 13, 2011. I make this declaration of my own personal knowledge and if called as a witness to testify regarding matters stated in this declaration I would and could testify competently thereto.

2. The Defendant Company is known as Empire/CLS Worldwide Chauffeured Services ("Empire/CLS" or "CLS"), and which, for purposes of this lawsuit, is the successor entity to the named defendants in the operable FAC.

3. On August 4, 2006, Arshavir Iskanian ("Iskanian") filed a Class Action Complaint (Case No. BC356521) against CLS Transportation Los Angeles, LLC and Does 1-10. The Complaint alleged six claims: (i) violation of Labor Code sections 510 and 1198 (unpaid overtime); violation of Labor Code sections 201 and 202 (wages not paid upon termination); (iii) violation of Labor Code section 226(a) (improper wage statements); (iv) violation of Labor Code section 226.7 (missed rest breaks); (v) violation of Labor Code section 512 and 226.7 (missed meal breaks); and (vi) violation of Business and Professions Code section 17200 (unfair competition). (A true and correct copy of Iskanian's August 4, 2006 Complaint is attached hereto and incorporated herein as **Exhibit "A".**)

4. On November 21, 2007, Iskanian filed a second Complaint pursuant to the Private Attorney General Act ("PAGA") (Case No. BC381065) against CLS Transportation Los Angeles, LLC, CLS Worldwide Services, LLC, Empire International, LTD, GTS Holdings, Inc. and Does 1 through 10. The Complaint alleged the same claims as Case No. BC356521 less the unfair competition claim. This case also added two new claims: violation of Labor Code section 221 and 2802 (improper withholding of wages and non-indemnification of business expenses; and violation of Labor Code 351 (confiscation of gratuities). (A true and correct copy of Iskanian's November 21, 2007 Complaint is attached hereto and incorporated herein as **Exhibit "B".**)

5. On February 7, 2007, Defendant filed a Motion for an Order Compelling Arbitration, Dismissing the Class Claims, and Staying the Action Pending the Outcome of Arbitration ("Motion to Compel Arbitration"). Rod Rave ("Mr. Rave"), the then Vice President of Operations for the Western Region, filed a declaration in support of Defendant's Motion to Compel Arbitration, and authenticated Empire/CLS's "Proprietary Information and Arbitration Policy/Agreement" ("Arbitration Agreement") wherein Iskanian and Empire/CLS agreed to arbitrate any and all disputes relating Iskanian's employment and separation. The Arbitration Agreement also contains a class action waiver clause. (A true and correct copy of Rod Rave's declaration containing a copy of the Arbitration Agreement are attached hereto and incorporated herein as **Exhibit "C".)**

6. On March 13, 2007, this Court issued an order granting Empire/CLS's motion. The order states: because Plaintiff and Defendant both executed a valid an enforceable arbitration agreement and class action waiver, Defendant's Motion for an Order Compelling Arbitration, Dismissing the Class Claims, and Staying the Action Pending the Outcome of Arbitration is GRANTED. Plaintiff's class claims are hereby dismissed with prejudice, and the remainder of the action is stayed pending the outcome of arbitration of Plaintiff's individual claims." (A true and correct copy of this Court's Order of March 13, 2007 is attached hereto and incorporated as **Exhibit "D."**)

7. On May 14, 2007, Plaintiff appealed this Court's Order.

8. Meanwhile, on August 30, 2007, the California Supreme Court issued *Gentry v. Superior Ct.* (2007) 42 Cal.4th 443 ("Gentry").

9. In response, on May 27, 2008, the Court of Appeal for the State of California, Second Appellate District, Division Two, issued an order, which directed this Court to "reconsider [its March 13, 2007 Order] in light of Gentry." The Court of Appeal further stated that "If either the arbitration agreement as a whole or the prohibition against representative or class action is void, the superior court is directed to vacate the order under review and proceed consistent with the opinion in Gentry." (A true and correct copy of the Court of Appeal's order of May 27, 2008 is attached hereto and incorporated as **Exhibit "E."**)

10. Empire/CLS was forced to withdraw its motion to compel because the Court of Appeal rendered an Order effectively stating that Gentry governs, and that class action waivers are unconscionable. Litigating the issue further appeared futile.

11. On August 28, 2008, this Court consolidated both of Iskanian's Complaint (case no. BC356521 and case No. BC381065).

12. On September 12, 2008, Iskanian filed a Consolidated First Amended Complaint ("FAC") pursuant to PAGA (Case Nos. BC356521 & BC381065) against CLS Transportation Los Angeles, LLC, CLS Worldwide Services, LLC, Empire International, LTD, GTS Holdings, Inc. and Does 1 through 10. The Complaint alleged six claims: (i) violation of Labor Code sections 510 and 1198 (unpaid overtime); violation of Labor Code sections 201 and 202 (wages not paid upon termination); (iii) violation of Labor Code section 226(a) (improper wage statements); (iv) violation of Labor Code section 226.7 (missed rest breaks); (v) violation of Labor Code section 512 and 226.7 (missed meal breaks); and (vi) violation of Labor Code section 221 and 2802 (improper withholding of wages and non-indemnification of business expenses. The FAC remained the operable Complaint in the Iskanian class action. (A true and correct copy of Iskanian's Consolidated FAC is attached hereto and incorporated herein as **Exhibit "F**.")

13. On August 24, 2009, the Court partially granted class representative Iskanian's motion for class certification by certifying five subclasses, consisting of 182 class members. Iskanian sought to represent a class of former and current limousine drivers who worked for Empire/CLS between January 1, 2005 and August 24, 2009, for purported wage and hour violations. (A true and correct copy of this Court's Order of August 24, 2009, is attached hereto and incorporated herein as **Exhibit "G**.")

14. On April 27, 2011, in *AT&T Mobility v. Conception*, 563 U.S. ___ (2011), the U.S. Supreme Court: (1) overruled Discover Bank v. Superior Court, 36 Cal.4th 148 (2005), (2) held that class action waivers are enforceable, and (3) ruled that arbitration agreements must be enforced "according to their terms." This obliterates the procedural history of this case and is new law that warrants renewal of Defendant's Motion for an Order Compelling Arbitration, Dismissing the Class Claims, and Staying the Action Pending the Outcome of Arbitration. (A true

and correct copy of the AT&T case is attached hereto and incorporated herein as **Exhibit "H."**)

15. On May 16, 2011, Empire/CLS filed a Motion for Renewal of its Prior Motion For an Order Compelling Arbitration, Dismissing Class Claims, and Staying the Action Pending the Outcome of Arbitration. The Motion was based on new law rendered in *AT&T Mobility.*

16. On June 13, 2011, this Court granted Empire/CLS' Motion for Renewal of its Prior Motion For an Order Compelling Arbitration, Dismissing Class Claims, and Staying the Action Pending the Outcome of Arbitration. The Court granted the Motion based on new law rendered in *AT&T Mobility v. Conception*, 563 U.S. __ (April 27, 2011). (A true and correct copy of this Court's Order of June 13, 2011, is attached hereto and incorporated herein as **Exhibit "I."**)

17. At the hearing of June 13, 2011, Iskanian's counsel advised the Court that Iskanian would appeal the Court's decision.

18. On August 12, 2011, Iskanian filed a Notice of Appeal. (A true and correct copy of this Iskanian's Notice of Appeal is attached hereto and incorporated herein as **Exhibit "J."**)

19. On September 23, 2011, the Court reporter from this Court filed the "record on appeal," triggering all appellate deadlines. Iskanian's Appellate brief is currently due on or before November 2, 2011.

20. In the meantime, Iskanian's counsel represented to Empire/CLS that they now represent former class members individually, that they were expanding the scope of the claims set forth in the Iskanian class action, and adding Empire/CLS's Chief Executive Officer, David Seelinger, as an individual defendant. (A true and correct copy of Iskanian's counsel's correspondence to me of August 2, 2011 is attached hereto and incorporated herein as **Exhibit "K."**)

21. Iskanian's counsel also requested the personnel files of these former class members, but refused to provide Empire/CLS with signed authorizations. (True and correct copies of correspondence between Iskanian's counsel's office and my office regarding the personnel files are attached hereto and incorporated herein as **Exhibit "L."**)

22. On September 28, 2011, Iskanian's counsel also filed 63 individual demands for arbitration on behalf of former class members. Plaintiff's counsel, however, refuses to acknowledge that these 63 individuals have thus opted out of the class. (A true and correct copy of one of the 63 identical demands for arbitration filed by Iskanian's counsel with AAA is attached hereto and incorporated herein as **Exhibit "M**.")

23. AAA acknowledged receipt of the 63 individual demands for arbitration, has assigned case numbers to each demand, and sought a non-refundable fee from Empire/CLS in the amount of $58,275.00 ($925.00 per plaintiff) in order to "commence administration" of the 63 arbitrations. (A true and correct copy of AAA acknowledgment of the 63 demands for arbitration are attached hereto and incorporated herein as **Exhibit "N**.")

24. In light of the fact that the 63 demands for arbitration are identical and raise identical procedural, legal and factual issues, between August 2, 2010 and September 16, 2011, I met and conferred with Iskanian's counsel and suggested that the parties consolidate the demands for arbitration before a single arbitrator for efficiency and in order to address preliminary and procedural issues before reaching the merits of each individual's claims. Iskanian's counsel refused. (True and correct copies of correspondence between Iskanian's counsel's office and my office regarding consolidation and the appointment of an arbitrator are attached hereto and incorporated herein as **Exhibit "O**.")

25. On October 10, 2011, my office sent a letter to AAA advising it that Empire/CLS did not recognize the validity of the demands for arbitration because the plaintiffs consist primarily of former class members of a class action that is currently on appeal. (A true and correct copy of the October 10, 2011 letter to AAA is attached hereto and incorporated herein as **Exhibit "P**.")

26. On May 16, 2009, while the Iskanian class action was still pending against Empire/CLS, Iskanian took the deposition of Douglass B. Trussler, who was designated as the Person Most Knowledgeable about Empire/CLS's pay practices and policies. (True and correct copies of excerpts from Trussler's deposition transcript are attached hereto and incorporated herein as **Exhibit "Q**.") Trussler testified that David Seelinger was his successor.

27. In early 2010, Iskanian's counsel personally met with David Seelinger at my office to discuss the financial condition of Empire/CLS and to discuss settlement. I too participated in that meeting.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed January 25, 2012, at Los Angeles, California.

/s/ David Faustman

David Faustman

EXHIBIT A

ORIGINAL

FILED
LOS ANGELES SUPERIOR COURT
AUG 04 2006
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E. Matthews

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Attorneys for Plaintiff
and for Class Members

Case assigned to Judge
CCW Victoria Chaney
D-324

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ARSHAVIR ISKANIAN, individually, and on behalf of other members of the general public similarly situated,

Plaintiffs,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, a Delaware corporation; and DOES 1 through 10, inclusive,

Defendants.

Case Number: BC356521

CLASS ACTION

(1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);

(2) Violation of California Labor Code §§ 201 and 202 (Wages Not Paid Upon Termination);

(3) Violation of California Labor Code § 226(a) (Improper Wage Statements);

(4) Violation of California Labor Code § 226.7 (Missed Rest Breaks);

(5) Violation of California Labor Code §§ 512 and 226.7 (Missed Meal Breaks);

(6) Violation of California Business & Professions Code § 17200, et seq.

Jury Trial Demanded

CIT/CASE: BC356521 LEA/DEPT:
RECEIPT #: 0C34817758J9
DATE PAID: 08/07/06 10:03:41 AM
PAYMENT: $320.00
RECEIVED:
CHECK: 320.00
CASH:
CHANGE:
CARD:
0310

Plaintiff, individually and on behalf of all other members of the public similarly situated, alleges as follows:

JURISDICTION AND VENUE

1) This class action is brought pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The amount in controversy for each class representative, including claims for compensatory damages and pro rata share of attorney fees, is less than $75,000.

2) This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." The statutes under which this action is brought do not specify any other basis for jurisdiction.

3) This Court has jurisdiction over all Defendants because, upon information and belief, each party is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4) Venue is proper in this Court because, upon information and belief, one or more of the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

THE PARTIES

5) Plaintiff Arshavir Iskanian (hereinafter "Plaintiff") is a resident of in the state of California.

6) Defendant CLS Transportation Los Angeles LLC (hereinafter "CLS" or "Defendant") was and is, upon information and belief, a corporation doing business within the state of Delaware, and at all times hereinafter mentioned, is an employer whose employees are engaged

throughout this county, the state of California, or the various states of the United States of America.

7) Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1-10, but prays for leave to amend and serve such fictitiously named Defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities become known.

8) Plaintiff is informed and believes, and thereon alleges, that Does 1-10 are the partners, agents, owners, shareholders, managers or employees of Defendant, and were acting on behalf of Defendant.

9) Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, Defendant and DOES 1-10 (collectively "Defendants"), each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent the official policy of, Defendant.

10) At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

11) Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

CLASS ACTION ALLEGATIONS

12) Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

13) All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

14) The proposed class is comprised of and defined as:

All persons who have been employed by Defendant in the state of California within four years prior to the filing of this complaint until resolution of this lawsuit who held the positions of driver or similar titles or titles with similar job duties.

15) There is a well defined community of interest in the litigation and the class is easily ascertainable:

a. Numerosity: The members of the class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time, however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members' as demonstrated herein.

c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys and the proposed class counsel are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorney's fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. Class action will achieve economies of time, effort and expense as compared to separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

e. Public Policy Considerations: Employers of the state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers may damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

16) There are common questions of law and fact as to the class (and each subclass, if any) that predominate over questions affecting only individual members, including but not limited to:

a. Whether Defendants required Plaintiff and the other class members to work over eight hours per day or over forty hours per week and failed to pay legally required premium overtime compensation to the Plaintiff and the other class members;

b. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;

c. Whether Defendants complied with wage reporting as required by the California Labor Code; including but not limited to Section 226;

d. Whether Defendants failed to provide rest breaks;

e. Whether Defendant filed to provide meal breaks;

g. Whether Defendants' conduct was willful or reckless;

h. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code § 17200, et seq.; and

i. The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

FACTUAL ALLEGATIONS

17) At all times set forth, CLS employed Plaintiff and other persons in the capacity of driver and other similar positions.

18) CLS employed Plaintiff as a driver from on or about the summer of 2003 to on or about August 4, 2005.

19) CLS continues to employ drivers within California.

20) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, CLS was advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law and employment and personnel practices, and about the requirements of California law.

21) Plaintiff is informed and believes, and thereon alleges that CLS knew or should have known that Plaintiff and other class members were entitled to receive premium wages for overtime compensation and that they were not receiving premium wages for overtime compensation.

22) Plaintiff overtime was not based upon his regular rate but instead only on his base rate.

23) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, CLS knew it had a duty to compensate Plaintiff and other members of the class, and that CLS had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and other members of the class that they were properly denied wages, all in order to increase CLS's profits.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198

(Against all Defendants)

24) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 23.

25) At all times herein set forth, California Labor Code §1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission (hereinafter "IWC").

26) At all times herein set forth, the IWC Wage Order applicable to Plaintiff's and the other class members' employment by Defendants has provided that employees working for more than eight hours in a day, or more than forty hours in a workweek, are entitled to payment at the

rate of time-and-one-half for all hours worked in excess of eight hours in a day or more than forty hours in a work week. An employee who works more than twelve hours in a day is entitled to overtime compensation at a rate of two times his or her regular rate of pay.

27) California Labor Code § 510 codifies the right to overtime compensation at one-and-one-half the regular hourly rate for hours worked in excess of eight hours in a day or forty hours in a week or for the first eight hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

28) During the relevant time period, Plaintiff and the other members of the class consistently worked in excess of eight hours in a day or forty hours in a week.

29) During the relevant time period, Defendants failed to pay all premium overtime wages owed to Plaintiff and the other members of the Class.

30) Defendants' failure to pay Plaintiff and other class members the unpaid balance of premium overtime compensation, as required by California state law, violates the provisions of California Labor Code §§ 510 and 1198, and is therefore unlawful.

31) Pursuant to California Labor Code § 1194, Plaintiff and other class members are entitled to recover their unpaid overtime compensation, as well as interest, costs and attorney's fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202

(Against all Defendants)

32) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 31.

33) At all times herein set forth, California Labor Code § 218 authorizes employees to sue directly for any wages or penalties due to them under the Labor Code.

34) At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due

and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

35) During the relevant time period, Defendants failed to pay Plaintiff and those class members who are no longer employed by Defendants their wages, earned and unpaid, either at the time of discharge, or within seventy-two hours of their leaving Defendants' employ.

36) Defendants' failure to pay Plaintiff and those class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

37) California Labor Code §203 provides that if an employer willfully fails to pay wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty days.

38) Plaintiff and other class members are entitled to recover from Defendants the statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code § 203.

THIRD CAUSE OF ACTION

Violation of California Labor Code § 226(a)

(Against all Defendants)

39) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 38.

40) Defendants have intentionally failed to provide employees with complete and accurate wage statements that include, among other things, the employer name, the inclusive dates of the pay period, the applicable rate paid to employees, failure to include the employee's social security number, and the actual number of hours worked by Plaintiff and the other class members.

41) Plaintiff and the other members of the class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a) or an aggregate penalty not exceeding four thousand dollars, and an award of costs and reasonable attorney's fees pursuant to California Labor Code § 226(e).

FOURTH CAUSE OF ACTION

Violation of California Labor Code § 226.7

(Against all Defendants)

42) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 41.

43) At all times herein set forth, California Labor Code § 218 authorizes employees to sue directly for any wages or penalty due to them under the California Labor Code.

44) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California Industrial Welfare Commission.

45) During the relevant time period, the Defendants required the Plaintiff and other members of the class to work during rest periods and failed to compensate Plaintiff and members of the class for work performed during rest periods.

46) Defendants' conduct violates applicable orders of the California Industrial Wage Commission, and California Labor Code §§ 226.7(a).

47) Pursuant to California Labor Code § 226.7(b), Plaintiff and other members of the class are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that a rest period was not provided.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7 and 512

48) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 47.

49) At all times herein set forth, California Labor Code § 218 authorizes employees to sue directly for any wages or penalty due to them under the California Labor Code.

50) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the California Industrial Welfare Commission.

51) At all times herein set forth, California Labor Code § 512(a) provides that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours the meal period may be waived by mutual consent of both the employer and the employee.

52) At all times herein set forth California Labor Code § 512(a) further provides that an employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

53) During the relevant time period, Plaintiff and other class members who were scheduled to work for a period of time in excess of six hours were required to work for periods longer than five hours without a meal period of not less than thirty minutes.

54) During the relevant time period, Plaintiff and other members of the class who were scheduled to work in excess of ten hours but not longer than twelve hours, and who did not waive their legally-mandated meal periods by mutual consent were required to work in excess of ten hours without receiving a second meal period of not less than thirty minutes.

55) During the relevant time period, Plaintiff and other members of the class who were scheduled to work in excess of twelve hours were required to work in excess of ten hours without receiving a second meal period of not less than thirty minutes.

56) During the relevant time period, the Defendants required the Plaintiff and other members of the class to work during meal periods and failed to compensate Plaintiff and members of the class for work performed during meal periods.

57) Defendants' conduct violates applicable orders of the California Industrial Wage Commission, and California Labor Code §§ 226.7(a) and 512(a).

58) Pursuant to California Labor Code § 226.7(b), Plaintiff and other members of the class are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

SIXTH CAUSE OF ACTION

Violation of California Business & Professions Code § 17200, et seq.

(Against all Defendants)

59) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 58.

60) Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to the Plaintiff, the other members of the class, and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

61) Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code § 17200, et seq.

62) Plaintiff and the putative Class members have been personally aggrieved by Defendants' unlawful business acts and practices alleged herein by the loss of money or property.

63) Pursuant to California Business & Professions Code § 17200, et seq., Plaintiff and the putative Class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to class members; an

award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable law; and an award of costs.

64) A violation of California Business & Professions Code § 17200, et seq. may be predicated on the violation of any state or federal law. In the instant case, Defendants' policy and practice of requiring drivers, including Plaintiffs, to work in excess of eight hours in a day or forty hours per week without paying them overtime compensation violates California Labor Code §§ 1198 and 510. In addition, Defendants' policy and practice of requiring drivers, including Plaintiffs, to work without being paid any compensation violates California Labor Code § 1194.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representatives of the Class; and
3. That counsel for Plaintiffs be appointed as Class counsel.

As to the First Cause of Action

4. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
5. For pre-judgment interest on any unpaid overtime compensation from the date such amounts were due;
6. For reasonable attorney's fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and
7. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

8. For all actual, consequential and incidental losses and damages, according to proof;

9. For statutory penalties pursuant to California Labor Code § 203 for Plaintiff and all other class members who have left Defendants' employ;

10. For costs of suit incurred herein; and

11. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

12. For all actual, consequential and incidental losses and damages, according to proof;

13. For statutory penalties pursuant to California Labor Code § 226(e);

14. For reasonable costs and attorney's fees pursuant to California Labor Code § 226(e); and

15. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

16. For all actual, consequential, and incidental losses and damages, according to proof;

17. For statutory penalties pursuant to California Labor Code § 226.7(b);

18. For costs of suit incurred herein; and

19. For such other and further relief as the Court may deem appropriate.

As to the Fifth Cause of Action

20. For all actual, consequential, and incidental losses and damages, according to proof;

21. For statutory penalties pursuant to California Labor Code § 226.7(b);

22. For costs of suit incurred herein; and

23. For such other and further relief as the Court may deem appropriate.

As to the Sixth Cause of Action

24. For disgorgement of any and all "unpaid wages" and incidental losses, according to proof;

25. For restitution of "unpaid wages" to all class members and prejudgment interest from the day such amounts were due and payable;

26. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code § 17200 et seq.;

27. For reasonable attorney's fees that Plaintiff and other members of the class are entitled to recover under California Code of Civil Procedure § 1021.5;

28. For costs of suit incurred herein; and

29. For such other and further relief as the Court may deem equitable and appropriate.

Dated: August 4, 2006

Respectfully submitted,
Initiative Legal Group LLP

By: _____
Mark Yablonovich, Esq.
Marc Primo, Esq.
Shawn Westrick, Esq.
Attorneys for Plaintiffs

EXHIBIT B

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Attorneys for Plaintiff Arshavir Iskanian

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ARSHAVIR ISKANIAN, an individual,

Plaintiff,

vs.

CLS TRANSPORTATION LOS ANGELES, LLC, a Delaware corporation; CLS WORLDWIDE SERVICES, LLC, a Delaware corporation; EMPIRE INTERNATIONAL, LTD, a New Jersey Corporation; GTS HOLDINGS, INC, a Delaware corporation and DOES 1 through 10, inclusive,

Defendants.

Case No. BC381065

LABOR CODE PRIVATE ATTORNEY GENERAL ACT

COMPLAINT FOR:

(1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);

(2) Violation of California Labor Code § 226(a) (Improper Wage Statements);

(3) Violation of California Labor Code §§ 226.7(a) and 512 (Missed Meal Periods);

(4) Violation of California Labor Code § 226.7(a) (Missed Rest Periods);

(5) Violation of California Labor Code §§ 221 and 2802 (Improper Withholding of Wages and Non-Indemnification of Business Expenses);

(6) Violation of California Labor Code § 351 (Confiscation of Gratuities);

(7) Violation of California Labor Code §§ 201 and 202 (Non-payment of Wages Upon Termination); and

(8) Violation of California Labor Code § 204 (Failure to Pay Wages)

Jury Trial Demanded

Plaintiff, an individual, alleges as follows:

JURISDICTION AND VENUE

1) This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." The statutes under which this action is brought do not specify any other basis for jurisdiction.

2) This Court has jurisdiction over all Defendants because, upon information and belief, each Defendant is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

3) Venue is proper in this Court because, upon information and belief, one or more of the named Defendants resides, transacts business, or has offices in this county and the acts and omissions alleged herein took place in this county.

4) California Labor Code §§ 2699 authorizes employees to sue directly for various civil penalties under the Labor Code.

5) Plaintiff has exhausted his administrative remedies by timely requesting and obtaining verification from the California Labor and Workforce Development Agency that it does not intend to investigate any alleged violations. See Exhibit "A," Notice of Right to Sue Letter (hereinafter "Right to Sue Letter")

THE PARTIES

6) Plaintiff ARSHAVIR ISKANIAN (hereinafter "Plaintiff") is a resident of Los Angeles County, in the State of California.

7) Defendant CLS TRANSPORATION LOS ANGELES, LLC, (hereinafter "Defendants") was and is, upon information and belief, a Delaware limited liability corporation

doing business within the state of California, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county, the state of California, or the various states of the United States of America.

8) Defendant CLS WORLDWIDE SERVICES, LLC, (hereinafter "Defendants") was and is, upon information and belief, a Delaware limited liability corporation doing business within the state of California, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county, the state of California, or the various states of the United States of America. CLS Worldwide Services, LLC, appears to be the same company as CLS Transportation Los Angeles, LLC.

9) Defendant EMPIRE INTERNATIONAL, LTD, (hereinafter "Defendants") was and is, upon information and belief, a New Jersey corporation doing business within the state of California, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county, the state of California, or the various states of the United States of America.

10) Defendant GTS HOLDINGS, INC, (hereinafter "Defendants") was and is, upon information and belief, a Delaware corporation doing business within state of California, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county, the state of California, or the various states of the United States of America. In February of 2005, Empire International, Ltd. and CLS Worldwide Services, LLC, combined their two assets forming GTS Holdings, Inc.

11) Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1-10, but prays for leave to amend and serve such fictitiously named Defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities become known.

12) Plaintiff is informed and believes, and thereon alleges, that DOES 1-10 are the partners, agents, owners, shareholders, managers or employees of Defendants, and were acting on behalf of Defendants.

13) Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, Defendants and DOES 1-10 (collectively "Defendants"), each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent the official policy of, Defendants at all times herein alleged.

14) At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages herein alleged.

15) Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

16) Plaintiff intends to seek penalties for violations of the California Labor Code, which are recoverable under California Labor Code §§ 2699 et seq. Plaintiff is seeking penalties on behalf of the State of California of which 75% will be kept by the state, while 25% will be available to aggrieved employees. Plaintiff is alleging PAGA penalties from March 8, 2004 to the date of the resolution of this lawsuit.

17) At all times set forth, Defendants employed Plaintiff as a driver from on or about March 8, 2004 to on or about August 4, 2005.

18) Defendants continue to employ drivers within California.

19) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law and employment and personnel practices, and about the requirements of California law.

20) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive certain wages for

overtime compensation and that they were not receiving certain wages for overtime compensation.

21) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive all the wages owed to them upon discharge.

22) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive complete and accurate wage statements in accordance with California law.

23) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive all meal periods or payment of one hour of pay at their regular rate of pay when they did not receive a timely uninterrupted meal period.

24) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive all rest periods or payment of one hour of pay at their regular rate of pay when a rest period was missed.

25) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive full reimbursement for all business-related expenses and costs they incurred during the course and scope of their employment, and that they did not receive full reimbursement of applicable business-related expenses and costs they incurred.

26) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and other aggrieved employees, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly and intentionally failed to do so, and falsely represented to Plaintiff and other aggrieved employees that they were properly denied wages, all in order to increase Defendants' profits.

27) At all times herein set forth, the California Labor Code § 2699 was applicable to Plaintiff's employment by Defendants.

the specific provisions of the Labor Code alleged to have been violated on August 4, 2006, including the facts and theories to support the alleged violations.

33) The Agency notified Defendant and Plaintiff by certified mail on September 13, 2006, that it did not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date of the Notice. See Exhibit "A."

34) Plaintiff has, therefore, satisfied the requirements of California Labor Code § 2699.3 and may amend his existing complaint and recover civil penalties, in addition to other remedies, for violations of California Labor Code §§ 201, 202, 203, 204, 221, 226(a), 226.7(a), 351, 510, 512, 1194, 1198, and 2802.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198

(Against all Defendants)

35) Plaintiff incorporates by reference and re-alleges as if fully stated herein the allegations set out in paragraphs 1 through 34.

36) At all times herein set forth, California Labor Code § 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provides that it is unlawful to employ persons without compensating them at a rate of pay either at one-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

37) Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other aggrieved employees who worked more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of one-and-one-half times the regular rate for all hours worked in excess of eight (8) hours in a day or more than forty (4) hours in a workweek.

38) The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other aggrieved employees who worked more than twelve (12) hours in a day, overtime compensation at a rate of two-times his or her regular rate of pay.

39) At all times herein set forth, California Labor Code § 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

40) During the relevant time period, Plaintiff and other aggrieved employees consistently worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, or in excess of forty (40) hours in a week.

41) During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and other aggrieved employees

42) During the relevant time period, Plaintiff and other aggrieved employees regularly performed non-exempt work in excess of fifty percent (50%) of the time, and was thus subject to the overtime requirements of California law.

43) Defendants' failure to pay Plaintiff and other aggrieved employees the unpaid balance of overtime compensation, as required by California law, violates the provisions of California Labor Code §§ 510 and 1198, and is therefore unlawful.

44) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 510, 1194 and 1198.

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SECOND CAUSE OF ACTION

Willful Violation of California Labor Code § 226(a)

(Against all Defendants)

45) Plaintiff incorporates by reference and re-alleges as if fully stated herein the allegations set out in paragraphs 1 through 44.

46) Defendants have intentionally failed to provide employees with complete and accurate wage statements that include, among other things, the actual number of hours worked by Plaintiff and other aggrieved employees.

47) Pursuant to California Labor Code §§ 2699(f) and 226.3, the State of California, Plaintiff and other aggrieved employees are entitled to recover from Defendants the greater of the actual damages caused by Defendants' failure to comply with California Labor Code § 226(a) or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee, and an award of costs and reasonable attorney's fees.

