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; APPENDIX OF EXHIBITS VOLUME II, TABS 3-4

DAVID F. FAUSTMAN
(SBN 081862)
YESENIA M. GALLEGOS
(SBN 231852)
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, California 90067
Phone: (310) 598-4150
Fax: (310) 556-9828

LEO V. LEYVA,
(admitted pro hac vice)
COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Court Plaza North
25 Main Street
Hackensack, NJ 07601
Phone: (646) 563-8930
Fax: (201) 678-6294

Attorneys for Defendant and Respondent
CLS Transportation Los Angeles, LLC

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; APPENDIX OF EXHIBITS VOLUME II, TABS 3-4

DAVID F. FAUSTMAN
(SBN 081862)
YESENIA M. GALLEGOS
(SBN 231852)
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, California 90067
Phone: (310) 598-4150
Fax: (310) 556-9828

LEO V. LEYVA,
(admitted pro hac vice)
COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
Court Plaza North
25 Main Street
Hackensack, NJ 07601
Phone: (646) 563-8930
Fax: (201) 678-6294

Attorneys for Defendant and Respondent
CLS Transportation Los Angeles, LLC

TABLE OF CONTENTS
APPENDIX OF EXHIBITS TO CLS TRANSPORTATION LOS ANGELES, LLC'S REQUEST FOR JUDICIAL NOTICE

DAVID FAUSTMAN, SBN 081862
YESENIA GALLEGOS, SBN 231852
NAMAL TANTULA, SBN 247373
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, California 90067-3005
Tel 310.598.4150 / Fax 310.556.9828
dfaustman@foxrothschild.com
ygallegos@foxrothschild.com
ntantula@foxrothschild.com

Attorneys for Defendant,
CLS Transportation Los Angeles LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GREG KEMPLER, et. al,

Plaintiffs,

vs.

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

Defendants.

CASE NO. BC473931

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

OPPOSITION TO PLAINTIFFS' MOTION RE WAIVER OF ARBITRATION; DECLARATION OF DAVID FAUSTMAN

Complaint filed: November 18, 2011

Date: November 6, 2012
Time: 8:30 a.m.
Dept.: 24

TABLE OF CONTENTS

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

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

STATE CASES

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

TABLE OF AUTHORITIES CONTINUED

Page(s)

STATE STATUTES

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

I. INTRODUCTION

As the Court is undoubtedly aware, this dispute between 63 limousine drivers and their former employer is subject to an arbitration agreement. The parties have been unable to agree on the arbitrator(s), and have been an impasse for sometime on the issue. Plaintiffs' Counsel has repeatedly threatened Defense Counsel with contempt proceedings and sanctions if they filed a motion with the Court to appoint the arbitrators. That Motion has been filed. Plaintiffs' counsel is now attempting to interpret this disagreement as a "waiver" of the arbitration process, demonstrating once again that it is not, and never was Plaintiffs' intention to engage in separate arbitrations.

Plaintiffs' Counsel originally insisted on forcing Defendant to hire 63 separate arbitrators, and declined to participate in the meet and confer process, suggested by the Court, in an obvious attempt to raise enormously the prospective cost of these arbitrations (all which must be borne by Defendant) in order to create leverage.

Additionally, Defendant made settlement offers of $1,000 to each of the 63 purported claimants pursuant to C.C.P. § 998. That amount is considerably more than the potential value of many of the claims, particularly since the Supreme Court's decision on meal breaks in the *Brinker* case. Plaintiffs' Counsel took the absurd position that such offers were not valid until Defendant paid the $925 filing fee to the AAA for each of 63 cases, again in an effort to drive up costs. The Defense asked for a 30-day delay in tendering the filing fees to AAA during which the written settlement offers could be sent to and considered by the claimants; Defendant would then pay the filing fees on those claims that did not settle and which would actually go forward. Plaintiffs' Counsel flatly rejected that suggestion, showing once again that his only motive is to drive up the costs. Defendant has now paid the AAA fees, but Plaintiff still insists on multiple arbitrators. Defendant does not believe that the settlement offers were ever communicated in writing to the 63 claimants, but is still willing to live by its § 998 offers.

At the status conference in this case on June 13, 2012, the Court suggested that the parties agree on four arbitrators to hear all of the cases. Defendant immediately agreed. Plaintiffs' counsel refused, and threatened to seek sanctions if Defendant sought judicial intervention.

Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067
310.598-4150
310 556-9828

Plaintiff eventually lowered his demand to ten separate arbitrations, still far to many for an efficient resolution of these cases. Plaintiff has now manufactured an "agreement" with respect to a subset of cases, and claims that Defendant has refused to honor the so-called agreement and has thus "waived" the arbitrations. The facts do not support this contention, and the argument for "waiver" is pure nonsense. It is simply preposterous to suggest that Defendant "agreed" to have three arbitrators handle 19 cases, leaving the other 44 cases still in dispute. Defendant even agreed to have one of the those three arbitrators hear 15 cases as an interim solution. Plaintiff declined, apparently preferring to play out the gambit of waiver.

Defendant respectfully requests that the Court put an end to this disingenuous game, deny Plaintiffs' motion, and appoint four retired judges to hear all of these cases.

II. FACTS

A. The Arbitration Agreement

While the arbitration agreement is governed in most respects by the American Arbitration Association ("AAA") rules, the agreement clearly **does not** follow AAA rules for selecting an arbitrator. (Declaration of David Faustman ("Faustman Dec."), ¶2 , Ex. 1). Rather, the agreement contains a specific procedure for the choice of an arbitrator, including appointment by the Court if the parties are unable to agree:

> "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,...the Parties...agree that a neutral arbitrator (who shall be a retired judge) shall be... appointed in the manner provided under the California Arbitration Act....**"

(Ex. 1) (emphasis added)).

Plaintiffs' Counsel has refused to follow this procedure.

B. The Statute

The California Arbitration Act is found in Code of Civil Procedure Section 1281, *et seq.* Section 1281.6 (Appointment of Arbitrator) reads:

> "If the arbitration agreement provides a method of appointing an arbitrator, that method shall be followed...**In the absence of an agreed method, or if the**

Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067
310 598-4150
310 556-9828

agreed method fails..., the court, on petition of a party... shall appoint the arbitrator."

C. C. P. § 1281.6 (emphasis added).

The use of the term "shall" suggests that the Court is required to appoint an arbitrator when the parties are unable to agree.

C. **Procedural History**

On February 7, 2012, this Court granted a motion to compel arbitration (which Defendant did not fundamentally oppose), deferred a motion to consolidate for decision by an arbitrator, and declined to grant Defendant's motion for appointment of an arbitrator because the Court was "not persuaded that selection of arbitrators has proceeded to impasse." (Faustman Dec., ¶3, Ex. 2). As set forth below, the process has now proceeded to impasse. Defendant is seeking four arbitrators to hear all of the cases. Plaintiffs steadfastly insist on ten separate arbitrators, and refuse even to discuss the appointment of one interim arbitrator (as suggested by the Court) to decide threshold issues such as consolidation, filing fees, and common legal issues. Additionally, the validity of Defendant's settlement agreements should be evaluated by the arbitrator. Defendant has been diligent in attempting to move these cases to arbitration; there has been no waiver.

1. **The Court's Guidance**

At the hearing on February 7, 2012, the Court strongly suggested "a meet and confer between the parties, perhaps with the assistance of [an] arbitrator." (Ex. 2). The Court further admonished, "You ought to be able to get together with an official arbitrator... and sit down and work out time effective, cost effective procedures for handling these things," and suggested the parties "do one filing fee, pick an arbitrator, and figure [it] out." (Faustman Dec., ¶4, Ex. 3, 19:4-5). Defendant has been willing to do this; Plaintiff refused.

///

///

///

///

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

2. **Plaintiffs' Counsel Immediately Rejects an Invitation to Meet and Confer.**

Minutes after the hearing on February 7, 2012, in the hall outside Department 24, Plaintiffs' Counsel emphatically rejected the suggestion that the parties engage an arbitrator to assist with the meet and confer process, or to deal with threshold and common issues. (Faustman Dec., ¶5).

3. **Defense Counsel Reaches Out Again.**

On February 27, 2012, Defense Counsel sent a letter to Plaintiffs' Counsel reminding him that Judge Hess "stated that he thought 63 arbitrations with 63 different arbitrators would be an unwise use of time and resources that neither of us should welcome." Further, the Judge "was strongly suggesting (if not directly ordering) that the parties meet and confer about choosing one arbitrator to deal with threshold issues, including consolidation, payment of fees and common issues..." Mr. Faustman implored, "I invite you to join in that process," and asked Mr. Perez to forward "a short list of retired judges" from which "I am sure we can agree on one to arbitrate the threshold issues." (Faustman Dec., ¶6, Ex. 4). On March 2, 2012, Mr. Perez flatly rejected the overture to meet and confer, stating *erroneously* that AAA rules require different "arbitrators for each and every arbitration." (Faustman Dec., ¶7, Ex. 5). Defense Counsel responded: "[W]e are disappointed in your refusal to meet and confer...You are still insisting on 63 separate filing fees (c.$60,000) and the engagement of 63 separate arbitrators (untold thousands of dollars). Respectfully, I do not believe that this is what Judge Hess intended... I hope you will reconsider your position, and work with us to come up with an efficient way to handle these cases." (Faustman Dec., ¶8, Ex. 6). Plaintiffs' Counsel's response was instructive on the true motivation for the refusal to cooperate.

4. **Plaintiffs' Counsel Demands "Class Wide Arbitration."**

Tipping his hand as to the real motive in all of this, Plaintiffs' Counsel then offered to drop his insistence on the exorbitant costs of 63 filing fees and 63 separate arbitrators if only the Defense would agree to reinstate the entire class of approximately 200 persons previously

Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067
310 598-4150
310 556-9828

dismissed by the Court. Plaintiffs' Counsel stated, **"If you and your client are not willing to participate in class wide arbitration, our clients will exercise their rights to have their claims heard individually...and select their own arbitrators"** and **"by agreeing to class wide arbitration...your client would not have to pay the $58,275 in filing fees...."** (Faustman Dec., ¶9, Exs. 7-8). Thus, Plaintiffs' Counsel was not really concerned about the merits of the 63 cases, or the efficient handling of those cases, but rather, how the specter of the cost of those cases can be used to return Plaintiffs' Counsel to the promised land of a class action. The attempt here to leverage the Defendant could not be more blatant. Now, Plaintiffs' Counsel is attempting to parlay his intransigence into a supposed "waiver."

5. **The Defense Offers to Settle Each Case for the Approximate Amount of the AAA Filing Fee ($1,000).**

On March 11, 2012, Defense Counsel wrote: "We will be sending you this week section 998 settlement offers for the equivalent amount of the filing fee [$1,000, exclusive of attorneys' fees], and we request and expect that you will confirm to AAA that the offers have been sent to the 63 individuals and specifically accepted or rejected. Finally, we assume that you (again) have rejected our suggestion to have one arbitrator appointed to hear each of the individual cases that exist and don't settle, and that we are at impasse on that issue." (Faustman Dec., ¶10, Ex. 9). The 63 settlement offers were subsequently delivered to Plaintiffs' Counsel. Defense Counsel added, "We think it makes sense to offer your clients the $1,000 rather than give it to the AAA." (Faustman Dec., ¶11, Exs. 10, 11). Finally, Defense Counsel said:

> "We will ask AAA to keep the cases open until you inform them and us which of your clients have rejected our settlement offer. We will then pay the fees on those remaining cases and move forward. We believe this is in compliance with the Court's order. In the meantime, there is nothing that prevents you from engaging in the attempt to agree on the arbitrator(s). Your insistence that we must 'pay up' before you will discuss choosing arbitrators is not reasonable.... [I]t seems obvious that you will never agree to one arbitrator to hear all of the remaining cases as we have suggested." (Ex. 10).

To date, Plaintiffs' Counsel has refused to confirm that the written settlement offers have been sent to the 63 supposed claimants.

Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067
310 598-4150
310 556-9828

6. Plaintiffs' Counsel Contends the Settlement Offers are Not Valid

Defendant delivered to Plaintiffs' Counsel 63 formal settlement offers pursuant to C.C.P. § 998 (Ex. 11). Plaintiffs' Counsel immediately contended that the offers were not valid unless Defendant *first* paid the AAA filing fee on each of the purported 63 cases, (Faustman Dec., ¶14, Ex. 14). Defendant responded:

> "Mr. Perez: We are in receipt of your letter of March 14. We obviously disagree with your characterization that we are in contempt of Judge Hess' order. In compliance with his directive, we are trying, with no help from you, to find a reasonable way of dealing with these cases. Offering the amount of the filing fee to each of your clients (whose potential claims may be far less than $1,000) to settle seems to us a step in that direction. I infer from your letter, however, that you are refusing to communicate our settlement offers to your clients. I hope you will reconsider that position."

(Faustman Dec., ¶15, Ex. 15).

Then Defense Counsel made the following proposal:

> "Let's agree to hold off on requiring the filing fees for 30 days until we know which of the 63 claimants refuse the offer and signify that they intend to show up for an arbitration in Los Angeles. CLS will then tender the fees for the remaining cases. The company fully intends to honor the arbitration agreements, but it just seems silly to require my client to pay a $1,000 fee on cases that may settle or otherwise not go forward. At that point we can go back to Judge Hess to settle the impasse on the issue of one arbitrator v. multiple arbitrators."

Plaintiffs' Counsel responded the only option was to agree to "our proposal for class-wide arbitration," otherwise "there is nothing left to discuss until your client pays the fees...." (Faustman Dec., ¶16, Ex. 16). Plaintiffs' Counsel later made the dubious representation that everyone of the 63 Plaintiffs had rejected the settlement offer. Defense Counsel responded "we'll take your response to my email of earlier [Ex. 15] as a complete rejection of the proposal contained therein." (Faustman Dec., ¶17, Ex. 17). There was no further response from Plaintiffs' Counsel. (Faustman Dec., ¶18). Defendants paid the AAA fees under protest.

///

///

///

Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067
310 598-4150
310 556-9828

7. An Impasse Is Reached.

On March 11, 2012, Defense Counsel had clarified, "We are at impasse, and it seems time to revisit the issue with Judge Hess." (Faustman Dec., ¶12, Ex. 12). On March 12, 2012, Defense Counsel wrote, "The arbitration agreement has its own procedure for choosing an arbitrator; it says we must agree on a retired judge, and if we can't the court will decide. We have requested that you supply some names. We would likely agree to any retired judge you choose, but you have refused to engage in that process. We are at impasse." (Ex. 10). Mr. Perez then accused Defense Counsel of attempting to "fabricate" an impasse, lamely demanding that the parties "follow the rules," without explaining how "the rules" had not been followed. The Defense responded: "We are not trying to fabricate anything. The arbitration agreement does not invoke AAA rules for the selection of an arbitrator. Section "d" of that agreement sets out the procedure for choosing a retired judge and invokes the California Arbitration Act procedure for appointment by a judge if the parties cannot agree. We have attempted to comply with that section; you have refused." (Faustman Dec., ¶13, Ex. 13).

The Parties are still at impasse. Recently, in attempt to move these cases along, Defendant tendered the filing fees to AAA with the expectation of a refund when the cases were consolidated. (Faustman Dec., ¶18).

Still playing the game, Plaintiff then asked ADR Services for lists of potential arbitrators for 63 separate cases. (Faustman Dec., ¶20). AAA provided a list of retired judges from its arbitration panel. Defendant responded that four of the judges would be acceptable. Plaintiff did not respond. (Faustman Dec., ¶19).

Plaintiff's Counsel also stated unilaterally that the parties were somehow bound to follow the ADR rules for striking arbitrators (Faustman Dec., ¶21), which is of course contrary to explicit term of the arbitration agreement requiring appointment by the Court if the parties cannot agree. Plaintiffs could no longer maintain the charade that the parties are not at impasse.

///

///

///

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

8. Plaintiffs' Counsel Invents an Agreement.

At the status conference on June 13th, the Court suggested that the parties agree on four arbitrators (two for Southern California and two for Northern California) to hear all of the cases. Defense counsel immediately agreed. (Faustman Dec., ¶22). In his letters of June 12th and June 25th, Mr. Perez unilaterally set forth an arbitration schedule involving 10 different arbitrators, still insisting on a "separate hearing" for each claim. He falsely asserted an "agreement," and said his proposal "should conclude the arbitration process." (Perez Exs. J and M). Those proposals were specifically rejected (Faustman Dec., ¶¶23, 25). There was no agreement. Mr. Perez threatened Mr. Faustman with sanctions (once again) for suggesting that the parties were at impasse. (Faustman Dec., ¶24). On July 6th, Defendant proposed the following four judges to hear all of the cases: Romero, Zebrowski, Murphy and Stein. (Faustman Dec., ¶26). Plaintiffs did not respond. Instead they mis-represented to AAA that there was an "agreement" with respect to 14 claimants. (Faustman Dec., ¶ 27). Now they falsely assert there was "agreement" with respect to 19 claimants that has somehow led to a "waiver." The Motion (p. 5) states falsely "the parties have come to an agreement and have selected arbitrators for 19 of the 63 claimants" citing the Perez Declaration, ¶ 34 which merely recites: "the Parties have come to an agreement and have selected arbitrators for 19 of the 63 claims." Mr. Perez' wishful thinking is not evidence. There is no evidence cited to support such an agreement. The documentary evidence submitted herewith is directly contrary to this fabricated "agreement."

9. The Defense Suggests An Interim Solution.

One of the judges proposed in Plaintiffs' group of ten was Judge Romero. Defense Counsel wrote on September 8th: "The closest we have come to agreement on anything is your suggestion of 12 claimants for Judge Romero...[L]et me suggest that if you can add three or four more claimants to the Romero group, we could notify AAA and move forward with that batch asap, and agree to disagree on the rest for now." Plaintiffs' counsel never responded, apparently preferring the tactic of arguing that the Defense has "waived" the arbitrations of those 12 claimants unilaterally proposed by Plaintiffs for Judge Romero. (Faustman Dec. ¶ 28).

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

III. LEGAL ARGUMENT

A. There Is No Waiver.

There are no facts to establish that Defendant (1) agreed to three arbitrators to hear only 19 cases (2) repudiated that agreement or (3) waived its right to compel arbitrations. There is no law that supports the argument for waiver. It appears that Plaintiff never really wanted to arbitrate these cases; now has concocted the "waiver" argument to avoid arbitration.

1. Waiver Is Highly Disfavored.

"[California] law, like the FAA, reflects a strong public policy favoring arbitration agreements." *Saint Agnes, Med. Ctr. v. PacificCare of Cal.* (2003) 31 Cal. 4th 1187, 1195 ("*Saint Agnes*"). "**[W]aivers are not to be lightly inferred and the party seeking to establish a waiver bears a heavy burden of proof.**" *Id.* "[A]ny doubts...should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp.* (1983) 460 U.S. 1, 24. Whether a party has waived arbitration is an issue of fact. *Engalla v. Permanente Med. Grp., Inc.* (1997) 15 Cal. 4th 951, 983. Waivers only occur if a party: (1) previously took steps inconsistent with an intent to arbitrate, (2) unreasonably delayed in seeking arbitration, or (3) acted in bad faith or with willful misconduct. *Saint Agnes,* 31 Cal. 4th at 1196; *Keating v. Super. Ct.* (1982) 31 Cal. 3d 584, 605. "Mere delay...without some resultant prejudice to a party, cannot carry the day." *Keating,* 31 Cal. 3d at 605; *Christensen v. Dewer Dev.* (1983) 33 Cal. 3d 778, 782.

2. Defendant Did Not Repudiate Any Agreement With Plaintiff, And There Is Absolutely No Evidence of Bad Faith. Waiver Is Improper.

During arbitration, waiver is only appropriate if: 1) there is an agreement between the parties that was breached, and 2) there was bad faith or "misfeasance." For example, in *Engalla,* the Court stated "**when delay in choosing arbitrators is the result of reasonable and good faith disagreements between the parties, the remedy for such a delay is a petition to the court to choose arbitrators under section 1281.6, rather than evasion of the contractual agreement to arbitrate. The burden is on the one opposing the arbitration agreement to prove to the trial court that the other party's dilatory conduct rises to such a level of misfeasance as to**

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

constitute waiver." 15 Cal. 4th at 984. In that case, a hospital failed to diagnose a patient's lung cancer, who became terminally ill, and demanded arbitration for the misdiagnosis. The arbitration agreement stated that each side "shall" designate a party arbitrator within 30 days of service of the claim and that the two party arbitrators "shall" designate a third, neutral arbitrator within 30 days thereafter. *Id.* Plaintiff's counsel informed Kaiser repeatedly that plaintiff was terminal, and wrote more than a dozen letters requesting Kaiser to select an arbitrator. *Id.* at 965. By the time the hospital responded, it was 144 days later, and plaintiff had died. On those facts, the Court found misfeasance and waiver.

Unlike *Engalla*, Defendant in this case did not breach any agreement or act in bad faith. First, Defendant did not agree to proceed with three arbitrators on 19 cases and it is nonsensical that Defendant would have done so because that would have left 44 cases in dispute. Second, there is absolutely no evidence of bad faith or prejudice. In fact, Defendant agreed to have one of those three arbitrators hear 15 cases as an interim solution, and has consistently tried to work with Plaintiff to select arbitrators. Thus, a finding of waiver would be improper.

The two cases cited by Plaintiff demonstrate that waiver is only proper when there has been a breach of an express agreement and acts of bad faith. For example, in *Cinel v. Barna* (2006) 206 Cal. App. 4th 1383, both plaintiff and six defendants agreed to pay the arbitrator "equally." *Id.* at 1386-1387. Plaintiff did not pay the fees, and only two of the six defendants paid the fee. *Id.* The plaintiff suggested that the two paying defendants pay the pro-rata share of the remaining fees, and the two paying defendants refused to do so. *Id.* As AAA did not receive the full payment of fees, AAA terminated the proceedings. *Id.* The Court held that the parties waived arbitration by refusing to pay the fee. In *Cinel*, the parties had expressly agreed to pay the fee, and then failed to abide by their own agreement. Similarly, in *Sink v. Aden Enterprises, Inc.* (2003) 352 F.3d 1197, 1199, "under the arbitration contract between [plaintiff, defendant, and the arbitrator, the defendant] was required to pay the costs of arbitration by August 6, 2001." Defendant, however, did not pay by the due date, did not provide notice that it could not pay, and did not try to make an alternative payment arrangements. *Id.* The Court held that defendant defaulted in payment, and thereby they were not entitled to go back to arbitration. *Id.* at 1201-

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

1202. In stark contrast to *Cinel* and *Sing*, here the fees have been paid and the Defense has been diligent in seeking an efficient solution. The parties never agreed that three arbitrators would hear only 19 cases. Defendant therefore has not repudiated anything, and there is no waiver. Moreover, there is no evidence of unreasonable delay or bad faith. Indeed, Defendant has been trying to pursue arbitration since 2007, filed two motions to compel arbitration, and has not acted inconsistently with its intent to arbitrate. By filing this motion, Plaintiff, however, is trying to avoid arbitration. Therefore, waiver is simply not applicable.

3. In Any Event, Plaintiff Has Failed To Establish "Prejudice."

The California Supreme Court has made clear that "mere delay in seeking a stay of the proceedings without some resulting prejudice to a party [citation] cannot carry the day." *Christensen*, 33 Cal. 3d at 782, *citing Keating*, 31 Cal. 3d 584. Still, to establish "prejudice," Plaintiff must clearly show that the purported "delay" resulted in lost evidence, disclosure of information in the course of discovery not otherwise available in arbitration, or in some other prejudicial act. *Saint Agnes*, at 1204; *Davis v. Cont. Airlines, Inc.* (1997) 59 Cal. App. 4th 205 (holding defendants unreasonably delayed compelling arbitration in order to take advantage of court discovery procedures to learn plaintiff's strategies, evidence and witnesses and to pin plaintiff down to a particular version of the facts when defendants obtained 1,600 pages of documents from plaintiff in 86 categories, took two days of plaintiff's videotaped deposition, and obtained other discovery that would not have otherwise been available to defendant in arbitration).

Here, Plaintiff has failed to plead prejudice or demonstrate any prejudice. Indeed, during the time period in which Defendant has been trying to get Plaintiff to select four arbitrators as the Court suggested, there is no suggestion that any evidence has been lost, that Defendant has gained any advantage from the delay, or that Plaintiffs have been harmed in any way. Indeed, Plaintiffs' Counsel's intransigence has caused the delay. Accordingly, Plaintiff has not demonstrated prejudice.

B. The Court Should Appoint the Arbitrators.

An impasse is reached once there is substantial delay, and further efforts to select an arbitrator would be futile. *Engalla v. Permanente Medical Group Inc.* (1997) 15 Cal. 4th 951, 965-967. *Cook v. Superior Ct.* (1966) 240 Cal. App. 2d 880, 884-885, 887 ("Section 1281.6 was designed to remedy just such an impasse").

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

The nature of the impasse is clear. Plaintiffs' Counsel is stubbornly insisting on ten different arbitrators; the Defense is insisting on four arbitrators as suggested by the Court. There apparently can be no agreement on this point. Indeed, Plaintiffs' Counsel has refused for months to even consider the appointment of one arbitrator to deal with the threshold issues, even in the face of the Court's directive to do so.

Arbitration agreements, like any other contract, must be interpreted according to their plain meaning. Cal. Civ. Code § 1644 (words in a contract "are to be understood in their ordinary and popular sense"); *Powers v. Dickson, Carlson & Campillo* (1997) 54 Cal. App. 4th 1102, 1111-1112.

The arbitration agreement at issue here, pursuant to the plain meaning of its terms, requires that the California Arbitration Act govern the process of selecting the arbitrator(s) – *i.e.*, the Court must appoint an arbitrator if the parties cannot agree.

As the plain meaning of Arbitration Agreement (Section 16d) states, and Plaintiffs' Counsel concedes, if an impasse is reached, an arbitrator must be appointed under the provisions in the California Arbitration Act. If "the parties cannot agree on the procedure to appoint an arbitrator, the remedy is to be found in Code of Civil Procedure section 1281.6." *Lewis v. Merrill Lynch, Pierce, Fenner & Smith* (1986) 183 Cal. App. 3d 1097, 1107; *Titan/Value Equities Group v. Superior Court* (1994) 29 Cal. App. 4th 482, 487. Section 1281.6(a) states that "the court, on petition of a party...**shall** appoint the arbitrator." (emphasis added). To do so, the court must first nominate five arbitrators, and then if the parties still fail to select "an arbitrator... the court **shall** appoint the arbitrator from the nominees." C. C. P. § 1281.6(b) (emphasis added).

IV. CONCLUSION

The Court should reject Plaintiffs' fanciful contention the Defendants agreed to, reneged on, and then waived 19 arbitration cases. Plaintiffs' Counsel is insisting on unreasonable procedures for handling these purported 63 arbitration cases. The motive for this unreasonable insistence is now clear. Plaintiffs' Counsel does not want to arbitrate. He wants to revive his class action (notwithstanding this Court's rejection of that class), and has used the huge cost of multiple arbitrations to leverage a stipulation to do so. Now he wants to transform this impasse,

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

that he caused into a waiver. The Court should end this nonsense, reject the "waiver," and appoint the arbitrators pursuant to C.C.P. § 1281.6.

Dated: October 24, 2012

FOX ROTHSCHILD LLP

By: _____

David Faustman
Yesenia Gallegos
Namal Tantula
Attorneys for Defendant
CLS Transportation Los Angeles LLC

Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067
310 598-4150
310 556-9828

EXHIBIT 1

EMPIRE / CLS ARBITRATION AGREEMENT

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: ARSNAVIR ISKANIAN
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 1654

EXHIBIT 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/07/12			DEPT. 24
HONORABLE Robert L. Hess	JUDGE	G. Charles	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
B. Bell C/A	Deputy Sheriff	C. Crawley	Reporter

8:33 am	BC356521	Plaintiff	Raul Perez	(x)
		Counsel	Ryan Wu	(x)
	ARSHAVIR ISKANIAN		Glenn Danas	(x)
	VS	Defendant		
	CLS TRANSPORTATION LOS ANGELES	Counsel	David Faustman	(x)
	R/T BC381065; BC473931			

NATURE OF PROCEEDINGS:

MOTION TO CONSOLIDATE AND ARBITRATION AND CLAFIFICATION OF ORDER.

The cause is called for hearing.

The motion to compel specific performance of the arbitration agreement is granted. The motion to consolidate the arbitrations is denied without prejudice to renewal in arbitration. The agreement is governed by the FAA agreement.

The application for barring individuals from asserting claims which were barred by the statute of limitations is withdrawn be defendant. That application should be presented to the arbitrator in the first instance.

Paragraph 16(d) of the agreement provides that arbitrators will be selected from one of four specified providors. Plaintiff's have chosen ADR Services, which has a selection procedure for arbitrators. The Court is not persuaded that selection of arbitrators has proceeded to impasse, and therefore declined to select an arbitrator for any purpose.

The Court has an impression that to some extent the issues presented here are the result of posturing by one or bioth parties. The Court further has the impression that neither side wishes to maximize the duration, complexity or exposure of tha arbitration process. The Court suggests that a meet and confer

MINUTES ENTERED
02/07/12
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 02/07/12			DEPT. 24
HONORABLE Robert L. Hess	JUDGE	G. Charles	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
B. Bell C/A	Deputy Sheriff	C. Crawley	Reporter

8:33 am	BC356521	Plaintiff Counsel	Raul Perez	(x)
			Ryan Wu	(x)
	ARSHAVIR ISKANIAN		Glenn Danas	(x)
	VS	Defendant Counsel		
	CLS TRANSPORTATION LOS ANGELES		David Faustman	(x)
	R/T BC381065; BC473931			

NATURE OF PROCEEDINGS:

between the parties, perhaps with the assistance of the first arbitrator selected, could result in agreement with respect to the procedures to be followed which are based on practical realities.

MINUTES ENTERED
02/07/12
COUNTY CLERK

EXHIBIT 3

SUPERIOR COURT OF THE STATE OF CALIFORNIA.

FOR THE COUNTY OF LOS ANGELES

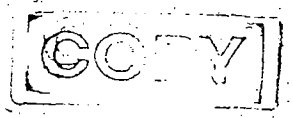
DEPARTMENT LA 24 HON. ROBERT L. HESS, JUDGE

ARSHAVIR ISKANIAN, INDIVIDUALLY AND ON BEHALF OF OTHER MEMBERS OF THE GENERAL PUBLIC SIMILARLY SITUATED,
PLAINTIFFS,

-VS-

CASE NO. BC356521

CLS TRANSPORTATION LOS ANGELES LLC, A DELAWARE CORPORATION, AND DOES 1 THROUGH 10, INCLUSIVE,
DEFENDANTS,



REPORTER'S RUSH TRANSCRIPT OF PROCEEDINGS

TUESDAY, FEBRUARY 7, 2012

APPEARANCES:

FOR THE PLAINTIFFS:
INITIATIVE LEGAL GROUP
BY: RAUL PEREZ
BY: GLENN DANAS
BY: RYAN WU
1800 CENTURY PARK EAST
2ND FLOOR
LOS ANGELES, CA 90067

FOR THE DEFENDANTS:
FOX ROTHSCHILD LLP
BY: DAVID FAUSTMAN
1800 CENTURY PARK EAST
SUITE 300
LOS ANGELES, CA 90067

CAROL L. CRAWLEY, CSR #7518

VOLUME 1 OF 1
PAGES 1-20 ONLY

LOS ANGELES, CALIFORNIA; WEDNESDAY, FEBRUARY 7, 2012

DEPARTMENT 24 HONORABLE ROBERT L. HESS, JUDGE

10:00 A.M.

APPEARANCES: (AS NOTED ON TITLE PAGE)

(CAROL L. CRAWLEY, OFFICIAL REPORTER.)

MR. PEREZ: RAUL PEREZ, GLENN DANAS, INITIATIVE LEGAL GROUP FOR PLAINTIFF, ISKANIAN.

THE COURT: FROM ISKANIAN AND THE KEMPLER PLAINTIFFS.

MR. WU: RYAN WU APPEARING ON BEHALF OF THE KEMPLER PLAINTIFFS AND ISKANIAN.

MR. FAUSTMAN: DAVID FAUSTMAN, YOUR HONOR, ON BEHALF OF THE DEFENDANTS.

THE COURT: WHO IS GOING TO PULL THE LABORING OAR WITH RESPECT TO ARGUMENT?

ORDINARILY WE ONLY HAVE ONE ATTORNEY ARGUE ON A SIDE ARGUE.

I DON'T UNDERSTAND THE DIFFERENT ATTORNEYS REPRESENT CLIENTS WITH DIFFERENT INTERESTS?

MR. PEREZ: WE REPRESENT ALL THE SAME CLIENTS, YOUR HONOR.

THE COURT: WHO WILL ARGUE?

MR. PEREZ: THE KEMPLER PLAINTIFFS FILED A MOTION FOR SPECIFIC PERFORMANCE. I WAS GOING TO ARGUE THAT

MOTION.

MY COLLEAGUE, MR. DANAS, IS GOING TO ARGUE THE OPPOSITION TO THE MOTION FOR CONSOLIDATION FILED BY THE DEFENDANT.

THE COURT: ALL RIGHT.

PLAINTIFF, WE HAVE A MOTION FOR CONSOLIDATION OR EXCUSE ME, MOTION TO COMPEL INDIVIDUAL ARBITRATION.

WE HAVE THE DEFENSE MOTION TO CONSOLIDATE ARBITRATIONS AND A MOTION TO CLARIFY THE COURT'S ORDER; IS THAT CORRECT?

MR. PEREZ: THE PLAINTIFFS' MOTION IS TO COMPEL SPECIFIC PERFORMANCE OF THE ARBITRATION AGREEMENT.

I GUESS IN A SENSE THAT IS A MOTION TO COMPEL ARBITRATION.

THE COURT: ON AN INDIVIDUAL BASIS?

MR. DANAS: CORRECT.

THE COURT: ALL RIGHT.

MR. FAUSTMAN: YOUR HONOR, IF I MIGHT WE HAVE NO OBJECTION TO ARBITRATING ON AN INDIVIDUAL BASIS.

THE CRUX OF THIS IS WHETHER IT SHOULD BE CONSOLIDATED, 63 CASES, INDIVIDUAL CASES, IN FRONT OF ONE ARBITRATOR.

THE COURT: OKAY.

WELL, NOW, LET ME, YOU KNOW, WHAT WE HAVE HERE NOW IS INTERESTING BECAUSE WE STARTED OUT AS A CLASS ACTION, PUNITIVE CLASS ACTION, AND IT WAS REVISITED AND AFTER THE CHANGE IN LAW, CONCEPCION, US

SUPREME COURT, THE COURT GRANTED THE RENEWED MOTION TO COMPEL ARBITRATION.

OKAY.

SO YOU GOT OUT OF YOUR CLASS ACTION.

AND SO WE HAVE GOT THESE DIFFERENT ARBITRATION DEMANDS FOR ARBITRATION BY INDIVIDUAL OR FOR EARLY PUTATIVE CLASS MEMBERS AND SAY FINE WE WILL BE DELIGHTED TO ARBITRATE.

WE ARE GOING FORWARD ON THE TERMS OF THE ARBITRATION CLAUSE, AND NOW HAVING NOT WANTED THIS TREATED IN ESSENCE AS A CLASS ACTION, YOU WANT TO CONSOLIDATE ALL THESE THINGS AND HAVE THEM TREATED AS A CLASS ACTION, DE FACTO CLASS ACTION WITHIN ARBITRATION OR THAT SEEMS TO ME TO BE THE EFFECT OF WHAT YOU ARE ASKING.

YOU DON'T WANT TO DENOMINATE IT A CLASS ACTION, BUT YOU WANT IT ALL LUMPED TOGETHER BECAUSE OF THE COMMONALITY.

MR. FAUSTMAN: NOT --

THE COURT: THAT.

MR. FAUSTMAN: NO, YOUR HONOR.

THE COURT: IS THAT ERRONEOUS?

MR. FAUSTMAN: THE EMPHASIS IS INCORRECT?

I THINK WE ARE NOT OPPOSED TO 63 INDIVIDUAL ARBITRATIONS.

THE COMMONALITY, REALLY, IS IRRELEVANT. THE FACT IS THAT THE ALLEGATIONS ARE ALL THE SAME. ONE ARBITRATOR FOR EACH OF THE INDIVIDUAL MATTERS TO TRY

THEM ONE AT A TIME WOULD BE MUCH MORE EFFICIENT; 63 ARBITRATORS FOR WHAT THESE FOLKS ARE SAYING IS GOING TO BE A WEEK PER PLAINTIFF WILL BE HUNDREDS OF THOUSANDS OF DOLLARS.

THE COURT: GREAT. WONDERFUL.

I AM SAYING THAT SLIGHTLY FACETIOUSLY, BUT WHY IS IT GOING TO TAKE LESS TIME?

MR. FAUSTMAN: ONE ARBITRATOR WHO IS FAMILIAR WITH THE COMPANY, THE PROCEDURES, IT IS REALLY JUST A MATTER OF A PROVE UP OF INDIVIDUAL DAMAGES, IF YOU WILL.

THE COURT: IS THAT A CONCESSION OF LIABILITY?

MR. FAUSTMAN: NO.

WE THINK THERE WILL BE VERY LITTLE DAMAGE, IF ANY, AND WE DON'T THINK HALF THESE PEOPLE WILL EVEN SHOW UP, BUT THAT IS ANOTHER ISSUE.

TO HAVE TO ENGAGE 63 SEPARATE ARBITRATORS IS JUST SILLY.

THE COURT: BUT WOULD YOU BE ENGAGING 63 SEPARATE ARBITRATORS?

MR. FAUSTMAN: NO.

THAT IS WHY WE THINK IT SHOULD BE ONE.

THE COURT: WELL, NO, WOULD YOU IN FACT IF I DENIED YOUR MOTION TO CONSOLIDATE, IF I DENY IT, WILL YOU REALLY HAVE 63 SEPARATE ARBITRATORS I --

MR. FAUSTMAN: I DON'T KNOW, YOUR HONOR, MY OPPONENTS HERE HAVE BEEN PRETTY ADAMANT ABOUT THIS.

CONSOLIDATION ASIDE I THINK YOU CAN SOLVE

THIS PROBLEM UNDER THE CIVIL CODE WHICH IS INVOKED IN THE AGREEMENT.

THE COURT: AND I READ THAT, AND THE CIVIL CODE SEEMS TO PROVIDE PRECISELY THE REMEDY THAT YOU ARE SEEKING.

HOWEVER, LET ME FIND MY -- THE ARBITRATION CLAUSE MANDATES THAT THE AGREEMENT WILL BE GOVERNED BY THE FAA AND NOT INDIVIDUAL STATE LAWS REGARDING ENFORCEMENT OF ARBITRATION AGREEMENTS OR OTHERWISE.

MR. FAUSTMAN: WITH A FEW EXCEPTIONS.

THE COURT: OTHERWISE THE AGREEMENT IS CONSTRUED BY CALIFORNIA LAW, AND BOTH CALIFORNIA AND US SUPREME COURT DICTATE THAT CONSOLIDATION IS THE ARBITRATOR'S CHOICE UNDER THE FEDERAL ARBITRATION ACT.

MR. FAUSTMAN: WHERE STATE PROCEDURE IS NOT INVOKED, BUT ON PARAGRAPH D --

THE COURT: YUN VERSUS SUPERIOR COURT 121 CAL APP 4TH, 1133.

THE CONTRACTS IN THIS CASE CONTAIN A CALIFORNIA CHOICE OF LAW PROVISION WITH AN EQUALLY BROUGHT ARBITRATION CLAUSE STATING THAT ALL DISPUTES RELATING TO THE CONTRACT SHALL BE SUBMITTED TO ARBITRATION. GREENTREE THAT IS GREENTREE FINANCIAL CORPORATION VERSUS BAZZLE, B-A-Z-Z-L-E MANDATES CONSOLIDATION IS SUCH AN ISSUE, AND GREEN TREE FINANCIAL VERSUS BAZZLE US SUPREME COURT'S DECISION ANALYZES CONSOLIDATION UNDER

THE FAA.

