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11
12 Attorneys for Defendants
CEVA LOGISTICS U.S., INC., CEVA FREIGHT
13 MANAGEMENT INTERNATIONAL GROUP,
INC., CEVA FREIGHT, LLC, and EGL EAGLE
14 GLOBAL LOGISTICS, LP

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 LONNIE R. SMITH, individually, and
18 on behalf of others similarly situated,

19 Plaintiffs,

20 v.

21 CEVA LOGISTICS U.S., INC.; a
Delaware corporation; CEVA
22 FREIGHT MANAGEMENT
INTERNATIONAL GROUP, INC., a
23 Delaware corporation; CEVA
FREIGHT, LLC, a Delaware limited
24 liability company; EGL EAGLE
GLOBAL LOGISTICS, LP, a
25 Delaware limited partnership; and
DOES 1 through 200, inclusive,

26 Defendants.
27
28

Case No. CV09-4957 CAS (RCx)

ASSIGNED FOR ALL PURPOSES TO
JUDGE CHRISTINA A. SNYDER

**DEFENDANTS' ANSWER TO
PLAINTIFF'S UNVERIFIED
COMPLAINT**

Complaint Filed: June 3, 2009
Complaint Removed: July 10, 2009

1 COME NOW Defendants CEVA LOGISTICS U.S., INC., CEVA
2 FREIGHT MANAGEMENT INTERNATIONAL GROUP, INC., CEVA FREIGHT,
3 LLC, and EGL EAGLE GLOBAL LOGISTICS, LP (collectively “Defendants”), to
4 answer to the Complaint (“Complaint”) of Plaintiff LONNIE R. SMITH (“Plaintiff”)
5 as follows:

6 **INTRODUCTION**

7 1. In response to paragraph one of the Complaint, Defendants allege that no
8 answer is required as it consists of legal argument and/or assertions. To the extent that
9 an answer is required, Defendants deny the allegations contained therein, and allege
10 that this case is not suitable for class treatment.

11 2. In response to paragraph two of the Complaint, Defendants admit the
12 allegations contained therein.

13 3. In response to paragraph three of the Complaint, Defendants deny the
14 allegations contained therein, and allege that Plaintiff, and the putative class, are not
15 entitled to any damages whatsoever as a result of any act or omission by Defendants.

16 4. In response to paragraph four of the Complaint, Defendants deny the
17 allegations contained therein.

18 **JURISDICTION AND VENUE**

19 5. In response to paragraph five of the Complaint, Defendants allege that no
20 answer is required as it consists of legal argument and/or assertions inapplicable to
21 this Court.

22 6. In response to paragraph six of the Complaint, Defendants admit the
23 jurisdiction of this Court.

24 7. In response to paragraph seven of the Complaint, Defendants admit this
25 action is properly venued.

26 8. In response to paragraph eight of the Complaint, Defendants admit that
27 the amount in controversy exceeds the jurisdictional minimum of this Court.
28

THE PARTIES

1
2 9. In response to paragraph nine of the Complaint, Defendants lack
3 knowledge or information sufficient to admit or deny the allegations contained
4 therein, with the exception that Defendant EGL Eagle Global logistics, LP, employed
5 Plaintiff.

6 10. In response to paragraph ten of the Complaint, Defendants admit that
7 they are Delaware entities and that they do business within the State of California.

8 11. In response to paragraph eleven of the Complaint, Defendants allege that
9 no answer is required as it consists of legal argument and/or assertions.

10 12. In response to paragraph twelve of the Complaint, Defendants deny the
11 allegations contained therein.

12 13. In response to paragraph thirteen of the Complaint, Defendants deny the
13 allegations contained therein.

14 **CLASS ACTION ALLEGATIONS – FREIGHT FORWARDER CLASSES**

15 14. In response to paragraph fourteen of the Complaint, Defendants allege
16 that no answer is required as it consists of legal argument and/or assertions. To the
17 extent that an answer is required, Defendants deny the allegations contained therein,
18 and allege that this case is not suitable for class treatment.

19 15. In response to paragraph fifteen of the Complaint, Defendants deny the
20 allegations contained therein, with the exception that Defendants admit that EGL
21 Eagle Global Logistics, LP, and CEVA Freight, LLC have employed individuals in
22 California engaged in various aspects of the freight forwarding business during the
23 relevant time period.

