

SUPREME COURT
FILED

No. S204032

APR 11 2013

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

ARSHAVIR ISKANIAN, an individual,
Plaintiff and Appellant,

v.

CLS TRANSPORTATION OF LOS ANGELES,
Defendant and Respondent.

AFTER DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION TWO
CASE B235158

FROM THE SUPERIOR COURT,
COUNTY OF LOS ANGELES,
CASE NO. BC 356521, ASSIGNED FOR ALL PURPOSES
TO JUDGE ROBERT HESS, DEPARTMENT 24

**MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS
AND AUTHORITIES; PROPOSED ORDER; VOLUME I OF I**

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Attorneys for Plaintiff and Appellant
ARSHAVIR ISKANIAN

RECEIVED

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Attorneys for Plaintiff and Appellant
ARSHAVIR ISKANIAN

MOTION FOR JUDICIAL NOTICE

Please take notice that, pursuant to Evidence Code §§ 459 and 452(d) and (h) and California Rules of Court, rules 8.520(g) and 8.252(a), and for the Court's convenience, Plaintiff and Appellant Arshavir Iskanian hereby moves for an order granting judicial notice of the documents in the bound volume submitted herewith, all of which are true and correct copies of the materials enumerated in the Table of Contents thereto. The Motion is based on this Notice and the Memorandum of Points and Authorities below.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Iskanian seeks judicial notice of the documents submitted herewith in the bound volume. These documents are true and correct copies of motions filed by former members of the plaintiff class in *Iskanian* and orders issued thereon, all filed or issued after the order compelling arbitration that is the subject of the instant appeal. These motions and orders were filed and issued in the action styled *Kempler v. CLS Transportation Los Angeles, LLC*, Los Angeles Superior Court Case No. BC473931, which is related to *Iskanian* and was brought by former *Iskanian* class members after the *Iskanian* class action was decertified as a result of an order compelling individual arbitration ("Order"). A complete list of the specific documents to be judicially noticed can be found on the Table of Contents inside the bound volume submitted herewith.

II. JUDICIAL NOTICE OF THE ATTACHED EXHIBITS SHOULD BE GRANTED

All documents of which Mr. Iskanian seeks judicial notice are records of the *Kempler* action, which was filed against CLS by the approximately 60 former *Iskanian* class members who elected to try to arbitrate their claims rather than continuing to join with the rest of the class

in appealing the Order. The trial court deemed *Kempler* related to *Iskanian* on December 16, 2011.

Evidence Code section 459(a) provides that a reviewing court may take notice of any matter specified in Evidence Code section 452. The matters that may be judicially noticed under Evidence Code section 452 include the “[r]ecords of ... any court of this state.” (Evidence Code §452(d).) A reviewing court may judicially notice records from state court proceedings. (Evidence Code § 459; *Taus v. Loftus* (2007) Cal.4th 683, 726 [in which the reviewing court granted judicial notice of records from other California courts relevant to whether the defendants had obtained private information about the plaintiff from confidential—rather than public—court records]; *Bell v. Greg Agee Construction, Inc.* (2004) 125 Cal.App.4th 453, 459, fn. 2 [a workplace injury action in which the reviewing court took judicial notice of the employer’s bankruptcy filing and of the employee’s workers’ compensation filing].)

The attached documents are relevant to Mr. Iskanian’s appeal before this Court because they refute an argument CLS makes for the first time in its Answer Brief on the Merits. Specifically, CLS now takes the position that because approximately 60 former *Iskanian* class members opted to pursue individual arbitration after the trial court compelled the same, this demonstrates that the arbitration agreement does not prevent the employees from vindicating their rights. (CLS’s Br. at 12.)

However, as the attached documents demonstrate, the 60 former class members who elected to proceed in arbitration spent the following year-and-a-half trying in vain to access the arbitral forum to which they had been compelled. The 60 former class members had to file the new *Kempler* action and repeatedly move for orders from the trial court to impel CLS to engage in the arbitration process. The attached documents demonstrate that CLS consistently refused to pay its share of the arbitration fees for a period

of about seven months, resulting in the American Arbitration Association (“AAA”) closing each of the former class members’ files twice and that CLS instructed AAA not to proceed with any arbitrations unless and until the former class members agreed to consolidate their arbitration claims first before one arbitrator, then four arbitrators. The former class members accordingly had to engage in over one-and-a-half years of trial court litigation just to gain access to the only forum allowed to them.

III. CONCLUSION

As the documents contained in the bound volume are the proper subjects of judicial notice, Mr. Iskanian respectfully requests that the Court grant this Motion and take judicial notice of the documents bound in the volume presented.

Dated: April 10, 2013

Respectfully submitted,

Capstone Law APC

By:



Glenn A. Danas
Ryan L. Wu

Public Citizen Litigation Group
Scott L. Nelson

Attorneys for Plaintiff-Appellant
ARSHAVIR ISKANIAN

**PROPOSED ORDER GRANTING PLAINTIFF-APPELLANT'S
MOTION FOR JUDICIAL NOTICE**

The Motion for Judicial Notice filed by Plaintiff and Appellant Arshavir Iskanian, having been filed, and grounds for judicial notice appearing warranted under Evidence Code §459, §451 and/or § 452, IT IS ORDERED that Plaintiff and Appellant Arshavir Iskanian's Motion is granted in full and the Court takes judicial notice of all of the documents identified in the bound volume presented with the motion.

[alternatively]

IT IS ORDERED that Plaintiff and Appellant Arshavir Iskanian's Motion is granted in part, and the Court takes judicial notice of the documents that are located behind the following tabs within the bound volume:

Date: _____

Chief Justice

**TABLE OF CONTENTS FOR
EXHIBITS TO MOTION FOR JUDICIAL NOTICE**

TAB	DESCRIPTION	DATE	VOL.
1	Complaint filed in <i>Kempler v. CLS Transportation Los Angeles, LLC</i> , Los Angeles Superior Court Case No. BC473931 (“ <i>Kempler Action</i> ”)	11/18/11	I
2	<ul style="list-style-type: none"> • Plaintiffs’ Notice of Motion and Motion for Order Compelling Specific Performance of Individual Arbitration; Or, in the Alternative, Setting Aside the Arbitration Agreement • Plaintiffs’ Memorandum of Points and Authorities In Support of Motion for Order Compelling Specific Performance of Individual Arbitration; Or, in the Alternative, Setting Aside the Arbitration Agreement • Declaration of Raul Perez in Support of Plaintiffs’ Motion for Order Compelling Specific Performance of Individual Arbitration; Or, in the Alternative, Setting Aside the Arbitration Agreement 	11/18/11	I
3	Notice of Related Cases re <i>Kempler Action</i>	11/21/11	I
4	Plaintiffs’ Amended Notice of Motion and Motion for Order Compelling Specific Performance of Individual Arbitration; Or, in the Alternative, Setting Aside the Arbitration Agreement	12/20/11	I
5	Notice of Ruling re: Related Cases	12/21/11	I
6	Minute Order re Motion to Consolidate and Arbitration and Clarification of Order	02/07/12	I
7	<ul style="list-style-type: none"> • Plaintiffs’ Motion for an Order Deeming Defendant CLS to Have Waived Arbitration • Declaration of Raul Perez in Support of Plaintiffs’ Motion for an Order Deeming Defendant CLS to Have Waived Arbitration as to 19 Plaintiffs 	08/31/12	I
8	Plaintiffs’ Amended Notice of Motion for Order Deeming Defendant CLS to Have Waived Arbitration	09/20/12	I
9	Minute Order re Case Management Conference	11/06/12	I

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NOV 18 2011

John A. Clarke, Executive Officer/Clerk
BY Gina Grider, Deputy

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7 Attorneys for Plaintiffs

8

9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

FOR THE COUNTY OF LOS ANGELES

11

GREG KEMPLER, an individual; ADRIEN
12 WARREN, an individual; ANANTRAY
SANATHARA, an individual; ANGELO
13 GARCIA, an individual; ARTHUR POST, an
individual; AVAAVAU TOAILOA, an
14 individual; BELINDA WASHINGTON, an
individual; BENNETT SLOAN, an individual;
15 BRUCE GOLD, an individual; CARL
MUELLER, an individual; CARL SWARTZ,
16 an individual, CASSANDRA LINDSEY, an
individual; CLEOPHUS COLLINS, an
17 individual; DANIEL ARAYA, an individual;
18 DANIEL ROGERS MILLINGTON, JR., an
individual; DAROLD CALDWELL, an
19 individual; DAVID BARANCO, an
individual; DAVID MONTOYA, an
20 individual; DAWN BINGHAM, an individual;
EDWARD SMITH, an individual; EDWIN
21 GARCIA, an individual; ELIJHA NORTON,
an individual; FLAVIO SILVA, an individual;
22 FRANK G. DUBUY, an individual; GERALD
GRIFFIN, an individual; GLEN ALSTON, an
23 individual; IGOR KROO, an individual;
JAMES C. DENISON, an individual; JAMES
24 RICHMOND, an individual; JAMES
STERLING, an individual; JERRY BOYD, an
25 individual; JIRO FUMOTO, an individual;
JOHNNIE EVANS, an individual;
26 JONATHON SCOTT, an individual; JULIUS
FUNES, an individual; KAREN BAILEY, an

28

Case No.:

BC 478981

- (1) Breach of Contract;
- (2) Rescission;
- (3) Specific Performance; and
- (4) Declaratory Relief

Jury Trial Demanded

1 individual; KARIM SHARIF, an individual;
2 KENNY CHENG, an individual; KUNG
3 MING CHANG, an individual; LAMONT
4 CRAWFORD, an individual; LEROY
5 CLARK, an individual; LUIS EARNSHAW,
6 an individual; MARCIAL SAZO, an
7 individual; MARQUEL ROSE, an individual;
8 MASOOD SHAFII, an individual;
9 MATTHEW LOATMAN, an individual;
10 MIGUEL DE LA MORA, an individual;
11 MYRON ROGAN, an individual; NEIL BEN
12 YAIR, an individual; PATER PAULL, an
13 individual; PATRICK COOLEY, an
14 individual; RAFAEL CANDELARIA, an
15 individual; RAUL FUENTES, an individual;
16 REGINALD COLWELL, an individual;
17 ROBERT OLMEDO, an individual; ROGER
18 PERRY, an individual; SCOTT SULLIVAN,
19 STEVE MAYNARD, an individual; SUSAN
20 STELLMAN, an individual; THOMAS
21 MARTIN, an individual; WAYNE IKNER, an
22 individual; WILLIAM BANKER, an
23 individual; and WILLIAM PINKERTON, an
24 individual,

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vs.

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

Defendants.

1 Plaintiffs, individuals, allege as follows:

2 **JURISDICTION AND VENUE**

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

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

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

15 **THE PARTIES**

16 4. Plaintiff GREG KEMPLER is a resident of Los Angeles County, in the state of
17 California.

18 5. Plaintiff ADRIEN WARREN is a resident of San Mateo County, in the state of
19 California.

20 6. Plaintiff ANANTRAY SANATHARA is a resident of Orange County, in the state
21 of California.

22 7. Plaintiff ANGELO GARCIA is a resident of Solano County, in the state of
23 California.

24 8. Plaintiff ARTHUR POST is a resident of Los Angeles County, in the state of
25 California.

26 9. Plaintiff AVAAVAU TOAILOA is a resident of Alameda County, in the state of
27 California.

28

- 1 10. Plaintiff BELINDA WASHINGTON is a resident of Ulster County, in the state of
2 New York.
- 3 11. Plaintiff BENNETT SLOAN is a resident of San Mateo County, in the state of
4 California.
- 5 12. Plaintiff BRUCE GOLD is a resident of Los Angeles County, in the state of
6 California.
- 7 13. Plaintiff CARL MUELLER is a resident of Contra Costa County, in the state of
8 California.
- 9 14. Plaintiff CARL SWARTZ is a resident of Los Angeles County, in the state of
10 California.
- 11 15. Plaintiff CASSANDRA LINDSEY is a resident of Flagler County, in the state of
12 Florida.
- 13 16. Plaintiff CLEOPHUS COLLINS is a resident of Los Angeles County, in the state
14 of California.
- 15 17. Plaintiff DANIEL ARAYA is a resident of San Bernardino County, in the state of
16 California.
- 17 18. Plaintiff DANIEL ROGERS MILLINGTON, JR. is a resident of Orange County,
18 in the state of California.
- 19 19. Plaintiff DAROLD CALDWELL is a resident of Los Angeles County, in the state
20 of California.
- 21 20. Plaintiff DAVID BARANCO is a resident of San Francisco County, in the state
22 of California.
- 23 21. Plaintiff DAVID MONTOYA is a resident of Kern County, in the state of
24 California.
- 25 22. Plaintiff DAWN BINGHAM is a resident of Los Angeles County, in the state of
26 California.
- 27 23. Plaintiff EDWARD SMITH is a resident of Los Angeles County, in the state of
28

1 California.

2 24. Plaintiff EDWIN GARCIA is a resident of Los Angeles County, in the state of

3 California.

4 25. Plaintiff ELIJHA NORTON is a resident of Los Angeles County, in the state of

5 California.

6 26. Plaintiff FLAVIO SILVA is a resident of Marin County, in the state of California.

7 27. Plaintiff FRANK G. DUBUY is a resident of Los Angeles County, in the state of

8 California.

9 28. Plaintiff GERALD GRIFFIN is a resident of Los Angeles County, in the state of

10 California.

11 29. Plaintiff GLEN ALSTON is a resident of Alameda County, in the state of

12 California.

13 30. Plaintiff IGOR KROO is a resident of Los Angeles County, in the state of

14 California.

15 31. Plaintiff JAMES C. DENISON is a resident of Alameda County, in the state of

16 California.

17 32. Plaintiff JAMES RICHMOND is a resident of Amador County, in the state of

18 California.

19 33. Plaintiff JAMES STERLING is a resident of Los Angeles County, in the state of

20 California.

21 34. Plaintiff JERRY BOYD is a resident of Los Angeles County, in the state of

22 California.

23 35. Plaintiff JIRO FUMOTO is a resident of Santa Clara County, in the state of

24 California.

25 36. Plaintiff JOHNNIE EVANS is a resident of Los Angeles County, in the state of

26 California.

27 37. Plaintiff JONATHON SCOTT is a resident of Maricopa County, in the state of

28

- 1 Arizona.
- 2 38. Plaintiff JULIUS FUNES is a resident of Los Angeles County, in the state of
- 3 California.
- 4 39. Plaintiff KAREN BAILEY is a resident of San Francisco County, in the state of
- 5 California.
- 6 40. Plaintiff KARIM SHARIF is a resident of Los Angeles County, in the state of
- 7 California.
- 8 41. Plaintiff KENNY CHENG is a resident of San Mateo County, in the state of
- 9 California.
- 10 42. Plaintiff KUNG MING CHANG is a resident of Los Angeles County, in the state
- 11 of California.
- 12 43. Plaintiff LAMONT CRAWFORD is a resident of Los Angeles County, in the
- 13 state of California.
- 14 44. Plaintiff LEROY CLARK is a resident of Los Angeles County, in the state of
- 15 California.
- 16 45. Plaintiff LUIS EARNSHAW is a resident of San Mateo County, in the state of
- 17 California.
- 18 46. Plaintiff MARCIAL SAZO is a resident of Los Angeles County, in the state of
- 19 California.
- 20 47. Plaintiff MARQUEL ROSE is a resident of Los Angeles County, in the state of
- 21 California.
- 22 48. Plaintiff MASOOD SHAFII is a resident of Los Angeles County, in the state of
- 23 California.
- 24 49. Plaintiff MATTHEW LOATMAN is a resident of Los Angeles County, in the
- 25 state of California.
- 26 50. Plaintiff MIGUEL DE LA MORA is a resident of Los Angeles County, in the
- 27 state of California.
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- 1 51. Plaintiff MYRON ROGAN is a resident of Los Angeles County, in the state of
2 California.
- 3 52. Plaintiff NEIL BEN YAIR is a resident of Los Angeles County, in the state of
4 California.
- 5 53. Plaintiff PATER PAULL is a resident of Los Angeles County, in the state of
6 California.
- 7 54. Plaintiff PATRICK COOLEY is a resident of Los Angeles County, in the state of
8 California.
- 9 55. Plaintiff RAFAEL CANDELARIA is a resident of Los Angeles County, in the
10 state of California.
- 11 56. Plaintiff RAUL FUENTES is a resident of Los Angeles County, in the state of
12 California.
- 13 57. Plaintiff REGINALD COLWELL is a resident of Ventura County, in the state of
14 California.
- 15 58. Plaintiff ROBERT OLMEDO is a resident of Los Angeles County, in the state of
16 California.
- 17 59. Plaintiff ROGER PERRY is a resident of Clark County, in the state of Nevada.
- 18 60. Plaintiff SCOTT SULLIVAN is a resident of Los Angeles County, in the state of
19 California.
- 20 61. Plaintiff STEVE MAYNARD is a resident of Los Angeles County, in the state of
21 California.
- 22 62. Plaintiff SUSAN STELLMAN is a resident of Pima County, in the state of
23 Arizona.
- 24 63. Plaintiff THOMAS MARTIN is a resident of Los Angeles County, in the state of
25 California.
- 26 64. Plaintiff WAYNE IKNER is a resident of Orange County, in the state of
27 California.
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1 65. Plaintiff WILLIAM BANKER is a resident of Los Angeles County, in the state of
2 California.

3 66. Plaintiff WILLIAM PINKERTON is a resident of Multnomah County, in the state
4 of Oregon.

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

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

13 69. Plaintiffs are informed and believe, and thereon alleges, that Does 1-10 are the
14 partners, agents, owners, shareholders, managers or employees of Defendant, and were acting on
15 behalf of Defendant.

16 70. Plaintiffs are informed and believe, and thereon alleges, that each and all of the
17 acts and omissions alleged herein was performed by, or is attributable to, Defendant and DOES
18 1-10 (collectively "Defendants" or "CLS"), each acting as the agent for the other, with legal
19 authority to act on the other's behalf. The acts of any and all Defendants were in accordance
20 with, and represent the official policy of, Defendant.

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

25 72. Plaintiffs are informed and believe, and thereon allege, that each of said
26 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
27 omissions, occurrences, and transactions alleged herein.

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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

1 purporting to govern the claims of each and every Plaintiff herein.

2 79. The plaintiffs in the *Iskanian* Action appealed the trial court's order compelling
3 arbitration. On May 27, 2008, the Court of Appeal, remanded the matter back to the trial court
4 for findings under the test enunciated in *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007).
5 However, on remand, CLS withdrew and abandoned its Motion to Compel Arbitration and
6 litigation in the *Iskanian* Action proceeded in the Los Angeles Superior Court thereafter.

7 80. On August 24, 2009, the court certified the class in the *Iskanian* Action (the
8 "*Iskanian* Class").

9 81. Each and every Plaintiff herein was a member of the *Iskanian* Class.

10 82. In May 2011, CLS filed a Motion for Renewal of its prior Motion to Compel
11 Arbitration in the *Iskanian* Action. The plaintiffs opposed the motion. On June 13, 2011, the
12 trial court in the *Iskanian* Action granted CLS's Motion for Renewal, ordered the plaintiff
13 therein to individual arbitration, and dismissed the class claims. A true and correct copy of the
14 court's June 13, 2011 order is attached hereto as Exhibit 2.

15 83. On August 11, 2011, the plaintiffs to the *Iskanian* Action filed a notice of appeal
16 of the June 13, 2011 order. That appeal is pending and is not yet fully briefed.

17 84. Plaintiffs herein, however, sixty-three former members of the *Iskanian* Class,
18 elected to pursue individual arbitration against Defendant pursuant to the trial court's order as
19 follows:

20 a. Plaintiff GREG KEMPLER (referred to as "Plaintiff" for this paragraph) filed a
21 claim with ADR Services, Inc. ("ADR") on or about August 12, 2011. A true and correct copy of
22 Plaintiff's claim is attached hereto as Exhibit 3. By letter dated September 19, 2011, counsel for
23 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
24 KEMPLER was contractually required to file the arbitration claim with the American Arbitration
25 Association ("AAA"). A true and correct copy of the September 19, 2011 letter is attached hereto
26 as Exhibit 4. On September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA.
27 A true and correct copy of Plaintiff's September 19, 2011 letter is attached hereto as Exhibit 5. By
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1 letter dated October 10, 2011, Defendants objected to the arbitration filing with AAA and
2 expressed its intent not to pay AAA's requested fees. A true and correct copy of Defendants'
3 October 10, 2011 letter is attached hereto as Exhibit 6. By letter dated October 20, 2011, AAA
4 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
5 arbitrate this and any future claims involving CLS. A true and correct copy of the AAA's letter of
6 October 20, 2011 is attached hereto as Exhibit 7.

7 b. Plaintiff ADRIEN WARREN (referred to as "Plaintiff" for this paragraph) filed
8 a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 c. Plaintiff ANANTRAY SANATHARA (referred to as "Plaintiff" for this
17 paragraph) filed a claim with ADR on or about September 14, 2011. By letter dated September
18 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part
19 on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or
20 about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter
21 dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with
22 AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011,
23 AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would
24 decline to arbitrate this and any future claims involving CLS.

25 d. Plaintiff ANGELO GARCIA (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 e. Plaintiff ARTHUR POST (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 29, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 f. Plaintiff AVAAVAU TOAILOA (referred to as "Plaintiff" for this paragraph)
17 filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel
18 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 g. Plaintiff BELINDA WASHINGTON (referred to as "Plaintiff" for this
26 paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September 19,
27 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on
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1 the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or
2 about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter
3 dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with
4 AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011,
5 AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would
6 decline to arbitrate this and any future claims involving CLS.

7 h. Plaintiff BENNETT SLOAN (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 i. Plaintiff BRUCE GOLD (referred to as "Plaintiff" for this paragraph) filed a
17 claim with ADR on or about September 6, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 j. Plaintiff CARL MUELLER (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 k. Plaintiff CARL SWARTZ (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 l. Plaintiff CASSANDRA LINDSEY (referred to as "Plaintiff" for this paragraph)
17 filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel
18 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 m. Plaintiff CLEOPHUS COLLINS (referred to as "Plaintiff" for this paragraph)
26 filed a claim with ADR on or about September 12, 2011. By letter dated September 19, 2011,
27 counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the
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1 basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about
2 September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated
3 October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA
4 and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 n. Plaintiff DANIEL ARAYA (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR in or about August or September 2011. By letter dated September 19, 2011,
9 counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the
10 basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about
11 September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated
12 October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA
13 and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 o. Plaintiff DANIEL ROGERS MILLINGTON, JR. (referred to as "Plaintiff" for
17 this paragraph) filed a claim with ADR on or about August 12, 2011. By letter dated September
18 19, 2011, counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part
19 on the basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or
20 about September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter
21 dated October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with
22 AAA and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011,
23 AAA advised that it would refund any fees advanced by or on behalf of Plaintiff and would
24 decline to arbitrate this and any future claims involving CLS.

25 p. Plaintiff DAROLD CALDWELL (referred to as "Plaintiff" for this paragraph)
26 filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel
27 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 q. Plaintiff DAVID BARANCO (referred to as "Plaintiff" for this paragraph) filed
8 a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 r. Plaintiff DAVID MONTOYA (referred to as "Plaintiff" for this paragraph) filed
17 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 s. Plaintiff DAWN BINGHAM (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about September 1, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 t. Plaintiff EDWARD SMITH (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 18, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 u. Plaintiff EDWIN GARCIA (referred to as "Plaintiff" for this paragraph) filed a
17 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 v. Plaintiff ELIJHA NORTON (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 w. Plaintiff FLAVIO SILVA (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 x. Plaintiff FRANK G. DUBUY (referred to as "Plaintiff" for this paragraph) filed
17 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 y. Plaintiff GERALD GRIFFIN (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 z. Plaintiff GLEN ALSTON (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 aa. Plaintiff IGOR KROO (referred to as "Plaintiff" for this paragraph) filed a claim
17 with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 bb. Plaintiff JAMES C. DENISON (referred to as "Plaintiff" for this paragraph)
26 filed a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel
27 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 cc. Plaintiff JAMES RICHMOND (referred to as "Plaintiff" for this paragraph) filed
8 a claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 dd. Plaintiff JAMES STERLING (referred to as "Plaintiff" for this paragraph) filed
17 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about 2011,
20 Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10, 2011, by
21 and through counsel, Defendants objected to the arbitration filing with AAA and expressed its
22 intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA advised that it
23 would refund any fees advanced by or on behalf of Plaintiff and would decline to arbitrate this and
24 any future claims involving CLS.

25 ee. Plaintiff JERRY BOYD (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 ff. Plaintiff JIRO FUMOTO (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 gg. Plaintiff JOHNNIE EVANS (referred to as "Plaintiff" for this paragraph) filed a
17 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 hh. Plaintiff JONATHON SCOTT (referred to as "Plaintiff" for this paragraph) filed
26 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 ii. Plaintiff JULIUS FUNES (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 jj. Plaintiff KAREN BAILEY (referred to as "Plaintiff" for this paragraph) filed a
17 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 kk. Plaintiff KARIM SHARIF (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about August 16, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 ll. Plaintiff KENNY CHENG (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 mm. Plaintiff KUNG MING CHANG (referred to as "Plaintiff" for this paragraph)
17 filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel
18 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 nn. Plaintiff LAMONT CRAWFORD (referred to as "Plaintiff" for this paragraph)
26 filed a claim with ADR on or about September 1, 2011. By letter dated September 19, 2011,
27 counsel for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the
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1 basis that Plaintiff was contractually required to file the arbitration claim with AAA. On or about
2 September 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated
3 October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA
4 and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 oo. Plaintiff LEROY CLARK (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 pp. Plaintiff LUIS EARNSHAW (referred to as "Plaintiff" for this paragraph) filed a
17 claim with ADR on or about August 19, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 qq. Plaintiff MARCIAL SAZO (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 rr. Plaintiff MARQUEL ROSE (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 ss. Plaintiff MASOOD SHAFII (referred to as "Plaintiff" for this paragraph) filed a
17 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 tt. Plaintiff MATTHEW LOATMAN (referred to as "Plaintiff" for this paragraph)
26 filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel
27 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 uu. Plaintiff MIGUEL DE LA MORA (referred to as "Plaintiff" for this paragraph)
8 filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel
9 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 vv. Plaintiff MYRON ROGAN (referred to as "Plaintiff" for this paragraph) filed a
17 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 ww. Plaintiff NEIL BEN YAIR (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 xx. Plaintiff PATER PAULL (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 yy. Plaintiff PATRICK COOLEY (referred to as "Plaintiff" for this paragraph) filed
17 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 zz. Plaintiff RAFAEL CANDELARIA (referred to as "Plaintiff" for this paragraph)
26 filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel
27 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 aaa. Plaintiff RAUL FUENTES (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 29, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 bbb. Plaintiff REGINALD COLWELL (referred to as "Plaintiff" for this paragraph)
17 filed a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel
18 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 ccc. Plaintiff ROBERT OLMEDO (referred to as "Plaintiff" for this paragraph) filed
26 a claim with ADR on or about August 29, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 ddd. Plaintiff ROGER PERRY (referred to as "Plaintiff" for this paragraph) filed a
8 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 eee. Plaintiff SCOTT SULLIVAN (referred to as "Plaintiff" for this paragraph) filed
17 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 fff. Plaintiff STEVE MAYNARD (referred to as "Plaintiff" for this paragraph) filed
26 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about 2
2 September 28, 011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated
3 October 10, 2011, by and through counsel, Defendants objected to the arbitration filing with AAA
4 and expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 ggg. Plaintiff SUSAN STELLMAN (referred to as "Plaintiff" for this paragraph) filed
8 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 hhh. Plaintiff THOMAS MARTIN (referred to as "Plaintiff" for this paragraph) filed
17 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
18 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 iii. Plaintiff WAYNE IKNER (referred to as "Plaintiff" for this paragraph) filed a
26 claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
27 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
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1 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
2 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
3 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
4 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
5 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
6 arbitrate this and any future claims involving CLS.

7 jjj. Plaintiff WILLIAM BANKER (referred to as "Plaintiff" for this paragraph) filed
8 a claim with ADR on or about August 12, 2011. By letter dated September 19, 2011, counsel for
9 Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
10 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
11 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
12 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
13 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
14 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
15 arbitrate this and any future claims involving CLS.

16 kkk. Plaintiff WILLIAM PINKERTON (referred to as "Plaintiff" for this paragraph)
17 filed a claim with ADR on or about August 18, 2011. By letter dated September 19, 2011, counsel
18 for Defendants objected to Plaintiff's filing of a claim with ADR in relevant part on the basis that
19 Plaintiff was contractually required to file the arbitration claim with AAA. On or about September
20 28, 2011, Plaintiff filed a claim for individual arbitration with AAA. By letter dated October 10,
21 2011, by and through counsel, Defendants objected to the arbitration filing with AAA and
22 expressed its intent not to pay AAA's requested fees. By letter dated October 20, 2011, AAA
23 advised that it would refund any fees advanced by or on behalf of Plaintiff and would decline to
24 arbitrate this and any future claims involving CLS.

25 lll. The claims filed by Plaintiff KEMPLER with ADR and AAA are substantially
26 similar to the claims filed by each of the other plaintiffs herein as alleged above.

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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

1 have deprived Plaintiffs of a forum in which to vindicate their rights and have prevented them
2 from obtaining the monetary relief they are due.

3 **SECOND CAUSE OF ACTION**

4 **Rescission**

5 **(Against all Defendants)**

6 94. Plaintiffs incorporate by reference and re-allege as if fully stated herein all
7 allegations set out in paragraphs 1 through 93.

8 95. In its motion to compel arbitration filed in the *Iskanian* Action, Defendants took
9 the position that, pursuant to the terms of the Arbitration Agreement, “both parties agreed to
10 arbitrate any and all disputes relating to Plaintiff’s employment and separation from CLS.”

11 96. By way of its Arbitration Order, the court in the *Iskanian* Action ordered the
12 parties to individual arbitration and dismissed the class claims. In so doing, the court found the
13 Arbitration Agreement to be an enforceable contract.

14 97. The Arbitration Agreement requires in relevant part that arbitration be conducted
15 pursuant to the “dispute resolution rules and procedures of the American Arbitration
16 Association...” By letter dated September 19, 2011, Defendants took the position that the
17 Arbitration Agreement thus requires the parties to submit to arbitration solely through AAA.

