SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SIMONA MONTALVO, on behalf of herself and all others similarly situated, Plaintiffs, v. SWIFT TRANSPORTATION CORPORATION d/b/a "ST Swift Transportation Corporation," a Nevada corporation; and DOES 1 to 100, inclusive, Defendants.	Case No.: 37-2011-00094313-CU-OE-CTL Honorable Katherine Bacal Department C-69

MEMORANDUM IN SUPPORT OF OBJECTION TO SETTLEMENT OR IN THE ALTERNATIVE, MOTION TO CLARIFY SCOPE OF RELEASE

The release language in the Joint Stipulation of Class Action Settlement and Release ("Settlement") at issue here is vastly broader than the claims asserted in the Complaint. The release as written would appear to cover significant claims in other pending litigation. To preserve their claims pending or anticipated in other litigation, plaintiffs/claimants in *Van Dusen et. al. v. Swift Transportation Co., Inc.*, *et. al.*, No. CV 10-899-PHX-JWS (D. Ariz.) and *Cilluffo et. al. v. Central Refrigerated Services, Inc., et. al.*, No. 5:12-cv-00886-VAP (C.D. Cal.) who are also covered by the Joint Stipulation of Class Action Settlement and Release object to the overbreadth of the release in this case.

COME NOW class members D[redacted] Y[redacted] and G[redacted] C[redacted] and class members in this matter who are also plaintiffs, opt-in plaintiffs, putative class members and claimants in the cases entitled *Van Dusen et. al. v. Swift Transportation Co., Inc.*, *et. al.*, No. CV 10-899-PHX-JWS (D. Ariz.), pending in the United States District Court for the District of Arizona, and *Cilluffo et. al. v. Central Refrigerated Services, Inc., et. al.*, No. 5:12-cv-00886-VAP (C.D. Cal.), pending in the United States District Court for the Central District of California, Eastern

Division, and before the American Arbitration Association[1] (collectively referred to herein as "Objector Class Members") by and through undersigned counsel and in support of their objections to the proposed Joint Stipulation of Class Action Settlement and Release or, in the alternative, in support of their motion to clarify the scope of the release to ensure that it does not affect the claims pending in the *Van Dusen* and *Cilluffo* matters, submit this Memorandum. Objector Class Members respectfully request that this Court 1) amend the release provision in this case so that it does not cover the claims asserted in the *Van Dusen* and *Cilluffo* matters, or 2) alternatively deny final fairness approval of the settlement or 3) alternatively, should the Court approve the Settlement and rule that the claims in the *Van Dusen* and *Cilluffo* matters are released by the Settlement, allow affected class members to be given additional time to opt out of the Settlement, or 4) alternatively, in the event the Court rules that additional time will not be given to affected class members to opt out of the Settlement, the Objector Class Members hereby request to be excluded from the Settlement.

Objector D[redacted] Y[redacted] currently resides at [redacted], phone: [redacted], and attended Defendants' new hire orientation in California in or about October 2011. Objector G[redacted] C[redacted] currently resides at [redacted], phone: [redacted], and attended Defendants' new hire orientation in California for two weeks in or about June 2010. Messrs. Y[redacted] and C[redacted] intend to appear at the final approval hearing through their undersigned counsel.

[1] The Court in the *Cilluffo* matter compelled a collective arbitration of the FLSA claims in that case and individual arbitration of forced labor claims. Since the Court sent these claims to individual arbitration, approximately 305 individuals have filed individual arbitrations against Central Refrigerated (with new claims being filed each week), charging that Central Refrigerated Service, Inc. and Central Leasing, Inc., engage in forced labor in violation of 18 U.S.C. §1589 in part by using threats of negative DAC report entries (and making such entries) to compel continued labor. The individual arbitrations also assert additional claims of unconscionability and unjust enrichment arising from the Respondents' use of the DAC Report to control the owner operator claimants. *See* Ex. A (Sample Arbitration Demand).

