S204032

In the Supreme Court

of the State of California

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 No. B235158

FROM THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES,
CASE NO. BC356521, ASSIGNED FOR ALL PURPOSES TO
JUDGE ROBERT HESS, DEPARTMENT 24

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF; BRIEF OF AMICUS CURIAE EMPLOYERS GROUP IN SUPPORT OF DEFENDANT/RESPONDENT CLS TRANSPORTATION OF LOS ANGELES

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
RICHARD J. SIMMONS, CAL. BAR NO. 72666
KARIN DOUGAN VOGEL, CAL. BAR. NO. 131768
MATTHEW M. SONNE, CAL. BAR NO. 239110
333 SOUTH HOPE STREET, 48TH FLOOR
LOS ANGELES, CALIFORNIA 90071-1448
Tel: 213-620-1780
Attorneys for Amicus Curiae Employers Group

S204032

In the Supreme Court

of the State of California

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 No. B235158

FROM THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES,
CASE NO. BC356521, ASSIGNED FOR ALL PURPOSES TO
JUDGE ROBERT HESS, DEPARTMENT 24

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF; BRIEF OF AMICUS CURIAE EMPLOYERS GROUP IN SUPPORT OF DEFENDANT/RESPONDENT CLS TRANSPORTATION OF LOS ANGELES

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
RICHARD J. SIMMONS, CAL. BAR NO. 72666
KARIN DOUGAN VOGEL, CAL. BAR. NO. 131768
MATTHEW M. SONNE, CAL. BAR NO. 239110
333 SOUTH HOPE STREET, 48TH FLOOR
LOS ANGELES, CALIFORNIA 90071-1448
Tel: 213-620-1780
Attorneys for Amicus Curiae Employers Group

APPLICATION FOR PERMISSION TO FILE BRIEF OF AMICUS CURIAE

Pursuant to Rule 8.520, subdivision (f) of the California Rules of Court, proposed amicus curiae the Employers Group ("Amicus") respectfully submits the enclosed brief in support of Defendant and Respondent CLS Transportation of Los Angeles ("Respondent"). This brief offers a unique perspective on the issue presented by this case.

For the reasons set forth below, Amicus respectfully urges the Court to affirm the court of appeal's decision in this case. In addition, Amicus respectfully request that in its opinion, the Court reconsider and analyze existing California decisional law in the labor/arbitration agreement context, in addition to *Gentry v. Superior Court* (2007) 42 Cal.4th 443 [*Gentry*], including the decisions in *Armendariz v. Found. Health Psychcare Servs., Inc.* (2000) 24 Cal.4th 83 [*Armendariz*], and *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489 [*Brown*], to provide comprehensive and conclusive direction to courts and litigants.

INTEREST OF AMICUS

Headquartered in California, the Employers Group is the nation's oldest and largest human resources management association, representing nearly 5,000 companies of all sizes and every industry, which collectively employ approximately 2.5 million employees. The Employers Group respectfully submits that its collective experience in employment matters,

including its appearance as amicus curiae in state and federal forums over a period of many decades, gives it a unique ability to focus on the short and long-term impact and implications of the legal issues under consideration in this case. The Employers Group, formerly known as Merchants & Manufacturers Association and the Federated Employers, has been involved as amicus in many significant employment cases, including *Dyna-Med v. FEHC*, *Foley v. Interactive Data Corp.*, *Gantt v. Sentry Insurance*, *Hunter v. Up-Right, Inc.*, *Jennings v. Marralle*, *Lazar v. Superior Court*, *Livadas v. Bradshaw*, *Miller v. Department of Corrections*, *Newman v. Emerson Radio*, *Ramirez v. Yosemite Water Co., Inc.*, *Rojo v. Kliger*, *Shoemaker v. Myers*, *Smith v. L'Oreal*, *Yanowitz v. L'Oreal*, *Harris v. Superior Court (Liberty Mutual)*, *Brinker v. Superior Court (Hohnbaum)*, *Sonic-Calabasas A, Inc. v. Frank Moreno*, and *Wisdom et al. v. AccentCare, Inc., et al.*

ISSUES IN NEED OF FURTHER BRIEFING

Amicus supports the arguments submitted by Respondent and does not seek to merely repeat the arguments submitted in Respondent's Brief. Rather, Amicus presents additional arguments and clarifications that will assist the Court in evaluating the important legal issues presented by this case.

The enclosed brief sets forth why, in reviewing *Iskanian*, the California Supreme Court should revisit case law governing the application

of the FAA to employment arbitration disputes and take this opportunity to articulate principles that will assist California parties and courts in enforcing arbitration agreements after *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. ___, 131 S.Ct. 1740.

CONCLUSION

For the aforementioned reasons, amicus curiae Employers Group respectfully requests that the Court accept the enclosed brief for filing and consideration.

DATED: May 10, 2013

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By 

RICHARD J. SIMMONS
KARIN DOUGAN VOGEL
MATTHEW M. SONNE
Attorneys for Amicus Curiae
Employers Group

CERTIFICATE OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.520(f)(4)

Amicus Curiae hereby certifies under provisions of California Rules of Court, rule 8.520(f)(4)(A) that no party or counsel for any party authored the proposed brief in whole or in part or made any monetary contributions intended to fund the preparation or submission of the brief. Amicus Curiae further certifies under California Rules of Court, rule 8.520(f)(4)(B) that no person or entity other than Amicus Curiae, its members, and its counsel made any monetary contribution intended to fund the preparation or submission of the brief.

