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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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<p>TODD SHOOK, HERSCHEL BERRINGER on behalf of himself and others similarly situated, and on behalf of all other "aggrieved" employees,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>INDIAN RIVER TRANSPORT CO., a Florida Corporation, and DOES 1-10, inclusive,</p> <p style="text-align: center;">Defendants.</p>

<p>CIV. NO. 1:14-1415 WBS BAM</p> <p><u>ORDER GRANTING MOTION TO QUASH SUBPOENA</u></p>

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Before the court is defendant's Motion to Quash Trial Subpoena for Steve Ferguson filed February 1, 2017. (Docket No. 65.) Federal Rule of Civil Procedure 45(c) imposes geographic limitations on the court's subpoena power, stating:

1 A subpoena may command a person to attend a
2 trial, hearing, or deposition only as follows:

3 (A) within 100 miles of where the person
4 resides, is employed, or regularly transacts
5 business in person; or

6 (B) within the state where the person
7 resides, is employed, or regularly transacts
8 business in person, if the person

9 (i) is a party or a party's
10 officer; or

11 (ii) is commanded to attend a
12 trial and would not incur substantial expense.¹

13 It is undisputed that Mr. Ferguson resides in, is
14 employed in, and regularly transacts business in Florida but not
15 in California. Rule 45(d)(3)(A) goes on to state that "[o]n
16 timely motion, the court . . . must quash or modify a subpoena
17 that . . . requires a person to comply beyond the geographical
18 limitations specified in Rule 45(c)."

19 Thus, under the plain language of Rule 45, upon timely
20 motion this court must grant the motion to quash plaintiffs'
21 subpoena directing Mr. Ferguson to appear at trial. The motion
22 here is timely, as it was filed on February 1, 2017, six days
23 after the subpoena was served on January 26, 2017. (See Docket
24 No. 67.) The fact that the motion was filed on the eve of trial
25 is simply a result of plaintiffs' service of the trial subpoena
26 on the eve of trial.

27 The fact that both parties designated Mr. Ferguson as a
28 witness in their pretrial statements and that such designations
were memorialized in the court's Pretrial Order, without
objection by defendant, does not waive defendant's ability to

¹ Rule 45(c) was amended in 2013, and thus the language
of the rule cited by plaintiff is out-of-date, and the case
relied on by plaintiff has been abrogated. See Fed. R. Civ. P.
advisory committee's note to 2013 amendment.


1 bring this motion. The court, by adopting the parties' witness
2 lists, expressed no opinion as to whether any particular witness
3 would be subject to this court's subpoena power under the Federal
4 Rules.

5 The court notes that Mr. Ferguson's deposition has been
6 taken as defendant's designee under Rule 30(b)(6) in this case.
7 Accordingly, under Rule 32(a)(3) plaintiff may use his deposition
8 at trial for any purpose. Further, because he is more than 100
9 miles from the place of trial, and plaintiff has been unable to
10 procure his attendance by subpoena, plaintiff may also use his
11 deposition for any purpose under Rule 32(a)(4).

12 Defense counsel also represented at the hearing that
13 she is willing to work with plaintiffs' counsel to arrive at
14 stipulations as to the facts to which Mr. Ferguson would be
15 expected to testify at trial. The court encourages the parties
16 to attempt to arrive at such stipulations in advance of trial.

17 For the foregoing reasons, IT IS HEREBY ORDERED that
18 defendant's Motion to Quash Trial Subpoena for Steve Ferguson
19 filed February 1, 2017 (Docket No. 65) be, and the same hereby
20 is, GRANTED.

21 Dated: February 3, 2017

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23 WILLIAM B. SHUBB
24 UNITED STATES DISTRICT JUDGE
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