AND SO, I THINK THAT CALIFORNIA AUTHORITY UNDER THIS CIRCUMSTANCE PROVIDES THAT THE FAA, TRUMPS THE CIVIL CODE AS FAR AS THE DETERMINATION OF WHETHER THESE SHOULD BE CONSOLIDATED.

MR. FAUSTMAN: IF YOU JUST FOCUSING ON CONSOLIDATION, THAT IS PERHAPS THE CASE.

THE COURT: BUT THAT IS WHAT WE ARE FOCUSING ON.

WE ARE FOCUSING ON WHETHER IT IS CONSOLIDATION. THAT IS WHAT YOU WANT TO DO.

YOUR MOTION IS TO HAVE ME ORDER THAT THESE BE CONSOLIDATED FOR ARBITRATION.

MR. FAUSTMAN: AND TO PICK THE ARBITRATOR, THE DIFFERENCE BETWEEN THOSE TWO CASES, BOTH GREENTREE AND WYNN CASE IS THAT IN NEITHER CASE WAS CALIFORNIA CIVIL PROCEDURE INVOKED.

IN THIS AGREEMENT SPECIFICALLY WHERE THERE IS A DISAGREEMENT THIS PARAGRAPH D OF THE ARBITRATION AGREEMENT:

> WHERE THERE IS A DISAGREEMENT ON THE CHOICE OF THE ARBITRATOR, THE PARTIES WILL AGREE THAT A NEUTRAL ARBITRATOR WHO SHALL BE A RETIRED JUDGE SHALL BE SELECTED OR APPOINTED IN THE SAME MANNER PROVIDED UNDER THE PROVISIONS OF THE CALIFORNIA ARBITRATION ACT. AND THAT IS WHAT WE ARE INVOKING HERE.

THE COURT: WELL, THE PLAINTIFFS ARE ARGUING THAT THEY HAVE NOT YET ATTEMPTED TO REACH AN AGREEMENT AS

TO AN ARBITRATOR, AND SO IT WOULD BE PREMATURE FOR ME TO APPOINT ONE.

MR. FAUSTMAN: WE HAVE DISAGREED ON AN ARBITRATOR, YOUR HONOR.

I SUGGESTED JUDGE ROMERO.

THIS IS ALL IN THE RECORD, TO HEAR ALL THE CASES OR AT LEAST THE PRELIMINARY THRESHOLD ISSUES, THAT ARE COMMON TO ALL THE CASES, AND THAT WAS FLATLY REFUSED.

THE DEMAND HERE IS FOR 63 SEPARATE PEOPLE, AND FRANKLY I CAN'T AGREE TO THAT ON BEHALF OF MY CLIENT LOOKING AT THE BILL THAT WOULD COME FROM THAT.

THE COURT: AS A PRACTICAL MATTER, THESE ATTORNEYS ARE NOT GOING TO WANT TO TIE THEMSELVES UP FOR A YEAR AND A HALF, TWO YEARS, DOING ONE ARBITRATION IN FRONT OF ANOTHER IN FRONT OF DIFFERENT ARBITRATORS.

THEY WON'T WANT TO DO THAT.

LET'S BE PRACTICAL.

MR. FAUSTMAN: WE HAVE GOT DECLARATIONS HERE.

THIS IS A PRETTY BIG EFFORT TO FORCE MY CLIENT TO HIRE 63 DIFFERENT PEOPLE, AND I WOULD BE HAPPY IF YOU WOULD JUST APPOINT ONE.

YOU DON'T EVEN HAVE TO CONSOLIDATE IT, JUST APPOINT THE SAME ARBITRATOR FOR EACH OF THE 63 CASES, AND IF THE ARBITRATOR SHOULD MAKE THE DECISION ON CONSOLIDATION, THEN SO BE IT.

WE HAVE A DISAGREEMENT ON ARBITRATORS IN 63 DIFFERENT CASES.

WE ARE NOT GOING TO BE ABLE TO AGREE.

AND THEREFORE I THINK WE PROPERLY INVOKE THE CIVIL ARBITRATION ACT UNDER CALIFORNIA LAW AS CALLED OUT IN PARAGRAPH D OF THE ARBITRATION AGREEMENT.

MR. PEREZ: YOUR HONOR, IF I CAN JUST.

THE COURT: JUST A SECOND.

LET'S FIND AN EXEMPLAR AGREEMENT.

MR. DANES: EXHIBIT (E) OR ONE TO MOST OF THE DOCUMENTS.

THE COURT: OKAY.

JUST A SECOND, HOLD ON A SECOND. IS THAT PART OF THE FAUSTMAN DECLARATION?

MR. FAUSTMAN: IT PROBABLY IS.

MR. DANES: IF YOU HAVE THE REQUEST FOR JUDICIAL NOTICE FOR THE DECLARATION OF RAUL PEREZ FOR THE SPECIFIC PERFORMANCE MOTION EXHIBIT 8.

THE COURT: HERE IS THE PEREZ DECLARATION EXHIBIT 1. AND WE ARE TALKING ABOUT PARAGRAPH.

MR. FAUSTMAN: THE ARBITRATION AGREEMENT BEGINS ON PAGE 6 OF THAT DOCUMENT, YOUR HONOR, SECTION 16 OVER ON PAGE 7 IS SECTION 16 D.

PLAINTIFFS, WHAT DO YOU WANT TO SAY?

MR. PEREZ: OBVIOUSLY THE LARGER THRESHOLD ISSUES I WANT TO ADDRESS ON THE ISSUE OF THE APPOINTMENT OF THE ARBITRATOR, YOUR HONOR.

THERE I BELIEVE THERE ARE CERTAIN UNDISPUTED FACTS WITH RESPECT TO THE RECOMMENDATION OF JUDGE ROMERO, WE INITIALLY FILED THEM WITH ADR.

ADR HAS SPECIFIC RULES ABOUT HOW TO SELECT A MUTUALLY HOW TO SELECT AN ARBITRATOR, AND THAT IS YOU ARE SUPPOSED TO RANK AND STRIKE THEM.

WHEN I GOT THAT LIST, I FOLLOWED THE ADR RULES. MR. FAUSTMAN THEN CALLED ME AND SAID LET'S BYPASS THIS WHOLE PROCESS.

WE LIKE JUDGE ROMERO.

I RESPONDED, WE PREFER TO FOLLOW THE ADR RULES FOR THE SELECTION OF ARBITRATOR.

HIS NEXT MOVE WAS TO SEND ME A LETTER THAT OUR DEMANDS WITH ADR ARE DEFECTIVE.

THEY WON'T RECOGNIZE THEM.

YOU MUST FILE THEM WITH TRIPLE (A).

THE COURT: WHERE IS TRIPLE (A) REFERRED TO IN THE AGREEMENT?

MR. FAUSTMAN: TRIPLE (A) IS INVOKED, YOUR HONOR, BACK AT THE BEGINNING OF 16 (A).

THE COURT: WHAT ABOUT 16 D?

MR. FAUSTMAN: WELL, I THINK 16 D TRUMPS EVERYTHING AND --

THE COURT: OKAY.

BUT WHAT IS THIS STUFF ABOUT TRIPLE (A) THEN?

MR. FAUSTMAN: WELL --

THE COURT: 16 D DOES NOT REFER TO TRIPLE (A).

IT REFERS TO -- IT SAYS:

THE PARTIES SHALL SELECT A MUTUALLY AGREEABLE ARBITRATOR WHO SHALL BE A RETIRED JUDGE FROM A LIST OF ARBITRATORS PROVIDED BY ADR

SERVICES, A-R-C, JUDICATE WEST OR JAMS SERVICES.

WHAT IF THEY GO TO ADR SERVICES, THAT SEEMS TO ME TO BE WITHIN THE LETTER OF THIS.

MR. FAUSTMAN: TO PICK AN ARBITRATOR I AGREE JUDGE ROMERO IS AN ADR.

THE COURT: BUT JUST A SECOND.

WHAT ARE YOU INVOKING NOW AS FAR AS TRIPLE (A) IF THE RULES, IF THE PROCEDURES EMPLOYED BY ADR SERVICES ARE A LIST TO STRIKE, THEN WHAT?

MR. FAUSTMAN: THE AGREEMENT SAYS TRIPLE (A) RULES WILL GOVERN FOR THE PROCEDURE THE PROCEEDING OF THE ARBITRATION.

THE COURT: BUT THIS IS PRELIMINARY TO THAT. THIS IS A QUESTION OF THE ARBITRATOR.

MR. FAUSTMAN: RIGHT.

AND WE WOULD BE HAPPY TO PICK A RETIRED JUDGE FROM ANY OF THOSE LISTS.

THE COURT: AS LONG AS IT IS JUDGE ROMERO.

MR. FAUSTMAN: NO. THAT WAS MY FIRST ONE, YOUR CHOICE JUDGE. WE ARE UNDER THE CCP 1281.

THE COURT: NO. YOU ARE STILL UNDER. YOU ARE STILL UNDER.

MR. FAUSTMAN: THE STRIKING PROCEDURE DOESN'T CONTEMPLATE A NOTION WHERE THE PARTIES DON'T AGREE.

I THINK THIS D TRUMPS THE STRIKING PROCEDURE PARTICULARLY WHEN WE CAN'T AGREE ON ONE JUDGE FOR ALL THE CASES.

MR. DANAS: YOUR HONOR, IF I MAY.

I THINK THAT YOUR HONOR HAS IT CORRECT WHICH IS THAT I THINK WE, AND IT SEEMS THAT MR. FAUSTMAN EVEN CONCEDES AT THIS POINT, THAT THE CONSOLIDATION ISSUE IS NOT ADDRESSED SPECIFICALLY BY THE AGREEMENT.

THAT IS THE AGREEMENT IS GOVERNED BY THE FAA THAT THE ONLY CARVE OUT FROM THE FAA HAS TO DO WITH CHOICE OF ARBITRATOR NOT CONSOLIDATION THAT PUTS US SQUARELY WITHIN BAZZLE AND WYNN AND THAT CLEARLY THE CONSOLIDATION ISSUE IS FOR THE ARBITRATOR NOT FOR THE COURT.

THEY HAVEN'T CITED A SINGLE FAA CASE THAT SAYS CONSOLIDATION IS FOR THE COURT.

MR. FAUSTMAN: AS LONG AS IT IS ARBITRATOR AND NOT ARBITRATORS, 63 OF THEM.

MR. DANAS: IF I CAN JUST FINISH WITH RESPECT.

THE COURT: PLEASE DON'T INTERRUPTED, SIR.

MR. DANAS: WITH RESPECT TO THE ISSUE OF CHOOSING ARBITRATOR IT IS FAIRLY CLEAR THAT 16 D PROVIDES THAT THAT PROCEDURE, AND THAT PROCEDURE SAYS THAT WHAT WILL HAPPEN FIRST IS THAT THE PARTIES WILL SELECT FROM A LIST OF ARBITRATORS THAT WILL BE CIRCULATED.

AND THAT ONLY IF THE PARTIES FAIL TO AGREE AND REACH AN IMPASSE AFTER ARBITRATION HAS BEEN INITIATED AND AFTER AN IMPASSE HAS BEEN REACHED, CAN THE COURT BE -- CAN THE CAA RULE ON ARBITRATOR SELECTION BE INVOKED AND THEN COME TO THE COURT.

WE CITED A CASE, THE CLEARWATER CASE,

CLEARWATER INSURANCE COMPANY CASE, THAT IS 2006, US DISTRICT LEXUS 74771, THAT IS FROM THE NORTHERN DISTRICT OF CALIFORNIA.

AND THAT WAS A CASE QUITE SIMILAR AS TO HERE, WHERE THE PARTIES HAD REACHED AN IMPASSE AFTER SELECTING ARBITRATORS UNDER THE AGREEMENT, HAD CIRCULATED THE DIFFERENT CHOICES AMONGST THEMSELVES AND HAD REACHED AN IMPASSE.

AND THE COURT CITING A NINTH CIRCUIT CASE SAID THAT AFTER FIVE MONTHS OF AN IMPASSE THEN AND ONLY THEN COULD THE COURT COME IN AND ACTIVATE THAT PROVISION TO CHOOSE AN ARBITRATOR COULD THE COURT CHOOSE AN ARBITRATOR, AND IN THAT CASE DISTINCTLY REFUSED TO CONSOLIDATE.

NOW IN THIS SITUATION WE ALSO POINTED OUT IN OUR PAPERS THAT IN 16 D THEY REFER TO SECTION 1282 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE WHICH OF COURSE DOES NOT HAVE ANYTHING TO DO AT ALL WITH SELECTION OF AN ARBITRATOR, AND CLS SORT OF MINIMIZES THAT IN A FOOTNOTE BY SAYING SURELY THAT WAS AN ERROR IN THE DRAFTING, IN OTHER WORDS THEY WERE THE ONES THAT DRAFTED THE AGREEMENT, WE SHOULD JUST IGNORE THAT, BUT EVEN IF WE WERE TO USE THE PROPER SECTION OF THE CODE WHICH IS 1281.6 THAT ONLY BECOMES ACTIVATED IF THE ARBITRATION IS INITIATED, AND THE PARTIES REACH AN IMPASSE.

THAT SIMPLY HAS NOT HAPPENED HERE.

CLS WOULD LIKE TO CHOOSE TO BYPASS THE ENTIRE

PROCEDURE AND HAVE THE COURT CHOOSE AN ARBITRATOR.

THAT WOULD NOT BE APPROPRIATE EVEN UNDER THE CAA, AND THAT IS NOT THE SITUATION WE ARE IN HERE.

IT IS SIMPLY NOT RIGHT.

IF CLS WANTS THAT TO HAPPEN, THEY WOULD HAVE TO INITIATE THE ARBITRATION, DOING THEIR PART UNDER THE AGREEMENT THAT THEY DRAFTED WHICH IS BY PAYING THEIR SHARE OF THE ARBITRATION INITIATION, THEN CHOOSE FROM ADR, ARC JUDICATE WEST OR JAMS.

THEN HAVE A LIST OF ARBITRATORS CIRCULATED, THEN STRIKE THEM, AND THEN US NEGOTIATE OVER IT, AND THEN US REACH AN IMPASSE, AND THEN AND ONLY THEN COME BACK TO THIS COURT AND SAY ON THIS POINT ALONE THE CAA NOT THE FAA APPLIES, AND I WILL INVOKE THAT BY GOING TO YOUR HONOR AND HAVING YOUR HONOR PICK AN ARBITRATOR SINCE WE HAVE REACHED AN IMPASSE.

THAT SIMPLY HASN'T HAPPENED YET.

MR. FAUSTMAN: I DISAGREE, YOUR HONOR. WE ARE AT AN IMPASSE.

THE COURT: I DISAGREE.

MR. FAUSTMAN: AS LONG AS 63 SEPARATE ARBITRATORS ARE BEING DEMANDED, WE ARE AT AN IMPASSE.

THE COURT: ANYTHING ELSE YOU WANT TO ADD?

MR. FAUSTMAN: ONE OTHER ALTERNATIVE, YOUR HONOR, MIGHT BE TO APPOINT ONE ARBITRATOR TO DECIDE THESE THRESHOLD ISSUES INCLUDING THE ISSUE OF CONSOLIDATION.

I DON'T THINK EITHER SIDE WANTS TO DO THIS

SEPARATELY WITH 63 ARBITRATORS, BUT WHAT CAN I DO IF THIS IS WHAT.

THE COURT: IF YOU WANT TO TALK ABOUT THIS IN TERMS OF HOW WE DO THIS IN A PRACTICAL SENSE, I WILL HELP YOU DO THAT HERE.

ANYTHING ELSE YOU WANT TO SAY, DEFENSE?

MR. FAUSTMAN: NO.

MR. PEREZ: WELL, YOUR HONOR, IF YOU ARE GOING TO PRACTICAL SOLUTION CLASS WIDE ARBITRATION IS AN OPTION, WE WOULD BE WILLING TO CONSIDER.

MR. DANAS: IN FACT, TRIPLE (A) HAS RULES SPECIFICALLY ALLOWING FOR CLASS WIDE ARBITRATION, AND WE WOULD BE HAPPY TO CONSIDER THAT.

MR. FAUSTMAN: WELL.

THE COURT: OKAY.

I AM NOT, YOU KNOW, THIS IS A DISCUSSION THAT DOESN'T NEED TO GO ON IN FRONT OF ME.

ANY OTHER POINTS AT ALL THAT YOU WANT TO RAISE IN CONNECTION WITH THE MATTERS BEFORE ME TODAY, SIR?

MR. DANAS: NO, YOUR HONOR.

THE COURT: I KNOW WHAT I AM GOING TO DO.

I AM WRITING THIS OUT.

I WILL READ IT TO YOU.

IS THERE A REASON WHY I SHOULD REACH THE ISSUE OF WHETHER ANY OF THESE CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS?

WHY I SHOULD DO IT AS OPPOSED TO THE

ARBITRATOR?

MR. FAUSTMAN: YOUR HONOR, ON FURTHER REFLECTION I THINK THAT IS A MATTER FOR THE ARBITRATOR.

ALL RIGHT.

THE COURT: HERE IS THE COURT'S ORDER.

THE MOTION TO COMPEL SPECIFIC PERFORMANCE OF THE ARBITRATION AGREEMENT IS GRANTED.

THE MOTION TO CONSOLIDATE THE ARBITRATION IS DENIED WITHOUT PREJUDICE TO RENEWAL IN ARBITRATION.

THE AGREEMENT IS COVERED BY THE FAA IN THIS RESPECT.

THAT IS AS WITH RESPECT TO WHO MAKES THE DECISION AS TO CONSOLIDATION.

THE APPLICATION FOR AN ORDER BARRING INDIVIDUALS FROM ASSERTING CLAIMS WHICH ARE BARRED BY THE STATUTE OF LIMITATIONS IS WITHDRAWN BY THE DEFENSE.

THAT APPLICATION SHOULD BE PRESENTED TO THE ARBITRATOR IN THE FIRST INSTANCE.

PARAGRAPH 16 D OF THE AGREEMENT PROVIDES THAT ARBITRATORS WILL BE SELECTED FROM ONE OF FOUR SPECIFIED PROVIDERS.

PLAINTIFFS HAVE CHOSEN ADR SERVICES WHICH HAS A SELECTION PROCEDURE FOR ARBITRATORS.

THE COURT IS NOT PERSUADED THAT SELECTION OF ARBITRATORS HAS PROCEEDED TO IMPASSE, AND THEREFORE DECLINES TO SELECT AN ARBITRATOR.

FOR ANY PURPOSES.

THE COURT HAS THE IMPRESSION THAT TO SOME EXTENT THE ISSUES PRESENTED HERE ARE THE RESULT OF POSTURING BY ONE OR BOTH PARTIES.

THE COURT FURTHER HAS THE IMPRESSION THAT NEITHER SIDE WISHES TO MAXIMIZE THE DURATION, COMPLEXITY OR EXPENSE OF THE ARBITRATION PROCESS.

THE COURT SUGGESTS THAT A MEET AND CONFER BETWEEN THE PARTIES PERHAPS WITH THE ASSISTANCE OF THE FIRST ARBITRATOR SELECTED COULD RESULT IN AN AGREEMENT WITH RESPECT TO THE PROCEDURES TO BE FOLLOWED WHICH WILL WHICH ARE BASED ON PRACTICAL REALITIES.

SO I THINK SOME OF THESE ISSUES YOU RAISE, IF YOU PEOPLE ACTUALLY SIT DOWN AND TALK ABOUT THEM PARTICULARLY WITH ARBITRATOR, ARE GOING TO SHAKE OUT.

THE IDEA.

I DON'T KNOW THAT ADR SERVICES HAS 63 SEPARATE PEOPLE TO DO ARBITRATIONS.

I DON'T KNOW THAT THERE ARE 63 PEOPLE AT ADR SERVICES THAT EITHER SIDE WOULD WANT TO DO THIS.

I THINK THAT YOU OUGHT TO BE ABLE TO WORK THIS THING OUT.

AND MY THOUGHT WOULD BE YOU WILL HAVE SOME PRELIMINARY ISSUES HERE POSSIBLY AND WITHOUT REGARDING WITHOUT PREJUDICE TO HOW MANY PEOPLE WILL ACTUALLY DO ARBITRATIONS, FOR THE INDIVIDUAL

PLAINTIFFS, OR HOW IF AT ALL THOSE ARE TO BE DONE, YOU OUGHT TO BE ABLE TO GET TOGETHER WITH AN OFFICIAL ARBITRATOR FOR EXAMPLE, AND SIT DOWN AND WORK OUT TIME EFFECTIVE, COST EFFECTIVE PROCEDURES FOR HANDLING THESE THINGS.

THERE WILL BE CERTAIN COMMON ISSUES.

I SUSPECT THAT IT IS IN BOTH SIDES INTERESTS THAT SOME OF THOSE ISSUES ARE DECIDED IN A UNIFORMED FASHION.

IT SEEMS TO ME WHAT I WOULD CALL ENLIGHTENED SELF INTEREST MAY SUGGEST THAT THERE, YOU KNOW, YOU CAN RESOLVE SOME OF THESE PRELIMINARIES.

IT SEEMS TO ME THAT PLAINTIFFS ARE ON SOLID GROUNDS TO PROVIDE THE SOURCE OF THE MEDIATORS FINE IF THEY HAVE A SELECTION PROCEDURE THAT IS APPLICABLE TO THE MEDIATORS THEY SUPPLY AT THE THRESHOLD, I WOULD THINK THAT WOULD THERE IS ROOM FOR YOU TO STIPULATE TO SOMEBODY IF YOU WANT TO DO THAT.

BUT IN THE ABSENCE OF A STIPULATION IT MAY BE THAT THE STRIKE PROCEDURE IS THE ONE THAT YOU WANT TO FOLLOW.

I HAVE NO REFERENCE FOR AN ADR PROVIDER.

I HAVE NO PREFERENCE FOR AN ARBITRATOR OR ARBITRATORS, I DO HAVE A PREFERENCE FOR YOU PEOPLE WORKING THIS OUT AMONGST YOURSELVES, IN A WAY THAT PROMOTES COST EFFECTIVE RESULTS.

IT MAY BE THAT HAVING ALL THE SAME BEFORE THE SAME ARBITRATE IS THE BEST, BUT IT ALSO MAY BE THAT

IT IS NOT.

THE ISSUE OF WHETHER THESE OUGHT TO BE CONSOLIDATED IS TO BE PRESENTED TO THE ARBITRATOR IN THE FIRST INSTANCE, HAVING CLEARLY THE FAA CONTROLS IN THIS, YOU PICK SOMEBODY AS THE FIRST PERSON OR 63 DIFFERENT PEOPLE OR EVEN PEOPLE FOR ALL THE DIFFERENT CLAIMANTS.

IT STRIKES ME, AND I AM THIS IS NOT A COURT ORDER, BUT IT STRIKES ME AS YOU GET SOMEBODY TO WORK WITH YOU AND TRY AND SET UP THE PERIMETERS OF THIS THING AND HELP YOU DECIDE WHAT ISSUES NEED TO BE HANDLED INDIVIDUALLY WHAT ISSUES NEED TO BE HANDLED COMMONLY.

I AM EXPRESSING NO PREFERENCE FOR EITHER ONE ENLIGHTENED SELF INTEREST IS SOMETHING THAT OUGHT TO COME IN TO PLAY HERE.

MR. PEREZ: FOR POINT OF CLARIFICATION WITH REGARDS TO YOUR ORDER, ONE OF THE STUMBLING BLOCKS IS THAT THERE ARE 63 INDIVIDUALS DEMANDS AND TRIPLE (A) REQUIRED THAT THE FEES BE PAID IN CONNECTION WITH THOSE DEMANDS.

I UNDERSTAND THAT.

THE COURT: I WILL TELL YOU WHAT, GO AHEAD FINISH YOUR THOUGHT.

LET ME OFFER YOU THOUGHT, THIS IS NOT A DIRECTION IT IS A THOUGHT.

IF THE QUESTION OF CONSOLIDATION IS REALLY FOR THE ARBITRATORS, THEN THE ONLY WAY THAT I IS

ROUND THE 63 FILING FEES REQUIREMENTS, I WILL CALL IT THAT I KNOW IT IS NOT A FILING FEE, BUT I WILL CALL IT THAT.

MIGHT BE, FOR YOU TO DO ONE FILING FEE, PICK AN ARBITRATOR AND FIGURE OUT.

MR. PEREZ: THE STATUTE OF LIMITATIONS PROBLEM.

THE COURT: YOU KNOW, WE HAVE WELL LOOK STATUTE IT IS RUNNING, SO THAT IS WHY WE HAD TO FILE.

YOU KNOW.

MR. FAUSTMAN: IT TOLLED.

THE STATUTE AS OF THE FIRST FILING YOUR HONOR THAT IS NOT AN ISSUE. THAT IS WHY YOU SORT THIS THING OUT, YOU KNOW.

THE COURT: IF HE IS WILLING TO TOLL THE STATUTE OF LIMITATIONS SO THAT YOU CAN DECIDE THIS YOU CAN GET THIS ON TRACK IN AN ORDINARY FASHION THAT IS ONE THING, I MEAN YOU ARE TALKING ABOUT A LOT OF MONEY IN FILING FEES.

IF THE IMPETUS FOR CONSOLIDATION MUST COME FROM THE ARBITRATOR AND NOT FROM THE COURT THE ONLY ALTERNATIVE TO POSTING THAT MONEY IS BY AGREEING TO DEFER THAT DECISION UNTIL YOU PEOPLE GET THE LOGISTICS OF THIS SORTED OUT AND THE PROCEDURAL ASPECTS OF THIS SORTED OUT BECAUSE I THINK THAT YOU CAN DO IT.

IT IS DIFFICULT FOR ME TO CONCEIVE A SITUATION IN WHICH IT WOULD BE TO PLAINTIFFS BENEFIT TO THE PLAINTIFFS BENEFIT, TO GO THROUGH 63

ARBITRATIONS EACH FROM POINT ZERO.

IT MAY BE THAT DOING IT IN ONE MASS IS NOT APPROPRIATE.

IT MAY BE THAT THERE ARE SUBDIVISIONS THAT ARE APPROPRIATE, BUT IF WE ARE TALKING ABOUT 63-WEEK LONG ARBITRATIONS, THAT A CESS POOL, YOU DON'T WANT TO FALL INTO.

YOU UNDERSTAND WHAT I AM SAYING. YOU DON'T WANT TO DEVOTE THE ENTIRE PROFESSIONAL LAW TO THIS.

MR. PEREZ: SOME OF OUR CLAIMANTS ARE UP NORTH WHO FILED DEMANDS UP NORTH. THAT IS WHAT THE CONTRACT REQUIRES. THAT IS ALL THE ISSUES WE ARE GOING TO MEET AND CONFER ABOUT.

THE COURT: AS FAR AS MEET AND CONFER, TELL ME WHAT ARE THE ALTERNATIVES?

(DISCUSSION OF THE RECORD)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT LA 24 HONORABLE ROBERT L HESS, JUDGE

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,

REPORTER'S CERTIFICATE
CASE NO. BC356521

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, CAROL L. CRAWLEY, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1-20 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD ON FEBRUARY 7, 2012 IN DEPARTMENT 24 OF THE LOS ANGELES COURT IN THE MATTER OF THE ABOVE-ENTITLED CAUSE.

DATED THIS 9TH DAY OF FEBRUARY 2012.

Carol Crawley, CSR #7518
CAROL CRAWLEY, OFFICIAL REPORTER

EXHIBIT 4

Fox Rothschild LLP
ATTORNEYS AT LAW

235 Pine Street, Suite 1500
San Francisco, CA 94104-2734
Tel 415.364.5540 Fax 415.391.4436
www.foxrothschild.com

David Faustman
Direct Dial: (415) 364-5550
Email Address: dfaustman@foxrothschild.com

February 27, 2012

Via Fax and U.S. Mail

Raul Perez, Esq.
Initiative Legal Group APC
1800 Century Park East, Second Floor
Los Angeles, CA 90067

Re: Kempler, et al v. Empire/CLS

Dear Mr. Perez:

We are in receipt (again) of 63 separate demands for arbitration with AAA. While Judge Hess did grant your motion to compel arbitration (which we did not fundamentally oppose), he also quite clearly stated that he thought 63 arbitrations with 63 different arbitrators would be an unwise use of time and resources that neither of us should welcome. I also inferred from the judge's comments at the February 2d hearing that he was strongly suggesting (if not directly ordering) that the parties meet and confer about choosing one arbitrator to deal with threshold issues, including consolidation, payment of fees, and common issues of law. I invite you to engage in that process.

Please forward a short list of retired judges who are acceptable to you, and I am sure we can agree on one to arbitrate the threshold issues. We look forward to hearing from you. Regards.

Very truly yours,

David Faustman

DF:jp

EXHIBIT 5

INITIATIVE LEGAL GROUP APC

RAUL PEREZ
310.556.5637 Main
RPerez@InitiativeLegal.com

March 2, 2012

VIA PERSONAL DELIVERY

David Faustman
Fox Rothschild LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067-3005

Subject: Demands for Arbitration

Dear Mr. Faustman:

This is in response to your February 27, 2012 letter confirming receipt of 63 separate demands for arbitration with AAA by our clients and your demand that the parties appoint an arbitrator to resolve "threshold issues."

As you know, the Court previously struck the class allegations in the *Iskanian* action and ordered individual arbitration. Accordingly, each of our clients is pursuing individual arbitrations.

In Plaintiffs' Motion for an Order Compelling Specific Performance of Individual Arbitration, Plaintiffs moved the Court to "order CLS to pay the arbitration fees and take all necessary action to effectuate individual arbitrations with Plaintiffs." Judge Hess unequivocally granted Plaintiffs' motion on February 7, 2012, writing in a Minute Order that "[t]he motion to compel specific performance of the arbitration agreement is granted." In that same Minute Order, Judge Hess denied CLS's Motion to Consolidate in its entirety.

Our clients' demands for arbitration are in accordance with the arbitration provision Judge Hess ordered CLS to comply with. On March 1, 2012, AAA sent CLS a notice requiring payment of the administrative fees that CLS must pay in order to comply with the Court's order. This payment is due March 12, 2012.

Contrary to Judge Hess' order compelling specific performance of your client's arbitration agreement, your proposal in your February 27 letter does not comply with these requirements. Specifically, CLS must pay the AAA administrative fees and follow the requirements of the agreement and AAA rules regarding selection of mutually agreeable arbitrators for each and every arbitration.

If CLS fails to comply with the Court Order by refusing to tender the required administrative fees, Plaintiffs will move to hold you and your client in contempt, and will seek all available remedies, including sanctions.

Sincerely,

Raul Perez

EXHIBIT 6

Fox Rothschild LLP
ATTORNEYS AT LAW

235 Pine Street, Suite 1500
San Francisco, CA 94104-2734
Tel 415.364.5540 Fax 415.391.4436
www.foxrothschild.com

David Faustman
Direct Dial: (415) 364-5550
Email Address: dfaustman@foxrothschild.com

March 2, 2012

VIA FACSIMILE AND U.S. MAIL

Raul Perez, Esq.
Initiative Legal Group APC
1800 Century Park East, Second Floor
Los Angeles, CA 90067

Re: Kempler, et al v. Empire/CLS

Dear Mr. Perez:

In response to your letter of March 2, we are disappointed in your refusal to meet and confer about choosing an arbitrator to assist with threshold issues, (including consolidation) as we believe Judge Hess suggested.

You are still insisting on 63 separate filing fees (c. $60,000) and the engagement of 63 separate arbitrators (untold thousands of dollars). Respectfully, I do not believe that this is what Judge Hess intended, and threatening me with contempt proceedings hardly seems constructive. We hope you will reconsider your position, and work with us to come up with an efficient way to handle these cases.

We will be responding separately to the AAA.

Very truly yours,

David F. Faustman

EXHIBIT 7

INITIATIVE LEGAL GROUP APC

RAUL PEREZ
310.556.5637 Main
RPerez@InitiativeLegal.com

March 5, 2012

VIA PERSONAL DELIVERY

David Faustman
Fox Rothschild LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067-3005

Subject: CLS/Demands for Arbitration

Dear Mr. Faustman:

In response to your March 2, 2012 letter seeking an "efficient" way to handle the 63 individual arbitrations, plaintiffs have repeatedly offered class-wide arbitration. This option provides the efficiency your client seeks, including minimizing the costs associated with arbitration and the time it takes to resolve the claims.

If you and your client are not willing to participate in class-wide arbitration, our clients will exercise their rights to have their claims heard individually – as you and your client specifically requested on and obtained June 13, 2011– and to select their own arbitrators. Our firm is prepared to try our clients' claims on individual bases. Further, contrary to your contention, Judge Hess unequivocally ordered Defendant to comply with the terms of the arbitration agreement and pay the required administrative fees demanded by AAA. If Defendant refuses to comply with this order by March 12, 2012, we are left with no other option but to initiate contempt proceedings. We hope that this will not be necessary.

Sincerely,

Raul Perez

EXHIBIT 8

INITIATIVE LEGAL GROUP APC

RAUL PEREZ
310.556.5637 Main
RPerez@InitiativeLegal.com

March 12, 2012

VIA PERSONAL DELIVERY

David Faustman
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067-3005

Re: *Kempler, et al v. Empire/CLS*

Dear Mr. Faustman:

This is in response to your March 6, 2012 letter. The class in any class-wide arbitration should include the 182 employees of the previously certified class in the *Iskanian* case. The 63 individuals who filed Demands for Arbitration are obviously included in the foregoing proposed class. This option is the most prudent because if Mr. Iskanian prevails in his appeal, we will continue to prosecute his claims as a representative action. Accordingly, including all 182 employees in the class-wide arbitration will provide the efficiency and finality your client presumably seeks. Enclosed is a proposed Stipulation regarding such a class wide arbitration for you and your client to consider.

By agreeing to class wide arbitration with AAA, it is our understanding your client would not have to pay the $58,275.00 in filing fees, but rather a reduced fee for class-wide arbitration. If you reject class-wide arbitration, then your client must tender filing fees of $58,275.00 by today, Monday, March 12, 2012. AAA affirmed in its letter of March 8, 2012 that this filing fee must be paid whether these cases are heard by one arbitrator or 63 arbitrators. We are available today to discuss the attached proposal.

Best,

Raul Perez

EXHIBIT 9

From: Faustman, David
Sent: Sunday, March 11, 2012 12:18 PM
To: 'Raul Perez'; 'Adam Shoneck'
Cc: Samuel Levy; Gallegos, Yesenia M.; Patrick Tatum
Subject: RE: Employees v. CLS et al

Respectfully, we think Mr. Shoneck can speak for himself and AAA on the meaning and purpose of Rule 4. We are not trying to delay, but before the AAA extracts tens of thousands of dollars in filing and arbitrators' fees, we would hope that the AAA would at least be interested in confirming whether these 63 individuals actually exist, are aware of the claims being made, and are prepared to show up at an arbitration in Los Angeles. We will be sending you this week section 998 settlement offers for the equivalent amount of the filing fee ($1,000, exclusive of fees), and we request, and expect, that you will confirm to AAA that the offers have been sent to the 63 individuals and specifically accepted or rejected. Finally, we assume that you (again) have rejected our suggestion to have one arbitrator appointed to hear each of the ***individual*** cases that exist and don't settle, and that we are at impasse on the issue. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

EXHIBIT 10

From: Faustman, David
Sent: Monday, March 12, 2012 11:14 AM
To: 'Raul Perez'; Monica Balderrama
Cc: Gallegos, Yesenia M.
Subject: RE: Employees v. CLS et al

Thank you for clarifying. The written settlement offers will be delivered to your office today. We think it makes sense to offer your clients the $1,000 rather than give it to the AAA. The arbitration agreement has its own procedure for choosing an arbitrator; it says that we must agree on a retired judge, and if we can't the court will decide. We have requested that you suggest some names. We would likely agree to any retired judge you choose, but you have refused to engage in that process. We are at impasse. -- DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

Sent: Monday, March 12, 2012 4:18 PM
To: 'Raul Perez'; Monica Balderrama
Cc: Gallegos, Yesenia M.; Adam Shoneck
Subject: RE: Employees v. CLS et al

We will ask AAA to keep the cases open until you inform them, and us, which of your clients have rejected our settlement offer. We will then pay the fees on those remaining cases and move forward. We believe that this is in compliance with the court's order. In the meantime, there is nothing that prevents you from engaging in the attempt to agree on the arbitrator(s). Your insistence that we must "pay up" before you will discuss choosing arbitrators is not reasonable. You continue to ignore section"d" of the agreement. And, it seems obvious that you will never agree to one arbitrator to hear all the remaining cases as we have suggested. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

EXHIBIT 11

March 12, 2012

Anantray Sanathara
c/o Initiative Legal Group APC
1800 Century Park East, 2nd Floor
Los Angeles, CA 90067

Re: Offer to Compromise Pursuant to Cal. Civ. Proc. Code § 998 To Anantray Sanathara v. CLS Transportation Los Angeles LLC, et al.

Dear Mr. Sanathara:

Your name has been submitted to the American Arbitration Association as a claimant for unpaid wages against CLS Transportation Los Angeles, LLC ("CLS"). The Company denies liability, but in order to avoid the cost of litigating the dispute, CLS has offered to pay you $1,000 to settle the matter. The entire amount will be sent you without deductions, and your attorneys will be required to seek an award of fees from the arbitrator. If you reject this offer and then fail to recover more than $1,000 in the arbitration, you may be liable to pay CLS's costs of the arbitration. A copy of the formal settlement offer is enclosed. Please review the settlement offer carefully, and then check one of the boxes below, sign this form, and send it back to the American Arbitration Association to the following address:

American Arbitration Association
1101 Laurel Oak Road, Suite 100
Vorhees, NJ 08043
c/o Adam Shoneck

☐ I accept the $1,000 payment, and agree to dismiss any claims I may have against CLS.

☐ I reject the settlement offer, and authorize the Initiative Legal Group to represent me in the arbitration and to receive copies of my personnel and payroll records.

Name: _____ Address: _____

Signature: _____ _____

Phone: _____

SF1 90698v1 03/11/12

DAVID F. FAUSTMAN, SBN 081862
YESENIA GALLEGOS, SBN 231852
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067-1605
Tel: 310.598.4150 / Fax: 310.556.9828

Attorneys for Respondents,
CLS Transportation of Los Angeles, LLC,
CLS Worldwide Services, LLC, Empire
International Ltd., Empire/CLS Worldwide
Chauffeured Services, GTS Holdings, Inc.,
and David Seelinger

AMERICAN ARBITRATION ASSOCIATION

ANANTRAY SANATHARA, an individual, Claimant, vs. CLS TRANSPORTATION LOS ANGELES, LLC, a Delaware limited liability company; CLS WORLDWIDE SERVICES, LLC, a Delaware limited liability company; EMPIRE INTERNATIONAL, LTD., a New Jersey Corporation; EMPIRE/CLS WORLDWIDE CHAUFFEURED SERVICES; GTS HOLDINGS, INC., a Delaware Corporation; and DAVID SEELINGER, an individual, Respondents.	Arbitrator: Unassigned Intake Specialist: Adam Shoneck **RESPONDENTS' OFFER TO COMPROMISE PURSUANT TO CAL. CIV. PROC. CODE § 998**

TO ANANTRAY SANATHARA AND HIS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Respondents hereby make the following offer to compromise pursuant to Cal. Civ. Proc. Code § 998 (the "Offer") to Claimant Anantray Sanathara ("Claimant"). The Offer is made to conclude this matter in its entirety as between Claimant and Respondents. The terms and conditions of the Offer are as follows:

1. Respondents offer to pay Claimant the sum of one thousand dollars ($1,000.00), without deductions.

2. Claimant's counsel may seek an award for their fees from the assigned arbitrator.

3. This Offer is conditioned upon Claimant executing a dismissal of the above-captioned matter with prejudice. Respondents make the Offer as a compromise, and admit no liability in doing so. The dismissal with prejudice shall operate to release Respondents (including their employees, agents, officers, and affiliated entities) from all liability to Claimant (including all liability for all potential remedies sought or which could be sought by Claimant) for the claims alleged in this matter through the date the Offer is accepted.