DATED: May 10, 2013

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By 

RICHARD J. SIMMONS
KARIN DOUGAN VOGEL
MATTHEW M. SONNE
Attorneys for Amicus Curiae
Employers Group

S204032

In the Supreme Court

of the State of California

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 No. B235158

FROM THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES,
CASE NO. BC356521, ASSIGNED FOR ALL PURPOSES TO
JUDGE ROBERT HESS, DEPARTMENT 24

BRIEF OF AMICUS CURIAE EMPLOYERS GROUP IN SUPPORT OF DEFENDANT/RESPONDENT CLS TRANSPORTATION OF LOS ANGELES

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
RICHARD J. SIMMONS, CAL. BAR NO. 72666
KARIN DOUGAN VOGEL, CAL. BAR. NO. 131768
MATTHEW M. SONNE, CAL. BAR NO. 239110
333 SOUTH HOPE STREET, 48TH FLOOR
LOS ANGELES, CALIFORNIA 90071-1448
TEL: 213-620-1780
ATTORNEYS FOR AMICUS CURIAE EMPLOYERS GROUP

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. SCOPE OF REVIEW 2

III. ARGUMENT 3

A. Under The FAA, Private Arbitration Agreements Must Be Enforced According To Their Terms 3

B. The Recent Ninth Circuit Decision Of *Kilgore v. KeyBank* Supports The Court Of Appeal's Holding In *Iskanian* 5

C. California's Expansive Application Of Unconscionability And Public Policy Principles In Employment Cases Largely Offends The FAA 8

D. Representative PAGA Arbitration Imposes The Same Burdens As Class Arbitration 11

E. Plaintiff Seeks To Abridge The State's Ability To Recover Civil Penalties On Behalf Of An Aggrieved Employee 14

F. *Iskanian* Provides This Court With An Opportunity To Revisit Authorities That Conflict With *Concepcion* 17

1. Because *Gentry* was based on *Discover Bank*, *Gentry* cannot survive *Concepcion* 17

2. *Armendariz* subjects California arbitration agreements to unique and impermissible scrutiny 20

3. *Brown*'s exception for PAGA claims improperly circumvents the FAA 22

IV. CONCLUSION 24

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Allied-Bruce Terminix Cos. v. Dobson (1995)
513 U.S. 265 12

In re Apple & AT&T iPad Unlimited Data Plan Litig. (N.D. Cal. 2011)
2011 U.S. Dist. LEXIS 78276, at * 11-12 6

Arellano v. T-Mobile USA, Inc. (N.D. Cal. 2011)
2011 U.S. Dist. LEXIS 52142, at *2-6 6

AT&T Mobility v. Concepcion (2011)
131 S.Ct. 1740 ..... 1, 9, 10, 12, 13, 14

Cardenas v. AmeriCredit Fin. Servs. Inc. (N.D. Cal. 2011)
2011 U.S. Dist. LEXIS 78282, at *6-8 6

Cole v. Burns International Sec. Services (D.C. Cir. 1997)
105 F.3d 1465 20

In re Gateway LX6810 Computer Prods. Litig. (C.D. Cal. 2011)
2011 U.S. Dist. LEXIS 84402, at *6-9 6

Grabowski v. C.H. Robinson Co. (S.D. Cal. 2011)
817 F. Supp. 2d 1159, 1181 23

Gray v. Conseco, Inc.
2000 WL 1480273, at *4 (C.D. Cal. Sept. 29, 2000) 8

Kaltwasser v. AT&T Mobility LLC (N.D. Cal. 2011)
2011 U.S. Dist. LEXIS 106783, at *20-23 6

Kilgore v. KeyBank, N.A. (9th Cir. 2013)
2013 U.S. App. LEXIS 7312, * 18-20 ..... 5, 7, 8

Lewis v. UBS Financial Services Inc. (N.D. Cal. Sept. 30, 2011)
2011 U.S. Dist. LEXIS 116433, at *14 18

Mitsubishi Motors v. Soler Chrysler-Plymouth (1985)
473 U.S. 614, 628 12

Morse v. ServiceMaster Global Holdings, Inc. (N.D. Cal. 2011)
U.S. Dist. LEXIS 82029, at *3 n.1 18

Murphy v. DIRECTV (C.D. Cal. Aug. 2, 2011)
2011 U.S. Dist. LEXIS 87625 at *4 18

Oguejiofor v. Serramonte Nissan (N.D. Cal. 2011)
2011 U.S. Dist. LEXIS 99180 *9 22

Perry v. Thomas (1987)
482 U.S. 482, 493 fn. 9 22

Quevedo v. Macy's Inc. (C.D. Cal. 2011)
2011 WL 3135052 at *6, n. 3 ..... 19, 23

Rent-A-Center West, Inc. v. Jackson (2010)
561 U.S. __, 130 S.Ct. 2772, 2774 4

Ruhe v. Masimo Corp. (C.D. Cal. 2011)
U.S. Dist. LEXIS 104811 22

Stolt-Nielsen S.A., et al. v. Animalfeeds Int'l Corp. (2010)
130 S. Ct. 1758, 1773-1777 13

Valle et al. v. Lowe's HIW, Inc. (N.D. Cal. August 22, 2011)
2011 U.S. Dist. LEXIS 93639, at * 5 18

Zarandi v. Alliance Data Sys. Corp. (C.D. Cal. 2011)
2011 U.S. Dist. LEXIS 54602, at *5 ..... 6, 18

State Cases

Arguelles-Romero v. Superior Court (2010)
184 Cal.App.4th 825, 840-41 18

Arias v. Superior Court (2009)
46 Cal.4th 969, 980 16

Armendariz v. Found. Health Psychcare Servs., Inc. (2000)
24 Cal.4th 83 ..... 3, 20, 21

