No. _____

In The
Supreme Court of the United States

PAC ANCHOR TRANSPORTATION, INC.,
AND ALFREDO BARAJAS,

Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA,
EX REL. KAMALA D. HARRIS, ATTORNEY
GENERAL OF THE STATE OF CALIFORNIA,

Respondent.

Petition For A Writ Of Certiorari
To The California Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the State of California's enforcement of its labor and employment laws against motor carriers by means of a claim of unfair competition under the State's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, state regulation of competition between motor carriers that is preempted by the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. § 14501(c)(1), and therefore unconstitutional?

RULE 29.6 STATEMENT

Pursuant to Rule 29.6, Petitioner Pac Anchor Transportation, Inc., states that no parent or publicly held company owns any of its stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Pac Anchor Transportation, Inc., and Alfredo Barajas respectfully petition for a writ of certiorari to review the judgment of the California Supreme Court.

OPINIONS BELOW

The opinion of the California Supreme Court (App. 1-25) is reported at 59 Cal. 4th 772, 329 P.3d 180 (2014). The opinion of the California Court of Appeal (App. 26-40) is reported at 195 Cal. App. 4th 765 (2011). The order of the Superior Court (App. 41-47) is unpublished.

JURISDICTION

The judgment of the California Supreme Court was filed on July 28, 2014. The jurisdiction of this Court rests on 28 U.S.C. § 1257(a), as interpreted by *Cox Broadcasting Corp. v. Coh*, 420 U.S. 469, 478-79, 482-83 (1975), and *Belknap, Inc., v. Hale*, 463 U.S. 491, 497 n.5 (1983).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2, states:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Federal Aviation Administration Authorization Act, 49 U.S.C. § 14501(c)(1), states:

> (c) Motor carriers of property.
>
> (1) General rule. Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

Provisions of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, are reproduced in the Appendix. (App. 48-55.)

Provisions of 1993 Stats. ch. 1226 § 4 (AB 2015 (Oct. 11, 1993)), *codified at* Cal. Pub. Util. Code

§§ 4120 *et seq*. (1994), are reproduced in the Appendix. (App. 56-59.)

STATEMENT

This case concerns the question whether a state can maintain a statutory claim for unfair competition against a motor carrier to enforce state labor and employment laws or whether such a claim is preempted by the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501(c)(1), and is therefore unconstitutional.

A. FAAAA Preemption

The FAAAA prohibits states from enacting or enforcing "a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property."[1] *Id.* In *Morales v. Trans*

[1] Congress borrowed the preemptive "related to" language it used in the FAAAA from comparable provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144(a), and the Airline Deregulation Act of 1978 ("ADA"), 49 U.S.C. § 41713(b)(4) (previously codified at 49 U.S.C. app. § 1305(a)(1)). Therefore, case law regarding ERISA and ADA preemption is precedential authority regarding Congress' intent in enacting the FAAAA and regarding the breadth of FAAAA preemption. H.R. Conf. Rep. 103-677 ("HRCR") at 83-85 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715; *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008). Moreover, "motor carriers . . . enjoy 'the identical interstate preemption of prices,

(Continued on following page)

World Airlines, Inc., 504 U.S. 374, 384 (1992), and subsequent cases regarding the FAAAA and the comparable preemptive provision of the Airline Deregulation Act of 1978 ("ADA"), 49 U.S.C. § 41713(b)(4), the Court has held that the FAAAA broadly preempts state laws, regulations, and other provisions having the force and effect of law ("state action") that has "a connection with, or reference to," carrier prices, routes, or services. *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370-71 (2008).

Under the reference test for preemption, state action refers to motor carrier prices, routes, or services where it expressly refers to them, where it acts immediately and exclusively upon them, or where their existence is essential to the State action. *Air Transp. Ass'n of Am. v. City & County of San Francisco*, 266 F.3d 1064, 1071 (9th Cir. 2011). Under the connection or "effect" test for preemption, state action is preempted if it affects carrier prices, routes, or services, even indirectly, so long as it has a "significant impact related to Congress' deregulatory and pre-emption-related objectives . . . ." *Rowe*, 552 U.S. at 371; *Morales*, 504 U.S. at 388. State action that affects prices, routes, or services "in too tenuous, remote, or peripheral a manner" is not preempted. *Morales*, 504 U.S. at 390. Under either test, the state action must concern the "motor carrier's transportation

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routes, and services as that originally contained in' the Airline Deregulation Act . . . ." *Rowe*, 552 U.S. at 370, *quoting* HRCR at 83.

of property." *Dan's City Used Cars, Inc., v. Pelkey*, 133 S. Ct. 1769, 1779 (2013).

Pursuant to the Supremacy Clause of the U.S. Constitution art. VI, cl. 2, federal law is superior to, and therefore preempts, conflicting state law. *Am. Trucking Ass'ns v. City of Los Angeles*, 133 S. Ct. 2096, 2106 (2013) (Thomas, J., dissenting). Consequently, state action preempted by the FAAAA is unconstitutional.

In enacting the FAAAA, Congress intended to facilitate interstate commerce and promote competition between motor carriers by broadly prohibiting State regulation of motor carriers. H.R. Conf. Rep. 103-677 ("HRCR") at 87 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715; *Morales*, 504 U.S. at 384-87. Congress singled out a particular California law that prompted it to enact the FAAAA, 1993 Stats. ch. 1226 § 4 (AB 2015 (Oct. 11, 1993)), *codified at* Cal. Pub. Util. Code §§ 4120 *et seq*. (1994), which exempted intermodal air and motor carriers from California's regulation of motor carrier operations, but "denied this exemption . . . to those using a large proportion of owner-operators instead of company employees . . . ." HRCR at 87; *see also* Cal. Pub. Util. Code §§ 4125(a), 4128.5, 4135, 4136, 4139 (1994) (limiting the percentage of revenue certain motor carriers could derive from the use of independent contractor drivers or "subhaulers" and imposing penalties for violations).

In addition, Congress specifically identified entry controls as a "'typical form' of harmful regulation"

imposed by the states, stating, "Strict entry controls often serve to protect carriers, while restricting new applicants from directly competing for any given route and type of trucking business." HRCR at 86-87.

B. The Complaint

The question of FAAAA preemption presented here arose in September 2008, when the Attorney General of the State of California (the "State") filed a series of substantially identical cases against Petitioners, and five other motor carriers doing business in Southern California, in California Superior Court, asserting against each carrier a single cause of action for unfair competition under California's Unfair Competition Law (or "UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq*., and seeking equitable relief under that statute, including restitution, a civil penalty, and a permanent injunction.[2] (App. 4-5, 60, 65, 68-69.)

In the complaint against Petitioners, the State alleges that they transport cargo from the Ports of Los Angeles and Long Beach to various locations throughout Southern California using trucks that are owned by one of the Petitioners and leased to the other and which are operated by drivers that the

[2] The other five cases were each resolved with stipulated judgments that permanently enjoined the defendant motor carriers from classifying drivers who operated trucks "provided, owned, or leased," or "owned or leased" by the carriers as independent contractors. (*See* Reqs. for J. Not. filed in the Court of Appeal and California Supreme Court.)

Petitioners classify as independent contractors.[3] (App. 3, 61-62.) The State alleges that the drivers are in fact employees and that Petitioners have violated various California labor and employment statutes by misclassifying the drivers. (App. 3-4, 66-67.) The State further alleges that by misclassifying the drivers Petitioners have "illegally lowered their costs of doing business" and obtained an unfair advantage over their competitors. (App. 4, 61, 67.)

C. The Decision by the Superior Court

Petitioners moved for judgment on the pleadings and summary judgment. (*See* App. 5, 42.) The trial court granted the motion for judgment on the pleadings, finding the FAAAA preempts the State's unfair competition claim against Petitioners for three reasons. (App. 5, 42, 44-45.)

First, the court determined that pursuant to *Fitz-Gerald v. Skywest Airlines*, 155 Cal. App. 4th 411, 423 (2007), *reh'g denied*, No. B187785, 2007 Cal. App. LEXIS 1719 (Oct. 16, 2007), *depublication denied*, No. S158366, 2008 Cal. LEXIS 1056 (Jan. 30, 2008), *overruled by People v. Pac Anchor Transp., Inc.*, 59 Cal. 4th 772, 794, 329 P.3d 180, 189 (2014), the

[3] This case comes before the Court following the entry of judgment on a motion for judgment on the pleadings. Therefore, the material allegations of the State's complaint are presumed to be true. *See Wilson v. North Carolina,* 169 U.S. 586, 595 (1898); *see also Smiley v. Citibank*, 11 Cal. 4th 138, 145-46, 900 P.2d 690, 695 (1995), *aff'd,* 517 U.S. 735 (1996).

FAAAA preempts, on their face, all actions under the Unfair Competition Law against motor carriers. (App. 5, 42-43.) Second, the court applied the effect test for FAAAA preemption, finding that the requested injunction would force Petitioners to treat the drivers as employees, which would affect Petitioners' prices, routes, and services. (App. 5, 44-45.)

Third, the trial court found that even if the effect on Petitioners' prices, routes, or services were remote, the State's unfair competition claim impermissibly interferes with the forces of competition between motor carriers. (App. 5, 45-46.) Specifically, the trial court found that Congress had enacted the FAAAA "to remove a California entry control that discouraged the use of independent contractors by motor carriers," and that the relief the State requested would require the drivers "to purchase trucks or negotiate new leases" to remain independent contractors. (App. 46.) Consequently, the Court found that the State's unfair competition claim "seeks to erect the specific type of entry control that Congress sought to dismantle" when it enacted the FAAAA. (App. 46.) The trial court therefore found that the State's unfair competition claim threatens to interfere with Congress' deregulatory purpose and is preempted "even if it is only remotely connected with" the carriers' prices, routes, and services. (App. 45-46.)

D. The Decision by the Court of Appeal

The State appealed the judgment, and the Court of Appeal reversed it. (App. 5, 26-27.) The court

rejected the holding of *Fitz-Gerald*, stating, "Where a cause of action is based on allegations of unlawful violations of the State's labor and unemployment insurance laws, we see no reason to find preemption merely because the pleading raised these issues under the UCL, as opposed to separately stated causes of action." (App. 36.)

In applying the effect test for FAAAA preemption, the court focused on the fact that the State's unfair competition claim is based on alleged violations of state labor and employment laws. (App. 38-39.) The court found that those laws were ones of general applicability. (*See* App. 38-39.) Therefore, it held that the effect of those laws on Petitioners' prices, routes, and services is too tenuous for the FAAAA to preempt them. (App. 40.) The court also found that the State's unfair competition claim based on the alleged violation of those laws "is not an action related to the price, route, or service of a motor carrier and, therefore, not preempted by the FAAAA." (App. 40.)

E. The Decision by the California Supreme Court

Petitioners sought review in the California Supreme Court, which was granted. (App. 3.) The court affirmed the decision of the Court of Appeal. (App. 5, 25.)

The court found that the State's unfair competition claim was not preempted on its face and overruled *Fitz-Gerald*'s inconsistent holding. (App. 16-19.)

The court reasoned that the Unfair Competition Law "is a law of general application" with respect to FAAAA preemption because it "defines unfair competition to 'mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising'" without referring to "motor carriers, or any other industry . . . ." (App. 17, *quoting* Cal. Bus. & Prof. Code § 17200.) The court further reasoned that "the FAAAA embodies Congress's concerns about regulation of motor carriers with respect to the transportation of property" and that "a UCL action that is based on an alleged general violation of labor and employment laws does not implicate those concerns." (App. 17.)

The court interpreted *Morales v. Trans World Airlines*, *Inc*., 504 U.S. 374, 388 (1992), to require only an analysis of whether the state labor and employment laws underlying the State's unfair competition claim relate to Petitioners' prices, routes, or services, but not to require an analysis of whether the Unfair Competition Law itself, or the particularized application presented by the State's unfair competition claim, relate to prices, routes, and services.[4] (*See* App. 20.) The court concluded that the state labor and unemployment laws did not relate to Petitioners' prices, routes, or services. (App. 21, 23.)

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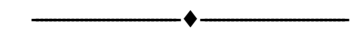
[4] The court nevertheless labelled its analysis "as Applied." (App. 19.)

In addition, the court interpreted the emphasis on the phrase "with respect to the transportation of property" from the FAAAA in *Dan's City Used Cars, Inc., v. Pelkey*, 133 S. Ct. 1769 (2013), to "strongly support[ ]" the court's finding that labor and employment laws of general applicability and the State's unfair competition claim are not preempted by the FAAAA. (App. 22.)

Finally, the court found that the State's unfair competition claim does not threaten to erect an entry control that would discourage the participation of independent contractor drivers in the market, and consequently that it does not threaten to interfere with Congress' deregulatory purpose in enacting the FAAAA. (App. 23-24.) Instead, the court found that the State's unfair competition claim merely enforces state labor and employment laws. (App. 24.)



REASONS FOR GRANTING THE WRIT

A. The Decision of the California Supreme Court Conflicts with the Court's Prior Decisions Regarding FAAAA Preemption.

The Court should grant certiorari because the California Supreme Court's decision conflicts with the Court's prior relevant decisions. Specifically, it conflicts with *Morales v. Trans World Airlines*, 504 U.S. 374 (1992), *American Airlines v. Wolens*, 513 U.S. 219 (1995), *American Trucking Associations v. City of Los Angeles*, 133 S. Ct. 2096 (2013), and *Northwest,*

Inc., v. Ginsberg, 134 S. Ct. 1422 (2014), in that it fails to distinguish between the State's claim for unfair competition and the state labor and employment statutes on which that claim is based when determining whether the claim affects motor carrier prices, routes, and services.

1. The Court's Prior Decisions Require a Separate Preemption Analysis for Unfair Competition and Consumer Protection Claims.

In *Wolens*, the Court held that the ADA preempted claims under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. § 505, which, like California's Unfair Competition Law, prohibits "'unfair methods of competition and unfair or deceptive acts or practices,'"[5] *Wolens*, 513 U.S. at 227, *quoting* 815 Ill. Comp. Stat. § 505/2;

[5] Both laws parallel Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a), such that courts look to case law regarding the Act when interpreting the state consumer protection statutes. *Cel-Tech Commc'ns, Inc., v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 185, 973 P.2d 527, 543 (1999); *Robinson v. Toyota Motor Credit Corp.*, 775 N.E. 2d 951, 960 (Ill. 2002); 815 Ill. Comp. Stat. § 505/2. Unlike California's Unfair Competition Law, the Illinois statute does not broadly permit claims premised on allegedly unlawful conduct. However, the broader reach of the California statute presents an even greater potential for the State to impose its policies on carriers and a correspondingly greater potential to affect prices, routes and services.

compare 815 Ill. Comp. Stat. § 505/2 *with* Cal. Bus. & Prof. Code § 17200.

The case involved claims under the Illinois statute, as well as claims of breach of contract, each based on the same conduct. *Wolens*, 513 U.S. at 224-25. The Court found that the two sets of claims did not "only differ in their labels," differentiating between consumer protection claims, which require a showing, "in all cases, [of] an unfair or deceptive practice" and breach of contract claims, which require a showing of "what the [carrier] itself undertakes . . . with no enlargement or enhancement based on state laws or policies external to the agreement." *Wolens*, 513 U.S. at 233. On the basis of that difference, the Court held that breach of contract claims are not generally preempted. *Id.* at 233.

