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10 CARLOS SOSA

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 CARLOS SOSA,

14 Plaintiff,

15 v.

16 DIRECTV GROUP, INC., a corporation,
17 DIRECTV, a corporation, and DOES 1
18 through 50, inclusive,

19 Defendants.

Case No.

BC363475

**COMPLAINT FOR DECLARATORY
RELIEF AND DAMAGES:**

- (1) DECLARATORY RELIEF ON
WRITTEN CONTRACT; AND
(2) LABOR CODE SECTION 2802

DEMAND FOR TRIAL BY JURY

20 Plaintiff CARLOS SOSA (hereinafter "MR. SOSA" or "PLAINTIFF"), as an
21 individual, complains and alleges as follows:
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UNRECORDED
OF ORIGINAL FILED
Los Angeles Superior Court
DEC 15 2006
M.A. Clarke, Executive Officer/Clerk

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1 5. The true names and capacities, whether corporate, associate, individual
2 or otherwise of defendants DOES 1 through 50, inclusive, are unknown to MR. SOSA, who
3 therefore sues said defendants by such fictitious names. Each of the defendants designated
4 herein as a DOE is negligently or otherwise legally responsible in some manner for the
5 events and happenings herein referred to and caused injuries and damages proximately
6 thereby to MR. SOSA, as herein alleged. MR. SOSA will seek leave of Court to amend this
7 Complaint to show their names and capacities when the same have been ascertained.

8
9 6. At all times herein mentioned, defendants, and each of them, were the
10 agents, representatives, employees, successors and/or assigns, each of the other, and at all
11 times pertinent hereto were acting within the course and scope of their authority as such
12 agents, representatives, employees, successors and/or assigns and acting on behalf of, under
13 the authority of, and subject to the control of each other.

14
15 **FACTS COMMON TO ALL CAUSES OF ACTION**
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17 7. On or about July 22, 2001, MR. SOSA commenced employment with
18 Hughes Electronics Corporation.

19
20 8. Hughes Electronics Corporation was subsequently renamed DIRECTV.
21

22 9. On or about July 23, 2001, defendant DIRECTV ordered MR. SOSA to
23 sign a contract – a Mutual Agreement to Arbitrate Claims (hereinafter referred to as the
24 “Arbitration Agreement”). (*See* Mutual Agreement to Arbitrate Claims attached hereto as
25 Exhibit “A”). The Arbitration Agreement contained an unlawful provision providing that
26 the standard of review to be applied to actions seeking to vacate any arbitration award would
27 be expanded and different from the standard for review provided in the California Code of
28 Civil Procedure (*e.g.*, §§ 1286.2 and 1286.4). [*See* Mutual Agreement to Arbitrate Claims,

1 Judicial Review, p. 4 attached hereto as Exhibit "A"("In actions seeking to vacate an award,
2 the standard of review to be applied to the arbitrator's findings of fact and conclusions of law
3 will be the same as that applied by an appellate court reviewing a decision of a trial court
4 sitting without a jury.")].

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6 10. Throughout MR. SOSA's employment with defendant DIRECTV,
7 defendant ROCK subjected MR. SOSA to a continuous, pervasive and ongoing hostile,
8 offensive, and unwelcome pattern and practice of sexually harassing and discriminatory
9 conduct, including, but not limited to, hostile work environment sexual harassment as alleged
10 herein. Defendant ROCK engaged in such conduct while acting in the course and scope of
11 his employment with DIRECTV and/or in carrying out its policies and practices. Such
12 conduct by defendant ROCK included, but is not limited to, the following:

13
14 A. Defendant ROCK flirted with MR. SOSA.

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16 B. Defendant ROCK hugged and/or tried to hug and/or otherwise touch MR.
17 SOSA.

18
19 C. Defendant ROCK asked MR. SOSA inappropriate sexual questions including
20 asking whether MR. SOSA was married, single, seeing anyone, whether MR.
21 SOSA was gay, and asking questions about MR. SOSA's sex life.

22
23 D. Defendant ROCK apparently had some type of fetish for Joan Crawford and
24 insisted that MR. SOSA (and others) call him "Joan." Defendant ROCK
25 referred to MR. SOSA as "Christine" (e.g., after Joan Crawford's daughter,
26 Christine Crawford). Defendant ROCK would also refer to MR. SOSA as
27 "she" and "her."

