

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVEN MCARDLE,  
Plaintiff,

v.

AT&T MOBILITY LLC; NEW  
CINGULAR WIRELESS PCS LLC; and  
NEW CINGULAR WIRELESS  
SERVICES, INC.,  
Defendants.

Case No. 09-cv-01117-CW

ORDER GRANTING MOTION TO  
RECONSIDER AND VACATING  
ARBITRAL AWARD

(Dkt. Nos. 257, 263, 273,  
274, 285)

United States District Court  
Northern District of California

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The Court granted the motion of Defendants AT&T Mobility LLC, New Cingular Wireless PCS LLC, and New Cingular Wireless Services, Inc., to compel arbitration in this case. The arbitrator has issued a decision. Plaintiff Steven McArdle has moved to vacate the arbitral award and to reconsider the Court's order compelling arbitration. Defendants have filed a cross-motion to confirm the award. Each motion is opposed and each party has filed a reply. Having considered the parties' papers, the record, and relevant authority, the Court grants Plaintiff's motion to reconsider, rescinds the September 25, 2013 order compelling arbitration and vacates the arbitral award. The Court also denies as moot Plaintiff's motion to vacate the award under 9 U.S.C. § 10(a)(3) or (4), and denies Defendants' motion to confirm.

## BACKGROUND

1 Defendants provide cellular telephone services. Plaintiff  
2 alleges that Defendants deceptively charged exorbitant  
3 international roaming fees for calls that customers did not  
4 answer, voicemail they did not check, and calls they did not  
5 place. He asserts claims under California law, on behalf of  
6 himself and all others similarly situated, for false advertising,  
7 fraud, and violation of the Consumers Legal Remedies Act (CLRA)  
8 and Unfair Competition Law (UCL).

9 Plaintiff's service agreement with Defendants contains a  
10 provision that requires the parties to the agreement to arbitrate  
11 "all disputes and claims" between them. Debra Figueroa Decl. in  
12 Support of Renewed Motion to Compel Arbitration and Stay Action,  
13 Ex. 2, § 2.2(1). More specifically, section 2.0 of the service  
14 agreement, captioned "How Do I Resolve Disputes With AT&T,"  
15 relates to dispute resolution. Id. § 2.0. Section 2.0 is  
16 divided into two sections, of which section 2.1 is a summary and  
17 section 2.2 is captioned "Arbitration Agreement." Id. § 2.2.  
18 Section 2.2, in turn, contains seven numbered subsections, the  
19 sixth of which provides:

20  
21 The arbitrator may award declaratory or injunctive  
22 relief only in favor of the individual party seeking  
23 relief and only to the extent necessary to provide  
24 relief warranted by that party's individual claim. YOU  
25 AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE  
26 OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT  
27 AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS  
28 OR REPRESENTATIVE PROCEEDING. Further, unless both you  
and AT&T agree otherwise, the arbitrator may not  
consolidate more than one person's claims, and may not  
otherwise preside over any form of a representative or  
class proceeding. If this specific provision is found  
to be unenforceable, then the entirety of this  
arbitration provision shall be null and void.

1 Id. § 2.2(6) (emphasis in original); see also July 1, 2013 Ltr.  
2 from Defense Counsel, Dkt. No. 245 (conceding that “‘this  
3 specific provision’ refers to all of Section 2.2(6), that is, all  
4 three preceding sentences”).

5 On September 14, 2009, this Court denied Defendants’ motion  
6 to compel arbitration, finding that the class arbitration waiver  
7 was unconscionable under Discover Bank v. Superior Court, 36 Cal.  
8 4th 148 (2005), and Shroyer v. New Cingular Wireless Services,  
9 Inc., 498 F.3d 976 (9th Cir. 2007). Because the class  
10 arbitration provision was expressly not severable from the other  
11 portions of the arbitration provision, the Court found that the  
12 arbitration provision as a whole was not enforceable.

13 Defendants filed an interlocutory appeal. Meanwhile, this  
14 Court granted a stay pending the decision of the United States  
15 Supreme Court in AT&T Mobility LLC v. Concepcion, 563 U.S. 333  
16 (2011). Following the Concepcion decision, in which the Supreme  
17 Court held that California’s Discover Bank rule was preempted by  
18 the Federal Arbitration Act (FAA), the Ninth Circuit reversed and  
19 remanded. See McArdle v. AT&T Mobility, 474 F. App’x 515, 516  
20 (9th Cir. 2012). The purpose of the remand was for this Court “to  
21 consider in the first instance McArdle’s arguments based on  
22 generally applicable contract defenses.” Id.