In its analysis, the Court examined the plain language of the ADA to determine the preemptive effect of the phrase "enact or enforce," stating:

> [T]he ban on enacting or enforcing any law "relating to rates, routes, or services" is most sensibly read, in light of the ADA's overarching deregulatory purpose, to mean States may not seek to impose their own public

> policies or theories of competition or regulation on the operations of an air carrier.[6]

Id. at 229 n.5 (internal quotation omitted).

According to the Court, the fact that state attorneys general could "guide and police" carriers by drawing up guidelines regarding carrier business practices from preexisting state law and enforce them through consumer protection statutes, as they had tried before in *Morales v. Trans World Airlines*, 504 U.S. 374 (1992), "highlighted the potential for intrusive regulation of airline business practices inherent in state consumer protection legislation typified by the Illinois Consumer Fraud Act." *Wolens,* 513 U.S. at 227-28.

In *Wolens*, the Court demonstrated that, due to the propensity of state unfair competition and consumer protection statutes to regulate competition in violation of Congress's intent in enacting the FAAAA, claims such as the State's unfair competition claim require their own preemption analysis, separate from any analysis of whether any other claim is preempted.

That requirement is consistent with the Court's earlier statement regarding the preemption of laws of general applicability in *Morales*. The Attorney

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[6] There is some variation in language in case and statutory law regarding preemption resulting from recodification. However, Congress stated that it intended no change in meaning or judicial interpretation when it changed "relating to" to "related to" and when it changed "rate" to "price." HRCR at 83-84.

General of California, along with the attorneys general of 30 other states, had contended that laws of general applicability, such as the Unfair Competition Law and the other state unfair competition and consumer protection statutes at issue, were not subject to ADA preemption. *Morales*, 504 U.S. at 374, 386; *see* Compl., *People v. Trans World Airlines*, No. 609941 (S.D. Cal. 1989) (in which the State asserted an unfair competition claim under the Unfair Competition Law); *Trans World Airlines v. Mattox*, 712 F. Supp. 99, 105 (W.D. Tex. 1989), *and Trans World Airlines v. Mattox*, 897 F.2d 773, 776, 788 (W.D. Tex. 1990), *aff'd in relevant part*, *Morales*, 504 U.S. 374 (1992) (together indicating that the unfair competition claim was part of the appeal before the Court in *Morales*).

In response, the Court stated, "Besides creating an utterly irrational loophole (there is little reason why state impairment of the federal scheme should be deemed acceptable so long as it is effected by the particularized application of a general statute), this notion similarly ignores the sweep of the 'relating to' language [in the ADA]." *Morales*, 504 U.S. at 386. With that statement, the Court signaled that courts must separately analyze whether the particularized application of a statute of general applicability, such as the Unfair Competition Law and other state unfair competition and consumer protection statutes, is preempted. *See In re Tobacco Cases II*, 41 Cal. 4th 1257, 1272, 1275-76, 163 P.3d 106, 115-17 (2007).

The Court underscored the requirement to perform a separate preemption analysis of state unfair

competition and consumer protection claims in two more recent cases. In *Northwest, Inc., v. Ginsberg*, 134 S. Ct. 1422, 1426, 1433, (2014), the Court determined that a claim for breach of the covenant of good faith and fair dealing enlarged and enhanced the remedies otherwise available to private litigants and was preempted by the ADA.

Furthermore, in *American Trucking Associations v. City of Los Angeles*, 133 S. Ct. 2096, 2100, 2103-04 (2013), another case concerning FAAAA preemption in the port trucking industry in Southern California, the Court determined that mandatory port concession agreements had "the force and effect of law" necessary to make them subject to FAAAA preemption because they were, albeit indirectly, backed by "the hammer of criminal law," "a coercive mechanism, available to no private party," and that consequently the Port of Los Angeles had "exercised classic regulatory authority" in imposing the agreements on motor carriers.

Under *Morales*, *Wolens*, *Ginsberg*, and *American Trucking Associations*, it is an error to treat state action that enlarges and enhances the remedies available under state laws which are not preempted as indistinct from those laws and an error to answer the question of whether such claims are preempted by only analyzing the effect of the underlying conduct on carrier prices, routes, and services.

2. The California Supreme Court Failed to Perform a Separate Analysis on Whether the FAAAA Preempts the State's Unfair Competition Claim Itself, Not Just the Underlying State Labor and Employment Laws.

The Unfair Competition Law vastly enlarges and enhances the remedies available against carriers in California. It creates a cause of action for competitors, consumers, employees, and the State against carriers that is in addition to any others which exist under California's statutes and the common law. *See* Cal. Bus. & Prof. Code §§ 17200, 17203; *Rose v. Bank of America, N.A.*, 57 Cal. 4th 390, 396, 304 P.3d 181, 185 (2014), *cert. denied*, 134 S. Ct. 2870 (2014). Although the State can pursue carriers for the labor and employment violations alleged in the complaint in various administrative actions, it can only file a civil complaint against carriers for such violations under the Unfair Competition Law. *See* Cal. Bus. & Prof. Code § 17204.

Furthermore, the Unfair Competition Law extends the statute of limitations for labor and employment claims, which is normally three years, to four years. *Compare* Cal. Civ. Proc. Code § 338(a) *with* Cal. Bus. & Prof. Code § 17208. In addition, the Unfair Competition Law gives the State and its subdivisions the coercive hammer of civil penalties that are not available to private litigants. *See* Cal. Bus. & Prof. Code § 17206. Finally, under the Unfair Competition Law, litigants can obtain injunctions and penalties for violating injunctions that are not otherwise

available in administrative actions or direct actions for the breach of the underlying state laws. Cal. Bus. & Prof. Code §§ 17203, 17207. All of the remedies available under the Unfair Competition Law are in addition to those otherwise available for violations of the underlyng laws or under other causes of action. *Id.* § 17205.

Moreover, California law recognizes that a claim under the Unfair Competition Law is not merely an action to enforce another law, but enlarges and enhances available remedies. In *Rose v. Bank of America, N.A.*, 57 Cal. 4th 390, 304 P.3d 181 (2014), *cert. denied*, 134 S. Ct. 2870 (2014), the California Supreme Court recognized that "a UCL action does not 'enforce' the law on which a claim of unlawful business practice is based. By proscribing 'any unlawful' business practice, Business and Professions Code section 17200 borrows violations of other laws and treats them as unlawful practices that the UCL makes *independently actionable*." *Id.* at 396 (internal quotations and alterations omitted). Consequently, an unfair competition claim "enforc[es] the UCL, not the statutes underlying the claim of unlawful business practice," and seeks restitution, injunctive relief, and civil penalties to restrain unfair competition, rather than damages for violations of the underlying statutes. *Id.* at 397, Cal. Bus. & Prof. Code §§ 17203, 17205-06.

Because the Court's prior decisions in *Morales*, *Wolens*, *Ginsberg*, and *American Trucking Associations* require a separate preemption analysis of

claims that enlarge and enhance remedies available under state laws that are not themselves preempted, and because the Unfair Competition Law is such a law, the California Supreme Court should have performed a separate preemption analysis regarding the State's unfair competition claim against Petitioners.

The California Supreme Court did not do so. While the Court did perform a facial preemption analysis of the Unfair Competition Law and found that it does not implicate Congress' concerns "about regulation of motor carriers with respect to the transportation of property" and considered whether the state labor and employment laws underlying the State's unfair competition claim are "related to" motor carrier prices, routes, and services, it failed to consider whether either the Unfair Competition Law itself or the particularized application of the Law presented by the State's unfair competition claim are related to prices, routes, or services. (*See* App. at 19-24.)

3. The Court Should Review This Case Because Courts Continue to Omit Separate Preemption Analyses When Considering Preemption in the Context of Unfair Competition Claims.

Case law indicates that the failure to distinguish between claims of unfair competition under California's Unfair Competition Law and the state laws upon which such claims are based is rampant. Many

other courts considering the preemption of claims under the Unfair Competition Law based on violations of state labor and employment laws have erroneously assumed that the claims are merely derivative enforcement actions and have consequently failed to analyze separately whether the unfair competition claims themselves are preempted. *Dilts v. Penske Logistics*, 819 F. Supp. 2d 1109, 1116, 1120-22 (S.D. Cal. 2011), *rev'd*, No. 12-55705, 2014 U.S. App. LEXIS 17476 (9th Cir. July 9, 2014) (slip op.) (without referring to the UCL claim); *Angeles v. U.S. Airways, Inc.*, 2013 U.S. Dist. LEXIS 22423, at *34-35 (N.D. Cal. Feb. 29, 2013); *Villalpando v. Exel Direct, Inc.*, 2014 U.S. Dist. LEXIS 42622, at *9-10, *50-51 (N.D. Cal. Mar. 28, 2014); *Rodriguez v. Old Dominion Freight Line, Inc.*, 2013 U.S. Dist. LEXIS 171328, at *1, *14, *20 (C.D. Cal. Nov. 27, 2013), *abrogated by Dilts v. Penske Logistics*, No. 12-55705, 2014 U.S. App. LEXIS 17476 (9th Cir. July 9, 2014) (slip op.); *Parker v. Dean Transp. Inc.*, 2013 U.S. Dist. LEXIS 184386, at *3, *5, *31 (C.D. Cal. Oct. 15, 2013), *abrogated by Dilts*, 2014 U.S. App. LEXIS 17476; *Burnham v. Ruan Transp*, 2013 U.S. Dist. LEXIS 118892, at *3, *13-14, *17 (C.D. Cal. Aug. 16, 2013), *abrogated by Dilts,* 2014 U.S. App. LEXIS 17476 *1; *Bryan v. Wal-Mart Stores, Inc.*, 2013 U.S. Dist. LEXIS 90007, at *3, *9, *12-13 (N.D. Cal. June 26, 2013); *Burnell v. Swift Transp. Co.*, 2013 U.S. Dist. LEXIS 186675, at *2, *3, *13 (C.D. Cal. May 29, 2013); *Brown v. Wal-Mart Stores, Inc.*, 2013 U.S. Dist. LEXIS 55930, at *3, *12, *24 (N.D. Cal. Apr. 18, 2013); *Aguirre v. Genesis Logistics*, 2012 U.S. Dist. LEXIS 186132, at *1, *4,

*21 (C.D. Cal. Nov. 5, 2012); *Jasper v. C.R. Eng., Inc.*, 2012 U.S. Dist. LEXIS 186607, at *10, *25-26 (C.D. Cal. Aug. 30, 2012); *Campbell v. Vitran Express, Inc.*, 2012 U.S. Dist. LEXIS 85509, at *10 (C.D. Cal. June 8, 2012), *abrogated by Dilts*, 2014 U.S. App. LEXIS 17476; *Aguiar v. Cal. Sierra Express, Inc.*, 2012 U.S. Dist. LEXIS 63348, at *3 (E.D. Cal. May 3, 2012), *abrogated by Dilts*, 2014 U.S. App. LEXIS 17476; *Esquivel v. Vistar Corp.*, 2012 U.S. Dist. LEXIS 26686, at *2, *18 (C.D. Cal. Feb. 8, 2012), *abrogated by Dilts*, 2014 U.S. App. LEXIS 17476; *see also Reinhardt v. Gemini Motor Transp.*, 869 F. Supp. 2d 1158, 1161, 1173-74 (E.D. Cal. 2012).[7]

This case presents the Court with the opportunity to resolve this problem by confirming that, pursuant to *Morales*, *Wolens*, *Ginsberg*, and *American Trucking Associations*, courts considering preemption in the context of claims under the Unfair Competition Law, and other state unfair competition and consumer protection laws, must analyze whether the unfair competition claim itself is preempted as well as

[7] Although *Dilts v. Penske Logistics*, No. 12-55705, 2014 U.S. App. LEXIS 17476 *1 (9th Cir. July 9, 2014) (slip op.), abrogated *Rodriguez*, *Parker*, *Burnham*, *Campbell*, *Aguiar*, *and Esquivel*, those cases nevertheless illustrate the point being made, that when unfair competition claims are premised on violations of state labor and employment law, many courts fail to distinguish between the claim and the underlying state labor and employment laws when performing a preemption analysis.

whether the underlying laws upon which the claim is based are preempted.

B. California's Unfair Competition Law and the State's Unfair Competition Claim Are Each Related to Motor Carrier Prices, Routes, and Services, and Are Therefore Each Preempted.

When the tests for FAAAA preemption are properly applied to the Unfair Competition Law and to its particular application in the State's unfair competition claim, each is preempted. Both the Unfair Competition Law and the State's unfair competition claim refer to unfair competition, and both have the prohibited, significant effect on motor carrier prices, routes, and services.

1. The Unfair Competition Law and the State's Unfair Competition Claim Each Refer to Motor Carrier Prices, Routes, and Services.

State action "refers to" motor carrier prices, routes, or services where it expressly refers to them, where it acts immediately and exclusively upon them, or where their existence is essential to the State action. *Air Transp. Ass'n of Am. v. City & County of San Francisco*, 266 F.3d 1064, 1071 (9th Cir. 2011).

The Unfair Competition Law creates a cause of action for unfair competition, which is defined as "unlawful, unfair or fraudulent" business acts or

practices. Cal Bus. & Prof. Code § 17200. It is even codified in Part 2, Division 7 of the California Business and Profession Code, which is titled "Preservation and Regulation of Competition." (App. 48.)

When a claim for unfair competition is brought against a motor carrier of property, the unfair competition and business acts and practices to which the claim refers are those of a business "providing motor vehicle transportation for compensation." 49 U.S.C. § 13102(14). Business competition and compensation require prices and services, and business competition regarding transportation requires routes. Thus, the competition, acts, and practices complained of necessarily concern the prices the carrier charges for compensation, the transportation services the carrier offers, and/or the routes the carrier uses.

Without prices, routes, or services, there would be no competition and no business act or practice upon which to predicate an unfair competition claim against a motor carrier. Consequently, the existence of motor carrier prices, routes, or services is essential to an unfair competition claim against a motor carrier. Therefore, unfair competition claims against motor carriers refer to prices, routes, and services and are preempted by the FAAAA.

Moreover, the State's unfair competition claim is premised squarely on Petitioners' prices, routes, and services. It alleges that Petitioners, who transport cargo "from the ports of Los Angeles and Long Beach to various locations in the Southern California area,

including warehouses and railroad freight depots" using trucks, "illegally lowered their costs of doing business" by failing to pay the costs of the alleged labor law violations, and that they thereby "gained an unfair competitive advantage over competing trucking companies . . . ." (App. 61-62, 67.)

Transportation of cargo, transportation between ports, warehouses, and rail depots, business costs, and competitive advantages over other trucking companies are all allegations that presuppose the existence of motor carrier prices, routes, and services. The State's unfair competition claim references Petitioners' prices, routes, and services in that the conduct complained of and the cause of action based on that conduct would not exist without them. Consequently, the State's UCL claim against Petitioners is preempted, and the fact that it focuses on alleged misclassification and alleged violations of labor laws is irrelevant.

2. The Unfair Competition Law and the State's Unfair Competition Claim Each Affect Motor Carrier Prices, Routes, and Services.

