STACEY M. LEYTON (SBN 203827)
Email: sleyton@altber.com
SCOTT A. KRONLAND (SBN 171693)
Email: skronland@altber.com
ROBIN S. THOLIN (SBN 344845)
Email: rtholin@altber.com
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064

Attorneys for Intervenor-Defendant International Brotherhood of Teamsters

Additional counsel listed on next page

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA TRUCKING ASSOCIATION, RAVINDER SINGH, and THOMAS ODOM,

Plaintiffs,

v.

ROB BONTA, in his official capacity as the Attorney General of the State of California; NATALIE PALUGYAI, in her official capacity as Secretary of the California Labor Workforce and Development Agency; KATRINA HAGEN, in her official capacity as the Acting Director of the Department of Industrial Relations of the State of California; and LILIA GARCIA BROWER, in her official capacity as Labor Commissioner of the State of California, Division of Labor Standards Enforcement, NANCY FARIAS, in her official capacity as the Director of the Employment Development Department,

Defendants,

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Intervenor-Defendant.

Case No. 3:18-cv-02458-BEN-DEB

INTERVENOR-DEFENDANT INTERNATIONAL BROTHERHOOD OF TEAMSTERS' RESPONSE TO PLAINTIFFS' MEMORANDA OF CONTENTIONS OF FACT AND LAW

Trial Date: November 13, 2023
Time: 10:30 a.m.
Courtroom: 5A
Action Filed: October 25, 2018

Additional Counsel:

JULIE GUTMAN DICKINSON
(SBN 148267)
Email: JGD@bushgottlieb.com
HECTOR DE HARO (SBN 300048)
Email: HDeharo@bushgottlieb.com
BUSH GOTTLIEB, ALC
801 N. Brand Boulevard, Suite 950
Glendale, CA 91203
Telephone: (818) 973-3200
Facsimile: (818) 973-3201

Attorneys for Intervenor-Defendant
International Brotherhood of Teamsters

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INTRODUCTION

Plaintiffs fall well short of meeting their burdens on any of their legal challenges to California Assembly Bill 5 ("AB 5"). Plaintiffs' F4A preemption arguments cannot get around binding Ninth Circuit precedent in this very action. *Cal. Trucking Ass'n v. Bonta*, 996 F.3d 644, 656-59 (9th Cir. 2021) ("*CTA*"). Plaintiffs' dormant Commerce Clause claim fails because AB 5 does not discriminate against out-of-state companies or impose a substantial burden on interstate commerce that is clearly excessive in relation to AB 5's putative local benefits. Plaintiffs' equal protection claim fails because there are rationally conceivable reasons for the distinctions AB 5 draws. Moreover, all of Plaintiffs' claims fail to clear a threshold hurdle: Plaintiffs have not demonstrated the harmful effects of AB 5 that they allege.

ARGUMENT

I. Plaintiffs' evidence does not show that AB 5 has disrupted transportation or imposed significant burdens on the trucking industry.

Plaintiffs[1] continue to rely on conclusory assertions about the effects of AB 5 that are unsupported by any non-anecdotal evidence. These assertions are belied by the record before the Court.

If Plaintiffs' dire predictions about the impact of AB 5 were accurate, there would be plenty of evidence for Plaintiffs to present. The initial injunction in this case was lifted more than a year ago. And, as IBT previously explained, the preliminary injunction against state enforcement of AB 5 did not prevent private litigation. IBT PI Opp. 46. Thus, AB 5 has been enforceable in the

[1] "Plaintiffs" refers to both CTA and OOIDA. "CTA" refers to all California Trucking Association plaintiffs, and "OOIDA" refers to plaintiff-intervenors Owner-Operator Independent Drivers Association et al. "CTA PI Br." refers to Dkt. 172-1; "OOIDA PI Br." refers to Dkt. 171-1; "CTA Trial Br." refers to Dkt. 189; "OOIDA Trial Br." refers to Dkt. 193; "IBT PI Opp." refers to Dkt. 173; "State PI Opp." refers to Dkt. 174; "IBT Trial Br." refers to Dkt. 186; "State Trial Br." refers to Dkt. 190-3. Page numbers are internal page numbers, not ECF page numbers.

trucking industry through private action for almost 4 years, and through public action for well over a year.[2]

Nonetheless, the *only* evidence Plaintiffs presented in their renewed preliminary injunction motion as supposedly supporting their assertions of significant disruption were conclusory and anecdotal declarations about the preferences of a few drivers (often premised on misinformation) plus an assertion by one employer that he could not hire employee drivers (without even disclosing the compensation terms he offered)—as IBT previously pointed out. IBT PI Opp. 26-27; IBT Trial Br. 12-13. Despite the prior identification of these weaknesses, Plaintiffs submitted no new evidence, declarations or otherwise, that support the assertion on which their entire argument is based.[3] Instead, they cite the same flawed evidence plus newspaper articles about short-lived protests that ended more than a year ago and a survey that generally summarizes reasons why some drivers prefer to be owner-operators (and that, not mentioned by Plaintiffs, reports that 17% of survey respondents had their own operating authority). CTA Trial Br. 9 & n.6, 10, 15.[4]

No evidence shows any disruption of interstate commerce or decline in the services offered by California motor carriers—let alone the "entire[] elimin[ation]" of services that Plaintiffs claim is the inherent and direct

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[2] The ABC test was also in effect for 20 months after the California Supreme Court's decision in *Dynamex Operations West, Inc. v. Superior Ct.*, 4 Cal.5th 903 (2018), until this Court's January 2020 injunction.

