UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED VAN LINES, LLC, Plaintiff, v. SCOTT DEMING, et al., Defendants.	Case No.17-cv-00390-JST **ORDER DENYING MOTION TO DISMISS** Re: ECF No. 23

Defendants Scott and Sarah Deming (the "Demings") move to dismiss Plaintiff United Van Lines, LLC's ("United") complaint. ECF No. 23. The Court will deny the motion.

I. BACKGROUND

This action arises from United's transport of the Demings' household goods during their move from St. Paul, Minnesota to San Francisco, California. Compl., ECF No. 1 ¶ 3.

Scott Deming's employer, Capella Education Company, entered into a contractual relationship with Plus Relocation Services. Id. ¶ 9. In turn, Plus Relocation Services contracted with United for motor carrier services through a "Transportation Services Agreement." Id. ¶ 8. According to that agreement, "Carrier's liability on an Item-by-Item basis (excluding Extraordinary Value Items) shall be Full Value Protection . . ." Id. ¶ 11. The agreement further states that "Carrier's maximum liability for loss or damage to any and all Items in a shipment shall be the lesser of $5.00 per pound times the actual weight of the shipment or $100,000," and that "[t]here shall be no charge for Carrier to assume this level of liability." Id. However, the agreement provides that "Shipper may increase the level of Carrier's maximum liability set forth above by declaring such additional amount on the Bill of Lading and paying charges for such additional amount equal to $.65 per $100.00 declared above Carrier's maximum liability level."

United States District Court
Northern District of California

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Id.

United and the Demings also executed a Household Goods Bill of Lading contract for the move. Id. ¶14. That contract similarly provides that, "[i]f any article is lost, destroyed, or damaged while in your mover's custody, your mover's liability is limited to the actual weight of the lost, destroyed, or damaged article multiplied by $5.00 per pound per article." Id. ¶ 15. It goes on to provide that, "[u]nder the Released Level of Liability, your shipment will be transported based on a value of $5.00 per pound multiplied by the actual weight of the shipment." Id. Finally, the Bill of Lading states the following: "Your signature is REQUIRED here: I acknowledge that for my shipment, I will receive the Released Level of Liability of $5.00 per pound per article." Id. The Demings shipped 1,066 pounds of household goods at $5.00 per pound and did not declare any household goods as "Item-by-Item" or "Extraordinary Value Items." Id. ¶ 12.

During transportation, the Demings' household goods suffered water and mold damage. Id. at 17. The Demings have demanded that United pay the full replacement value in the amount of $48,002.64. Id. ¶18. In response, United offered the Demings $5,330, which it contends is its maximum contractual liability under both the Transportation Services Agreement and Bill of Lading. Id. ¶¶ 19-20, 12.

United's complaint asserts a single count seeking declaratory judgment that the Demings are not entitled to recover the full replacement value of the damaged goods. Id. at 5-6.

The Demings move to dismiss United's complaint on the ground that United has not pled the existence of any contract properly limiting its liability under the Carmack Amendment. ECF No. 23 at 6.

II. LEGAL STANDARD

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" which gives "the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Fed. R. Civ. P. 8(a)(2); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks omitted). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "A claim

has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. at 663.

III. DISCUSSION

The Court must determine whether United has plausibly alleged that it is entitled to declaratory judgment that its liability limitations were effective under the Carmack Amendment.

The Carmack Amendment "subjects a motor carrier transporting cargo in interstate commerce to absolute liability for 'actual loss or injury to property.'" Hughes Aircraft Co. v. N. Am. Van Lines, Inc., 970 F.2d 609, 611–12 (9th Cir. 1992) (citing Missouri Pacific R.R. Co. v. Elmore & Stahl, 377 U.S. 134, 137 (1964)); see also, 49 U.S.C. § 14706(a)(1). "[A] carrier's maximum liability for household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination is an amount equal to the replacement value of such goods, subject to a maximum amount equal to the declared value of the shipment and to rules issued by the Surface Transportation Board and applicable tariffs." 49 U.S.C. § 14706(f)(2).