THIRD CAUSE OF ACTION

Violation of California Labor Code §§ 226.7(a) and 512(a)

(Against all Defendants)

48) Plaintiff incorporates by reference and re-alleges as if fully stated herein the allegations set out in paragraphs 1 through 47.

49) At all times herein set forth, the California IWC Wage Order and California Labor Code §§ 226.7(a) and 512(a) were applicable to Plaintiff employment with Defendants.

50) At all times herein set forth, California Labor Code § 226.7(a) provides that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

51) At all times herein set forth, California Labor Code § 512(a) further provides that an employer may not require, cause or permit an employee to work for a period of more than ten (10)

hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

52) During the relevant time period, Plaintiff and the other aggrieved employees who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without a meal period of not less than thirty (30) minutes.

53) During the relevant time period, Plaintiff and the other aggrieved employees who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without a meal period of not less than thirty (30) minutes.

54) During the relevant time period, Plaintiff and the other aggrieved employees who were scheduled to work in excess of ten (10) hours but not longer than twelve (12) hours, and who did not waive their legally-mandated meal periods by mutual consent were required to work in excess of ten (10) hours without receiving a second meal period of not less than thirty (3) minutes.

55) During the relevant time period, Plaintiff and the other aggrieved employees who were scheduled to work for a period of time in excess of twelve (12) hours were required to work for periods longer than ten (10) hours without a meal period of not less than thirty (30) minutes.

56) During the relevant time period, Defendants willfully required Plaintiff and other aggrieved employees to work during meal periods and failed to compensate Plaintiff for work performed during those meal periods.

57) Defendants' conduct violates applicable IWC Wage Orders and California Labor Code §§ 226.7(a) and 512(a).

58) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and the other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each

subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 226.7(a) and 512(a).

FOURTH CAUSE OF ACTION

Violation of California Labor Code § 226.7(a)

(Against all Defendants)

59) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 58.

60) At all times herein set forth, the applicable IWC Wage Order and California Labor Code § 226.7(a) was applicable to Plaintiff's and the other aggrieved employees' employment by Defendants.

61) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

62) At all material times set forth herein, Defendants required Plaintiff and the other aggrieved employees to work in excess of four (4) hours without providing a ten (10) minute rest period.

63) At all material times set forth herein, Defendants required Plaintiff and the other aggrieved employees to work an additional four (4) hours without providing a second ten (10) minute rest period.

64) At all material times set forth herein, Defendants required Plaintiff and the other aggrieved employees to work during rest periods and failed to compensate Plaintiff and the other aggrieved employees for work performed during rest periods.

65) Defendants' conduct violates the applicable IWC Wage Order and California Labor Code 226.7(a).

66) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial

violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 226.7(a).

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 221 and 2802

(Against All Defendants)

67) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 66.

68) At all times herein set forth, California Labor Code § 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages previously paid by the employer to the employee.

69) At all times herein set forth, California Labor Code § 2802 provides further that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

70) At all material times set forth herein, Defendants required Plaintiff and the other aggrieved employees to contribute to Defendants' costs of doing business, including, but not limited to, deducting from wages or otherwise requiring employees to pay for the costs of uniforms required for all drivers and did not indemnify or reimburse employees for these necessary business expenditures required in the discharge of his or her duties of employment.

71) Defendants' conduct violates California Labor Code §§ 221 and 2802.

72) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 221

and 2802.

SIXTH CAUSE OF ACTION

Violation of California Labor Code § 351

(Against all Defendants)

73) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 72.

74) At all times herein set forth, California Labor Code § 351 provides that no employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the portion indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

75) During the relevant time period, Defendants collected, took, or received gratuity payments given to Plaintiff and the other aggrieved employees without crediting the amount or any part of it to the employees. Further, Defendants failed to make gratuity payments made by patrons using credit cards payable to aggrieved employees by the next regular payday following the date the patron authorized the credit card payments.

76) Defendants' conduct violates California Labor Code § 351.

77) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial

violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 351.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202

(Against all Defendants)

78) Plaintiff incorporates by reference and re-alleges as if fully stated herein the allegations set out in paragraphs 1 through 77.

79) At all times herein set forth, California Labor Code § 218 authorizes employees to sue directly for any wages or penalties due to him under the Labor Code.

80) At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

81) During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees their wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of leaving Defendants' employ.

82) Defendants' failure to pay Plaintiff and other aggrieved employees their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of her leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

83) Pursuant to California Labor Code § 2699(f) and (g), the State of California, Plaintiff and the other class members are entitled to recover civil penalties in the amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorney's fees, for violations of the Labor Code §§ 201 and 202.

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EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 204

(Against all Defendants)

84) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1through 83.

85) At all times herein set forth, California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and the 15th days, inclusive of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

86) At all times herein set forth, California Labor Code § 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

87) Additionally, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

88) During the relevant time period, Defendants willfully failed to pay Plaintiff and the other aggrieved employees the regular and overtime wages due to them, within any time period permissible by California Labor Code § 204.

89) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 204.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

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PRAYER FOR RELIEF

Plaintiff, and on behalf of all other aggrieved employees similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

As to the First Cause of Action

1) For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

2) For pre-judgment interest on any unpaid overtime compensation from the date such amounts were due;

3) For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a);

4) For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 510, 1194 and 1198; and

5) For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

1) For all actual, consequential and incidental losses and damages, according to proof;

2) For costs of suit incurred herein;

3) For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 226(a); and

4) For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

1) For all actual, consequential and incidental losses and damages, according to proof;

2) For costs of suit incurred herein;

3) For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the

amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 226.7(a) and 512; and

4) For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

1) For all actual, consequential and incidental losses and damages, according to proof;

2) For costs of suit incurred herein;

3) For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 226.7(a); and

4) For such other and further relief as the Court may deem appropriate.

As to the Fifth Cause of Action

1) For all actual, consequential and incidental losses and damages, according to proof;

2) For costs of suit incurred herein;

3) For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 221 and 2802; and

4) For such other and further relief as the Court may deem appropriate.

As to the Sixth Cause of Action

1) For all actual, consequential and incidental losses and damages, according to proof;

2) For restitution of confiscated gratuities to all aggrieved employees and prejudgment interest from the day such amounts were due and payable;

3) For costs of suit incurred herein;

4) For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each

aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 351; and

5) For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

1) For all actual, consequential and incidental losses and damages, according to proof;

2) For reasonable attorneys' fees and for costs of suit incurred herein;

3) For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 201, 202 and 203; and

4) For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

1) For all actual, consequential and incidental losses and damages, according to proof;

2) For pre-judgment interest on any untimely paid compensation, from the date such amounts were due;

3) For reasonable attorneys' fees and costs of suit incurred herein;

4) For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 204; and

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5) For such other and further relief as the Court may deem equitable and appropriate.

Dated: November 20, 2007

Respectfully submitted,

INITIATIVE LEGAL GROUP, LLP

By: _____

Mark Yablonovich
Marc Primo
Matthew T. Theriault
Lory N. Ishii
Attorneys for Plaintiff and all other aggrieved employees

EXHIBIT C

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Attorneys for Defendant
CLS TRANSPORTATION LOS ANGELES LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ARSHAVIR ISKANIAN, individually, and on behalf of other members of the general public similarly situated,

Plaintiffs,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, a Delaware corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. BC 356521

DECLARATION OF ROD RAVE IN SUPPORT OF MOTION FOR ORDER COMPELLING ARBITRATION, DISMISSING CLASS CLAIMS, AND STAYING ACTION PENDING THE OUTCOME OF ARBITRATION

DATE: March 13, 2007
TIME: 8:30 a.m.
DEPT.: 24

Complaint filed: August 4, 2006
Trial Date: None

Assigned for All Purposes to:
The Honorable Robert Hess

I, Rod Rave, declare as follows:

1. I am Vice President of Operations, Western Region for Defendant CLS Transportation Los Angeles ("CLS"). I have personal knowledge of the facts set forth in this declaration and if called as a witness, I could and would competently testify to them.

2. Arshavir Iskanian began his employment with CLS as a limousine driver on or about March 8, 2004.

3. On December 21, 2004, Plaintiff and CLS executed a document entitled "Settlement Agreement and Release of All Claims," under which Plaintiff received certain sums in exchange for his agreement to release CLS for any potential claims he may have had. A true and correct copy of the executed document is attached hereto as Exhibit A.

4. On December 21, 2004, Plaintiff and CLS also executed a document entitled "Proprietary Information and Arbitration Policy/Agreement" ("the Arbitration Agreement"), wherein both parties agreed to arbitrate any and all disputes relating to Plaintiff's employment and separation from CLS. A true and correct copy of the executed document is attached hereto as Exhibit B.

5. Plaintiff was not forced to sign the Arbitration Agreement. The Arbitration Agreement was provided to some drivers in conjunction with the Release identified in paragraph 3; some drivers chose to sign the Arbitration Agreement and some did not.

6. Plaintiff was terminated from CLS on August 2, 2005, for repeated violations of company policy.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of February 2007, at El Segundo, California.

By _____
ROD RAVE

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of February 2007, at El Segundo, California.

By _____
ROD RAVE

[Exhibit B to Rod Rave's Declaration]

PROPRIETARY INFORMATION AND ARBITRATION POLICY/AGREEMENT

This Proprietary Information and Arbitration Policy/Agreement ("Policy/Agreement") is entered into by and between ARSHAVIR ISKANIAN (hereinafter referred to as "EMPLOYEE"), on the one hand, and CLS WORLDWIDE SERVICES, LLC (hereinafter, together with parent, subsidiary and affiliated corporations and entities, and their successors and assigns, referred to as "COMPANY"), on the other hand. In consideration of the mutual representations, warranties, covenants and agreements set forth below, and for other good and valuable consideration, including EMPLOYEE'S employment and/or continued employment and for other consideration, the receipt and sufficiency of which is hereby acknowledged, EMPLOYEE and COMPANY agree as follows:

1. **PROPRIETARY INFORMATON.**

a. EMPLOYEE understands that, by virtue of EMPLOYEE'S employment with COMPANY, EMPLOYEE will acquire and be exposed to Proprietary Information of COMPANY. "Proprietary Information" includes all ideas, information and materials, tangible or intangible, not generally known to the public, relating in any manner to the business of COMPANY, its products and services (including all trade secrets), its personnel (including its officers, directors, employees, and contractors), its clients, vendors and suppliers and all others with whom it does business that EMPLOYEE learns or acquires during EMPLOYEE'S employment with COMPANY. Proprietary Information includes, but is not limited to, manuals, documents, computer programs and software used by COMPANY, users manuals, compilations of technical, financial, legal or other data, salary information, client or prospective client lists, names of suppliers or vendors, client, supplier or vendor contact information, customer contact information, business referral sources, specifications, designs, devices, inventions, processes, business or marketing plans or strategies, pricing information, information regarding the identity of COMPANY'S designs, mock-ups, prototypes, and works in progress, all other research and development information, forecasts, financial information, and all other technical or business information. Proprietary Information does not include basic information that is generally known and used within the limousine industry.

b. EMPLOYEE agrees to hold in trust and confidence all Proprietary Information during and after the period of EMPLOYEE'S employment with COMPANY. EMPLOYEE shall not disclose any Proprietary Information to anyone outside COMPANY without the written approval of an authorized officer of COMPANY or use any Proprietary Information for any purpose other than for the benefit of COMPANY as required by EMPLOYEE'S authorized duties for COMPANY. At all times during EMPLOYEE'S employment with COMPANY, EMPLOYEE shall comply with all of COMPANY'S policies, procedures, regulations or directives relating to the protection and confidentiality of Proprietary Information. Upon termination of EMPLOYEE'S employment with COMPANY, (a) EMPLOYEE shall not use Proprietary Information, or disclose Proprietary Information to anyone, for any purpose, unless expressly requested to do so in writing by an authorized officer of COMPANY, (b) EMPLOYEE shall not retain or take with EMPLOYEE any Proprietary Information in a Tangible Form (defined below), and (c) EMPLOYEE shall immediately deliver to COMPANY any Proprietary Information in a Tangible Form that EMPLOYEE may then or

thereafter hold or control, as well as all other property, equipment, documents or things that EMPLOYEE was issued or otherwise received or obtained during EMPLOYEE'S employment with COMPANY. "Tangible Form" includes ideas, information or materials in written or graphic form, on a computer disc or other medium, or otherwise stored in or available through electronic, magnetic, videotape or other form.

2. NON-SOLICITATION OF CUSTOMERS/CLIENTS. EMPLOYEE acknowledges that, because of the nature of EMPLOYEE'S work for COMPANY, EMPLOYEE'S solicitation or serving of certain customers or clients would necessarily involve the unauthorized use or disclosure of Proprietary Information, and specifically trade secret information, as well as the proprietary relationships and goodwill of COMPANY. Accordingly, for one (1) year following the termination of EMPLOYEE'S employment with COMPANY for any reason, EMPLOYEE shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce, any person or entity then known to be a customer or client of COMPANY (a "Restricted Customer/Client"), to terminate his, her or its relationship with COMPANY for any purpose, including the purpose of associating with or becoming a customer or client, whether or not exclusive, of EMPLOYEE or any entity of which EMPLOYEE is or becomes an officer, director, member, agent, employee or consultant, or otherwise solicit, induce, or attempt to solicit or induce, any Restricted Customer/Client to terminate his, her or its relationship with COMPANY for any other purpose or no purpose; provided, however, this Section 2 seeks to protect COMPANY'S trade secrets and/or to prohibit EMPLOYEE from improperly disclosing or using Proprietary Information. Accordingly, if, during EMPLOYEE'S employment, EMPLOYEE never learned nor was exposed to Proprietary Information regarding the identification of such customers/clients or customer/client contact information, pricing information, business development information, sales and marketing plan information, financial information or other Proprietary Information, EMPLOYEE shall not be restrained from such solicitation or attempted solicitation but EMPLOYEE shall not use any Proprietary Information during or in connection with any such solicitation, nor shall EMPLOYEE interfere or attempt to interfere with COMPANY'S contractual or prospective economic relationships with any customer or client through unlawful or improper means.

3. NON-SOLICITATION OF PERSONNEL. During EMPLOYEE'S employment with COMPANY and for one (1) year thereafter, EMPLOYEE shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce, any person known to EMPLOYEE to be an employee of COMPANY (each such person, a "Company Person"), to terminate his or her employment or other relationship with COMPANY for the purpose of associating with (a) any entity of which EMPLOYEE is or becomes an officer, director, member, partner, principal, agent, employee or consultant, or (b) any competitor of COMPANY, or otherwise encourage any Company Person to terminate his or her employment or other relationship with COMPANY for any other purpose or no purpose.

4. COMPETING ACTIVITIES. To protect COMPANY'S Proprietary Information, during EMPLOYEE'S employment with COMPANY, EMPLOYEE shall not engage in any activity that is or may be competitive with COMPANY in the limousine industry or otherwise in any state in the United States, where COMPANY engages in business, whether or not for compensation including, but not limited to, providing services or selling products

similar to those provided or sold by COMPANY, offering, or soliciting or accepting an offer, to provide such services or to sell such products, or taking any action to form, or become employed by, a COMPANY or business to provide such services or to sell such products; provided, however, nothing in this Policy/Agreement shall be construed as limiting EMPLOYEE'S ability to engage in any lawful off-duty conduct.

5. RETURN OF DOCUMENTS AND MATERIALS. Immediately upon the termination of EMPLOYEE'S employment or at any time prior thereto if requested by COMPANY, EMPLOYEE shall return all records, documents, equipment, proposals, notes, lists, files, and any and all other materials, including but not limited to Proprietary Information in a Tangible Form, that refers, relates or otherwise pertains to COMPANY and its business, including its products and services, personnel, customers or clients (actual or potential), investors (actual or potential), and/or vendors and suppliers (actual or potential), or any of them, and any and all business dealings with said persons and entities (the "Returned Property and Equipment") to COMPANY at its offices in Los Angeles, California. EMPLOYEE is not authorized to retain any copies or duplicates of the Returned Property and Equipment or any Proprietary Information that EMPLOYEE obtained or received as a result of EMPLOYEE'S employment or other relationships with COMPANY.

6. PROPRIETARY INFORMATION OF OTHERS/COMPLIANCE WITH LAWS. EMPLOYEE shall not breach any lawful, enforceable agreement to keep in confidence, or to refrain from using, the nonpublic ideas, information or materials of a third party, including, but not limited to, a former employer or present or former customer or client. EMPLOYEE shall not bring any such ideas, information or materials to COMPANY, or use any such ideas, information or materials in connection with EMPLOYEE'S employment by COMPANY. EMPLOYEE shall comply with all national, state, local and other laws, regulations and ordinances.

7. RIGHTS AND REMEDIES UPON BREACH. If EMPLOYEE breaches, or threatens to commit a breach of, any of the provisions of this Policy/Agreement, EMPLOYEE agrees that, in aid of arbitration and as a provisional remedy (or permanent remedy ordered by an arbitrator), COMPANY shall have the right and remedy to have each and every one of the covenants in this Policy/Agreement specifically enforced and the right and remedy to obtain temporary and permanent injunctive relief, it being acknowledged and agreed by EMPLOYEE that any breach or threatened breach of any of the covenants and agreements contained herein would cause irreparable injury to COMPANY and that money damages would not provide an adequate remedy at law to COMPANY. Moreover, if EMPLOYEE breaches or threatens to commit a breach of this Policy/Agreement during EMPLOYEE'S employment with COMPANY, EMPLOYEE may be subject to the immediate termination of EMPLOYEE'S employment. In any proceeding seeking to enforce Sections 1 through 6 of this Policy/Agreement, the prevailing Party shall be entitled to recover all reasonable attorneys' fees, costs and expenses, including any expert fees, which were incurred by that Party in connection with any such proceeding.

8. SEVERABILITY/BLUE-PENCIL. EMPLOYEE acknowledges and agrees that (a) the covenants and agreements contained herein are reasonable and valid in geographic,

temporal and subject matter scope and in all other respects, and do not impose limitations greater than are necessary to protect the goodwill, Proprietary Information, and other business interests of COMPANY; (b) if any arbitrator (or a court when COMPANY seeks a provisional remedy in aid of arbitration) subsequently determines that any of such covenants or agreements, or any part thereof, is invalid or unenforceable, the remainder of such covenants and agreements shall not thereby be affected and shall be given full effect without regard to the invalid portions; and (c) if any arbitrator (or a court when COMPANY seeks a provisional remedy in aid of arbitration) determines that any of the covenants and agreements, or any part thereof, is invalid or unenforceable because of the duration or scope of such provision, such arbitrator (or a court when COMPANY seeks a provisional remedy in aid of arbitration) shall have the power to reduce the duration or scope of such provision, as the case may be, and, in its reduced form, such provision shall then be enforceable to the maximum extent permitted by applicable law. EMPLOYEE intends to and hereby confers jurisdiction to enforce each and every one of the covenants and agreements contained in Sections 1 through 7 of this Policy/Agreement upon the arbitrators (or courts when COMPANY seeks a provisional remedy in aid of arbitration) of any jurisdiction within the geographic scope of such covenants and agreements, and if the arbitrator (or a court when COMPANY seeks a provisional remedy in aid of arbitration) in any one or more of such jurisdictions hold any such covenant or agreement unenforceable by reason of the breadth or scope or otherwise, it is the intention of EMPLOYEE that such determination shall not bar or in any way affect COMPANY'S right to the relief provided above in any other jurisdiction within the geographic scope of such covenants and agreements, as to breaches of such covenants and agreements in such other respective jurisdictions, such covenants and agreements as they relate to each jurisdiction being, for this purposes, severable into diverse and independent covenants and agreements.

9. CONFIRMATION OF AT-WILL EMPLOYMENT. Unless EMPLOYEE and COMPANY have otherwise entered into an express, written employment contract or agreement for a specified term, EMPLOYEE and COMPANY acknowledge and agree that: (a) EMPLOYEE'S employment with COMPANY is and shall be at all times on an at-will basis, and COMPANY or EMPLOYEE may terminate EMPLOYEE'S employment at any time, for any reason, with or without cause or advance notice; (b) nothing in this Policy/Agreement or in COMPANY'S EMPLOYEE manuals, handbooks or other written materials, and no oral statements or representations of any COMPANY officer, director, agent or employee, create or are intended to create an express or implied contract for employment or continuing employment; (c) nothing in the Policy/Agreement obligates COMPANY to hire, retain or promote EMPLOYEE; (d) all definitions, terms and conditions of this Policy/Agreement apply for purposes of this Policy/Agreement, and for no other purpose, and do not alter or otherwise effect the at-will status of EMPLOYEE'S employment with COMPANY; and (e) no representative of COMPANY has any authority to enter into any express or implied, oral or written agreements that are contrary to the terms and conditions of this Policy/Agreement or to enter into any express or implied contracts for employment (other than for at-will employment) except for the President, Chief Executive Officer or Chief Operating Officer of COMPANY, and any agreement between EMPLOYEE and the President, Chief Executive Officer or Chief Operating Officer must be in writing and signed by EMPLOYEE and the President, Chief Executive Officer or Chief Operating Officer.

10. INFORMATION ON COMPANY PREMISES. EMPLOYEE acknowledges that, by virtue of EMPLOYEE'S employment with COMPANY, EMPLOYEE will have use of the premises and equipment of COMPANY including the electronic mail systems, the computer system, internet access, and the voicemail system (collectively, the "COMPANY Information Systems"). EMPLOYEE acknowledges and agrees that (a) COMPANY Information Systems shall be used solely for COMPANY business and shall not be used for personal business, (b) EMPLOYEE has no right to privacy in any matter, file or information that is stored or transmitted on COMPANY Information Systems, and (c) COMPANY reserves the right to monitor or inspect any matter or file EMPLOYEE sends, stores, receives, or creates on COMPANY Information Systems, even if they contain EMPLOYEE'S personal information or materials. In addition, EMPLOYEE acknowledges and agrees that (a) EMPLOYEE has no right to privacy in any items, property, documents, materials, or other information that is contained, stored or transported in COMPANY'S vehicles, and (b) COMPANY reserves the right to monitor or inspect any items, property, documents, materials, or other information that is contained, stored or transported in COMPANY'S vehicles, even if they contain EMPLOYEE'S personal property, information or materials.

11. GOVERNING LAW. This Policy/Agreement shall be construed, interpreted, and governed in accordance with either (a) the laws of the State of California, regardless of applicable conflicts of law principles, or (b) in the event of a breach of any of the covenants contained in Sections 1 through 6, the law of the State where such breach actually occurs, depending on whichever choice of law shall ensure to the maximum extent that the covenants shall be enforced in accordance with the intent of the Parties as reflected in this Policy/Agreement.

13. ENTIRE AGREEMENT/MODIFICATION/NO WAIVER. This Policy/Agreement (a) represent the entire agreement of the Parties with respect to the subject matter hereof, (b) shall supersede any and all previous contracts, arrangements or understandings between the Parties hereto with respect to the subject matter hereof, and (c) may not be modified or amended except by an instrument in writing signed by each of the Parties hereto.

14. PARTIES IN INTEREST/ASSIGNMENT/SURVIVAL. Neither this Policy/Agreement nor any of the rights, interests or obligations under this Policy/Agreement shall be assigned, in whole or in part, by operation of law or otherwise, by EMPLOYEE. COMPANY may sell, assign, and transfer all of its right, title and interests in this Policy/Agreement without the prior consent of EMPLOYEE, whether by operation of law or otherwise, in which case this Policy/Agreement shall remain in full force after such sale, assignment or other transfer and may be enforced by (a) any successor, assignee or transferee of all or any part of COMPANY'S business as fully and completely as it could be enforced by COMPANY if no such sale, assignment or transfer had occurred, and (b) COMPANY in the case of any sale, assignment or other transfer of a part, but not all, of the business. The benefits under this Policy/Agreement shall inure to and may be enforced by COMPANY, and its parent, subsidiary and affiliated corporations and entities, and their successors, transferees and assigns. EMPLOYEE'S duties and obligations under this Policy/Agreement shall survive the termination of EMPLOYEE'S employment with COMPANY.

15. NOTIFICATION TO NEW EMPLOYER. EMPLOYEE understands that the various terms and conditions of this Policy/Agreement shall survive and continue after EMPLOYEE'S employment with COMPANY terminates. Accordingly, EMPLOYEE hereby expressly agrees that COMPANY may inform EMPLOYEE'S new employer regarding EMPLOYEE'S duties and obligations under this Policy/Agreement.

16. ARBITRATION.

a. EMPLOYEE and COMPANY agree that any and all disputes that may arise in connection with, arise out of or relate to this Policy/Agreement, or any dispute that relates in any way, in whole or in part, to EMPLOYEE'S hiring by, employment with or separation from COMPANY, or any other dispute by and between EMPLOYEE, on the one hand, and COMPANY, its parent, subsidiary and affiliated corporations and entities, and each of their respective officers, directors, agents and employees (the "Company Parties"), on the other hand, shall be submitted to binding arbitration before a neutral arbitrator (who shall be a retired judge) pursuant to the then-current dispute resolution rules and procedures of the American Arbitration Association ("AAA"), or such other rules and procedures to which the Parties may otherwise agree. This arbitration obligation extends to any and all claims that may arise by and between the Parties and, except as expressly required by applicable law, extends to, without limitation, claims or causes of action for wrongful termination, impairment of ability to compete in the open labor market, breach of express or implied contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, breach of duty of loyalty, fraud, misrepresentation, defamation, slander, infliction of emotional distress, discrimination, harassment, disability, loss of future earnings, and claims under any applicable state Constitution, the United States Constitution, and applicable state and federal fair employment laws, federal equal employment opportunity laws, and federal and state labor statutes and regulations, including, but not limited to, the Civil Rights Act of 1964, as amended, the Fair Labor Standards Act, as amended, the Worker Retraining and Notification Act of 1988, as amended, the Americans With Disabilities Act of 1990, as amended, the Rehabilitation Act of 1973, as amended, the Family Medical Leave Act, as amended, the Employee Retirement Income Security Act of 1974, as amended, the Age Discrimination in Employment Act, as amended, the California Fair Employment and Housing Act, as amended, the California Family Rights Act, as amended, the California Labor Code, as amended, the California Business and Professions Code, as amended, and all other applicable state or federal law. COMPANY and EMPLOYEE understand and agree that arbitration of the disputes and claims covered by this Policy/Agreement shall be the sole and exclusive method of resolving any and all existing and future disputes or claims arising by and between the Parties; provided, however, nothing in this Policy/Agreement should be interpreted as restricting or prohibiting EMPLOYEE from filing a charge or complaint with a federal, state, or local administrative agency charged with investigating and/or prosecuting complaints under any applicable federal, state or municipal law or regulation, but any dispute or claim that is not resolved through the federal, state, or local agency must be submitted to arbitration in accordance with this Policy/Agreement.

b. COMPANY and EMPLOYEE further understand and agree that claims for workers' compensation benefits, unemployment insurance, or state or federal disability insurance are not covered by this Policy/Agreement and shall therefore be resolved in any

appropriate forum, including the Workers' Compensation Appeals Board, as required by the laws then in effect. Furthermore, except as otherwise required under applicable law, (1) EMPLOYEE and COMPANY expressly intend and agree that class action and representative action procedures shall not be asserted, nor will they apply, in any arbitration pursuant to this Policy/Agreement; (2) EMPLOYEE and COMPANY agree that each will not assert class action or representative action claims against the other in arbitration or otherwise; and (3) each of EMPLOYEE and COMPANY shall only submit their own, individual claims in arbitration and will not seek to represent the interests of any other person.

c. Any demand for arbitration by either EMPLOYEE or COMPANY shall be served or filed within the statute of limitations that is applicable to the claim(s) upon which arbitration is sought or required. Any failure to demand arbitration within this time frame and according to these rules shall constitute a waiver of all rights to raise any claims in any forum arising out of any dispute that was subject to arbitration to the same extent such claims would be barred if the matter proceeded in court (along with the same defenses to such claims).

d. The Parties shall select a mutually agreeable arbitrator (who shall be a retired judge) from a list of arbitrators provided by ADR Services, ARC, Judicate West, or JAMS/Endispute. If, however, the Parties are unable to reach an agreement regarding the selection of an arbitrator, without incorporating the California Arbitration Act into this Policy/Agreement, the Parties nevertheless agree that a neutral arbitrator (who shall be a retired judge) shall be selected or appointed in the manner provided under the then-effective provisions of the California Arbitration Act, California Code of Civil Procedure section 1282 et seq.

e. The arbitration shall take place in Los Angeles, California, or, at EMPLOYEE'S option, the state and county where EMPLOYEE works or last worked for COMPANY

f. This arbitration agreement shall be governed by and construed and enforced pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and not individual state laws regarding enforcement of arbitration agreements or otherwise. The Arbitrator shall allow reasonable discovery to prepare for arbitration of any claims. At a minimum, without adopting or incorporating the California Arbitration Act into this Policy/Agreement, the Arbitrator shall allow at least that discovery that is authorized or permitted by California Code of Civil Procedure section 1283.05 and any other discovery required by law in arbitration proceedings. Nothing in this Policy/Agreement relieves either Party from any obligation they may have to exhaust certain administrative remedies before arbitrating any claims or disputes under this Policy/Agreement.

g. In any arbitration proceeding under this Policy/Agreement, the Arbitrator shall issue a written award that sets forth the essential findings and conclusions on which the award is based. The Arbitrator shall have the authority to award any relief authorized by law in connection with the asserted claims or disputes. The Arbitrator's award shall be subject to correction, confirmation, or vacation, as provided by any applicable governing judicial review of arbitration awards.

h. Unless otherwise provided or permitted under applicable law, COMPANY shall pay the arbitrator's fee and any other type of expense or cost that EMPLOYEE would not be required to bear if he or she were free to bring the dispute or claim in court as well as any other expense or cost that is unique to arbitration. Except as otherwise required under applicable law (or the Parties' agreement), COMPANY and EMPLOYEE shall each pay their own attorneys' fees and costs incurred in connection with the arbitration, and the arbitrator will not have authority to award attorneys' fees and costs unless a statute or contract at issue in the dispute authorizes the award of attorneys' fees and costs to the prevailing Party, in which case the arbitrator shall have the authority to make an award of attorneys' fees and costs to the same extent available under applicable law. If there is a dispute as to whether COMPANY or EMPLOYEE is the prevailing party in the arbitration, the Arbitrator will decide this issue.

i. The arbitration of disputes and claims under this Policy/Agreement shall be instead of a trial before a court or jury and COMPANY and EMPLOYEE understand that they are expressly waiving any and all rights to a trial before a court and/or jury regarding any disputes and claims which they now have or which they may in the future have that are subject to arbitration under this Policy/Agreement; provided, however, nothing in this Policy/Agreement prohibits either Party from seeking provisional remedies in court in aid of arbitration including temporary restraining orders, preliminary injunctions and other provisional remedies.