[3] OOIDA's two new declarations (one of which solely addresses income taxes) do not demonstrate any decline in available trucking services. The new declaration submitted by OOIDA President Todd Spencer, which generally asserts that "most owner-operators would likely choose to give up the business in California," Dkt. 193-1, Ex. 1 (Spencer Decl.) ¶54, like his prior declaration, is entirely speculative and based on misinformation (*see*, *e.g.*, *id.* ¶60). In any event, it does not even purport to say that motor carriers will be unable to hire employee drivers.

[4] CTA promises to "supplement this evidence as the case advances," CTA Trial Br. 15, but Plaintiffs were required to submit the evidence they rely upon for their prima facie case with their trial briefs. They cannot submit new evidence to make out their prima facie case at this stage; any new declarations are limited to rebuttal.

"practical effect" of AB 5. CTA Trial Br. 2. The evidence demonstrates the opposite: that trucking services in California have *not* decreased relative to those in comparable markets and that motor carriers have successfully hired employee drivers (including owner-operators). Previously submitted expert declarations established that California has an "oversupply" of available drivers; that load-to-truck ratio measurements and rate trends show *no* adverse impact of AB 5 on the availability of trucking services; and that, during the relevant time period, California has led the country in grants of new motor carrier authority. Dkt. 173-3 (Second Viscelli Decl.), Ex. B at 22-23 & fig. 4, 23-26 & figs. 5-7, 29-31. Declarations by three trucking companies show that they have been able to hire employee drivers. Dkt. 173-11 (Peratt Decl.) ¶¶4-5, 8-9; Dkt. 173-12 (Ta Decl.) ¶¶3-4, 11-12; Dkt. 173-7 (Glackin Decl.) ¶¶5-7; *see also* Dkt. 173-1 (Second Belzer Decl.) ¶¶69-79, 81 ("labor shortage" in trucking industry is due to inadequate compensation and predatory motor carrier practices); Dkt. 173-3 (Second Viscelli Decl.), Ex. B at 35-36 (similar). Although these declarations were *already* in the record before this Court, Plaintiffs fail to address or refute any of this evidence.

Plaintiffs' trial briefs also depend on a series of fallacies about the requirements and costs of compliance with AB 5. First, despite asserting that AB 5 will eliminate services entirely, neither CTA nor OOIDA deny that AB 5 allows motor carriers to hire owner-operators as employees and pay them using the "two-check system" that separates wages and expense reimbursements. Drivers classified as employees *can and do* own their own trucks and are compensated through the "two-check" system, as shown by numerous declarations submitted by IBT. *See* Hong Rebuttal Decl., ¶3-4 (Pac9 drivers receive regular wages and "an additional paycheck to compensate them for the use, upkeep, and maintenance for their truck," and that the system is "not

difficult to implement or maintain").[5]

Despite this record evidence, CTA's trial brief makes *no* mention of the two-check system. OOIDA addresses the two-check system in a single footnote, asserting only that the system "is not without risk to a motor carrier that utilizes it" because the employee must "itemize[] and substantiate[] all vehicle and other expenses to be paid by separate check." OOIDA Trial Br. 18 n.2 (citing Fowler Dec. ¶¶16-17). But workers in any number of jobs across the State are required to itemize expenses and keep receipts for reimbursement; OOIDA presents no evidence to show why their members would be unable to do so. Employers that want to avoid the need for receipts can also offer per-mile reimbursements that cover expenses. *See* Hong Rebuttal Decl. ¶3.[6] Plaintiffs' lack of evidence—or even plausible argument—that the two check-system is impractical dooms all of their arguments as to the burdens of AB 5. Motor carriers can continue to use the same owner-operators to perform the same tasks, as many have been doing since AB 5 was adopted, without the dire consequences Plaintiffs concoct.

Second, CTA continues to strategically ignore AB 5's business-to-business (B2B) exception, Cal. Lab. Code §2776 (formerly §2750.3(e)), although Defendants have *repeatedly* discussed its availability. *E.g.*, IBT PI Opp. 4, 18-19; State PI Opp. 17. OOIDA, for its part, acknowledges that intrastate owner-operators may take advantage of the B2B exception such that their classification would be determined by applying the *Borello* test. OOIDA Trial Br. 32.[7] OOIDA

[5] *See also* Dkt. 173-1 (Second Belzer Decl.) ¶¶18, 51-56, 71; Dkt. 173-13 (Second Tate Decl.) ¶¶19-21; Dkt. 173-12 (Ta Decl.) ¶7; Dkt. 173-4 (Arambula Decl.) ¶¶5-8.

[6] The IRS document cited by OOIDA's own declarant—IRS Publication 15, Circular E, Employer's Tax Guide—states that employers can reimburse "by travel days, miles, or some other fixed allowance" substantiated through records such as the purpose of the travel and miles driven. Publication 15, (Circular E), Employer's Tax Guide (2023), https://www.irs.gov/publications/p15; *see* Dkt. 193-2 (Fowler Decl.) ¶¶16-18. This system is used by motor carriers and is "not difficult to implement or maintain." Hong Rebuttal Decl. ¶4.

