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6 Attorneys for Cross-defendant ALL SEASONS MOVING & STORAGE, INC. dba DON
 7 HEMSTEDS VAN AND STORAGE (erroneously sued as Don Hemsted's Van &
 Storage, Inc. herein as ROE 1)

8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA
 10 SACRAMENTO DIVISION

11 FRAS, INC.,	)	Case No. 2:09-cv-01242-MCE-DAD
)	
12 Plaintiff,	)	[Assigned to Judge Morrison C. England,
	)	Jr.]
13 v.)	
	)	STIPULATION TO SET ASIDE
14 SPECIALIZED TRANSPORTATION,	)	ENTRY OF DEFAULT AND FILE
15 INC., IKON OFFICE SOLUTIONS, INC.,	)	ANSWER TO CROSS-COMPLAINT;
16 and DOES 1 through 20, inclusive,	)	ORDER
)	
17 Defendants.)	

18 IKON OFFICE SOLUTIONS, INC.,)
)
19 Cross-complainant,)
)
20 v.)
)
21 SPECIALIZED TRANSPORTATION,)
22 INC. and ROES 1 through 500, inclusive,)
)
23 Cross-defendants.)

24 Cross-defendant ALL SEASONS MOVING & STORAGE, INC. dba DON
 25 HEMSTEDS VAN AND STORAGE (erroneously sued as Don Hemsted's Van & Storage,
 26 Inc. herein as ROE 1) (hereinafter "All Seasons"), by and through its attorneys of record,
 27 Haight Brown & Bonesteel LLP, and Defendant and Cross-Complainant IKON OFFICE
 28

1 SOLUTIONS, INC.'s (hereinafter "Ikon"), by and through its attorneys of record, Wood,
2 Smith, Henning & Berman LLP, hereby agree and stipulate as follows:

3 Whereas, on or about April 3, 2009, Plaintiff FRAS, INC., filed a Complaint against
4 Defendants SPECIALIZED TRANSPORTATION, INC., Ikon, and DOES 1 through 20,
5 inclusive, in the Superior Court of California – County of Shasta, Case No. 165835.

6 Whereas, on or about May 6, 2009, Defendants STI and Ikon removed this matter
7 from the Superior Court of Shasta County to the United States District Court for the
8 Eastern District of California.

9 Whereas, on or about May 8, 2009, Ikon filed a Cross-Complaint against STI and
10 ROES 1 through 500, inclusive.

11 Whereas, on or about July 2, 2009, Ikon filed Roe Amendment No. 1 to Ikon's
12 Cross-Complaint naming DON HEMSTED'S VAN & STORAGE, INC. as Roe No. 1.

13 Whereas, a Request for Entry of Default was entered against Cross-Defendant DON
14 HEMSTED'S VAN & STORAGE, INC. as to Ikon's Cross-Complaint.

15 **THEREFORE, IT IS HEREBY STIPULATED:**

16 1. The Default entered against Cross-Defendant DON HEMSTED'S VAN &
17 STORAGE, INC., as to Ikon's Cross-Complaint shall be set aside.

18 2. Cross-Defendant ALL SEASONS MOVING & STORAGE, INC. dba DON
19 HEMSTEDS VAN AND STORAGE (erroneously sued as Don Hemsted's Van & Storage,
20 Inc. herein as ROE 1) shall be permitted to file the Answer to Ikon's Cross-Complaint,
21 attached hereto as Exhibit "A." Cross-Defendant All Seasons' Answer is deemed filed and
22 served on all parties as of the date of the Court's Order setting aside the default.

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1 Dated: March 30, 2010

HAIGHT BROWN & BONESTEEL LLP

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By: _____ /s/

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Richard E. Morton
Brian A. Moore
Attorneys for Cross-defendant ALL
SEASONS MOVING & STORAGE,
INC. dba DON HEMSTEDS VAN AND
STORAGE (erroneously sued as Don
Hemsted's Van & Storage, Inc. herein as
ROE 1)

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8 Dated: March 27, 2010

WOOD, SMITH, HENNING & BERMAN
LLP

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By: _____ /s/

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Michael C. Guasco
Attorneys for Defendant and Cross-
Complainant IKON OFFICE
SOLUTIONS, INC.

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ORDER

IT IS HEREBY ORDERED:

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3 1 The Default entered against Cross-Defendant DON HEMSTED’S VAN &
4 STORAGE, INC., as to Ikon’s Cross-Complaint is hereby set aside.

5 2. Cross-Defendant ALL SEASONS MOVING & STORAGE, INC. dba DON
6 HEMSTEDS VAN AND STORAGE’s (erroneously sued as Don Hemsted's Van &
7 Storage, Inc. herein as ROE 1) Answer to Ikon’s Cross-Complaint, attached hereto as
8 Exhibit "A," is hereby deemed filed and served on all parties as of the date of this Order
9 setting aside the default.

