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17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 CALIFORNIA TRUCKING
20 ASSOCIATION *et al.*,

21 Plaintiffs,

22 OWNER-OPERATOR
23 INDEPENDENT DRIVERS
24 ASSOCIATION,

25 Intervenor- Plaintiff,

26 v.

27 BOB BONTA, *et al.*,

28 Defendants.

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

**AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff OWNER-OPERATOR INDEPENDENT DRIVERS
ASSOCIATION, INC. (“OOIDA”) intervenes in this ongoing litigation challenging
the enforcement of the ABC test, as first codified by AB 5 and later amended by AB
2257, against the motor carrier industry. OOIDA adopts the allegations set forth in

1 the Second Amended Complaint for Declaratory and Injunctive Relief (ECF No. 47)
2 unless otherwise stated below and so long as those allegations are not contrary to
3 OOIDA’s allegations. OOIDA states its proposed complaint for declaratory and
4 injunctive relief against State Defendants and Intervenor Defendant as follows:

5 **INTRODUCTION**

6 1. OOIDA brings this lawsuit to intervene to protect the rights of its
7 members to engage in interstate commerce free from unduly burdensome state-
8 imposed laws, which interfere with the interstate motor carrier industry and their
9 chosen professions, under the Supremacy Clause and Commerce Clause of the
10 United States Constitution.

11 2. OOIDA seeks declaratory and injunctive relief prohibiting State
12 Defendants from enforcing California’s new, rigid worker classification test
13 established by California Assembly Bill 5 (“AB 5”) and subsequently amended by
14 AB 2257, codifying the test set forth in *Dynamex Operations West, Inc. v. Superior*
15 *Court*, 4 Cal. 5th 903 (2018). *See* Cal. Lab. Code § 2775.¹

16 3. Section 2275(b)(1) provides that:

17 [A] person providing labor or services for remuneration shall be
18 considered an employee rather than an independent contractor
19 unless the hiring entity demonstrates that all of the following
20 conditions are satisfied:

21 (A) The person is free from the control and direction
22 of the hiring entity in connection with the
23 performance of the work, both under the contract
24 for the performance of the work and in fact.

25 (B) The person performs work that is outside the
26 usual course of the hiring entity's business.

27 ¹ AB 5 was subsequently amended by AB 2257 earlier this year. Those amendments
28 did not substantively change the ABC test previously located at Cal. Lab. Code §
2750.3. *See* Second Amended Complaint for Declaratory and Injunctive Relief (ECF
No. 47) (“Am. Compl.”) ¶ 3.

1 (C) The person is customarily engaged in an
2 independently established trade, occupation, or
3 business of the same nature as that involved in the
work performed.

4 4. Section 2275 (“the ABC test”) applies to California’s Labor Code, the
5 Unemployment Insurance Code, and wage orders of the Industrial Welfare
6 Commission. *See* Cal. Lab. Code § 2775(b)(1).

7 5. On its face, the ABC test is not limited in its application to those
8 businesses that are based in California or conduct a majority of their work in the
9 state.

10 6. On its face, the ABC test is also not limited in its application to those
11 workers that are based in California or perform a majority of their professional
12 responsibilities in the state.

13 7. Instead, the ABC test applies to any business or individual that conducts
14 any work or provides any service in California.

15 8. The ABC test departs from the multi-factor test, often referred to as the
16 *Borello* test, previously established by *S. G. Borello & Sons, Inc. v. Department of*
17 *Industrial Relations*, 48 Cal. 3d 341 (1989).

18 9. The *Borello* test took into consideration at least eight different factors,
19 not one of which was dispositive of a worker’s status as an employee or independent
20 contractor.

21 10. Nevertheless, under the *Borello* test, the State found in the worker’s
22 favor in 97% of cases. *See* Intervenor-Defendant’s Mem. in Supp. of Mot. to Dismiss
23 (ECF No. 63-1) at 6 (citing Analysis of SB 1402, California Senate Committee on
24 May 7, 2018).