[7] The *Borello* test is also not preempted by the F4A. *See Cal. Trucking Ass'n v. Su*, 903 F.3d 953 (9th Cir. 2018).

argues only that federal Truth-in-Leasing (TIL) regulations prevent interstate drivers from qualifying for the B2B exception, if the driver lacks independent operating authority. That interpretation is incorrect, *see infra* at 10-12. Even if it were accurate, the availability of the B2B exception for drivers with their own operating authority and the ability of motor carriers to hire other owner-operators as employees by using the two-check system mean that AB 5 does not disrupt the industry by banning owner-operators.

Third, OOIDA relies on a misleading analysis of the financial implications of employee status by noting the tax advantages for independent contractors who can deduct actual business expenses or a per diem from their adjusted gross income. OOIDA Trial Br. 15; *see* Dkt. 193-2 (Fowler Decl.) ¶¶9-10. But this analysis entirely ignores the fact that employees—and not independent contractors—are entitled to *reimbursement* for business expenses, which the employer can then deduct. *See* Cal. Lab. Code §2802. OOIDA fails even to acknowledge this, much less to compare the benefits of reimbursement as opposed to tax deductions, so makes no showing either that an employee driver is worse off overall or that that AB 5 creates a net burden on the industry by shifting the deductions from driver to motor carrier.

Employment status generally puts drivers in an overall better economic position than being classified as independent contractors. Dkt. 173-1 (Second Belzer Decl.) ¶¶60-61; Cooner Rebuttal Decl., ¶3, Ex. A; Viscelli Rebuttal Decl., ¶¶6, 8; Fuentes Rebuttal Decl., ¶6. Reimbursements also offer a more consistent financial benefit than the deductions OOIDA focuses on, as drivers' earnings are sometimes insufficient even to cover all expenses. Dkt. 173-1 (Second Belzer Decl.) ¶¶60-61; Viscelli Rebuttal Decl., ¶9; Fuentes Rebuttal Decl., ¶¶3-4; Dkt. 173-9 (Islas Decl.) ¶¶15, 19; Dkt. 173-6 (Garcia Decl.) ¶¶9-12; Dkt. 173-10 (Mayorga Decl.) ¶¶9-10, 14; *see also* Dkt. 173-12 (Ta Decl.) ¶¶15-17; Dkt. 173-13 (Second Tate Decl.) ¶8. Plaintiffs' calculations also omit the significant

financial costs borne by independent contractors who lack other benefits and protections provided to employees, including sick leave, workers' compensation, and unemployment insurance. *See, e.g.*, Viscelli Rebuttal Decl., ¶10; Dkt. 173-10 (Mayorga Decl.) ¶¶11-12; Dkt. 173-5 (Fuentes Decl.) ¶¶8-9; Dkt. 173-6 (Garcia Decl.) ¶8; Dkt. 173-4 (Arambula Decl.) ¶10.

Fourth, Plaintiffs fail to support their assertions that drivers will have to pay numerous additional costs under AB 5. OOIDA asserts that drivers classified as employees will "lose income" because they "will have to sell their equipment." OOIDA Trial Br. 14-15. But this is a fallacy. Drivers can and do remain employees while continuing to own trucks. Dkt. 173-4 (Arambula Decl.) ¶ 7; Dkt. 173-5 (Fuentes Decl.) ¶3; Dkt. 173-6 (Garcia Decl.) ¶11; Dkt. 173-12 (Ta Decl.) ¶5; *see* Dkt. 173-1 (Second Belzer Decl.) ¶¶71, 77; *see also, e.g.*, *Air Couriers Int'l v. Emp. Dev. Dep't*, 150 Cal.App.4th 923, 927 (2007) (finding employee status under *Borello* where workers "typically drove their own pickup trucks"). OOIDA likewise incorrectly asserts that "employee drivers may be subject to unexpected chargebacks by motor carrier employers that would reduce their … income." OOIDA Trial Br. 15. But it is independent contractors, not employees, who bear this risk: California law prohibits chargebacks by employers. Cal. Lab. Code §221 ("It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.").

In discussing costs to drivers, OOIDA also appears to acknowledge that owner-operators can continue to work as independent contractors by obtaining their own operating authority. *See* Dkt. 172-5 (Stefflre Decl.) ¶11; Dkt. 173-3 (Second Viscelli Decl.), Ex. B at 11. OOIDA points out that such drivers must pay certain registration fees and buy insurance. OOIDA Trial Br. 16-17. But these types of costs are typical for independent businesses. Nothing in California law prevents drivers with their own operating authority from negotiating fees

with motor carriers sufficient to compensate drivers for the costs of running an independent small business.

In sum, Plaintiffs do not present evidence to prove that AB 5 is disrupting the trucking industry. This is fatal to all their legal theories.

II. AB 5 is neither expressly nor impliedly preempted by the F4A.

Plaintiffs' F4A arguments are squarely precluded by the Ninth Circuit's decision in this case. Plaintiffs' efforts to avoid this result rest on misrepresentations of that decision and of the relevant facts.