18 98. Pursuant to the terms of the Arbitration Agreement, the Arbitration Order, and
19 Defendants’ correspondence of September 19, 2011, each and every Plaintiff herein filed an
20 arbitration claim with AAA dated September 28, 2011.

21 99. Each and every Plaintiff herein properly has performed all duties and obligations
22 under the Arbitration Agreement.

23 100. Defendants failed and refused to participate in arbitration, rejected Plaintiffs’
24 proper arbitration claims, and refused to pay AAA’s fee. In so doing, Defendants materially
25 breached the terms of the Arbitration Agreement.

26 101. Due to Defendants’ material breach of the Arbitration Agreement by its refusal to
27 allow Plaintiffs’ claims to proceed in the superior court and Defendants’ refusal to allow
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1 Plaintiffs' claims to proceed in arbitration, Defendants have deprived Plaintiffs of a forum in
2 which to vindicate their rights.

3 **THIRD CAUSE OF ACTION**

4 **Specific Performance**

5 **(Against all Defendants)**

6 102. Plaintiffs incorporate by reference and re-allege as if fully stated herein all
7 allegations set out in paragraphs 1 through 101.

8 103. In its motion to compel arbitration filed in the *Iskanian* Action, Defendants took
9 the position that, pursuant to the terms of the Arbitration Agreement, "both parties agreed to
10 arbitrate any and all disputes relating to Plaintiff's employment and separation from CLS."

11 104. By way of its Arbitration Order, the court in the *Iskanian* Action ordered the
12 parties to individual arbitration and dismissed the class claims. In so doing, the court found the
13 Arbitration Agreement to be an enforceable contract.

14 105. The Arbitration Agreement requires in relevant part that arbitration be conducted
15 pursuant to the "dispute resolution rules and procedures of the American Arbitration
16 Association..." By letter dated September 19, 2011, Defendants took the position that the
17 Arbitration Agreement thus requires the parties to submit to arbitration solely through AAA.

18 106. Pursuant to the terms of the Arbitration Agreement, the Arbitration Order, and
19 Defendants' correspondence of September 19, 2011, each and every Plaintiff herein filed an
20 arbitration claim with AAA dated September 28, 2011.

21 107. Each and every Plaintiff herein properly has performed all duties and obligations
22 under the Arbitration Agreement.

23 108. Defendants failed and refused to participate in arbitration, rejected Plaintiffs'
24 proper arbitration claims, and refused to pay AAA's fee. In so doing, Defendants materially
25 breached the terms of the Arbitration Agreement.

26 109. Due to Defendants' refusal to allow Plaintiffs' claims to proceed in the superior
27 court and Defendants' refusal to allow Plaintiffs' claims to proceed in arbitration, Defendants
28

1 have deprived Plaintiffs of a forum in which to vindicate their rights.

2 **FOURTH CAUSE OF ACTION**

3 **Declaratory Relief**

4 **(Against all Defendants)**

5 110. Plaintiffs incorporate by reference and re-allege as if fully stated herein all
6 allegations set out in paragraphs 1 through 109.

7 111. An actual controversy exists among the parties as to Plaintiffs' and Defendants'
8 respective rights and duties under the Arbitration Agreement, as well as the continued viability
9 and enforceability of the Arbitration Agreement.

10 112. Accordingly, Plaintiffs request a declaration as to the parties' respective rights
11 and duties under the Arbitration Agreement. Specifically, Plaintiffs request a declaration that:

- 12 a. Defendants are in material breach of the Arbitration Agreement.
- 13 b. Defendants and Plaintiffs only contractually agreed to arbitrate, if at all, through
14 AAA.
- 15 c. Plaintiffs are released from any contractual obligation they may have had to
16 individually arbitrate their claims against Defendants.
- 17 d. Plaintiffs may assert in this action their wage & hour class claims previously
18 alleged in the *Iskanian* Action.
- 19 e. Each plaintiff's wage & hour claims asserted in the *Iskanian* Action have been
20 equitably tolled, at the very least, from the date each plaintiff first filed an
21 arbitration claim with ADR.

22 **REQUEST FOR JURY TRIAL**

23 Plaintiffs request a trial by jury.

24 **PRAYER FOR RELIEF**

25 Plaintiffs pray for relief and judgment against Defendants, jointly and severally, as
26 follows:

27 **As to the First, Second and Third Causes of Action**

28

PROPRIETARY INFORMATION AND ARBITRATION POLICY/AGREEMENT

This Proprietary Information and Arbitration Policy/Agreement ("Policy/Agreement") is entered into by and between KUNG-MING CHANG (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 INFORMATION.

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.

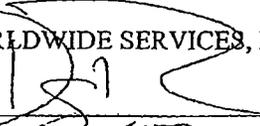
17. **COMPANY POLICY.** The foregoing provisions of this Policy/Agreement are binding upon EMPLOYEE and COMPANY irrespective of whether EMPLOYEE and/or COMPANY signs this Policy/Agreement. The terms and conditions of this Policy/Agreement describe some of COMPANY'S policies and procedures and supplement 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

King-ming Chang
Name: *King-ming Chang*
Address: *18838 Stefani Ave Cerritos, CA 90703*
Date: *12-23-04*, 2004

CLS WORLDWIDE SERVICES, LLC

By: 
Its: *CEO*
Date: *12/23*, 2004

Los_Angeles:362501.2 820000.1684

CLS7311

ORIGINAL

1 DAVID F. FAUSTMAN, SBN 081862
 2 YESENIA GALLEGOS, SBN 231852
 3 FOX ROTHSCHILD LLP
 4 1800 Century Park East, Suite 300
 Los Angeles, California 90067-3005
 5 Tel 310.598-4150 / Fax 310.556-9828
 Email: dfaustman@foxrothschild.com
 Email: nmunaweera@foxrothschild.com

REC'D
 MAY 16 2011
 FILING WINDOW
 FILED
 LOS ANGELES SUPERIOR COURT
 JUN 13 2011
 JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
 BY: 26
 T. FREEMAN DEPUTY

6 LEO V. LEYVA, NJ Bar No. 39645 (Admitted Pro Hac Vice)
 7 COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, PA
 8 Court Plaza North, 25 Main Street
 Hackensack, NJ 07602-0800
 9 Telephone: (201) 525-6294
 Facsimile: (201) 678-6294

10 Attorneys for Defendant
 CLS TRANSPORTATION LOS ANGELES LLC

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 IN AND FOR THE COUNTY OF LOS ANGELES

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

16 Plaintiff,

17 vs.

18 CLS TRANSPORTATION LOS ANGELES
 19 LLC, a Delaware corporation; Defendant
 20 WORLDWIDE SERVICES, LLC, a Delaware
 21 corporation; EMPIRE INTERNATIONAL,
 LTD., a New Jersey Corporation; GTS
 22 HOLDINGS, INC., a Delaware corporation
 and DOES 1 through 10, inclusive,

23 Defendants.

CASE NO. BC356521
 [Ordered Consolidated w/ BC381065]

Judge: Hon. Robert L. Hess

**[PROPOSED] ORDER GRANTING
 DEFENDANT'S MOTION FOR
 RENEWAL OF ITS PRIOR MOTION
 FOR ORDER COMPELLING
 ARBITRATION, DISMISSING CLASS
 CLAIMS, AND STAYING ACTION
 PENDING THE OUTCOME OF
 ARBITRATION**

Date: June 13, 2011
 Time: 8:30 a.m.
 Dept.: 24

Complaint Filed: August 4, 2006
 Class Certified: August 24, 2009
 Post-Mediation Conf.: May 2, 2011
 Trial Date: None

[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION FOR RENEWAL OF ITS PRIOR MOTION FOR ORDER COMPELLING ARBITRATION, DISMISSING CLASS CLAIMS, AND STAYING ACTION PENDING THE OUTCOME OF ARBITRATION

06/16/11

1
2 Defendant CLS Transportation Los Angeles LLC's ("CLS" or Defendant") Motion for
3 Renewal of Its Prior Motion for an Order Compelling Arbitration, Dismissing the Class Claims,
4 and Staying the Action Pending the Outcome of Arbitration, came on for hearing on June 13,
5 2011, at 8:30 a.m. before this Court in Department 24, the Honorable Robert L. Hess presiding.
6 David F. Faustman appeared on behalf of Defendant, and Gene Williams appeared on behalf of
7 Plaintiff Arshavir Iskanian and all class members ("Plaintiffs").

8 After full consideration of the evidence, memorandum of points and authorities,
9 declarations and exhibits submitted by each party, as well as counsels' oral arguments, IT IS

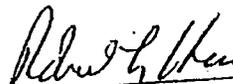
10 HEREBY ORDERED THAT:

11 1. Based on new law rendered in *AT&T Mobility v. Conception* (April 27, 2011) 563
12 U.S. ___ (2011), Defendant's Motion for Renewal of Its Prior Motion for an Order Compelling
13 Arbitration, Dismissing the Class Claims, and Staying the Action Pending the Outcome of
14 Arbitration is GRANTED.

15 2. Because Plaintiff and Defendant both executed a valid an enforceable arbitration
16 agreement and class action waiver, Defendant's Motion for an Order Compelling Arbitration,
17 Dismissing the Class Claims, and Staying the Action Pending the Outcome of Arbitration is
18 GRANTED.

19 3. Plaintiff's class claims are hereby dismissed with prejudice, and the remainder of
20 the action is stayed pending the outcome of arbitration of Plaintiff's individual claims.

21
22 Dated: 6/13/, 2011


HON. ROBERT L. HESS

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25
26
27
28
06/16/11



DEMAND FOR ARBITRATION

before ADR Services, Inc.

CLAIMANT(S): Greg Kempler

Table with 2 columns: Representative/Attorney (if known). Left column contains contact info for Raul Perez at Initiative Legal Group APC. Right column is empty.

RESPONDENT(S): See Attachment A

Table with 2 columns: Representative/Attorney (if known). Left column contains contact info for David F. Faustman at Fox Rothschild LLP. Right column contains contact info for Leo V. Leyva at Cole, Schotz, Meisel, Forman & Leonard, PA.

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: Greg Kempler	Demand for Arbitration before ADR Services, Inc.
Respondent's Name: See Attachment A	

CLAIM OR RELIEF SOUGHT (describe):

See Attachment C

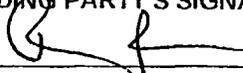
(attach additional pages if necessary)

OTHER RELIEF SOUGHT:

<input checked="" type="checkbox"/> Attorneys Fees	<input checked="" type="checkbox"/> Interest	<input type="checkbox"/> Other:
<input checked="" type="checkbox"/> Arbitration Costs	<input checked="" type="checkbox"/> 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):

	August 12, 2011
Signature	Date
Raul Perez	Title (if Party is a company)
Print Name	

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:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Century City / West Los Angeles
1900 Avenue of the Stars, Suite 250
Los Angeles, California 90067
Tel (310) 201-0010 / Fax (310) 201-0016 | <input type="checkbox"/> Downtown Los Angeles
915 Wilshire Boulevard, Suite 1900
Los Angeles, California 90017
Tel (213) 683-1600 / Fax (213) 683-9797 |
| <input type="checkbox"/> San Francisco / Northern California
50 Fremont Street, Suite 2110
San Francisco, California 94105
Tel (415) 772-0900 / Fax (415) 772-0960 | <input type="checkbox"/> San Diego
225 Broadway, Suite 1400
San Diego, California 92101
Tel (619) 233-1323 / Fax (619) 233-1324 |
| <input type="checkbox"/> Orange County
19000 MacArthur Boulevard, Suite 550
Irvine, California 92612
Tel (949) 863-9800 / Fax (949) 863-9888 | <input type="checkbox"/> 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

Plaintiff Matthew Theriault (x)
Counsel

ARSHAVIR ISKANIAN

Defendant Nima Shivayi (x)
Counsel

VS

CLS TRANSPORTATION LOS ANGELES

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.

3/14/07

MINUTES ENTERED 03/13/07 COUNTY CLERK

1 Raul Perez (SBN 174687)
RPerez@InitiativeLegal.com
2 Melissa Grant (SBN 205633)
MGrant@InitiativeLegal.com
3 Suzy E. Lee (SBN 271120)
SuzyLee@InitiativeLegal.com
4 Initiative Legal Group APC
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiff Arshavir Iskanian

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11 ARSHAVIR ISKANIAN, an individual,

12 Plaintiff,

13 vs.

14
15 CLS TRANSPORTATION LOS
16 ANGELES, LLC, a Delaware corporation;
17 CLS WORLDWIDE SERVICES, LLC, a
18 Delaware corporation; EMPIRE
19 INTERNATIONAL, LTD, a New Jersey
20 Corporation; GTS HOLDINGS, INC, a
21 Delaware corporation and DOES 1 through
22 10, inclusive,

23 Defendants.

Case No. BC 356521

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

CLASS ACTION

PROOF OF SERVICE

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ATTACHMENT 1

1. DEMAND FOR ARBITRATION FOR CASSANDRA LINDSEY
2. DEMAND FOR ARBITRATION FOR DANIEL ARAYA
3. DEMAND FOR ARBITRATION FOR DANIEL ROGERS MILLINGTON, JR.
4. DEMAND FOR ARBITRATION FOR DAROLD CALDWELL
5. DEMAND FOR ARBITRATION FOR DAVID MONTOYA
6. DEMAND FOR ARBITRATION FOR EDWIN GARCIA
7. DEMAND FOR ARBITRATION FOR ELIJHA NORTON
8. DEMAND FOR ARBITRATION FOR FRANK G. DUBUY
9. DEMAND FOR ARBITRATION FOR GERALD GRIFFIN
10. DEMAND FOR ARBITRATION FOR GREG KEMPLER
11. DEMAND FOR ARBITRATION FOR IGOR KROO
12. DEMAND FOR ARBITRATION FOR JAMES STERLING
13. DEMAND FOR ARBITRATION FOR JERRY BOYD
14. DEMAND FOR ARBITRATION FOR JIRO FUMUTO
15. DEMAND FOR ARBITRATION FOR JOHNNY EVANS
16. DEMAND FOR ARBITRATION FOR JONATHON SCOTT
17. DEMAND FOR ARBITRATION FOR JULIUS FUNES
18. DEMAND FOR ARBITRATION FOR KARIM SHARIF
19. DEMAND FOR ARBITRATION FOR KUNG MING CHANG
20. DEMAND FOR ARBITRATION FOR LEROY CLARK
21. DEMAND FOR ARBITRATION FOR MARCIAL SAZO
22. DEMAND FOR ARBITRATION FOR MARQUEL ROSE
23. DEMAND FOR ARBITRATION FOR MASOOD SHAFII
24. DEMAND FOR ARBITRATION FOR MATTHEW LOATMAN
25. DEMAND FOR ARBITRATION FOR MIGUEL DE LA MORA

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- 26. DEMAND FOR ARBITRATION FOR MYRON ROGAN
- 27. DEMAND FOR ARBITRATION FOR NEIL BEN YAIR
- 28. DEMAND FOR ARBITRATION FOR PATER PAULL
- 29. DEMAND FOR ARBITRATION FOR PATRICK COOLEY
- 30. DEMAND FOR ARBITRATION FOR RAFAEL CANDELARIA
- 31. DEMAND FOR ARBITRATION FOR REGINALD COLWELL
- 32. DEMAND FOR ARBITRATION FOR ROGER PERRY
- 33. DEMAND FOR ARBITRATION FOR SCOTT SULIVAN
- 34. DEMAND FOR ARBITRATION FOR STEVE MAYNARD
- 35. DEMAND FOR ARBITRATION FOR SUSAN STELLMAN
- 36. DEMAND FOR ARBITRATION FOR THOMAS MARTIN
- 37. DEMAND FOR ARBITRATION FOR WAYNE IKNER
- 38. DEMAND FOR ARBITRATION FOR WILLIAM BAKER



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

DATE: SEPTEMBER 19, 2011

FACSIMILE TRANSMITTAL SHEET

TO: Raul Perez, Esq. and	COMPANY: Initiative Legal Group	FAX NUMBER: 310-861-9051	PHONE NUMBER: 310-556-5637
FROM: Yesenia Gallegos	PHONE NUMBER: (310) 598-4159	EMAIL: ygallegos@foxrothschild.com	BILLING NUMBER:
NUMBER OF PAGES: 3	CHARGE FILE #: 15135-00005	PRIORITY: REGULAR	LOG NUMBER:

IF YOU DO NOT RECEIVE ALL OF THE PAGES,
PLEASE CALL (310) 598-4150 AS SOON AS POSSIBLE.
ORIGINAL DOCUMENT WILL FOLLOW BY MAIL

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY FOR YOUR INFORMATION

NOTES/COMMENTS:

Arshavir Iskanian v. CLS Transportation

Attached please find correspondence of today's date.

IRS CIRCULAR 230 DISCLOSURE:

PURSUANT TO TREASURY REGULATIONS, ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED OR RELIED UPON BY YOU OR ANY OTHER PERSON, FOR THE PURPOSE OF (i) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX ADVICE ADDRESSED HEREIN.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

LAI 87267v1 05/26/11



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

A Pennsylvania Limited Liability Partnership

California

Connecticut

Delaware

Florida

Nevada

New Jersey

New York

Pennsylvania

Ms. Shea
September 19, 2011
Page 2

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

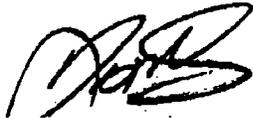
Ms. Shea
September 19, 2011
Page 3

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.



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)

Greg Kempler
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 provided by CCP 1283.05

Hearing: Estimated time needed to present case at hearing:

Hours: 8.00 Days: 2

Hearing locale: Los Angeles

Requested by Claimant Locale provision included in the contract

Filing Fee: Employer-Promulgated Plan fee requirement or \$175 (max amount per AAA rules)

Standard Fee Schedule for individually negotiated contracts Flexible Fee Schedule for individually negotiated contracts

Amount 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 1-877-520-0879. 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 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.



Fox Rothschild LLP
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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

A Pennsylvania Limited Liability Partnership

California Connecticut Delaware District of Columbia Florida Nevada New Jersey New York Pennsylvania



American Arbitration Association
Dispute Resolution Services Worldwide

phone: 877-495-4185
fax: 877-304-8457

October 20th, 2011

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 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.
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7 Attorneys for Plaintiffs

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

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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
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JAMES STERLING, JERRY BOYD, JIRO
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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

Conformed Copy

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OF ORIGINAL FILED
Los Angeles Superior Court

NOV 18 2011

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

CASE NO: BC 473931

NOTICE OF MOTION AND MOTION
FOR ORDER COMPELLING SPECIFIC
PERFORMANCE OF INDIVIDUAL
ARBITRATION; OR, IN THE
ALTERNATIVE, SETTING ASIDE THE
ARBITRATION AGREEMENT

[Filed concurrently with Memorandum of Points
and Authorities in Support Thereof; Declaration
of Raul Perez; the Request for Judicial Notice;
and [Proposed] Order]

Date: 2/10/11
Time: 8:30 AM
Place: D42

Complaint Filed:

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STELLMAN, THOMAS MARTIN, WAYNE
IKNER, WILLIAM BANKER, AND
WILLIAM PINKERTON,

Plaintiffs,

vs.

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

Defendants.

1 **TO DEFENDANT CLS TRANSPORTATION LOS ANGELES LLC AND ITS ATTORNEY**
2 **OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** on a date to be determined, in a Department to be
4 assigned in the above-captioned court, located at 111 North Hill Street, Los Angeles, California,
5 90012, the Plaintiffs named above will, and hereby do move the Court for an order for compelling
6 specific performance of individual arbitration; or, in the alternative, setting aside the arbitration
7 agreement. Once the case is assigned to a judge in the above-captioned court, Plaintiffs will file
8 and serve an amended notice of this motion setting forth the date, time and place of hearing.

9 Plaintiffs' motion is made pursuant to California Code of Civil Procedure §§ 526,
10 1281.8(a)(3) and the Court's equitable powers to specifically enforce the agreements for individual
11 arbitration ("Agreement"). Specifically, Defendant has breached the Agreement with Plaintiffs by first
12 compelling individual arbitration in Court, causing Plaintiffs' class claims to be dismissed, and then
13 refusing to participate in individual arbitration when Plaintiffs attempted to comply with the Court
14 Order. Defendant has taken specific acts, memorialized in writing, which repudiates the same
15 Agreement that Defendant previously attempted to enforce in Court. Equity and justice would not
16 permit Defendant to take contradictory positions in order to deny Plaintiffs a forum to pursue their
17 claims. Thus, Plaintiffs seek an order to secure an appropriate forum to adjudicate their claims.

18 In the alternative, Plaintiffs moves to have the Court revoke, rescind, or set aside the
19 Agreement pursuant to Code of Civil Procedure § 1281.2(b) and the court's equitable powers. This
20 alternative remedy is made on three grounds. First, due to Defendant's intransigence, the only body
21 contractually permitted to administer the arbitration, the American Arbitration Association, now flatly
22 refuses to conduct business with Defendant. Due to this impracticable condition, the Arbitration
23 cannot be performed and thus the Agreement should be set aside to allow Plaintiffs to pursue their
24 claims in Court. Second, Defendant has taken contradictory positions in Court, which is contrary to
25 equity, in a clear attempt to deprive Plaintiffs of their due process. Though Defendant had heavily
26 litigated a certified class action for four years, Defendant suddenly insisted that all matters must be
27 resolved through individual arbitration within sixty days of trial. It then successfully compelled

28

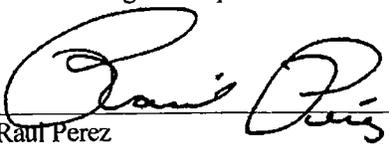
1 individual arbitration of the named Plaintiff, with the remaining class members' claims dismissed.
2 When Plaintiffs demanded individual arbitration, Defendant resisted, refusing to tender the requisite
3 fees. Defendants finally filed a procedurally defective motion to consolidate the arbitration demands
4 on grounds of efficiency and cost-effectiveness – which are the same bases for class actions.
5 Defendant must thus be estopped from enforcing the Agreement since it had taken contradictory legal
6 positions in an effort to deprive Plaintiffs of the right to adjudicate their claims.

7 Lastly, the Agreements should be rescinded on the simple ground that Defendant
8 unmistakably breached the Agreement by failing to tender arbitration fees. Rescission is thus the
9 most appropriate remedy to restore Plaintiffs' rights. On any one of the three foregoing grounds,
10 the Court should revoke, rescind, or set aside the Agreement and grant Plaintiffs leave to amend
11 the complaint to allege their class wage and hour claims in this action.

12 Plaintiffs' Motion is based on this Notice of Motion, the accompanying Memorandum of
13 Points and Authorities, the declaration of Raul Perez and all exhibits attached thereto, the Request
14 for Judicial Notice and all exhibits attached thereto, all pleadings and papers on file in this action
15 and in the related action *Iskanian v. CLS Transportation Los Angeles LLC*, Los Angeles Superior
16 Court Case No. BC356521, and such other matters as may be presented to the Court at or before
17 the time of the hearing.

18
19 Dated: November 18, 2011

Respectfully submitted,
Initiative Legal Group APC

21
22 By: 
23 Raul Perez
24 Melissa Grant
25 Suzy E. Lee

Attorneys for Plaintiffs

26
27
28

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OF ORIGINAL FILED
Los Angeles Superior Court

Conformed Copy NOV 18 2011

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By SHAUNYA WESLEY, Deputy

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7 Attorneys for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

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ANANTRAY SANATHARA, ANGELO
12 GARCIA, ARTHUR POST, AVAAVAU
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PAULL, PATRICK COOLEY, RAFAEL
24 CANDELARIA, RAUL FUENTES,
REGINALD COLWELL, ROBERT
25 OLMEDO, ROGER PERRY, SCOTT
SULLIVAN, STEVE MAYNARD, SUSAN
26 STELLMAN, THOMAS MARTIN,

CASE NO.:

BC473931

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER COMPELLING SPECIFIC
PERFORMANCE OF INDIVIDUAL
ARBITRATION; OR, IN THE
ALTERNATIVE, SETTING ASIDE THE
ARBITRATION AGREEMENT

[Filed concurrently with the Notice of Motion and
Motion for an Order Compelling Specific
Performance of Individual Arbitration; or, in the
Alternative, Setting Aside the Arbitration
Agreement, Declaration of Raul Perez, the
Request for Judicial Notice, and [Proposed] Order]

Date: 2/10/11
Time: 8:30 AM
Place: D42

Complaint Filed:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER COMPELLING SPECIFIC PERFORMANCE OF
INDIVIDUAL ARBITRATION; OR, IN THE ALTERNATIVE, SETTING ASIDE THE ARBITRATION AGREEMENT

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WAYNE IKNER, WILLIAM BANKER,
AND WILLIAM PINKERTON,

Plaintiffs,

vs.

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

Defendants.

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1 I. INTRODUCTION

2 Over the course of one year, Defendant CLS Transportation Los Angeles LLC's ("CLS") have
3 taken at least three contradictory positions in an effort to deny Plaintiffs a forum to adjudicate their
4 claims. CLS employed Plaintiffs as limousine drivers, and as a condition of their employment,
5 required that each employee sign, or be bound by, an agreement containing an arbitration clause with
6 class action and representative action waivers ("Agreement").¹ However, when Plaintiffs attempted to
7 arbitrate their claims as per the Agreement, CLS began its gamesmanship to deprive Plaintiffs of their
8 due process rights. A provisional remedy is particularly appropriate here because, with this action,
9 Plaintiffs are seeking to secure a forum to adjudicate their underlying substantive claims.

10 Initially, CLS maintained that all disputes arising out of Labor Code violations must be
11 individually arbitrated under the Agreement. In June 2011, CLS successfully argued this position,
12 obtaining a court order compelling individual arbitration and dismissing Plaintiffs' class claims in
13 *Iskanian v. CLS Transportation Los Angeles, LLC*² ("*Iskanian*") to which Plaintiffs had belonged as
14 members of a certified class. Following this order, in September 2011, sixty-three former *Iskanian*
15 class members ("Plaintiffs") filed individual arbitration demands with ADR Services, Inc. ("ADR").³
16 However, CLS refused to recognize the validity of Plaintiffs' arbitration demands, arguing that only
17 the American Arbitration Association ("AAA") was authorized to administer the arbitrations. CLS
18 instead demanded Plaintiffs submit their claims to arbitration with AAA, otherwise they refused to
19

20 ¹ A true and correct copy of the Proprietary Information and Arbitration
21 Policy/Agreement ("Agreement") signed by Arshavir Iskanian is attached to the Declaration
22 of Raul Perez as Exhibit A. On information and belief, many, but not all, of the Plaintiffs
23 signed the Agreement. However, paragraph 17 of the Agreement states that the terms of the
24 Agreement are binding on all employees irrespective of signing. Plaintiffs proceed in this
25 action assuming they are bound by this form Agreement, as CLS had repeatedly contended
26 they were.

27 ² Los Angeles Superior Court Case No. BC356521, consolidated with BC381065,
28 assigned to Hon. Robert L. Hess.

³ Former class representative Arshavir Iskanian opted to file an appeal of the trial
court's order granting CLS's motion to compel individual arbitration, rather than file an
individual arbitration claim. (*See Iskanian v. CLS Transportation Los Angeles, LLC*, No.
B198999 (Cal. Ct. App. 2d Dist., May 27, 2008) (order remanding trial court's order
compelling arbitration for application of the *Gentry* test) ("*Iskanian* appeal").). A true and
correct copy of the slip opinion is attached to the RJN as Exhibit 1.

1 recognize their validity. Yet when the conciliatory Plaintiffs acceded to CLS's demand and tendered
2 fees to initiate arbitration with AAA, CLS abruptly changed its position.

3 Upon receipt of the arbitration demands with AAA in October, 2011, CLS adopted a second
4 position. Under the Agreement and AAA rules, CLS was obligated to pay \$925.00 to commence the
5 arbitration for each individual claimant. Rather than comply with the terms of the Agreement, CLS
6 adamantly refused to pay the non-refundable arbitration fee. Excuses accompanied the non-payment,
7 including the baseless charge that Plaintiffs' counsel Initiative Legal Group ("ILG") did not have
8 authority to represent Plaintiffs and that the arbitration was stayed pending the appeal in *Iskanian*. At
9 that time, CLS also insisted that the individual arbitration claims must be consolidated.

10 By November, 2011, CLS had abandoned its argument, made only weeks earlier, that the
11 *Iskanian* appeal stayed the arbitrations. Instead, CLS staked out a third—contradictory—position.
12 Filing a procedurally-defective Motion for Consolidation of Arbitrations in the *Iskanian* court,⁴ CLS
13 now firmly contends that individual arbitrations of employee disputes would be inefficient and
14 prohibitively expensive. The arbitrations, CLS argues, should be consolidated by the Superior Court.
15 CLS's new position, however, finds no support in the Agreement that CLS previously insisted must be
16 enforced "according to its terms."⁵

17 By refusing to honor its own Agreement and the Order it sought and obtained by motion, CLS
18 proves that it will adopt inconsistent, even contradictory, positions solely to stymie Plaintiffs from
19 vindicating their individual claims. Plaintiffs have now been waiting for over five years to have their
20 claims against CLS adjudicated, having had their claims thwarted by CLS less than two months before
21 trial. CLS should not be permitted to adopt successive contradictory positions to deny Plaintiffs their
22 due process. Thus, the Court should immediately rectify this gross injustice by ordering CLS to pay

23 ⁴ A true and correct copy of the Motion for Consolidation of Arbitrations Pursuant to
24 CCP 1281.3 and for Clarification of the Court's Order of June 13, 2011 is attached to the
25 Request for Judicial Notice ("RJN") as Exhibit 4. This motion is procedurally defective for
26 two reasons: (a) the action in the *Iskanian* trial court is stayed pending appeal, and (b) after
dismissal of class claims, the *Iskanian* court is divested of personal jurisdiction over the
former class members.

27 ⁵ Ironically, CLS's arguments in support of consolidation echo the rationale for class actions,
28 argued by the plaintiff class in *Iskanian*—that individual arbitrations are impracticable, expensive
and inefficient to conduct a multiplicity of suits.

1 the requisite fees to AAA (along with all costs CLS is obligated to pay under the Agreement and AAA
2 rules) to conduct separate arbitrations with each individual Plaintiff. In the alternative, the Court may
3 prevent an unjust result by issuing a declaratory judgment invalidating or rescinding the Agreement on
4 equitable or unenforceability grounds, thereby permitting Plaintiffs to proceed in court on a class-wide
5 basis.

