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Attorney for Plaintiffs
 DORIS HEMSLEY; ALICE WOODS; ALLEN WOODS; GEORGIA FROST;
 PAULETTE FROST; ROSE MARIE USHER; ORLANDO USHER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN BERNARDINO**

DORIS HEMSLEY, an individual; ALICE WOODS, an individual; ALLEN WOODS, an individual; GEORGIA FROST, an individual; PAULETTE FROST, an individual; ROSE MARIE USHER, an individual; ORLANDO USHER, an individual,

Plaintiffs,

vs.

COLUMBUS DAVIS, JR, an individual; JOSE ARTURO ARGUETA-CERANO, an individual; GOLD & SILVER CHARTER BUS COMPANY; GOLD & SILVER TRAVEL, INC.; HEBARAGI AND LEMI BUS, INC.; JEAN DEVELOPMENT COMPANY dba GOLD STRIKE HOTEL AND GAMBLING HALL; ELSINORE DEVELOPMENT CO. dba NEVADA LANDING HOTEL & CASINO; DINA AUTOBUS, business form unknown; FUTERO ELECTRONICS, business form unknown; MOTOR COACH INDUSTRIES INTERNATIONAL, INC., a foreign corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO. BCVBS08259
[Related to Case No. BCVBS08246]

***Assigned for All Purposes to:
 Honorable Christopher J. Warner
 Department S2***

NOTICE OF MOTION AND MOTION FOR ELECTRONIC SERVICE OF DOCUMENTS; MEMORANDUM OF POINTS & AUTHORITIES; DECLARATION OF JAMES R. GILLEN, ESQ.; DECLARATION OF BARBARA SHARP; [PROPOSED] ORDER

[Ca. Rules of Court, Rules 2053]

Hearing:

Reserved:
 Date: April 19, 2005
 Time: 8:30 a.m.
 Place: Department S2

Complaint Filed: March 9, 2004

AND RELATED CROSS-ACTIONS))	Discovery Cut-Off:	None.
))	Motion Cut-Off:	None.
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TO THE PARTIES AND THE HONORABLE COURT:

NOTICE IS HEREBY GIVEN that on April 19, 2005, at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department S2, of this Court, located at 351 N. Arrowhead Avenue, San Bernardino, CA 92415, Plaintiff Doris Hemsley (“Plaintiff”) will and hereby does move the Court for an Order Authorizing Electronic Service. The Motion will be brought pursuant to *Ca. Rules of Court*, Rules 2053, and will be made on the grounds that there will be no undue hardship or prejudice to any party, and because the interests of justice will be served with the parties being able to conserve resources via electronic service. This is due to the quantity of parties involved in the herein action, the voluminous amount of discovery and anticipated pleadings, and the excessive cost to the parties to serve said documents.

This Motion will be based on this Notice, on the Declaration of James R. Gillen, Esq., the Declaration of Barbara Sharp, the Memorandum of Points and Authorities served and filed herewith, and on such further and additional evidence as may be presented at the hearing of this Motion.

DATED: March 17, 2005

JAMES R. GILLEN
Attorney at Law

By _____
James R. Gillen, Esq.
Attorney for Plaintiffs
DORIS HEMSLEY; ALICE WOODS;
ALLEN WOODS; GEORGIA FROST;
PAULETTE FROST; ROSE MARIE
USHER; ORLANDO USHER

MEMORANDUM OF POINTS & AUTHORITIES

I.

INTRODUCTION

At present, the herein case, *Hemsley v. Davis, et al.*, has seven (7) Plaintiffs and at least eleven (11) Defendants, plus two (2) Cross-Defendants, as well as the related Cross Actions¹. Furthermore, *Hemsley* has been related with *Ngo Hu So v. Jose Arturo Argueta-Cerna, et al.* [Case No. BCVBS08246], and *So* has an additional two (2) plaintiffs and four (4) defendants, plus additional Cross Actions². [Notice of Order Regarding Related Cases, a true and correct copy of which is attached as **Exhibit 1** to Declaration of James R. Gillen, Esq., dated March 15, 2005, which is attached hereto and incorporated herein by reference.] Due to the numerous parties involved in these actions, as well as at least twenty-one (21) other cases all emanating from the accident of March 9, 2003; the voluminous amount of discovery between the parties related to the core issues of agency and product/design defect; and the amount of pleadings and discovery documents, including deposition notices, that must be produced between the parties (and in many instances, the non-related cases, as well), Plaintiffs herein request an Order Authorizing Electronic Service.