10 Dated: April 7, 2010

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14 MORRISON C. ENGLAND, JR
15 UNITED STATES DISTRICT JUDGE
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EXHIBIT "A"

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Attorneys for Cross-defendant ALL SEASONS MOVING & STORAGE, INC. dba DON
HEMSTEDS VAN AND STORAGE (erroneously sued as Don Hemsted's Van &
Storage, Inc. herein as ROE 1)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

FRAS, INC.,	)	Case No. 2:09-cv-01242-MCE-DAD
)	
Plaintiff,	)	[Assigned to Judge Morrison C. England,
	)	Jr.]
v.)	
	)	ANSWER TO CROSS-COMPLAINT
SPECIALIZED TRANSPORTATION,)	
INC., IKON OFFICE SOLUTIONS, INC.,)	
and DOES 1 through 20, inclusive,)	
)	
Defendants.)	
_____)	
IKON OFFICE SOLUTIONS, INC.,)	
)	
Cross-complainant,)	
)	
v.)	
)	
SPECIALIZED TRANSPORTATION,)	
INC. and ROES 1 through 500, inclusive,)	
)	
Cross-defendants.)	
_____)	

Cross-defendant, ALL SEASONS MOVING & STORAGE, INC. dba DON
HEMSTEDS VAN AND STORAGE (erroneously sued as Don Hemsted's Van & Storage,

1 Inc. herein as ROE 1) (hereinafter “Cross-Defendant”), answers IKON OFFICE
2 SOLUTIONS, INC.’s (hereinafter “Ikon”) Cross-Complaint as follows:

3 1. Cross-Defendant lacks information or knowledge sufficient to form a belief
4 as to the truth, intent or meaning of the allegations contained in Paragraph 1 of Ikon’s
5 Cross-Complaint, and, therefore, denies the same.

6 2. Cross-Defendant admits the allegations contained in Paragraph 2 of Ikon’s
7 Cross-Complaint as to Cross-Defendant. Cross-Defendant lacks information or knowledge
8 sufficient to form a belief as to the truth, intent or meaning of the allegations contained in
9 Paragraph 2 of Ikon’s Cross-Complaint relating to other cross-defendants, and, therefore,
10 denies the same.

11 3. Cross-Defendant lacks information or knowledge sufficient to form a belief
12 as to the truth, intent or meaning of the allegations contained in Paragraph 3 of Ikon’s
13 Cross-Complaint, and, therefore, denies the same.

14 4. Cross-Defendant admits that Cross-Defendant disputes the contentions in
15 Ikon’s Cross-Complaint. Cross-Defendant denies the remaining allegations in Paragraph 4
16 of Ikon’s Cross-Complaint as to Cross-Defendant. Cross-Defendant lacks information or
17 knowledge sufficient to form a belief as to the truth, intent or meaning of the allegations
18 contained in Paragraph 4 of Ikon’s Cross-Complaint relating to other cross-defendants,
19 and, therefore, denies the same.

20 5. Cross-Defendant admits the allegations contained in Paragraph 5 of Ikon’s
21 Cross-Complaint as to Cross-Defendant. Cross-Defendant lacks information or knowledge
22 sufficient to form a belief as to the truth, intent or meaning of the allegations contained in
23 Paragraph 5 of Ikon’s Cross-Complaint relating to other cross-defendants, and, therefore,
24 denies the same.

25 6. Cross-Defendant lacks information or knowledge sufficient to form a belief
26 as to the truth, intent or meaning of the allegations contained in Paragraph 6 of Ikon’s
27 Cross-Complaint, and, therefore, denies the same.

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1 7. Cross-Defendant lacks information or knowledge sufficient to form a belief
2 as to the truth, intent or meaning of the allegations contained in Paragraph 7 of Ikon's
3 Cross-Complaint, and, therefore, denies the same.

4 8. Cross-Defendant lacks information or knowledge sufficient to form a belief
5 as to the truth, intent or meaning of the allegations contained in Paragraph 8 of Ikon's
6 Cross-Complaint, and, therefore, denies the same.

7 9. Cross-Defendant incorporates by reference its response to the allegations of
8 Paragraphs 1 through 8 of Ikon's Cross-Complaint, as set forth above, as if fully set forth
9 herein.

10 10. Cross-Defendant denies the allegations in Paragraph 10 of Ikon's Cross-
11 Complaint as to Cross-Defendant. Cross-Defendant lacks information or knowledge
12 sufficient to form a belief as to the truth, intent or meaning of the remaining allegations
13 contained in Paragraph 10 of Ikon's Cross-Complaint, and, therefore, denies the same.