Plaintiffs contend that the Ninth Circuit addressed only the limited question whether automatic classification of drivers as employees rather than independent contractors "was, in and of itself, enough to trigger preemption." CTA Trial Br. 14. And they assert that the Ninth Circuit "did not address the possibility that motor carriers would be unable to engage owner-operators" or "that owner-operators would refuse to become employee drivers," thereby affecting the availability of trucking services. *Id.* Thus, they contend, their F4A preemption claim is not foreclosed by the Ninth Circuit's decision because they have now for the first time argued that the *impact* of AB 5 is what makes it preempted.[8]

But this mischaracterizes the issues that were before the Ninth Circuit. CTA did not limit its appellate arguments to the claim that a requirement to classify drivers as employees is preempted regardless of the impact. As IBT previously pointed out, IBT Trial Br. 10, CTA's brief to the Ninth Circuit argued that AB 5's practical impact "will change not only how trucking services are provided, but the extent to which they are offered at all." Answering Br., 9th Cir. Case Nos. 10-55106, 20-55107 (filed May 6, 2020), at 18; *see also id.* at 19 ("This will 'affect the availability of services.'"); *id.* ("Certain services will

[8] OOIDA makes no independent F4A argument, but simply joins CTA's F4A argument. OOIDA Trial Br. 38.

therefore be in short supply ….”); *id.* at 37-38 (claiming to have “submitted evidence that AB-5 will have a ‘significant impact’ on motor carrier’s [sic] ‘prices, routes, or services’”); *id.* at 39 (claiming to have “showed that application of the ABC test will ‘affect the availability of services’”). Thus, CTA previously made its impact argument, and it was rejected.

Equally to the point, the Ninth Circuit’s reasoning forecloses CTA’s impact claim. The Ninth Circuit concluded that AB 5 is a “law of general applicability,” and explained that such “laws … that affect a motor carrier’s relationship with its workforce, and compel a certain wage … are not significantly related to rates, routes or services.” *CTA*, 996 F.3d at 657, 659. The Ninth Circuit acknowledged that CTA argued that “AB-5’s impact is so significant that it indirectly determines price, routes, or services.” *Id.* at 659; *see also id.* at 660 (acknowledging CTA contention that effect of AB 5 will be to diminish services). But the Ninth Circuit rejected this argument, holding that these impacts are “indirect” effects that do not trigger F4A preemption. *Id.* at 660-61. The same reasoning applies equally here.

Even if this Court could disregard the Ninth Circuit’s holdings, CTA’s evidence simply does not support CTA’s broad assertion that “owner-operators … refuse to become employee drivers” and motor carriers “cannot find owner-operators who will accept [employee] positions,” so that “AB-5 will result in trucking companies offering fewer services, or not meeting available demand, or going out of business entirely.” CTA Trial Br. 14-16. As previously discussed, AB 5 has been in effect for more than three years and enforceable by the state for over a year—unquestionably sufficient time for Plaintiffs to have shown an impact on services if trucking services in California were going to see the dramatic decline that they predicted. *See supra* at 1-2. But they have presented no such evidence, either in support of their preliminary injunction motion or now. *See id.*

Finally, Plaintiffs' implied preemption argument is simply a rehash of their express preemption argument, and it fails for that reason. The Ninth Circuit already looked to the F4A's general purposes in addressing express preemption claims, and the Ninth Circuit rejected CTA's exact argument—that Congress intended to preempt generally applicable employment laws. *See* IBT Trial Br. 18-19. The authorities that CTA contends are indicative of congressional intent to implicitly preempt laws like AB 5—*Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364 (2008), and *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992)—are express preemption cases that the Ninth Circuit repeatedly cited and applied in rejecting Plaintiffs' argument about congressional intent. *See CTA*, 996 F.3d at 654, 656-58.

III. AB 5 does not violate the dormant Commerce Clause.

Plaintiffs also fail to establish that AB 5 violates the Commerce Clause.

A. AB 5 does not regulate interstate travel.

CTA mischaracterizes AB 5 as a law that "tr[ies] to regulate the interstate transportation of goods or services in commerce," comparing it to laws regulating modes of interstate travel. CTA Trial Br. 18. This is simply untrue—"AB-5 is a generally applicable labor law" that deals with the classification of workers in numerous industries across the state. *CTA*, 996 F.3d at 664. As such, CTA cannot rely on cases addressing regulations requiring mudguards on trucks and trailers operating on Illinois highways, *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), or limiting the length of trains, *Southern Pacific Co. v. State of Arizona ex rel. Sullivan*, 325 U.S. 761 (1945), to argue that AB 5 directly interferes with the travel of goods across state lines. *See* IBT Trial Br. 32.

Nor can CTA plausibly argue that the dormant Commerce Clause requires a uniform national rule for *labor laws* that apply to transportation companies. *See* CTA Trial Br. 19. Laws regulating employment relationships and worker protections have always varied from state to state. Moreover, Congress addressed

trucking deregulation in the F4A, and the Ninth Circuit expressly rejected CTA's claim that the F4A's preemption provision was intended to require uniform labor laws. *See supra* at 8. Thus, Congress has spoken to this issue.[9]

B. AB 5 does not discriminate against out-of-state businesses.

AB 5 does not discriminate within the meaning of the Commerce Clause because AB 5 does not adopt different rules based on the location of a trucking company. *See Sullivan v. Oracle Corp.*, 662 F.3d 1265, 1271 (9th Cir. 2011); *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 370 (2023) (there was no discrimination-based dormant Commerce Clause claim where petitioners "d[id] not allege that California's law seeks to advantage in-state firms or disadvantage out-of-state rivals"). Both "intrastate" and "interstate" drivers are subject to the ABC test under AB 5. Dkt. 173-3 (Second Viscelli Decl.), Ex. B at 12-13.[10]

