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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

John Doe 1, et al.,
Plaintiffs,
vs.
Swift Transportation Co., Inc., et al.,
Defendants.

2:10-cv-00899 JWS
ORDER AND OPINION
[Re: Motion at Docket 631]

I. MOTION PRESENTED

At docket 631 Plaintiffs filed a motion to compel discovery responses, arguing that Defendants have unjustifiably failed to respond to many of their discovery requests based on relevancy, breadth, and undue burden. Defendants respond at docket 634. Plaintiffs reply at docket 635. Oral argument was requested, but would not be of additional assistance to the court.

II. BACKGROUND

For readers needing to familiarize themselves with the case, a full recitation of facts and the procedural history of the case can be located at dockets 223 and 605. At issue in the motion at hand is whether Plaintiffs are entitled to discovery materials related to their employment classification and working relationship with Defendants or whether discovery should be more limited in nature given the court's rulings at dockets 546, 605, and 622. Plaintiffs argue that Defendants have failed to cooperate

1 with discovery and have yet to turn over materials in relation to fifty specific discovery
2 requests, which are listed and described in Exhibit E of their motion. Defendants argue
3 that Plaintiffs' discovery requests are irrelevant and overbroad. They argue that
4 discovery should be limited to the parties' intent with regards to the named Plaintiffs'
5 contractor agreements and should not include materials related to the parties' functional
6 employment relationship.

7 III. STANDARD OF REVIEW

8 Federal Rule of Civil Procedure 26(b)(1) provides for liberal discovery: "Parties
9 may obtain discovery regarding any nonprivileged matter that is relevant to any party's
10 claim or defense."¹ Relevance for purposes of discovery is defined broadly; "[r]elevant
11 information need not be admissible at the trial if the discovery appears reasonably
12 calculated to lead to the discovery of admissible evidence."² The court must limit the
13 requested discovery if it is shown to be "unreasonably cumulative or duplicative;" if "the
14 party seeking the discovery has had ample opportunity to obtain the information;" or if
15 "the burden or expense of the proposed discovery outweighs its likely benefit,
16 considering the needs of the case, the amount in controversy, the parties' resources,
17 the importance of the issues at stake in the action, and the importance of the discovery
18 in resolving the issues."³ Additionally, Rule 26(c)(1) permits the court, with good cause,
19 to limit discovery in order "to protect a party or person from annoyance,
20 embarrassment, oppression, or undue burden or expense."

21 On a motion to compel, the party seeking to compel discovery has the initial
22 burden of establishing that its request satisfies the relevancy requirements of
23 Rule 26(b).⁴ In turn, the party opposing discovery has the burden to demonstrate that

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25 ¹Fed. R. Civ. P. 26(b)(1).

26 ²Fed. R. Civ. P. 26(b)(1).

27 ³Fed. R. Civ. P. 26(b)(2)(C).

28 ⁴Fed. R. Civ. P. 26(b)(1).

1 discovery should not be allowed due to burden or cost and must explain and support its
2 objections with competent evidence.⁵

3 IV. DISCUSSION

4 Defendants argue that they do not need to respond to many of Plaintiffs'
5 discovery requests because the scope of permissible discovery here is exceedingly
6 narrow and should exclude any evidence regarding the Plaintiffs' working relationship
7 with Defendants. This is the third formulation of the same argument Defendants have
8 made at docket 542 and at docket 566, which is that the court need only review the
9 contract itself when determining whether they are "contracts of employment" within the
10 meaning of Section 1 of the Federal Arbitration Act. In other words, Defendants assert
11 that the issue of whether Plaintiffs entered into contracts of employment for purposes of
12 arbitration exemption is distinct from the issue of whether Plaintiffs functioned as
13 employees. The court rejected that argument at docket 546 and then again at
14 docket 605 after a detailed analysis of other Section 1 cases and applicable case law
15 regarding employment classification. Defendants attempt to make the same argument
16 in their response to Plaintiffs' motion to compel, although they seem to concede that
17 some evidence outside the contracts could be relevant to provide insight into "the
18 intention of the parties at the time they formed the contract."