25 11. The majority of OOIDA’s members are independent owner-operators
26 who provide interstate freight transportation services.

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1 12. An independent owner-operator is a truck driver who operates a small
2 trucking business: he or she owns at least one truck and typically provides interstate
3 transportation services to motor carriers as an independent contractor.

4 13. The business relationship under which an independent owner-operator
5 provides transportation services to a motor carrier as an independent contractor is
6 known as the leased owner-operator model and is governed by the federal Truth-in-
7 Leasing regulations promulgated by the Federal Motor Carrier Safety
8 Administration. *See* 49 C.F.R. §§ 376.1-376.42.

9 14. Independent owner-operators that provide transportation services to
10 motor carriers are often referred to as leased owner-operators or as being leased on
11 to a motor carrier.

12 15. The ability of owner-operators to lease on to a motor carrier allows
13 owner-operators to start and run their own interstate freight transportation businesses
14 without obtaining their own federal motor carrier operating authority.

15 16. Independent owner-operators choose to work as independent
16 contractors rather than employee drivers because of the additional freedom they
17 enjoy and control they are able to exercise in operating their businesses.

18 17. The independent owner-operator model has been a vital entrepreneurial
19 avenue for truck drivers looking to build their own businesses and to have a greater
20 say in developing their career in the trucking industry.

21 18. Some of OOIDA's members are small-business interstate motor
22 carriers that have obtained their own federal motor carrier operating authority.

23 19. These members can and do work with independent owner-operators
24 who provide their services as independent contractors.

25 20. These small-business motor carriers also contract with other motor
26 carriers.

27 21. OOIDA's independent owner-operator and small-business interstate
28 motor carrier members are based throughout the United States.

1 22. Many of these members depend on access to the California market to
2 pick up freight being shipped from California and to drop off freight destined for
3 California and beyond.

4 23. OOIDA's members also use California highways to transport freight in
5 interstate commerce between other states.

6 24. Prior to AB 5 and but for the ABC test, OOIDA's independent owner-
7 operator members could work as independent contractors to deliver freight from, to,
8 or through California regardless of where they or the motor carriers they work for
9 are based in the United States.

10 25. Under the ABC test, independent owner-operators are no longer able to
11 provide their services as independent contractors to motor carriers when delivering
12 freight from, to, or through California.

13 26. Instead, under the ABC test, independent owner-operators will be
14 forced to: (1) close their businesses altogether and potentially lose the value in the
15 trucks or equipment in which they have invested; (2) abandon their businesses to
16 become employee drivers (assuming they can obtain such opportunities); or (3) if
17 they have sufficient experience and ability, obtain their own operating authority and
18 incur the costs and risks necessary to become interstate motor carriers.

19 27. Under the ABC test, independent owner-operators would be forced to
20 abandon the business model and contractual relationships that they have chosen to
21 continue their trucking careers.

22 28. But for the ABC test, many independent owner-operators would not
23 abandon their businesses, become employee drivers, or obtain their own operating
24 authority.

25 29. Current owner-operators who obtain their own operating authority to
26 become motor carriers will face the same constraints as existing interstate motor
27 carriers: they will be unable to contract with independent owner-operators to deliver
28 freight from, to, or through California.

1 30. OOIDA seeks a declaration that Section 2775(b)(1)(B) (“Prong B” of
2 the ABC test) violates the dormant Commerce Clause by unduly burdening interstate
3 commerce and a corresponding injunction prohibiting State Defendants from
4 enforcing Prong B against the motor carrier industry.

5 31. The ABC test unduly burdens interstate commerce by forcing
6 independent interstate owner-operators to fundamentally alter their businesses or
7 give up their businesses altogether to continue serving the California market. This is
8 true even if the independent owner-operator is based outside California or spends a
9 majority of their time working outside California.