17. COMPANY POLICY. The foregoing provisions of this Policy/Agreement are binding upon EMPLOYEE and COMPANY irrespective of whether EMPLOYEE and/or COMPANY signs this Policy/Agreement. The terms and conditions of this Policy/Agreement describe some of COMPANY'S policies and procedures and supplement such policies and procedures set forth in COMPANY'S EMPLOYEE handbook and other policy and procedure statements or communications of COMPANY. EMPLOYEE'S and COMPANY'S signatures on this Policy/Agreement confirms EMPLOYEE'S and COMPANY'S knowledge of such policies and procedures and EMPLOYEE'S and COMPANY'S agreement to comply with such policies, procedures, and terms and conditions of employment and/or continuing employment. EMPLOYEE affirmatively represents that EMPLOYEE has other comparable employment opportunities available to EMPLOYEE (other than employment with COMPANY) and EMPLOYEE freely and voluntarily enters into this Policy/Agreement and agrees to be bound by the foregoing without any duress or undue pressure whatsoever and without relying on any promises, representations or warranties regarding the subject matter of this Policy/Agreement except for the express terms of this Policy/Agreement.

To acknowledge EMPLOYEE'S receipt of this Policy/Agreement, EMPLOYEE has signed this acknowledgement on the day and year written below; but, EMPLOYEE and COMPANY are bound by the Arbitration Policy/Agreement with or without signing this Policy/Agreement.

EMPLOYEE

Name: ARSHAVIR TSKANIAN
Address: 7655 MELITA AV. N. HOL. CAL 91605
Date: 12-21, 2004

CLS WORLDWIDE SERVICES, LLC

By:
Its: PRESIDENT & COO
Date: 12-21-04, 2004

Los_Angeles 362501 2 820000 1634

EXHIBIT D

FILED
LOS ANGELES SUPERIOR COURT

MAR 12 2007

BY _____ DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ARSHAVIR ISKANIAN, individually, and on behalf of other members of the general public similarly situated,

Plaintiffs,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, a Delaware corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. BC 356521

[~~PROPOSED~~] ORDER COMPELLING ARBITRATION, DISMISSING CLASS CLAIMS, AND STAYING ACTION PENDING THE OUTCOME OF ARBITRATION

DATE: March 13, 2007
TIME: 8:30 a.m.
DEPT.: 24

Complaint filed: August 4, 2006
Trial Date: None

Assigned for All Purposes to:
The Honorable Robert Hess

Received

MAR 15 2007

By _____

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

Defendant CLS Transportation Los Angeles, LLC's Motion for Order Compelling Arbitration, Dismissing Class Claims, and Staying the Action Pending the Outcome of Arbitration came on for hearing on March 13, 2007, at 8:30 a.m. in Department 24 of the above-entitled court, located at 111 North Hill Street, Los Angeles, California. Having considered all of the evidence before it, the arguments of the parties' respective counsel, and all of the pleadings and papers filed herein, the Court issues the following order:

IT IS HEREBY ORDERED that because Plaintiff and Defendant both executed a valid and enforceable arbitration agreement and class action waiver, Defendants' Motion for Order Compelling Arbitration, Dismissing Class Claims, and Staying the Action Pending the Outcome of Arbitration is granted. Plaintiff's class claims are hereby dismissed with prejudice, and the remainder of the action is stayed pending the outcome of the arbitration of Plaintiff's individual claims.

IT IS SO ORDERED.

Dated: March 13, 2007

The Honorable Robert Hess
Judge of the Superior Court

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action; my business address is: 1801 Century Park East, Suite 1420, Los Angeles, California 90067.

On February 9, 2007, I served the foregoing **[PROPOSED] ORDER COMPELLING ARBITRATION, DISMISSING CLASS CLAIMS, AND STAYING ACTION PENDING THE OUTCOME OF ARBITRATION** on the interested party in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Mark Yablonovich, Esq.
Marc Primo, Esq.
Shawn Westrick, Esq.
Initiative Legal Group LLP
1875 Century Park East
Suite 1800
Los Angeles, CA 90067

[X] **BY FIRST CLASS MAIL:** I caused said document(s) to be deposited in a facility regularly maintained by the United States Postal Service on the same day, in a sealed envelope, with postage paid, addressed to the above listed person(s) on whom it is being served in Los Angeles, California for collection and mailing on that date following ordinary business practices.

[ ] **BY HAND DELIVERY/PERSONAL SERVICE:** I caused said documents(s) to be personally delivered by a courier to each addressee.

[ ] **BY FACSIMILE:** I caused such document(s) to be faxed to the office of the addressee(s) to the facsimile number(s) above, at Los Angeles, California.

[ ] **BY FEDERAL EXPRESS:** I caused said document(s) to be deposited in a facility regularly maintained by the Federal Express on the same day, in a sealed envelope, with fees and postage paid, addressed to the above listed person(s) on whom it is being served in Los Angeles, California

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of February 2007 at Los Angeles, California.

Lorraine Harris

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/13/07			DEPT. 24
HONORABLE ROBERT L. HESS	JUDGE	G. CHARLES	DEPUTY CLERK
HONORABLE #6	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
B. BELL C/A	Deputy Sheriff	C. Crawley	Reporter

8:33 am BC356521

ARSHAVIR ISKANIAN

VS
CLS TRANSPORTATION LOS ANGELES

Plaintiff Counsel: Matthew Theriault (x)

Defendant Counsel: Nima Shivayi (x)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANT CLS TRANSPORTATION OF LOS ANGELES FOR ORDER COMPELLING ARBITRATION, DISMISSING CLASS ACTION PENDING THE OUTCOME OF ARBITRATION;

The cause is called for hearing.

The motion is granted.

The Court finds the agreement is neither procedurally nor substantively unconsciable.

The matter will be stayed pending arbitration.

The case is set for post arbitration status conference at 8:30am November 13, 2007.

Notice is waived.

MINUTES ENTERED
03/13/07
COUNTY CLERK

EXHIBIT E

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ARSHAVIR ISKANIAN et al.,

Plaintiffs and Appellants,

v.

CLS TRANSPORTATION LOS ANGELES LLC,

Defendant and Respondent.

B198999

(Los Angeles County Super. Ct. No. BC356521)

APPEAL from an order of the Superior Court of Los Angeles County. Robert L. Hess, Judge. Reversed and remanded.

Initiative Legal Group, Mark Yablonovich, Marc Primo, Matthew T. Theriault, Dina Livhits for Plaintiff's and Appellants.

No appearance for Defendant and Respondent.

An employee, Arshavir Iskanian, appeals from an order granting the motion by his employer, CLS Transportation of Los Angeles, to compel the individual arbitration of claims brought in a class action lawsuit.[1] The lawsuit alleged various Labor Code and Unfair Competition Law violations, such as the failure to pay statutorily required overtime compensation. (Lab. Code, §§ 510, 1198.)

The employer successfully sought binding arbitration, in accordance with the provisions of a signed agreement between employer and employee. Also, the employee acknowledged and agreed to a mandatory arbitration provision highlighted in the employee handbook. The agreement and the handbook subjected the employee's claims to binding arbitration, and the agreement further required the arbitration of individual claims and prohibited proceedings on a class or representative basis.

The trial court found that the agreement to arbitrate was neither procedurally nor substantively unconscionable, and that the arbitration agreement and class action waiver were valid and enforceable. Thus, the trial court granted the employer's motion to compel arbitration, dismissed the class action claims, stayed the action pending the outcome of the arbitration of the employee's individual claims, and set a postarbitration status conference for November of 2007.

Soon after the trial court rendered its opinion, our Supreme Court decided *Gentry v. Superior Court* (2007) 42 Cal.4th 443 (*Gentry*), a major case addressing the issue of class action arbitration waivers in overtime cases. *Gentry* held that a class arbitration

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[1] An order compelling arbitration is not appealable. (See, e.g., *Melchor Investment Co. v. Rolm Systems* (1992) 3 Cal.App.4th 587, 591.) However, because the employee presumably would not want to confirm the award and the grounds to vacate it are extremely limited (Code Civ. Proc., § 1286.2), there is arguably no adequate remedy of law. As requested by the employee, we thus "exercise our discretion to treat the appeal as a petition for a writ of mandate." (*Szetela v. Discover Bank* (2002) 97 Cal.App.4th 1094, 1098.)

We express no opinion as to whether such discretion would be similarly exercised, should the matter come before us again in the same procedural posture after the further proceedings directed herein.

waiver should not be enforced "if a trial court determines, based on factors discussed below, that class arbitration would be a significantly more effective way of vindicating the rights of affected employees than individual arbitration." (*Id.* at p. 450.)

As the court in *Gentry* explained: "We cannot say categorically that all class arbitration waivers in overtime cases are unenforceable. . . . Nonetheless, when it is alleged that an employer has systematically denied proper overtime pay to a class of employees and a class action is requested notwithstanding an arbitration agreement that contains a class arbitration waiver, the trial court must consider the[se] factors . . . : the modest size of the potential individual recovery, the potential for retaliation against members of the class, the fact that absent members of the class may be ill informed about their rights, and other real world obstacles to the vindication of class members' rights to overtime pay through individual arbitration." (*Id.* at pp. 462, 463.)

In *Gentry,* the court made clear that the question of whether a class action waiver is enforceable depends upon a factual inquiry to determine whether or not, in light of the claims being asserted, a class action will be a "more effective practical means of vindicating the rights of the affected employees than individual litigation or arbitration." (*Id.* at p. 463.) Thus, a class action waiver in an arbitration agreement will be invalidated only "after the proper factual showing." (*Id.* at p. 466.)

The court in *Gentry* also addressed the claim by the plaintiff that the arbitration agreement as a whole--not just the class action waiver--was unenforceable. The court observed that "[s]hould the trial court on remand find the class arbitration waiver in the present case to be void, it is unclear whether the issue of the unconscionability of the arbitration agreement as a whole will become moot, because it is unclear whether Gentry will continue to resist arbitration or whether [the employer] will continue to seek it." (*Id.* at p. 467.)

Thus, the Supreme Court in *Gentry* observed that a finding of procedural unconscionability "is a prerequisite to determining that the arbitration agreement as a whole is unconscionable" (*id.* at p. 451), and proceeded to discuss the employer's argument that the entire agreement was not unconscionable because Gentry had a 30-day

period to opt out of the agreement. (*Id.* at p. 472.) The court concluded that, based on some of the terms in the employee handbook and some arbitration limitations (*id.* at pp. 470-471), "the present agreement has an element of procedural unconscionability notwithstanding the opt-out provision, and therefore remand[ed] for a determination of whether provisions of the arbitration agreement were substantively unconscionable." (*Id.* at p. 451.)

In the present case, there was no specific provision in the agreement permitting the employee to opt out of the arbitration agreement within any specified period of time. However, the employer argued to the trial court that its employees could effectively opt out of arbitration because they were not forced to sign the arbitration agreement, some of them did not sign it, and Iskanian signed the agreement approximately a year after his employment started. The employer thus argued there was no contract of adhesion.[2]

However, because the trial court herein did not have the benefit of the Supreme Court's decision in *Gentry*, we deem it appropriate for the trial court in the first instance to have the opportunity to apply *Gentry* to the factual record in this case. (See *Gentry, supra,* 42 Cal.4th at p. 472 ["we remand the matter to the Court of Appeal with directions to remand to the trial court to determine whether the class arbitration waiver is void"].) The matter must therefore be reconsidered in light of *Gentry, supra,* 42 Cal.4th 443, both as to the validity of the arbitration agreement as a whole and the validity of the prohibition against representative or class actions.

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[2] On appeal, CLS has filed a notice "that it will not file an opposition to the appeal." This enigmatic notice is an obvious failure to rebut the contentions raised in the opening brief and thus could be construed as a waiver or concession. (Cf. *Curtis v. Santa Clara Valley Medical Center* (2003) 110 Cal.App.4th 796, 803, fn. 4; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545.)

While the appeal was pending, CLS moved to dismiss the appeal as moot because it had agreed to resolve the issues on appeal by way of stipulation. However, no stipulation was ever signed by Iskanian, who deemed the terms vague and unsatisfactory, and we have denied the motion to dismiss.

DISPOSITION

Assuming the matter is not moot due to Iskanian's satisfaction with the arbitration which has been ordered, let a writ of mandate issue. This conditional writ of mandate directs the superior court to reconsider in light of *Gentry* whether the arbitration agreement as a whole is unconscionable and thus void and, if the arbitration agreement is valid and enforceable, to determine in light of *Gentry* if the prohibition against representative or class actions is nonetheless void. If either the arbitration agreement as a whole or the prohibition against representative or class actions is void, the superior court is directed to vacate the order under review and proceed consistent with the opinion in *Gentry*.

Iskanian shall recover his costs.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.

Nima Shivayi
Fox Rothschild LLP
1801 Century Park East
Suite 1420
Los Angeles, CA 90067

Division 2
Arshavir Iskanian
v.
CLS Transportation Los Angeles, LLC

B198999

EXHIBIT F

Mark Yablonovich (SBN 186670)
Marc Primo (SBN 216796)
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Attorneys for Plaintiff ARSHAVIR ISKANIAN and for Class Members

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ARSHAVIR ISKANIAN, individually, and on behalf of other members of the general public similarly situated,

Plaintiffs,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, a Delaware corporation; CLS WORLDWIDE SERVICES, LLC, a Delaware corporation; EMPIRE INTERNATIONAL, LTD, a New Jersey Corporation; GTS HOLDINGS, INC, a Delaware corporation and DOES 1 through 10, inclusive,

Defendants.

Case Number: BC 356521; ordered Consolidated with BC381065

CLASS ACTION AND LABOR CODE PRIVATE ATTORNEYS GENERAL ENFORCEMENT ACTION

Consolidated First Amended Complaint for:

(1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);

(2) Violation of California Labor Code §§ 201 and 202 (Wages Not Paid Upon Termination);

(3) Violation of California Labor Code § 226(a) (Improper Wage Statements);

(4) Violation of California Labor Code § 226.7 (Missed Rest Breaks);

(5) Violation of California Labor Code §§ 512 and 226.7 (Missed Meal Breaks);

(6) Violation of California Labor Code §§ 221 and 2800 (Improper Withholding of Wages and Non-Indemnification of Business Expenses);

(7) Violation of California Labor Code § 351 (Confiscation of Gratuities); and

(8) Violation of California Business & Professions Code § 17200, et seq.

Jury Trial Demanded

Plaintiff, individually and on behalf of all other members of the public similarly situated, alleges as follows:

PRELIMINARY STATEMENT

This Consolidated First Amended Complaint ("Complaint") is filed pursuant to the Order of this Court (ordered during a Status Conference on August 28, 2008) and presents claims brought against CLS TRANSPORTATION LOS ANGELES, LLC; CLS WORLDWIDE SERVICES, LLC; EMPIRE INTERNATIONAL, LTD; and GTS HOLDINGS, INC. (as defined below) in two separate cases deemed related and filed in this Court, case Nos. BC356521 (lead case) and BC381065 (related case).

JURISDICTION AND VENUE

1) This class action is brought pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The amount in controversy for each class representative, including claims for compensatory damages and pro rata share of attorney fees, is less than $75,000.

2) This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." The statutes under which this action is brought do not specify any other basis for jurisdiction.

3) This Court has jurisdiction over all Defendants because, upon information and belief, each party is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of

jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4) Venue is proper in this Court because, upon information and belief, one or more of the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

THE PARTIES

5) Plaintiff ARSHAVIR ISKANIAN (hereinafter "Plaintiff") is a resident Los Angeles County, of in the state of California.

6) Defendant CLS Transportation Los Angeles LLC (hereinafter "CLS" or "Defendant") was and is, upon information and belief, a corporation doing business within the state of Delaware, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county, the state of California, or the various states of the United States of America.

7) Defendant CLS WORLDWIDE SERVICES, LLC, (hereinafter "Defendants") was and is, upon information and belief, a Delaware limited liability corporation doing business within the state of California, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county, the state of California, or the various states of the United States of America. CLS Worldwide Services, LLC, appears to be the same company as CLS Transportation Los Angeles, LLC.

8) Defendant EMPIRE INTERNATIONAL, LTD, (hereinafter "Defendants") was and is, upon information and belief, a New Jersey corporation doing business within the state of California, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county, the state of California, or the various states of the United States of America.

9) Defendant GTS HOLDINGS, INC, (hereinafter "Defendants") was and is, upon information and belief, a Delaware corporation doing business within state of California, and at all times hereinafter mentioned, is an employer whose employees are engaged throughout this county,

the state of California, or the various states of the United States of America. In February of 2005, Empire International, Ltd. and CLS Worldwide Services, LLC, combined their two assets forming GTS Holdings, Inc.

10) Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1-10, but prays for leave to amend and serve such fictitiously named Defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities become known.

11) Plaintiff is informed and believes, and thereon alleges, that Does 1-10 are the partners, agents, owners, shareholders, managers or employees of Defendant, and were acting on behalf of Defendant.

12) Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, Defendant and DOES 1-10 (collectively "Defendants"), each acting as the agent for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent the official policy of, Defendant.

13) At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

14) Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

CLASS ACTION ALLEGATIONS

15) Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

16) All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

17) The proposed class is comprised of and defined as:

(Sept. 12 2004) All persons who have been employed by Defendants in the state of California within four years prior to the filing of this complaint until resolution of this lawsuit who held the positions of driver or similar titles or titles with similar job duties.

18) There is a well defined community of interest in the litigation and the class is easily ascertainable:

a. Numerosity: The members of the class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time, however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members' as demonstrated herein.

c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys and the proposed class counsel are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorney's fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. Class action will achieve economies of time, effort and expense as

compared to separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

e. Public Policy Considerations: Employers of the state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers may damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

19) There are common questions of law and fact as to the class (and each subclass, if any) that predominate over questions affecting only individual members, including but not limited to:

a. Whether Defendants required Plaintiff and the other class members to work over eight hours per day or over forty hours per week and failed to pay legally required premium overtime compensation to the Plaintiff and the other class members;

b. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;

c. Whether Defendants complied with wage reporting as required by the California Labor Code; including but not limited to Section 226;

d. Whether Defendants failed to provide rest breaks;

e. Whether Defendants failed to provide meal breaks;

f. Whether Defendants improperly withheld the wages and failed to indemnify the business expenses of their employees;

g. Whether Defendants improperly confiscated gratuities given to their employees;

h. Whether Defendants' conduct was willful or reckless;

i. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code § 17200, et seq.; and

j. The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

FACTUAL ALLEGATIONS

20) At all times set forth, CLS employed Plaintiff and other persons in the capacity of driver and other similar positions.

21) Plaintiff intends to seek penalties for violations of the California Labor Code, which are recoverable under California Labor Code §§ 2699 et seq. Plaintiff is seeking penalties on behalf of the State of California of which 75% will be kept by the state, while 25% will be available to aggrieved employees. Plaintiff is alleging PAGA penalties from March 8, 2004 to the date of the resolution of this lawsuit.

22) Defendants employed Plaintiff as a driver from on or about the summer of 2003 to on or about August 4, 2005.

23) Defendants continue to employ drivers within California.

24) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law and employment and personnel practices, and about the requirements of California law.

25) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other class members or aggrieved employees were entitled to receive premium wages for overtime compensation and that they were not receiving premium wages for overtime compensation.

26) Plaintiff and other class members or aggrieved employees were not properly paid overtime based upon their regular rate of pay, but instead based upon their base rate of pay.

27) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other class members or aggrieved employees were entitled to receive all the wages owed to them upon discharge.

28) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should

have known that Plaintiff and other class members or aggrieved employees were entitled to receive complete and accurate wage statements in accordance with California law.

29) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other class members or aggrieved employees were entitled to receive all meal periods or payment of one hour of pay at their regular rate of pay when they did not receive a timely uninterrupted meal period.

30) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other class members or aggrieved employees were entitled to receive all rest periods or payment of one hour of pay at their regular rate of pay when a rest period was missed.

31) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and other class members or aggrieved employees were entitled to receive full reimbursement for all business-related expenses and costs they incurred during the course and scope of their employment, and that they did not receive full reimbursement of applicable business-related expenses and costs they incurred.

32) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and other class members or aggrieved employees, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly and intentionally failed to do so, and falsely represented to Plaintiff and other aggrieved employees that they were properly denied wages, all in order to increase Defendants' profits.

33) At all times herein set forth, the California Labor Code § 2699 was applicable to Plaintiff's employment by Defendants.

34) At all times herein set forth, California Labor Code § 2699, "The Labor Code Private Attorney General Act" (hereinafter "PAGA"), provides that for any provision of law under the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency for violation of the Labor Code, may, as an alternative, be

recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlines in California Labor Code § 2699.3.

35) Pursuant to California Labor Code § 2699, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

36) Plaintiff was employed by the Defendants and the alleged violations were committed against him during his time of employment and is therefore, an aggrieved employee.

37) Pursuant to California Labor Code §§ 2699.3 and 2699.5 an aggrieved employee, including Plaintiff, may as a matter of right amend an existing complaint to add a cause of action arising under Labor Code § 2699 only after the following requirements have been met:

a. The aggrieved employee shall give written notice (hereinafter "Notice") by certified mail to the Labor and Workforce Development Agency (hereinafter "Agency") and the employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

b. The Agency shall notify the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date of the Notice. Upon receipt of the Notice or if no Notice is provided within thirty-three (33) calendar days of the postmark date of the Notice, the aggrieved employee may amend an existing complaint within sixty days of receiving the Notice that the Agency does not intend to investigate the alleged violation, to add a cause of action pursuant to Labor Code § 2699 to recover civil penalties in addition to any other penalties that the employee may be entitled to.

38) Plaintiff provided written notice by certified mail to the Agency and the Defendant of the specific provisions of the Labor Code alleged to have been violated on August 4, 2006, including the facts and theories to support the alleged violations.

39) The Agency notified Defendant and Plaintiff by certified mail on September 13, 2006, that it did not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date of the Notice. See Exhibit "A."

40) Plaintiff has, therefore, satisfied the requirements of California Labor Code § 2699.3 and may amend his existing complaint and recover civil penalties, in addition to other remedies, for violations of California Labor Code §§ 201, 202, 203, 204, 221, 226(a), 226.7(a), 351, 510, 512, 1194, 1198, and 2802.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198

(Against all Defendants)

41) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 40.

42) At all times herein set forth, California Labor Code §1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission (hereinafter "IWC").

43) At all times herein set forth, the IWC Wage Order applicable to Plaintiff's and the other class members' and aggrieved employees' employment by Defendants has provided that employees working for more than eight hours in a day, or more than forty hours in a workweek, are entitled to payment at the rate of time-and-one-half for all hours worked in excess of eight hours in a day or more than forty hours in a work week. An employee who works more than twelve hours in a day is entitled to overtime compensation at a rate of two times his or her regular rate of pay.

44) California Labor Code § 510 codifies the right to overtime compensation at one-and-one-half the regular hourly rate for hours worked in excess of eight hours in a day or forty hours in a week or for the first eight hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

45) During the relevant time period, Plaintiff and the other members of the class and aggrieved employees consistently worked in excess of eight hours in a day or forty hours in a week.

46) During the relevant time period, Defendants failed to pay all premium overtime wages owed to Plaintiff and the other members of the class and aggrieved employees.

47) During the relevant time period, Plaintiff and other class members and aggrieved employees regularly performed non-exempt work in excess of fifty percent (50%) of the time, and was thus subject to the overtime requirements of California law.

48) Defendants' failure to pay Plaintiff and other class members and aggrieved employees the unpaid balance of premium overtime compensation, as required by California state law, violates the provisions of California Labor Code §§ 510 and 1198, and is therefore unlawful.

49) Pursuant to California Labor Code § 1194, Plaintiff and other class members and aggrieved employees are entitled to recover their unpaid overtime compensation, as well as interest, costs and attorney's fees.

50) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 510, 1194 and 1198.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202

(Against all Defendants)

51) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 50.

52) At all times herein set forth, California Labor Code § 218 authorizes employees to sue directly for any wages or penalties due to them under the Labor Code.

53) At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

54) During the relevant time period, Defendants failed to pay Plaintiff and those class members and aggrieved employees who are no longer employed by Defendants their wages, earned and unpaid, either at the time of discharge, or within seventy-two hours of their leaving Defendants' employ.

55) Defendants' failure to pay Plaintiff and those class members and aggrieved employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

56) California Labor Code §203 provides that if an employer willfully fails to pay wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty days.

57) Plaintiff and other class members and aggrieved employees are entitled to recover from Defendants the statutory penalty for each day they were not paid at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code § 203.

58) Pursuant to California Labor Code § 2699(f) and (g), the State of California, Plaintiff and the other class members are entitled to recover civil penalties in the amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorney's fees, for violations of the Labor Code §§ 201 and 202.

THIRD CAUSE OF ACTION

Violation of California Labor Code § 226(a)

(Against all Defendants)

59) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 58.

60) Defendants have intentionally failed to provide employees with complete and accurate wage statements that include, among other things, the employer name, the inclusive dates of the pay period, the applicable rate paid to employees, failure to include the employee's social security number, and the actual number of hours worked by Plaintiff and the other class members or aggrieved employees.

61) Plaintiff and the other class members or aggrieved employees have suffered injury or infringement of their legal right to receive statutorily correct wage statements, showing all nine itemized pieces of information, as mandated by California Labor Code § 226 (a).

62) Plaintiff and the other members of the class and aggrieved employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a) or an aggregate penalty not exceeding four thousand dollars, and an award of costs and reasonable attorney's fees pursuant to California Labor Code §§ 226(e) and 226.3.

63) Pursuant to California Labor Code § 2699(f) and (g), the State of California, Plaintiff and the other class members are entitled to recover civil penalties in the amount of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorney's fees, for violations of the Labor Code § 226 (a).

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FOURTH CAUSE OF ACTION

Violation of California Labor Code § 226.7

(Against all Defendants)

64) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 63.

65) At all times herein set forth, California Labor Code § 218 authorizes employees to sue directly for any wages or penalty due to them under the California Labor Code.

66) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California Industrial Welfare Commission.

67) During the relevant time period, the Defendants required the Plaintiff and other members and aggrieved employees of the class to work during rest periods and failed to compensate Plaintiff and members of the class for work performed during rest periods.

68) At all material times set forth herein, Defendants required Plaintiff and the other aggrieved employees and aggrieved employees to work in excess of four (4) hours without providing a ten (10) minute rest period.

69) At all material times set forth herein, Defendants required Plaintiff and the other class members and aggrieved employees to work an additional four (4) hours without providing a second ten (10) minute rest period.

70) Defendants' conduct violates applicable orders of the California Industrial Wage Commission, and California Labor Code §§ 226.7(a).

71) Pursuant to California Labor Code § 226.7(b), Plaintiff and other members of the class are aggrieved employees are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that a rest period was not provided.

72) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial

violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 226.7(a).

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7 and 512

(Against All Defendants)

73) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 72.

74) At all times herein set forth, California Labor Code § 218 authorizes employees to sue directly for any wages or penalty due to them under the California Labor Code.

75) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the California Industrial Welfare Commission.

76) At all times herein set forth, California Labor Code § 512(a) provides that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six hours the meal period may be waived by mutual consent of both the employer and the employee.

77) At all times herein set forth California Labor Code § 512(a) further provides that an employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

78) During the relevant time period, Plaintiff and other class members and aggrieved employees who were scheduled to work for a period of time in excess of six hours were required to work for periods longer than five hours without a meal period of not less than thirty minutes.

79) During the relevant time period, Plaintiff and other members of the class and aggrieved employees who were scheduled to work in excess of ten hours but not longer than twelve hours, and who did not waive their legally-mandated meal periods by mutual consent were required to work in excess of ten hours without receiving a second meal period of not less than thirty minutes.

80) During the relevant time period, Plaintiff and other members of the class and aggrieved employees who were scheduled to work in excess of twelve hours were required to work in excess of ten hours without receiving a second meal period of not less than thirty minutes.

81) During the relevant time period, the Defendants required the Plaintiff and other members of the class and aggrieved employees to work during meal periods and failed to compensate Plaintiff and members of the class and aggrieved employees for work performed during meal periods.

82) Defendants' conduct violates applicable orders of the California Industrial Wage Commission, and California Labor Code §§ 226.7(a) and 512(a).

83) Pursuant to California Labor Code § 226.7(b), Plaintiff and other members of the class and aggrieved employees are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

84) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and the other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 226.7(a) and 512(a).

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SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 221 and 2802

(Against All Defendants)

85) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 84.

86) At all times herein set forth, California Labor Code § 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages previously paid by the employer to the employee.