4. This Offer shall remain open for 30 days.

5. Claimant is advised that if the Offer is not accepted and Claimant fails to obtain a more favorable judgment at arbitration, Claimant shall be required to pay Respondents' costs from the time of this offer.

Dated: March 12, 2012

FOX ROTHSCHILD LLP

By:_____
David F. Faustman
Yesenia Gallegos
Attorneys for Respondents,
CLS Transportation Los Angeles, LLC, CLS Worldwide Services, LLC, Empire International, Ltd., Empire/CLS Worldwide Chauffeured Services, GTS Holdings, Inc., and David Seelinger

EXHIBIT 12

From: Faustman, David

Sent: Sunday, March 11, 2012 1:04 PM

To: 'Raul Perez'

Cc: Gallegos, Yesenia M.

Subject: RE: Employees v. CLS et al

Not trying to wreck your Sunday, I'm just trying to get caught up on some things. You need not respond until later in the week. We are willing to pay the arbitration fees in those cases where the claimant rejects our settlement offer of $1,000. As for the remaining cases, we still think the same arbitrator would be most efficient; you are insisting on different arbitrators for each case. Further, you have rejected the suggestion that we meet and confer with the assistance of an arbitrator. We are at impasse, and seems time to revisit the issue with Judge Hess. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

EXHIBIT 13

From: Faustman, David
Sent: Monday, March 12, 2012 12:48 PM
To: 'Raul Perez'; Monica Balderrama
Cc: Gallegos, Yesenia M.
Subject: RE: Employees v. CLS et al

We are not attempting to fabricate anything. The arbitration agreement does not invoke AAA rules for the selection of an arbitrator. Section "d" of that agreement sets out the procedure for choosing a retired judge and invokes the California Arbitration Act if the parties cannot agree. We have attempted to comply with that section; you have refused. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Monday, March 12, 2012 12:33 PM
To: Faustman, David; Monica Balderrama
Cc: Gallegos, Yesenia M.
Subject: RE: Employees v. CLS et al

Counselor, we categorically reject your "impasse" argument for the reasons set forth below. This appears to be a transparent effort to fabricate an "impasse" to somehow justify an appearance before Judge Hess. There are rules and procedures to follow, and we again request (now for the third time), that you follow the rules of the arbitration agreement and AAA for selection arbitrators. Furthermore, we are hand delivering you a response to your March 6 letter.

EXHIBIT 14

INITIATIVE LEGAL GROUP APC

RAUL PEREZ
310.556.5637 Main
RPerez@InitiativeLegal.com

March 14, 2012

VIA FACSIMILE AND EMAIL

David Faustman
Fox Rothschild LLP
235 Pine Street, Suite 1500
San Francisco, CA 94104

Subject: *Kempler, et al. v. Empire/CLS*

Dear Mr. Faustman:

This letter is to inform you of our intent to seek Court relief in light of CLS's refusal to comply with AAA's rules and deadlines regarding payment of fees.

As you know, CLS was obligated to pay AAA the outstanding administrative fees by March 12, 2012. We have received confirmation from AAA that your clients have *not* paid – for the second time – those initial mandatory fees necessary to initiate the AAA proceeding. *See* AAA Employment Arbitration Rules and Mediation Procedures (eff. Nov. 1, 2009) rule 4.k. Accordingly, a proceeding before the AAA has not been initiated given your refusal to pay. As a reminder, on October 20, 2011, the AAA "decline[d] to administer this case" because of CLS's failure to pay its obligation (and went as far as requesting that your client remove AAA from its arbitration clauses).

This is CLS's second time refusing to pay the required administrative fee necessary to initiate the AAA proceedings. As a result of CLS's initial failure to comply, we sought Court intervention which resulted in Judge Hess's February 7, 2012 Order granting our motion for specific performance in its entirety, which also required CLS to pay the outstanding administrative fee. Yet, you continue to refuse – citing to Section (d) of the Arbitration Agreement. Your invocation of Section (d) is ineffective. First, the AAA proceeding has not been initiated. Second, no arbitrator list has been prepared – indeed cannot be created or circulated without a proceeding first being initiated – since CLS failed to tender fees to commence the 63 proceedings. Accordingly, unilaterally declaring an "impasse" would not give the Court any right to appoint arbitrators under the Agreement (Judge Hess agreed with us on this point).

Further, your refusal now is in violation of Judge Hess's February 7, 2012 Order, and as such we will be filing a motion for contempt of a court order and will also seek to invalidate

CLS's Arbitration Agreement based on CLS's refusal to comply with the requirements of AAA.

Further, the supposed Code of Civil Procedure section 998 offers that you delivered to us this week do not result in a de facto stay of arbitration proceedings, or a unilateral extension to pay overdue administrative fees. Indeed, you may not issue section 998 offers in arbitration because *your clients have not paid their share of the arbitration fees.* It is illogical and totally improper for you to purport to use AAA pleading and AAA rules to make a "998 offer" yet fail to pay for their initial administrative fees. Finally, the cover letter attached to your section 998 offers is an improper attempt to communicate directly with a represented party in violation of California Rule of Professional Conduct 2-100. Your complete disregard for AAA rules or creation of your own rules and procedures has no basis in contract or law.

Sincerely,

Raul Perez

EXHIBIT 15

Faustman, David

From: Faustman, David

Sent: Wednesday, March 14, 2012 5:43 PM

To: 'Raul Perez'

Cc: Gallegos, Yesenia M.

Subject: CLS

Mr. Perez: We are in receipt of your letter of March 14. We obviously disagree with your characterization that we are in contempt of Judge Hess' order. In compliance with his directive, we are trying, with no help from you, to find a reasonable way of dealing with these cases. Offering the amount of the filing fee to each of your clients (whose potential claims may be far less than $1,000) to settle seems to us a step in that direction. I infer from your letter, however, that you are refusing to communicate our settlement offers to your clients. I hope you will reconsider that position.

David F. Faustman
Attorney at Law
Fox Rothschild LLP

EXHIBIT 16

From: Raul Perez [rperez@initiativelegal.com]
Sent: Saturday, March 17, 2012 4:06 PM
To: Faustman, David; Raul Perez
Cc: lleyva@coleschotz.com; Gallegos, Yesenia M.
Subject: RE: CLS

Please refer to our March 14 letter because it explains clearly the relief we will seek if you fail to comply with the AAA deadline re payment of fees. Again, Judge Hess granted our motion, and denied yours, so there is nothing to revisit with Judge Hess other than a potential contempt motion if you fail to comply with the new AAA deadline. We are going in circles, if you have no response to our proposal for classwide arbitration, then there is nothing left to discuss until your client pays the fees so the arbitration process can formally commence. I am going to church now then celebrating st patrick day so please contact me on Monday if you have a new proposal.

Best,
Raul

-----Original message-----

From: "Faustman, David" <DFaustman@foxrothschild.com>
To: Raul Perez <rperez@initiativelegal.com>
Cc: "Gallegos, Yesenia M." <YGallegos@foxrothschild.com>, "lleyva@coleschotz.com" <lleyva@coleschotz.com>
Sent: Sat, Mar 17, 2012 15:34:15 PDT
Subject: RE: CLS

I am pleased to hear that you are communicating the settlement offers to your clients. I trust that you are doing so in writing, and asking them to return the notification form to AAA so we'll know who's in and who's out May I propose the following: Let's agree to hold off on requiring the filing fees for 30 days until we know which of the 63 claimants refuse the offer and signify that they intend to show up for an arbitration in Los Angeles. CLS will then tender the fees for the remaining cases. The company fully intends to honor the arbitration agreements, but it just seems silly to require my client to pay a $1,000 fee on cases that may settle or otherwise not go forward. At that point we can go back to Judge Hess to settle the impasse on the issue of one arbitrator vs. multiple arbitrators.

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

EXHIBIT 17

From: Faustman, David
Sent: Saturday, March 17, 2012 4:11 PM
To: 'Raul Perez'
Cc: lleyva@coleschotz.com; Gallegos, Yesenia M.
Subject: RE: CLS

Most people go to church *after* they have celebrated St. Patrick's Day, but what do I know.

We'll take your response to my email of earlier as a complete rejection of the proposal contained therein.

Regards. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

EXHIBIT 18

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 M. Gallegos
Direct Dial: (310) 598-4159
Email Address: ygallegos@foxrothschild.com

April 18, 2012

VIA OVERNIGHT MAIL

Adam Shoneck
Intake Specialist
American Arbitration Association
1101 Laurel Oak Road, Suite 100
Vorhees, NJ 08043

Re: Kempler et al. v. CLS Transportation of Los Angeles LLC, et al.
63 demands for arbitration filed with AAA

Dear Mr. Shoneck:

Enclosed please find a check made payable to AAA in the amount of $58,275.00, representing Defendant CLS Transportation of Los Angeles LLC's ("CLS") administrative fee of $925 for the 63 demands filed by Greg Kempler and the other 62 Claimants.

Please do not commence administration of these matters until Judge Robert Hess of the Los Angeles Superior Court has had the opportunity to rule on CLS' motion to appoint an arbitrator. If and when Judge Hess appoints a single arbitrator to preside over the 63 arbitrations, CLS will seek reimbursement of the full administrative fee less $925. We expect a ruling on CLS' motion in June 2012.

Please call me if you have any questions or concerns. Thank you for your courtesy and anticipated cooperation.

Very truly yours,

Yesenia M. Gallegos
Encl.

cc: David Faustman, Esq.
Raul Perez, Esq.

EmpireCLS WORLDWIDE CHAUFFEURED SERVICES

225 Meadowlands Parkway
Secaucus, NJ 07094
(201) 784-1200

CORPORATE HEADQUARTERS

PNC BANK, N.A.
NEW JERSEY 060
55-760/312

115821

CHECK DATE	CHECK NO.	AMOUNT
4/16/2012	115821	$*****58,275.00

PAY Fifty-Eight Thousand Two Hundred Seventy-Five and 00/100------------------------------------ US DOLLARS

TO THE ORDER OF
AMERICAN ARBITRATION ASSOCIATION
1101 LAUREL OAK ROAD
SUITE 100
VOORHEES, NJ 08043

AUTHORIZED SIGNATURE

Security Features Included. Details on back.

⑈115821⑈ ⑆031207607⑆ 8026218282⑈

EmpireCLS

115821

Vendor 001961 AMERICAN ARBITRATION ASSOCI Check Date 4/16/2012 Check Number 115821

Ref Nbr	Invc Nbr	Invc Date	Invoice Amount	Amount Paid	Disc Taken	Net Check Amt
105815	EMPIRE-Arbitrat	3/14/2012	58,275.00	58,275.00	0.00	58,275.00

DELUXE FOR BUSINESS 1-800-328-0304

Ord. No: G 3346289

EXHIBIT 19

Faustman, David

From: Faustman, David
Sent: Saturday, May 19, 2012 3:43 PM
To: 'Amie Chale'; 'RPerez@initiativelegal.com'; 'mbalderrama@initiativelegal.com'; 'slevy@initiativelegal.com'; Gallegos, Yesenia M.
Cc: Patrick Tatum
Subject: RE: CLS Transportation

We would accept Ricard Byrne or Eli Cher now for the LA cases; we would accept Warren Conklin or Chris Cattle for the SF cases. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Amie Chale [mailto:ChaleA@adr.org]
Sent: Thursday, May 10, 2012 4:10 PM
To: 'RPerez@initiativelegal.com'; 'mbalderrama@initiativelegal.com'; 'slevy@initiativelegal.com'; Faustman, David; Gallegos, Yesenia M.
Cc: Patrick Tatum
Subject: CLS Transportation

Good Afternoon:

Attached for your review please find the resumes for our neutral retired judges. Please note the resumes contain judges that are located throughout the state of California.

Please let me know if you have any questions.

Thank you.

/s/

Amie Chale
Supervisor for Labor, Employment and Elections
American Arbitration Association
Western Case Management Center
6795 N. Palm Ave., 2nd Floor
Fresno, CA 93704
Tel: 559-490-1874
Fax: 855-270-8400
E-mail: chalea@adr.org
www.adr.org

From: Amie Chale

EXHIBIT 20

Faustman, David

From: Faustman, David
Sent: Saturday, May 19, 2012 2:24 PM
To: 'Dario Higuchi'; RPerez@InitiativeLegal.com; SLevy@InitiativeLegal.com; Gallegos, Yesenia M.
Cc: Lucie Barron
Subject: RE: CLS matters

We would agree to either Enrique Romero or Michael Marcus to hear all of the Los Angeles cases. We would agree to Bonnie Sabraw or Kevin Murphy to hear the San Francisco cases. Thank you. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Dario Higuchi [mailto:dario@adrservices.org]
Sent: Friday, May 18, 2012 11:19 AM
To: RPerez@InitiativeLegal.com; SLevy@InitiativeLegal.com; Faustman, David; Gallegos, Yesenia M.
Cc: Lucie Barron
Subject: CLS matters

Dear Counsel:

Pursuant to your request, ADR Services, Inc., has developed an algorithm so that each of the 63 CLS employment cases could be given a random selection of five (5) arbitrators from our panel who are retired judges and who have had employment experience.

Based on your list of the 63 claimants and the locale of their arbitrations, each case located in San Francisco (14 in total) was given a random selection of five (5) suggested arbitrators from our Northern California panel, while each case located in Los Angeles (49 in total) was given a random selection of five (5) arbitrators from our Southern California panel.

Please find attached individual correspondence for each of the 63 employment cases.

The resumes for these arbitrators can be found on our website: http://www.adrservices.org/neutrals.

Please feel free to contact Lucie Barron or me if you have any questions.

Sincerely,

Dario

Dario Higuchi | Director of Operations | **ADR SERVICES, INC.**

Tel: 310.201.0010 | **Fax:** 310.557.1593 | 1900 Avenue of the Stars, Suite 250 | Los Angeles, California | 90067
| www.adrservices.org

SIX OFFICES STATEWIDE: Century City | Downtown Los Angeles | Orange County | San Diego | San Francisco | Silicon Valley

August 24, 2011

ADR SERVICES, INC.
915 Wilshire Boulevard
Suite 1900
Los Angeles, California 90017
(213) 683-1600 Tel.
(213) 683-9797 Fax

www.adrservices.org

Raul Perez, Esq.
Sam Levy, Esq.
INITIATIVE LEGAL GROUP APC
1800 Century Park East, 2nd Floor
Los Angeles, California 90067

David F. Faustman, Esq.
FOX ROTHSCHILD, LLP
1800 Century Park East, Suite 300
Los Angeles, California 90067

Leo V. Leyva, Esq.
COLE SCHOTZ MEISEL FORMAN & LEONARD, PA
Court Plaza North
25 Main Street
Hanckensack, NJ 07602-0800

RE: *ARAYA V. CLS*
ADRS Case No. 11-5223

Dear Counsel/Parties:

This letter will acknowledge receipt of Daniel Araya's Demand for Arbitration in the above-referenced matter, directed at the following respondents: CLS Transportation of Los Angeles, LLC; CLC Worldwide Services, LLC; Empire International, LTD; Empire/CLS Worldwide Chauffeured Services; GTS Holdings, Inc.; David Seelinger. We are outlining the procedure for setting up this arbitration for our Century City office.

ADR Services, Inc. is hereby providing you with a list of potential arbitrators. The parties are encouraged to agree on an arbitrator. Please strike up three (3) names, number the remaining names in order of preference, and return the list to ADR Services, Inc. within **fifteen days**. The arbitrator most acceptable to the parties as indicated by your preferences will be appointed.

Hon. Patricia Collins	($425/hour)	Hon. Enrique Romero	($625/hour)
Hon. James P. Gray	($400/hour)	Hon. Alexander Williams	($450/hour)
Hon. Joe Hilberman	($490/hour)	Hon. John Zebrowski	($600/hour)
Hon. David Horowitz	($450/hour)	Robert Coviello, Esq.	($500/hour)
Hon. Michael Marcus	($460/hour)	Jan Frankel Schau, Esq.	($400/hour)

You may view the resumes of the arbitrators by visiting our website at www.adrservices.org.

If there are any further questions, please do not hesitate to contact me at the numbers above.

Sincerely,

Terry Shea
Arbitration Coordinator

C:\Documents and Settings\Jessie_2\Desktop\CLS Wage & Hour Arbitration\CLS Demand Response Letter.doc

EXHIBIT 21

Faustman, David

From: Faustman, David
Sent: Monday, June 04, 2012 12:12 PM
To: 'Samuel Levy'; Amie Chale; Raul Perez; Monica Balderrama; Gallegos, Yesenia M.
Cc: Patrick Tatum
Subject: RE: CLS Transportation

Mr. Levy: Your firm is apparently continuing the obstinate and disingenuous quest to impose 63 separate arbitrators at Defendant's expense. Your implication that Judge Hess somehow ordered the parties to use the ADR Services "striking and ranking" procedure 63 times is ridiculous and untrue. You may "intend to follow it", but please be advised that Defendant does not. We have given you four names from the AAA panel that are acceptable; we have suggested that we could agree on one arbitrator for the LA cases, and another for the San Fran cases; you have not responded. Your unilateral invocation of the ADR Services selection process is, once again, contrary to the procedure set out in the arbitration agreement. If you are still insisting on 63 arbitrators, we are still at impasse, and this issue should be taken back to Judge Hess.

David F. Faustman
Attorney at Law
Fox Rothschild LLP

From: Samuel Levy [mailto:SLevy@initiativelegal.com]
Sent: Thursday, May 31, 2012 3:39 PM
To: Amie Chale; Raul Perez; Monica Balderrama; Faustman, David; Gallegos, Yesenia M.
Cc: Patrick Tatum
Subject: RE: CLS Transportation

Good Afternoon:

In response to your email today, we are still in the process of selecting arbitrators for each Claimant from the lists of arbitrators provided by ADR Services. ADR Services has its own selection procedure which involves striking and ranking the arbitrators listed. Judge Hess referenced this procedure in his Order dated February 2, 2012, and we intend to follow it. Upon completion, we will submit the results of our selection to ADR Services, and we will let both AAA and Mr. Faustman know that we have done so. We hope to submit the results to ADR Services by tomorrow, June 1, 2012. Thank you.

-Sam Levy

EXHIBIT 22

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Wednesday, June 13, 2012 10:11 AM
To: Faustman, David
Cc: Samuel Levy; Gallegos, Yesenia M.; Amie Chale (ChaleA@adr.org); Patrick Tatum (TatumP@adr.org); Monica Balderrama
Subject: Re: CLS Transportation

Mr. Faustman, we will respond in due time, but please trying to dictate how these arbitrations should be handled, and especially stop threatening to declare an impasse or file motions when you do not get your way. Judge Hess once again emphasized he was not issuing any rulings or orders, and your threat to seek judicial intervention as opposed to working with us is in direct contravention of his instructions. If you file a premature motion especially based on a self-serving distortion of comments by Judge Hess, we will once again file a 128.7 motion. We respectfully request you wait for our proposal then we can resume discussions, as opposed to sending us emails full of threats and one-sided proposals.

Best,
RP

On Jun 13, 2012, at 9:58 AM, "Faustman, David" <DFaustman@foxrothschild.com> wrote:

> We agree with Judge Hess' suggestion this morning to add another choice of arbitrators for both the northern and southern cases. On May 19, we suggested Judges Byrne or Chernow for LA and Judges Conklin or Cottle for San Fran. We invite you to chose one for each location (in addition to Judges Romero and Murphy), or to suggest other alternatives. This would result in four cases with consolidated claims that would achieve the "economies of scale" and avoid the "pure repetition" noted by Judge Hess. With this procedure, I belief we can finish each claim in less than a day. I believe this plan represents the "enlightened self interest" that Judge Hess is suggesting. Please let me know whether you agree, or whether we will need to go back to Judge Hess with a motion to appoint the arbitrator(s). --DFF
>
> **David F. Faustman**
> Attorney at Law
> **Fox Rothschild LLP**
> 415-364-5550

EXHIBIT 23

From: Faustman, David
Sent: Wednesday, June 13, 2012 8:57 AM
To: 'Samuel Levy'; Gallegos, Yesenia M.; Amie Chale (ChaleA@adr.org); Patrick Tatum (TatumP@adr.org)
Cc: Raul Perez; Monica Balderrama
Subject: RE: CLS Transportation

We agree to Judge Romero for all the Southern California cases, and to Judge Murphy for the Northern California cases. The cases should be consolidated in both proceedings. Your continued insistence on the ADR "strike and rank process" for (now) 49 separate cases is, as I have stated before, contrary to the selection procedure in the arbitration agreement. We will not agree to that process. It appears we are still at impasse on this issue. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Samuel Levy [mailto:SLevy@initiativelegal.com]
Sent: Tuesday, June 12, 2012 4:51 PM
To: Faustman, David; Gallegos, Yesenia M.; Amie Chale (ChaleA@adr.org); Patrick Tatum (TatumP@adr.org)
Cc: Raul Perez; Monica Balderrama
Subject: CLS Transportation

Please see attached.

Samuel Levy ▫ Initiative Legal Group APC
1800 Century Park East ▫ 2nd Floor ▫ Los Angeles, CA 90067 ▫ 310.734.0506 direct ▫ 310.861.9051 facsimile
SLevy@InitiativeLegal.com ▫ www.InitiativeLegal.com

EXHIBIT 24

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Wednesday, June 13, 2012 10:11 AM
To: Faustman, David
Cc: Samuel Levy; Gallegos, Yesenia M.; Amie Chale (ChaleA@adr.org); Patrick Tatum (TatumP@adr.org); Monica Balderrama
Subject: Re: CLS Transportation

Mr. Faustman, we will respond in due time, but please trying to dictate how these arbitrations should be handled, and especially stop threatening to declare an impasse or file motions when you do not get your way. Judge Hess once again emphasized he was not issuing any rulings or orders, and your threat to seek judicial intervention as opposed to working with us is in direct contravention of his instructions. If you file a premature motion especially based on a self-serving distortion of comments by Judge Hess, we will once again file a 128.7 motion. We respectfully request you wait for our proposal then we can resume discussions, as opposed to sending us emails full of threats and one-sided proposals.

Best,
RP

EXHIBIT 25

From: Faustman, David [mailto:DFaustman@foxrothschild.com]
Sent: Thursday, June 28, 2012 1:02 PM
To: Samuel Levy; Gallegos, Yesenia M.; Amie Chale (ChaleA@adr.org); Patrick Tatum (TatumP@adr.org)
Cc: Raul Perez; Monica Balderrama; lucie@adrservices.org
Subject: RE: CLS Transportation

I am on the run this week, and am just looking at this for the first time. I will give you a more specific response next week, but initially the number of arbitrators you propose is not acceptable. Six claimants per session seems too few to gain the efficiencies we are looking for. Also, some of names you propose do not appear to be retired judges as required by the agreement. It is also unclear whether you propose San Francisco or LA as the location. Finally, we need clarification of what you mean by "separate hearings". We are contemplating a consolidated proceeding for each of the groups, and a refund of some of the filing fees by AAA. Regards --DFF

From: Samuel Levy [mailto:SLevy@initiativelegal.com]
Sent: Monday, June 25, 2012 6:51 PM
To: Faustman, David; Gallegos, Yesenia M.; Amie Chale (ChaleA@adr.org); Patrick Tatum (TatumP@adr.org)
Cc: Raul Perez; Monica Balderrama; lucie@adrservices.org
Subject: CLS Transportation

Please see attached.

Samuel Levy ▫ Initiative Legal Group APC
1800 Century Park East ▫ 2nd Floor ▫ Los Angeles, CA 90067 ▫ 310.734.0506 direct ▫ 310.861.9051 facsimile
SLevy@InitiativeLegal.com ▫ www.InitiativeLegal.com

EXHIBIT 26

From: Faustman, David [mailto:DFaustman@foxrothschild.com]
Sent: Friday, July 06, 2012 12:20 PM
To: Faustman, David; 'Samuel Levy'; Gallegos, Yesenia M.; Amie Chale; Patrick Tatum
Cc: 'Raul Perez'; 'Monica Balderrama'; 'lucie@adrservices.org'
Subject: RE: CLS Transportation

Sorry for the delay in responding; I've been sick all week. We will agree to two more arbitrators: Zebrowski in LA; Stein in San Fran. That gives us Romero and Zebrowski in the south ; Murphy and Stein in the north. We thus anticipate four arbitrations with approximately 15 claimants consolidated in each case.

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

EXHIBIT 27

From: Faustman, David [mailto:DFaustman@foxrothschild.com]
Sent: Wednesday, August 01, 2012 2:57 PM
To: 'Amie Chale'; Samuel Levy; Gallegos, Yesenia M.; Patrick Tatum
Cc: Raul Perez; Monica Balderrama; 'lucie@adrservices.org'
Subject: RE: CLS Transportation

I have heard nothing from plaintiffs' counsel in this matter in over a month. While the parties have tentatively agreed that Romero and Murphy would be acceptable, we have NOT agreed on the particular claims that each would hear. The claimants listed in the June 12 letter amounted to a unilateral proposal that was NOT accepted. The appointment process is thus premature until an overall agreement is reached. AAA is NOT authorized to handle these 63 claims on a piecemeal basis, or to engage any particular arbitrator at this time. If the parties cannot agree on the arbitrators and claims, the matter will go back to the court for resolution. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Amie Chale [mailto:ChaleA@adr.org]
Sent: Wednesday, August 01, 2012 2:16 PM
To: Faustman, David; 'Samuel Levy'; Gallegos, Yesenia M.; Patrick Tatum
Cc: 'Raul Perez'; 'Monica Balderrama'; 'lucie@adrservices.org'
Subject: RE: CLS Transportation

Good Afternoon:

As the parties have agreed to appoint Arbitrator Enrique Romero and Arbitrator Kevin Murphy to hear the claims as referenced in Claimant's letter dated June 12, 2012, the Association will begin the appointment process of these two arbitrators. We ask that parties to please provide us with any updated information regarding the names of the remaining arbitrators and their assigned claims.

Thank you.

Faustman, David

From: Faustman, David
Sent: Thursday, August 02, 2012 3:20 PM
To: 'Raul Perez'; 'Amie Chale'; Samuel Levy; Gallegos, Yesenia M.; Patrick Tatum
Cc: Monica Balderrama; 'lucie@adrservices.org'
Subject: RE: CLS Transportation

Ms. Chale: Let me repeat: CLS did not agree to the proposal of June 12. Mr. Perez' wishful thinking aside, my emails of June 28 and July 6, below, make it perfectly clear that we have no overall agreement. We have proposed four arbitrators for all 63 cases, 15-16 claims to heard by each arbitrator on a consolidated bases. Mr. Perez, it appears, is still insisting on 12 arbitrators. WE HAVE NO AGREEMENT. You are not authorized to proceed. It is not AAA's role to insert itself in this dispute. Unless Mr. Perez says otherwise, the parties appear to be at an impasse, and we will need to take the issue back to the court for the appointment of the arbitrator(s). Please confirm that you are NOT proceeding to engage any arbitrator(s) at this time. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Raul Perez [mailto:rperez@initiativelegal.com]
Sent: Thursday, August 02, 2012 2:55 PM
To: Faustman, David; 'Amie Chale'; Samuel Levy; Gallegos, Yesenia M.; Patrick Tatum
Cc: Monica Balderrama; 'lucie@adrservices.org'; Raul Perez
Subject: RE: CLS Transportation

Dear Ms. Chale:

This letter is in response to your email today regarding the appointment of Arbitrator Enrique Romero and Arbitrator Kevin Murphy to hear the claims as referenced in our letter dated June 12, 2012. As stated in that letter, we agreed to appoint Arbitrator Enrique Romero to hear the claims of 12 specific Claimants, and to appoint Arbitrator Kevin Murphy to hear the claims of 2 specific Claimants. We agree with AAA that those arbitrations should move forward because to delay any further denies these Claimants any forum to resolve their claims. Please advise what is next step to arbitrate those claims.

In regard to the names of additional arbitrators to hear the claims of the remaining Claimants, we offered a reasonable compromise that balances the interests of our clients and respondent's by reducing the number of arbitrators previously demanded from 63 to 10 in our letter dated June 25, 2012. On July 6, 2012, Mr. Faustman countered our proposal by only agreeing to 2 additional arbitrators, Hon. John Zebrowski and Hon. William Stein. However, we discussed Mr. Faustman's proposal with our clients and it is unacceptable.

Furthermore, we withdraw Justice Zebrowski from consideration. We recommend that Hon. James A. Albracht take his place.

We urge Mr. Faustman to reconsider our July 6, 2012 proposal, with Hon. James A. Albracht in place of Hon. John Zebrowski.

Faustman, David

From: Faustman, David
Sent: Wednesday, September 19, 2012 12:39 PM
To: 'Raul Perez'
Cc: Gallegos, Yesenia M.
Subject: RE: Motion Service

Raul: I am assuming at this point that you are not interested in our proposal to have Judge Romero hear a batch of these cases, and that you would rather maintain to the argument that Defendant has somehow waived the arbitration process. We will be filing a motion to, once again, ask Judge Hess to appoint the arbitrators notwithstanding your threats to seek sanctions if we do so.

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Faustman, David
Sent: Wednesday, September 12, 2012 3:49 PM
To: 'Raul Perez'
Cc: Gallegos, Yesenia M.
Subject: RE: Motion Service

Thanks for resolving the issue on the hearing date. If you can add a few more cases to the Romero list, we are still willing to move forward with one group of arbitrations as an interim resolution of our disagreement on the the appointment of arbitrators. I would propose to then ask Judge Hess to resolve the issue with respect to the remaining 47 or so cases. Please let us know. --DFF

David F. Faustman
Attorney at Law
Fox Rothschild LLP
415-364-5550

From: Faustman, David
Sent: Saturday, September 08, 2012 4:09 PM
To: Faustman, David; 'Raul Perez'
Cc: Gallegos, Yesenia M.
Subject: RE: Motion Service

I hope we can resolve the hearing and briefing issues early on Monday. In the meantime, I am trying to understand your motion, and I confess I'm having a hard time understanding how you come up with the 19 claimants whose cases you believe have been waived. In any event, the closest we have come to agreement on anything in this matter is your suggestion of 12 claimants for Judge Romero. We have proposed (as Judge Hess suggested) a total of four arbitrators to hear 15-16 cases each; you have consistently rejected that idea. We have been at impasse on this issue for some time now. I would prefer that we have a resolution of the procedure for all 63 cases, either by agreement or court order.; In an effort to move this along, however, let me suggest that if you can add three or four more claimants to the Romero group, we could notify AAA and move forward with that batch asap and agree to disagree on the rest for now. Let me know. Regards. --DFF

Raul Perez (SBN 174687)
RPerez@CapstoneLawyers.com
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Mónica Balderrama (SBN 196424)
MBalderrama@InitiativeLegal.com
G. Arthur Meneses (SBN 105260)
AMeneses@initiativelegal.com
Cory G. Lee (SBN 216921)
CoryLee@InitiativeLegal.com
Initiative Legal Group APC
1800 Century Park East, Mezzanine
Los Angeles, California 90067
Telephone: (310) 556-5637
Facsimile: (310) 861-9051

Attorneys for All Claimants

AMERICAN ARBITRATION ASSOCIATION

LUIS EARNSHAW,

Claimant,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, et al.,

Respondents.

74 160 223 12 AMCH

CLAIMANT LUIS EARNSHAW'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES

Arbitrator: Hon. Kevin Murphy

Date: May 1, 2, or 3 [Tentative]
Time:
Place: Via Conference Call

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

FEDERAL CASES

STATE STATUTES

FEDERAL STATUTES

SECONDARY AUTHORITIES

I. INTRODUCTION

The settlement of Claimant Luis Earnshaw's ("Claimant") claims against Respondent CLS Transportation Los Angeles ("CLS" or "Respondent") is the result of over six-and-a-half years of litigation. For five years, Claimant pursued his claims as a member of the *Iskanian* class.[1] After the trial court compelled this case to arbitration, Claimant continued to pursue his claims and the claims of all class members, on an individual basis in arbitration. Claimant now seeks attorneys' fees in the amount of $57412 (the pro-rata portion of the total fees as calculated on a lodestar basis incurred in prosecuting the 61 pending arbitrations with a two-time multiplier) and costs in the amount of $596. Claimant moves for attorneys' fees both under contract (the arbitration agreement and settlement offer authorize attorneys' fees) and applicable one-way fee shifting statutes (Labor Code sections 218.5, 1194(a), and 226(e) and Code of Civil Procedure section 1021.5).

Claimant is entitled to recover attorneys' fees as the prevailing party in this action because he achieved his litigation objectives. Individual wage and hour claims—such as Claimant's—typically have a low value that is overwhelmed by the costs of pursuing the claims in the first place. The $2000 settlement here exceeds the estimated value of Claimant's individual wage and hour claims, considering his low hourly pay and less than two months of employment during the statutory period. Further, as a result of this litigation, CLS has updated its employment policies to now include a statutory premium for missed meal and rest break for employees. Additionally, Claimant has been engaged in litigation during a period of time when the case law governing how and whether he could pursue his claims has evolved significantly, resulting in the court stripping Claimant of the protections and security of the class action device on the eve of trial after then-five years of litigation. Under the circumstances, Claimant has not only achieved his litigation objectives, he has exceeded them.

Claimant is also entitled to recover attorneys' fees under the attorney general statute. Claimant conferred a benefit to the public by litigating claims that served as a catalyst for CLS changing its employment practices to provide a statutory premium for missed meal and rest breaks, and other former *Iskanian* class members benefitted from Claimant's lawsuit because it created a positive precedent for

[1] *Iskanian v. CLS Transportation Los Angeles LLC*, Los Angeles Superior Court Case No. BC356521, filed on August 4, 2006, was certified as a class action on behalf of CLS's current and former drivers.

the settlement value of their claims. Further, because the value of his claims paled in comparison to the costs of litigation, Claimant pursued his wage and hour claims---which courts recognize have a public benefit in and of themselves—despite a concrete financial disincentive from doing so. Under the circumstances, it would not be in the interests of justice to force Claimant to pay his attorneys out of his recovery.

Claimant's requested proportionate share of attorneys' fees is reasonable. Claimant's counsel's lodestar—the product of counsel's reasonable hourly rate and the number of hours billed to the litigation of current and former CLS employees—is $1,751,078. Although the lodestar is the primary reference for determining the propriety of the requested fees, Claimant's request is also justified by: (1) the factual and legal complexities of Claimant's action and the risk assumed by Claimant's counsel, who allocated more than 4500 hours of their time and advanced over $36,000 in costs to the case; (2) Claimant's counsel's preclusion from pursuing other work; (3) the contingent basis on which Claimant's counsel prosecuted this case; (4) the public service performed by Claimant in enforcing the State's wage and hour laws; (5) Claimant's counsel's significant investment of time and resources; and (6) the recovery of the costs of the lawsuit. Claimant is only requesting 1/61 of the fees and costs incurred in the prosecution of this matter up to and including the arbitration process with a reasonable multiplier of two.

Claimant is entitled to recover attorneys' fees incurred since inception of the litigation. While Claimant only filed his arbitration claims with AAA in September 2011, he has been litigating his claims against CLS consistently since August 2006. The extensive litigation of Claimant's claims as a class action, before being compelled to individual arbitration, was absolutely necessary for Claimant to secure the $2000 settlement. Indeed, although the Arbitration appears to be in its nascent stages, the parties have already substantially litigated their claims, and exchanged almost all discovery on the merits of Claimant's claims. When the court granted CLS's renewed motion to compel individual arbitration, the parties were just weeks from trial. And the referral to individual arbitration simply changed the forum in which Claimant could pursue his claims and the procedural devices available to him, similar to a transfer to a new venue or court. This settlement is not the result of a quick deal in a new lawsuit trying to avoid expensive litigation to come, but the result of an estimation of the value of the harm Claimant suffered as informed by years of litigation.

"A defendant cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." *Peak-Las Positas Partners v. Bollag*, 172 Cal. App. 4th 101, 114 (2009). Thus, Claimant should be awarded $57,412 in attorneys' fees, after a reasonable two time multiplier, and $596 in other costs.

II. FACTS AND PROCEDURE

Claimant's claims have been litigated against CLS for over six and a half years. For five years, Claimant pursued his claims as a member of the certified class in *Iskanian* until CLS prevailed on a motion to compel individual arbitration. Claimant then spent the next year trying to pursue his individual claims in arbitration in the face of CLS's delay tactics. Over the years, CLS has issued Claimant three settlement offers, the first two of which Claimant rejected. The facts demonstrate the extensive litigation history of Claimant's claims and the fact that Claimant's individual arbitration claim is a direct extension of the prior *Iskanian* class action.

A. Claimant First Pursued His Claims As A Member Of The *Iskanian* Class

Claimant was a member of the certified class in *Iskanian*, filed on August 4, 2006, which pursued wage and hour claims against CLS, one of the largest providers of chauffeured limousine services in California. (Declaration of Raul Perez ["Perez Decl."] ¶ 3.) Claimant's counsel litigated the class action for five years to the eve of trial, obtaining certification, completing almost all discovery, and briefing and arguing CLS'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 pursuant to C.C.P. § 1008(b), providing the foundation for Claimant's individual arbitration case. The *Iskanian* Court's order on this motion compelled this matter to individual arbitration in this proceeding.

On February 7, 2007, CLS first moved to compel individual contractual arbitration, and the trial court granted the motion. (Perez Decl., ¶¶ 6-7.) While the order compelling individual arbitration was on appeal, the California Supreme Court decided *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007), and the Court of Appeal reversed and remanded with instructions to reconsider CLS's motion in light of *Gentry*.[2] (*Id.*, ¶¶ 8-10.) On remand, CLS did not pursue arbitration and litigated the case as a class action. (*Id.*, ¶ 11.)

[2] Fees incurred in the appeal are not included in Claimant's attorneys' fees request.

In preparation for moving for class certification, the *Iskanian* plaintiffs served four sets of requests for production of documents, four sets of requests for admissions, three sets of special interrogatories, and two sets of form interrogatories. (Perez Decl., ¶¶ 32-37.) CLS produced over 11,000 pages of documents and responses. (*Id.*, ¶ 38.) The plaintiffs deposed the former CEO of CLS as a person most qualified to testify to CLS's wage and hour policies and practices. (*Id.*, ¶ 36.) Plaintiff also responded to CLS's request for the exchange of expert witnesses, and detailed requests for production exploring the basis of the employees' claims. (*Id.*, ¶ 39.)

CLS offered the putative class members $500 in exchange for a full release in early June 2009, shortly before the *Iskanian* court certified the class on August 29, 2009. 103 employees accepted the settlement. (Perez Decl., ¶ 17.) Notices of Depositions were served for these settling employees, eight of whom were deposed. (*Id.*, ¶¶ 39-40.) CLS also filed a motion for summary judgment; plaintiffs took depositions and conducted discovery in preparation for opposing this motion. (*Id.*, ¶ 22.)

On April 27, 2011, the U.S. Supreme Court decided *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) ("*Concepcion*"). Shortly thereafter, on May 13, 2011, the parties participated in a class-wide mediation for which Claimant's counsel filed a mediation brief. (Perez Decl., ¶ 23.) The mediation was unsuccessful in part because the offer for the class wide settlement was less that the individual settlements on a per individual basis. (*Id.*) Three days later, on May 16, 2011—about three months before trial—CLS moved for renewal of its motion to compel individual arbitration on the grounds that *Concepcion* abrogated *Gentry*. (*Id.*, ¶¶ 24-27.) The court granted the Motion for Renewal on June 14, 2011, compelling Claimant to arbitration on an individual, not class-wide, basis.[3] (*Id.*, ¶30.)

