IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

JAMES ELLIS III,
DWIGHT D. BRINSON,
MARLIN L WILLIAMS,
SHERMAN M. KIER,
ERNEST SHIPMAN,
TANIA S. CHAPMAN,
ERIC S. JONES,
EUGENE MARSHALL,
on behalf of themselves and all similarly situated individuals,
Plaintiffs,
v.
SWIFT TRANSPORTATION CO. OF ARIZONA, LLC,
Defendant

Civil Action No. 3:13-CV-00473-JAG

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

The release language in the settlement agreement is vastly broader than the claims asserted in the Complaint. The release is also significantly broader than what class members were advised in the notice. The release as written would appear to cover significant claims in other pending litigation. Defendants' Counsel here has informed Plaintiffs' Counsel that "I agree that the Settlement Agreement in the Ellis case does not settle any of the overlapping class members claims in the Swift wage and hour case." Declaration of Jennifer Kroll in Support of Objection to Settlement or in the Alternative, Motion to Clarify Scope of Release ("Kroll Decl.") ¶ 15, Ex. L. Plaintiffs' counsel was willing to sign a stipulation confirming this, however, Defendants' Counsel refused. Kroll Decl. ¶17-18. To preserve their claims pending or anticipated in other litigation, Claimants object to the overbreadth of the release in this case.

COME NOW class members Jason Hoffman, Arthur L. Reed, Jr. 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.) 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 proposed class action settlement or in the alternative, motion to clarify scope of release to ensure that it does not affect the claims pending in the *Van Dusen* and *Cilluffo* matters, submit this Memorandum.

INTRODUCTION

Objector Class Members have employment and contract related claims pending against the defendant here, Swift Transportation Co. of Arizona, LLC or its related and 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. *Van Dusen* and *Cilluffo* both allege (among other claims) that the threat and use of negative entries on DAC reports has been used by Swift as a way to exert economic control over the truck driver employees in those cases. While the cases have nothing to do with the claims in this case, which allege that Swift violated the Fair Credit

[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. *See* Kroll Decl. Ex. F. Since the Court sent these claims to individual arbitration, more than 1,300 individuals have opted into the collective arbitration and 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* sample arbitration demand, Kroll Decl. Ex. G & ¶ 9.

[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 and email dated May 6, 2014. Kroll Decl. Ex. H & ¶ 10. Plaintiffs in that case have not yet amended their claims to name Swift as a defendant, but expect to do so in the very near future.

Reporting Act, 15 U.S.C. §§ 1681 et. seq. ("FRCA"), by failing to make certain disclosures to applicants for employment, and Swift's counsel in this case admits the release in this case was not intended to cover the "wage and hour" claims against them in other cases, Swift has refused to enter into a stipulation in this Court agreeing that the release in this case which ostensibly broadly releases claims regarding DAC reports 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 Disclosure Requirements Contained in the Fair Credit Reporting Act.

The instant case alleges that Swift violated certain provisions of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et. seq. ("FRCA") requiring certain disclosures in connection with obtaining background reports for employment purposes. Stipulation of Settlement, Doc. 36-1, p. 1. In this case, the plaintiffs allege that Swift willfully violated the FRCA because it did not make clear and conspicuous disclosures in writing that a consumer report would be obtained for employment purposes, in a document that consisted solely of the disclosure. Memorandum in Support of Joint Motion for Preliminary Approval of Class Action Settlement, Doc. 37, at pp. 2-3. The plaintiffs further allege that Swift violated the requirements to advise consumers that they could receive a free copy of the consumer report with 60 days or that they could dispute the accuracy or completeness of any information contained within the consumer report with the consumer reporting agency. 15 U.S.C. § 1681b(b)(2). *See* Amended Complaint. *Id.* The Amended Complaint alleges that all such consumer reports are obtained by Swift from HireRight Solutions, Inc. ("HireRight"). *See, e.g.*, Amended Complaint, Doc. 25, ¶¶ 6, 9, 17, 20, 25, 33,

40, 44, 51. The Amended Complaint further alleges that HireRight is a consumer reporting agency as defined by 15 U.S.C. § 1681 a. *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.[3] Both Swift and CRS are referred to herein as Swift. The complaints filed in these matters are attached to the Kroll Decl. as Exs.A and B. 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 Swift and a "Contractor Agreement" with Swift in which the drivers agreed to turn the leased truck over to Swift for the purpose of hauling freight for Swift. 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 Swift. 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.