Plaintiffs do not argue that AB 5 expressly distinguishes between drivers based on whether they operate intrastate or interstate. Instead, OOIDA argues for the first time in its trial brief that the B2B exception's interaction with federal Truth-in-Leasing (TIL) requirements gives local drivers "privileges" or "benefits" not afforded to out-of-state drivers. OOIDA Trial Br. 22-24 (quoting *Granholm v. Heald*, 544 U.S. 460, 475-76 (2005)). This argument is wrong.

As a threshold matter, OOIDA mischaracterizes the B2B exception as a *per se* violation of the dormant Commerce Clause by relying on cases in which a statute itself facially distinguished between in-state and out-of-state businesses. *See Granholm*, 544 U.S. at 473-74 (addressing exemptions state regulations

[9] CTA relies on *People v. Zook*, 336 U.S. 725, 728 (1949), to argue that uniformity is the touchstone of the dormant Commerce Clause analysis. But *Zook* did not involve a dormant Commerce Clause challenge, and there the Court held that federal laws regulating transportation of passengers for hire in interstate commerce *did not preempt* a California statute on the same subject. *Id.* at 738.

[10] CTA's argument that AB 5 was motivated by "discriminatory intent against *interstate* motor carriers" has no basis in fact. CTA Trial Br. 21 (emphasis added). CTA highlights statements from Assemblymember Gonzalez that it argues show animus against the trucking industry, *but see infra* at 16-17, but none of the statements refer to interstate motor carriers or distinguish at all between intrastate and interstate trucking.

offered only to in-state wineries or those with an in-state presence). There is no such facial distinction in AB 5 because AB 5 allows application of the B2B exemption for both in-state and out-of-state businesses. In dormant Commerce Clause challenges, "a plaintiff must satisfy a higher evidentiary burden when, as here, a statute is neither facially discriminatory nor motivated by an impermissible purpose." *Int'l Franchise Ass'n, Inc. v. City of Seattle*, 803 F.3d 389, 405 (9th Cir. 2015). Plaintiffs do not meet that burden for three reasons.

First, the TIL regulations would be relevant only for interstate owner-operators who *lack their own operating authority* but meet all of the other requirements to qualify for the B2B exception. OOIDA does not offer evidence that there are drivers who fall into this category. At the merits stage of this case, unsupported allegations are insufficient.

Second, OOIDA's entire argument rests on its claim that interstate drivers subject to federal TIL regulations cannot meet the B2B exception's requirements. But California case law supports the opposite conclusion.

Under Labor Code §2776(a)(1), the B2B exception requires a worker to be "free from the control and direction" of the hiring business "in connection with the performance of the work," which OOIDA asserts could not be met where carriers "have exclusive possession, control, and use of the equipment for the duration of the lease" under federal law. 49 C.F.R. §376.12(c)(1); OOIDA Trial Br. 24. But the TIL regulations expressly state that the requirements in (c)(1) are not "intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee," a test that has *always* included consideration of the right to control the employee. 49 C.F.R. § 376.12(c)(4); *see S.G. Borello & Sons, Inc. v. Dep't of Indus. Rels.*, 48 Cal.3d 341, 350 (1989). Courts would harmonize the state law and federal regulation by concluding that control over equipment mandated by the TIL regulations is not dispositive of whether the B2B exception applies.

This interpretation would be consistent with how California courts and other courts have treated "paper" control required by government regulation when assessing employee status. *See* IBT Trial Br. 16-17 (collecting cases). In *Southwest Research Institute v. Unemployment Insurance Appeals Board*, 81 Cal.App.4th 705 (Cal. Ct. App. 2000), for example, the California Court of Appeal held that a worker was not an employee despite having to follow "precise and detailed instructions as to the manner" of collecting, packaging, and shipping samples of gasoline, where compliance was required by federal agencies. *Id.* at 709. Courts would employ a similar approach in interpreting the B2B exception, particularly given the clear statement in the TIL regulations that TIL-mandated control over equipment should not affect employee status.

Turning to the other B2B element cited by OOIDA, there is no reason why a driver with a lease subject to the TIL regulations could not "advertise[] and hold[] itself out to the public as available to provide the same or similar services." Cal. Lab. Code §2776(a)(8). That motor carriers must maintain control over a truck *while it is being leased* does not foreclose an owner-operator from advertising for other business, which the owner-operator can provide after the end of the lease term (or at the same time, if the owner has multiple vehicles).

Moreover, the "common practice" of California courts "is to 'construe[ ] statutes, when reasonable, to avoid difficult constitutional questions.'" *In re Smith*, 42 Cal.4th 1251, 1269 (2008) (alteration in original) (quoting *Le Francois v. Goel*, 35 Cal.4th 1094, 1105 (2005)); *see also People v. Birks*, 19 Cal.4th 108 (1998). Thus, to the extent a contrary interpretation of the B2B exception would raise dormant Commerce Clause concerns, California courts would harmonize the B2B exception and the TIL regulations.