B. Claimant Continued To Pursue His Individual Claims In Arbitration

After being compelled to individual arbitration, 63 former *Iskanian* class members, including Claimant, demanded individual arbitration in August 2011. (Perez Decl., ¶ 43.) They first filed claims with ADR Services, as provided in the arbitration agreement. (*Id.*, ¶ 44.) CLS rejected these demands, insisting on arbitration with the AAA. (*Id.*, ¶¶ 45-46.) The claimants agreed, and each tendered his or her $175 share of the arbitration fees. (*Id.*, ¶ 47.) However, CLS refused to pay its share of the filing

[3] Plaintiff appealed this ruling, and the Court of Appeal affirmed. On September 19, 2012, the California Supreme Court granted Plaintiff's petition for review. That petition is still pending. No fees incurred in appealing the trial court rulings are included in Claimant's request for attorneys' fees.

fees owed to the AAA. (*Id.*, ¶ 28.) CLS's repeated refusal to pay—based on arguments such as that the claimants' counsel did not represent them—led the AAA to close the claimants' arbitration files ***twice***. (*Id.*, ¶¶ 49, 57.)

On October 27, 2011, CLS filed a motion in the superior court in *Iskanian* to consolidate the arbitrations and appoint a single arbitrator, arguing that individual arbitrations would be too expensive and inefficient. (Perez Decl., ¶¶ 52-53.) Despite previously having argued that the Court must strictly enforce the terms of the arbitration agreement and compel individual arbitration, CLS now argued that Claimant's claims should be consolidated with the claims of the other former class members. (*Id.*)

Due to CLS's refusal to pay arbitration fees, AAA closed Claimant's file (and the file of every other former *Iskanian* class member who demanded arbitration) for the first time. (Perez Decl., ¶ 49.)

In an effort to proceed in arbitration, Claimants filed *Kempler, et al. v. CLS Transportation*, BC473931 ("*Kempler*") on behalf of Claimant and the other former *Iskanian* class members whose access to the arbitral forum was being denied. (Perez Decl., ¶ 51.) *Kempler*, filed November 18, 2011, asserted contractual claims related to CLS's breach of the Arbitration Agreement. (*Id.*) Claimants filed a Motion to Compel Specific Performance in *Kempler* seeking an order requiring CLS to perform the terms of its arbitration agreement and tender the required fees to the AAA. (*Id.*, ¶ 52.)

In its February 7, 2012 order, the trial court denied CLS's motion to consolidate and granted Plaintiffs' motion to compel specific performance under the arbitration agreement. (Perez Decl., ¶ 54.) The claimants again tendered their filing fees. (*Id.*, ¶55.) CLS once again refused to pay the fees, despite the court's order and the AAA's repeated demands for payment. (*Id.*, ¶ 56.) Despite the AAA's explanation that CLS would have to pay a fee for each of the 63 claimants even if only one arbitrator was selected, CLS argued that it should not have to pay pending the resolution of the $1,000 settlement offers it had made. (*Id.*, ¶ 55.)

CLS sought a further extension of time to pay the filing fees on the ground that it had issued a written settlement demand to each Claimant. Although the AAA had provided a first extension, it denied CLS's second extension request with the explanation that, should any arbitration settle within 30 days of payment and before appointment of an arbitrator, the AAA would refund the arbitration fee. CLS, however, still refused to pay the required arbitration filing fees, and instead filed a ***second*** motion

to stay the proceedings and appoint an arbitrator on March 23, 2012. (Perez Decl., ¶ 56.)

The AAA once again closed all 63 files, including Claimant's. (Perez Decl., ¶ 57.)

In response to CLS's defiance both of the AAA rules and a clear court order, on April 9, 2012, the claimants served (but did not file) a motion for sanctions pursuant to Code of Civil Procedure section 128.7 on the grounds that CLS's second motion to stay was frivolous. (Perez Decl., ¶ 58.) During the 21-day safe harbor period, CLS withdrew its second motion to stay the proceedings and agreed to pay the AAA's filing fees. (Id.)

The parties then negotiated the number and selection of the arbitrators. Claimants made substantial concessions on the number of arbitrators, reducing the number of arbitrators requested from 63 to 10. (Perez Decl., ¶ 59.) However, CLS refused to budge from their original four-arbitrator demand. Although the parties were able to agree to arbitrators for 19 of the 63 claimants, CLS refused to proceed with any arbitrations unless the other 44 claimants also agreed to proceed before one of the four arbitrators to which the first 19 had agreed. (*Id.*) Claimant filed a Motion for an Order Deeming Defendant CLS to have Waived Arbitration. (*Id.*, ¶ 61.) The court ordered the parties to select eight arbitrators. (*Id.*, ¶ 64.)

Claimant has since pursued his claims before the Arbitrator. Claimant's counsel attended the arbitration management conference and propounded two notices of deposition, one set of special interrogatories, and one request for production of documents. Claimant also opposed and argued CLS's Motion to Consolidate the Arbitrations. (Perez Decl., ¶¶ 67, 69.)

C. Claimant Accepted the Negotiated Offer from CLS to Settle the Claims.

Shortly before the *Iskanian* class was certified, in early June 2009, CLS offered to settle Claimant's claims for $500. (Perez Decl., ¶ 17.) CLS then offered Claimant a $1000 settlement on March 12, 2012, after having successfully compelled Claimant to individual arbitration. (*Id.*, ¶ 28.) Claimant rejected both these offers because he felt the amounts offered were not adequate compensation for CLS's illegal employment practices. (Earnshaw Decl. ¶ 6.)

On December 21, 2012, once it became clear that Claimant would pursue his individual claims in arbitration, CLS made a settlement offer of $2000. (Perez Decl., ¶ 65.) Claimant accepted this offer within the statutory period for acceptance because he believes that this amount does fairly compensate

him for the wage and hour violations he suffered while working at CLS. (*Id.*, ¶ 66; Earnshaw Decl. ¶ 6.) CLS's offer provides that "claimant may seek an award for their fees from the assigned arbitrator." (Perez Decl., ¶ 66, Ex. 18, ¶ 2.)

III. ARGUMENT

As a matter of right, a prevailing party is entitled to the recovery of costs. Cal. Civ. Proc. Code § 1032. Pursuant to Section 1033.5(a), an allowable cost is attorneys' fees when authorized by contract or statute. Here, Claimant, as the prevailing party, is entitled to costs, including his attorneys' fees.

By litigating this case to a successful settlement, four times CLS's original settlement offer, Claimant may recover attorneys' fees. Claimant's motion is authorized both by contract (the arbitration agreement and the 998 offer) and by statute (Labor Code sections 218.5, 1194(a), and 226(e) and Code of Civil Procedure section 1021.5). Claimant is entitled to recover attorneys' fees because he is the "prevailing party"—he achieved his litigation objectives—and because he pursued his claims to the benefit of the general public. Claimant seeks to recover fees as calculated by counsel's reasonable lodestar.

A. Claimant May Seek To Recover Attorneys' Fees Under Contract And Statute

The arbitration agreement between Claimant and CLS entitles the prevailing party to recover its attorneys' fees and costs. (Perez Decl., ¶ 30, Ex. 5 at ¶ 16(h) [where "a statute or contract at issue ... authorizes the awards of attorneys' fees and costs to the prevailing party," the arbitrator may award attorneys' fees and costs to the "extent available under applicable law"].) CLS's 998 offer also explicitly states that "Claimant's counsel may seek an award of their fees from the assigned arbitrator." (*Id.*, ¶ 66, Ex. 18.)

The statutory claims asserted in this action also entitle Claimant, as the prevailing party, to attorneys' fees. The certified class in *Iskanian*, of which Claimant was a member, asserted claims for numerous wage and hour violations under the California Labor Code.[4] Claimant's Demand for Arbitration asserted nearly identical claims to those the class had pursued in *Iskanian*: violations of

[4] The class pursued claims for unpaid overtime, noncompliant wage statements, missed rest and meal periods, improper withholding of wages and non-reimbursement of business expenses, confiscation of gratuities, non-payment of wages upon termination, failure to pay wages and violations of Business and Professions Code section 17200, *et seq.* Claims were also asserted under the Private Attorneys General Act.

sections[5] 1194, 1197, and 1197.1 (failure to pay minimum wage), 510 and 918 (unpaid overtime), 201 and 202 (non-payment of wages upon termination), 226(a) (improper wage statements), 226.7(a) (missed rest periods), 225.7(a) and 512 (missed meal periods), 221 and 2800 (improper withholding of wages and non-indemnification of business expenses), 351 (confiscation of gratuities), 226(b), 432, and 1198.5 (failure to provide copies of employment records); and Business and Professional Codes section 17200 *et seq.*

Seven of Claimant's ten claims explicitly entitle him to attorneys' fees: non-payment of wages upon termination (§ 218.5 ["the court shall award reasonable attorney's fees and costs to the prevailing party if ... request[ed] ... upon the initiation of the action"])[6]; improper wage statements (§ 226(e) [the employee "is entitled to an award of costs and reasonable attorney's fees"]); failure to pay minimum wages and all overtime wages (§ 1194(a) ["the employee is entitled to recover ... reasonable attorney's fees, and costs of suit"]); and unfair competition, missed meal period, and missed rest period claims (Cal. Civ. Proc. Code § 1021.5 ["a court may award attorneys' fees to a successful party"]).

B. Claimant Is Entitled To Recover His Attorneys' Fees And Costs As the Prevailing Party Under Both the Labor Code And As A Private Attorney General

1. Claimant is the Prevailing Party Under California Labor Code Fee Shifting Statutes

California courts "decline[] to adopt a rigid interpretation of the term 'prevailing party,' and instead, analyze[] which party had prevailed on a practical level." *Heather Farms Homeowners Assn. v. Robinson*, 21 Cal. App. 4th 1568, 1574 (1994); *see also Wohlgemuth v. Caterpillar Inc.*, 207 Cal. App. 4th 1252, 1264 (2012) ("the trial court should simply take a pragmatic approach to determine which party has prevailed"). To be deemed the prevailing party plaintiff is only required to achieve his litigation objectives, whether by judgment, settlement, or other means. *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 576-77 (2004); *see also Santisas v. Goodin*, 17 Cal. 4th 599, 622 (1998) (same). It is well-established that a plaintiff may be the prevailing party for the purpose of recovering attorneys' fees where he dismissed the action with prejudice in exchange for a settlement. *See Wohlgemuth*, 207

[5] All statutory citations are to the California Labor Code unless otherwise specified.

[6] Claimant expressly requested attorneys' fees and costs both in his arbitration demand (Perez_Decl. ¶ 43, Ex. 10) and in the class action complaint filed in *Iskanian* (*Id.*, ¶ 3, Ex. 1, p. 11-13).

Cal. App. 4th 1252. In *Wohlgemuth*, the plaintiffs were the prevailing party in their pre-trial settlement for $50,000 on a claim for more than $180,000 because the settlement, which would allow for replacement of a faulty engine—but not replacement of an entire vehicle—allowed plaintiffs to achieve their litigation objectives. *Id.* at 1256-68.

Claimant, by settling his individual wage and hour claims for $2000, is the prevailing party. Claimant worked for CLS for about seven weeks of the relevant statutory period at $23 per hour. (Earnshaw Decl. ¶¶ 3-4.) However, Claimant had anticipated potentially successful affirmative defenses in arbitration and a potential recovery after litigation of about $100. (*Id.*) The $2000 settlement thus compensates Claimant for the violations he suffered, thereby satisfying his litigation objectives.

This settlement also represents a substantial recovery for wage-and-hour claims. "Individual awards in wage-and-hour cases tend to be modest...usually involv[ing] workers at the lower end of the pay scale, since professional, executive, and administrative employees are generally exempt from overtime statutes and regulations." *Gentry*,[7] 42 Cal. 4th at 457-58.[8] And while a $2000 settlement for Claimant is a success, it also represents just 1/61 of CLS's cumulative settlement offer. CLS issued a $2000 offer to each of the 61 claimants, thus offering a total of $120,000.

Claimant's success in this action must be understood in the context of the expansive changes in the case law that governed how, where, and even whether, Claimant would be able to vindicate his statutory rights. When *Gentry* was decided, it protected Claimant's ability to pursue his claims as part of a class. In order to protect employees' ability to vindicate their statutory rights, the California Supreme Court deemed class action waivers in arbitration agreements unenforceable where an employee faced modest potential individual recovery and the potential for retaliation from his employer, and where absent class members may be ill informed about their rights. *Arguelles-Romero v. Superior Court*, 184

---

[7] *Gentry* noted that, according to the Department of Labor Standards Enforcement, "the average award from its wage adjudication unit for 2000–2005 was $6,038." *Gentry*, 42 Cal. 4th at 458. *Gentry* also cited to "Asian Pacific American Legal Center et al., Reinforcing the Seams: Guaranteeing the Promise of California's Landmark Anti-Sweatshop Law, An Evaluation of Assembly Bill 633 Six Years Later (Sept. 2005) p. 2," which explained that the "average claim for overtime and minimum wage violations submitted to DLSE ranged from $ 5,000–$ 7,000, and settlement ranged from $ 400–$ 1,600."

[8] *Gentry* is cited only for the court's reasoning and the evidence it found of the generally low value of individual wage and hour claims and the difficulties individual employees face in pursuing claims against their employers. The California Supreme Court's findings that wage and hour cases are hard to prosecute has not been impugned. The enforceability of class action waivers issue is currently before the California Supreme Court in *Iskanian v. CLS*, the underlying class action in these arbitrations.

Cal. App. 4th 825, 839 (2010); *Gentry*, 42 Cal. 4th at 463. The *Gentry* Court explained that, under these circumstances, a class action waiver "would impermissibly interfere with employees' ability to vindicate unwaivable rights and to enforce the overtime laws." *Id.* at 457. The *Gentry* test thus evaluates whether, in any given case, the employee would be unreasonably frustrated from vindicating his rights. After the Court of Appeal remanded with instructions to apply *Gentry*, CLS declined to renew its motion to compel arbitration until *Concepcion* was issued. CLS has since conceded that the *Gentry* test would have been satisfied here. (Perez Decl. ¶ 11.)

Claimant lost *Gentry*'s protections of class procedures when the U.S. Supreme Court decided *Concepcion* in April 2011. Less than a month later, and after five years of class litigation, CLS renewed its earlier motion to compel individual arbitration. The trial court granted the motion and compelled individual arbitration, stripping Claimant of the security and bargaining power inherent to litigating as a class. Claimant was among the former class members who decided to pursue his claims individually in the arbitral forum. Where, as here, the meager potential individual recovery is far eclipsed by the costs of achieving that recovery, simple financial reality often precludes an employee's ability to vindicate his wage and hour rights.[9] As here, where, instead of simply being a class member, an employee is put in the position of having to individually pursue a much stronger defendant for a claim likely worth just hundreds of dollars, obtaining $2000 in settlement is a great success. Notably, Claimant's recovery of $2,000 is 400% more than CLS initially offered him shortly before the court granted class certification, and double the amount CLS offered just after stripping Claimant of the protections of class procedures. Claimant rejected those earlier offers because he felt the amounts were too low to compensate him for having suffered under CLS's the illegal working conditions. (Earnshaw Decl. ¶ 6.) He accepted the $2000 offer because he felt the amount would fairly compensate him for his losses. (*Id.*) Claimant has not just achieved his litigation goals, he has exceeded them.

As discussed in greater detail below, the reasonable value of Claimant's counsel's services is

[9] After CLS successfully moved to compel Claimant to arbitrate his small individual claims, CLS tried to press this advantage by engaging various delay tactics for a year, including repeatedly running back to the trial court to try to gain strategic advantages in arbitration and refusing to pay the arbitration fee so that AAA actually closed Claimant's file twice. In so doing, CLS strategically exacerbated the fact that Claimant was looking at a small individual recovery by forcing Claimant to incur significant expense just trying to get his claims heard in arbitration.

over $66,000 per claimant. Notwithstanding, Claimant seeks attorneys' fees of $57,412 including a reasonable two-time multiplier and costs of $596. *See Flannery v. Prentice*, 26 Cal. 4th 572, 585 (2001) (awards generally "are computed from their reasonable market value"). Accordingly, based on an employee's statutory right to recover attorneys' fees, Claimant should be awarded all his reasonable attorneys' fees.

2. Claimant is Also the Prevailing Party Under Code of Civil Procedure Section 1021.5

As additional statutory authority for the fees sought, under Code of Civil Procedure section 1021.5, a court or arbitrator may award attorneys' fees to a "successful party in any action that has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or non-pecuniary, has been conferred on the general public or a large class of persons; (b) the necessity and financial burden of private enforcement are such as to make the award appropriate; and (c) such fees should not in the interest of justice be paid out of the recovery. Cal. Civ. Proc. Code § 1021.5. The fundamental objective of the statute is "to encourage suits enforcing public policies by providing substantial attorney fees to successful litigants in such cases." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004). Each of these factors is satisfied here.

First, a significant benefit has been conferred both on the general public and on a large class of persons for several reasons. During their 2011 depositions, four CLS drivers testified that CLS had changed policies being litigated in this action to record and pay for meal breaks violations. In particular, CLS now compensates employees who miss meal and rest breaks. (Perez Decl., ¶ 41, Exs. 6-9.)

Even Claimant's decision to maintain his individual claims after being stripped of class procedures confers a benefit both to other former class members and to the public at large. When an employee is deprived of class procedures, he is faced with the decision whether to pursue individual wage and hour claims whose potential value pales in comparison to the costs of vindicating those rights. It often makes no economic sense for a claimant in such a position to try to hold his or her former employer accountable for wage and hour violations. This works a tremendous detriment not only to the claimant, but to all other former, current and future employees of the employer. In fact, CLS spent the better part of the year following its successful motion to compel individual arbitration taking advantage

of these circumstances.[10] CLS engaged in a year of delay tactics (see sections II.A and B, *infra*), making Claimant and the other former class members incur substantial expenses just trying to get their claims heard. (Perez Decl. ¶¶ 43-64.) CLS even refused to pay its share of the arbitration fees for so long that AAA ***twice*** closed Claimant's file, shutting him out of the only forum available to him. (*Id.*, ¶¶ 49, 57.)

But rather than allowing CLS to evade responsibility for its statutory violations against employees, Claimant proceeded to hold CLS accountable. Claimant's efforts in the face of financial disincentive from pursuing his claims are particularly meaningful since his wage and hour claims themselves benefit the public. *See Earley v. Superior Court*, 79 Cal. App. 4th 1420, 1430 (2000) (citing *Monzon v. Schaefer Ambulance Service, Inc.*, 224 Cal. App. 3d 16, 29 (1990) (wage and hours laws "concern not only the health and welfare of the workers themselves, but also the public health and general welfare"). *Earley* recognized that wage and hour laws "spread employment throughout the work force by putting financial pressure on the employer" and advance "a public policy fostering society's interest in a stable job market." (*Id.*)

This litigation thus has conferred significant benefits to the general public by forcing a large employer to comply with wage and hour laws and recompense its employees for its failure to do so in the first instance. CLS's employees will prospectively benefit from the fact that CLS has been held accountable to comply with the state's wage and hour laws. Current employees also benefited once the then-putative class action was filed because the litigation prompted CLS to pay $500 to 103 of its employees in order to settle their potential claims. (Perez Decl. ¶17, Ex. 4, Declaration of Leila Maccioccia, ¶ 12.) And through Claimant's and his counsel's enduring efforts to hold CLS accountable, CLS has quadrupled its original $500 offer. In addition to the 8 Claimants who settled their claims for the substantial amount of $2000 from CLS, there are still 53 other cases pending in arbitration that will benefit from the fact that Claimant's counsel has secured a 400% increase in settlement offers. And all current and future employees will benefit from the fact that CLS has changed its premium policies.

Second, Claimant's settlement also satisfies the financial burden requirement. The "burden of

[10] It is not difficult to surmise that once CLS succeeded in compelling individual arbitration and enforcing its arbitration agreement with all its class member employees, it believed few or none of its employees would actually pursue their individual claims against CLS, and thus CLS would have been absolved of its liability without ever having to pay any of its employees unpaid wages for the failure to, among other things, pay proper compensation and provide uninterrupted meal periods.

private enforcement" factor asks whether "the necessity for pursuing the lawsuit placed a burden on the plaintiff 'out of proportion to his individual stake in the matter.'" *Woodland Hills Residents Ass'n v. City Council*, 23 Cal. 3d 917, 941 (1979). This factor is satisfied where "the cost of the legal victory transcends the claimant's personal interest." *Ryan v. California Interscholastic Federation*, 94 Cal. App. 4th 1033, 1044 (2001). Here, Claimant's attorneys' fees exceed his recovery by more than 1300%. Claimant would likely not have found representation in the absence of statutory attorneys' fees. (Declaration of G. Arthur Meneses, ¶ 5.) This is entirely to be expected in a case such as Claimant's. Courts have recognized that individual wage and hour claims, especially for low-income employees, tend to be very low-value, with potential recovery far exceeded by the likely costs. *See Gentry*, 442 Cal. 4th at 457-58.

Third, satisfying the last criterion, paying counsel's fees from Claimant's recovery would not be "in the interest of justice." Here, "the interests of justice" require payment of attorneys' fees by CLS, rather than out of the Claimant's recovery. As a threshold matter, in its offer to settle, CLS recognized that any attorneys' fees should be paid pursuant to a Motion for Fees, and not out of the settlement proceeds. (Perez Decl., Ex. 18, ¶ 2.) Moreover, the incentive of a Court-awarded (in this case, arbitrator-awarded) fee is necessary here due to the large amount of attorneys' fees that have been incurred over the course of six and a half years of litigation necessary to reach this result. When Claimant decided to pursue his claims individually, he was faced with five years of attorneys' fees already incurred and the potential for much more, all for claims with comparatively very small potential value. "The California Supreme Court has repeatedly reinforced California's public policy in interpreting remedial legislation in favor of employee protections." *Ramirez v. Yosemite Water Co., Inc.*, 20 Cal. 4th 785, 794 (1999) ("[P]ast decisions . . . teach that in light of the remedial nature of the legislative enactments authorizing the regulation of wages, hours and working conditions for the protection and benefit of employees, the statutory provisions are to be liberally construed with an eye to promoting such protection."); *Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 340 (2004) (same); *see also Earley*, 79 Cal. App. 4th at 1430 (emphasizing the benefits to the public of wage and hour laws). In light of the public policy of promoting the vindication of wage and hour claims and the strong financial disincentives to pursuing such claims individually, CLS, not Claimant, should bear the cost of Claimant's portion of attorneys'

fees.

C. The Attorneys' Fees Claimant Seeks Are Reasonable

1. Claimant's Counsel's Lodestar is Reasonable

In cases where "the responsibility to pay attorney fees is statutorily or otherwise transferred from the prevailing plaintiff to the defendant, the primary method for establishing the amount of 'reasonable' attorney fees is the lodestar method." *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 26 (2000). The lodestar is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate.[11] *Id.* Here, Claimant's counsel's lodestar is $28,706, calculated by aggregating the total lodestar for the two firms prosecuting this matter for the *Iskanian* case, the *Kempler* case, and the arbitrations and proportionately dividing that amount by the 61 claimants in these Arbitrations. No fees incurred in any appeal are included in this lodestar. The resulting $28,706 is the amount of attorneys' fees apportioned to each Claimant to date.

Claimant's counsel's hourly rates are comparable to, or less than, those charged by other plaintiffs' counsel[12] and the firms defending against wage and hour claims. Counsel's hourly rates for partners, senior counsel, and associates range from $330 per hour to $695 per hour.

Likewise, the total attorney hours expended on this action are reasonable and in line with comparable cases. Claimant's counsel billed a total of 3,774.1 hours. (Perez Decl. ¶ 2; Meneses Decl. ¶ 2.) Multiplying the total attorney hours by the applicable hourly rates yields an aggregate lodestar of $1,751,078 or $28,706 after division among the 61 Claimants.

---

[11] Courts may approve attorneys' fees without reviewing detailed timesheets and regularly do so. *See Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986) ("testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records"); *Dixon v. State Bar*, 39 Cal. 3d 335, 344 (1985) (an attorney need not submit contemporaneous time records to recover attorney fees); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 64 (2008) ("detailed timesheets are not required of class counsel to support fee awards in class action cases"); *Margolin v. Regional Planning Com.*, 134 Cal. App. 3d 999, 1006–1007 (1982) (the court may award fees based on time estimates); *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465, 470-471, 478 (1984) (a court may approve attorneys' fees based on billing summaries provided by counsel). Claimant's counsel's timesheets are particularly sensitive here, where other claimants' matters are pending and the entries on the timesheets may disclose work product.

[12] *See, e.g., Richard v. Ameri-Force Mgmt. Servs., Inc.* (San Diego Super. Ct. No. 37-2008-00096019) (partner rates: $695-$750/hour; associate rate: $495/hour); *see also Barrera v. Gamestop Corp.*, No. CV 09-1399 (C.D. Cal. Nov. 29, 2010) (partner rate: $700/hour; associate rate: $475/hour); *Anderson v. Nextel Retail Stores, LLC*, No. CV 07-4480 (C.D. Cal. June 20, 2010) (partner rates: $655-$750/hour; associate rates: $300-$515).

CLS litigated this case aggressively. CLS succeeded in obtaining an order forcing the *Iskanian* class members to arbitration on an individual bases even though the parties had already litigated for then-five years to the eve of trial. Although insisting on essentially starting the process over again in arbitration on an individual basis for each of dozens of claimants would be inherently inefficient and costly, CLS vigorously pursued this strategy. Even after Claimant was compelled to individual arbitration, CLS still spent a year forcing Claimant to incur substantial expense just to access the forum to which he had been compelled at CLS's insistence. Under the circumstances, it is not surprising that Claimant's reasonable attorneys' fees significantly exceed his recovery. But "[a] defendant cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." *Peak-Las Positas*, 172 Cal. App. 4th at 114.

Indeed, "[t]he whole purpose of fee-shifting statutes is to generate attorneys' fees that are disproportionate to the plaintiff's recovery." *Millea v. Metro-North R.R. Co.*, 2011 U.S. App. LEXIS 16354, *31 (2d Cir. Aug. 8, 2011) ("especially for claims where the financial recovery is likely to be small, calculating attorneys' fees as a proportion of damages runs directly contrary to the purpose of fee-shifting statutes [by assuring that] claims of modest cash value can attract competent counsel"); *see also Beaty v. BET Holding, Inc.*, 222 F.3d 607 , 612-613 (9th Cir. 2000) (a "trial court does not under California law abuse its discretion simply by awarding fees in an amount higher, even very much higher, than the damages awarded").[13] Moreover, any approach attempting to link the amount of recovery to the amount of attorneys' fees awarded would undermine the rationale for claims that, like those at issue here, provide for statutory fee-shifting. *City of Riverside v. Rivera*, 477 U.S. 561, 578-79 (1986) (explaining that "[a] rule of proportionality would make it difficult, if not impossible, for individuals with meritorious

[13] California has expressly rejected a proposal to cap fees in proportion to the damages award in civil rights cases. *See Harman v. City and County of San Francisco*, 158 Cal. App. 4th 407, 415-421 (2007) (the trial court's award of about $970,000 in fees and $30,300 in damages was not an abuse of discretion). The degree of success is more significant than proportionality. *Id.* at 419. The Court of Appeal also affirmed an award of $ 470,000 in attorneys' fees under the California Fair Employment Housing Act where the plaintiffs succeeded only on some of their claims and the damages awarded amounted to only $37,500. *See Vo v. Las Virgenes Municipal Water District*, 79 Cal. App. 4th 440 (2000). Like civil rights actions, wage-and-hour class actions are brought in the public interest. *See In re Trombley*, 31 Cal. 2d 801, 809 (1948) ("because of the economic position of the average worker and, in particular, his dependence on wages for the necessities of life for himself and his family, it is essential to the public welfare that he receive his pay when it is due"); *Kerr's Catering Service v. Department of Industrial Relations*, 57 Cal. 2d 319, 325-27 (1962) (labor protections are designed to promote the public welfare, as well as protect the interests of individual workers).

. . . claims but relatively small potential damages to obtain redress from the courts," and that such an approach would "seriously undermine Congress' purpose in enacting [its fee-shifting statute]").[14]

Policy goals militate in favor of approving Claimant's request for statutory fee-shifting. In the absence of fee shifting, employees likely would not have access to counsel with the experience and resources necessary to litigate complicated actions against sophisticated defendants. If counsel are not sufficiently compensated, claimants in these cases will not be able to secure effective representation. *See, e.g., Jones v. Tracy School Dist.*, 27 Cal. 3d 99, 111 (1980) ("Most employers . . . can more readily afford a protracted . . . suit than can their employees. The mandatory award of attorney's fees encourages aggrieved employees to pursue meritorious but expensive claims, some . . . involving lost pay awards which are small compared to the plaintiffs attorney's fees.").

Claimant thus is entitled to all fees necessarily and reasonably incurred under the applicable fee shifting statutes.

2. Additional Factors under California Law Support Awarding Claimant's Counsel's Fee Award

Although the lodestar is the primary reference for a fee request, courts may also consider the following non-exclusive factors: (1) the novelty, difficulty, and complexity of the questions involved; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award. Additionally, Claimant requests that the Arbitrator consider: (1) the results achieved on behalf of the Claimants; (2) Class counsel's significant investment of time and resources into the litigation; and (3) the reasonableness of the requested cost recovery

[14] "Courts rejecting the proportionality approach under fee-shifting statutes assert rationale that is not limited to cases brought in the public interest or to individual (as opposed to class) suits. *See, e.g., Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 639 (9th Cir. 1989) ("[T]here is no reason to treat attorney's fees in antitrust cases under [the Clayton Act] different from attorney's fees in civil rights cases under section 1988. We have recognized the public benefit of antitrust litigation.");*United Auto. Workers Local 259 Social Sec. Dept. v. Metro Auto Center*, 501 F.3d 283, 295 (3rd Cir. 2007) (citing *Riverside* and stating in ERISA case that, "When delinquencies are small, the cost of recovery may be disproportionate, and requiring proportionality would, in effect, discourage plaintiffs from taking their claims to federal courts); *Bldg. Serv. Local 47 v. Grandview Raceway*, 46 F.3d 1392, 1401 (6th Cir. 1995) ("[I]n ERISA cases, there is no requirement that the amount of an award of attorneys' fees be proportional to the amount of the underlying award of damages"); *Bd. of Trs. of the Hotel & Rest. Employees, Local 25 & Employers' Health & Welfare Fund v. Madison Hotel, Inc.*, 43 F. Supp.2d 8, 14 (D.D.C.1999) (same); *Niederer v. Ferreira*, 189 Cal. App. 3d 1485 (1987) (applying the anti-proportionality logic in an action to collect from the guarantor of a note)."

(a) Claimant's Action was Complex and Required Counsel to Risk Not Being Compensated for Years of Work, if Ever

The challenges Claimant's action presented and the risk Claimant's counsel undertook support Claimant's fee request. Both the law and the facts at issue support this factor.

Claimant's action involved aggressive litigation over the enforceability of CLS's arbitration agreement, and then significant litigation to compel CLS to comply with arbitration after CLS's agreement was ruled enforceable. The past several years have seen rapid evolution of the case law governing the enforceability of both arbitration agreements in general and class action waivers. Claimant's claims were filed before the issuance of *Gentry*, then proceeded on a class-wide basis after *Gentry* became the law of the land, changed again after *Concepcion* was issued—at which time Claimant was stripped of the class with which he had been litigating, and has seen extensive appellate case law addressing issues such as whether *Concepcion* abrogated *Gentry*. Claimant's claims were repeatedly affected by this evolution, as discussed in detail at Section II.A., *supra*.

The facts that were being investigated and litigated were also complex. For instance, Claimants alleged that pursuant to CLS's policies, drivers received an automatic 30 minutes of pay as "prep time" before the first pick up and after the last drop off of the day. (Perez Decl. Ex.3, Plaintiff's Motion for Class Certification, p. 3-5.) But the automatic pay did not take into account the actual time it took for the driver to prepare before picking up or dropping off the client. (*Id.*) Thus, the drivers were not paid their full wages and did not receive all of their overtime pay. (*Id.*) Additionally, Claimant's causes of action included a regular rate issue where CLS improperly calculated the base rate for overtime calculations without the automatic 20% commission the corporation received from clients and paid to the drivers. (*Id.*, at p. 5-6.) The commission was incorrectly denoted on the driver's wage statements as a "flat rate." (*Id.*) Moreover, the meal and rest break claims were based on the facts that the drivers were forced to remain "on duty" because they remained connected to dispatch or their clients while on every "break". (*Id.*, Plaintiff's Motion for Class Certification, p. 7.) In all, in order to prove these complex theories, counsel reviewed and analyzed over 11,000 pages of documents and testimony to determine the exact scope of CLS's liability. (Perez Decl. ¶ 38.)

In this specific case, the *Iskanian* class action was necessary to reach Claimant's individual

settlement. The vast majority of the discovery was conducted in the class action— in fact, a CLS company representative was deposed and over 11,000 pages of documents related to CLS's employment practices were reviewed and analyzed. The class action discovery was so thorough that the parties now seek only minimal discovery in arbitration largely as a result of the extensive discovery they have already exchanged. Further, as incident to the *Iskanian* class action, the parties engaged in extensive litigation to determine Claimant's rights in arbitration and after the determination of those rights, extensive litigation to enforce those rights. Thus, not only was the class action related to the instant arbitrations, it was necessary to define the rights owed to each claimant. In essence, without all the work done in the class action litigation, there would likely have been no way to proceed in arbitration.

Thus, not only was the litigation long-standing and complex, but arbitration and class action issues were extensively (and repeatedly) litigated in this action as the case law changed rapidly. Moreover, because of the litigation tactics CLS pursued after compelling individual arbitration, Claimant was forced to return to court numerous times both to defend itself against CLS's improper motions and to compel CLS to abide by its own arbitration agreements. (*See* Sections II.A. and B., *supra*.) Claimant spent a year just trying to gain access to the forum he was compelled to by CLS.

(b) This Action Was Litigated for Over Six Years to the Preclusion of Other Work

Because Claimant's Counsel must maintain appropriate attorney and staff-to-case ratios, taking this case required Claimants' counsel to turn away other potential fee-generating work. (Meneses Decl. ¶ 6.)[15] In fact, Claimant's counsel was precluded from pursuing other work is amply demonstrated by the 3728.5 hours spent pursuing Claimant's rights in court and arbitration.

(c) The Prosecution of this Case on a Contingency Basis Supports the Requested Fee Multiplier and Total Attorneys' Fees Award

Providing attorneys who represent clients under contingent-fee agreements a larger fee than what may be the market-value of their services helps to assure adequate representation for plaintiffs unable to

[15] Initiative does not track its opportunity cost in cases foregone. (Meneses Decl. ¶ 6.) Nonetheless, on average, Initiative receives ten or more substantial, extensive telephone inquiries per week from individuals seeking to pursue what they perceive to be employment-related claims against high-profile employers. (*Id.*)

afford accomplished attorney hourly rates. *See Graham*, 34 Cal. 4th at 580 ("[A] lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions."); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) ("[A] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable.").

California courts recognize that "the experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk." *Ketchum*, 24 Cal. 4th at 1136 (quoting Berger, Court Awarded Attorneys' Fees: What is Reasonable?" 126 U. Pa. L. Rev. 281, 324-25 (1977)). Indeed, "[i]t is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases . . ." *Chemical Bank v. City of Seattle*, 19 F.3d 1291, 1299 (9th Cir. 1994). Contingent fees that may far exceed the market value of the services if rendered on a "non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose." *Id.* If this bonus methodology did not exist, "very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing." *Id.* at 1300.

Here, Claimant's counsel is only claiming the fees for time actually incurred in pursuing the matter to success. Claimant's counsel is seeking only a reasonable two time multiplier on their lodestar, after writing off hundreds of thousands of dollars in accrued fees, for the risk of accepting this contingency case.

(d) Counsel Achieved Excellent Results for the Claimant

As explained above in demonstrating that Claimant is the prevailing party, counsel achieved excellent results for the Claimant. In the interests of avoiding repetition, Claimant incorporates the argument at Section III.B.1. and 2., *supra*, explaining why a $2000 settlement for Claimant is an excellent result.

(e) Counsel Invested Significant Time and Resources

Counsel devoted significant time and resources to pursuing Claimant's claims. Counsel

conducted extensive formal discovery. (Perez Decl. ¶¶ 32-42.) In response to discovery requests, CLS produced roughly 11,000 pages of documents. Claimant's counsel expended considerable resources reviewing these documents and interviewing employees to further investigate CLS's practices and the circumstances giving rise to the violations and to assess the strengths and weaknesses of the claims. (Perez Decl. ¶ 2; Meneses Decl. ¶ 2.) Claimant's counsel was also forced to engage in extraordinary motion practice, including drafting and arguing approximately 10 motions before the *Iskanian* and *Kempler* courts and before the arbitrator.[16] (Perez Decl. ¶¶ 3-64.)

3. The Requested Cost Recovery Is Reasonable

Claimant is also entitled to reimbursement of his counsel's litigation costs. Cal. Lab. Code §§ 1194(a), 2699(g)(1). Counsel incurred and advanced approximately $36,411 in reasonably incurred costs. (Meneses Decl., ¶ 8.) These costs are for necessary litigation expenses such as filing fees, deposition charges, court reporter fees, the fees Claimant paid to initiate arbitration with AAA, delivery and messenger services required to comply with CLS's discovery requests and for court filings, and travel and mileage for depositions and court hearings. These are costs of precisely the sort that are reimbursable because they were reasonably and necessarily incurred during the case's pendency. *See Bussey v. Affleck*, 225 Cal. App. 3d 1162, 1166 (1990) (reversing a trial court's disallowance of costs such as "supplemental secretarial costs, copying, telephone costs and necessary travel," which are "integrally related to the work of an attorney and the services for which outlays are made[, which] may play a significant role in the ultimate success of litigation"); *see also, e.g., In re United Energy Corp. Sec. Litig.*, No. MDL 726, 1989 U.S. Dist. LEXIS 19146, at *16 (C.D. Cal. Mar. 9, 1989) (approving $71,000 such costs).

D. Claimant's Counsel are Entitled to Recover Attorneys' Fees on All Claims

Three of Claimant's ten claims do not explicitly call for an award of fees.[17] Nonetheless, fees for

[16] These included: (1) Opposition to Motion to Compel Arbitration, (2) Motion for Class Certification, (3) Reply In Support of the Opposition to the Motion to Consolidate, (4) Motion in Opposition to the Motion for Renewal of Defendant's Prior Motion, (5) Plaintiff's Reply in Support of Plaintiff's Motion for Relief from Defendant's Untimely Motion for Summary Judgment, (5) Plaintiff's Motion to Compel Specific Performance, (6) Opposition to the Motion to Consolidate, (7) Motion Deeming CLS Waived Arbitration, (8) Motion in Opposition to CLS's Motion to Appoint Arbitrators, and (9) the Motion in Opposition to Respondent's Motion to Consolidate Arbitrations

[17] Specifically: confiscation of gratuities (section 251), improper withholding of wages and non-

these claims may be awarded for two reasons. First, CLS's 998 offer to Claimant expressly allows Claimant to seek attorneys' fees for fees and costs incurred in litigating Claimant's claims. The 998 offer does not in any way limit the scope of this allowance for fees to those claims for which statutory fee shifting is available.

Second, regardless of the language of the 998 offer, attorneys' fees may be awarded for these claims where, as here, the liability issues are interrelated and inseparable:

> When a cause of action for which attorney fees are provided by statute is joined with other causes of action for which attorney fees are not permitted, the prevailing party may recover only on the statutory cause of action. However, the joinder of causes of action should not dilute the right to attorney fees. Such fees need not be apportioned when incurred for representation of an issue common to both a cause of action for which fees are permitted and one for which they are not. All expenses incurred on the common issues qualify for an award.