19 For the same reasons set forth in detail at docket 605, the court rejects
20 Defendants' arguments once again. The Ninth Circuit remanded the case and directed
21 the court to determine whether the parties formed employment contracts, which are
22 exempt under Section 1 of the FAA, and whether Plaintiffs had employment contracts
23 necessarily involves a factual inquiry apart from the contract itself. It requires the court
24 to look at the economic realities of the parties' working relationship and not just the
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27 ⁵See *Lind v. United States*, No. 13-cv-032, 2014 WL 2930486, at * 3 (D. Ariz. June 30,
28 2014); *Integrated Global Concepts, Inc. v. j2 Global, Inc.*, No. 5:12-cv-03434, 2014 WL 232211,
at *1 (N.D. Cal. Jan. 21, 2014).

1 contract at issue or the parties' subjective intent.⁶ The fact that the inquiry necessary to
2 resolve the arbitration exemption issue is intertwined with the merits of the underlying
3 dispute does not prohibit the court from looking at the parties' working relationship.
4 Indeed, the Ninth Circuit directed the court to decide the exemption issue despite "the
5 law's repeated admonishments that district courts refrain from addressing the merits of
6 an underlying dispute."⁷ Despite Defendants' repeated assertion that discovery should
7 nonetheless be restricted, they cite no precedent requiring the court to impose more
8 stringent discovery limitations here.

9 Turning to the disputed discovery requests, which are summarized in Exhibit E to
10 Plaintiffs' motion, the court concludes that many of the requests are relevant to whether
11 Plaintiffs were hired as employees or contractors. Most of the requests are limited to
12 the named Plaintiffs. Information about their contracts, leases, contract modifications,
13 insurance, job performance, personnel files, fuel surcharges, and work instructions are
14 examples of relevant information. Information about certain actions Defendants took in
15 relation to Plaintiffs are also relevant; for example, any violation notices issued,
16 disciplinary actions instigated, route changes authorized, invoices and bills sent, data
17 gathered from monitoring efforts, credit reporting or collection efforts taken, and
18 reimbursements issued. Other general information not specifically related to Plaintiffs is
19 also relevant, such as standard form contracts and leases, recruitment information,
20 materials regarding Defendants' rules or policies related to training, discipline, benefits,
21 subcontracting, repair services, safety holds and the like are relevant. However, to the
22 extent Plaintiffs seek communications or documents specifically related to all other
23 drivers not named in the lawsuit—such as disciplinary actions taken against,
24 authorizations granted to, or agreements with other drivers—the court concludes that

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26 ⁶*Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 755 (9th Cir. 1979) (noting that
27 economic realities of the parties' working relationship determines employment status, not
28 contractual labels or parties' subjective intent).

⁷*In re Van Dusen*, 654 F.3d 838, 846 (9th Cir. 2011).

1 the relevance of such items is outweighed by the likely burden and expense of tracking
2 down the information for all drivers, given the needs of the case and the information's
3 marginal importance to resolving the single issue at hand.

4 Defendants have not specified any particular objection to one of the fifty disputed
5 discovery items listed in Exhibit E. Rather, Defendants' arguments in response to the
6 motion to compel are more general in nature. Thus, the court will not address each of
7 the disputed items and instead the parties should use the court's discussion above as
8 guidance in proceeding with discovery going forward. To the extent Defendants have
9 some specific objection, they have not clearly identified what item they are disputing,
10 and they have not met their burden of demonstrating with appropriate evidence why
11 that disputed discovery item is irrelevant or overbroad.

12 **V. CONCLUSION**

13 Based on the preceding discussion, Plaintiffs' motion at docket 631 is GRANTED
14 IN PART AND DENIED IN PART. Defendants are directed to respond to the requests
15 listed in Exhibit E in compliance with the guidance provided in this order, but
16 Defendants need not provide documents specifically related to drivers not involved in
17 this litigation. Given that the motion has been denied in part, the court concludes that
18 the sanctions requested by both parties are not warranted.

19 DATED this 15th day of July 2015.

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22 /s/ JOHN W. SEDWICK
23 SENIOR UNITED STATES DISTRICT JUDGE
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