Plaintiffs have experienced that each time pleadings or discovery must be served upon the parties in the herein action alone, the cost to these faultless Plaintiffs is in excess of Three Hundred and 00/100 Dollars (\$300.00). [Declaration of James R. Gillen, at p. 2 ¶5.] In fact, to date, Plaintiffs have incurred well in excess of Five Thousand and 00/100 Dollars (\$5,000.00) in service costs alone, which

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Cross Complaints filed by: 1) Jose Arturo Argueta-Cerna, Hebaragi & Lemi Bus, Inc.; 2) Joseph Arthur Rodriguez, Victoria Rodriguez; and 3) Jean Development Company.

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Cross Complaints filed by: 1) Jose Arturo Argueta-Cerna, Hebaragi & Lemi Bus, Inc.; 2) Joseph Arthur Rodriguez, Victoria Rodriguez; and 3) Jean Development Company.

include copy charges, staff time and postage. *Id.* This is an undue hardship to said Plaintiffs, which hardship the Court has the power to undo. Furthermore, granting of an Order Authorizing Electronic Service will not cause an undue hardship or prejudice of any kind upon *any* party herein whatsoever.

II.

PURSUANT TO CALIFORNIA RULES OF COURT, RULE 2053, THE COURT HAS THE AUTHORITY TO ORDER PARTIES TO FILE AND SERVE ALL DOCUMENTS ELECTRONICALLY.

California Rules of Court, Rule 2053, provides as follows:

(a) [Court order] A court may, on the motion of any party or on its own motion, order all parties to file and serve all documents electronically in any class action, a consolidated action, or a **group of actions**, a coordinated action, or an action that is deemed complex under rule 1812, after finding that such an order would not cause undue hardship or significant prejudice to any party. The court's order may also provide that:

(1) Documents previously filed in paper form may be resubmitted in electronic form; and

(2) When the court sends confirmation of filing to all parties,

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As mentioned above, the herein case (*Hemsley*), with its Cross Actions, has been related with *Ngo Hu So v. Jose Arturo Argueta-Cerna, et al.* [Case No. BCVBS 08246], and its Cross Actions, and all have been transferred from Los Angeles County, where they were originally filed, to San Bernardino County. As such, this group of at least eight (8) total actions represents a “group of actions” within the meaning of *California Rules of Court*, Rule 2053. Hence, this Court is authorized to hear Plaintiff’s Motion and thereafter order all parties to serve (and file, if the Court so chooses) their documents electronically.

III.

THE COURT’S ORDER AUTHORIZING ELECTRONIC SERVICE WOULD NOT CAUSE UNDUE HARDSHIP OR SIGNIFICANT PREJUDICE TO ANY PARTY, AND AS SUCH, SHOULD BE GRANTED.

Plaintiffs have experienced that each time pleadings or discovery must be served upon the parties in the herein action alone, the cost to these faultless Plaintiffs is in excess of Three Hundred and 00/100 Dollars (\$300.00). [Declaration of James R. Gillen, Esq., at p. 2 ¶5.] In fact, to date, Plaintiffs have incurred well in excess of Five Thousand and 00/100 Dollars (\$5,000.00) in service costs alone, which include copy charges, staff time and postage. *Id.* This is an undue hardship to the herein Plaintiffs, who are, without question, entirely blameless in this matter. Furthermore, it cannot be shown by any of the herein parties that the granting of an Order Authorizing Electronic Service will cause an undue hardship or prejudice of any kind whatsoever. In fact, electronic service is specifically designed to alleviate cost and time pressures that result in a case of this complexity with numerous parties and actions. Specifically,

“electronic service” is the secure, online exchange of documents between legal counsel and provides more direct control not only over document delivery and associated costs, but also over the management of case documents and information. [Declaration of James R. Gillen, at p. 2 ¶6.] In fact, each time documents are exchanged electronically with other parties, an online case file is created in real time, providing secure, convenient access to documents, service lists, proofs of service, and other important case information that can be accessed by the parties at any time. *Id.* Hence, this service cannot, in any way, be said to create a hardship of any kind – quite the contrary.