Broughton v. Cigna Healthplans of California (1999)
21 Cal.4th 1066 ..... 5, 6

Cruz v. Pacificare Health Systems, Inc. (2003)
30 Cal.4th 303 ..... 5, 6

Discover Bank v. Superior Court (2005)
36 Cal.4th 148, 162-63 4

Gentry v. Superior Court (2007)
42 Cal.4th 443 ..... 3, 4, 5, 17, 18, 19, 20

Iskanian v. CLS Transportation L.A., LLC (2012)
206 Cal.App.4th 949 ..... 1, 2

Federal: Statutes, Rules, Regulations, Constitutional Provisions

Federal Arbitration Act ("FAA") 1, 2, 5, 6, 7, 12, 14

State: Statutes, Rules, Regulations, Constitutional Provisions

Cal. Lab. Code §§ 225.5 ..... 15, 16

Private Attorneys General Act of 2004 ("PAGA") 1, 7, 8, 11, 12, 13, 14, 15, 16, 17, 22, 23

I.
INTRODUCTION

Although *AT&T Mobility v. Concepcion* (2011) 131 S.Ct. 1740 [*Concepcion*] addressed the enforceability of arbitration agreements that waive or do not contemplate class arbitration, its legal analysis is equally applicable to arbitration agreements that waive or do not contemplate arbitration of representative Private Attorneys General Act of 2004 ("PAGA") claims. *Concepcion's* basic tenet is that "[s]tates cannot require a procedure that is inconsistent with the [Federal Arbitration Act], *even if it is desirable for unrelated reasons.*" (*Id.* at p. 1753 (emphasis added).) In *Concepcion*, the Court found it inconsistent with the Federal Arbitration Act ("FAA") for California to elevate its interest in consumer class actions over private contractual arbitration of claims. Likewise here, it is inconsistent with the FAA for California to elevate its interest in PAGA representative actions over private contractual arbitration.

Even though the legislature enacted the PAGA to provide a procedural method by which employees can obtain redress -- similar to the way the consumer class action procedural device plays a significant role for consumers to obtain redress -- those state interests must bow to the FAA. Even if FAA preemption forecloses a litigant's right to proceed on a representative basis, arbitration agreements must be enforced in accordance with their terms. Because the arbitration agreement at issue in *Iskanian v.*

CLS Transportation L.A., LLC [*Iskanian*] (2012) 206 Cal.App.4th 949, is enforceable under these principles of *Concepcion*, the Court of Appeal's decision should be affirmed.

Moreover, *Iskanian* cannot be decided in a vacuum. In reviewing *Iskanian*, the California Supreme Court should examine the broad impact of *Concepcion* on California's larger body of employment arbitration case law. This much needed guidance will instruct California courts and litigants how to better navigate conflicts between the FAA and state unconscionability/public policy laws. Without this comprehensive review, issues related to the enforceability of arbitration agreements in the labor context will continue to plague California courts.

II.
SCOPE OF REVIEW

The underlying facts in *Iskanian* are fully set forth in the parties' briefs. For purposes of the analysis here, the basic language of the arbitration agreements signed by the plaintiff employee, in relevant part, is as follows:

> ". . . [E]xcept 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." [Appellant's Appendix at p. 81.]

In applying the principles of *Concepcion* to this agreement, the Court will be revisiting *Gentry v. Superior Court* (2007) 42 Cal.4th 443 [*Gentry*]. Additionally, the Court should revisit two other published decisions to distill the law in this area: *Armendariz v. Found. Health Psychcare Servs., Inc.* (2000) 24 Cal.4th 83 [*Armendariz*] and *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489 [*Brown*]. All three of the foregoing decisions are inconsistent with *Concepcion's* overarching admonition that arbitration agreements are to be enforced in accordance with their terms, even where the result could frustrate state public policy. (*Concepcion*, 131 S.Ct. at p. 1753.) As this Court analyzes *Iskanian* in light of *Concepcion*, its thorough analysis should establish clear principles that will enable contracting parties and the courts to predict and apply the law in this evolving area.

III.
ARGUMENT

A. Under The FAA, Private Arbitration Agreements Must Be Enforced According To Their Terms

In *Concepcion,* the U.S. Supreme Court recognized that the "principal purpose" of the FAA is to "ensure that private arbitration agreements are enforced according to their terms." (*Concepcion,* 131 S.Ct. at p. 1748.) The FAA preempts any state law or public policy finding that

employment arbitration agreements are unconscionable and invalid if they do such things as require arbitration according to specific rules or fail to define basic terms such as "binding arbitration." (See *id.* at pp. 1748-49.) Such preemption precludes states from creating a rule "that is inconsistent with the FAA, even if it is desirable for unrelated reasons." (*Concepcion*, 131 S.Ct. at p. 1753.) Thus, the FAA trumps any state policy that favors litigation or other procedures over contractual arbitration. (*Id.* at p. 1752, citing *Rent-A-Center West, Inc. v. Jackson* (2010) 561 U.S. __, 130 S.Ct. 2772, 2774 ("[a]rbitration is a matter of contract, and the FAA requires courts to honor parties' expectations").)

But the principles of *Concepcion* are not limited to a single state rule that interferes with the federal policy favoring enforcement of arbitration agreements according to their terms. In invalidating the *Discover Bank*[1] rule, the U.S. Supreme Court also identified other state rules that interfere with the federal policy favoring arbitration, such as those that find arbitration agreements unconscionable as against public policy if they fail

---

[1] See *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148, 162-63 [*Discover Bank*], where this Court held that "when [a class action] waiver is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money, then . . . the waiver becomes in practice the exemption of the party 'from responsibility for [its] own fraud, or willful injury to the person or property of another'" and therefore "such waivers are unconscionable."

to provide for judicially monitored discovery. (*Id.* at p. 1747.) The Court reasoned that a trial court might find the absence of such discovery rights unenforceable due to "unconscionability," attempting to insulate the ruling under the saving clause of section 2 of the FAA. (*Id.*) Finding that such a decision would be inconsistent with the FAA, the Supreme Court stated that while the saving clause of section 2 "preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives." (*Id.* at p. 1748.) As discussed below, Plaintiff's representative action waiver must be enforced even if it would be "desirable for unrelated reasons" to invalidate it. (*Concepcion*, 131 S.Ct. at p. 1753.)