23 On remand, Defendants filed a renewed motion to compel  
24 arbitration and stay the action. The Court granted the motion on  
25 September 25, 2013. The Court considered and rejected  
26 Plaintiff’s arguments that arbitration was foreclosed by  
27 California’s Broughton-Cruz rule, which prohibits arbitration of  
28 public injunctive relief claims under the CLRA and UCL, because

1 such claims are "designed to prevent further harm to the public  
2 at large rather than to redress or prevent injury to a  
3 plaintiff." Cruz v. PacifiCare Health Systems, Inc., 30 Cal. 4th  
4 303, 316 (2003); see also Broughton v. Cigna Healthplans of  
5 California, 21 Cal. 4th 1066 (1999). The Court found that the  
6 Broughton-Cruz rule is not a generally applicable contract  
7 defense and thus does not survive Concepcion. The Court further  
8 found that the arbitration agreement was not unenforceable under  
9 then-applicable law for purporting to bar customers from seeking  
10 public injunctive relief in any forum.

11 While the arbitration was pending, the California Supreme  
12 Court granted a petition for review to assess the enforceability  
13 of public injunctive relief waivers under California law. McGill  
14 v. Citibank, 345 P.3d 61 (Cal. Apr. 1, 2015) (Mem.). Plaintiff  
15 requested that the arbitrator stay the arbitration pending  
16 McGill. The arbitrator denied the request on June 8, 2015.  
17 Kristen Simplicio Decl. in Support of Motion to Vacate Arbitral  
18 Award ¶ 3 & Ex. B.

19 On September 16, 2016, the arbitrator issued his ruling in  
20 favor of Defendants. Id. ¶ 2 & Ex. A. Addressing Plaintiff's  
21 individual claims, he found that Plaintiff did not meet his  
22 burden to prove that Defendants failed to disclose international  
23 roaming charges before Plaintiff incurred those charges on a trip  
24 to Italy in 2008. In light of this finding, the arbitrator  
25 decided that it was not necessary to address the additional  
26 issues raised by the parties, including Plaintiff's claim for  
27 injunctive relief.

28 On December 16, 2016, Plaintiff timely filed his motion to

1 vacate the arbitral award. The Court granted two stipulated  
2 motions to extend the time for Defendants to respond to the  
3 motion, due to the scheduling needs of counsel and the Supreme  
4 Court's impending decision in McGill.

5 On April 6, 2017, the California Supreme Court decided  
6 McGill v. Citibank, N.A., 2 Cal. 5th 945 (2017). After the  
7 decision in McGill, this Court granted leave for Plaintiff to  
8 file a motion for reconsideration of the order compelling  
9 arbitration. Plaintiff filed the motion for reconsideration and  
10 Defendants filed a cross-motion to confirm the arbitral award.

#### 11 DISCUSSION

12 I. Plaintiff's Motion for Reconsideration of the Order  
13 Compelling Arbitration.

14 A. McGill Is a Change in Controlling Law that Warrants  
15 Reconsideration.

16 Plaintiff moves for reconsideration of the Court's order  
17 compelling arbitration. A party who shows "reasonable diligence  
18 in bringing the motion" may seek reconsideration of an  
19 interlocutory order based on "a change of law occurring after the  
20 time of such order." N.D. Cal. Civil L.R. 7-9(b). Defendants do  
21 not dispute Plaintiff's diligence in bringing the motion promptly  
22 after McGill was decided.

23 McGill constitutes a change in controlling law for the  
24 purpose of reconsideration. In the Court's September 25, 2013  
25 order, the Court found that the Broughton-Cruz doctrine applies  
26 only to arbitration agreements, and thus could not be a generally  
27 applicable contract defense as contemplated by the FAA. In  
28 McGill, however, the California Supreme Court ruled that  
predispute contracts purporting to waive the right to seek the

1 California statutory remedy of public injunctive relief in any  
2 forum are contrary to California public policy and thus  
3 unenforceable under California law, regardless of whether they  
4 are contained in an arbitration agreement. 2 Cal. 5th at 951-52;  
5 see also id. at 961 (quoting Cal. Civil. Code § 3513 ("Any one  
6 may waive the advantage of a law intended solely for his benefit.  
7 But a law established for a public reason cannot be contravened  
8 by a private agreement.")). The court further held that the FAA  
9 does not preempt this rule of California law or require  
10 enforcement of the waiver provision. Id. at 951-52, 962-966.