However, "[a] carrier . . . may petition the Board to modify, eliminate, or establish rates for the transportation of household goods under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper or by a written agreement." Id. § 14706(f)(1). But "[t]he released rates established by the Board . . . shall not apply to the transportation of household goods by a carrier unless the liability of the carrier for the full value of such household goods . . . is waived, in writing, by the shipper." Id. § 14703(f)(3).

"Before a carrier's attempt to limit its liability will be effective, the carrier must (1) maintain a tariff in compliance with the requirements of the Interstate Commerce Commission; (2) give the shipper a reasonable opportunity to choose between two or more levels of liability; (3) obtain the shipper's agreement as to his choice of carrier liability limit; and (4) issue a bill of lading prior to moving the shipment that reflects any such agreement." Hughes, 970 F.2d at 611–12. "The carrier has the burden of proving that it has complied with these requirements." Id. at 612.

The Demings argue that the Bill of Lading and the Transportation Services Agreement do not comply with the second and third requirements because they did not give Mr. Deming a

reasonable opportunity to choose between different liability levels or obtain his agreement as to the same. ECF No. 23 at 6-7. They further argue that the Transportation Services Agreement between Plus Relocation and United does not apply because it was not incorporated by reference into the Bill of Lading between Mr. Deming and United and Mr. Deming was not aware of its terms. Id.

In response, United fails to explain how either its Bill of Lading or its Transportation Services Agreement satisfied these requirements. Instead, United argues that the motion to dismiss is premature because there are unresolved factual issues relating to whether Mr. Deming had actual notice of the limitation of liability. ECF No. 27 at 9. United further argues that the liability limitation in the Transportation Services Agreement between United and Plus Relocation is binding on Mr. Deming regardless of whether he knew about it. Id. at 9-11. To the extent the Court is inclined to consider the motion to dismiss, United seeks leave to amend. Id. at 11-12.[1]

The Court rejects United's argument that the motion to dismiss is premature and improper. To support this argument, United relies exclusively on the Northern District of Illinois' decision in H. Kramer & Co. v. CDN Logistics, Inc., No 13. CV 5790, 2014 WL 3397161 at *4 (N.D. Ill. July 11, 2014). ECF No. 27 at 9. But that case is distinguishable. The Kramer court noted that it "cannot consider the bill of lading and [defendant's] tariff without converting the motion to dismiss into a motion for summary judgment, as those documents are 'matters outside the pleadings.'" Id. at *4 (quoting Fed. R. Civ. P. 12(d)). However, United attached both the Bill of Lading and the Transportation Services Agreement to its complaint, and therefore this Court may consider those documents without converting the motion to dismiss into a motion for summary judgment. See United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003). Moreover, because United seeks declaratory relief that hinges directly on whether those two agreements (which are properly before the Court) contained a permissible limitation of liability, it is unclear what further discovery is needed to resolve this litigation, and United does not point to any.

[1] United dedicates much of its opposition briefing to jurisdictional issues under the Declaratory Judgment Act that are not in dispute and have no relevance to the present motion to dismiss. ECF No. 27 at 5-9.

Turning to the merits of the motion to dismiss, the Court first looks to the Bill of Lading between Mr. Deming and United. With respect to liability, the Bill of Lading provides the following:

> If any article is lost, destroyed, or damaged while in your mover's custody, your mover's liability is limited to the actual weight of the lost, destroyed, or damaged article multiplied by $5.00 per pound per article. This liability level is provided at no charge.
>
> Under the Released Level of Liability, your shipment will be transported based on a value of $5.00 per pound multiplied by the actual weight of the shipment.
>
> Your signature is REQUIRED here: I acknowledge that for my shipment, I will receive the Released Level of Liability of $5.00 per pound per article.

