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February 17, 2010

VIA HAND DELIVERY

Honorable Richard M. Berman, U.S.D.J.
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Van Dusen, et al v. Swift Transportation Co., Inc., et al
Case No. 09 civ 10376 (RMB)

Dear Judge Berman:

This Firm represents Defendants Swift Transportation Co., Inc. ("Swift") and Interstate Equipment Leasing, Inc. ("IEL") in the above-captioned matter. Pursuant to Your Honor's Individual Practices, we write to request a pre-motion conference for permission to file a motion to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(3) or, in the alternative, to transfer venue to the U.S. District Court for the District of Arizona pursuant to 28 U.S.C. § 1404(a).[1]

By way of background, this lawsuit arises out of Plaintiffs Joseph Sheer and Virginia Van Dusen's former engagement by Swift as independent contractors. At the time of filing of the initial Complaint, Plaintiffs' counsel brought this action on behalf of Joseph Sheer and John Doe 1. Mr. Sheer, a California resident, claims that Swift, a large truckload motor carrier incorporated in and maintaining its principal place of business in Arizona, and IEL, a truck leasing company incorporated in and maintaining its principal place of business in Arizona, are joint employers, and that they misclassified him as an independent contractor for purposes of the federal Fair Labor Standards Act ("FLSA") and the California Labor Code. Plaintiff John Doe 1, who is allegedly a New York resident, claims that Defendants misclassified him as an independent contractor for purposes of the FLSA and the New York Labor Law. Sheer and Doe both claim that they were employees of Swift and IEL for purposes of the FLSA, the California Labor Code and New York Labor Law, respectively, and are therefore entitled to unpaid wages, liquidated damages, interest, costs, attorneys fees, and declaratory relief. Subsequently, Plaintiffs' counsel amended the Complaint to add Virginia Van Dusen as an additional named plaintiff, further asserting three additional counts: (1) that the lease agreement with IEL is unconscionable under New York and California law; and (2) a common law claim for restitution/unjust enrichment.

Plaintiffs allege that venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) on the mistaken premise that "a substantial part of the events or omissions giving rise to the claim occurred in this District and at least one Defendant resides in this District." In fact, neither

[1] In addition, if this matter is not transferred, or upon transfer, Defendants intend to file a motion to compel arbitration.

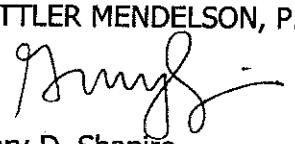
defendant resides in New York. Further, the vast majority of the individuals who made the decisions that give rise to this action, namely to classify these individuals as independent contractors, are located in Arizona. Last, the independent contractor agreements that Mr. Sheer, Ms. Van Dusen and their alleged colleagues signed, and which the Court will necessarily have to analyze and interpret in ruling on the merits, contain an arbitration provision which expressly requires that any such dispute be resolved in Arizona in accordance with Arizona law. A large number of the lease agreements signed with IEL, including those signed by Ms. Van Dusen and some of the opt-in plaintiffs, similarly include an Arizona choice of law provision, as well as a clear and unequivocal forum selection clause, requiring the parties to resolve any disputes under the lease exclusively in the state or federal courts of Phoenix, Arizona. In short, because no part, let alone a substantial part, of the events or omissions giving rise to this claim occurred in New York, and the very contracts at issue require the parties to litigate such claims in Arizona, venue in New York is inappropriate and this Court should dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(3).

In the alternative, the Court should transfer this case to the United States District Court for the District of Arizona pursuant to 28 U.S.C. § 1404(a). Again, Plaintiffs Sheer and Van Dusen and the opt-ins all signed independent contractor agreements with Swift, which Swift intends to enforce. All of these agreements require the parties to arbitrate any disputes arising under them in Maricopa County, Arizona in accordance with Arizona law. In addition, a large number of the lease agreements signed with IEL, including the one signed by Ms. Van Dusen, similarly have Arizona choice of law and choice of forum provisions, requiring any such disputes to be litigated in Phoenix, Arizona in accordance with Arizona law. Also, as stated above, the great majority of the individuals who made the decisions that Plaintiffs now challenge reside in Arizona, over 2,000 miles away from New York, as do the documents which will drive this litigation. Under the established case law of this Circuit, because Plaintiffs might have filed this case in the District of Arizona, and because the convenience of the parties and the interests of justice favor litigating this case there, this Court should transfer this action there.

Finally, Defendants respectfully request that Your Honor stay the deadlines for them to file an Answer or other responsive pleading pending the outcome of the pre-motion conference.

Respectfully submitted,

LITTLER MENDELSON, P.C.



Gary D. Shapiro

cc: Dan Charles Getman (via Hand Delivery)
James N. Boudreau (via Hand Delivery)