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March 3, 2010

**VIA HAND DELIVERY**

Honorable Richard M. Berman, U.S.D.J.  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

**Re: Van Dusen, et al v. Swift Transportation Co., Inc., et al  
Case No. 09 civ 10376 (RMB)**

Dear Judge Berman:

This letter serves as Defendants Swift Transportation Co., Inc. ("Swift") and Interstate Equipment Leasing, Inc. ("IEL") reply in support of its Motion to Dismiss or, in the alternative, to Transfer Venue to the U.S. District Court for the District of Arizona. In their response to Defendants' Motion, Plaintiffs make two main arguments. First, they insist that their claims arise in New York, as 28 U.S.C. § 1391 requires. Second, they argue that the Arizona contractual forum selection clauses, which they concede exist, are unenforceable because the contracts at issue are somehow unconscionable and that their choice of forum (this Court) is therefore entitled to deference. Neither argument is persuasive. Venue is not proper here and, even if it were, this case belongs in Arizona.

Regarding venue, Plaintiffs claim that it is proper in this district because a substantial part of the events giving rise to the claim occurred here. (Compl. ¶ 23; 28 U.S.C. § 1391(b)(2)).<sup>1</sup> The Second Circuit has advised courts to "take seriously the adjective substantial," and "construe the venue statute strictly." *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 357 (2d Cir. 2005) (internal quotations and citations omitted). For venue to be proper, "significant events or omissions material to the plaintiff's claim must have occurred in the district in question even if other material events occurred elsewhere." *Litton v. Avomex Inc.*, 2010 U.S. Dist. LEXIS 2881, \*31 (N.D.N.Y. Jan. 10, 2010). Thus, that Swift may conduct business, or even have a location, in New York is not dispositive. Rather, to determine proper venue, a court must first "identify the nature of the claims and the acts or omissions that the plaintiff alleges give rise to those claims." *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 432 (2d Cir. 2005) (citations omitted). After that, "the court should determine whether a substantial part of those acts or omissions occurred in the district where suit was filed, that is, whether 'significant events or

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<sup>1</sup> Plaintiffs' letter (as opposed to their Amended Complaint) makes a veiled reference to venue being proper under 28 U.S.C. § 1391(b)(1) (venue proper in any district in which a defendant resides, if all defendants reside in the same State). Even accepting Plaintiffs' allegations, however, venue is not proper here under § 1391(b)(1). First, all Defendants only reside in New York if this Court accepts Plaintiffs' strained and factually unsupported claim that IEL and Swift are a single enterprise. Second, although Swift has a terminal in Syracuse, New York, Syracuse is notably not within this District.

omissions material to [those] claims...have occurred in the district in question.” *Id.* Applying this analytical framework demonstrates the impropriety of Plaintiffs’ chosen venue.

Plaintiffs assert federal claims based on Swift’s alleged misclassification of owner/operators as independent contractors and the alleged failure to pay these drivers the minimum wage for all hours worked. The alleged act that gives rise to Plaintiffs’ federal claim, therefore, concerns Swift’s classification of them as independent contractors and the amount, manner and method of compensation. No part of those alleged acts took place in New York, let alone a substantial part. Moreover, neither Swift nor IEL created policies, procedures or business practices in New York which are material to Plaintiffs’ claims. That a defendant may have operations in New York is not material because the foundation of Plaintiffs’ claims – namely, their classification as independent contractors and the manner and method of compensating them – did not occur here; it occurred in Arizona. *Earley v. BJ’s Wholesale Club, Inc.*, 2007 U.S. Dist. Lexis 40125, \*6-7 (S.D.N.Y. June 4, 2007) (stating location of operative facts in FLSA action is employer’s headquarters, where corporate policies concerning pay are determined and implemented).

Alternatively, Plaintiffs insist that the contracts at issue are unconscionable and that this Court should not enforce the forum selection clauses contained in them. The Supreme Court, however, has repeatedly ruled that forum selection clauses are *prima facie* valid. Neither unfair bargaining power nor inability to negotiate is reason to invalidate them. *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972); *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991). Courts in New York agree. See *Comprehensive Habilitation Services, Inc., v. Commerce Funding Corp.*, 2009 U.S. Dist. LEXIS 30386, \* 31 (S.D.N.Y. April 7, 2009) (“Absent fraud or violation of public policy, a court is to apply the law selected in the contract as long as the state selected has sufficient contacts with the transaction.”) (citations omitted). This is particularly the case where, as here, enforcing the provision will not deprive Plaintiffs of their day in court, just move it to an agreed upon forum. In short, while Plaintiffs submit declarations to demonstrate the overall unconscionability of the contracts at issue and/or to support allegations of undue coercion in their execution,<sup>2</sup> they notably do not claim that Swift forced them to become Owner/Operators. Irrespective of the ultimate merit of such arguments, they are not relevant to the instant issue. Were it otherwise, parties to a contract dispute would always allege unconscionability to try to litigate in a forum other than the contractually chosen one.