24 16. In response to paragraph sixteen of the Complaint, Defendants deny the
25 allegations contained therein.

26 17. In response to paragraph seventeen of the Complaint, Defendants deny
27 the allegations contained therein.

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1 18. In response to paragraph eighteen of the Complaint, Defendants deny the
2 allegations contained therein.

3 19. In response to paragraph nineteen (and its subparagraphs) of the
4 Complaint, Defendants deny the allegations contained therein and that there are
5 questions of law and fact common to the class.

6 20. In response to paragraph twenty (and its subparagraphs) of the
7 Complaint, Defendants deny the allegations contained therein and that there are
8 questions of law and fact common to the class.

9 21. In response to paragraph twenty-one of the Complaint, Defendants deny
10 the allegations contained therein.

11 22. In response to paragraph twenty-two of the Complaint, Defendants deny
12 the allegations contained therein with the exception that, on information and belief,
13 the names and last known addresses of current and former employees are in the
14 possession of Defendants.

15 **FIRST CAUSE OF ACTION**

16 **(Failure To Pay Overtime Compensation In Violation of California Labor Code**
17 **Section 1194(a) On Behalf Of Plaintiff, The Class, And Sub-Class Against All**
18 **Defendants)**

19 23. In response to paragraph twenty-three of the Complaint, Defendants re-
20 allege and incorporate by reference each and every response to paragraphs 1 through
21 22 above, as though set forth in full herein.

22 24. In response to paragraph twenty-four of the Complaint, Defendants deny
23 the allegations contained therein, except that Defendants admit that Defendant EGL
24 Eagle Global Logistics, LP, and CEVA Freight, LLC have employed individuals in
25 California engaged in various aspects of the freight forwarding business during the
26 relevant time period. With regard to the portion of the paragraph that contains legal
27 argument and/or assertions, no answer is required.

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1 25. In response to paragraph twenty-five of the Complaint, Defendants deny
2 the allegations contained therein. With regard to the portion of the paragraph that
3 contains legal argument and/or assertions, no answer is required.

4 26. In response to paragraph twenty-six of the Complaint, Defendants deny
5 the allegations contained therein

6 27. In response to paragraph twenty-seven of the Complaint, Defendants
7 deny the allegations contained therein.

8 28. In response to paragraph twenty-eight of the Complaint, Defendants
9 deny the allegations contained therein.

10 29. In response to paragraph twenty-nine of the Complaint, Defendants deny
11 the allegations contained therein. In response to the portions of the paragraph that
12 consist of legal argument and/or assertions, no answer is required.

13 30. In response to paragraph thirty of the Complaint, Defendants deny the
14 allegations contained therein.

15 31. In response to paragraph thirty-one of the Complaint, Defendants deny
16 the allegations contained therein.

17 **SECOND CAUSE OF ACTION**

18 **(Failure To Provide Accurate Itemized Statements In Violation of California**
19 **Labor Code Section 226 On Behalf Of Plaintiff Classes Against All Defendants)**

20 32. In response to paragraph thirty-two of the Complaint, Defendants re-
21 allege and incorporate by reference each and every response to paragraphs 1 through
22 31 above, as though set forth in full herein.

23 33. In response to paragraph thirty-three of the Complaint, Defendants
24 allege that no answer is required as it consists of legal argument and/or assertions.

25 34. In response to paragraph thirty-four of the Complaint, Defendants allege
26 that no answer is required as it consists of legal argument and/or assertions.

27 35. In response to paragraph thirty-five of the Complaint, Defendants deny
28 the allegations contained therein.

1 36. In response to paragraph thirty-six of the Complaint, Defendants deny
2 the allegations contained therein.

3 **THIRD CAUSE OF ACTION**

4 **(Failure To Provide Meal And Rest Periods In Violation of California Labor**
5 **Code Section 226.7 On Behalf Of The Plaintiff Classes Against, All Defendants)**

6 37. In response to paragraph thirty-seven of the Complaint, Defendants re-
7 allege and incorporate by reference each and every response to paragraphs 1 through
8 36 above, as though set forth in full herein.

9 38. In response to paragraph thirty-eight of the Complaint, Defendants deny
10 the allegations contained therein.

11 39. In response to paragraph thirty-nine of the Complaint, Defendants deny
12 the allegations contained therein.