6 II. FACTS AND PROCEDURE

7 Plaintiffs previously belonged to a certified class in *Iskanian*, which was filed on August 4,
8 2006. In that action, plaintiff Arshavir Iskanian brought wage and hour claims on behalf of himself
9 and a class of similarly situated drivers currently or formerly employed by CLS, the largest provider of
10 chauffeured limousine services in California. (“Declaration of Raul Perez (“Perez Decl.”), ¶ 2.) In
11 early 2007, CLS moved for an order compelling individual arbitration, based on the Agreement
12 allegedly signed by Iskanian in 2004 (and all of the other unnamed class members at various times).
13 (Perez Decl., ¶ 3.) The *Iskanian* court granted the motion, which was immediately appealed.⁶ (Perez
14 Decl., ¶¶ 4-5.) While the appeal was pending, the California Supreme Court issued *Gentry v. Superior*
15 *Court*, 42 Cal. 4th 443 (2007), which promulgated a fact-intensive test to determine whether class
16 action waivers are enforceable. (Perez Decl., ¶ 6.) The Court of Appeal then reversed and remanded
17 with instructions to “apply *Gentry* to the factual record.” (*Iskanian*, Slip. op., at 4.) However, on
18 remand, CLS proceeded to litigate the matter as a class action. (Perez Decl., ¶ 8.) On August 24,
19 2009, the *Iskanian* trial court granted the plaintiff’s class certification motion, certifying five
20 subclasses with Iskanian appointed as class representative for each subclass. (Perez Decl., ¶ 9.)
21 Thereafter, the parties continued to litigate on a class-wide basis.

22 After four years of litigation, with the August 6, 2011 trial date fast approaching, on May 16,
23 2011 CLS filed a motion “for renewal” of its prior motion seeking to compel arbitration. (Perez Decl.,
24 ¶¶ 9-10.) In its Motion for Renewal, CLS invoked the U.S. Supreme Court’s recently issued *AT&T*
25 *Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) (“*Concepcion*”) to argue that the Federal

26 ⁶ *Iskanian v. CLS Transportation Los Angeles, LLC*, No. B198999 (Cal. Ct. App. 2d
27 Dist., May 27, 2008) (order remanding trial court’s order compelling arbitration for
28 application of the *Gentry* test). A true and correct copy of the slip opinion is attached to the
RJN as Exhibit 1.

1 Arbitration Act (“FAA”) preempted the rule in *Gentry*, and insisted that arbitration agreements “must
2 be enforced according to their terms” in all respects under the FAA. (Def.’s Mot. for Renewal, at
3 6:14-15, attached as Exhibit 2 to the RJN; *see also* Perez Decl., ¶11.) Specifically, CLS focused on
4 the class and representative action waivers, arguing that both should be enforced. (*Id.* at 6:15-17.) On
5 June 14, 2011, the trial court granted CLS’s motion and issued an order dismissing the class claims
6 and compelling Iskanian to individual arbitration. (*See* Order Granting Motion for Renewal, attached
7 as Exhibit 3 to the RJN.) Iskanian filed a timely notice of appeal of this order.⁷ (Perez Decl., ¶ 13.)

8 Beginning in August, 2011, a number of former *Iskanian* class members demanded individual
9 arbitration. (Perez Decl., ¶ 14.) These former class members first filed with ADR, which was
10 identified in paragraph 16(d) of the Agreement as a mutually acceptable arbitration provider. (Perez
11 Decl., ¶ 15.) CLS, however, rejected the validity of these arbitration demands, claiming by letter that
12 the Agreement “invokes the services of the American Arbitration Association and requires that the
13 parties follow AAA’s rules.” (Perez Decl., ¶ 16; a true and correct copy of the September 19, 2011
14 letter from CLS to ADR is attached as Exhibit B.) CLS then advised that “if the purported Plaintiffs
15 exist and seek to arbitrate, **they will need to file with AAA and tender the appropriate fees.**”
16 (Exhibit B (emphasis added).) The 63 individual employees chose to avoid further delay and expense
17 and agreed to arbitrate before CLS’s preferred arbitration organization, AAA. (Perez Decl., ¶ 17.)
18 Each individual plaintiff then promptly tendered the \$175.00 filing fee to AAA to begin separate
19 arbitration proceedings. (*Id.*)

20 Yet CLS again failed to abide by its own Agreement, this time by refusing to pay its share of
21 the filing fees owed to AAA, the only service it claims can administer the arbitration. CLS’s refusal to
22 pay its filing fees to commence arbitration is a material breach of its duties under the Agreement,
23 which provides:

24 Unless otherwise provided or permitted under applicable law, [CLS]
25 shall pay the arbitrator’s fee and any other type of expense or cost that
26 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.

27
28 ⁷ Notice of Appeal filed August 11, 2011, appellate no. B235138.

1 (Arbitration Agreement, ¶ 16(h) attached to the Perez Decl. as Exhibit A.) Under AAA rules, the
2 employer must pay a \$925.00 nonrefundable fee, along with a \$300 hearing fee, and all expenses
3 incurred by the arbitrator, among other fees. (AAA's Employment Arbitration Rules and Mediation
4 Procedures, ¶ 48, attached to the RJN as Exhibit 5.)

5 CLS resorts to a number of contradictory excuses to justify its refusal to pay the non-
6 refundable fees for each individual arbitration. CLS initially suggested, without any evidence, that
7 Plaintiffs' attorneys did not represent them and also that the arbitrations were stayed pending appeal.
8 (Perez Decl, ¶ 18; a true and correct copy of the October 10, 2011 letter from CLS to AAA is attached
9 as Exhibit C.) This was false, as ILG had obtained individual retainer agreements from each Plaintiff
10 beginning in July 2011 to early September 2011 to represent these Plaintiffs. (Perez Decl., ¶ 14.)
11 However, quickly abandoning the position that the action was stayed pending appeal, CLS filed a
12 motion for consolidation of the arbitrations. (A true and correct copy of this motion is attached to the
13 RJN as Exhibit 4; *see also* Perez Decl., ¶ 19.) The thrust of CLS's motion for consolidation is that
14 individual arbitrations are too expensive and inefficient, and that CLS wants to avoid the possibility of
15 inconsistent judgments. (*See* Def.'s Mot. for Consolidation, at 8:20-10:15.) CLS's newly stated
16 rationale departed from its prior position in compelling individual arbitration, when it argued that the
17 Court must give effect to the parties' expectations embodied in the terms of the agreement. (Def.'s
18 Mot. for Renewal, at 6:4-8.)

19 After CLS repeatedly failed to tender arbitration fees, AAA finally determined not only that it
20 could not administer Plaintiffs' individual arbitrations, but that it "must decline to administer any other
21 employment disputes with [CLS]." (Perez Decl., ¶ 19; a true and correct copy of the letter from AAA
22 to CLS is attached hereto as Exhibit D.) Thus, CLS's bad-faith tactics have rendered the arbitration
23 Agreement unenforceable as written and leave Plaintiffs without a forum to adjudicate their claims.
24 This unjust result cannot be permitted. The Court should use its equitable powers to ensure that
25 Plaintiffs will be able to properly adjudicate their individual claims.

26 III. ARGUMENT

27 A. The Court Has Jurisdiction to Order Specific Performance of the Agreement

28 The Court has jurisdiction to hear and decide this issue. First, the Court has authority to issue

1 orders in aid of arbitration. Under paragraph 16(i) of the Arbitration Agreement, the Court is
2 empowered to render any orders in aid of arbitration as “nothing in this Policy/Agreement prohibits
3 either Party from seeking provisional remedies in court in aid of arbitration including temporary
4 restraining orders, preliminary injunctions and other provisional remedies.” This contractual authority
5 is supported by California statute, which grants a court authority to issue a preliminary injunction to
6 further the arbitration. CCP § 1281.8(a)(3).⁸ Under this provision, the court may issue injunctive
7 relief pending arbitration “if it is necessary to preserve the effectiveness of arbitration.” *Davenport v.*
8 *Blue Cross*, 52 Cal. App. 4th 435, 453 (1997).

9 Second, a party may bring an equitable motion seeking specific performance of an arbitration
10 agreement. *See Freeman v. State Farm Mut. Auto Ins. Co.*, 14 Cal. 3d 473, 479 (1975) (holding that
11 motion to compel performance of arbitration agreement is essentially an equitable motion for specific
12 performance). Because CLS has already successfully compelled arbitration but is now refusing to
13 comply with the trial court’s order or the terms of the Agreement, the Court may order CLS to perform
14 its obligations under the Agreement.

15 Third, the Court has authority rooted in case law to resolve a dispute regarding the
16 appointment of the arbitrator or the arbitrator’s fees. *Burgess v. Kaiser Found. Hosp.*, 16 Cal. App. 4th
17 1077, 1079 (1993). In *Burgess*, the plaintiff disagreed with the reservation fee requested by the
18 arbitrator, but instead of petitioning the court for a resolution on the fee dispute, plaintiff did nothing
19 for sixteen months. *Id.* at 1081. Finally, the arbitrator dismissed the action upon defendant’s request,
20 a dismissal affirmed by the trial court. *Id.* The *Burgess* court held that “[a]rbitration is intended to be
21 more expeditious than litigation...[a]ccordingly, if there is any delay by an arbitrator, the appropriate
22 remedy is not tolling of the five-year period, but rather a petition to the court for an appropriate order
23

24 ⁸ This California statutory provision does not run afoul of the FAA, which purportedly
25 governs this Agreement under Paragraph 16(f). *See Davenport*, 52 Cal. App. 4th at 452
26 (holding “a court may grant provisional relief pending arbitration under the FAA if the party
27 seeking the relief establishes the necessity of the injunction to preserve the status quo pending
28 arbitration in order to avoid nullification of the arbitration process.”); *see also Rosenthal v.*
Great Western Fin. Securities Corp., 14 Cal. 4th 394, 409 (1996) (holding that state rules
apply in state court unless the application of such rules would defeat the purpose and
objectives of the FAA). As the California rule here would facilitate rather than frustrate
arbitration, there conflict with the FAA.

1 expediting the arbitration proceeding.” *Id.*

2 By this motion, Plaintiffs seek exactly this “appropriate remedy” of petitioning the Court to
3 expedite the arbitration proceeding. As in *Burgess*, the delay in this case stemmed from a payment
4 dispute, only here the dilatory party is the defendant CLS, who refused to pay its share of the fees for
5 the very individual arbitrations it compelled. Indeed, even after each Plaintiff sent a demand to AAA
6 along with the \$175.00 per person payment, CLS still refused to meet its contractual obligations,
7 which provide that CLS must pay the arbitrator’s fee and “any other expense or cost unique to
8 arbitration.” (Arb. Agmt., ¶ 16(h).) CLS is thus required to pay the arbitration fees and can be ordered
9 to do so by this Court. Based on the foregoing, if the Court finds that the Agreement remains
10 enforceable, the Court should order CLS to comply with all of its terms, including the payment of
11 requisite fees, in order to give effect to the individual arbitrations.

12 B. The Court Should Order CLS to Specifically Perform the Arbitration
13 Agreement

14 1. The Court Should Enforce the Arbitration Agreements

15 If the Court finds that the Agreement remains enforceable, the Court should order CLS to
16 comply with all the terms of the Agreement, including the payment of fees for individual arbitrations.
17 A short summary of CLS’s conduct is instructive in illustrating the inequitable conduct at issue. In the
18 long-running *Iskanian* action, five subclasses were certified in 2009. However, after four years of
19 litigation and less than two months before trial, CLS renewed its motion to compel arbitration, arguing
20 that the court must ‘ensure that private arbitration agreements are enforced according to their terms.’
21 (Def.’s Mot. for Renewal, at 6:14-15, citing *AT&T Mobility LLC v. Conception*, 131 S. Ct 1740, 1748
22 (2011) (quoting *Volt Information Sciences v. Board of Trustees of Leland Stanford Junior Univ*, 489
23 U.S. 468, 478 (1989)). CLS highlighted language from the Agreement, including, “each of
24 EMPLOYEE and COMPANY shall only submit their own individual claims in arbitration and will
25 not seek to represent the interests of any other person.” (Def.’s Mot. for Renewal, at 2:17-19.)

26 CLS eventually prevailed on its argument that *Gentry* was preempted by the FAA under
27 *Concepcion*. Consequently, the *Iskanian* court dismissed the class claims with prejudice and ordered
28 plaintiff to individual arbitration. (Order Granting Mot. for Renewal, at 2, attached to the RJN as

1 Exhibit 3.)

2 While the *Iskanian* plaintiff appealed the ruling, certain former members of the decertified
3 class decided to take CLS at its word and demanded individual arbitration. However, faced with
4 parties who actually seek to arbitrate individually, CLS became evasive. First, CLS contended that
5 ADR, despite being identified in CLS's own form arbitration agreement as an acceptable provider of
6 arbitration, could not administer the arbitration. (Perez Decl., ¶ 16; Exhibit B.) When Plaintiffs
7 acceded to CLS's demands to conduct arbitration with AAA, CLS again refused to cooperate. (Perez
8 Decl., ¶ 18; Exhibit C.) CLS instead tried to box Plaintiffs in by adopting a new posture: that even
9 though Plaintiffs are precluded from conducting class-wide arbitration under CLS's Agreement,
10 Plaintiffs must nonetheless "consolidate" their arbitrations in spite the Agreement's express mandate
11 under paragraph 16(b) that parties shall "only submit their own individual claims in arbitration." (See
12 Exhibit C.) In other words, after vigilantly arguing that all disputes must be resolved through
13 individual arbitrations to defeat the class action, now that some employees have actually agreed to
14 individual arbitrations, CLS opposes that as well.

15 Aside from being fundamentally unfair and evidencing bad faith, CLS's position is belied by
16 the language in its own arbitration Agreement. Indeed, it was only by arguing that the Agreement
17 must be enforced "according to its terms" that CLS was able to defeat class arbitration. However, no
18 sooner had CLS obtained its desired forum did it shift to a second, contradictory posture. Where
19 individual arbitration was once the embodiment of the parties' expectations – the only forum which
20 CLS and employees purportedly agreed to avail themselves – the very same forum is now inefficient,
21 prohibitively expensive, and cannot govern the parties' dispute. (See Mot. to Consolidate Arbitrations,
22 at 8:20-10:15.) These two positions cannot be reconciled.

23 By now, it is clear that CLS's only consistent position is to do whatever it takes to deprive
24 Plaintiffs of a forum to adequately adjudicate their claims. To redress the effects of this bad faith
25 conduct, Court should order CLS to pay fees to AAA for separate arbitrations with each individual
26 Plaintiff.

27 2. Plaintiffs Have Also Satisfied Other Injunctive Relief Factors

28 Meeting traditional requirements for injunctive relief is not necessary because the Court has

1 independent statutory authority to issue an injunctive order to effectuate arbitration. Nonetheless,
2 Plaintiffs can alternatively obtain injunctive relief on statutory grounds. Under Code of Civ. Proc.
3 § 526(a)(3), an injunction may issue if “a party to the action is doing, or threatens, or is about to
4 do . . . some in act in violation of the rights of another party to the action. . . and tending to render the
5 judgment ineffectual.” In addition, an injunction may issue where legal remedy is inadequate, such as
6 when “compensation would not afford adequate relief.” Code of Civ. Proc. § 526(a)(4). Inadequate
7 legal remedy will be found “where it would be extremely difficult to ascertain the amount of
8 compensation which would afford adequate legal relief. Code Civ. Proc. § 526(a)(5).

9 These factors are satisfied here. Plaintiffs are left with no way of obtaining monetary damages
10 because no forum is available to adjudicate their claims to make such an award. *See Dept. of Fish &*
11 *Game v. Anderson-Cottonwood Irrig. Dist.*, 8 Cal. App. 4th 1554, 1564 (1992) (holding that an
12 injunction should be granted where monetary damages are prohibited by law). CLS is interfering with
13 its employees’ rights by preventing individual adjudication of their claims in any forum. This is
14 exactly the kind of violation of rights – in this case, Plaintiffs’ due process rights – that would render
15 judgment ineffectual. In these unusual circumstances, Plaintiffs could not even “render judgment”
16 against CLS, since CLS’s misconduct has stymied Plaintiffs from being able to resolve the dispute
17 altogether. Indeed, if Plaintiffs were to file a separate action to pursue their wage and hour class action
18 in court, CLS would likely invoke collateral estoppel based on its Motion for Renewal of Prior Motion
19 to Compel Arbitration to compel this action to arbitration – which CLS would then refuse to fund.
20 The end result is that Plaintiffs would be left in the same position – without a forum to resolve their
21 claims.

22 An injunction is both proper and necessary because Plaintiffs cannot obtain compensatory
23 damages. The monetary value of CLS breaching its own Agreement cannot be ascertained because it
24 is purely a forum-selection agreement. And a breach of the agreement will yield no liquidated
25 damages or compensatory damages that could be readily calculated. With no adequate legal remedy,
26 the Court is empowered to grant injunctive relief by ordering CLS to pay individual arbitration fees to
27 prevent gross injustice.

28

1 3. The Doctrine of Judicial Estoppel Bars CLS From Compelling Individual
2 Arbitration of Employees and Subsequently Opposing Same

3 Judicial estoppel “precludes a party from gaining an advantage by taking one position, and
4 then seeking a second advantage by taking an incompatible position.” *Aguilar v. Lerner*, 32 Cal. 4th
5 974, 986 (2004). This doctrine applies when “(1) the same party has taken two positions; (2) the
6 positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was
7 successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true);
8 (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of
9 ignorance, fraud, or mistake.” *Jackson v. County of Los Angeles*, 60 Cal. App. 4th 171, 183 (1997).

10 All of these elements are met here. After CLS prevailed in court on its position that only
11 individual arbitrations with employees are permitted under the Agreement, it took the opposite
12 position once certain employees decided to proceed in individual arbitration. Because CLS has taken
13 these calculated positions, which were set forth in affirmative motion papers after presumed
14 consultation with its counsel, it cannot be relieved from estoppel on the grounds of ignorance, fraud or
15 mistake.

16 CLS’s stated grounds for refusing to pay for individual arbitrations are invalid under the
17 doctrine of judicial estoppel. Furthermore, CLS should be judicially estopped from taking any
18 position that impairs a Plaintiff from resolving his or her dispute through individual arbitration that
19 CLS itself had previously compelled.

20 C. In the Alternative, the Court Should Rescind or Set Aside the Agreement
21 Because It Cannot Be Enforced

22 Alternatively, the Court may revoke CLS’s Arbitration agreement if such grounds exist. *See*
23 Cal. Code Civ. Proc. § 1281.2(b). Three grounds exist to rescind or set aside the Agreement. First, the
24 agreement should be set aside or rescinded due to impracticability or impossibility of performance due
25 to factors outside of Plaintiffs’ control. Second, CLS should be equitably estopped from benefiting
26 from asserting positions that have caused injury to Plaintiffs. Finally, because CLS has clearly
27 breached the material terms of the Agreement by refusing to pay the AAA as obligated, the
28 Agreement may be rescinded.

1 1. The Agreement Cannot Be Enforced Due to Impracticability.

2 Under California law, impracticability related to the difficulty and expense of performance
3 may provide grounds to excuse performance. *Kennedy v. Reece*, 225 Cal. App. 2d 717, 724-25
4 (1964). As *Kennedy* explained, the impracticability defense is an “enlargement of the meaning of
5 ‘impossibility’ as a defense.” *Id.* at 725. This doctrine may be invoked against contractual
6 enforcement, “[w]here, after a contract is made, a party’s performance is made impracticable without
7 his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which
8 the contract was made.” *Maudlin v. Pacific Decision Sciences Corp.*, 137 Cal. App. 4th 1001, 1017
9 (2006) (quoting Rest.2d Contracts, § 261).

10 Furthermore, under the FAA Section 2, general defenses to the enforceability of contracts are
11 preserved, and the Court may hold an arbitration agreement unenforceable under a valid contractual
12 enforcement defense. 9 U.S.C. § 2. *See also Doctor’s Assocs. v. Casarotto*, 517 U.S. 681, 687 (1996)
13 (“[G]enerally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied
14 to invalidate arbitration agreements without contravening § 2”). CLS’s Agreement requires AAA to
15 administer the arbitration, but, due to CLS’s chicanery, AAA now refuses to work with CLS.
16 Therefore, the Agreement cannot be enforced as it is written.

17 Through no fault of Plaintiffs, the Agreement now cannot be performed by either party. When
18 the *Iskanian* court granted CLS’s motion to compel individual arbitration, it did so after CLS
19 highlighted the principle purpose of the FAA, which is to ‘ensure that private arbitration agreements
20 are enforced according to their terms.’ (See Def. Mot. for Renewal, at 6:14-15, quoting *Conception*,
21 131 S. Ct at 1748.) However, CLS’s exalted, “most important” idea – that the terms of the Agreement
22 are the only ones that give effect to the parties’ expectations – must be consistently applied. If the
23 class and representative action waivers contained in the Agreement are to be enforced by Court, then
24 so too should all of the other terms.

25 One such term requires that only the AAA may administer the arbitration. Under paragraph
26 16(a) of the Agreement, the arbitration shall be governed by the “then-current dispute resolution rules
27 and procedures of the American Arbitration Association.” CLS reiterated this position in its letter
28 declining to arbitrate with ADR Services, stating that the “the arbitration agreement at issue invokes

1 the services of the American Arbitration Agreement (“AAA”), and requires that the parties follow
2 AAA’s rules.” (See Exhibit B.) Under the AAA rules, “when the parties agree to arbitrate under
3 these rules . . . they thereby authorize the AAA to administer the arbitration.” (AAA Emp. Arb. Rules
4 and Med. Proc., Rule 3.) CLS’s position was reinforced in *Maggio v. Windward Capital Management*
5 *Co.*, 80 Cal. App. 4th 1210, 1213 (2000), which held that only AAA can administer the arbitration
6 when an agreement sets forth that the arbitration is governed “according to AAA rules.” Thus, by the
7 narrow interpretation of the Agreement that CLS has urged, the only service that may administer the
8 arbitration is AAA.

9 However, due to CLS’s recalcitrance, AAA will no longer administer any arbitrations to
10 which CLS is a party, going so far as to demand that CLS “remove the AAA name from its arbitration
11 clauses so that there is no confusion to the company’s employees regarding our decision.” (Perez
12 Decl., ¶ 19; Exhibit D.) This development renders a material condition of the Agreement
13 impracticable – if not impossible – to perform. The parties currently have no means to submit their
14 arbitral claims to the appropriate administrative body, since the sole body authorized to do so, AAA,
15 now refuses to accept their submissions after it unequivocally rejected CLS as a customer. Because
16 the parties did not bargain for any other body to administer the arbitration, the Court may set aside the
17 Agreement under the general contract defense of impracticability or impossibility. Once the
18 Arbitration Agreement is set aside, the parties may again form a class for the purposes of proceeding
19 as a class action.

20 2. The Arbitration Agreement Must Be Set Aside Due to Equitable Estoppel

21 Equitable estoppel precludes a party from asserting rights “he otherwise would have had
22 against another” when his own conduct renders assertion of those rights contrary to equity. *Metalclad*
23 *Corp. v. Ventana Environmental Organizational Partnership*, 109 Cal. App. 4th 1705, 1713 (2003).
24 The elements of equitable estoppel are the following: (1) The party to be estopped must know the
25 facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the
26 estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be
27 ignorant of the true state of facts; and, (4) he must rely upon the conduct to his injury.” *Nicolopoulos v.*
28 *Super. Ct.*, 106 Cal. App. 4th 304, 311 (2003) (citation omitted).

1 This doctrine is “based on the theory that a party who by his declarations or conduct
2 misleads another to his prejudice should be estopped from obtaining the benefits of his
3 misconduct.” *Cotta v. City and County of San Francisco*, 157 Cal. App. 4th 1550, 1567 (2007). In
4 the arbitration context, equitable estoppel has applied where “a party who has *not* signed a contract
5 containing an arbitration clause may nonetheless be compelled to arbitrate when he seeks enforcement
6 of other provisions of the same contract that benefit him.” *Metalclad*, 109 Cal. App. 4th at 1713. The
7 principles of equitable estoppel should work in the converse as well, to prevent enforcement of an
8 arbitration agreement by a party which has selectively sought to enforce its provisions. Three separate
9 reasons exist for invalidating the Agreement under this doctrine.

10 First, equitable estoppel is invoked where a party seeks to benefit by taking contradictory
11 positions in bad faith. This is especially poignant as CLS deprived Plaintiffs of their class claims by
12 arguing that the terms of the agreement must be strictly enforced, yet now seeks relief from strict
13 enforcement of contract on the rationale of judicial efficiency and costs-savings, which echo policy
14 arguments in support of class actions.

15 Under Code of Civil Procedure 382, when “the question is one of common or general interest,
16 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
17 court, one or more may sue or defend for the benefit of all.” One reason for judicial preference of
18 class treatment is to avoid the high costs and inefficiencies associated with a multiplicity of suits:

19 Absent class treatment, each individual plaintiff would present in
20 separate, duplicative proceedings the same or essentially the same
21 arguments and evidence, including expert testimony. The result would
be a multiplicity of trials conducted at enormous expense to both the
judicial system and the litigants.

22 *Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 340 (2004).

23 Although CLS vigilantly attacked class treatment of Plaintiffs, it proffers exactly the same
24 rationale to support consolidation. CLS first argues that consolidation would “avoid repetitive,
25 separate arbitrations dealing with common issues of law and fact arising from the same set of facts.”
26 (Def.’s Mot. for Consolidation, at 9:7-9.) Then, CLS contends that consolidation would “avoid
27 unnecessary costs and delays” associated with individual arbitration. (*Id.* at 9:11-13.) Consolidation,
28 according to CLS, will also “avoid repetitive and overlapping discovery” that would result with

1 individual arbitrations. (*Id.* at 9:25-26.) By extolling the virtues of class treatment when convenient,
2 CLS inadvertently concedes that allowing the claims to proceed as class action is an appropriate and
3 fair remedy in light of CLS’s continuing gamesmanship. Indeed, if CLS is willing to engage in bad
4 faith conduct to further the interests of efficiency and cost-effectiveness, it should not complain if the
5 Court invalidates the arbitration agreement so that Plaintiffs’ claims *are* resolved more efficiently and
6 less expensively – as a class action.

7 Furthermore, when CLS moved to compel individual arbitration in *Iskanian*, it had no
8 intention of actually arbitrating the class’s employment claims individually, as its subsequent conduct
9 confirmed. Instead, CLS planned to default on the arbitrator’s fees in order to deprive Plaintiffs of the
10 arbitral forum it demanded (and which was contractually provided). By contrast, Plaintiffs simply
11 took CLS at its word and proceeded to individual arbitration when CLS insisted that the Agreement
12 provides for only this method to resolve their dispute. CLS clearly misrepresented its intentions, and
13 by doing so, prevented Plaintiffs from asserting their rights. Equitable estoppel should therefore apply
14 to prevent CLS from unjustly reaping benefits from its misconduct.

15 Separately, CLS’s subsequent conduct confirms that the fees provision, as stated in the
16 Agreement, is a sham designed solely to prevent the Agreement from being invalidated on grounds of
17 unconscionability. In California, an employee who signs an arbitration agreement as a condition of
18 employment cannot be asked to “bear any type of expense that the employee would not be required to
19 bear if he or she were free to bring the action in court.” *Armendariz v. Foundation Health Psychcare*
20 *Serv., Inc.*, 24 Cal. 4th 83, 110-111 (2000); *see also Gutierrez v. Autowest, Inc.*, 114 Cal. App. 4th 77,
21 90 (2003) (invalidating an agreement as unconscionable when a provision required a consumer to pay
22 the AAA initiation fee to arbitrate in an adhesion contract drafted by defendant). CLS’s inclusion of
23 such a term is an attempt to circumvent judicial scrutiny of its unconscionable arbitration system. CLS
24 presents its Agreement as obligating it, the employer, to pay the arbitrator’s fee – thus ensuring that the
25 Agreement will not be held unconscionable on that basis. Yet when the arbitrator’s fee actually comes
26 due, CLS refuses to pay it. Therefore, **in practice**, the fee provision is ineffective since CLS will not
27 comply with its terms. Instead, CLS chooses to pass the costs of arbitration to its employees, who are
28 forced by CLS’s breach into the expensive proposition of filing an action, and then a motion, in order

1 to enforce the fee terms.

2 The issue now before the Court is simply what to do with a party that now refuses to
3 participate in the individual arbitrations that it itself compelled. Because it is hard to imagine a more
4 clear-cut case of bad faith conduct than CLS's here, the Court should order an equitable remedy –
5 either to compel CLS to pay arbitration fees and participate in individual arbitration with each
6 individual Plaintiff, or to set aside the Agreement under equitable estoppel or the impossibility or
7 impracticability defense so that Plaintiffs may proceed to litigate their class claims in Court.

8 3. Rescission Is An Appropriate Remedy Under the Instant Facts

9 The court may order rescission as a provisional remedy when legal remedies would not
10 provide appropriate relief. *Lenard v. Edmonds*, 151 Cal. App. 2d 764, 769 (1957) (affirming that
11 rescission may issue as a provisional remedy on a breach of contract). As established above, the
12 traditional factors for injunctive relief are satisfied, and CLS has clearly breached the Agreement by
13 failing to tender fees for individual arbitration as required. Therefore, the Court may rescind the
14 Agreement so that the Parties may litigate their claims in court.

15 IV. CONCLUSION

16 Based on the foregoing, the Court should order CLS to pay the arbitration fees and take all
17 necessary action to effectuate individual arbitrations with Plaintiffs. In the alternative, the Court
18 should set aside the Agreement because CLS is equitably estopped from enforcing the agreement, or
19 because the terms of the Agreement cannot be performed.

20 Dated: November 18, 2011

Respectfully submitted,

Initiative Legal Group APC

21
22
23 By: _____

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22 GARCIA, ELIHA NORTON, FLAVIO
23 SILVA, FRANK G. DUBUY, GERALD
24 GRIFFIN, GLEN ALSTON, IGOR KROO,
25 JAMES C. DENISON, JAMES RICHMOND,
26 JAMES STERLING, JERRY BOYD, JIRO
27 FUMOTO, JOHNNIE EVANS, JONATHON
28 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

CASE NO. BC 473931

DECLARATION OF RAUL PEREZ IN
SUPPORT OF PLAINTIFFS' MOTION
FOR ORDER COMPELLING SPECIFIC
PERFORMANCE OF INDIVIDUAL
ARBITRATION; OR, IN THE
ALTERNATIVE, SETTING ASIDE THE
ARBITRATION AGREEMENT

[Filed concurrently with the Notice of Motion
and Motion for Order Compelling Specific
Performance of Individual Arbitration; or, in
the Alternative, Setting Aside the Arbitration
Agreement; Memorandum of Points and
Authorities in Support Thereof; the Request
for Judicial Notice; and [Proposed] Order]

Date: 2/10/11
Time: 8:30 AM
Place: D 42

Complaint Filed:

1 STELLMAN, THOMAS MARTIN, WAYNE
2 IKNER, WILLIAM BANKER, AND
3 WILLIAM PINKERTON,

4 Plaintiffs,

5 vs.