Third, even if OOIDA's TIL argument did have merit, the remedy would not be the injunction Plaintiffs seek. Courts are charged with "enjoin[ing] only the unconstitutional applications of a statute while leaving other applications in

force." *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328–39 (2006); *see also People v. Kelly*, 47 Cal.4th 1008, 1048 (2010) ("[T]he appropriate remedy ... is to disapprove, or disallow, *only the unconstitutional application* of [the statute], thereby preserving any residuary constitutional application with regard to the other provisions…."). The appropriate remedy here would thus be to enjoin application of the elements of the B2B exception that interstate drivers purportedly cannot meet because of the TIL regulations, not to enjoin AB 5.[11]

C. AB 5 does not impose significant burdens on interstate commerce, let alone burdens that are clearly excessive relative to its putative benefits.

Plaintiffs' contention that AB 5 excessively burdens interstate commerce in relation to local benefits under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), is likewise unavailing and largely repeats the same arguments made in their Preliminary Injunction briefing.[12] Plaintiffs argue that AB 5 imposes the burdens "in the context of truckers who are based out-of-state who do not work a majority of their time in California." OOIDA Trial Br. 30; *see also* CTA Trial Br. 20. But as IBT has previously pointed out, IBT Trial Br. 28-29, Plaintiffs continue to assume that all protections that California law grants to employees will apply to all drivers the minute they enter California, regardless of whether they are based outside of California or spend the majority of their time here. In fact, however, the conflict-of-laws analysis will differ based on the time spent in the state and the specific employment protections at issue. *See Haynie v. Team*

[11] AB 5 also includes a severability clause specifying that "[i]f any provision of this Article *or its application* is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application." Cal. Lab. Code §2787 (emphasis supplied).

[12] As IBT has previously explained, IBT Trial Br. 21, the *Pike* test is closely tied to the dormant Commerce Clause's "antidiscrimination precedents," and whether the effects of the law "disclose the presence of a discriminatory purpose." *Nat'l Pork Producers*, 598 U.S. at 377. Nothing in Plaintiffs' evidence supports the conclusion that AB 5 was enacted for a discriminatory purpose against interstate trucking.

Drive-Away, Inc., No. 20-cv-00573-RS, 2021 WL 4916708, at *3 (N.D. Cal. May 10, 2021); *Oman v. Delta Airlines,* 889 F.3d 1075, 1079 (9th Cir. 2018).

OOIDA cites conflict-of-laws cases to assert that California lacks an interest in applying its laws to out-of-state truckers with no significant connection to California. OOIDA Trial Br. 31. But, if that is the case, then the conflict-of-laws analysis will dictate that AB 5 does *not* apply to those drivers. As OOIDA itself points out, the laws in the cases OOIDA relies upon "did not expressly limit their geographic reach," but the courts nonetheless construed them to apply only to California-based workers. *Id.*; *see Oman v. Delta Air Lines*, 9 Cal.5th 762, 776-77 (Cal. 2020) (California's wage payment and paystub requirements did not apply to non-California-based flight attendants who worked in California "episodically and for less than a day at a time") (citation omitted). State courts would apply the same conflict-of-laws and extraterritoriality analysis to AB 5.

Plaintiffs further argue that AB 5 disproportionately burdens interstate businesses because it exempts certain professions like doctors, lawyers, and real estate agents while applying to interstate (as well as intrastate) truck drivers. CTA Trial Br. 20-21. But AB 5 applies to workers in a wide range of industries, and does not "exempt[] intrastate businesses." *Id.* at 21. The law applies to many likely-intrastate workers, like janitors and retail workers, and exempts some workers who could easily operate interstate, like musicians. The construction exemption likewise is not dependent on whether the operator is in- or out-of-state. And many of the so-called "intrastate" professions that CTA focuses on, like doctors and lawyers, have long been exempt from California's Wage Orders, and from numerous other state and federal labor laws. Treating those workers differently from truck drivers based on the type of work they do does not create a discriminatory burden on interstate commerce. *See also Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 342 (2008) (quoting *United Haulers Ass'n v. Oneida-*

Herkimer Solid Waste Mgmt. Auth., 550 U.S. 330, 342 (2007)) ("Any notion of discrimination assumes a comparison of substantially similar entities.").

Because AB 5 does not impose a significant burden on interstate commerce, the dormant Commerce Clause does not require any assessment of its benefits. *Chinatown Neighborhood Ass'n v. Harris*, 794 F.3d 1136, 1146-47 (9th Cir. 2015). But even if Plaintiffs had made the required showing of burden, they do not demonstrate that AB 5's burdens are "clearly excessive in relation to the putative local benefits." *Pike*, 397 U.S. at 142; *see* IBT Trial Br. 30-33.