Plaintiffs have researched this service and found the LexisNexis “File & Serve” program to be ideal for the herein case, related case and Cross Actions. Several of the benefits of this service are highlighted as follows:

1. Parties’ direct costs are significantly reduced – i.e., paper, toner, copier maintenance or service charges, postage, attorney service/messenger fees;
2. Parties’ indirect costs are significantly reduced – i.e., staff time and attorney time;
3. Documents are delivered in seconds;
4. Proofs of service can be accessed online;
5. Service lists can be better streamlined and managed;
6. Case files and paperwork can be better streamlined and managed;
7. Documents can be searched and retrieved online;
8. Automatic alerts regarding case activity are received online. *Id.* at pp. 2-3 ¶7..

Furthermore, LexisNexis will assist all parties with implementation, and will promptly set-

up the case upon delivery of the service list. *Id.* at p. 3 ¶8. This information is supplied in further detail by LexisNexis, and in support of the herein Motion, Plaintiffs hereby provide for the Court and the herein parties, the LexisNexis “File & Serve” folder and articles for their further review. [LexisNexis “File & Serve” folder, Questions & Answers and “At Your E-Service” article, true and correct copies of which are attached to Declaration of James R. Gillen, Esq., as **Exhibit 2**, attached hereto and incorporated herein by reference.] Upon even a cursory review of these materials, it is evident to counsel for the herein Plaintiffs that electronic service will vastly improve the delivery, security and costs in managing the herein actions.

Plaintiffs previously attempted to address this issue with the parties and have, in fact, obtained several signed Stipulations agreeing to participate in serving documents electronically. Specifically, the following parties have agreed to participate in electronic service of documents between counsel of record: HEBARAGI & LEMI BUS, INC.; JOSE ARTURO ARGUETA-CERNA; and FLAMINGO PARADISE GAMING, INC., who have since been dismissed from the case. [Stipulations, true and correct copies of which are attached as **Exhibit 3** to Declaration of James R. Gillen, Esq., and incorporated herein by reference.] Furthermore, on December 3, 2004, the issue had been broached with Defendant and Cross-Defendant, THE PEOPLE OF THE STATE OF CALIFORNIA, and it had no objection to participation (however, the STATE does not have the ability to pay the initial set-up fee). [Declaration of Barbara Sharp, dated March 15, 2005, p. 1 ¶3, a true and correct copy of which is attached hereto and incorporated herein by reference.] In addition, at that time, counsel for Cross-Defendant P.V. HOLDING CORPORATION/BUDGET RENT A CAR SYSTEMS, INC. stated they would “probably” sign a Stipulation to participate in electronic service; Cross-Defendants/Cross-Complainants, JOSEPH ARTHUR RODRIGUEZ and VICTORIA RODRIGUEZ indicated that “yes,” they would sign a Stipulation to participate in electronic service; and counsel for Plaintiffs NGO HU SO and NA LU in the related matter *Ngo Hu So v. Jose Arturo Argueta-Cerna, et al.* [Case No. BCVBS08246] said they were “interested” in signing a Stipulation to participate in electronic

service. *Id.* Counsel for Defendant MOTOR COACH INDUSTRIES INTERNATIONAL, INC.; Cross-Defendant, MOTOR COACH INDUSTRIES MEXICO, S.A. de C.V., f/k/a DINA AUTOBUSES, S.A. de C.V.; MCI SALES & SERVICE, INC. indicated that it was “too early” in the case to make a decision. *Id.* at pp. 1-2 ¶3.

