1 H. TIM HOFFMAN, (State Bar No. 49141) ROSS L. LIBENSON, (State Bar No. 181912) INOFFMAN LIBENSON SAUNDERS & BARBA 180 Grand Avenue, Suite 1550 2 INOFFMAN LIBENSON SAUNDERS & BARBA 180 Grand Avenue, Suite 1550 3 Telephone: (510) 763-5700 4 Facsimile: (310) 835-1311 5 Counsel for Plaintiffs 6 GREGORY W. KNOPP (SBN 237615) CHRISTOPHER PETERSEN (SBN 200631) AKIN GUMP STRAUSS HAUER & FELD LLP 2029 Century Park Last, Suite 2400 10 Attorneys for Defendants 11 UNITED STATES DISTRICT COURT Telephone: 310-229-1001 12 NORTHERN DISTRICT OF CALLPORNIA 13 STEPHEN MORRIS and KELLY NORTHERN DISTRICT OF CALLPORNIA 14 MORNEL on behalf of themselves and all others similarly situated, Case No. 12-ev-04964-RMW (HRL) [Assigned for all purposes to Judge Ronald M. Whyte] 16 Plaintiffs, v. VOUNG U.S., LLP, and ERNST & YOUNG U.S., LLP, and ERNST & YOUNG U.S., LLP, Date: February 15, 2013 18 Defendants. Date: February 15, 2013 19 Defendants. Date: February 15, 2013 20 Time: 9:00 a.m. Ctrm: 6 21 VOUNG U.S., LLP, AND COMPEL ARBITRATION BRIEFING VOUNG U.S., LLP, AND COMPEL ARBITRATION BRIEFING 23 Defendants. Date: February 15, 2013				
2 HOFFMAN LIBENSON SAUNDERS & BARBA 180 Grand Avenue, Suite 1550 3 Oakland, CA 94612 Telephone: (510) 835-1311 5 Counsel for Plaintiffs 6 GREGORY W. KNOPP (SBN 237615) CHRISTOPHER PETERSEN (SBN 206631) AKIN GUMP STRAUSS HAUER & FELD LLP 2029 Century Park East, Suite 2400 10 Actorneys for Defendants 11 UNITED STATES DISTRICT COURT 12 NORTHERN DISTRICT OF CALIFORNIA 13 STEPHEN MORRIS and KELLY MCDANIEL, on behalf of themselves and all others similarly situated, Case No. 12-cv-04964-RMW (HRL) 14 Plaintiffs, Case No. 12-cv-04964-RMW (HRL) 15 Plaintiffs, Case No. 12-cv-04964-RMW (HRL) 16 N. Plaintiffs, SECOND STIPULATION AND 17 ERNST & YOUNG, LLP, and ERNST & YOUNG U.S., LLP, SECOND STIPULATION AND SECOND STIPULATION AND 19 Defendants. Date: February 15, 2013 Time: 9:00 a.m. 21	1			
3 Oakland, CA. 94612 Telephone: (510) 763-5700 Facsimile: (510) 835-1311 5 Counsel for Plaintiffs 6 GREGORY W. KNOPP (SBN 237615) CIRISTOPHER PETERSEN (SBN 260631) AKIN GUMP STRAUSS HAUER & FELD LLP 2029 Century Park East, Suite 2400 Los Angeles, CA 90067-3012 Telephone: 310-229-1000 10 Autorneys for Defendants 11 UNITED STATES DISTRICT COURT 12 UNITED STATES DISTRICT COURT 13 STEPHEN MORRIS and KELLY McDANIEL, on behaff of themselves and all others similarly situated, Case No. 12-cv-04964-RMW (HRL) 14 V. 15 Plaintiffs, SECOND STIPULATION AND (PROPOSED) ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, OR IN THE AUTERNATIVE, STAY PROCEEDINGS AND COMPEL ARBITRATION BRIEFING 16 v. Defendants. 17 FENST & YOUNG LLP, and ERNST & YOUNG U.S., LLP, Date: February 15, 2013 18 YOUNG U.S., LLP, Date: February 15, 2013 11 Ctrm: 6 SECOND STIPULATION AND (PROPOSED) ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, ND CONDSTIPULATION AND (PROPOSED) ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, ND COND STIPULATION AND (PROPOSED) ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, ND COND STIPULATION AND (PROPOSED) ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, ND COND STIPULATION AND (PROPOSED) ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, ND	2	HOFFMAN LIBENSON SAUNDERS & BARBA		
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CHRISTOPHER PETERSEN (SBN 260631) AKIN GUMP STRAUSS HAUER & FELD LLP 2029 Century Park East, Suite 2400 Los Angeles, CA 90067-3012 Telephone: 310-229-1001 Atorneys for Defendants UNITED STATES DISTRICT COURT STEPHEN MORRIS and KELLY McDANIEL, on behalf of themselves and all others similarly situated, Plaintiffs, V. Plaintiffs, V. Plaintiffs, V. Plaintiffs, VOUNG U.S., LLP, and ERNST & YOUNG, LLP, and ERNST & YOUNG U.S., LLP, Defendants. Defendants. Defendants. Defendants. Defendants. Defendants. Defendants. Date: February 15, 2013 Time: 9:00 a.m. Ctrm: 6 SECOND STIPULATION AND IPROFOSED ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS. MOTION TO DISMISS, OR IN THE ABUEFING Date: February 15, 2013 Time: 9:00 a.m. Ctrm: 6 SECOND STIPULATION AND IPROFOSED ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS. MCTOR STIPULATION AND IP	5	Counsel for Plaintiffs		
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9 Facsimile: 310-229-1001 10 Attorneys for Defendants 11 UNITED STATES DISTRICT COURT 12 NORTHERN DISTRICT OF CALIFORNIA 13 STEPHEN MORRIS and KELLY 14 McDANIEL, on behalf of themselves and all others similarly situated, Case No. 12-cv-04964-RMW (HRL) 16 v. Plaintiffs, Case No. 12-cv-04964-RMW (HRL) 16 v. Plaintiffs, SECOND STIPULATION AND IPROPOSED] ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, OR IN THE ALTERNATIVE, STAY PROCEEDINGS AND COMPEL ARBITRATION BRIEFING 19 Defendants. Date: February 15, 2013 20 Time: 9:00 a.m. Ctrm: 6 21 SECOND STIPULATION AND IPROPOSED ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, IN THE ALTERNATIVE, STAY PROCEEDINGS AND COMPEL ARBITRATION BRIEFING 23 SECOND STIPULATION AND IPROPOSED ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, IN THE ALTERNATIVE, STAY PROCEEDINGS AND COMPEL ARBITRATION BRIEFING 24 SECOND STIPULATION AND IPROPOSED ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, IN THE ALTERNATIVE, STAY PROCEEDINGS AND COMPEL ARBITRATION BRIEFING 25 SECOND STIPULATION AND IPROPOSED ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, IN THE ALTERNATIVE, STAY PROCEEDINGS AND COMPEL ARBITRATION BRIEFING	8	Los Angeles, CA 90067-3012		
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14 McDANIEL, on behalf of themselves and all others similarly situated, [Assigned for all purposes to Judge Ronald M. Whyte] 15 Plaintiffs, [Assigned for all purposes to Judge Ronald M. Whyte] 16 v. SECOND STIPULATION AND 17 ERNST & YOUNG, LLP, and ERNST & YOUNG U.S., LLP, SECOND STIPULATION AND 19 Defendants. BRIEFING 20 Defendants. Date: February 15, 2013 21 Ctrm: 6 Ctrm: 6 23 Ctrm: 6 SECOND STIPULATION AND (PROPOSED) ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR MOTION TO DISMISS, NR IN THE ALTERNATIVE, STAY PROCEEDINGS AND COMPEL ARBITRATION BRIEFING Case No. 12-cv-04964-RMW (HRL)	13			
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21 Time: 9:00 a.m. 22 Ctrm: 6 23 Ctrm: 6 24	19	Defendants.		
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		Case No. 12-cv-04964-RMW (HRL)	Dockets.Just	

