

1 Jeffrey M. Singletary (#233528)
jsingletary@swlaw.com
2 Lily N. Toubi (#254108)
ltoubi@swlaw.com
3 SNELL & WILMER L.L.P.
600 Anton Boulevard, Suite 1400
4 Costa Mesa, California 92626-7689
Telephone: (714) 427-7000
5 Facsimile: (714) 427-7799

6 Attorneys for Defendant Swift
Transportation Co. Inc.
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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 DANIEL L. MAHNKE,
11 Plaintiff,
12 vs.
13 SWIFT TRANSPORTATION CO.
14 INC.,
15 Defendant.

CASE NO. CV 08-7669 R (PLAx)

**Swift Transportation Co. Inc.'s Notice
of Motion to Dismiss Daniel L.
Mahnke's Complaint**

[FRCP 12(b)(1), 12(b)(5), and 12(b)(6)]

DATE: February 17, 2009
TIME: 10:00 a.m.
CTRM.: 8
JUDGE: Hon. Manuel L. Real

DATE FILED: November 20, 2008

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19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that on February 17, 2009, at 10:00 a.m., in
21 Courtroom 8 of the above-captioned court, defendant Swift Transportation Co. Inc.
22 ("Swift"), through its counsel, Snell & Wilmer L.L.P., will and hereby does move
23 this Court pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(5), and 12(b)(6) for an order
24 dismissing plaintiff Daniel L. Mahnke's ("Mahnke") complaint.

25 This Motion to Dismiss is made pursuant to Federal Rule of Civil Procedure
26 ("FRCP") 12(b)(1) on the ground that the Court lacks subject matter jurisdiction to
27 adjudicate this matter. Mahnke cannot establish diversity jurisdiction because he
28 has not and cannot allege that the amount in controversy exceeds the sum or value

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of \$75,000.

This Motion to Dismiss is made pursuant to FRCP 12(b)(5) on the ground that Mahnke has failed to properly serve Swift with a summons and complaint and therefore his complaint should be dismissed for insufficient service of process.

This Motion to Dismiss is made pursuant to FRCP 12(b)(6) on the grounds that Mahnke's complaint fails to state a claim against Swift upon which relief can be granted. First, Mahnke's allegations demonstrate nothing more than that Swift has at all times acted in compliance with an IRS levy on Mahnke's wages and is therefore immune from liability as set forth in 26 U.S.C. § 6332(e). Second, Mahnke's action should be dismissed for failure to state a claim because his claim is barred by the Anti-Injunction Act. 26 U.S.C. § 7421(a).

The Motion to Dismiss is based on this Notice of Motion, the concurrently filed Memorandum of Points and Authorities, the concurrently filed Declaration of James Fry, the pleadings and papers on file in this action, and such other argument as may be properly received by the Court at the time of hearing.

Dated: January 20, 2009

SNELL & WILMER L.L.P.

By: s/Jeffrey M. Singletary

Jeffrey M. Singletary
Attorneys for Swift Transportation Co.
Inc.