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). Plaintiffs alleged that

[3] At the time the Complaint was filed, CRS and the defendant leasing company, CLI were private companies, owned and operated by related individuals including Defendants Jon Isaacson and Jerry Moyes. Following filing of that lawsuit, on August 6, 2013, Swift Transportation acquired 100% of the shares of Central Refrigerated Service, Inc. and all of its related entities. *See* Kroll Decl. Ex. H (email from CRS counsel Drew Hanson to Arbitrator Nusbaum dated May 6, 2014 in the matter *In re Zachery Book v CRS Inc.*, Case No. 77-16-134-13). In or around February 2014, the operations of CRS were consolidated with Swift. *Id.*

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 recently 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 has recently set a schedule to hear the FAA § 1 exemption issue. There are currently approximately 474 opt-in plaintiffs in the *Van Dusen* matter.[4] Exhibit A hereto. The putative class includes all truckers who leased a truck from IEL 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 for the FLSA claims, which is pending before Arbitrator Patrick Irvine involving more than 1,300 opt-in claimants, and more than 300 individual arbitrations against Swift 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. Kroll Decl. Ex. A, G.

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

C. Facts in this Case and in *Van Dusen* And *Cilluffo* Involving DAC Reporting.

As Plaintiffs established in the *Van Dusen* and *Cilluffo* matters, HireRight's report used for truckers in the industry including by Swift is called the DAC Employment History file. *See, e.g.,* Kroll Decl. Ex. II. HireRight states: "DAC Employment History File contains historical employment records from more than 2,500 motor carriers, and acts as a 'file cabinet' for participating members who are required to submit records to gain access to the database. Currently containing over 5.7 million records, with thousands added every month, the DAC Employment History File is the only employment history database of its kind in the transportation industry." *Id.*

This case asserts claims involving the failure to make proper disclosures under the FCRA regarding DAC reports obtained and relied on by Swift for individuals who apply for employment with Swift. This case alleges discrete violations of specific provisions of the FCRA that impose certain obligations on reports obtained for employment purposes including: a) disclosure that such reports are being obtained in a document that consists solely of the disclosure and b) the requirement to advise applicants that that they could receive a free copy of the report within 60 days or that they could dispute the accuracy or completeness of any information contained within the consumer report with the consumer reporting agency. The factual predicate for this lawsuit is Swift's failure to comply with those obligations with respect to applicants for employment. No other claims have been asserted.

Both *Van Dusen* and *Cilluffo* also contain allegations regarding DAC reports. However, that is where the similarity ends. The *Van Dusen* and *Cilluffo* Plaintiffs/Claimants have alleged that the DAC reports are used to obtain control over the drivers' employment and are part of the forced labor, unjust enrichment and contract unconscionability claims. The Contractor Agreements allow Swift to terminate the truck drivers' contractor agreements at will and place the drivers in "default" status, giving the related entity who signed the lease and owns the truck

the right to seize the truck and demand immediate payment of all rent for the remaining period of the Lease. The *Van Dusen* and *Cilluffo* Plaintiffs/Claimants have alleged that the "default" of the lease is reported to the truck drivers' DAC reports, which Plaintiffs have alleged are universally used in the trucking industry as a pre-employment screening tool, thereby making it virtually impossible for the drivers to obtain work as truck drivers again. For example, the *Van Dusen* and *Cilluffo* Plaintiffs/Claimants have alleged that Swift obtained the continued labor of Plaintiffs by using threats of serious harm including, *inter alia*, loss of employment opportunities and credit through negative credit reporting and negative DAC reporting. Second Amended Complaint in *Van Dusen*, Kroll Decl. Ex. A, at ¶¶ 104-105. Complaint in *Cilluffo*, Kroll Decl. Ex. B, at ¶¶ 12 ("Defendants let Drivers know that if they refuse to work for Defendants during the term of the Agreements, Defendants will treat the Driver as in 'default,' Defendants will repossess the leased truck, accelerate all remaining lease payments, thereby imposing crushing debt on the Driver, ruin the Driver's credit rating, and file a negative entry on the Plaintiff Driver's 'DAC Report' which is universally used in the trucking industry as a pre-employment screening tool, thereby making it virtually impossible to obtain work as a truck driver again."), ¶ 67 ("If a driver is 'in default' Defendants seize the driver's truck and hold him or her liable for all remaining Lease payments, and make negative entries on Plaintiffs' DAC reports."); *see also* ¶¶ 93, 95, 96, 99, 110, 118, 123, 138.