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<sup>2</sup> Contrary to Plaintiffs’ assertions, Defendants do not force anyone to sign agreements. Owner/Operators are free to remove the agreements and review them with lawyers and/or spouses before signing them if they choose. Moreover, Van Dusen’s independent contractor agreement (Plaintiffs’ Exhibit D) (“ICOA”), which is essentially the same contract all owner operators sign regardless of whether they own their truck or lease from IEL or another vendor, is 16 pages and written in an acceptable sized font. Nothing in the ICOA supports Plaintiffs’ claim that it had to be executed along with a lease or that it is a “classic contract of adhesion.” Although the ICOA is not short, it is written in plain English. The forum selection (¶ 33), choice of law (¶ 24) and arbitration provisions (¶ 25, accentuated in **bold**) are clear and unambiguous. The lease agreements are no different, including similar choice of law and forum selection clauses. Plaintiffs’ Declarations are “lawyered up,” created solely to oppose this Motion, entitled to little weight. The authenticity of “John Doe 1”’s Declaration is particularly dubious. Although English is not his first language and he claims to read it with difficulty (¶ 9), his declaration is perfectly clear.

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In response to Defendants' request to transfer this case, Plaintiffs rehash their unconscionability arguments and insist this Court defer to their forum choice. Courts often distill the nine factor test for transfer of venue to four categories: (1) party considerations, (2) witness/evidentiary considerations, (3) forum considerations, and (4) public interest considerations. *Zaitsev v. State Farm Fire & Cas. Co.*, 2005 U.S. Dist. LEXIS 30325, at \*4 (E.D.N.Y. 2005).

First, party considerations warrant transfer. Arizona is where the parties chose to litigate their disputes, and their contacts with Arizona are significant. See 14D Wright Miller & Cooper, *Jurisdiction and Related Matters* § 3803.1 (noting forum selection clause is significant factor that figures centrally in transfer analysis, tipping convenience of the parties in favor of transfer). Plaintiffs' counsel's unsubstantiated representation that "most of the lower income named Plaintiffs reside in New York" is pure conjecture and of little importance. This case impacts a large number of potential class members who are dispersed throughout the country. In such a nationwide case, the named plaintiff's choice of forum is afforded little weight. *Coen v. Hoffmann-La Roche*, 2007 U.S. Dist. LEXIS 23132, \*10 (S.D.N.Y. Mar. 21, 2007). Nor is the "convenience of counsel . . . an appropriate factor to consider on a motion to transfer." *Fuji Photo Film Co. v. Lexar Media, Inc.*, 415 F. Supp. 2d 370, 374 (S.D.N.Y. 2006).


Second, evidentiary considerations favor transfer. The vast majority of individuals who made the decisions that Plaintiffs challenge live in Arizona. Plaintiffs will undoubtedly seek to depose them, and they will be witnesses at trial. Most of the voluminous documents which pertain to Plaintiffs' nationwide claims also reside in Arizona. See *Farrior v. George Weston Bakeries Dist., Inc.*, 2009 U.S. Dist. LEXIS 2636, \*9 (E.D.N.Y. Jan. 15, 2009) (holding transfer favored where location of documents and integral company witnesses centralized in transferee forum).

Third, forum considerations favor transfer. "Courts routinely transfer cases when the principal events occurred and the principal witnesses are located in another district." *Berman v. Informix Corp.*, 30 F. Supp. 2d 653, 658 (S.D.N.Y. 1998) For the reasons stated above, the District of Arizona is the "center of gravity of the litigation." *Amick v. Am. Express Travel Related Servs. Co.*, 2010 U.S. Dist. LEXIS 6483, \*3 (S.D.N.Y. Jan. 26, 2010).

Finally, public interest considerations favor transfer. "Public interest considerations include calendar congestion, and the interests of justice and fairness." *Zaitsev*, 2005 U.S. Dist. LEXIS 30325, \*12. According to the latest Judicial Caseload Statistics, the District of Arizona's civil case docket is far less crowded than that of the Southern District of New York. (Ex. A). Indeed, the number of civil filings in the District of Arizona decreased by 9 percent from March 2008 to March 2009. Civil filings in the S.D.N.Y. increased 4 percent over the same time period.

In sum, Plaintiffs could have and should have filed this case in Arizona. Therefore, this Court should transfer this action there.

Respectfully submitted,

  
Gary D. Shapiro

cc: Dan Getman (via e-mail)

# EXHIBIT A

**Table C-1.  
U.S. District Courts—Civil Cases Commenced, Terminated, and Pending  
During the 12-Month Period Ending March 31, 2009**

