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 NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

JSW

13 JOSEPH KRUZICH,

CV 11-80 216MISC

14 Plaintiff/Petitioner,

15 v.

16 CHEVRON CORPORATION,
 17 CHEVRON U.S.A., INC.,
 18 Defendants/Respondents.

) **PLAINTIFF'S MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT OF PETITION TO COMPEL**
) **ARBITRATION**

) Date:
) Time:
) Dept.:

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION TO COMPEL ARBITRATION

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6 **FEDERAL STATUTES**

7	Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 <i>et seq</i>	2, 9, 10
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1 **I. INTRODUCTION**

2 Plaintiff/Petitioner Joseph Kruzich ("Kruzich") was an employee of
3 Defendants/Respondents Chevron Corporation and/or Chevron U.S.A., Inc. (collectively
4 "Chevron") between December 2008 and August 2009. Chevron has an internal dispute
5 resolution program called "Steps to Employee Solution" ("STEPS"). The STEPS program
6 requires that an employee with a dispute against Chevron go through both mediation and then (if
7 mediation is unsuccessful) arbitration with Chevron, before a lawsuit can be filed. Kruzich and
8 Chevron agreed to be bound by the STEPS program, and the policies of the STEPS program
9 became part of Kruzich's employment contract.
10

11 In connection with his employment (and its termination), Kruzich asserted various claims
12 against Chevron. All of Kruzich's claims were subject to both mediation and arbitration under
13 the STEPS program. Indeed, Chevron wanted Kruzich to participate in mediation under the
14 STEPS program when Kruzich first asserted his claims, and Kruzich did so. However, after the
15 mediation was unsuccessful and Kruzich demanded that Chevron then proceed to the arbitration
16 phase of the STEPS program, Chevron simply refused to do so. Chevron thereby breached the
17 parties' agreement to arbitrate.
18

19 Chevron's refusal to arbitrate is indefensible and was done in complete bad faith.
20 Plaintiff's claims (wrongful termination in violation of public policy, discrimination, fraud,
21 breach of the covenant of good faith and fair dealing) are the types of claims *specifically*
22 *identified* in the STEPS program as being subject to arbitration. Thus, the STEPS program states
23 that any "legally protected rights", i.e., rights which could be asserted by an employee in a court
24 of law, are subject to mediation and arbitration under STEPS. Even more explicitly, the STEPS
25 policy gives examples of "legally protected rights", and specifically lists discrimination,
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1 retaliation, wrongful discharge in violation of public policy, fraud, and breach of the covenant of
2 good faith and fair dealing. These are precisely the claims being asserted by Kruzich.

3 In refusing to arbitrate, Chevron gave as its excuse that it had unilaterally decided that
4 Kruzich's claims were not meritorious. Chevron's position was not only outlandish on its face,
5 but was directly contrary to the plain language of the STEPS program. Indeed, Chevron had just
6 finished mediating Kruzich's claims under Step 3 of the STEPS program, but then refused to
7 arbitrate the same claims under Step 4 of the STEPS program.

8
9 Plaintiff believed that Chevron had refused in bad faith to arbitrate under the STEPS
10 program in retaliation for Plaintiff having asserted discrimination claims against Chevron.
11 Plaintiff therefore filed a Charge of Discrimination with the Equal Employment Opportunity
12 Commission ("EEOC"). Following an investigation, the EEOC issued a Determination Letter in
13 which it agreed with Plaintiff's contention, i.e., the EEOC found that there was "reasonable
14 cause" to believe that Chevron's refusal to arbitrate constituted unlawful retaliation against
15 Plaintiff.
16

17 In light of Chevron's inexplicable refusal to arbitrate as required by its own personnel
18 policies, Plaintiff is left with no alternative but to petition this Court to compel Chevron to
19 arbitrate Plaintiff's claims, pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et*
20 *seq.*
21

22 **II. FACTUAL BACKGROUND**

23 **A. Kruzich's Hiring**

24 Plaintiff Kruzich began his employment at Chevron in December 2008. Declaration of
25 Kruzich, Par. 2 (hereafter "Kruzich Dec.") Kruzich worked for Chevron in China, in connection
26 with the development of a large natural gas field in Sichuan province (the "CDB Project").
27
28