11 McGill's holding that predispute waivers of public  
12 injunctive relief are contrary to California public policy is  
13 binding on this Court. See Hemmings v. Tidyman's Inc., 285 F.3d  
14 1174, 1203 (9th Cir. 2002) ("In interpreting state law, federal  
15 courts are bound by the pronouncements of the state's highest  
16 court."). It represents a significant change in California law  
17 that occurred after this Court's order compelling arbitration.  
18 Judgment has not been entered in this case, and the Court may  
19 reconsider its interlocutory order compelling arbitration. "As  
20 long as a district court has jurisdiction over the case, then it  
21 possesses the inherent procedural power to reconsider, rescind,  
22 or modify an interlocutory order for cause seen by it to be  
23 sufficient." City of Los Angeles, Harbor Div. v. Santa Monica  
24 Baykeeper, 254 F.3d 882, 885 (9th Cir. 2001) (holding that  
25 district court had jurisdiction to rescind order certifying  
26 interlocutory appeal) (quoting Melancon v. Texaco, Inc., 659 F.2d  
27 551, 553 (5th Cir. 1981)). Accordingly, the Court must examine  
28 whether the referral to arbitration was correct.

B. The FAA Does Not Preempt the McGill Rule.

On the question of whether the FAA preempts the McGill rule, the Court owes no deference to the state court, and follows federal law. Vandevere v. Lloyd, 644 F.3d 957, 964 (9th Cir. 2011). If the FAA preempted McGill, then no reconsideration of the Court's prior order compelling arbitration would be warranted, and the Court would proceed to review the arbitral award. The Court finds, however, that the FAA does not preempt McGill.

In Sakkab v. Luxottica Retail N. Am., 803 F.3d 425 (9th Cir. 2015),<sup>1</sup> the Ninth Circuit held that the FAA does not preempt California's rule, announced in Iskanian v. CLS Transportation Los Angeles, LLC, 59 Cal. 4th 348 (2014), barring the predispute waiver of representative claims under the Private Attorneys General Act of 2004 (PAGA), Cal. Lab. Code. § 2698 et seq. Following the two-step approach used by the Supreme Court in Concepcion, the Sakkab court first analyzed whether the Iskanian rule falls within the plain language of the FAA savings clause for "such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. It held that the Iskanian rule is a "generally applicable contract defense," not a ground for revocation of arbitration agreements only. Sakkab, 803 F.3d at 433 (citing Concepcion, 563 U.S. at 343).

Second, the Sakkab court turned to the question of whether the Iskanian rule conflicts with the FAA's purposes, applying "ordinary conflict preemption principles." Id. It held that the

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<sup>1</sup> Sakkab, like McGill, was decided after this Court's September 25, 2013 order.

1 Iskanian rule does not "stand as an obstacle to the  
2 accomplishment of the FAA's objectives." Id. at 427, 433  
3 (quoting Concepcion, 563 U.S. at 343). It held that Iskanian  
4 "expresses no preference regarding whether individual PAGA claims  
5 are litigated or arbitrated. It provides only that  
6 representative PAGA claims may not be waived outright." Id. at  
7 434 (citing Iskanian, 59 Cal. 4th at 384). Therefore, the court  
8 held, the "Iskanian rule prohibiting waiver of representative  
9 PAGA claims does not diminish parties' freedom to select informal  
10 arbitration procedures." Id. at 435. A class action is a  
11 procedural device, which, the court explained, imposes burdens on  
12 arbitration that "diminish the parties' freedom to select the  
13 arbitration procedures that best suit their needs." Id. at 436.  
14 By contrast, a PAGA action is a statutory action by which an  
15 employee may seek penalties "as the proxy or agent of the state's  
16 labor law enforcement agencies." Id. at 435 (quoting Iskanian,  
17 59 Cal. 4th at 380). A PAGA action does not require any special  
18 procedures, and therefore "prohibiting waiver of such claims does  
19 not diminish parties' freedom to select the arbitration  
20 procedures that best suit their needs." Id. at 436. In contrast  
21 to the requirements of class actions, nothing "prevents parties  
22 from agreeing to use informal procedures to arbitrate  
23 representative PAGA claims." Id.