| Circuit and District | Total Civil Cases     |                |                |                |               |               | U.S. Civil Cases      |               |                |                |                |                | Private Civil Cases   |               |               |               |               |                |                       |                |                |               |               |               |               |               |               |
|----------------------|-----------------------|----------------|----------------|----------------|---------------|---------------|-----------------------|---------------|----------------|----------------|----------------|----------------|-----------------------|---------------|---------------|---------------|---------------|----------------|-----------------------|----------------|----------------|---------------|---------------|---------------|---------------|---------------|---------------|
|                      | Pending Mar. 31, 2008 |                | Terminated     |                | Commenced     |               | Pending Mar. 31, 2009 |               | Terminated     |                | Commenced      |                | Pending Mar. 31, 2008 |               | Terminated    |               | Commenced     |                | Pending Mar. 31, 2009 |                | Terminated     |               | Commenced     |               |               |               |               |
|                      |                       |                |                |                |               |               |                       |               |                |                |                |                |                       |               |               |               |               |                |                       |                |                |               |               |               |               |               |               |
| <b>TOTAL</b>         | <b>281,705</b>        | <b>258,535</b> | <b>238,640</b> | <b>301,600</b> | <b>38,347</b> | <b>42,364</b> | <b>43,665</b>         | <b>37,046</b> | <b>243,358</b> | <b>194,975</b> | <b>216,171</b> | <b>264,554</b> | <b>1,080</b>          | <b>1,364</b>  | <b>1,118</b>  | <b>1,080</b>  | <b>1,118</b>  | <b>243,358</b> | <b>194,975</b>        | <b>216,171</b> | <b>264,554</b> | <b>1,080</b>  | <b>1,364</b>  | <b>1,118</b>  | <b>1,080</b>  |               |               |
| <b>DC</b>            | <b>2,814</b>          | <b>2,448</b>   | <b>2,388</b>   | <b>2,874</b>   | <b>1,488</b>  | <b>1,330</b>  | <b>1,308</b>          | <b>1,510</b>  | <b>1,326</b>   | <b>1,080</b>   | <b>1,118</b>   | <b>1,364</b>   | <b>1,080</b>          | <b>1,364</b>  | <b>1,118</b>  | <b>1,080</b>  | <b>1,118</b>  | <b>1,326</b>   | <b>1,080</b>          | <b>1,118</b>   | <b>1,364</b>   | <b>1,080</b>  | <b>1,364</b>  | <b>1,118</b>  | <b>1,080</b>  | <b>1,118</b>  |               |
| <b>1ST</b>           | <b>6,737</b>          | <b>6,152</b>   | <b>5,796</b>   | <b>7,093</b>   | <b>1,325</b>  | <b>1,333</b>  | <b>1,459</b>          | <b>1,199</b>  | <b>5,412</b>   | <b>4,337</b>   | <b>4,819</b>   | <b>5,894</b>   | <b>4,337</b>          | <b>5,894</b>  | <b>4,819</b>  | <b>4,337</b>  | <b>4,819</b>  | <b>5,412</b>   | <b>4,337</b>          | <b>4,819</b>   | <b>5,894</b>   | <b>4,337</b>  | <b>5,894</b>  | <b>4,819</b>  | <b>4,337</b>  | <b>4,819</b>  |               |
| ME                   | 290                   | 471            | 457            | 304            | 64            | 159           | 126                   | 97            | 226            | 331            | 312            | 207            | 331                   | 207           | 312           | 331           | 312           | 226            | 331                   | 312            | 207            | 331           | 312           | 207           | 331           | 312           |               |
| MA                   | 2,979                 | 2,754          | 2,869          | 2,864          | 600           | 643           | 675                   | 568           | 2,379          | 2,194          | 2,111          | 2,296          | 2,194                 | 2,296         | 2,111         | 2,194         | 2,111         | 2,379          | 2,194                 | 2,111          | 2,296          | 2,194         | 2,296         | 2,111         | 2,194         | 2,111         |               |
| NH                   | 426                   | 504            | 518            | 412            | 80            | 132           | 118                   | 94            | 346            | 400            | 372            | 318            | 400                   | 318           | 372           | 400           | 372           | 346            | 400                   | 372            | 318            | 400           | 372           | 318           | 400           | 372           |               |
| RI                   | 1,274                 | 1,134          | 475            | 1,933          | 116           | 135           | 125                   | 126           | 1,158          | 350            | 999            | 1,807          | 350                   | 1,807         | 999           | 350           | 999           | 1,158          | 350                   | 999            | 1,807          | 350           | 1,807         | 999           | 350           | 999           |               |
| PR                   | 1,768                 | 1,289          | 1,477          | 1,580          | 465           | 264           | 415                   | 314           | 1,303          | 1,062          | 1,025          | 1,266          | 1,062                 | 1,266         | 1,025         | 1,062         | 1,025         | 1,303          | 1,062                 | 1,025          | 1,266          | 1,062         | 1,266         | 1,025         | 1,062         | 1,025         |               |