The Unfair Competition Law and the State's unfair competition claim each also have the forbidden significant effect on motor carrier prices, routes, and services. Because the Unfair Competition Law creates a cause of action for unfair competition, and because,

when applied to motor carriers, it concerns anti-competitive conduct by persons transporting property for compensation, any claim under the Unfair Competition Law against a motor carrier necessarily concerns the prices the carrier charges for compensation, the transportation services the carrier offers, and the routes the carrier uses.

Because the Unfair Competition Law empowers courts to enjoin future predicate conduct and to award restitution and impose civil penalties for past conduct, Cal. Bus. & Prof. Code §§ 17203, 17206, each time the Law is enforced against a motor carrier, it directly affects the carrier's prices, routes, or services.

The State's unfair competition claim affects motor carrier prices, routes, and services, too. In the complaint, the State alleged:

> This action is brought . . . to halt an unlawful practice by Defendants of misclassifying their truck driver employees who do not own a truck as "independent contractors" rather than employees. As a consequence of misclassifying the truck driver employees, Defendants illegally lowered their costs of doing business . . . .

(App. 60-61.) The State also seeks an injunction to permanently enjoin "defendants, their successors, representatives, employees and all persons who act in concert with defendants" from engaging in that practice, at least $4,160,000.00 in civil penalties, and at least $1,000,000.00 in restitution. (App. 68-69.)

If the requested injunction is granted, Petitioners have two choices: switch their operations to an employee-based model or terminate their transportation contracts with the current drivers and negotiate new contracts with drivers who own trucks. The drivers, who consider themselves to be independent contractors and who operate small businesses, will be faced with a similar choice: dissolve their businesses or buy trucks.

Petitioners and the drivers each "provid[e] motor vehicle transportation for compensation." 49 U.S.C. § 13102(14). Therefore, they are each motor carriers within the meaning of the FAAAA, and each of these decisions threatens to affect motor carrier prices, routes, and services.

If the drivers dissolve their small businesses, they will stop charging prices, offering services, and servicing routes altogether. If they buy trucks, their operating expenses will increase dramatically, affecting the prices they charge, the services they can afford to offer, and the routes that they use. The fact that the drivers lease the trucks now rather than own them is indicative of the fact that the price to buy trucks is prohibitively high.

Such requirements have the required effect on prices, routes, and services because they "require carriers to offer a system of services that the market does not now provide (and which the carriers would prefer not to offer)," namely leasing trucks to Petitioners, in addition to the driving services they currently provide. *Rowe v. N.H. Motor Transp. Ass'n*, 552

U.S. 364, 371-72 (2008); *see also* 49 C.F.R. § 376.2(e) (drivers "lease" their driving services and/or trucks to motor carriers).

If Petitioners treat the drivers as employees, they will immediately have to pay employment costs. In *American Trucking Associations v. City of Los Angeles*, 559 F.3d 1046, 1048-49, 1058-59 (9th Cir. 2009), the court found such costs imposed by the employee driver requirement of the Port of Los Angeles concession agreements to be so vast that, when imposed gradually on motor carriers over a five-year period, they could force smaller carriers out of the market altogether. *See also Am. Trucking Ass'ns v. City of Los Angeles*, No. CV 08-4920 CAS (RZx), 2010 WL 3386436, at *10, *19 (C.D. Cal. Aug. 26, 2010) (reclassification of drivers threatens to increase motor carrier operating costs by as much as 167%). Therefore, the court found that such costs directly and significantly affected prices, routes, and services. *Id.* at 1056, 1060.

The effect on Petitioners, who operate in the same market, will be even greater, as they will have to pay those costs from one day to the next, as well as over $5,000,000.00 in restitution and civil penalties. To accommodate such a dramatic increase in costs, Petitioners will have to increase their rates, reduce the services they offer, or change the routes they service. Thus, the State's unfair competition claim threatens to affect Petitioners' prices, routes, and services.

3. The Effects of California's Unfair Competition Law and the State's Unfair Competition Claim Threaten to Interfere with Congress' Deregulatory Purpose.

Even if the effects of the Unfair Competition Law and the State's unfair competition claim are only indirect, they are nevertheless preempted if they have "a 'significant impact' related to Congress' deregulatory and pre-emption related objectives." *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 371 (2008), *citing Morales v. Trans World Airlines*, 504 U.S. 374, 391 (1992), *and American Airlines v. Wolens*, 513 U.S. 219, 226-28 (1995).

Both the Unfair Competition Law and the State's unfair competition claim interfere with that deregulatory purpose. In enacting the FAAAA, Congress intended to facilitate interstate commerce and promote competition between motor carriers by broadly prohibiting State regulation of motor carriers. HRCR at 87; *Morales*, 504 U.S. at 384-87. The Unfair Competition Law regulates competition between motor carriers by prohibiting what the State deems to be anti-competitive, unlawful, and fraudulent business practices and acts. *See* Cal. Bus. & Prof. Code § 17200. When applied to motor carriers, the Unfair Competition Law directly violates Congress' intent to prohibit States from regulating them and from interfering with the forces of competition between them. Therefore, even where the effect of the Unfair Competition Law on motor carrier prices, routes, and services is indirect, it is nevertheless preempted.

In adopting the FAAAA, Congress identified entry controls as a particular form of State regulation it intended to prohibit, and specifically identified a California statute that discouraged carriers from using independent contractors as being the type of State interference with the forces of competition between carriers it intended to preempt. *See* HRCR at 87.

As demonstrated, if the requested injunction is granted, for the drivers to continue to participate in the market as small businesses, they will face a significant economic hurdle: they will have to buy trucks. That requirement is not simply a cost of doing business, it is an entry control that robs drivers of the option to lease rather than buy trucks and that will chill their participation in market. Because the State's unfair competition claim threatens to erect the very entry control that Congress sought to dismantle when it enacted the FAAAA, even if the effect of the State's unfair competition claim is indirect, it is nevertheless preempted.

C. Claims Under State Unfair Competition Laws and Consumer Protection Laws Are Facially Preempted.

The Court should review this matter because it presents the opportunity to determine, once and for all, whether claims under California's Unfair Competition Law and similar state unfair competition and consumer protection laws against air and motor

carriers are facially preempted, absent a statutory exception such as claims against motor carriers that do not concern the transportation of property. *See Dan's City Used Cars, Inc., v. Pelkey*, 133 S. Ct. 1769, 1779 (2013).

The California Supreme Court erred when if found that the FAAAA does not facially preempt the Unfair Competition Law in this case because the FAAAA does not refer to motor carriers. (*See* App. 17.) As demonstrated above, the Unfair Competition Law, when applied to claims involving the transportation of property against motor carriers invariably refers to the carriers' prices, routes, and services and affects them in ways that interfere with Congress' deregulatory purpose in enacting the FAAAA. The Unfair Competition Statute is fundamentally a statute that enforces the "Preservation and Regulation of Competition" (App. 48), the very state action that Congress intended to preempt in enacting the FAAAA.

Due to the unusual nature of California's Unfair Competition Law and similar state unfair competition and consumer protection laws, courts continue to find such laws and claims under them to be preempted by the ADA and FAAAA.[8] *See UPS Supply Chain*

[8] Numerous unpublished cases agree: *Gregory Poole Equip. Co. v. ATS Logistics Servs., Inc.*, 2014 U.S. Dist. LEXIS 33516, at *2, *7 (E.D.N.C. Mar. 14, 2014) (N.C. unfair competition statute); *Banga v. Gundumolgula*, 2013 U.S. Dist. LEXIS 101705, at *2, *5-7 (E.D. Cal. July 19, 2013) (UCL claim), *adopted by* 2013 U.S. Dist. LEXIS 130766 (E.D. Cal. Sept. 12,

(Continued on following page)

Solutions, Inc., v. Megatrux Transp., Inc., 750 F.3d 1282, 1294 (11th Cir. 2014); *In re Korean Air Lines*, 642 F.3d 685, 688, 697 (9th Cir. 2011) (UCL claim); *In re JetBlue Airways Corp. Privacy Litig.*, 379 F. Supp. 2d 299, 304 n.1, 315 n.12, 315-16 (E.D.N.Y. 2005) (UCL claim); *FedEx v. USPS*, 55 F. Supp. 2d 813, 814, 818 (W.D. Tenn. 1999); *Virgin Atl. Airways v. British Airways*, 872 F. Supp. 52, 59, 67 (S.D.N.Y. 1995); *Cont'l Airlines v. Am. Airlines*, 824 F. Supp. 689, 693, 695 (S.D. Tex. 1993); *Frontier Airlines v. United Air Lines*, 758 F. Supp. 1399, 1402, 1409 (D. Colo. 1989); *Rosen v. Cont'l Airlines*, 62 A.3d 321, 326 (N.J. Super.

2013); *Madorsky v. Spirit Airlines*, 2012 U.S. Dist. LEXIS 172363, at *2, *32 (E.D. Mich. Dec. 5, 2012); *Moffitt v. JetBlue Airways Corp.*, 2012 U.S. Dist. LEXIS 50974, at *3, *13-14 (N.D.N.Y. Apr. 11, 2012) (N.Y. unfair business practices law); *Miller v. Delta Air Lines, Inc.*, 2012 U.S. Dist. LEXIS 48294, at *3, *8 (S.D. Fla. Apr. 5, 2012) (Fla. unfair business practices law); *Esquivel v. Vistar Corp.*, 2012 U.S. Dist. LEXIS 26686, at *3, *18 (C.D. Cal. Feb. 8, 2012) (UCL claim), *abrogated by Dilts v. Penske Logistics*, No. 12-55705, 2014 U.S. App. LEXIS 17476 (9th Cir. July 9, 2014) (slip op.); *Shulick v. United Airlines*, 2012 U.S. Dist. LEXIS 13013, at *1, *3, *6-7, *15-16 (E.D. Penn. Feb. 2, 2012) (Penn. unfair business practices law); *Flaster/Greenberg P.C. v. Brendan Airways*, No. 08-4333, 2009 WL 1652156, at *2, *7 (D.N.J. June 10, 2009); *Blackwell v. Skywest Airlines*, No. 06cv0307 DMS (AJB), 2008 WL 5103195, at *20 (S.D. Cal. Dec. 3, 2008) (UCL claim); *Butler v. United Air Lines*, No. C 07-04369 CRB, 2008 WL 1994896, at *5 (N.D. Cal. May 5, 2008) (UCL claim); *Brownstein v. Am. Airlines*, No. C-05-3435 JCS, 2005 WL 2988720, at *2, *7 (N.D. Cal. Nov. 7, 2005) (UCL claim); *In re EVIC Class Action Litig.*, No. M-21-84 (RMB), 2002 WL 1766554, at *1, *8 (S.D.N.Y. July 31, 2002); *W. Parcel Ex. v. UPS*, No. C 96-1526, 1996 WL 756858, at *1, *3 (N.D. Cal. 1996) (UCL claim).

2013) (N.J. consumer fraud law); *Tanen v. Sw. Airlines,* 114 Cal. Rptr. 3d 743, 745, 752, 756 (Cal. Ct. App. 2010) (UCL claim); *Fitz-Gerald v. Skywest Airlines*, 155 Cal. App. 4th 411, 414-15, 423 (2007) (UCL claim found preempted in the trial court but later overruled by the California Supreme Court in this case), *reh'g denied*, No. B187785, 2007 Cal. App. LEXIS 1719 (Oct. 16, 2007), *depublication denied*, No. S158366, 2008 Cal. LEXIS 1056 (Jan. 30, 2008), *overruled by People v. Pac Anchor Transp., Inc.*, 59 Cal. 4th 772, 794, 329 P.3d 180, 189 (2014); *Beyer v. ACME Truck Line*, 802 So. 2d 798, 799, 801 (La. Ct. App. 2001) (unfair trade practices claim); *see also Dilts v. Penske Logistics*, 819 F. Supp. 2d 1109, 1116, 1120-22 (S.D. Cal. 2011) (UCL claim), *rev'd*, No. 12-55705, 2014 U.S. App. LEXIS 17476 (9th Cir. July 9, 2014) (slip op.) (the district court found preemption, but the Ninth Circuit reversed without even referring to the UCL claim); *Cardenas v. McLane Foodserv's*, 796 F. Supp. 2d 1246, 1248, 1256 (C.D. Cal. 2011) (issue remained open after cross-motions for summary judgment).

In *Dogbe v. United Air Lines, Inc.*, 969 F. Supp. 2d 261, 276 (E.D.N.Y. 2013), the court held that the ADA preempted the use of New York consumer protection laws against an air carrier, citing an earlier New York case, *Stone v. Cont'l Airlines*, 804 N.Y.S. 2d 652, 656 n.2 (N.Y. Civ. Ct. 2005), for the proposition that such laws "cannot be invoked against airlines due to federal preemption." In *Levitt v. Southwest*

Airlines Co., 846 F. Supp. 2d 956, 959-60 (N.D. Ill. 2012), citing *Wolens* and *Rowe*, the court held that claims under Illinois and Pennsylvania consumer fraud statutes are preempted by the ADA regardless of their effect on carrier prices, routes, and services.

Facial preemption of state unfair competition and consumer protection statutes comports with the intent of Congress. Absent preemption, such statutes expand the liability of air and motor carriers, giving effect to state policies and regulating competition. Such statues have industry-wide effects on prices, routes, and services that vary from state to state, threatening to create a patchwork of state regulation with which air and motor carriers must comply. *See S.C. Johnson & Son, Inc., v. Transp. Corp.*, 697 F.3d 544, 559 (7th Cir. 2012).

In California, the Unfair Competition Law creates a cause of action for unfair competition and broadly defines unfair competition as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising . . . ." Cal. Bus. & Prof. Code § 17200. Because all such conduct is defined as unfair competition, every claim under the Unfair Competition Law, regardless of the conduct upon which it is premised, necessarily concerns anti-competitive conduct.

The FAAAA was enacted to prohibit the State from interfering with the forces of competition between motor carriers by preempting State action related to motor carrier prices, routes, or services.

HRCR at 87; 49 U.S.C. § 14501(c)(1). As demonstrated, unfair competition claims invariably refer to and affect motor carrier prices, routes, and services and invariably interfere with Congress' deregulatory intent in enacting the FAAAA. Therefore, claims against motor carriers under the Unfair Competition Statute, at least insofar as they concern the transportation of property, are invariably preempted.

D. The Decision of the California Supreme Court Gives the State Unfettered Power to Regulate Competition in the Air and Motor Carrier Markets.

The State and its political subdivisions have sought for more than twenty years to impose a State policy favoring the use of employee drivers over independent contractor drivers on motor carriers. As evidenced by the legislative history of the FAAAA, Congress enacted it to preempt an attempt by the State to impose this policy legislatively. HRCR at 87. More recently, the Ninth Circuit held that the State and its political subdivisions cannot impose that policy by means of mandatory port concession agreements, either. *Am. Trucking Ass'ns v. City of Los Angeles*, 660 F.3d 384, 407-08 (9th Cir. 2011), *rev'd in part*, *on other grounds*, 133 S. Ct. 2096 (2013).