B. The Recent Ninth Circuit Decision Of *Kilgore v. KeyBank* Supports The Court Of Appeal's Holding In *Iskanian*

The Ninth Circuit recently applied this reasoning from *Concepcion* to enforce an arbitration agreement according to its terms, after addressing the interface between the FAA policy favoring arbitration and California statutes authorizing a party to obtain "public" injunctive relief. (*Kilgore v. KeyBank, N.A.* (9th Cir. 2013) 2013 U.S. App. LEXIS 7312, * 18-20.) In *Kilgore*, the Ninth Circuit examined California's "*Broughton-Cruz*" rule prohibiting the arbitration of claims for broad, public injunctive relief—a rule established in *Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th 1066 and *Cruz v. Pacificare Health Systems, Inc.* (2003) 30 Cal.4th

303. In *Broughton*, the "court concluded that an agreement to arbitrate could not be enforced in a case where the plaintiff is 'functioning as a private attorney general, enjoining future deceptive practices on behalf of the general public.'" (*Broughton*, 21 Cal.4th at pp. 1079-1080.) The *Broughton* Court held that because "the relief is for the benefit of the general public rather than the party bringing the action" and arbitration would "lead to the diminution or frustration of the public benefit," there was an "inherent conflict" between arbitration and the purpose of the CLRA's injunctive relief remedy." (*Broughton*, 21 Cal.4th at p. 1082 (emphasis added).) In *Cruz*, the California Supreme Court extended the *Broughton* rule to claims for public injunctive relief under the UCL. (*Cruz*, 30 Cal.4th at p. 316.)

Even assuming *arguendo* that the *Broughton-Cruz* rule was not abrogated by the U.S. Supreme Court's holding in *Concepcion,*[2] the *Kilgore*

---

[2] After *Concepcion*, multiple courts have held that *Broughton* and *Cruz* are preempted by the FAA. (See e.g., *Kaltwasser v. AT&T Mobility LLC*, (N.D. Cal. 2011) 2011 U.S. Dist. LEXIS 106783, at *20-23 [injunctive relief claims are arbitrable]; *In re Gateway LX6810 Computer Prods. Litig.*, (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 84402, at *6-9 [claims for injunctive relief under CLRA and UCL are arbitrable]; *In re Apple & AT&T iPad Unlimited Data Plan Litig.*, (N.D. Cal. 2011) 2011 U.S. Dist. LEXIS 78276, at * 11-12 [same]; *Cardenas v. AmeriCredit Fin. Servs. Inc.*, (N.D. Cal. 2011) 2011 U.S. Dist. LEXIS 78282, at *6-8 ["*Concepcion's* 'straightforward' analysis arguably compels the conclusion that the FAA preempts both [*Broughton* and *Cruz*]"]; *Arellano v. T-Mobile USA, Inc.*, (N.D. Cal. 2011) 2011 U.S. Dist. LEXIS 52142, at *2-6 [FAA preempts *Cruz* and *Broughton*]; *Zarandi v. Alliance Data Sys.*

court noted that the "central premise of *Broughton-Cruz* is that 'the judicial forum has significant institutional advantages over arbitration in administering a *public* injunctive remedy, which as a consequence will likely lead to the diminution or frustration of the *public benefit* if the remedy is entrusted to arbitrators.'" (*Kilgore*, at *19-20 quoting *Broughton*, 988 P.2d at 78 [emphasis added].) The concern in *Broughton-Cruz* is absent, however, "where the class affected by the alleged practices is small, and *where there is no real prospective benefit to the public at large* from the relief sought." (*Id.* at *20 [emphasis added].) Finding that the requested injunctive relief in *Kilgore* related only to past harms suffered by the members of a limited putative class, the Ninth Circuit found there was no real prospective benefit to the public at large from the relief sought. (*Id.*) Thus, the Ninth Circuit held the FAA applied and reversed the denial of the defendants' motion to compel arbitration so that the arbitration agreement between the parties could be enforced according to its terms. (*Id.*)

Just like the injunctive relief claim at issue in *Kilgore*, Plaintiff's PAGA claim for penalties in *Iskanian* is subject to the FAA and not exempt

---

Corp., (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 54602, at *5; *Nelson*, 2011 U.S. Dist. LEXIS 92290, at * 25 ["[u]nder *Concepcion*, the FAA preempts any rule or policy rooted in state law that subjects agreements to arbitrate particular kinds of claims to more stringent standards of enforceability than contracts generally.].)

from it, because "there is no real prospective benefit to the public at large from the relief sought." (See *Kilgore*, 2013 U.S. App. LEXIS 7312 at *20.) Civil penalties paid by an employer under the PAGA do not inure to the benefit of the public. To the contrary, in a best case scenario, a successful plaintiff in a representative PAGA action could potentially recover civil penalties only on behalf of other aggrieved parties, not the general public. To the extent Plaintiff might argue that waiving the right to seek PAGA penalties on behalf of other employees would lead to a frustration of an alleged public benefit, Plaintiff's argument fails because (1) nothing prevents other employees from seeking individual PAGA penalties;[3] and (2) PAGA representative claims still only benefit a defined group of people, and not the general public of California. Accordingly, *Kilgore* buttresses the Court of Appeal's reasoning in *Iskanian*.

