

1 James R. Lynch (SBN 144694)
jlynch@gcrlegal.com
2 GARCIA CALDERON RUIZ, LLP
500 S. Grand Ave., Ste. 1100
3 Los Angeles, California 90071
Tel: (213) 347-0210
4 Fax: (213) 347-0216

5 Attorneys for Respondent
South Dakota Board of Regents,
6 South Dakota International Business Institute

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT FOR CALIFORNIA

10
11 Darley International, LLC, a Delaware
corporation,

12 Petitioner,

13 vs.

14 South Dakota Board of Regents, dba
15 South Dakota International Business
Institute,

16 Respondent.
17

CASE NO.: CV08-05034 DDP PLAx

**RESPONDENT'S NOTICE OF MOTION
AND MOTION TO VACATE ORDER
[FRCP Rule 60(b)]**

Date: April 13, 2009
Time: 10:00 a.m.
Ctrm.: 3
Judge: Hon. Dean D. Pregerson

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on April 13, 2009, at 10:00 a.m., in Courtroom 3 of this
3 Court, at 312 N. Spring Street, Los Angeles, California, the Board of Regents of South Dakota,
4 doing business as and specially appearing as Respondent South Dakota International Business
5 Institute, will move this Court for the following:

- 6 1) Pursuant to subdivisions (1), (3), (4), and (6) of subdivision (b) of Rule 60 of the
7 Federal Rules of Civil Procedure, for an Order relieving the Board of Regents of
8 South Dakota, acting by and through Respondent, from this Court's October 7,
9 2008, Order compelling Respondent to participate in and be subject to binding
10 arbitration between Petitioner Darley International, LLC, and Hanul Professional
11 Law Corporation.

12
13 This motion is based upon the ground that Respondent South Dakota International
14 Business Institute is a fully integrated office and function of the Board of Regents of South
15 Dakota and as such is an alter ego or arm of the State of South Dakota precluding diversity
16 jurisdiction on the basis of citizenship and entitled to the State's immunity from suit in federal
17 court; and that this Court therefore had and has no personal or subject matter jurisdiction over
18 Respondent, the Board of Regents, or the State of South Dakota; and that the Order issued by
19 this Court on October 7, 2008, was void for lack of jurisdiction to issue any Order to
20 Respondent.

21 This motion is further based on the ground that Petitioner failed to properly serve the
22 Board of Regents or the State of South Dakota with process in this action in accordance with the
23 Federal Rules of Civil Procedures and that, consequently, this Court lacked personal jurisdiction
24 over the Board of Regents and the State of South Dakota. Further, neither the Board of Regents
25 nor the State of South Dakota had actual notice of the above-captioned matter until January
26 2009. Joop Bollen and the South Dakota International Business Institute had no legal authority
27 to appear on behalf of the Board of Regents or the State of South Dakota, to accept service of
28 process on their behalf, to sue or be sued in SDIBI's name, or to otherwise respond to this action.

1 Austin Su Ki Kim was not lawfully appointed to represent the South Dakota International
2 Business Institute in the above-captioned matter and therefore did not represent the Institute, the
3 Board of Regents, or the State of South Dakota. Consequently, the Board of Regents and the
4 State of South Dakota were surprised and/or excusably neglected to raise jurisdictional defenses
5 at an earlier stage.

6 This motion is further based on the grounds that the circumstances under which the
7 Petition was prosecuted and this Court's Order issued constituted mistake, surprise, and
8 excusable neglect on Respondent's part, and that in any event relief is justified for equitable
9 reasons.

10 This motion is further based on the grounds that Petitioner misrepresented to this Court
11 that the South Dakota International Business Institute was a private organization and that it had
12 the capacity to sue and be sued in its own name, when in fact it was and is an arm and alter ego
13 of the State of South Dakota.

14 This motion will based upon this notice of motion, the memorandum of points and
15 authorities and supporting declarations and exhibits filed herewith, and such arguments and
16 additional evidence as may be presented to this Court by Respondent.

17 This motion is made following the conference of counsel pursuant to L.R. 7-3 which took
18 place via e-mail correspondence on February 4 and 10, 2009.

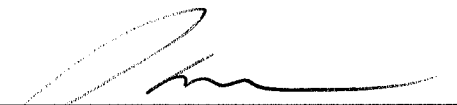
19

20 Dated: March 20, 2009

GARCIA CALDERÓN RUÍZ, LLP

21

22

By: 
James R. Lynch
Attorneys for Respondent
South Dakota Board of Regents, dba South Dakota
International Business Institute

23

24

25

26

27

28