14 11. Cross-Defendant denies the allegations in Paragraph 11 of Ikon's Cross-
15 Complaint as to Cross-Defendant. Cross-Defendant lacks information or knowledge
16 sufficient to form a belief as to the truth, intent or meaning of the remaining allegations
17 contained in Paragraph 11 of Ikon's Cross-Complaint, and, therefore, denies the same.

18 12. Cross-Defendant denies the allegations contained in Paragraph 12 of Ikon's
19 Cross-Complaint as to Cross-Defendant. Cross-Defendant lacks information or knowledge
20 sufficient to form a belief as to the truth, intent or meaning of the allegations contained in
21 Paragraph 12 of Ikon's Cross-Complaint relating to other cross-defendants, and, therefore,
22 denies the same.

23 13. Cross-Defendant denies the allegations in Paragraph 13 of Ikon's Cross-
24 Complaint as to Cross-Defendant. Cross-Defendant lacks information or knowledge
25 sufficient to form a belief as to the truth, intent or meaning of the remaining allegations
26 contained in Paragraph 13 of Ikon's Cross-Complaint, and, therefore, denies the same.

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1 14. Cross-Defendant lacks information or knowledge sufficient to form a belief
2 as to the truth, intent or meaning of the allegations contained in Paragraph 14 of Ikon's
3 Cross-Complaint, and, therefore, denies the same.

4 15. Cross-Defendant denies the allegations contained in Paragraph 15 of Ikon's
5 Cross-Complaint as to Cross-Defendant. Cross-Defendant lacks information or knowledge
6 sufficient to form a belief as to the truth, intent or meaning of the allegations contained in
7 Paragraph 15 of Ikon's Cross-Complaint relating to other cross-defendants, and, therefore,
8 denies the same.

9 16. Cross-Defendant incorporates by reference its response to the allegations of
10 Paragraphs 1 through 15 of Ikon's Cross-Complaint, as set forth above, as if fully set forth
11 herein.

12 17. Cross-Defendant denies the allegations contained in Paragraph 17 of Ikon's
13 Cross-Complaint as to Cross-Defendant. Cross-Defendant lacks information or knowledge
14 sufficient to form a belief as to the truth, intent or meaning of the allegations contained in
15 Paragraph 17 of Ikon's Cross-Complaint relating to other cross-defendants, and, therefore,
16 denies the same.

17 18. Cross-Defendant incorporates by reference its response to the allegations of
18 Paragraphs 1 through 17 of Ikon's Cross-Complaint, as set forth above, as if fully set forth
19 herein.

20 19. Cross-Defendant admits that a cross-complaint has been filed against it by
21 Ikon. Cross-Defendant lacks information or knowledge sufficient to form a belief as to the
22 truth, intent or meaning of the remaining allegations contained in Paragraph 19 of Ikon's
23 Cross-Complaint, and, therefore, denies the same.

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FIFTH AFFIRMATIVE DEFENSE

(Intervening or Superseding Causes)

5. Cross-Defendant is informed and believes and upon such information and belief alleges that independent, intervening or superseding forces and/or actions of third parties proximately caused or contributed to Ikon’s alleged losses or damages, barring recovery from Cross-Defendant.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

6. All claims against this Cross-Defendant are barred, in whole or in part, by laches and delay on the part of Ikon, to the prejudice of this Cross-Defendant.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

7. Ikon has failed to take reasonable action to mitigate its alleged damages, in whole or in part; and, as a result of such failure and refusal to undertake reasonable mitigation efforts, Ikon’s purported claims for damages herein are barred in their entirety.

EIGHTH AFFIRMATIVE DEFENSE

(Credits, Reductions and Setoffs)

8. Pursuant to the common law right to credits, reductions and setoffs, any settlement reached between Ikon and a named Cross-Defendant in this action shall reduce the amount of Cross-Defendant’s recovery by the stipulated amount of the agreement, or in the amount of consideration paid, whichever is greater.

NINTH AFFIRMATIVE DEFENSE

(Reservation)

9. Cross-Defendant presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet, unstated affirmative defenses available. Cross-Defendant reserves herein the right to assert additional defenses in the event that the discovery indicates it would be appropriate.

1 WHEREFORE, Cross-Defendant prays that Ikon take nothing by its Cross-
2 Complaint, for costs of suit herein incurred, and for such other and further relief as the
3 Court may deem just and proper under the circumstances.

4 Dated: March 30, 2010

HAIGHT BROWN & BONESTEEL LLP

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By: _____ /s/
Richard E. Morton
Brian A. Moore
Attorneys for Cross-defendant ALL
SEASONS MOVING & STORAGE,
INC. dba DON HEMSTEDS VAN AND
STORAGE (erroneously sued as Don
Hemsted's Van & Storage, Inc. herein as
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