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- 1 E. Defendant ROCK sent MR. SOSA e-mails contained nude photographs of men.
- 2
- 3 F. Defendant ROCK showed MR. SOSA photographs of naked men.
- 4
- 5 G. Defendant ROCK sent MR. SOSA sexually graphic e-mails, instant messages,
- 6 and text messages. Some of the text messages included:
- 7
- 8 • “My vagina is sore today.” [Defendant ROCK referred to a man’s anus
 - 9 as a “vagina” and/or a “pussy”].
 - 10
 - 11 • “Eunice wants to put her fist up your ass.”
 - 12
 - 13 • “Aaron want to bareback with you.”
 - 14
 - 15 • “Go fuck yourself.”
 - 16
 - 17 • “Grace Donoso wants to sit on your face.”
 - 18
 - 19 • “Roger Hyde wants to finger your pussy.”
 - 20
 - 21 • “The Virgin Mary will appear to you in a dream tonight and tell you that
 - 22 you’re a slut.”
 - 23
 - 24 • “Are you still pole dancing on the weekends.”
 - 25
 - 26 • “You may need to start acting a little straighter.”
 - 27
 - 28 • “I’ve been super busy taking it up the butt all morning.”

- “Filthy heteros.”
- “Tu eres una mujer” [translated from Spanish as “You are a woman.”]
- “Roger Hyde wants to rim you.”
- “Is this an institution of higher learning or a teenage brothel?”

H. Defendant ROCK defaced MR. SOSA’s office with pornographic graffiti. For example, Defendant ROCK wrote a “To Do List” on the whiteboard in MR. SOSA’s office indicating that one of the items MR. SOSA had completed was:



BARE BACKING

I. Defendant ROCK described his sexual life in excruciating detail to MR. SOSA. For example, defendant ROCK told MR. SOSA about joining a gym in Long Beach where he had sex in the gym showers with numerous different men. On another occasion, defendant ROCK said that he had picked up a guy over the weekend and that the guy had “fucked me hard for hours” and that his “vagina” was “so sore.”

J. Defendant ROCK told MR. SOSA that he was “turned on” by Hispanic men.

K. Defendant ROCK would bring sexually explicit gay-themed magazines to work

1 (e.g., Frontiers Magazine and Odyssey Magazine), show MR. SOSA sexually
2 explicit photos from the magazines, and leave the magazines on MR. SOSA's
3 desk with certain pictures circled with comments that defendant ROCK had
4 written.

5
6 L. Defendant ROCK left pornographic gay video catalogues all over MR. SOSA's
7 office.

8
9 M. Defendant ROCK told MR. SOSA that "Roger Hyde wants to rim you." Mr.
10 Hyde was the Vice-President of Creative Services for defendant DIRECTV.

11
12 N. Defendant ROCK told MR. SOSA: "What have you been up to today? I've
13 been taking it up the butt all morning."

14
15 O. Defendant ROCK accused MR. SOSA of having unprotected anal sex with
16 Roger Hyde.

17
18 P. Defendant ROCK accused MR. SOSA of being HIV-positive.
19

20 11. On numerous occasions, MR. SOSA objected to defendant ROCK's
21 conduct, told him that it was inappropriate, or otherwise engaged in conduct that was clearly
22 designed to place defendant ROCK on notice that defendant ROCK's conduct was
23 unwelcome.
24

25 12. On multiple occasions, MR. ROCK complained to defendant DIRECTV
26 about MR. ROCK's sexually harassing conduct.

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1 13. In on or about on July 14, 2006, following MR. SOSA's complaints of
2 sexual harassment against defendant ROCK, defendant DIRECTV informed MR. SOSA that
3 he had until August 21, 2006 to decide whether to accept one of the following two options:
4 (1) relocate to the COMPANY's New York offices (where defendant ROCK worked); or (2)
5 be terminated. At that time, MR. SOSA renewed his complaints of sexual harassment against
6 defendant ROCK.

7
8 14. In response to MR. SOSA's renewed complaints of sexual harassment
9 against defendant ROCK, defendant DIRECTV purportedly commenced an investigation into
10 MR. SOSA's claims. Upon the conclusion of its purported investigation, defendant
11 DIRECTV notified MR. SOSA that "based on the available information, the Company could
12 not substantiate that sexual harassment occurred, because among other things, we cannot
13 conclusively determine that his conduct was unwelcome." Defendant DIRECTV also
14 continued to insist that MR. SOSA accept one of the two options with which it had
15 previously presented him: (1) relocate to the COMPANY's New York offices (where
16 defendant ROCK worked); or (2) be terminated.