1 Kruzich Dec., Pars 2-4. Chevron hired Kruzich to be the Manager for its "Policy, Government
2 and Public Affairs" department ("PGPA") on the CDB Project. *Id.* PGPA was the department
3 responsible for managing relations between the CDB Project and the local communities and
4 government officials.¹ *Id.*

5
6 **B. The STEPS Program for Dispute Resolution**

7 Prior to Kruzich's hiring, Chevron had adopted certain policies and procedures, including
8 Human Resources Policy 344 ("Policy 344"). Kruzich Dec., Par. 2. Policy 344 set forth
9 Chevron's dispute resolution program for employees, known as the "Steps To Employee Problem
10 Solution" ("STEPS") program. Kruzich Dec., Ex. A. Under the terms of Policy 344, by
11 remaining an employee at Chevron, Kruzich agreed to follow the STEPS program should any
12 dispute arise relating to his employment (or the termination of his employment), and Chevron
13 similarly agreed to follow the STEPS program should any dispute arise.² *Id.* Policy 344, and the
14 STEPS process described in it, became part of the terms and conditions of Kruzich's employment,
15 and were incorporated into Kruzich's employment agreement with Chevron.
16

17 The STEPS process follows four steps. Step One involves an employee discussing the
18 issue with members of management. Step Two allows for internal facilitation of the employee's
19 concern with the assistance of unbiased company personnel. Both Steps One and Two are
20 *voluntary*. But Step Three (mediation) and Step 4 (arbitration) are *mandatory* with respect to
21 "legally protected rights", i.e., claims which an employee could assert in a court of law. Thus,
22 under Policy 344, Chevron required that "employees...use STEPS before proceeding to litigation."
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25 ¹ The CDB Project would require the permanent relocation of approximately 15,000 local
26 villagers. Kruzich Dec., Par. 2.

27 ² Policy 344 states that, "An employee's continued employment at Chevron will mean they
28 agree to use STEPS." Kruzich Dec., Exh. A.

1 Kruzich Dec., Ex. A. Along the same lines, Policy 344 states that, if an employee seeks legal
2 remedies before participating in Steps Three and Four, Chevron "will request that legal
3 proceedings be suspended until Steps Three and Four are utilized." *Id.* Policy 344 also stated that
4 "it is mandatory to use Step Three before proceeding to Step Four". *Id.*

5
6 Step 3 of the STEPS process requires the employee and Chevron to engage in mediation
7 with an objective, outside mediator, with respect to any dispute involving "legally protected
8 rights". *Id.* Chevron is required to pay the full cost of the mediation. *Id.* Step Four mandates
9 arbitration of "a legally protected right that is not resolved in Step Three." *Id.* Under Policy 344,
10 if Step 3 mediation is unsuccessful, an employee initiates arbitration by completing Chevron's
11 "Arbitration Request Form" (Form GO-1607) and forwarding it to Chevron's Human Resources
12 department. *Id.* The employee and Chevron submit their dispute to arbitration before the
13 American Arbitration Association or a similar independent arbitration organization. *Id.*
14
15 Significantly, Policy 344 requires that Chevron pay all costs of the arbitration.³ *Id.*

16 Steps 3 and 4 of the STEPS process specifically cover issues involving "legally protected
17 rights", which are defined as those claims that could be asserted by the employee in a court of
18 law.⁴ *Id.* Policy 344 lists specific examples of "legally protected rights" which are subject to the
19 mediation and arbitration phases of the STEPS process, including claims for discrimination on the
20 basis of national origin, retaliation for discriminatory reasons, wrongful termination in violation of
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24 ³ In addition to the requirement that Chevron pay all arbitration costs, the arbitration process
25 set forth in the STEPS program has other attractive aspects for an employee. For example, if the
26 employee accepts the arbitrator's decision, it becomes *binding* on the company and employee.
27 However, if the employee is not satisfied with the arbitrator's decision, he is free to seek other legal
28 remedies, i.e., he can proceed to file a lawsuit in court. Kruzich Dec., Exh. A.