C. California's Expansive Application Of Unconscionability And Public Policy Principles In Employment Cases Largely Offends The FAA

Federal courts within California have noticed California state courts' unique and expansive application of unconscionability doctrines to arbitration agreements. (See *Gray v. Conseco, Inc.* (C.D. Cal. 2000) 2000 WL 1480273, at *4 ("Under California law, other non-mutual contract

---

[3] None of the claims at issue in this case affect the rights of third parties who are unable to bring their own legal actions to vindicate their rights. Plaintiff has not shown any reason why other employees would be unable to fully redress any grievances they may have in arbitration.

provisions are valid and not unconscionable. The language used by the California Supreme Court in the *Armendariz* opinion itself demonstrates that the rule singles out and imposes a special burden on arbitration agreements . . . . [citation omitted]").) Many California courts have attempted to distance themselves from *Concepcion* by focusing on "unwaivable statutory rights" as opposed to the "unconscionability" rationale used in *Discover Bank.* This is a distinction without a difference. This argument ignores the fact that the "unwaivable statutory rights" doctrine is driven by the same public policy concerns as the unconscionability rationale and, as set forth above, such public policy concerns cannot overcome the preemptive effect of the FAA. (See *Concepcion*, 131 S.Ct. at p. 1753.)

Even if public policy concerns properly enter the calculation, the consequences of the current budget cuts affecting the state judiciary further serve to elevate the desirability of agreements to arbitrate. For example, the San Diego Superior Court recently announced:

> "The San Diego Court has estimated that it faces as much as a $14 million cut in funding for FY 2012-2013, and predicts the total cuts for fiscal year 2013-2014 could rise to $40 million or more. These cuts are in addition to reductions incurred during the preceding four fiscal years. As a result, the Court is facing the most significant reduction of services in its history. As a result, the Court has determined that it will no longer be able to provide court reporters at the Court's expense in matters

> where it is not legally required to do so. That change will take effect on November 1, 2012."[4]

Los Angeles Superior Court and San Francisco Superior Court are experiencing similar cuts in their court services.[5] A recent news release quotes a local judge: "'The civil justice system in San Francisco is collapsing,' Judge Feinstein said. 'We will prioritize criminal, juvenile, and other matters that must, by law, be adjudicated within time limits. Beyond that, *justice will neither be swift nor accessible*.'" (*Id.* [emphasis added].)

These current economic realities only underscore the reasons why parties choose to arbitrate civil claims rather than rely on public court

---

[4] (San Diego Superior Court, General Order of the Presiding Department, Order No. 090512, (September 5, 2012) <http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/RESOURCELISTS/COURTREPORTERINFORMATION/GENERAL%20ORDER%20090512%20SUSPEND%201.4.5.PDF> [as of May 1, 2013].)

[5] See News Release, *San Franciscans Face Long Lines, 5-Year Case Delays From State Budget Cuts That Force The Court To Lay Off 200 Employees, Close 25 Courtrooms* (July 18, 2011) <http://www.sfcourts.org/Modules/ShowDocument.aspx?documentid= (as of May 1, 2013); *Los Angeles Superior Court Announces Budget Cuts Affecting 431 Employees*; (June 15, 2012) <http://www.lasuperiorcourt.org/courtnews/Uploads/14201261592757LosAngelesSuperiorCourtAnnouncesBudgetCuts.htm> [as of May 1, 2013] ("Tomorrow 431 court employees will be adversely affected as reductions in state financial support for the California judicial branch force us to cut our budget by $30 million.")

services that are becoming increasingly difficult and expensive to access. More and more, as a matter of public policy, arbitration procedures provide a critical means for parties to obtain a speedy and economical resolution of their disputes. When courts enforce parties' individual arbitration agreements, the ends of judicial efficiency and economy are served because the parties' disputes are handled on a streamlined basis by an arbitrator. Accordingly, arbitration agreement enforcement is not only consistent with the FAA's precepts, but it simultaneously respects the state's limited judicial resources.

D. Representative PAGA Arbitration Imposes The Same Burdens As Class Arbitration

As with the improper imposition of class arbitration, an unexpected imposition of arbitration with a PAGA representative group would transform a process for the resolution of a bilateral, naturally circumscribed dispute into a sprawling, high-stakes quasi-litigation. Such an imposition would improperly rewrite the parties' arbitration agreement and retroactively alter the core economics of the previously agreed to bargain.[6] In short, a shift from individual arbitration to arbitration with a representative group fundamentally transforms the risk/benefit calculus of the arbitration bargain. This is particularly true where, as here, the

---

[6] Requiring Defendant to arbitrate with a representative group would also effectively, and improperly, rewrite the many individual agreements Defendant has likely entered into with each employee who would be part of that representative group.

agreement to arbitrate plainly disallows arbitration of a representative action. In these circumstances, compelling or enforcing arbitration with a representative group would be inconsistent with *Concepcion* and the central purpose of the FAA to ensure that private agreements to arbitrate are enforced according to their terms. (*Concepcion*, 131 S.Ct. at p. 1748.)

Furthermore, the procedural complexity and uncertainty of arbitration with a representative group also radically alters the benefits of the parties' original arbitration bargain. Conventional, bilateral arbitration promises "simplicity, informality, and expedition," (*Mitsubishi Motors v. Soler Chrysler-Plymouth* (1985) 473 U.S. 614, 628), as opposed to the "delay and expense of litigation." (*Allied-Bruce Terminix Cos. v. Dobson* (1995) 513 U.S. 265.) In contrast, representative actions, like class proceedings, are complex, litigious, and slow.