17
18 15. In response to defendant DIRECTV's ultimatum, MR. SOSA
19 requested that DIRECTV inform him "what specific steps" the COMPANY had taken "to
20 ensure that Stephen Rock never sexually harasses me again."

21
22 16. Defendant DIRECTV did not answer MR. SOSA's question. Instead,
23 DIRECTV simply informed MR. SOSA that his position could involve him "working with or
24 coming in contact with Mr. Rock."

25
26 17. Because defendant DIRECTV refused to tell MR. SOSA what steps it
27 had taken to ensure that defendant ROCK did not harass him, MR. SOSA declined the
28 transfer. As a result, DIRECTV fired him.

1 18. MR. SOSA filed for arbitration of his claims against DIRECTV. Prior
2 to his filing for arbitration, MR. SOSA filed a complaint with the Department of Fair
3 Employment and Housing (“DFEH”) alleging that the acts of defendants, and each of them,
4 established a violation of the Fair Employment and Housing Act, Government Code Section
5 12900 et. seq., has received the requisite Right-To-Sue Letters from the DFEH, and has
6 served them on defendants.

7
8 **FIRST CAUSE OF ACTION**

9 **DECLARATORY RELIEF ON WRITTEN CONTRACT**

10 **(Cal. Code Civ. Proc. §1060)**

11 **(Against All Defendants)**
12

13 19. MR. SOSA realleges and incorporates by reference paragraphs 1
14 through 9 and 18 as though set forth in full.
15

16 20. An actual controversy has arisen and now exists between MR. SOSA
17 and defendant DIRECTV regarding their respective rights and duties under the contract.
18

19 19. MR. SOSA contends that the provision of the contract regarding judicial
20 review (*e.g.*, defendant DIRECTV’s attempt to contractually expand the scope of review
21 governed by California Code of Civil Procedure Sections 1286.2 and 1286.4) is unlawful.
22

23 20. MR. SOSA bases his contention on a number of California cases which
24 provide that the scope of judicial review of arbitration decisions can not be expanded by
25 contract. *See e.g., Crowell v. Downey Community Hospital Foundation*, 95 Cal. App. 4th
26 730, 739 (2002)(“Because the Legislature clearly set forth the trial court's jurisdiction to
27 review arbitration awards when it specified grounds for vacating or correcting awards in
28 sections 1286.2 and 1286.6, we hold that the parties cannot expand that jurisdiction by

1 contract to include a review on the merits.”); Oakland-Alameda County Coliseum Authority
2 v. CC Partners, 101 Cal. App. 4th 635, 645 (2002) (“Judicial review of private arbitration is
3 limited to those grounds for review provided by sections 1286.2 and 1286.6 of the Code of
4 Civil Procedure.”). MR. SOSA also bases his contention on a recent case in which a
5 California Court rejected defendant DIRECTV’s attempt to contractually expand the scope of
6 judicial review of an arbitration decision. *See Cable Connection, Inc. v. DIRECT TV*, 143
7 Cal. App. 4th 207, 223-24 (2006)(“[W]e conclude that the arbitration award before us was
8 subject to the limited judicial review described by the Supreme Court in Moncharsh. As such,
9 the merits of the controversy between the parties were not properly subject to judicial
10 review.”).

11
12 21. MR. SOSA explained to DIRECTV why he believed the scope
13 of judicial review provision was unlawful and he repeatedly requested that DIRECTV enter
14 into a stipulation striking the unlawful provision from the parties’ contract. Notwithstanding
15 MR. SOSA’s repeated requests, DIRECTV failed to execute the stipulation.

16
17 22. MR. SOSA desires a judicial determination of his rights and duties and a
18 declaration that the provision of the Arbitration Agreement purporting to expand the scope of
19 judicial review is invalid.

20
21 23. A judicial declaration is necessary and appropriate at this time under all
22 the circumstances so that MR. SOSA may determine his rights and duties under the
23 Arbitration Agreement. Among other things, it is important for MR. SOSA to know the
24 scope of judicial review as such knowledge will affect the strategies and tactics he uses in
25 conducting his underlying arbitration against defendant DIRECTV.

