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UNITED STATES DISTRICT COURT

8

EASTERN DISTRICT OF CALIFORNIA

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10 SALVADOR ROBLES, individually  
11 and on behalf of others  
similarly situated,

12 Plaintiffs,

13 v.

14 COMTRAK LOGISTICS, INC., a  
15 Delaware Corporation; DOES 1  
through 10, inclusive,

16 Defendants.

No. 2:13-cv-00161-JAM-AC

**ORDER GRANTING DEFENDANT'S  
MOTION TO TRANSFER VENUE**

17

18 Defendant Comtrak Logistics, Inc. ("Defendant") moves the  
19 Court to transfer venue ("MTV") (Doc. #59) based on a forum  
20 selection clause included in a written agreement between the  
21 parties. For the reasons that follow, Defendant's motion is  
22 GRANTED.

23

24 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

25 A full discussion of the facts can be found in the Court's  
26 earlier order (Doc. #54) of December 19, 2014. For purposes of  
27 this motion, a few additional items need be mentioned.

28 Defendant is a major provider of full dray truckload

1 transportation services across the country. FAC ¶ 5. Plaintiff  
2 Salvador Robles ("Plaintiff") alleges that he is a former driver  
3 for Defendant who was initially classified as an independent  
4 contractor and later hired as an employee driver by Defendant.  
5 Id. ¶ 3.

6 Plaintiff claims Defendant has misclassified these drivers  
7 as independent contractors in order "to avoid various duties and  
8 obligations owed to employees" under California law. FAC ¶ 1.  
9 Plaintiff alleges that he and the other drivers were made to sign  
10 an "Independent Contractor and Equipment Lease Contract" (the  
11 "Contract"), which labeled them as independent contractors and  
12 primarily discussed the details of Defendant's "leasing" of the  
13 drivers' equipment. MTV, Exhibit A.

14 The FAC pleads the first twelve causes of action ("IC  
15 Claims") as a class action on behalf of Plaintiff and a class of  
16 drivers who (a) signed the Contract with Defendant; (b) were  
17 assigned to an operating terminal in California; and (c) were  
18 residents of California ("the Class"). These claims involve  
19 obligations owed by an employer to an employee; therefore, each  
20 of these causes of action relies on the premise that Defendant  
21 improperly classified the drivers as independent contractors when  
22 legally they should have been treated as employees under  
23 California law. The claims are brought pursuant to California  
24 law, primarily arising under the California Labor Code.

25 In addition, the FAC restates the same claims found in the  
26 second through twelfth causes of action on behalf of Plaintiff  
27 individually for labor and wage violations during his time  
28 working for Defendant in which he was classified as an employee.

1 These eleven claims ("EE Claims") allege that although Plaintiff  
2 was properly classified as an employee by Defendant during the  
3 relevant time period, Defendant still failed to abide by the  
4 applicable provisions of California law, including the California  
5 Labor Code.

6 Defendant filed a motion to dismiss, which was stayed for a  
7 period pending resolution of relevant issues by the Ninth  
8 Circuit. After the Ninth Circuit's decision was handed down and  
9 the Court received supplemental briefing, the motion to dismiss  
10 was denied. Defendant now moves to transfer venue pursuant to 28  
11 U.S.C. § 1404(a) ("§1404(a)").

## 12 13 II. OPINION

### 14 A. Request for Judicial Notice

15 Plaintiff requests the Court take notice of three documents  
16 (Doc. #63).

17 The Court may consider material attached to, or relied on  
18 by, the complaint so long as authenticity is not disputed, or  
19 matters of public record, provided that they are not subject to  
20 reasonable dispute. E.g., Sherman v. Stryker Corp., 2009 WL  
21 2241664 at \*2 (C.D. Cal. Mar. 30, 2009) (citing Lee v. City of  
22 Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001) and Fed. R. Evid.  
23 201).