⁴ As noted above, Policy 344 prohibits an employee from proceeding to litigation before
using Steps 3 and 4.

1 public policy, fraud, breach of an employment contract, and breach of the covenant of good faith
2 and fair dealing.⁵ *Id.*

3 **C. Kruzich's Termination and His Claims Against Chevron**

4 Kruzich worked on the CDB Project in China between December 2008 and June 2009.
5 Kruzich was abruptly removed from the project in June 2009 and it became clear that he was
6 going to be terminated. Kruzich's last official day of employment was August 31, 2009. Kruzich
7 Dec., Par. 4.

8 Kruzich had performed his job well, and it seemed clear that Chevron had terminated him
9 at the demand of Chevron's Chinese partner on the CDB Project---Petro China ("PC"). Kruzich
10 Dec., Par. 4. PC was the largest oil and gas company in China, and Kruzich had clashed with PC-
11 -and had complained to Chevron--about PC's illegal and improper conduct on the CDB Project,
12 including possible violations of the Foreign Corrupt Practices Act, violations of Chinese law, and
13 its refusal to comply with international resettlement standards. *Id.* Kruzich's termination not only
14 violated public policy, but it also violated federal anti-discrimination laws because: 1) PC wanted
15 Kruzich terminated due to his national origin, i.e., he was not Chinese and 2) Kruzich had
16 objected to PC's discriminatory attitude toward women. By submitting to PC's pressure to fire
17 Kruzich for these multiple unlawful motives, Chevron became liable for Kruzich's termination.

18 **D. Chevron Uses Step 3 of the STEPS Program, But Refuses to Use Step 4**

19 As discussed in Part B above, Policy 344 and the STEPS program became part of the
20 terms and conditions of Kruzich's employment, and both Kruzich and Chevron were bound by
21 these policies. In connection with his removal from the CDB Project and his subsequent

22 ⁵ Policy 344 also gives examples of issues that do *not* involve "legally protected rights" and
23 so are *not* subject to Steps 3 and 4, such as an employee's complaint about his performance
24 evaluation.

1 termination, Kruzich asserted that Chevron discriminated against him on the basis of national
2 origin, retaliated against him for objecting to gender discrimination, wrongfully discharged him in
3 violation of public policy, and improperly breached the covenant of good faith and fair dealing.
4 Kruzich Dec., Par. 4; Palefsky Dec., Pars. 2, 3, 6, Ex. C. Kruzich also asserted that Chevron had
5 engaged in fraud in connection with its recruitment in 2008.⁶ *Id.* Not only is each of these claims
6 a “legally protected right”, i.e., they could be asserted in a court of law, but each of these claims is
7 specifically identified in HR Policy 344 as an example of a “legally protected right” subject to
8 Steps 3 and 4 of the STEPS program.⁷ Kruzich Dec., Ex. A.

9
10 In August 2009, Plaintiff’s attorney (Cliff Palefsky), spoke with Chevron’s attorney
11 (Robert Eassa) about the nature of the claims which Kruzich was asserting. Palefsky Dec., Par. 2.
12 When Plaintiff’s counsel raised the possibility of mediation, Chevron responded that it would
13 mediate Kruzich’s claims under the STEPS program. Palefsky Dec., Par. 2. Palefsky agreed that
14 this was appropriate. *Id.* As provided by Step 3 of the STEPS program, the parties then jointly
15 selected an outside mediator and Chevron had to pay the entire cost of the mediation. Palefsky
16 Dec., Pars. 2, 3.

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20 ⁶ Prior to being recruited by Chevron in 2008, Kruzich had worked at the State Department
21 for 16 years. To persuade Kruzich to accept a job on the CDB Project, Chevron made a series of
22 false representations to Kruzich and had failed to disclose numerous key facts about the CDB
Project.

23 ⁷ According to the “Covered Disputes” section of Policy 344, Steps Three and Four of the
24 STEPS procedure “cover issues involving legally protected rights only – those that can be asserted
25 in a court of law....Those complaints eligible for Steps Three and Four include claims for
26 *discrimination, retaliation* or harassment on the basis of age, gender, race, color, national origin,
27 religion, disability, pregnancy, marital status, sexual orientation, veteran’s status or any other
28 protected status. Legally protected rights also include causes of action relating to employment or
termination of employment based on claims of *wrongful discharge*, breach of employment contract,
breach of covenant of good faith and fair dealing, *fraud*, defamation and *violation of public policy*.”
Kruzich Dec., Exh. A (emphasis added).