13 40. In response to paragraph forty of the Complaint, Defendants deny the
14 allegations contained therein. In response to the portions of the paragraph that consist
15 of legal argument and/or assertions, no answer is required.

16 41. In response to paragraph forty-one of the Complaint, Defendants deny
17 the allegations contained therein.

18 42. In response to paragraph forty-two of the Complaint, Defendants deny
19 the allegations contained therein.

20 **FOURTH CAUSE OF ACTION**

21 **(Unlawful And Unfair Business Practice In Violation Of The UCL On Behalf Of**
22 **The Plaintiff Classes And Against All Defendants)**

23 43. In response to paragraph forty-three of the Complaint, Defendants re-
24 allege and incorporate by reference each and every response to paragraphs 1 through
25 42 above, as though set forth in full herein.

26 44. In response to paragraph forty-four of the Complaint (and its
27 subparagraphs), Defendants deny the allegations contained therein.

1 45. In response to paragraph forty-five of the Complaint, Defendants deny
2 the allegations contained therein.

3 46. In response to paragraph forty-six of the Complaint, Defendants deny the
4 allegations contained therein with the exception that, on information and belief, the
5 names and last known addresses of current and former employees are in the
6 possession of Defendants.

7 47. In response to paragraph forty-seven of the Complaint, (and its
8 subparagraphs), Defendants deny the allegations contained therein.

9 48. Defendants deny each and every allegation in the Complaint not
10 specifically admitted herein as true.

11 49. Defendants deny Plaintiff's prayer for relief, and all relief sought
12 therein.

13 **AFFIRMATIVE DEFENSES**

14 **FIRST AFFIRMATIVE DEFENSE**

15 (Failure To State Sufficient Facts)

16 1. As separate and affirmative defense to the Complaint and each purported
17 cause of action therein, Defendants allege that the Complaint fails to state sufficient
18 facts to constitute a cause of action.

19 **SECOND AFFIRMATIVE DEFENSE**

20 (Statute Of Limitations)

21 2. As a separate and affirmative defense to Plaintiff's Complaint,
22 Defendants allege that Plaintiff's claims are barred by the applicable statutes of
23 limitations under California Labor Code section 200, *et seq.*, California Code of Civil
24 Procedure sections 338, 340(a), and/or 340(b), and California Business and
25 Professions Code section 17208.

26 **THIRD AFFIRMATIVE DEFENSE**

27 (Waiver)

28 3. As a separate and affirmative defense to Plaintiff's Complaint,

1 Defendants are informed and believe that further investigation and discovery will
2 reveal, and on that basis allege, that the Complaint and each cause of action therein
3 are barred by the equitable doctrine of waiver as a result of Plaintiff's failure to
4 complain to Defendants of any alleged misconduct. Defendants will amend their
5 answer to assert further facts in support of this affirmative defense as they become
6 known.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 (Estoppel)

9 4. As a separate and affirmative defense to Plaintiff's Complaint,
10 Defendants are informed and believe that further investigation and discovery will
11 reveal, and on that basis allege, that the Complaint is barred by the equitable doctrine
12 of estoppel as Plaintiff agreed to the payment structure when accepting his position
13 with Defendants. Defendants will amend their answer to assert further facts in support
14 of this affirmative defense as they become known.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 (Laches)

17 5. As a separate and affirmative defense to Plaintiff's Complaint,
18 Defendants are informed and believe that further investigation and discovery will
19 reveal, and on that basis allege, that the Complaint is barred by the equitable doctrine
20 of laches because Plaintiff failed to make any complaint of this type during his
21 employment with Defendants. Defendants will amend their answer to assert further
22 facts in support of this affirmative defense as they become known.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 (Unclean Hands)

25 6. As a separate and affirmative defense to Plaintiff's Complaint,
26 Defendants are informed and believe that further investigation and discovery will
27 reveal, and on that basis allege, that the Complaint is barred by the equitable doctrine
28 of unclean hands. Defendants will amend their answer to assert further facts in

1 support of this affirmative defense as they become known.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 (Lack Of Standing – Failure To Adequately Represent)

4 7. As a separate and affirmative defense to Plaintiff’s Complaint,
5 Defendants allege that the Complaint and each cause of action set forth therein are
6 barred pursuant to Proposition 64, i.e. that Plaintiff lacks standing as a representative
7 of the proposed class and as a representative of the group of allegedly similarly
8 situated individuals he seeks to represent, and he does not adequately represent the
9 putative class members or other current and/or former employees of Defendants.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 (Lack Of Standing - Failure To Exhaust Remedies)

12 8 As a separate and affirmative defense to Plaintiff’s Complaint, Defendant
13 alleges that Plaintiff lacks standing to bring this action for, and the court lacks
14 jurisdiction to award, certain of the penalties sought in the Complaint, as such
15 penalties may only be imposed in a proceeding brought by the California Labor
16 Commissioner.