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

9 Defendants.

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1 the record. (A true and correct copy of the Slip Opinion is attached to the concurrently filed
2 Request for Judicial Notice ("RJN") as Exhibit 1.)

3 8. On remand, CLS, apparently conceding that the *Gentry* factors would be satisfied,
4 decided to proceed to litigate the matter in state court.

5 9. On or about August 24, 2009, the *Iskanian* trial court granted Plaintiff's contested
6 class action motion, certifying five subclasses with Iskanian appointed as class representative for
7 each subclass.

8 10. The parties continued to litigate on a classwide basis, with a trial date set for
9 August 6, 2011.

10 11. On May 16, 2011, less than sixty days before trial, CLS filed a Motion for Renewal
11 of Its Prior Motion for Order Compelling Arbitration. (A true and correct copy of this Motion is
12 attached to the RJN as Exhibit 2.) In the Motion for Renewal, CLS invoked the U.S. Supreme
13 Court's then-issued *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) to argue that
14 *Gentry* has been preempted. CLS also insisted in this motion that agreements "must be enforced
15 according to their terms" under the Federal Arbitration Act.

16 12. On or about June 14, 2011, the Court granted Defendant's motion and issued an
17 order dismissing class claims and compelling Iskanian to individual arbitration.

18 13. On or about August 11, 2011, Iskanian filed a notice of appeal based on the trial
19 court's order compelling individual arbitration.

20 14. Beginning August 2011, former Iskanian class members Greg Kempler, Adrien
21 Warren, Anantray Sanathara, Angelo Garcia, Arthur Post, Avaavau Toailoa, Belinda Washington,
22 Bennett Sloan, Bruce Gold, Carl Mueller, Carl Swartz, Cassandra Lindsey, Cleophus Collins,
23 Daniel Araya, Daniel Rogers Millington, Jr., Darold Caldwell, David Baranco, David Montoya,
24 Dawn Bingham, Edward Smith, Edwin Garcia, Elijha Norton, Flavio Silva, Frank G. Dubuy,
25 Gerald Griffin, Glen Alston, Igor Kroo, James C. Denison, James Richmond, James Sterling, Jerry
26 Boyd, Jiro Fumoto, Johnnie Evans, Jonathon Scott, Julius Funes, Karen Bailey, Karim Sharif,
27 Kenny Cheng, Kung Ming Chang, Lamont Crawford, Leroy Clark, Luis Earnshaw, Marcial Sazo,
28

1 Marquel Rose, Masood Shafii, Matthew Loatman, Miguel De La Mora, Myron Rogan, Neil Ben
2 Yair, Pater Paull, Patrick Cooley, Rafael Candelaria, Raul Fuentes, Reginald Colwell, Robert
3 Olmedo, Roger Perry, Scott Sullivan, Steve Maynard, Susan Stellman, Thomas Martin, Wayne
4 Ikner, William Banker, and William Pinkerton retained ILG to represent them in their efforts.
5 Retainer agreements were signed beginning in July 2011 to early September 2011. Each Plaintiff
6 sought to resolve his or her dispute through individual arbitration with CLS.

7 15. Beginning in August, 2011, each Plaintiff filed a demand for arbitration with ADR
8 Services, Inc., which was named in the Agreement as a mutually accepted provider.

9 16. In a letter to ADR Services, Inc. dated September 19, 2011, CLS's counsel
10 Yessenia Gallegos rejected the validity of Plaintiffs' arbitration demands, maintaining that the
11 American Arbitration Association ("AAA") was the sole arbitrator under the Agreement. A true
12 and correct of the September 19, 2011 Letter from Gallegos to Terry Shea, Arbitration
13 Coordinator for ADR Services, Inc. is attached hereto as **Exhibit B**.

14 17. Beginning in September, 2011, and to avoid further delay and expense, each
15 Plaintiff tendered a \$175.00 filing fee and demanded separate arbitration proceedings with AAA.

16 18. In a letter to AAA dated October 10, 2011, CLS's counsel confirmed that CLS will
17 not pay the nonrefundable fee of \$52,275 to AAA that it was obligated to pay under both its own
18 Agreement and the AAA rules,¹ which call for the employer to pay a \$925 refundable fee per
19 arbitration. A true and correct copy of this letter from Gallegos to Adam Shoneck, Intake
20 Specialist for AAA is attached as **Exhibit C**. Instead, in this letter, CLS offered numerous reasons
21 for its refusal to pay, including "claimants are part of a class action that is currently on appeal" and
22 "we have not received anything authoritative confirming that claimants have opted out of the
23 class." CLS then argued that the arbitrations should be consolidated.

24 19. On October 20, 2011, AAA sent a letter to Plaintiffs' counsel and CLS counsel
25 stating unequivocally that, because CLS "has not complied with [AAA's] request to pay the
26 requisite administrative fees in accordance with the employer-promulgated plan fee schedule, we

27

28 ¹ A true and correct copy of the current AAA rules is attached to the Request for Judicial Notice as Exhibit 5.

EXHIBIT A

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 INFORMATION.

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.

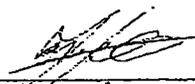
h. Unless otherwise provided or permitted under applicable law, COMPANY shall pay the arbitrator's fee and any other type of expense or cost that EMPLOYEE would not be required to bear if he or she were free to bring the dispute or claim in court as well as any other expense or cost that is unique to 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.

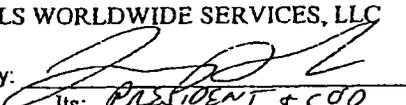
17. **COMPANY POLICY.** The foregoing provisions of this Policy/Agreement are binding upon EMPLOYEE and COMPANY irrespective of whether EMPLOYEE and/or COMPANY signs this Policy/Agreement. The terms and conditions of this Policy/Agreement describe some of COMPANY'S policies and procedures and supplement 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 TSAKANIAN
Address: 1655 MELITA AV. N. HOL. CAL. 91605
Date: 12-21, 2004

CLS WORLDWIDE SERVICES, LLC

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

Los_Angeles:362501.2 820000.1634

EXHIBIT B



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

DATE: SEPTEMBER 19, 2011

FACSIMILE TRANSMITTAL SHEET

TO: Raul Perez, Esq. and	COMPANY: Initiative Legal Group	FAX NUMBER: 310-861-9051	PHONE NUMBER: 310-556-5637
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URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY FOR YOUR INFORMATION

NOTES/COMMENTS:

Arshavit Iskanian v. CLS Transportation

Attached please find correspondence of today's date.

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LA 1 87267 v1 05/26/11



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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

A Pennsylvania Limited Liability Partnership

California

Connecticut

Delaware

Florida

Nevada

New Jersey

New York

Pennsylvania

Ms. Shea
September 19, 2011
Page 2

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

LA1 101953v1 09/18/11

Ms. Shea
September 19, 2011
Page 3

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,

A handwritten signature in black ink, appearing to read 'Yesenia Gallegos', written in a cursive style.

Yesenia Gallegos

cc: Raul Perez, Esq.

EXHIBIT C



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October 10, 2011

VIA FACSIMILE/FIRST CLASS MAIL

Adam Shoneck
Intake Specialist
American Arbitration Association
1101 Laurel Oak Road, Suite 100
Voorhees, 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

A Pennsylvania Limited Liability Partnership

California Connecticut Delaware District of Columbia Florida Nevada New Jersey New York Pennsylvania

EXHIBIT D



American Arbitration Association
Dispute Resolution Services Worldwide

phone: 877-495-4185
fax: 877-304-8457

October 20th, 2011

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 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.
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7 Attorneys for Plaintiffs

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12 ANANTRAY SANATHARA, ANGELO
13 GARCIA, ARTHUR POST, AVAAVAU
14 TOAILOA, BELINDA WASHINGTON,
15 BENNETT SLOAN, BRUCE GOLD, CARL
16 MUELLER, CARL SWARTZ, CASSANDRA
17 LINDSEY, CLEOPHUS COLLINS, DANIEL
18 ARAYA, DANIEL ROGERS MILLINGTON,
19 JR., DAROLD CALDWELL, DAVID
20 BARANCO, DAVID MONTOYA, DAWN
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24 GRIFFIN, GLEN ALSTON, IGOR KROO,
25 JAMES C. DENISON, JAMES RICHMOND,
26 JAMES STERLING, JERRY BOYD, JIRO
27 FUMOTO, JOHNNIE EVANS, JONATHON
28 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

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Los Angeles Superior Court

NOV 18 2011

John A. Clarke, Executive Officer/Clerk
By SHAURVA WESLEY, Deputy

CASE NO. BC 473931

NOTICE OF MOTION AND MOTION
FOR ORDER COMPELLING SPECIFIC
PERFORMANCE OF INDIVIDUAL
ARBITRATION; OR, IN THE
ALTERNATIVE, SETTING ASIDE THE
ARBITRATION AGREEMENT

[Filed concurrently with Memorandum of Points
and Authorities in Support Thereof; Declaration
of Raul Perez; the Request for Judicial Notice;
and [Proposed] Order]

Date: 2/10/11
Time: 8:30 AM
Place: D 42

Complaint Filed:

1 STELLMAN, THOMAS MARTIN, WAYNE
2 IKNER, WILLIAM BANKER, AND
3 WILLIAM PINKERTON,

4 Plaintiffs,

5 vs.

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

9 Defendants.

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1 **TO DEFENDANT CLS TRANSPORTATION LOS ANGELES LLC AND ITS ATTORNEY**
2 **OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** on a date to be determined, in a Department to be
4 assigned in the above-captioned court, located at 111 North Hill Street, Los Angeles, California,
5 90012, the Plaintiffs named above will, and hereby do move the Court for an order for compelling
6 specific performance of individual arbitration; or, in the alternative, setting aside the arbitration
7 agreement. Once the case is assigned to a judge in the above-captioned court, Plaintiffs will file
8 and serve an amended notice of this motion setting forth the date, time and place of hearing.

9 Plaintiffs' motion is made pursuant to California Code of Civil Procedure §§ 526,
10 1281.8(a)(3) and the Court's equitable powers to specifically enforce the agreements for individual
11 arbitration ("Agreement"). Specifically, Defendant has breached the Agreement with Plaintiffs by first
12 compelling individual arbitration in Court, causing Plaintiffs' class claims to be dismissed, and then
13 refusing to participate in individual arbitration when Plaintiffs attempted to comply with the Court
14 Order. Defendant has taken specific acts, memorialized in writing, which repudiates the same
15 Agreement that Defendant previously attempted to enforce in Court. Equity and justice would not
16 permit Defendant to take contradictory positions in order to deny Plaintiffs a forum to pursue their
17 claims. Thus, Plaintiffs seek an order to secure an appropriate forum to adjudicate their claims.

18 In the alternative, Plaintiffs moves to have the Court revoke, rescind, or set aside the
19 Agreement pursuant to Code of Civil Procedure § 1281.2(b) and the court's equitable powers. This
20 alternative remedy is made on three grounds. First, due to Defendant's intransigence, the only body
21 contractually permitted to administer the arbitration, the American Arbitration Association, now flatly
22 refuses to conduct business with Defendant. Due to this impracticable condition, the Arbitration
23 cannot be performed and thus the Agreement should be set aside to allow Plaintiffs to pursue their
24 claims in Court. Second, Defendant has taken contradictory positions in Court, which is contrary to
25 equity, in a clear attempt to deprive Plaintiffs of their due process. Though Defendant had heavily
26 litigated a certified class action for four years, Defendant suddenly insisted that all matters must be
27 resolved through individual arbitration within sixty days of trial. It then successfully compelled

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1 individual arbitration of the named Plaintiff, with the remaining class members' claims dismissed.
2 When Plaintiffs demanded individual arbitration, Defendant resisted, refusing to tender the requisite
3 fees. Defendants finally filed a procedurally defective motion to consolidate the arbitration demands
4 on grounds of efficiency and cost-effectiveness – which are the same bases for class actions.
5 Defendant must thus be estopped from enforcing the Agreement since it had taken contradictory legal
6 positions in an effort to deprive Plaintiffs of the right to adjudicate their claims.

7 Lastly, the Agreements should be rescinded on the simple ground that Defendant
8 unmistakably breached the Agreement by failing to tender arbitration fees. Rescission is thus the
9 most appropriate remedy to restore Plaintiffs' rights. On any one of the three foregoing grounds,
10 the Court should revoke, rescind, or set aside the Agreement and grant Plaintiffs leave to amend
11 the complaint to allege their class wage and hour claims in this action.

12 Plaintiffs' Motion is based on this Notice of Motion, the accompanying Memorandum of
13 Points and Authorities, the declaration of Raul Perez and all exhibits attached thereto, the Request
14 for Judicial Notice and all exhibits attached thereto, all pleadings and papers on file in this action
15 and in the related action *Iskanian v. CLS Transportation Los Angeles LLC*, Los Angeles Superior
16 Court Case No. BC356521, and such other matters as may be presented to the Court at or before
17 the time of the hearing.

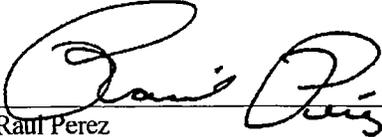
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Dated: November 18, 2011

Respectfully submitted,

Initiative Legal Group APC

By: _____


Raul Perez
Melissa Grant
Suzy E. Lee

Attorneys for Plaintiffs

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OF ORIGINAL FILED
Los Angeles Superior Court

Conformed Copy
NOV 18 2011

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

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7 Attorneys for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

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11 GREG KEMPLER, ADRIEN WARREN,
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24 CANDELARIA, RAUL FUENTES,
REGINALD COLWELL, ROBERT
25 OLMEDO, ROGER PERRY, SCOTT
SULLIVAN, STEVE MAYNARD, SUSAN
26 STELLMAN, THOMAS MARTIN,
27
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CASE NO.:

BC473931

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER COMPELLING SPECIFIC
PERFORMANCE OF INDIVIDUAL
ARBITRATION; OR, IN THE
ALTERNATIVE, SETTING ASIDE THE
ARBITRATION AGREEMENT

[Filed concurrently with the Notice of Motion and
Motion for an Order Compelling Specific
Performance of Individual Arbitration; or, in the
Alternative, Setting Aside the Arbitration
Agreement, Declaration of Raul Perez, the
Request for Judicial Notice, and [Proposed] Order]

Date: 2/10/11
Time: 8:30 AM
Place: D 42

Complaint Filed:

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WAYNE IKNER, WILLIAM BANKER,
AND WILLIAM PINKERTON,

Plaintiffs,

vs.

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

Defendants.

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2 STATE CASES

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5 *Cotta v. City and County of San Francisco*, 157 Cal. App. 4th 1550 (2007) 13

6 *Davenport v. Blue Cross*, 52 Cal. App. 4th 435 (1997).....6

7 *Dept. of Fish & Game v. Anderson-Cottonwood Irrig. Dist.*, 8 Cal. App. 4th 1554

8 (1992).....9

9 *Freeman v. State Farm Mut. Auto Ins. Co.*, 14 Cal. 3d 473 (1975)6

10 *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007) 1, 3, 4, 8

11 *Gutierrez v. Autowest, Inc.*, 114 Cal. App. 4th 77 (2003)..... 14

12 *Jackson v. County of Los Angeles*, 60 Cal. App. 4th 171 (1997)..... 10

13 *Kennedy v. Reece*, 225 Cal. App. 2d 717 (1964) 11

14 *Lenard v. Edmonds*, 151 Cal. App. 2d 764 (1957) 15

15 *Maggio v. Windward Capital Management Co.*, 80 Cal. App. 4th 1210 (2000) 12

16 *Maudlin v. Pacific Decision Sciences Corp.*, 137 Cal. App. 4th 1001 (2006)..... 11

17 *Metalclad Corp. v. Ventana Environmental Organizational Partnership*, 109 Cal. App.

18 4th 1705 (2003)..... 12, 13

19 *Nicolopolos v. Super. Ct.*, 106 Cal. App. 4th 304 (2003) 13

20 *Rosenthal v. Great Western Fin. Securities Corp.*, 14 Cal. 4th 394 (1996)6

21 *Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319 (2004) 13

22 FEDERAL CASES

23 *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011).....4, 7, 8, 11

24 *Doctor's Assocs. v. Casarotto*, 517 U.S. 681 (1996)..... 11

25 *Volt Information Sciences v. Board of Trustees of Leland Stanford Junior Univ*, 489

26 U.S. 468 (1989).....7

27 STATE STATUTES

28 Cal. Civ. Proc. Code § 382 13

1 Cal. Civ. Proc. Code § 526(a)(3)9
2 Cal. Civ. Proc. Code § 526(a)(4)9
3 Cal. Civ. Proc. Code § 526(a)(5)9
4 Cal. Civ. Proc. Code § 1281.2(b)10
5 Cal. Civ. Proc. Code § 1281.32
6 Cal. Civ. Proc. Code § 1281.8(a)(3)6
7 **FEDERAL STATUTES**
8 9 U.S.C. § 211
9 Federal Arbitration Act (FAA)4, 6, 8, 11
10 **SECONDARY AUTHORITIES**
11 Rest.2d Contracts, § 26111
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1 I. INTRODUCTION

2 Over the course of one year, Defendant CLS Transportation Los Angeles LLC's ("CLS") have
3 taken at least three contradictory positions in an effort to deny Plaintiffs a forum to adjudicate their
4 claims. CLS employed Plaintiffs as limousine drivers, and as a condition of their employment,
5 required that each employee sign, or be bound by, an agreement containing an arbitration clause with
6 class action and representative action waivers ("Agreement").¹ However, when Plaintiffs attempted to
7 arbitrate their claims as per the Agreement, CLS began its gamesmanship to deprive Plaintiffs of their
8 due process rights. A provisional remedy is particularly appropriate here because, with this action,
9 Plaintiffs are seeking to secure a forum to adjudicate their underlying substantive claims.

10 Initially, CLS maintained that all disputes arising out of Labor Code violations must be
11 individually arbitrated under the Agreement. In June 2011, CLS successfully argued this position,
12 obtaining a court order compelling individual arbitration and dismissing Plaintiffs' class claims in
13 *Iskanian v. CLS Transportation Los Angeles, LLC*² ("Iskanian") to which Plaintiffs had belonged as
14 members of a certified class. Following this order, in September 2011, sixty-three former *Iskanian*
15 class members ("Plaintiffs") filed individual arbitration demands with ADR Services, Inc. ("ADR").³
16 However, CLS refused to recognize the validity of Plaintiffs' arbitration demands, arguing that only
17 the American Arbitration Association ("AAA") was authorized to administer the arbitrations. CLS
18 instead demanded Plaintiffs submit their claims to arbitration with AAA, otherwise they refused to

19
20 ¹ A true and correct copy of the Proprietary Information and Arbitration
21 Policy/Agreement ("Agreement") signed by Arshavir Iskanian is attached to the Declaration
22 of Raul Perez as Exhibit A. On information and belief, many, but not all, of the Plaintiffs
23 signed the Agreement. However, paragraph 17 of the Agreement states that the terms of the
24 Agreement are binding on all employees irrespective of signing. Plaintiffs proceed in this
25 action assuming they are bound by this form Agreement, as CLS had repeatedly contended
26 they were.

27 ² Los Angeles Superior Court Case No. BC356521, consolidated with BC381065,
28 assigned to Hon. Robert L. Hess.

³ Former class representative Arshavir Iskanian opted to file an appeal of the trial
court's order granting CLS's motion to compel individual arbitration, rather than file an
individual arbitration claim. (*See Iskanian v. CLS Transportation Los Angeles, LLC*, No.
B198999 (Cal. Ct. App. 2d Dist., May 27, 2008) (order remanding trial court's order
compelling arbitration for application of the *Gentry* test) ("*Iskanian* appeal"). A true and
correct copy of the slip opinion is attached to the RJN as Exhibit 1.

1 recognize their validity. Yet when the conciliatory Plaintiffs acceded to CLS's demand and tendered
2 fees to initiate arbitration with AAA, CLS abruptly changed its position.

3 Upon receipt of the arbitration demands with AAA in October, 2011, CLS adopted a second
4 position. Under the Agreement and AAA rules, CLS was obligated to pay \$925.00 to commence the
5 arbitration for each individual claimant. Rather than comply with the terms of the Agreement, CLS
6 adamantly refused to pay the non-refundable arbitration fee. Excuses accompanied the non-payment,
7 including the baseless charge that Plaintiffs' counsel Initiative Legal Group ("ILG") did not have
8 authority to represent Plaintiffs and that the arbitration was stayed pending the appeal in *Iskanian*. At
9 that time, CLS also insisted that the individual arbitration claims must be consolidated.

10 By November, 2011, CLS had abandoned its argument, made only weeks earlier, that the
11 *Iskanian* appeal stayed the arbitrations. Instead, CLS staked out a third—contradictory—position.
12 Filing a procedurally-defective Motion for Consolidation of Arbitrations in the *Iskanian* court,⁴ CLS
13 now firmly contends that individual arbitrations of employee disputes would be inefficient and
14 prohibitively expensive. The arbitrations, CLS argues, should be consolidated by the Superior Court.
15 CLS's new position, however, finds no support in the Agreement that CLS previously insisted must be
16 enforced "according to its terms."⁵

17 By refusing to honor its own Agreement and the Order it sought and obtained by motion, CLS
18 proves that it will adopt inconsistent, even contradictory, positions solely to stymie Plaintiffs from
19 vindicating their individual claims. Plaintiffs have now been waiting for over five years to have their
20 claims against CLS adjudicated, having had their claims thwarted by CLS less than two months before
21 trial. CLS should not be permitted to adopt successive contradictory positions to deny Plaintiffs their
22 due process. Thus, the Court should immediately rectify this gross injustice by ordering CLS to pay

23 ⁴ A true and correct copy of the Motion for Consolidation of Arbitrations Pursuant to
24 CCP 1281.3 and for Clarification of the Court's Order of June 13, 2011 is attached to the
25 Request for Judicial Notice ("RJN") as Exhibit 4. This motion is procedurally defective for
26 two reasons: (a) the action in the *Iskanian* trial court is stayed pending appeal, and (b) after
dismissal of class claims, the *Iskanian* court is divested of personal jurisdiction over the
former class members.

27 ⁵ Ironically, CLS's arguments in support of consolidation echo the rationale for class actions,
28 argued by the plaintiff class in *Iskanian* – that individual arbitrations are impracticable, expensive
and inefficient to conduct a multiplicity of suits.

1 the requisite fees to AAA (along with all costs CLS is obligated to pay under the Agreement and AAA
2 rules) to conduct separate arbitrations with each individual Plaintiff. In the alternative, the Court may
3 prevent an unjust result by issuing a declaratory judgment invalidating or rescinding the Agreement on
4 equitable or unenforceability grounds, thereby permitting Plaintiffs to proceed in court on a class-wide
5 basis.

6 II. FACTS AND PROCEDURE

7 Plaintiffs previously belonged to a certified class in *Iskanian*, which was filed on August 4,
8 2006. In that action, plaintiff Arshavir Iskanian brought wage and hour claims on behalf of himself
9 and a class of similarly situated drivers currently or formerly employed by CLS, the largest provider of
10 chauffeured limousine services in California. (“Declaration of Raul Perez (“Perez Decl.”), ¶ 2.) In
11 early 2007, CLS moved for an order compelling individual arbitration, based on the Agreement
12 allegedly signed by Iskanian in 2004 (and all of the other unnamed class members at various times).
13 (Perez Decl., ¶ 3.) The *Iskanian* court granted the motion, which was immediately appealed.⁶ (Perez
14 Decl., ¶¶ 4-5.) While the appeal was pending, the California Supreme Court issued *Gentry v. Superior*
15 *Court*, 42 Cal. 4th 443 (2007), which promulgated a fact-intensive test to determine whether class
16 action waivers are enforceable. (Perez Decl., ¶ 6.) The Court of Appeal then reversed and remanded
17 with instructions to “apply *Gentry* to the factual record.” (*Iskanian*, Slip. op., at 4.) However, on
18 remand, CLS proceeded to litigate the matter as a class action. (Perez Decl., ¶ 8.) On August 24,
19 2009, the *Iskanian* trial court granted the plaintiff’s class certification motion, certifying five
20 subclasses with Iskanian appointed as class representative for each subclass. (Perez Decl., ¶ 9.)
21 Thereafter, the parties continued to litigate on a class-wide basis.

22 After four years of litigation, with the August 6, 2011 trial date fast approaching, on May 16,
23 2011 CLS filed a motion “for renewal” of its prior motion seeking to compel arbitration. (Perez Decl.,
24 ¶¶ 9-10.) In its Motion for Renewal, CLS invoked the U.S. Supreme Court’s recently issued *AT&T*
25 *Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) (“*Concepcion*”) to argue that the Federal

26 ⁶ *Iskanian v. CLS Transportation Los Angeles, LLC*, No. B198999 (Cal. Ct. App. 2d
27 Dist., May 27, 2008) (order remanding trial court’s order compelling arbitration for
28 application of the *Gentry* test). A true and correct copy of the slip opinion is attached to the
RJV as Exhibit 1.

1 Arbitration Act (“FAA”) preempted the rule in *Gentry*, and insisted that arbitration agreements “must
2 be enforced according to their terms” in all respects under the FAA. (Def.’s Mot. for Renewal, at
3 6:14-15, attached as Exhibit 2 to the RJN; *see also* Perez Decl., ¶11.) Specifically, CLS focused on
4 the class and representative action waivers, arguing that both should be enforced. (*Id.* at 6:15-17.) On
5 June 14, 2011, the trial court granted CLS’s motion and issued an order dismissing the class claims
6 and compelling Iskanian to individual arbitration. (*See* Order Granting Motion for Renewal, attached
7 as Exhibit 3 to the RJN.) Iskanian filed a timely notice of appeal of this order.⁷ (Perez Decl., ¶ 13.)

8 Beginning in August, 2011, a number of former *Iskanian* class members demanded individual
9 arbitration. (Perez Decl., ¶ 14.) These former class members first filed with ADR, which was
10 identified in paragraph 16(d) of the Agreement as a mutually acceptable arbitration provider. (Perez
11 Decl., ¶ 15.) CLS, however, rejected the validity of these arbitration demands, claiming by letter that
12 the Agreement “invokes the services of the American Arbitration Association and requires that the
13 parties follow AAA’s rules.” (Perez Decl., ¶ 16; a true and correct copy of the September 19, 2011
14 letter from CLS to ADR is attached as Exhibit B.) CLS then advised that “if the purported Plaintiffs
15 exist and seek to arbitrate, **they will need to file with AAA and tender the appropriate fees.**”
16 (Exhibit B (emphasis added).) The 63 individual employees chose to avoid further delay and expense
17 and agreed to arbitrate before CLS’s preferred arbitration organization, AAA. (Perez Decl., ¶ 17.)
18 Each individual plaintiff then promptly tendered the \$175.00 filing fee to AAA to begin separate
19 arbitration proceedings. (*Id.*)

20 Yet CLS again failed to abide by its own Agreement, this time by refusing to pay its share of
21 the filing fees owed to AAA, the only service it claims can administer the arbitration. CLS’s refusal to
22 pay its filing fees to commence arbitration is a material breach of its duties under the Agreement,
23 which provides:

24 Unless otherwise provided or permitted under applicable law, [CLS]
25 shall pay the arbitrator’s fee and any other type of expense or cost that
26 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.

27
28 ⁷ Notice of Appeal filed August 11, 2011, appellate no. B235138.

1 (Arbitration Agreement, ¶ 16(h) attached to the Perez Decl. as Exhibit A.) Under AAA rules, the
2 employer must pay a \$925.00 nonrefundable fee, along with a \$300 hearing fee, and all expenses
3 incurred by the arbitrator, among other fees. (AAA’s Employment Arbitration Rules and Mediation
4 Procedures, ¶ 48, attached to the RJN as Exhibit 5.)

5 CLS resorts to a number of contradictory excuses to justify its refusal to pay the non-
6 refundable fees for each individual arbitration. CLS initially suggested, without any evidence, that
7 Plaintiffs’ attorneys did not represent them and also that the arbitrations were stayed pending appeal.
8 (Perez Decl, ¶ 18; a true and correct copy of the October 10, 2011 letter from CLS to AAA is attached
9 as Exhibit C.) This was false, as ILG had obtained individual retainer agreements from each Plaintiff
10 beginning in July 2011 to early September 2011 to represent these Plaintiffs. (Perez Decl., ¶ 14.)
11 However, quickly abandoning the position that the action was stayed pending appeal, CLS filed a
12 motion for consolidation of the arbitrations. (A true and correct copy of this motion is attached to the
13 RJN as Exhibit 4; *see also* Perez Decl., ¶ 19.) The thrust of CLS’s motion for consolidation is that
14 individual arbitrations are too expensive and inefficient, and that CLS wants to avoid the possibility of
15 inconsistent judgments. (*See* Def.’s Mot. for Consolidation, at 8:20-10:15.) CLS’s newly stated
16 rationale departed from its prior position in compelling individual arbitration, when it argued that the
17 Court must give effect to the parties’ expectations embodied in the terms of the agreement. (Def.’s
18 Mot. for Renewal, at 6:4-8.)

19 After CLS repeatedly failed to tender arbitration fees, AAA finally determined not only that it
20 could not administer Plaintiffs’ individual arbitrations, but that it “must decline to administer any other
21 employment disputes with [CLS].” (Perez Decl., ¶ 19; a true and correct copy of the letter from AAA
22 to CLS is attached hereto as Exhibit D.) Thus, CLS’s bad-faith tactics have rendered the arbitration
23 Agreement unenforceable as written and leave Plaintiffs without a forum to adjudicate their claims.
24 This unjust result cannot be permitted. The Court should use its equitable powers to ensure that
25 Plaintiffs will be able to properly adjudicate their individual claims.