Indeed, arbitration with a representative group can be as costly and time consuming as class action arbitration. Like class actions, a PAGA representative claim involves the claims of other employees. The main issue in a PAGA case is whether other employees' rights under the Labor Code have been violated. Arbitration with a representative employee on behalf of a group imposes the additional cost of paying the often substantial fees of an arbitrator for hearings on the merits of the representative claims and procedural administration of the same. For example, the statutory burden of proving a PAGA claim provides that:

> If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

(Cal. Lab. Code § 2699 (f)(2).) Thus, under the express provisions of the statute, in a PAGA representative action, civil penalties can only be assessed per each **aggrieved** employee, per each pay period for each violation. Because penalties can only be assessed as to those employees who had their Labor Code rights violated on a per-pay-period basis, the resolution of the PAGA claim will entail testimony not only about Plaintiff's claims but also about the claims of potentially hundreds or thousands of other employees. A PAGA case presents the same problems that led the Supreme Court to hold that arbitrations are presumptively individual proceedings, not class proceedings, and that the arbitration must proceed as an individual case unless it is clear that the parties affirmatively agreed to something more than bilateral arbitration. (*Concepcion*, 131 S.Ct. at 1745-1749; *Stolt-Nielsen S.A., et al. v. Animalfeeds Int'l Corp.* (2010) 130 S. Ct. 1758, 1773-1777.)

Finally, this problem is not cured by severing a PAGA representative claim from other relief and permitting arbitration of the remaining claims. As in class actions, the burden and expense of litigating a PAGA representative action may be so great that a defendant is compelled to settle

even though it has done nothing wrong. (Cf., *Concepcion*, 131 S. Ct. at p. 1752 ["class arbitration greatly increases risks to defendants...when damages allegedly owed to tens of thousands of potential claimants are aggregated and decided at once"].) This problem is exacerbated by litigants who sue over mere trifles to extort a settlement check rather than to remedy any true harms. As *Concepcion* pronounces, the FAA cannot and does not allow unscrupulous plaintiffs to impel employers into representative or class action litigation when -- like in *Iskanian* -- their contractual agreements clearly and unmistakably mandate that all disputes be resolved in an *individual* arbitration.

E. Plaintiff Seeks To Abridge The State's Ability To Recover Civil Penalties On Behalf Of An Aggrieved Employee

Contrary to the Court of Appeal's holding in *Iskanian*, Plaintiff plainly contends that as a matter of law, an "individual PAGA claim...does not exist." (Appellant's Opening Brief "AOB," p. 26.) Plaintiff's argument fails to appreciate its unintended consequences -- by taking the position that the PAGA is inherently representative and that litigants may never seek civil penalties under the Labor Code on an individual basis, Plaintiff simultaneously forecloses the Labor Commissioner and/or the State of California from seeking civil penalties under the Labor Code on behalf an individual employee. This tortured interpretation of the PAGA is belied by the Labor Code itself and fails to appreciate the statute's genesis.

The PAGA established civil penalties for all provisions of the Labor Code "except those for which a civil penalty is specifically provided." (Cal. Labor Code section 2699(f).) More importantly, the PAGA also allowed an aggrieved employee to recover civil penalties that were already enumerated in the Labor Code prior to the passage of the PAGA, but were only "assessed and collected by the Labor and Workforce Development Agency ['LWDA']" until the PAGA's enactment. (Cal. Labor Code section 2699(f).) In other words, the PAGA for the first time authorized aggrieved employees to invoke Labor Code provisions that existed prior to January 1, 2004 -- the PAGA's effective date -- but that had exclusively authorized the LWDA to recover those enumerated civil penalties. (See e.g., Cal. Labor Code sections 225.5; 210; 752.)

By way of example, California Labor Code section 225.5 states, in relevant part:

> "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:
>
> (a) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.
>
> (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

> The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action...."

(Cal. Labor Code section 225.5.) This civil penalty statute is an example of one that existed prior to the PAGA but only provided for a right of action by the Labor Commissioner. After the PAGA's enactment, private litigants could invoke this civil penalty statute (and others), after satisfying certain conditions precedent, and serve as a "proxy" for the State of California. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.) Nothing in this civil penalty section of the Labor Code precludes the Labor Commissioner from recovering civil penalties on behalf of one employee instead of many, nor does anything in the statute foreclose a "private attorney general" under the PAGA from recovering civil penalties exclusively on behalf of herself.

In a nutshell, Plaintiff cannot have it both ways. If the LWDA could recover civil penalties on behalf of an individual employee prior to the enactment of the PAGA, an aggrieved employee acting as a "proxy" for the State of California must be permitted to recover civil penalties on behalf of only herself after the PAGA's enactment. If the PAGA somehow operates to foreclose an aggrieved employee from bringing an individual claim for civil penalties under the Labor Code, it must necessarily also operate to

foreclose the State of California from recovering civil penalties on behalf of one employee since the PAGA merely allows an aggrieved employee to "stand in the shoes" of the Labor Commissioner. Because no statutory language in the PAGA abridges the Labor Commissioner's ability to recover civil penalties solely on behalf of one aggrieved employee, no such restriction can apply to a "private attorney general." Thus, contrary to Plaintiff's contention, the PAGA is not an inherently representative action. The Court of Appeal properly analyzed the PAGA and its reasoning should be affirmed.

F. *Iskanian* Provides This Court With An Opportunity To Revisit Authorities That Conflict With *Concepcion*

The *Iskanian* decision presents an opportunity for the Court to harmonize California's arbitration jurisprudence in light of *Concepcion*. As discussed below, *Concepcion* has fatally undermined the doctrines established in *Gentry, Armendariz*, and *Brown*.

1. Because *Gentry* was based on *Discover Bank*, *Gentry* cannot survive *Concepcion*

In *Gentry, supra,* the California Supreme Court extended the *Discover Bank* rule (which the U.S. Supreme Court later struck down in *Concepcion*) to wage and hour employment cases. (See *Gentry*, 42 Cal.4th at pp. 457-59.) Specifically, as set forth in *Gentry,* invalidation of a class action waiver requires the court to first conclude, "based on [the *Gentry*] factors," that:

> [A] class [action] is *likely to be a **significantly more effective practical means*** of vindicating the rights of [plaintiffs] than individual litigation or arbitration, *and* find[] that the disallowance of the class action will likely lead to a less comprehensive enforcement [of any unwaivable statutory rights].