24 The Sakkab court concluded that the potential high stakes of  
25 a claim, alone, do not interfere with arbitration because the  
26 parties are free to contract for whatever formal or informal  
27 procedures they choose to handle the claim. Id. at 437-439. The  
28 FAA was not "intended to require courts to enforce agreements



1 that severely limit the right to recover penalties for violations  
2 that did not directly harm the party bringing the action." Id.  
3 at 440.

4 The same analysis applies here, with equal force. The  
5 McGill rule is a generally-applicable contract defense.  
6 See 9 U.S.C. § 2. Moreover, claims for public injunctive relief  
7 do not require burdensome procedures that could stand as an  
8 obstacle to FAA arbitration. On the contrary, the parties are  
9 free to contract for any procedures they choose for arbitrating,  
10 or litigating, public injunctive relief claims. Therefore, the  
11 FAA does not preempt California's McGill rule.

12 C. The Arbitration Agreement Is "Null and Void" by Its Own  
13 Terms.

14 The Court turns to the arbitration agreement in this case.  
15 The parties agree that the first sentence of subsection 2.2(6),  
16 quoted above, purports to waive the arbitrator's ability to award  
17 public injunctive relief. In combination with the agreement in  
18 subsection 2.2(1) that all claims and disputes, broadly defined,  
19 would be arbitrated, this constitutes a waiver of public  
20 injunctive relief in all fora that violates the McGill rule.

21 The Court turns, therefore, to the consequences of this  
22 waiver. Defendants contend that if the arbitrator could not  
23 address Plaintiff's claims for public injunctive relief, then  
24 this Court could address them after the arbitrator resolved the  
25 issues that were within the scope of the arbitration agreement.  
26 See Ferguson v. Corinthian Colls., Inc., 733 F.3d 928, 937 (9th  
27 Cir. 2013) (if arbitrator concludes that it lacks authority to  
28 enter injunction, then under language of applicable arbitration

1 agreement plaintiffs "may return to the district court to seek  
2 their public injunctive relief"); see also Wiseman v. Tesla,  
3 Inc., <sup>2</sup> No. 17-cv-04798-JFW, at 4 (C.D. Cal. Sept. 12, 2017)  
4 (holding that language of agreement allowed arbitrator to decide  
5 in first instance whether public injunctive relief claims were  
6 arbitrable). Moreover, Defendants argue, following this  
7 procedure would render Plaintiff's public injunctive relief claim  
8 moot, because the arbitrator decided that Plaintiff had failed to  
9 meet his burden to prove any of his underlying claims on the  
10 merits, making it unnecessary to reach the issue of injunctive  
11 relief.

12 This argument does not comport with the language of the  
13 arbitration agreement in this case. The procedure to be followed  
14 here is dictated, not by other courts' findings regarding the  
15 procedures set forth in other arbitration agreements, but by the  
16 specific procedures contracted to by the parties in the  
17 arbitration agreement at issue here.

18 Plaintiff describes the final sentence of subsection 2.2(6)  
19 of the parties' arbitration agreement as a "poison pill." He  
20 contends that because, under the McGill rule, the first sentence  
21 of subsection 2.2(6) is unenforceable, the entire arbitration  
22 provision in the contract (section 2.0) is also "null and void"  
23 due to the "poison pill," and no portion of the parties' dispute  
24 is subject to arbitration.

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26 <sup>2</sup> The Court GRANTS Defendants' administrative motion for  
27 leave to file a statement of recent decision bringing Wiseman to  
28 the attention of the Court, although it agrees with Plaintiff  
that the arbitration agreement in this case is materially  
different from that in Wiseman.

1 Defendants, on the other hand, contend that if the waiver of  
2 any claim is found to be unenforceable, then the arbitration  
3 agreement is "null and void" only with regard to that one claim,  
4 leaving other claims subject to arbitration. This interpretation  
5 would suggest an approach similar to that taken in Ferguson,  
6 where the arbitrator would decide all claims subject to  
7 arbitration, and Plaintiff could then return to this Court for  
8 adjudication of his claim for public injunctive relief.