87) At all times herein set forth, California Labor Code § 2802 provides further that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

88) At all material times set forth herein, Defendants required Plaintiff and the other class members and aggrieved employees to contribute to Defendants' costs of doing business, including, but not limited to, deducting from wages or otherwise requiring employees to pay for the costs of uniforms required for all drivers and did not indemnify or reimburse employees for these necessary business expenditures required in the discharge of his or her duties of employment.

89) Defendants' conduct violates California Labor Code §§ 221 and 2802.

90) Pursuant to California Labor Code § 225.5, in addition to, and entirely independent and apart from, any other penalty provided in article 1 of the Labor Code, every person who unlawfully withholds wages due any employee in violation of Section 221 shall be subject to a civil penalty as follows: (a) for any initial violation, one hundred dollars ($100) for each failure to pay each employee; and (b) for each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. The penalty shall be recovered by the Labor Commissioner as part of the

hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

91) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and other aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 221 and 2802.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code § 351

(Against all Defendants)

92) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 91.

93) At all times herein set forth, California Labor Code § 351 provides that no employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the portion indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the

employees not later than the next regular payday following the date the patron authorized the credit card payment.

94) During the relevant time period, Defendants collected, took, or received gratuity payments given to Plaintiff and the other class members and aggrieved employees without crediting the amount or any part of it to the employees. Further, Defendants failed to make gratuity payments made by patrons using credit cards payable to Plaintiff, the other class members and aggrieved employees by the next regular payday following the date the patron authorized the credit card payments.

95) Defendants' conduct violates California Labor Code § 351.

96) Pursuant to California Labor Code § 354, any employer who violates any provision of this article is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment for not exceeding 60 days, or both.

97) Pursuant to the civil penalties provided for in California Labor Code § 2699(f) and (g), the State of California, Plaintiff and other class members and aggrieved employees are entitled to recover civil penalties of one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 351.

EIGHTH CAUSE OF ACTION

Violation of California Business & Professions Code § 17200 *et seq.*

(Against all Defendants)

98) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 97.

99) Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to the Plaintiff, the other members of the class, and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

100) Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code § 17200, et seq.

101) Plaintiff and the putative Class members have been personally aggrieved by Defendants' unlawful business acts and practices alleged herein by the loss of money or property.

102) Pursuant to California Business & Professions Code § 17200, et seq., Plaintiff and the putative Class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to class members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable law; and an award of costs.

103) A violation of California Business & Professions Code § 17200, et seq. may be predicated on the violation of any state or federal law. In the instant case, Defendants' policy and practice of requiring drivers, including Plaintiffs, to work in excess of eight hours in a day or forty hours per week without paying them overtime compensation violates California Labor Code §§ 1198 and 510. In addition, Defendants' policy and practice of requiring drivers, including Plaintiffs, to work without being paid any compensation violates California Labor Code § 1194.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class counsel.

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As to the First Cause of Action

4. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

5. For pre-judgment interest on any unpaid overtime compensation from the date such amounts were due;

6. For reasonable attorney's fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a);

7. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 510, 1194 and 1198; and

8. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

9. For all actual, consequential and incidental losses and damages, according to proof;

10. For statutory penalties pursuant to California Labor Code § 203 for Plaintiff and all other class members who have left Defendants' employ;

11. For costs of suit incurred herein;

12. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 201, 202 and 203; and

13. For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

14. For all actual, consequential and incidental losses and damages, according to proof;

15. For statutory penalties pursuant to California Labor Code § 226(e) and 226.3;

16. For reasonable costs and attorney's fees pursuant to California Labor Code § 226(e);

17. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 226(a); and

18. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For statutory penalties pursuant to California Labor Code § 226.7(b);

21. For costs of suit incurred herein;

22. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 226.7(a); and

23. For such other and further relief as the Court may deem appropriate.

As to the Fifth Cause of Action

24. For all actual, consequential, and incidental losses and damages, according to proof;

25. For statutory penalties pursuant to California Labor Code § 226.7(b);

26. For costs of suit incurred herein;

27. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 226.7(a) and 512; and

28. For such other and further relief as the Court may deem appropriate.

As to the Sixth Cause of Action

29. For all actual, consequential and incidental losses and damages, according to proof;

30. For costs of suit incurred herein;

31. For civil penalties pursuant to California Labor Code § 225.5;

32. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 221 and 2802; and

33. For such other and further relief as the Court may deem appropriate.

As to the Seventh Cause of Action

34. For all actual, consequential and incidental losses and damages, according to proof;

35. For restitution of confiscated gratuities to all aggrieved employees and class members and prejudgment interest from the day such amounts were due and payable;

36. For costs of suit incurred herein;

37. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 351; and

38. For other such and further relief as the Court may deem appropriate.

As to the Eighth Cause of Action

39. For disgorgement of any and all "unpaid wages" and incidental losses, according to proof;

40. For restitution of "unpaid wages" to all class members and prejudgment interest from the day such amounts were due and payable;

41. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code § 17200 et seq.;

42. For reasonable attorney's fees that Plaintiff and other members of the class are entitled to recover under California Code of Civil Procedure § 1021.5;

43. For costs of suit incurred herein; and

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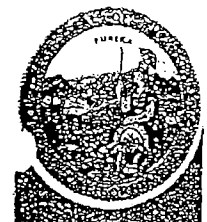
44. For such other and further relief as the Court may deem equitable and appropriate.

Dated: September 12, 2008

Respectfully submitted,
INITIATIVE LEGAL GROUP, LLP

By: _____
Marc Primo
Matthew T. Theriault
Lory N. Ishii
Dina S. Livhits
Attorneys for Plaintiffs

EXHIBIT A



CALIFORNIA
Labor & Workforce Development Agency

September 13, 2006

Shawn Westrick
Initiative Legal Group, LLP
1875 Century Park East, Suite 1800
Los Angeles, CA 90067

David Seelinger
Agent for Service of Process for
CLS Transportation Los Angeles, LLC
600 Allied Way
El Segundo, CA 90245

Re: LWDA No: 1528
Employer: CLS Transportation Los Angeles, LLC
Employee: Mr. Iskanian

Dear Employer and Representative of the Employee:

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked August 04, 2006 and after review, does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code". Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part".

Consequently you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement.

Sincerely,

Richard L Rice

Richard L. Rice
Undersecretary

Employment Development Department

Employment Training Panel

801 K Street, Suite 2101 • Sacramento, California 95814 • www.labor.ca.gov
(916) 327-9064 • Fax (916) 327-9158

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On September 12, 2008, I served the within document(s) described below as:

FIRST AMENDED COMPLAINT

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes address as follows:

David Faustman, Esq.
Javier C. Rivera, Esq.
Lorinda Franco, Esq.
FOX ROTHSCHILD LLP
1801 Century Park East, Suite 1420
Los Angeles, CA 90067
Fax: 310-843-9910

( ) **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.

(X) **PERSONAL:** I caused such envelope to be delivered by hand to the individuals at the addresses listed.

( ) **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service (FedEx), for delivery to the above addressee(s).

( ) **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.

(X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on September 12, 2008, at Los Angeles, California.

Matthew Krout

EXHIBIT G

Iskanian v. CLS Transportation Los Angeles, LLC–BC356521

Order on Submitted Motion

This action came on regularly before the Court, the Honorable Robert L. Hess, Judge, presiding, on July 20, 2009, for hearing on plaintiff's motion for class certification. Plaintiff appeared by Matthew Theriault, Esq., and Orlando Arellano, Esq., of Initiative Law Group; defendant CLS Transportation Los Angeles ("CLS") appeared by David Faustman, Esq., of Fox Rothschild.[1] Having considered the moving and opposition papers, the arguments of counsel, and being fully advised, the Court rules as follows.

A. Background

From about March 8, 2004, until on or about August 2, 2005, plaintiff was a chauffeur and limousine driver for CLS. He is claiming CLS committed various violations of the California Labor Code in his compensation and the format of his wage statements. He is seeking to certify six subclasses to address these issues.

There was prior litigation over related issues which resulted in a class action settlement in the suit entitled *Prince v. CLS Transportation*, LASC case number

[1] The operative pleading is the Consolidated First Amended Complaint ("CFAC") filed September 15, 2008. In addition to CLS Transportation Los Angeles, it names as defendants CLS Worldwide Services LLC, Empire International, Ltd., and CLS Holdings, Inc. The moving papers seek class certification only against CLS Transportation Los Angeles, and do not identify any of these latter three entities as potential class action defendants. In addition, plaintiff has put forth no evidence which would establish a connection between himself (or any other putative class members) and these entities. Since the time for moving for class certification established by the Court has long passed, the Court deems any class-wide claims against any of these three entities waived.

BC273239. As to the persons who were settling class members, the period covered by the settlement ran from May 2, 1998, through December 31, 2005. Those persons who were part of the class action settlement in *Prince* (who are represented to the Court as having been primarily former employees of CLS) are not included in the putative class in this action.

Plaintiff, however, was one of a substantial number of individuals who reached individual settlements with CLS prior to resolution of the class claims in *Prince*, and thus were excluded from the class settlement. In plaintiff's case, his settlement was executed on about December 21, 2004, and releases claims which existed through the date of his settlement. Because many employees who reached individual settlements with CLS did so in December 2004, plaintiff seeks in this action to represent only persons employed by CLS on and after January 1, 2005.

B. The Putative Classes

In the Notice of Motion and Motion for Class Certification, plaintiff identifies six subclasses to address various specific issues.[2] Except as noted, each purports to cover all drivers employed by CLS in the State of California since January 1, 2005, until resolution of this lawsuit whose claims have not been released. As the Court

[2] The moving papers are substantially deficient in that the definitions of the subclasses on pages 1-3 of the Notice of Motion do not actually describe anything except temporal periods. For example, there is no explanation of the nature of the claims a putative member of the "Of-the-Clock Subclass" may have. It is only by attempting to parse the descriptions of what conduct plaintiff is complaining about contained in the Memorandum of Points and Authorities that the Court has synthesized the descriptions set forth below. No class certification order can possibly be signed unless and until a proper description of each subclass is prepared.

understands them, the specific subclasses are:

—Off-the-Clock Subclass: This relates to CLS' allowance of 30 minutes compensated time prior to the first pick-up and 30 minutes after completion of the last job for travel and preparation time, regardless of the actual amount of time spent. Plaintiff alleges that this under-compensates drivers who on a given day spend more travel time to get from the starting location (usually home or the garage location near LAX) to the first job, and who travel farther to get home.

—Regular Rate Subclass: For certain runs the drivers were compensated on the basis of an hourly rate. For other runs, most typically to and from airports, CLS charged the customers a flat rate. For those latter runs, the drivers were compensated at 20% of the flat rate, regardless how long the run actually took. Plaintiff alleges that the flat rate commissions were not included when CLS calculated the rate of pay for purposes of determining overtime rates for time worked beyond 8 hours. This time period is limited to January 1, 2005 until September 2005, when the procedures changed. Plaintiff was not employed by CLS after the procedures changed.

—Meal Period Subclass: Plaintiff claims that drivers were not relieved of all duties for a 30-minute meal break for five hours of work, and for a second 30-minute break during shifts of more than 10 hours, because they were required to remain on call and in contact throughout the day. In addition, drivers were not compensated with an hour's pay for missing meal breaks.

—Rest Period Subclass: Plaintiff claims that drivers were not given an uninterrupted 10-minute rest break every four hours, and CLS did not compensate employees with an hour's pay for missing rest breaks.

—Wage Statements Subclass: Related to the regular rate issue, plaintiff alleges that the wage statements did not accurately reflect the actual hours worked because of the hourly-rate vs commission difference in compensation through September 2005. After that time, plaintiff alleges the wage statements simply failed to aggregate the total hours worked.

—Unpaid Final Wages Subclass: Plaintiff alleges final wages were not paid on the last day of employment or within 72 hours after, as applicable.

The Court notes that these issues address only the First through Fifth Causes of Action of the CFAC. Plaintiff has not moved for class certification on issues encompassed in the Sixth through Eighth Causes of Action, which respectively relate to non-indemnification of business expenses, confiscation of gratuities, and unfair business practices.

C. Class Certification Criteria

Class certification is appropriate when "the question is one of a common or general interest, of many persons, or when it is impracticable to bring them all before the court." CCP § 382.

> To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among class members. [Citations.] The community of interest requirement involves three factors: "(1) predominant common questions of law or fact; (class representatives with claims or defenses typical of the class; and (3) class representative who can adequately represent the class." [Citation.]

Linder v. Thrifty Oil Co. (2000) 23 Cal. 4th 429, 435. The party seeking class certification has the burden of establishing the prerequisites of a class action:

specifically to establish the requisite community of interest and that questions of law or fact common to the class predominate over individual questions. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1036, 1104.

1. Numerosity.

Numerosity means that the class is sufficiently numerous that joinder of all the members is impracticable. However, "no set number is required as a matter of law for the maintenance of a class action." *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 934. Courts have certified class actions with numbers of members ranging from 30 to 40 because individual joinder is impractical. *See, e.g., id.* at 934 (42 members); *Collins v. Rocha* (1972) 7 Cal. 3d 232, 235 (44 members).

Plaintiff has suggested that each subclass contains all of the approximately 276 drivers, except for the Regular Rate Subclass, as to which there were approximately 140 drivers.[3] CLS has not demonstrated that the numerosity requirement has not been met for either group.[4]

2. Ascertainability.

Ascertainability requires examining the class definition, the size of the

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[3] The Joint Case Management Statement filed November 18, 2008, suggests the total number of drivers is about 250. Defendant's Exhibit F contains a list of 231 driver employees between December 1/ 2004 and November 8, 2008.

[4] The Court is aware that a number of current drivers (CLS claims 103) have filed declarations which suggest they do not wish to be part of this suit. Even if the Court gives full credit to that number, the balance appears to satisfy the numerosity requirement.

class, and the means for identifying class members. *Global Minerals & Metals Corp. V. Superior Court* (2003) 113 Cal. App. 4th 836, 849. In defining an ascertainable class, "the goal is to use terminology that will convey 'sufficient meaning to enable persons hearing it to determine whether they are members of the class plaintiffs wish to represent.'" *Id.* at 858, *quoting In re Copper Antitrust Litigation* (2000) 196 F.R.D. 348, 359.

The employees who are potential class members appear to be readily ascertainable from CLS' own records identifying its driver employees during this period. The Court is confident CLS can easily identify those employees whose claims were released in individual settlements, and the dates, as well as those whose claims were resolved through December 31, 2005, through the *Prince* class action. This criterion is satisfied.

3. Typicality.

The named plaintiff must be a member of the class. *Petherbridge v. Altadena Fed. Sav. & Loan Ass'n* (1974) 37 Cal. App. 3d 193, 200 ("[A} class representative seeking to assert several individuals' legal rights must first himself be a member of the class which possesses those rights."). The test of typicality "'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Seastrom v. Neways, Inc.* (2007) 149 Cal. App. 4th 1496, 1502, *quoting Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508. However, the class representatives' interests need not be identical to those

of class members, only that they are similarly situated. *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.

With respect to the Off-the-Clock Subclass, while there are conflicting declarations with respect to whether the half hour before and the half hour after the regular day were in fact sufficient to cover travel time and prep time, the policy used was the same for all drivers, and the typicality requirement is satisfied.

With respect to the Regular Rate Subclass, the policy of not including commission wages when computing the overtime or double overtime rate was common to all drivers. According to defendant's materials, that policy existed from January 1, 2005 through September 2005. Whether that was appropriate under Labor Code § 510 (applying the definition of "regular rate of pay" in the Fair Labor Standards Act, 29 U.S.C. § 207(c)) is an issue as to which plaintiff's claim is typical. However, because of his termination in August 2005, plaintiff cannot have any claim with respect to the overtime calculations used after September 2005.

With respect to the Meal Period and Rest Period Subclasses, the evidence presented shows that at least part of the time, the drivers were unable to take uninterrupted 30-minute meals or 10-minute rest breaks. Plaintiff's claims appear typical.

With respect to the Wage Statement Subclass, the uniform format used indicates plaintiff has typical claims to those of other drivers during the period of his employment. However, the format (and /or the content) of the statements changed when the computation of hours for overtime (the Regular Rate Subclass) changed. Plaintiff was never issued a wage statement the format used after that time. The

evidence before the Court does not include a copy of the post-September 2005 wages statement. While the Court understands there is some difference between the pre- and post-September 2005 wage statements, the Court does not understand precisely what it is. This is a failure of proof which is the responsibility of the moving party.[5]

With respect to the Unpaid Final Wages Subclass, plaintiff's testified that he waited three weeks to get his final paycheck. The other testimony, including that of Mr. Trussler the normal time for final checks to be issued, leads to the conclusion that plaintiff's claim is typical.

CLS argues that plaintiff lacks typicality because he lacks knowledge of CLS' policies and practices after he left. However, the standard of typicality is not knowledge but whether plaintiff raises claims that are similar to claims the putative class members could raise. While in certain respects facts may differ from individual to individual, it is clear that the legal standard applicable to each putative class member is the same as to each subclass. The Court is persuaded that plaintiff shares typical claims during the period of his employment from January 1 through August 2, 2005, and to the extent the same practices continued after September 2005, to the present time.[6]

4. Adequacy.

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[5] As noted above, even if there were some deficiencies in the wage statements issued after September 2005, plaintiff has no personal claim based on that format and thus lacks typicality.

[6] The Court notes that plaintiff has cited to a portion of plaintiff's deposition in which he claims he was subjected to religious discrimination. No such claim is asserted in this action. The Court finds that belief does not make his claims atypical nor otherwise render him an inappropriate class representative.

Adequacy has two prongs: adequacy of the proposed class representatives and adequacy of proposed class counsel. The class representatives must adequately represent and protect the class interests, and must raise claims "reasonably expected to be raised by members of the class." *City of San Jose v. Superior Court (Lands Unlimited)* (1974) 12 Cal. 3d 447, 463-64. While there must not be any antagonisms or conflicts between the class representatives and the class members' interests (*J.P. Morgan & Co., Inc. v. Superior Court* (2003) 13 Cal. App. 4th 195, 212), "only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 470. Class counsel, in turn, must be qualified, experienced and generally able to conduct the proposed litigation. *Miller v. Woods* (1983) 148 Cal. App. 3d 862, 874.

CLS has raised issues concerning plaintiff's appropriateness as a class representative. These include (among other things) his degree of fluency in English, his understanding of the precise nature of the claims (including whether or not he himself had any complaint with respect to particular issues), and his ability to testify on personal knowledge to facts after his termination. The Court is not persuaded that any or all of these factors raise sufficient issues to disqualify him as a class representative, under circumstances where the legal issues raised are common to all class members, plaintiff has no conflicts with members of the class that go to the heart of the litigation,[7] and

[7] The 103 declarations from current employees stating that they do not wish to be part of this litigation are not valid opt-outs, since a prospective class member cannot opt out until after a class is certified and notice is provided. The Court notes that the declarations appear to be entirely from current employees and to be in a standard form

plaintiff has participated fully and willingly in the process so far. CLS does not raise any issues concerning counsel's ability to adequately represent the class. The Court concludes these criteria have been satisfied.

5. Commonality.

> The ultimate question in every [purported class action] is whether, given an ascertainable class, the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and the litigants.

Brown v. Regents of the University of California (1984) 151 Cal. App. 3d 982, 989.

Moreover,

> [p]laintiff's burden in moving for class certification . . . is not merely to show that some common issues exist, but rather to place substantial evidence in the record to show that common issues *predominate.* [Citation.] As we previously have explained, "this means 'each member must not be requires to individually litigate numerous and substantial questions to determine his [or her] right to recover following the class judgment; and the issues which may be jointly tried, when compared with those requiring separate adjudication, must be sufficiently numerous and substantial to make the class action advantageous to the judicial process and to the litigants.'"

Lockheed Martin Corp., supra, 29 Cal. 4th at 1108 (emphasis in original) (internal citations omitted).

With respect to the Off-the-Clock Subclass, the real issue is not whether

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provided by CLS or its counsel. Even if all these individuals opt out, if the other criteria are met the case may proceed as a class action.

Fanucchi v. Coberly-West Co. (1957) 151 Cal. App. 2d 72, 82, stands for the proposition that even the fact that one-third of the potential class signed affidavits that they did not wish to participate in the class did not defeat the right of the remaining members to maintain a class action.

This issue is discussed further below under the Superiority heading.

30-minutes pay before scheduled pick-ups and at the end of the day is legal; CLS may pay for an additional hour a day of prep time. The real issue is whether the class members were paid for all hours worked. Did the putative class members take more than the paid one hour to clean, stock and fuel the limo, and arrive at the scheduled pick-up 10 to 15 minutes early? The evidence before the Court strongly suggests that initial pick-up times and locations changed daily, and there was additional variation depending on whether the drivers started from CLS' premises or their own homes. Plaintiff has not suggested how he can establish by common proof whether and to what extent the putative class took more than the one hour allowed to perform the tasks (that is, worked off the clock). Plaintiff's own evidence suggests that travel times between point A and point B could vary from day to day. This appears to require testimony from each class member to establish both the existence of a violation and its extent. Common issues do not appear to predominate as to this subclass.

With respect to the Regular Rate Subclass, the common issues include whether the flat rates paid from January 2005 and September 2005 are properly commission wages, whether those sums earned were required to be included in the regular rate of pay for purposes of calculating overtime, whether or not that was done, and whether the entirety of the flat rate was commission or whether there was gratuity involved. These issues all appear to be resolvable on a common basis. While any damages may have to be calculated individually, that fact does not mean that individual fact questions predominate. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 334-35.

With respect to the Meal Period Subclass, there really are three issues:

whether a first meal break within 5 hours was allowed or denied, whether it was taken after 5 hours, and whether a second meal break was allowed in work days over 10 hours. These present separate issues for class certification.

There appears to be a splint in authority as to whether the employer has a responsibility to affirmatively insure that workers are actually taking meal breaks, as opposed to the employee showing that he was forced to forego them. *Compare Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal. App. 4th 962-63, *with White v. Starbucks Corp.* (N.D. Cal. 2007) 497 F. Supp. 2d 1080, 1088-89, *and Brown v. Federal Express Corp.* (C.D. Cal. 2008) 249 F. R. D. 580-584.[8] However, the law appears to be that the employer must ensure that employees are provided with meal and rest breaks, and the employer must do nothing that would constructively (impede) or overtly (demand) prevent meal breaks from being taken.

The evidence before the Court shows that on the bi-weekly time sheets filled out by the drivers it states that a one-half hour lunch break was to be taken daily either between jobs or during time that is convenient. Plaintiff's own time sheets show that he regularly took a meal break of 30 minutes. However, plaintiff also testified that these entries were false because he had to show lunch, but that did not mean he actually received lunch. It is not clear what if anything the putative class members showed on their time sheets about whether they had or had not taken meals breaks, and whether such statements were true.

There is also a substantial conflict whether the drivers were continuously

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[8] The issue is now before the California Supreme Court in *Brinker Restaurant v. Superior Court*, case no. S166350 and *Brinkley v. Public Storage*, case no. S168806.

on call, and hence were not off duty for meals, as plaintiff contends. However, it appears there is no dispute that all drivers were paid for all down time, which included time in which meals could be taken. CLS' position is that drivers simply had to keep their pagers on to be reachable, but were not on duty.

Thus, it appears that individual inquiries will predominate as to whether the first meal break was denied. Each putative class member will need to testify whether the entries on their time sheets for meals were correct; if not, on what days no meal break was taken and why (e.g., too much work, inability to stop for a meal, or despite downtime simply did not take meals).

However, unlike the denied first meal issue, the issue whether the first meal was late appears to present common issues. It turns on the legal issue whether the meal must be provided within the first five hours of work, and is resolved by reference to the time sheets (which assumes some accuracy in record-keeping) to see if and when meals were taken after five hours of work.

The issue whether a second meal was allowed is also susceptible to common resolution. The time sheets purport to show the times the drivers began and ended work, and there is no space on the time sheets to record a second meal. Moreover, CLS' witness testified he was aware of no policy about providing a second meal period. The employer's obligation to communicate a clear policy that an employee would be entitled to a second meal period appears resolvable on a class-wide basis.

With respect to rest breaks, they are to be authorized and permitted for every four hours of work or major fraction thereof. The Courts generally agree that they need only be authorized and permitted, which means made available. While the

employer need not record rest breaks, and employees are paid for their time during rest breaks, the employer must clearly communicate to its employees the right to take such breaks.

Here there is a distinct lack of evidence that CLS maintained or clearly communicated a policy to the drivers that they were entitled to 10-minute rest breaks for every four hours worked. CLS argues that drivers had plenty of down time where they could do what they liked as long as their pagers were on, and this was sufficient provision for rest breaks. However, that does not resolve the questions whether CLS clearly communicated a policy and whether the fact that drivers had down time is sufficient to establish that rest periods were authorized and permitted. These two questions predominate over whether the drivers individually took rest breaks.

The nature of the problem under the Wage Statement Subclass is somewhat amorphous, but it apparently meets the commonality test. The inquiry appears to be limited to whether the format of the wage statement used demonstrates that the "total hours worked" requirement is met. If not, whether the omission was "knowing and willful" is also susceptible to common proof.

The more difficult question is whether the putative class members "suffered injury" if the wage statements were incomplete. This appears to be an element of liability rather than one purely of damages. More than a mere violation of the statute may be required. *See Elliott v. Spherion Pacific Work, LLC* (C.D. Cal. 2008) 572 F. Supp. 2d 1169, 1181. However, various formulations for injury have included the need to perform "arithmetic computations" to determine an hourly rate (*see Cicarios, supra,* 133 Cal. App. 4th at 955), or the possibilities that and employee might not be paid

overtime to which (s)he is entitled, or because the absence of an hourly rate prevents an employee from challenging the overtime paid (*see Wang v. Chinese Daily News, Inc.* (C.D. Cal. 2006) 435 F. Supp. 2d 1042, 1050.

Here the evidence suggests that from January 2005 to September 2005, the plaintiff asserts the bifurcated pay policy used by CLS, which apparently disregarded the time actually worked in favor of standard travel times for certain jobs, and had no entry for hours worked under "flat rate," allegedly caused confusion as to what the drivers were being paid, and specifically whether drivers were being properly paid for all hours worked . Plaintiff apparently complained several times about his pay. This appears to be susceptible to class-wide proof.

On the other hand, there is much less evidence to show class-wide injury after September 2005, when CLS changed the manner in which it calculated the rate of overtime. As noted under the typicality discussion, the evidence before the Court does not include a post-September 2005 wage statement, and the moving papers are insufficient to explain exactly what the deficiency in those wage statements has been. Assuming the number of hours of regular time, overtime, and double time are all shown accurately, and the supposed violation is that the total of these three is not shown, query whether there is any actual injury, let alone class-wide injury. If the problem with the wage statements after September 2005 actually is something else, plaintiff has failed to adequately articulate what it may be.[9]

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[9] To the extent the Court misapprehends what the claim actually is, the responsibility may rest with the plaintiff, whose burden it is to present clear definitions of the subclasses and to put forth the supporting evidence.

Finally, with respect to the Unpaid Final Wage Subclass, common issues predominate. The period within which wages are to be paid for employees who are terminated, and for all employees who quit with and without notice, are fixed by statute. The dates of resignation or termination and whether they were paid timely is readily resolvable by reference to personnel records and paychecks. Even the damages calculation requires no special inquiry, since it is a formula based on days the check was late times pay rate.

6. Superiority

In addition to the criteria under CCP § 386, "a class action also must be the superior means of resolving the litigation, for both the parties and the court." *Aguilar v. Cintas Corp.* (2006) 144 Cal. App. 4th 121, 132-33. This may exist where the injury is of insufficient size to warrant individual action, and /or where denial of class relief will result in an unjust advantage to the wrongdoer. *Id.* The Court must also assess the probability of each class member coming forward to prove his or her claim, and whether the class approach will deter and redress the alleged wrongdoing. *Id.* Weil & Brown have identified four factors to consider in deciding whether class adjudication is superior.

> The interest of each class member in controlling his or her case personally;
> The difficulties, if any, that are likely to be encountered in managing a class action;
> The nature and extent of any litigation by individual class members already in progress involving the same controversy; and
> The desirability of consolidating all claims in a single action before a single court.

Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (Rutter Group 2008) ¶ 14.16, *quoted in Basurco v. 21st Century Insurance Co.* (2003) 108 Cal. App. 4th 110, 121.

Furthermore, as there is a potential to create injustice, the Court must "carefully weigh respective benefits and burdens and . . . allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts." *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435; *Aguilar, supra,* 144 Cal. App. 4th at 132-33.

The Court has considered the various facts bearing on this issue. These include, without limitation:

--the number of current drivers who say they do not wish to participate in this suit;

--the fact that there has previously been class action litigation relating to the practices of this defendant;,

--the manageability and costs of requiring separate suit or individual joinder in a single suit;

--the speed, cost and effectiveness of labor commission proceedings;

--the risks of inconsistent adjudications; and

--other costs and benefits of maintaining this as a class action.

The Court is persuaded that, on balance, a class action is the superior method of proceeding for those particular subclasses and time periods which it has identified as otherwise appropriate. Indeed, notwithstanding the 103 declarations by current employees, the Court can conceive of benefit to those employees, and will be interested to see how many actually will opt out when given notice and the opportunity to do so.

D. Evidentiary Objections

The rulings on CLS' evidentiary objections are as follows.

—Iskanian Declaration: Sustained as to ¶ 16, lines 9-11, and otherwise overruled.

—Silver Declaration: Sustained as to ¶ 2, lines 7-8, and ¶ 10, lines 12-13, and otherwise overruled.

—Sklore Declaration: Sustained as to ¶ 10, lines 12-13, and otherwise overruled.

—Theriault Declaration: Overruled.

—Ho Declaration: Sustained as to ¶ 10, lines 12-13, and otherwise overruled.