Hence, even at that earlier stage of the herein litigation – prior to these cases being transferred to San Bernardino County – there was substantial interest on the part of a significant number of parties. Since, in fact, the majority of objections provided to Plaintiffs concerned waiting until after the *Hemsley* case was transferred to San Bernardino County [Declaration of Barbara Sharp at p.2 ¶3], which, of course, has now occurred, Plaintiffs consider the herein Motion to be not only beneficial to all, but timely, as well.

If the Court does not see fit to grant the herein Motion as to all parties, it is noteworthy that LexisNexis has the ability to allow parties to “opt out” until such time, if ever, as they desire to join the other parties utilizing electronic service. [Exhibit 2, and Declaration of Barbara Sharp, p. 2 ¶4.] In fact, for those parties desiring to utilize electronic service versus the old fashioned paper way, LexisNexis will not only e-serve program participants on the service list, but will *paper serve* via U. S. Mail those parties on the service list who have opted-out.³ [*Id.*] Thus, even the “Luddites” among us will be satisfied. (There is a one-time set up fee of Three Hundred and Fifty and 00/100 Dollars (\$350.00) to join the LexisNexis Electronic Service program. [Declaration of Barbara Sharp, p. 2 ¶5].)

Finally, as the Court is aware, the herein Motion has been filed simultaneously with Plaintiff Doris Hemsley’s Motion for Preferential Trial Setting. Because said Motion is extremely compelling

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LexisNexis charges to its program participants for U.S. Mail service to those parties “opting out” are as follows: a \$5.00 handling fee per document, which covers LexisNexis assembling costs; standard U.S. postage; and 6¢ per copy.

due to the poor health and advanced age of Ms. Hemsley, it is expected that her Motion will be granted. For this additional reason, granting of the Motion Authorizing Electronic Service is even more timely and provides needed support for all parties herein. Thus, it is difficult, indeed, to envision anything but a “win-win” scenario with a Court Order Authorizing Electronic Service.

IV.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court grant an Order Authorizing Electronic Service pursuant to *California Rules of Court*, Rules 2053. No undue hardship or prejudice will result to any party, and the interests of justice will be served with the parties’ ability to conserve resources via electronic service. The quantity of parties involved in the herein action, the ///

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voluminous amount of discovery and anticipated pleadings, and the excessive cost to the parties to serve said documents justifies such an Order.

DATED: March 17, 2005

JAMES R. GILLEN
Attorney at Law

By _____
James R. Gillen, Esq.
Attorney for Plaintiffs
DORIS HEMSLEY; ALICE WOODS;
ALLEN WOODS; GEORGIA
FROST;
PAULETTE FROST; ROSE MARIE
USHER; ORLANDO USHER

DECLARATION OF JAMES R. GILLEN, ESQ.

I, James R. Gillen, declare and state as follows:

1. I am an attorney licensed to practice before all courts of the State of California, and am counsel of record for Plaintiffs, DORIS HEMSLEY, ALICE WOODS, ALLEN WOODS, GEORGIA FROST, PAULETTE FROST, ROSE MARIE USHER, and ORLANDO USHER in the herein matter *Hemsley, et al. v. Davis, et al.* (San Bernardino Case No.: BCVBS 08259). I have personal knowledge of each of the facts set forth in this Declaration, and can testify competently thereto, except as to the matters stated on information and belief, and as to such matters I believe them to be true.
2. This Declaration is prepared in support of Plaintiffs' Notice of Motion and Motion for Electronic Service of Documents.
3. At present, the herein case, *Hemsley v. Davis, et al.*, has seven (7) Plaintiffs and at least eleven (11) Defendants, plus two (2) Cross-Defendants, as well as the related Cross Actions. (Cross Complaints filed by: 1) Jose Arturo Argueta-Cerna, Hebaragi & Lemi Bus, Inc.; 2) Joseph Arthur Rodriguez, Victoria Rodriguez; and 3) Jean Development Company.) Furthermore, Hemsley has been related with *Ngo Hu So v. Jose Arturo Argueta-Cerna, et al.* [Case No. BCVBS08246], and *So* has an additional two (2) plaintiffs and four (4) defendants, plus additional Cross Actions. (Cross Complaints filed by: 1) Jose Arturo Argueta-Cerna, Hebaragi & Lemi Bus, Inc.; 2) Joseph Arthur Rodriguez, Victoria Rodriguez; and 3) Jean Development Company.) [Notice of Order Regarding Related Cases, a true and correct copy of which is attached hereto as **Exhibit 1**, and incorporated herein by reference.] Due to the numerous parties involved in these actions, as well as at least twenty-one (21) other cases all emanating from the accident of March 9, 2003; the voluminous amount of discovery between the parties related to the core issues of agency and product/design defect; and the amount of pleadings and discovery documents, including deposition notices, that must be produced

