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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GIRIK ISSAIAN, individually and on behalf of himself, all others similarly situated, and the general public, Plaintiff-Appellant, v. J.B. HUNT TRANSPORT SERVICES, INC., an Arkansas corporation; J.B. HUNT TRANSPORT, INC., a Georgia corporation, Defendants-Appellees.	No. 21-55613 D.C. No. 2:20-cv-00732-SVW-MAA MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted November 8, 2022**
Pasadena, California

Before: MURGUIA, Chief Judge, and PARKER*** and LEE, Circuit Judges.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Barrington D. Parker, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Second Circuit, sitting by designation.

Girik Issaian worked as a contract truck driver for J.B. Hunt Transport Services, Inc. and its wholly owned subsidiary, J.B. Hunt Transport, Inc. (collectively "J.B. Hunt"), until J.B. Hunt fired him three months after a work-related accident that injured his knee, neck, and back. Consequently, Issaian sued J.B. Hunt for disability discrimination and related claims under the California Fair Employment and Housing Act ("FEHA"). The district court assumed that Issaian was J.B. Hunt's employee under FEHA and reached the merits of his claims, but the court nevertheless granted J.B. Hunt summary judgment.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's decision on summary judgment and may affirm "on any ground supported by the record." *ACLU of Nev. v. City of Las Vegas*, 466 F.3d 784, 790–91 (9th Cir. 2006) (citation omitted); *Engleson v. Burlington N. R. Co.*, 972 F.2d 1038, 1044 (9th Cir. 1992) (citation omitted). We affirm.

1. "In order to recover under the discrimination in employment provisions of the FEHA, the aggrieved plaintiff must be an employee." *Estrada v. City of Los Angeles*, 159 Cal. Rptr. 3d 843, 846 (Cal. App. 2013) (cleaned up). As a remedial statute, FEHA is intended to be interpreted "broad[ly]," *Talley v. Cnty. of Fresno*, 265 Cal. Rptr. 3d 663, 692 (Cal. App. 2020), and in favor of effectuating its "fundamental antidiscrimination purposes," *Yanowitz v. L'Oreal USA, Inc.*, 116 P.3d 1123, 1138 (Cal. 2005). Even so, the "threshold requirement" under FEHA "is the

existence of an employment relationship," and the statute "cannot be interpreted so broadly as to obviate this primary requirement . . . ." *Talley*, 265 Cal. Rptr. 3d at 692 (citation omitted).

Whether an individual is an employee or an independent contractor is a question of law unless the determination depends upon a dispute of material fact. *S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations*, 769 P.2d 399, 403 (Cal. 1989). No material facts are disputed here. We and California courts apply the common-law right-to-control test to determine whether an individual is an independent contractor. *See Cmty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 751–52 (1989); *Borello*, 769 P.2d at 404; *Dynamex Operations W. v. Superior Ct.*, 416 P.3d 1, 31 n.20 (Cal. 2018); *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981, 988 (9th Cir. 2014); *see also Talley*, 265 Cal. Rptr. 3d at 676–77.

2. Because the district court reached the merits of Issaian's FEHA claims by assuming he was an employee, it did not apply the right-to-control test. Under that test, Issaian was an independent contractor. The work Issaian completed—delivering loads throughout Southern California—was indisputably central to J.B. Hunt's business. Issaian was a skilled driver who drove his personal truck on J.B. Hunt's behalf, but he could choose to work for other employers at the same time and hire assistant drivers and subcontract his jobs to them. Either party could terminate their contractual relationship with 30-days' notice. Issaian could—and did—set his

own schedule and determine whether, when, and how long to work. But Issaian claimed before the district court that if he refused a load, as he was permitted to do by the contract, he was told that "he would [be] penalize[d]."

Both parties expressly and voluntarily agreed to, and acted with the understanding of, Issaian's independent-contractor status. J.B. Hunt generally paid Issaian by the task and delivery, not hourly or on a salaried basis; and the employer never issued him a W-2. And although J.B. Hunt offered Issaian an employee-driver position for when he would be able to return to work, he apparently declined it in favor of remaining an independent contractor.

Considered in their totality, these factors compel the conclusion that Issaian was an independent contractor. *Arnold v. Mut. of Omaha Ins. Co.*, 135 Cal. Rptr. 3d 213, 221 (Cal. App. 2011) ("Even if one or two of the individual factors might suggest an employment relationship, summary judgment is nevertheless proper when, as here, all the factors weighed and considered as a whole establish that [the plaintiff] was an independent contractor and not an employee . . . ."). He therefore cannot state claims under FEHA. The district court's summary-judgment order is

AFFIRMED.