26 III. ARGUMENT

27 A. The Court Has Jurisdiction to Order Specific Performance of the Agreement

28 The Court has jurisdiction to hear and decide this issue. First, the Court has authority to issue

1 orders in aid of arbitration. Under paragraph 16(i) of the Arbitration Agreement, the Court is
2 empowered to render any orders in aid of arbitration as “nothing in this Policy/Agreement prohibits
3 either Party from seeking provisional remedies in court in aid of arbitration including temporary
4 restraining orders, preliminary injunctions and other provisional remedies.” This contractual authority
5 is supported by California statute, which grants a court authority to issue a preliminary injunction to
6 further the arbitration. CCP § 1281.8(a)(3).⁸ Under this provision, the court may issue injunctive
7 relief pending arbitration “if it is necessary to preserve the effectiveness of arbitration.” *Davenport v.*
8 *Blue Cross*, 52 Cal. App. 4th 435, 453 (1997).

9 Second, a party may bring an equitable motion seeking specific performance of an arbitration
10 agreement. *See Freeman v. State Farm Mut. Auto Ins. Co.*, 14 Cal. 3d 473, 479 (1975) (holding that
11 motion to compel performance of arbitration agreement is essentially an equitable motion for specific
12 performance). Because CLS has already successfully compelled arbitration but is now refusing to
13 comply with the trial court’s order or the terms of the Agreement, the Court may order CLS to perform
14 its obligations under the Agreement.

15 Third, the Court has authority rooted in case law to resolve a dispute regarding the
16 appointment of the arbitrator or the arbitrator’s fees. *Burgess v. Kaiser Found. Hosp.*, 16 Cal. App. 4th
17 1077, 1079 (1993). In *Burgess*, the plaintiff disagreed with the reservation fee requested by the
18 arbitrator, but instead of petitioning the court for a resolution on the fee dispute, plaintiff did nothing
19 for sixteen months. *Id.* at 1081. Finally, the arbitrator dismissed the action upon defendant’s request,
20 a dismissal affirmed by the trial court. *Id.* The *Burgess* court held that “[a]rbitration is intended to be
21 more expeditious than litigation...[a]ccordingly, if there is any delay by an arbitrator, the appropriate
22 remedy is not tolling of the five-year period, but rather a petition to the court for an appropriate order
23

24 ⁸ This California statutory provision does not run afoul of the FAA, which purportedly
25 governs this Agreement under Paragraph 16(f). *See Davenport*, 52 Cal. App. 4th at 452
26 (holding “a court may grant provisional relief pending arbitration under the FAA if the party
27 seeking the relief establishes the necessity of the injunction to preserve the status quo pending
28 arbitration in order to avoid nullification of the arbitration process.”); *see also Rosenthal v.*
Great Western Fin. Securities Corp., 14 Cal. 4th 394, 409 (1996) (holding that state rules
apply in state court unless the application of such rules would defeat the purpose and
objectives of the FAA). As the California rule here would facilitate rather than frustrate
arbitration, there conflict with the FAA.

1 expediting the arbitration proceeding.” *Id.*

2 By this motion, Plaintiffs seek exactly this “appropriate remedy” of petitioning the Court to
3 expedite the arbitration proceeding. As in *Burgess*, the delay in this case stemmed from a payment
4 dispute, only here the dilatory party is the defendant CLS, who refused to pay its share of the fees for
5 the very individual arbitrations it compelled. Indeed, even after each Plaintiff sent a demand to AAA
6 along with the \$175.00 per person payment, CLS still refused to meet its contractual obligations,
7 which provide that CLS must pay the arbitrator’s fee and “any other expense or cost unique to
8 arbitration.” (Arb. Agmt., ¶ 16(h).) CLS is thus required to pay the arbitration fees and can be ordered
9 to do so by this Court. Based on the foregoing, if the Court finds that the Agreement remains
10 enforceable, the Court should order CLS to comply with all of its terms, including the payment of
11 requisite fees, in order to give effect to the individual arbitrations.

12 B. The Court Should Order CLS to Specifically Perform the Arbitration
13 Agreement

14 1. The Court Should Enforce the Arbitration Agreements

15 If the Court finds that the Agreement remains enforceable, the Court should order CLS to
16 comply with all the terms of the Agreement, including the payment of fees for individual arbitrations.
17 A short summary of CLS’s conduct is instructive in illustrating the inequitable conduct at issue. In the
18 long-running *Iskanian* action, five subclasses were certified in 2009. However, after four years of
19 litigation and less than two months before trial, CLS renewed its motion to compel arbitration, arguing
20 that the court must ‘ensure that private arbitration agreements are enforced according to their terms.’
21 (Def.’s Mot. for Renewal, at 6:14-15, citing *AT&T Mobility LLC v. Conception*, 131 S. Ct 1740, 1748
22 (2011) (quoting *Volt Information Sciences v. Board of Trustees of Leland Stanford Junior Univ*, 489
23 U.S. 468, 478 (1989)). CLS highlighted language from the Agreement, including, “each of
24 EMPLOYEE and COMPANY shall only submit their own individual claims in arbitration and will
25 not seek to represent the interests of any other person.” (Def.’s Mot. for Renewal, at 2:17-19.)

26 CLS eventually prevailed on its argument that *Gentry* was preempted by the FAA under
27 *Concepcion*. Consequently, the *Iskanian* court dismissed the class claims with prejudice and ordered
28 plaintiff to individual arbitration. (Order Granting Mot. for Renewal, at 2, attached to the RJN as

1 Exhibit 3.)

2 While the *Iskanian* plaintiff appealed the ruling, certain former members of the decertified
3 class decided to take CLS at its word and demanded individual arbitration. However, faced with
4 parties who actually seek to arbitrate individually, CLS became evasive. First, CLS contended that
5 ADR, despite being identified in CLS's own form arbitration agreement as an acceptable provider of
6 arbitration, could not administer the arbitration. (Perez Decl., ¶ 16; Exhibit B.) When Plaintiffs
7 acceded to CLS's demands to conduct arbitration with AAA, CLS again refused to cooperate. (Perez
8 Decl., ¶ 18; Exhibit C.) CLS instead tried to box Plaintiffs in by adopting a new posture: that even
9 though Plaintiffs are precluded from conducting class-wide arbitration under CLS's Agreement,
10 Plaintiffs must nonetheless "consolidate" their arbitrations in spite the Agreement's express mandate
11 under paragraph 16(b) that parties shall "only submit their own individual claims in arbitration." (*See*
12 Exhibit C.) In other words, after vigilantly arguing that all disputes must be resolved through
13 individual arbitrations to defeat the class action, now that some employees have actually agreed to
14 individual arbitrations, CLS opposes that as well.

15 Aside from being fundamentally unfair and evidencing bad faith, CLS's position is belied by
16 the language in its own arbitration Agreement. Indeed, it was only by arguing that the Agreement
17 must be enforced "according to its terms" that CLS was able to defeat class arbitration. However, no
18 sooner had CLS obtained its desired forum did it shift to a second, contradictory posture. Where
19 individual arbitration was once the embodiment of the parties' expectations – the only forum which
20 CLS and employees purportedly agreed to avail themselves – the very same forum is now inefficient,
21 prohibitively expensive, and cannot govern the parties' dispute. (*See* Mot. to Consolidate Arbitrations,
22 at 8:20-10:15.) These two positions cannot be reconciled.

23 By now, it is clear that CLS's only consistent position is to do whatever it takes to deprive
24 Plaintiffs of a forum to adequately adjudicate their claims. To redress the effects of this bad faith
25 conduct, Court should order CLS to pay fees to AAA for separate arbitrations with each individual
26 Plaintiff.

27 2. Plaintiffs Have Also Satisfied Other Injunctive Relief Factors

28 Meeting traditional requirements for injunctive relief is not necessary because the Court has

1 independent statutory authority to issue an injunctive order to effectuate arbitration. Nonetheless,
2 Plaintiffs can alternatively obtain injunctive relief on statutory grounds. Under Code of Civ. Proc.
3 § 526(a)(3), an injunction may issue if “a party to the action is doing, or threatens, or is about to
4 do...some in act in violation of the rights of another party to the action. . .and tending to render the
5 judgment ineffectual.” In addition, an injunction may issue where legal remedy is inadequate, such as
6 when “compensation would not afford adequate relief.” Code of Civ. Proc. § 526(a)(4). Inadequate
7 legal remedy will be found “where it would be extremely difficult to ascertain the amount of
8 compensation which would afford adequate legal relief. Code Civ. Proc. § 526(a)(5).

9 These factors are satisfied here. Plaintiffs are left with no way of obtaining monetary damages
10 because no forum is available to adjudicate their claims to make such an award. *See Dept. of Fish &*
11 *Game v. Anderson-Cottonwood Irrig. Dist.*, 8 Cal. App. 4th 1554, 1564 (1992) (holding that an
12 injunction should be granted where monetary damages are prohibited by law). CLS is interfering with
13 its employees’ rights by preventing individual adjudication of their claims in any forum. This is
14 exactly the kind of violation of rights – in this case, Plaintiffs’ due process rights – that would render
15 judgment ineffectual. In these unusual circumstances, Plaintiffs could not even “render judgment”
16 against CLS, since CLS’s misconduct has stymied Plaintiffs from being able to resolve the dispute
17 altogether. Indeed, if Plaintiffs were to file a separate action to pursue their wage and hour class action
18 in court, CLS would likely invoke collateral estoppel based on its Motion for Renewal of Prior Motion
19 to Compel Arbitration to compel this action to arbitration – which CLS would then refuse to fund.
20 The end result is that Plaintiffs would be left in the same position – without a forum to resolve their
21 claims.

22 An injunction is both proper and necessary because Plaintiffs cannot obtain compensatory
23 damages. The monetary value of CLS breaching its own Agreement cannot be ascertained because it
24 is purely a forum-selection agreement. And a breach of the agreement will yield no liquidated
25 damages or compensatory damages that could be readily calculated. With no adequate legal remedy,
26 the Court is empowered to grant injunctive relief by ordering CLS to pay individual arbitration fees to
27 prevent gross injustice.

1 1. The Agreement Cannot Be Enforced Due to Impracticability.

2 Under California law, impracticability related to the difficulty and expense of performance
3 may provide grounds to excuse performance. *Kennedy v. Reece*, 225 Cal. App. 2d 717, 724-25
4 (1964). As *Kennedy* explained, the impracticability defense is an “enlargement of the meaning of
5 ‘impossibility’ as a defense.” *Id.* at 725. This doctrine may be invoked against contractual
6 enforcement, “[w]here, after a contract is made, a party’s performance is made impracticable without
7 his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which
8 the contract was made.” *Maudlin v. Pacific Decision Sciences Corp.*, 137 Cal. App. 4th 1001, 1017
9 (2006) (quoting Rest.2d Contracts, § 261).

10 Furthermore, under the FAA Section 2, general defenses to the enforceability of contracts are
11 preserved, and the Court may hold an arbitration agreement unenforceable under a valid contractual
12 enforcement defense. 9 U.S.C. § 2. *See also Doctor’s Assocs. v. Casarotto*, 517 U.S. 681, 687 (1996)
13 (“[G]enerally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied
14 to invalidate arbitration agreements without contravening § 2”). CLS’s Agreement requires AAA to
15 administer the arbitration, but, due to CLS’s chicanery, AAA now refuses to work with CLS.
16 Therefore, the Agreement cannot be enforced as it is written.

17 Through no fault of Plaintiffs, the Agreement now cannot be performed by either party. When
18 the *Iskanian* court granted CLS’s motion to compel individual arbitration, it did so after CLS
19 highlighted the principle purpose of the FAA, which is to ‘ensure that private arbitration agreements
20 are enforced according to their terms.’ (See Def. Mot. for Renewal, at 6:14-15, quoting *Conception*,
21 131 S. Ct at 1748.) However, CLS’s exalted, “most important” idea – that the terms of the Agreement
22 are the only ones that give effect to the parties’ expectations – must be consistently applied. If the
23 class and representative action waivers contained in the Agreement are to be enforced by Court, then
24 so too should all of the other terms.

25 One such term requires that only the AAA may administer the arbitration. Under paragraph
26 16(a) of the Agreement, the arbitration shall be governed by the “then-current dispute resolution rules
27 and procedures of the American Arbitration Association.” CLS reiterated this position in its letter
28 declining to arbitrate with ADR Services, stating that the “the arbitration agreement at issue invokes

1 the services of the American Arbitration Agreement (“AAA”), and requires that the parties follow
2 AAA’s rules.” (See Exhibit B.) Under the AAA rules, “when the parties agree to arbitrate under
3 these rules . . . they thereby authorize the AAA to administer the arbitration.” (AAA Emp. Arb. Rules
4 and Med. Proc., Rule 3.) CLS’s position was reinforced in *Maggio v. Windward Capital Management*
5 *Co.*, 80 Cal. App. 4th 1210, 1213 (2000), which held that only AAA can administer the arbitration
6 when an agreement sets forth that the arbitration is governed “according to AAA rules.” Thus, by the
7 narrow interpretation of the Agreement that CLS has urged, the only service that may administer the
8 arbitration is AAA.

9 However, due to CLS’s recalcitrance, AAA will no longer administer any arbitrations to
10 which CLS is a party, going so far as to demand that CLS “remove the AAA name from its arbitration
11 clauses so that there is no confusion to the company’s employees regarding our decision.” (Perez
12 Decl., ¶ 19; Exhibit D.) This development renders a material condition of the Agreement
13 impracticable – if not impossible – to perform. The parties currently have no means to submit their
14 arbitral claims to the appropriate administrative body, since the sole body authorized to do so, AAA,
15 now refuses to accept their submissions after it unequivocally rejected CLS as a customer. Because
16 the parties did not bargain for any other body to administer the arbitration, the Court may set aside the
17 Agreement under the general contract defense of impracticability or impossibility. Once the
18 Arbitration Agreement is set aside, the parties may again form a class for the purposes of proceeding
19 as a class action.

20 2. The Arbitration Agreement Must Be Set Aside Due to Equitable Estoppel

21 Equitable estoppel precludes a party from asserting rights “he otherwise would have had
22 against another” when his own conduct renders assertion of those rights contrary to equity. *Metalclad*
23 *Corp. v. Ventana Environmental Organizational Partnership*, 109 Cal. App. 4th 1705, 1713 (2003).
24 The elements of equitable estoppel are the following: (1) The party to be estopped must know the
25 facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the
26 estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be
27 ignorant of the true state of facts; and, (4) he must rely upon the conduct to his injury.” *Nicolopoulos v.*
28 *Super. Ct.*, 106 Cal. App. 4th 304, 311 (2003) (citation omitted).

1 This doctrine is “based on the theory that a party who by his declarations or conduct
2 misleads another to his prejudice should be estopped from obtaining the benefits of his
3 misconduct.” *Cotta v. City and County of San Francisco*, 157 Cal. App. 4th 1550, 1567 (2007). In
4 the arbitration context, equitable estoppel has applied where “a party who has *not* signed a contract
5 containing an arbitration clause may nonetheless be compelled to arbitrate when he seeks enforcement
6 of other provisions of the same contract that benefit him.” *Metalclad*, 109 Cal. App. 4th at 1713. The
7 principles of equitable estoppel should work in the converse as well, to prevent enforcement of an
8 arbitration agreement by a party which has selectively sought to enforce its provisions. Three separate
9 reasons exist for invalidating the Agreement under this doctrine.

10 First, equitable estoppel is invoked where a party seeks to benefit by taking contradictory
11 positions in bad faith. This is especially poignant as CLS deprived Plaintiffs of their class claims by
12 arguing that the terms of the agreement must be strictly enforced, yet now seeks relief from strict
13 enforcement of contract on the rationale of judicial efficiency and costs-savings, which echo policy
14 arguments in support of class actions.

15 Under Code of Civil Procedure 382, when “the question is one of common or general interest,
16 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
17 court, one or more may sue or defend for the benefit of all.” One reason for judicial preference of
18 class treatment is to avoid the high costs and inefficiencies associated with a multiplicity of suits:

19 Absent class treatment, each individual plaintiff would present in
20 separate, duplicative proceedings the same or essentially the same
21 arguments and evidence, including expert testimony. The result would
be a multiplicity of trials conducted at enormous expense to both the
judicial system and the litigants.

22 *Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 340 (2004).

23 Although CLS vigilantly attacked class treatment of Plaintiffs, it proffers exactly the same
24 rationale to support consolidation. CLS first argues that consolidation would “avoid repetitive,
25 separate arbitrations dealing with common issues of law and fact arising from the same set of facts.”
26 (Def.’s Mot. for Consolidation, at 9:7-9.) Then, CLS contends that consolidation would “avoid
27 unnecessary costs and delays” associated with individual arbitration. (*Id.* at 9:11-13.) Consolidation,
28 according to CLS, will also “avoid repetitive and overlapping discovery” that would result with

1 individual arbitrations. (*Id.* at 9:25-26.) By extolling the virtues of class treatment when convenient,
2 CLS inadvertently concedes that allowing the claims to proceed as class action is an appropriate and
3 fair remedy in light of CLS’s continuing gamesmanship. Indeed, if CLS is willing to engage in bad
4 faith conduct to further the interests of efficiency and cost-effectiveness, it should not complain if the
5 Court invalidates the arbitration agreement so that Plaintiffs’ claims *are* resolved more efficiently and
6 less expensively – as a class action.

7 Furthermore, when CLS moved to compel individual arbitration in *Iskanian*, it had no
8 intention of actually arbitrating the class’s employment claims individually, as its subsequent conduct
9 confirmed. Instead, CLS planned to default on the arbitrator’s fees in order to deprive Plaintiffs of the
10 arbitral forum it demanded (and which was contractually provided). By contrast, Plaintiffs simply
11 took CLS at its word and proceeded to individual arbitration when CLS insisted that the Agreement
12 provides for only this method to resolve their dispute. CLS clearly misrepresented its intentions, and
13 by doing so, prevented Plaintiffs from asserting their rights. Equitable estoppel should therefore apply
14 to prevent CLS from unjustly reaping benefits from its misconduct.

15 Separately, CLS’s subsequent conduct confirms that the fees provision, as stated in the
16 Agreement, is a sham designed solely to prevent the Agreement from being invalidated on grounds of
17 unconscionability. In California, an employee who signs an arbitration agreement as a condition of
18 employment cannot be asked to “bear any type of expense that the employee would not be required to
19 bear if he or she were free to bring the action in court.” *Armendariz v. Foundation Health Psychcare*
20 *Serv., Inc.*, 24 Cal. 4th 83, 110-111 (2000); *see also Gutierrez v. Autowest, Inc.*, 114 Cal. App. 4th 77,
21 90 (2003) (invalidating an agreement as unconscionable when a provision required a consumer to pay
22 the AAA initiation fee to arbitrate in an adhesion contract drafted by defendant). CLS’s inclusion of
23 such a term is an attempt to circumvent judicial scrutiny of its unconscionable arbitration system. CLS
24 presents its Agreement as obligating it, the employer, to pay the arbitrator’s fee – thus ensuring that the
25 Agreement will not be held unconscionable on that basis. Yet when the arbitrator’s fee actually comes
26 due, CLS refuses to pay it. Therefore, **in practice**, the fee provision is ineffective since CLS will not
27 comply with its terms. Instead, CLS chooses to pass the costs of arbitration to its employees, who are
28 forced by CLS’s breach into the expensive proposition of filing an action, and then a motion, in order

1 to enforce the fee terms.

2 The issue now before the Court is simply what to do with a party that now refuses to
3 participate in the individual arbitrations that it itself compelled. Because it is hard to imagine a more
4 clear-cut case of bad faith conduct than CLS's here, the Court should order an equitable remedy –
5 either to compel CLS to pay arbitration fees and participate in individual arbitration with each
6 individual Plaintiff, or to set aside the Agreement under equitable estoppel or the impossibility or
7 impracticability defense so that Plaintiffs may proceed to litigate their class claims in Court.

8 3. Rescission Is An Appropriate Remedy Under the Instant Facts

9 The court may order rescission as a provisional remedy when legal remedies would not
10 provide appropriate relief. *Lenard v. Edmonds*, 151 Cal. App. 2d 764, 769 (1957) (affirming that
11 rescission may issue as a provisional remedy on a breach of contract). As established above, the
12 traditional factors for injunctive relief are satisfied, and CLS has clearly breached the Agreement by
13 failing to tender fees for individual arbitration as required. Therefore, the Court may rescind the
14 Agreement so that the Parties may litigate their claims in court.

15 IV. CONCLUSION

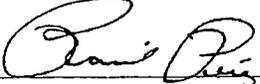
16 Based on the foregoing, the Court should order CLS to pay the arbitration fees and take all
17 necessary action to effectuate individual arbitrations with Plaintiffs. In the alternative, the Court
18 should set aside the Agreement because CLS is equitably estopped from enforcing the agreement, or
19 because the terms of the Agreement cannot be performed.

20 Dated: November 18, 2011

Respectfully submitted,

Initiative Legal Group APC

21
22
23 By: _____


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Conformed Copy
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10

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MUELLER, CARL SWARTZ, CASSANDRA
14 LINDSEY, CLEOPHUS COLLINS, DANIEL
ARAYA, DANIEL ROGERS MILLINGTON,
15 JR., DAROLD CALDWELL, DAVID
BARANCO, DAVID MONTOYA, DAWN
16 BINGHAM, EDWARD SMITH, EDWIN
GARCIA, ELIHA NORTON, FLAVIO
17 SILVA, FRANK G. DUBUY, GERALD
GRIFFIN, GLEN ALSTON, IGOR KROO,
18 JAMES C. DENISON, JAMES RICHMOND,
JAMES STERLING, JERRY BOYD, JIRO
19 FUMOTO, JOHNNIE EVANS, JONATHON
SCOTT, JULIUS FUNES, KAREN BAILEY,
20 KARIM SHARIF, KENNY CHENG, KUNG
MING CHANG, LAMONT CRAWFORD,
21 LEROY CLARK, LUIS EARNSHAW,
MARCIAL SAZO, MARQUEL ROSE,
22 MASOOD SHAFII, MATTHEW LOATMAN,
MIGUEL DE LA MORA, MYRON ROGAN,
23 NEIL BEN YAIR, PATER PAULL,
PATRICK COOLEY, RAFAEL
24 CANDELARIA, RAUL FUENTES,
REGINALD COLWELL, ROBERT
25 OLMEDO, ROGER PERRY, SCOTT
SULLIVAN, STEVE MAYNARD, SUSAN
26
27
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CASE NO. BC 473931

DECLARATION OF RAUL PEREZ IN
SUPPORT OF PLAINTIFFS' MOTION
FOR ORDER COMPELLING SPECIFIC
PERFORMANCE OF INDIVIDUAL
ARBITRATION; OR, IN THE
ALTERNATIVE, SETTING ASIDE THE
ARBITRATION AGREEMENT

[Filed concurrently with the Notice of Motion
and Motion for Order Compelling Specific
Performance of Individual Arbitration; or, in
the Alternative, Setting Aside the Arbitration
Agreement; Memorandum of Points and
Authorities in Support Thereof; the Request
for Judicial Notice; and [Proposed] Order]

Date: 2/10/11
Time: 8:30 AM
Place: D 42

Complaint Filed:

1 STELLMAN, THOMAS MARTIN, WAYNE
2 IKNER, WILLIAM BANKER, AND
3 WILLIAM PINKERTON,
4
5 Plaintiffs,
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7 vs.
8
9 CLS TRANSPORTATION LOS ANGELES
10 LLC, a Delaware corporation; and DOES 1
11 through 10, inclusive,
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13 Defendants.
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DECLARATION OF RAUL PEREZ IN SUPPORT OF PLAINTIFFS' MOTION FOR ORDER COMPELLING SPECIFIC PERFORMANCE OF INDIVIDUAL ARBITRATION; OR, IN THE ALTERNATIVE, SETTING ASIDE THE ARBITRATION AGREEMENT

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DECLARATION OF RAUL PEREZ

I, Raul Perez, declare:

1. I am an attorney admitted to the Bar of the State of California. I am an attorney at Initiative Legal Group APC (ILG), counsel of record for the above named Plaintiffs (“Plaintiffs”) in this action. I make this declaration in support of Plaintiffs’ Motion for Order Compelling Specific Performance of Individual Arbitration; or, in the Alternative, Setting Aside the Arbitration Agreement. 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.

2. On August 4, 2006, Plaintiff Arshavir Iskanian (“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. On information and belief, CLS is the largest provider of chauffeured limousine services in California.

3. On or about February 9, 2007, Defendants moved for an order compelling individual arbitration based on the form Proprietary Information and Arbitration Policy/Agreement (“Agreement”) signed by Iskanian and putative class members as a condition of their employment. A true and correct copy of the Agreement is attached hereto as **Exhibit A**. On information and belief, not all Plaintiffs signed the Agreement, but paragraph 17 of the Agreement states that the terms of the Agreement are binding on all employees irrespective of signing.

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

5. On or about May 11, 2007, Plaintiff immediately appealed the *Iskanian* Court’s decision in the California Court of Appeals, Second Appellate District, Case No. B198999.

6. 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.

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

1 the record. (A true and correct copy of the Slip Opinion is attached to the concurrently filed
2 Request for Judicial Notice (“RJN”) as Exhibit 1.)

3 8. On remand, CLS, apparently conceding that the *Gentry* factors would be satisfied,
4 decided to proceed to litigate the matter in state court.

5 9. On or about August 24, 2009, the *Iskanian* trial court granted Plaintiff’s contested
6 class action motion, certifying five subclasses with *Iskanian* appointed as class representative for
7 each subclass.

8 10. The parties continued to litigate on a classwide basis, with a trial date set for
9 August 6, 2011.

10 11. On May 16, 2011, less than sixty days before trial, CLS filed a Motion for Renewal
11 of Its Prior Motion for Order Compelling Arbitration. (A true and correct copy of this Motion is
12 attached to the RJN as Exhibit 2.) In the Motion for Renewal, CLS invoked the U.S. Supreme
13 Court’s then-issued *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) to argue that
14 *Gentry* has been preempted. CLS also insisted in this motion that agreements “must be enforced
15 according to their terms” under the Federal Arbitration Act.

16 12. On or about June 14, 2011, the Court granted Defendant’s motion and issued an
17 order dismissing class claims and compelling *Iskanian* to individual arbitration.

18 13. On or about August 11, 2011, *Iskanian* filed a notice of appeal based on the trial
19 court’s order compelling individual arbitration.

20 14. Beginning August 2011, former *Iskanian* class members Greg Kempler, Adrien
21 Warren, Anantray Sanathara, Angelo Garcia, Arthur Post, Avaavau Toailoa, Belinda Washington,
22 Bennett Sloan, Bruce Gold, Carl Mueller, Carl Swartz, Cassandra Lindsey, Cleophus Collins,
23 Daniel Araya, Daniel Rogers Millington, Jr., Darold Caldwell, David Baranco, David Montoya,
24 Dawn Bingham, Edward Smith, Edwin Garcia, Elijha Norton, Flavio Silva, Frank G. Dubuy,
25 Gerald Griffin, Glen Alston, Igor Kroo, James C. Denison, James Richmond, James Sterling, Jerry
26 Boyd, Jiro Fumoto, Johnnie Evans, Jonathon Scott, Julius Funes, Karen Bailey, Karim Sharif,
27 Kenny Cheng, Kung Ming Chang, Lamont Crawford, Leroy Clark, Luis Earnshaw, Marcial Sazo,

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1 Marquel Rose, Masood Shafii, Matthew Loatman, Miguel De La Mora, Myron Rogan, Neil Ben
2 Yair, Pater Paull, Patrick Cooley, Rafael Candelaria, Raul Fuentes, Reginald Colwell, Robert
3 Olmedo, Roger Perry, Scott Sullivan, Steve Maynard, Susan Stellman, Thomas Martin, Wayne
4 Ikner, William Banker, and William Pinkerton retained ILG to represent them in their efforts.
5 Retainer agreements were signed beginning in July 2011 to early September 2011. Each Plaintiff
6 sought to resolve his or her dispute through individual arbitration with CLS.

7 15. Beginning in August, 2011, each Plaintiff filed a demand for arbitration with ADR
8 Services, Inc., which was named in the Agreement as a mutually accepted provider.

9 16. In a letter to ADR Services, Inc. dated September 19, 2011, CLS's counsel
10 Yessenia Gallegos rejected the validity of Plaintiffs' arbitration demands, maintaining that the
11 American Arbitration Association ("AAA") was the sole arbitrator under the Agreement. A true
12 and correct of the September 19, 2011 Letter from Gallegos to Terry Shea, Arbitration
13 Coordinator for ADR Services, Inc. is attached hereto as **Exhibit B**.

14 17. Beginning in September, 2011, and to avoid further delay and expense, each
15 Plaintiff tendered a \$175.00 filing fee and demanded separate arbitration proceedings with AAA.

16 18. In a letter to AAA dated October 10, 2011, CLS's counsel confirmed that CLS will
17 not pay the nonrefundable fee of \$52,275 to AAA that it was obligated to pay under both its own
18 Agreement and the AAA rules,¹ which call for the employer to pay a \$925 refundable fee per
19 arbitration. A true and correct copy of this letter from Gallegos to Adam Shoneck, Intake
20 Specialist for AAA is attached as **Exhibit C**. Instead, in this letter, CLS offered numerous reasons
21 for its refusal to pay, including "claimants are part of a class action that is currently on appeal" and
22 "we have not received anything authoritative confirming that claimants have opted out of the
23 class." CLS then argued that the arbitrations should be consolidated.

24 19. On October 20, 2011, AAA sent a letter to Plaintiffs' counsel and CLS counsel
25 stating unequivocally that, because CLS "has not complied with [AAA's] request to pay the
26 requisite administrative fees in accordance with the employer-promulgated plan fee schedule, we
27

28 ¹ A true and correct copy of the current AAA rules is attached to the Request for Judicial Notice as Exhibit 5.

1 must decline to administer any other employment disputes involving this company.” AAA further
2 added that CLS “remove the AAA name from its arbitration clauses so that there is no confusion
3 to the company’s employees regarding our decision.” A true and correct copy of the October 20,
4 2011 letter from Adam Shoneck, Intake Specialist for AAA, to Raul Perez and CLS’s counsel
5 David Faustman is attached hereto as **Exhibit D**.

6 20. Although CLS alleged that the action is stayed in the trial court pending the appeal,
7 Defendant filed a motion for consolidation of arbitrations on October 27, 2011. In this motion,
8 CLS argues that individual arbitrations are too expensive and inefficient and consolidation is
9 needed to avoid the possibility of inconsistent judgments. (This motion is attached to the RJN as
10 Exhibit 4.)

11 21. Plaintiffs are left without a forum to individually resolve their claims, which
12 necessitate court intervention.