ECF No. 1 at 17. On its face, this liability provision in the Bill of Lading does not give Mr. Deming "a reasonable opportunity to choose between two or more levels of liability" or "obtain [his] agreement as to his choice of carrier liability limit." Hughes, 970 F.2d at 611–12. Nor does the Bill of Lading include any written waiver of full value protection, which is required by the plain text of the provision governing the transport of household goods. 49 U.S.C. § 14703(f)(3). Therefore, the Bill of Lading does not establish an effective limitation of liability under the Carmack Amendment.

Next, the Court turns to the Transportation Services Agreement between United and Plus Relocation. As a preliminary matter, United has plausibly alleged that Mr. Deming was bound by this agreement even though he was not a direct party to it. The Bill of Lading incorporates the Transportation Services Agreement between United and Plus Relocation. Specifically, the "CONTRACT TERMS and CONDITIONS of HOUSEHOLD GOODS BILL of LADING" section provides the following: "Carrier's currently effective applicable tariffs, all inventories prepared in conjunction with this Bill of Lading, any applicable National Contract Agreements and the Estimate/Order for Service prepared in advance of shipment are hereby incorporated by reference." ECF No. 1 at 20 (emphasis added). And, even if Mr. Deming was not actually aware of the terms of the Transportation Services Agreement, he is still be bound by it if Plus Relocation was acting as an intermediary. See Norfolk S. Ry. Co. v. Kirby, 543 U.S. 14, 33 (2004) ("When

an intermediary contracts with a carrier to transport goods, the cargo owner's recovery against the carrier is limited by the liability limitation to which the intermediary and carrier agreed. . . . [W]hen it comes to liability limitations for negligence resulting in damage, an intermediary can negotiate reliable and enforceable agreements with the carriers it engages."). United has plausibly alleged that Plus Relocation was acting as an intermediary between United and Mr. Deming, and therefore that Mr. Deming is bound by the liability limitation in the Transportation Services Agreement. See ECF No. 1 ¶¶ 8-9 (alleging that Scott Deming's employer, Capella Education Company, entered into a contractual relationship with Plus Relocation Services, who in turn contracted with United).

United has also plausibly alleged that the Transportation Services Agreement satisfied the requirements for an effective liability limitation under the Carmack Amendment. According to that agreement, "Carrier's liability on an Item-by-Item basis (excluding Extraordinary Value Items) shall be Full Value Protection . . ." ECF No. 1 ¶ 11. The agreement further states "Carrier's maximum liability for loss or damage to any and all Items in a shipment shall be the lesser of $5.00 per pound times the actual weight of the shipment or $100,000," and that "[t]here shall be no charge for Carrier to assume this level of liability." Id. Importantly, though, that agreement also states that "Shipper may increase the level of Carrier's maximum liability set forth above by declaring such additional amount on the Bill of Lading and paying charges for such additional amount equal to $.65 per $100.00 declared above Carrier's maximum liability level." Id. This statement, when viewed in conjunction with Mr. Deming's subsequent failure to declare an additional amount in the blanks on the Bill of Lading, plausibly suggests that United gave Mr. Deming a reasonable opportunity to choose between two or more levels of liability and obtained Mr. Deming's agreement to a lower level of liability. See Nipponkoa, 687 F.3d at 782-83 (finding that the contracts, "[o]n their face, suggest that [shipper] had a choice between accepting a $0.60 per pound limitation of liability or declaring a different value for the load" because "[shipper] left the line blank where it could have declared a higher value than $0.60 per pound").

Therefore, when construed in the light most favorable to United, the allegations in the complaint and the attached exhibits plausibly suggest that United is entitled to the declaratory

United States District Court
Northern District of California

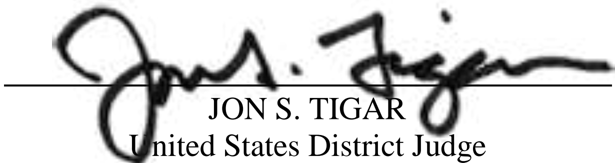
relief that it seeks in this action. The Court accordingly denies the motion to dismiss.

CONCLUSION

The Court denies the motion to dismiss.

IT IS SO ORDERED.

Dated: July 25, 2017



JON S. TIGAR
United States District Judge