UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 15-1825-JLS (KESx) Date: February 26, 2016
Title: Daniel Escobar v. Garden Fresh Restaurant Corp.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero	N/A
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER DENYING DEFENDANT'S MOTION TO COMPEL ARBITRATION (Doc. 13)

Before the Court is Defendant Garden Fresh Restaurant Corp.'s Motion to Compel Arbitration. (Mot., Doc. 13.) Plaintiff Daniel Escobar opposes the Motion. (Opp., Doc. 20.) Garden Fresh replied. (Reply, Doc. 21.) Having considered the Parties' briefing, heard oral argument, and taken the matter under submission, the Court DENIES Garden Fresh's Motion.

I. BACKGROUND

According to the Complaint, Escobar was employed by Garden Fresh from January 20, 2010 through November 15, 2014. (Complaint ¶ 3, Doc. 1.) Garden Fresh, which purportedly does business as Souplantation and Sweet Tomatoes ("Souplantation"), "employs drivers to deliver goods from within California to various locations both in and out of California." (*Id.* ¶¶ 3, 7.) Escobar alleges that "[t]he drivers were paid a 'piece rate' for their driving – that is, they were paid per stop and per mile." (*Id.* ¶ 8.) The Complaint furthers asserts that "[t]he drivers were not permitted to take meal breaks within the first five hours of work" and "[t]he drivers were not provided paid 10 minute rest breaks." (*Id.* ¶¶ 10-11.) The Complaint states causes of action for (1) failing to pay minimum wage; (2) failing to provide adequate meal and rest periods; (3) failing to itemize wage statements; (4) waiting time penalties; and (5) violations of

California's Unfair Competition Law. (*Id.* ¶¶ 26-69.) Escobar proposes three different classes: the "California drivers," the "Piece Rate Drivers," and the "Former Drivers." (*Id.* ¶¶ 13-15.)

It is undisputed that Escobar executed an arbitration agreement during the course of his employment. (*Compare* Mem. at 3 (citing Grubbs Decl., Ex. A, "Employee Acknowledgment and Agreement," Doc. 14-1) *with* Opp. at 5 (arguing that agreement is not silent on class action arbitrations).) In relevant part, the agreement states:

> I also acknowledge that the company utilizes a system of alternative dispute resolution that involves binding arbitration to resolve all disputes that may arise out of the employment context. Because of the mutual benefits . . . that private binding arbitration can provide both the company and me, the company and I agree that any claim, dispute, and/or controversy . . . arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, or other association with the company . . . shall be submitted to and determined exclusively by binding arbitration.

(Employee Acknowledgement and Agreement at 1.) Based on this agreement, Garden Fresh brought the instant Motion to compel arbitration. (Mot., Doc. 13.)

II. LEGAL STANDARD

The Federal Arbitration Act provides that an agreement to submit commercial disputes to arbitration shall be "valid, irrevocable, and enforceable." 9 U.S.C. § 2. When a motion to compel arbitration is filed, "[t]he burden is on the party opposing arbitration." *Shearson/Am. Express., Inc. v. McMahon*, 482 U.S. 220, 227 (1987). However, the FAA does not apply to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. The Supreme Court has interpreted § 1 to exempt "transportation workers" from the FAA. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119-121 (2001).

Section 4 of the FAA sets forth a procedure to resolve factual disputes concerning "the making of the arbitration agreement" or a party's purported "failure, neglect, or refusal" to arbitrate. 9 U.S.C. § 4. Where such a factual dispute arises, "the court shall

proceed summarily to the trial thereof." *Id.* The party who is resisting arbitration is entitled to request a jury trial. *Id.*

III. DISCUSSION

Garden Fresh seeks an order from the Court compelling Escobar to submit his claims to arbitration and to dismiss his putative class claims. (Mem. at 1.) For support, Garden Fresh contends that Escobar "signed a valid and enforceable binding arbitration agreement during his employment at Garden Fresh that requires arbitration of his individual claims[.]" (*Id.*) In response, Escobar argues that the Motion must fail because he is exempt from the FAA by virtue of his work as a commercial truck driver. (Opp. at 1-2.) At a minimum, Escobar contends, he is entitled to a jury trial to resolve any outstanding factual disputes. (*Id.* at 1.)

The dispositive question is whether Escobar is a "transportation worker" under § 1 of the FAA and, as a result, exempt from its application. The Supreme Court has made clear that § 1 "exempt[s] contracts of employment of transportation workers, but not other employment contracts, from the FAA's coverage." *Circuit City*, 532 U.S. at 109. In *Harden v. Roadway Package Sys., Inc.*, 249 F.3d 1137 (9th Cir. 2001), the Ninth Circuit held that a delivery driver for Roadway Package Systems, Inc., who had entered into a contract to "deliver packages 'throughout the United States, with connecting international service'" is exempt from the FAA under § 1. *Id.* at 1140. Although the Ninth Circuit has yet to consider the precise volume of interstate deliveries required in order for the exemption to apply, subsequent cases describe the facts in *Harden* as "the most obvious case." *See Veliz v. Cintas Corp.*, No. C 03-1180 SBA, 2004 WL 2452851, at *5 (N.D. Cal. Apr. 5, 2004).

Here, there exists a genuine dispute of material fact as to whether, and how frequently, Escobar made interstate deliveries. Garden Fresh contends that Escobar "was a local driver in Garden Fresh's Central Kitchen . . . who drove exclusively in California." (Mem. at 18.) For support, Garden Fresh cites to a declaration from Archie Clark, who is the company's Executive Director of Distribution. (Clark Decl. ¶ 2, Doc. 15.) Clark states that he has "personally consulted company records regarding Plaintiff Daniel Escobar's stops and miles" and, based upon this review, concluded that "Mr.

Escobar never drove an out-of-state route to Nevada or Arizona." (*Id.* ¶ 3.) Contrary to Clark's declaration, Escobar states that during his employment with Garden Fresh he "drove from Fullerton, California to Las Vegas, Nevada and to Arizona at least 30 times." (Escobar Decl. ¶2, Doc. 20-1.) On his trips to Las Vegas, Escobar states that he "would make deliveries to several of the Souplantation restaurant locations[.]" (*Id.* ¶ 3.) When he purportedly drove to Arizona, Escobar states that he "would take goods to and from a warehouse location." (*Id.* ¶ 4.) Escobar further attests that "[a]s a driver, approximately 40% of my time was spent on routes that crossed state lines and about 60% of [my] time was spent driving routes in California." (*Id.* ¶ 10.)

The Court finds that resolution of this factual dispute relates directly to Escobar's purported "failure, neglect, or refusal" to arbitrate. *See* 9 U.S.C. § 4. Therefore, these issues are properly resolved by a jury. *See, e.g.*, *Ferguson v. Countrywide Credit Indust., Inc.*, No. CV00-13096AHM(CTX), 2001 WL 867103, at *1 (C.D. Cal. Apr. 23, 2001).

IV. CONCLUSION

For the reasons stated above, the Court DENIES Garden Fresh's Motion to Compel Arbitration. The Court ORDERS the Parties to meet and confer and, thereafter, to file a joint report identifying a timeline for discovery pertaining only to issues relevant to determining the nature of Escobar's work as it relates to the FAA § 1 exemption and a proposed trial schedule to resolve that issue. The joint report should be filed no later than fourteen (14) days after issuance of this order. With the exception of the issue to be tried, all pending motions and other dates in this case are stayed until the exemption question has been resolved.

Initials of Preparer: _____