| <b>2ND</b>           | <b>36,941</b>         | <b>22,865</b>  | <b>21,874</b>  | <b>37,932</b>  | <b>3,453</b>  | <b>3,124</b>  | <b>3,326</b>          | <b>3,251</b>  | <b>33,488</b>  | <b>18,548</b>  | <b>19,741</b>  | <b>34,681</b>  | <b>18,548</b>         | <b>34,681</b> | <b>19,741</b> | <b>18,548</b> | <b>19,741</b> | <b>33,488</b>  | <b>18,548</b>         | <b>19,741</b>  | <b>34,681</b>  | <b>18,548</b> | <b>34,681</b> | <b>19,741</b> | <b>18,548</b> | <b>19,741</b> |               |
| CT                   | 2,377                 | 2,091          | 2,290          | 2,178          | 305           | 346           | 379                   | 272           | 2,072          | 1,911          | 1,745          | 1,906          | 1,911                 | 1,906         | 1,745         | 1,911         | 1,745         | 2,072          | 1,911                 | 1,745          | 1,906          | 1,911         | 1,906         | 1,745         | 1,911         | 1,745         |               |
| NY,N                 | 2,271                 | 1,453          | 1,608          | 2,116          | 554           | 316           | 393                   | 477           | 1,717          | 1,215          | 1,137          | 1,639          | 1,215                 | 1,639         | 1,137         | 1,215         | 1,137         | 1,717          | 1,215                 | 1,137          | 1,639          | 1,215         | 1,639         | 1,137         | 1,215         | 1,137         |               |
| NY,E                 | 7,225                 | 5,447          | 5,417          | 7,255          | 1,069         | 988           | 1,030                 | 1,027         | 6,156          | 4,387          | 4,459          | 6,228          | 4,387                 | 6,228         | 4,459         | 4,387         | 4,459         | 6,156          | 4,387                 | 4,459          | 6,228          | 4,387         | 6,228         | 4,459         | 4,387         | 4,459         |               |
| NY,S                 | 22,247                | 11,922         | 10,762         | 23,407         | 1,036         | 958           | 1,043                 | 951           | 21,211         | 9,719          | 10,964         | 22,456         | 9,719                 | 22,456        | 10,964        | 9,719         | 10,964        | 21,211         | 9,719                 | 10,964         | 22,456         | 9,719         | 22,456        | 10,964        | 9,719         | 10,964        |               |
| NY,W                 | 2,544                 | 1,665          | 1,515          | 2,694          | 426           | 432           | 399                   | 459           | 2,118          | 1,116          | 1,233          | 2,235          | 1,116                 | 2,235         | 1,233         | 1,116         | 1,233         | 2,118          | 1,116                 | 1,233          | 2,235          | 1,116         | 2,235         | 1,233         | 1,116         | 1,233         |               |
| VT                   | 277                   | 287            | 282            | 282            | 63            | 84            | 82                    | 65            | 214            | 200            | 203            | 217            | 200                   | 217           | 203           | 200           | 203           | 214            | 200                   | 203            | 217            | 200           | 217           | 200           | 203           | 200           |               |
| <b>3RD</b>           | <b>55,001</b>         | <b>42,980</b>  | <b>27,201</b>  | <b>70,780</b>  | <b>2,574</b>  | <b>2,985</b>  | <b>3,168</b>          | <b>2,391</b>  | <b>52,427</b>  | <b>24,033</b>  | <b>39,995</b>  | <b>68,389</b>  | <b>24,033</b>         | <b>68,389</b> | <b>39,995</b> | <b>24,033</b> | <b>39,995</b> | <b>52,427</b>  | <b>24,033</b>         | <b>39,995</b>  | <b>68,389</b>  | <b>24,033</b> | <b>68,389</b> | <b>39,995</b> | <b>24,033</b> | <b>39,995</b> |               |
| DE                   | 1,289                 | 1,074          | 1,124          | 1,239          | 102           | 80            | 77                    | 105           | 1,187          | 1,047          | 994            | 1,134          | 1,047                 | 1,134         | 994           | 1,047         | 994           | 1,187          | 1,047                 | 994            | 1,134          | 1,047         | 1,134         | 994           | 1,047         | 994           |               |
| NJ                   | 6,228                 | 6,679          | 7,220          | 5,687          | 730           | 908           | 942                   | 696           | 5,498          | 4,991          | 5,771          | 6,228          | 4,991                 | 6,228         | 5,771         | 4,991         | 5,771         | 5,498          | 4,991                 | 5,771          | 6,228          | 4,991         | 6,228         | 5,771         | 4,991         | 5,771         |               |
| PA,E                 | 42,192                | 30,085         | 13,540         | 58,737         | 609           | 765           | 826                   | 548           | 41,583         | 12,714         | 29,320         | 58,189         | 12,714                | 58,189        | 29,320        | 12,714        | 29,320        | 41,583         | 12,714                | 29,320         | 58,189         | 12,714        | 58,189        | 29,320        | 12,714        | 29,320        |               |
| PA,M                 | 2,017                 | 2,423          | 2,335          | 2,105          | 457           | 648           | 679                   | 426           | 1,560          | 1,656          | 1,775          | 1,679          | 1,656                 | 1,679         | 1,775         | 1,656         | 1,775         | 1,560          | 1,656                 | 1,775          | 1,679          | 1,656         | 1,679         | 1,775         | 1,656         | 1,775         |               |