13 I declare under penalty of perjury under the laws of the State of California and the United
14 States of America that the foregoing is true and correct. Executed this 18th day of November,
15 2011, at Los Angeles, California.

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17 _____
18 Raul Perez

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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 INFORMATION.

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.

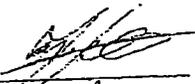
h. Unless otherwise provided or permitted under applicable law, COMPANY shall pay the arbitrator's fee and any other type of expense or cost that EMPLOYEE would not be required to bear if he or she were free to bring the dispute or claim in court as well as any other expense or cost that is unique to 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.

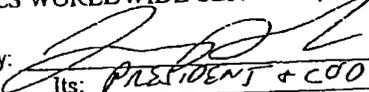
17. COMPANY POLICY. The foregoing provisions of this Policy/Agreement are binding upon EMPLOYEE and COMPANY irrespective of whether EMPLOYEE and/or COMPANY signs this Policy/Agreement. The terms and conditions of this Policy/Agreement describe some of COMPANY'S policies and procedures and supplement 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 AVE. N. HOL. CAL. 91605
Date: 12-21, 2004

CLS WORLDWIDE SERVICES, LLC

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

Los_Angeles:362501.2 820000.1634

EXHIBIT B



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

DATE: SEPTEMBER 19, 2011

FACSIMILE TRANSMITTAL SHEET

TO: Raul Perez, Esq. and	COMPANY: Initiative Legal Group	FAX NUMBER: 310-861-9051	PHONE NUMBER: 310-556-5637
FROM: Yesenia Gallegos	PHONE NUMBER: (310) 598-4159	EMAIL: ygallegos@foxrothschild.com	BILLING NUMBER:
NUMBER OF PAGES: 3	CHARGE FILE #: 15135-00005	PRIORITY: REGULAR	LOG NUMBER:

**IF YOU DO NOT RECEIVE ALL OF THE PAGES,
PLEASE CALL (310) 598-4150 AS SOON AS POSSIBLE.
ORIGINAL DOCUMENT WILL FOLLOW BY MAIL**

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY FOR YOUR INFORMATION

NOTES/COMMENTS:

Arshavit Iskanian v. CLS Transportation

Attached please find correspondence of today's date.

IRS CIRCULAR 230 DISCLOSURE:

PURSUANT TO TREASURY REGULATIONS, ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED OR RELIED UPON BY YOU OR ANY OTHER PERSON, FOR THE PURPOSE OF (i) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX ADVICE ADDRESSED HEREIN.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

L A I 87267v1 05/26/11



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

A Pennsylvania Limited Liability Partnership

California

Connecticut

Delaware

Florida

Nevada

New Jersey

New York

Pennsylvania

Ms. Shea
September 19, 2011
Page 2

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

Ms. Shea
September 19, 2011
Page 3

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,

A handwritten signature in black ink, appearing to read 'Yesenia Gallegos', with a stylized, cursive script.

Yesenia Gallegos

cc: Raul Perez, Esq.

EXHIBIT C



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

A Pennsylvania Limited Liability Partnership

California Connecticut Delaware District of Columbia Florida Nevada New Jersey New York Pennsylvania

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<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Raul Perez (SBN 174687); Melissa Grant (SBN 205633) Initiative Legal Group APC, Suzy E. Lee (SBN 271120) 1800 Century Park East, Second Floor Los Angeles, California 90067 TELEPHONE NO.: (310) 556-5637 FAX NO. (Optional): (310) 861-9051 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff Arshavir Iskanian, et al.</p>	<p>FOR COURT USE ONLY</p> <p>FILED Superior Court of California County of Los Angeles</p> <p>NOV 21 2011</p> <p>John A. Clarke, Executive Officer/ Clerk By <u>M. Soto</u>, Deputy MOSES SOTO</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street, California 90012 CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse - Central District</p>	
<p>PLAINTIFF/PETITIONER: Arshavir Iskanian, et al.</p>	<p>CASE NUMBER: BC 356521</p>
<p>DEFENDANT/RESPONDENT: CLS Transportation Los Angeles LLC</p>	<p>JUDICIAL OFFICER: Judge Robert L. Hess</p>
<p>NOTICE OF RELATED CASE</p>	<p>DEPT.: 24</p>

BY FAX

BY FAX

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: GREG KEMPLER vs. CLS TRANSPORTATION LOS ANGELES
- b. Case number: BC 473931
- c. Court: same as above
 other state or federal court (name and address):
- d. Department: 42
- e. Case type: limited civil unlimited civil probate family law other (specify):
- f. Filing date: 11/18/2011
- g. Has this case been designated or determined as "complex?" Yes No
- h. Relationship of this case to the case referenced above (check all that apply):
 - involves the same parties and is based on the same or similar claims.
 - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
 - involves claims against, title to, possession of, or damages to the same property.
 - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 - Additional explanation is attached in attachment 1h
- i. Status of case:
 - pending
 - dismissed with without prejudice
 - disposed of by judgment
2. a. Title:
- b. Case number:
- c. Court: same as above
 other state or federal court (name and address):
- d. Department:

PLAINTIFF/PETITIONER: Arshavir Iskanian, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: CLS Transportation Los Angeles LLC	BC 356521

2. (continued)

e. Case type: limited civil unlimited civil probate family law other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?" Yes No

h. Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 2h

i. Status of case:

- pending
- dismissed with without prejudice
- disposed of by judgment

3. a. Title:

b. Case number:

c. Court: same as above
 other state or federal court (name and address):

d. Department:

e. Case type: limited civil unlimited civil probate family law other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?" Yes No

h. Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 3h

i. Status of case:

- pending
- dismissed with without prejudice
- disposed of by judgment

4. Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: November 21, 2010

Raul Perez

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)



(SIGNATURE OF PARTY OR ATTORNEY)

SHORT TITLE: Arshavir Iskanian, et al. v. CLS Transportation Los Angeles LLC	CASE NUMBER: BC 356521
---	---------------------------

1 Attachment 1h to Notice of Related Case:

2 The Kempler v. CLS Transportation Los Angeles, LLC (BC 473931) case relates to the Iskanian

3 v. CLS Transportation Los Angeles, LLC (BC 356521- consolidated w/BC381065) action in two ways:

4 (1) The Kempler Plaintiffs are former class members previously certified in the Iskanian action.

5 (2) Kempler Plaintiffs' claims arise from CLS's failure to comply with an order in the Iskanian matter

6 dismissing the class claims and ordering individual arbitration. The causes of action relate to

7 Defendant's failure to conduct individual arbitration with Plaintiffs.

8 However, it is important to note that the Iskanian action is stayed pending appeal, while the

9 Kempler Plaintiffs have opted out and are pursuing individual arbitration.

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26 *(Required for verified pleading)* The items on this page stated on information and belief are *(specify item numbers, not line numbers)*:

27

Page _____

PLAINTIFF/PETITIONER: Arshavir Iskanian, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: CLS Transportation Los Angeles LLC	BC 356521

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

Initiative Legal Group APC, 1800 Century Park East, Second Floor, Los Angeles, California 90067

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and *(check one)*:

- a. deposited the sealed envelope with the United States Postal Service.
- b. placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

- a. on *(date)*: November 21, 2011
- b. from *(city and state)*: Los Angeles, California

4. The envelope was addressed and mailed as follows:

- | | |
|---|--|
| a. Name of person served:
David F. Faustman, FOX ROTHSCHILD
Street address: 1800 Century Park East, #300
City: Los Angeles
State and zip code: California 90067 | c. Name of person served:

Street address:
City:
State and zip code: |
|---|--|

- | | |
|--|--|
| b. Name of person served:

Street address:
City:
State and zip code: | d. Name of person served:

Street address:
City:
State and zip code: |
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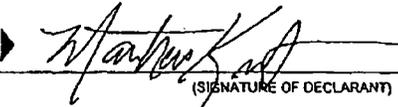
Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

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

Date: November 21, 2011

Matthew Krout

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

1 Raul Perez (SBN 174687)
RPerez@InitiativeLegal.com
2 Melissa Grant (SBN 205633)
MGrant@InitiativeLegal.com
3 Suzy E. Lee (SBN 271120)
SuzyLee@InitiativeLegal.com
4 INITIATIVE LEGAL GROUP APC
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiffs

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

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, ELIJHA NORTON, FLAVIO
SILVA, FRANK G. DUBUY, GERALD
GRIFFIN, GLEN ALSTON, IGOR KROO,
JAMES C. DENISON, JAMES RICHMOND,
JAMES STERLING, JERRY BOYD, JIRO
FUMOTO, JOHNNIE EVANS, JONATHON
SCOTT, JULIUS FUNES, KAREN BAILEY,
KARIM SHARIF, KENNY CHENG, KUNG
MING CHANG, LAMONT CRAWFORD,
LEROY CLARK, LUIS EARNSHAW,
MARCIAL SAZO, MARQUEL ROSE,
MASOOD SHAFII, MATTHEW LOATMAN,
MIGUEL DE LA MORA, MYRON ROGAN,
NEIL BEN YAIR, PATER PAULL,
PATRICK COOLEY, RAFAEL
CANDELARIA, RAUL FUENTES,
REGINALD COLWELL, ROBERT

Case No.: BC473931

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

**AMENDED NOTICE OF MOTION AND
MOTION FOR ORDER COMPELLING
SPECIFIC PERFORMANCE OF
INDIVIDUAL ARBITRATION; OR, IN
THE ALTERNATIVE, SETTING ASIDE
THE ARBITRATION AGREEMENT**

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

Complaint Filed: November 18, 2011

CONFIRMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DEC 20 2011

John A. Clarke, Executive Officer/Clerk
BY Raul Sanchez, Deputy

BT FAX

1 OLMEDO, ROGER PERRY, SCOTT
2 SULLIVAN, STEVE MAYNARD, SUSAN
3 STELLMAN, THOMAS MARTIN, WAYNE
4 IKNER, WILLIAM BANKER, AND
5 WILLIAM PINKERTON,

6 Plaintiffs,

7 vs.

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

11 Defendants.

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1 **TO DEFENDANT CLS TRANSPORTATION LOS ANGELES LLC AND ITS ATTORNEY**
2 **OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** on February 7, 2012 at 8:30 a.m. in Department 24 in
4 the above-captioned court, located at 111 North Hill Street, Los Angeles, California, 90012, the
5 Plaintiffs named above will, and hereby do move the Court for an order for compelling specific
6 performance of individual arbitration; or, in the alternative, setting aside the arbitration agreement.
7 Once the case is assigned to a judge in the above-captioned court, Plaintiffs will file and serve an
8 amended notice of this motion setting forth the date, time and place of hearing.

9 Plaintiffs' motion is made pursuant to California Code of Civil Procedure §§ 526,
10 1281.8(a)(3) and the Court's equitable powers to specifically enforce the agreements for individual
11 arbitration ("Agreement"). Specifically, Defendant has breached the Agreement with Plaintiffs by first
12 compelling individual arbitration in Court, causing Plaintiffs' class claims to be dismissed, and then
13 refusing to participate in individual arbitration when Plaintiffs attempted to comply with the Court
14 Order. Defendant has taken specific acts, memorialized in writing, which repudiates the same
15 Agreement that Defendant previously attempted to enforce in Court. Equity and justice would not
16 permit Defendant to take contradictory positions in order to deny Plaintiffs a forum to pursue their
17 claims. Thus, Plaintiffs seek an order to secure an appropriate forum to adjudicate their claims.

18 In the alternative, Plaintiffs moves to have the Court revoke, rescind, or set aside the
19 Agreement pursuant to Code of Civil Procedure § 1281.2(b) and the court's equitable powers. This
20 alternative remedy is made on three grounds. First, due to Defendant's intransigence, the only body
21 contractually permitted to administer the arbitration, the American Arbitration Association, now flatly
22 refuses to conduct business with Defendant. Due to this impracticable condition, the Arbitration
23 cannot be performed and thus the Agreement should be set aside to allow Plaintiffs to pursue their
24 claims in Court. Second, Defendant has taken contradictory positions in Court, which is contrary to
25 equity, in a clear attempt to deprive Plaintiffs of their due process. Though Defendant had heavily
26 litigated a certified class action for four years, Defendant suddenly insisted that all matters must be
27 resolved through individual arbitration within sixty days of trial. It then successfully compelled
28

1 individual arbitration of the named Plaintiff, with the remaining class members' claims dismissed.
2 When Plaintiffs demanded individual arbitration, Defendant resisted, refusing to tender the requisite
3 fees. Defendants finally filed a procedurally defective motion to consolidate the arbitration demands
4 on grounds of efficiency and cost-effectiveness – which are the same bases for class actions.
5 Defendant must thus be estopped from enforcing the Agreement since it had taken contradictory legal
6 positions in an effort to deprive Plaintiffs of the right to adjudicate their claims.

7 Lastly, the Agreements should be rescinded on the simple ground that Defendant
8 unmistakably breached the Agreement by failing to tender arbitration fees. Rescission is thus the
9 most appropriate remedy to restore Plaintiffs' rights. On any one of the three foregoing grounds,
10 the Court should revoke, rescind, or set aside the Agreement and grant Plaintiffs leave to amend
11 the complaint to allege their class wage and hour claims in this action.

12 Plaintiffs' Motion is based on this Notice of Motion, the accompanying Memorandum of
13 Points and Authorities, the declaration of Raul Perez and all exhibits attached thereto, the Request
14 for Judicial Notice and all exhibits attached thereto, all pleadings and papers on file in this action
15 and in the related action *Iskanian v. CLS Transportation Los Angeles LLC*, Los Angeles Superior
16 Court Case No. BC356521, and such other matters as may be presented to the Court at or before
17 the time of the hearing.

18

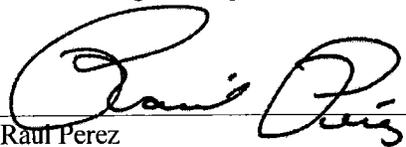
19 Dated: December 20, 2011

Respectfully submitted,

Initiative Legal Group APC

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22

By: 

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Melissa Grant
Suzy E. Lee

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Attorneys for Plaintiffs

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9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

FOR THE COUNTY OF LOS ANGELES

11

12 GREG KEMPLER, ADRIEN WARREN,
ANANTRAY SANATHARA, ANGELO
13 GARCIA, ARTHUR POST, AVAAVAU
TOAILOA, BELINDA WASHINGTON,
14 BENNETT SLOAN, BRUCE GOLD, CARL
MUELLER, CARL SWARTZ, CASSANDRA
15 LINDSEY, CLEOPHUS COLLINS, DANIEL
ARAYA, DANIEL ROGERS MILLINGTON,
16 JR., DAROLD CALDWELL, DAVID
BARANCO, DAVID MONTOYA, DAWN
17 BINGHAM, EDWARD SMITH, EDWIN
18 GARCIA, ELIJHA NORTON, FLAVIO
SILVA, FRANK G. DUBUY, GERALD
19 GRIFFIN, GLEN ALSTON, IGOR KROO,
20 JAMES C. DENISON, JAMES RICHMOND,
JAMES STERLING, JERRY BOYD, JIRO
21 FUMOTO, JOHNNIE EVANS, JONATHON
SCOTT, JULIUS FUNES, KAREN BAILEY,
22 KARIM SHARIF, KENNY CHENG, KUNG
MING CHANG, LAMONT CRAWFORD,
23 LEROY CLARK, LUIS EARNSHAW,
24 MARCIAL SAZO, MARQUEL ROSE,
MASOOD SHAFII, MATTHEW LOATMAN,
25 MIGUEL DE LA MORA, MYRON ROGAN,
26 NEIL BEN YAIR, PATER PAULL,
PATRICK COOLEY, RAFAEL
27 CANDELARIA, RAUL FUENTES,
REGINALD COLWELL, ROBERT
28

Case No.: BC473931

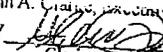
[Assigned to Hon. Robert L. Hess; Ordered
Related to BC356521]

**NOTICE OF RULING RE: RELATED
CASES**

Complaint Filed: November 18, 2011

**CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

DEC 21 2011

John A. Craig, Executive Officer/Clerk
BY  Deputy
Glorietta Robinson

1 OLMEDO, ROGER PERRY, SCOTT
2 SULLIVAN, STEVE MAYNARD, SUSAN
3 STELLMAN, THOMAS MARTIN, WAYNE
4 IKNER, WILLIAM BANKER, AND
5 WILLIAM PINKERTON,

6 Plaintiffs,

7 vs.

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

11 Defendants.

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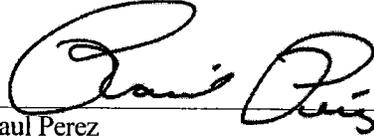
1 **TO DEFENDANT CLS TRANSPORTATION LOS ANGELES LLC AND ITS**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** on December 16, 2011 the Court issued a minute order
4 relating case number BC356521 and BC473921 under CRC 3.300. Furthermore, the Court
5 ordered case number BC473921 transferred to Judge Robert L. Hess in Department 24 for all
6 purposes. All hearing dates in Department 42 are vacated and must be reset in Department 24.
7 Both cases are set for status conference at 8:30 a.m. on January 6, 2012.

8 Attached as Exhibit A please find a true and correct copy of the Court's minute order.

9
10 Dated: December 21, 2011

Respectfully submitted,
Initiative Legal Group APC

11
12
13 By: 
14 Raul Perez
15 Melissa Grant
16 Suzy E. Lee

Attorneys for Plaintiffs

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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/16/11

DEPT. 24

HONORABLE Robert L. Hess

JUDGE G. Charles

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. Bell

C/A

Deputy Sheriff

None

Reporter

1:30 pm

BC473931

Plaintiff
Counsel

GREG KEMPLER

No Appearance

Defendant
Counsel

VS

CLS TRANSPORTATION LOS ANGELES

R/t BC356521

NATURE OF PROCEEDINGS:

COURT ORDER

It appears that LASC cases BC356521 and BC472921 are related within the meaning of CRC 3.300. Good cause appearing, case BC473931 is ordered transferred forthwith the the calendar of Judge Robert Hess in Department 24 for all purposes. All hearing dates in Dept. 42 are vacated and must be reset in Department 24. Both cases are set for status conference at 8:30am January 6, 2012.

A copy of the minute order is sent via U.S. mail addressed to moving party, who is to give notice.

Raul Perez
Initiative Legal Group
1800 Century Park East
Second Floor
Los Angeles, CA 9067

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of
4 18 and not a party to the within suit; my business address is 1800 Century Park East, 2nd Floor,
Los Angeles, California 90067.

5 On **December 21, 2011**, I served the document described as: **NOTICE OF RULING RE:
6 RELATED CASES** on the interested parties in this action by sending on the interested
parties in this action by sending the original [or] a true copy thereof to interested
7 parties as follows [or] [.] as stated on the attached service list:

8 **SEE ATTACHED SERVICE LIST**

9 **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
10 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
11 Service that same day in the ordinary course of business with postage thereon fully
prepaid at Los Angeles, California.

12 **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-
13 mail address or e-mail of record in this action.

14 **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
15 record in this action.

16 **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope,
by hand to the offices of the addressee(s) named herein.

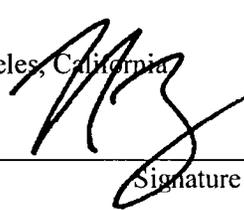
17 **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of
18 collection and processing correspondence for overnight delivery. Under that practice,
overnight packages are enclosed in a sealed envelope with a packing slip attached
19 thereto fully prepaid. The packages are picked up by the carrier at our offices or
delivered by our office to a designated collection site.

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

22 Executed this **December 21, 2011**, at Los Angeles, California

23 Navid Zivari

24 Type or Print Name



24 Signature

SERVICE LIST

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

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 providers. 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	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.

<p align="center">MINUTES ENTERED 02/07/12 COUNTY CLERK</p>

Conformed Copy

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7 Attorneys for Plaintiffs

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10
11 GREG KEMPLER, et al.,

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: BC473931

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

**PLAINTIFFS' MOTION FOR AN ORDER
DEEMING DEFENDANT CLS TO HAVE
WAIVED ARBITRATION**

Date: September 25, 2012

Time: 8:30 a.m.

Place: Department 24

Complaint Filed: November 18, 2011

CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

AUG 31 2012

John A. Clarke, Executive Officer/Clerk
BY *Cristina Grialva* Deputy
Cristina Grialva

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Sink v. Aden Enterprises, Inc., 352 F.3d 1197 (9th Cir. 2003)7

OTHER AUTHORITIES

9 U.S.C. § 1 *et seq.* (Arb. Act (FAA)).....2

1 I. INTRODUCTION

2 CLS has repudiated the arbitration agreements into which it entered with 19 of the
3 Plaintiffs.¹ Without any contractual, statutory or equitable basis for doing so, CLS has refused
4 to participate in arbitration with these Plaintiffs and has instructed the American Arbitration
5 Association (“AAA”) not to proceed with arbitration. As to these 19 Plaintiffs, all arbitration
6 filing fees have been paid and a mutually acceptable arbitrator has been identified. For these
7 19 individuals, nothing further remains to be done before the commenced arbitration
8 proceeds—they are prepared to begin arbitration immediately. However, in what has become
9 a year-long campaign clearly designed to delay the proceedings indefinitely, CLS has refused
10 to proceed with arbitration for the 19 Plaintiffs until arbitrators are selected for the other
11 claimants. There is simply no legal or logical basis for doing so.

12 For over a year (arbitration demands were first filed in August 2011), Plaintiffs have
13 attempted to arbitrate their claims against CLS, only to be thwarted at every turn. CLS has
14 relied on an ever-changing array of excuses for delaying the proceedings. CLS has alternately
15 argued that all arbitrators had to be selected before it would pay its share of the filing fees,
16 that the arbitrations had to be consolidated before it would pay its share of fees, that
17 arbitration should not proceed until Plaintiffs prove they are represented by counsel, that
18 Plaintiffs should prove that they are aware of the arbitration claims, and that arbitration could
19 not proceed while settlement offers are pending. Now, CLS argues that the 19 Plaintiffs who
20 are ready to arbitrate, as to whom all fees have been paid and arbitrators have been selected,
21 should have their arbitration claims delayed further until **all** arbitrators are selected for **all**
22 **other** claimants.²

23 The 19 Plaintiffs have repeatedly been denied a forum in which to vindicate their
24 rights. Indeed, CLS has made a mockery of the arbitration process by attempting to
25

26 ¹ Moving Plaintiffs are 19 of the 63 Named Plaintiffs. The moving Plaintiffs are
27 identified in paragraph 14 of the Declaration of Raul Perez. Further, the 19 Plaintiffs are
periodically referred to as “Claimants”.

28 ² Although Plaintiffs wished to conduct arbitration before separate arbitrators, based on
the Court’s feedback, Plaintiffs proposed a much more limited number of arbitrators to preside
over their individual arbitrations.

1 unilaterally dictate how the arbitrations should be handled, and when it does not get its way, it
2 forces AAA to stop the proceedings. The California Court of Appeal recently clarified that
3 this exact type of conduct can waive arbitration--even after arbitration has been compelled.
4 Based on this recent controlling authority, CLS has waived arbitration as to the 19 Plaintiffs
5 who have been ready to commence arbitration for over a year. Plaintiffs therefore respectfully
6 request that the Court issue an order deeming CLS having waived arbitration as to these 19
7 Plaintiffs.

8 **II. FACTS AND PROCEDURE**

9 **A. Inception Of The Action**

10 Plaintiffs previously belonged to a certified class in *Iskanian v. CLS Transportation*
11 *Los Angeles LLC*, Los Angeles Superior Court Case No. BC356521, which was filed on
12 August 4, 2006 and which asserted class-wide wage and hour claims against CLS, the largest
13 provider of chauffeured limousine services in California. (Declaration of Raul Perez [“Perez
14 Decl.”] ¶ 2.) CLS moved to compel individual contractual arbitration; the motion was granted
15 on March 13, 2007 and the plaintiffs appealed on May 11, 2007. (*Id.* ¶¶ 3-5.) The California
16 Supreme Court decided *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007) while the appeal was
17 pending, and the Court of Appeal reversed and remanded on May 27, 2008 with instructions
18 to “apply *Gentry* to the factual record.” (*Id.* ¶¶ 6-7.) However, on remand, CLS abandoned
19 its bid for arbitration and proceeded to litigate the matter as a class action. (*Id.* ¶ 8.) The class
20 in *Iskanian* was certified on August 24, 2009, after which the parties continued to litigate on a
21 class-wide basis. (*Id.* ¶¶ 9-10.) The court set a trial for August 6, 2011. (*Id.*)

22 On May 16, 2011, CLS moved for renewal of its prior motion to compel arbitration
23 under *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) (“*Concepcion*”), which
24 purportedly held, by analogy, that the Federal Arbitration Act (“FAA”) pre-empted *Gentry*.
25 (Perez Decl. ¶ 11.) The Court granted CLS’s motion on June 14, 2011, compelling individual
26 arbitration and dismissing the class claims. (*Id.* ¶ 12.) *Iskanian* appealed. (*Id.* ¶ 13.) On June
27 4, 2012 the Court of Appeal affirmed the Court’s order. The *Iskanian* opinion is currently the
28 subject of a Petition for Review to the California Supreme Court. (*Id.*)

1 **B. CLS's History Of Delay Tactics**

2 In August 2011, 63 former *Iskanian* class members demanded individual arbitration.
3 (Perez Decl. ¶ 14.) Beginning in August 2011, these former class members (“Claimants”)
4 filed claims with ADR Services, which the Agreement identifies as a mutually acceptable
5 arbitration provider. (*Id.* ¶ 15.) However, CLS rejected these demands on the ground that the
6 Agreement requires arbitration with AAA. (*Id.* ¶ 16.) To avoid further delay, the 63
7 Claimants agreed to arbitrate before AAA and tendered \$175 each, their shares of the
8 arbitration fees, to AAA. (*Id.* ¶ 17.) But CLS refused to pay its share of the filing fees owed
9 to AAA (\$925) for each arbitration, a material breach of the Agreement. (*Id.* ¶¶ 18-19.)

10 CLS resorted to a number of contradictory excuses to justify its refusal to pay the 63
11 Claimants’ filing fees, including that Claimants’ attorneys “did not represent them” and that
12 the arbitrations were stayed pending appeal. (Perez Decl. ¶¶ 18-20.) CLS then filed a motion
13 to consolidate the arbitrations and appoint an arbitrator, arguing that individual arbitrations
14 would be too expensive and inefficient and that the parties had reached an impasse over the
15 selection of an arbitrator. (*Id.*) CLS’s stated rationale departed from its prior litigation
16 position, which had been that the Court must strictly enforce the terms of the Agreement and
17 compel individual arbitration. (*Id.*) Due to CLS’s refusal to pay arbitration fees, AAA closed
18 all 63 of the files and refunded Plaintiffs’ filing fees. (*Id.*) The Claimants also went back to
19 the Court, filing a motion to compel specific performance of their arbitration agreements with
20 CLS, including that CLS honor its obligation to pay its share of each filing fee. (*Id.*)

21 In its February 7, 2012 order, the Court denied CLS’s motion and granted the 63
22 Claimants’ motion to compel specific performance of the Agreement. (Perez Decl. ¶ 21.)
23 Each of the 63 Claimants again tendered his or her filing fee to AAA. (*Id.*) CLS, however,
24 refused to comply with this Court’s order (as well as with AAA’s repeated demands) and
25 again declined to pay the required arbitration fees. (*Id.*) CLS’s excuse was the same one it
26 had unsuccessfully advanced earlier—that it should not have to pay its share of the filing fees
27 until the parties agreed to a single arbitrator. (*Id.*) CLS’s position directly contravened both
28 the AAA arbitrator selection rules, which require payment of fees prior to the selection of an

1 arbitrator, as well as the Court's admonition that the parties compromise on the number of
2 arbitrators. (*Id.* ¶ 22.) Once again AAA rebuked CLS, pointing out to CLS that it would have
3 to pay a fee on behalf of each of the 63 Plaintiffs even if only one arbitrator were selected.
4 (*Id.* ¶ 23.)

5 CLS then immediately shifted its position, refusing to pay on the basis of a contention
6 it had previously asserted and then abandoned, that it first needed "proof" that Initiative Legal
7 Group ("ILG") "actually represent[s] these 63 individuals" and that the individuals were
8 aware of the arbitration cases. (Perez Decl. ¶ 23.) CLS also questioned the 63 Claimants'
9 compliance with the AAA's filing requirements. (*Id.*) However, each of these rehashed
10 doubts was quickly and easily allayed. AAA confirmed to CLS that the Plaintiffs had
11 satisfied their filing requirements. (*Id.* ¶ 25.) Further, although the scope of ILG's
12 representation of its clients was clearly protected by attorney-client privilege, ILG had 63
13 individual retainer agreements with the Claimants, ILG is listed with AAA as the contact for
14 each of the 63 Claimants, and each of the 63 Claimants had paid his arbitration fee. (*Id.* ¶ 24.)

15 CLS then sought a further extension of the deadline to pay the arbitration fees on the
16 basis of a written settlement demand to each of the 63 Claimants. (Perez Decl. ¶ 26.)
17 Although AAA had been willing to provide a first extension of time, AAA denied CLS a
18 second extension. (*Id.*) AAA explained that CLS's purported worry was misplaced, because
19 if any claimants settled within 30 days of payment and before appointment of an arbitrator,
20 AAA would refund the arbitration fee. (*Id.*) Nonetheless, CLS refused to pay, instead on
21 March 23, 2012 filing a second motion to stay the arbitration and appoint an arbitrator, which
22 CLS conceded was essentially a renewal of its prior motion the Court had already denied.
23 (*Id.* ¶ 27.) AAA once again closed all 63 files and refunded Claimants their arbitration fees.
24 (*Id.* ¶ 28.)