Akins v. Enterprise Rent-A-Car Co., 79 Cal. App. 4th 1127, 1133 (2000) (citing *Reynolds Metals Co. v. Alperson*, 25 Cal. 3d 124, 129-130 (1979)); *see also Drouin v. Fleetwood Enterprises*, 163 Cal. App. 3d 486, 493 (1985) ("Attorneys' fees need not be apportioned between distinct causes of action where plaintiff's various claims involve a common core of facts or are based on related legal theories"); *see also, Bell v. Vista Unified School Dist.*, 82 Cal. App. 4th 672, 687 (1985) ("Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible to separate the attorney's time into compensable and noncompensable units"). To separate out the time spent on the various claims in this case would be highly impracticable. Claimant's counsel took depositions and propounded discovery to establish all of the claims without separating the discovery or deposition by claim, and reviewed thousands of pages of documents—such as corporate policies and handbooks—that applied to multiple claims. Each motion filed in these matters advanced the litigation as a whole rather than each claim on a piecemeal basis. To require counsel to apportion out the time spent on each claim would result in an impossibly inaccurate estimate. Claimant's counsel would likely be underpaid for the services rendered in contravention of the public policies underlying the fee-shifting statutes.

---

indemnification of business expenses (sections 221 and 2800), and failure to provide copies of employment records within the time allowed (sections 226(b), 432, and 1198.5).

E. Claimant is Entitled to Recover Attorneys' Fees for All Work Which Advanced the Interests of the Claimant to Settlement of the Claims

Claimant should be awarded attorneys' fees dating to the filing of the *Iskanian* action in August 2006. Claimant could not have settled his claims for a reasonable amount absent the extensive litigation of Claimant's claims as part of the *Iskanian* class action and the protracted motion practice in *Kempler* after arbitration was compelled. And Claimant is not seeking a double recovery, but attorneys' fees for the collective work done on behalf of the 61 claimants as equally apportioned among them.

It is well established that attorneys' fee awards may include fees incurred prior to the filing of the complaint for services necessary to the litigation. *See, e.g., Best v. California Apprenticeship Council*, 193 Cal. App. 3d 1448, 1461 (1987) (attorneys' fees awards under Code of Civil Procedure section 1021.5 may include fees incurred for administrative proceedings that were useful and necessary to the public interest litigation); *La Mesa-Spring Valley School Dist. v. Ostuka*, 57 Cal. 2d 309 (1962) (attorneys' fees awarded under Code of Civil Procedure section 1255a may include fees "for services rendered ... before or after the filing of the action, provided only that they are the type of services that are reasonably necessary to protect defendant's interests at the expected trial"); *Stokus v Marsh*, 217 Cal. App. 3d 647, 655-56 (1990) (under Civil Code Section 1717, "the pre-complaint investigation and evaluation of the potential claim is part of the process and expense of litigation." In fact, "nothing in [Civil Code Section 1717] precludes compensation for fees incurred prior to filing the complaint, where fees were reasonably and necessarily incurred at that time by the prevailing party").

By the time arbitration started, the parties had already substantially litigated their claims, exchanged almost all discovery, and even prepared for briefing a summary judgment motion—hence why the parties anticipate minimal discovery and motion practice in arbitration. And it has taken six-and-a-half years to get an acceptable settlement offer from CLS. CLS issued its first offer for $500 shortly before the *Iskanian* class was certified in June 2009. Its $1000 offer was issued shortly after Claimant was compelled to individual arbitration after years of litigation. And it did not offer its recent $2000 offer until the parties appeared in arbitration and it became clear that Claimant would pursue his claims even after being forced to litigate on an individual basis.

Claimant did not file his arbitration claim as a newly-incepting claim, but as a direct continuation

of *Iskanian*. Claimant's wage and hour claims in his arbitration are almost identical to the wage and hour claims asserted by the *Iskanian* class of which he was a member.[18] In being compelled to individual arbitration, Claimant was transferred to a new forum in which to maintain his claims, and this transfer of forum does not undo or nullify the extensive work Claimant accomplished in court. This settlement comes after years of investigation and litigation—the parties have scrutinized each others' written records and deposed potential witnesses. This settlement is not the result of a quick deal in a new lawsuit trying to avoid expensive litigation to come, but the result of an estimation of the value of the harm Claimant suffered as informed by years of litigation.

Further, as explained above at Section II.B., Claimant was forced to engage in protracted litigation after being compelled to arbitration just to get access to the arbitral forum. Indeed, until CLS finally paid its share of the arbitration filing fees, Claimant was foreclosed from arbitration and had to return to court for relief from CLS's tactics. Claimant could not have obtained this arbitration settlement without having prevailed in the post-arbitration superior court motion practice described above.

IV. CONCLUSION

For the foregoing reasons, the Arbitrator should grant Claimant's request for the award of attorneys' fees in the amount of $57,412 and costs in the amount of $596, and for any other relief the Arbitrator deems just and proper.

Dated: March 25, 2013

Respectfully submitted,

Capstone Law APC

By: _____
Raul Perez

Dated: March 25, 2013

Initiative Legal Group APC

By: _____
Mónica Balderrama
Cory G. Lee

Attorneys for All Claimants

[18] The primary difference between the class action claims and the individual arbitration claims is that Private Attorneys General Act claims were asserted on behalf of the putative class, but are not asserted in arbitration.

Mónica Balderrama (SBN 196424)
MBalderrama@InitiativeLegal.com
G. Arthur Meneses (SBN 105260)
AMeneses@initiativelegal.com
Cory G. Lee (SBN 216921)
CoryLee@InitiativeLegal.com
Initiative Legal Group APC
1800 Century Park East, Mezzanine
Los Angeles, California 90067
Telephone: (310) 556-5637
Facsimile: (310) 861-9051

Attorneys for All Claimants

AMERICAN ARBITRATION ASSOCIATION

LUIS EARNSHAW,

Claimant,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, et al.,

Respondents.

74 160 223 12 AMCH

DECLARATION OF G. ARTHUR MENESES IN SUPPORT OF LUIS EARNSHAW'S MOTION FOR ATTORNEYS' FEES AND COSTS

Arbitrator: Hon. Kevin Murphy

Date: May 1, 2 or 3 [Tentative]
Time:
Place: Via Conference Call

DECLARATION OF G. ARTHUR MENESES

I, G. Arthur Meneses, declare as follows:

1. I am an attorney licensed to practice before all courts of the State of California and am a graduate of the University of California, Los Angeles, and the University of California, Los Angeles School of Law. I was admitted to practice in California in December of 1982 and have practiced in the state continuously from that time. Unless the context indicates otherwise, I have personal knowledge of the following facts, and if called as a witness, I could and would testify competently to them. I am a partner at Initiative Legal Group APC ("Initiative" or "ILG"), co-counsel of record for Claimants. I make this declaration in support of Claimant's Motions for Attorneys' Fees and Costs.

2. Initiative's records reflect that Initiative's attorneys spent over 2280 hours working on the *Iskanian v. CLS Transportation Los Angeles LLC* suit, *the Kempler v. CLS Transportation Los Angeles LLC* suit, and the instant arbitration against CLS as counsel for Claimants. The following chart sets forth the regular billable hourly rate and the hours worked by each attorney. The rates are commensurate with the prevailing rates among firms that regularly litigate wage and hour class actions. The fee totals reflect the amounts that would have been charged on an hourly basis. In the exercise of billing discretion, Initiative wrote off over 400 hours of attorney time. California courts may approve attorneys' fees without reviewing detailed timesheets and regularly do so. *See Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986) ("testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records"); *Dixon v. State Bar*, 39 Cal. 3d 335, 344 (1985) (an attorney need not submit contemporaneous time records to recover attorney fees); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 64 (2008) ("detailed timesheets are not required of class counsel to support fee awards in class action cases"); *Margolin v. Regional Planning Com.*, 134 Cal. App. 3d 999, 1006–1007 (1982) (the court may award fees based on time estimates); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254-55 (timesheets are not required of counsel to award attorneys' fees in class action cases); *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465, 470-471, 478 (1984) (a court may approve attorneys' fees based on billing summaries provided by counsel).

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, 2ND FLOOR, LOS ANGELES, CALIFORNIA 90067

Schedule of Fees				
Attorney	**Rate**	**Title**	**Hours**	**Total**
Arthur Meneses	$695	Partner	25.6	$17,792
Cory Lee	$575	Senior Associate	223.9	$128,742
Dina Glucksman	$445	Associate	128.0	$56,960
Kevin Yang	$365	Former Associate	208.2	$75,993
Michelle Lee	$330	Associate	161.6	$53,328
Monica Balderrama	$665	Partner	93.4	$48,811
Olesya Mikhaylova	$420	Former Associate	139.7	$58,674
Samuel Levy	$330	Former Associate	1206.1	$398,013
Theodore O'Reilly	$365	Former Associate	93.7	$34,182
Total			**2,280.2**	**$885,768**

3. As shown above, Initiative's hourly rates for associates range from $330 to $445 per hour. These rates are comparable to those charged by the Los Angeles office of Sheppard Mullin Richter & Hampton ("Sheppard Mullin"), a prominent law firm with a significant wage and hour class action defense practice. Sheppard Mullin's associate rates range from $275 to $635 an hour. *See* 2011 Nationwide Sampling of Law Firm Billing Rates – The National Law Journal, December 19, 2011 (a true and correct copy of which is attached as Exhibit A). Initiative's associate hourly rates are also comparable to those of Manatt, Phelps & Phillips ("Manatt Phelps"), a well-known law firm based in Los Angeles. Manatt Phelps' average associate hourly rate is $464. *Id.* Initiative's average associate rate (specifically for those attorneys above) is approximately $436. Initiative's senior associates and partner hourly rates range from $575 to $665. These rates are comparable to those charged by the Los Angeles offices of Sheppard Mullin ($505 to $860) and Manatt Phelps ($540 to $850). *Id.* Moreover, Initiative's rates are comparable to those judicially approved for other plaintiff's firms. *See, e.g., Richard v. Ameri-Force Mgmt. Servs., Inc.* (San Diego Super. Ct., August 27, 2010, No. 37-2008-00096019) ($695 to $750 an hour for partners; $495 an hour for associates); *Barrera v. Gamestop Corp.* (C.D. Cal. Nov. 29, 2010, No. CV 09-1399) ($700 an hour for partners; $475 an hour for associates); and *Anderson v. Nextel Retail Stores, LLC* (C.D. Cal. June 20, 2010, No. CV 07-4480) ($655 to $750 an hour for partners; $300 to $515 an hour for associates).

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

4. While adjusting our rates to track annual market increases, Initiative's rates have steadily remained reasonable and competitive, and have been consistently approved by federal and state courts over the past several years. *See, e.g., Colsa v. Freeway Insurance Services, Inc.* (Riverside Super. Ct. Case No. RIC 10018869) (July 30, 2012) ("The Court finds that the requested Class Counsel award is reasonable for a contingency fee in a class action such as this. Moreover, Class Counsel have provided sufficient evidence to establish that the award is appropriate by way of their lodestar/multiplier cross-check analysis, demonstrating to the Court's satisfaction that the attorney rates and hours billed to the litigation were reasonable."); *Hill v. Sunglass Hut*, (L.A. Super. Ct. No. BC422934) (July 2, 2012) ("Class Counsel have demonstrated the propriety of their request for attorneys' fees by reference to their lodestar, which the court finds to be the product of fair-market attorney rates and hours billed to the litigation"); *Johnston v. American Fidelity Assurance,* (Fresno Super. Ct. No. 09CECG03909) (May 23, 2012) ("[t]he Court finds that the requested Class Counsel fee award is reasonable on a lodestar/multiplier basis, and that the hours and attorney rates billed to the litigation were reasonable"), *Acheson v. Express LLC* (Santa Clara Super. Ct. No. 109CV135335) (Sept. 3, 2011) ("Class Counsel have justified the propriety of their request for attorneys' fees, and the fair value of their services, by reference to their lodestar, which the court finds to be the product of reasonable attorney rates and hours billed to the litigation."); *LaGaisse v. 20 20 Powervision* (Riverside Super. Ct. No. RIC 528973) (Apr. 12, 2011) ("[C]lass Counsel have justified the appropriateness of such an award by way of their lodestar cross-check analysis, demonstrating to the Court's satisfaction that the attorney rates and hours billed to the litigation were reasonable."); *Gutierrez v. Lowe's HIW, Inc.* (Stanislaus County Super. Ct. No. 657474) (July 8, 2011); *Ethridge v. Universal Health Servs.*, (L.A. Super. Ct. No. BC391958) (May 27, 2011); *Aguiar v. Cingular Wireless LLC et al.* (C.D. Cal. No. 05-02907) (Mar. 3, 2011); *Burrows v. Combined Ins. Co. of Am.* (E.D. Cal. No. 08-01752) (Dec. 15, 2010); *Berrymon v. St. Vincent Med. Ctr.* (L.A. Super. Ct. No. BC391114) (Jun. 28, 2010); *Mares v. BFS Retail & Commercial Operations, LLC* (L.A. Super. Ct. No. BC375967) (Mar. 1, 2010); *Padovani v. Citicorp Inv. Servs., Inc.* (C.D. Cal. No. 07-00113) (Jan. 23, 2009); *Simpson v. e*Trade* (C.D. Cal. No. 06-00156) (June 2, 2008); *Brannon v. Midland Credit Mgmt., Inc.* (San Diego Super. Ct. No. GIC 864722) (June 13, 2007); and *Sunio v. Marsh* (L.A. Super. Ct. No. BC328782) (Apr. 28, 2006).

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

5. It is unlikely that Claimant would have been able to secure representation for this matter without prospect for the award of statutory attorneys' fees upon prevailing.

6. To properly handle and prosecute this case, Initiative was precluded from taking other cases and, in fact, had to turn away other meritorious fee-generating cases. The firm does not track the number of cases declined, but is regularly forced to decline numerous worthy cases because attorney and staff-to-case ratios will not allow for any additional matters. Taking on this case meant that Initiative had to turn away other fee-generating work because this case required substantial firm resources on multiple fronts: pre-litigation investigation; formal and informal discovery; research into Defendant's policies and practices; researching the causes of action; and legal and factual analyses in litigation, and multiple motions and hearings.

Discovery, Hearings and Procedures

7. I have reviewed the Declaration of Raul Perez in Support of this Motion and Initiative's time and billing records show that ILG attorneys, in conjunction with Capstone Law attorneys, conducted the discovery and participated in the hearings and procedures in the *Iskanian v. CLS Transportation Los Angeles* case, the *Kempler et al. v. CLS Transportation Los Angeles* case, and the arbitrations for the 61 individual claimants as stated therein.

Initiative's Costs

8. Over the course of this litigation, Initiative has incurred a total of $36,411.60 in recoverable costs, for a pro rated per Claimant amount of $596 in costs, consisting of the following:

COST CATEGORIES	
COST CATEGORIES	**AMOUNT**
Arbitration Fees	$10,675.00
Court Fees, Filings & Service of Process	$10,265.64
Court Reporters, Transcripts & Depositions	$6,946.32
Delivery and Messenger	$3,535.49
Mediation Fees	$3,350.00
Travel & Lodging (Airfare, Mileage, Parking, Hotel, etc.)	$1,639.79
TOTAL COSTS	**$36,411.60**

9. As shown, these costs were incurred for, *inter alia*, filing fees, postage, photocopying, deposition costs, and mediation fees. The costs for delivery and messenger service are related to trial preparation, and were incurred for such matters as filing documents with the court, complying with

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

plaintiffs' document. These delivery and messenger costs are allowable as reasonably necessary costs incurred. *Ladas v. California State Auto. Ass'n*, 19 Cal App 4th 761 (1993). The travel and lodging expenses were necessary for court hearings and depositions. These are costs of precisely the sort that are reimbursable because they are reasonable and were necessarily incurred during the case's pendency. Cal. Civ. Proc. Code § 1033.5; *see Bussey v. Affleck*, 225 Cal. App. 3d 1162, 1166 (1990); *see also, e.g., In re United Energy Corp. Sec. Litig.*, No. MDL 726, 1989 U.S. Dist. LEXIS 19146, at *16 (C.D. Cal. Mar. 9, 1989) (approving $71,000 in costs for "filing fees, postage, telephone bills, photocopying, legal research assistance, deposition costs, witness fees, and similar items.")

10. Attached as Exhibit B is a true and correct copy of a declaration executed by Claimant in support of this Motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of March, 2013, at Los Angeles, California.

G. Arthur Meneses

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

Exhibit A

Firm Name	Principal or Largest Office	Average full-time equivalent Attorneys*	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: High	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: Median	Associate Billing Rate: High	Associate Billing Rate: Low	Associate Billing Rate: Average	Associate Billing Rate: Median
Baker, Donelson, Bearman, Caldwell & Berkowitz	Memphis, Tenn.	527	$311	$310	$595	$250	$357	$345	$315	$160	$228	$225
Best Best & Krieger	Riverside, Calif.	195	$358	$360	$575	$275	$417	$420	$375	$205	$265	$240
Briggs and Morgan	Minneapolis	185			$625	$325			$305	$230		
Broad and Cassel	Orlando, Fla.	160	$377	$350	$575	$295	$435	$395	$350	$180	$265	$265
Bryan Cave	St. Louis	908	$475	$460	$795	$375	$565	$553	$540	$200	$356	$360
Butzel Long	Detroit	176			$700	$325	$440		$425	$225	$274	
Carlton Fields	Tampa, Fla.	270	$397	$400	$815	$320	$470	$470	$380	$195	$262	$265
Cozen O'Connor	Philadelphia	504	$439	$410	$900	$305	$510	$490	$550	$225	$330	$330
Day Pitney	Parsippany, N.J.	324	$447	$450	$960	$380	$537	$525	$470	$235	$317	$315
Dickinson Wright	Detroit	229			$600	$325			$320	$200		
Dickstein Shapiro	Washington	335	$560	$550	$1,000	$540	$680	$670	$545	$225	$435	$465
Dinsmore & Shohl	Cincinnati	407	$308	$295	$630	$150	$373	$370	$310	$130	$217	$220
DLA Piper	New York	3348	$585	$615	$1,120	$530	$747	$730	$730	$320	$508	$510
Dorsey & Whitney	Minneapolis	567	$426	$405	$810	$295	$526	$525	$465	$190	$294	$275
Duane Morris	Philadelphia	629	$503	$500	$875	$375	$575	$570	$530	$225	$365	$365
Dykema Gossett	Detroit	333	$406	$400	$665	$310	$482	$485	$395	$260	$309	$305
Epstein Becker & Green	New York	300	$428	$425	$850	$350	$519	$500	$550	$195	$341	$325

Firm Name	Principal or Largest Office	Average full-time equivalent Attorneys*	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: High	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: Median	Associate Billing Rate: High	Associate Billing Rate: Low	Associate Billing Rate: Average	Associate Billing Rate: Median
Fitzpatrick, Cella, Harper & Scinto	New York	168			$730	$460		$525	$440	$275		$325
Fox Rothschild	Philadelphia	450	$413	$420	$725	$325	$486	$483	$455	$190	$297	$295
Frost Brown Todd	Cincinnati	401	$296	$295	$515	$205	$340	$340	$265	$150	$200	$200
Gardere Wynne Sewell	Dallas	265	$435	$450	$815	$380	$550	$550	$500	$225	$325	$320
Gibbons	Newark, N.J.	199	$505	$450	$725	$400	$563	$505	$475	$285	$380	$320
Harris Beach	Rochester, N.Y.	176			$390	$275			$260	$160		
Hiscock & Barclay	Syracuse, N.Y.	174	$269	$240	$750	$195	$304	$265	$350	$150	$207	$195
Hodgson Russ	Buffalo, N.Y.	199			$685	$240	$378	$360	$420	$180	$234	$225
Holland & Knight	Washington	910	$445	$455	$895	$300	$530	$520	$495	$175	$295	$290
Hughes Hubbard & Reed	New York	300	$633	$615	$990	$625	$828	$800	$695	$270	$533	$540
Husch Blackwell	St. Louis	551	$341	$340	$850	$225	$395	$390	$425	$175	$226	$210
Jackson Kelly	Charleston, W.Va.	170	$275	$275	$505	$255	$319	$325	$260	$155	$208	$205
Kaye Scholer	New York	425	$661	$665	$1,080	$685	$831	$835	$705	$310	$519	$525
Kelley Drye & Warren	New York	321	$474	$400	$925	$480	$634	$645	$595	$275	$425	$420
Knobbe, Martens, Olson & Bear	Irvine, Calif.	268	$439	$415	$735	$415	$525	$500	$495	$295	$346	$345
Lane Powell	Seattle	180	$405	$425	$645	$340	$460	$450	$360	$225	$295	$285

Firm Name	Principal or Largest Office	Average full-time equivalent Attorneys*	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: High	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: Median	Associate Billing Rate: High	Associate Billing Rate: Low	Associate Billing Rate: Average	Associate Billing Rate: Median
Lathrop & Gage	Kansas City, Mo.	281	$337	$340	$735	$275	$390	$390	$410	$205	$246	$245
Lewis, Rice & Fingersh	St. Louis	162	$275		$470	$270			$320	$150		
Lowenstein Sandler	Roseland, N.J.	249	$478	$480	$895	$435	$613	$595	$660	$250	$400	$390
Manatt, Phelps & Phillips	Los Angeles	322	$602	$620	$850	$540	$676	$670	$550	$215	$464	$500
McElroy, Deutsch, Mulvaney & Carpenter	Morristown, N.J.	272	$245	$275	$575	$295	$350	$375	$325	$185	$250	$235
McKenna Long & Aldridge	Atlanta	425	$472	$455	$800	$405	$562	$540	$510	$215	$374	$375
Michael Best & Friedrich	Milwaukee	208	$321	$310	$650	$245	$413		$310	$205	$241	
Miller & Martin	Chattanooga, Tenn.	184	$313	$325	$610	$240	$369	$375	$275	$185	$215	$215
Nelson Mullins Riley & Scarborough	Columbia, S.C.	399	$318	$310	$850	$220	$412	$400	$350	$170	$255	$250
Nexsen Pruet	Columbia, S.C.	178			$550	$235			$265	$170		
Patton Boggs	Washington	512	$546	$540	$990	$410	$659	$645	$570	$240	$410	$415
Pepper Hamilton	Philadelphia	459			$825	$380	$557		$460	$235	$344	
Perkins Coie	Seattle	693	$462		$875	$285	$550	$545	$590	$215	$368	
Phelps Dunbar	New Orleans	280	$236	$225	$465	$190	$281	$275	$245	$150	$189	$190
Polsinelli Shughart	Kansas City, Mo.	466			$630	$275			$335	$205		
Saul Ewing	Philadelphia	220	$431	$450	$750	$350	$502	$490	$495	$245	$326	$300

Firm Name	Principal or Largest Office	Average full-time equivalent Attorneys*	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: High	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: Median	Associate Billing Rate: High	Associate Billing Rate: Low	Associate Billing Rate: Average	Associate Billing Rate: Median
Schulte Roth & Zabel	New York	406	$615	$630	$935	$770	$846	$840	$675	$285	$608	$580
Seyfarth Shaw	Chicago	702	$437	$425	$790	$355	$528	$525	$505	$225	$341	$340
Sheppard, Mullin, Richter & Hampton	Los Angeles	465			$860	$505			$635	$275		
Shumaker, Loop & Kendrick	Toledo, Ohio	208	$345	$365	$555	$265	$364	$375	$320	$195	$252	$250
Stoel Rives	Portland, Ore.	373	$385	$395	$625	$320	$451	$450	$500	$195	$292	$275
Strasburger & Price	Dallas	181	$363	$362	$630	$211	$395	$397	$332	$199	$250	$238
Thompson & Knight	Dallas	319	$520	$520	$875	$440	$594	$585	$460	$250	$358	$350
Thompson Coburn	St. Louis	325			$750	$315			$445	$195		
Ulmer & Berne	Cleveland	179	$316		$585	$280	$405		$390	$200	$260	
Vedder Price	Chicago	246	$445	$445	$735	$295	$500	$490	$520	$265	$345	$335
Winstead	Dallas	265	$406		$680	$365	$477		$410	$215	$301	
Winston & Strawn	Chicago	868	$557	$550	$1,130	$580	$713	$700	$600	$350	$434	$413
Wyatt, Tarrant & Combs	Louisville, Ky.	181	$312	$350	$500	$240	$325	$375	$275	$180	$220	$235

Exhibit B

DECLARATION OF LUIS EARNSHAW

I, Luis Earnshaw, declare as follows:

1. I am an adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am the named plaintiff in the action entitled *Kempler et al. v. CLS Transportation Los Angeles, et al.* (BC 473931). I make this declaration in support of my motion for attorneys' fees.

3. I worked for CLS Transportation Los Angeles ("CLS") as a limousine driver from August 1, 2005 until September 14, 2005 a period of about 7 weeks. My main job duty was to transport clients to and from various locations throughout the San Francisco Bay area and surrounding areas. I worked on both "transfer-only" and "as-directed" jobs.

4. My regular rate of pay was approximately $23 per hour including commissions and gratuities.

5. I first learned of my rights with regards to missed meal and rest breaks, overtime, and insufficient wage statements when I learned of the *Iskanian v. CLS Transportation Los Angeles, et al.* class action lawsuit. After I was not permitted to continue in that lawsuit, I retained Initiative Legal Group, APC, to represent me individually and enforce my rights.

6. I feel that a $2,000 payment from CLS is a fair settlement for my claims. I previously rejected offers of $500 and $1,000 because I felt that those amounts were too low for the illegal work conditions I was subjected to.

7. Although the amount of attorneys' fees spent to win this compensation was more than the amount I was awarded, I believe that the work was justified because my attorneys were working to protect my rights as an employee. CLS was not entitled to keep the compensation that I earned.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed by me on this 20th day of March 2013, at Pacifica, California.

Luis Earnshaw

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

Raul Perez (SBN 174687)
RPerez@CapstoneLawyers.com
Capstone Law APC
1840 Century Park East, Suite 450
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for All Claimants

AMERICAN ARBITRATION ASSOCIATION

LUIS EARNSHAW,

Claimant,

vs.

CLS TRANSPORTATION LOS ANGELES LLC, et al.,

Respondents.

74 160 223 12 AMCH

DECLARATION OF RAUL PEREZ IN SUPPORT OF LUIS EARNSHAW'S MOTION FOR ATTORNEYS' FEES AND COSTS

Arbitrator: Hon. Kevin Murphy

Date: May 1, 2, or 3 [Tentative]
Time:
Place: Via Conference Call

DECLARATION OF RAUL PEREZ

I, Raul Perez, declare as follows:

1. I am an attorney licensed to practice before all courts of the State of California. Unless the context indicates otherwise, I have personal knowledge of the facts stated in this declaration and if called as a witness, I could and would competently testify to them. I am a partner at Capstone Law, APC ("Capstone"), co-counsel of record for the above named Claimant. I make this declaration in support of Claimant's Motion for Attorneys' Fees and Costs.

2. Capstone's records reflect that Capstone's attorneys spent a total of 1493.9 hours working on this action against CLS as counsel for Claimants. The following chart sets forth the regular billable hourly rate and the hours worked by each attorney. The rates are commensurate with the prevailing rates among firms that regularly litigate wage and hour class actions. The fee totals reflect the amounts that would have been charged on an hourly basis. In the exercise of billing discretion, Capstone wrote off over 350 hours of attorney time. California courts may approve attorneys' fees without reviewing detailed timesheets and regularly do so. *See Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986) ("testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records"); *Dixon v. State Bar*, 39 Cal. 3d 335, 344 (1985) (an attorney need not submit contemporaneous time records to recover attorney fees); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 64 (2008) ("detailed timesheets are not required of class counsel to support fee awards in class action cases"); *Margolin v. Regional Planning Com.*, 134 Cal. App. 3d 999, 1006–1007 (1982) (the court may award fees based on time estimates); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254-55 (timesheets are not required of counsel to award attorneys' fees in class action cases); *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465, 470-471, 478 (1984) (a court may approve attorneys' fees based on billing summaries provided by counsel).

Schedule of Fees

Attorney	Rate	Title	Hours	Total
Glenn Danas	$590	Senior Associate	149.7	$117,383
Katherine Kehr	$520	Senior Associate	173.5	$90,220

Schedule of Fees				
Attorney	**Rate**	**Title**	**Hours**	**Total**
Matthew Theriault	$610	Partner	441.8	$269,468
Orlando Arellano	$490	Associate	221.3	$108,437
Raul Perez	$670	Partner	187.2	$125,424
Robert Byrnes	$610	Senior Counsel	114.3	$69,723
Ryan Wu	$550	Senior Associate	121.1	$66,605
Suzy Lee	$330	Associate	85.0	$28,050
Totals			**1493.9**	**$875,310**

Court Hearings and Procedures

3. On or about August 4, 2006, Arshavir Iskanian brought wage and hour claims against CLS Transportation ("CLS"), on behalf of himself and a class of currently and formerly employed CLS limousine drivers of which Claimant was a putative class member. That case was filed in the Los Angeles Superior Court, case number BC356521 ("*Iskanian*"). A true and correct copy of the Complaint in that matter is attached as Exhibit 1. In 2010, CLS had revenues of approximately $140,000, making it one of the largest providers of chauffeured limousine service in California. Exhibit 2 is a true and correct copy of a news page of CLS's website, last visited on 3/22/2013, located at http://www.empirecls.com/NewsItem.aspx?id=94871bf541c44ecfac13d3aec6e103bd

4. On or about August 12, 2006, there was a status hearing in *Iskanian.*

5. On or about December 21, 2006, there was a Case Management Conference in *Iskanian.*

6. On or about February 7, 2007, Defendants moved for an order compelling individual arbitration based on the form "Proprietary Information and Arbitration Policy/Agreement" (the "Agreement") signed by Mr. Iskanian and putative class members as a condition of their employment. On August 28, 2007, Plaintiff filed an Opposition.

7. On or about March 13, 2007, the *Iskanian* Court granted Defendant's motion for an order compelling individual arbitration.

8. On or about May 11, 2007, Plaintiff appealed the *Iskanian* Court's decision in the California Court of Appeal, Second Appellate District, Case No. B198999.

9. While the appeal was pending, the California Supreme Court issued *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007), which promulgated a fact-intensive test to determine whether a class action waiver is enforceable.

10. On or about May 27, 2008, the Court of Appeal reversed and remanded the order compelling arbitration with specific instructions for the trial court to apply the new *Gentry* test to the record.

11. On remand, CLS, apparently conceding that the *Gentry* factors would be satisfied, proceeded to litigate the matter in state court as a class action.

12. On or about September 15, 2008, Plaintiff filed a PAGA Complaint.

13. On or about September 24, 2008, Plaintiff filed the Consolidated First Amended Complaint.

14. On or about November 19, 2008, the parties attended a Case Management Conference.

15. On or about May 20, 2009, Plaintiff filed a Motion for Class Certification, attached as Exhibit 3.

16. On or about June 25, 2009, Plaintiff filed a Reply in Support of Class Certification.

17. In early June 2009, 103 drivers accepted settlement offers of $500, made to all drivers, for release of their claims. None of the Claimants at issue in these Arbitrations accepted the offer. Attached as Exhibit 4 is a true and correct copy of the Declaration of Leila Macciocca In Support of CLS's Motion for Summary Judgment.

18. On or about July 20, 2009, the parties attended a hearing on Plaintiff's Motion for Class Certification.

19. On or about August 24, 2009, the *Iskanian* trial court granted Plaintiff's contested motion for class certification, certifying five subclasses with Mr. Iskanian appointed as class representative for each subclass.

20. The parties continued to litigate on a class-wide basis, with a trial date set for August 6, 2011.

21. On or about March 1, 2011, the parties attended a Case Management Conference.

22. On or about April 26, 2011, CLS filed a Motion for Summary Judgment. Plaintiff took depositions and undertook discovery in preparation for opposition to this motion.

23. On May 13, 2011, the parties participated in a class-wide mediation for which Claimant's counsel filed a mediation brief. The mediation was unsuccessful in part because the class-wide relief offered was below even the prior settlement offer on a per individual basis.

24. With less than three months before the trial, on May 16, 2011, CLS filed a 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 pursuant to C.C.P. § 1008(b). In the Motion for Renewal, CLS invoked the U.S. Supreme Court's then-recently issued *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) decision to argue that *Gentry* has been preempted. CLS also insisted in this motion that agreements "must be enforced according to their terms" under the Federal Arbitration Act.

25. On or about May 31, 2011, Plaintiff filed an Opposition to CLS's Motion for Renewal.

26. On or about June 3, 2011, Plaintiff filed a Motion for Relief from Defendant's Untimely Motion for Summary Judgment.

27. On or about June 10, 2011, Plaintiff filed a Reply in Support of Plaintiff's Motion for Relief from Defendant's Untimely Motion for Summary Judgment.

28. On March 12, 2012, CLS made offers to compromise under California Code of Civil Procedure section 998 for $1000. None of the Claimants in these arbitrations accepted the offer.

29. On or about June 13, 2012, the parties attended a hearing on CLS's Motion for Renewal.

30. On or about June 14, 2012, the Court granted Defendant's motion and issued an order dismissing class claims and compelling *Iskanian* to individual arbitration. A true and correct copy of the applicable arbitration agreement is attached as Exhibit 5.

31. On or about August 11, 2012, Iskanian filed a notice of appeal of the trial court's order compelling individual arbitration.

\\

\\

\\

Discovery

32. On or about January 18, 2007, Plaintiff served a Notice of Deposition of Defendant's Person(s) Most Knowledgeable, Special Interrogatories, Set One, Special Interrogatories, Set Two, and Request for Production of Documents, Set One.

33. On or about January 25, 2007, Plaintiff served a Notice of Deposition of Defendant's Person(s) Most Knowledgeable, Special Interrogatories, Set Two, Request for Production, Set Two, Request for Admissions, Set Two, and General Form Interrogatories.

34. On or about November 26, 2008, Plaintiff served Responses to Defendant's Request for Production of Documents, Set One.

35. On or about April 22, 2009, Plaintiff served Request for Production of Documents, Set Three, Plaintiff's Request for Admission, Set Three, Plaintiff's Special Interrogatories, Set Three, and the Notice of Deposition of Defendant's Person(s) Most Qualified.

36. On or about May 16, 2009, Plaintiff also took the deposition of former CLS CEO Douglas Trussler in preparation for opposition to CLS's motion for summary judgment.

37. On or about September 1, 2010, Plaintiff served Form Interrogatories, Plaintiff's Special Interrogatories, Set Three, Plaintiff's Request for Admissions, Set Four, and Plaintiff's Request for Production of Documents, Set Four.

38. In total, CLS produced over 11,000 pages of documents and responses.

39. Plaintiff responded to CLS's request for the exchange of expert witnesses, and detailed requests for production exploring the basis of the employees' claims.

40. On or about May 17, 2011, Plaintiff filed a Notice of Deposition for each of the following CLS employees: Jaymie Akopyan, Kiki Cuffee, Antonie Abouhaidar, Donald Akpenyi, Michael Antonelli, Samual Avagian, Derrick Bean, James Becerra, Arthur Belmontes, Vern Belt, Major Black, Paul Bradley, Trevor Brathawaite, Timothy Brocker, Anthony Burnett, Shawn Casper, Ronald Castiglione, Martin Castillo, Frank Chavez, Yuriy Chaliyan, Daniel Cleary, Daniel Coleman, Rafael Conchucos, Lesmond Cooper, Elena Cummings, Damon Deleon, Douglas Ewer, John Forbes, Jr., Timothy Fox, Juan Pablo Friz, Krist Frost, Hamlet Galstyan, Jose Garcia, Bagdasar Gezalyan, Sarkis Ghazaryan, Gerargo Gomalez, Teodoro Gomeri, Kenneth Gottlieb, Raul Gutierrez, Michael Halaka, Teo

Tetsuo Hamaguchi, Nelson P. Hayes Jr., Javier Hernandez, Benjamin Hill, Sayed Ismail, Kelvin Jackson, Derek Johnson, Jerry Jones, Rachid Kaid, Misak Kasabian, Jeff Kotylar, Nicholas Klopsis, Yuri Kochar, Charles Kouosseu, Michael Krakov, James Krohn, John Lamb, Linwood Loatman, Tom R. Lowe, Abraham Mardirosian, Dana Marrow, Richard Martin, Daniel Mitre, Avraham Avi Nathan, Angel Montero, Nedzad, Mulahusejnovic, James Neal, Broderick Nelson, Ross Nosem, Robert Norman, Raul C. Nunez, Razmik Petrosyan, Asbet Petrossian, Larry Phillips, Tracy Pizzorusso, Ray Prugh, Larry Quartarao, Lynda Renna, Eric A. Rivers, Alfredo Rufatt, Keiji Saito, Georgina Sanchez, Gregory Sappington, Garen Sarkissian, Steven Sanders, Merab Shalumov, Leonard Streeter, Homayak, Elvazian-Tabrizi, Jorj Tahrnaseyan, Asfaw Teferi, Peter Tetelboin, Martin O. Trevathan, Henock Tsehay, Javier Uranga, Steven Walker, Royce Washington, Henrk Wojak, Robert Wood, Duchun Wynn, Yakubov Bakhrom, Vedat Yalcin, Aleksey Zilberglit, and Wodeckc Zurawski.

41. On or about June 7, 2011 through June 10, 2011, CLS drivers Anthony Burnett, Derrick Bean, James Becerra, Jaymie Akopyan, Major C. Black, Martin Castillo, Michael Antonelli, and Vern Wayne Belt were deposed. At least 4 of the deponents, Antonelli, Bean, Becerra and Burnett testified that CLS had changed their policies after the *Iskanian* suit was filed to begin paying premiums for missed meal and/or rest periods. True and correct copies of the relevant excerpts of these deposition transcripts are attached as follows: Deposition transcript of Mr. Antonelli is attached as Exhibit 6; deposition transcript of Mr. Bean is attached as Exhibit 7; deposition transcript of Mr. Becerra is attached as Exhibit 8; and deposition transcript of Mr. Burnett is attached as Exhibit 9.

42. On or about June 2, 2011, Plaintiff served a Notice of Deposition of Leila Macciocca.

Arbitration

43. Beginning August 2011, former *Iskanian* class members 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 Garcia, Elijah 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 Candelaria, Raul Fuentes, Reginald Colwell, Robert Olmedo, Roger Perry, Scott Sullivan, Steve Maynard, Susan Stellman, Thomas Martin, Wayne Ikner, William Banker, and William Pinkerton sought to pursue their individual claims against CLS. Each of the above individuals (collectively "Claimants") sought to resolve his or her dispute through individual arbitration with CLS.

44. Beginning in August 2011, each Claimant filed a demand for arbitration with ADR Services, Inc., which was named in the Agreement as a mutually acceptable provider. A true and correct copy of Claimant's August 2011 arbitration demand is attached as Exhibit 10.

45. CLS initially did not reject ADR as an acceptable administrator and even went as far as suggesting the Honorable Enrique Romero, from ADR, be appointed the sole arbitrator for all 63 claimants, ignoring the explicit ADR strike and rank rules for appointing a mutually acceptable arbitrator, a procedure that CLS refused to follow.

46. In a letter to ADR Services, Inc. dated September 19, 2011, CLS's counsel Yesenia Gallegos asked the Claimants to arbitrate solely with the American Arbitration Association ("AAA") instead of ADR. A true and correct copy of the September 19, 2011 letter from Gallegos to Terry Shea, Arbitration Coordinator for ADR Services, Inc. is attached as Exhibit 11.

47. Beginning in September 2011, and to avoid further delay and expense, each Claimant tendered a $175 filing fee and demanded separate arbitration proceedings with AAA. A true and correct copy of Claimant's September 2011 demand for arbitration is attached as Exhibit 12.

48. CLS accused Claimant's counsel of not being authorized to represent Claimants despite the fact that Initiative, as officers of the court, could only bring demands for arbitration on behalf of persons who authorized Initiative to do so. Then, in a letter to AAA dated October 10, 2011, CLS's counsel confirmed that CLS would *not* pay the non-refundable fee of $52,275 to AAA that it was obligated to pay under both its own Agreement and the AAA Rules, which call for the employer to pay a $925 non-refundable fee per arbitration. A true and correct copy of this letter from Gallegos to Adam Shoneck, Intake Specialist for AAA, is attached as Exhibit 13. In this letter CLS offered numerous reasons for its refusal to pay, including "claimants are part of a class action that is currently on appeal"

and "we have not received anything authoritative confirming that claimants have opted out of the class." CLS then argued that the arbitrations should be consolidated.