10 32. The ABC test also unduly burdens interstate commerce by
11 discriminating between motor carriers that rely on employee drivers, which will be
12 able to continue their business operations as usual, and those that rely on independent
13 owner-operators, which will not be able to do business with owner-operators as
14 usual, if at all, in California.

15 33. Prong B of the ABC test will insulate in-state motor carriers relying on
16 employee drivers from innovation and competition by out-of-state motor carriers
17 that primarily rely on independent owner-operators. The costs associated with
18 altering their business practices will deter those motor carriers from competing for
19 and agreeing to move freight that originates in or is destined for California.

20 34. If motor carriers that rely on independent owner-operators decline to
21 compete for freight originating in or destined for California, independent owner-
22 operators based throughout the nation will be deprived of income for transporting
23 freight that they would have otherwise willingly and freely agreed to transport.

24 35. Prong B of the ABC test will also increase the cost of starting a new
25 interstate motor carrier that hopes, intends, or will need to rely on access to the
26 California market, thus further reducing competition in the motor carrier industry
27 and protecting existing carriers from new entrants.

28

1 36. Small-business motor carriers will be particularly disadvantaged as
2 they will be less able to adapt to the increased costs and challenges associated with
3 using employee drivers.

4 37. The practical effect of Prong B of the ABC test is to legislate how
5 businesses are formed, how businesses are operated, and which business models are
6 preferred far beyond California’s borders for the privilege of transporting freight
7 into, out of, and through the state.

8 38. OOIDA also seeks a declaration that Prong B of the ABC test is
9 preempted by the Federal Aviation Administration Authorization Act of 1994
10 (“FAAAA”), 49 U.S.C. § 14501, and a corresponding injunction prohibiting State
11 Defendants from enforcing Prong B.

12 39. The stated purpose of AB 5 was to “ensure workers who are currently
13 exploited by being misclassified as independent contractors instead of recognized as
14 employees have the basic rights and protections they deserve under the law including
15 a minimum wage, workers’ compensation if they are injured on the job,
16 unemployment insurance, paid sick leave, and paid family leave.” AB 5 §1(e).

17 40. The legislative history of AB 5, however, and the public statements of
18 its proponents, believe the intended purpose is to fundamentally change portions of
19 the trucking industry to use employee drivers rather than independent contractors.
20 More employee truck drivers mean more potential union members of the IBT, the
21 cause and former employer of the principal proponent of AB 5 in the General
22 Assembly, former Representative Lorena Gonzalez.

23 41. By way of example, those statements include:

- 24 • Then-Representative Gonzalez stated on the Assembly Floor on
25 September 11, 2019 that one of the purposes of AB 5 was to “get[] rid
26 of an outdated broker model that allows companies to basically make
27 money and set rates for people that they called independent
28 contractors.”

- 1 • Then-Representative Gonzalez tweeted on November 21, 2019 that
2 AB 5 (and its exceptions) permit a trucker to “work as an independent
3 contractor for a construction firm” but “work as an employee for a
4 trucking company,” specifically acknowledging the disparate treatment
5 of these similarly-situated operators.
- 6 • On September 2, 2019 tweet, then-Representative Gonzalez
7 specifically referenced trucking and gig companies as a primary
8 motivation for the reclassification brought about by AB 5.

9 42. Borrowing from *Dynamex*, the legislature framed AB 5 as a statute of
10 general application. But the legislature carved out exceptions for workers in dozens
11 of industries and categories without justifying why those workers need any less
12 protection than the workers described in the purpose of the legislation or the
13 workers whose classification remained within the statute.

14 43. The proliferation of exceptions to AB 5 for workers in businesses other
15 than trucking lacks any rational purpose and bears no relationship to AB 5’s stated
16 purpose.

17 44. Similarly, the specific carve-out for truckers in the construction
18 industry has no rational basis. Independent owner-operators, including many
19 OOIDA members, working in other industries are similarly situated to independent
20 owner-operators working in construction.