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between the parties (and in many instances, the non-related cases, as well), Plaintiffs herein are requesting an Order Authorizing Electronic Service.

4. This group of at least eight (8) total actions represents a “group of actions” within the meaning of *California Rules of Court*, Rule 2053. Hence, this Court is authorized to hear Plaintiff’s Motion and thereafter order all parties to serve (and file, if the Court so chooses) their documents electronically.
5. As counsel for the herein Plaintiffs, it has been my experience that each time pleadings or discovery must be served upon the parties in the herein action alone, the cost to these faultless Plaintiffs is in excess of Three Hundred and 00/100 Dollars (\$300.00). In fact, to date, Plaintiffs have incurred well in excess of Five Thousand and 00/100 Dollars (\$5,000.00) in service costs alone, which include copy charges, staff time and postage. This is an undue hardship to the herein Plaintiffs, who are, without question, entirely blameless in this matter. Furthermore, it cannot be shown by any of the herein parties that the granting of an Order Authorizing Electronic Service will cause an undue hardship or prejudice of any kind whatsoever. In fact, electronic service is specifically designed to alleviate cost and time pressures that result in a case of this complexity with numerous parties and actions.
6. Upon consulting with Peter Buckley of LexisNexis, I have learned that “electronic service” is the secure, online exchange of documents between legal counsel and provides more direct control not only over document delivery and associated costs, but also over the management of case documents and information. Each time documents are exchanged electronically with other parties, an online case file is created in real time, providing secure, convenient access to documents, service lists, proofs of service, and other important case information that can be accessed by the parties at any time. Hence, this service cannot, in any way, be said to create a hardship of any kind – quite the contrary.
7. I have researched this service and found the LexisNexis “File & Serve” program to be ideal

for the herein case, related case and Cross Actions. Several of the benefits of this service are listed as follows:

- a. Parties' direct costs are significantly reduced – i.e., paper, toner, copier maintenance or service charges, postage, attorney service/messenger fees;
 - b. Parties' indirect costs are significantly reduced – i.e., staff time and attorney time;
 - c. Documents are delivered in seconds;
 - d. Proofs of service can be accessed online;
 - e. Service lists can be better streamlined and managed;
 - f. Case files and paperwork can be better streamlined and managed;
 - g. Documents can be searched and retrieved online;
 - h. Automatic alerts regarding case activity are received online.
8. Furthermore, Peter Buckley of LexisNexis has represented to me that they will assist all parties with implementation, and will promptly set-up the case upon delivery of the service list. This information has been supplied in further detail by LexisNexis, and in support of the herein Motion, I hereby provide for the Court and the herein parties, the LexisNexis "File & Serve" folder and articles for their further review. [LexisNexis "File & Serve" folder, Questions & Answers and "At Your E-Service" article, true and correct copies of which are attached hereto as **Exhibit 2**, and incorporated herein by reference.] Upon even a cursory review of these materials, it is evident to me that electronic service will vastly improve the delivery, security and costs in managing the herein actions.
9. Plaintiffs previously attempted to address this issue with the parties and have, in fact, obtained two (2) signed Stipulations agreeing to participate in serving documents electronically.

Specifically, the following parties have agreed to participate in electronic service of documents between counsel of record: HEBARAGI & LEMI BUS, INC.; JOSE ARTURO ARGUETA-CERNA; and FLAMINGO PARADISE GAMING, INC., who have since been dismissed from the case. [Stipulations, true and correct copies of which are attached hereto as **Exhibit 3**, and incorporated herein by reference.]