24 The three documents offered by Plaintiff are (1) a record of  
25 Defendant's name change from the California Secretary of State  
26 (Doc. #63-1); (2) a 10-k SEC Filing form for the year ending  
27 December 31, 2013 (Doc. #63-2); and (3) a "Business Entity  
28 Detail" record from the California Secretary of State (Doc. #63-

1 3). The Court finds these documents are matters of public record  
2 that are not subject to reasonable dispute. Accordingly, the  
3 Court will take judicial notice of them.

4 B. Discussion

5 Defendant has moved the Court to transfer venue pursuant to  
6 §1404(a) based on the forum selection clause included in the  
7 "Independent Contractor and Equipment Lease Contract" ("the  
8 Contract") entered into by the parties.

9 Section 1404(a) provides: "For the convenience of parties  
10 and witnesses, in the interest of justice, a district court may  
11 transfer any civil action to any other district or division where  
12 it might have been brought or to any district or division to  
13 which all parties have consented." The United States Supreme  
14 Court has held that "a forum-selection clause may be enforced by  
15 a motion to transfer under § 1404(a)." Atl. Marine Const. Co. v.  
16 U.S. Dist. Court for W. Dist. of Texas, 134 S. Ct. 568, 575  
17 (2013) ("Atlantic Marine").

18 The Contract is referenced and relied on in the FAC (¶¶ 3,  
19 67) and attached to Defendant's motion as Exhibit A. Plaintiff  
20 does not dispute its authenticity so the Court looks to it in its  
21 analysis. The relevant clause provides that "any action or suit  
22 relating to this Agreement shall be brought in the state or  
23 federal courts sitting in Memphis, Tennessee, and in no other  
24 court." MTV, Exh. A § 5.G. The Contract labels Plaintiff as an  
25 independent contractor and primarily discusses the detail of  
26 Defendant's lease of Plaintiff's equipment in boilerplate  
27 language.

28 Defendant contends the forum selection clause is valid,

1 enforceable, and Plaintiff's claims lie within its scope. MTV at  
2 p. 11. It therefore requests the Court transfer this matter to  
3 the District Court for the Western District of Tennessee.

4 Plaintiff opposes the motion on a number of grounds. First,  
5 he argues the claims are not "related to" the Contract and  
6 therefore fall outside the scope of the forum selection clause.  
7 Second, Plaintiff contends that even if the clause does apply, it  
8 is unenforceable because: (1) the clause's inclusion in the  
9 Contract was the product of Defendant's coercion and  
10 overreaching; (2) the clause is unreasonable; and (3) enforcement  
11 of the clause will undermine public policy.

12 1. Scope of the Forum Selection Clause

13 "In diversity cases, federal law governs the analysis of the  
14 effect and scope of forum selection clauses." Jones v. GNC  
15 Franchising, Inc., 211 F.3d 495, 497 (9th Cir. 2000) (citing  
16 Manetti-Farrow, 858 F.2d at 513. It is well-settled in the Ninth  
17 Circuit that the scope of a forum selection clause can cover both  
18 contractual and tort causes of action. Manetti-Farrow, 858 F.2d  
19 at 514; Morgan Tire of Sacramento, Inc. v. Goodyear Tire & Rubber  
20 Co., No. 2:13-CV-2135 KJM AC, 2014 WL 6390282, at \*9 (E.D. Cal.  
21 2014).

22 Plaintiff has stated claims pursuant to the California Labor  
23 Code along with other California laws regulating employment  
24 practices. The issue at the center of this controversy is  
25 whether Plaintiff and the proposed class were employees of  
26 Defendant rather than independent contractors and therefore  
27 entitled to a host of benefits they did not receive. In its  
28 motion, Defendant contends the language in the clause "easily

1 encompasses Plaintiff's claims." MTV at pp. 6-8. Defendant  
2 argues Plaintiff's theory of misclassification necessarily relies  
3 on the terms of the Contract.

