

1 [*Counsel information*  
2 *on the following page*]

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9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
11

12 GRANT FRITSCH, an individual,

13 Plaintiff,

14 vs.

15 SWIFT TRANSPORTATION CO. OF  
16 ARIZONA, LLC, a Delaware limited  
17 liability company; and DOES 1 through  
18 10, inclusive.

19 Defendants.  
20  
21  
22

Case No.: 5:17-cv-02226-JGB-SP

*Assigned to:* Hon Jesus G. Bernal

**CLASS ACTION**

*{Removed from: San Bernardino  
Superior Court Case No.  
CIV-DS-1518012}*

**JOINT RULE 26 REPORT**

Date: February 25, 2019

Time: 11:00 AM

Location: Courtroom 1  
3470 Twelfth Street  
Riverside, California 92501

*Complaint Filed: 12/10/15*

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*Attorneys for Defendant*  
**Swift Transportation Co. of Arizona, LLC**

1 Plaintiff Grant Fritsch (“Plaintiff” or “Fritsch”) and Defendant Swift  
2 Transportation Co. of Arizona, LLC (“Defendant” or “Swift”), have met and conferred  
3 pursuant to Federal Rule of Civil Procedure 26(f) on February 8, 2019. The meeting  
4 took place telephonically because of the significant distance between counsel’s office.  
5 Plaintiff prepared a draft Joint Report, which Defendant’s counsel edited thereafter.  
6 The Parties shall exchange Initial Disclosures under Rule 26 within 14 days of the  
7 conference of counsel.

8 **I. STATEMENT OF THE CASE**

9 a. Plaintiff’s Position

10 Defendant Swift Transportation is a transportation services company, operating  
11 one of the largest fleets of truckload equipment in North America from over 40  
12 terminals near key freight centers and traffic lanes. Swift has employed approximately  
13 233 employees in the position of “yard hostler” in California, during the relevant claims  
14 period in this case. The position of yard hostler is sometimes also referred to in the  
15 industry as a “yard spotter” or “yard jockey,” or simply “hostler.”

16 As a hostler working for Defendant, Plaintiff was required to drive a hostler  
17 tractor, also sometimes called a “yard goat,” which is a utility vehicle that is connected  
18 to freight trailers, for the purpose of moving the trailers from staging areas in a yard to  
19 various loading docks. Typically, a hostler is stationed at a yard maintained either by  
20 Swift or one of Swift’s customers. From time to time, Fritsch also was called upon to  
21 do some loading and unloading work with the trailers.

22 Swift paid Plaintiff an hourly rate, approximately \$16 to \$18 per hour for his  
23 work as a hostler. During his employment with Defendant, Plaintiff frequently worked  
24 long hours (over 12 hours in a day, and over 40 hours per week). However, Swift paid  
25 Plaintiff at his straight time (regular) rate, even when he worked overtime hours, rather  
26 than time-and-a-half.

27 During Plaintiff’s employment with Swift, he was not provided with second meal  
28 periods as required by California law. It is alleged by Plaintiff that he is owed wages,

1 meal period premiums, and penalties all relating to the wage/hour policies of Defendant  
2 with respect to the hostler position.

3 b. Defendant's Position

4 Swift is a nationwide commercial motor carrier. Swift employs certain drivers to  
5 perform among other tasks, yard hostling work. Plaintiff is a former employee driver  
6 who performed yard hostling work for Swift. Yard hostlers, like other drivers for Swift,  
7 also regularly transport Swift's customers' property in interstate commerce. All of  
8 Swift's drivers performing yard hostler work are qualified under the Federal Motor  
9 Carrier Safety Regulations to drive commercial motor vehicles in interstate commerce  
10 and can be indiscriminately called upon at any time to drive commercial motor vehicles  
11 in transportation on the public highways in interstate commerce. Swift expects that  
12 yard hostlers will regularly be assigned to drive loads in interstate commerce in the  
13 course of Swift's normal operations and requires that hostlers be dispatched to transport  
14 interstate loads on public highways at least once every 30 days.