INTRODUCTION

Objector Class Members have employment and contract related claims pending against the defendants here, Swift Transportation Co. of Arizona, LLC and Central Refrigerated Service, Inc., or their related and/or predecessor companies (together referred to herein as "Swift") in two different lawsuits, *Van Dusen et. al. v. Swift Transportation Co., Inc.*, *et. al.*, No. CV 10-899-PHX-JWS (D. Ariz.) and *Cilluffo et. al. v. Central Refrigerated Services, Inc., et. al.*, No. 5:12-cv-00886-VAP (C.D. Cal.).[2] These claims have been pending for several years. The claims in *Van Dusen* predate the claims in the instant case, while the claims in *Cilluffo* predate the claims in the instant case's related proceeding, *Jorge Calix v Central Refrigerated Service, Inc.*, Case No. CIVDSI313561 (Cal. Super. Ct., San Bernadino Cnty.).[3] *Van Dusen* and *Cilluffo* both allege (among other claims) that so-called Owner Operator drivers were misclassified by Defendants as independent contractors when they are as a matter of law, treated by Central and Swift as employees, and are thus owed the minimum wage for every hour they worked for Defendants as Owner Operators. The cases have nothing to do with the claims in this case, which allege that Defendants violated the California Labor Code and the Business and Professions Code by failing to pay the minimum wage for the time Plaintiffs spent attending orientation for Defendants.

Objectors attempted to reach a settlement with the Defendants in this case to obtain a stipulation that the release language in this case did not affect the class members' claims in *Van Dusen* and *Cilluffo.* Despite this, Defendants have refused to enter into a stipulation in this Court agreeing that the release in this case, which ostensibly broadly releases "any other remedies

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[2] In *Cilluffo,* the corporate defendants have been purchased or merged into the entities Swift Transportation Company and Swift Transportation Co., LLC. *See* Corporate Disclosure Statement, Doc. 175 therein. Ex. B hereto. The plaintiffs in that case have amended their claims to name Swift as a defendant. In the AAA arbitration, Arbitrator Patrick Irvine has held that Central Refrigerated Service, LLC, Central Leasing, LLC, Swift Transportation Co., LLC, and Swift Transportation Company are successor companies to Central Refrigerated and are responsible for any judgment that results in that case. Exs. C, D (Orders).

[3] *Van Dusen* was filed on December 22, 2009, while *Montalvo* was filed on July 12, 2011. *Cilluffo* was filed on June 1, 2012, while *Calix* was filed on November 17, 2013.

owed or available under any federal, state or local law based on the facts set forth in the operative class action complaint filed by Plaintiff during the Class Period" does not affect the *Van Dusen* and *Cilluffo matters.*

Accordingly, Objector Class Members are filing this objection to the proposed Settlement and alternatively request that the Court's judgment clarify that the scope of the release does not apply to claims in their cases.

BACKGROUND

A. Claims in this Case Alleging Violations of the California Labor Code and the Business and Professions Code for Failure to Pay Minimum Wage During Orientation

The instant case alleges that Defendants violated certain provisions of the California Labor Code and the Business Professions Code. Specifically, the Plaintiffs allege that Defendants willfully violated the California Labor Code and the Business Professions Code because it did not pay Plaintiffs minimum wage during the time that Plaintiffs attended Defendants' new hire orientation. Ex. E (Joint Stipulation of Class Action Settlement and Release), at ¶ 2.2. Plaintiffs also alleged derivative claims for inaccurate wage statements, untimely final wages, and violation of Unfair Business Practices and Private Attorneys' General Act, based on the same orientation period. *Id.* Lastly, Plaintiffs alleged a claim for independent, systematic untimely final wages for the same orientation period. *Id.* Plaintiffs sought damages and other relief on behalf of Plaintiff and Class Members for compensatory damages, restitution, penalties, interest, and attorneys' fees and costs. *Id.*