This case is not an isolated incident. It is simply the next wave in the seemingly endless attempts by the State to impose its policy over the policy favored by the free market. In at least five other cases, the

State has used the Unfair Competition Law to obtain broad injunctions prohibiting motor carriers from classifying drivers who drive trucks provided, leased, or owned by Petitioners as independent contractors.[9]

Under the California Supreme Court's decision, the State is free to use the Unfair Competition Law to continue to force California motor carriers to classify drivers who do not own their own trucks as employees and to force drivers who wish to operate as independent contractors to purchase trucks. The decision creates a patchwork of state regulation in which motor carriers in California will be encouraged, and even compelled, to use employee drivers over independent contractor drivers, whereas carriers in other States will not. Furthermore, what constitutes anticompetitive conduct worth pursuing will change with the political winds, so the application of the regulation will vary over time.

When Congress enacted the FAAAA, it specifically considered State action encouraging the use of employee drivers rather than independent contractor drivers to constitute state interference with the forces

[9] Pursuant to the Federal Leasing Regulations, motor carriers may only transport property in trucks they own or which they lease on specified terms. 49 C.F.R. §§ 376.11, 376.12. Because the Federal Leasing Regulations require the motor carriers to lease or own the trucks, and because the injunctions require the carriers to classify drivers who operate trucks that the carriers lease or own as employees, the injunctions prohibit the carriers from using independent contractors.

of competition between carriers, and it specifically intended the FAAAA to strike down and prohibit such state action. HRCR at 87. Therefore, the imposition of the State's policy is precisely the sort of patchwork regulation by the states that Congress intended to preempt.

FAAAA preemption extends to all State action having the force and effect of law, including injunctions. The State should not be able to achieve piecemeal through unfair competition claims and injunctions what it is prohibited from achieving through mandatory concession agreements and legislation. The State's use of the Unfair Competition Law to impose a State policy on motor carriers is exactly the sort of intrusive, backdoor State regulation of motor carriers by means of State consumer protection statutes that the Court warned against in *Wolens*. *See American Airlines v. Wolens*, 513 U.S. 219, 227-28 (1995).

Congress told the State to stop regulating motor carriers and specifically told the State to stop interfering with the forces of competition between carriers by imposing a State policy favoring the use of employee drivers on them. HRCR at 87. The Court should not countenance the use of the Unfair Competition Law to circumvent that prohibition.

Until the Court answers the question whether the FAAAA preempts causes of action under the Unfair Competition Statute, every motor and air carrier doing business in California is exposed to such claims, not just those brought by the State, but also

those brought by competitors, employees, and consumers. Furthermore, litigants and courts in other jurisdictions may rely on the decision's reasoning to pursue state unfair competition and consumer protection claims against air and motor carriers in other states, seriously eroding the federal policy against state regulation of such carriers.

In *Cox Broadcasting Corp. v. Coh*, 420 U.S. 469, 478-79, 482-83 (1975), the Court held that its jurisdiction to review state court judgments under 28 U.S.C. § 1257(a) extends to cases in which a:

> federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review [at the U.S. Supreme Court] might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation of the relevant cause of action . . . .

See also Belknap, Inc., v. Hale, 463 U.S. 491, 497 n.5 (1983) (applying *Cox* in the context of federal preemption).

Under the *Cox* standard, the issue is ripe for review now. This matter is on appeal from judgment on the pleadings. If the Court does not consider whether the FAAAA preempts the State's unfair competition claim now, the parties will return to the Superior Court, which will proceed to determine whether the alleged misclassification actually occurred by ruling

on the pending motion for summary judgment and possibly conducting a trial on the issue.

If the Superior Court finds that the drivers were correctly classified as independent contractors, judgment will be entered in favor of Petitioners. In such instance, Petitioners will have no basis for appeal, and the issue of whether the FAAAA preempts the State's unfair competition claim will become moot and will escape the Court's review.

That result is utterly irrational, because it means Petitioners will have won this case on the merits, but will forever lose the constitutional protections afforded by FAAAA preemption in the process. Moreover, air and motor carriers doing business in California will remain exposed to backdoor state regulation in the form of unfair competition claims indefinitely.

If, on the other hand, the Superior Court determines that the drivers were employees, Petitioners will have to pursue a second appeal before this Court has another opportunity to rule on the issue, presuming that Petitioners can afford to do so. Air and motor carriers will remain exposed to state regulation via unfair competition claims for years.

Thus, until the Court resolves the issue of whether the FAAAA preempts unfair competition claims, air and motor carriers doing business in California remain exposed to state regulation in the guise of such claims. Such circumstances are intolerable.

The Court can resolve the problem by answering the question now. If the Court finds that the FAAAA preempts the unfair competition claims, the State's claim against Petitioners will be dismissed and the litigation will be resolved, avoiding a significant waste of resources. Moreover, answering the question now minimizes the exposure of air and motor carriers doing business in California to unconstitutional state regulation in the form of unfair competition claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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THE PEOPLE ex rel. Kamala D. HARRIS, as Attorney General, etc., Plaintiff and Appellant, v. PAC ANCHOR TRANSPORTATION, INC., et al., Defendants and Respondents.

S194388

SUPREME COURT OF CALIFORNIA

59 Cal. 4th 772*; *329 P.3d 180*; *174 Cal. Rptr. 3d 626*; *2014 Cal. LEXIS 5181*; *23 Wage & Hour Cas. 2d (BNA) 226*; *164 Lab. Cas. (CCH) P61,504

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JUDGES: Opinion by Chin, J., with Cantil-Sakauye, C. J., Baxter, Werdegar, Corrigan, Liu, JJ., and Aronson, J.,* concurring.

OPINION BY: Chin

OPINION

CHIN, J. – The narrow question presented is whether an action under the unfair competition law (Bus. & Prof. Code, § 17200 et seq. (UCL)) that is based on a trucking company's alleged violation of state labor and insurance laws is "related to a price, route or service" (49 U.S.C. § 14501(c)(1)) of the company and, therefore, preempted by the Federal Aviation Administration Authorization Act of 1994 (Pub.L. No. 103-305 (Aug. 23, 1994) 108 Stat. 1569) (FAAAA). The FAAAA provides that a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with

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* Associate Justice of the Court of Appeal, Fourth Appellate District, Division Three, assigned by the Chief Justice pursuant to *article VI, section 6 of the California Constitution.*

respect to the transportation of property." (49 U.S.C. § 14501(c)(1).) The People, on behalf of the State of California, filed this action against defendants Pac Anchor Transportation, Inc. (Pac Anchor) and Alfredo Barajas (Barajas) for misclassifying drivers as independent contractors and for other alleged violations of California's labor and unemployment insurance laws. As we explain, we conclude that the FAAAA does not preempt the People's UCL action against defendants. We therefore affirm the Court of Appeal's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Pac Anchor is a trucking company in Long Beach, California. Defendant Barajas is the company's owner, manager, and truck dispatcher. Barajas also separately owns approximately 75 trucks. He recruits drivers to drive his trucks for his independent company. He also enters into lease agreements with Pac Anchor in order to utilize the trucks and drivers he supplies. Both defendants classify these drivers as independent contractors, even though they invest no capital, own no trucks, and do not use their own tools or equipment. The drivers rely instead on defendants to supply those items. Drivers are often employed for extended time periods, but they can be discharged without cause, have no operational control, have no other customers, take all instruction from defendants, and have no Department of Transportation operating authority or permits to engage independently in cargo transport. In addition, the drivers are an integrated part of

defendants' trucking business because they perform the core activity of delivering cargo.

On September 5, 2008, the People filed a complaint against defendants for violating the UCL. The complaint alleged that defendants misclassified drivers as independent contractors and therefore illegally lowered their costs of doing business by engaging in acts of unfair competition including, but not limited to, failing to take the following statutorily mandated actions: (1) pay unemployment insurance taxes (Unemp. Ins. Code, § 976); (2) pay employment training fund taxes (*id.,* § 976.6); (3) withhold state disability insurance taxes (*id.,* § 984); (4) withhold state income taxes (*id.,* § 13020); (5) provide worker's compensation (Lab. Code, § 3700); (6) provide employees with itemized written wage statements (*id.,* § 226) and provide employees with certain records that California's Industrial Welfare Commission wage order No. 9-2001, section 7, requires (Cal. Code Regs., tit. 8, § 11090 (hereafter IWC Wage Order No. 9)); (7) reimburse employees for business expenses and losses (Lab. Code, § 2802); and (8) ensure payment at all times of California's minimum wage (Lab. Code, § 1194; IWC Wage Order No. 9, § 4). The People specifically noted that as a result of failing to follow the above statutes, defendants obtained an unfair advantage over their competitors, deprived employees of benefits and protections to which they are entitled under California law, harmed their truck driver employees, harmed the general public, and deprived the state of payments for California state payroll taxes,

all in violation of the UCL. The People seek injunctive relief, civil penalties, and restitution.

In August 2009, defendants filed a motion for judgment on the pleadings. After a hearing in September 2009, the trial court concluded that the FAAAA preempted the People's action. It issued an order granting judgment on the pleadings in defendants' favor on three grounds. First, it cited *Fitz-Gerald v. SkyWest Airlines, Inc.* (2007) 155 Cal.App.4th 411, 423 [65 Cal. Rptr. 3d 913] (*Fitz-Gerald*). That case held that the similar provision of the earlier Airline Deregulation Act of 1978 (ADA) (49 U.S.C. § 41713(b)(1), now the FAAAA) preempted UCL causes of action against an airline for alleged wage and rest/meal break violations because they related to the airline's "price, route, or service." Second, the court found that requiring defendants to treat truck drivers as employees would increase their operational costs. Therefore, the action also related to their price, route, or service. Third, the court concluded that the action threatened to interfere with the forces of competition by discouraging independent contractors from competing in the trucking market. The People filed a timely notice of appeal. The Court of Appeal reversed the trial court judgment, holding that because the People's UCL action is not related to Pac Anchor's price, route, or service as a motor carrier, the FAAAA does not preempt this action against defendants. We granted defendants' petition for review.

DISCUSSION

A. *Standard of Review*

"A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review." (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672 [128 Cal. Rptr. 2d 358].) "All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law. . . ." (*Ibid.*) Courts may consider judicially noticeable matters in the motion as well. (*Ibid.*)

B. *Federal Preemption Principles*

(1) The supremacy clause of the United States Constitution establishes that federal law "shall be the supreme law of the land . . . , any thing in the Constitution or laws of any state to the contrary notwithstanding." (U.S. Const., art. VI, cl. 2.) Consequently, the supremacy clause vests Congress with the power to preempt state law. "Congress may exercise that power by enacting an express preemption provision, or courts may infer preemption under one or more of three implied preemption doctrines: conflict, obstacle, or field preemption." (*Brown v. Mortensen* (2011) 51 Cal.4th 1052, 1059 [126 Cal. Rptr. 3d 428, 253 P.3d 522] (*Brown*); *see Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935 [63 Cal. Rptr. 3d 50, 162 P.3d 569].)

Express preemption occurs when Congress defines the extent to which its enactments preempt state law. (*Viva!,* at p. 936) Conflict preemption is found when it is impossible to comply with both state and federal law simultaneously. (*Ibid.*) Obstacle preemption occurs when state law stands as an obstacle to the full accomplishment and execution of congressional objectives. (*Ibid.*) Field preemption applies when federal regulation is comprehensive and leaves no room for state regulation. (*Ibid.*) Here, all parties agree that our review is limited to the express preemption provision of the FAAAA. (*Rowe v. New Hampshire Motor Transp. Assn.* (2008) 552 U.S. 364, 368 [169 L. Ed. 2d 933, 128 S. Ct. 989] (*Rowe*); *see American Airlines, Inc. v. Wolens* (1995) 513 U.S. 219, 222-223 [130 L. Ed. 2d 715, 115 S. Ct. 817] (*Wolens*) [construing similar express preemption clause of the ADA]; *Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 383-384 [119 L. Ed. 2d 157, 112 S. Ct. 2031] (*Morales*) [same].)

(2) We recently observed that "[t]he United States Supreme Court has identified 'two cornerstones' of federal preemption analysis. [Citation.] First, the question of preemption '"fundamentally is a question of congressional intent."' [Citations.] If a statute 'contains an express pre-emption clause, our "task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress's pre-emptive intent."' [Citations.] '"Also relevant, however, is the 'structure and purpose of the statute as a whole,' [citation] as revealed not only in the text, but

through the reviewing court's reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law."' [Citation.]" (*Brown, supra,* 51 Cal.4th at pp. 1059-1060; *see Wyeth v. Levine* (2009) 555 U.S. 555, 565 [173 L. Ed. 2d 51, 129 S. Ct. 1187] (*Wyeth*); *Morales, supra,* 504 U.S. at p. 383; *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1265 [63 Cal. Rptr. 3d 418, 163 P.3d 106] (*Tobacco Cases II*).)

(3) "'Second, "[i]n all pre-emption cases, and particularly in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' . . . we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'"' [Citations.]" (*Brown, supra,* 51 Cal.4th at p. 1060.) This is known as the presumption against preemption, and its role is to "'"provide[ ] assurance that 'the federal-state balance' [citation] will not be disturbed unintentionally by Congress or unnecessarily by the courts."' [Citation.]" (*Ibid.*; *see Wyeth, supra,* 555 U.S. at p. 565; *Tobacco Cases II, supra,* 41 Cal.4th at p. 1265.) **(4)** The high court, however, in response to a state's argument for a "'public health'" exception to FAAAA preemption, has stated that the FAAAA creates no exemption for state "laws that it would otherwise preempt." (*Rowe, supra,* 552 U.S. at p. 374; accord, *DiFiore v. American Airlines, Inc.* (1st Cir. 2011) 646 F.3d 81, 86 [neither *Rowe,* nor *Morales,* nor *Wolens*

"adopted [the] position . . . that we should presume strongly against preempting in areas historically occupied by state law"].)

With these principles in mind, we turn to the FAAAA's express preemption provision. In analyzing the provision, we rely on the analytical framework provided by the high court's jurisprudence on the subject.

C. *The FAAAA*

The United States Supreme Court recently explained the history and purpose of the FAAAA: "In 1978, Congress 'determin[ed] that "maximum reliance on competitive market forces"' would favor lower airline fares and better airline service, and it enacted the [ADA]." (*Rowe, supra,* 552 U.S. at pp. 367-368.) "In order to 'ensure that the States would not undo federal deregulation with regulation of their own,' that Act 'included a pre-emption provision' that said 'no State . . . shall enact or enforce any law . . . relating to rates, routes, or services of any air carrier.'"[1] (*Rowe,* at p. 368.)

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[1] "Reenacting Title 49 of the U.S. Code in 1994, Congress revised this clause to read: [¶] ' . . . related to a price, route, or service. . . .' . . . Congress intended the revision to make no substantive change. Pub. L. 103-272, § 1(a), 108 Stat. 745." (*Wolens, supra,* 513 U.S. at p. 223, fn. 1, citation omitted.) The terms "rates" and "prices" will be used interchangeably.