| PA,W                 | 2,051                 | 2,437          | 2,549          | 1,939          | 429           | 550           | 569                   | 410           | 1,622          | 1,980          | 1,887          | 1,529          | 1,980                 | 1,529         | 1,887         | 1,980         | 1,887         | 1,622          | 1,980                 | 1,887          | 1,529          | 1,980         | 1,529         | 1,887         | 1,980         | 1,887         |               |
| VI                   | 1,224                 | 282            | 433            | 1,073          | 247           | 34            | 75                    | 206           | 977            | 358            | 248            | 867            | 358                   | 867           | 248           | 358           | 248           | 977            | 358                   | 248            | 867            | 358           | 867           | 248           | 358           | 248           |               |
| <b>4TH</b>           | <b>12,924</b>         | <b>17,867</b>  | <b>17,295</b>  | <b>13,496</b>  | <b>3,406</b>  | <b>3,919</b>  | <b>3,947</b>          | <b>3,378</b>  | <b>9,518</b>   | <b>13,348</b>  | <b>13,948</b>  | <b>10,118</b>  | <b>13,348</b>         | <b>10,118</b> | <b>13,948</b> | <b>13,348</b> | <b>13,948</b> | <b>9,518</b>   | <b>13,348</b>         | <b>13,948</b>  | <b>10,118</b>  | <b>13,348</b> | <b>13,948</b> | <b>13,348</b> | <b>13,948</b> | <b>13,348</b> | <b>13,948</b> |
| MD                   | 2,901                 | 3,590          | 3,416          | 3,075          | 717           | 920           | 887                   | 750           | 2,184          | 2,529          | 2,670          | 2,325          | 2,529                 | 2,325         | 2,670         | 2,529         | 2,670         | 2,184          | 2,529                 | 2,670          | 2,325          | 2,529         | 2,670         | 2,325         | 2,529         | 2,670         |               |
| NC,E                 | 1,308                 | 1,484          | 1,331          | 1,441          | 520           | 575           | 555                   | 540           | 788            | 776            | 889            | 901            | 776                   | 901           | 889           | 776           | 889           | 788            | 776                   | 889            | 901            | 776           | 901           | 776           | 889           | 901           |               |
| NC,M                 | 801                   | 955            | 996            | 760            | 296           | 234           | 288                   | 242           | 505            | 708            | 721            | 518            | 708                   | 518           | 721           | 708           | 721           | 505            | 708                   | 721            | 518            | 708           | 721           | 518           | 708           | 721           |               |
| NC,W                 | 777                   | 1,281          | 1,207          | 851            | 208           | 254           | 246                   | 216           | 569            | 961            | 1,027          | 635            | 961                   | 635           | 1,027         | 961           | 1,027         | 569            | 961                   | 1,027          | 635            | 961           | 635           | 961           | 635           | 961           |               |
| SC                   | 3,224                 | 4,113          | 4,081          | 3,256          | 518           | 505           | 542                   | 481           | 2,706          | 3,608          | 3,608          | 2,775          | 3,608                 | 2,775         | 3,608         | 3,608         | 3,608         | 2,706          | 3,608                 | 3,608          | 2,775          | 3,608         | 3,608         | 2,775         | 3,608         | 3,608         |               |
| VA,E                 | 1,534                 | 3,194          | 3,085          | 1,643          | 262           | 568           | 505                   | 325           | 1,272          | 2,580          | 2,626          | 1,318          | 2,580                 | 1,318         | 2,626         | 2,580         | 2,626         | 1,272          | 2,580                 | 2,626          | 1,318          | 2,580         | 2,626         | 1,318         | 2,580         | 2,626         |               |
| VA,W                 | 648                   | 1,020          | 1,041          | 627            | 284           | 360           | 397                   | 247           | 364            | 644            | 660            | 380            | 644                   | 380           | 660           | 644           | 660           | 364            | 644                   | 660            | 380            | 644           | 660           | 380           | 644           | 660           |               |
| WV,N                 | 706                   | 603            | 737            | 572            | 254           | 187           | 270                   | 171           | 452            | 467            | 416            | 401            | 467                   | 401           | 416           | 467           | 416           | 452            | 467                   | 416            | 401            | 467           | 401           | 467           | 401           | 467           |               |
| WV,S                 | 1,025                 | 1,647          | 1,401          | 1,271          | 347           | 316           | 257                   | 406           | 678            | 1,144          | 1,331          | 865            | 1,144                 | 865           | 1,331         | 1,144         | 1,331         | 678            | 1,144                 | 1,331          | 865            | 1,144         | 865           | 1,144         | 865           | 1,144         |               |