(*Arguelles-Romero v. Sup. Ct.* (2010) 184 Cal.App.4th 825 at pp. 840-841 [quoting *Gentry,* 42 Cal.4th at p. 463] (emphasis added).)

Like *Discover Bank*, *Gentry* cannot survive post-*Concepcion* because it "[requires] the availability of class-wide arbitration, ... interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA." (*Concepcion*, 131 S.Ct. at p. 1748; see also *Zarandi v. Alliance Data Sys. Corp.* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 54602, at *5.) Indeed, "...many [other] courts have found that *Concepcion* overrules or abrogates *Gentry*." (*Valle et al. v. Lowe's HIW, Inc.* (N.D. Cal. August 22, 2011) 2011 U.S. Dist. LEXIS 93639, at * 5; see also *Murphy v. DIRECTV* (C.D. Cal. Aug. 2, 2011) 2011 U.S. Dist. LEXIS 87625 at *4 (holding that *Concepcion* overruled *Gentry*); *Lewis v. UBS Financial Services Inc.* (N.D. Cal. Sept. 30, 2011) 2011 U.S. Dist. LEXIS 116433, at *14 (same); *Morse v. ServiceMaster Global Holdings, Inc.* (N.D. Cal. 2011) U.S. Dist. LEXIS 82029, at *3 n.1 (noting that even if *Concepcion* did not explicitly overrule *Gentry*, it rejected the reasoning and precedent behind it).)

In conflict with *Concepcion*, *Gentry* applies California's public policy goals while undermining the purpose of the FAA. The *Gentry* factors are all designed to keep class action litigation in the court system, based on the assumption that court-supervised class actions are superior to arbitration in enforcing California's overtime laws. Indeed, in ignoring the FAA's objectives in enforcing arbitration provisions, *Gentry* nonetheless cites to California's public policy concerns over fourteen separate times. (See *Gentry*, 42 Cal.4th at pp. 455-466.) As the strong dissent in *Gentry* notes, however, the majority's decision actually created a "de-facto" prohibition on class action waivers in overtime cases because the test established by the majority insures that class action waivers will be deemed unenforceable whenever a class action might otherwise be appropriate in court. (See *id.* at p. 476 n. 2 (Baxter, J., dissenting); see also *Quevedo v. Macy's Inc.* (C.D. Cal. 2011) 2011 WL 3135052 at *6, n. 3 (concluding that it was reasonable for the employer to believe that the "*Gentry* rule" finding class action waivers unenforceable would be applied and therefore not seek to enforce its arbitration agreement until after *Concepcion*).) The majority holding in *Gentry* cannot survive *Concepcion.*

Gentry and *Discover Bank* were based on the same "general principle," that "[c]lass action and arbitration waivers . . . can be exculpatory in practical terms because [they] can make it very difficult for those injured by unlawful conduct to pursue a legal remedy." (*Gentry*, 42

Cal.4th at p. 457.) *Concepcion* explicitly considered -- and ***rejected*** -- precisely the same public policy-driven arguments regarding the "exculpatory" nature of class waivers. It rejected the argument that "the arbitration agreement was unconscionable and unlawfully exculpatory under California law because it disallowed classwide procedures." (*Concepcion*, 131 S.Ct. at p. 1745.) It further rejected the argument that "California's policy against exculpation" falls within the FAA's saving clause as "a ground that 'exist[s] at law or in equity for the revocation of any contract[.]'" (*Id.* at pp. 1745-47.) And it stated, in no uncertain terms, that "[r]equiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA." (*Id.* at p. 1748.) Just as the U.S. Supreme Court in *Concepcion* rejected the public policy rationale behind *Discover Bank*, it also implicitly rejected the same rationale in *Gentry*.

2. *Armendariz* subjects California arbitration agreements to unique and impermissible scrutiny

In the seminal case of *Armendariz, supra,* 24 Cal.4th 83, 117, the California Supreme Court singled out arbitration agreements for additional scrutiny under unconscionability and public policy doctrines. Relying on the D.C. Circuit Court of Appeal's decision in *Cole v. Burns International Sec. Services* (D.C. Cir. 1997) 105 F.3d 1465, the *Armendariz* Court pronounced the "five minimum requirements for the lawful arbitration of

[statutory employment] rights" that would serve as the litmus test against which mandatory, employer-drafted arbitration agreements would be evaluated. (*Armendariz*, 24 Cal.4th at p. 102.) Those minimum requirements are (1) neutral arbitrators; (2) more than minimal discovery; (3) a written decision by the arbitrator; (4) allowance for all types of relief otherwise available in court; and (5) employees not required to pay either unreasonable costs or any arbitrators' fees or expenses as a condition of access to the arbitration process. (See *id.*) *Armendariz* also requires employers, in certain circumstances, to demonstrate "a reasonable justification for the [arbitration] arrangement – i.e., a justification grounded in something other than the employer's desire to maximize its advantage based on the perceived superiority of the judicial forum." (*Id.* at p. 120.) Applying this "reasonable justification" requirement only to employment contracts, the Court held that unconscionability could be assumed in its absence. *(Id.)*

The *Armendariz* Court noted that "[w]e agree with the *Stirlen* court that the ordinary principles of unconscionability may manifest themselves *in forms peculiar to the arbitration context.*" (*Id.* at p. 119 [emphasis added].) By imputing unconscionability-based contract defects to arbitration agreements and not other contracts, *Armendariz* runs afoul of the U.S. Supreme Court's decision in *Perry v. Thomas*, where the Court held that the "uniqueness of an agreement to arbitrate" cannot form the "basis

for a state-law holding that the enforcement" of an arbitration agreement "would be unconscionable, for this would enable the court to effect what . . . the state legislature cannot." (*Perry v. Thomas* (1987) 482 U.S. 482, 493 fn. 9.) Indeed, as one commentator noted, "in *Armendariz*, the court honed California unconscionability law into a weapon that could be used against mandatory arbitration agreements." (Michael Schneidereit, Note, *A Cold Night: Unconscionability as a Defense to Mandatory Arbitration Clauses in Employment Agreements*, 55 Hastings L.J. 987, 1002 (2004).)