26
27 24. By the aforesaid acts and omissions of defendants, and each of them,
28 MR. SOSA has been directly and legally caused to suffer actual damages including attorneys’

1 fees and costs of suit.

2
3 25. As a result of defendants' acts and conduct, as alleged herein, MR.
4 SOSA is entitled to reasonable attorneys' fees and costs of suit as provided in Section 2802
5 of the Labor Code.

6
7 26. MR. SOSA has been generally damaged in an amount within the
8 jurisdictional limits of this Court.

9
10 **SECOND CAUSE OF ACTION**

11 **LABOR CODE SECTION 2802**

12 (Against all Defendants)

13
14 27. MR. SOSA realleges and incorporates by reference paragraphs 1
15 through 9 and 18 through 26 as though set forth in full.

16
17 28. Utilizing its power and authority as MR. SOSA's employer, defendant
18 DIRECTV forced MR. SOSA to sign an Arbitration Agreement that contained an unlawful
19 provision (*e.g.*, a provision that purports to expand the scope of review governed by
20 California Code of Civil Procedure Sections 1286.2 and 1286.4). [*See* Mutual Agreement to
21 Arbitrate Claims, Judicial Review, p. 4 attached hereto as Exhibit "A"("In actions seeking to
22 vacate an award, the standard of review to be applied to the arbitrator's findings of fact and
23 conclusions of law will be the same as that applied by an appellate court reviewing a decision
24 of a trial court sitting without a jury.")].

25
26 29. In order to save the Court, the parties, and their counsel the time and
27 expense that would be otherwise be expended, MR. SOSA attempted to meet and confer with
28 defendant DIRECTV regarding this issue in an effort to have the unlawful scope of review

1 provision stricken from the parties' contract.

2
3 30. Notwithstanding MR. SOSA's repeated requests, defendant DIRECTV
4 failed to execute the stipulation that would have stricken the unlawful scope of review
5 provision from the parties' contract.

6
7 31. As a direct and legal result MR. SOSA's obedience to the directions of
8 his employer, he was forced to incur costs and attorneys' fees. Accordingly, MR. SOSA is
9 entitled to reasonable attorneys' fees and costs of suit as provided in Section 2802 of the
10 Labor Code.

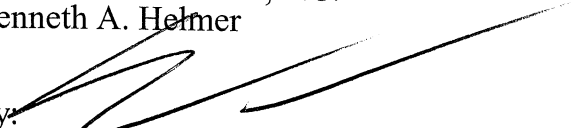
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12 **PRAYER FOR RELIEF**

13
14 WHEREFORE, **PLAINTIFF** prays for judgment against defendants, and each
15 of them, as follows:

- 16 1. A declaration that the provision in the Arbitration Agreement attempting
17 to expand judicial review beyond that provided for in California Code of
18 Civil Procedure Sections 1286.2 and 1286.4 is void;
19 2. Reasonable attorneys' fees;
20 5. Costs of suit;
21 6. Interest; and
22 10. For such other relief as the Court deems proper.

23
24 DATED: December 15, 2006

HELMER • FRIEDMAN, LLP
Gregory D. Helmer, P.C.
Andrew H. Friedman, P.C.
Kenneth A. Helmer

25
26
27 By: 
28 Andrew H. Friedman, P.C.
Attorneys for Plaintiff
CARLOS SOSA

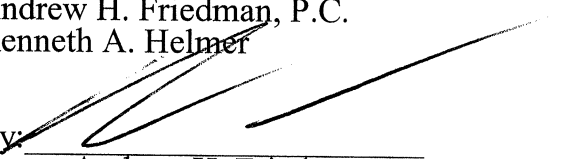
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PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff CARLOS SOSA hereby demands a trial by jury.

DATED: December 15, 2006

HELMER • FRIEDMAN, LLP
Gregory D. Helmer, P.C.
Andrew H. Friedman, P.C.
Kenneth A. Helmer

By: 
Andrew H. Friedman, P.C.
Attorneys for Plaintiff
CARLOS SOSA

MUTUAL AGREEMENT TO ARBITRATE CLAIMS

Hughes Electronics Corporation (hereafter referred to as the "Company") acknowledges that a quick, fair and cost effective internal dispute resolution procedure for employee/employer complaints is one method of creating an environment that provides each employee the "opportunity to contribute and develop to his or her full potential." The Company's Arbitration Procedure is intended to be an impartial, cost effective and speedy mechanism for resolving employment or other disputes between the Company and its employees.

