

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 A Limited Liability Partnership
 2 Including Professional Corporations
 RONALD J. HOLLAND, Cal. Bar No. 148687 (*Pro Hac Vice*)
 3 rholland@sheppardmullin.com
 ELLEN M. BRONCHETTI, Cal. Bar No. 226975 (*Pro Hac Vice*)
 4 ebronchetti@sheppardmullin.com
 PAUL S. COWIE, Cal. Bar No. 250131 (*Pro Hac Vice*)
 5 pcowie@sheppardmullin.com
 Four Embarcadero Center, 17th Floor
 6 San Francisco, California 94111-4109
 Telephone: 415-434-9100
 7 Facsimile: 415-434-3947

8 Attorneys for Defendants
 SWIFT TRANSPORTATION CO. OF
 9 ARIZONA, LLC, INTERSTATE EQUIPMENT
 LEASING, LLC, CHAD KILLEBREW and
 10 JERRY MOYES

11
 12 UNITED STATES DISTRICT COURT
 13 FOR THE DISTRICT OF ARIZONA
 14

15 Virginia Van Dusen; John Doe 1; and
 16 Joseph Sheer, individually and on behalf of
 all other similarly situated persons,

17 Plaintiffs,

18 v.

19 Swift Transportation Co., Inc.; Interstate
 20 Equipment Leasing, Inc.; Chad Killibrew;
 and Jerry Moyes,

21 Defendants.

Case No. CV 10-899-PHX-JWS

**DECLARATION OF ROBERT
 MUSSIG IN SUPPORT OF
 DEFENDANTS SWIFT
 TRANSPORTATION CO. OF
 ARIZONA, LLC AND INTERSTATE
 EQUIPMENT LEASING, INC.'S
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR SANCTIONS**

[Filed Concurrently with Opposition]

DECLARATION OF ROBERT MUSSIG

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I, Robert Mussig, declare as follows:

1. I am an attorney for Defendants Swift Transportation Co. of Arizona, LLC; Interstate Equipment Leasing, LLC; Chad Killebrew; and Jerry Moyes in the above referenced action. I am an associate with the law firm Sheppard, Mullin, Richter & Hampton. I make this declaration based on my own personal knowledge and, if called as a witness, I could and would testify competently concerning the facts set forth below.

2. Immediately following the Court’s July 15, 2015 order compelling Plaintiffs’ requests for production, Defendants began analyzing the order in order to determine exactly which documents they were required to produce, and also began searching for responsive documents.

3. Less than two weeks later, Plaintiffs’ counsel, Dan Getman, contacted me and requested a status update on the document production. In response, I explained: “We have been working diligently to ascertain precisely which documents Swift must produce in order to comply with the Court’s discovery order, and to obtain those documents from our client so they can be produced.” I instructed Plaintiffs’ counsel that Defendants “obviously intend to comply with the Court’s order fully and in good faith.” At no point did I or any of Defendants’ other attorneys ever indicate that Defendants would refuse to produce responsive documents. Defendants diligently continued searching for responsive documents in both Swift and IEL’s voluminous records. Attached hereto as **Exhibit A** is a true and correct copy of my email to Plaintiffs’ counsel.

4. Plaintiffs’ followed up again approximately one month later. On August 31, 2015, Mr. Getman emailed me and asked about the status of the production. Attached hereto as **Exhibit B** is a true and correct copy of Mr. Getman’s email.

