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10	UNITED STATES DISTRICT COURT
11	DISTRICT OF NEVADA
12) RICHARD UNDERWOOD,) 3:11-cv-00035-HDM-RAM
13 14	RICHARD UNDERWOOD,) 3:11-cv-00035-HDM-RAM) Plaintiff,)
14	vs.) ORDER
16	ALLIED VAN LINES, INC.,
17	Defendant.
18)
19	The court has been advised that plaintiff has complied with the
20	required claims process pursuant to 49 C.F.R. § 370.3(a), 49 C.F.R.
21	§ 1005.2(a), and the defendant's tariff. Accordingly, leave is
22	granted to the plaintiff to file a second amended complaint. Any such
23	complaint shall be limited to a claim under the Carmack Amendment.
24	The inclusion of a claim for intentional infliction of emotional distress would be futile as it is preempted by the Carmack Amendment
25	arscress would be fuctie as it is preempted by the carmack Amendment

"to the extent it arises from the same conduct as the claims for

delay, loss or damage to shipped property." White v. Mayflower

Transit, L.L.C., 543 F.3d 581, 586 (9th Cir. 2008). Despite

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plaintiff's assertion otherwise, his proposed claim for intentional 1 2 infliction of emotional distress arises from the same conduct underlying his Carmack Amendment claim. Plaintiff is therefore denied 3 4 leave to amend his complaint to add a claim for emotional distress. Accordingly, the plaintiff's motion to file a second amended 5 complaint (#20) is granted in part and denied in part in accordance 6 7 with this order. The bond previously posted by plaintiff shall remain 8 deposited with the clerk of the court.

9 Upon the filing of the plaintiff's second amended complaint, the 10 defendant's motion to dismiss, or in the alternative motion for a 11 more definite statement(#9), shall be denied as moot. The denial is 12 without prejudice should the defendant elect to file a motion to 13 dismiss the second amended complaint.

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IT IS SO ORDERED.

DATED this 14th day of April, 2011.

Howard DMEKiller

UNITED STATES DISTRICT JUDGE