—Dubuy Declaration: Sustained as to ¶ 10, lines 12-13, and otherwise overruled.

The rulings on plaintiff's evidentiary objections are as follows.

—Faustman Declaration: Sustained as to ¶ 5, lines 5-6, and ¶ 8, lines 16-19, and otherwise overruled.

—Macciocca Declaration: Overruled.

E. Disposition

The Court now makes the following orders.

1. The motion for class certification is granted as to:

a. The Regular Rate Subclass, for the period from January 1, 2005, through September 2005;

b. The Meal Period Subclass, for the period commencing January 1, 2005, limited to issues of late first meal periods (meal break not provided within the first five hours of work) and denied second meal periods;

c. The Rest Period Subclass, for the period commencing January 1, 2005;

d. The Wage Statement Subclass, for the period January 1, 2005, through September 2005; and

e. The Unpaid Final Wages Subclass, for the period commencing January 1, 2005.

2. The motion for class certification is denied as to:

a. The Off-the-Clock Subclass, for any period;

b. The Regular Rate Subclass, for the period after September 2005 (although the Court understands certification was not actually sought for this later period);

c. The Meal Period Subclass, as to whether first meals were permitted; and

d. The Wage Statement Subclass, for the period after September 2005.

3. Mr. Iskanian is appointed Class Representative.

4. Initiative Law Group is appointed Class Counsel.

5. The parties are directed to meet and confer, to the following purposes:

a. For those subclasses which the Court has determined to certify, to develop a (relatively) concise description of the alleged wrong comprehended within each of those subclasses;

b. To agree, if possible, on a specific ending date for the class period in the Regular Rate Subclass and Wage Statement Subclass; and

c. To prepare a Notice of Pendency of Class Action to be sent to the

putative class members, and submit that to the Court in accordance with CRC 3.765. If the parties are unable to agree on a form or notice, then each party is to submit its respective proposed form to the Court in a jointly filed document. The proposed notice is to be submitted to the Court on or before September 28, 2009.

6. The matter is set for hearing on the form of Notice of Pendency of Class Action for October 9, 2009, at 8:30 a.m. in Dept. 24.

7. CLS' Exhibits K and N contain plaintiff's full social security number, in violation of CRC 1.20(b). Those documents are to be pulled from imaging, and CLS' counsel is responsible for redacting the information before they are re-scanned and/or filed in the public record. CLS shall have to and including September 9, 2009, to accomplish this.

Dated: August 24, 2009

Robert L. Hess
Judge of the Superior Court

EXHIBIT H

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

AT&T MOBILITY LLC *v.* CONCEPCION ET UX.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 09–893. Argued November 9, 2010—Decided April 27, 2011

The cellular telephone contract between respondents (Concepcions) and petitioner (AT&T) provided for arbitration of all disputes, but did not permit classwide arbitration. After the Concepcions were charged sales tax on the retail value of phones provided free under their service contract, they sued AT&T in a California Federal District Court. Their suit was consolidated with a class action alleging, *inter alia*, that AT&T had engaged in false advertising and fraud by charging sales tax on "free" phones. The District Court denied AT&T's motion to compel arbitration under the Concepcions' contract. Relying on the California Supreme Court's *Discover Bank* decision, it found the arbitration provision unconscionable because it disallowed classwide proceedings. The Ninth Circuit agreed that the provision was unconscionable under California law and held that the Federal Arbitration Act (FAA), which makes arbitration agreements "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," 9 U. S. C. §2, did not preempt its ruling.

Held: Because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines* v. *Davidowitz*, 312 U. S. 52, 67, California's *Discover Bank* rule is preempted by the FAA. Pp. 4–18.

(a) Section 2 reflects a "liberal federal policy favoring arbitration," *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24, and the "fundamental principle that arbitration is a matter of contract," *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. ____, ____. Thus, courts must place arbitration agreements on an equal footing with other contracts, *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 443, and enforce them according to their terms, *Volt In-*

Syllabus

formation Sciences, Inc. v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 478. Section 2's saving clause permits agreements to be invalidated by "generally applicable contract defenses," but not by defenses that apply only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue. *Doctor's Associates, Inc.* v. *Casarotto*, 517 U. S. 681, 687. Pp. 4–5.

(b) In *Discover Bank*, the California Supreme Court held that class waivers in consumer arbitration agreements are unconscionable if the agreement is in an adhesion contract, disputes between the parties are likely to involve small amounts of damages, and the party with inferior bargaining power alleges a deliberate scheme to defraud. Pp. 5–6.

(c) The Concepcions claim that the *Discover Bank* rule is a ground that "exist[s] at law or in equity for the revocation of any contract" under FAA §2. When state law prohibits outright the arbitration of a particular type of claim, the FAA displaces the conflicting rule. But the inquiry is more complex when a generally applicable doctrine is alleged to have been applied in a fashion that disfavors or interferes with arbitration. Although §2's saving clause preserves generally applicable contract defenses, it does not suggest an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives. Cf. *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, 872. The FAA's overarching purpose is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate informal, streamlined proceedings. Parties may agree to limit the issues subject to arbitration, *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628, to arbitrate according to specific rules, *Volt*, *supra*, at 479, and to limit with whom they will arbitrate, *Stolt-Nielsen*, *supra*, at ___. Pp. 6–12.

(d) Class arbitration, to the extent it is manufactured by *Discover Bank* rather than consensual, interferes with fundamental attributes of arbitration. The switch from bilateral to class arbitration sacrifices arbitration's informality and makes the process slower, more costly, and more likely to generate procedural morass than final judgment. And class arbitration greatly increases risks to defendants. The absence of multilayered review makes it more likely that errors will go uncorrected. That risk of error may become unacceptable when damages allegedly owed to thousands of claimants are aggregated and decided at once. Arbitration is poorly suited to these higher stakes. In litigation, a defendant may appeal a certification decision and a final judgment, but 9 U. S. C. §10 limits the grounds on which courts can vacate arbitral awards. Pp. 12–18.

584 F. 3d 849, reversed and remanded.

Syllabus

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and ALITO, JJ., joined. THOMAS, J., filed a concurring opinion. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 09–893

AT&T MOBILITY LLC, PETITIONER *v.* VINCENT CONCEPCION ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[April 27, 2011]

JUSTICE SCALIA delivered the opinion of the Court.

Section 2 of the Federal Arbitration Act (FAA) makes agreements to arbitrate "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2. We consider whether the FAA prohibits States from conditioning the enforceability of certain arbitration agreements on the availability of classwide arbitration procedures.

I

In February 2002, Vincent and Liza Concepcion entered into an agreement for the sale and servicing of cellular telephones with AT&T Mobility LCC (AT&T).[1] The contract provided for arbitration of all disputes between the parties, but required that claims be brought in the parties' "individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding." App.

[1]The Concepcions' original contract was with Cingular Wireless. AT&T acquired Cingular in 2005 and renamed the company AT&T Mobility in 2007. *Laster* v. *AT&T Mobility LLC*, 584 F. 3d 849, 852, n. 1 (CA9 2009).

to Pet. for Cert. 61a.[2] The agreement authorized AT&T to make unilateral amendments, which it did to the arbitration provision on several occasions. The version at issue in this case reflects revisions made in December 2006, which the parties agree are controlling.

The revised agreement provides that customers may initiate dispute proceedings by completing a one-page Notice of Dispute form available on AT&T's Web site. AT&T may then offer to settle the claim; if it does not, or if the dispute is not resolved within 30 days, the customer may invoke arbitration by filing a separate Demand for Arbitration, also available on AT&T's Web site. In the event the parties proceed to arbitration, the agreement specifies that AT&T must pay all costs for nonfrivolous claims; that arbitration must take place in the county in which the customer is billed; that, for claims of $10,000 or less, the customer may choose whether the arbitration proceeds in person, by telephone, or based only on submissions; that either party may bring a claim in small claims court in lieu of arbitration; and that the arbitrator may award any form of individual relief, including injunctions and presumably punitive damages. The agreement, moreover, denies AT&T any ability to seek reimbursement of its attorney's fees, and, in the event that a customer receives an arbitration award greater than AT&T's last written settlement offer, requires AT&T to pay a $7,500 minimum recovery and twice the amount of the claimant's attorney's fees.[3]

The Concepcions purchased AT&T service, which was advertised as including the provision of free phones; they

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[2]That provision further states that "the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding." App. to Pet. for Cert. 61a.

[3]The guaranteed minimum recovery was increased in 2009 to $10,000. Brief for Petitioner 7.

were not charged for the phones, but they were charged $30.22 in sales tax based on the phones' retail value. In March 2006, the Concepcions filed a complaint against AT&T in the United States District Court for the Southern District of California. The complaint was later consolidated with a putative class action alleging, among other things, that AT&T had engaged in false advertising and fraud by charging sales tax on phones it advertised as free.

In March 2008, AT&T moved to compel arbitration under the terms of its contract with the Concepcions. The Concepcions opposed the motion, contending that the arbitration agreement was unconscionable and unlawfully exculpatory under California law because it disallowed classwide procedures. The District Court denied AT&T's motion. It described AT&T's arbitration agreement favorably, noting, for example, that the informal dispute-resolution process was "quick, easy to use" and likely to "promp[t] full or . . . even excess payment to the customer *without* the need to arbitrate or litigate"; that the $7,500 premium functioned as "a substantial inducement for the consumer to pursue the claim in arbitration" if a dispute was not resolved informally; and that consumers who were members of a class would likely be worse off. *Laster* v. *T-Mobile USA, Inc.*, 2008 WL 5216255, *11–*12 (SD Cal., Aug. 11, 2008). Nevertheless, relying on the California Supreme Court's decision in *Discover Bank* v. *Superior Court*, 36 Cal. 4th 148, 113 P. 3d 1100 (2005), the court found that the arbitration provision was unconscionable because AT&T had not shown that bilateral arbitration adequately substituted for the deterrent effects of class actions. *Laster*, 2008 WL 5216255, *14.

The Ninth Circuit affirmed, also finding the provision unconscionable under California law as announced in *Discover Bank*. *Laster* v. *AT&T Mobility LLC*, 584 F. 3d 849, 855 (2009). It also held that the *Discover Bank* rule was not preempted by the FAA because that rule was

simply "a refinement of the unconscionability analysis applicable to contracts generally in California." 584 F. 3d, at 857. In response to AT&T's argument that the Concepcions' interpretation of California law discriminated against arbitration, the Ninth Circuit rejected the contention that "'class proceedings will reduce the efficiency and expeditiousness of arbitration'" and noted that "'*Discover Bank* placed arbitration agreements with class action waivers on the *exact same footing* as contracts that bar class action litigation outside the context of arbitration.'" *Id.*, at 858 (quoting *Shroyer* v. *New Cingular Wireless Services, Inc.*, 498 F. 3d 976, 990 (CA9 2007)).

We granted certiorari, 560 U. S. ___ (2010).

II

The FAA was enacted in 1925 in response to widespread judicial hostility to arbitration agreements. See *Hall Street Associates, L. L. C.* v. *Mattel, Inc.*, 552 U. S. 576, 581 (2008). Section 2, the "primary substantive provision of the Act," *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24 (1983), provides, in relevant part, as follows:

> "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2.

We have described this provision as reflecting both a "liberal federal policy favoring arbitration," *Moses H. Cone*, *supra*, at 24, and the "fundamental principle that arbitration is a matter of contract," *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. ___, ___ (2010) (slip op., at 3). In line with these principles, courts must place arbitration

agreements on an equal footing with other contracts, *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 443 (2006), and enforce them according to their terms, *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 478 (1989).

The final phrase of §2, however, permits arbitration agreements to be declared unenforceable "upon such grounds as exist at law or in equity for the revocation of any contract." This saving clause permits agreements to arbitrate to be invalidated by "generally applicable contract defenses, such as fraud, duress, or unconscionability," but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue. *Doctor's Associates, Inc.* v. *Casarotto*, 517 U. S. 681, 687 (1996); see also *Perry* v. *Thomas*, 482 U. S. 483, 492–493, n. 9 (1987). The question in this case is whether §2 preempts California's rule classifying most collective-arbitration waivers in consumer contracts as unconscionable. We refer to this rule as the *Discover Bank* rule.

Under California law, courts may refuse to enforce any contract found "to have been unconscionable at the time it was made," or may "limit the application of any unconscionable clause." Cal. Civ. Code Ann. §1670.5(a) (West 1985). A finding of unconscionability requires "a 'procedural' and a 'substantive' element, the former focusing on 'oppression' or 'surprise' due to unequal bargaining power, the latter on 'overly harsh' or 'one-sided' results." *Armendariz* v. *Foundation Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 114, 6 P. 3d 669, 690 (2000); accord, *Discover Bank*, 36 Cal. 4th, at 159–161, 113 P. 3d, at 1108.

In *Discover Bank*, the California Supreme Court applied this framework to class-action waivers in arbitration agreements and held as follows:

"[W]hen the waiver is found in a consumer contract of

> adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, then . . . the waiver becomes in practice the exemption of the party 'from responsibility for [its] own fraud, or willful injury to the person or property of another.' Under these circumstances, such waivers are unconscionable under California law and should not be enforced." *Id.*, at 162, 113 P. 3d, at 1110 (quoting Cal. Civ. Code Ann. §1668).

California courts have frequently applied this rule to find arbitration agreements unconscionable. See, *e.g.*, *Cohen* v. *DirecTV, Inc.*, 142 Cal. App. 4th 1442, 1451–1453, 48 Cal. Rptr. 3d 813, 819–821 (2006); *Klussman* v. *Cross Country Bank*, 134 Cal. App. 4th 1283, 1297, 36 Cal Rptr. 3d 728, 738–739 (2005); *Aral* v. *EarthLink, Inc.*, 134 Cal. App. 4th 544, 556–557, 36 Cal. Rptr. 3d 229, 237–239 (2005).

III

A

The Concepcions argue that the *Discover Bank* rule, given its origins in California's unconscionability doctrine and California's policy against exculpation, is a ground that "exist[s] at law or in equity for the revocation of any contract" under FAA §2. Moreover, they argue that even if we construe the *Discover Bank* rule as a prohibition on collective-action waivers rather than simply an application of unconscionability, the rule would still be applicable to all dispute-resolution contracts, since California prohibits waivers of class litigation as well. See *America Online, Inc.* v. *Superior Ct.*, 90 Cal. App. 4th 1, 17–18, 108 Cal. Rptr. 2d 699, 711–713 (2001).

When state law prohibits outright the arbitration of a

particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA. *Preston* v. *Ferrer*, 552 U. S. 346, 353 (2008). But the inquiry becomes more complex when a doctrine normally thought to be generally applicable, such as duress or, as relevant here, unconscionability, is alleged to have been applied in a fashion that disfavors arbitration. In *Perry* v. *Thomas*, 482 U. S. 483 (1987), for example, we noted that the FAA's preemptive effect might extend even to grounds traditionally thought to exist "'at law or in equity for the revocation of any contract.'" *Id.*, at 492, n. 9 (emphasis deleted). We said that a court may not "rely on the uniqueness of an agreement to arbitrate as a basis for a state-law holding that enforcement would be unconscionable, for this would enable the court to effect what . . . the state legislature cannot." *Id.*, at 493, n. 9.

An obvious illustration of this point would be a case finding unconscionable or unenforceable as against public policy consumer arbitration agreements that fail to provide for judicially monitored discovery. The rationalizations for such a holding are neither difficult to imagine nor different in kind from those articulated in *Discover Bank*. A court might reason that no consumer would knowingly waive his right to full discovery, as this would enable companies to hide their wrongdoing. Or the court might simply say that such agreements are exculpatory—restricting discovery would be of greater benefit to the company than the consumer, since the former is more likely to be sued than to sue. See *Discover Bank*, *supra*, at 161, 113 P. 3d, at 1109 (arguing that class waivers are similarly one-sided). And, the reasoning would continue, because such a rule applies the general principle of unconscionability or public-policy disapproval of exculpatory agreements, it is applicable to "any" contract and thus preserved by §2 of the FAA. In practice, of course, the rule would have a disproportionate impact on arbitration

agreements; but it would presumably apply to contracts purporting to restrict discovery in litigation as well.

Other examples are easy to imagine. The same argument might apply to a rule classifying as unconscionable arbitration agreements that fail to abide by the Federal Rules of Evidence, or that disallow an ultimate disposition by a jury (perhaps termed "a panel of twelve lay arbitrators" to help avoid preemption). Such examples are not fanciful, since the judicial hostility towards arbitration that prompted the FAA had manifested itself in "a great variety" of "devices and formulas" declaring arbitration against public policy. *Robert Lawrence Co.* v. *Devonshire Fabrics, Inc.*, 271 F. 2d 402, 406 (CA2 1959). And although these statistics are not definitive, it is worth noting that California's courts have been more likely to hold contracts to arbitrate unconscionable than other contracts. Broome, An Unconscionable Application of the Unconscionability Doctrine: How the California Courts are Circumventing the Federal Arbitration Act, 3 Hastings Bus. L. J. 39, 54, 66 (2006); Randall, Judicial Attitudes Toward Arbitration and the Resurgence of Unconscionability, 52 Buffalo L. Rev. 185, 186–187 (2004).

The Concepcions suggest that all this is just a parade of horribles, and no genuine worry. "Rules aimed at destroying arbitration" or "demanding procedures incompatible with arbitration," they concede, "would be preempted by the FAA because they cannot sensibly be reconciled with Section 2." Brief for Respondents 32. The "grounds" available under §2's saving clause, they admit, "should not be construed to include a State's mere preference for procedures that are incompatible with arbitration and 'would wholly eviscerate arbitration agreements.'" *Id.*, at 33 (quoting *Carter* v. *SSC Odin Operating Co., LLC*, 237 Ill. 2d 30, 50, 927 N. E. 2d 1207, 1220 (2010)).[4]

[4]The dissent seeks to fight off even this eminently reasonable conces-

We largely agree. Although §2's saving clause preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives. Cf. *Geier* v. *American Honda Motor Co.*, 529 U. S. 861, 872 (2000); *Crosby* v. *National Foreign Trade Council*, 530 U. S. 363, 372–373 (2000). As we have said, a federal statute's saving clause "'cannot in reason be construed as [allowing] a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the act. In other words, the act cannot be held to destroy itself.'" *American Telephone & Telegraph Co.* v. *Central Office Telephone, Inc.*, 524 U. S. 214, 227–228 (1998) (quoting *Texas & Pacific R. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 446 (1907)).

We differ with the Concepcions only in the application of this analysis to the matter before us. We do not agree that rules requiring judicially monitored discovery or adherence to the Federal Rules of Evidence are "a far cry from this case." Brief for Respondents 32. The overarching purpose of the FAA, evident in the text of §§2, 3, and 4, is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings. Requiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA.

B

The "principal purpose" of the FAA is to "ensur[e] that private arbitration agreements are enforced according to

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sion. It says that to its knowledge "we have not . . . applied the Act to strike down a state statute that treats arbitrations on par with judicial and administrative proceedings," *post*, at 10 (opinion of BREYER, J.), and that "we should think more than twice before invalidating a state law that . . . puts agreements to arbitrate and agreements to litigate 'upon the same footing'" *post*, at 4–5.

their terms." *Volt*, 489 U. S., at 478; see also *Stolt-Nielsen S. A.* v. *AnimalFeeds Int'l Corp.*, 559 U. S. ___, ___ (2010) (slip op., at 17). This purpose is readily apparent from the FAA's text. Section 2 makes arbitration agreements "valid, irrevocable, and enforceable" as written (subject, of course, to the saving clause); §3 requires courts to stay litigation of arbitral claims pending arbitration of those claims "in accordance with the terms of the agreement"; and §4 requires courts to compel arbitration "in accordance with the terms of the agreement" upon the motion of either party to the agreement (assuming that the "making of the arbitration agreement or the failure . . . to perform the same" is not at issue). In light of these provisions, we have held that parties may agree to limit the issues subject to arbitration, *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628 (1985), to arbitrate according to specific rules, *Volt*, *supra*, at 479, and to limit *with whom* a party will arbitrate its disputes, *Stolt-Nielsen*, *supra*, at ___ (slip op., at 19).

The point of affording parties discretion in designing arbitration processes is to allow for efficient, streamlined procedures tailored to the type of dispute. It can be specified, for example, that the decisionmaker be a specialist in the relevant field, or that proceedings be kept confidential to protect trade secrets. And the informality of arbitral proceedings is itself desirable, reducing the cost and increasing the speed of dispute resolution. *14 Penn Plaza LLC* v. *Pyett*, 556 U. S. ___, ___ (2009) (slip op., at 20); *Mitsubishi Motors Corp.*, *supra*, at 628.

The dissent quotes *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 219 (1985), as "'reject[ing] the suggestion that the overriding goal of the Arbitration Act was to promote the expeditious resolution of claims.'" *Post*, at 4 (opinion of BREYER, J.). That is greatly misleading. After saying (accurately enough) that "the overriding goal of the Arbitration Act was [not] to promote the expeditious reso-

lution of claims," but to "ensure judicial enforcement of privately made agreements to arbitrate," 470 U. S., at 219, *Dean Witter* went on to explain: "This is not to say that Congress was blind to the potential benefit of the legislation for expedited resolution of disputes. Far from it . . . ." *Id.*, at 220. It then quotes a House Report saying that "the costliness and delays of litigation . . . can be largely eliminated by agreements for arbitration." *Ibid.* (quoting H. R. Rep. No. 96, 68th Cong., 1st Sess., 2 (1924)). The concluding paragraph of this part of its discussion begins as follows:

> "We therefore are not persuaded by the argument that the conflict between two goals of the Arbitration Act—enforcement of private agreements and encouragement of efficient and speedy dispute resolution—must be resolved in favor of the latter in order to realize the intent of the drafters." 470 U. S., at 221.

In the present case, of course, those "two goals" do not conflict—and it is the dissent's view that would frustrate *both* of them.

Contrary to the dissent's view, our cases place it beyond dispute that the FAA was designed to promote arbitration. They have repeatedly described the Act as "embod[ying] [a] national policy favoring arbitration," *Buckeye Check Cashing*, 546 U. S., at 443, and "a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary," *Moses H. Cone*, 460 U. S., at 24; see also *Hall Street Assocs.*, 552 U. S., at 581. Thus, in *Preston* v. *Ferrer*, holding preempted a state-law rule requiring exhaustion of administrative remedies before arbitration, we said: "A prime objective of an agreement to arbitrate is to achieve 'streamlined proceedings and expeditious results,'" which objective would be "frustrated" by requiring a dispute to be heard by an agency first. 552 U. S., at 357–358. That

rule, we said, would "at the least, hinder speedy resolution of the controversy." *Id.*, at 358.[5]

California's *Discover Bank* rule similarly interferes with arbitration. Although the rule does not *require* classwide arbitration, it allows any party to a consumer contract to demand it *ex post*. The rule is limited to adhesion contracts, *Discover Bank*, 36 Cal. 4th, at 162–163, 113 P. 3d, at 1110, but the times in which consumer contracts were anything other than adhesive are long past.[6] *Carbajal* v. *H&R Block Tax Servs., Inc.*, 372 F. 3d 903, 906 (CA7 2004); see also *Hill* v. *Gateway 2000, Inc.*, 105 F. 3d 1147, 1149 (CA7 1997). The rule also requires that damages be predictably small, and that the consumer allege a scheme to cheat consumers. *Discover Bank*, *supra*, at 162–163, 113 P. 3d, at 1110. The former requirement, however, is

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[5] Relying upon nothing more indicative of congressional understanding than statements of witnesses in committee hearings and a press release of Secretary of Commerce Herbert Hoover, the dissent suggests that Congress "thought that arbitration would be used primarily where merchants sought to resolve disputes of fact . . . [and] possessed roughly equivalent bargaining power." *Post*, at 6. Such a limitation appears nowhere in the text of the FAA and has been explicitly rejected by our cases. "Relationships between securities dealers and investors, for example, may involve unequal bargaining power, but we [have] nevertheless held . . . that agreements to arbitrate in that context are enforceable." *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 33 (1991); see also *id.*, at 32–33 (allowing arbitration of claims arising under the Age Discrimination in Employment Act of 1967 despite allegations of unequal bargaining power between employers and employees). Of course the dissent's disquisition on legislative history fails to note that it contains nothing—not even the testimony of a stray witness in committee hearings—that contemplates the existence of class arbitration.

[6] Of course States remain free to take steps addressing the concerns that attend contracts of adhesion—for example, requiring class-action-waiver provisions in adhesive arbitration agreements to be highlighted. Such steps cannot, however, conflict with the FAA or frustrate its purpose to ensure that private arbitration agreements are enforced according to their terms.

toothless and malleable (the Ninth Circuit has held that damages of $4,000 are sufficiently small, see *Oestreicher* v. *Alienware Corp.*, 322 Fed. Appx. 489, 492 (2009) (unpublished)), and the latter has no limiting effect, as all that is required is an allegation. Consumers remain free to bring and resolve their disputes on a bilateral basis under *Discover Bank*, and some may well do so; but there is little incentive for lawyers to arbitrate on behalf of individuals when they may do so for a class and reap far higher fees in the process. And faced with inevitable class arbitration, companies would have less incentive to continue resolving potentially duplicative claims on an individual basis.

Although we have had little occasion to examine classwide arbitration, our decision in *Stolt-Nielsen* is instructive. In that case we held that an arbitration panel exceeded its power under §10(a)(4) of the FAA by imposing class procedures based on policy judgments rather than the arbitration agreement itself or some background principle of contract law that would affect its interpretation. 559 U. S., at ___ (slip op., at 20–23). We then held that the agreement at issue, which was silent on the question of class procedures, could not be interpreted to allow them because the "changes brought about by the shift from bilateral arbitration to class-action arbitration" are "fundamental." *Id.*, at ___ (slip op., at 22). This is obvious as a structural matter: Classwide arbitration includes absent parties, necessitating additional and different procedures and involving higher stakes. Confidentiality becomes more difficult. And while it is theoretically possible to select an arbitrator with some expertise relevant to the class-certification question, arbitrators are not generally knowledgeable in the often-dominant procedural aspects of certification, such as the protection of absent parties. The conclusion follows that class arbitration, to the extent it is manufactured by *Discover Bank* rather than consensual, is inconsistent with the FAA.

Second, class arbitration *requires* procedural formality. The AAA's rules governing class arbitrations mimic the Federal Rules of Civil Procedure for class litigation. Compare AAA, Supplementary Rules for Class Arbitrations (effective Oct. 8, 2003), online at http://www.adr.org/sp.asp?id=21936, with Fed. Rule Civ. Proc. 23. And while parties can alter those procedures by contract, an alternative is not obvious. If procedures are too informal, absent class members would not be bound by the arbitration. For a class-action money judgment to bind absentees in litigation, class representatives must at all times adequately represent absent class members, and absent members must be afforded notice, an opportunity to be heard, and a right to opt out of the class. *Phillips Petroleum Co.* v. *Shutts*, 472 U. S. 797, 811–812 (1985). At least this amount of process would presumably be required for absent parties to be bound by the results of arbitration.

We find it unlikely that in passing the FAA Congress meant to leave the disposition of these procedural requirements to an arbitrator. Indeed, class arbitration was not even envisioned by Congress when it passed the FAA in 1925; as the California Supreme Court admitted in *Discover Bank*, class arbitration is a "relatively recent development." 36 Cal. 4th, at 163, 113 P. 3d, at 1110. And it is at the very least odd to think that an arbitrator would be entrusted with ensuring that third parties' due process rights are satisfied.

Third, class arbitration greatly increases risks to defendants. Informal procedures do of course have a cost: The absence of multilayered review makes it more likely that errors will go uncorrected. Defendants are willing to accept the costs of these errors in arbitration, since their

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trating a class is more desirable than litigating one, however, is not relevant. A State cannot defend a rule requiring arbitration-by-jury by saying that parties will still prefer it to trial-by-jury.

impact is limited to the size of individual disputes, and presumably outweighed by savings from avoiding the courts. But when damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once, the risk of an error will often become unacceptable. Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims. Other courts have noted the risk of "in terrorem" settlements that class actions entail, see, *e.g.*, *Kohen* v. *Pacific Inv. Management Co. LLC*, 571 F. 3d 672, 677–678 (CA7 2009), and class arbitration would be no different.

Arbitration is poorly suited to the higher stakes of class litigation. In litigation, a defendant may appeal a certification decision on an interlocutory basis and, if unsuccessful, may appeal from a final judgment as well. Questions of law are reviewed *de novo* and questions of fact for clear error. In contrast, 9 U. S. C. §10 allows a court to vacate an arbitral award *only* where the award "was procured by corruption, fraud, or undue means"; "there was evident partiality or corruption in the arbitrators"; "the arbitrators were guilty of misconduct in refusing to postpone the hearing . . . or in refusing to hear evidence pertinent and material to the controversy[,] or of any other misbehavior by which the rights of any party have been prejudiced"; or if the "arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award . . . was not made." The AAA rules do authorize judicial review of certification decisions, but this review is unlikely to have much effect given these limitations; review under §10 focuses on misconduct rather than mistake. And parties may not contractually expand the grounds or nature of judicial review. *Hall Street Assocs.*, 552 U. S., at 578. We find it hard to believe that defendants would bet the company with no effective means of review, and even harder to believe that Congress would have intended to

allow state courts to force such a decision.[8]

The Concepcions contend that because parties may and sometimes do agree to aggregation, class procedures are not necessarily incompatible with arbitration. But the same could be said about procedures that the Concepcions admit States may not superimpose on arbitration: Parties *could* agree to arbitrate pursuant to the Federal Rules of Civil Procedure, or pursuant to a discovery process rivaling that in litigation. Arbitration is a matter of contract, and the FAA requires courts to honor parties' expectations. *Rent-A-Center, West*, 561 U. S., at ___ (slip op., at 3). But what the parties in the aforementioned examples would have agreed to is not arbitration as envisioned by the FAA, lacks its benefits, and therefore may not be required by state law.