"In 1980, Congress deregulated trucking." (*Rowe, supra,* 552 U.S. at p. 368, citing Motor Carrier Act of 1980 (Pub.L. No. 96-296 (July 1, 1980) 94 Stat. 793).) "[I]n 1994, Congress similarly sought to pre-empt state trucking regulation." (*Rowe,* at p. 368, citing FAAAA, 108 Stat. 1569, 1605-1606 and ICC Termination Act of 1995 (Pub.L. No. 104-88 (Dec. 29, 1995) 109 Stat. 803, 899).) "In doing so, it borrowed language from the [ADA] and wrote into its 1994 law language that says: '[A] State . . . may not enact or enforce a law . . . related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.'" (*Rowe,* at p. 368, quoting 49 U.S.C. § 14501(c)(1); *see* 552 U.S. at p. 368, citing 49 U.S.C. § 41713(b)(4)(A) [similar provision for combined motor-air carriers].)[2] Specifically, the FAAAA was intended

[2] The full text of title 49 United States Code section 14501(c)(1) provides: "(1) General rule. – Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." (Capitalization altered.)Paragraph (2) discusses three exempt matters: (1) state regulation of motor vehicle safety, highway controls, and minimum amounts of insurance; (2) household goods; and (3) tow trucks. (*Id.,* § 14501(c)(2).) Paragraph (3) deals with "Continuation" of "State standard transportation practices," such as "uniform bills of lading or receipts" and "antitrust immunity for joint line rates. . . ." (*Id.,* § 14501(c)(3), capitalization altered.)

to prevent state regulatory practices including "entry controls, tariff filing and price regulation, and [regulation of] types of commodities carried." (H.R.Rep. No. 103-677, 2d Sess., p. 86 (1994), reprinted at 1994 U.S. Code Cong. & Admin. News, p. 1758.)

In *Morales,* the Supreme Court set out fundamental principles that define the scope of ADA preemption. (*Morales, supra,* 504 U.S at pp. 388-390.) *Morales* called for an analysis of the underlying state regulations on advertising to determine if they related to carrier prices. After finding that "every one" of the state guidelines on advertising at issue bore a "'reference to' airfares," the court held that the ADA preempted the claims of a coalition of state attorneys general who threatened to use consumer protection laws to enforce state advertising regulations against airlines. (*Morales,* at p. 388.) *Morales* did not address whether the advertising guidelines derived from the enactment or enforcement of state law. Instead, the court found that the state advertising regulations were preempted because they required that advertisements referencing airfares clearly state any applicable "variations in fares" as well as any "material restrictions on the fares' availability," and that airlines make advertised fares "available in sufficient quantities to 'meet reasonably foreseeable demand.'" (*Id.* at p. 387.) "[V]iolations of these requirements would give consumers a cause of action . . . for an airline's failure to provide a particular advertised fare – effectively creating an enforceable right to that fare. . . ." (*Id.* at p. 388.)

In addition, the state regulations had a "*forbidden significant effect upon fares*" (*Morales, supra,* 504 U.S. at p. 388, italics added) because the restrictions on fare advertising increased consumer difficulty in determining the lowest cost. "'[W]here consumers have the benefit of price advertising, retail prices often are dramatically lower than they would be without advertising.'" (*Ibid*.) *Morales* did suggest that "'[s]ome state actions may affect [airline fares] in too tenuous, remote, or peripheral a manner' to have preemptive effect." (*Id.* at p. 390.) But the court expressed "'no views about where it would be appropriate to draw the line'" because the case before it did "not present a borderline question." (*Ibid.*)

The Supreme Court's "second encounter with the ADA's preemption clause" arose in the context of a consumer fraud claim that sought to enjoin American Airlines from devaluing the benefits associated with its frequent flyer program. (*Wolens, supra,* 513 U.S. at p. 223.) *Wolens* decided whether a claim brought under the Illinois consumer fraud act fell within the ADA's proscription that "'[N]o State . . . shall enact or enforce any law . . . '" relating to price, route, or service. (*Wolens,* at pp. 222-223.) The court held that the consumer fraud act constituted state enforcement of a law relating to price, because it "serve[d] as a means to guide and police the marketing practices of airlines." (*Wolens,* at p. 228; *see Northwest, Inc. v. Ginsberg* (2014) 572 U.S. ___ [188 L. Ed. 2d 538, 134 S. Ct. 1422] [ADA preempts state law claim for Northwest Airlines's breach of implied covenant of

good faith and fair dealing regarding changes to its frequent flyer program].)

The Supreme Court incorporated the holdings of *Morales* and *Wolens* in the FAAAA context when it decided *Rowe, supra,* 552 U.S. 364. Because in *Morales* the high court had previously interpreted the same language as contained in the 1978 ADA, and Congress endorsed this interpretation, the *Rowe* court followed *Morales*'s interpretation of the ADA in order to interpret the FAAAA. (*Rowe, supra,* 552 U.S. at pp. 370-371.) Initially, *Rowe* observed that FAAAA preemption applies only to claims that (1) derive from the enactment or enforcement of state law, and (2) relate to a motor carrier's prices, routes, or services with respect to the transportation of property. (*Rowe, supra,* 552 U.S. at pp. 370-372.) *Rowe* held that the FAAAA preempted a provision of Maine's tobacco delivery law that required tobacco distributors to utilize a delivery service that would verify whether "the person to whom the package [was] addressed [was] of legal age to purchase tobacco." (*Rowe,* at p. 368.) The court conceded that an initial review of the regulation might make it appear applicable to shippers rather than carriers. However, the court observed that the effect of Maine's law would be substantial because "carriers will have to offer tobacco delivery services that differ significantly from those that, in the absence of the regulation, the market might dictate." (*Id.* at p. 372.)

More recently, in *Dan's City Used Cars, Inc. v. Pelkey* (2013) 569 U.S. ___ [185 L. Ed. 2d 909, 133

S. Ct. 1769] (*Dan's City*), the plaintiff brought suit under various state laws, including the New Hampshire Consumer Protection Act, to recover damages from a defendant who towed the plaintiff's car and traded it to a third party without compensating the plaintiff. (*Dan's City, supra,* 569 U.S. at p. ___, 133 S. Ct. at p. 1775].) The court initially noted that where Congress has superseded state legislation by statute, its duty is to focus on the statutory language in order to "'identify the domain expressly pre-empted.'" (*Id.* at p. ___ [133 S. Ct. at p. 1778].) The court observed that "it is not sufficient that a state law relates to the 'price, route, or service' of a motor carrier in any capacity; the law must also concern a motor carrier's 'transportation of property.' [Citation.] [¶] Title 49 defines 'transportation,' in relevant part, as 'services related to th[e] movement' of property, 'including arranging for . . . storage [and] handling. . . .'" (*Dan's City,* 569 U.S. at pp. ___-___ [133 S. Ct. at pp. 1778-1779].) These fall within the FAAAA's ambit "only when those services 'relat[e] to th[e] movement' of property." (569 U.S. at p. ___ [133 S. Ct. at p. 1779].) Because the FAAAA preempts only state laws that relate to motor carrier "'price, route, or service . . . with respect to the transportation of property,'" a unanimous court held that the plaintiff's state law claims, including his claim under New Hampshire's consumer protection act, were unrelated to the transportation or service of a motor carrier. (569 U.S. at p. ___ [133 S. Ct. at p. 1775], italics omitted.)

Dan's City determined that the New Hampshire law did not run afoul of the congressional purpose behind the FAAAA, namely, to prevent individual states from substituting their "'own governmental commands for competitive market forces in determining . . . the services that motor carriers will provide.'" (*Dan's City, supra,* 569 U.S. at p. ___ [133 S. Ct. at p. 1780].) The law in question did not "constrain participation in interstate commerce by requiring a motor carrier to offer services not available in the market. Nor [did it] 'freez[e] into place services that carriers might prefer to discontinue in the future.'" (*Ibid.*)

(5) *Morales, Wolens, Rowe,* and *Dan's City* each establish when a claim is expressly preempted. (*See*, *e.g.*, *Tanen v. Southwest Airlines Co.* (2010) 187 Cal.App.4th 1156, 1166-1167 [114 Cal. Rptr. 3d 743.) Based on these cases, in order to find FAAAA preemption here, defendants must show that the People's UCL claim (1) derives from the enactment or enforcement of state law, and (2) relates to Pac Anchor's prices, routes, or services with respect to the transportation of property. (*Rowe, supra,* 552 U.S. at pp. 370-372.) Because the People concede the UCL claim against Pac Anchor derives from the enforcement of state law, the issue narrows to whether the People's claim "relate[s] to" Pac Anchor's price, route, or service "with respect to the transportation" of property. (49 U.S.C. § 14501(c)(1).)

Defendants make two preemption arguments: First, they assert that the FAAAA facially preempts

all claims against motor carriers brought under California's UCL; second, they argue that the People's particular UCL claim is preempted as applied to this case. We turn to the facial preemption argument first.

D. *Facial Preemption of California's UCL*

Defendants contend that UCL claims against motor carriers are facially preempted because they regulate the effect that unfair business practices have on the quality and price of goods and services. They rely on *Fitz-Gerald,* which held that the ADA preempted a UCL claim based on state minimum wage laws because *Morales* and *Wolens* "held that claims under a state unfair business practices statute are preempted." (*Fitz-Gerald, supra,* 155 Cal.App.4th at p. 423.) The Court of Appeal here rejected the argument, holding that when a cause of action is based on allegations of unlawful violations of the state's labor and employment laws, there is no reason to find preemption simply because the pleading raises these issues under the UCL, as opposed to separate causes of action. The People add that the UCL's application here does not interfere with the FAAAA's regulations because that act preempts only state regulations that are specifically "related to" the "price, route, or service" *of motor carriers* for violations involving the "transportation of property." (49 U.S.C. § 14501(c)(1).) As we explain, the Court of Appeal and the People have the better interpretation.

(6) The UCL's "scope is broad," and its coverage is "'sweeping.'" (*Cel-Tech, Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th at p. 163, 180 [83 Cal.Rptr.2d 548, 973 P.2d 527]; *see Zhang v. Superior Court* (2013) 57 Cal.4th 364 [159 Cal. Rptr. 3d 672, 304 P.3d 163] [analyzing a UCL claim against an insurance company].) It defines unfair competition to "mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." (Bus. & Prof. Code, § 17200.) The UCL does not mention motor carriers, or any other industry for that matter; it is a law of general application. In *Tobacco Cases II,* we held that, as a general matter, the UCL is not subject to preemption on its face by the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1331 et seq.), which governs cigarette sales to minors, because it "is a law of general application, and it is not based on concerns about smoking and health." (*Tobacco Cases II, supra,* 41 Cal.4th at p. 1272; *see Dan's City, supra,* 569 U.S. at pp. ___-___ [133 S. Ct. at pp. 1778-1779] [FAAAA does not preempt state consumer protection law of general application].) Similarly, here the FAAAA embodies Congress's concerns about regulation of motor carriers with respect to the transportation of property; a UCL action that is based on an alleged general violation of labor and employment laws does not implicate those concerns.

Indeed, defendants have conceded, as they must, that the FAAAA does not preempt generally applicable employment laws that affect prices, routes, and

services. (*See, e.g*., *Californians for Safe Dump Truck Transp. v. Mendonca* (9th Cir. 1998) 152 F.3d 1184, 1190 (*Mendonca*) [holding that the FAAAA does not preempt California's prevailing wage law when enforced against transportation companies].) *Mendonca* emphasized that in drafting the FAAAA, Congress observed that 10 jurisdictions had not enacted laws to regulate intrastate prices, routes, or services, despite the fact that seven of those states had wage and hour provisions similar to California's. (*Mendonca,* at p. 1187.) *Mendonca* concluded that Congress's observation that those seven states did *not* regulate prices, routes, or services "constitute[d] indirect evidence that Congress did not intend to preempt" the regulations there at issue. (*Id.* at p. 1188.) We observe that all 10 of the jurisdictions identified in *Mendonca* had unfair competition laws or deceptive trade practices statutes in force at the time Congress passed the FAAAA and that Congress did not perceive these laws as implicating regulation of prices, routes, or services. (*See* Alaska Stat. § 45.50.471 [prohibiting "unfair methods of competition" and "'unfair or deceptive acts or practices'"]; Ariz. Rev. Stat. § 44-1522 [prohibiting deceptive practices in employment]; *see also* Del. Code Ann. tit. 6, § 2513 [prohibiting deceptive practices in employment]; D.C. Code § 28-3904 [enacting a broad deceptive practices prohibition]; Fla. Stat. § 501.204 [broadly prohibiting deceptive and unconscionable trade practices]; Me. Rev. Stat. Ann. tit. 5, § 207 [prohibiting unfair or deceptive practices in competition]; Md. Code Ann., Com. § 13-303 [restricting unfair or deceptive trade practices]; N.J. Stat.

Ann. § 56:8-2 [prohibiting fraud and deceptive trade practices]; Vt. Stat. Ann. tit. 9, § 2453 [prohibiting unfair trade practices in commerce]; Wis. Stat. § 100.20 [providing that business methods and competition in business must be fair].)

(7) *Dan's City* impliedly approved *Mendonca*'s reasoning on this point. Like *Mendonca, Dan's City* expressly incorporated an earlier federal employee retirement income security act (ERISA) preemption case into its FAAAA analysis. (*Dan's City, supra,* 569 U.S. at p. ___ [133 S. Ct. at p. 1778], citing *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* (1995) 514 U.S. 645, 655-656 [131 L. Ed. 2d 695, 115 S. Ct. 1671] (*Travelers*); *see Mendonca, supra,* 152 F.3d at pp. 1188-1189.) As *Mendonca* noted, *Travelers* rejected the notion that under ERISA's broad preemption provision, Congress intended to preempt "basic regulation of employment conditions" even though such regulation "will invariably affect the cost and price of services." (*Travelers, supra,* 514 U.S. at p. 660.) Thus, we hold that the FAAAA does not facially preempt the People's UCL action in this case. To the extent *Fitz-Gerald v. Sky-West Airlines, Inc., supra,* 155 Cal.App.4th 411, is inconsistent with the above analysis and conclusion, we disapprove it.

E. *The People's UCL Action as Applied*

Defendants also challenge the People's action as applied under the FAAAA. They note that the People

assert a single cause of action under the UCL, premised on violations of the Unemployment Insurance Code, the Labor Code, and IWC Wage Order No. 9. Defendants contend that under the facts of this case, the People's action actually seeks to regulate motor carrier competition (i.e., prices, routes, or services) directly, by coupling the UCL with various provisions of Unemployment Insurance Code, Labor Code, and IWC Wage Order No. 9. The People counter that they filed the UCL claim because defendants sought to evade the financial and administrative responsibilities of these laws, and compete unfairly, by misclassifying their truck drivers as independent contractors. The UCL action, the People argue, is independent of defendants' prices, routes, or services with respect to the transportation of property. We agree.

In *Morales,* the high court held that state airline advertising guidelines *related to* airfares, because the guidelines required airlines to disclose material restrictions on price, and "effectively creat[ed] an enforceable right to that fare when the advertisement fail[ed] to include the mandated . . . disclaimers." (*Morales, supra,* 504 U.S. at p. 3881.) *Morales* calls for an analysis of the underlying state regulations to see if they relate to motor carrier prices, routes, or services when enforced through the UCL.

The sections of the Labor Code and the Unemployment Insurance Code that anchor the People's UCL claim make no reference to motor carriers, or the transportation of property. Rather, they are laws that regulate employer practices in all fields and

simply require motor carriers to comply with labor laws that apply to the classification of their employees. In fact, defendants concede "that those state employment laws . . . are laws of general application whose effects on the carriers' prices, routes, and services is remote." Defendants do not concede the point with respect to IWC Wage Order No. 9. Although IWC Wage Order No. 9 regulates wages, hours, and working conditions "in the transportation industry," the sections on which the People rely do not refer to prices, routes, or services. Section 4 governs minimum wage requirements, and section 7 governs employer recordkeeping. If sections 4 and 7 have an effect on defendants' prices, routes, or services, that effect is indirect, and thus falls outside the scope of the test set forth in *Morales*. For this reason, we also reject defendants' argument that the FAAAA facially preempts sections 4 and 7 of IWC Wage Order No. 9.