4 In response, Plaintiff discusses the factors involved in  
5 analyzing whether an employer-employee relationship exists. Opp.  
6 at pp. 9-12. See S. G. Borello & Sons, Inc. v. Dep't of Indus.  
7 Relations, 48 Cal. 3d 341, 351 (1989) (listing over one dozen  
8 factors "logically pertinent to the inherently difficult  
9 determination whether a provider of service is an employee or an  
10 [] independent contractor"). Plaintiff argues that none of these  
11 factors arise out of or are related to the Contract. He points  
12 out that the Contract does not even contain a clause that  
13 attempts to define Plaintiff as an independent contractor. Opp.  
14 at p. 2.

15 "The scope of the claims governed by a forum selection  
16 clause depends [upon] the language used in the clause." Ronlake  
17 v. US-Reports, Inc., No. 1:11-CV-02009 LJO, 2012 WL 393614, at  
18 \*3-4 (E.D. Cal. 2012) ("Ronlake"). In analogous contexts, the  
19 Ninth Circuit has found that provisions using the phrases  
20 "arising under," "arising out of," and "arising hereunder"  
21 (collectively referred to as "arising under" language) should be  
22 narrowly construed to cover only those disputes "relating to the  
23 interpretation and performance of the contract itself." Cape  
24 Flattery Ltd. v. Titan Mar., LLC, 647 F.3d 914, 922 (9th Cir.  
25 2011); see also Ronlake, 2012 WL 393614, at \*4; Perry v. AT & T  
26 Mobility LLC, No. C 11-01488 SI, 2011 WL 4080625, at \*4 (N.D.  
27 Cal. 2011) ("Perry"). In contrast, provisions that include or  
28 add phrases such as "relating to" and "in connection with"

1 (collectively referred to as "relating to" language) have a  
2 broader reach. Cedars-Sinai Med. Ctr. v. Global Excel Mgmt.,  
3 Inc., No. CV 09-3627 PSG AJWX, 2009 WL 7322253, at \*5 (C.D. Cal.  
4 Dec. 30, 2009); Cape Flattery, 647 F.3d at 922; Joseph v.  
5 Amazon.Com, Inc., No. C12-06256 HRL, 2013 WL 4806462, at \*4 (N.D.  
6 Cal. 2013).

7 Defendant argues in its reply that the forum selection  
8 clause in the Contract should be construed broadly to include  
9 Plaintiff's labor code claims because the clause uses "related  
10 to" language. The Court agrees.

11 In Perry, the court stated the issue before it as "'whether  
12 in classifying plaintiff, and others like h[er], as an  
13 independent contractor defendant[s] ha[ve] violated the law.'" Perry,  
14 2011 WL 4080625, at \*3-4 (quoting Quinonez v. Empire  
15 Today, LLC, No. C 10-02049 WHA, 2010 WL 4569873, at \*3 (N.D. Cal.  
16 2010)). The court determined whether the California Labor Code  
17 claims brought by the plaintiff were covered under a forum  
18 selection clause found in a contract between the parties. Id. at  
19 \*1. The court found the forum selection clause's use of the term  
20 "any action . . . relating to" made it "significantly broader"  
21 than clauses using "arising under" language. Id. It then found  
22 the "question [fell] within the scope of the forum selection  
23 clause, because it 'relates to' the contracts entered into by  
24 [the parties]." Id.

25 The circumstances present in Perry are nearly identical to  
26 those before this Court. The Court similarly finds Plaintiff's  
27 claims *relate to* the Contract. The Contract governs the working  
28 relationship between the parties. It is the precise nature of

1 that relationship that is at issue in this matter. Therefore,  
2 Plaintiffs claims fall within the scope of the forum selection  
3 clause.

## 4 2. Enforceability of Forum Selection Clause

5 Federal courts have recognized three grounds for declining  
6 to enforce a forum selection clause: (1) where the inclusion of  
7 the clause in the contract was the result of "fraud or  
8 overreaching"; (2) if the party seeking to avoid the clause would  
9 be effectively deprived of its day in court in the forum  
10 specified in the clause; or (3) if enforcement would contravene a  
11 strong public policy of the forum in which the suit is brought.  
12 Murphy v. Schneider Nat'l, Inc., 362 F.3d 1133, 1140 (9th Cir.  
13 2004); see also Manetti-Farrow, Inc. v. Gucci Am., Inc., 858 F.2d  
14 509, 514 (9th Cir. 1988); The Bremen v. Zapata Off-Shore Co., 407  
15 U.S. 1, 15 (1972)). However, "[w]hen the parties have agreed to  
16 a valid forum-selection clause, a district court should  
17 ordinarily transfer the case to the forum specified in that  
18 clause." Atlantic Marine, at 581.