1 On September 29, 2009, the parties conducted a full day mediation. However, the
2 mediation was not successful in resolving the dispute. Palefsky Dec., Pars. 3, 4. By mediating
3 Kruzich's claims under Step 3 of the STEPS program, Chevron acknowledged that Kruzich was
4 asserting "legally protected rights". Indeed, all of Kruzich's claims were specifically listed in the
5 STEPS program as examples of "legally protected rights", and thus it would be somewhat
6 ludicrous for Chevron to argue that they were *not* covered by the STEPS program.
7

8 Since the Step Three mediation was not successful in reaching a resolution, Kruzich
9 attempted to initiate the arbitration process outlined in Step Four, which involved the employee
10 submitting an "Arbitration Request Form" (Chevron Form GO-1607) to Chevron Human
11 Resources. On October 13, 2009, Kruzich's attorney (Palefsky) wrote to Chevron's attorney
12 (Eassa), asking for the forms necessary to initiate the arbitration process under the STEPS
13 program. Palefsky Dec., Par. 4, Ex. A. In fact, during October and November 2009, Palefsky
14 made repeated requests for the Arbitration Request Form and/or asked Eassa to help initiate the
15 arbitration process described in Step Four. Palefsky Dec., Pars. 4-10, Exhs A-E.
16

17 On November 25, 2009, Palefsky was informed that Chevron had denied Kruzich's
18 arbitration demand because "Chevron has determined that none of [Kruzich's] claims are legally
19 viable or arbitrable under Chevron's STEPs policy." Palefsky Dec., Par. 9, Ex. F. Chevron's
20 response was outrageous. First, each one of Kruzich's claims was specifically identified in
21 Policy 344 as being subject to arbitration under the STEPS program. Second, Chevron was
22 refusing to arbitrate under Step Four of the STEPS program even though Chevron had just
23 finished mediating the exact same claims under Step 3 of the STEPS program. Third, Chevron
24 appeared to be making the outlandish suggestion that it could refuse arbitration if it unilaterally
25 'determined' that Kruzich would not ultimately prevail on the merits, even though: 1) Kruzich
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1 had not yet conducted discovery or presented his evidence to Chevron, and 2) Chevron was the
2 putative defendant and obviously biased.

3 In December 2009, Palefsky asked Eassa for clarification as to how Chevron had the right
4 to decide that none of Kruzich's claims were "legally viable", and why Chevron was refusing to
5 arbitrate under the STEPS program when Chevron had just mediated the same claims under
6 STEPS. Palefsky Dec., Par. 10, Ex. G. On December 7, 2009, nearly two months after Kruzich
7 first attempted to initiate arbitration, Eassa repeated that Chevron had determined that Kruzich's
8 claims were not "legally viable" and that Chevron would not arbitrate the dispute. Palefsky Dec.,
9 Par. 11, Ex. H.

11 Palefsky believed that Chevron had refused to go through the arbitration process with
12 Kruzich in retaliation for Kruzich having asserted discrimination claims against Chevron.
13 Palefsky Dec., Par. 13. Therefore, in Kruzich's January 2010 EEOC Charge of Discrimination
14 ("EEOC Charge"), in addition to Kruzich's original claims for national origin discrimination and
15 retaliation for having opposed gender discrimination, Kruzich also alleged that Chevron had
16 unlawfully retaliated against him for engaging in protected activity (asserting discrimination
17 claims) by refusing to go through the arbitration process set forth in the STEPS program. *Id.*;
18 Palefsky Dec., Par. 13, Ex. I.. The EEOC conducted an investigation of Kruzich's claim that
19 Chevron's inexplicable refusal to arbitrate under the STEPS program was an act of unlawful
20 retaliation. On June 15, 2011, the EEOC issued a "Determination Letter" in which the EEOC
21 stated that there was reasonable cause to believe that Chevron had, in fact, engaged in retaliatory
22 discrimination against Kruzich when it refused to arbitrate his claims. Palefsky Dec., Par. 14,
23 Ex. J.