AB 5 was adopted to address serious problems caused by misclassifying workers who lack true independence as independent contractors, including in the trucking industry. *See* IBT Trial Br. 31. Substantial record evidence shows the scope and impact of that misclassification on drivers, their families, and their finances, as well as the safety of the public.[13] And the California Supreme Court has explained that the ABC test "provide[s] greater clarity and consistency, and less opportunity for manipulation, than a test or standard that invariably requires the consideration and weighing of a significant number of disparate factors on a case-by-case basis." *Dynamex*, 4 Cal.5th at 964.[14]

OOIDA attempts to argue that AB 5's benefits are "illusory" because, OOIDA says, many drivers were properly classified as independent contractors before AB 5 and are *improperly* classified as employees under the ABC test. OOIDA Trial Br. 29. But this fundamentally misunderstands the harms the Legislature was intending to remedy. Treating workers as independent contractors exempts them from basic rights and protections the legislature affords to employees. *See* AB 5 §1(e). OOIDA's own view of how workers

[13] *See, e.g.*, Dkt. 173-1 (Second Belzer Decl.) ¶¶59, 79; Dkt. 173-3 (Second Viscelli Decl.), Ex. B at 16-17; Dkt. 173-9 (Islas Decl.) ¶¶14-16; Dkt. 173-6 (Garcia Decl.) ¶¶8-9; Dkt. 173-10 (Mayorga Decl.) ¶¶8-11; *see also* Dkt. 173-12 (Ta Decl.) ¶¶16-17; Dkt. 173-13 (Second Tate Decl.) ¶¶7-11.

[14] The importance of this clarity makes irrelevant the fact that most misclassification actions under *Borello* were successful. OOIDA Trial Br. 29.

should be classified, or potentially how they would have been classified under a different test, is simply a policy dispute about the proper test that should be applied to workers, and the Legislature acted well within its constitutional authority to follow the California Supreme Court's view and adopt the ABC test. The dormant Commerce Clause does not give courts "freewheeling power" to make "their own assessment of the relevant law's 'costs' and 'benefits.'" *Nat'l Pork Producers*, 598 U.S. at 380 (Gorsuch, J., joined by two justices).

Finally, CTA argues that AB 5 "*targeted*" the trucking industry, CTA Trial Br. 21, but AB 5 is a law of general application and truck drivers are among many workers covered by AB 5. *See supra* at 8-9; *infra* at 17-18. And CTA misunderstands the fact that *Dynamex* "applied the ABC test as only one of three tests for employment status" for IWC Wage Orders. CTA Trial Br. 21. That means that, for purposes of IWC wage orders, workers are employees if they qualify as employees under any of those tests, not that all three must be satisfied.

IV. AB 5 does not violate Equal Protection.

Plaintiffs contend that that AB 5 fails the highly deferential rational basis test. But Plaintiffs do not meet their burden to negate every possible rational basis for the Legislature's decision to apply the ABC Test to truck drivers (along with workers in most occupations). *See FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993) (classification is valid "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification"); *Am. Soc'y of Journalists and Authors, Inc. v. Bonta*, 15 F.4th 954, 965 (9th Cir. 2021) (upholding AB 5 under rational-basis review) ("So long as the law rests upon some rational basis [the court's] inquiry is at an end."). The ABC Test serves the legitimate purposes of preventing misclassification, providing an easy-to-administer test of employee status, and providing minimum employment protections to more workers. Those rationales apply to truck drivers.

Plaintiffs nevertheless argue that AB 5 violates equal protection because

Assemblymember Lorena Gonzalez "proudly announc[ed]" her pro-union background, including by saying "I am a Teamster," CTA Trial Br. 25, and referred to AB 5 as "getting rid of an outdated broker model" that she described as "exploitative" and "illegal." OOIDA Trial Br. 37. This argument fails for multiple independent reasons.

First, as IBT previously explained, even if a law *was* motivated by animus, the law must be upheld unless it serves no legitimate government purpose. IBT Trial Br. 38 (citing *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1200-01 (9th Cir. 2018)); *United States v. O'Brien*, 391 U.S. 367, 383 (1968) ("[T]his Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive."). The numerous rational bases for AB 5 thus end the analysis. Plaintiffs attempt to rely on *Olson v. California*, 62 F.4th 1206 (9th Cir. 2023), which held that app-based rideshare and delivery companies "*plausibly state*[*d*] a claim" that AB 5 irrationally targeted those companies. *Id.* at 1219-20 (emphasis supplied). But *Olson* is inapposite here—at trial—where Plaintiffs have not met their burden to *prove* AB 5 irrationally singles out the trucking industry.

Second, plaintiffs seek to dramatically expand the concept of "animus" to cover not just irrational prejudice against a disfavored group, but any political position a legislator might hold. But neither being pro- or anti-union nor wanting to classify more or fewer workers as employees is evidence of irrational "animus" when legislating. Similarly, "statements reflect[ing] a legislative debate about the merits of [a business] model" do not demonstrate a "bare [] desire to harm a politically unpopular group." *Int'l Franchise Ass'n*, 803 F.3d at 407 n.10 (final alteration in original) (quoting *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)).

Third, there is also no basis for Plaintiffs' claims that AB 5 singles out the trucking industry. The vast majority of California workers are in occupations

where the ABC test now applies, including janitors, maids, and other cleaners; retail workers; grounds maintenance workers; and childcare workers.[15] The broad scope of the legislation shows that AB 5 did not single out individual industries. Even if an individual legislator's remarks were relevant (and they are not, *see* IBT Trial Br. 39), the comments quoted by OOIDA show concern about misclassification and potential exploitation in *many* industries, including "trucking, delivery, janitorial and construction." OOIDA Trial Br. 37.