B. Claims in the *Van Dusen* and *Cilluffo* Cases

The Objector Class Members from both the *Van Dusen* and *Cilluffo* matter are interstate truck drivers who allege that they were employees of Swift (*Van Dusen* matter) or of Central Refrigerated Service, Inc. (CRS) (*Cilluffo* matter). CRS was acquired by Swift in 2013 and is

now consolidated with Swift. *See* Ex. B (Corporate Disclosure Statement filed in *Cilluffo*). Both Swift and CRS are referred to herein as Swift or Defendants. The complaints filed in these matters are attached hereto as Ex. F (*Van Dusen* Complaint) and G (*Cilluffo* Complaint). The plaintiffs in both cases are interstate truck drivers who simultaneously entered into a "Lease Agreement" to lease a truck from a leasing company closely related to Defendants and a "Contractor Agreement" with Defendants in which the drivers agreed to turn the leased truck over to Defendants for the purpose of hauling freight for Defendants. The complaints allege that the Contractor and Leasing Agreements the plaintiffs signed constituted contracts of employment and that the plaintiffs were misclassified as independent contractors when they are, in fact and by law, "employees" of Defendants. The complaints both allege violations the minimum wage provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 206, as well as federal forced labor statutes,18 U.S.C. §1589. The Van Dusen complaint also alleges contract unconscionability, unjust enrichment, and violations of New York and California state labor laws for failure to pay minimum wage to drivers, failure to pay timely wages, and for unlawful deductions.

Van Dusen was commenced in the Southern District of New York in 2009 and was transferred to the District of Arizona in 2010. The FLSA claims are brought as a collective action and the other claims are brought as putative Rule 23(b)(3) class actions. In that case, Swift moved to compel arbitration under the Federal Arbitration Act (FAA). The plaintiffs alleged that they were exempt under § 1 of the FAA which exempts "contracts of employment of… workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. Following the Court's order compelling arbitration and after a mandamus petition, the plaintiffs were successful on an interlocutory appeal and the Ninth Circuit remanded to the District Court directing that the

District court "must determine whether the Contractor Agreements between each appellant and Swift are exempt under § 1 of the FAA before it may consider Swift's motion to compel." *Van Dusen v. Swift Transp. Co.*, 544 F. App'x 724 (9th Cir. 2013) *cert. denied,* 134 S. Ct. 2819 (U.S. 2014). The Arizona District Court issued a scheduling order to hear the FAA § 1 exemption issue. Swift has appealed the scheduling order and oral argument on the appeal is scheduled for November 16, 2015. There are currently approximately 547 opt-in plaintiffs in the *Van Dusen* matter.[4] The putative class includes all truckers who leased a truck from Interstate Equipment Leasing (Swift's leasing arm) to drive for Swift during the three years preceding the filing of the initial complaint in and up through the date of final judgment and subject to any equitable tolling for any applicable portion of the limitation period.

In *Cilluffo*, because Utah's arbitration act contains no similar exclusion for employees as the FAA, the Court ordered arbitration and stayed further court proceedings. There are currently several proceedings that are ongoing in front of the American Arbitration Association including a collective action with over 1,300 opt-in claimants for the FLSA claims, which is pending before Arbitrator Patrick Irvine, and more than 300 individual arbitrations against CRS alleging in addition to the forced labor claims, numerous other claims including federal and state common law and statutory claims including common law fraud, negligent misrepresentation, unjust enrichment and claims regarding unconscionability of contracts. *See* Ex. A (Sample Arbitration Demand).

C. Facts in this Case and in *Van Dusen* And *Cilluffo* Involving Minimum Wage Violations

The case at bar asserts claims involving the failure to pay minimum wages during the

[4]Additional individuals can be expected to regularly join this case as they have done since it was filed.

time that Plaintiffs attended Defendants' new hire orientation. No other claims have been asserted. Both *Van Dusen* and *Cilluffo* also contain allegations regarding failure to pay the minimum wage. However, that is where the similarity ends. The *Van Dusen* and *Cilluffo* plaintiffs/claimants have alleged that that so-called Owner Operator drivers were misclassified by Defendants as independent contractors when they were called "Owner Operators" by Defendants, but are employees as a matter of law, and are thus owed the minimum wage for every hour they worked for Defendants as Owner Operators. Unlike the instant case, neither *Van Dusen* nor *Cilluffo* make any allegations regarding the time drivers spent at Defendants' new hire orientation. Thus, the cases cover a completely different time period than the instant case.