9 Defendants imply that the language of the "poison pill" is at  
10 least ambiguous, and should be construed in favor of permitting  
11 arbitration of all issues except public injunctive relief because  
12 "any doubts concerning the scope of arbitrable issues should be  
13 resolved in favor of arbitration, whether the problem at hand is  
14 the construction of the contract language itself or an allegation  
15 of waiver, delay, or a like defense to arbitrability." Moses H.  
16 Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25  
17 (1983).

18 Defendants are correct that the Court will not deny an order  
19 compelling arbitration "unless it may be said with positive  
20 assurance that the arbitration clause is not susceptible of an  
21 interpretation that covers the asserted dispute. Doubts should  
22 be resolved in favor of coverage." AT&T Techs., Inc. v. Commc'ns  
23 Workers of Am., 475 U.S. 643, 650 (1986) (quoting Steelworkers v.  
24 Warrior & Gulf Navigation Co., 363 U.S. 574, 582-583 (1960)).

25 Here, however, there is no room for doubt. The language of the  
26 "poison pill" sentence unambiguously provides that "the entirety  
27 of this arbitration provision shall be null and void" if  
28 subsection 2.2(6), waiving claims and relief on behalf of other

1 persons, is found to be unenforceable. Defendants' proposed  
2 construction of this sentence ignores the agreement's use of the  
3 word "entirety" and attempts to read in limiting language that  
4 does not exist, such as adding the words "as to the specific  
5 claim" at the end of the paragraph. It also is in tension with  
6 Defendants' earlier position regarding the scope of the "poison  
7 pill."

8 It would, of course, have been permissible for the parties  
9 to agree to an arbitration provision that was limited in this  
10 way. They did not do so, however. The contract as actually  
11 written declares the entire arbitration provision null and void  
12 because the waiver of public injunctive relief is unenforceable.  
13 The Court notes that although the parties need not have agreed to  
14 so broad a "poison pill," there was reason for them to do so.  
15 See Sakkab, 803 F.3d at 437 ("The FAA contemplates that parties  
16 may simply agree ex ante to litigate high stakes claims if they  
17 find arbitration's informal procedures unsuitable.").

18 The McGill rule constitutes a change in controlling law and  
19 is not preempted by the FAA. The waiver of public injunctive  
20 relief in subsection 2.2(6) of the parties' agreement is  
21 therefore unenforceable, and this triggers the "poison pill"  
22 rendering the entire arbitration provision null and void. The  
23 Court must therefore grant reconsideration of, and rescind, its  
24 September 25, 2013 order compelling arbitration and vacate the  
25 arbitral award.

## 26 II. The Motions to Vacate or Confirm the Arbitral Award.

27 Because the Court reconsiders the September 25, 2013 order  
28 granting Defendants' renewed motion to compel arbitration and

1 stay this action, rescinds its prior order compelling arbitration  
2 and vacates the arbitral award, the Court denies as moot  
3 Plaintiff's motion to vacate the award under 9 U.S.C. § 10(a)(3)  
4 and (4). The Court also denies Defendants' motion to confirm the  
5 award. By this decision, the Court does not reach or review the  
6 merits of the arbitrator's decision.

7 Defendants contend that the FAA statutorily bars Plaintiff's  
8 "attempt to evade confirmation of a final arbitration award"  
9 through reconsideration of this Court's order compelling  
10 arbitration. Opp. at 20. When reviewing an arbitrator's  
11 decision, this Court's review is "both limited and highly  
12 deferential." Coutee v. Barington Capital Grp., L.P., 336 F.3d  
13 1128, 1132 (9th Cir. 2003) (internal quotation marks omitted).  
14 The Court "must" confirm and enter judgment on an award "unless  
15 the award is vacated, modified, or corrected as prescribed in  
16 sections 10 and 11" of the FAA. 9 U.S.C. § 9; see also Hall St.  
17 Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 587 (2008) ("There  
18 is nothing malleable about 'must grant,' which unequivocally  
19 tells courts to grant confirmation in all cases, except when one  
20 of the 'prescribed' exceptions applies.").