Disputes which shall be submitted to binding arbitration for final resolution include: all claims or controversies, past, present or future, except claims identified in the Arbitration Procedure under the heading "Claims Not Covered by the Agreement," arising out of an employee's employment or its termination, that the Company may have against an employee or that an employee may have against any of the following (1) the Company; (2) its officers, directors, employees or agents in their capacity as such or otherwise, (3) the Company's parent, subsidiary and affiliated entities, (4) the benefit plans or the plans' sponsors, fiduciaries, administrators, affiliates and agents, and or (5) all successors and assigns of any of them ("claims").

Claims and disputes by employees hired after January 1, 1993 shall be governed by this Agreement whether or not a complaint was initiated through the Employee Problem Resolution Procedure ("EPRP").

Employee understands that any reference in this Agreement to the Company will be a reference only to the Hughes Electronics Corporation subsidiary and affiliated entities who have adopted mandatory arbitration, and all successor and assigns of any of them.

Except as set forth in the Arbitration Procedure, the decision of the Arbitrator shall be final and binding upon all parties. The parties' mutual promise to arbitrate differences, rather than litigate them before courts or other tribunals, provides adequate consideration for each other.

By entering into this Agreement, Employee does not waive his/her right to file an administrative claim or complaint with the appropriate administrative agency, but does waive his/her right to file a civil action and a jury trial, because the Agreement provides for an adequate and equal opportunity for the vindication of claims and complaints through this arbitration and/or EPRP process.

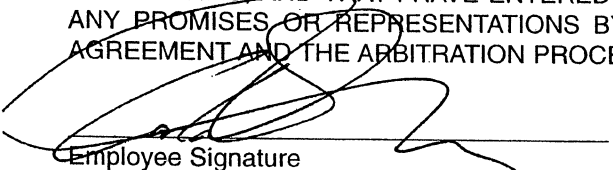
The parties agree that the Company is engaged in transactions involving interstate commerce.

Arbitration under this Agreement may be compelled and enforced according to the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the California Arbitration Act (California Code of Civil Procedure § 1280 et seq.) and shall be conducted in accordance with the Arbitration Procedure. This Agreement, and/or the Arbitration Procedure, do not create nor are either to be construed to create any contract of employment, expressed or implied, and is in no way intended to alter or affect Employee's status as an employee.

This Agreement shall survive the employer-employee relationship between Employee and the Company, and shall apply to all claims whether they arises or are asserted during or after Employee's employment or after Employee's separation of employment with the Company. This Agreement can be modified or revoked only by a writing signed by both parties that references this Agreement and specifically states an intent to modify or revoke it. If any part of this Agreement or the Arbitration Procedure is found to be void or otherwise unenforceable, the remainder of the Agreement/Arbitration Procedure will continue to be in full force and effect.

This is the complete Agreement of the parties on the subject of arbitration of disputes (except for any arbitration agreement in connection with any pension or benefit plan). This Agreement supersedes any prior or contemporaneous oral or written understandings on the subject. No party is relying on any representations, oral or written, specifically set forth in this Agreement.

I ACKNOWLEDGE THAT I HAVE READ THIS AGREEMENT AND THE ARBITRATION PROCEDURE, THAT I UNDERSTAND THEIR TERMS, AND THAT I HAVE ENTERED INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED WITHIN THE AGREEMENT AND THE ARBITRATION PROCEDURE.


Employee Signature

Date

7/23/01CARLOS SOSA
Print Employee Name

ARBITRATION PROCEDURE

GENERAL

The Hughes Electronics Corporation (the "Company") Arbitration Procedure is intended to be an impartial, cost effective and speedy mechanism for resolving employment or other disputes between the Company and its employees. The Company encourages using the Employee Problem Resolution Procedure ("EPRP") to investigate and address employee concerns and recognizes that this will most occur when employees have trust and confidence in the internal dispute resolution process. Employees may obtain final and binding arbitration of all claims as a final step in the EPRP in accordance with the Mutual Agreement to Arbitrate Claims ("Arbitration Agreement") and the procedure described herein. Since January 1, 1993 all new hires of Hughes companies that have adopted this Procedure, have been required to execute a Mutual Agreement to Arbitrate Claims as a condition of employment.