The dissent claims that class proceedings are necessary to prosecute small-dollar claims that might otherwise slip through the legal system. See *post*, at 9. But States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons. Moreover, the claim here was most unlikely to go unresolved. As noted earlier, the arbitration agreement provides that AT&T will pay claimants a minimum of $7,500 and twice their attorney's fees if they obtain an arbitration award greater than AT&T's last settlement offer. The District Court

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[8]The dissent cites three large arbitration awards (none of which stems from classwide arbitration) as evidence that parties are willing to submit large claims before an arbitrator. *Post*, at 7–8. Those examples might be in point if it could be established that the size of the arbitral dispute was predictable when the arbitration agreement was entered. Otherwise, all the cases prove is that arbitrators can give huge awards—which we have never doubted. The point is that in class-action arbitration huge awards (with limited judicial review) will be entirely predictable, thus rendering arbitration unattractive. It is not reasonably deniable that requiring consumer disputes to be arbitrated on a classwide basis will have a substantial deterrent effect on incentives to arbitrate.

found this scheme sufficient to provide incentive for the individual prosecution of meritorious claims that are not immediately settled, and the Ninth Circuit admitted that aggrieved customers who filed claims would be "essentially guarantee[d]" to be made whole, 584 F. 3d, at 856, n. 9. Indeed, the District Court concluded that the Concepcions were *better off* under their arbitration agreement with AT&T than they would have been as participants in a class action, which "could take months, if not years, and which may merely yield an opportunity to submit a claim for recovery of a small percentage of a few dollars." *Laster*, 2008 WL 5216255, at *12.

* * *

Because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941), California's *Discover Bank* rule is preempted by the FAA. The judgment of the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 09–893

AT&T MOBILITY LLC, PETITIONER *v.* VINCENT CONCEPCION ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[April 27, 2011]

JUSTICE THOMAS, concurring.

Section 2 of the Federal Arbitration Act (FAA) provides that an arbitration provision "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2. The question here is whether California's *Discover Bank* rule, see *Discover Bank* v. *Superior Ct.*, 36 Cal. 4th 148, 113 P. 3d 1100 (2005), is a "groun[d] . . . for the revocation of any contract."

It would be absurd to suggest that §2 requires only that a defense apply to "any contract." If §2 means anything, it is that courts cannot refuse to enforce arbitration agreements because of a state public policy against arbitration, even if the policy nominally applies to "any contract." There must be some additional limit on the contract defenses permitted by §2. Cf. *ante*, at 17 (opinion of the Court) (state law may not require procedures that are "not arbitration as envisioned by the FAA" and "lac[k] its benefits"); *post*, at 5 (BREYER, J., dissenting) (state law may require only procedures that are "consistent with the use of arbitration").

I write separately to explain how I would find that limit in the FAA's text. As I would read it, the FAA requires that an agreement to arbitrate be enforced unless a party successfully challenges the formation of the arbitration

agreement, such as by proving fraud or duress. 9 U. S. C. §§2, 4. Under this reading, I would reverse the Court of Appeals because a district court cannot follow both the FAA and the *Discover Bank* rule, which does not relate to defects in the making of an agreement.

This reading of the text, however, has not been fully developed by any party, cf. Brief for Petitioner 41, n. 12, and could benefit from briefing and argument in an appropriate case. Moreover, I think that the Court's test will often lead to the same outcome as my textual interpretation and that, when possible, it is important in interpreting statutes to give lower courts guidance from a majority of the Court. See *US Airways, Inc.* v. *Barnett*, 535 U. S. 391, 411 (2002) (O'Connor, J., concurring). Therefore, although I adhere to my views on purposes-and-objectives pre-emption, see *Wyeth* v. *Levine*, 555 U. S. 555, ___ (2009) (opinion concurring in judgment), I reluctantly join the Court's opinion.

I

The FAA generally requires courts to enforce arbitration agreements as written. Section 2 provides that "[a] written provision in . . . a contract . . . to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." Significantly, the statute does not parallel the words "valid, irrevocable, and enforceable" by referencing the grounds as exist for the "invalidation, revocation, or nonenforcement" of any contract. Nor does the statute use a different word or phrase entirely that might arguably encompass validity, revocability, and enforceability. The use of only "revocation" and the conspicuous omission of "invalidation" and "nonenforcement" suggest that the exception does not include all defenses applicable to any contract but rather some subset of those defenses.

See *Duncan* v. *Walker*, 533 U. S. 167, 174 (2001) ("It is our duty to give effect, if possible, to every clause and word of a statute" (internal quotation marks omitted)).

Concededly, the difference between revocability, on the one hand, and validity and enforceability, on the other, is not obvious. The statute does not define the terms, and their ordinary meanings arguably overlap. Indeed, this Court and others have referred to the concepts of revocability, validity, and enforceability interchangeably. But this ambiguity alone cannot justify ignoring Congress' clear decision in §2 to repeat only one of the three concepts.

To clarify the meaning of §2, it would be natural to look to other portions of the FAA. Statutory interpretation focuses on "the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 341 (1997). "A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 371 (1988).

Examining the broader statutory scheme, §4 can be read to clarify the scope of §2's exception to the enforcement of arbitration agreements. When a party seeks to enforce an arbitration agreement in federal court, §4 requires that "upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue," the court must order arbitration "in accordance with the terms of the agreement."

Reading §§2 and 4 harmoniously, the "grounds . . . for the revocation" preserved in §2 would mean grounds related to the making of the agreement. This would require enforcement of an agreement to arbitrate unless a party

successfully asserts a defense concerning the formation of the agreement to arbitrate, such as fraud, duress, or mutual mistake. See *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395, 403–404 (1967) (interpreting §4 to permit federal courts to adjudicate claims of "fraud in the inducement of the arbitration clause itself" because such claims "g[o] to the 'making' of the agreement to arbitrate"). Contract defenses unrelated to the making of the agreement—such as public policy—could not be the basis for declining to enforce an arbitration clause.*

*The interpretation I suggest would be consistent with our precedent. Contract formation is based on the consent of the parties, and we have emphasized that "[a]rbitration under the Act is a matter of consent." *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 479 (1989).

The statement in *Perry* v. *Thomas*, 482 U. S. 483 (1987), suggesting that §2 preserves all state-law defenses that "arose to govern issues concerning the validity, revocability, and enforceability of contracts generally," *id.*, at 493, n. 9, is dicta. This statement is found in a footnote concerning a claim that the Court "decline[d] to address." *Id.*, at 392, n. 9. Similarly, to the extent that statements in *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. ___, ___ n. 1 (2010) (slip op. at ___, n. 1), can be read to suggest anything about the scope of state-law defenses under §2, those statements are dicta, as well. This Court has never addressed the question whether the state-law "grounds" referred to in §2 are narrower than those applicable to any contract.

Moreover, every specific contract defense that the Court has acknowledged is applicable under §2 relates to contract formation. In *Doctor's Associates, Inc.* v. *Casarotto*, 517 U. S. 681, 687 (1996), this Court said that fraud, duress, and unconscionability "may be applied to invalidate arbitration agreements without contravening §2." All three defenses historically concern the making of an agreement. See *Morgan Stanley Capital Group Inc.* v. *Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U. S. 527, 547 (2008) (describing fraud and duress as "traditional grounds for the abrogation of [a] contract" that speak to "unfair dealing at the contract formation stage"); *Hume* v. *United States*, 132 U. S. 406, 411, 414 (1889) (describing an unconscionable contract as one "such as no man in his senses and not under delusion would make" and suggesting that there may be "contracts so extortionate and unconscionable on their face as to raise the presumption of fraud in their inception" (internal quotation marks omitted)).

II

Under this reading, the question here would be whether California's *Discover Bank* rule relates to the making of an agreement. I think it does not.

In *Discover Bank*, 36 Cal. 4th 148, 113 P. 3d 1100, the California Supreme Court held that "class action waivers are, under certain circumstances, unconscionable as unlawfully exculpatory." *Id.*, at 65, 113 P. 3d, at 1112; see also *id.*, at 161, 113 P. 3d, at 1108 ("[C]lass action waivers [may be] substantively unconscionable inasmuch as they may operate effectively as exculpatory contract clauses that are contrary to public policy"). The court concluded that where a class-action waiver is found in an arbitration agreement in certain consumer contracts of adhesion, such waivers "should not be enforced." *Id.*, at 163, 113 P. 3d, at 1110. In practice, the court explained, such agreements "operate to insulate a party from liability that otherwise would be imposed under California law." *Id.*, at 161, 113 P. 3d, at 1108, 1109. The court did not conclude that a customer would sign such an agreement only if under the influence of fraud, duress, or delusion.

The court's analysis and conclusion that the arbitration agreement was exculpatory reveals that the *Discover Bank* rule does not concern the making of the arbitration agreement. Exculpatory contracts are a paradigmatic example of contracts that will not be enforced because of public policy. 15 G. Giesel, Corbin on Contracts §§85.1, 85.17, 85.18 (rev. ed. 2003). Indeed, the court explained that it would not enforce the agreements because they are "'against the policy of the law.'" 36 Cal. 4th, at 161, 113 P. 3d, at 1108 (quoting Cal. Civ. Code Ann. §1668); see also 36 Cal. 4th, at 166, 113 P. 3d, at 1112 ("Agreements to arbitrate may not be used to harbor terms, conditions and practices that undermine public policy" (internal quotation marks omitted)). Refusal to enforce a contract for public-policy reasons does not concern whether the

contract was properly made.

Accordingly, the *Discover Bank* rule is not a "groun[d] . . . for the revocation of any contract" as I would read §2 of the FAA in light of §4. Under this reading, the FAA dictates that the arbitration agreement here be enforced and the *Discover Bank* rule is pre-empted.

SUPREME COURT OF THE UNITED STATES

No. 09–893

AT&T MOBILITY LLC, PETITIONER *v.* VINCENT CONCEPCION ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[April 27, 2011]

JUSTICE BREYER, with whom JUSTICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting.

The Federal Arbitration Act says that an arbitration agreement "shall be valid, irrevocable, and enforceable, *save upon such grounds as exist at law or in equity for the revocation of any contract.*" 9 U. S. C. §2 (emphasis added). California law sets forth certain circumstances in which "class action waivers" in *any* contract are unenforceable. In my view, this rule of state law is consistent with the federal Act's language and primary objective. It does not "stan[d] as an obstacle" to the Act's "accomplishment and execution." *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941). And the Court is wrong to hold that the federal Act pre-empts the rule of state law.

I

The California law in question consists of an authoritative state-court interpretation of two provisions of the California Civil Code. The first provision makes unlawful all contracts "which have for their object, directly or indirectly, to exempt anyone from responsibility for his own . . . violation of law." Cal. Civ. Code Ann. §1668 (West 1985). The second provision authorizes courts to "limit the application of any unconscionable clause" in a contract so "as to avoid any unconscionable result." §1670.5(a).

The specific rule of state law in question consists of the California Supreme Court's application of these principles to hold that "some" (but not "all") "class action waivers" in consumer contracts are exculpatory and unconscionable under California "law." *Discover Bank* v. *Superior Ct.*, 36 Cal. 4th 148, 160, 162, 113 P. 3d 1100, 1108, 1110 (2005). In particular, in *Discover Bank* the California Supreme Court stated that, when a class-action waiver

> "is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, then . . . the waiver becomes in practice the exemption of the party 'from responsibility for [its] own fraud, or willful injury to the person or property of another.'" *Id.*, at 162–163, 113 P. 3d, at 1110.

In such a circumstance, the "waivers are unconscionable under California law and should not be enforced." *Id.*, at 163, 113 P. 3d, at 1110.

The *Discover Bank* rule does not create a "blanket policy in California against class action waivers in the consumer context." *Provencher* v. *Dell, Inc.*, 409 F. Supp. 2d 1196, 1201 (CD Cal. 2006). Instead, it represents the "application of a more general [unconscionability] principle." *Gentry* v. *Superior Ct.*, 42 Cal. 4th 443, 457, 165 P. 3d 556, 564 (2007). Courts applying California law have enforced class-action waivers where they satisfy general unconscionability standards. See, *e.g.*, *Walnut Producers of Cal.* v. *Diamond Foods, Inc.*, 187 Cal. App. 4th 634, 647–650, 114 Cal. Rptr. 3d 449, 459–462 (2010); *Arguelles-Romero* v. *Superior Ct.*, 184 Cal. App. 4th 825, 843–845, 109 Cal. Rptr. 3d 289, 305–307 (2010); *Smith* v. *Americredit Finan-*

cial Servs., Inc., No. 09cv1076, 2009 WL 4895280 (SD Cal., Dec. 11, 2009); cf. *Provencher*, *supra*, at 1201 (considering *Discover Bank* in choice-of-law inquiry). And even when they fail, the parties remain free to devise other dispute mechanisms, including informal mechanisms, that, in context, will not prove unconscionable. See *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 479 (1989).

II

A

The *Discover Bank* rule is consistent with the federal Act's language. It "applies equally to class action litigation waivers in contracts without arbitration agreements as it does to class arbitration waivers in contracts with such agreements." 36 Cal. 4th, at 165–166, 113 P. 3d, at 1112. Linguistically speaking, it falls directly within the scope of the Act's exception permitting courts to refuse to enforce arbitration agreements on grounds that exist "for the revocation of *any* contract." 9 U. S. C. §2 (emphasis added). The majority agrees. *Ante*, at 9.

B

The *Discover Bank* rule is also consistent with the basic "purpose behind" the Act. *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 219 (1985). We have described that purpose as one of "ensur[ing] judicial enforcement" of arbitration agreements. *Ibid.*; see also *Marine Transit Corp.* v. *Dreyfus*, 284 U. S. 263, 274, n. 2 (1932) ("'The purpose of this bill is to make *valid and enforcible* agreements for arbitration'" (quoting H. R. Rep. No. 96, 68th Cong., 1st Sess., 1 (1924); emphasis added)); 65 Cong. Rec. 1931 (1924) ("It creates no new legislation, grants no new rights, except a remedy to enforce an agreement in commercial contracts and in admiralty contracts"). As is well known, prior to the federal Act, many courts expressed

hostility to arbitration, for example by refusing to order specific performance of agreements to arbitrate. See S. Rep. No. 536, 68th Cong., 1st Sess., 2 (1924). The Act sought to eliminate that hostility by placing agreements to arbitrate "'*upon the same footing as other contracts.*'" *Scherk* v. *Alberto-Culver Co.*, 417 U. S. 506, 511 (1974) (quoting H. R. Rep. No. 96, at 2; emphasis added).

Congress was fully aware that arbitration could provide procedural and cost advantages. The House Report emphasized the "appropriate[ness]" of making arbitration agreements enforceable "at this time when there is so much agitation against the costliness and delays of litigation." *Id.*, at 2. And this Court has acknowledged that parties may enter into arbitration agreements in order to expedite the resolution of disputes. See *Preston* v. *Ferrer*, 552 U. S. 346, 357 (2008) (discussing "prime objective of an agreement to arbitrate"). See also *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628 (1985).

But we have also cautioned against thinking that Congress' primary objective was to guarantee these particular procedural advantages. Rather, that primary objective was to secure the "enforcement" of agreements to arbitrate. *Dean Witter*, 470 U. S., at 221. See also *id.*, at 219 (we "reject the suggestion that the overriding goal of the Arbitration Act was to promote the expeditious resolution of claims"); *id.*, at 219, 217–218 ("[T]he intent of Congress" requires us to apply the terms of the Act without regard to whether the result would be "possibly inefficient"); cf. *id.*, at 220 (acknowledging that "expedited resolution of disputes" might lead parties to prefer arbitration). The relevant Senate Report points to the Act's basic purpose when it says that "[t]he purpose of the [Act] is *clearly set forth in section 2*," S. Rep. No. 536, at 2 (emphasis added), namely, the section that says that an arbitration agreement "shall be valid, irrevocable, and enforceable, save

upon such grounds as exist at law or in equity for the revocation of any contract," 9 U. S. C. §2.

Thus, insofar as we seek to implement Congress' intent, we should think more than twice before invalidating a state law that does just what §2 requires, namely, puts agreements to arbitrate and agreements to litigate "upon the same footing."

III

The majority's contrary view (that *Discover Bank* stands as an "obstacle" to the accomplishment of the federal law's objective, *ante*, at 9–18) rests primarily upon its claims that the *Discover Bank* rule increases the complexity of arbitration procedures, thereby discouraging parties from entering into arbitration agreements, and to that extent discriminating in practice against arbitration. These claims are not well founded.

For one thing, a state rule of law that would sometimes set aside as unconscionable a contract term that forbids class arbitration is not (as the majority claims) like a rule that would require "ultimate disposition by a jury" or "judicially monitored discovery" or use of "the Federal Rules of Evidence." *Ante*, at 8, 9. Unlike the majority's examples, class arbitration is consistent with the use of arbitration. It is a form of arbitration that is well known in California and followed elsewhere. See, *e.g.*, *Keating* v. *Superior Ct.*, 167 Cal. Rptr. 481, 492 (App. 1980) (officially depublished); American Arbitration Association (AAA), Supplementary Rules for Class Arbitrations (2003), http://www.adr.org/sp.asp?id=21936 (as visited Apr. 25, 2011, and available in Clerk of Court's case file); JAMS, The Resolution Experts, Class Action Procedures (2009). Indeed, the AAA has told us that it has found class arbitration to be "a fair, balanced, and efficient means of resolving class disputes." Brief for AAA as *Amicus Curiae* in *Stolt-Nielsen S. A.* v. *AnimalFeeds Int'l Corp.*, O. T.

2009, No. 08–1198, p. 25 (hereinafter AAA *Amicus* Brief). And unlike the majority's examples, the *Discover Bank* rule imposes equivalent limitations on litigation; hence it cannot fairly be characterized as a targeted attack on arbitration.

Where does the majority get its contrary idea—that individual, rather than class, arbitration is a "fundamental attribut[e]" of arbitration? *Ante*, at 9. The majority does not explain. And it is unlikely to be able to trace its present view to the history of the arbitration statute itself.

When Congress enacted the Act, arbitration procedures had not yet been fully developed. Insofar as Congress considered detailed forms of arbitration at all, it may well have thought that arbitration would be used primarily where merchants sought to resolve disputes of fact, not law, under the customs of their industries, where the parties possessed roughly equivalent bargaining power. See *Mitsubishi Motors*, *supra*, at 646 (Stevens, J., dissenting); Joint Hearings on S. 1005 and H. R. 646 before the Subcommittees of the Committees on the Judiciary, 68th Cong., 1st Sess., 15 (1924); Hearing on S. 4213 and S. 4214 before a Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess., 9–10 (1923); Dept. of Commerce, Secretary Hoover Favors Arbitration—Press Release (Dec. 28, 1925), Herbert Hoover Papers—Articles, Addresses, and Public Statements File—No. 536, p. 2 (Herbert Hoover Presidential Library); Cohen & Dayton, The New Federal Arbitration Law, 12 Va. L. Rev. 265, 281 (1926); AAA, Year Book on Commercial Arbitration in the United States (1927). This last mentioned feature of the history—roughly equivalent bargaining power—suggests, if anything, that California's statute is consistent with, and indeed may help to further, the objectives that Congress had in mind.

Regardless, if neither the history nor present practice suggests that class arbitration is fundamentally incom-

patible with arbitration itself, then on what basis can the majority hold California's law pre-empted?

For another thing, the majority's argument that the *Discover Bank* rule will discourage arbitration rests critically upon the wrong comparison. The majority compares the complexity of class arbitration with that of bilateral arbitration. See *ante*, at 14. And it finds the former more complex. See *ibid.* But, if incentives are at issue, the *relevant* comparison is not "arbitration with arbitration" but a comparison between class arbitration and judicial class actions. After all, in respect to the relevant set of contracts, the *Discover Bank* rule similarly and equally sets aside clauses that forbid class procedures—whether arbitration procedures or ordinary judicial procedures are at issue.

Why would a typical defendant (say, a business) prefer a judicial class action to class arbitration? AAA statistics "suggest that class arbitration proceedings take more time than the average commercial arbitration, but may take *less time* than the average class action in court." AAA *Amicus* Brief 24 (emphasis added). Data from California courts confirm that class arbitrations can take considerably less time than in-court proceedings in which class certification is sought. Compare *ante*, at 14 (providing statistics for class arbitration), with Judicial Council of California, Administrative Office of the Courts, Class Certification in California: Second Interim Report from the Study of California Class Action Litigation 18 (2010) (providing statistics for class-action litigation in California courts). And a single class proceeding is surely more efficient than thousands of separate proceedings for identical claims. Thus, if speedy resolution of disputes were all that mattered, then the *Discover Bank* rule would reinforce, not obstruct, that objective of the Act.

The majority's related claim that the *Discover Bank* rule will discourage the use of arbitration because

"[a]rbitration is poorly suited to . . . higher stakes" lacks empirical support. *Ante*, at 16. Indeed, the majority provides no convincing reason to believe that parties are unwilling to submit high-stake disputes to arbitration. And there are numerous counterexamples. Loftus, Rivals Resolve Dispute Over Drug, Wall Street Journal, Apr. 16, 2011, p. B2 (discussing $500 million settlement in dispute submitted to arbitration); Ziobro, Kraft Seeks Arbitration In Fight With Starbucks Over Distribution, Wall Street Journal, Nov. 30, 2010, p. B10 (describing initiation of an arbitration in which the payout "could be higher" than $1.5 billion); Markoff, Software Arbitration Ruling Gives I.B.M. $833 Million From Fujitsu, N. Y. Times, Nov. 30, 1988, p. A1 (describing both companies as "pleased with the ruling" resolving a licensing dispute).

Further, even though contract defenses, *e.g.*, duress and unconscionability, slow down the dispute resolution process, federal arbitration law normally leaves such matters to the States. *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. ___, ___ (2010) (slip op., at 4) (arbitration agreements "may be invalidated by 'generally applicable contract defenses'" (quoting *Doctor's Associates, Inc.* v. *Casarotto*, 517 U. S. 681, 687 (1996))). A provision in a contract of adhesion (for example, requiring a consumer to decide very quickly whether to pursue a claim) might increase the speed and efficiency of arbitrating a dispute, but the State can forbid it. See, *e.g.*, *Hayes* v. *Oakridge Home*, 122 Ohio St. 3d 63, 67, 2009-Ohio-2054, ¶19, 908 N. E. 2d 408, 412 ("Unconscionability is a ground for revocation of an arbitration agreement"); *In re Poly-America, L. P.*, 262 S. W. 3d 337, 348 (Tex. 2008) ("Unconscionable contracts, however—whether relating to arbitration or not—are unenforceable under Texas law"). The *Discover Bank* rule amounts to a variation on this theme. California is free to define unconscionability as it sees fit, and its common law is of no federal concern so long as the State does not adopt

a special rule that disfavors arbitration. Cf. *Doctor's Associates, supra*, at 687. See also *ante*, at 4, n. (THOMAS, J., concurring) (suggesting that, under certain circumstances, California might remain free to apply its unconscionability doctrine).

Because California applies the same legal principles to address the unconscionability of class arbitration waivers as it does to address the unconscionability of any other contractual provision, the merits of class proceedings should not factor into our decision. If California had applied its law of duress to void an arbitration agreement, would it matter if the procedures in the coerced agreement were efficient?

Regardless, the majority highlights the disadvantages of class arbitrations, as it sees them. See *ante*, at 15–16 (referring to the "greatly increase[d] risks to defendants"; the "chance of a devastating loss" pressuring defendants "into settling questionable claims"). But class proceedings have countervailing advantages. In general agreements that forbid the consolidation of claims can lead small-dollar claimants to abandon their claims rather than to litigate. I suspect that it is true even here, for as the Court of Appeals recognized, AT&T can avoid the $7,500 payout (the payout that supposedly makes the Concepcions' arbitration worthwhile) simply by paying the claim's face value, such that "the maximum gain to a customer for the hassle of arbitrating a $30.22 dispute is still just $30.22." *Laster* v. *AT&T Mobility LLC*, 584 F. 3d 849, 855, 856 (CA9 2009).

What rational lawyer would have signed on to represent the Concepcions in litigation for the possibility of fees stemming from a $30.22 claim? See, *e.g.*, *Carnegie* v. *Household Int'l, Inc.*, 376 F. 3d 656, 661 (CA7 2004) ("The *realistic* alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for $30"). In California's perfectly

rational view, nonclass arbitration over such sums will also sometimes have the effect of depriving claimants of their claims (say, for example, where claiming the $30.22 were to involve filling out many forms that require technical legal knowledge or waiting at great length while a call is placed on hold). *Discover Bank* sets forth circumstances in which the California courts believe that the terms of consumer contracts can be manipulated to insulate an agreement's author from liability for its own frauds by "deliberately cheat[ing] large numbers of consumers out of individually small sums of money." 36 Cal. 4th, at 162–163, 113 P. 3d, at 1110. Why is this kind of decision—weighing the pros and cons of all class proceedings alike—not California's to make?

Finally, the majority can find no meaningful support for its views in this Court's precedent. The federal Act has been in force for nearly a century. We have decided dozens of cases about its requirements. We have reached results that authorize complex arbitration procedures. *E.g., Mitsubishi Motors*, 473 U. S., at 629 (antitrust claims arising in international transaction are arbitrable). We have upheld nondiscriminatory state laws that slow down arbitration proceedings. *E.g., Volt Information Sciences*, 489 U. S., at 477–479 (California law staying arbitration proceedings until completion of related litigation is not pre-empted). But we have not, to my knowledge, applied the Act to strike down a state statute that treats arbitrations on par with judicial and administrative proceedings. Cf. *Preston*, 552 U. S., at 355–356 (Act pre-empts state law that vests primary jurisdiction in state administrative board).

At the same time, we have repeatedly referred to the Act's basic objective as assuring that courts treat arbitration agreements "like all other contracts." *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 447 (2006). See also, *e.g., Vaden* v. *Discover Bank*, 556 U. S. ___, ___

(2009); (slip op., at 13); *Doctor's Associates, supra,* at 687; *Allied-Bruce Terminix Cos.* v. *Dobson,* 513 U. S. 265, 281 (1995); *Rodriguez de Quijas* v. *Shearson/American Express, Inc.,* 490 U. S. 477, 483–484 (1989); *Perry* v. *Thomas,* 482 U. S. 483, 492–493, n. 9 (1987); *Mitsubishi Motors, supra,* at 627. And we have recognized that "[t]o immunize an arbitration agreement from judicial challenge" on grounds applicable to all other contracts "would be to elevate it over other forms of contract." *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.,* 388 U. S. 395, 404, n. 12 (1967); see also *Marchant* v. *Mead-Morrison Mfg. Co.,* 252 N. Y. 284, 299, 169 N. E. 386, 391 (1929) (Cardozo, C. J.) ("Courts are not at liberty to shirk the process of [contractual] construction under the empire of a belief that arbitration is beneficent any more than they may shirk it if their belief happens to be the contrary"); Cohen & Dayton, 12 Va. L. Rev., at 276 (the Act "is no infringement upon the right of each State to decide for itself what contracts shall or shall not exist under its laws").

These cases do not concern the merits and demerits of class actions; they concern equal treatment of arbitration contracts and other contracts. Since it is the latter question that is at issue here, I am not surprised that the majority can find no meaningful precedent supporting its decision.

IV

By using the words "save upon such grounds as exist at law or in equity for the revocation of any contract," Congress retained for the States an important role incident to agreements to arbitrate. 9 U. S. C. §2. Through those words Congress reiterated a basic federal idea that has long informed the nature of this Nation's laws. We have often expressed this idea in opinions that set forth presumptions. See, *e.g., Medtronic, Inc.* v. *Lohr,* 518 U. S. 470, 485 (1996) ("[B]ecause the States are independent

sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action"). But federalism is as much a question of deeds as words. It often takes the form of a concrete decision by this Court that respects the legitimacy of a State's action in an individual case. Here, recognition of that federalist ideal, embodied in specific language in this particular statute, should lead us to uphold California's law, not to strike it down. We do not honor federalist principles in their breach.

With respect, I dissent.

EXHIBIT I

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ARSHAVIR ISKANIAN, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, a Delaware corporation; Defendant WORLDWIDE SERVICES, LLC, a Delaware corporation; EMPIRE INTERNATIONAL, LTD., a New Jersey Corporation; GTS HOLDINGS, INC., a Delaware corporation and DOES 1 through 10, inclusive,

Defendants.

CASE NO. BC356521
[Ordered Consolidated w/ BC381065]

Judge: Hon. Robert L. Hess

[~~PROPOSED~~] ORDER GRANTING DEFENDANT'S MOTION FOR RENEWAL OF ITS PRIOR MOTION FOR ORDER COMPELLING ARBITRATION, DISMISSING CLASS CLAIMS, AND STAYING ACTION PENDING THE OUTCOME OF ARBITRATION

Date: June 13, 2011
Time: 8:30 a.m.
Dept.: 24

Complaint Filed: August 4, 2006
Class Certified: August 24, 2009
Post-Mediation Conf.: May 2, 2011
Trial Date: None

Defendant CLS Transportation Los Angeles LLC's ("CLS" or Defendant") Motion for Renewal of Its Prior Motion for an Order Compelling Arbitration, Dismissing the Class Claims, and Staying the Action Pending the Outcome of Arbitration, came on for hearing on June 13, 2011, at 8:30 a.m. before this Court in Department 24, the Honorable Robert L. Hess presiding. David F. Faustman appeared on behalf of Defendant, and Gene Williams appeared on behalf of Plaintiff Arshavir Iskanian and all class members ("Plaintiffs").

