

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 TROY SLACK, et al.,

9 Plaintiffs,

10 v.

11 SWIFT TRANSPORTATION CO. OF
12 ARIZONA, LLC,

13 Defendant.

CASE NO. C11-5843 BHS

ORDER DENYING MOTION
FOR RECONSIDERATION

14
15 This matter comes before the Court on Defendant Swift Transportation Co. of
16 Arizona, LLC's ("Swift") motion for reconsideration of the Court's order granting class
17 certification (Dkt. 84). The Court has considered the pleadings filed in support of and in
18 opposition to the motion and the remainder of the file and hereby denies the motion for
19 the reasons stated herein.

20 **I. PROCEDURAL HISTORY**

21 On June 28, 2013, Plaintiffs Troy Slack, Eric Dublinski, Richard Erickson, Sean P.
22 Forney, Jacob Grismer, Timothy Helmick, Henry M. Ledesma, Scott Praye, Gary H.

1 Roberts, and Dennis Stuber (“Plaintiffs”) filed a motion for class certification. Dkt. 40.
2 On August 2, 2013, Slack responded. Dkt. 57. On August 23, 2013, Plaintiffs replied.
3 Dkt. 82. On November 20, 2013, the Court granted the motion and certified a smaller,
4 more defined class than Plaintiffs originally proposed. Dkt. 83.

5 On December 4, 2013, Swift filed a motion for reconsideration. Dkt. 84. On
6 December 9, 2013, the Court requested a response. Dkt. 85. On January 3, 2013,
7 Plaintiffs responded. Dkt. 86. On January 10, 2013, Swift replied. Dkt. 87.

8 II. DISCUSSION

9 Motions for reconsideration are governed by Local Rule CR 7(h), which provides
10 as follows:

11 Motions for reconsideration are disfavored. The court will ordinarily
12 deny such motions in the absence of a showing of manifest error in the
13 prior ruling or a showing of new facts or legal authority which could not
14 have been brought to its attention earlier with reasonable diligence.

15 Local Rule CR 7(h)(1).

16 In this case, Swift argues that they were prejudiced by a violation of due process
17 but stops short of asserting that the Court committed a manifest error of law. The Court
18 engaged in a rigorous analysis of Rule 23’s requirements. *Wal-Mart Stores, Inc. v.*
19 *Dukes*, 131 S. Ct. 2541, 2551 (2011). When Swift showed that Plaintiffs’ proposed class
20 was unworkable, the Court was faced with two decisions: (1) deny the motion to certify
21 the proposed class or (2) certify a more defined class in accordance with the substantive
22 law of Washington. The Court concluded that there was a class of Plaintiffs that fell
“squarely” within the Washington Supreme Court decision of *Bostain v. Food Express*,

1 *Inc.*, 159 Wn.2d 700 (2007). The Court is unaware of any authority that holds that the
2 Court abused its discretion by accepting Swift's arguments that the proposed class was
3 unworkable, yet concluding that a smaller, more defined class was workable and met
4 Rule 23's requirements. In cases where the law was not so clear, the Court may have
5 committed error. But, in this case, the law of the state clearly applies to the drivers
6 within the certified class. Therefore, the Court finds that it did not commit a manifest
7 error of law.

8 Swift argues that, given the opportunity to collect and present evidence, it would
9 show that the certified class is also unworkable. This case is over two years old and
10 Swift has had sufficient time to collect evidence. Moreover, the Court based its decision
11 on declarations that are in the record and cites were provided in the order. If Swift has a
12 basis to narrow or attack the scope of the class, then it may do so through a Rule
13 23(c)(1)(C) motion. However, the Court is not persuaded that the certification order
14 should be vacated in its entirety.

15 III. ORDER

16 Therefore, it is hereby **ORDERED** that Swift's motion for reconsideration (Dkt.
17 84) is **DENIED**.

18 Dated this 23rd day of January, 2014.

19
20 

21

BENJAMIN H. SETTLE
22 United States District Judge