17 **NINTH AFFIRMATIVE DEFENSE**

18 (Claims Discharged)

19 9. As a separate and affirmative defense to Plaintiff’s Complaint, the
20 Complaint and each purported cause of action therein are barred because all or a
21 portion of the wages, overtime premiums, interest, attorneys’ fees, and/or penalties or
22 other relief sought by Plaintiff on his own behalf and/or on behalf of the putative class
23 members were, or will be before the conclusion of this action, paid or collected and,
24 therefore, Plaintiff’s claims and/or the claims of the putative class members have been
25 partially or completely discharged.

26 **TENTH AFFIRMATIVE DEFENSE**

27 (Adequate Remedy At Law)

28 10. As a separate and affirmative defense to Plaintiff’s Complaint and the

1 purported claims for injunctive and other equitable relief contained therein,
2 Defendants allege that such claims are barred because Plaintiff and the putative class
3 members and allegedly similarly situated persons he seeks to represent have an
4 adequate remedy at law.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 (Procedural Due Process)

7 11. As a separate and affirmative defense to Plaintiff's Complaint,
8 Defendants allege that Plaintiff's Complaint, each purported cause of action therein,
9 and all relief sought therein, or some of them, are barred because the certification of a
10 class, as applied to the facts and circumstances of this case, would constitute a denial
11 of Defendants' due process rights and to a trial by jury, both substantive and
12 procedural, in violation of the Due Process and Equal Protection clauses of the
13 Fourteenth Amendment of the United States Constitution and the Due Process and
14 Equal Protection clauses of Article I, Section 7 of the California Constitution. *State*
15 *Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408 (2003) or
16 *People ex. rel. Lockyer v. R.J. Reynolds*, 37 Cal. 4th 707 (2005).

17 **TWELFTH AFFIRMATIVE DEFENSE**

18 (Substantive Due Process)

19 12. As a separate and affirmative defense to Plaintiff's Complaint,
20 Defendants are informed and believe that further investigation and discovery will
21 reveal, and on that basis allege, that Business and Professions Code sections 17200, *et*
22 *seq.*, are unconstitutionally vague and overbroad, as applied to the facts and
23 circumstances of this case, and Plaintiff's Complaint is barred because the prosecution
24 of this action by Plaintiff as a representative of persons allegedly similarly situated or
25 of the general public would constitute a denial of Defendants' due process rights, both
26 substantive and procedural, in violation of the Fourteenth Amendment of the United
27 States Constitution and the Constitution and laws of the State of California. That
28 violation is both procedural, by imposing a procedure that would render it impossible

1 for defendant to defend its interests and property, and substantive, by imposing
2 remedies constitutionally disproportionate to the wrongs committed. *People ex rel*
3 *Lockyer v. R.J. Reynolds Tobacco Company*, 37 Cal. 4th 707 (2005).

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 (Bona Fide Dispute)

6 13. As a separate and affirmative defense to the Complaint and Plaintiff's
7 claim for penalties against Defendants, Defendants allege that such claims are barred
8 because there is a bona fide dispute as to whether further compensation is actually due
9 to the Plaintiff and the putative class or persons allegedly similarly situated that he
10 seeks to represent and, if such compensation is due, as to the amount of such further
11 compensation.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 (No Private Right Of Action)

14 14. As a separate and distinct affirmative defense to Plaintiff's Complaint,
15 Defendants allege that Plaintiff's claims under California Labor Code section 200, *et*
16 *seq.*, are barred, in whole or in part, because there is no private right of action under
17 such sections.

