

AMERICAN ARBITRATION ASSOCIATION

IN RE INDIVIDUAL ARBITRATIONS,

Claimants,

v.

CENTRAL REFRIGERATED SERVICE, INC., et al,

Respondents.

STIPULATION REGARDING BELLWETHER ARBITRATIONS

- 1. No stay of FLSA collective action pending before Arbitrator Irvine.**
- 2. All individual arbitrations filed by Claimants' counsel against Respondents shall be stayed indefinitely, except as set forth in Paragraphs 3, 4 , and 5 below.**
- 3. 8 Bellwether Arbitrations**
 - a. 8 Bellwether Arbitrations:**
 - i. Within one week of the CAMP's approval of this agreement, Claimants' counsel shall provide Respondents' counsel with (a) a list identifying all claimants that Claimants' counsel is aware are deceased (including, but not limited to David Kite, Julie Harman, and Wilma Willenborg) and (b) a complete list of all Claimants who they are aware are not currently in contact with Claimants' counsel.
 - ii. Within three weeks of the CAMP's approval of this agreement, the parties shall select 4 arbitrators (i.e., Claimants shall select 2 and Respondents shall select 2).
 - iii. Within two weeks of the selection of the 4 arbitrators, each side shall select one arbitration from Exhibit A to the October 24, 2014 stipulation creating the CAMP for resolution by each of the 4 arbitrators (i.e., 8 individual arbitrations in total, with four arbitrations chosen by each side). Upon selection, the 8 individual arbitrations shall be removed from the ambit of the stay and they shall proceed as set forth in Paragraph 4 below.
 1. Claimants on the lists provided under Paragraph 3.a.i are not eligible for selection by either side.

2. Claimants whose arbitrations are selected by either side but who do not participate shall have their arbitrations dismissed¹ and another arbitration shall be selected by the party who selected the unresponsive claimant.
3. Respondents may select no more than one arbitration of a “fleet” driver. If a “fleet” driver selected by Respondents does not participate, Respondents may select another “fleet” driver to replace the unresponsive “fleet” driver.
4. **Case Schedule for the 8 Bellwether Arbitrations:** With respect to the 8 bellwether arbitrations selected pursuant to Paragraph 3.a, the case schedule shall be as follows unless modified by the parties:
 - a. Pre-Trial Schedule:
 - i. Fact discovery shall be completed by October 17, 2016. Depositions may be taken by video or telephone at the option of the party taking the deposition.
 - ii. Initial expert reports shall be produced by October 28, 2016.
 - iii. Response expert reports shall be produced by November 18, 2016.
 - iv. Expert depositions shall be completed by December 9, 2016.
 - v. Summary judgment motions shall be filed by December 23, 2016.
 - vi. Oppositions to summary judgment motions shall be filed by January 20, 2017.
 - vii. Replies in support of summary judgment shall be filed by February 10, 2017.
 - viii. The parties shall request that the arbitrators issue decisions on any summary judgment motions by February 24, 2017.
 - b. Trial Schedule: Subject to the availability of the each of the four arbitrators and any procedures ordered by him or her, the trials, if necessary, in each of 8 bellwether cases shall commence on mutually convenient dates no earlier than March 1, 2017, and shall be concluded by no later than May 1, 2017. Notwithstanding the foregoing, the parties agree that trials may continue after May 1, 2017 if necessary to allow a party to present all evidence that it would otherwise be entitled to present.
 - c. Each of the 4 designated arbitrators shall make any necessary rulings on issues arising in either of the individual arbitrations before them. CAMP will have no further role in the

¹ Dismissal shall be with prejudice if the Claimant is in contact with Plaintiffs’ Counsel but shall refuse to participate. If Plaintiffs’ Counsel cannot reach a selected arbitrant to determine if they will participate, Counsel shall notify Defense Counsel and shall then be treated as lost for purposes of ¶ 5(c) herein.

8 bellwether arbitrations, except that its prior orders shall be followed as law of the case unless modified by this agreement.

- d. The two individual arbitrations before each of the four arbitrators shall remain separate proceedings and will not be consolidated for purposes of trial or decision. However, the parties agree that testimony and evidence presented at trial in one arbitration that is also relevant to the other arbitration pending before a particular arbitrator need not be re-presented in the other arbitration to be considered by the arbitrator in ruling in the other arbitration.
- e. The result of each of the 8 bellwether arbitrations (whether through settlement, summary judgment or judgment after trial) shall be treated as confidential and shall not be disclosed to any other arbitrator for any reason until all of the 8 bellwether arbitrations have been finally resolved.

5. Resolution of All of the Remaining Individual Arbitrations Subject to the CAMP's Jurisdiction.

- a. 3 weeks after the completion of all bellwether trials, the stay will be lifted for all remaining individual arbitrations subject to the CAMP's jurisdiction.
- b. CAMP shall continue to have authority over those issues previously committed to its authority. Among other things, this means that the pre-trial schedule set by the CAMP shall remain in effect, with the various case deadlines continued by the number of days between April 1, 2016 (i.e., the day the CAMP approved the parties' initial request for a stay of the individual arbitrations) and the date the stay is lifted pursuant to Paragraph 5(a). For example, if the stay terminates on June 1, 2017, the fact discovery cut-off is continued from July 7, 2016 to September 6, 2017.
- c. **Deceased/"Lost" Claimants:** Within 30 days of the resolution of the 8 bellwether arbitrations, Claimants' counsel shall provide Respondents' counsel with (1) a list identifying all Claimants that Claimants' counsel is aware are deceased (including, but not limited to David Kite, Julie Harman, and Wilma Willenborg) and (2) a list identifying (a) all claimants (i) who were previously identified as "lost" by Claimants' counsel and have not since reestablished contact with Claimants' counsel, or (ii) who have become "lost" and are not currently in contact with Claimants' counsel; and (b) the date of Claimants' counsel last contact with each of the "lost" claimants. The individual arbitration of each claimant that Claimants' counsel identifies as deceased shall be dismissed without prejudice on the 30th day after the list of deceased Claimants is provided (and no earlier than 6 months after such individual shall have deceased) unless Claimants' counsel has filed a motion substituting in the deceased claimant's estate/successor or the parties have submitted a stipulation to substitute the deceased claimant's estate/successor by that date.

6. Confidentiality of Claimant's Deposition Testimony

- a. Respondents shall continue to treat the deposition testimony of all individual claimants other than the 8 claimants whose arbitrations are selected as bellwethers under Paragraph 2.a. as confidential during the pendency of the stay established by Paragraph 2 and for at least 30 days after the expiration of the stay to provide Claimants' counsel with sufficient time to make confidentiality designations under the stipulated protective order.
- b. With respect to the 8 individual claimants whose arbitrations are selected as bellwethers under Paragraph 3.a:
 - i. If the claimant has already been deposed, Respondents will continue to treat his or her deposition testimony as confidential for 21 days after his or her selection under Paragraph 3.a to provide Claimants' counsel with sufficient time to make confidentiality designations under the stipulated protective order.
 - ii. If the claimant has not yet been deposed, Respondents will treat his or her deposition testimony as confidential for 21 days after his or her deposition transcript becomes available to provide Claimants' counsel with sufficient time to make confidentiality designations under the stipulated protective order.
 - iii. Nothing in this section shall prevent any party in any of the individual arbitrations subject to this agreement or the Cilluffo collective arbitration from introducing evidence (including but not limited to confidential depositions or documentary evidence) taken in any of the individual arbitrations subject to this agreement or the Cilluffo collective arbitration in of the other individual arbitrations or the Cilluffo collective arbitration.

Dated: July 19, 2016

Respectfully Submitted,

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