The *Van Dusen* and *Cilluffo* Plaintiffs/Claimants' allegations regarding the use of the DAC reports in the other cases have been supported in numerous filings by declarations, some examples of which are attached to the Kroll Decl.. *See, e.g.*, Kroll Decl. Ex. J, Second Declaration of Virginia Van Dusen, Ex. F to Plaintiffs' Motion to Conditionally Certify a Fair Labor Standards Act Collective Action and Authorize Notice to Be Issued to the Class in *Van Dusen*, Doc. 108-6 (D. Ariz. May 10, 2010), at ¶¶ 23- 24 (after turning in her truck to Swift, Plaintiff Van Dusen received a letter warning her that Swift might take further action and was

also advised by a recruiter for a prospective employer "that Swift filed a negative DAC report about me and that no trucking company trucking company is ever going to hire me because of that report…"); Kroll Decl. Ex. K, Declaration of Gabriel Cilluffo in Support of Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion to Compel Arbitration, in *Cilluffo*, Doc. 40-2 (C.D. Cal. Aug. 10, 2012), at ¶¶ 26-32 (threatened with a negative DAC report if he stopped driving for CRS and kept driving for CRS for longer than he otherwise would have because of fear of negative DAC entry and received letter from Swift threatening to report "lease default" and other information to DAC after he was terminated by CRS).

Unlike the instant case, neither *Van Dusen* nor *Cilluffo* make any allegations regarding a failure to disclose reliance on DAC reports. Neither the *Cilluffo* nor the *Van Dusen* cases allege FRCA claims regarding failures with respect to disclosures concerning background checks for applicants for employment with Swift.

D. The Stipulation of Settlement, Release of Claims and Notice to Class Members.

The Settlement in this case provides settlement benefits based on when the claim arose of $50 or, for Group II, a settlement that is anticipated to be $48. *See* Motion for Preliminary Approval, Doc. 47 p. 8.

The Motion for Preliminary Approval recites that the "The Settlement Agreement would narrowly tailor the release…so that it is limited to the claims and issues in this case." Doc. 37 p. 9. The release language contained in the Stipulation of Settlement, however, provides a vastly broader release:

> 3.1 Upon the Effective Date, each member of the Settlement Class who has not opted out of the proposed Settlement, and each of their respective spouses, executors, representatives, heirs, successors, conservators, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants in the entirety, co-borrowers, agents, successors, assignees and assigns, and all others who also claim through them or who assert claims on their behalf shall be deemed to have, and by operation of the Judgment shall have fully, finally, and **forever settled,**

> **released, relinquished and discharged the Released Defendants of and from all duties, obligations, Claims, actions, causes of action, suits, damages, rights, or liabilities of any nature and description whatsoever, whether arising under federal, state, tribal, or local law, whether by Constitution, statute, (including, but not limited to, all claims under the FCRA and FCRA State Equivalents), tort, contract, common law, restitution or equity or otherwise whether known or Unknown Claims, concealed or hidden, suspected or unsuspected, anticipated or unanticipated, asserted or unasserted, alleged or unalleged, foreseen or unforeseen, actual or contingent, liquidated of unliquidated, fixed or contingent related to, arising from, or in connection with** Released Defendants obtaining or using a criminal background, motor vehicle history, **DAC report**, or other Consumer Report information related to or regarding a consumer.
>
> 3.2 This release includes, but is not limited to, all claimed or unclaimed compensatory damages, actual damages, statutory damages, damages stemming from any and all allegations of willfulness, recklessness, damages for emotional distress, consequential damages, incidental damages, punitive and exemplary damages, interest, cost and fees, as well as all claims for equitable, declaratory, or injunctive relief that was alleged or could have been alleged in the Civil Action. The Parties hereby acknowledge that the Released Defendants are express intended beneficiaries of this Release, and that the Released Claims shall be dismissed with prejudice and released against the Released Parties, even if the Class Members never received actual notice of the Settlement prior to the Final Fairness Hearing or final approval of the Settlement.
>
> 3.3 Also, upon the Effective Date, Named Plaintiffs and each member of the Settlement Class who has not opted out of the proposed settlement shall be permanently enjoined and barred from filing, commencing, prosecuting, intervening (as class members or otherwise) or receiving any benefits from any lawsuit, arbitration, or administrative proceeding arising from any of the Released Claims.

(emph. added). The Stipulation of Settlement provides that its release extends to known and unknown claims. Section 1.24. "Unknown Claims" include, *inter alia*:

> Released Claims that Named Plaintiffs or any Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendants, which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Defendants, or might have affected his, her, or its decision(s) with respect to the Settlement.

Section 1.34.