49. On or about October 20, 2011, AAA sent a letter to Claimants' counsel and CLS's counsel stating unequivocally that, because CLS "has not complied with [AAA's] request to pay the requisite administrative fees in accordance with the employer-promulgated plan fee schedule, we must decline to administer any other employment disputes involving this company." AAA further added that CLS "remove the AAA name from its arbitration clauses so that there is no confusion to the company's employees regarding our decision." A true and correct copy of the October 20, 2011 letter from Adam Shoneck to Claimants' counsel, Raul Perez and CLS's counsel, David Faustman is attached as Exhibit 14. As a result of AAA's rejection of Claimants' arbitration demands, the parties never proceeded to the point of choosing an arbitrator at that time.

50. Although CLS alleged that the action is stayed in the trial court pending the appeal, Defendant filed a motion for consolidation of arbitrations on October 27, 2011. In this motion, CLS argued that individual arbitrations are too expensive and inefficient and consolidation is needed to avoid the possibility of inconsistent judgments.

51. On or about November 18, 2011, Claimants filed *Kempler, et al. v. CLS*[1] ("*Kempler*"), a new action, asserting contractual claims related to CLS's refusal to perform under the Agreement. The separate action was filed because the Court did not have jurisdiction over Claimants after dismissing class claims, and furthermore, *Iskanian* was stayed pending appeal. A true and correct copy of the Complaint in that action is attached as Exhibit 15. Because Claimants in the *Kempler* action have identical claims (breach of contract) based on identical predicate facts (CLS's refusal to pay arbitration fees), they sought immediate adjudication of their claims by filing one action, which avoids multiplicity of actions while seeking a remedy—individual arbitration—that was specifically contained in the agreement at issue.

[1] Los Angeles Superior Court Case No. BC473931, assigned to Judge Holly Kendig and deemed related by Judge Hess on December 21, 2011.

52. Concurrent with filing the complaint in *Kempler*, Claimants filed a Motion to Compel Specific Performance on or about December 20, 2011, and a Reply In Support Thereof on or about January 31, 2012.

53. On or about the same time, CLS filed a Motion to Consolidate the Arbitrations in the trial court. On or about January 25, 2012, Claimants filed their Opposition thereto.

54. On or about February 7, 2012, the presiding court in *Iskanian* denied CLS's Motion to Consolidate the arbitrations and granted Plaintiffs' Motion to Compel Specific Performance of the Agreement. A true and correct copy of the Court's February 7, 2012 minute order is attached as Exhibit 16.

55. Claimants tendered AAA their filling fees pursuant to the Court's order. On or about March 8, 2012, AAA Intake Specialist Adam Shoneck sent Claimant's counsel and Respondent's counsel a letter stating that the amount of the filing fees CLS would have to pay remained unchanged. AAA noted that CLS would have to pay 63 filing fees regardless of whether the cases were heard by one arbitrator or 63. A true and correct copy of this correspondence is attached as Exhibit 17.

56. CLS sought a further extension of time to pay the filing fees on the ground that it had issued a written settlement demand to each Claimant. Although AAA had provided a first extension, it denied CLS's second extension request with the concession that, should any arbitration settle within 30 days of payment and before appointment of an arbitrator, AAA would refund the arbitration fee. On or about March 23, 2012, CLS filed another motion to stay the arbitrations and appoint an arbitrator and refused to pay the arbitration fees.

57. On or about, March 27, 2012, AAA again closed its files based on Respondent's refusal to pay the required AAA filing fees.

58. On or about April 9, 2013, Claimants served but did not file a Motion for Sanctions. During the 21-day safe harbor period, CLS withdrew its second motion to stay the arbitration and appoint an arbitrator and agreed to pay the AAA's filing fees.

59. Thereafter, the parties then negotiated the number and selection of the arbitrators. Claimants made substantial concessions on the number of arbitrators, reducing the number of arbitrators requested from 63 to 10. However, CLS refused to make any concessions from their original four-

arbitrator demand. Although the parties were able to agree to arbitrators for 19 of the 63 claimants, CLS refused to proceed with any arbitrations unless the other 44 claimants also agreed to proceed before one of the four arbitrators to which the first 19 had agreed.

60. On or about June 13, 2012, the parties attended a Case Management Conference.

61. On or about August 3, 2012, Claimants filed a Motion Deeming CLS to Have Waived Arbitration.

62. On or about October 24, 2012, Claimants filed an Opposition to CLS's Motion for Appointment of Arbitrators.

63. On or about October 30, 2012, Claimants filed a Reply in Support of Claimants' Motion to Deem CLS to Have Waived Arbitration.

64. On or about November 6, 2012, the parties attended a hearing on Claimants' Motion to Deem CLS to Have Waived Arbitration and CLS's Motion to Appoint Arbitrators. The Court ordered the parties to select 8 arbitrators.

65. On or about December 21, 2012, CLS made an offer to compromise under California Code of Civil Procedure section 998 for $2000. Claimants' counsel would make a motion to the respective arbitrators for their fees. A true and correct copy is attached as Exhibit 18.

66. On or about January 24, 2013, Claimants James Denison, Frank Dubuy, Luis Earnshaw, Jiro Fumoto, Wayne Ikner, Daniel Rogers Millington Jr., Robert Olmedo, and Scott Sullivan accepted CLS's offer to settle under California Civil Procedure Code section 998. A true and correct copy of the correspondence accepting the offer is attached as Exhibit 19.

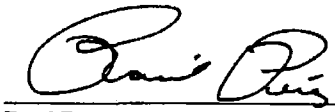
67. On or about January 14, 2013, the parties attended an Arbitration Management Conference.

68. The settlement awards were signed on or about February 14th, February 15th, February 18th, and February 22nd of 2013. A true and correct copy of Claimant's award is attached as Exhibit 20.

69. On or about February 20, 2013, the Claimants served two notices of depositions, a first set of special interrogatories, and a request for production of documents.

70. On or about February 22, 2013, the Claimants filed their Opposition to Respondents' Motion to Consolidate Arbitrations.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th of March 2013, at Los Angeles, California.



Raul Perez

Exhibit 1

Mark Yablonovich, Esq. (SBN 186670)
Marc Primo, Esq. (SBN 216796)
Shawn Westrick, Esq. (SBN 235313)
Initiative Legal Group LLP
1875 Century Park East, Suite 1800
Los Angeles, California 90067
Telephone: (310) 556-5637
Facsimile: (310) 861-9051

Attorneys for Plaintiff
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; 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

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

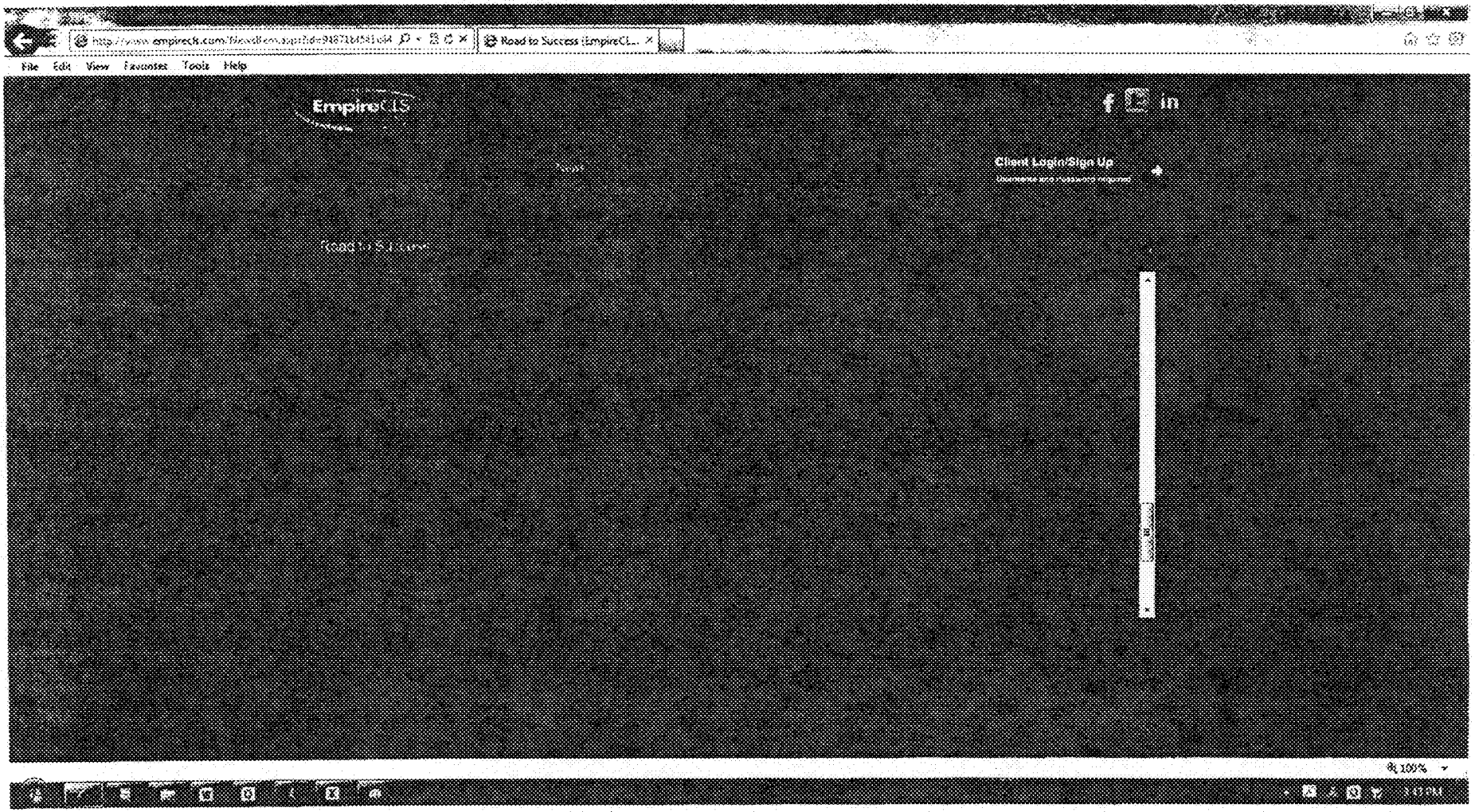
29. For such other and further relief as the Court may deem equitable and appropriate.

Dated: August 4, 2006

Respectfully submitted,
Initiative Legal Group LLP

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

Exhibit 2


File Edit View Favorites Tools Help
Road to Success (EmpireCL...
EmpireCLS
Client Login/Sign Up
100%

410

Exhibit 3

Conformed Copy

Marc Primo (SBN 216796)
Matthew T. Theriault (SBN 244037)
Orlando Arellano (SBN 234073)
Initiative Legal Group LLP
1800 Century Park East, Second Floor
Los Angeles, California 90067
Telephone: (310) 556-5637
Facsimile: (310) 861-9051

Attorneys for Plaintiff Arshavir Iskanian

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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. BC356521

CLASS ACTION

[Assigned for All Purposes to:
The Honorable Robert L. Hess]

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Date: July 8, 2009
Time: 8:30 a.m.
Place: Dept. 24

Action Filed: August 4, 2006
Trial Date: None

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

TABLE OF CONTENTS

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

TABLE OF AUTHORITIES

CASES

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Named-Plaintiff Arshavir Iskanian (Plaintiff) brings this Motion pursuant to California Code of Civil Procedure Section 382 and California Rule of Court 3.764 to certify six subclasses of current and former chauffer and limousine drivers employed by CLS Transportation Los Angeles (CLS or Defendant). Plaintiff alleges CLS's common policies resulted in a systematic failure to (a) pay for all off-the-clock work; (b) pay overtime at the regular rate; (c) provide all meal breaks or premium compensation in lieu thereof; (d) provide all rest breaks or premium compensation in lieu thereof; (e) furnish properly itemized wage statements; and (f) timely pay all final wages upon the drivers' separation from employment.

Defendant's class-wide wage-and-hour practices, as evidenced by their corporate representative's testimony and corporate documents, are ideally suited for class treatment, which persisted notwithstanding the settlement of a previous wage-and-hour class action.

Each of the proposed subclasses satisfies all of the requirements for class certification under Section 382. Defendant's records verify that there are between 140 and 276 members of each Subclass, easily meeting both numerosity and ascertainability. Given that CLS's policies were violative, both facially and in practice, class-wide questions of law and fact predominate over individual questions. Plaintiff's claims are typical of the claims of each subclass, because he was subjected to each and every violative practice alleged here, and he was employed in each subclass period. Plaintiff and his counsel will adequately protect the interests of the class, and class treatment is the superior method for the fair and efficient adjudication of these claims.

Thus, Plaintiff requests that the Court grant certification to the six proposed subclasses.

II. STATEMENT OF RELEVANT FACTS[1]

A. CLS's Wage-and-Hour Policies are Centralized, Systematic and Apply Class-Wide

The day-to-day working conditions of the drivers, and the policies and practices

[1] The procedural history of this case, including the effect of the release in the *Prince v. CLS Settlement*, is included in the Declaration of Matthew T. Theriault, ¶¶ 2-14.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

governing that work, demonstrate systematic non-compliance with the California Labor Code. CLS is the largest provider of chauffeured limousine services in California. Declaration of Matthew Theriault (Theriault Decl.) ¶ 18. CLS maintains a location near LAX, which includes offices and a garage to store and maintain the vehicles. Declaration of Arshavir Iskanian (Iskanian Decl.) ¶ 4; Deposition of Doug Tressler (Tressler Depo. Tr.). 57:10-18. Drivers often traveled to the LAX location (with no compensation) in their personal vehicles to retrieve their work vehicle before the start of the workweek. Iskanian Decl. ¶ 4; Tressler Depo. Tr. 40:22-41:2. Throughout the workweek, they maintained possession of their work vehicles, driving them home after scheduled shifts. *Id.* The drivers were fully responsible for their work vehicles while in their possession, including the maintenance of the vehicle's appearance, for which they were not compensated. Iskanian Decl. ¶ 5; Tressler Depo. Tr. 40:10-14 and 40:22-41:2.

Drivers do not have a set schedule. Instead, they agree to be available to work certain days of the week, and, generally, are notified of their assignments either one day in advance or while they are actually working. Iskanian Decl. ¶ 6; Tressler Depo. Tr. 13:21-25. For instance, once CLS has been contracted by a client, CLS then contacts a driver by page or phone to inform the driver of the pick-up location, and whether the job will be a "transfer-only" job or an "as-directed" job. Iskanian Decl. ¶ 7; Tressler Depo. Tr. 15:6-16:6; 16:10-17. A "transfer-only" job is similar to a taxi service, where the driver picks up the client at one location and drives them to another, at which time the driver's responsibility ends. Iskanian Decl. ¶ 8; Tressler Depo. Tr. 43:21-44:2. An "as-directed" job is a typical chauffer service, subjecting the driver to the client's whim for a specified period of time. Iskanian Decl. ¶ 8; Tressler Depo. Tr. 58:8-12. If the as-directed client is taken to an event, where the client plans to remain for an extended period of time, the driver is required by CLS policy to remain at that location and wait for the client. Iskanian Decl. ¶¶ 8-9; Tressler Depo. Tr. 59:17-25; 60:25-61:8. Not only is it a violation of CLS policy to leave the general location during an as-directed job, but the driver must remain on-duty at all times. *Id.*

CLS had two distinct, but uniform systems of compensating drivers. From January 1, 2005 through September 2005, drivers received both an hourly rate for "as-directed" jobs and a

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

20% commission for "transfer-only" jobs. Exhibit 4 to Theriault Decl.; Tressler Depo. Tr. 44:2-4; 44:15-21; 51:15-23. With respect to transfer-only jobs, CLS made no effort to calculate or record time actually worked, and commissions were simply denoted on the driver's wage statements as the "Flat Rate." *Id.*; *see also* Tressler Depo. Tr. 52:17-20; 71:1-12. During this nine month period in 2005, drivers were also paid on an hourly basis, which invariably included overtime work. *Id.* Thus, the payment of overtime was calculated *only* on as-directed jobs even though drivers also worked transfer-only jobs during the same two-week payroll cycle. And, when CLS did pay overtime, it did not pay the proper amount, because CLS did not include the flat-rate commission into the regular rate calculation, which resulted in underpayment.

In September 2005, CLS ceased this bifurcated system of pay by dropping commission-based rates. Thereafter, CLS simply paid straight and overtime rates for hours worked. Tressler Depo. Tr. 33:3-10; 42:16-25. As set forth below, even then, CLS did not pay for all hours worked because its automatic 30-minute "to-and-from time" policy failed to adequately capture all time worked.

1. CLS Systematically Failed to Pay For All Hours Worked

CLS compensation policy throughout the entire class period (from January 1, 2005 through certification) failed to compensate drivers for all hours actually worked as a result of CLS's implementation of "to-and-from time" or "prep time." Tressler Depo. Tr. 20:13-25 and 39:22-40:4. These terms described CLS's policy to provide an *automatic* 30 minutes of pay before the day's first pick-up and another *automatic* 30 minutes of pay beginning immediately after the day's last drop-off (for a total of one hour per day). *Id.* CLS's written policy describes the purpose of the "to-and-from time," as follows:

> **Start of Day** Start of the day is 1/2 hour prior to your scheduled start time, or, 1/2 hours prior to your first job of the day, whichever is earlier. This will allow for all filling up of gas, car wash, etc.
>
> **End of Day** End of day is 1/2 hour after your scheduled end time, or, 1/2 hour after your last job (after travel time). This will allow for travel time back home.

Exhibit A to Iskanian Decl.; *see also* Tressler Depo. Tr. 20:13-25 and 39:22-40:4. Only one

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

additional per day was added to complete these tasks, regardless of how long these tasks actually took. *See* Tressler Depo. Tr. 22:3-13 (CLS assumes and only pays 1 hour per day).

CLS dispatchers have been primarily responsible for recording the hours worked by drivers in accordance with this policy. *See* Tressler Depo. Tr. 19:14-19 (dispatcher's responsibility to record time); 22:20-23 (same). Once a job has been assigned to a driver, the dispatcher records the actual start as 30 minutes prior to the pickup to account for the drive time, cleaning the vehicle and getting gas. *See* Tressler Depo. Tr. 24:8-13 (dispatcher only records 30 minutes before and 30 minutes after pick-ups). Moreover, CLS policy dictated that drivers were to arrive at the pick-up location 10 minutes in advance of the actual pickup time (Tressler Depo. Tr. 92:10-14), thus leaving only 20 minutes to drive to the location and perform any necessary cleaning.

At the day's conclusion, the driver would contact dispatch, who would then record the shift's end time by adding 30 minutes. Tressler Depo. Tr. 24:21-25:23; 26:1-5 (end of day is recorded 30 minutes after driver is clear of last job). This systematic practice resulted in a widespread failure to pay for time actually worked, because drivers often spent more than 30 minute driving to and from their shifts, especially given that the drivers were also responsible for maintaining the vehicles' appearance. *See* Declaration of Frank Dubuy (Dubuy Decl.) ¶¶ 4-8;[2] Declaration of Joe Skore (Skore Decl.) ¶¶ 4-8; Declaration of Robert Silver (Silver Decl.) ¶¶ 4-8; Declaration of Wickey Ho (Ho Decl.) ¶¶ 4-8 (testifying to working much more than the 30 minutes of to and from time to wash the vehicle and drive to and from the locations of pick-up and drop-off).

Even CLS's CEO acknowledged that this practice results in underpayment:

> A. There are certainly occasions where a chauffeur may have had to drive more than the 30 minutes...
> Q. In that situation as rare as it is or was, would CLS provide any extra compensation?
> A. There was no additional compensation...
> Q. So the assumption was you get 30 minutes I'm going to pay you for 30 minutes [ ] on either side whether it's less than 30

[2] The four Subclass Member declarations submitted in support of this Motion are attached to the Declaration of Matthew T. Theriault as Exhibit 6.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

> minutes or more than 30 minutes.
> A. That's correct...

Tressler Depo. Tr. 22:3-13.

Additionally, CLS did not allot any additional time to clean the vehicles:

> A. Our policy is that the car is clean and pristine at all times, and that's the chauffeur's responsibility. There's no reason why it's responsibility all the time so there's no reason why there is specific time in the morning for that.

Tressler Depo. Tr. 40:10-14.

CLS fails to pay for all overtime hours worked because its common policy, which only pays drivers 30 minutes of "to and from time," ultimately results in a failure to compensate drivers for all time worked, especially when they have to arrive 10 minutes early, keep their vehicle gassed and immaculate. Iskanian Decl. ¶¶ 10-15; *see also* Exhibit 6, Dubuy Decl. ¶¶ 4-8; Skore Decl. ¶¶ 4-8; Silver Decl. ¶¶ 4-8; and Ho Decl. ¶¶ 4-8. In short, CLS "to and from time" policy failed to compensate drivers for time actually worked.

2. CLS Systematically Failed to Include Commissions Into the Drivers' Regular Rate Calculation From January 2005 to September 2005

CLS failed to pay the correct overtime rate from January 2005 to September 2005. In calculating the "regular rate" for purposes of determining the overtime rate, all forms of remuneration must be included, including commissions. *See* DLSE Enforcement Policies and Interpretations Manual 49.1-49.1.2.3 (Exhibit 7 to Theriault Decl.); *see also* DLSE opinion letter 1988.06.02 (Exhibit 8 to Theriault Decl.).

From January 2005 to September 2005, CLS did not include commissions that it paid limo drivers when calculating the regular rate for purposes of overtime. Tressler Depo. Tr. 73:2-20 (testifying that CLS failed to include commission/flat rate when calculating the overtime rate before September 2005); *see also* Iskanian Decl. ¶ 16. Instead, CLS's calculated overtime pay by paying one and one-half times the base rate or, when drivers worked more than 12 hours in one day, two times the base rate. *Id.* All drivers employed from January 2005 through September 2005 worked "flat rate" shifts (Tressler Depo. Tr. 97:15-18), which resulted in

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

underpayment throughout that Subclass, *infra*. *See also* Dubey Decl. ¶ 3; Skore Decl. ¶ 3; Silver Decl ¶ 3; Ho Decl. ¶ 3; and Iskanian Decl. ¶ 3.

3. CLS Systematically Failed to Provide All Meal Periods and Never Paid Meal Period Premiums

California Labor Code section 512 states that an employee must be provided a 30-minute, duty-free meal period for every five hours of work. Interestingly, CLS's policy evidences that CLS did not give high regard to meal periods:

> A 1/2 hour lunch break must be taken daily, either between scheduled jobs or during a time that is convenient, but does not impact service being rendered to a CLS client.

See Biweekly Time Sheets, Exhibit A to Iskanian Decl. Most importantly, CLS policy mandated that drivers always remain on-duty throughout the day, even during purported meal (or rest) breaks. Specifically, drivers were required to remain on-call and be in contact throughout the entire work day. Iskanian Decl. ¶ 19; Tressler Depo. Tr. 80:15-18; and 81:2-7 ("We have to be able to contact them.").

Moreover, when a driver dropped a customer off at an event, the driver was required to remain on duty in order should the client call. Tressler Depo. Tr. 59:3-13; and 60:25-61:8; Iskanian Decl. ¶ 18. In fact, leaving the location during as-directed jobs was a violation of policy. Tressler Depo. Tr. 59:3-13; and 60:25-61:8 (describing requirement to remain in location, keep car properly positioned and remain in communication contact); *see also* Iskanian Decl. ¶ 18; Dubuy Decl. ¶¶ 11-12; Skore Decl. ¶¶ 11-12; Silver Decl. ¶¶ 11-12; and Ho Decl. ¶¶ 11-12. CLS's CEO readily admitted that drivers were not relieved of all duty at any time throughout the working day. Tressler Depo. Tr. 81:13-18 (at no time were drivers completely free of all duties). Because drivers were constantly on-duty or be free from CLS's control, they were not provided with the required duty-free meal (and rest) periods.

Additionally, CLS made no attempt to provide drivers with a second 30-minute meal period during shifts of more than ten hours:

> Q. Did CLS have a policy of asking chauffeurs to take a second meal period after 10 hours of work?
> A. Not that I know of.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

Tressler Depo. Tr. 96:7-14. (However, even if CLS attempted to provide second meal periods, it would be ineffective given that drivers were never relieved of all duty.)

When an employee does not receive a timely, duty-free meal period of at least 30 minutes, the employer is required to pay the employee one additional hour of pay at the employee's regular rate of compensation. Cal. Lab. Code § 226.7(b). CLS has never compensated any driver with the meal period premium:

> Q. Since January 1st, 2005, has CLS ever paid a chauffeur or a driver an additional hour of compensation because they were not able to take a meal period during a given shift?
> A. The answer to that is I don't think so.

Tressler Depo. Tr. 79:6-10; *see also* Iskanian Decl. ¶ 22.

4. CLS Systematically Failed to Provide All Rest Periods and Never Paid Rest Period Premiums

California Industrial Wage (IWC) Order 4-2001 section 11 requires an employer to provide an uninterrupted 10-minute rest break for every four hours of work or fraction thereof. CAL. CODE REGS., tit. 8, § 11070, subd. 12(A). Additionally, Section 226.7(a) provides "[n]o employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission." CLS, however, completely ignored the rest break requirements. First, CLS provided no method for scheduling or tracking rest breaks. Tressler Depo. Tr. 102:14-20 (no mechanism in place for tracking rest breaks). Even if it had, drivers were required to remain on-duty, thus they were never relieved of all duties to take a proper rest break. *See* Dubuy Decl. ¶¶ 16-17; Skore Decl. ¶¶ 16-17; Silver Decl. ¶¶ 16-17; and Ho Decl. ¶¶ 16-17.

Failure to provide rest breaks should result in the payment of one additional hour of pay at the employee's regular rate of compensation. CAL. LAB. CODE § 226.7(b). CLS has *never* compensated any driver with an additional hour of pay for missing their rest breaks:

> Q. Has CLS ever paid an additional hour of compensation at the employee's base rate or regular rate as a result of an employee being unable to take a 10-minute [rest break]?
> [Colloquy]
> A. The answer is no.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

Tressler Depo. Tr. 89:22-90:7.

5. CLS's Wage Statements Failed to State the "Total Hours Worked"

CLS furnished all drivers with wage statements with their bi-weekly pay. The wage statements provided to Plaintiff and drivers failed to state the "total hours worked" in violation of California Labor Code 226(a)(2). *See* Exhibit B to Iskanian Decl. From January 2005 through September 2005, the wage statements did not state the actual hours worked by virtue of CLS's bifurcated pay policy where it disregarded time actually worked, *supra*. After September 2005, the wage statements simply failed to aggregate the total the hours worked.

6. CLS Does Not Pay Separating Employees on Their Final Day of Employment

Labor Code sections 201 and 202 require employers to pay all wages due the employee on the same day as the employee is terminated or within 72 hours of being notified that the employee is quitting. CLS admits that it regularly did not pay drivers on the final day of their employment, even when employees gave more than three days notice or were terminated:

> Q. [I]f somebody comes to you [and] says Friday is going to be my last day . . . and he works on Friday, . . . how long do you think after that time period reasonabl[y] estimated you would be able to pay him his final wages correctly calculated?
> A. I would say probably no later than Wednesday the next [week].

Tressler Depo. Tr. 99:11-19; *accord* Dubuy Decl. ¶ 20; Skore Decl. ¶ 20; Iskanian Decl. ¶ 30; Ho Decl. ¶ 20 and Silver Decl. ¶ 20. Thus, CLS's final pay policy violates California Labor Code sections 201 and 202.

B. Plaintiff Experienced Wage-and-Hour Violations Resulting from CLS's Class-wide Policies

Plaintiff was a driver for CLS from March 8, 2004 until August 2, 2005. Iskanian Decl. ¶ 3. Following the settlement of another class action, Iskanian signed a general release on December 22, 2004. However, the violations continued.

Like the other class members, Plaintiff drove clients on a "transfer-only" and "as-directed" basis. *Id.* Plaintiff regularly worked overtime hours, including double time shifts.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

Iskanian Decl., ¶ 10, Exhibit A.

Plaintiff was not compensated for all hours actually worked, because it took much longer than 30 minutes to prepare his vehicle and drive to the pick-up location ten minutes prior to the start time, as directed by CLS policy. Iskanian Decl. ¶ 12. However, consistent with CLS's "to and from time" policy, he was paid for only 30 minutes, regardless of the time actually spent working. Iskanian Decl. ¶ 11. Thus, Plaintiff worked "off-the-clock," and was not compensated with either minimum wage or overtime during those periods. Iskanian Decl. ¶¶ 10-15.

Additionally, the commissions Plaintiff received were not included within CLS's regular rate calculation for purposes of overtime pay. Iskanian Decl. ¶ 16; *see also* Ex. B to Iskanian Decl. (wage statement shows, on its face, the payment of commissions, but the overtime rates of one and one-half times, and double time, respectively, are calculated on the base rate).

Plaintiff regularly worked through his 30-minute meal periods. Iskanian Decl. ¶¶ 17-23. First, he was not provided meal periods because he was required to remain on-duty and at the location during as-directed jobs, and therefore he was not relieved of all duty. Iskanian Decl. ¶ 19. Notwithstanding, CLS never informed Plaintiff that he could take two meal periods during shifts of 10 hours or more. Iskanian Decl. ¶ 22; *see also* Exhibit A to Iskanian Decl. (CLS's timesheets failed to consider that two or more meal periods could be taken in a day).[3] Also consistent with CLS's admissions, Plaintiff *never* received meal period premiums after having worked through any meal period. Iskanian Decl. ¶ 23, Exhibits A and B.

CLS made no attempt to provide 10-minute rest periods and never even attempted to make Plaintiff aware that he was entitled to rest periods. *See* Iskanian Decl. ¶¶ 24-26. Plaintiff never received rest period premiums. Iskanian Dec. ¶ 26.

Plaintiff received wage statements during each pay period he worked for CLS. Iskanian Decl. ¶ 27, Exhibit B. The wage statements provided by CLS failed to show the "total hours worked." *Id.* This total was important information to Plaintiff, because it would have permitted

[3] Plaintiff wrote on his time sheet that he took 30-minute meal periods as a matter of course. However, CLS acknowledged that the drivers were never free from CLS's control during meal periods, thus the time sheets were, apparently, some perfunctory requirement by CLS to avoid liability.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

him to compare the total number of hours he recorded on his Biweekly Time Sheets with the total number of hours he was paid for. *Id.* Often, Plaintiff had to fill out Pay Discrepancy forms because of the confusion caused by these insufficient wage statements. Iskanian Decl. ¶ 27.

On August 2, 2005, Plaintiff was terminated for violating policy by leaving the vicinity of the client. Iskanian Decl. ¶¶ 28-29, Exhibit D. Plaintiff was not paid his final wages on the date of his termination; rather, it was received three week later. Iskanian Dec. ¶ 30.

III. ARGUMENT

A. Class Certification is Appropriate Where There is an Ascertainable Class with a Well-Defined Community of Interest and Proceeding on a Class Basis is Superior to Numerous Individual Suits

Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." *Sav-On Drug Stores, Inc. v. Superior Court (Rocher)*, 34 Cal. 4th 319, 326 (2004). Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Civ. Proc Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Additionally, the party seeking class certification has the burden to establish that proceeding on a class basis will be a superior means of resolving the dispute. *Aguiar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121, 132–133 (2006).

Where a trial court abuses its discretion and either fails to certify, or decertifies, a wage-and-hour class based on "erroneous legal assumptions," reversal of the order is appropriate. *Id.* at 131-132; *see also Bufil v. Dollar Fin. Group, Inc.,* 162 Cal. App. 4th 1193 (2008) (reversing trial court's denial of class certification motion); *Bell v. Super. Ct.,* 158 Cal. App. 4th 147 (2008) (same); *Daar v. Yellow Cab*, 67 Cal. 2d 695 (1967) (reversing trial court's denial of certification that premised on the erroneous finding that common questions of law and fact did not predominate); *Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263 (1987) (same); *Richmond v. Dart Industries,* 29 Cal. 3d 342 (1981).

The certification question is a procedural one, rather than one that goes to the merits.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

The focus at the certification stage is properly on whether or not there is a systematic, class-wide practice, not whether there is liability following from such a practice. *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal. App. 4th 1524, 1531 (2008) ("Rather than denying certification because it cannot reach the merits, as the court did here, the trial court must evaluate whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. . . ."). Liability is *exclusively* a post-certification determination; *Medrazo v. Honda of North Hollywood*, 166 Cal. App. 4th 89, 97-98 (2008).

In addition, class treatment is appropriate even if each class member at some point may be required to make an individual showing as to eligibility for recovery. *Bufil, supra*, 162 Cal. App. 4th at 1207. Although a class member's precise amount of damages or restitution may ultimately vary, such individual variations are not a bar to class certification. *Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 815 (1971). Moreover, "the necessity for class members to individually establish eligibility and damages does not mean individual questions predominate." *Reyes, supra*, 196 Cal. App. 3d at 1278. This case readily meets requirements for class certification.

B. The Proposed Subclasses are Ascertainable

1. A Class is Ascertainable if a Sufficiently Numerous Group of Unnamed Plaintiffs is Identified by Common Characteristics

A class is "ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself as having a right to recover based on the description." *Harper v. 24 Hour Fitness, Inc.*, 167 Cal. App. 4th 966, 977 (2008) (citing *Estrada v. FedEx Ground Package System, Inc.*, 154 Cal. App. 4th 1, 14 (2007)). *v. Woods,* 148 Cal. App. 3d 862, 873 (1983); *Dynamex, supra,* 166 Cal. App. 4th at 1334. Not every member of the class must be identified from the outset; indeed, it is reversible error to so require. *Harper, supra,* 167 Cal. App. 4th at 977. The fact that a class may ultimately turn out to be over-inclusive is not determinative of class certification. *Dynamex, supra*, 166 Cal. App. 4th at 1334.

Not only are the class members easily identified, but Defendant has already specifically identified potential class members. On November 18, 2008, at the Court's request, the parties

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

filed a Joint Case Management Statement Regarding Scope of Putative Class And Class Period Theriault Decl. ¶¶ 4, 15, Exhibit 1. The purpose of the statement was to inform the Court (and the parties) whether, given the *Prince v. CLS* settlement, Plaintiff had standing to pursue class claims. CLS submitted an "Employee List" which was attached as Exhibit 10 that identified 276 potential members of the class who were either not included in the *Prince* settlement or who worked after signing any individual settlement agreement. *Id.*

Each Subclass contains all 276 drivers, with the exception of one, *infra* (there are approximately 140 Regular Rate Subclass Members), each is therefore sufficiently numerous for purposes of class certification because "it is impracticable to bring them all before the court." Cal. Civ. Proc. Code § 382; *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017, 1030 (1972).

2. The Off-the-Clock Subclass Is Ascertainable and Numerous

Plaintiff proposes the following Subclass:

> **Off-the-Clock Subclass**: All drivers who have been employed by Defendant in the state of California since January 1, 2005 until resolution of this lawsuit whose claims have not been released.

Given that CLS has already identified each of the 276 drivers who worked during this period and did not release their claims, this Subclass is ascertainable and numerous. The Off-the-Clock Subclass Members maintain claims for minimum wage, overtime, "waiting-time" penalties under Labor Code section 203, PAGA penalties, and restitution under the UCL, as a result of CLS's "to-and-from time" policy that resulted in off-the-clock work.

3. The Regular Rate Subclass Is Ascertainable and Numerous

Plaintiff proposes the following Subclass to seek redress for CLS's failure to pay the correct overtime rate by virtue of its failure to include commissions into the regular rate calculation from January 2005 to September 2005:

> **Regular Rate Subclass**: All drivers who have been employed by Defendant in the state of California since January 1, 2005 until September 2005 who worked overtime and received commission pay, and whose claims have not been released.

Although this Subclass is much narrower in scope, CLS never employed less than 140 drivers at any one time during the class period (Trussler Depo. Tr. 61:9-20) and is sufficiently

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

ascertainable and numerous. The Regular Rate Subclass Members have claims for overtime, waiting-time penalties, PAGA penalties, and restitution under the UCL on account of CLS's systematic and admitted failure to properly calculate the regular rate of pay.

4. The Meal Period Subclass Is Ascertainable and Numerous

Plaintiff proposes the following Meal Period Subclass:

> **Meal Period Subclass**: All drivers who have been employed by Defendant in the state of California since January 1, 2005 until resolution of this lawsuit whose claims have not been released.

These 276 Subclass Members have already been ascertained. The Meal Period Subclass Members will pursue claims for meal period violations, including waiting-time penalties, PAGA penalties, and restitution under the UCL, on account of CLS's systematic failure to provide duty-free meal periods.

5. The Rest Period Subclass Is Ascertainable and Numerous

Plaintiff proposes the following Rest Period Subclass:

> **Rest Period Subclass**: All drivers who have been employed by Defendant in the state of California since January 1, 2005 until resolution of this lawsuit whose claims have not been released.

The Rest Period Subclass is identical to the Meal Period Subclass in all respects, with the exception that this Subclass will pursue claims for rest period violations, including waiting-time penalties, PAGA penalties and UCL restitution, on account of CLS's failure to provide duty-free rest periods.

6. The Wage Statement Subclass Is Ascertainable and Numerous

Plaintiff proposes the following Wage Statement Subclass:

> **Wage Statement Subclass**: All drivers who have been employed by Defendant in the state of California since January 1, 2005 until resolution of this lawsuit and who received a wage statement from Defendant, and whose claims have not been released.

All 276 drivers received a wage statement during each bi-weekly pay period. Thus, this Subclass is ascertainable and sufficiently numerous. The Wage Statement Subclass will pursue claims resulting from CLS's failure to comply with Labor Code section 226(a), including penalties under Labor Code section 226(e) and PAGA.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

7. The Untimely Final Wages Subclass Is Ascertainable and Numerous

Plaintiff proposes the following Untimely Final Wages Subclass:

> **Untimely Final Wages Subclass**: All drivers who have been employed by Defendant in the state of California since January 1, 2005 until resolution of this lawsuit, whose employment with Defendant has ended and whose claims have not been released.

CLS can readily identify which of the 276 Untimely Final Wages Subclass Members are no longer employed by it. The Untimely Final Wages Subclass Members claims are based entirely upon CLS's failure to timely pay final wages notwithstanding CLS's failure to properly compensate drivers during their employment. The Untimely Final Wages Subclass Members are entitled to waiting-time penalties and restitution under the UCL.

C. Plaintiff and the Proposed Subclasses Share a Community of Interest

1. A Community of Interest Exists if There are Predominant Common Questions of Law or Fact, Class Representatives with Claims or Defenses Typical of the Class, and Class Representatives and Counsel Who Adequately Represent the Class

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code §382; *Medrazo v. Honda of North Hollywood*, 166 Cal. App. 4th 89, 96 (2008).

It is not necessary that all questions be common to the class, only that some such questions predominate. *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971).

2. Common Questions of Fact and Law Predominate as to the Off-the-Clock Subclass Members

The Off-the-Clock Subclass raises common questions of fact and law by virtue of CLS's common policy to only pay 30 minutes of time before each shift and 30 minutes of time at the conclusion of each shift, irrespective of the amount of work actually performed. Thus, the common question of fact that predominates over all individual questions is, *whether CLS's systematic "to-and-from-time" policy to automatically pay only 30 minutes of time before the*

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

first pick-up and 30 minutes of time after the last drop-off adequately captures all time worked by the drivers.

This question is readily amenable to class treatment, given that All Off-the-Clock Subclass Members were subjected to a common "to and from time" policy (Tressler Depo. Tr., 20:13-25; 22:3-13; and 39:22-40:4; *see also* Ex. A to Iskanian Decl.). Additionally, CLS's dispatchers, who were charged with timekeeping responsibilities, automatically added one additional hour per day. *See* Tressler Depo. Tr. 19:14-19 and 22:20-23. Of course, CLS had knowledge of the location of the drivers and its clients at all times, by virtue of the fact that they remained in direct contact with the dispatchers. Of course, each class member will have varying damages, but that never bars certification. *See Sav-On Drug Stores, supra*, 34 Cal. 4th at 334-335; *Occidental Land, Inc.*, 18 Cal. 3d 355, 363 (1976); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971).