18 **FIFTEENTH AFFIRMATIVE DEFENSE**

19 (Good Faith Under L.C. § 203)

20 15. As a separate and distinct affirmative defense to Plaintiff's Complaint,
21 Defendants allege that the Complaint fails to state a claim for penalties under the
22 California Labor Code in that (1) there was and is a bona fide, good faith dispute as to
23 Defendants' obligations under any applicable Labor Code provisions, including
24 without limitation Labor Code section 203; and (2) Defendants did not willfully
25 violate Labor Code section 203. Moreover, Defendants are informed and believe that
26 further investigation and discovery will reveal, and on that basis allege, that any
27 violation of the Labor Code or an Order of the Industrial Welfare Commission was an
28 act or omission made in good faith, and Defendants had reasonable grounds for

1 believing that their wage payment practices complied with applicable laws and that
2 any act or omission was not a violation of the Labor Code or any Order of the
3 Industrial Welfare Commission so that Plaintiff is not entitled to any damages in
4 excess of any wages/overtime which might be found to be due.

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 (Excessive Fines)

7 16. As a separate and distinct affirmative defense to Plaintiff's Complaint,
8 Defendants allege that, as applied in this putative class action, employment of civil
9 penalties and/or punitive damages would result in the imposition of excessive fines in
10 violation of Article I, section 17 of the California Constitution and the Eighth
11 Amendment to the United States Constitution, as made applicable to the states under
12 the Fourteenth Amendment to the United States Constitution. *See People ex rel*
13 *Lockyer v. R.J. Reynolds Tobacco Company*, 37 Cal. 4th 707 (2005).

14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 (Other Remedies Barred)

16 17. As a separate and distinct affirmative defense to Plaintiff's Complaint,
17 Defendants allege that Plaintiff and the purported class have failed to state a claim for
18 an award of liquidated damages, costs or attorneys' fees under Labor Code sections
19 218.5, 226, 1194 and 1194.2(a), Code of Civil Procedure section 1021.5, California
20 Business and Professions Code section 17200, *et seq.*, or any other basis.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 (IWC Orders Unconstitutional)

23 18. As a separate and distinct affirmative defense to Plaintiff's Complaint,
24 Defendants allege that the Complaint and each cause of action therein, or some of
25 them, are barred because the applicable wage orders of the Industrial Welfare
26 Commission are unconstitutionally vague and ambiguous and violate Defendants'
27 rights under the United States Constitution and the California Constitution as to,
28 among other things, due process of law.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 (Actions Outside The Scope Of Authority)

3 19. As a separate and distinct affirmative defense to Plaintiff's Complaint,
4 Defendants allege that Plaintiff's claims cannot be maintained against Defendants
5 because if employees of Defendants or any of their subsidiaries (including Plaintiff)
6 took the actions alleged, such actions were committed outside the course and scope of
7 such employees' employment, were not authorized, adopted or ratified by Defendants
8 or their subsidiaries, and/or Defendants and their subsidiaries did not know of nor
9 should they have known of such conduct.

10 **TWENTIETH AFFIRMATIVE DEFENSE**

11 (Remedies For Discontinued Actions)

12 20. As a separate and distinct affirmative defense to Plaintiff's Complaint,
13 Defendant alleges that restitution and injunctive relief are barred with respect to any
14 and all alleged violations of Business and Professions Code section 17200, *et seq.*,
15 that have discontinued, ceased, and are not likely to recur.

16 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

17 (No Right To Injunctive Relief)

18 21. As a separate and distinct affirmative defense to Plaintiff's Complaint,
19 Defendants allege that the Complaint fails to state a claim for injunctive relief.

20 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

21 (Waiver of Meal and Rest Periods)

22 22. As a separate and distinct affirmative defense to Plaintiff's Complaint,
23 Defendants allege that Plaintiff and the putative class and persons allegedly similarly
24 situated that he seeks to represent waived their right to some or all of the meal or rest
25 breaks either (a) by failing to take breaks that were provided to them as required by
26 law, (b) choosing not to take rest breaks that were authorized and permitted, or by
27 waiving the right to take meal breaks or (c) waiving the breaks under California
28 Labor Code section 512(a).