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1 **III. LEGAL DISCUSSION AND ARGUMENT**

2 **A. Chevron and Kruzich Entered into a Valid Agreement to Arbitrate which the**
3 **Courts Will Enforce under the FAA**

4 The Federal Arbitration Act ("FAA") governs the enforceability of the parties' agreement
5 to arbitrate. 9 U.S.C. Section 1 et seq. The FAA applies to contracts "evidencing a transaction
6 involving commerce," including commerce with foreign nations. See 9 U.S.C. §§ 1, 2. Here,
7 Plaintiff was a United States citizen doing business in China on behalf of an American company.
8 Therefore, the employment relationship between Chevron and Kruzich "involved" commerce as
9 defined by the FAA, and so the FAA governs the arbitration agreement here.⁸
10

11 The FAA creates "a body of federal substantive law of arbitrability", enforceable in both
12 state and federal courts.⁹ The FAA allows a federal district court to enforce arbitration
13 agreements. *Shearson/American Exp. v. McMahon*, 482 U.S. 220, 226, 107 S.Ct. 2332, 96
14 L.Ed.2d 185 (1987). Thus, Section 4 of the FAA permits "a party aggrieved by the alleged failure,
15 neglect or refusal of another to arbitrate under a written agreement for arbitration to petition any
16 United States District Court...for an order directing that...arbitration proceed in the manner
17 provided for in the [arbitration] agreement." 9 U.S.C. Sec. 4.
18

19 As a threshold matter, the Court must determine whether the parties entered into a valid
20 and enforceable written agreement to arbitrate. See *Wagner v. Stratton Oakmont, Inc.*, 83 F.3d
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23 ⁸ As the Supreme Court has ruled, contracts "evidencing a transaction involving
24 commerce" include employment contracts. *Rogers v. Royal Caribbean Cruise Line*, 547 F.3d 1148,
1154 (9th Cir. 2008) (citing *Circuit City Stores v. Adams*, 532 U.S. 105, 113 (2001)).

25 ⁹ *Moses H. Cone Mem. Hosp. v. Mercury Const.*, 460 U.S. 1, 24, 103 S.Ct. 927, 74 L.Ed.2d
26 765 (1983); *Cohen v. Wedbush*, 841 F.2d 282, 285 (9th Cir. 1988). The FAA reflects "Congress'
27 intent to provide for the enforcement of arbitration agreements within the full reach of the
28 Commerce Clause." *Perry v. Thomas*, 482 U.S. 483, 490, 107 S.Ct. 2520, 96 L.Ed.2d 426 (1987);
Republic of Nicaragua v. Standard Fruit Co., 937 F.2d 469, 475 (9th Cir. 1991).

1 1046, 1048 (9th Cir. 1996). "An arbitration clause may be found invalid only where the contract
2 never existed or where there is a defect in the arbitration clause." *Homestake Lead v. Doe Run*
3 *Resources*, 282 F. Supp. 2d 1131, 1139 (N.D. Cal. 2003). Here, Chevron's Policy 344, which
4 contained the arbitration clause, became a term and condition of Kruzich's employment
5 agreement. Indeed, Policy 344 states that "[a]n employee's continued employment at Chevron
6 will mean they agree to use STEPS." See Kruzich Dec., Exhibit A. Thus, Kruzich and Chevron
7 agreed to follow the STEPS program mandating arbitration, once Kruzich accepted employment
8 and then continued to work as an employee of Chevron.¹⁰

