

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18



JS - 6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ELITE LOGISTICS CORP., and	)	Case No. CV 11-02954 DDP (PLAx)
on behalf of all others	)	
similarly situated,	)	
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANTS' MOTION</b>
	)	<b>TO DISMISS FOR LACK OF SUBJECT</b>
v.	)	<b>MATTER JURISDICTION</b>
	)	
YANG MING MARINE TRANSPORT	)	
CORPORATION, YANG MING	)	
(AMERICA) CORPORATION,	)	
	)	[Dkt. No. 24]
Defendants.	)	
	)	
_____	)	

Presently before the court is a Motion to Dismiss Plaintiff's Complaint brought by Defendants Yang Ming Marine Transport Corporation and Yang Ming America Corporation (collectively, "Yang Ming"). Because the court determines that subject matter jurisdiction is lacking, the court grants the motion and adopts the following order.

**I. Background**

Yanhg Ming, a shipping company, contracts with trucking companies such as Plaintiff for the overland transport of cargo containers. When truckers do not return containers on time, Yang

1 Ming charges late fees.<sup>1</sup> The parties enter into a standard  
2 contract, the Uniform Intermodal Interchange and Facilities Access  
3 Agreement ("the Agreement"). The Agreement contains an arbitration  
4 provision that applies to billing disputes.<sup>2</sup> Plaintiff filed suit  
5 in this court, alleging that Yang Ming improperly charged plaintiff  
6 late return fees on weekends and holidays. Yang Ming now moves to  
7 dismiss the complaint for lack of subject matter jurisdiction.<sup>3</sup>

## 8 **II. Discussion**

9 Plaintiff filed suit in this court on the basis of diversity  
10 jurisdiction. (Complaint ¶ 14.) This court has jurisdiction over  
11 civil actions between diverse parties where the amount in  
12 controversy exceeds \$75,000. 28 U.S.C. § 1332(a). A party may  
13 raise a jurisdictional challenge under Federal Rule of Civil  
14 Procedure 12(b)(1) either on the face of the pleadings or with  
15 reference to extrinsic evidence. Warren v. Fox Family Worldwide,  
16 Inc., 38 F.3d 1136, 1139 (9th Cir. 2003). Where subject matter  
17 jurisdiction is challenged, the party asserting jurisdiction bears  
18 the burden of proving its existence. Robinson v. United States, 58  
19 F.3d 683.

---

22 <sup>1</sup> The parties refer to these fees as "per diem" charges. Yang  
23 Ming does not charge late pick-up, or "demurrage" fees.  
24 (Declaration of Thomas Liou in Support of Defendant's Motion to  
Dismiss ¶ 9.)

25 <sup>2</sup> In a related case, this court found the arbitration  
26 provision unconscionable and unenforceable. See Unimax Express,  
Inc. v. Cosco North Am., Inc., No. CV 11-02947 DDP, 2011 WL 5909881  
at \*3-4 (C.D. Cal. November 28, 2011).

27 <sup>3</sup> Because the court agrees with Yang Ming that subject matter  
28 jurisdiction is lacking, the court does not address Yang Ming's  
other arguments in support of the motion to dismiss.

1 Here, Yang Ming has presented evidence that the total amount  
2 of late fees billed to Plaintiff was \$16,525, and that the amount  
3 actually collected was only \$12,737.. (Declaration of Thomas Liou  
4 in Support of Defendant's Motion to Dismiss ¶ 10.) This amount is  
5 insufficient to confer jurisdiction under 28 U.S.C. § 1332(a).

6 Though not pled in the complaint, Plaintiff's opposition to  
7 the instant motion suggests that this court has jurisdiction under  
8 the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d). Under  
9 CAFA, this court has original jurisdiction over class actions in  
10 which the parties are minimally diverse and in which the amount in  
11 controversy exceeds \$5 million. 28 U.S.C. § 1332(d). The  
12 complaint, however, makes no mention of CAFA and makes no  
13 suggestion that the amount in controversy exceeds the  
14 jurisdictional minimum. Nor has Plaintiff provided any extrinsic  
15 evidence that the \$5 million minimum is met. To the contrary, Yang  
16 Ming has submitted evidence that it charged all motor carriers,  
17 including Plaintiff, a total of \$4,290,320.05 in late fees incurred  
18 on all days of the week. (Liou Dec. ¶¶ 11-12.)

19 Apparently recognizing that it has not met its burden of  
20 proving subject matter jurisdiction, Plaintiff has requested  
21 jurisdictional discovery. (Opp. at 19-20.) Plaintiff argues that  
22 such discovery is necessary because the parameters of Yang Ming's  
23 electronic database are unknown. (Opp. at 20.) It does not appear  
24 to the court, however, that there is any reasonable probability  
25 that Plaintiff would be able to establish CAFA jurisdiction if  
26 discovery were allowed. See Laub v. Dep't of Interior, 342 F.3d  
27 1080, 1093 (9th Cir. 2003). Accordingly, Plaintiff's request is  
28 denied.

1 **III. Conclusion**

2 For the reasons stated above, Defendant's Motion to Dismiss is  
3 GRANTED.

4  
5 IT IS SO ORDERED.  
6

7  
8 Dated: May 23, 2012  
9

  
DEAN D. PREGERSON  
United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28