Perhaps tacitly recognizing that allegations of animus alone cannot justify invalidating a statute under rational basis review, Plaintiffs also argue that AB 5's exceptions, particularly the construction exemption in Labor Code §2781(h), demonstrate that the statute's application to the trucking industry lacks a rational basis. But IBT offered a rationally conceivable basis for allowing a time-limited exception (until January 1, 2025) for drivers that contract directly with construction contractors: Because construction contractors often enter into fixed-price contracts years before their work on a project ends, the contractors may not be able to pass on increased costs to customers. Dkt. 173-8 (Hannan Decl.) ¶6; Dkt. 186-1 (Borjas Decl.) ¶5. OOIDA challenges the credentials of one of IBT's cited experts, OODIA Trial Br. 34-35, but does not even address, let alone meet its burden to refute, this plausible reason for providing a time-limited exception for construction contractors.[16] Even if some other businesses enter into long-term contracts, and some construction contractors do not enter into long-term contracts, legislators are not required to "draw the perfect line."

[15] *See* Ken Jacobs et al., "The Vast Majority of California's Independent Contractors are Still Covered by the ABC Test," UC Berkeley Labor Center 2 (June 2023), at https://laborcenter.berkeley.edu/ab2257-employment-status.

[16] Even if OOIDA's attack on Defendant's declarant had any basis—which it does not—rational basis review does not require "an expert opinion on the [statute at issue]." OOIDA Trial Br. 34. To the contrary, courts are charged under rational basis review to "*imagine* any conceivable basis supporting a law," *Fowler Packing Co., Inc. v. Lanier*, 844 F.3d 809, 815 n.3 (9th Cir. 2016) (emphasis added), and "compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends." *Heller v. Doe*, 509 U.S. 312, 321 (1993).

Armour v. City of Indianapolis, 566 U.S. 673, 685 (2012). And a legislature may "implement [its] program step by step ... adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations"—or here, simply to a time a little further in the future. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). The rational basis test is thus satisfied.

Nor does the B2B exception demonstrate the absence of a rational basis for the law. OOIDA argues that AB 5 irrationally applies the B2B exception in a way that would favor in-state workers. OOIDA Trial Br. 33-34. As previously explained, OOIDA's foundational assertion that California courts would have to interpret the B2B exception to apply only to intrastate truck drivers is incorrect. *See supra*, at 11-13. And even if OOIDA were correct that the B2B exception creates an irrational distinction between intrastate and interstate drivers—which it does not—the correct remedy would be to strike down the relevant parts of the B2B exception, not the law entirely or the law as applied to the entire trucking industry. *See* IBT Trial Br. 38; *see supra* n.11.

That the Legislature generally included "dozens of exemptions and exceptions" in AB 5 also does not make the statute's lack of an exception for the trucking industry irrational. CTA Trial Br. 26. "[S]tate substantive labor standards … are not invalid simply because they apply to particular trades, professions, or job classifications rather than to the entire labor market." *Assoc. Builders & Contractors of S. Cal., Inc. v. Nunn*, 356 F.3d 979, 990 (9th Cir.), *amended*, No. 02-56735, 2004 WL 292128 (9th Cir. Feb. 17, 2004). CTA offers no evidence whatsoever about the other exempted professions—which include doctors, lawyers, freelance writers, manicurists, musicians, interpreters, and publicists—or why it would have been irrational for the Legislature to have believed that workers in those occupations are less subject to exploitation or are more likely to have true independence. Nor can Plaintiffs show that these

exceptions mean that AB 5 "does not advance its purported purpose." CTA Trial Br. 29-31. First, no legislation pursues a single policy goal at the expense of all others. *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) ("Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice."). Second, rational basis review does not permit courts to act as a superlegislature to determine whether the legislature effectuated its purposes as effectively as possible, as CTA seems to suggest this Court should do here.

Finally, CTA argues that the Court can strike down AB 5 because its exceptions "protect politically favored groups." CTA Trial Br. 27-29. But "[a]ccommodating one interest group is not equivalent to intentionally harming another," particularly when plaintiffs allege only that the legislature responded to organizations exercising their constitutionally protected right to lobby. *Gallinger v. Becerra*, 898 F.3d 1012, 1021 (9th Cir. 2018). Nor does *Fowler Packing Co., Inc. v. Lanier*, 844 F.3d 809 (9th Cir. 2016), on which CTA relies, hold otherwise. *Fowler* involved carve outs for three specific *employers*, as compared to others in the very same industry, with no offered rationale except political favoritism. *Id.* at 812-13, 816; *see* IBT Trial Br. 37-38. Under *Fowler*, as under any equal protection case challenging ordinary economic legislation, the fundamental question remains whether there is any rational basis for the distinctions in the statute, not whether individual legislators were being lobbied by interest groups. CTA's proposed standard would subject every piece of legislation to extensive scrutiny, as any statute could be characterized as assisting a "politically favored group"—precisely the outcome that deferential rational basis review is designed to prevent.

CONCLUSION

The Court should enter judgment for Defendants.

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Respectfully submitted,

STACEY M. LEYTON
SCOTT A. KRONLAND
ROBIN S. THOLIN
ALTSHULER BERZON LLP

JULIE GUTMAN DICKINSON
HECTOR DE HARO
BUSH GOTTLIEB, ALC

By: */s/ Stacey M. Leyton*
Stacey M. Leyton

Attorneys for Intervenor-Defendant
International Brotherhood of Teamsters