Defendants next argue that the People's UCL claim, will significantly affect motor carrier prices, routes, and services because its application will prevent their using independent contractors, potentially affecting their prices and services. Defendants claim that if the People's UCL action is successful, they will have to reclassify their drivers as employees, driving up their cost of doing business and thereby affecting market forces.

The defendants' assertion that the People may not prevent them from using independent contractors is correct, but its characterization of the People's UCL claim is not. Nothing in the People's UCL action

would prevent defendants from using independent contractors. The People merely contend that if defendants pay individuals to drive their trucks, they must classify these drivers appropriately and comply with generally applicable labor and employment laws.

Dan's City observed that the "target at which [Congress] aimed" the FAAAA was "'a State's direct substitution of its own governmental commands for competitive market forces in determining (to a significant degree) the services that motor carriers will provide.'" (*Dan's City, supra,* 569 U.S. at p. ___ [133 S. Ct. at p. 1780]; *see Columbus v. Ours Garage & Wrecker Service, Inc.* (2002) 536 U.S. 424, 449 [153 L. Ed. 2d 430, 122 S. Ct. 2226] (dis. opn. of Scalia, J.) [recognizing FAAAA preemption is limited to laws and regulations that single out for special treatment motor carriers of property; states remain free to enforce general regulations not targeting motor carriers regarding transportation of property].)

Dan's City emphasized the FAAAA limiting phrase "with respect to the transportation of property," which strongly supports a finding that California labor and insurance laws and regulations of general applicability are not preempted as applied under the FAAAA, even if they form the basis of the People's UCL action. (*See California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.* (1997) 519 U.S. 316, 334 [136 L. Ed. 2d 791, 117 S. Ct. 832] [relying on *Travelers* to conclude that ERISA does not preempt California's prevailing wage law].) The laws invoked here apply to all employers, not just trucking

companies. As we noted earlier, *Mendonca* concluded that California's generally applicable prevailing wage laws were not preempted by the FAAAA in part because several states Congress identified as not having laws regulating interstate trucking had prevailing wage laws in place at the time the FAAAA was enacted. (*Ante,* at p. 783.) Similarly, eight out of the 10 jurisdictions identified in *Mendonca* had generally applicable laws governing when a worker is an independent contractor (or the equivalent) and when a worker is an employee. (*See* Alaska Stat. § 23.20.525; Ariz. Rev. Stat. § 23-902; Del. Code Ann. tit. 19, § 3302; Fla. Stat. § 440.02; Me. Rev. Stat. Ann. tit. 26, § 1043; N.J. Stat. Ann. § 43.21-19; Vt. Stat. Ann. tit. 21, § 1301; Wis. Stat. §§ 102.07, 108.02.) Thus even though the People's UCL action may have some indirect effect on defendants' prices or services, that effect is "'too tenuous, remote, [and] peripheral . . . to have pre-emptive effect.'" (*Morales, supra,* 504 U.S. at p. 390.)

Defendants also contend that the People's UCL claim should be preempted, even if its effect on motor carrier transportation is remote, because it threatens Congress's deregulatory purpose. In *Rowe,* the high court stated that "pre-emption occurs at least where state laws have a 'significant impact' related to Congress' deregulatory and pre-emption-related objectives." (*Rowe, supra,* 552 U.S. at p. 371.) Congress passed the FAAAA in order to end a patchwork of state regulations. However, nothing in the congressional record establishes that Congress intended to preempt states' ability to tax motor carriers, to enforce

labor and wage standards, or to exempt motor carriers from generally applicable insurance laws. (*See Mendonca, supra,* 152 F.3d at pp. 1187-1188 [Congress did not intend ADA to preempt Cal. prevailing wage law]; *see also Rice v. Santa Fe Elevator Corp.* (1947) 331 U.S. 218, 230 [91 L. Ed. 1447, 67 S. Ct. 1146] [matters traditionally within state's police powers not preempted unless Congress's intent to do so is manifest].)

Defendants argue additionally that the People's UCL claim conflicts with Congress's deregulatory purpose because it erects the very entry control that Congress intended to dismantle. The congressional record does show that Congress disapproved of a California law that denied advantageous regulatory exemptions to motor carriers who used a large proportion of independent contractors. (*See* H.R.Rep. No. 103-677, 2d Sess., p. 87, *supra,* reprinted in 1994 U.S. Code Cong. & Admin. News, p. 1759.) As we have noted, however, defendants' claim is factually inaccurate because the People's UCL action does not encourage employers to use employee drivers rather than independent contractors. Defendants are free to use independent contractors as long as they are properly classified. The People's sole premise for invoking the UCL is to ensure that employers properly classify their employees or independent contractors in order to conform to state law.

CONCLUSION

(8) For the reasons stated, we hold that 49 United States Code section 14501(c) does not preempt the People's UCL action. We therefore affirm the Court of Appeal's judgment. We leave it to that court to decide how to address the remaining issues on remittitur. (On remand, the trial court will have to address the merits of the case, i.e., whether defendants actually misclassified their employees as independent contractors.)

Cantil-Sakauye, C. J., Baxter, Werdegar, J., Corrigan, J., Liu, J., and Aronson, J.,* concurred.

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* Associate Justice of the Court of Appeal, Fourth Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

THE PEOPLE ex rel. KAMALA D. HARRIS, as Attorney General, etc., Plaintiff and Appellant, v. PAC ANCHOR TRANSPORTATION, INC., et al., Defendants and Respondents.

B220966

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE

195 Cal. App. 4th 765*; *125 Cal. Rptr. 3d 709*; *2011 Cal. App. LEXIS 595

May 18, 2011, Filed

COUNSEL: Edmund G. Brown, Jr., and Kamala D. Harris, Attorneys General, Dane R. Gillette, Chief Assistant Attorney General, Mark J. Breckler, Senior Assistant Attorney General, Jon M. Ichinaga and Satoshi Yanai, Deputy Attorneys General, for Plaintiff and Appellant.

Sands Lerner, Neil S. Lerner and Arthur A. Severance for Defendants and Respondents.

JUDGES: Opinion by Kriegler, J., with Armstrong, Acting P. J., and Mosk, J., concurring.

OPINION BY: Kriegler

OPINION

KRIEGLER, J. – Plaintiff and appellant State of California appeals from a judgment following an order granting judgment on the pleadings in favor of

defendants and respondents Alfredo Barajas and Pac Anchor Transportation, Inc. The State contends the Federal Aviation Administration Authorization Act of 1994 (FAAAA) (49 U.S.C. § 14501 et seq.) does not preempt this action under California's unfair competition law (UCL) (Bus. & Prof. Code, § 17200 et seq.) based on alleged violations of California labor and unemployment insurance laws. We agree the State's unfair competition action is not related to a price, route, or service of a motor carrier with respect to the transportation of property, and therefore, the action is not preempted by the FAAAA. We reverse.

FACTS

Pac Anchor is a trucking company in Long Beach, California. Barajas is an owner of Pac Anchor, where he works as a manager and truck dispatcher. Pac Anchor has contracts with shipping companies to transport shipping containers from the ports of Los Angeles and Long Beach to locations in Southern California, including warehouses and railroad freight depots.

Barajas owns 75 trucks. He recruits drivers, then leases his trucks and the drivers to Pac Anchor. Barajas and Pac Anchor classify the drivers as independent contractors. As a result, Barajas and Pac Anchor do not obtain workers' compensation insurance, withhold state disability insurance or income taxes, pay unemployment insurance or employment training fund taxes on behalf of the drivers, reimburse

business expenses, insure payment of the state minimum wage, or provide itemized written statements of hours and pay to the drivers.

The drivers do not invest any capital, however, or own the trucks that they drive. They use trucks, tools, and equipment furnished by Barajas and Pac Anchor. The drivers are employed for extended periods of time, but can be discharged without cause. The drivers take all their instructions from Barajas and Pac Anchor. They are not skilled workers and do not have substantial control over operational details. The drivers do not have other customers or their own businesses. The drivers do not have Department of Transportation operating authority or other necessary permits and/or licenses to independently engage in the transport of cargo. They are an integrated part of Barajas's and Pac Anchor's trucking business, because they perform the core activity of delivering cargo.

PROCEDURAL HISTORY

On September 5, 2008, the State filed a complaint against Barajas and Pac Anchor for violation of the UCL. The complaint alleged that Barajas and Pac Anchor misclassified drivers as independent contractors and, as a result, "illegally lowered their costs of doing business." Specifically, Barajas and Pac Anchor violated the UCL "by engaging in acts of unfair competition including, but not limited to, the following: [¶] a. Failing to pay unemployment insurance taxes

as required by Unemployment Insurance Code [section] 976; [¶] b. Failing to pay Employment Training Fund taxes as required by Unemployment Insurance Code [section] 976.6; [¶] c. Failing to withhold State Disability Insurance taxes as required by Unemployment Insurance Code [section] 984; [¶] d. Failing to withhold State income taxes as required by Unemployment Insurance Code [section] 13020; [¶] e. Failing to provide workers' compensation as required by Labor Code [section] 3700; [¶] f. Failing to provide employees with itemized written statements as required by Labor Code [section] 226 and to maintain and provide employees with records required by [California's Industrial Welfare Commission (IWC)] Wage Order [No.] 9, subsection 7; [¶] g. Failing to reimburse employees for business expenses and losses as required by Labor Code [section] 2802; [and] [¶] h. Failing to ensure payment at all times of California's minimum wage as required by Labor Code [section] 1194 and [IWC] Wage Order 9, subsection 4." As a result of these practices, Barajas and Pac Anchor "have obtained an unfair advantage over its competitors, deprived employees of benefits and protections to which they are entitled under California law, harmed their truck driver employees, harmed the general public, and deprived the State . . . of payments for California state payroll taxes." The State sought restitution, civil penalties, and injunctive relief.

Barajas and Pac Anchor filed a motion for judgment on the pleadings on August 21, 2009. After a hearing on September 22, 2009, the trial court found

the action was preempted by the FAAAA for three reasons. First, the court concluded that the holding of *Fitz-Gerald v. SkyWest, Inc.* (2007) 155 Cal.App.4th 411 [65 Cal. Rptr. 3d 913] (*Fitz-Gerald*) required finding all UCL causes of action against motor carriers preempted by the FAAAA. Second, the court found that requiring Barajas and Pac Anchor to treat its truck drivers as employees would increase the motor carrier's operational costs, and therefore, the action related to the motor carrier's prices, routes, and services. Third, the court concluded that the action threatened to interfere with the forces of competition by discouraging independent contractors from competing in the trucking market. The court entered an order granting judgment on the pleadings on October 13, 2009, and entered judgment in favor of Barajas and Pac Anchor on October 14, 2009. The State filed a timely notice of appeal.

DISCUSSION

Standard of Review

"A judgment on the pleadings in favor of the defendant is appropriate when the complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 438, subd. (c)(3)(B)(ii).) A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review. [Citations.] All properly pleaded, material facts are deemed true, but not contentions, deductions, or conclusions of fact or law; judicially noticeable

matters may be considered. [Citations.]" (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672 [128 Cal. Rptr. 2d 358].)

Federal Preemption Principles

(1) "The supremacy clause of the United States Constitution establishes a constitutional choice-of-law rule, makes federal law paramount, and vests Congress with the power to preempt state law. (U.S. Const., art. VI, cl. 2; *Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 516 [120 L. Ed. 2d 407, 112 S.Ct. 2608]; *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 949 [28 Cal. Rptr. 3d 685, 111 P.3d 954].) There are four species of federal preemption: express, conflict, obstacle, and field. [Citation.]" (*Viva! Internat. Voice For Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935 [63 Cal. Rptr. 3d 50, 162 P.3d 569], fns. omitted.)

"First, express preemption arises when Congress 'define[s] explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent, [citation], and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.' [Citations.] Second, conflict preemption will be found when simultaneous compliance with both state and federal directives is impossible. [Citations.] Third, obstacle preemption arises when "'under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the

accomplishment and execution of the full purposes and objectives of Congress.'" [Citations.] Finally, field preemption, i.e., 'Congress' intent to pre-empt all state law in a particular area,' applies 'where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation.' [Citation.]" (*Viva! Internat. Voice For Animals v. Adidas Promotional Retail Operations, Inc., supra,* 41 Cal.4th at p. 936.)

Express Preemption Provision of the FAAAA

The FAAAA preempts state and local regulation relating to the prices, routes or services of motor carriers with respect to the transportation of property. (49 U.S.C. § 14501(c).) Specifically, section 14501(c) of title 49 of the United States Code provides in pertinent part: "(1) . . . Except as provided in paragraphs (2) and (3), a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property."

As part of the deregulation of motor carriers, Congress believed it was necessary to eliminate non-uniform state regulations which had caused "'significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology, and curtail[ed] the expansion of markets.' H.R. Conf. Rep. No. 103-677, at 86-88 (1994), *reprinted in* 1994

U.S.C.C.A.N. 1715, 1758-60." (*Californians for Safe & Competitive Dump Truck Transp. v. Mendonca* (9th Cir. 1998) 152 F.3d 1184, 1187 (*Mendonca*).)

The preemption provision of the FAAAA is identical to the preemption provision of the Airline Deregulation Act of 1978 (ADA); Pub L. No. 95-504 (Oct. 24, 1978) 92 Stat. 1705) to "'even the playing field' between air carriers and motor carriers. [H.R. Conf. Rep. No. 103-677, *supra*,] at 85, 1994 U.S.C.C.A.N. at 1757, 1759." (*Mendonca, supra,* 152 F.3d at p. 1187.)

(2) The preemption clauses of the FAAAA and the ADA are interpreted broadly and expansively. (*Mendonca, supra,* 152 F.3d at p. 1188, fn. 5.) "The phrase 'related to' in this general preemption provision is 'interpreted quite broadly.' [Citation.] Thus, "'[a] state or local regulation is related to the price, route, or service of a motor carrier if the regulation has more than an indirect, remote, or tenuous effect on the motor carrier's prices, routes, or services.'" [Citation.]" (*CPF Agency Corp. v. Sevel's 24 Hour Towing Service* (2005) 132 Cal.App.4th 1034, 1044 [34 Cal.Rptr.3d 120].)

The issue before us in this case is whether the State's unfair competition action relates to "a price, route, or service" provided by Barajas and Pac Anchor.

Relevant Cases Applying the Preemption Standard

Three relevant federal court cases have interpreted and applied the preemption provisions of the ADA and the FAAAA. In *Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 383 [119 L. Ed. 2d 157, 112 S.Ct. 2031] (*Morales*), the United States Supreme Court considered whether enforcement of certain fare advertising guidelines through state consumer protection laws was preempted by the ADA. The *Morales* court held that "[s]tate enforcement actions having a connection with, or reference to, airline 'rates, routes, or services' are pre-empted under [the ADA]." (504 U.S. at p. 384.) The court found that the guidelines were indisputably related to fares. (504 U.S. at pp. 387-388.) Therefore, the court held that the fare advertising guidelines were preempted by the ADA. (*Id.* at p. 391.)