10 Pursuant to Section 2 of the FAA, an arbitration agreement "shall be valid, irrevocable and
11 enforceable, save upon such grounds as exist at law or in equity for the revocation of any
12 contract." 9 U.S.C. § 2. Once a valid agreement to arbitrate has been established, a court must
13 determine whether the agreement encompasses the dispute at issue. See *Chiron Corp. v. Ortho*
14 *Diagnostic Sys.*, 207 F.3d 1126, 1130 (9th Cir. 2000). Any question concerning arbitrability must
15 be addressed with a healthy regard for the federal policy favoring arbitration. *Simula, Inc. v.*
16 *Autoliv, Inc.*, 175 F.3d 716, 719--721 (9th Cir. 1999) (to fall within the agreement's scope, a
17 plaintiff's claims "need only touch matters covered by the contract . . . and all doubts are to be
18 resolved in favor of arbitrability."). The FAA establishes that "any doubts concerning the scope
19 of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the
20 construction of the contract language itself or an allegation of waiver, delay, or a like defense to
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25 ¹⁰ *Hicks v. Macy's Dep't Stores, Inc.*, 2006 U.S. Dist. LEXIS 68268, *8 (N.D. Cal. Sept. 11,
26 2006) (Breyer, J.) ("[I]t is well-established that a party may be bound by an agreement to arbitrate
27 even absent a signature.") (quoting *Genesco v. T. Kakiuchi Co.*, 815 F.2d 840, 846 (2d Cir. 1987));
28 *Circuit City Stores, Inc. v. Najd*, 294 F.3d 1104, 1109 (9th Cir. 2002) ("[W]here circumstances . . .
between the parties places the offeree under a duty to act or be bound, his silence or inactivity will
constitute his assent.").

1 arbitrability.”¹¹ If a federal district court finds that the dispute falls within the scope of the
2 agreement, then the court *must* issue an order compelling arbitration. *See, Cohen v. Wedbush,*
3 *supra*, 841 F.2d at 285.

4 In our case, Chevron implemented an arbitration program to which Kruzich agreed, yet
5 Chevron is now refusing to follow its own agreement. The STEPS policy not only mandates
6 arbitration of employment disputes, but the STEPS policy specifically identifies each of Kruzich’s
7 claims as being subject to the STEPS mediation and arbitration provisions, i.e., discrimination on
8 the basis of national origin, fraud, wrongful termination in violation of public policy, retaliation
9 for objecting to gender discrimination, and breach of the covenant of good faith and fair dealing.
10 Thus, the parties’ arbitration agreement obviously encompasses the dispute at issue. Any attempt
11 by Chevron to assert that Kruzich’s claims are not “legally protected rights” within the meaning of
12 the STEPS program is simply additional evidence of bad faith on Chevron’s part.

13 Moreover, Chevron has already acknowledged that Kruzich’s claims *do* involve “legally
14 protected rights”, since it mediated Kruzich’s claims under Step 3 of the STEPS program. As set
15 forth in HR Policy 344, “Steps Three and Four cover issues involving legally protected rights
16 only”. Kruzich Dec., Exh. A. HR Policy 344 explains further that, “Mediation is only for legally
17 protected rights involving individual employee claims...[A]rbitration is used for a legally
18 protected right that is not resolved in Step Three.” *Id.* Having mediated Kruzich’s claims under
19 Step Three, Chevron cannot now pretend that Kruzich’s claims do not involve “legally protected
20 rights” for purposes of Step Four.¹²

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25 ¹¹ *Moses H. Cone Mem. Hosp. v. Mercury Const.*, *supra*, 460 U.S. at 24; *Simula v. Autoliv*,
26 *supra*, 175 F.3d at 719 (9th Cir. 1999); *Wolsey v. Foodmaker*, 144 F.3d 1205, 1209 (9th Cir. 1998).

27 ¹² Furthermore, the EEOC determined that Chevron’s inexplicable refusal to arbitrate under
28 the STEPS program was likely done in retaliation for Kruzich having previously asserted his

1 **IV. CONCLUSION**

2 Kruzich and Chevron agreed that they would arbitrate employment claims of the very type
3 which Kruzich is asserting against Chevron. By this Petition, Kruzich seeks to hold Chevron to
4 this agreement. Kruzich requests that the Court issue an order compelling arbitration in
5 accordance with the provisions of HR Policy 344, including an order that Chevron pay all costs of
6 the arbitration in a timely manner.
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8 Dated: September 7, 2011

McGUINN, HILLSMAN & PALEFSKY
Attorneys for Plaintiff

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11 By: 
12 Cliff Palefsky
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discrimination claims against Chevron.