21 45. Thus, the legislature exempted from AB 5 some truck drivers who are
22 indistinguishable with respect to the relevant business conditions from those truck
23 drivers represented by OOIDA to whom AB 5 applies. There is no legislative record
24 that demonstrates any rational basis for this legislative action. Indeed, the evidence
25 demonstrates that political animus motivated the disparate treatment of these
26 truckers.

27 46. OOIDA seeks a declaration that the defendants have violated
28 OOIDA’s members’ rights protected by the Equal Protection clauses of the

1 California and U.S. Constitutions and a corresponding preliminary and permanent
2 injunction prohibiting the Defendants from enforcing AB 5 against the trucking
3 industry.

4 **JURISDICTION AND VENUE**

5 47. This action arises under the Constitution and laws of the United States,
6 including the Supremacy Clause, U.S. Const. art. VI, § 3; the Commerce Clause,
7 U.S. Const., art. 1, § 8; the FAAAA, 49 U.S.C. §§ 14501(c), 14504a(c), and 14506;
8 and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988. This Court has
9 jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 2201.

10 48. This is a proceeding for declaratory judgment and injunctive relief
11 under 28 U.S.C. §§ 2201-2202 and the Supremacy Clause and Commerce Clause of
12 the United States Constitution. This action presents an actual controversy within the
13 Court’s jurisdiction.

14 49. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
15 because the transportation services provided by OOIDA’s members, and the
16 interstate independent owner-operators whose interests are represented by OOIDA,
17 are contracted for and carried out within the geographical boundaries of this district,
18 such that a substantial part of the events giving rise to the claim occurring in this
19 district.

20 50. This venue is also proper pursuant to Federal Rule of Civil Procedure
21 24 because OOIDA seeks to intervene in Plaintiffs’ ongoing legal challenge to Prong
22 B of the ABC test.

23 **PARTIES**

24 51. OOIDA is the largest international trade association representing the
25 interests of independent owner-operators, small-business motor carriers, and
26 professional truck drivers. It has more than 150,000 members located in all 50 states
27 and Canada, who collectively own and operate more than 200,000 individual heavy-
28 duty trucks. OOIDA is a leading advocate of single truck motor carriers, which

1 represent nearly half of the total active motor carriers in the United States, and
2 independent owner-operators, which are a critical component of today’s interstate
3 motor carrier industry. Declaration of Todd Spencer in Support of Mot. to Intervene
4 (“Spencer Decl.”) ¶¶ 5-9 [ECF No. 122-3].

5 52. Among the truck drivers directly represented by OOIDA are 6,103
6 members based in California. An additional 7,050 members reside nearby in Arizona,
7 Nevada, Oregon, and Washington. Spencer Decl. ¶ 10.

8 53. An even greater number independent owner-operator OOIDA members
9 are based throughout the United States. Spencer Decl. ¶¶ 6, 11.

10 54. These members rely on the independent owner-operator, also known as
11 the leased owner-operator, model to occasionally, if not regularly, transport freight
12 from, to, or through California.

13 55. OOIDA adopts Plaintiffs’ description of the current parties as set forth
14 in the Amended Complaint. Am. Compl. ¶¶ 14-22.

15 **GENERAL ALLEGATIONS**

16 **Independent Owner-Operator Model**

17 56. There are approximately 350,000 to 400,000 independent owner-
18 operators on the roads today in the United States. Spencer Decl. ¶ 12.

19 57. Independent owner-operators typically first start and gain experience in
20 the motor carrier industry as employee drivers. Spencer Decl. ¶ 14.

21 58. Employee drivers do not own their trucks and do not operate their own
22 trucking businesses.

23 59. Employee drivers typically work on a schedule dictated by their
24 employer, are not permitted to decline transporting assigned freight, and are required
25 to abide by other employer-imposed restrictions such as the routes they take, and
26 where they can obtain fuel. *See* Spencer Decl. ¶¶ 20, 24.