D. The Joint Stipulation of Class Action Settlement and Release and the Release of Claims

The Settlement in this case provides settlement benefits based on when the claim arose of $83.21 for Subclass 1, $53.90 for Subclass 2, and $14.18 for Subclass 3. *See* Ex. H (Notice of Class Action Settlement) at Section 3, p. 3.

The Settlement states that "Defendants desire to settle the Action and the claims asserted in the Action." Ex. E at ¶ 3.2. The release language contained in the Settlement, however, provides a vastly broader release than simply the claims asserted in this action:

> 1.25 "Released Claims" means any and all liabilities, demands, claims, causes of action, complaints, and obligations, whether known or unknown, against the Released Parties that are or that could have been pled in this Action relating to the payment or non-payment of wages, and/or violations of state wage and hour laws, such as the Industrial Welfare Commission Wage Orders and California Labor Code sections 201, 202, 203 , 204, 212, 226, 1194, 1194.2, 1199, 2698 and 2699 resulting from the failure to pay minimum wage at orientation; only the 1st violation of the claim for the failure to maintain or provide accurate itemized statements due to failing to pay minimum wage at orientation under Labor Code section 226; 15 of the 30 days of the claim for the failure to pay all wages due upon termination under Labor

Code section 203, due to failing to pay minimum wage at orientation; violation of Labor Code section 212; engaging in unfair business practices related only to failing to pay minimum wage at orientation and foregoing derivative violations; declaratory relief related only to failing to pay minimum wage at orientation and any other claims whatsoever that were alleged in this case based on the facts alleged in the operative class action complaint. This includes all related claims for failing to pay minimum wage at orientation, the foregoing derivative violations, for restitution and other equitable relief under Business & Professions Code § 17200, *et seq.,* conversion, liquidated damages, punitive damages, waiting-time penalties, penalties under Labor Code §§2698-2699, *et seq*. (Private Attorney General Act of 2004), **and any other remedies owed or available under any federal, state or local law based on the facts set forth in the operative class action complaint filed by Plaintiff during the Class Period.** This release does not release the claims in the case of *John Burnell, et a/. v. Swift Transportation Co. Inc., et al.,* pending in the United States District Court, Central District of California (Case No.: ED-CV 10-00809 VAP(OPx)), other than the 1st violation of the claim for the failure to maintain or provide accurate itemized statements (under Labor Code section 226), and 15 of the 30 days of the claim for the failure to pay all wages due upon termination (under Labor Code section 203), which are released here.

…

7. WAIVER, RELEASE AND DISMISSAL

7.1 Release and Waiver of Claims by the Class Members.

7.1.1 The Class Members, including Named Plaintiffs Woods and Calix, and their successors, assigns, and/or agents, shall fully and finally release and discharge Defendants and Released Parties from the "Released Claims," as defined herein.

…

7.1.4 The Class Members agree to release any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind by each and all of the Class Members (including participation to any extent in any class or collective action), to obtain a recovery against any of the Released Parties that is reasonably related to the Released Claims for harms arising during the Class Period.

Ex. E at ¶¶ 1.25, 7.1.1, 7.1.4 (emph. added). The Settlement provides that its release extends to known and *unknown* claims:

> 7.1.2 The Released Claims include **any unknown claims that the Class Members do not know or suspect to exist in their favor at the time of the** release with respect to the Released Claims, which, if known by them, might have affected their settlement with, and release of, the Released Parties or might have affected their decision not to object to this Settlement. With respect to the Released Claims only, the Class Members stipulate and agree that, upon the Effective Date, the Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:
>
> > A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR.
>
> 7 .1.3 **The Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or mature, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future**, including conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, whether in tort, contract, or for violation of any state or federal statute, rule, or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution hereof, without regard to the subsequent discovery or existence of such different or additional facts.

Ex. E at ¶¶ 7.1.2, 7.1.3 (emph. added). The release also releases not just Defendants but also serves to release each Defendants':

> past or present officers, directors, partners, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys, and/or any individual or entity which could be jointly liable with Defendants.