3. Common Questions of Fact and Law Predominate as to the Regular Rate Subclass

CLS's admittedly failed to include commissions when calculating the overtime rate from January 2005 until September 2005. The common question of fact and law that predominate over individual questions with respect to the Regular Rate Subclass is, *whether CLS's failure to include commissions when calculating the regular rate resulted in a failure to properly calculate overtime in accordance with California Labor Code sections 510 and 1198.*

The Regular Rate Subclass Members working from January 2005 to September 2005 received a "flat rate" and thus earned commissions (Tressler Depo. Tr. 97:15-18). Moreover, CLS admitted that it did not even attempt to properly calculate regular rate. Tressler Depo. Tr. 73:2-20. Thus, recalculation of the regular rate can be achieved by an administerial review of the commissions paid to the Subclass Members during each pay period. *See Lewis v. Robinson Ford Sales, Inc.*, 156 Cal. App. 4th 359 (2007) (reversible error to deny certification based on fact that each individual class member's contract would have to be examined to determine liability and damages). Thus, common questions of fact and law predominate over any individual issues.

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

4. Common Questions of Fact and Law Predominate as to the Meal Period Subclass

The Labor Code requires employers to affirmatively relieve workers of all duty and be free from the employer's control for thirty minutes during shifts of more than five hours. *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 962-63 (2005) (quoting DLSE Op.Ltr. 2002.01.28); 8 CAL. CODE. REGS. § 11070 Wage Order 7, section 11 ("no employer shall require any employee to work during any meal or rest period.") Notwithstanding, CLS admitted that drivers were required to always remain on-duty for their entire shift, even during purported meal (and rest) periods. Moreover, CLS made no effort to inform Meal Period Subclass Members that they were entitled to take a second meal period after 10 hours of work (though, in any event, any such meal periods, they would have been on-duty). Thus, the common question of law and fact that predominates is, *whether CLS's admitted policy requiring Meal Period Subclass Members to remain on duty during their shift deprived them of 30-minute meal periods.* The second common question that predominates is, *whether CLS's failure to pay any meal period premiums violates Labor Code section 226.7(b).*

All Meal Period Subclass were subjected to CLS's uniform meal period policy requiring them to remain on duty at all times. *See* Tressler Depo. Tr. 59:3-13; 60:25-61:8; 80:15-18; and 81:2-7. Thus, class-wide liability can be determined merely by answering two questions, that is, whether the Meal Period Subclass Members were required to remain on duty and whether there was an eligible shift of over 5 hours.

5. Common Questions of Fact and Law Predominate as to the Rest Period Subclass

The common questions of fact and law that predominate over any relevant individual questions with respect to the Rest Period Subclass is, *whether CLS authorized and permitted drivers to take one 10 minute rest period during every four-hour shift given that CLS required drivers to remain on duty.* Additionally, the second common question that predominates is, *whether CLS's systematic failure to pay drivers an additional hour of compensation as result of missed rest breaks violates Labor Code section 226.7(b).*

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

The fact that all Rest Period Subclass Members were required to remain on duty throughout the day and were never free from CLS's control establishes that the common question can be readily answered on a classwide basis. *See* Tressler Depo. Tr. 59:3-13; 60:25-61:8; 80:15-18; and 81:2-7. Thus, common questions of fact and law predominate over any individual issues.

6. Common Questions of Fact and Law Predominate as to the Wage Statement Subclass

The common questions of fact and law that predominate over any relevant individual questions with respect to the Wage Statement Subclass is, *whether CLS's use of a form wage statement that failed to aggregate the total hours worked violates Labor Code section 226(a).*

It is a simple matter to adjudicate these claims on a class-wide basis, given that the review of only one, form wage statement will determine liability. Class-wide damages are easy to prove, given that Labor Code section 226(e) provides a straightforward formula based on the number of wage statements furnished to the Subclass Members. Thus, common questions of fact and law predominate over any individual issues.

7. Common Questions of Fact and Law Predominate as to the Untimely Final Wages Subclass

Common questions of fact and law predominate over individual issues with respect to Plaintiff's proposed Untimely Final Wages Subclass; *whether CLS's policy and practice of paying all final wages no earlier than four days after the Subclass Member's last day of employment violates Labor Code sections 201 or 202.* Of course, given that CLS admitted that it does not, the question has already been answered. Thus, it would only be necessary to review employment records to determine how long after their last day they were paid their final wages, and waiting time penalties under Labor Code section 203 can accordingly calculated.

8. Plaintiff's Claims Are Typical of the Proposed Subclasses

The typicality requirement is intended to ensure that the class representative is a member of the class he or she seeks to represent. *Chern v. Bank of America,* 15 Cal. 3d 866, 874 (1976). The plaintiff's claim must arise from the same event, practice or course of conduct that gives rise

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

to the claims of the other class members and be based on the same legal theories. *Classen v. Weller,* 145 Cal. App. 3d 27, 46-47 (1983).

The representative Plaintiff here was subject to every violation for which he now seeks class certification. Iskanian Decl. ¶¶ 1-30. Plaintiff, like the other class members, worked "off-the-clock" and was not paid minimum wages or overtime for that time. *See* Iskanian Decl. ¶ 3-16. Plaintiff was also not provided any meal periods because he was never off-duty, and he was never paid any meal period premiums as a result. Iskanian Decl. ¶¶ 17-23. Plaintiff was also not provided all rest periods, because he had to remain on duty, and he was never compensated with rest period premiums as a result. Iskanian Decl. ¶¶ 24-26. Plaintiff's wage statements fail to set forth the "total hours worked" for each pay period. Iskanian Decl. ¶ 27, Exhibit B. Finally, Plaintiff did not receive his final paycheck until weeks after his last day. Iskanian Decl. ¶ 30. Accordingly, Plaintiff's claims are typical of the claims brought by each and every Subclass he seeks to represent.

9. Plaintiff and his Counsel Will Adequately Represent the Interests of the Proposed Subclasses

Certification requires adequacy of both the proposed class representative and of the proposed class counsel. The class representative "assumes a fiduciary obligation to the members of the class, surrendering any right to compromise the group action in return for an individual gain." *La Sala v. American Sav. & Loan Assn.,* 5 Cal. 3d 864, 871 (1971).

Plaintiff desires to be the class representative in this action and his interests are entirely coextensive with the interests of the class. Iskanian Decl., ¶ 31. Plaintiff has been injured by the same company-wide practices to which the other class members are subject, and seek the same relief as will their fellow class members. Iskanian Decl. ¶¶ 1-30. Plaintiff has already demonstrated his ability to advocate for the interests of the class members in this case by initiating this litigation, and undertaking discovery on behalf of himself and the putative class members and being deposed. Iskanian Decl. ¶ 31.

Likewise, Plaintiff's lawyers at Initiative Legal Group, LLP ("Initiative") easily meet the adequacy threshold. Initiative has certified numerous wage-and-hour class actions, has a

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

recognized appellate practice, and has settled class actions worth tens of millions of dollars on behalf of thousands of class members. *See* Declaration of Marc Primo ("Primo Decl.") ¶¶ 2-5. Initiative has repeatedly been appointed class counsel in both California state and federal courts. *See* Primo Decl. ¶ 3. In it relatively brief history, Initiative has successfully briefed, argued, certified and gained state and federal court settlement approval of all of the class-wide causes of action in this case. *See* Primo Decl. ¶ 5.

Initiative has already conducted pre-certification discovery, deposed Defendant's corporate representatives, as well as analyzed various employment documents of Defendant related to the claims at issue. Theriault Decl. ¶¶ 8-10. Accordingly, Initiative's wage-and-hour class action expertise establishes that it is well-qualified to represent the interests of this class and should be appointed class counsel.

D. Class Treatment is Superior to a Multitude of Individual Suits

The class action must be superior to other available methods for the fair and efficient adjudication of the controversy. *Dean Witter Reynolds, Inc. v. Super. Ct.*, 211 Cal. App. 3d 758, 772-73 (1989). This requirement applies to class actions brought under CCP § 382. *Schneider v. Vennard*, 183 Cal. App. 3d 1340 (1986).

California has a "strong public policy that encourages the use of the class action procedure" for the adjudication of rights. *Johnson, supra,* 166 Cal. App. 4th at 1512. In turn, California law recognizes that "defendants should not profit from their wrongdoing simply because their conduct harmed large numbers of people in small amounts instead of small numbers of people in large amounts." *Linder, supra,* 23 Cal. 4th at 446 (internal quotations and citations omitted). In particular, courts regularly certify class actions to resolve wage-and-hour claims. *Bufil, supra,* 162 Cal. App. 4th at 1208. Given there are hundreds of class members, and the claims of these class members are susceptible to class-wide proof of liability, class treatment is superior to individual, case-by-case resolution.

This matter is manageable as a Class Action. The claims related to the question of whether or not the employees in question were paid for all overtime hours worked, were paid for all missed meal and rest periods, were provided properly itemized wage statements, and were

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

paid their final wages timely, can be assessed using sound survey methods and by reliance on CLS's employment records. Quantification of these issues are well-suited to investigation via mail survey methods or via phone survey methods using relatively cost-efficient callers reading mostly from a script. Assuming some class-wide liability is found, it is possible to determine which class members should be paid money, and how much each might be paid. Based on survey data, Plaintiff will estimate any amounts that a typical class member might be owed on a per-workweek basis.

Plaintiff's action is ideally suited for class action treatment because it will benefit a large number of people, each requesting a relatively small monetary sum of relief. Defendants would also benefit by this case proceeding as a class action in order to avoid potentially inconsistent judgments. All the parties, and the court as well, will benefit from avoiding hundreds of individual lawsuits.

IV. CONCLUSION

For the foregoing reasons Plaintiff requests that this court certify each of the six proposed subclasses, appoint Arshavir Iskanian as class representatives, and Initiative Legal Group, LLP as class counsel.

Dated: May 20, 2009

Respectfully submitted,

Initiative Legal Group LLP

By: _____

Marc Primo
Matthew T. Theriault
Orlando Arellano
Attorneys for Plaintiff Arshavir Iskanian

INITIATIVE LEGAL GROUP LLP
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

Exhibit 4

DAVID A. FAUSTMAN, SBN 081862
YESESNIA M. GALLEGOS, SBN 231852
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, California 90067-3005
Tel 310.598-4150 / Fax 310.556-9828
Email: dfaustman@foxrothschild.com
Email: ygallegos@foxrothschild.com

LEO V. LEYVA, NJ Bar No. 39645 (Admitted *Pro Hac Vice*)
COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, PA
Court Plaza North, 25 Main Street
Hackensack, NJ 07602-0800
Telephone: (201) 525-6294
Facsimile: (201) 678-6294

Attorneys for Defendants

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; 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. BC356521
[Ordered Consolidated w/ BC381065]

DECLARATION OF LEILA MACCIOCCA IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

[Filed concurrently with Notice of Motion and Motion for Summary Judgment Or, In The Alternative, Summary Adjudication, Memorandum of Points and Authorities in Support thereof; Declaration of David F. Faustman, Esq. in support thereof; Separate Statement of Undisputed Material Facts in Support Thereof; and Proposed Order]

Date: July 11, 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

DECLARATION OF LEILA MACCIOCCA

I, Leila Macciocca, hereby declare:

1. I have been employed by Empire/CLS Worldwide Chauffeured Services ("Empire/CLS" or "the Company) since May 2005. I became the Company's Human Resources Manager in about August 2005. Prior to becoming Human Resources Manager, I was a Human Resources representative. I make this declaration based on my own personal knowledge, and if called and sworn as a witness, could and would testify truthfully as to the matters stated herein.

2. The Company employs limousine drivers ("drivers"). Drivers are dispatched as needed in the greater Los Angeles area on a daily basis. Empire/CLS currently employs about 125 limousine drivers.

3. I am responsible for maintaining personnel files for all Company employees, including drivers. I am also responsible for processing payroll and maintaining certain payroll records for all employees, including drivers. The personnel files and payroll records are maintained at our current facility in El Segundo, California.

4. Arshavir Iskanian is a former employee of Empire/CLS, who worked as a driver from March 8, 2004 through August 2, 2005, according to his personnel records.

Empire/CLS's Flat Rate Jobs

5. Empire/CLS' pay practices have evolved over the past several years. In early 2005, there were a variety of components in the driver's pay: "minimum wage hours" (waiting time), "regular rate hours" (driving time), "flat rate hours" (two-hour "commission", plus gratuity), overtime hours, double time hours, and gratuities.

6. "Flat rate" jobs existed only until about September 30, 2005. The phrase "flat rate" job was used to describe airport transfers (*i.e.*, picking up and dropping off clients at the airport.) These "flat rate" jobs took between 15 to 90 minutes to complete, with the vast majority of airport transfers taking less than one hour to complete.

7. The Company attributed two hours of the driver's time to each "flat-rate" job. The "flat-rate" included a two-hour "commission." Everything above that amount was considered a gratuity. As a result, even when a driver completed a "flat rate" job in 15 minutes, the driver was

paid for a total of two hours at minimum wage, plus gratuity. Drivers were fond of "flat rate" jobs and were disappointed when the Company eliminated them in about September 2005.

Wage Statements and Pay Statements

8. Drivers receive a detailed spreadsheet with their paychecks and wage statements every two weeks that explain the components of their compensation for that pay period. Those pay statements identify the total number of "regular hours," "standby hours," "overtime hours" and "double time hours" that a driver worked for that pay period. In 2005, when "flat rate" jobs still existed, pay statements also identified the total "flat rate" hours worked in any even pay period.

Meal and Rest Periods

9. Throughout the class period, January 1, 2009 through August 24, 2010, Empire/CLS has maintained written policies that permit drivers to take meal and rest breaks. (True and correct copies of Empire/CLS's Meal Period Policy and Rest Period Policy are attached hereto and incorporated herein as **Exhibit K**.)

10. We require that drivers take breaks (whether a 30-minute meal break or a 10-minute rest break) during their downtime and gaps in their daily schedule. Drivers can do whatever they wish to do during the gaps in their schedule; it is their time to use as they see fit. If dispatch calls a driver during a gap in the driver's schedule, the driver can decline an assignment if they are still on a break.

11. Arshavir Iskanian never complained to me that he was unable to take his meal or rest breaks, nor are there any personnel records reflecting that he complained to someone else.

12. Shortly after Arshavir Iskanian sought to certify this case as a class action, Empire/CLS' management met with putative class members and obtained declarations from 103 drivers, who provided information about their compensation, meal and rest periods, among other things. We informed the drivers about Iskanian's lawsuit and the fact that he was alleging that he had not received meal and rest periods, properly been paid overtime and final wages, among other things. We asked drivers about their view, and asked whether they would sign a declaration consistent with their views. We asked drivers to read the declaration before signing it, and asked them to let us know if they had any questions or wished to make any changes. Some of the

Company's drivers declined to sign declarations. The following 103 drivers, however, volunteered to sign declarations and also settled claims in exchange for $500.00:

1. Antoine Abouhaidar
2. Jaymie Akopyan
3. Donald D. Akpenyi
4. Michael A. Antonelli
5. Samuel Avagian
6. Derrick Bean
7. James Becerra
8. Arthur Belmontes
9. Vern Belt
10. Major Black
11. Paul Bradley
12. Trevor Brathwaite
13. Timothy Brocker
14. Anthony Burnett
15. Shawn Casper
16. Ronald Castiglione
17. Martin Castillo
18. Frank Chavez
19. Yuriy Chaliyan
20. Daniel Cleary
21. Daniel Coleman
22. Rafael H. Conchucos
23. Lesmond Cooper
24. Kiki J. Cuffee
25. Elena Cummings
26. Damon Deleon
27. Douglas Ewer
28. John Forbes, Jr.
29. Timothy J. Fox
30. Juan Pablo Friz
31. Kris Frost
32. Hamlet Galstyan
33. Jose Garcia
34. Bagdasar Gezalyan
35. Sarkis Ghazaryan
36. Gerardo Gomalez
37. Teodoro Gomeri
38. Kenneth Gottlieb
39. ~~Raul~~ Gutierrez
40. Michael Halaka
41. Teo Tetsuo Hamaguchi
42. Nelson P. Hayes, Jr.
43. Javier J. Hernandez
44. Benjamin B. Hill
45. Sayed Ismail

46. Kelvin Jackson
47. Derek C. Johnson
48. Jerry Jones
49. Rachid Kaid
50. Misak Kasabian
51. Nicholas Klopsis
52. Yuri Kochar
53. Jeff Kotlyar
54. Charles Kouosseu
55. Michael Krakov
56. James Krohn
57. John Lamb
58. Linwood Loatman
59. Tom R. Lowe
60. Abraham Mardirosian
61. Dana Marrow
62. Richard Martin
63. Daniel Mitre
64. Avraham Avi Nathan
65. Angel Montero
66. Nedzad Mulahusejnovic
67. James Neal
68. Broderick Nelson
69. Ross Nosem
70. Robert Norman
71. Raul C. Nunez
72. Razmik Petrosyan
73. Asbet Petrossian
74. Larry Phillips
75. Tracy Pizzorusso
76. Ray Prugh
77. Larry Quartarao
78. Lynda Renna
79. Eric A. Rivers
80. Alfredo Rufatt
81. Keiji Saito
82. Georgina Sanchez
83. Gregory Sappington
84. Garen Sarkissian
85. Steven Sanders
86. Merab Shalumov
87. Leonard Streeter
88. Homayak Elvazian-Tabrizi
89. Jorj Tahmaseyan
90. Asfaw Teferi
91. Peter Tetelboin
92. Martin O. Trevathan
93. Henock Tsehay

94. Javier Uranga
95. Steven Walker
96. Royce Washington
97. Henryk Wojak
98. Robert Wood
99. Duchun Wynn
100. Yakubov Bakhrom
101. Vedat Yalcin
102. Aleksey Zilberglit
103. Wodeck M. Zurawski

Copies of the driver declarations are attached hereto and incorporated herein as **Exhibit L.**

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st of April, 2011, at El Segundo, California.

Leila Macciocca

Exhibit 5

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 ISKANIAN
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:1625012 820000.1684

CLS00141

Exhibit 6

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.

No. BC356521

DEPOSITION OF
MICHAEL ANTONELLI, III

DATE & TIME: Tuesday, June 7, 2011
3:49 p.m. - 5:39 p.m.

LOCATION: 1800 Century Park East
2nd Floor
Los Angeles, California

REPORTER: Christina Kim-Campos, CSR
Certificate No. 12598

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.

No. BC356521

DEPOSITION OF MICHAEL ANTONELLI, III, taken on behalf of the Plaintiffs, at 1800 Century Park East, 2nd Floor, Los Angeles, California, commencing at 3:49 p.m., and concluding at 5:39 p.m., on Tuesday, June 7, 2011, pursuant to Notice, before CHRISTINA KIM-CAMPOS, CSR No. 12598, a Certified Shorthand Reporter, in and for the State of California.

***

APPEARANCES:

For the Plaintiffs:
INITIATIVE LEGAL GROUP, LLP
BY: RAUL PEREZ, ESQ.
- & -
BY: THEODORE O'REILLY, ESQ.
1800 Century Park East
2nd Floor
Los Angeles, California 90067
(310) 556-5637

For the Defendants:
FOX ROTHSCHILD, LLP
BY: NANCY YAFFE, ESQ.
1800 Century Park East
Suite 300
Los Angeles, California 90067-1506
(310) 598-4150

statement that your testimony is that you have no recollection of anyone at CLS telling you that California law required your employer to provide you uninterrupted ten minutes rest breaks for every four hours of work; is that a fair statement?

A. That's a fair statement. When I was initially employed in 2005; that is correct.

Q. Is it also a fair statement that you understand CLS policy to be that the priority is servicing the client, even if that involves interrupting any meal or rest break that you're taking?

A. Absolutely.

Q. Is it your understanding during your employment at CLS that at all times you remain on duty, even when you're taking meal and rest breaks?

MS. YAFFE: Objection. Vague and ambiguous as to "on duty."

THE WITNESS: The way the nature of the beast of the limousine service is, of all the limo companies, including our own, is that you're ready to go on moment's notice, even in the middle of your sandwich. However, I do know and understand that the new company policy is if I call in the radio and say I'm going to take my 30 minute meal break,

they're not supposed to interrupt me.
BY MR. PEREZ:
Q. I respectfully move to strike the response of the answer that started with "new company policy" towards the end.
Is it your understanding that the -- during the time that you were employed by CLS, that with respect to rest breaks you remain on duty throughout the entire time that you're taking your rest break?
MS. YAFFE: Vague and ambiguous as to "on duty." Objection.
THE WITNESS: Well, it seems that way. I never -- even with the new policy I've not, all of a sudden, announced I'm going to take a ten minute rest break.
BY MR. PEREZ:
Q. Now, when -- again, talking about your six years because -- I appreciate there's always days when there's exceptions. I'm just trying to get what was your custom and practice during the six years that you've been at CLS.
When you're taking a meal or a rest break, is it your understanding that you have to remain in contact with the company while take those breaks?
A. We're in contact with the company 24/7

should take your rest break during these occasions where you worked these long days and didn't take any rest breaks?

A. Never. I wish.

Q. And on these occasions that you -- that you went an entire workday without taking any meal or rest breaks, was that caused by just demands of the client and the demands of the job?

A. Combination of demands of the client, combination of the fact that perhaps I went from three back-to-back transfers and then went immediately into an AD, as-directed, which will go into whatever, how many hours.

Q. During the occasions that you missed any meal breaks, did the company ever provide you any additional compensation for missed -- meal breaks missed?

A. Well, I know now we have a form we fill out every two weeks with our pay statement, and we're supposed to go over it day by day. And I get out my printout from all my jobs and I compare one against the other. And most of it is through recollection and through looking at the pay statements. Oh, here I'm working a twelve hour as-directed so I had no meal break. At that point I write on that sheet "No

meal break." I sign it, date it, turn it in to my supervisor.

Q. This procedure or process you just described, when did that come into play?

A. It's recent.

Q. Recent?

A. I don't know exactly when, but it's pretty recent.

Q. Now, I want to know prior to this recent practice implemented by the company that you just described, did the company ever provide you any compensation for the meal breaks that you -- that you missed?

A. I don't think so.

Q. What about the rest breaks that you described that you -- that you missed during long work days, did the company ever provide you any additional compensation for the rest breaks that you missed?

A. And you're referring to prior to the implementation of this?

Q. Correct.

A. Not to my recollection.

Q. Prior to this recent practice -- and by the way, let's talk about this recent practice 'cause I

know you mentioned a couple times new company policy. Why don't we take a step back.

When you say "new company policy," did someone come and give you some type of document, or did they just announce it?

A. I believe we had meetings. I believe it was mentioned in some of the meetings, chauffeur meetings. Also, we received a memo that was attached to our pay printout statement, that the new company policy is we must fill this out and turn it in the Friday following payday, which is on a Friday, so we had seven days to turn it in.

Q. And did this new company policy and these chauffeur meetings that you made reference to, did they take place in 2011?

A. I can't really be sure exactly when.

Q. I'm not looking for the date. Just, like, what year do you recall the new policy came into play?

A. I'm assuming it's 2011 because I think it's pretty recent.

Q. Gotcha.

Prior to this, the implementation of these new recent policies that the company implemented, did the company ever pay you one hour of additional

A. The answer is no.
Q. Okay. Yeah. Yeah. I'm not suggesting something -- conspiracy, whatever. I'm just asking when they stop paying you so --
A. Yes, sir.
Q. Okay. And everybody was excited about this uniform, so let me ask you about the uniform.
A. Oh, I hate the tie.
Q. It's my understanding that you have to -- the company requires you to have a certain look. Black suit?
A. Black suit.
Q. White tie -- I mean white shirt?
A. White shirt. No stripes, no lines.
Q. Black socks?
A. Black socks.
Q. As a male, you're required to have a tie?
A. As a male, I'm required to wear this ugly made in China tie, which you cannot even find at Target bargain basement, and my supervisors know how I feel.
Q. And black shoes?
A. Black shoes, yes.
Q. And the company doesn't reimburse you for any of the attire?

A. They pay for the tie.
Q. Okay.
A. And recently, the board had approved the purchase of a suit -- for a suit and two pairs of pants for all the chauffeurs so --
Q. When did that policy come into play?
A. Just this last month.
Q. Prior to that, were you ever compensated for any of the clothes you had to buy to provide services as a limo driver for CLS?
A. Never, for the exception of the tie. And the tie was started a couple years ago. I can't remember the exact date. Prior to that we bought our own ties.
Q. And with the exception of the tie, how much do you estimate one complete outfit cost you -- the suit, the shirt, the socks?
A. Well, a chauffeur is never going to buy Armani suits --
Q. Correct.
A. -- unless, you know, you like to wear Armani suits --
Q. Correct.
A. -- especially when you're considering that you're lifting luggage, clients' dogs are jumping on

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: JUN 17 2011

CHRISTINA KIM-CAMPOS, CSR

CERTIFICATE NO. 12598

Exhibit 7

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.

No. BC356521

DEPOSITION OF
DERRICK BEAN

DATE & TIME: Wednesday, June 8, 2011
10:04 a.m. - 11:55 a.m.

LOCATION: 1800 Century Park East
2nd Floor
Los Angeles, California

REPORTER: Christina Kim-Campos, CSR
Certificate No. 12598

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.

No. BC356521

DEPOSITION OF DERRICK BEAN, taken on behalf of the Plaintiffs, at 1800 Century Park East, 2nd Floor, Los Angeles, California, commencing at 10:04 a.m., and concluding at 11:55 a.m., on Wednesday, June 8, 2011, pursuant to Notice, before CHRISTINA KIM-CAMPOS, CSR No. 12598, a Certified Shorthand Reporter, in and for the State of California.

***

APPEARANCES:

For the Plaintiffs:
INITIATIVE LEGAL GROUP, LLP
BY: RAUL PEREZ, ESQ.
1800 Century Park East
2nd Floor
Los Angeles, California 90067
(310) 556-5637

For the Defendants:
FOX ROTHSCHILD, LLP
BY: NANCY YAFFE, ESQ.
1800 Century Park East
Suite 300
Los Angeles, California 90067-1506
(310) 598-4150

A. I'm going to say six months ago.
Q. Prior to six months ago, do you have -- do you have any recollection of the company providing you any information about meal break policies, either in writing or verbally?
A. I'm not sure. I'm not certain.
Q. What happened six months ago? What did the company -- what information did the company provide you?
A. They just -- they just are -- well, they adopted a new policy where they have these sheets now that we write down the times that we take our lunches; whereas in the past we didn't have to do that. There wasn't a sheet to fill out our times.
Q. And in this sheet, do you also -- are you also required to record any rest breaks that you take, or is it just lunch breaks?
MS. YAFFE: Objection. Vague and ambiguous as to "rest break." Lacks foundation.
THE WITNESS: It's just lunch. Just lunch.
BY MR. PEREZ:
Q. Before this new timesheet came out, previously did you ever have to fill out any other type of timesheet where you had to record the hours you worked?

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: JUN 17 2011

CHRISTINA KIM-CAMPOS, CSR

CERTIFICATE NO. 12598

Exhibit 8

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.	No. BC356521

DEPOSITION OF
JAMES BECERRA

DATE & TIME: Wednesday, June 8, 2011
1:06 p.m. - 2:14 p.m.

LOCATION: 1800 Century Park East
2nd Floor
Los Angeles, California

REPORTER: Christina Kim-Campos, CSR
Certificate No. 12598

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.

No. BC356521

DEPOSITION OF JAMES BECERRA, taken on behalf of the Plaintiffs, at 1800 Century Park East, 2nd Floor, Los Angeles, California, commencing at 1:06 p.m., and concluding at 2:14 p.m., on Wednesday, June 8, 2011, pursuant to Notice, before CHRISTINA KIM-CAMPOS, CSR No. 12598, a Certified Shorthand Reporter, in and for the State of California.

***

APPEARANCES:

For the Plaintiffs:
INITIATIVE LEGAL GROUP, LLP
BY: RAUL PEREZ, ESQ.
- & -
BY: THEODORE O'REILLY, ESQ.
1800 Century Park East
2nd Floor
Los Angeles, California 90067
(310) 556-5637

For the Defendants:
FOX ROTHSCHILD, LLP
BY: NANCY YAFFE, ESQ.
- & -
BY: NAMAL MUNAWEERA, ESQ.
1800 Century Park East
Suite 300
Los Angeles, California 90067-1506
(310) 598-4150

A. No, not to me.
Q. Do you remember when you joined the company if at any time Mr. Schultz ever explained to you what California law requires with respect to providing limo drivers or any employee, other employees, duty free meal and rest breaks?
A. No.
Q. At any point during your employment at CLS during the six years you've been there, has the company ever provided you any information with respect to what California law requires in connection with providing employees duty free meal breaks and duty free rest breaks?
A. At any time?
Q. Yes.
A. Just recently they -- I would say six months ago they -- I don't know -- maybe six, maybe more -- they -- we had a meeting explaining our breaks and lunch. And also, if we were with a client as-directed for ten hours, eleven hours, they would pay us for our lunch, which is not -- which is what we do get paid now. This all started -- I don't know how long ago it started. Six months ago, maybe.
Q. Let me follow up on a couple things; okay?

This meeting that you described, who presides over the meeting?
A. Rod.
Q. What's his last name?
A. I -- it will come to me in a minute, his last name. I can't think of it.
Q. Okay.
A. Rod Rave, R-a-v-e. He's vice president.
Q. Okay. So he's an executive?
A. Yes.
Q. Was Mr. Schultz at this meeting?
A. Yes.
Q. Okay.
A. And Murray.
Q. Mr. Levy?
A. Mr. Levy.
Q. Was the HR person, I believe her first name is --
A. Leila.
Q. -- Leila. Was she there?
A. No, she wasn't there.
Q. And I presume in attendance were you and other limo drivers?
A. Yes.
Q. Were any documents passed out to you?

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: JUN 17 2011

CHRISTINA KIM-CAMPOS, CSR

CERTIFICATE NO. 12598

Exhibit 9

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.

No. BC356521

DEPOSITION OF
ANTHONY BURNETT

DATE & TIME: Friday, June 10, 2011
3:23 p.m. - 4:55 p.m.

LOCATION: 1800 Century Park East
2nd Floor
Los Angeles, California

REPORTER: Christina Kim-Campos, CSR
Certificate No. 12598

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.

No. BC356521

DEPOSITION OF ANTHONY BURNETT, taken on behalf of the Plaintiffs, at 1800 Century Park East, 2nd Floor, Los Angeles, California, commencing at 3:23 p.m., and concluding at 4:55 p.m., on Friday, June 10, 2011, pursuant to Notice, before CHRISTINA KIM-CAMPOS, CSR No. 12598, a Certified Shorthand Reporter, in and for the State of California.

***

APPEARANCES:

For the Plaintiffs:
INITIATIVE LEGAL GROUP, LLP
BY: THEODORE O'REILLY, ESQ.
- & -
BY: RAUL PEREZ, ESQ.
1800 Century Park East
2nd Floor
Los Angeles, California 90067
(310) 556-5637

For the Defendants:
FOX ROTHSCHILD, LLP
BY: YESENIA GALLEGOS, ESQ.
1800 Century Park East
Suite 300
Los Angeles, California 90067-1506
(310) 598-4150

job. Do plenty of reading.

Q. If Dispatch contacts you while you're resting, you're required to respond to Dispatch immediately; is that correct?

A. Yes, sir.

Q. Now, is it fair to say that Dispatch has contacted you while you're resting and you have responded immediately, since you've worked at CLS since 2003?

A. It's fair to say that Dispatch has contacted me while I'm on an as-directed job. Yes.

Q. And when they contact you on the as-directed job, you're required to respond immediately; correct?

A. Yes.

Q. Have you ever been paid any additional compensation by CLS since you began working there in 2003, for a missed rest break?

A. That rule is intact now, I believe.

Q. Okay. I'll come back to that in a sec, but I'm just asking have you been personally paid additional compensation by CLS since you began working there in 2003 --

A. Not that I know of.

Q. -- additional compensation for a missed rest

break?

A. Not that I know of.

Q. And you stated --

MS. GALLEGOS: I'm sorry, Teddy. I just want to insert an objection to the last question as lacks foundation as to the term, the phrase "missed meal break."

BY MR. O'REILLY:

Q. Now, you stated a second ago that -- I believe you indicated that some sort of policy had changed recently; is that correct?

A. As far as pencilling it in, yes.

Q. So recently, within the last year, has anybody from CLS informed you that if you missed -- strike that.

Recently, within the last year, has anybody from CLS informed you that if CLS failed to provide you with a rest break that complies with California law, that you are owed additional compensation?

A. Yes.

Q. Who from CLS told you that?

A. Supervisors.

Q. Can you name those supervise for me?

A. You know what? It could have been the same three. So Rod, Murray, and Bob. I don't recall

who's in these meetings.

Q. Rod Rave?

A. Yes.

Q. Bob Schultz; correct?

A. Yes. Yeah. But I -- yeah. And Murray.

Q. And Murray Levy?

A. Mm-hmm.

Q. And did either Rod Rave, Bob Schultz, or Murray Levy also inform you within the last year or so that under California law if CLS failed to provide you with a California law compliant meal break, that you would be owed additional compensation?

A. You just asked the same thing, and I just answered.

Q. I know it sounds like the same thing. I -- I believe I asked about the rest breaks earlier. Now I'm just asking about meal breaks. Two separate things.

Did they ever tell you -- did Rod Rave, Bob Schultz, or Murray Levy -- or any other manager from CLS -- within the last year tell you if CLS failed to provide you with a California law compliant meal break, that CLS would owe you additional compensation?

A. With the meal break, yes.
Q. So only for meal breaks they told you that?
A. I don't recall how it was worded.
Q. Fair enough.
Now, this might sound like an odd question to you, but since you've worked at CLS starting in August 2003, do you have any managers from CLS schedule your meal breaks in any way?
A. No.
Q. Have any managers from CLS, since you worked there, since you started working there in August 2003, have any managers from CLS scheduled your rest breaks in any way?
A. No.
Q. Has Dispatch ever -- since you started working in 2003, has Dispatch ever contacted you over the two-way radio and told you, "Mr. Burnett, go take a meal break?"
A. Yes, they have.
Q. Since you started working there in 2003, has anybody -- has Dispatch contacted you over the two-way radio and told you, "Mr. Burnett, go take a ten minute rest break"?
A. Wording? They will say "Take a break." I mean, meal break. Break this. They will say --

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: JUN 17 2011

CHRISTINA KIM-CAMPOS, CSR

CERTIFICATE NO. 12598

Exhibit 10

ADR SERVICES, INC.

DEMAND FOR ARBITRATION

before ADR Services, Inc.

CLAIMANT(S): Luis Earnshaw

Representative/Attorney (if known)	Representative/Attorney (if known)
Name: Raul Perez (SBN 174687)	Name:
Law Firm: Initiative Legal Group APC	Law Firm:
Address: 1800 Century Park East, 2nd Floor Los Angeles, CA 90067	Address:
Telephone: (310)556-5637	Telephone:
Facsimile: (310)861-9051	Facsimile:
Email: rperez@initiativelegal.com	Email:

RESPONDENT(S): See Attachment A

Representative/Attorney (if known)	Representative/Attorney (if known)
Name: David F. Faustman (SBN 081862)	Name: Leo V. Leyva (NJ Bar No. 39645)
Law Firm: Fox Rothschild LLP	Law Firm: Cole, Schotz, Meisel, Forman & Leonard, PA
Address: 1800 Century Park East, Suite 300 Los Angeles, CA 90067-3005	Address: Court Plaza North, 25 Main Street Hackensack, NJ 07602-0800
Telephone: (310) 598-4150	Telephone: (201) 525-6294
Facsimile: (310) 556-9828	Facsimile: (201) 678-6294
Email: dfaustman@foxrothschild.com	Email:

NATURE OF DISPUTE: Claimant hereby demands that you submit the following dispute to arbitration.

See Attachment B

(attach additional pages if necessary)

ARBITRATION AGREEMENT: This demand is made pursuant to the arbitration agreement you made on the instrument described as:

See Court Order

(please attach a copy of the arbitration agreement)

MEDIATION: If mediation in advance of the arbitration is desired, or required, please check here and ADR Services, Inc. will assist the parties in coordinating a mediation proceeding first: ☐

Claimant's Name: Luis Earnshaw	*Demand for Arbitration before ADR Services, Inc.*
Respondent's Name: See Attachment A	

CLAIM OR RELIEF SOUGHT (describe):

See Attachment C

(attach additional pages if necessary)

OTHER RELIEF SOUGHT:

☒ Attorneys Fees ☒ Interest ☐ Other:
☒ Arbitration Costs ☒ Punitive / Exemplary

RESPONSE: You may file a response and counter-claim to the claim stated in the previous page. Send the original of the response and counter-claim to the Claimant at the address stated above, with copies to ADR Services, Inc. office checked below:

DEMANDING PARTY'S SIGNATURE (may be signed by an attorney):

Signature — August 19, 2011 Date

Raul Perez
Print Name — Title (if Party is a company)

DIRECTIONS FOR SUBMITTING DEMAND FOR ARBITRATION

1. Please serve a copy of the Demand for Arbitration, pre-dispute Arbitration Agreement, and any additional claim documents to the opposing counsel (if the opposing side is not or not yet represented by counsel, please submit the aforementioned documents to the opposing party).

2. Please include a check payable to ADR Services, Inc. for the required, **non-refundable $300 Initial Filing Fee** and submit to the appropriate ADR Services, Inc. office along with your Demand for Arbitration.

3. Please submit a copy of the Demand for Arbitration, pre-dispute Arbitration Agreement, and any additional claim documents to the appropriate ADR Services, Inc. office:

☐ **Century City / West Los Angeles**
1900 Avenue of the Stars, Suite 250
Los Angeles, California 90067
Tel (310) 201-0010 / Fax (310) 201-0016

☐ **Downtown Los Angeles**
915 Wilshire Boulevard, Suite 1900
Los Angeles, California 90017
Tel (213) 683-1600 / Fax (213) 683-9797

☒ **San Francisco / Northern California**
50 Fremont Street, Suite 2110
San Francisco, California 94105
Tel (415) 772-0900 / Fax (415) 772-0960

☐ **San Diego**
225 Broadway, Suite 1400
San Diego, California 92101
Tel (619) 233-1323 / Fax (619) 233-1324

☐ **Orange County**
19000 MacArthur Boulevard, Suite 550
Irvine, California 92612
Tel (949) 863-9800 / Fax (949) 863-9888

☐ **San Jose / Silicon Valley**
50 Fremont Street, Suite 2110
San Francisco, California 94105
Tel (415) 772-0900 / Fax (415) 772-0960

4. If you have any questions regarding the Demand for Arbitration or procedures regarding the Binding Arbitration, please feel free to visit our website at **www.adrservices.org** or contact the filing office above and ask for the "Arbitration Coordinator".

Print Form

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); and
(9) Violation of California Business & Professions Code § 17200, et seq.

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) (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 (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 (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 (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;

5. For costs of suit incurred herein; and

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

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

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On **August 19, 2011**, I served the documents described as:

DEMAND FOR ARBITRATION FOR LUIS EARNSHAW

on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

David Faustman, Esq.
Yesenia Gallegos, Esq.
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067

[ ] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[ ] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[ ] **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

[✓] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[ ] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this 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 packages 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 **August 19, 2011**, at Los Angeles, California.