**Table C-1. (March 31, 2009—Continued)**

| Circuit and District | Total Civil Cases     |        |            |        |                       |       | U.S. Civil Cases      |       |           |        |            |        | Private Civil Cases   |  |           |  |            |  |                       |  |
|----------------------|-----------------------|--------|------------|--------|-----------------------|-------|-----------------------|-------|-----------|--------|------------|--------|-----------------------|--|-----------|--|------------|--|-----------------------|--|
|                      | Pending Mar. 31, 2008 |        | Terminated |        | Pending Mar. 31, 2009 |       | Pending Mar. 31, 2008 |       | Commenced |        | Terminated |        | Pending Mar. 31, 2009 |  | Commenced |  | Terminated |  | Pending Mar. 31, 2009 |  |
|                      |                       |        |            |        |                       |       |                       |       |           |        |            |        |                       |  |           |  |            |  |                       |  |
| <b>5TH</b>           | 37,845                | 29,897 | 33,453     | 34,289 | 4,503                 | 4,877 | 4,907                 | 4,473 | 33,342    | 25,020 | 28,546     | 29,816 |                       |  |           |  |            |  |                       |  |
| LA,E                 | 17,323                | 7,111  | 8,991      | 15,443 | 570                   | 348   | 437                   | 481   | 16,753    | 6,763  | 8,554      | 14,962 |                       |  |           |  |            |  |                       |  |
| LA,M                 | 2,301                 | 862    | 846        | 846    | 82                    | 95    | 107                   | 70    | 2,219     | 767    | 2,210      | 776    |                       |  |           |  |            |  |                       |  |
| LA,W                 | 2,205                 | 2,100  | 2,137      | 2,168  | 425                   | 489   | 457                   | 437   | 1,780     | 1,631  | 1,680      | 1,731  |                       |  |           |  |            |  |                       |  |
| MS,N                 | 1,083                 | 896    | 984        | 984    | 131                   | 122   | 122                   | 131   | 952       | 774    | 873        | 853    |                       |  |           |  |            |  |                       |  |
| MS,S                 | 2,463                 | 3,185  | 3,215      | 2,433  | 260                   | 257   | 210                   | 307   | 2,203     | 2,928  | 3,005      | 2,126  |                       |  |           |  |            |  |                       |  |
| TX,N                 | 3,048                 | 4,172  | 4,133      | 3,087  | 628                   | 860   | 888                   | 600   | 2,420     | 3,312  | 3,245      | 2,487  |                       |  |           |  |            |  |                       |  |
| TX,E                 | 2,768                 | 2,914  | 2,981      | 2,701  | 547                   | 477   | 448                   | 576   | 2,221     | 2,437  | 2,533      | 2,125  |                       |  |           |  |            |  |                       |  |
| TX,S                 | 4,252                 | 5,613  | 5,609      | 4,256  | 1,161                 | 1,393 | 1,381                 | 1,173 | 3,091     | 4,220  | 4,228      | 3,083  |                       |  |           |  |            |  |                       |  |
| TX,W                 | 2,402                 | 3,044  | 3,075      | 2,371  | 699                   | 856   | 857                   | 698   | 1,703     | 2,188  | 2,218      | 1,673  |                       |  |           |  |            |  |                       |  |
| <b>6TH</b>           | 21,222                | 21,417 | 20,271     | 22,368 | 3,732                 | 4,225 | 4,345                 | 3,612 | 17,490    | 17,192 | 15,926     | 18,756 |                       |  |           |  |            |  |                       |  |
| KYE                  | 1,447                 | 1,600  | 1,594      | 1,453  | 620                   | 772   | 799                   | 593   | 827       | 828    | 795        | 860    |                       |  |           |  |            |  |                       |  |
| KY,W                 | 1,295                 | 1,343  | 1,281      | 1,357  | 272                   | 255   | 301                   | 226   | 1,023     | 1,088  | 980        | 1,131  |                       |  |           |  |            |  |                       |  |
| MI,E                 | 5,335                 | 4,966  | 5,263      | 5,038  | 709                   | 1,003 | 1,045                 | 667   | 4,626     | 3,963  | 4,218      | 4,371  |                       |  |           |  |            |  |                       |  |
| MI,W                 | 1,417                 | 1,582  | 1,626      | 1,373  | 187                   | 249   | 222                   | 214   | 1,230     | 1,333  | 1,404      | 1,159  |                       |  |           |  |            |  |                       |  |
| OH,N                 | 4,622                 | 5,322  | 4,034      | 5,910  | 458                   | 574   | 607                   | 425   | 4,164     | 4,748  | 3,427      | 5,485  |                       |  |           |  |            |  |                       |  |
| OH,S                 | 2,811                 | 2,606  | 2,724      | 2,693  | 586                   | 593   | 602                   | 577   | 2,225     | 2,013  | 2,122      | 2,116  |                       |  |           |  |            |  |                       |  |