Ex. E at ¶ 1.26 (Definition of Released Defendants).

The settlement payout to the Plaintiffs in this case in no way fairly states the settlement value of misclassification claims for owner operators. Upon evidence which has been developed in both *Cilluffo* and *Van Dusen,* the misclassification claims in those cases have vastly higher damages per person. The settlement in this case neither considered, calculated, nor properly compensated Objectors for the value of their misclassification and other related claims as asserted in those cases. Nor was any argument nor evidence of the fair settlement value of those claims presented to the Court.

E. Objector Class Members' Request that Defendants Stipulate and Request an Order Clarifying the Scope of the Release

Concerned about the release's broad language, counsel for the Objector Class Members contacted counsel for the parties in this case. Declaration of Lesley Tse ("*Tse Decl.*") at ¶ 3. Because it is the Court's judgment that controls the judgment, counsel for the Objector Class Members requested that the parties enter into a stipulation to be entered by the Court clarifying that the release in this case does not affect the claims in *Van Dusen* and *Cilluffo* cases. *Id.* at ¶ 4. A copy of the proposed stipulation is attached hereto as Ex. I. Plaintiff's counsel agreed to do so, *Tse Decl.* at ¶ 5, demonstrating the parties' intent not to release the claims in the *Van Dusen* and *Cilluffo* cases. Swift's counsel refused to agree to the stipulation. *Id.* at ¶ 6. The broad release

language continues to affect Objector Class Members and accordingly they file this objection and request that the Court clarify the release in its final order and judgment to avoid any potential overreaching into the claims of the *Cilluffo* and *Van Dusen* actions.

ARGUMENT

I. THE COURT SHOULD CLARIFY THE SCOPE OF THE RELEASE IN ITS FINAL ORDER

Rule 3.769 of the California Rules of Court state in relevant part:

> Settlement of class actions
>
> (a) Court approval after hearing
>
> A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
> …
>
> (g) Conduct of final approval hearing
>
> Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.
> …

Similarly, Rule 23(e) of the Federal Rules of Civil Procedure provides in relevant part:

> Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:
> (1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.
> (2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.
> …

Here the claims brought arose from Defendants' new hire orientation. Yet the release as currently written appears also to release any claims concerning Defendants' failure to pay wages,

inaccurate wage statements, and untimely final wages. The release is thus vastly broader than the claims in this case – purportedly covering "any other remedies owed or available under any federal, state or local law based on the facts set forth in the operative class action complaint filed by Plaintiff during the Class Period." Ex. E at ¶ 1.25.

Without some narrowing of the release through Court Order, the Objector Class Members have concerns that the scope of the release here is too broad. As set forth above, the claims in this case and the *Van Dusen* and *Cilluffo* cases are very different, with very different factual predicates. Because the factual predicates are different and because the release purports to limit claims related minimum wage violations for amounts substantially less than the relief sought in the *Van Dusen* and *Cilluffo* matters, the Objector Class Members request clarification that the release cannot apply to their claims in those cases or to any other unasserted wage claims that may exist. To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01, 56 Cal. Rptr. 2d 483 (1996), *as modified* (Sept. 30, 1996) (citations omitted). The court must determine the settlement is fair, adequate, and reasonable. *Id.* The purpose of the requirement is the protection of those class members whose rights may not have been given due regard by the negotiating parties. *Id.* Additionally, any attempt to include in a class settlement terms which are outside the scope of the operative complaint should be closely scrutinized by the trial court to determine if the plaintiff adequately represents the class. *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438, 152 Cal. Rptr. 503, 506 (Ct. App. 1979). *See also, Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129, 85 Cal. Rptr. 3d 20, 31 (2008) ("The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement."); § 1797.1 Settlement, Voluntary Dismissal, or Compromise of