27 60. Some of these employee drivers choose to start their own small trucking
28 businesses by becoming independent owner-operators. Spencer Decl. ¶¶ 14-15.

1 61. Independent owner-operators typically provide their driving services
2 using the trucking equipment they own (a tractor and sometimes trailer) to motor
3 carriers as independent contractors under a contract called a “lease.” Spencer Decl.
4 ¶ 15.

5 62. Some independent owner-operators may own more than more tractor,
6 allowing them to work with different motor carriers at the same time, and may even
7 have employees.

8 63. Most independent owner-operators, however, enter into contracts, also
9 known as lease agreements, with motor carriers to drive their own tractors as
10 independent contractors.

11 64. An independent owner-operator can spend more than \$200,000 to
12 purchase a tractor and even more to acquire a trailer or specialized equipment to use
13 in their business. *See* Spencer Decl. ¶ 15.

14 65. Under their lease contracts with motor carriers, independent owner-
15 operators transport freight under that motor carrier’s federal interstate motor carrier
16 operating authority. Spencer Decl. ¶¶ 14-15, 18.

17 66. Independent owner-operators are often separately incorporated.
18 Spencer Decl. ¶ 19.

19 67. Independent owner-operators remain the sole owners of their trucks.
20 They are responsible for maintaining their trucks, setting their own schedules,
21 deciding what freight they want to transport, selecting the route that works best for
22 them, cultivating their own relationships and business goodwill, and otherwise
23 operating their trucks as would any other small trucking business. Spencer Decl. ¶¶
24 19-22.

25 68. Independent owner-operators also invest in trailers, flatbeds, tankers,
26 and others specialized equipment to grow their businesses and increase their
27 opportunities. Spencer Decl. ¶ 20.

28

1 69. Some motor carriers who contract with independent owner-operators
2 own little or none of the tractor and trailer equipment used to haul freight under their
3 own authority. Spencer Decl. ¶ 26.

4 70. Independent owner-operators can be based throughout the nation
5 regardless of where the motor carrier to which they are leased is based. Spencer Decl.
6 ¶¶ 16-17.

7 71. Independent owner-operators can be part of motor carrier fleets that
8 also rely on employee drivers. Independent owner-operators can transport freight
9 along with employee drivers as part of an integrated supply chain or transport freight
10 between two destinations while employee drivers cover different freight and/or
11 routes. Spencer Decl. ¶¶ 25, 27.

12 72. Some independent owner-operators eventually choose to obtain their
13 own federal interstate motor carrier operating authority. Spencer Decl. ¶ 28.

14 73. These motor carriers can haul freight for a variety of shipping clients
15 and contract with other trucker drivers, including independent owner-operators, to
16 strategically expand their businesses.

17 74. Small-business motor carriers can provide services as independent
18 contractors and rely on independent owner-operators to respond to market demand.
19 *See* Spencer Decl. ¶¶ 28-29.

20 75. Of the approximately 530,000 interstate motor carriers operating in the
21 United States, nearly 85% are fleets consisting of 1 to 6 tractors.

22 76. Many of these motor carriers were founded by individuals who gained
23 significant trucking experience as independent owner-operators. Spencer Decl. ¶ 30.

24 77. The independent owner-operator model is an important part of the
25 motor carrier industry and is a steppingstone for the creation of new motor carriers.
26 *See* Spencer Decl. ¶¶ 22, 31, 43.

27
28

1 **Federal Regulation of the Motor Carrier Industry**

2 78. Federal regulation of the motor carrier industry has recognized and
3 continues to recognize the importance of independent owner-operators.

4 79. Although independent owner-operators have entered into different
5 contractual arrangements with motor carriers over the years, they have been a
6 consistent and important component of interstate commerce and the motor carrier
7 industry for decades. *See* Spencer Decl. ¶¶ 13, 23.