Matthew Krout
Type or Print Name

Signature

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

Exhibit 11

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

September 19, 2011

VIA FACSIMILE AND FIRST CLASS MAIL

Terry Shea
Arbitration Coordinator
ADR Services, Inc.
915 Wilshire Blvd., Suite 1900
Los Angeles, CA 90017

Re: Alston, Glen-ADR Case No. 11-5401
Araya, Daniel-ADRS Case No. 11-5223
Bailey, Karen-ADR Case No. 11-5402
Baker, William-ADRS Case No. 11-5240
Baranco, David-ADRS Case No. 11-5197
Ben Yair, Neil-ADRS Case No. 11-5220
Boyd, Jerry-ADRS Case No. 11-5206
Caldwell, Darold-ADRS Case No. 11-5225
Candelaria, Rafael-ADRS Case No. 11-5232
Chang, Kung Ming-ADRS Case No. 11-5212
Cheng, Kenny-ADRS Case No. 11-5202
Clark, LeRoy-ADRS Case No. 11-5213
Collins, Cleophus-ADRS Case No. 11-5291
Colwell, Reginald-ADRS Case No. 11-5233
Cooley, Patrick-ADRS Case No. 11-5231
De La Mora, Miguel-ADRS Case No. 11-5218
Denison, James-ADRS Case No. 11-5199
Dubuy, Frank G.-ADRS Case No. 11-5229
Earnshaw, Luis-ADRS Case No. 11-5201
Evans, Johnnie-ADRS Case No. 11-5208
Fuentes, Raul-ADRS Case No. 11-5404
Fumoto, Jiro-ADRS Case No. 11-5207
Funes, Julius-ADRS Case No. 11-5210
Garcia, Angelo-ADRS Case No. 11-5193
Garcia, Edwin-ADRS Case No. 11-5227
Griffin, Gerald-ADRS Case No. 11-5230

Ikner, Wayne-ADRS Case No. 11-5239
Kempler, Greg-ADRS Case No. 11-5203
Kroo, Igor -ADRS Case No. 11-5204
Lindsey, Cassandra-ADRS Case No. 11-5222
Loatman, Matthew-ADRS Case No. 11-5217
Martin, Thomas-ADRS Case No. 11-5238
Maynard, Steve-ADRS Case No. 11-5236
Millington Jr, Daniel Rogers-ADRS Case No. 11-5224
Montoya, David-ADRS Case No. 11-5226
Mueller, Carl-ADRS Case No. 11-5196
Norton, Elijha-ADRS Case No. 11-5228
Olmedo, Robert-ADRS Case No. 11-5406
Paull, Pater-ADRS Case No. 11-5221
Perry, Roger-ADRS Case No. 11-5234
Pinkerton, William-ADRS Case No. 11-5293
Post, Arthur E.-ADRS Case No. 11-5405
Richmond, James-ADRS Case No. 11-5200
Rogan, Myron-ADRS Case No. 11-5219
Rose, Marquel-ADRS Case No. 11-5215
Sazo, Marcial-ADRS Case No. 11-5214
Scott, Jonathan-ADRS Case No. 11-5209
Sharif, Karim-ADRS Case No. 11-5211
Shafii, Masood-ADRS Case No. 11-5216
Silva, Flavio-ADRS Case No. 11-5198
Sloan, Bennett-ADRS Case No. 11-5195
Smith, Edward-ADRS Case No. 11-5181
Stellman, Susan-ADRS Case No. 11-5237
Sterling, James-ADRS Case No. 11-5205
Sullivan, Scott-ADRS Case No. 11-5235
Swartz, Carl-ADRS Case No. 11-5292
Toailoa, Avaavau-ADRS Case No. 11-5194
Warren, Adrien-ADRS Case No. 11-5192
Washington, Belinda-ADRS Case No. 11-5403

Dear Ms. Shea:

This shall respond to your recent request that CLS Transportation of Los Angeles, LLC and other named defendants select an arbitrator in the above-referenced matters. Please be advised that we do not recognize the purported Plaintiffs' demands for arbitration as valid submissions. As a preliminary matter, the procedure you have provided for choosing an arbitrator is inconsistent with the requirement set forth in the arbitration agreement at issue, which requires that the parties select a retired judge as the arbitrator. In any event, the arbitration agreement at issue invokes

the services of the American Arbitration Association ("AAA"), and requires that the parties follow AAA's rules. Moreover, Plaintiffs' counsel has not presented anything to show that he is authorized by the purported Plaintiffs to initiate arbitration.

If the purported Plaintiffs exist and seek to arbitrate, they will need to file with AAA and tender the appropriate fees.

Should you have any questions, please feel free to call me.

Very truly yours,

Yesenia Gallegos

cc: Raul Perez, Esq.

Exhibit 12

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)

Luis Earnshaw
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: San Francisco

☐ 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 13

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 14

American Arbitration Association
Dispute Resolution Services Worldwide

phone: 877-495-4185
fax: 877-304-8457

Case Filing Services
1101 Laurel Oak Road, Suite 100
Voorhees, NJ 08043
www.adr.org

October 20th, 2011

VIA E-MAIL to rperez@initiativelegal.com
Raul Perez, Esq.
Initiative Legal Group, APC
1800 Century Park East
2nd Floor
Los Angeles, CA 90067

VIA E-MAIL to dfaustman@foxrothschild.com
David F. Faustman, Esq.
Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067

Dear Mr. Perez and Mr. Faustman:

As of this date we have not received the fees requested from Respondent in my letter of October 6th, 2011. On October 10th, 2011, we received a letter from Ms. Gallegos confirming Respondent would not be paying the fees requested in the October 6th, 2011 letter; accordingly, we must decline to administer this case. We will issue a full refund for the fees paid by Claimants.

Furthermore, since the Respondent has not complied with our request to pay the requisite administrative fees in accordance with the employer-promulgated plan fee schedule, we must decline to administer any other employment disputes involving this company. We request that the business remove the AAA name from its arbitration clauses so that there is no confusion to the company's employees regarding our decision.

Sincerely,

Adam Shoneck
Intake Specialist
856-679-4610
ShoneckA@adr.org

Supervisor Information: Tara Parvey, ParveyT@adr.org

CC: **VIA E-MAIL to ygallegos@foxrothschild.com**
Yesenia Gallegos, Esq.
Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067

Exhibit 15

Raul Perez (SBN 174687)
RPerez@InitiativeLegal.com
Melissa Grant (SBN 205633)
MGrant@InitiativeLegal.com
Suzy E. Lee (SBN 271120)
SuzyLee@InitiativeLegal.com
Initiative Legal Group APC
1800 Century Park East, 2nd Floor
Los Angeles, California 90067
Telephone: (310) 556-5637
Facsimile: (310) 861-9051

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GREG KEMPLER, an individual; ADRIEN WARREN, an individual; ANANTRAY SANATHARA, an individual; ANGELO GARCIA, an individual; ARTHUR POST, an individual; AVAAVAU TOAILOA, an individual; BELINDA WASHINGTON, an individual; BENNETT SLOAN, an individual; BRUCE GOLD, an individual; CARL MUELLER, an individual; CARL SWARTZ, an individual, CASSANDRA LINDSEY, an individual; CLEOPHUS COLLINS, an individual; DANIEL ARAYA, an individual; DANIEL ROGERS MILLINGTON, JR., an individual; DAROLD CALDWELL, an individual; DAVID BARANCO, an individual; DAVID MONTOYA, an individual; DAWN BINGHAM, an individual; EDWARD SMITH, an individual; EDWIN GARCIA, an individual; ELIJHA NORTON, an individual; FLAVIO SILVA, an individual; FRANK G. DUBUY, an individual; GERALD GRIFFIN, an individual; GLEN ALSTON, an individual; IGOR KROO, an individual; JAMES C. DENISON, an individual; JAMES RICHMOND, an individual; JAMES STERLING, an individual; JERRY BOYD, an individual; JIRO FUMOTO, an individual; JOHNNIE EVANS, an individual; JONATHON SCOTT, an individual; JULIUS FUNES, an individual; KAREN BAILEY, an

Case No.: BC 478931

(1) Breach of Contract;

(2) Rescission;

(3) Specific Performance; and

(4) Declaratory Relief

Jury Trial Demanded

individual; KARIM SHARIF, an individual; KENNY CHENG, an individual; KUNG MING CHANG, an individual; LAMONT CRAWFORD, an individual; LEROY CLARK, an individual; LUIS EARNSHAW, an individual; MARCIAL SAZO, an individual; MARQUEL ROSE, an individual; MASOOD SHAFII, an individual; MATTHEW LOATMAN, an individual; MIGUEL DE LA MORA, an individual; MYRON ROGAN, an individual; NEIL BEN YAIR, an individual; PATER PAULL, an individual; PATRICK COOLEY, an individual; RAFAEL CANDELARIA, an individual; RAUL FUENTES, an individual; REGINALD COLWELL, an individual; ROBERT OLMEDO, an individual; ROGER PERRY, an individual; SCOTT SULLIVAN, STEVE MAYNARD, an individual; SUSAN STELLMAN, an individual; THOMAS MARTIN, an individual; WAYNE IKNER, an individual; WILLIAM BANKER, an individual; and WILLIAM PINKERTON, an individual,

Plaintiffs,

vs.

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

Defendants.

Plaintiffs, individuals, allege 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 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.

3. 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

4. Plaintiff GREG KEMPLER is a resident of Los Angeles County, in the state of California.

5. Plaintiff ADRIEN WARREN is a resident of San Mateo County, in the state of California.

6. Plaintiff ANANTRAY SANATHARA is a resident of Orange County, in the state of California.

7. Plaintiff ANGELO GARCIA is a resident of Solano County, in the state of California.

8. Plaintiff ARTHUR POST is a resident of Los Angeles County, in the state of California.

9. Plaintiff AVAAVAU TOAILOA is a resident of Alameda County, in the state of California.

10. Plaintiff BELINDA WASHINGTON is a resident of Ulster County, in the state of New York.

11. Plaintiff BENNETT SLOAN is a resident of San Mateo County, in the state of California.

12. Plaintiff BRUCE GOLD is a resident of Los Angeles County, in the state of California.

13. Plaintiff CARL MUELLER is a resident of Contra Costa County, in the state of California.

14. Plaintiff CARL SWARTZ is a resident of Los Angeles County, in the state of California.

15. Plaintiff CASSANDRA LINDSEY is a resident of Flagler County, in the state of Florida.

16. Plaintiff CLEOPHUS COLLINS is a resident of Los Angeles County, in the state of California.

17. Plaintiff DANIEL ARAYA is a resident of San Bernardino County, in the state of California.

18. Plaintiff DANIEL ROGERS MILLINGTON, JR. is a resident of Orange County, in the state of California.

19. Plaintiff DAROLD CALDWELL is a resident of Los Angeles County, in the state of California.

20. Plaintiff DAVID BARANCO is a resident of San Francisco County, in the state of California.

21. Plaintiff DAVID MONTOYA is a resident of Kern County, in the state of California.

22. Plaintiff DAWN BINGHAM is a resident of Los Angeles County, in the state of California.

23. Plaintiff EDWARD SMITH is a resident of Los Angeles County, in the state of

California.

24. Plaintiff EDWIN GARCIA is a resident of Los Angeles County, in the state of California.

25. Plaintiff ELIJHA NORTON is a resident of Los Angeles County, in the state of California.

26. Plaintiff FLAVIO SILVA is a resident of Marin County, in the state of California.

27. Plaintiff FRANK G. DUBUY is a resident of Los Angeles County, in the state of California.

28. Plaintiff GERALD GRIFFIN is a resident of Los Angeles County, in the state of California.

29. Plaintiff GLEN ALSTON is a resident of Alameda County, in the state of California.

30. Plaintiff IGOR KROO is a resident of Los Angeles County, in the state of California.

31. Plaintiff JAMES C. DENISON is a resident of Alameda County, in the state of California.

32. Plaintiff JAMES RICHMOND is a resident of Amador County, in the state of California.

33. Plaintiff JAMES STERLING is a resident of Los Angeles County, in the state of California.

34. Plaintiff JERRY BOYD is a resident of Los Angeles County, in the state of California.

35. Plaintiff JIRO FUMOTO is a resident of Santa Clara County, in the state of California.

36. Plaintiff JOHNNIE EVANS is a resident of Los Angeles County, in the state of California.

37. Plaintiff JONATHON SCOTT is a resident of Maricopa County, in the state of

Arizona.

38. Plaintiff JULIUS FUNES is a resident of Los Angeles County, in the state of California.

39. Plaintiff KAREN BAILEY is a resident of San Francisco County, in the state of California.

40. Plaintiff KARIM SHARIF is a resident of Los Angeles County, in the state of California.

41. Plaintiff KENNY CHENG is a resident of San Mateo County, in the state of California.

42. Plaintiff KUNG MING CHANG is a resident of Los Angeles County, in the state of California.

43. Plaintiff LAMONT CRAWFORD is a resident of Los Angeles County, in the state of California.

44. Plaintiff LEROY CLARK is a resident of Los Angeles County, in the state of California.

45. Plaintiff LUIS EARNSHAW is a resident of San Mateo County, in the state of California.

46. Plaintiff MARCIAL SAZO is a resident of Los Angeles County, in the state of California.

47. Plaintiff MARQUEL ROSE is a resident of Los Angeles County, in the state of California.

48. Plaintiff MASOOD SHAFII is a resident of Los Angeles County, in the state of California.

49. Plaintiff MATTHEW LOATMAN is a resident of Los Angeles County, in the state of California.

50. Plaintiff MIGUEL DE LA MORA is a resident of Los Angeles County, in the state of California.

51. Plaintiff MYRON ROGAN is a resident of Los Angeles County, in the state of California.

52. Plaintiff NEIL BEN YAIR is a resident of Los Angeles County, in the state of California.

53. Plaintiff PATER PAULL is a resident of Los Angeles County, in the state of California.

54. Plaintiff PATRICK COOLEY is a resident of Los Angeles County, in the state of California.

55. Plaintiff RAFAEL CANDELARIA is a resident of Los Angeles County, in the state of California.

56. Plaintiff RAUL FUENTES is a resident of Los Angeles County, in the state of California.

57. Plaintiff REGINALD COLWELL is a resident of Ventura County, in the state of California.

58. Plaintiff ROBERT OLMEDO is a resident of Los Angeles County, in the state of California.

59. Plaintiff ROGER PERRY is a resident of Clark County, in the state of Nevada.

60. Plaintiff SCOTT SULLIVAN is a resident of Los Angeles County, in the state of California.

61. Plaintiff STEVE MAYNARD is a resident of Los Angeles County, in the state of California.

62. Plaintiff SUSAN STELLMAN is a resident of Pima County, in the state of Arizona.

63. Plaintiff THOMAS MARTIN is a resident of Los Angeles County, in the state of California.

64. Plaintiff WAYNE IKNER is a resident of Orange County, in the state of California.

65. Plaintiff WILLIAM BANKER is a resident of Los Angeles County, in the state of California.

66. Plaintiff WILLIAM PINKERTON is a resident of Multnomah County, in the state of Oregon.

67. Defendant CLS Transportation Los Angeles LLC (hereinafter "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.

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

69. Plaintiffs are informed and believe, 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.

70. Plaintiffs are informed and believe, 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" or "CLS"), 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.

71. 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.

72. Plaintiffs are informed and believe, and thereon allege, 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

73. On August 4, 2004, a putative class action complaint was filed in the action styled *Arshavir Iskanian v. CLS Transportation Los Angeles, LLC, et al.*, Los Angeles Superior Court case number BC 356521 (the "*Iskanian* Action"). That action is currently pending.

74. At all times set forth, CLS employed Plaintiffs in the capacity of livery drivers and other similar positions. Each and every Plaintiff herein is either currently employed by Defendants or was employed by Defendants within the four years prior to the filing of the complaint in the *Iskanian* Action.

75. On information and belief, Defendants continue to employ drivers within California.

76. The *Iskanian* Action was filed by Arshavir Iskanian on his own behalf and on behalf of a class of similarly situated current and former employees of Defendant.

77. The *Iskanian* Action alleged causes of action for: (1) unpaid overtime in violation of California Labor Code ("Labor Code") §§ 510 and 1198; (2) improper wage statements in violation of Labor Code § 226(a); (3) missed meal periods in violation of Labor Code §§ 226.7(a) and 512; (4) missed rest periods in violation of Labor Code § 226.7(a); (5) improper withholding of wages and failure to indemnify business expenses in violation of Labor Code §§ 221 and 2802; (6) confiscation of gratuities in violation of Labor Code § 351; (7) non-payment of wages upon termination in violation of Labor Code §§ 201 and 212; and (8) failure to pay wages in violation of Labor Code § 204. The *Iskanian* Action also asserted claims under the Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. ("PAGA").

78. In February 2007, CLS filed a Motion to Compel Arbitration and Stay or Dismiss the *Iskanian* Action. The plaintiffs to the *Iskanian* Action opposed that motion. On March 13, 2007, the trial court granted CLS's Motion to Compel Arbitration. On information and belief, the document attached hereto as Exhibit 1 is a copy of an arbitration agreement entered into between the Defendant CLS and Plaintiff Kung-Ming Chang. On information and belief, it is Defendants' position that this document is substantially identical to arbitration agreements

purporting to govern the claims of each and every Plaintiff herein.

79. The plaintiffs in the *Iskanian* Action appealed the trial court's order compelling arbitration. On May 27, 2008, the Court of Appeal, remanded the matter back to the trial court for findings under the test enunciated in *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007). However, on remand, CLS withdrew and abandoned its Motion to Compel Arbitration and litigation in the *Iskanian* Action proceeded in the Los Angeles Superior Court thereafter.

80. On August 24, 2009, the court certified the class in the *Iskanian* Action (the "*Iskanian* Class").

81. Each and every Plaintiff herein was a member of the *Iskanian* Class.

82. In May 2011, CLS filed a Motion for Renewal of its prior Motion to Compel Arbitration in the *Iskanian* Action. The plaintiffs opposed the motion. On June 13, 2011, the trial court in the *Iskanian* Action granted CLS's Motion for Renewal, ordered the plaintiff therein to individual arbitration, and dismissed the class claims. A true and correct copy of the court's June 13, 2011 order is attached hereto as Exhibit 2.

83. On August 11, 2011, the plaintiffs to the *Iskanian* Action filed a notice of appeal of the June 13, 2011 order. That appeal is pending and is not yet fully briefed.

84. Plaintiffs herein, however, sixty-three former members of the *Iskanian* Class, elected to pursue individual arbitration against Defendant pursuant to the trial court's order as follows:

a. Plaintiff GREG KEMPLER (referred to as "Plaintiff" for this paragraph) filed a claim with ADR Services, Inc. ("ADR") on or about August 12, 2011. A true and correct copy of Plaintiff's claim is attached hereto as Exhibit 3. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that KEMPLER was contractually required to file the arbitration claim with the American Arbitration Association ("AAA"). A true and correct copy of the September 19, 2011 letter is attached hereto as Exhibit 4. On September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. A true and correct copy of Plaintiff's September 19, 2011 letter is attached hereto as Exhibit 5. By

letter dated October 10, 2011, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. A true and correct copy of Defendants' October 10, 2011 letter is attached hereto as Exhibit 6. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS. A true and correct copy of the AAA's letter of October 20, 2011 is attached hereto as Exhibit 7.

b. Plaintiff ADRIEN WARREN (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

c. Plaintiff ANANTRAY SANATHARA (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about September 14, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

d. Plaintiff ANGELO GARCIA (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

e. Plaintiff ARTHUR POST (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 29, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

f. Plaintiff AVAAVAU TOAILOA (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

g. Plaintiff BELINDA WASHINGTON (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on

the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

h. Plaintiff BENNETT SLOAN (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

i. Plaintiff BRUCE GOLD (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about September 6, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

j. Plaintiff CARL MUELLER (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

k. Plaintiff CARL SWARTZ (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

l. Plaintiff CASSANDRA LINDSEY (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

m. Plaintiff CLEOPHUS COLLINS (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about September 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the

basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

n. Plaintiff DANIEL ARAYA (referred to as "Plaintiff" for this paragraph) filed a claim with ADR in or about August or September 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

o. Plaintiff DANIEL ROGERS MILLINGTON, JR. (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

p. Plaintiff DAROLD CALDWELL (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

q. Plaintiff DAVID BARANCO (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

r. Plaintiff DAVID MONTOYA (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

s. Plaintiff DAWN BINGHAM (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about September 1, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

t. Plaintiff EDWARD SMITH (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 18, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

u. Plaintiff EDWIN GARCIA (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

v. Plaintiff ELIJHA NORTON (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

w. Plaintiff FLAVIO SILVA (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

x. Plaintiff FRANK G. DUBUY (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

y. Plaintiff GERALD GRIFFIN (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

z. Plaintiff GLEN ALSTON (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

aa. Plaintiff IGOR KROO (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

bb. Plaintiff JAMES C. DENISON (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

cc. Plaintiff JAMES RICHMOND (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

dd. Plaintiff JAMES STERLING (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

ee. Plaintiff JERRY BOYD (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

ff. Plaintiff JIRO FUMOTO (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

gg. Plaintiff JOHNNIE EVANS (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

hh. Plaintiff JONATHON SCOTT (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

ii. Plaintiff JULIUS FUNES (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

jj. Plaintiff KAREN BAILEY (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

kk. Plaintiff KARIM SHARIF (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 16, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

ll. Plaintiff KENNY CHENG (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

mm. Plaintiff KUNG MING CHANG (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

nn. Plaintiff LAMONT CRAWFORD (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about September 1, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the

basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

oo. Plaintiff LEROY CLARK (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

pp. Plaintiff LUIS EARNSHAW (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

qq. Plaintiff MARCIAL SAZO (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

rr. Plaintiff MARQUEL ROSE (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

ss. Plaintiff MASOOD SHAFII (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

tt. Plaintiff MATTHEW LOATMAN (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

uu. Plaintiff MIGUEL DE LA MORA (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

vv. Plaintiff MYRON ROGAN (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

ww. Plaintiff NEIL BEN YAIR (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

xx. Plaintiff PATER PAULL (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

yy. Plaintiff PATRICK COOLEY (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

zz. Plaintiff RAFAEL CANDELARIA (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

aaa. Plaintiff RAUL FUENTES (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 29, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

bbb. Plaintiff REGINALD COLWELL (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

ccc. Plaintiff ROBERT OLMEDO (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 29, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

ddd. Plaintiff ROGER PERRY (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

eee. Plaintiff SCOTT SULLIVAN (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

fff. Plaintiff STEVE MAYNARD (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about 2 September 28, 011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

ggg. Plaintiff SUSAN STELLMAN (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

hhh. Plaintiff THOMAS MARTIN (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

iii. Plaintiff WAYNE IKNER (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that

Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

jjj. Plaintiff WILLIAM BANKER (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

kkk. Plaintiff WILLIAM PINKERTON (referred to as "Plaintiff" for this paragraph) filed a claim with ADR on or about August 18, 2011. By letter dated September 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and any future claims involving CLS.

lll. The claims filed by Plaintiff KEMPLER with ADR and AAA are substantially similar to the claims filed by each of the other plaintiffs herein as alleged above.

///

FIRST CAUSE OF ACTION

Breach of Contract

(Against all Defendants)

85. Plaintiffs incorporate by reference and re-allege as if fully stated herein all allegations set out in paragraphs 1 through 84.

86. Defendant and each and every Plaintiff herein executed a document entitled Proprietary Information And Arbitration Policy/Agreement ("Arbitration Agreement").

87. In its motion to compel arbitration filed in the *Iskanian* Action, Defendants took the position that, pursuant to the terms of the Arbitration Agreement, "both parties agreed to arbitrate any and all disputes relating to Plaintiff's employment and separation from CLS."

88. By way of its Arbitration Order, the court in the *Iskanian* Action ordered the parties to individual arbitration and dismissed the class claims. In so doing, the court found the Arbitration Agreement to be an enforceable contract.

89. The Arbitration Agreement requires in relevant part that arbitration be conducted pursuant to the "dispute resolution rules and procedures of the American Arbitration Association..." By letter dated September 19, 2011, Defendants took the position that the Arbitration Agreement thus requires the parties to submit to arbitration solely through AAA.

90. Pursuant to the terms of the Arbitration Agreement, the Arbitration Order, and Defendants' correspondence of September 19, 2011, each and every Plaintiff herein filed an arbitration demand with AAA dated September 28, 2011.

91. Each and every Plaintiff herein properly has performed all duties and obligations under the Arbitration Agreement.

92. Defendants failed and refused to participate in arbitration, rejected Plaintiffs' proper arbitration demands, and refused to pay AAA's fee. In so doing, Defendants materially breached the terms of the Arbitration Agreement.

93. Due to Defendants' refusal to allow Plaintiffs' claims to proceed in the superior court and Defendants' refusal to allow Plaintiffs' claims to proceed in arbitration, Defendants

have deprived Plaintiffs of a forum in which to vindicate their rights and have prevented them from obtaining the monetary relief they are due.

SECOND CAUSE OF ACTION

Rescission

(Against all Defendants)

94. Plaintiffs incorporate by reference and re-allege as if fully stated herein all allegations set out in paragraphs 1 through 93.

95. In its motion to compel arbitration filed in the *Iskanian* Action, Defendants took the position that, pursuant to the terms of the Arbitration Agreement, "both parties agreed to arbitrate any and all disputes relating to Plaintiff's employment and separation from CLS."

96. By way of its Arbitration Order, the court in the *Iskanian* Action ordered the parties to individual arbitration and dismissed the class claims. In so doing, the court found the Arbitration Agreement to be an enforceable contract.

97. The Arbitration Agreement requires in relevant part that arbitration be conducted pursuant to the "dispute resolution rules and procedures of the American Arbitration Association..." By letter dated September 19, 2011, Defendants took the position that the Arbitration Agreement thus requires the parties to submit to arbitration solely through AAA.

98. Pursuant to the terms of the Arbitration Agreement, the Arbitration Order, and Defendants' correspondence of September 19, 2011, each and every Plaintiff herein filed an arbitration claim with AAA dated September 28, 2011.

99. Each and every Plaintiff herein properly has performed all duties and obligations under the Arbitration Agreement.

100. Defendants failed and refused to participate in arbitration, rejected Plaintiffs' proper arbitration claims, and refused to pay AAA's fee. In so doing, Defendants materially breached the terms of the Arbitration Agreement.

101. Due to Defendants' material breach of the Arbitration Agreement by its refusal to allow Plaintiffs' claims to proceed in the superior court and Defendants' refusal to allow

Plaintiffs' claims to proceed in arbitration, Defendants have deprived Plaintiffs of a forum in which to vindicate their rights.

THIRD CAUSE OF ACTION

Specific Performance

(Against all Defendants)

102. Plaintiffs incorporate by reference and re-allege as if fully stated herein all allegations set out in paragraphs 1 through 101.

103. In its motion to compel arbitration filed in the *Iskanian* Action, Defendants took the position that, pursuant to the terms of the Arbitration Agreement, "both parties agreed to arbitrate any and all disputes relating to Plaintiff's employment and separation from CLS."

104. By way of its Arbitration Order, the court in the *Iskanian* Action ordered the parties to individual arbitration and dismissed the class claims. In so doing, the court found the Arbitration Agreement to be an enforceable contract.

105. The Arbitration Agreement requires in relevant part that arbitration be conducted pursuant to the "dispute resolution rules and procedures of the American Arbitration Association..." By letter dated September 19, 2011, Defendants took the position that the Arbitration Agreement thus requires the parties to submit to arbitration solely through AAA.

106. Pursuant to the terms of the Arbitration Agreement, the Arbitration Order, and Defendants' correspondence of September 19, 2011, each and every Plaintiff herein filed an arbitration claim with AAA dated September 28, 2011.

107. Each and every Plaintiff herein properly has performed all duties and obligations under the Arbitration Agreement.

108. Defendants failed and refused to participate in arbitration, rejected Plaintiffs' proper arbitration claims, and refused to pay AAA's fee. In so doing, Defendants materially breached the terms of the Arbitration Agreement.

109. Due to Defendants' refusal to allow Plaintiffs' claims to proceed in the superior court and Defendants' refusal to allow Plaintiffs' claims to proceed in arbitration, Defendants

have deprived Plaintiffs of a forum in which to vindicate their rights.

FOURTH CAUSE OF ACTION

Declaratory Relief

(Against all Defendants)

110. Plaintiffs incorporate by reference and re-allege as if fully stated herein all allegations set out in paragraphs 1 through 109.

111. An actual controversy exists among the parties as to Plaintiffs' and Defendants' respective rights and duties under the Arbitration Agreement, as well as the continued viability and enforceability of the Arbitration Agreement.

112. Accordingly, Plaintiffs request a declaration as to the parties' respective rights and duties under the Arbitration Agreement. Specifically, Plaintiffs request a declaration that:

a. Defendants are in material breach of the Arbitration Agreement.

b. Defendants and Plaintiffs only contractually agreed to arbitrate, if at all, through AAA.

c. Plaintiffs are released from any contractual obligation they may have had to individually arbitrate their claims against Defendants.

d. Plaintiffs may assert in this action their wage & hour class claims previously alleged in the *Iskanian* Action.

e. Each plaintiff's wage & hour claims asserted in the *Iskanian* Action have been equitably tolled, at the very least, from the date each plaintiff first filed an arbitration claim with ADR.

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

Plaintiffs pray for relief and judgment against Defendants, jointly and severally, as follows:

As to the First, Second and Third Causes of Action

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

2. For, in the alternative, either an order rescinding the Arbitration Agreement or an order requiring Defendants to abide by the Arbitration Agreement by paying AAA's fees and recognizing the validity of Plaintiffs' arbitration claims before AAA; and

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

As to the Fourth Cause of Action

4. A declaration as to the parties' respective rights and duties under the Arbitration Agreement. Specifically, Plaintiffs request a declaration that:

a. Defendants are in material breach of the Arbitration Agreement.

b. Defendants and Plaintiffs only contractually agreed to arbitrate, if at all, through AAA.

c. Plaintiffs are released from any contractual obligation they may have had to individually arbitrate their claims against Defendants.

d. Plaintiffs may assert in this action their wage & hour class claims previously alleged in the *Iskanian* Action.

e. Each plaintiff's wage & hour claims asserted in the *Iskanian* Action have been equitably tolled, at the very least, from the date each plaintiff first filed an arbitration claim with ADR.

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

Dated: November 18, 2011

Respectfully submitted,

INITIATIVE LEGAL GROUP APC

By _____

Raul Perez
Melissa Grant
Suzy E. Lee

Attorneys for Plaintiffs

Exhibit 16

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

TE: 02/07/12			DEPT. 24
NORABLE Robert L. Hess	JUDGE	G. Charles	DEPUTY CLERK
NORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
B. Bell C/A	Deputy Sheriff	C. Crawley	Reporter

:33 am	BC356521	Plaintiff	Raul Perez	(x)
		Counsel	Ryan Wu	(x)
	ARSHAVIR ISKANIAN		Glenn Danas	(x)
	VS	Defendant		
	CLS TRANSPORTATION LOS ANGELES	Counsel	David Faustman	(x)
	R/T BC381065; BC473931			

NATURE OF PROCEEDINGS:

MOTION TO CONSOLIDATE AND ARBITRATION AND CLAFIFICATION OF ORDER.

The cause is called for hearing.

The motion to compel specific performance of the arbitration agreement is granted. The motion to consolidate the arbitrations is denied without prejudice to renewal in arbitration. The agreement is governed by the FAA agreement.

The application for barring individuals from asserting claims which were barred by the statute of limitations is withdrawn be defendant. That application should be presented to the arbitrator in the first instance.

Paragraph 16(d) of the agreement provides that arbitrators will be selected from one of four specified providors. Plaintiff's have chosen ADR Services, which has a selection procedure for arbitrators. The Court is not persuaded that selection of arbitrators has proceeded to impasse, and therefore declined to select an arbitrator for any purpose.

The Court has an impression that to some extent the issues presented here are the result of posturing by one or bioth parties. The Court further has the impression that neither side wishes to maximize the duration, complexity or exposure of tha arbitration process. The Court suggests that a meet and confer

MINUTES ENTERED
02/07/12
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

TE: 02/07/12			DEPT. 24
NORABLE Robert L. Hess	JUDGE	G. Charles	DEPUTY CLERK
NORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
B. Bell C/A	Deputy Sheriff	C. Crawley	Reporter

:33 am	BC356521	Plaintiff	Raul Perez	(x)
		Counsel	Ryan Wu	(x)
	ARSHAVIR ISKANIAN		Glenn Danas	(x)
	VS	Defendant		
	CLS TRANSPORTATION LOS ANGELES	Counsel	David Faustman	(x)
	R/T BC381065; BC473931			

NATURE OF PROCEEDINGS:

between the parties, perhaps with the assistance of the first arbitrator selected, could result in agreement with respect to the procedures to be followed which are based on practical realities.

MINUTES ENTERED
02/07/12
COUNTY CLERK

Exhibit 17

American Arbitration Association
Dispute Resolution Services Worldwide

phone: 877-495-4185
fax: 877-304-8457

March 8th, 2012

Case Filing Services
1101 Laurel Oak Road, Suite 100
Voorhees, NJ 08043
www.adr.org

VIA E-MAIL to rperez@initiativelegal.com
Raul Perez, Esq.
Initiative Legal Group, APC
1800 Century Park East
2nd Floor
Los Angeles, CA 90067

VIA E-MAIL to dfaustman@foxrothschild.com
David F. Faustman, Esq.
Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067

Dear Counsel:

We have received Mr. Faustman's letter of March 2nd, 2012. The letter raises the issues of whether one arbitrator might hear all 63 cases as opposed to 63 separate arbitrators, and whether Mr. Perez represents all 63 individuals.

As to the first issue, the AAA is not opposed to allowing the parties ample time to discuss options that may result in a more efficient process. The AAA is willing to work with the parties to find fair and efficient dispute resolution solutions; however, as there has been no agreement to consolidate all cases, and as the Claimants have met their filing requirements, the amount of the filing fee will not change. Whether the cases are heard by one arbitrator or 63 arbitrators, there will still be 63 cases filed with the AAA requiring payment of 63 filing fees.

As to Respondent's second concern, this issue may be raised to the arbitrator(s) upon selection.

We therefore reaffirm our request for Respondent to submit payment of the filing fees in the amount of $58,275.00 as requested in our March 1st, 2012 letter.

Sincerely,

Adam Shoneck
Intake Specialist
856-679-4610
ShoneckA@adr.org

Supervisor Information: Tara Parvey, ParveyT@adr.org

CC: **VIA E-MAIL to slevy@initiativelegal.com**
Samuel Levy, Esq.
Initiative Legal Group, APC

1800 Century Park East
2nd Floor
Los Angeles, CA 90067

VIA E-MAIL to ygallegos@foxrothschild.com
Yesenia Gallegos, Esq.
Fox Rothschild LLP
1800 Century Park East
Suite 300
Los Angeles, CA 90067

Exhibit 18

DAVID F. FAUSTMAN, SBN 081862
YESENIA GALLEGOS, SBN 231852
FOX ROTHSCHILD LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067-1605
Tel: 310.598.4150 / Fax: 310.556.9828

Attorneys for Respondents,
CLS Transportation of Los Angeles, LLC,
CLS Worldwide Services, LLC, Empire
International Ltd., Empire/CLS Worldwide
Chauffeured Services, GTS Holdings, Inc.,
and David Seelinger

AMERICAN ARBITRATION ASSOCIATION

LUIS EARNSHAW, an individual, Claimant, vs. CLS TRANSPORTATION LOS ANGELES, LLC, a Delaware limited liability company; CLS WORLDWIDE SERVICES, LLC, a Delaware limited liability company; EMPIRE INTERNATIONAL, LTD., a New Jersey Corporation; EMPIRE/CLS WORLDWIDE CHAUFFEURED SERVICES; GTS HOLDINGS, INC., a Delaware Corporation; and DAVID SEELINGER, an individual, Respondents.	74-160-223-12 AMCH Arbitrator: Kevin Murphy **OFFER TO COMPROMISE PURSUANT TO CIV. PROC. CODE § 998**

TO LUIS EARNSHAW AND HIS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Respondents hereby make the following offer to compromise pursuant to California Code of Civil Procedure § 998 (the "Offer") to Claimant Luis Earnshaw ("Claimant"). The Offer is made to conclude this matter in its entirety as between Claimant and Respondents. The terms and conditions of the Offer are as follows:

1. Respondents offer to pay Claimant the sum of two thousand dollars ($2,000) without deductions. A Form 1099 will be filed with the IRS.

2. Claimant's counsel may seek an award for their fees from the assigned arbitrator.

3. This Offer is conditioned upon Claimant executing a dismissal of the above-captioned matter with prejudice. Respondents make the Offer as a compromise, and admit no liability in doing so. The dismissal with prejudice shall operate to release Respondents (including their employees, agents, officers, and affiliated entities) from all liability to Claimant (including all liability for all potential remedies sought or which could be sought by Claimant) for the claims alleged in this matter through the date the Offer is accepted.

4. This Offer shall remain open for 30 days.

5. Claimant is advised that if the Offer is not accepted and Claimant fails to obtain a more favorable judgment at arbitration, Claimant shall be required to pay Respondents' costs from the time of this offer.

Dated: December 21, 2012

FOX ROTHSCHILD LLP

By: _____
David F. Faustman
Yesenia Gallegos
Attorneys for Respondents

Exhibit 19

INITIATIVE LEGAL GROUP APC

CORY G. LEE
310.556.5637 Main
CoryLee@InitiativeLegal.com

January 24, 2013

VIA E-MAIL and U.S. MAIL

David Faustman
Fox Rothschild LLP
235 Pine Street, Suite 1500
San Francisco, CA 94104

Subject: CLS's Offers to Compromise Pursuant to California Code of Civil Procedure section 998

Dear Mr. Faustman:

This letter is in response to your December 21, 2012 letters regarding CLS's California Code of Civil Procedure section 998 offers of $2,000 to our 61 clients. The following Claimants have accepted the 998 offers:

James Denison;
Frank Dubuy;
Luis Earnshaw;
Jiro Fumoto;
Wayne Ikner;
Daniel Rogers Millington, Jr.;
Robert Olmedo; and
Scott Sullivan

As you know, section 988(b) states that "[a]ny acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, shall be in writing and shall be signed by counsel for the accepting party or, if not represented by counsel, by the accepting party." Therefore, this letter shall constitute acceptance of the offers for the above listed individuals.

Claimants will seek a fee award from the appropriate arbitrators as specified in the 998 offers.

If you have any questions, please call me at 310.556.5637. Thank you.

Sincerely,

Cory G. Lee

Copy to: Yesenia Gallegos (Via Personal Delivery)
1800 Century Park east, Suite 300, Los Angeles, CA 90067

Exhibit 20

AMERICAN ARBITRATION ASSOCIATION
Employment Arbitration Tribunal

In the Matter of the Arbitration between

Re: 74 160 00223 12 AMCH
Luis Earnshaw
VS
CLS Transportation of Los Angeles, LLC
and CLS Worldwide Services, LLC
and Empire International, Ltd.
and Empire/CLS Worldwide Chauffeured Services
and GTS Holdings, Inc. and David Seelinger

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the employment agreement entered into between the above-named parties and having been duly sworn, and the parties having reached a signed settlement of their dispute (attached), hereby make the terms set forth in that settlement my Award:

1. Respondents shall pay Claimant the sum of Two Thousand Dollars ($2,000), without deductions;

2. Claimant shall executing a dismissal of the matter with prejudice upon receipt of said sums;

3. Within 30 days of this award, Claimant's attorney may seek an award for Attorneys' fees and costs from the Arbitrator;

4. Respondents admit no liability in compromising this matter.

This Award shall remain in full force and effect until such time as a Final Award is rendered. The undersigned Arbitrator shall retain jurisdiction to hear, decide, and enforce forthcoming Request for Award of Attorneys' Fees and Costs.

2-22-2013
Date

Hon. Kevin Murphy

LA1 285206v1 02/11/13

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:

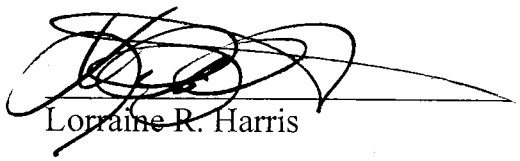
SEE ATTACHED SERVICE LIST

[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

Marc Primo, Esq. Initiative Legal Group LLP 1800 Century Park East, 2nd Floor Los Angeles, CA 90067	**Attorneys for:** **Plaintiff/Appellant Arshavir Iskanian**
Capstone Law APC Raul Perez, Esq. Glenn A. Danas, Esq. Ryan H. Wu, Esq. 1840 Century Park East, Suite 450 Los Angeles, CA 90067	**Attorneys for:** **Plaintiff/Appellant Arshavir Iskanian**
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	