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Prejudgment Interest)

23. As a separate and distinct affirmative defense to Plaintiff’s Complaint, Defendants allege that Plaintiff’s Complaint fails to state a claim upon which prejudgment interest may be granted, as the damages claimed are not sufficiently certain to allow an award of prejudgment interest.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Criminal Penalty)

24. As a separate and affirmative defense to Plaintiff’s Complaint, Defendants allege that Plaintiff is not entitled to recover any punitive damages because such damages are so punitive in purpose and effect as to constitute a criminal penalty, entitling Defendants to rights to be given to defendants in criminal proceedings under the United States Constitution and the California Constitution. All procedures and application of California and federal law in this action that deny Defendants such rights including, but not limited to, a burden of proof beyond a reasonable doubt and the right against self-incrimination, violate Defendants’ rights under such Constitutional provisions.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Due Process/Equal Protection Violation)

25. As a separate and affirmative defense to Plaintiff’s Complaint, Defendants allege that Plaintiff is not entitled to recover any punitive damages because the provisions of California law allowing for the award of punitive damages and the substantive rules, procedures and standards for determining whether or not to award them and, if so, in what amount, violate Defendants’ rights to due process and/or equal protection under the law, under the United States and/or California Constitutions.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Due Process/Equal Protection Violation)

26. As a separate and affirmative defense to Plaintiff's Complaint, Defendants allege that Plaintiff's Complaint, to the extent it seeks punitive or exemplary damages pursuant to section 3294 of the California Civil Code, violates Defendants' rights to procedural due process under the Fourteenth Amendment to the United States Constitution and the Constitution of the State of California and, therefore, fails to state a cause of action upon which either punitive or exemplary damages can be awarded.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Due Process/Equal Protection Violation)

27. As a separate and affirmative defense to Plaintiff's Complaint, Defendants allege that Plaintiff waived any right to punitive damages on the grounds that (a) the wage and hour claims at issue did not exist at common law, and the California Labor Code currently provides a comprehensive and detailed remedial scheme for their enforcement pursuant to the "new right-exclusive remedy rule"; and (b) any purported right to punitive damages was waived by and through Plaintiff's pursuit of statutory and civil penalties.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Wage Orders Unconstitutionally Vague)

28. As a separate and affirmative defense to Plaintiff's Complaint, Defendants allege that the Complaint and each cause of action therein, or some of them, are barred because the applicable wage orders of the Industrial Welfare Commission are unconstitutionally vague and ambiguous and violate Defendants' rights under the United States Constitution and the California Constitution as to, among other things, due process of law.

1 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

2 (Accord and Satisfaction)

3 29. As a separate and affirmative defense to Plaintiff's Complaint,
4 Defendants allege that the Complaint and each cause of action therein, or some of
5 them, are barred by the doctrine of accord and satisfaction and/or release.

6 **THIRTIETH AFFIRMATIVE DEFENSE**

7 (Defendants Did Not Employ Plaintiff(s))

8 30. As a separate and affirmative defense to Plaintiff's Complaint,
9 Defendants allege that the Complaint and each cause of action therein, or some of
10 them, are barred because Defendants, or some of them, did not employ either Plaintiff
11 nor any members of the putative class whom Plaintiff seeks to represent.

12 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

13 (Exemption)

14 31. As a separate and affirmative defense to Plaintiff's Complaint,
15 Defendants allege that Plaintiff and some or all of the members of the putative class
16 were exempt from the overtime provisions of California law.

17 **ADDITIONAL AFFIRMATIVE DEFENSE**

18 (Reservation of Rights)

19 32. Defendants do not presently know all facts respecting the conduct of
20 Plaintiff and the putative class members sufficient to state all affirmative defenses at
21 this time. Defendants reserve the right to amend this Answer should it later discover
22 facts demonstrating the existence of additional affirmative defenses.

23 WHEREFORE, Defendants pray that:

- 24 1. Plaintiff's Complaint be dismissed in its entirety with prejudice;
25 2. Plaintiff take nothing by this action;
26 3. Defendants be awarded their costs of suit and attorneys' fees
27 incurred herein; and
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4. Defendants be awarded such other and further relief as the Court deems just and proper.

Dated: July 17, 2009

/s/

JULIE DUNNE
DOMINIC J. MESSIHA
AMIR NAYEBDADASH
LITTLER MENDELSON
A Professional Corporation
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CEVA LOGISTICS U.S., INC., CEVA
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INTERNATIONAL GROUP, INC.,
CEVA FREIGHT, LLC, and EGL
EAGLE GLOBAL LOGISTICS, LP