8 80. As early as the 1950s, the federal government has exercised oversight
9 of the contractual relationship between motor carriers and owner-operators. *See*
10 Amendments to the Interstate Commerce Act, Pub. L. No. 84-957; H.R. Rep. No.
11 84-2425, reprinted in 1956 U.S.C.C.A.N. 4304, 4309.

12 81. As part of that regulation, the I.C.C. promulgated rules which stated, in
13 part: “The lease shall provide that the authorized carrier lessee shall have exclusive
14 possession, control, and use of the equipment for the duration of the lease. The lease
15 shall further provide that the authorized carrier lessee shall assume complete
16 responsibility for the operation of the equipment for the duration of the lease.” 49
17 C.F.R. § 376.12(c)(1).

18 82. The regulations were motivated by “the Commission’s deep concern
19 for the problems faced by the owner-operator in making a decent living in his chosen
20 profession.” 42 Fed. Reg. 59984 (Lease & Interchange of Vehicles, Ex Parte No.
21 MC-43 (Sub-No. 7)) (Nov. 23, 1977).

22 83. In 1979, the I.C.C. adopted new rules governing the relationship
23 between motor carriers and owner-operators in response to “a number of problems
24 and abuses suffered by independent truckers.” *Global Van Lines, Inc. v. I.C.C.*, 627
25 F.2d 546, 548 (D.C. Cir. 1980).

26 84. These rules, which are known as the “Truth-in-Leasing Rules,” were
27 intended to strengthen and provide stability to the independent owner-operator
28 model by guaranteeing “full disclosure of the benefits and obligations of leasing

1 arrangements between owner-operators and regulated carriers.” Lease &
2 Interchange of Vehicles, 129 M.C.C. 700, 702 (June 13, 1978).

3 85. According to the I.C.C., the Truth-in-Leasing Rules were intended to
4 “promote the stability and economic welfare of the independent trucker segment of
5 the motor carrier industry.” Lease & Interchange of Vehicles, 131 M.C.C. 141 (Jan.
6 9, 1979).

7 86. In addressing the issues negatively impacting owner-operators, the
8 Truth-in-Leasing Rules did not, and were not intended to, eliminate the independent
9 owner-operator model or the ability for owner-operators to work as independent
10 contractors for motor carriers.

11 87. The relationship between independent owner-operators and motor
12 carriers, particularly motor carriers’ use of equipment owned by independent owner-
13 operators, continues to be regulated pursuant to 49 U.S.C. § 14102.

14 88. The Truth-in-Leasing Rules also govern other aspects of the
15 relationship between independent owner-operators and motor carriers, including the
16 amount of compensation to be paid for both the equipment and the driver’s services
17 and who will be responsible for loading and unloading the truck. *See* 49 C.F.R. §
18 376.12(d)-(e).

19 89. The importance of independent owner-operators was also
20 acknowledged by Congress when it enacted the FAAAA. *See* H.R. Conf. Rep. No.
21 103-677, at 87 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1715, 1759 (explaining how
22 California passed legislation discriminating against motor carriers “using a large
23 proportion of own-operators instead of company employees”).

24 **The ABC Test prohibits Independent Owner-Operators from continuing to**
25 **operate in California.**

26 90. Independent owner-operators, by design, perform work that is within
27 “the usual course” of a motor carrier’s business.

28

1 91. Under Prong B of the ABC test, independent owner-operators are
2 prohibited from continuing to work as independent contractors in California for
3 motor carriers.

4 92. Prior to the enactment of AB 5, motor carriers could and did contract
5 with independent owner-operators based throughout the nation to transport freight
6 from, to, and through California.

7 93. Motor carriers continue to do so today pursuant to the preliminary
8 injunction currently preventing the ABC test from being enforced against the motor
9 carrier industry.

10 94. But for the preliminary injunction, the ABC test would prevent
11 independent owner-operators from continuing to work, in their chosen capacity as
12 independent contractors, in California.