1 5. On September 4, 2015, less than a week after receiving Mr. Getman's email,
2 Defendants produced nearly a thousand pages of documents. The documents produced
3 directly address whether Plaintiffs are independent contractors or employees. Such
4 documents include: Plaintiffs' Owner Operator agreements; Plaintiffs' leasing
5 agreements; all Owner Operator agreement templates used within the last ten years;
6 recruiting materials such as brochures and magazine, radio, and internet advertisements; all
7 five versions of the information packet given to new Owner Operators within recent years;
8 training materials including manuals, booklets, and presentations; policy documents on
9 topics such as to whom IEL leases trucks; and Plaintiffs' Company Driver personnel files
10 including their employment applications, DAC employment history reports, and
11 performance reviews. These documents are responsive to several of Plaintiffs' requests for
12 production, such as:

- 13 • The owner operator contract templates used in the last ten years. [Responsive to
14 Request No. 3]
- 15 • Each and every owner operator contract signed by the named Plaintiffs along with
16 accompanying documents. [Responsive to Request Nos. 4 and 64]
- 17 • Each and every equipment lease signed by the named Plaintiffs. [Responsive to
18 Request No. 8, 10, and 76]
- 19 • A spreadsheet of each named Plaintiffs' driver movement details listing information
20 such as the origin, designation, and miles of every trip taken. [Responsive to
21 Request No. 34]
- 22 • Contracts and brochures from companies that owner operators can but do not
23 necessarily have to contract with for services such as health insurance or accounting
24 services. [Responsive to Request No. 79]
- 25 •
- 26 •
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- 28 •

- 1 • Documents related to the cancelation of contracts between Defendants and the
2 named Plaintiffs. [Responsive to Request Nos. 12 and 54]
- 3
- 4 • Various Owner Operator recruiting materials, including internet, radio, magazine,
5 and other print advertisements. [Responsive to Request No. 24]
- 6
- 7 • Training and policy materials, including mentor training program agreements,
8 handouts, booklets, and presentations. [Responsive to Request Nos. 35, 36, 37, 38,
9 94, and 96]
- 10 • Personnel files of the named-Plaintiffs' for the time period that they worked as
11 company drivers, which includes documents such as employment applications,
12 performance evaluations, and DAC employment history files. [Responsive to
13 Request Nos. 43, 44, 45, and 53]

14 6. On September 4, 2015, in connection with Defendants' document
15 production, I informed Plaintiffs' counsel by email that Defendants were still searching for
16 documents and would produce them as soon as they were located. Attached hereto as
17 **Exhibit C** is a true and correct copy of my email September 4, 2015 email.

18

19 7. On September 10, 2015, Plaintiffs' counsel, Lesley Tse, emailed regarding a
20 separate matter. In her email, she conceded that Plaintiffs seek the documents at issue here
21 in order to prepare for the depositions of Defendants' corporate representatives under
22 FRCP 30(b)(6). Attached hereto as **Exhibit D** is a true and correct copy of Ms. Tse's
23 email.

24

25 8. Following Defendants' production and status update, Plaintiffs never
26 contacted Defendants again regarding any potential motion. Plaintiffs never informed
27 Defendants that they would file a motion because they had not yet received the remainder
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1 of the document production. Plaintiffs never tried to reach a compromise with Defendants
2 regarding a timeline to produce the remaining documents.

3
4 9. Defendants have continued to produce documents even after Plaintiffs filed
5 their motion. All told, Defendants have produced nearly two thousand pages of documents
6 in response to the Court's order. Defendants have produced essentially *all* documents
7 pertaining to the named plaintiffs, as well as the vast majority of the policies that would
8 have applied to them. Defendants have produced over three thousand pages of documents
9 throughout the pendency of the litigation.

10
11 I declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct, and that this Declaration was executed on October 9, 2015, at
13 Los Angeles, California.

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15 */s/ Robert Mussig*
16 Robert Mussig

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CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2015, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to the following CM/ECF registrants:

Susan Joan Martin
Jennifer Lynn Kroll
Martin & Bonnett PLLC
1850 N. Central Ave.; Ste. 2010
Phoenix, AZ 85004

Dan Getman
Edward John Tuddenham
Lesley Tse
Getman & Sweeney, PLLC
9 Paradies La.
New Paltz, NY 12561

Attorneys for Defendants

/s/ Ronald Holland