Examining *Iskanian* without acknowledging and revisiting *Armendariz* would produce an incomplete outcome. (See, e.g., *Ruhe v. Masimo Corp.* (C.D. Cal. 2011) U.S. Dist. LEXIS 104811; see also *Oguejiofor v. Serramonte Nissan* (N.D. Cal. 2011) 2011 U.S. Dist. LEXIS 99180 *9 (noting that *Armendariz* was "abrogated in part on other grounds" by *Concepcion*).)

3. *Brown*'s exception for PAGA claims improperly circumvents the FAA

The *Brown* decision is a creature of state public policy that is irreconcilable with the FAA. There, the court stated: "[*Concepcion*] does not provide that a public right, such as that created under the PAGA, can be waived if such a waiver is contrary to state law." (*Brown*, 197 Cal.App.4th at p. 500.) The U.S. Supreme Court's rejection of the *Discover Bank* rule

in *Concepcion* is an indicator the PAGA waiver in *Brown* should be treated the same way.

Regardless of whether California law prohibits parties from waiving PAGA claims, or whether plaintiffs will be precluded from bringing claims on behalf of the state attorney general that the attorney general does not have the means or the manpower to bring, the mandate of the FAA must be followed. As the Court held in *Concepcion*, "States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons." (*Concepcion*, 131 S.Ct. at p. 1753 (rejecting argument that class proceedings are necessary to prosecute small-dollar claims that might otherwise slip through the legal system).)[7]

Following a rationale similar to that of *Gentry* and *Armendariz*, the court in *Brown* elevated state public policy above the FAA and the precise terms of the contracting parties' agreements. Accordingly, an examination of *Iskanian* that also includes instruction on *Brown* would promote consistent lower court rulings and more certainty among contracting parties as to the enforceability of their agreements.

---

[7] See also *Quevedo v. Macy's, Inc., supra*, 2011 WL 3135052 at *17 (court correctly applied *Concepcion* to hold that "[f]or similar reasons, requiring arbitration agreements to allow for representative PAGA claims on behalf of other employees would be inconsistent with the FAA."); see also *Grabowski v. C.H. Robinson Co.* (S.D. Cal. 2011) 817 F. Supp. 2d 1159 at p. 1181 (court finds reasoning of *Quevedo* more persuasive than that in *Brown, supra*).

IV. CONCLUSION

For the aforementioned reasons, Amicus respectfully requests that the Court affirm the Court of Appeal decision in this case. In addition, Amicus respectfully requests that the Court reconsider and analyze existing California decisional law in the labor/arbitration agreement context, including the decisions in *Gentry, Armendariz*, and *Brown*, to provide comprehensive and conclusive direction to courts and litigants.

DATED: May 10, 2013

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By 

RICHARD J. SIMMONS
KARIN DOUGAN VOGEL
MATTHEW M. SONNE
Attorneys for Amici Curiae
Employers Group

CERTIFICATION OF WORD COUNT

Amici Curiae the Employers Group hereby certify that the text of their brief, to be filed on May 10, 2013, contains 6,469 words as counted by Microsoft Word, the word processing program utilized to generate the brief.

DATED: May 10, 2013

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By 

RICHARD J. SIMMONS
KARIN DOUGAN VOGEL
MATTHEW M. SONNE

Attorneys for Amici Curiae
Employers Group

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

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 Orange, State of California. My business address is 650 Town Center Drive, 4th Floor, Costa Mesa, CA 92626-1993.

On May 10, 2013, I served true copies of the following document(s) described as

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF; BRIEF OF AMICUS CURIAE EMPLOYERS GROUP IN SUPPORT OF DEFENDANT/RESPONDENT CLS TRANSPORTATION OF LOS ANGELES

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 the firm's 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 May 10, 2013, at Costa Mesa, California.

James E. Summers

SERVICE LIST

David Faustman Yesenia Gallegos Cristina Armstrong Namal Tantula FOX ROTHSCHILD LLP 1800 Century Park East, Suite 300 Los Angeles, CA 90067 Telephone: (31 0) 598-4159 Facsimile: (31 0) 556-9828 E-mail: Ygallegos@foxrothschild.com dfaustman@foxrothschild.com	Attorneys for Defendant/Respondent CLS Transportation of Los Angeles
Leo V. Leyva (Pro Hac Vice) Cole, Schotz, Meisel, Forman & Leonard, P.A. Court Plaza North 25 Main Street Hackensack, NJ 07601	Attorneys for Defendant/Respondent CLS Transportation of Los Angeles
Raul Perez, Esq. Glenn A. Danas, Esq. Ryan H. Wu, Esq. Katherine Ward Kehr, Esq. Capstone Law APC 1840 Century Park East, Suite 450 Los Angeles, CA 90067	Attorney for Plaintiff/Appellant Arshavir Iskanian
Scott L. Nelson (*Pro Hac Vice*) Public Citizen Litigation Group 1600 20th Street, NW Washington, DC 20009 Telephone: (202) 588-1000 Facsimile: (202) 588-7795 Email: SNelson@Citizen.org	Attorney for Plaintiff/Appellant Arshavir Iskanian