The United States Supreme Court further developed the scope of the ADA preemption in *American Airlines, Inc. v. Wolens* (1995) 513 U.S. 219 [130 L. Ed. 2d 715, 115 S.Ct. 817] (*Wolens*). The plaintiffs in *Wolens* had filed class action lawsuits for breach of contract and violation of state consumer protection and deceptive business practices laws, based on changes to American Airlines's frequent flyer program. (*Id.* at pp. 224-225.) "Plaintiffs' claims relate to 'rates,' *i.e.,* American's charges in the form of mileage credits for free tickets and upgrades, and to 'services,' *i.e.,* access to flights and class-of-service upgrades unlimited by retrospectively applied capacity controls and blackout dates." (*Id.* at p. 226.) The *Wolens* court

held that the plaintiffs' claims under the state consumer protection law amounted to enforcement of a law related to air carrier rates, routes, or services and, therefore, were preempted. (*Id.* at p. 228.) However, common-law remedies for breach of contract were not a requirement imposed under state law, and therefore, the plaintiffs' breach of contract claims based on the airline's voluntary contractual commitments were not preempted. (*Id.* at pp. 228-229.)

In *Mendonca, supra,* 152 F.3d at page 1189, the Ninth Circuit held that enforcement of California's Prevailing Wage Law (CPWL) (Lab. Code, §§ 1770-1780) was not preempted by the FAAAA. CPWL requires contractors and subcontractors awarded public works contracts to pay workers the prevailing wages. (Lab. Code, § 1771.) A group of motor carriers argued that CPWL directly affected "prices, routes, or services," because rates were based on costs, performance factors, and conditions, including prevailing wage requirements. (*Mendonca, supra,* at p. 1189.) The appellate court concluded that although the wage law was "related to" the motor carrier's prices, routes, and services in a sense, the effect was "no more than indirect, remote, and tenuous." (*Ibid.*) CPWL did not frustrate "the purpose of deregulation by *acutely* interfering with the forces of competition." (152 F.3d at p. 1189.)

Division Six of this appellate district similarly found in *Fitz-Gerald, supra,* 155 Cal.App.4th at page 423, that actions to enforce California's minimum wage laws and labor laws governing meal and rest

breaks are not preempted by the ADA. Specifically, the *Fitz-Gerald* court concluded the plaintiffs' causes of action for unpaid minimum wages under Labor Code section 1194, unpaid meal and rest breaks, unpaid overtime, and waiting time penalties under Labor Code section 203 were not preempted by the ADA. (*Fitz-Gerald, supra,* at p. 415.) The *Fitz-Gerald* court found that although state minimum wage laws ultimately result in higher fares, fewer routes, and less service, the connection was too tenuous for preemption to apply. (*Id.* at p. 423, fn. 7.) "If the rule was otherwise, 'any string of contingencies is sufficient to establish a connection with price, route or service, [and] there will be no end to ADA preemption. [Citation.]' [Citation.]" (*Id.* at p. 423.)

The court in *Fitz-Gerald* also held, however, that the ADA bars causes of action under the UCL. (*Fitz-Gerald, supra,* 155 Cal.App.4th at p. 423.) We disagree with *Fitz-Gerald*'s cursory citation to *Morales* and *Wolens* to support the conclusion that all state unfair business practices statutes are preempted by the ADA. Where a cause of action is based on allegations of unlawful violations of the State's labor and unemployment insurance laws, we see no reason to find preemption merely because the pleading raised these issues under the UCL, as opposed to separately stated causes of action. We respectfully disagree with *Fitz-Gerald*'s contrary conclusion as to preemption of causes of action under the UCL.

The State's UCL Action

The State contends its action under the UCL is not preempted by the FAAAA, because it is not related to the price, route or service of any motor carrier. We agree.

(4) The UCL defines "unfair competition" as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the false advertising law (Bus. & Prof. Code, § 17500 et seq.)]." (Bus. & Prof. Code, § 17200.) "The UCL's purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. [Citation.]" (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949 [119 Cal. Rptr. 2d 296, 45 P.3d 243].) "'Because Business and Professions Code section 17200 is written in the disjunctive, it establishes three varieties of unfair competition – acts or practices which are *unlawful, or unfair, or fraudulent*.' [Citation.]" (*Shvarts v. Budget Group, Inc.* (2000) 81 Cal.App.4th 1153, 1157 [97 Cal. Rptr. 2d 722], italics added.)

"An 'unlawful' business practice or act within the meaning of the UCL 'is an act or practice, committed pursuant to business activity, that is at the same time *forbidden by law*. [Citation.]' [Citation.] The California Supreme Court has explained that '[b]y proscribing "any unlawful" business practice, "[Business and Professions Code] section 17200 'borrows' violations of other laws and treats them as unlawful

practices" that the unfair competition law makes independently actionable. [Citation.]' [Citation.]" (*Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th 322, 351-352 [9 Cal. Rptr. 3d 197].) "In addition, under [Business and Professions Code] section 17200, 'a practice may be deemed unfair even if not specifically proscribed by some other law.' [Citation.]" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143 [131 Cal. Rptr. 2d 29, 63 P.3d 937].)

The State's action against Barajas and Pac Anchor under the UCL is based on alleged violations of statutory obligations concerning employees. Specifically, the State alleges violations of certain laws governing minimum labor standards, including Labor Code section 1194 (requiring the payment of California's minimum wage), Labor Code section 226 (requiring issuance of itemized wage statements to employees), Labor Code section 2802 (requiring reimbursement of employee expenses), Labor Code section 3700 (requiring employers to secure workers' compensation insurance or receive certification to self-insure), and certain laws governing generally applicable state payroll tax requirements, including Unemployment Insurance Code section 976 (requiring contributions to the State Unemployment Fund), Unemployment Insurance Code section 976.6 (requiring contributions to the State Employment Training Fund), Unemployment Insurance Code section 984 (requiring employee contributions to the State Disability Fund, which employers must withhold from

employee wages under Unemp. Ins. Code section 986), and Unemployment Insurance Code section 13020 (requiring employers to withhold income taxes from employee wages).

(5) "'States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety . . . are only a few examples.' [Citation.] State laws requiring that employers contribute to unemployment and workmen's compensation funds, laws prescribing mandatory state holidays, and those dictating payment to employees for time spent at the polls or on jury duty all have withstood scrutiny. [Citation.]" (*Metropolitan Life Ins. Co. v. Massachusetts* (1985) 471 U.S. 724, 756 [85 L. Ed. 2d 728, 105 S.Ct. 2380].)

(6) In this case, the State's action to enforce Barajas's and Pac Anchor's statutory obligations as an employer is not related to Pac Anchor's prices, routes, or services, even though it may remotely affect the prices, routes, or services that the motor carrier provides. Case law supports finding that the effect of California's minimum wage law (Lab. Code, § 1194) on a motor carrier's prices, routes, and services is too tenuous for preemption under the FAAAA. (*See Fitz-Gerald, supra,* 155 Cal.App.4th at p. 423 [connection of minimum wage law to higher fares, fewer routes, and less service is tenuous]; *Mendonca, supra,* 152 F.3d at p. 1189 [Cal's prevailing wage law applicable to public works contractors is not preempted by the

FAAAA].) Other California labor and unemployment insurance provisions that Barajas and Pac Anchor allegedly violated have a similarly indirect and tenuous connection to Pac Anchor's prices, routes, and services. We hold that the State's UCL action based on Barajas's and Pac Anchor's alleged violations of generally applicable state laws governing an employer's relationship with employees is not an action related to the price, route, or service of a motor carrier and, therefore, not preempted by the FAAAA.

DISPOSITION

The judgment is reversed. Costs on appeal are awarded to appellant State of California.

Armstrong, Acting P. J., and Mosk, J., concurred.

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SUPERIOR COURT OF THE
STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. EDMUND G. BROWN JR., Attorney General of the State of California,

Plaintiff,

vs.

PAC ANCHOR TRANSPORTATION, INC., a California corporation, ALFREDO BARAJAS aka "Alfredo Barajas Ramirez", and DOES 1 through 110, inclusive

Defendants.

Case No. BC 397600

The Hon.
Elizabeth Allen White
Dept. 48

~~**[SECOND AMENDED PROPOSED]**~~ **ORDER GRANTING JUDGMENT ON THE PLEADINGS**

(Filed Oct. 13, 2009)

The motion by Defendants PAC ANCHOR TRANSPORTATION, INC. and ALFREDO BARAJAS for judgment on the pleadings came on for hearing in Department 48 of this Court on September 22, 2009.

The Court sustained Plaintiffs' objections to the taking of judicial notice of the factual findings in *American Trucking Associations, Inc. v. Los Angeles*, 559 F.3d 1046 (2009), of earlier pleadings in this matter, and of other documents because the Court cannot take judicial notice of any matter other than case law or statutory law in considering a motion for judgment on the pleadings.

After full consideration of the written and oral submissions by the parties and the matters regarding which the Court took judicial notice, the Court finds that the Complaint does not state facts sufficient to state a cause of action, and Defendants are entitled to judgment on the pleadings for the following reasons:

1. Plaintiff's action against Defendants under the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. §§ 17200 *et seq.*, is preempted *per se* by Section 14501(c)(1) of the Federal Aviation Administration Authorization Act ("Section 14501(c)(1)"), 49 U.S.C. § 14501(c)(1).

a. The decision of the Court of Appeal in *Fitz-Gerald v. Skywest, Inc.*, 65 Cal. Rptr. 3d 913 (2007), regarding Section 14501(c)(1) preemption of actions under the UCL is binding authority which this Court must follow.

b. The holding of the U.S. Court of Appeals for the Ninth Circuit in *Parent V.S. v. Gatos-Saratoga Joint Union High School District*, 484 F.3d 1230, 1233 n.1 (9th Cir. 2007) does not prevent the Court from following *Fitz-Gerald*. *Parent V.S.* is a federal decision in which an appellate court announced that it was not bound to follow its own prior ruling in another case and does not speak to the issue of whether a California superior court is bound by a decision of the Court of Appeal.

c. The decision by the Court of Appeal in *Fitz-Gerald* contains a very lengthy analysis of federal preemption as it applies to California wage and hour laws and a Section 17200 action concerning alleged violations of those laws.

d. In *Fitz-Gerald*, the Court of Appeal held that causes of action against air carriers under the UCL are preempted *per se* under Section 41713(b)(1) of the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1). *Fitz-Gerald*, 65 Cal. Rptr. 3d at 921-22.

e. Section 14501(c)(1) has the same preemptive effect regarding motor carriers as Section 41713(b)(1) has regarding air carriers, and case law regarding Section 41713(b)(1) applies to Section 14501(c)(1). *See Rowe v. N.H. Motor Transp. Ass'n*, 128 S.Ct. 989, 994 (2008); H.R. Conf. Rep. 103-667 at 83, 85 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1755, 1757.

f. Accordingly, because causes of action against air carriers under the UCL are preempted *per se* by Section 41713(b)(1), they are

also preempted *per se* against motor carriers under Section 14501(c)(1).

g. Because Plaintiff alleges that Defendants provide motor transportation of property for compensation (Compl. ¶¶ 3-4), Defendants are motor carriers of property protected by Section 14501(c)(1). 49 U.S.C. § 13102(14); 14501(c).

h. Therefore, the State's cause of action under the UCL against Defendants is preempted *per se* by Section 14501(c)(1).

2. Plaintiff's action against Defendants under the UCL is also preempted by Section 14501(c)(1) because it is directly "related to" motor carrier prices, routes, and services.

a. Plaintiff alleges that Defendants have obtained an unfair competitive advance by misclassifying the drivers who drive Defendants' trucks as independent contractors, rather than employees, and thereby avoiding employment costs under the California Labor Code, Unemployment Insurance Code, and I.W.C. Wage Order 9-2001. (Compl. ¶¶ 13-15.)

b. Plaintiff has requested an injunction under the UCL to stop this practice. (Comp. at 6-7.)

c. The logical effect of the injunction, if granted, is to force Defendants to treat the drivers as employees. Such treatment necessarily will increase Defendants' operational costs, and effect Defendants' prices, the routes Defendants are able to service, and the services Defendants are able to offer. Therefore, Plaintiff's action under

the UCL threatens to have a direct and significant effect on motor carrier prices, routes, and services.

d. Because Plaintiff's action under the UCL threatens a direct and significant effect on motor carrier prices, routes, and services it is directly connected with, and therefore related to motor carrier prices, routes, and services within the meaning of Section 14501(c)(1).

e. Therefore, Plaintiff's action against Defendants under the UCL is preempted by Section 14501(c)(1).

3. Even if the connection between Plaintiff's action under the UCL and motor carrier prices, routes, and services is remote, the action is nevertheless preempted by Section 14501(c)(1) because its acute economic effects threaten to interfere with the forces of competition and to frustrate Congress' deregulatory purposes by, in effect, creating entry controls regarding the use of independent contractor drivers.

a. Plaintiff alleges that Defendants' misclassified their drivers, who do not own trucks and who use trucks owned by Defendants, as independent contractors, rather than employees. (Compl. ¶ 1.)

b. The logical effect of the requested relief is that drivers wishing to remain independent contractors will have to purchase trucks or negotiate new leases for the use of Defendants' trucks or other trucks.

c. Plaintiff's action under the UCL therefore threatens to create an entry control that would discourage independent contractors from competing in the trucking market.

d. The legislative history of Section 14501(c)(1) indicates that Congress enacted the statute to prevent states from erecting entry controls to the trucking market. H.R. Conf. Rep. 103-677 at 87 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1759.

e. Furthermore, the legislative history of Section 14501(c)(1) indicates that Congress specifically enacted the law to remove a California entry control that discouraged the use of independent contractor drivers by motor carriers. H.R. Conf. Rep. 103-677 at 87 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1759.

f. Therefore, Plaintiff's action seeks to erect the specific type of entry control that Congress sought to dismantle by enacting Section 14501(c)(1). Consequently, the action threatens to interfere with the forces of competition and to frustrate Congress' purpose in enacting the statute.

g. Because the acute economic effect of Plaintiff's action threatens to interfere with the forces of competition, the action is preempted by Section 14501(c)(1), even if it is only remotely connected with motor carrier prices, routes, and services. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 224 (1995).

4. Plaintiff's Complaint does not state facts sufficient to constitute a cause of action against Defendants PAC ANCHOR TRANSPORTATION, INC. and ALFREDO BARAJAS.

a. Plaintiff's Complaint states only one cause of action under the UCL.

b. That cause of action is preempted *per se* and because it is related to motor carrier prices, routes, and services within the meaning of Section 14501(c)(1).

c. Because Plaintiff's sole cause of action is preempted by Section 14501(c)(1), the Complaint does not state facts sufficient to constitute a cause of action against Defendants. Therefore, Defendants are entitled to judgment on the pleadings. Cal. Civ. Proc. Code § 438.

THEREFORE, IT IS ORDERED that the motion for judgment on the pleadings is granted and that judgment in favor of Defendants PAC ANCHOR TRANSPORTATION, INC. and ALFREDO BARAJAS shall be entered forthwith.

IT IS SO ORDERED.