The release also releases not just Swift but also serves to release Swift's:

> current and former parents, subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees and assigns, their respective subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees and

> assigns, and each of the foregoing's respective present, former or future officers, directors, shareholders, members, equity interest holders, agents, control persons, advisors, employees, representatives, executors, receivers, conservators, trustees, consultants, insurers and reinsurers, accountants, attorneys, and any representative of the foregoing.

Section 1.24 (Definition of Released Defendants).

The Notice to class members states as follows with respect to the release:

> Unless you exclude yourself from this Settlement, you will be considered a member of the Class, which means you give up your right to sue or file a lawsuit against Swift regarding the legal issues that were raised or could have been raised in this case. Giving up your legal claims is called a release. The released parties collectively include Swift, and its parent, subsidiaries, principals and agents. You will be releasing these parties from all claims relating to Swift's employment background check when you applied for a job at Swift.

Stipulation of Settlement Exhibits A and B.

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

Concerned about the release's broad language and reference to DAC reporting, counsel for the Objector Class Members contacted counsel for the parties in this case. Swift's counsel agreed in an email "that the Settlement Agreement in the Ellis case does not settle any of the overlapping class members claims in the Swift wage and hour case." Kroll Decl. ¶ 15 & Ex. L. Plaintiffs' counsel likewise agreed the release was not intended to cover the claims in the *Cilluffo* and *Van Dusen* cases. Kroll Decl. Ex. L & ¶ 17.

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. A copy of the proposed stipulation is attached to the Kroll Decl. as Ex. M. Plaintiff's counsel agreed to do so. Swift's counsel refused to agree to a stipulation, stating that Swift did not see the necessity of such a stipulation. Kroll Decl. ¶ 18. The broad release language continues to concern Objector Class Members and accordingly they file this objection and request that the

Court clarify the release in its final order and judgment.

ARGUMENT

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

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 Swift's pre-employment screening. Yet the release as currently written appears also to release claims concerning Swift's making of entries and threats to make entries upon a DAC report. The release is thus vastly broader than the claims in this case – purportedly covering any claims "arising from, or in connection with … using a … DAC report…". Release Section 3.1.

Defendant has admitted to Objectors' Counsel that the scope of the release does not cover the wage and hour cases. Kroll Decl. ¶ 15 & Ex. L. However, 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 than the claims in this case with very different factual predicates. Because the factual predicates are different and because the release purports to limit claims related to DAC reporting 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. "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." § 1797.1 Settlement, Voluntary Dismissal, or Compromise of Class Actions—Factors Considered for Approval, 7B Fed. Prac. & Proc. Civ. § 1797.1 (3d ed.). *See also 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)); *Kakani v. Oracle Corp.*, C 06-06493 WHA, 2007 WL 1793774, at *2 (N.D. Cal. June 19, 2007) (noting that "the written instrument simply does *not* comport with counsel's softer spin").

The fact that the release was not intended to cover the claims in *Van Dusen* and *Cilluffo* is confirmed not just by counsels' communications, but also by the fact that the parties have never advised the Court in connection with the proposed class action settlement regarding the value of any "unknown" or otherwise released claims. *See, e.g.*, 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."). *See also Moreno v. Regions Bank*, 729 F. Supp. 2d 1346, 1352 (M.D. Fla. 2010); *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.").

II. THE NOTICES WOULD BE INADEQUATE IF THE RELEASE IS NOT CLARIFIED.

Without some clarification of the release in the final judgment, the Notice here would also fail the requirements of Rule 23(e). The Notice states, *inter alia*: "You will be releasing

these parties from all claims relating to Swift's employment background check when you applied for a job at Swift." "Due process requires that notice of a hearing to review the compromise of a class suit be structured in terms of content in a manner that enables class members rationally to decide whether they should intervene in the settlement proceedings or otherwise make their views known, and if they choose to become actively involved, to have sufficient opportunity to prepare their position." *Reynolds v. Nat'l Football League*, 584 F.2d 280, 285 (8th Cir. 1978) (citations omitted). *See also Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, (1950). To the extent that the Stipulation of Settlement's release could be read as releasing the *Cilluffo* and *Van Dusen* claims, it is much broader than the notice sets forth, does not comply with due process and violates Rule 23(e)'s requirements. This is another reason the judgment should be clarified or alternatively, the Court should reject the settlement as inadequate.

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 Stipulation of Settlement.

Respectfully submitted this 22nd day of September 2014.

By:_____/s/_____

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CERTIFICATE OF SERVICE

I hereby certify on this 22nd day of September 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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