25 In response, on April 9, 2012, Plaintiffs served a motion for sanctions pursuant to the
26 Code of Civil Procedure, section 128.7 on the basis that CLS's second motion to stay was
27 baseless and frivolous. (Perez Decl. ¶ 19.) During the 21-day safe harbor period, on April 20,
28 2012, CLS withdrew its motion without prejudice and agreed to pay the AAA filing fees for

1 each plaintiff. (*Id.* ¶ 30.) CLS finally recognized it faced significant sanctions for filing
2 another motion seeking the same relief that had been rejected by this Court back in February
3 2012. (*Id.*)

4 **C. CLS's Most Recent Improper Delay Tactics**

5 On June 13, 2012, the Court, in an informal advisory opinion, resolved CLS's motion
6 to stay the arbitration and appoint a single arbitrator by recommending that the parties meet
7 and confer and strike a balance between the competing proposals. (*Id.* ¶ 32.) Despite the fact
8 that the Claimants each had an undeniable right under the arbitration agreements, the
9 Claimants began to negotiate with CLS regarding the selection of arbitrators, with Claimants
10 making numerous concessions as suggested by the Court. (*Id.*) Specifically, Plaintiffs backed
11 off of their earlier position for 63 separate arbitrators, and instead agreed to narrow the
12 proceedings to ten arbitrators. (*Id.* ¶¶ 32-33.) CLS, however, refused Claimants' proposal
13 and insisted on only four arbitrators. (*Id.*)

14 Nonetheless, the parties have come to an agreement and have selected the arbitrators
15 for 19 of the 63 Claimants. (Perez Decl. ¶ 34.) As to each of these 19 Claimants, all filing
16 fees have been paid, each arbitrator has been mutually approved, and each Claimant is ready
17 to proceed with his claims. (*Id.*) CLS, however, has again refused to proceed with these
18 arbitrations—and has demanded that AAA delay *all* proceedings—until four arbitrators who
19 CLS contends will handle all 63 Claimants' disputes are selected. (*Id.* ¶ 38.) Once again,
20 CLS insists that the arbitrations be conducted under its terms and conditions or not at all.
21 Moreover, there is no contractual, statutory or equitable basis for continuing to deprive these
22 plaintiffs of a forum in which to resolve their claims.

23 The 19 individual Claimants who have agreed to the arbitrators proposed by CLS are:
24 William Baker, Kung Ming Chang, Miguel De La Mora, Johnnie Evans, Raul Fuentes, Steve
25 Maynard, Peter Paull, Roger Perry, Myron Rogan, Masood Shafii, Karim Shariff, and Carl
26 Swartz. Each of whom has agreed to CLS's selection of Enrique Romero to serve as the
27 arbitrator for their individual cases. (Perez Decl. ¶ 36.)

28 Kenny Cheng and Angelo Garcia each have agreed to CLS's selection of Kevin

1 Murphy to serve as the arbitrator for their individual cases. (Perez Decl. ¶ 38.)

2 Karen Bailey, James Dension, Carl Mueller, James Richmond, and Bennett Sloan have
3 each agreed to CLS's selection of William Stein to serve as the arbitrator for their individual
4 cases. (Perez Decl. ¶ 38.)

5 **III. ARGUMENT**

6 **A. Recent Case Law Clarifies That CLS Has Waived Arbitration**

7 It is now clear that a party can waive the right to proceed in arbitration **even after**
8 **arbitration has been compelled.** In *Cinel v. Barna*, 206 Cal. App. 4th 1383 (May 18, 2012),
9 the trial court had granted a motion brought by six defendants to compel arbitration pursuant
10 to a written arbitration agreement. *Id.* at 1386. Of the six defendants, only two (defendants
11 Barna and Christopher) paid their share of the AAA's filing fees. The arbitrators to which the
12 parties had already agreed "suggested the paying parties agree to pay a pro rata share of the
13 deposits of the delinquent parties." *Id.* at 1387. Barna and Christopher declined to pay, and
14 AAA terminated the arbitration. *Id.* The trial court reasserted jurisdiction over the matter and
15 set the case for trial. *Id.* at 1387-88. The plaintiff proposed that the two paying defendants
16 advance the fees of the four nonpaying defendants on a pro rata basis, but both Barna and
17 Christopher declined this offer. *Id.* at 1388. The two paying defendants argued both that the
18 trial court had already found there to be an enforceable arbitration agreement and that the
19 plaintiff, a billionaire, should contribute towards the unpaid fees. *Id.* The trial court denied
20 the defendants' motion to compel Cinel to return to arbitration.

21 The Court of Appeal held that the "defendants have waived their right to arbitrate by
22 refusing to reach a resolution with [the plaintiff] on the fee dispute." *Id.* at 1389. The court
23 explained that "Barna cannot use the nonpaying parties as a proxy to extort payment of the
24 entire amount of the nonpaying parties' fees from [the plaintiff], who did not demand
25 arbitration in the first place." *Id.* at 1391. The Court further explained that, in the context of
26 arbitration, "waiver arises from a party's failure to perform an act it is required to perform,"
27 and the party's intent to waive arbitration is irrelevant. *Id.* at 1289 (citing *St. Agnes Medical*
28 *Center v. PacifiCare Of California*, 31 Cal. 4th 1187 (2003)). The court then concluded that

1 the parties had behaved in a manner inconsistent with an intent to arbitrate. *Id.* at 1389-90. In
2 particular, the failure to pay the AAA's fees constituted a repudiation of the arbitration
3 agreement. *Id.* at 1390.

4 The *Cinel* court relied upon and expanded the Ninth Circuit's holding in *Sink v. Aden*
5 *Enterprises, Inc.*, 352 F.3d 1197 (9th Cir. 2003) in reaching this conclusion. *Cinel* points to
6 *Sink* as "illustrative of the infinite loop this case will enter if we endorse Barna's arguments."
7 *Id.* at 1391. In *Sink*, the plaintiff had sued his employer, and the matter was ordered to
8 arbitration pursuant to an arbitration agreement in the parties' employment contract. *Id.* The
9 employer was obligated, but refused, to pay the arbitration costs, and the arbitrator cancelled
10 the arbitration for nonpayment of fees. *Id.* The plaintiff obtained a default from the arbitrator,
11 and sought entry of default judgment in the trial court. *Id.* The employer then advised the
12 court that it had secured the money needed to fund the arbitration and requested the court refer
13 the action back to arbitration. *Id.* The court refused, finding the employer had waived its
14 right to proceed in arbitration and set the matter for trial. *Id.* The court explained that
15 allowing the employer to return to arbitration "would allow a party refusing to cooperate with
16 arbitration to indefinitely postpone litigation." *Id.* The *Cinel* court too refused "to endorse
17 such a result." *Id.*

18 CLS's behavior demonstrates vividly the "infinite loop" that was the focus of the *Cinel*
19 court's reasoning. In fact, CLS's dilatory conduct here has been far more egregious than that
20 of the non-paying defendants in *Cinel*. While *Cinel* simply involved the defendants' refusal to
21 pay other defendants' filing fees, CLS has presented Plaintiffs with an ever-changing target,
22 repeatedly inventing new reasons not to proceed with arbitration. CLS has attempted to delay
23 Plaintiffs' claims indefinitely, repeatedly citing new and baseless reasons why arbitration
24 cannot continue.

- 25 • CLS first contended that, despite the plain language of the arbitration
26 agreements, AAA rather than ADR Services, be the arbitration provider.
- 27 • CLS then argued that the selection of arbitrators must be decided prior to the
28 payment of fees, despite the fact that the AAA rules expressly hold otherwise.

- 1 • CLS then argued that the arbitrations should be consolidated before the
- 2 payment of fees.
- 3 • CLS next expressed its purported concern that ILG did not represent the
- 4 Claimants.
- 5 • CLS has also argued that it should be able to obtain proof that the Plaintiffs are
- 6 “aware” of the arbitration claims (despite having paid their share of the filing
- 7 fees).
- 8 • CLS then contended that arbitration should not continue while settlement offers
- 9 are pending, despite AAA’s assurances that they would be refunded any fees in
- 10 the event of settlement.
- 11 • Now, CLS argues that the 19 Claimants who are ready to arbitrate, as to whom
- 12 all fees have been paid and all arbitrators have been selected, should have their
- 13 arbitration claims delayed further until all arbitrators are selected for all other
- 14 plaintiffs.

15 There is no contractual, statutory or equitable basis for CLS’s latest position. The
16 identity and number of arbitrators selected as to other plaintiffs is irrelevant as to these 19
17 Claimants. CLS has shown time and again that it will take even frivolous, legally
18 unsupportable positions to deprive Plaintiffs of their access to a forum—any forum—in which
19 their claims may be adjudicated. If the Court simply compels the parties back to arbitration,
20 CLS will have succeeded and the “infinite loop” of CLS’s recalcitrance and ensuing motion
21 practice will continue.

22 Pursuant to *Cinel*, by refusing to proceed with arbitration as to 19 Claimants who are
23 ready and able to proceed, and without any legal justification for doing so, CLS has breached
24 the arbitration agreements into which it entered with these 19 Plaintiffs. CLS has therefore
25 waived its right to proceed with arbitration as to these 19 Plaintiffs.

26 **IV. CONCLUSION**

27 For the foregoing reasons, Plaintiffs respectfully request that the Court issue an order
28 deeming Defendant CLS to have waived arbitration as to the 19 Plaintiffs.

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Dated: August 31, 2012

Respectfully submitted,
Initiative Legal Group APC

By: 
Raul Perez
Melissa Grant
Suzy E. Lee
Attorneys for Plaintiff Greg Kempler, et al.

Conformed Copy

INITIATIVE LEGAL GROUP APC
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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
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; Related to BC356521

DECLARATION OF RAUL PEREZ IN SUPPORT OF PLAINTIFFS' MOTION FOR AN ORDER DEEMING DEFENDANT CLS TO HAVE WAIVED ARBITRATION AS TO 19 PLAINTIFFS

Date: September 25, 2012

Time: 8:30 a.m.

Place: Department 24

Complaint Filed: November 18, 2011

**CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

AUG 31 2012

John A. Clarke, Executive Officer/Clerk

BY Cristina Grijalva Deputy
Cristina Grijalva

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

3 11. On May 16, 2011, CLS moved for renewal of its prior motion to compel arbitration
4 on the basis that, under *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011), the Federal
5 Arbitration Act (“FAA”) pre-empted *Gentry*.

6 12. On June 14, 2011, the Court granted Defendant’s motion and issued an order
7 dismissing class claims and compelling Iskanian to individual arbitration.

8 13. Iskanian appealed. The *Iskanian* opinion is currently the subject of a Petition for
9 Review to the California Supreme Court.

10 14. Beginning August 2011, 63 former Iskanian class members Greg Kempler, Adrien
11 Warren, Anantray Sanathara, Angelo Garcia, Arthur Post, Avaavau Toailoa, Belinda Washington,
12 Bennett Sloan, Bruce Gold, Carl Mueller, Carl Swartz, Cassandra Lindsey, Cleophus Collins,
13 Daniel Araya, Daniel Rogers Millington, Jr., Darold Caldwell, David Baranco, David Montoya,
14 Dawn Bingham, Edward Smith, Edwin Garcia, Elijha Norton, Flavio Silva, Frank G. Dubuy, Gerald
15 Griffin, Glen Alston, Igor Kroo, James C. Denison, James Richmond, James Sterling, Jerry Boyd,
16 Jiro Fumoto, Johnnie Evans, Jonathon Scott, Julius Funes, Karen Bailey, Karim Sharif, Kenny
17 Cheng, Kung Ming Chang, Lamont Crawford, Leroy Clark, Luis Earnshaw, Marcial Sazo, Marquel
18 Rose, Masood Shafii, Matthew Loatman, Miguel De La Mora, Myron Rogan, Neil Ben Yair, Pater
19 Paull, Patrick Cooley, Rafael Candelaria, Raul Fuentes, Reginald Colwell, Robert Olmedo, Roger
20 Perry, Scott Sullivan, Steve Maynard, Susan Stellman, Thomas Martin, Wayne Ikner, William
21 Banker, and William Pinkerton retained ILG to represent them in their efforts. Attorney-Client
22 Agreements were signed by each Plaintiff beginning in July 2011 to early September 2011. Each
23 Plaintiff sought to resolve his or her dispute through individual arbitration with CLS in light of the
24 order compelling arbitration in *Iskanian*.

25 15. Beginning in August 2011, each Plaintiff filed a demand for arbitration with ADR
26 Services, Inc., which was named in the Agreement as a mutually accepted provider.

27 16. CLS rejected these 63 demands on the ground that the Agreement requires
28 arbitration with the American Arbitration Association (“AAA”). A true and correct of

1 correspondence dated September 19, 2011 from Yesenia Gallegos, counsel for Defendant CLS to
2 Terry Shea, Arbitration Coordinator for ADR Services, Inc., in which CLS “rejected” the August
3 2011 arbitration demands, is attached as Exhibit B.

4 17. Beginning in September 2011, the Plaintiffs agreed to arbitrate before the AAA to
5 avoid further delay and expense. Each Plaintiff tendered his or her \$175.00 share of the arbitration
6 filing fee.

7 18. CLS refused to pay its share of the filing fees owed to the AAA (\$925 for each case).
8 CLS resorted to a number of contradictory excuses to justify its refusal to pay the 63 filing fees,
9 including that Plaintiffs’ attorneys did not represent them and that the arbitrations were stayed
10 pending appeal. CLS then filed a motion to consolidate the arbitrations and appoint an arbitrator,
11 arguing that individual arbitrations would be too expensive and inefficient and that the parties had
12 reached an impasse over the selection of an arbitrator. CLS’s newly stated rationale departed from
13 its prior position, when it had argued that the Court must strictly enforce the terms of the Agreement
14 and compel individual arbitration.

15 19. A true and correct copy of an October 10, 2011 letter from Ms. Gallegos to Adam
16 Shoneck, Intake Specialist for the AAA, refusing to pay the filing fee, is attached as Exhibit C.

17 20. Due to CLS’s refusal to pay arbitration fees, AAA closed all 63 of the arbitrations
18 and refunded Plaintiffs’ filing fees. CLS filed a motion in the *Iskanian* action to consolidate all 63
19 arbitrations and to appoint an arbitrator. A true and correct copy of an October 20, 2011 response
20 from Shoneck to me and CLS’s counsel David Faustman is attached as Exhibit D.

21 21. After the Court’s order of February 7, 2012 denying CLS’s motion and granting
22 Plaintiffs’ motion to compel specific performance of the arbitration agreement, Plaintiffs again
23 tendered 63 filing fees of \$175. CLS, however, refused to comply with the Court’s order (as well as
24 with the AAA’s repeated demands) and again declined to pay the required arbitration fees.

25 22. CLS’s initial excuse for continuing to refuse to pay its share of the arbitration fees
26 was the same one it had unsuccessfully advanced earlier—that it should not have to pay until the
27 parties agreed to an arbitrator.

28 23. On March 2, 2012, CLS wrote to the AAA airing the concerns stated in its motion to

1 stay the arbitration and appoint an arbitrator, primarily, that only one arbitrator be selected and that
2 CLS receive some assurance that ILG represents each of the Plaintiffs. CLS also questioned
3 Plaintiffs' compliance with the AAA filing requirements. Attached as Exhibit E is a true and correct
4 copy of the letter dated March 2, 2012 from Mr. Faustman to the AAA.

5 24. ILG has 63 individual retainer agreements with the Plaintiffs, ILG is listed with the
6 AAA as the contact for each of the 63 Plaintiffs, and each of the 63 Plaintiffs has paid his or her
7 arbitration fee.

8 25. On March 8, 2012, the AAA confirmed that the Plaintiffs had satisfied their filing
9 requirements. AAA also rejected CLS's attempts to hinge its refusal to pay on a disagreement over
10 the number of arbitrators in explaining to CLS that it would have to pay a fee on behalf of each of
11 the 63 claimants even only one arbitrator is selected. Attached as Exhibit F is a true and correct
12 copy of the letter dated March 8, 2012 from the AAA to me and to Mr. Faustman.

13 26. The AAA demanded payment by CLS on March 14, 2012, refusing a second
14 extension of time to pay based on settlement offers but agreeing to the potential for a refund of the
15 arbitration fees should any matter settle within 30 days prior to appointment of an arbitrator.
16 Attached as Exhibit G is a true and correct copy of correspondence dated March 14, 2012 between
17 the AAA, Mr. Faustman, and me.

18 27. CLS refused to pay its filing fees, and on March 23, 2012, CLS filed its second
19 motion to stay arbitration.

20 28. Not having received payment from CLS, the AAA once again closed all 63
21 arbitrations and refunded Plaintiffs their share of the arbitration fees. Attached as Exhibit H is a true
22 and correct copy of correspondence dated March 27, 2012 from the AAA to me and to Mr.
23 Faustman.

24 29. On April 9, 2012, Plaintiffs served a motion for sanctions pursuant to Code of Civil
25 Procedure section 128.7 on the basis that CLS's second motion to stay was baseless and frivolous.

26 30. During the 21-day safe harbor period, on April 20, 2012, CLS withdrew its motion
27 without prejudice and agreed to pay the AAA's filing fees for each claimant. Attached as Exhibit I
28 is a true and correct copy of CLS's notice of withdrawal of the motion to stay arbitration.

1 31. It was Plaintiffs' position that each Claimant is contractually entitled to select an
2 individual arbitrator (as indeed CLS had argued in *Iskanian*), while it was CLS's position that the 63
3 arbitrations should be consolidated into a single proceeding to be heard by a single arbitrator.

4 32. On June 13, 2012, the parties attend a status conference before this Court. The
5 Court, in an informal advisory opinion, recommended that the parties meet and confer and strike a
6 balance between the competing proposals. The parties began to negotiate the selection of
7 arbitrators, and Plaintiffs made numerous concessions in response to the Court's advice.
8 Specifically, on June 25, 2012, Plaintiffs have agreed to narrow the proceedings to 10 arbitrators.
9 Attached as Exhibit J is a true and correct copy of correspondence dated June 25, 2012 from me to
10 Mr. Faustman.

11 33. On July 6, 2012, Mr. Faustman agreed to a total of 4 arbitrators. Attached as
12 Exhibit K is a true and correct copy of correspondence dated July 6, 2012 from Mr. Faustman to me.

13 34. The parties have come to an agreement and have selected the arbitrators for 19 of the
14 63 Plaintiffs. As to each of these 19 individuals, all filing fees have been paid, the arbitrators have
15 been mutually approved, and the Claimants are ready to proceed.

16 35. On May 19, 2012, Mr. Faustman agreed to Enrique Romero to hear the Los Angeles
17 cases, and to Kevin Murphy to hear the San Francisco cases. Attached as Exhibit L is a true and
18 correct copy of correspondence dated May 19, 2012 from Mr. Faustman to me.

19 36. On June 12, I responded to Mr. Faustman's May 19, 2012 correspondence indicating
20 that William Baker, Kung Ming Chang, Miguel De La Mora, Johnnie Evans, Raul Fuentes, Steve
21 Maynard, Peter Paull, Roger Perry, Myron Rogan, Masood Shafii, Karim Shariff, and Carl Swartz
22 each agreed to CLS's selection of Enrique Romero to serve as the arbitrator for their individual
23 cases. In addition, Kenny Cheng and Angelo Garcia both agreed to CLS's selection of Kevin
24 Murphy to serve as the arbitrator for their individual cases. Attached as Exhibit M is a true and
25 correct copy of correspondence dated June 12, 2012 from me to Mr. Faustman.

26 37. On July 6, 2012, Mr. Faustman agreed to two of the arbitrators referenced in my
27 June 25, 2012 correspondence, John Zebrowski and William Stein. Attached as Exhibit N is a true
28 and correct copy of correspondence dated July 6, 2012 from Mr. Faustman to me.

1 38. On August 1, 2012, the AAA informed the parties that it would begin the
2 appointment process of the arbitrators that parties had agreed selected. In response, Mr. Faustman
3 stated that the appointment process is “premature” until an overall agreement is reached, and that the
4 AAA was “not authorized” to engage any arbitrators at this time. On August 2, 2012, I responded,
5 stating that the Claimants’ arbitrations for whom arbitrators had been selected and agreed upon
6 should move forward because any further delay denies these Claimants any forum to resolve their
7 cases. I also withdrew John Zebrowski from consideration and recommended James A. Albracht in
8 his place. The five Claimants who agreed to CLS’s selection of William Stein to serve as the
9 arbitrator in their individual cases are Karen Bailey, James Denison, Carl Mueller, James Richmond,
10 and Bennett Sloan, as indicated in Exhibit L. Attached as Exhibit O is a true and correct copy of a
11 chain of emails sent between August 1, 2012 and August 2, 2012 among the offices of ILG, Fox
12 Rothschild and the AAA.

13 I declare under penalty of perjury under the laws of the State of California and the
14 United States of America that the foregoing is true and correct. Executed this 31st day of
15 August, 2012, at Los Angeles, California.

16
17 

18 Raul Perez
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EXHIBIT A

1 DAVID F. FAUSTMAN, Bar No. 081862
 2 NIMA SHIVAYI, Bar No. 220007
 3 FOX ROTHSCHILD LLP
 4 1801 Century Park East, Suite 1420
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8 LEO V. LEYVA (NJ Bar No. 39645) (Admitted Pro Hac Vice)
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 11 Hackensack, NJ 07602-0800
 12 Telephone: (201) 525-6294
 13 Facsimile: (201) 678-6294

14 Attorneys for Defendant
 15 CLS TRANSPORTATION LOS ANGELES LLC

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 17 IN AND FOR THE COUNTY OF LOS ANGELES

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

21 Plaintiffs,

22 vs.

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

26 Defendants.

Case No. BC 356521

**NOTICE OF MOTION AND MOTION FOR
 ORDER COMPELLING ARBITRATION,
 DISMISSING CLASS CLAIMS, AND
 STAYING ACTION PENDING THE
 OUTCOME OF ARBITRATION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

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

Complaint filed: August 4, 2006
 Trial Date: None

Assigned for All Purposes to:
 The Honorable Robert Hess

Filed Concurrently Herewith:
 1) [Proposed] Order
 2) Declarations of Nima Shivayi and Rod Rave

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 13, 2007 at 8:30 a.m. or as soon thereafter as the
3 matter may be heard in Department 24 of the Los Angeles Superior Court, located at 111 N. Hill St.,
4 Los Angeles, CA 90012, Defendant CLS TRANSPORTATION LOS ANGELES, LLC, ("Defendant")
5 will bring on for hearing their motion for an order compelling arbitration, dismissing the class claims,
6 and staying the action pending the outcome of the arbitration, in the above-captioned action.
7

8 This motion is made pursuant to *Code of Civil Procedure* §§ 1281.2 and 1281.4 on the grounds
9 that the parties hereto entered into an agreement dated December 21, 2004, which provides for
10 arbitration of all of the claims and issues made subject to this lawsuit by Plaintiff's complaint filed
11 herein. Defendant has requested that Plaintiff dismiss or agree to stay this action and proceed to
12 arbitration of his individual claims under the procedures specified under the agreement, but Plaintiff
13 has refused. Defendant has no other adequate remedy but to compel arbitration, seek dismissal of the
14 class claims, and stay these proceedings pending the outcome of arbitration.
15

16 This motion is based on this Notice, the attached Memorandum of Points and Authorities, the
17 Declarations of Nima Shivayi and Rod Rave, all pleadings, records and files herein, and upon such
18 other oral or documentary evidence as may be accepted at the time of hearing.
19

20
21 Dated: February 7, 2007

22 COLE, SCHOTZ, MEISEL, FORMAN &
23 LEONARD, P.A. and
24 FOX ROTHSCHILD LLP

25 By 

26 NIMA SHIVAYI
27 Attorneys for Defendant
28 CLS TRANSPORTATION LOS ANGELES, LLC

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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

This dispute over wages arises from the employment of Plaintiff, Arshavir Iskanian, with Defendant CLS Transportation Los Angeles, LLC ("CLS"). Plaintiff was employed by CLS as a livery driver from March 8, 2004, through August 2, 2005. Plaintiff filed this putative class action on August 4, 2004, alleging six causes of action against CLS for, among other things, unpaid overtime and penalties for missed meal periods. This case, however, must be submitted to arbitration.

The Superior Court is an improper forum for this lawsuit because Plaintiff signed a valid and enforceable arbitration agreement covering this dispute. The arbitration agreement also contains a valid and enforceable clause waiving any right to bring, or participate in, a class action. *Konig v. U-Haul Company of California*, 145 Cal.App.4th 1243 (2006) and *Discover Bank v. Superior Court*, 36 Cal.4th 148 (2005) confirm that the arbitration agreement, including the class action waiver, is valid and enforceable. Further, the class action waiver is enforceable because Plaintiff's alleged damages are *not* so small as to make it impracticable to assert his claims on an individual basis.

II. STATEMENT OF FACTS

Plaintiff began his employment with CLS on or about March 8, 2004. (Declaration of Rod Rave ("Rave Decl.") ¶ 2). On December 21, 2004, Plaintiff and CLS executed a document entitled "Settlement Agreement and Release of All Claims," under which Plaintiff received certain sums in exchange for his agreement to release CLS for any potential claims he may have had up to that date. (Rave Decl. ¶ 3; Exh. A). Also on December 21, 2004, Plaintiff and CLS executed a document entitled "Proprietary Information and Arbitration Policy/Agreement," wherein both parties agreed to arbitrate any and all disputes relating to Plaintiff's employment and separation from CLS ("the Arbitration Agreement"). (Rave Decl. ¶ 4; Exh. B). Both parties also agreed to arbitrate all other

1 potential and future claims between them. (Id.). Finally, the Arbitration Agreement provides in part as
2 follows:

3
4 " ...EMPLOYEE and COMPANY expressly intend and agree that class action and
5 representative action procedures shall not be asserted, nor will they apply, in any
6 arbitration pursuant to this Policy/Agreement ... EMPLOYEE and COMPANY agree
7 that each will not assert class action or representative action claims against the other in
8 arbitration or otherwise ... each of EMPLOYEE and COMPANY shall only submit
9 their own, individual claims in arbitration and will not seek to represent the interests of
10 any other person."

11 (Id. at pp. 6-7, ¶ 16(b)). Plaintiff was *not* required to execute the agreement as a condition of his
12 employment. (Rave Decl. ¶ 5). The Arbitration Agreement was provided to some drivers in
13 conjunction with the release on the same date; some drivers chose to sign it and some did not. (Id.)
14 Plaintiff voluntarily signed the Arbitration Agreement. Plaintiff was terminated on August 2, 2005, for
15 repeated violations of company policy. (Rave Decl. ¶ 6).

16 Plaintiff filed this lawsuit on August 4, 2006. On December 6, 2006, CLS wrote to Plaintiff's
17 counsel, advising that Plaintiff had executed the Arbitration Agreement and requested that Plaintiff
18 voluntarily submit his claims to arbitration. (Shivayi Decl. ¶ 2; Exh. A). CLS also provided counsel a
19 copy of the agreement. (Id.). On January 8, 2007, Plaintiff's counsel responded via letter, suggesting
20 a bench trial in lieu of arbitration. (Shivayi Decl. ¶ 3; Exh. B). Because counsel's January 8 letter
21 mentioned "putative class members," CLS again wrote counsel to point out that the Arbitration
22 Agreement also contained an agreement to not pursue class claims. (Shivayi Decl. ¶ 4; Exh. C). CLS
23 again requested that Plaintiff submit his individual claims to arbitration. (Id.). Plaintiff has refused to
24 do so. (Shivayi Decl. ¶ 5; Exh. D). At the case management conference on January 22, 2007, the
25 Court directed Defendant CLS to file its motion to compel arbitration by February 9, 2007.

26 ///
27 ///
28 ///

1 III. ARGUMENT

2 A. The Court Should Enforce The Parties' Agreement And Compel Arbitration.

3 1. California Has A Strong Public Policy In Favor Of Arbitration.

4 Code of Civil Procedure section 1280 provides:

5 A written agreement to submit to arbitration an existing controversy or a controversy
6 thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist
7 for the revocation of any contract.

8 Section 1280 and its related provisions set forth "a comprehensive statutory scheme regulating
9 private arbitration in this state." *In re Tobacco Cases I, JCCP 404I*, 124 Cal.App.4th 1095, 1103
10 (2004). Through this detailed statutory scheme, the Legislature has expressed a "strong public policy
11 in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution." *Id.* See
12 also *Moncharsh v. Heily & Blase*, 3 Cal.4th 1, 9-10 (1992).

13 "California law, like federal law, favors enforcement of valid arbitration agreements."
14 *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83, 97-99 (2000). "California
15 has a strong public policy in favor of arbitration and any doubts regarding the arbitrability of a dispute
16 are resolved in favor of arbitration." *Coast Plaza Doctors Hospital v. Blue Cross of California*, 83
17 Cal.App.4th 677, 686 (2000). Consequently, courts will "indulge every intendment to give effect to
18 such proceedings." *In re Tobacco Cases*, 124 Cal.App.4th at 1103.

19 2. The Court Can Compel Arbitration.

20 Code of Civil Procedure section 1281.2 provides:

21 On petition of a party to an arbitration agreement alleging the existence of a written
22 agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such
23 controversy, the court shall order the petitioner and the respondent to arbitrate the
24 controversy if it determines that an agreement to arbitrate the controversy exists...

25 Under this provision, a party to an agreement to arbitrate may bring an action to compel
26 specific performance of the arbitration provision by alleging the existence of the agreement and that
27
28

1 the opposing party refuses to arbitrate the controversy. See *Meyer v. Carnow*, 185 Cal.App.3d 169,
2 174 (1986). Both requirements are clearly present here.

3
4 **3. No Grounds Exist To Deny Enforcement Of The Arbitration Agreement**

5 "An agreement to arbitrate is enforceable unless a recognized contract defense, such as
6 unconscionability exists." *Szettel v. Discover Bank*, 97 Cal.App.4th 1094, 1099 (2002).

7 As the California Supreme Court has noted, "under both federal and California law, arbitration
8 agreements are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity
9 for the revocation of any contract." *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24
10 Cal.4th 83, 98 (2000). Having already acknowledged that the arbitration clause was valid before
11 realizing it contained a class action waiver, counsel cannot now argue that the arbitration clause is
12 unconscionable.

13
14 The Arbitration Agreement meets all of the requirements and minimum procedural standards
15 set forth in *Armendariz*. In order to be enforceable, *Armendariz* requires that arbitration agreements
16 must *not*: (1) limit statutorily imposed remedies; (2) limit adequate discovery; (3) be one-sided; and (4)
17 require that a plaintiff pay unreasonable costs and the arbitration fees. *Id.* At 103-109. The Arbitration
18 Agreement here complies with the requirements of *Armendariz*. It *does not* limit statutorily imposed
19 remedies. It *does not* limit discovery. It applies to *both* Plaintiff's claims against the employer and
20 vice versa. Lastly, it provides that the employer will pay the arbitrator's fees, as well as all costs that
21 are unique to the arbitration setting.