10. If the Court does not see fit to grant the herein Motion as to all parties, it is noteworthy that LexisNexis has the ability to allow parties to “opt out” until such time, if ever, as they desire to join the other parties utilizing electronic service. [**Exhibit 2.**] For those parties desiring to utilize electronic service versus the old fashioned paper way, LexisNexis will not only e-serve the service list, but paper serve those parties opting-out. [**Exhibit 2.**] It is therefore difficult to envision anything but a “win-win” scenario with the Court’s Order Authorizing Electronic Service.
11. Hence, no undue hardship or prejudice will result to any party, and the interests of justice will be served with the parties’ ability to conserve resources via electronic service. The quantity of parties involved in the herein action, the voluminous amount of discovery and anticipated pleadings, and the excessive cost to the parties to serve said documents justifies such an Order.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of March, 2005, at Marina del Rey, California.

James R. Gillen
Declarant

DECLARATION OF BARBARA SHARP

I, Barbara Sharp, declare and state as follows:

12. I am working with James R. Gillen, Esq. in the capacity of research attorney only (I am licensed to practice before all courts of the State of Ohio) on the matter *Hemsley, et al. v. Davis, et al.* (San Bernardino Case No.: BCVBS 08259). I have personal knowledge of each of the facts set forth in this Declaration, and can testify competently thereto, except as to the matters stated on information and belief, and as to such matters I believe them to be true.
13. This Declaration is prepared in support of Plaintiffs' Notice of Motion and Motion for Electronic Service of Documents.
14. In late November and early December 2004, I consulted with Peter Buckley of LexisNexis regarding electronic service of documents. Thereafter, I requested that Mr. Buckley contact counsel on the service list to explain the electronic service program and obtain counsel's position as to participation in the program, and thereafter report back to me regarding same. Regarding Defendant and Cross-Defendant, THE PEOPLE OF THE STATE OF CALIFORNIA, I was informed it had no objection to participation (however, the STATE does not have the ability to pay the initial set-up fee). As to Cross-Defendant P.V. HOLDING CORPORATION/BUDGET RENT A CAR SYSTEMS, INC. I was informed their reply was that they would "probably" sign a Stipulation to participate in electronic service. As to Cross-Defendants/Cross-Complainants, JOSEPH ARTHUR RODRIGUEZ and VICTORIA RODRIGUEZ, they indicated that "yes," they would sign a Stipulation to participate in electronic service. As to Plaintiffs NGO HU SO and NA LU in the related matter *Ngo Hu So v. Jose Arturo Argueta-Cerna, et al.* [Case No. BCVBS08246], they indicated that they were "interested" in signing a Stipulation to participate in electronic service. Counsel for Defendant MOTOR COACH INDUSTRIES INTERNATIONAL,

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INC.; Defendant/Cross-Defendant, MOTOR COACH INDUSTRIES MEXICO, S.A. de C.V., f/k/a DINA AUTOBUSES, S.A. de C.V.; and Defendant MCI SALES AND SERVICE, INC., indicated that it was “too early” in the case to make a decision. The majority of objections provided to me by Mr. Buckley concerned waiting until after the *Hemsley* case was transferred to San Bernardino County, which, of course, has occurred.

15. The LexisNexisElectronic Service program allows parties to “opt out” of Electronic Service. Thus, for program participants, LexisNexis will not only provide Electronic Service to all other parties engaged in the program, but will deliver documents via U.S. Mail service to those remaining parties who “opt out.” The LexisNexis charges for U.S. Mail service to its program participants are as follows: a \$5.00 handling fee per document, which covers LexisNexis assembling costs; standard U.S. postage; and 6¢ per copy.
16. There is a one-time set up fee of Three Hundred and Fifty and 00/100 Dollars (\$350.00) to join the LexisNexis Electronic Service program.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of March, 2005, at Marina del Rey, California.

Barbara Sharp

Declarant