After full consideration of the evidence, memorandum of points and authorities, declarations and exhibits submitted by each party, as well as counsels' oral arguments, IT IS HEREBY ORDERED THAT:

1. Based on new law rendered in *AT&T Mobility v. Conception* (April 27, 2011) 563 U.S. __ (2011), Defendant's Motion for Renewal of Its Prior Motion for an Order Compelling Arbitration, Dismissing the Class Claims, and Staying the Action Pending the Outcome of Arbitration is GRANTED.

2. Because Plaintiff and Defendant both executed a valid an enforceable arbitration agreement and class action waiver, Defendant's Motion for an Order Compelling Arbitration, Dismissing the Class Claims, and Staying the Action Pending the Outcome of Arbitration is GRANTED.

3. Plaintiff's class claims are hereby dismissed with prejudice, and the remainder of the action is stayed pending the outcome of arbitration of Plaintiff's individual claims.

Dated: 6/13, 2011

HON. ROBERT L. HESS

EXHIBIT J

APP-002

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)	FOR COURT USE ONLY
Glenn Danas (SBN: 270317) Initiative Legal Group, APC 1800 Century Park East, 2nd Floor Los Angeles, CA 90067 TELEPHONE NO.: (310) 556-5637 FAX NO (Optional): (310) 861-9051 E-MAIL ADDRESS (Optional): GDanas@InitiativeLegal.com ATTORNEY FOR (Name): Arshavir Iskanian	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse	
PLAINTIFF/PETITIONER: Arshavir Iskanian DEFENDANT/RESPONDENT: CLS Transportation of Los Angeles	
☑ NOTICE OF APPEAL ☐ CROSS-APPEAL (UNLIMITED CIVIL CASE)	CASE NUMBER BC356521

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.

1. NOTICE IS HEREBY GIVEN that *(name)*: Arshavir Iskanian
   appeals from the following judgment or order in this case, which was entered on *(date)*: 6/13/2011
   - ☐ Judgment after jury trial
   - ☐ Judgment after court trial
   - ☐ Default judgment
   - ☐ Judgment after an order granting a summary judgment motion
   - ☐ Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
   - ☐ Judgment of dismissal after an order sustaining a demurrer
   - ☐ An order after judgment under Code of Civil Procedure section 904.1(a)(2)
   - ☐ An order or judgment under Code of Civil Procedure section 904.1(a)(3)–(13)
   - ☑ Other *(describe and specify code section that authorizes this appeal)*:
     Order compelling arbitration and dismissing all class claims under the "death knell" doctrine.
2. For cross-appeals only:
   - a. Date notice of appeal was filed in original appeal.
   - b. Date superior court clerk mailed notice of original appeal:
   - c. Court of Appeal case number *(if known)*:

Date: 8/11/2011

Glenn A. Danas
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-002 [Rev. July 1, 2010]

NOTICE OF APPEAL/CROSS-APPEAL (UNLIMITED CIVIL CASE)
(Appellate)

Cal. Rules of Court, rule 8.100
www.courts.ca.gov

APP-002

CASE NAME	CASE NUMBER:
Iskanian v. CLS Transportation of Los Angeles	BC356521

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE

☑ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My residence or business address is *(specify)*

1800 Century Park East, 2nd Floor
Los Angeles, CA 90067

3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows *(complete either a or b)*

a. ☑ **Mail.** I am a resident of or employed in the county where the mailing occurred.

(1) I enclosed a copy in an envelope and

(a) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid

(b) ☑ placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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(c) Date of mailing: 8/11/2011

(d) Place of mailing *(city and state)*: Los Angeles, CA

b. ☐ **Personal delivery.** I personally delivered a copy as follows

(1) Name of person served:

(2) Address where delivered:

(3) Date delivered:

(4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 8/11/2011

Rashan R. Barnes
(TYPE OR PRINT NAME)

▶ Rashan Barnes
(SIGNATURE OF DECLARANT)

EXHIBIT K

From: Faustman, David
Sent: Tuesday, August 02, 2011 3:43 PM
To: 'Raul Perez'
Cc: Suzy Lee; Melissa Grant; Samuel Levy; Frank Gatto; Art Meneses
Subject: RE: Demand For Arbitration-- CLS/Empire

Please assume that Fox Rothschild represents the suggested defendants. (I do not see, however, any good faith theory under which you can name Mr. Seelinger personally.) Are these 32 people you purport to represent members of the erstwhile class? Are they proposing to opt out out of the appeal? Are you proposing to consolidate the matters in front of one arbitrator? Are you seeking to initiate settlement discussions? Please let me know. In the meantime you may forward any demand letters to my Los Angeles office, and we will respond accordingly. Regards. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Tuesday, August 02, 2011 2:46 PM
To: Faustman, David
Cc: Suzy Lee; Melissa Grant; Samuel Levy; Frank Gatto; Art Meneses
Subject: Demand For Arbitration-- CLS/Empire

Our firm, Initiative Legal Group, represents 32 former and current employees of CLS/Empire (the "Company") who have retained us to prosecute their claims for various Labor Code violations against the Company. We will be seeking damages for, *inter alia*, 1) failure to pay overtime compensation; 2) failure to pay minimum wages; 3) failure to provide meal and rest periods; 4) failure to pay wages upon termination; 5) improper wage statements; 6) confiscation of gratuities; 7) failure to reimburse business expenses; and 8) violation of Business & Professions Code Section 17200, et seq. We will also be seeking penalties under the Labor Code, including, without limitation, the Private Attorneys General Act. We intend to file the claims with ADR, which is one of the arbitration forums authorized by the company's arbitration agreement. As you know, the company is responsible for paying all of the arbitrator's fees and costs in connection with the 32 actions that will be filed.

Our clients will be naming the following parties as defendants: 1) CLS Transportation of Los Angeles, LLC; 2) CLS Worldwide Services LLC; 3) Empire International, LTD; 4) Empire/CLS Worldwide Chauffered Services; 5) GTS Holdings; and 6) David Seelinger. Please advise by the end of the business day, Thursday, August 4, 2011, whether your firm represents all of these related entities and individuals in connection with this dispute. If we do not hear from you by

August 4, 2011, we will assume you do not represent the named defendants, and will serve the demand for arbitration directly on the companies and Mr. Seelinger.

As a courtesy notice, we also plan to file an additional 50 demands for arbitration for other former and current employees of CLS/Empire who want their claims for Labor Code violations handled by ILG. We will notify you in the future of the forum that our clients select for the next phase of arbitration.

Additionally, ILG will be expanding the scope of the litigation to include aggrieved employees on a national scale. Please also advise by this Thursday whether you firm is national counsel for the Company for wage and hour/FLSA claims, and whether your firm will be handling arbitrations across the country. If we do not hear from you by this Thursday, we will again assume you are not national counsel.

Nothing above shall constitute a waiver of any rights of appeal in the state action filed by Arshavir Iskanian and still pending before Judge Hess of the Los Angeles Superior Court; all rights expressly reserved.

We are available anytime this week if you want to discuss the above. Emails in the past have not been productive so we encourage you to call us or we can meet in person since we are in the same building.

Best,

Raul Perez ▫ Initiative Legal Group APC
1800 Century Park East ▫ 2nd Floor ▫ Los Angeles, CA 90067 ▫ 310.556.4881 direct ▫ 310.861.9051 facsimile
RPerez@InitiativeLegal.com ▫ www.InitiativeLegal.com

EXHIBIT L

INITIATIVE LEGAL GROUP APC

RAUL PEREZ
310 556 5637 Main
RPerez@InitiativeLegal.com

August 5, 2011

VIA PERSONAL DELIVERY

David A. Faustman
Yesenia Gallegos
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067-3005

Subject: Employee Personnel Files Request

Dear Mr. Faustman:

The individuals listed in the attached page have retained Initiative Legal Group APC ("ILG") to represent them in their claims against Empire/CLS for various Labor Code violations. You confirmed earlier this week that you are counsel for Empire/CLS with respect to this dispute. As counsel for the employees named on the attached page, we hereby request that Empire/CLS send copies of the following to our attention:

1) Copies of these employees' personnel files pursuant to California Labor Code §1198.5;
2) Copies of any instrument that these employees have signed relating to the obtaining or holding of employment, including, but not limited to, any signed arbitration agreements pursuant to California Labor Code §432; and
3) Copies of payroll records pertaining to these employees pursuant to California Labor Code §226(b).

ILG represents these employees individually. Under the Labor Code sections cited above, if an employee signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request. Furthermore, an employer has to afford current and former employees the right to inspect or copy the payroll records and personnel files pertaining to that current or former employee. We trust that you will produce the requested documents within the time period required by California law.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Raul Perez

Attachment

Attachment 1:

ARAYA, DANIEL
BAKER, WILLIAM
BARANCO, DAVID
BEN YAIR, NEIL
BOYD, JERRY
CALDWELL, DAROLD
CANDELARIA, RAFAEL
CLARK, LEROY
COOLEY, PATRICK
DE LA MORA, MIGUEL
DUBUY, FRANK G
EVANS, JOHNNIE
FUMOTO, JIRO
GARCIA, ANGELO
GARCIA, EDWIN
GRIFFIN, GERALD
IKNER, WAYNE
KEMPLER, GREG
KROO, IGOR
LINDSEY, CASSANDRA
LOATMAN, MATTHEW
MARTIN, THOMAS
MAYNARD, STEVE
MILLINGTON JR, DANIEL ROGERS
MONTOYA, DAVID
MUELLER, CARL
NORTON, ELIJHA
PAULL, PATER
PERRY, ROGER
RICHMOND, JAMES
ROGAN, MYRON
SAZO, MARCIAL
SCOTT, JONATHON
SHAFII, MASOOD
SILVA, FLAVIO
SLOAN, BENNETT
STELLMAN, SUSAN
STERLING, JAMES
SULLIVAN, SCOTT
TOAILOA, AVAAVAU
WARREN, ADRIEN

INITIATIVE LEGAL GROUP APC

RAUL PEREZ
310.556.5637 Main
RPerez@InitiativeLegal.com

August 12, 2011

VIA PERSONAL DELIVERY

David A. Faustman
Yesenia Gallegos
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067-3005

Subject: Employee Personnel Files Request

Dear Mr. Faustman:

The individuals listed in the attached page have retained Initiative Legal Group APC ("ILG") to represent them in their claims against Empire/CLS for various Labor Code violations. You previously confirmed that you are counsel for Empire/CLS with respect to this dispute. As counsel for the employees named on the attached page, we hereby request that Empire/CLS send copies of the following to our attention:

1) Copies of these employees' personnel files pursuant to California Labor Code §1198.5;
2) Copies of any instrument that these employees have signed relating to the obtaining or holding of employment, including, but not limited to, any signed arbitration agreements pursuant to California Labor Code §432; and
3) Copies of payroll records pertaining to these employees pursuant to California Labor Code §226(b).

ILG represents these employees individually. Under the Labor Code sections cited above, if an employee signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request. Furthermore, an employer has to afford current and former employees the right to inspect or copy the payroll records and personnel files pertaining to that current or former employee. We trust that you will produce the requested documents within the time period required by California law.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Raul Perez

Attachment

Attachment 1:

CHANG, KUNG MING
DENISON, JAMES
FUNES, JULIUS
ROSE, MARQUEL

Fox Rothschild LLP
ATTORNEYS AT LAW

1800 Century Park East, Suite [illegible]
Los Angeles, CA 90067-1506
Tel: 310.598.4150 Fax: 310.556.9828
www.foxrothschild.com

Direct Dial: (310) 598-4159
Email Address: ygallegos@foxrothschild.com

August 12, 2011

VIA FACSIMILE AND U.S. MAIL

Raul Perez, Esq.
Initiative Legal Group APC
1800 Century Park East, Second Floor
Los Angeles, CA 90067

Re: Demand for Arbitration

Dear Mr. Perez:

We are in receipt of your August 5th letter requesting the personnel files and payroll records of 41 current and former employees of CLS Transportation ("Empire/CLS"). Empire/CLS is amendable to complying with your request but will require an authorization signed by each of the 41 individuals stating that each of them authorize Empire/CLS to produce copies of their personnel and payroll records to Initiative Legal Group, 1800 Century Park East, Second Floor, Los Angeles, California 90067. Labor Code sections 1198.5 (pertaining to personnel files) and 226 (payroll records) give "employee[s]" the right to inspect their own records. These sections do not give the right of inspection to employee representatives, lawyers or designated agents. Notwithstanding, we will have these records delivered to your office based on your representation that you have been retained as counsel by the 41 individuals, but will need their authorization in writing.

Thank you for your courtesy and cooperation.

Very truly yours,

Yesenia Gallegos

LA1 96824v1 08/12/11

From: Faustman, David
Sent: Friday, August 12, 2011 10:42 AM
To: 'Raul Perez'
Cc: Samuel Levy
Subject: RE: Demand for Personnel Records

The employees have a right to privacy, and the employer is entitled to an authorization and waiver from the employee. A simple one-paragraph form from each employee will be sufficient. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Friday, August 12, 2011 10:02 AM
To: Faustman, David
Cc: Samuel Levy
Subject: Demand for Personnel Records

This communication is an effort to keep our confidential settlement communications separate and apart from our discussions regarding our demand for the personnel files/records of our retained clients. Your refusal to provide those files/records upon written request by their retained counsel in our opinion violates the Labor Code, and exposes your client unnecessarily to penalties under the Labor Code. Unless you can provide me an authority that supports your position, your demand for a written authorization lacks merit. Those records are necessary to promptly resolve their claims in arbitration, which is what your client insisted on when it renewed its motion to compel arbitration. If you fail to provide the records by the time required by the Labor Code, we will be forced to seek judicial relief, including filing a lawsuit. We hope that you will reconsider your position to avoid further litigation.

Best,

Raul Perez ▫ Initiative Legal Group APC
1800 Century Park East ▫ 2nd Floor ▫ Los Angeles, CA 90067 ▫ 310.556.4881 direct ▫ 310.861.9051 facsimile
RPerez@InitiativeLegal.com ▫ www.InitiativeLegal.com

EXHIBIT M

kwiktag® 12_ 3 054

American Arbitration Association
Dispute Resolution Services Worldwide

Please visit our website at www.adr.org if you would like to file this case online.
AAA Customer Service can be reached at 800-778-7879

Employment Arbitration Rules Demand for Arbitration

Please visit our website at www.adr.org if you would like to file this case online.

Mediation: *If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box.* ☐ *There is no additional administrative fee for this service.*

Parties (Claimant)

Daniel Araya
Name of Claimant:

Address:

City: State Zip:

Phone: Fax:

Email Address:

Raul Perez (SBN 174687)
Representative's Name (if known):

Initiative Legal Group APC
Firm (if applicable):

1800 Century Park East, 2nd Floor
Address:

Los Angeles CA 90067
City: State Zip:

(310) 556-5637 (310) 861-9051
Phone: Fax:

rperez@initiativelegal.com
Email Address:

Parties (Respondent):

See Attachment A
Name of Respondent:

Address:

City: State Zip:

Phone: Fax:

Email Address:

David F. Faustman
Representative's Name (if known):

Fox Rothschild LLP
Firm (if applicable):

1800 Century Park East, Suite 300
Address:

Los Angeles CA 90067
City: State Zip:

(310) 598-4150 (201) 556-9828
Phone: Fax:

dfaustman@foxrothschild.com
Email Address:

Claim: What was/is the employee's annual wage range?
Note: This question is required by California law.

☒ Less than $100,000 ☐ $100,000 - $250,000 ☐ Over $250,000

Amount of Claim: See Attachment C

Claim involves:

☒ Statutorily Protected Rights ☐ Non-statutorily protected rights

In detail, please describe the nature of each claim.
You may attach additional pages if necessary:

See Attachment B

Other Relief Sought: ☒ Arbitration Costs ☒ Attorney's Fees ☒ Interest ☒ Punitive/Exemplary Damages ☐ Other

Neutral: Please describe the qualifications for arbitrator(s) to hear this dispute:

A mutually agreeable arbitrator (who shall be a retired judge) from a list of arbitrators provided by ADR Services, ARC, Judicate West, or JAMS. If, however, the parties are unable to agree, a neutral arbitrator (who shall be a retired judge) shall be appointed in the manner proved by CCP 1283.05

Hearing: Estimated time needed to present case at hearing:

Hours: 8.00 Days: 2

Hearing locale: Los Angeles

☐ Requested by Claimant ☒ Locale provision included in the contract

Filing Fee: ☐ Employer-Promulgated Plan fee requirement or $175 *(max amount per AAA rules)*

☐ Standard Fee Schedule for individually negotiated contracts ☐ Flexible Fee Schedule for individually negotiated contracts

Amout Tendered: _____

Notice: To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100 Voorhees, NJ 08043. Send the original Demand to the Respondent.

Pursuant to Section 1284.3 of the California Code of Civil Procedure, consumers with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of arbitration fees and costs, exclusive of arbitrator fees. This law applies to all consumer agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. Only those disputes arising out of employer promulgated plans are included in the consumer definition. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath regarding your monthly income and the number of persons in your household. Please contact the AAA's Western Case Management Center at 1-877-528-0879. If you have any questions regarding the waiver of administrative fees, AAA Case Filing Services can be reached at 877-495-4185.

Signature of claimant or representative: _____ Date: September 28, 2011

Attachment A

RESPONDENTS:

CLS Transportation of Los Angeles, LLC; CLS Worldwide Services, LLC; Empire International, Ltd.; Empire/CLS Worldwide Chauffeured Services; GTS Holdings, Inc.; David Seelinger

Attachment B

NATURE OF DISPUTE:

Claimant hereby demands that you submit the following disputes to arbitration:

1. Violation of California Labor Code §§ 1194, 1197 and 1197.1 (Failure to Pay Minimum Wage);
2. Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
3. Violation of California Labor Code §§ 201 and 202 (Non-payment of Wages Upon Termination);
4. Violation of California Labor Code § 226(a) (Improper Wage Statements);
5. Violation of California Labor Code § 226.7(a) (Missed Rest Periods);
6. Violation of California Labor Code §§ 226.7(a) and 512 (Missed Meal Periods);
7. Violation of California Labor Code §§ 221 and 2800 (Improper Withholding of Wages and Non-Indemnification of Business Expenses);
8. Violation of California Labor Code § 351 (Confiscation of Gratuities);
9. Violation of California Business & Professions Code § 17200, et seq.; and
10. Violation of California Labor Code §§ 226(b), 432 and 1198.5 (Failure to Provide Copies of Employment Records within Time Allowed by Statute).

Attachment C

CLAIM/RELIEF SOUGHT:

As to the California Labor Code §§ 1194, 1197, and 1197.1 claims (Minimum Wages):

1. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
2. For statutory wage penalties pursuant to California Labor Code §1197.1 in amount as may be established according to proof.
3. For pre-judgment interest on any unpaid overtime compensation from the date such amounts were due;
4. For reasonable attorney's fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a);
5. For liquidated damages pursuant to California Labor Code § 1194.2;
6. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 510, 1194 and 1198; and
7. For such other and further relief as the Arbitrator may deem equitable and appropriate.

As to the California Labor Code §§ 510 and 1198 claims (Unpaid Overtime):

1. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
2. For pre-judgment interest on any unpaid overtime compensation from the date such amounts were due;
3. For reasonable attorney's fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a);
4. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 510, 1194 and 1198; and
5. For such other and further relief as the Arbitrator may deem equitable and appropriate.

As to the California Labor Code §§ 201 and 202 claims (Non-payment of Wages Upon Termination):

1. For all actual, consequential and incidental losses and damages, according to proof;
2. For statutory penalties pursuant to California Labor Code § 203 for Plaintiff and all other class members who have left Defendants' employ;
3. For costs of suit incurred herein;
4. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 201, 202 and 203; and
5. For such other and further relief as the Arbitrator may deem equitable and appropriate.

As to the California Labor Code § 226(a) claims (Improper Wage Statements):

1. For all actual, consequential and incidental losses and damages, according to proof;
2. For statutory penalties pursuant to California Labor Code § 226(e) and 226.3;
3. For reasonable costs and attorney's fees pursuant to California Labor Code § 226(e);
4. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 226(a); and
5. For such other and further relief as the Arbitrator may deem equitable and appropriate.

As to the California Labor Code § 226.7(a) claims (Missed Rest Periods):

1. For all actual, consequential, and incidental losses and damages, according to proof;
2. For statutory penalties pursuant to California Labor Code § 226.7(b);
3. For costs of suit incurred herein;
4. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 226.7(a); and
5. For such other and further relief as the Arbitrator may deem appropriate.

As to the California Labor Code §§ 226.7(a) and 512 claims (Missed Meal Periods):

1. For all actual, consequential, and incidental losses and damages, according to proof;
2. For statutory penalties pursuant to California Labor Code § 226.7(b);
3. For costs of suit incurred herein;
4. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 226.7(a) and 512; and
5. For such other and further relief as the Arbitrator may deem appropriate.

As to the California Labor Code §§ 221 and 2800 claims (Improper Withholding of Wages and Non-Indemnification of Business Expenses):

1. For all actual, consequential and incidental losses and damages, according to proof;
2. For costs of suit incurred herein;
3. For civil penalties pursuant to California Labor Code § 225.5;
4. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code §§ 221 and 2802; and
5. For such other and further relief as the Arbitrator may deem appropriate.

As to the California Labor Code § 351 claims (Confiscation of Gratuities):

1. For all actual, consequential and incidental losses and damages, according to proof;
2. For restitution of confiscated gratuities to all aggrieved employees and class members and prejudgment interest from the day such amounts were due and payable;
3. For costs of suit incurred herein;
4. For civil penalties pursuant to California Labor Code § 2699(f) and (g) in the amount of $100 dollars for each violation per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation, plus costs and attorneys' fees for violation of California Labor Code § 351; and
5. For other such and further relief as the Arbitrator may deem appropriate.

As to the California Business & Professions Code § 17200, et seq. claims:

1. For disgorgement of any and all "unpaid wages" and incidental losses, according to proof;
2. For restitution of "unpaid wages" to all class members and prejudgment interest from the day such amounts were due and payable;
3. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code § 17200 et seq.;
4. For reasonable attorney's fees that Plaintiff and other members of the class are entitled to recover under California Code of Civil Procedure § 1021.5; and
5. For costs of suit incurred herein

As to the California Labor Code §§ 226(b), 432 and 1198.5 claims:

1. For all actual, consequential and incidental losses and damages, according to proof;
2. For costs of suit incurred herein;
3. For civil penalties pursuant to California Labor Code § 226(f) in the amount of $750;
4. For injunctive relief, costs and reasonable attorneys' fees pursuant to California Labor Code § 226(g); and
5. For such other and further relief as the Arbitrator may deem appropriate.

For such other and further relief as the Arbitrator may deem equitable and appropriate.

EXHIBIT N

Please make the check payable to the American Arbitration Association and send it to the address above. Please note with the payment that it is for the "Employees v. CLS Transportation of Los Angeles LLC et al" matters.

Alternatively, Respondent may make payment via credit card or wire transfer. Please email me at ShoneckA@adr.org for information on these payment methods.

The AAA's administrative fees are based on filing and service charges. Arbitrator compensation is not included in this schedule. The AAA may require arbitrator's compensation deposits in advance of any hearings. Unless the employee chooses to pay a portion of the arbitrator's compensation, the employer shall pay such compensation in total.

Payment should be submitted on or before Monday, October 17th, 2011. Upon receipt of the balance of the filing fee, the Association will proceed with administration in accordance with the rules.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Adam Shoneck
Intake Specialist
856-679-4610
ShoneckA@adr.org

Supervisor Information: Tara Parvey, ParveyT@adr.org

Employee Name	Case Number
Alston, Glen	72-460-1067-11
Araya, Daniel	72-460-1022-11
Bailey, Karen	72-460-1064-11
Baker, William	72-460-1061-11
Baranco, David	72-460-1069-11
Bingham, Dawn	72-460-1081-11
Boyd, Jerry	72-460-1036-11
Caldwell, Darold	72-460-1024-11
Candelaria, Rafael	72-460-1048-11
Chang, Kung Ming	72-460-1042-11
Cheng, Kenny	72-460-1063-11
Clark, Leroy	72-460-1043-11
Collins, Cleophus	72-460-1021-11
Colwell, Reginald	72-460-1049-11
Cooley, Patrick	72-460-1047-11
Crawford, Lamont	72-460-1078-11
De La Mora, Miguel	72-460-1058-11
Denison, James	72-460-1066-11
Dubuy, Frank G.	72-460-1031-11
Earnshaw, Luis	72-460-1062-11
Evans, Johnnie	72-460-1038-11
Fuentes, Raul	72-460-1079-11
Fumoto, Jiro	72-460-1037-11
Funes, Julius	72-460-1040-11
Garcia, Edwin	72-460-1027-11
Garcia, Angelo	72-460-1073-11
Gold, Bruce	72-460-1082-11
Griffin, Gerald	72-460-1032-11
Ikner, Wayne	72-460-1060-11
Kempler, Greg	72-460-1033-11
Kroo, Igor	72-460-1034-11
Lindsey, Cassandra	72-460-1020-11
Loatman, Matthew	72-460-1057-11
Martin, Thomas	72-460-1054-11
Maynard, Steve	72-460-1052-11
Millington, Jr., Daniel Rogers	72-460-1023-11
Montoya, David	72-460-1025-11
Mueller, Carl	72-460-1070-11
Norton, Elijah	72-460-1030-11
Olmedo, Robert	72-460-1080-11
Paull, Peter	72-460-1046-11
Perry, Roger	72-460-1050-11
Pinkerton, William	72-460-1075-11
Post, Arthur	72-460-1076-11
Richmond, James	72-460-1065-11
Rogan, Myron	72-460-1059-11
Rose, Marquel	72-460-1055-11
Sanathara, Anatray	72-460-1018-11
Sazo, Marcial	72-460-1044-11
Scott, Jonathon	72-460-1039-11
Shafi, Masood	72-460-1056-11

Sharif, Karim	72-460-1041-11
Silva, Flavio	72-460-1068-11
Sloan, Bennett	72-460-1071-11
Smith, Edward	72-460-1026-11
Stellman, Susan	72-460-1053-11
Sterling, James	72-460-1035-11
Sullivan, Scott	72-460-1051-11
Swartz, Carl	72-460-1019-11
Toailoa, Avaavau	72-460-1072-11
Warren, Adrien	72-460-1074-11
Washington, Belinda	72-460-1077-11
Yair, Neil Ben	72-460-1045-11

EXHIBIT O

From: Faustman, David
Sent: Friday, September 16, 2011 2:39 PM
To: 'Raul Perez'
Cc: Gallegos, Yesenia M.

Raul: We think it is unreasonable to demand a separate arbitrator for each of your purported claimants, and to be required to engage arbitrators before we have any indication that the individuals are actually willing to show up for a deposition or hearing. We think it is particularly unreasonable to demand 50+ arbitrators to each separately decide the threshold issues of (1) your entitlement to files without authorization and (2) the personal liability of Mr. Seelinger. We should discuss this (I will be in LA next Thurs afternoon), and perhaps consider agreeing to take some of these issues back to Judge Hess.. Also, we still would appreciate some explanation of your basis for naming Mr. Seelinger personally, particularly in light of the obvious statute of limitations issues. Finally, I'm not sure what your are asking for as "proof or assurance". --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Thursday, September 08, 2011 6:56 PM
To: Faustman, David
Cc: Gallegos, Yesenia M.
Subject: Re: Settlement Offer

We will start giving you deposition dates once an arbitrator is appointed for each case & ground rules set.

The failure to provide our client's files is now part of the individual claims that should be decided by the arbitrator assigned to each case.

Give me proof or assurance that cls/empire can satisfy all judgments because you previously represented to gene cls was broke.

Best, Raul

On Sep 8, 2011, at 4:27 PM, "Faustman, David" <DFaustman@foxrothschild.com> wrote:

Raul:

(1) We are not suggesting a class or representative action. These are individual cases.

(2) Are you proposing that we use 50+ different arbitrators?

(3) You have not responded to my proposal to use one arbitrator (e.g., Judge Romero) to decide threshold issues such as your entitlement
to the personnel files.

(4) Another threshold issue for one arbitrator would be whether there is any basis to name Mr. Seelinger

personally. Please explain yo[redacted]asis for naming him.

(5) You have not responded to our request for deposition dates for the claimants. Please do so at your earliest convenience.

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Thursday, September 08, 2011 2:48 PM
To: Faustman, David
Cc: Gallegos, Yesenia M.
Subject: RE: Settlement Offer

These are individual cases and we have requested different arbitrators per case, or b case, or basically that the rules be complied with re ranking and striking arbitrators for each case. We will not agree that one arbitrator can handle all the cases. You and your client did not want a class or representative action.
Best,
Raul Perez
ILG-Attorney at Law
1800 Century Park East
2nd Floor
Los Angeles, CA 90067
(310) 556-4881

"Faustman, David" wrote:

Raul: We haven't heard back from you on this. We are agreeable to using Judge Romero as an arbitrator. We also need deposition dates for the individual claimants. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Faustman, David
Sent: Wednesday, August 31, 2011 12:35 PM
To: 'Raul Perez'
Cc: Gallegos, Yesenia M.
Subject: RE: Settlement Offer

We have never asked for privileged communications, just your confirmation that the offer was communicated. We will accept your representation that, as of August 31, all 50+ of the individuals at issue were presented with, and rejected, our offer to settle for [redacted] exclusive of fees. We will hold you to that representation in the future. We, of course, intend to comply with the obligations of the arbitration agreement. Perhaps we should engage an arbitrator to decide the threshold issue of whether you are entitled to the personnel files without providing authorizations. Also, we may want to take a one hour deposition of each of the individuals; please let us know their availability in the next several weeks. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Wednesday, August 31, 2011 12:02 PM
To: Faustman, David
Cc: Gallegos, Yesenia M.
Subject: RE: Settlement Offer

Again, your offer was not accepted by our clients, and of course it was communicated to them. We will not disclose any privileged communications with our clients. Your client has been sued for failing to produce their personnel records, which we believe was a tactic to cause further delay in their ability to prosecute their claims against your client. This issue ultimately will need to be addressed by the arbitrator since we are seeking penalties on behalf of our clients.