WHEREAS the parties have met and conferred and agreed to each exceed the applicable page limit for the opposition and reply briefing to the Defendants' **MOTION TO DISMISS, OR IN THE ALTERNATIVE, STAY PROCEEDINGS AND COMPEL ARBITRATION** by ten (10) pages.

WHEREAS a Stipulation and [Proposed] Order To Exceed Applicable Page Limit For Motion To Dismiss, Or In The Alternative, Stay Proceedings and Compel Arbitration Briefing (the "Stipulation") was filed on January 23, 2013 (Dkt. No. 43).

WHEREAS the Court denied without prejudice to re-file the Stipulation for failure to include in the Stipulation the reasons, consistent with Civil Local Rule 7-11(a), for seeking to exceed the page limits (Dkt. No. 46).

WHEREAS Plaintiffs believe the reasons necessary to submit a memorandum exceeding the page limit up to an additional ten (10) pages includes a significant and extensive judicial history interpreting the very arbitration agreement at issue that was not addressed in Defendants' motion. This includes, Plaintiffs maintain, finding the subject agreement unenforceable in circumstances which while different in some respects are sufficiently similar to control the result here. Hence, the need for additional pages to address the numerous issues include the following reasons:

 First, the agreement Defendants seek to enforce does not provide for shifting of costs and expense, or in other words allow for arbitrator discretion, where the relevant statutes unconditionally require costs and expenses to be shifted to the employer. See, *Sutherland v. Ernst & Young* LLP, 768 F.Supp.2d 547 (S.D.N.Y. 2011) ("Sutherland I"); *Sutherland v. Ernst & Young* LLP, 2012 U.S. Dist. LEXIS 5024 (S.D.N.Y. January 13, 2012) ("Sutherland II");