| TN,E                 | 1,365                 | 1,284  | 1,184      | 1,465  | 324                   | 305   | 264                   | 365   | 1,041     | 979    | 920        | 1,100  |                       |  |           |  |            |  |                       |  |
| TN,M                 | 1,638                 | 1,489  | 1,472      | 1,655  | 326                   | 244   | 302                   | 268   | 1,312     | 1,245  | 1,170      | 1,387  |                       |  |           |  |            |  |                       |  |
| TN,W                 | 1,292                 | 1,225  | 1,093      | 1,424  | 250                   | 230   | 203                   | 277   | 1,042     | 895    | 890        | 1,147  |                       |  |           |  |            |  |                       |  |
| <b>7TH</b>           | 14,450                | 16,176 | 15,446     | 15,180 | 1,814                 | 2,274 | 2,132                 | 1,956 | 12,636    | 13,902 | 13,314     | 13,224 |                       |  |           |  |            |  |                       |  |
| IL,N                 | 7,256                 | 7,958  | 7,489      | 7,725  | 769                   | 830   | 843                   | 756   | 6,487     | 7,128  | 6,646      | 6,969  |                       |  |           |  |            |  |                       |  |
| IL,C                 | 1,011                 | 1,134  | 997        | 1,148  | 182                   | 240   | 217                   | 205   | 829       | 894    | 780        | 943    |                       |  |           |  |            |  |                       |  |
| IL,S                 | 1,032                 | 946    | 991        | 987    | 180                   | 203   | 192                   | 191   | 852       | 743    | 789        | 796    |                       |  |           |  |            |  |                       |  |
| IN,N                 | 1,542                 | 1,398  | 1,481      | 1,459  | 195                   | 231   | 218                   | 208   | 1,347     | 1,167  | 1,263      | 1,251  |                       |  |           |  |            |  |                       |  |
| IN,S                 | 2,224                 | 2,687  | 2,550      | 2,361  | 282                   | 412   | 321                   | 373   | 1,942     | 2,275  | 2,229      | 1,988  |                       |  |           |  |            |  |                       |  |
| WI,E                 | 1,079                 | 1,246  | 1,213      | 1,112  | 139                   | 190   | 186                   | 143   | 940       | 1,056  | 1,027      | 969    |                       |  |           |  |            |  |                       |  |
| WI,W                 | 306                   | 807    | 725        | 388    | 67                    | 168   | 155                   | 80    | 239       | 639    | 570        | 308    |                       |  |           |  |            |  |                       |  |
| <b>8TH</b>           | 17,393                | 19,489 | 16,663     | 20,219 | 2,376                 | 2,924 | 3,019                 | 2,281 | 15,017    | 16,565 | 13,644     | 17,938 |                       |  |           |  |            |  |                       |  |
| AR,E                 | 4,941                 | 5,107  | 1,938      | 8,110  | 281                   | 378   | 360                   | 299   | 4,660     | 4,729  | 1,578      | 7,811  |                       |  |           |  |            |  |                       |  |
| AR,W                 | 758                   | 845    | 784        | 819    | 275                   | 305   | 299                   | 289   | 483       | 540    | 503        | 520    |                       |  |           |  |            |  |                       |  |
| IA,N                 | 435                   | 554    | 534        | 455    | 205                   | 252   | 255                   | 202   | 280       | 302    | 279        | 263    |                       |  |           |  |            |  |                       |  |
| IA,S                 | 764                   | 743    | 836        | 671    | 212                   | 248   | 288                   | 172   | 562       | 495    | 548        | 499    |                       |  |           |  |            |  |                       |  |
| MN                   | 5,876                 | 6,454  | 7,023      | 5,307  | 269                   | 348   | 384                   | 233   | 5,607     | 6,106  | 6,639      | 5,074  |                       |  |           |  |            |  |                       |  |
| MO,E                 | 1,966                 | 2,383  | 2,193      | 2,156  | 415                   | 452   | 457                   | 410   | 1,551     | 1,931  | 1,736      | 1,746  |                       |  |           |  |            |  |                       |  |
| MO,W                 | 1,478                 | 2,076  | 2,047      | 1,507  | 454                   | 569   | 635                   | 388   | 1,024     | 1,507  | 1,412      | 1,119  |                       |  |           |  |            |  |                       |  |
| NE                   | 576                   | 772    | 751        | 597    | 120                   | 208   | 199                   | 129   | 456       | 564    | 552        | 468    |                       |  |           |  |            |  |                       |  |
| ND                   | 210                   | 218    | 247        | 181    | 43                    | 62    | 63                    | 42    | 167       | 156    | 184        | 139    |                       |  |           |  |            |  |                       |  |
| SD                   | 389                   | 337    | 310        | 416    | 102                   | 102   | 97                    | 107   | 287       | 235    | 213        | 309    |                       |  |           |  |            |  |                       |  |