15 Plaintiff alleges that he and a putative class of Swift's yard hostlers in California  
16 were not paid overtime wages in accordance with California law. Swift contends that  
17 its yard hostler employees are exempt from California's overtime regulations under Cal.  
18 Code Regs. tit. 8, § 11090(3)(L)(1), which exempts employees in the transportation  
19 industry from overtime if their hours of service are regulated by "(1) The United States  
20 Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to  
21 395.13, Hours of Service of Drivers; or (2) Title 13 of the California Code of  
22 Regulations, subchapter 6.5, Section 1200 and the following sections, regulating hours  
23 of drivers." Swift contends that its employee yard hostlers qualify for this exemption  
24 due to their interstate duties.

25 Plaintiff also alleges that Swift's yard hostlers in California were not provided  
26 with meal periods in accordance with California law. Swift contends that its California  
27 yard hostlers were provided with meal periods or lawfully waived their meal periods in  
28 accordance with California law, and alternatively that California's meal period

1 regulations are preempted by 49 U.S.C. § 31141(a) and a December 21, 2018  
2 determination by the Federal Motor Carrier Safety Administration. Swift further  
3 contends that this case is not suitable to be certified as a class action under Rule 23 of  
4 the FRCP.

5 **II. SUBJECT MATTER JURISDICTION**

6 The Class Action Fairness Act (“CAFA”) gives federal district courts original  
7 jurisdiction in most class actions in which “the matter in controversy exceeds the sum  
8 or value of \$5,000,000” in the aggregate and there is at least minimal diversity of  
9 citizenship. 28 U.S.C. § 1332(d)(2). Defendant removed this case from Superior Court  
10 for the County of San Bernardino under CAFA and Plaintiff’s motion to remand was  
11 ultimately denied.

12 **III. LEGAL ISSUES**

13 a. Plaintiff’s Position

- 14 • Are the class member yard hostlers non-exempt employees entitled to  
15 receive overtime and double-time pay?  
16 • Have the class member yard hostlers received timely and lawful first and  
17 second meal periods?  
18 • Are the class member yard hostlers owed penalties for failure to provide  
19 proper paystubs?  
20 • Are the class member yard hostlers owed waiting-time penalties for former  
21 employees?  
22 • Are the class member yard hostlers owed civil penalties under the Labor  
23 Code Private Attorneys General Act (“PAGA”)?

24 b. Defendant’s Position

- 25 • Are Swift’s drivers who performed yard hostler work exempt from  
26 California’s overtime regulation pursuant to Code Regs. tit. 8, §  
27 11090(3)(L)(1)?  
28

- 1 • Did Swift provide its drivers who performed yard hostler work in
- 2 California lawful meal periods?
- 3 • Did Swift’s drivers who performed yard hostler work in California
- 4 lawfully waiver their meal periods?
- 5 • Are California’s meal period regulations preempted under 49 U.S.C. §
- 6 31141(a) and a December 21, 2018 determination by the Federal Motor
- 7 Carrier Safety Administration?
- 8 • Can a class be certified under Rule 23?

9 **IV. PARTIES, EVIDENCE, ETC.**

10 a. The Parties

11 The proper parties are currently before this court.

12 b. The Evidence; Plaintiff’s Position

13 The evidence that will bear on the resolution of Plaintiff’s claims includes, but is  
14 not limited to the following: (1) time records (2) pay stubs; (3) driver e-logs; (4)  
15 Defendant’s policies. Since this matter was certified as a class action in the state court,  
16 Defendants have already produced thousands of pages of documents bearing directly on  
17 the issues in dispute as it pertains to the class members (i.e., time records, payroll  
18 information, etc. for the certified class).

19 c. The Evidence; Defendant’s Position

20 The testimony of Swift’s drivers who perform yard hostler work and managers,  
21 policies, and produced records will demonstrate that Swift’s drivers who perform yard  
22 hostler work in California are exempt from overtime and were lawfully provided meal  
23 periods. This evidence will also demonstrate that California’s meal period regulations  
24 are preempted and that a class cannot be certified.

25 **V. DAMAGES**

26 a. Plaintiff’s Position

1 As discussed extensively in the CAFA-related briefing in this matter, the non-  
2 PAGA damages in this matter have been estimated by the Court to be just over \$5  
3 million, and the damages including PAGA are estimated at approximately \$10 million.

4 b. Defendant's Position

5 Plaintiff's allegations have no merit and Plaintiff and the putative class have  
6 therefore suffered no damages.

7  
8 **VI. INSURANCE**

9 None.

10  
11 **VII. MOTIONS**

12 a. Plaintiff's Position

13 Plaintiff intends to conclude discovery in the next two months, and will be ready  
14 for trial of this matter thereafter as is convenient to the Court. Motions will only be  
15 necessary if any discovery disputes arise.