Second, the history includes this Court's finding of waiver by Defendant of a claim to arbitration in *Ho v. Ernst & Young*, LLP, a putative class action in which both Plaintiffs were putative class members and which Plaintiff Morris participated, *inter alia*, by giving a declaration and sitting for a deposition. See, *Ho v. Ernst & Young*, LLP, 2011 U.S. Dist. LEXIS 106658 (N.D. Cal. Sept. 20, 2011), *Order Denying Motion for Leave to Move For Reconsideration (Ho Dkt. No.* 302, October 19, 2011). Whether such wavier applies to all 2

SECOND STIPULATION AND [PROPOSED] ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR CLASS CERTIFICATION BRIEFING

putative class members, or at least to those, like Mr. Morris, who specifically identified his personal dispute with Defendant and was subjected to discovery, apparently is an issue of first impression;

Third, the cost of proceeding in individual arbitration proceedings under the arbitration agreements at issue here have been found to be so high that individual arbitration would not allow the participants to "effectively vindicate their statutory rights." See *Sutherland I* and *Sutherland II*. Where arbitration must be conducted on an individual basis, but class proceedings in Court would allow those statutory rights to be vindicated. See also, *Italian Colors Rest. v. Am. Express Travel Related Servs. Co. (In re Am. Express Merchs. Litig.)*, 667 F.3d 204 (2d Cir. 2012)("*Amex III*"), *Nat'l Supermarkets Assoc. v. Am. Express Travel Related Servs. Co. (In re Am. Express Travel Related Servs. Co. (In re Am. Express Merchs. Litig.)*, 634 F.3d 187, 2011 U.S. App. LEXIS 4507 (2d Cir., 2011)("*Amex II*"), and *In re Am. Express Merchs. Litig.*, 554 F.3d 300 (2d Cir. 2009)("*Amex I*")(collectively hereinafter the "*Amex Trilogy*"); *Coneff v. AT&T Corp.*, 673 F.3d 1155, 1159 (9th Cir. Wash. 2012);

4. Fourth, Plaintiffs maintain the findings in *Sutherland II* could be collateral estoppel;

5. Fifth, Plaintiffs maintain the National Labor Relations Board holding in *D.R. Horton, Inc. v. Cuda*, NLRB Case No. 12-CA-25764, 357 NLRB No. 184, (Jan. 3, 2012) that a class/collective action waiver imposed in an agreement required as a condition of employment to be a violation of Section 7 of the National Labor Relations Act and a violation of the *Norris LaGuardia Act* deserves deference. Accordingly, Plaintiffs need to address those issues; and

6. Sixth, the Plaintiffs will seek to address the issue of waiver not only as a choice of law issue as touched upon in *Ho v. Ernst & Young, LLP*, 2011 U.S. Dist. LEXIS 106658 (N.D. Cal. Sept. 20, 2011), but also the separate issue of waiver by moving to compel arbitration only after seeking to transfer this matter from a sister court and then seeking to relate the matter to other cases.

1	WHEREAS, Defendants do not oppose Plaintiffs' request for additional pages, but seek an	
2	equal extension for the reply in the event the Court grants Plaintiffs' request.	
3	THEREFORE IT IS HEREBY STIPULATED by and between the parties hereto through their	
4	respective undersigned counsel that:	
5	1. Plaintiffs shall have up to thirty-five (35) pages for their Memorandum of Points and	
6	Authorities In Opposition to Defendant's Motion To Dismiss, Or In the Alternative, Stay Proceedings	
7	and Compel Arbitration; and	
8	2. Defendants shall have up to twenty-five (25) pages for their Memorandum of Points and	
9	Authorities In Reply to Plaintiffs' To Memorandum of Points and Authorities In Opposition to	
10	Defendant's Motion To Dismiss, Or In the Alternative, Stay Proceedings and Compel Arbitration.	
11	Detect. Lanuary 24, 2012	
12	Dated: January 24, 2013	
13	Attorney for Plaintiffs	
14	Dated: January 24, 2013 /s Gregory W. Knopp	
15	GREGORY W. KNOPP AKIN GUMP STRAUSS HAUER &	
16	FELD LLP Attorney for Defendant	
17	(This stipulation has been approved by Gregory W. Knopp)	
18	(This suprimine has been approved by Gregory W. Khopp)	
19	Because the court has agreed to extend the filing deadline for the opposition papers to Monday,	
20	January 28, the court likewise extends the filing deadline for the reply papers to Monday, February 4.	
21		
22	ORDER	
23	PURSUANT TO STIPULATION IT IS SO ORDERED.	
24	Konold M Whato	
25	Dated: <u>January 25</u> , 2013 <i>Konald M. Whyte</i> United States District Judge	
26		
27	4	
28	SECOND STIPULATION AND [PROPOSED] ORDER TO EXCEED APPLICABLE PAGE LIMIT FOR CLASS CERTIFICATION	
	BRIEFING Case No. 12-cv-04964-RMW (HRL)	