### 19 a. Fraud and Overreaching

20 "For a party to escape a forum selection clause on the  
21 grounds of fraud, it must show that 'the *inclusion of that clause*  
22 *in the contract* was the product of fraud or coercion.'" Richards  
23 v. Lloyd's of London, 135 F.3d 1289, 1297 (9th Cir. 1998)  
24 (quoting Scherk v. Alberto-Culver Co., 417 U.S. 506, 518, 94 S.  
25 Ct. 2449, 2457, 41 L. Ed. 2d 270 (1974)) (emphasis in original).  
26 "'Overreaching' is a ground 'short of fraud,' and a mere showing  
27 of 'non-negotiability and power difference' does not render a  
28 forum selection clause unenforceable." Mahoney v. Depuy



1 Orthopaedics, Inc., No. CIVF 07-1321 AWI SMS, 2007 WL 3341389, at  
2 \*7 (E.D. Cal. 2007) (citing Murphy, 362 F.3d at 1141; E.J. Gallo  
3 Winery v. Andina Licores S.A., 440 F.Supp.2d 1115, 1126 (E.D.  
4 Cal. 2006)). The party opposing enforcement of the forum  
5 selection clause on the grounds of fraud or overreaching "must  
6 show that the inclusion of the clause itself into the agreement  
7 was improper; it is insufficient to allege that the agreement as  
8 a whole was improperly procured." Id.

9 Plaintiff argues the forum selection clause was the product  
10 of economic coercion and overreaching. Opp. at pp. 12-13.  
11 Plaintiff cites the power differentials between the parties and  
12 Plaintiff's lack of negotiating power in regards to the formation  
13 of the Contract and, specifically, the inclusion of the forum  
14 selection clause. However, "the Ninth Circuit has rejected the  
15 argument that unequal bargaining power is a ground to reject  
16 enforcement of a forum selection clause in an employment  
17 contract." Marcotte v. Micros Sys., Inc., No. C 14-01372 LB,  
18 2014 WL 4477349, at \*7 (N.D. Cal. 2014) (citing Murphy, 362 F.3d  
19 at 1141). A forum selection clause is "not unreasonable merely  
20 because of the parties' unequal bargaining power: it is  
21 enforceable if there is reasonable communication of the clause."  
22 Id. (citing Carnival Cruise Lines, Inc. v. Shute, 499 U.S 585,  
23 595 (1991)).

24 Plaintiff has failed to provide any evidence that the  
25 Contract's terms regarding forum selection were not clearly  
26 communicated in the Contract or that the inclusion of the forum  
27 selection clause was the product of fraud or overreaching. As  
28 such, the argument regarding fraud and overreaching fails.

1                                    b. Unreasonable

2            Plaintiff next contends the forum selection clause should  
3 not be enforced because it is unreasonable under the  
4 circumstances. Opp. at pp. 14-16. Plaintiff attempts to support  
5 his argument by focusing on § 1404(a) factors including  
6 convenience of the parties and witnesses and other practical  
7 considerations.

8            In a typical case involving a §1404(a) transfer motion, the  
9 court must evaluate a range of factors in determining whether  
10 transfer would serve "the convenience of the parties and  
11 witnesses" and otherwise promote "the interests of justice."  
12 Atlantic Marine, at 581 (quoting §1404(a)). However, when a  
13 valid forum-selection clause is involved, "the calculus changes."  
14 Id. In this new analysis, "a district court may consider  
15 arguments about public-interest factors only"; the "plaintiff's  
16 choice of forum merits no weight"; and the court "must deem the  
17 private-interest factors to weigh entirely in favor of the  
18 preselected forum." Id. at 581-83. "Only under extraordinary  
19 circumstances unrelated to the convenience of the parties should  
20 a § 1404(a) motion be denied." Id. at 581.