16 b. Defendant's Position

17 Plaintiff's allegations have no merit and Plaintiff and the putative class have  
18 therefore suffered no damages. A class has not been certified under Rule 23 and the  
19 state court's February 1, 2018 class certification order is void because it was issued  
20 after removal on October 31, 2017. Thus, if Plaintiff wishes to pursue this case as a  
21 class action, Plaintiff must move for class certification under Rule 23. Swift may move  
22 for summary judgment.

23  
24 **VIII. MANUAL FOR COMPLEX LITIGATION**

25 Neither of the Parties believe the Manual for Complex Litigation need be used at  
26 this time.

1           **IX.           STATUS OF DISCOVERY**

2                   a. Rule 26 Initial Disclosures

3           The Parties have agreed to exchange Initial Disclosures by February 22, 2019.

4                   b. Plaintiff's Position

5           The Parties have exchanged formal written discovery and Plaintiff has taken  
6 some deposition discovery (including person-most-qualified / 30(b)(6) witnesses). In  
7 fact, Defendants have produced thousands of pages of documents bearing directly on  
8 the issues in dispute as was required after the class was certified. Plaintiff's fact  
9 discovery is nearly completed, and it is anticipated Plaintiff will conclude fact discovery  
10 within the next two months.

11                   c. Defendant's Position

12           Swift shall serve written discovery and take Plaintiff's deposition.

13           **X.           DISCOVERY PLAN**

14           Plaintiff's discovery is nearly completed.

15           Plaintiff's Position:

- 16
  - Plaintiff intends to complete discovery in the next two months.

17           Defendant's Position:

- 18
  - Swift intends to serve written discovery and take Plaintiff's deposition.

19           The amount of time to complete discovery is dependent on whether  
20           Plaintiff intends to move for class certification under Rule 23.

21           **XI.          DISCOVERY CUTOFF**

22           See completed Schedule of Pretrial and Trial Dates form attached as Exhibit A.

24           **XII.         EXPERT DISCOVERY**

25           See completed Schedule of Pretrial and Trial Dates form attached as Exhibit A.

27           **XIII.        DISPOSITIVE MOTIONS**

28           See Section VII "Motions" above.



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**XIV. SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION (ADR)**

The Parties have attended private mediation on two separate occasions; first in late 2017 and also in 2018. The case did not resolve at mediation. Defendant removed the matter to federal court based on written settlement demands made in connection with the mediation(s). The Parties have thus already discharged ADR Procedure No. 3 under Local Rule 16-15.4.

**XV. TRIAL ESTIMATE**

a. Plaintiff's Position

Plaintiff estimates that this class action may be tried in 4-5 days. Plaintiff estimates 5-7 witnesses will be called. Plaintiff has requested a jury trial in this matter.

b. Defendant's Position

The amount of time needed for trial depends on whether a class will be certified. If a class is not certified, trial should be 3 days. If a class is certified 15-20 days will be needed for trial.

**XVI. TRIAL COUNSEL**

- a. For Plaintiff: Daniel J. Palay and Brian D. Hefelfinger
- b. For Defendant: Paul S. Cowie and John D. Ellis

**XVII. INDEPENDENT EXPERT OR MASTER**

Neither of the Parties believe an Independent Expert or Master will be needed.

**XVIII. TIMETABLE**

See completed Schedule of Pretrial and Trial Dates form attached as Exhibit A.

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DATED: February 11, 2019

**PALAY HEFELFINGER, APC**

By: /s/\_\_\_\_\_  
Brian D. Hefelfinger  
Attorneys for Plaintiff and the Class

Pursuant to Local Rule 5-3.3.4(a)(2), I attest that all of the signatories listed below concur in this filing's contents and have authorized the filing of this document.

DATED: February 11, 2019

**SHEPPARD, MULLIN, RICHTER & HAMPTON LLP**

By /s/ John D. Ellis  
**PAUL S. COWIE**  
**JOHN D. ELLIS**  
**REANNE SWAFFORD-HARRIS**  
Attorneys for Defendant,  
**SWIFT TRANSPORTATION CO. OF ARIZONA, LLC**