22
23
24 **B. The Court Should Order A Stay Of The Litigation.**

25 A party may seek a stay of pending litigation in conjunction with a petition to compel
26 arbitration, and that stay must be granted where the Court orders arbitration of the dispute. *Code of*
27 *Civil Procedure* §1281.4; *Twentieth Century Fox Film Corp. v. Superior Court*, 79 Cal. App. 4th 188,
28

1 192 (2000). Because the arbitration agreement here is valid and enforceable, the Court should compel
2 arbitration and stay the pending litigation.

3 C. The Court Should Enforce the Parties' Agreement And Dismiss Plaintiff's Class
4 Claims.

5 1. The Arbitration Agreement Here Is Not A Contract Of Adhesion.

6 Although not a significant factor, the Arbitration Agreement here was not a contract of
7 adhesion. Plaintiff was not forced to sign the Arbitration Agreement containing the class action waiver
8 as a condition of his employment. Plaintiff was provided with the Arbitration Agreement in
9 conjunction with the release that he signed. The drivers were not forced to sign the Arbitration
10 Agreement. Some drivers agreed to sign while some did not. In fact, Plaintiff signed the agreement in
11 question in December 2004, almost a year after the inception of his employment with CLS.
12

13 2. The Class Action Waiver Is Valid And Enforceable.

14 In order to invalidate a contractual provision because it is "unconscionable," both procedural
15 and substantive unconscionability must be present. *Armendariz*, 24 Cal.4th at 114. The California
16 Supreme Court has adopted a sliding scale analysis, under which the greater a contract term is
17 procedurally unconscionable, the less evidence of substantive unconscionability need be presented and
18 vice versa. *Id.* The burden rests with a plaintiff to prove that the class action waiver is both
19 procedurally and substantively unconscionable. *Engalla v. Permanente Medical Group, Inc.*, 15
20 Cal.4th 951, 972 (1997).

21 In *Discover Bank v. Superior Court*, the California Supreme Court held that an element of
22 procedural unconscionability exists when a consumer is given an amendment to its cardholder
23 agreement, in the form of a "bill-stuffer," which contains a class action waiver. 36 Cal.4th 148, 160
24 (2005). This is due to the fact that the consumer has no choice but to accept the terms unless he closes
25 his account. *Id.* Moreover, although adhesive contracts are generally enforced, class action waivers in
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1 such contracts may also be substantively unconscionable because they "operate effectively as
2 exculpatory contract clauses that are contrary to public policy." *Id.* at 160-61.

3 In *Szetela v. Discover Bank*, the court stated as follows:

4 This provision is clearly meant to prevent customers, such as Szetela and those he seeks
5 to represent, from seeking redress for relatively small amounts of money, such as the
6 \$29 sought by Szetela. Fully aware that few customers will go to the time and trouble
7 of *suing in small claims court*, Discover has instead sought to create for itself virtual
8 immunity from class or representative actions despite their potential merit ... [emphasis
added]

9 97 Cal.App.4th at 1101. Thus, arbitration agreements and class action waivers are not necessarily
10 exculpatory clauses. Because damages in consumer cases, however, are often so small that class
11 actions are the "only effective way to halt and redress such exploitation," class action waivers are
12 unenforceable only in such circumstances. *Discover Bank*, 36 Cal.4th at 161 [emphasis added].

13 On the other hand, in *Konig v. U-Haul Company of California*, 145 Cal.App.4th 1243 (2006),
14 the court held that the arbitration agreement and class action waiver in an employment agreement,
15 which plaintiff was required to sign as a condition of employment, were not unconscionable and thus
16 were enforceable. The court reasoned that plaintiff had failed to establish predictably small amounts of
17 potential damages, such that a class action would be the only effective way to address his claims. *Id.* at
18 1252-53. As an example, the court looked at the penalties available under just one of plaintiff's causes
19 of action for missed meal periods and concluded that the potential penalties alone under that single
20 cause of action were thousands of dollars and thus not "predictably .. small amounts of damages." *Id.*
21 at 1253-54. Plaintiff in this case has a similar claim for missed meal periods.

22 3. Here, Plaintiff's Potential Damages Are Not So Predictably Small As To
23 Render The Class Action Waiver Unconscionable And Thus Unenforceable.

24 While CLS denies all of the allegations set forth in Plaintiff's Complaint, Plaintiff's alleged
25 potential damages here are in the thousands of dollars. First, Plaintiff has alleged that the "monetary
26
27
28

1 damages and restitution sought by [him] exceed the minimal jurisdictional limits of the Superior Court
2 and will be established according to proof at trial." (Complaint ¶ 1). The *Konig* court also noted that
3 plaintiff's causes of action, which were alleged to be typical of the other class members, were general
4 jurisdiction claims. *Id.* at 1253. Thus, according to Plaintiff himself, his potential damages exceed
5 \$25,000. *Code of Civil Procedure* § 86(a)(1).

7 Even if Plaintiff claims that his jurisdictional limit allegation is based on the entire class'
8 potential damages, his individual potential damages are still large enough to render the class action
9 waiver valid and enforceable. Since Plaintiff signed a release for any and all potential claims on
10 December 21, 2004, and was terminated on August 2, 2005, his damage period is 223 days of
11 employment, or approximately 32 weeks.

13 In his first cause of action, Plaintiff alleges that CLS failed to pay him overtime wages
14 (Complaint ¶¶ 28, 29). In addition to the allegedly unpaid overtime wages, Plaintiff would be entitled
15 to interest, costs, attorneys' fees, and penalties. *Labor Code* § 1194.

17 In his second cause of action, Plaintiff alleges that CLS failed to pay him wages due upon
18 termination. (Complaint ¶ 35). In addition to the allegedly unpaid wages, Plaintiff is entitled to a
19 penalty equaling his wages for a 30-day period. *Labor Code* ¶ 203.

21 In his third cause of action, Plaintiff alleges CLS failed to provide him with complete and
22 accurate wage statements. (Complaint ¶ 40). For this alleged violation, Plaintiff is potentially entitled
23 to the greater of either: (a) his actual damages; or (b) \$50 for the first violation and \$100 for each
24 subsequent one (\$1,550 in potential penalties alone for Plaintiff under this cause of action). *Labor*
25 *Code* § 226(e). Plaintiff would also be entitled to his costs and attorneys' fees. *Id.*

27 In his fourth cause of action, Plaintiff alleges that CLS regularly required him to work during
28 legally-mandated rest breaks. (Complaint ¶ 45). If true, Plaintiff would be entitled to an additional

1 hour of pay at his regular rate for every day that he missed a rest break. *Labor Code* ¶ 226.7(b).

2 In his fifth cause of action, Plaintiff alleges that CLS regularly failed to provide him with
3 legally-mandated meal periods. (Complaint ¶¶ 53-56). Plaintiff also alleges that not only was he
4 required to work during meal periods, he was not compensated for such work. (Complaint ¶ 56). If
5 true, Plaintiff would be entitled to his wages for the work actually performed during the meal periods,
6 plus a penalty of an additional hour of pay at his regular rate for every day that he missed a meal
7 period. *Labor Code* ¶ 226.7(b).

8
9 In addition to all of the above, Plaintiff would also potentially be entitled to statutory penalties
10 for the alleged overtime and meal period violations. *Labor Code* § 558. Plaintiff's potential penalties
11 under section 558 are as follows: (1) \$50 for the initial pay period during which Plaintiff was
12 underpaid; and (2) \$100 for each subsequent pay period during which Plaintiff was underpaid. *Id.* If
13 Plaintiff's allegations are true, Plaintiff would be entitled to another \$1,550 under these statutory
14 penalties. This is in addition to all the other penalties, his actual damages, prejudgment interest on the
15 allegedly unpaid wages, post-judgment interest on the entire sum, costs, and attorneys' fees.

16
17 Certainly, these are not the circumstances contemplated by the *Discover Bank* Court in holding
18 class action waivers in consumer contracts unenforceable. The class action waiver here is not the
19 "exculpatory clause" discussed by the *Discover Bank* Court. *Discover Bank*, 36 Cal.4th at 161. Here,
20 the class action waiver does not exempt CLS "from responsibility for [its] own fraud, or willful injury
21 to the person or property of another." *Id.* at 162-63.

22
23
24 **4. Individual Recovery Is Possible And Practical.**

25 Moreover, the class action mechanism is not the only way for Plaintiff to seek his alleged
26 thousands of dollars in potential damages. First, Plaintiff can seek redress through the California
27 Labor Commissioner, which is a relatively speedy and inexpensive method for resolving such disputes.
28

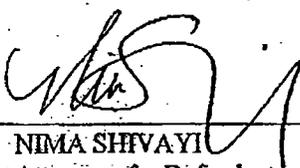
1 Labor Code §§ 98(a), 90. In that arena, Plaintiff would not even need counsel. Furthermore, if
2 Plaintiff pursued his own individual claims in court or arbitration, he would be entitled to his
3 attorneys' fees if he prevails, precluding any argument that such fees would probably exceed the
4 potential damages. The class action mechanism is not "*the only effective way*" for Plaintiff to pursue
5 his claims, as it is in the consumer contract context, where damages are typically so small that no
6 individual would pursue his individual claims in any setting.
7

8 IV. CONCLUSION

9
10 Because Plaintiff's potential damages here are not so small as to make it impracticable to bring
11 his individual claims in *any* setting, the Arbitration Agreement and class action waiver is valid and
12 enforceable. If Plaintiff's allegations are true, he would be entitled to thousands of dollars in penalties
13 alone, not to mention his actual damages with interest, costs, and attorneys' fees. Thus, the class
14 action mechanism is not "*the only effective way*" for Plaintiff to pursue his claims. In fact, the most
15 effective way for Plaintiff to pursue his claims is through the California Labor Commissioner without
16 the need for counsel. Even if Plaintiff prefers to have counsel, however, he can effectively pursue his
17 individual claims in arbitration. Considering California's strong public policy favoring arbitration and
18 controlling case law directly on point, the Arbitration Agreement and class action waiver should be
19 enforced, and that the instant motion should be granted.
20
21

22 Dated: February 7, 2007

23 COLE, SCHOTZ, MEISEL, FORMAN &
24 LEONARD, P.A. and
25 FOX ROTHSCHILD LLP

26 By 

27 NIMA SHIVAYI
28 Attorneys for Defendant
CLS TRANSPORTATION LOS ANGELES, LLC

EXHIBIT B



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DATE: SEPTEMBER 19, 2011

FACSIMILE TRANSMITTAL SHEET

TO: Raul Perez, Esq. and	COMPANY: Initiative Legal Group	FAX NUMBER: 310-861-9051	PHONE NUMBER: 310-556-5637
FROM: Yesenia Gallegos	PHONE NUMBER: (310) 598-4159	EMAIL: ygallegos@foxrothschild.com	BILLING NUMBER:
NUMBER OF PAGES: 3	CHARGE FILE #: 15135-00005	PRIORITY: REGULAR	LOG NUMBER:

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NOTES/COMMENTS:

Arshavir Iskanian v. CLS Transportation

Attached please find correspondence of today's date.

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L.A. 1 87267 v1 05/26/11



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Yesenia Gallegos
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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

A Pennsylvania Limited Liability Partnership

California Connecticut Delaware Florida Nevada New Jersey New York Pennsylvania

Ms. Shea
September 19, 2011
Page 2

Ikner, Wayne-ADRS Case No. 11-5239
Kempner, 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

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Ms. Shea
September 19, 2011
Page 3

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,

A handwritten signature in black ink, appearing to read 'Yesenia Gallegos', written in a cursive style.

Yesenia Gallegos

cc: Raul Perez, Esq.

EXHIBIT C



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Yesenia Gallegos
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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

A Pennsylvania Limited Liability Partnership

California Connecticut Delaware District of Columbia Florida Nevada New Jersey New York Pennsylvania

EXHIBIT D



American Arbitration Association
Dispute Resolution Services Worldwide

phone: 877-495-4185
fax: 877-304-8457

October 20th, 2011

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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
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EXHIBIT E



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DATE: MARCH 2, 2012

FACSIMILE TRANSMITTAL SHEET

TO:	COMPANY:	FAX NUMBER:	PHONE NUMBER:
Raul Perez, Esq. and	Initiative Legal Group	310-861-9051	310-556-5637
FROM:	PHONE NUMBER:	EMAIL:	BILLING NUMBER:
David Faustman	(415) 364-5550	dfaustman@foxrothschild.com	
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NOTES/COMMENTS:

Kempner v. CLS Transportation

Attached please find correspondence of today's date.

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March 2, 2012

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: Kempler, et al. v. CLS Transportation of Los Angeles LLC, et al.

Dear Mr. Shoneck:

We are in receipt of the 63 purported demands for arbitration and your letter of March 1, 2012.

We have two primary concerns. First, all 63 cases include identical allegations, presumably differing only in the amount of damage (although none of the cases allege any specific amount). We therefore believe that the 63 cases can be heard, individually, by the same arbitrator much more quickly and efficiently than by 63 different arbitrators. California Superior Court Judge Robert Hess has ruled that this issue of consolidation should be decided by an arbitrator. We are attempting to convince Mr. Perez to agree to an arbitrator to decide this issue.

Second, before we consider tendering the initial fees requested by AAA (almost \$60,000), we would like some assurance that Mr. Perez and his firm actually represent these 63 individuals, that the 63 individuals are actually aware of the proposed AAA cases, and that they intend to show up for an arbitration proceeding in Los Angeles. I note that the client contact information for the claimants is conspicuously missing from all 63 claim forms in violation of your Rule 4(b)(i)(1). We have repeatedly asked Mr. Perez to provide some proof that he is authorized to represent these 63 people (whose names he obtained from a now-dismissed class list), but he has refused. It would be helpful if AAA would require such a showing.

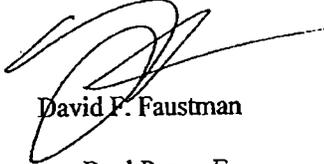
A Pennsylvania-licensed U.S. 409 Patent Att.

California Connecticut Delaware District of Columbia Florida Nevada New Jersey New York Pennsylvania

Adam Shoneck
March 2, 2012
Page 2

Please be assured that my client is not trying to avoid its contractual obligation to arbitrate claims with individual employees. Further, we have the utmost respect for the AAA. But, respectfully, we would like to resolve these concerns before we proceed further. We welcome your suggestions. Regards.

Very truly yours,



David F. Faustman

cc: Raul Perez, Esq.

EXHIBIT F



American Arbitration Association
Dispute Resolution Services Worldwide

phone: 877-495-4185
fax: 877-304-8457

March 8th, 2012

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VIA E-MAIL to rperez@initiativelegal.com

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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
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EXHIBIT G



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March 14, 2012

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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 not received payment from Respondent for the fees requested in my letter of March 1st, 2012. This letter is a final request for Respondent to submit payment of the requested filing fees in the total amount of \$58,275.00. The deadline for submission of these fees is Thursday, March 22nd, 2012. Unfortunately, absent receipt of the fees by that date, the AAA will cease administration of these matters.

We understand that Respondent has made settlement offers to the Claimants. While the AAA will not stay administration of these matters at this time, we may consider refunding a portion of the filing fees paid by the parties should any of the cases settle within thirty days of the date of this letter. In no event will a refund be issued after the selection of the arbitrator.

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 H



American Arbitration Association
Dispute Resolution Services Worldwide

phone: 877-495-4185
fax: 877-304-8457

March 27, 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:

As we have not received payment from Respondents for the filing fees requested in my letters of March 1st and 14th, 2012, we are not able to proceed with administration of the cases filed by the sixty-three (63) individual employees against 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; accordingly, we have closed our file on these matters.

We have issued a refund to Mr. Perez of the fee previously paid to AAA to re-initiate these filings.

Should the parties later decide to submit these cases to arbitration administered by the AAA and are willing to pay the requested filing fees, please feel free to contact me.

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 I

1 DAVID FAUSTMAN, SBN 081862
YESENIA GALLEGOS, SBN 231852
2 NAMAL TANTULA, SBN 247373
FOX ROTHSCHILD LLP
3 1800 Century Park East, Suite 300
Los Angeles, California 90067-3005
4 Tel 310.598.4150 / Fax 310.556.9828
dfaustman@foxrothschild.com
5 ygallegos@foxrothschild.com
nantula@foxrothschild.com
6

7 Attorneys for Defendant,
CLS Transportation Los Angeles LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF LOS ANGELES

10 GREG KEMPLER, et. al,

11 Plaintiffs,

12 vs.

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

15 Defendants.

CASE NO. BC473931

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

**NOTICE OF WITHDRAWAL OF
MOTION TO STAY ARBITRATION AND
FOR APPOINTMENT OF AN
ARBITRATOR**

Date: May 16, 2012
Time: 8:30 a.m.
Dept.: 24

Complaint filed: November 18, 2011

18 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
19 RECORD:

20 PLEASE TAKE NOTICE that Defendant CLS Transportation Los Angeles, LLC
21 withdraws its Motion to Stay Arbitration and for the Appointment of an Arbitrator, without
22 prejudice to re-noticing said motion in the future if necessary.

23 Dated: April 19, 2012

FOX ROTHSCHILD LLP

24 By: _____

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

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On April 20, 2012, I served the following document(s) described as **NOTICE OF WITHDRAWAL OF MOTION TO STAY ARBITRATION AND ARBITRATOR** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

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

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

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



Claudia LeBrane

SERVICE LIST

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Raul Perez, Esq.
Initiative Legal Group, APC
1800 Century Park East, 2nd Floor
Los Angeles, CA 90067

EXHIBIT J



RAUL PEREZ
310.556.5637 Main
RPerez@InitiativeLegal.com

June 25, 2012

VIA EMAIL

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

Subject: *63 Individual Employees v. CLS Transportation of Los Angeles, LLC, et al.*

Dear Mr. Faustman:

The following proposal achieves the efficiencies your client seeks while giving our clients more choice in selection of arbitrators. The proposal also provides greater flexibility in the scheduling of individual arbitrations as the parties will not be reliant on the availability of one to two arbitrators. In short, we propose that each of the 49 individual claimants who have not yet agreed upon arbitrators be assigned to one of the following eight arbitrators to hear that claimant's individual case. In other words, each employee assigned to an arbitrator will have his or her separate hearing. Please see below for our proposed groups and arbitrators.

The following Claimants each agree to have Hon. Patricia Collins as the arbitrator for their individual cases:

1. Daniel Araya;
2. Jerry Boyd;
3. Cleophus Collins;
4. Lamont Crawford;
5. Frank G. Dubuy;
6. Gerald Griffin; and
7. Greg Kempler

The following Claimants each agree to have Hon. Alexander Williams as the arbitrator for their individual cases:

1. Cassandra Lindsey;
2. Matthew Loatman;
3. Thomas Martin;

4. Robert Olmedo;
5. William Pinkerton; and
6. Marquel Rose

The following Claimants each agree to have Gabriel Gutierrez as the arbitrator for their individual cases:

1. Reginald Colwell;
2. Jiro Fumoto;
3. Bruce Gold;
4. Igor Kroo;
5. David Montoya; and
6. Elijah Norton

The following Claimants each agree to have Hon. Gregory O'Brien as the arbitrator for their individual cases:

1. Wayne Ikner;
2. Arthur Post;
3. Anantray Sanathara;
4. Edward Smith;
5. Belinda Washington; and
6. Neil Ben Yair

The following Claimants each agree to have Hon. Victor Person as the arbitrator for their individual cases:

1. Leroy Clark;
2. Patrick Cooley;
3. Edwin Garcia;
4. Marcial Sazo;
5. Jonathon Scott; and
6. Susan Stellman

The following Claimants each agree to have Hon. John Zebrowski as the arbitrator for their individual cases:

1. Dawn Bingham;
2. Darold Caldwell;
3. Rafael Candelaria;
4. Julius Funes;
5. James Sterling; and
6. Scott Sullivan

The following Claimants each agree to have Laurence Kay as the arbitrator for their individual cases:

1. David Baranco;
2. Luis Earnshaw;

3. Daniel Rogers Millington, Jr.;
4. Flavio Silva;
5. Avaavau Toailoa; and
6. Adrien Warren

The following Claimants each agree to have William Stein as the arbitrator for their individual cases:

1. Glen Alston;
2. Karen Bailey;
3. James Denison;
4. Carl Mueller;
5. James Richmond; and
6. Bennett Sloan

Since we have already agreed to your proposed arbitrators for 14 of the Claimants (by our letter dated June 12, 2012), the above proposal should conclude the arbitrator selection process. If you have any comments or questions, please respond by Friday, June 29, 2012. Please note that twice AAA has suspended these proceedings due to non-payment by Defendants, and Claimants will not tolerate further postponement of these arbitrations by your again refusing to pay arbitration fees and costs required by AAA. If the cycle of delay continues due to non-payment by Defendants, Claimants will seek an order concluding that Defendants have waived their right to arbitration.

Sincerely,



Raul Perez

cc: Amie Chale
Supervisor for Labor, Employment and Elections
American Arbitration Association
6795 N. Palm Ave., 2nd Floor
Fresno, CA 93704

Patrick Tatum
Assistant Vice President
American Arbitration Association
6795 N. Palm Ave., 2nd Floor
Fresno, CA 93704

Lucie Barron
President
ADR Services
1900 Avenue of the Stars #250
Los Angeles, CA 90067

EXHIBIT K

From: Faustman, David <Dfaustman@foxrothschild.com>
Sent: Friday, July 06, 2012 12:20 PM
To: Faustman, David; 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

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

From: Faustman, David
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

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EXHIBIT L

From: Faustman, David <DFaustman@foxrothschild.com>
Sent: Saturday, May 19, 2012 2:24 PM
To: 'Dario Higuchi'; Raul Perez; Samuel Levy; Gallegos, Yesenia M.
Cc: Lucie Barron
Subject: RE: CLS matters

Follow Up Flag: Follow up
Flag Status: Flagged

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

EXHIBIT M



RAUL PEREZ
310.556.5637 Main
RPerez@InitiativeLegal.com

June 12, 2012

VIA E-MAIL

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

Subject: *63 Individual Employees v. CLS Transportation of Los Angeles, LLC, et al.*

Dear Mr. Faustman:

This letter is in response to your May 19, 2012 email regarding your selection of arbitrators for the Los Angeles and San Francisco cases. After conferring with our clients, some have indicated that they are willing to have their individual cases heard by the same arbitrator.

With respect to our clients who reside in the Southern California area, the following Claimants agree to have their individual cases heard by a single arbitrator in separate hearings.

1. William Baker
2. Kung Ming Chang;
3. Miguel De La Mora;
4. Johnnie Evans;
5. Raul Fuentes;
6. Steve Maynard;
7. Peter Paull;
8. Roger Perry;
9. Myron Rogan;
10. Masood Shafiq;
11. Karim Shariff; and
12. Carl Swartz

Given your selection of Enrique Romero and in an effort to resolve informally as many outstanding issues, we will agree to Mr. Romero serving as the arbitrator for our above clients. Our remaining clients located in Southern California do not agree to the use of a single arbitrator for their individual cases.

With respect to our clients who reside in the Northern California area, the following Claimants agree to have their individual cases heard by a single arbitrator in separate hearings.

1. Kenny Cheng; and
2. Angelo Garcia

Given your selection of Kevin Murphy for the Northern California cases and again, in an effort to resolve informally as many outstanding issues, we will agree to Mr. Murphy serving as the arbitrator for our above two Northern California clients.

Our remaining 49 clients each wish to engage in the arbitrator selection process provided for in the agreement from the individual lists of arbitrators provided by ADR Services. We are diligently working to complete the strike and rank process for our remaining clients, the results of which will be communicated to ADR Services, and we will inform you and AAA when this has been done.

If you have any questions, please call me at 310.556.5637. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Raul Perez", written in a cursive style.

Raul Perez

EXHIBIT N

From: Faustman, David <Dfaustman@foxrothschild.com>
Sent: Friday, July 06, 2012 12:20 PM
To: Faustman, David; 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

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

From: Faustman, David
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

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EXHIBIT O

From: Raul Perez
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.

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.

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

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Thank you.

Registration is now open!
Webinar – Disclosures, Depositions and Dispositive Motions in Employment Arbitration:
Find out how advocates, parties and neutrals who deal with these aspects of arbitral proceedings can greatly enhance their chances for success.

September 12, 2012, at 2:00 PM EDT
For more information contact: AAAUniversity@adr.org or 212 716 3977 or
<http://www.aaauonline.org/courseSection.aspx?course=432>

ORIGINAL

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

1 Raul Perez (SBN 174687)
RPerez@InitiativeLegal.com
2 Melissa Grant (SBN 205633)
MGrant@InitiativeLegal.com
3 Glenn A. Danas (SBN 270317)
GDanas@InitiativeLegal.com
4 Initiative Legal Group APC
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

FILED
Los Angeles Superior Court

SEP 20 2012

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY Deputy

7 Attorneys for Plaintiffs

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

11 GREG KEMPLER, et al.,

12 Plaintiffs,

13 vs.

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

16 Defendants.

Case No.: BC473931

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

**AMENDED NOTICE OF MOTION FOR
ORDER DEEMING DEFENDANT CLS
TO HAVE WAIVED ARBITRATION**

Previously Scheduled:

Date: September 25, 2012

New Date:

Date: November 6, 2012

Time: 8:30 a.m.

Place: Department 24

Complaint Filed: November 18, 2011

22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

23 **PLEASE TAKE NOTICE THAT** the hearing on Plaintiff's Motion for an Order
24 Deeming Defendant CLS to have Waived Arbitration previously scheduled for September 25,
25 2012, has been rescheduled to November 6, 2012 at 8:30 a.m. or as soon thereafter as the
26 matter may be heard, in Department 24 in the Los Angeles Superior Court, located at 111
27 North Hill Street, Los Angeles, California, 90012.

28 Plaintiffs' Motion is based on this Amended Notice of Motion, the Memorandum of

1 Points and Authorities filed with this Court on August 31, 2012, the declaration of Raul Perez
2 and all exhibits attached thereto filed with this Court on August 31, 2012, all pleadings and
3 papers on file in this action and in the related action *Iskanian v. CLS Transportation Los*
4 *Angeles LLC*, Los Angeles Superior Court Case No. BC356521, and such other matters as
5 may be presented to the Court at or before the time of the hearing.
6

7 Dated: September 19, 2012

Respectfully submitted,

Initiative Legal Group APC

9
10
11 By: 

Raul Perez
Melissa Grant
Glenn A. Danas

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13 Attorneys for Plaintiffs
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ORIGINAL

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

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 September 19, 2012, I served the documents described as:

AMENDED NOTICE OF MOTION FOR ORDER DEEMING DEFENDANT CLS TO HAVE WAIVED ARBITRATION

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:

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 September 19, 2012, at Los Angeles, California.

Sam Levy

Type or Print Name

Signature

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/06/12		DEPT. 24
HONORABLE Robert L. Hess	JUDGE	G. Charles
HONORABLE #1	JUDGE PRO TEM	DERUTY CLERK
B. Bell	C/C	ELECTRONIC RECORDING MONITOR
	Deputy Sheriff	K. Algorri CSR 8319 Stip Reporter

8:30 am	BC473931	Plaintiff	Raul Perez	(X)
	GREG KEMPLER	Counsel	Katherine Kehr	(x)
	VS	Defendant	David Faustman	(x)
	CLS TRANSPORTATION LOS ANGELES	Counsel		
	R/t BC356521			

NATURE OF PROCEEDINGS:

CASE MANAGEMENT CONFERENCE

The cause is called for hearing.

The Court orders the following procedures, as more fully stated on the record:

There will be two arbitrators, Murphy and Stein for Northern California. Northern California claimants are to choose between them.

There will be 6 Southern California arbitrators-- Romero plus five to be chosen. The parties are to attempt to agree on 5 more; if there is not complete agreement, they will use strike procedure. Each claimant for Southern California is to chose which arbitrator to use.

The Southern California arbitrators are to be selected not later than November 27, 2012. Each claimant is to make a binding choice of arbitrator to hear their case not later than December 18, 2012. This choice is irrevocable unless the arbitrator withdraws or is disqualified for cause.

The matter is continued to 8:30am December 21, 2012 for status of arbitration. The parties are to present a final list of srbitrators and which claimant will use which arbitrator. The parties are to be prepared to address when the arbitration will actually comm-

MINUTES ENTERED
11/06/12
COUNTY CLERK

11/06/2012

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of
4 18 and not a party to the within suit; my business address is 1840 Century Park East, Suite 450,
5 Los Angeles, California 90067.

6 On April 10, 2013, I served the document(s) described as:

7 **1) MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND
8 AUTHORITIES; PROPOSED ORDER; VOLUME I OF I**

9 on the interested parties in this action by sending the original [or] a true copy thereof
10 to interested parties as follows [or] as stated on the attached service list:

11 **SEE ATTACHED SERVICE LIST**

12 **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
13 for mailing in the ordinary course of business at Los Angeles, California. I am "readily
14 familiar" with this firm's practice of collection and processing correspondence for
15 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal
16 Service that same day in the ordinary course of business with postage thereon fully
17 prepaid at Los Angeles, California.

18 **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
19 California, by e-mail delivery on the parties listed herein at their most recent known e-
20 mail address or e-mail of record in this action.

21 **BY FAX:** I hereby certify that this document was served from Los Angeles, California,
22 by facsimile delivery on the parties listed herein at their most recent fax number of
23 record in this action.

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25 by hand to the offices of the addressee(s) named herein.

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27 collection and processing correspondence for overnight delivery. Under that practice,
28 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 April 10, 2013, at Los Angeles, California.

Rashan R. Barnes
Type or Print Name


Signature

SERVICE LIST

1 2 3 4 5 6	Yesenia Gallegos, Esq. David Faustman, Esq. FOX ROTHSCHILD LLP 1800 Century Park East, Suite 300 Los Angeles, CA 90067 Telephone: (310) 598-4159 Facsimile: (310) 556-9828 E-mail: Ygallegos@foxrothschild.com dfaustman@foxrothschild.com	Attorneys for Defendant/Respondent CLS Transportation of Los Angeles
7 8 9 10	Scott L. Nelson (<i>Pro Hac Vice</i>) Public Citizen Litigation Group 1600 20 th Street, NW Washington, DC 20009 Telephone: (202) 588-1000 Facsimile: (202) 588-7795 Email: SNelson@Citizen.org	Attorney for Plaintiff/Appellant Arshavir Iskanian
11 12 13 14	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
15 16 17	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
18 19 20	The Hon. Robert Hess Department 24 c/o Clerk of the Court Los Angeles Superior Court 111 North Hill Street Los Angeles, CA 90012	
21 22 23	California Court of Appeal Second Appellate District, Div. 2 300 S. Spring Street North Tower, 2 nd Floor Los Angeles, CA 90013	