DATED: OCT 13 2009 By: Elizabeth Allen White
Hon. Elizabeth Allen White
Judge of the Superior Court

Business & Professions Code
Division 7. General Business Regulations
Part 2. Preservation and
Regulation of Competition
Chapter 5. Enforcement

17200. As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

17203. Injunctive Relief – Court Orders

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

17204. Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys

Actions for relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or a district attorney or by a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association, or by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition.

17205. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the

district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned

funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

(d) The Unfair Competition Law Fund is hereby created as a special account within the General Fund in the State Treasury. The portion of penalties that is payable to the General Fund or to the Treasurer recovered by the Attorney General from an action or settlement of a claim made by the Attorney General pursuant to this chapter or Chapter 1 (commencing with Section 17500) of Part 3 shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support investigations and prosecutions of California's consumer protection laws, including implementation of judgments obtained from such prosecutions or investigations and other activities which are in furtherance of this chapter or Chapter 1 (commencing with Section 17500) of Part 3. Notwithstanding Section 13340 of the Government Code, any civil penalties deposited in the fund pursuant to the National Mortgage Settlement, as provided in Section 12531 of the Government Code, are continuously appropriated to the Department of Justice for the purpose of offsetting General Fund costs incurred by the Department of Justice.

(e) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the

board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(f) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered for the exclusive use by the city attorney for the enforcement of consumer protection laws. However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17980 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 10 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action, and that

the balance of the penalty be paid to the treasurer of the city and county.

17207. (a) Any person who intentionally violates any injunction prohibiting unfair competition issued pursuant to Section 17203 shall be liable for a civil penalty not to exceed six thousand dollars ($6,000) for each violation. Where the conduct constituting a violation is of a continuing nature, each day of that conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of that conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant.

(b) The civil penalty prescribed by this section shall be assessed and recovered in a civil action brought in any county in which the violation occurs or where the injunction was issued in the name of the people of the State of California by the Attorney General or by any district attorney, any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney in any court of competent jurisdiction within his or her jurisdiction without regard to the county from which the original injunction was issued. An action brought pursuant to this section to recover civil penalties shall take precedence

over all civil matters on the calendar of the court except those matters to which equal precedence on the calendar is granted by law.

(c) If such an action is brought by the Attorney General, one-half of the penalty collected pursuant to this section shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State Treasurer. If brought by a district attorney or county counsel the entire amount of the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If brought by a city attorney or city prosecutor, one-half of the penalty shall be paid to the treasurer of the county in which the judgment was entered and one-half to the city, except that if the action was brought by a city attorney of a city and county the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment is entered.

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of the reasonable expenses incurred by the board shall be paid to the State Treasurer for deposit in the special fund of the board described in Section 205. If the board has no such special fund, the moneys shall be paid to the

State Treasurer. The amount of the reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county which funds the local agency.

17208. Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this section shall be revived by its enactment.

Cal Pub Util Code § 4120. "Integrated intermodal small package carrier"

For purposes of this chapter, "integrated intermodal small package carrier" means any person or corporation that transports by motor vehicle packages or articles weighing not more than 150 pounds and that provides, by itself or through a company affiliated through common ownership, intermodal air-ground transportation service for the packages or articles in both interstate and intrastate commerce. The incidental or occasional use of aircraft in transporting packages or articles does not constitute integrated intermodal operation within the meaning of this section.

Cal Pub Util Code § 4125. Registration requirement

(a) Except as provided in Section 4129, no integrated intermodal small package carrier shall operate a motor vehicle on any public highway of this state unless it is currently registered with the commission.

(b) The commission shall grant registration upon the filing of the application and the payment of the fee as required by this article, and shall assign an identification number to the carrier.

(c) The transportation of packages or articles larger than 150 pounds by a person or corporation

registered pursuant to Section 4125 does not relieve that person of any obligation imposed by this chapter.

Cal Pub Util Code § 4128.5. Subhaulers

(a) Any person or corporation who subhauls for an integrated intermodal small package carrier shall be a highway contract carrier.

(b) No integrated intermodal small package carrier may utilize subhaulers or otherwise directly or indirectly purchase transportation by motor vehicle to provide services for which registration is required under this chapter, if the total amount paid to all subhaulers or for the purchased transportation exceeds 10 percent of the gross intrastate revenue of the integrated intermodal small package carrier derived from transporting packages or articles described by Section 4120 in any calendar year.

Cal Pub Util Code § 4135. Grounds for suspension

Upon the receipt of a written determination from the department that an integrated intermodal small package carrier is engaged in unsafe operation, has failed the terminal inspection program or has failed to enroll its drivers in the pull notice program, the commission shall suspend the registration of the integrated intermodal small package carrier.

Cal Pub Util Code § 4136. Notice and hearing

(a) The commission shall determine that the department has complied with Section 4137 before suspending any registration pursuant to Section 4135.

(b) The commission shall notify the integrated intermodal small package carrier of any action taken pursuant to Section 4135.

(c) Whenever the commission suspends the registration of an integrated intermodal small package carrier pursuant to Section 4135, the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefore is filed with the commission.

(d) At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may terminate the suspension, continue the suspension, or cancel the carrier's registration.

(e) The commission may cancel the registration of any carrier suspended pursuant to Section 4135 at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

Cal Pub Util Code § 4139. Fines and imprisonment

Any person who violates any provision of this chapter is guilty of an infraction and is punishable by a fine of not more than two thousand five hundred dollars ($ 2,500) or by imprisonment in a county jail for not more three months for each day of unlawful operation, and in addition shall be liable for any unpaid registration and renewal fees imposed by Section 4127 during the period of unlawful operation, together with the costs of enforcement.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. EDMUND G. BROWN JR., Attorney General of the State of California, **Plaintiff,** **v.** **PAC ANCHOR TRANSPORTATION, INC., a California corporation, ALFREDO BARAJAS aka "Alfredo Barajas Ramirez", and DOES 1 through 100, inclusive,** **Defendants**	**COMPLAINT FOR RESTITUTION, PENALTIES AND INJUNCTIVE RELIEF** (Filed Sep. 5, 2008)

Plaintiff, the People of the State of California ex rel. Edmund G. Brown Jr., as the Attorney General of the State of California:

INTRODUCTION

1. This action is brought by the Plaintiff, the People of the State of California ex rel. Edmund G. Brown, Jr., Attorney General of the State of California, against PAC ANCHOR TRANSPORTATION, INC. ("Pac Anchor"), ALFREDO BARAJAS ("Barajas"), and Does 1 through 100 (collectively "Defendants"), in

order to halt an unlawful practice by Defendants of misclassifying their truck driver employees who do not own a truck as "independent contractors" rather than employees. As a consequence of misclassifying the truck driver employees, Defendants illegally lowered their costs of doing business by failing to reimburse business expenses and losses pursuant to Labor Code §2802, failing to properly pay the California Employment Development Department payroll taxes which were due, by failing to at all times pay the minimum wage, and failing to secure promised workers compensation insurance covering those truck drivers. Defendants' misclassification of truck driver employees who do not own a truck ("drivers") as "independent contractors" permitted Defendants to gain an unfair advantage over competing trucking companies, harmed Defendants' driver employees, and violated California law.

PARTIES

2. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California and is the chief law officer of the State. (Cal. Const., art. V. § 13.) The Attorney General is empowered by the California Constitution to take whatever action is necessary to ensure that the laws of the State are uniformly and adequately enforced. He is statutorily authorized to bring actions in the name of the People of the State of California to enforce California's statutes governing unfair competition. (Bus. & Prof. Code, §§ 17200 et seq.).

3. Defendant Pac Anchor is now, and has been at various relevant times, a California corporation engaged in the transportation industry. Pac Anchor has agreements with various shipping companies which require Pac Anchor to transport the cargo and containers from the ports of Los Angeles and Long Beach to various locations in the Southern California area, including warehouses and railroad freight depots. Pac Anchor maintains an office and freight yard at 609-665 West Cowles Street, in Long Beach, California in the County of Los Angeles, and has conducted business at all times relevant to this lawsuit in, among other places, the County of Los Angeles in the State of California.

4. Defendant Barajas, also known as "Alfredo Barajas Ramirez," is an individual. Barajas is employed by Pac Anchor as a manager and truck dispatcher. Plaintiff is informed and believes that Barajas is owner, or part owner of Pac Anchor. Barajas also owns approximately 75 truck tractors ("trucks") which he leases to Pac Anchor. Barajas recruits drivers for his trucks. Barajas enters into leases, for an indefinite time, often lasting several years, with Pac Anchor to supply his trucks and drivers for those trucks to Pac Anchor. Barajas is employed at 609-665 West Cowles Street, in Long Beach, California in the County of Los Angeles, and has conducted business at all times relevant to this lawsuit in, among other places, the County of Los Angeles in the State of California. Plaintiff is informed and believes that Baraj as is also a resident of Los Angeles County.

5. Plaintiff is not aware of the true names, identities, or capacities of the defendants sued herein as Does 1 through 100, and therefore sues said defendants by such fictitious names. Plaintiff is informed and believes that, at various relevant times, said Doe defendants participated in, or otherwise were in some manner responsible for the harm to the general public that arose from the facts and occurrences alleged in this complaint. Plaintiff will seek leave of the court to amend this complaint to state the true names of the fictitiously named defendants once they are discovered.

GENERAL ALLEGATIONS

6. Whenever reference is made in this complaint to any act of the corporate defendant, such allegation shall mean that the corporation did the acts alleged in this complaint through its officers, directors, employees, agents and/or representatives while they were acting within the actual or ostensible scope of their authority.

7. Whenever reference is made in this complaint to any act of any of the Defendants, including those named herein as Doe defendants, such allegation shall mean that each Defendant and/or Doe defendant acted individually and jointly with the other defendants, including other Doe defendants named in this complaint.

8. At all relevant times, each defendant knew or realized that the other defendants and/or Doe defendants were engaging in or planned to engage in the violations of law alleged in this complaint. Knowing or realizing that other defendants were engaging in such unlawful conduct, each defendant nevertheless facilitated the commission of those unlawful acts. Each defendant encouraged, facilitated, or assisted in the commission of the unlawful acts, and thereby, aided and abetted the other defendants in the unlawful conduct.

9. Defendants have engaged in a conspiracy, common enterprise, and a common course of conduct to facilitate a common unlawful and unfair practice of profiting by the unlawful evasion of California Labor Code and IWC Wage Order protections for employees, state payroll tax, and workers' compensation obligations. The conspiracy, common enterprise, and common course of conduct continues to the present.

10. At all relevant times, each defendant has operated, and currently operates, as an integrated enterprise on account of their interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control.

11. At all relevant times, each defendant, including those named herein as Doe defendants, have operated, and currently operate, as a single business enterprise. Though such Defendants have multiple corporate, entity, and individual personalities, there is

but one enterprise and this enterprise has been so handled that it should respond, as a whole and jointly and severally by each of its constituent parts, for the acts committed by defendants. Each corporation, individual and entity has been, and is, merely an instrument and conduit for the others in the prosecution of a single business venture. There is such a unity of interest and ownership among these Defendants that the separate personalities of the corporations, individuals and entities no longer exist. If the separate acts of the defendants are treated as those of each Defendant alone, an inequitable result will follow in that Defendants will evade and effectively frustrate the statutes and statutory schemes set forth below which are meant to protect employee and the public's welfare, and defendants separately may have insufficient assets to respond to the ultimate aware of restitution, costs, and penalties entered in this case. Further, an award of penalties against one or more of the defendants alone will not accurately reflect the amount necessary for punishment of the entire business enterprise conducted by defendants.

FIRST CAUSE OF ACTION

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(Against all Defendants)

12. The People reallege and incorporate by reference paragraphs 1 through 11 of this complaint as if set fully herein.

13. Defendants misclassified their drivers: the drivers are Defendants' employees, not independent contractors. Defendants can discharge the drivers without cause at any time. The drivers are not skilled workers with substantial control over operational details. The drivers take all necessary instructions from defendants, given the nature of the trucking business. The drivers are an integrated part of defendants' trucking business, engaged in the core activity of defendants' usual business: delivering cargo. The drivers do not have their own businesses or their own customers. The drivers have no significant opportunity for profit or loss other than working more hours. The drivers do not have DOT operating authority or other necessary permits and/or licenses to independently engage in the transport of cargo. The drivers are employed for extended periods of time. The drivers are using trucks, tools and equipment furnished by defendants. The drivers do not own their trucks.

14. Defendants have violated and continue to violate Business and Professions Code §§17200, et seq. by engaging in acts of unfair competition including, but not limited to, the following:

a. Failing to pay Unemployment Insurance taxes as required by Unemployment Insurance Code § 976;

b. Failing to pay Employment Training Fund taxes as required by Unemployment Insurance Code §976.6;

c. Failing to withhold State Disability Insurance taxes as required by Unemployment Insurance Code §984;

d. Failing to withhold State income taxes as required by Unemployment Insurance Code § 13020;

e. Failing to provide workers' compensation as required by Labor Code §3700;

f. Failing to provide employees with itemized written statements as required by Labor Code §226 and to maintain and provide employees with records required by I.W.C. Wage Order 9, subsection 7;

g. Failing to reimburse employees for business expenses and losses as required by Labor Code §2802;

h. Failing to ensure payment at all times of California's minimum wage as required by Labor Code § 1194 and I.W.C. Wage Order 9, subsection 4.

15. Due to Defendants' unfair and unlawful practices described above, Defendants have obtained an unfair advantage over its competitors, deprived employees of benefits and protections to which they are entitled under California law, harmed their truck driver employees, harmed the general public, and deprived the State of California of payments for California state payroll taxes.

16. Due to Defendants' unfair and unlawful practices described above, Defendants' driver employees suffered monetary losses and are entitled to restitution for those losses. Plaintiff estimates the losses to be in excess of $1,000,000.

17. Plaintiff requests that the Court, pursuant to Business & Professions Code § 17206, assess a civil penalty of two thousand five hundred dollars ($2,500) against Defendants jointly and severally for each violation of Business & Professions Code § 17200 in an amount not less than $4,160,000.00, or as proved at trial.

18. Defendants' violations of California statutes and administrative orders have caused irreparable damage to the People of the State of California. There is no adequate remedy at law that might justify denial of preliminary or permanent injunctive relief, and Plaintiff requests that an injunction issue prohibiting the unlawful and unfair conduct described above.

PRAYER FOR RELIEF

WHEREFORE, the People pray for the following relief:

1. Pursuant to Business and Professions Code § 17203, that defendants, their successors, agents, representatives, employees and all persons who act in concert with defendants be permanently enjoined from engaging in unfair competition as defined in

Business and Professions Code § 17200, including, but not limited to, acts and practices alleged in this complaint;

2. Pursuant to Business and Professions Code §17206, that the Court assess a civil penalty of two thousand five hundred dollars ($2,500) against Defendants for each violation of Business and Professions Code § 17200, the total amount being no less than $4,160,000 or as proved at trial;

3. That Defendants be ordered to make restitution of unpaid minimum wages and money or property which Defendants acquired by their violations of Business & Professions Code §§17200 et seq. in an amount not less than $1,000,000, or as proved at trial,

4. That the People recover their costs of suit; and

5. Such other and further relief that the Court deems appropriate and just.

Dated: September 4, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the
State of California

MARK J. BRECKLER
Senior Assistant Attorney General
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By: /s/ [Illegible]
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