21            By agreeing to the forum selection clause in the Contract,  
22 Plaintiff has "waive[d] the right to challenge the preselected  
23 forum as inconvenient or less convenient." Atlantic Marine, at  
24 581. Plaintiff's arguments that litigating the case in Tennessee  
25 would be impractical and inconvenient are therefore unpersuasive.

26                                    c. Public Policy

27            Plaintiff's remaining arguments implicate the public policy  
28 of California and rely on the choice of law provision in the

1 Contract. Opp. at pp. 16-20. Plaintiff contends the forum  
2 selection clause "cannot be considered in isolation from the  
3 choice-of-law provision where both provisions are complimentary  
4 aspects of an unlawful subterfuge to evade California employment  
5 law."

6 "Courts in the Ninth Circuit have generally agreed that the  
7 choice-of-law analysis is irrelevant to determining if the  
8 enforcement of a forum selection clause contravenes a strong  
9 public policy." Rowen v. Soundview Commc'ns, Inc., No. 14-CV-  
10 05530-WHO, 2015 WL 899294, at \*3-4 (N.D. Cal. 2015). "[A] party  
11 challenging enforcement of a forum selection clause may not base  
12 its challenge on choice of law analysis.'" Marcotte, 2014 WL  
13 4477349, at \*8 (quoting Besag v. Custom Decorators, Inc., No. C  
14 08-05463 JSW, 2009 WL 330934, at \*3-4 (N.D. Cal. 2009) (called  
15 into question on other grounds by Narayan v. EGL, Inc., 616 F.3d  
16 895, 899, 904 (9th Cir. 2010))). "As a general matter,  
17 California courts will enforce adequate forum selection clauses  
18 that apply to non-waivable statutory claims, because such clauses  
19 do[] not waive the claims, they simply submit their resolution to  
20 another forum." Perry, 2011 WL 4080625, at \*5.

21 However, under certain circumstances, public policy  
22 considerations may lead to non-enforcement of an otherwise valid  
23 forum selection clause:

24 [I]f the forum is not adequate, a forum selection  
25 clause that applies to a non-waivable statutory claim  
26 may, in fact, improperly compel the claimant to forfeit  
27 his or her statutory rights. In such a case, the forum  
28 selection clause is contrary to the strong public  
policy of California and will not be enforced. More  
specifically, . . . the California Supreme Court has  
held clearly and unequivocally that it is against the  
strong public policy of California to enforce a forum

1 selection clause where the practical effect of  
2 enforcement will be to deprive a plaintiff or class of  
3 plaintiffs of their unwaivable statutory entitlement to  
4 the minimum wage and overtime payments.

5 Perry, at \*5 (internal citations omitted).

6 Plaintiff argues the choice-of-law provision and the forum  
7 selection clause operate in tandem to deny him of his statutory  
8 rights under California law. However, there is no evidence  
9 provided, or found, indicating that a transfer of this case to  
10 the District Court for the Western District of Tennessee would  
11 deprive him of his rights. Federal courts in other states are  
12 "fully capable of applying California law." Foster v. Nationwide  
13 Mut. Ins. Co., No. C 07-04928 SI, 2007 WL 4410408, at \*6 (N.D.  
14 Cal. 2007). If Plaintiff's allegations regarding Defendant's  
15 misclassification of him and others as independent contractors  
16 are proven true, the court in Tennessee will be "fully capable"  
17 of awarding him the remedies and withheld benefits provided for  
18 under California labor laws.

19 Accordingly, Plaintiff's arguments based on public policy  
20 fall short, and Defendant's motion is GRANTED.

21 III. ORDER

22 For the reasons set forth above, the Court GRANTS  
23 Defendant's motion to transfer venue.

24 IT IS SO ORDERED.

25 Dated: April 2, 2015

26   
27 JOHN A. MENDEZ,  
28 UNITED STATES DISTRICT JUDGE