21 Here, the Court is not reviewing an arbitral award, and the  
22 merits of the arbitrator's decision are irrelevant to the  
23 correctness of this Court's order compelling arbitration in the  
24 first place. In Hall Street, by contrast, the district court had  
25 reviewed the merits of the arbitrator's decision based on  
26 impermissible grounds. The Hall Street parties had agreed by  
27 contract that the arbitral award could be vacated if the  
28 arbitrator's findings of fact were not supported by substantial

1 evidence or the arbitrator's conclusions of law were erroneous.  
2 552 U.S. at 579. The Supreme Court held that these bases are not  
3 among the grounds for vacatur of an arbitral award under the FAA.  
4 Because the statutory grounds for vacatur are exclusive, the  
5 district court could not vacate the award based on the  
6 contractual grounds.

7 Likewise, the Ninth Circuit held in a recent unpublished  
8 memorandum disposition that where an arbitrator applies the law  
9 as it exists at the time of the arbitral award, an intervening  
10 change in law prior to a court's FAA review does not provide a  
11 basis to vacate the award. Wulfe v. Valero Ref. Co.--California,  
12 687 F. App'x 646, 648 (9th Cir. 2017). In Wulfe, the arbitrator--  
13 not the district court--held that the governing arbitration  
14 agreement's waiver of representative PAGA claims was enforceable.  
15 See Wulfe v. Valero Ref. Co.--California, 641 Fed. App'x 758, 761  
16 (9th Cir. 2016) ("Wulfe argues that the arbitrator exceeded her  
17 powers by allegedly ordering Wulfe to proceed with his PAGA claim  
18 on an individual basis because such a right cannot be waived.");  
19 Wulfe v. Valero Ref. Co., No. 12-cv-05971-MWF, 2016 WL 9132900,  
20 \*1 (C.D. Cal. May 19, 2016) (noting that it was "the arbitrator's  
21 order requiring Plaintiff to proceed with his PAGA claims on an  
22 individual basis"). After the award was issued, however, the  
23 California Supreme Court decided Iskanian and the Ninth Circuit  
24 decided Sakkab, reaching a different decision about the  
25 enforceability of PAGA waivers. The district court held that the  
26 change in law did not justify vacating the arbitral award under  
27 the rigorous standard of review provided by the FAA. The Ninth  
28 Circuit explained that "the issue is not whether, with perfect

1 hindsight, we can conclude that the arbitrator erred." Wulfe,  
2 687 F. App'x at 648. Rather, in reviewing an arbitrator's  
3 decision, the Court must consider whether the arbitrator  
4 "recognized the applicable law and then ignored it." Id.  
5 (quoting Lagstein v. Certain Underwriters at Lloyd's, London,  
6 607 F.3d 634, 641 (9th Cir. 2010)). In Wulfe, the arbitrator did  
7 not act with manifest disregard of any law that existed at the  
8 time of the award, and the court therefore confirmed the arbitral  
9 award.

10 The issue here is different. The arbitrator was not the one  
11 to conclude that Plaintiff's waiver of public injunctive relief  
12 claims was enforceable; it was this Court that made that ruling  
13 in the order compelling arbitration. The Court therefore does  
14 not review the arbitrator's decision under the FAA, but rather,  
15 reconsiders its own interlocutory order. As discussed, the  
16 Court's order compelling arbitration was erroneous in light of  
17 the subsequent decisions in McGill and Sakkab, and must be  
18 rescinded. The Court, therefore, vacates the arbitral award  
19 without reviewing its merits under the FAA.

#### 20 CONCLUSION

21 For the foregoing reasons, the Court GRANTS Plaintiff's  
22 motion for reconsideration of the order compelling arbitration  
23 (Docket No. 273), rescinds that prior order (Docket No. 257), and  
24 VACATES the arbitral award. The Court DENIES AS MOOT Plaintiff's  
25 motion to vacate the arbitral award (Docket No. 263); and DENIES  
26 Defendants' cross-motion to confirm the arbitral award (Docket  
27 No. 274). The Court also GRANTS Defendants' administrative  
28 motion for leave to file a statement of recent decision (Docket


1 No. 285).

2 The Court shall schedule a case management conference by  
3 separate Clerk's Notice.

4 IT IS SO ORDERED.

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6 Dated: October 2, 2017



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CLAUDIA WILKEN  
United States District Judge

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United States District Court  
Northern District of California