**Table C-1. (March 31, 2009—Continued)**

| Circuit and District | Total Civil Cases        |               |               |                          |                          | U.S. Civil Cases |              |                          |                          |               | Private Civil Cases |                          |           |            |                          |
|----------------------|--------------------------|---------------|---------------|--------------------------|--------------------------|------------------|--------------|--------------------------|--------------------------|---------------|---------------------|--------------------------|-----------|------------|--------------------------|
|                      | Pending<br>Mar. 31, 2008 | Commenced     | Terminated    | Pending<br>Mar. 31, 2009 | Pending<br>Mar. 31, 2008 | Commenced        | Terminated   | Pending<br>Mar. 31, 2009 | Pending<br>Mar. 31, 2008 | Commenced     | Terminated          | Pending<br>Mar. 31, 2008 | Commenced | Terminated | Pending<br>Mar. 31, 2009 |
| <b>9TH</b>           | <b>39,919</b>            | <b>40,350</b> | <b>40,164</b> | <b>40,105</b>            | <b>7,230</b>             | <b>7,988</b>     | <b>8,545</b> | <b>6,673</b>             | <b>32,689</b>            | <b>32,362</b> | <b>31,619</b>       | <b>33,432</b>            |           |            |                          |
| AK                   | 361                      | 380           | 364           | 377                      | 138                      | 138              | 113          | 163                      | 223                      | 242           | 251                 | 214                      |           |            |                          |
| AZ                   | 3,172                    | 3,302         | 3,515         | 2,959                    | 700                      | 825              | 943          | 582                      | 2,472                    | 2,477         | 2,572               | 2,377                    |           |            |                          |
| CA,N                 | 8,095                    | 5,571         | 5,858         | 7,808                    | 759                      | 689              | 844          | 604                      | 7,336                    | 4,882         | 5,014               | 7,204                    |           |            |                          |
| CA,E                 | 6,302                    | 5,324         | 4,770         | 6,856                    | 844                      | 795              | 712          | 927                      | 5,458                    | 4,529         | 4,058               | 5,929                    |           |            |                          |
| CA,C                 | 10,267                   | 12,861        | 12,844        | 10,284                   | 2,141                    | 2,749            | 2,948        | 1,942                    | 8,126                    | 10,112        | 9,896               | 8,342                    |           |            |                          |
| CA,S                 | 1,946                    | 2,832         | 2,566         | 2,212                    | 442                      | 554              | 583          | 413                      | 1,504                    | 2,278         | 1,983               | 1,799                    |           |            |                          |
| HI                   | 589                      | 567           | 630           | 546                      | 106                      | 113              | 107          | 112                      | 483                      | 474           | 523                 | 434                      |           |            |                          |
| ID                   | 584                      | 564           | 543           | 605                      | 119                      | 116              | 119          | 116                      | 465                      | 448           | 424                 | 489                      |           |            |                          |
| MT                   | 649                      | 577           | 744           | 482                      | 200                      | 163              | 229          | 134                      | 449                      | 414           | 515                 | 348                      |           |            |                          |
| NV                   | 2,666                    | 2,815         | 2,403         | 3,078                    | 326                      | 254              | 254          | 326                      | 2,340                    | 2,561         | 2,149               | 2,752                    |           |            |                          |
| OR                   | 2,493                    | 2,081         | 2,279         | 2,295                    | 746                      | 614              | 690          | 670                      | 1,747                    | 1,467         | 1,589               | 1,625                    |           |            |                          |
| WA,E                 | 600                      | 659           | 681           | 578                      | 204                      | 289              | 262          | 231                      | 396                      | 370           | 419                 | 347                      |           |            |                          |
| WA,W                 | 2,092                    | 2,731         | 2,893         | 1,930                    | 472                      | 671              | 720          | 423                      | 1,620                    | 2,060         | 2,173               | 1,507                    |           |            |                          |
| GUAM                 | 45                       | 22            | 34            | 33                       | 18                       | 9                | 13           | 14                       | 27                       | 13            | 21                  | 19                       |           |            |                          |
| NMI                  | 58                       | 44            | 40            | 62                       | 15                       | 9                | 8            | 16                       | 43                       | 35            | 32                  | 46                       |           |            |                          |
| <b>10TH</b>          | <b>9,177</b>             | <b>9,957</b>  | <b>9,631</b>  | <b>9,503</b>             | <b>2,133</b>             | <b>2,336</b>     | <b>2,289</b> | <b>2,180</b>             | <b>7,044</b>             | <b>7,621</b>  | <b>7,342</b>        | <b>7,323</b>             |           |            |                          |
| CO                   | 2,105                    | 2,363         | 2,779         | 2,289                    | 487                      | 651              | 627          | 511                      | 1,618                    | 2,312         | 2,152               | 1,778                    |           |            |                          |
| KS                   | 1,432                    | 1,544         | 1,502         | 1,474                    | 319                      | 419              | 372          | 366                      | 1,113                    | 1,125         | 1,130               | 1,108                    |           |            |                          |
| NM                   | 1,774                    | 1,222         | 1,282         | 1,714                    | 365                      | 276              | 278          | 363                      | 1,409                    | 946           | 1,004               | 1,351                    |           |            |                          |
| OK,N                 | 768                      | 799           | 760           | 807                      | 183                      | 228              | 201          | 210                      | 585                      | 571           | 559                 | 597                      |           |            |                          |
| OK,E                 | 388                      | 497           | 471           | 414                      | 168                      | 189              | 168          | 189                      | 220                      | 308           | 303                 | 225                      |           |            |                          |
| OK,W                 | 1,105                    | 1,464         | 1,413         | 1,156                    | 268                      | 280              | 342          | 206                      | 837                      | 1,184         | 1,071               | 950                      |           |            |                          |
| UT                   | 1,263                    | 1,190         | 1,095         | 1,358                    | 232                      | 228              | 230          | 230                      | 1,031                    | 962           | 865                 | 1,128                    |           |            |                          |
| WY                   | 342                      | 278           | 329           | 291                      | 111                      | 65               | 71           | 105                      | 231                      | 213           | 258                 | 186                      |           |            |                          |
| <b>11TH</b>          | <b>27,282</b>            | <b>26,937</b> | <b>26,458</b> | <b>27,761</b>            | <b>4,313</b>             | <b>5,049</b>     | <b>5,220</b> | <b>4,142</b>             | <b>22,969</b>            | <b>23,888</b> | <b>23,238</b>       | <b>23,619</b>            |           |            |                          |
| AL,N                 | 3,654                    | 2,638         | 3,237         | 3,055                    | 473                      | 468              | 524          | 417                      | 3,181                    | 2,170         | 2,713               | 2,638                    |           |            |                          |
| AL,M                 | 996                      | 1,093         | 1,144         | 945                      | 197                      | 211              | 201          | 207                      | 799                      | 882           | 943                 | 738                      |           |            |                          |
| AL,S                 | 663                      | 771           | 812           | 622                      | 150                      | 181              | 185          | 146                      | 513                      | 590           | 627                 | 476                      |           |            |                          |
| FL,N                 | 1,290                    | 1,773         | 1,545         | 1,518                    | 339                      | 453              | 385          | 407                      | 951                      | 1,320         | 1,160               | 1,111                    |           |            |                          |
| FL,M                 | 11,483                   | 8,067         | 7,336         | 12,214                   | 1,249                    | 1,575            | 1,517        | 1,307                    | 10,234                   | 6,492         | 5,819               | 10,907                   |           |            |                          |
| FL,S                 | 4,575                    | 8,046         | 8,042         | 4,579                    | 1,096                    | 1,141            | 1,418        | 819                      | 3,479                    | 6,905         | 6,624               | 3,760                    |           |            |                          |
| GA,N                 | 2,929                    | 4,359         | 4,193         | 3,095                    | 443                      | 607              | 565          | 485                      | 2,486                    | 3,752         | 3,628               | 2,610                    |           |            |                          |
| GA,M                 | 1,056                    | 1,215         | 1,240         | 1,031                    | 235                      | 237              | 261          | 211                      | 821                      | 978           | 979                 | 820                      |           |            |                          |
| GA,S                 | 636                      | 975           | 909           | 702                      | 131                      | 176              | 164          | 143                      | 505                      | 799           | 745                 | 559                      |           |            |                          |