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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL HERRERA,
Plaintiff,
v.
NEFF RENTAL, LLC, *et al.*,
Defendants.

Case No. [14-cv-02295-SI](#)

**ORDER RE: NEFF RENTAL LLC'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Re: Dkt. No. 55

Neff Rental, LLC's motion for partial summary judgment on its third-party complaint against Marine Terminals Corporation, d.b.a. Ports America ("Ports") is scheduled for a hearing on September 4, 2015. Docket No. 55. Neff contends that Ports has an immediate and continuing duty to defend Neff pursuant to the defense and indemnity provision in the Rental Agreement that Ports signed in order to lease the payloaders that plaintiff was using at the time of his injury.

Ports opposes summary judgment on several grounds, including its assertion that there is an additional contract between Neff and Ports that governs the equipment rental. In support of this assertion, Ports cites the deposition testimony of Neff Rental's Western Region Service Manager, Forrest Belcher, in which he testified that in addition to the "everyday rental contract that every customer would get," there was an additional contract between Neff and Ports that contained "a specified term and other conditions in it that Ports had requested." Dkt. 57-1 (Belcher depo. at 106:23-107:9). Neither party has provided a copy of the contract referenced in the Belcher deposition to the Court. In its reply brief, Neff does not explicitly deny the existence of an additional contract, but instead argues that Ports' "insinuation that there may be another contract which may contain terms that modify the defense and indemnity provision in the Rental Out agreement is a red herring, because there is no evidence of any 'separate contract' in any way

1 modifying the defense and indemnity provision in the Rental Out agreement. If another relevant
2 agreement existed, Ports America would have a copy and would have produced it with its
3 opposition." Dkt. 60 at 1:15-20.

4 The Court finds that if there is another contract between Neff and Ports governing the
5 equipment rental, that contract could be relevant to the issues presented by Neff's motion for
6 partial summary judgment. Accordingly, the parties should be prepared to address at the hearing
7 whether there is in fact an additional contract governing the equipment rental, and if so, its
8 relevance to the pending motion. The parties may file a copy of the contract, along with a
9 supplemental brief of no more than 3 pages addressing that contract, in advance of the hearing.

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IT IS SO ORDERED.

Dated: August 28, 2015



SUSAN ILLSTON
United States District Judge