PROCEDURE

The arbitration procedure is applicable to all employees at the Company locations where the EPRP is available. The reference in the Arbitration Agreement to "Employee" includes eligible current and former employees.

Claims Covered by the Agreement

Disputes which shall be submitted to binding arbitration for final resolution include: all claims or controversies ("claims"), past, present or future, arising out of an employee's employment or its termination, that the Company may have against an employee or that an employee may have against any of the following (1) the Company; (2) its officers, directors, employees or agents in their capacity as such or otherwise, (3) the Company's parent, subsidiary and affiliated entities, (4) the benefit plans or the plans' sponsors, fiduciaries, administrators, affiliates and agents, and or (5) all successors and assigns of any of them.

The only claims that are arbitrable are those that, in the absence of the Arbitration Agreement, would have been justiciable under applicable state or federal law. The claims covered by the Arbitration Agreement include, but are not limited to: claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); tort claims; claims for discrimination (including, but not limited to, race, sex, sexual orientation, religion, national origin, age, marital status, physical or mental disability, or medical condition); claims for benefits (except claims under an employee benefit or pension plan that either (1) specifies that its claims procedure shall culminate in an arbitration procedure different from this one, or (2) is underwritten by a commercial insurer which decides claims); and claims for violation of any federal, state, or other governmental law, statute, regulation, or ordinance, except claims excluded below under the heading "Claims Not Covered by the Agreement."

Claims Not Covered by the Agreement

Claims for Workers' Compensation or Unemployment Compensation benefits cannot be submitted to binding arbitration under the Arbitration Agreement. Also not covered are claims by the Company or by the employee for temporary restraining orders or preliminary injunctions ("temporary equitable relief") in cases in which such temporary equitable relief would be otherwise authorized by law. Such resort to temporary equitable relief shall be in aid of arbitration only, and in such cases the trial on the merits of the action will occur in front of, and will be decided by, the Arbitrator, who will have the same ability to order legal or equitable remedies as could a court of general jurisdiction.

Required Notice of Claims and Time Limits

The aggrieved party must give written notice of any claim to the other party no later than the expiration of the statute of limitations (deadline for filing) that the law prescribes for the claim. For example, an employee's request for arbitration of claims processed through EPRP or through the Ethics Program must be made within any applicable federal or state statute of limitations. The aggrieved party is encouraged to give written notice of any claim as soon as possible after the decisions of the EPRP Consensus Review Board or the Ethics Corporate Responsibility Committee (or its designee) are issued or, as soon as possible after the event or events in dispute occur so that arbitration of any differences may take place promptly. However, any request for arbitration of claims made beyond the

applicable federal or state statute of limitations shall be considered "late." Late claims shall be deemed void, waived and not arbitrable. By mutual agreement, the parties may bypass steps within the EPRP process or bypass the entire EPRP process and proceed directly to arbitration. An employee may file an administrative agency charge of discrimination, provided however, that such a filing shall not affect this Arbitration Procedure, or the running of the applicable federal or state statute of limitations periods.

Written notice to the Company, or its officers, directors, employees or agents, shall be sent to employee's local Human Resources Department at the Company's then current address. Any notice of claim by the Company against an employee shall be sent to the employee's last address of record.

The written notice shall identify and describe the nature of all claims asserted and the facts upon which the claims are based and the relief or remedy sought. The notice shall be sent to the other party by certified or registered mail, return receipt requested or by personal delivery to a designated Human Resources representative or the employee.

Representation

Any party may be represented at arbitration by an attorney or other representative selected by the party, provided however, that no current or former supervisory or managerial employee of the Company shall represent another employee.

Discovery

Each party shall have the right to take the deposition of one individual and any expert witness designated by another party. Each party also shall have the right to make requests for production of documents to any party and to subpoena documents from third parties. Requests for additional discovery may be made by mutual agreement or to the Arbitrator selected pursuant to the Agreement. Unless additional discovery is agreed to by mutual agreement between the parties, the Arbitrator shall grant an order for the requested additional discovery that the Arbitrator finds the party requires to adequately arbitrate a claim, taking into account the parties' mutual desire to have a fact, cost-effective dispute resolution mechanism.

Designation of Witnesses

At least thirty (30) days before the arbitration, the parties must exchange lists of witnesses, including any experts, and copies of all exhibits intended to be used at the arbitration.