Class Actions—Factors Considered for Approval, 7B Fed. Prac. & Proc. Civ. § 1797.1 (3d ed.) ("Courts must take special care when a class-action settlement purports to release claims not asserted within the class action or not shared alike by all class members and should decline to permit the uncompensated release of claims resting on a separate factual predicate from that settled in the class action.").*See also Myles v. AlliedBarton Sec. Servs.*, LLC, No. 12-CV-05761-JD, 2014 WL 6065602, at *4 (N.D. Cal. Nov. 12, 2014) ("The Court will not approve a proposed settlement in which the scope of the release differs dramatically from the scope of liability and the class members to be compensated unless the parties provide good reasons for that departure"); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) ("A settlement agreement may preclude a party from bringing a related claim in the future 'even though the claim was not presented and might not have been presentable in the class action,' but only where the released claim is 'based on the identical factual predicate as that underlying the claims in the settled class action.'"); *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 248 (2d Cir. 2011) ("Any released claims not presented directly in the complaint, however, must be 'based on the identical factual predicate as that underlying the claims in the settled class action.'") (quoting *TBK Partners, Ltd. v. Western Union Corp.,* 675 F.2d 456, 460 (2d Cir. 1982)).

The fact that the release was not intended to cover the claims in *Van Dusen* and *Cilluffo* is confirmed by the fact that the parties here have never advised the Court in connection with the proposed class action Settlement regarding the value of any "unknown" or otherwise released claims. If indeed the parties here intended to release the claims in the *Van Dusen* and *Cilluffo* cases, the Court would need to know the value of those claims in order to evaluate the fairness of the Settlement. In order to determine whether a class settlement is fair, adequate and reasonable, a court must be provided with "basic information about the nature and magnitude of the claims in

question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.*,168 Cal. App. 4th 116, 133 (2008). *See, also,* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 12:15, at 313 (4th ed. 2002) ("Of course, in order independently and objectively to evaluate the adequacy of the entire settlement ..., the court must possess sufficient evidence or information to weigh the strengths and weaknesses of the additional ... claims."); *In re Hewlett-Packard Co. S'holder Derivative Litig.*, No. 3:12-CV-06003-CRB, 2014 WL 7240144, at *5 (N.D. Cal. Dec. 19, 2014) ("The unknown scope and potential value of released claims leaves this Court unable to determine 'the strength of the plaintiffs' case' and whether the 'amount offered in settlement' is fairly and reasonably commensurate."); *Moreno v. Regions Bank*, 729 F. Supp. 2d 1346, 1352 (M.D. Fla. 2010) ("Absent some knowledge of the value of the released claims, the fairness of the compromise remains indeterminate."); *Nat'l Super Spuds, Inc. v. New York Mercantile Exch.*, 660 F.2d 9, 19 (2d Cir. 1981) ("An advantage to the class, no matter how great, simply cannot be bought by the uncompensated sacrifice of claims of members, whether few or many, which were not within the description of claims assertable by the class."). As the parties here never informed the Court of the value of the claims in *Van Dusen* and *Cilluffo*, it reflects the parties' intention not to release those claims.

CONCLUSION

For the foregoing reasons, the Objector Class Members respectfully request that the Court either modify the proposed judgment to clarify and limit the scope of the release in the final judgment to ensure that it is clear that it does not release, settle or otherwise have any effect on any of the claims asserted in the *Van Dusen* and *Cilluffo* matters pending in the District of Arizona and Central District of California and the American Arbitration Association, which are

wholly unrelated litigation with different factual predicates, or alternatively, reject the Joint Stipulation of Class Action Settlement and Release. Additionally, Objector Class Members respectfully request that, should the Court approve the Settlement and rule that the claims in the *Van Dusen* and *Cilluffo* matters are released by the Settlement, affected class members be given additional time to opt out of the Settlement. In the event the Court rules that additional time will not be given to affected class members to opt out of the Settlement, the Objector Class Members hereby request to be excluded from the Settlement.

Respectfully submitted this 2nd day of October 2015.

By: */s/ Dan Getman*

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CERTIFICATE OF SERVICE

I hereby certify on this 2nd day of October 2015, a copy of this Memorandum in Support of Objection to Settlement or in the Alternative, Motion to Clarify Scope of Release and all supporting documents was served on each of the following at the indicated address by first class U.S. mail, postage pre-paid:

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