Best,

RP

From: Faustman, David [mailto:DFaustman@foxrothschild.com]
Sent: Wednesday, August 31, 2011 11:20 AM
To: Raul Perez
Cc: Gallegos, Yesenia M.
Subject: RE: Settlement Offer

I was not aware that our offer has been "previously rejected". Please confirm that the offer of [redacted] was specifically communicated to each of the people you now purport to represent individually. Also, as I have said before, we will be happy to produce personnel files upon receipt of an authorization to do so by any individual employee. It seems to me we should resolve these two issues before we get into the logistics of arbitration. --DFF

David F. Faustman

Attorney at Law

Fox Rothschild LLP

415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Wednesday, August 31, 2011 10:57 AM
To: Faustman, David
Cc: Gallegos, Yesenia M.
Subject: RE: Settlement Offer

Your offer was not accepted by any of our clients. You received the demand for arbitration, and proceedings have commenced. Please advise if your client intents to comply with its obligations under the arbitration provision. You will also be receiving demands from additional clients, as well as a request for their personnel files. Please note we will be amending the demand to include a claim for your client's failure to produce their personnel files and records within the time period required by the Labor Code. Please let us know if you want to schedule a time to discuss logistics and appointment of arbitrators. We also are open to discussing resolution but we trust you will stop making the same offer that has been previously rejected by our clients.

Best.

RP

From: Faustman, David [mailto:DFaustman@foxrothschild.com]
Sent: Wednesday, August 31, 2011 10:51 AM
To: Raul Perez
Cc: Gallegos, Yesenia M.
Subject: RE: Settlement Offer

Raul: We're still waiting for your response to our settlement proposal. Have any of the former drivers agreed to our offer? --DFF

David F. Faustman

Attorney at Law

Fox Rothschild LLP

415-364-5550

From: Faustman, David
Sent: Friday, August 19, 2011 12:58 PM
To: 'Raul Perez'
Cc: Gallegos, Yesenia M.
Subject: RE: Settlement Offer

We're in receipt of your Aug 18 letter in which you identify four new claimants. We will also need authorization from them personally in order to release their files. Finally, please confirm that you have communicated to them, and the others, our offer to settle their claims for [redacted]net). --DFF

David F. Faustman

Attorney at Law

Fox Rothschild LLP

415-364-5550

From: Faustman, David
Sent: Wednesday, August 17, 2011 12:52 PM
To: 'Raul Perez'
Subject: RE: Settlement Offer

I need to talk with the client, but I'm inclined to say that the [redacted]is net to the driver and exclusive of fees. We might be able to agree on a number for the fees depending upon how many drivers take the deal. Otherwise, I'd be inclined to have your fee petition heard by the judge rather than having to engage an arbitrator. What do you think? --DFF

David F. Faustman

Attorney at Law

Fox Rothschild LLP

415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Tuesday, August 16, 2011 6:24 PM
To: Faustman, David
Subject: Settlement Offer

Is your [redacted] per client offer inclusive of attorneys' fees/costs or exclusive? Would you stipulate to submitting a fee motion to the arbitrator?

Raul Perez ▫ Initiative Legal Group APC

1800 Century Park East ▫ 2nd Floor ▫ Los Angeles, CA 90067 ▫ 310.556.4881 direct ▫ 310.861.9051 facsimile

RPerez@InitiativeLegal.com ▫ www.InitiativeLegal.com

From: Faustman, David
Sent: Tuesday, August 02, 2011 3:43 PM
To: 'Raul Perez'
Cc: Suzy Lee; Melissa Grant; Samuel Levy; Frank Gatto; Art Meneses
Subject: RE: Demand For Arbitration-- CLS/Empire

Please assume that Fox Rothschild represents the suggested defendants. (I do not see, however, any good faith theory under which you can name Mr. Seelinger personally.) Are these 32 people you purport to represent members of the erstwhile class? Are they proposing to opt out out of the appeal? Are you proposing to consolidate the matters in front of one arbitrator? Are you seeking to initiate settlement discussions? Please let me know. In the meantime you may forward any demand letters to my Los Angeles office, and we will respond accordingly. Regards. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Tuesday, August 02, 2011 2:46 PM
To: Faustman, David
Cc: Suzy Lee; Melissa Grant; Samuel Levy; Frank Gatto; Art Meneses
Subject: Demand For Arbitration-- CLS/Empire

Our firm, Initiative Legal Group, represents 32 former and current employees of CLS/Empire (the "Company") who have retained us to prosecute their claims for various Labor Code violations against the Company. We will be seeking damages for, *inter alia,* 1) failure to pay overtime compensation; 2) failure to pay minimum wages; 3) failure to provide meal and rest periods; 4) failure to pay wages upon termination; 5) improper wage statements; 6) confiscation of gratuities; 7) failure to reimburse business expenses; and 8) violation of Business & Professions Code Section 17200, et seq. We will also be seeking penalties under the Labor Code, including, without limitation, the Private Attorneys General Act. We intend to file the claims with ADR, which is one of the arbitration forums authorized by the company's arbitration agreement. As you know, the company is responsible for paying all of the arbitrator's fees and costs in connection with the 32 actions that will be filed.

Our clients will be naming the following parties as defendants: 1) CLS Transportation of Los Angeles, LLC; 2) CLS Worldwide Services LLC; 3) Empire International, LTD; 4) Empire/CLS Worldwide Chauffered Services; 5) GTS Holdings; and 6) David Seelinger. Please advise by the end of the business day, Thursday, August 4, 2011, whether your firm

represents all of these related entities and individuals in connection with this dispute. If we do not hear from you by August 4, 2011, we will assume you do not represent the named defendants, and will serve the demand for arbitration directly on the companies and Mr. Seelinger.

As a courtesy notice, we also plan to file an additional 50 demands for arbitration for other former and current employees of CLS/Empire who want their claims for Labor Code violations handled by ILG. We will notify you in the future of the forum that our clients select for the next phase of arbitration.

Additionally, ILG will be expanding the scope of the litigation to include aggrieved employees on a national scale. Please also advise by this Thursday whether you firm is national counsel for the Company for wage and hour/FLSA claims, and whether your firm will be handling arbitrations across the country. If we do not hear from you by this Thursday, we will again assume you are not national counsel.

Nothing above shall constitute a waiver of any rights of appeal in the state action filed by Arshavir Iskanian and still pending before Judge Hess of the Los Angeles Superior Court; all rights expressly reserved.

We are available anytime this week if you want to discuss the above. Emails in the past have not been productive so we encourage you to call us or we can meet in person since we are in the same building.

Best,

Raul Perez ▫ Initiative Legal Group APC
1800 Century Park East ▫ 2nd Floor ▫ Los Angeles, CA 90067 ▫ 310.556.4881 direct ▫ 310.861.9051 facsimile
RPerez@InitiativeLegal.com ▫ www.InitiativeLegal.com

EXHIBIT P

Fox Rothschild LLP
ATTORNEYS AT LAW

1800 Century Park East, Suite 300
Los Angeles, CA 90067-1506
Tel 310.598.4150 Fax 310.556 9828
www.foxrothschild.com

Yesenia Gallegos
Direct Dial: (310) 598-4159
Email Address: ygallegos@foxrothschild.com

October 10, 2011

VIA FACSIMILE/FIRST CLASS MAIL

Adam Shoneck
Intake Specialist
American Arbitration Association
1101 Laurel Oak Road, Suite 100
Vorhees, NJ 08043
Fax: 877-304-8457

Re: Glen Alston, et al. v. CLS Transportation of Los Angeles LLC, et al.

Dear Mr. Shoneck:

We are in receipt of your letter of October 6, 2011, requesting that CLS Transportation of Los Angeles, LLC, CLS Worldwide Services, LLC, Empire International, Ltd., Empire/CLS Worldwide Chauffeured Services, GTS Holdings, Inc., and David Seelinger tender a non-refundable fee in the amount of $52,275.00 in the above referenced matter.

We do not at this time recognize the validity of the filings. All of the claimants are part of a class action that is currently on appeal. We have not received anything authoritative confirming that the claimants have opted out of the class, or that they even know that these demands to arbitrate have been made on their behalf. If the demands are genuine, they are IDENTICAL and the parties are IDENTICAL. The arbitrations, therefore, should be completely consolidated before a single arbitrator with a substantially reduced fee for the employer.

Very truly yours,

Yesenia Gallegos

EXHIBIT Q

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ARSHAVIR ISKANIAN, AN INDIVIDUAL,	)	
	)	
PLAINTIFF,	)	CASE NO.
	)	BC356521
vs.	)	
	)	
CLS TRANSPORTATION LOS ANGELES, LLC, A DELAWARE CORPORATION; CLS WORLDWIDE SERVICES, LLC, A DELAWARE CORPORATION; EMPIRE INTERNATIONAL, LTD, A NEW JERSEY CORPORATION; GTS HOLDINGS, INC., A DELAWARE CORPORATION AND DOES 1 THROUGH 10, INCLUSIVE,	)	
	)	
DEFENDANTS.	)	
	)	

DEPOSITION OF DOUGLAS B. TRUSSLER
TAKEN SATURDAY, MAY 16, 2009
LOS ANGELES, CALIFORNIA

Reported by Audra E. Cramer, CSR No. 9901

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ARSHAVIR ISKANIAN, AN INDIVIDUAL.)
)
PLAINTIFF,) CASE NO
) BC356521
vs)
)
CLS TRANSPORTATION LOS ANGELES, LLC.)
A DELAWARE CORPORATION, CLS WORLDWIDE)
SERVICES, LLC, A DELAWARE)
CORPORATION, EMPIRE INTERNATIONAL.)
LTD, A NEW JERSEY CORPORATION, GTS)
HOLDINGS, INC , A DELAWARE)
CORPORATION AND DOES 1 THROUGH 10.)
INCLUSIVE,)
)
DEFENDANTS)
_____)

DEPOSITION OF DOUGLAS B TRUSSLER, TAKEN ON BEHALF OF THE PLAINTIFF, AT 10 16 A.M SATURDAY, MAY 16, 2009, AT 1800 CENTURY PARK EAST, LOS ANGELES, CALIFORNIA, BEFORE AUDRA E CRAMER, C S R NO 9901, PURSUANT TO NOTICE

APPEARANCES OF COUNSEL

FOR PLAINTIFF
INITIATIVE LEGAL GROUP, LLP
BY: MATTHEW T THERIAULT, ESQUIRE
ORLANDO ARELLANO, ESQUIRE
1800 CENTURY PARK EAST
SECOND FLOOR
LOS ANGELES, CALIFORNIA 90067
(310) 556-5637

FOR DEFENDANTS:
FOX ROTHSCHILD LLP
BY: DAVID A. FAUSTMAN, ESQUIRE
1800 CENTURY PARK EAST
SUITE 300
LOS ANGELES, CALIFORNIA 90067
(310) 598-4150
dfaustman@foxrothschild com

INDEX

WITNESS
DOUGLAS B. TRUSSLER

EXHIBITS

LOS ANGELES, CALIFORNIA;
SATURDAY, MAY 16, 2009, 10:16 A.M.

DOUGLAS B. TRUSSLER,
having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. THERIAULT:

Q. Good morning. Could you state your name for the record, please.

A. Douglas, B, as in boy, Trussler.

Q. Mr. Trussler, my name is Matt Theriault, and I'm one of the attorneys that represents the plaintiff in this matter, Arshavir Iskanian. Do you know Mr. Iskanian?

A. I'd say that I've met him, but I wouldn't say I know him.

Q. Do you have any recollection of knowing him?

A. I would have met with all of the chauffeurs, so I would have met him, but I don't have any recollection of knowing Mr. Iskanian.

Q. Mr. Trussler, has your attorney explained the deposition procedure and what's going to occur today?

A. Generally speaking, yes.

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received.
MR. THERIAULT: All right. Let's mark another exhibit. This will be marked as Exhibit 2. I'll give you a copy, but I don't know if you want one Mr. Faustman since I'll represent to you that this is one of the packages that you provided me.
(Whereupon, Exhibit 2 was marked for identification.)
THE WITNESS: Did Mr. Iskanian give you his full pay statement?
BY MR. THERIAULT:
Q. Well, let me ask the questions, and then if there's something you don't understand about a question that I'm asking, you can ask me to clarify. Then later on if you feel there are questions, you can ask them for me, but really this is your deposition, not mine.
A. I can I understand how you didn't understand how he was being paid if you didn't receive all the information.
MR. THERIAULT: Move to strike as nonresponsive.
Let me put Exhibit 3 in front of you, which I'll represent is what your attorney provided me or CLS's attorney provided me on Friday.
(Whereupon, Exhibit 3 was marked

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for identification.)
BY MR. THERIAULT:
Q. Now, Exhibit 3 is what you're referring to as an audit in your summary of the findings; right?
A. Yes. If you'd like it in color it's a little easier to read.
Q. If I recall correctly, you said you were the CEO of CLS Transportation?
A. I was the CEO of CLS Transportation for the period October 2004 through February 2005. We were the controlling shareholder of CLS Worldwide Services for the period October 2004 through February 2005. In February 2005, CLS Worldwide Services the LLC was merged with Empire Chauffeur Transportation Services, a New Jersey Corporation. As a result of that merger we became a very large shareholder in the combined company.
Q. Did your --
A. My employment was at that point, I was superseded by David Sealinger who is now the CEO of the company.
Q. In February 2005, did you stop working for CLS?
A. I did. From that point forward I was only on the board of directors. My day-to-day responsibilities ended February 25th, 2005.
MR. THERIAULT: Let me hand you what's marked

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as Exhibit 4. It appears to be an application for employment at CLS for our client, at least during the time that he was hired.
(Whereupon, Exhibit 4 was marked for identification.)
THE WITNESS: I wouldn't have been involved in the day-to-day operations at this point in time.
BY MR. THERIAULT:
Q. Nonetheless, are you familiar with this document?
A. I'm familiar with the form, yes.
Q. Okay. Thank you. Now, is this a form that was used from 2004 on, if you know?
A. This form was changed when I took over the company at the end of 2004, I believe. Probably wouldn't have been rolled out until sometime in 2005.
Q. Does CLS from a period of 2004 through say 2006, did CLS require potential new hires to fill out an application similar to this?
A. I can't say that because I'm pretty sure we had a form that was very similar to this, but I don't know the specifics.
Q. Let me ask a more general question.
A. Okay.
Q. Does CLS require potential chauffeurs and

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drivers to fill out an application?
A. We have an application, yes.
Q. I see in the first page that you asked the applicant or CLS asked the applicant to print their cell number and phone number. For what purpose do you do that?
A. I imagine so we can get ahold of them. Is there another purpose that we would want a phone number?
Q. I'm just asking.
What I want to do is I want to spend a couple of minutes to understand the process of how the chauffeur actually works.
A. Sure.
Q. It might be helpful if we contrast it with another type of job because I don't think it's like this at all, but I could be wrong. But another job like a manufacturing job or services industry other than working as a chauffeur, for instance stay Starbucks, the schedule comes out a week in the advance; everyone knows where when they are working 8:00 to 5:00, 8:00 to 5:00, 8:00 to 5:00, et cetera, et cetera. Does CLS provide schedules to chauffeurs of the times that they are going to be working in the next week?
A. Not the times. But what people will do, people will have scheduled days that they will work. It looked

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

I, DOUGLAS B. TRUSSLER, hereby certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 2009, at _____, California.

_____
DOUGLAS B. TRUSSLER

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

I, AUDRA E. CRAMER, C.S.R. No. 9901, in and for the State of California, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting under my direction, and the same is a true, correct and complete transcript of said proceedings;

I further certify that I am not interested in the event of the action.

Witness my hand this ____ day of _____, 2009.

_____
Certified Shorthand
Reporter for the
State of California

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ERRATA SHEET FOR THE TRANSCRIPT OF:
Case Name: Iskanian vs. CLS
Dep. Date: May 16, 2009
Deponent: Douglas B. Trussler

Pg.	Ln.	Now Reads	Should Read	Reason

_____
Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME
THIS__ DAY OF_____, 2009.

_____
(Notary Public) MY COMMISSION EXPIRES:

David F. Faustman, SBN: 231852
Yesenia Gallegos, SBN: 231852
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067
Tel: 310.598.4150 Fax: 310.556.9828
dfaustman@foxrothschild.com
ygallegos@foxrothschild.com

Attorneys for Defendant,
CLS TRANSPORTATION LOS ANGELES LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

GREG KEMPLER, ADRIEN WARREN, ANANTRAY SANATHARA, ANGELO GARCIA, ARTHUR POST, AVAAVAU TOAILOA, BELINDA WASHINGTON,BENNETT SLOAN, BRUCE GOLD, CARL MUELLER, CARL SWARTZ, CASSANDRA LINDSEY, CLEOPHUS COLLINS, DANIEL ARAYA, DANIEL ROGERS MILLINGTON, JR., DAROLD CALDWELL, DAVID BARANCO, DAVID MONTOYA, DAWN BINGHAM, EDWARD SMITH, EDWIN GARCIS, ELIJHA NORTON, FLAVIO SILVA, FRANK G. DUBUY, GERALD GRIFFIN, GLEN ALSTON, IGOR KROO, JAMES C. DENISON, JAMES RICHMOND, JAMES STERLING, JERRY BOYD, JIRO FUMOTO, JOHNNIE EVANS, JONATHON SCOTT, JULIUS FUNES, KAREN BAILEY, KARIM SHARIF, KENNY CHENG, KUNG MING CHANG, LAMONT CRAWFORD, LEROY CLARK, LUIS EARNSHAW, MARCIAL SAZO, MARQUEL ROSE, MASOOD SHAFII, MATTHEW LOATMAN, MIGUEL DE LA MORA, MYRON ROGAN, NEIL BEN YAIR, PATER PAULL, PATRICK COOLEY, RAFAEL CANDELARIS, RAUL FUENTES, REGINALD COLWELL, ROBERT OLMEDO, ROGER PERRY, SCOTT SULLIVAN, STEVE MAYNARD, SUSAN STELLMAN, THOMAS MARTIN, WAYNE IKNER, WILLIAM BANKER, AND WILLIAM PINKERSON

Plaintiffs,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, a Delaware corporation and DOES 1 through 10, inclusive,

Defendants.

Case No. BC 473931

[Assigned to Hon. Robert L. Hess; Ordered Related to BC356521

DECLARATION OF YESENIA M. GALLEGOS, ESQ. IN SUPPORT OF DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR AN ORDER COMPELLING SPECIFIC PERFORMANCE OF INDIVIDUAL ARBITRATION OR, IN THE ALTERNATIVE, SETTING ASIDE THE ARBITRATION AGREEMENT

[Filed Concurrently with: Defendant's Opposition; and Declaration of David F. Faustman]

Date: February 7, 2012
Time: 8:30 a.m.
Dept.: 24

Date Complaint Filed: November 8, 2011
Trial Date: None

DECLARATION OF YESENIA M. GALLEGOS

I, Yesenia M. Gallegos, declare as follows:

1. I am an associate with the law firm of Fox Rothschild LLP, attorneys of record for Defendants in the above-captioned matter. I make this declaration in support of Defendant's motion for consolidation of arbitrations and motion for clarification of this Court's order of June 13, 2011. I further make this declaration of my own personal knowledge and if called as a witness to testify regarding matters stated in this declaration I would and could testify competently thereto.

2. On September 28, 2011, Iskanian's counsel also filed 63 individual demands for arbitration on behalf of former class members. Plaintiff's counsel, however, refuses to acknowledge that these 63 individuals have thus opted out of the class.

3. On October 12, 2011, I spoke with Raul Perez of Initiative Legal Group, counsel for Iskanian and former class action members. Iskanian's counsel claimed that if Empire/CLS refused to move forward with 63 individual arbitrations before 63 individually appointed arbitrators through the American Arbitration Association ("AAA"), and failed to pay AAA's non-refundable fee in the amount of $58,275.00, his office would file a motion for contempt of court and/or sanctions. I advised him that Empire/CLS preferred to consolidate the arbitrations, that the non-refundable fee was excessive, and that it was money that could be used to resolve the case if his office made a reasonable settlement demand. I also advised him to provide Empire/CLS with signed authorizations and it would turn over the former class members confidential payroll and personnel files. Mr. Perez said that in his years of experience he has never had to produce a signed authorization and was not going to start doing so now. We were unable to make any progress.

4. Subsequently, on October 12, 2011, Patrick Tatum of AAA office in Fresno, California, called me and advised me that AAA could not address Empire/CLS's procedural concerns (whether 63 demands for arbitration should be consolidated, and whether the new claims and the claims against David Seelinger are time-barred). Mr. Tatum explained that in order to address Empire/CLS's preliminary concerns, Empire/CLS would need to tender the non-

refundable fee in the amount of $58,275.00, $925.00 per individual, so that AAA could assign arbitrators to each case, at which time Empire/CLS could raise the preliminary issues to the assigned arbitrators. Mr. Tatum also advised me that Iskanian's counsel insisted on arbitrating 63 individual claims with 63 separately appointed arbitrators and was not amenable to any alternatives.

5. During the afternoon of October 12, 2011, Mr. Perez sent me correspondence containing a settlement demand on behalf of the 63 individuals seeking to arbitrate their claims. (A true and correct, but redacted version, of the settlement correspondence is attached hereto and incorporated herein as **Exhibit "R."**) Empire/CLS did not accept the settlement demand because the amount demanded was *greater than* the global settlement demand Mr. Perez made to settle the Iskanian class action months ago when the 63 individuals were still part of the Iskanian class action consisting of 183 class members.

6. Under AAA's Employment Arbitration and Mediation Procedures ("Employment Rules") each plaintiff must tender a non-refundable fee of $175.00, and the employer must tender a non-refundable fee of $925.00 per case.

7. On October 20, 2011, Adam Shoneck of AAA notified the parties that AAA was closing the 63 individual cases.

8. On October 27, 2011, CLS promptly filed a Motion for Consolidation. The earliest hearing date I was able to obtain was January 13, 2012.

9. On November 18, 2011, the 63 individuals seeking to arbitrate their claims filed a civil lawsuit alleging breach of contract and seeking specific performance, declaratory relief, or in the alternative, rescission of the arbitration agreement. That lawsuit is entitled *Kempler v. CLS Transportation Los Angeles, LLC* (Case No. BC473931) ("the *Kempler* case").

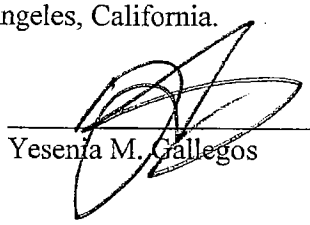
10. On December 16, 2011, this Court deemed the *Kempler* case related to the now decertified Iskanian case entitled *Iskanian v. CLS Trnasportation Los Angeles, LLC et al.* (Case No. BC356521).

11. Before CLS could even file a response to the *Kempler* case, on December 20, 2011, the Plaintiffs in the *Kempler* case filed an *ex parte* application seeking leave to have

Plaintiffs' Motion to Compel Specific Peformance heard immediately. The Court denied Plaintiffs *ex parte* application and CLS agreed to continue the hearing date on its Motion for Consolidation from January 13 to February 7, 2012 so that both motions could be heard on the same day.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed January 25, 2012, at Los Angeles, California.



Yesenia M. Gallegos

EXHIBIT R

Gallegos, Yesenia M.

From: Raul Perez [rperez@initiativelegal.com]
Sent: Wednesday, October 12, 2011 12:54 PM
To: Gallegos, Yesenia M.
Cc: Samuel Levy
Subject: FW: CLS/Empire Settlement Communication

REDACTED

Please consider this a confidential settlement communication.

Below is the last communication regarding settlement. Please note we current represent 63 clients who filed claims to arbitrate (Mr. Iskanian remains a client but did not file for arbitration pending his appeal).

I agree that the parties should resume efforts to resolve this matter. I would like to outline the costs of arbitration that your client can expect to pay if these claims are arbitrated in the hopes that we can reach a settlement that is in the best interest of all parties.

In addition to the $58,275 non-refundable filing fee that your client must pay to AAA by Monday, October 17, 2011 as indicated in AAA's letter acknowledging receipt of Plaintiffs' demands, there are significant other costs that will be borne by your client if no settlement is reached.

Each arbitration hearing will take about two (2) days, plus one (1) additional day for the arbitrator to preside over any disputes that arise throughout the process and to issue the written opinion, for a total of 3 days of arbitration, or 24 total hours (8 hrs/day x 3 days).

Since the arbitration agreement requires only retired judges to be appointed, you can expect that the arbitrator fees will range from $400/hr to $625/hr. Given the estimated 24 hours it will take to resolve each dispute in arbitration, the arbitrator's hourly fee will be between $9600 and $15000 per dispute. For 63 clients, the total arbitrators' fees will be between $604,800 and $945,000. Pursuant to section 16(h) of your client's arbitration agreement, this amount is to be paid by your client. We will not agree to any consolidation, especially since your client has refused to allow us to proceed on any class-wide or representative basis.

In addition, AAA charges hearing fees of $300/day under Rule 48(ii) of the AAA rules. Given the 63 individual arbitrations and the 2 days it will take to resolve each claim, an additional cost of $37,800 will be due ($300/day x 2 days x 63). Again, pursuant to your client's arbitration agreement and AAA rules, these costs are to be paid by your client.

Furthermore, AAA charges $200/day for the hearing room rental. Again, given the 63 individual arbitrations and the 2 days it will take to resolve each claim, an additional cost of $25200 will be due (200/day x 3 days x 63). As stated before, pursuant to your client's arbitration agreement and AAA rules, these costs are to be paid by your client.

Thus, without even considering the amount of our clients' claims, our attorney's fees or defense fees, your client is facing fees and costs between $726,075 and $1,066,275, as follows:

Non-Refundable Filing Fee:	$58,275
Arbitrator Hourly Fees:	$604,800 to $945,000
AAA Hearing Fees:	$37,800
AAA Hearing Room Rental Fee:	$22,500
	$726,075 to $1,066,275

Total costs and fees will only increase significantly if our clients receive favorable judgments and an award of attorney's fees. As we have discussed before, our firm has made a significant investment in represent our clients, and we assume that attorney's fees continue to mount for your client as well. In addition, Mr. Iskanian's appeal continues and we are confident that a favorable decision in that case will ultimately be reached for him, as has happened recently in the *Brown v. Ralphs* case which we litigated.

However, as has been the case from the very beginning, we remain open to negotiations and settlement. That being said, the ball is in your client's court. If your client wants to avoid spending what could amount to over a million dollars in arbitration fees and costs alone, exclusive of the value of our clients' claims and attorney's fees, and instead put that money towards a meaningful settlement offer for our clients, we would be willing to negotiate in good faith.

Best,

Raul

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Thursday, August 11, 2011 4:46 PM
To: Faustman, David
Cc: Samuel Levy
Subject: RE: CLS/Empire Demand for Arbitration

(1) $[redacted] (2) 45 drivers are ready to arbitrate, with another 36 in pipeline. Obviously, I consider these email exchanges to constitute efforts to resolve their claims and therefore confidential.

From: Faustman, David [mailto:DFaustman@foxrothschild.com]
Sent: Thursday, August 11, 2011 4:13 PM
To: Raul Perez
Cc: Samuel Levy
Subject: RE: CLS/Empire Demand for Arbitration

I'm sorry, I may not have been clear. Let's try this:(1) What is your settlement demand? (2) on behalf of how many drivers? --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to this action; my business address is:

235 Pine Street, Suite 1500, San Francisco, CA 94104.

On July 1, 2013, I served the following documents:

- **RESPONDENT'S OBJECTION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; APPENDIX OF EXHIBITS VOLUME I, TABS 1-2;**
- **APPENDIX OF EXHIBITS TO RESPONDENT'S OBJECTIONS TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE VOLUME II, TABS 3-4; and**
- **APPENDIX OF EXHIBITS TO RESPONDENT'S OBJECTIONS TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE VOLUME III, TAB 5** on the interested parties in this action by sending true and correct copy thereof in sealed envelopes to:

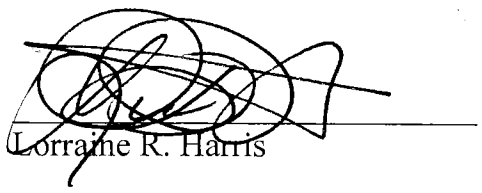
SEE ATTACHED SERVICE LIST

[X] **BY PERSONAL SERVICE**: I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[X] **BY OVERNIGHT DELIVERY**: I am readily familiar with the firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The package are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 1st day of July 2013 at San Francisco, California.



Lorraine R. Harris

SERVICE LIST

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Public Citizen Litigation Group Scott L. Nelson, Esq. (Pro Hac Vice) 1600 20th Street, NW Washington, DC 20009	**Attorneys for:** **Plaintiff/Appellant Arshavir Iskanian**
Appellate Coordinator Office of the Attorney General Consumer Law Section 300 South Spring Street Fifth Floor, North Tower Los Angeles, CA 90013	Office of the Attorney General
Office of the District Attorney County of Los Angeles Appellate Division 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney of the county in which the lower proceeding was filed.
The Honorable Judge Robert Hess Department 24 c/o Clerk of the Court Los Angeles Superior Court 111 N. Hill Street Los Angeles, CA 90012	
California Court of Appeal Second Appellate District, Div. 2 300 S. Spring Street North Tower, 2nd Floor Los Angeles, CA 90013	