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CIV 500678 GABRIEL NATALINI VS. IMPORT MOTORS, INC, ET AL.

GABRIEL NATALINI — JOHN W. HANSON
IMPORT MOTORS, INC — DAVID R. SIDRAN

DEFENDANT IMPORT MOTORS' PETITION TO COMPEL BINDING ARBITRATION PURSUANT TO CONTRACT.

- **The Petition to Compel Arbitration is DENIED.**

- **The Court will not consider the late-filed Supplemental Declaration of Alicia Faulkner, which attempts to introduce evidence after Plaintiff filed his opposition.**

- **There is no admissible evidence establishing Plaintiff agreed to arbitrate his claim. Although Plaintiff failed to submit a written objection to any evidence, the contentions in the opposition indicate that Plaintiff will object at the Hearing to introduction of the purported arbitration agreement. Such an objection will be sustained as the purported arbitration agreement has not been properly authenticated. Furthermore, based on the filings, even if accepted as including the portion of the contract that Plaintiff signed, the Court cannot determine if the purported arbitration agreement was a part of the complete agreement.**

- **The Court additionally concludes that there is substantial doubt as to whether the holding of AT&T Mobility v. Concepcion (2011) 131 S.Ct. 1740, applies to actions filed in state court. For example, a recent federal district court decision concluded, based on AT&T Mobility that "the Act [the FAA] preempts California's exemption of claims for public injunctive relief from arbitration, at least for actions in federal court." (Arellano v. T-Mobile USA, Inc. (May 16, 2011) 2011 U.S. Dist. LEXIS 52142, at *4).**

- **The Court concludes that Defendant Import Motors, Inc. waived any right to arbitration that it may have possessed by delaying, engaging in discovery, obtaining discovery from Plaintiff, and forcing Plaintiff to incur substantial expenses without any prior suggestion that Defendant would attempt to**

pursue arbitration. Defendant's conduct has prejudiced Plaintiff. (St. Agnes Medical Center v. PacifiCare of California, 31 Cal.4th 1187, 1204).

- **Further, the Court concludes that the purported arbitration provision is unenforceable because it is unconscionable. At best, there is procedural unconsionability because the contract of adhesion contained an arbitration provision obscured from Plaintiff's attention. In addition the provision named an organization to manage the arbitration which no longer handles consumer actions after actions initiated by at least one city and one State Attorney General. Defendant retains veto power over any alternative arbitrator, but the provision does not so limit Defendant's power to choose an arbitrator. Defendant is responsible for only the first portion of anticipated costs of arbitration and can appeal any large sum awarded in excess of $100,000 whereas appeals in situations likely to spur such a decision from Plaintiff is unavailable. Thus, the instant arbitration provision is unconscionable independent of the class action waiver.**

- **If the tentative ruling is uncontested, it shall become the order of the court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required, as the tentative ruling affords sufficient notice to the parties.**

9:00
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CIV 500978 NENG LY VS. COOSEMANS, SF INC., ET AL.

NENG LY
COOSEMANS, SF INC.

NICHOLAS J. GOMEZ
DOUGLAS G NUGENT

MOTION FOR LEAVE TO INTERVENE FILED BY ENDURANCE REINSURANCE CORPORATION

- **The unopposed Motion for Leave to Intervene brought by Endurance Reinsurance Corporation is GRANTED pursuant to CCP §387(a) and California Labor Code §3853.**

- **Moving party is directed to prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of**