Subpoenas

Each party shall have the right to subpoena witnesses and documents for the arbitration as well as documents relevant to the case from third parties.

Arbitration Process

The arbitration will be conducted either by the American Arbitration Association ("AAA"), the Judicial Arbitration & Mediation Services ("J•A•M•S") or as otherwise mutually agreed upon by the parties ("Tribunal").

The parties agree that, except as provided in the Arbitration Agreement, the arbitration shall be in accordance with the selected Tribunal's then-current employment arbitration rules/procedures. The Arbitrator shall be either a retired judge, or an attorney who is experienced in employment law and licensed to practice law in the state in which the arbitration is convened (the "Arbitrator"). The arbitration shall take place in or near the city in which employee is or was last employed by the Company. However, if the employee is or was last employed on a long or short term domestic or foreign assignment, the arbitration shall take place at the city in which the "home" employing organization is located.

The Arbitrator shall be selected as follows. If the parties cannot agree on an arbitrator, the selected Tribunal shall give each party a list of seven (7) arbitrators drawn from its panel of employment dispute arbitrators. Each party shall have ten (10) calendar days from receipt of the list to strike all names on the list it deems unacceptable. If only one common name remains on the lists of all parties, that individual shall be designated as the Arbitrator. If more than one common name remains on the lists of all parties, the parties shall strike names alternately from one list of common names until only one remains. The party who did not initiate the claim shall strike first. If no common name exists on

the lists of all parties, the selected Tribunal shall furnish an additional list of seven (7) arbitrators from which the parties shall strike alternately, with the party initiating the claim striking first, until only one name remains. That person shall be designated as the Arbitrator.

The Arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state in which the claim arose, or federal law, or both, as applicable to the claim(s) asserted. The Arbitrator is without jurisdiction to apply any different substantive law or law of remedies. The Federal Rules of Evidence shall apply. The Arbitrator shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of the Arbitration Agreement, including but not limited to any claim that all or any part of the Arbitration Agreement is void or voidable. The arbitration shall be final and binding upon the parties, except as provided herein.

The Arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by telephone or in person, as the Arbitrator deems advisable. The Arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure.

Either party, at its expense, may arrange for and pay the cost of a court reporter to provide a stenographic record of proceedings.

Should any party refuse or neglect to appear for, or participate in, the arbitration hearing, the Arbitrator shall have the authority to decide the dispute based upon whatever evidence is presented.

Either party, upon request at the close of hearing, shall be given leave to file a post-hearing brief. The time for filing such a brief shall be set by the Arbitrator.

The Arbitrator shall render an award and written opinion in the form typically rendered in labor arbitrations no later than thirty (30) days from the date of the arbitration hearing concludes or the post-hearing briefs (if requested) are received, whichever is later. The opinion shall include the factual and legal basis for the award.

Either party shall have the right, within twenty (20) days of issuance of the Arbitrator's opinion, to file with the Arbitrator a motion to reconsider (accompanied by a supporting brief), and the other party shall have twenty (20) days from the date of the motion to respond. The Arbitrator thereupon shall reconsider the issues raised by the motion and, promptly, either confirm or change the decision, with (except as provided herein) shall then be final and conclusive upon the parties.

Judicial Review

Either Party may bring an action in any court of competent jurisdiction to compel arbitration under the Arbitration Agreement, to enforce an arbitration award and/or to vacate an arbitration award. In actions seeking to vacate an award, the standard of review to be applied to the arbitrator's findings of fact and conclusions of law will be the same as that applied by an appellate court reviewing a decision of a trial court sitting without a jury.

Arbitration Fees and Costs

The Company will be responsible for paying any filing fee and the fees and costs of the Arbitrator; provided however, if the employee is the party initiating the claim, the employee shall pay the costs of his/her own filing fees and costs which are normally incurred by a plaintiff in a civil action (e.g., filing fees, subpoena fees, jury fees, deposition costs, and transcript services. Each party shall pay for its own costs and attorneys' fees, if any. However, if any party prevails on a statutory claim which affords the prevailing party attorneys' fees and costs, or if there is a written agreement providing for attorneys' fees and/or costs, the Arbitrator may award reasonable attorneys' fees and/or costs to the prevailing party, applying the same standards a court would apply under the law applicable to the claim(s).