13 95. On its face, the ABC test applies to any independent owner-operator or
14 motor carrier operating in California, regardless of where they are based, how much
15 time they spend in California, or how much of their business is actually conducted
16 in the state.

17 96. Independent owner-operators, including those based outside California
18 or who spend a majority of their time working outside of California, will be forced
19 to fundamentally change their businesses, decline freight originating from or
20 destined for California, abandon their business to become employee drivers
21 (provided such an opportunity is available), or cease trucking altogether.

22 97. If they become employee drivers or cease trucking entirely,
23 independent owner-operators not only risk losing significant value in the equipment
24 and trucks they had purchased, they also risk losing their chosen profession and
25 dream of being a small business owner.

26 98. Alternatively, independent owner operators could be forced to turn over
27 the freight they are carrying to an employee driver at the California border. Such a
28 transfer of freight would result in lost earnings and transportation delays.

1 99. The business-to-business exception, as amended by AB 2257, does not
2 otherwise enable independent owner-operators to continue operating in California.

3 100. In order to qualify for the business-to-business exception, an
4 independent owner-operator must satisfy eleven factors. Cal. Lab. Code §
5 2776(a)(1)-(11).

6 101. Several of those factors cannot be met by independent owner-operators.

7 102. For example, the business-to-business exception requires that the
8 “business service provider can contract with other businesses to provide the same or
9 similar services and maintain a clientele without restrictions from the hiring entity.”
10 Cal. Lab. Code § 2776(a)(7).

11 103. The Truth-in-Leasing Rules, however, require that the “authorized
12 carrier lessee shall have exclusive possession, control, and use of the equipment for
13 the duration of the lease.” 49 C.F.R. § 376.12(c)(1).

14 104. Similarly, the business-to-business exception requires that “[t]he
15 business service provider advertises and holds itself out to the public as available to
16 provide the same or similar services.” Cal. Lab. Code § 2776(a)(8).

17 105. The business-to-business exception is also inconsistent with the Truth-
18 in-Leasing Rules, which explicitly recognize that a contract must give the motor
19 carrier exclusive use of an owner-operator’s equipment. 49 C.F.R. § 376.12 (c)(4).

20 106. OOIDA adopts the allegations contained in Plaintiffs’ Amended
21 Complaint describing the obligations California imposes on hiring entities and the
22 practical consequences of the ABC test on the business relationship between motor
23 carriers and independent owner-operators. *See* Am. Compl. ¶¶ 38-42, 46-51.

24 107. There are no definitive steps that current independent owner-operators
25 can take to continue working as independent contractors in California.

26 108. Obtaining federal interstate motor carrier operating authority does not
27 per se satisfy the business-to-business exception to the ABC test.

28

1 109. Moreover, obtaining federal interstate motor carrier operating authority
2 involves greater burdens, including financial costs, with more statutory and
3 regulatory responsibilities than those required of owner-operators.

4 110. Not all owner-operators have the requisite experience to become a
5 successful motor carrier and many that do have the requisite experience choose not
6 to do so for both practical and business reasons.

7 111. For example, becoming a motor carrier requires current independent
8 owner-operators to obtain additional insurance, which can cost thousands of dollars
9 that many independent owner-operators cannot afford.

10 112. Relocating outside of California also does not present a solution for
11 independent owner-operators because there are no express or implied limits to AB
12 5's geographical reach so long as the driver performs services within the state.

13 113. OOIDA further adopts the allegation contained in paragraph 60 of
14 Plaintiffs' Amended Complaint.

15 **FIRST CLAIM FOR RELIEF**

16 **Article I, Section 8 of the United States Constitutions (Commerce Clause)**

17 114. OOIDA incorporates by reference preceding paragraphs 1-105 of its
18 Proposed Complaint.

19 115. The Commerce Clause of the United States Constitution protects the
20 right to engage in interstate commerce free from state-imposed undue burdens.

21 116. The Commerce Clause has long protected the motor carrier industry,
22 including interstate small-business truckers (both motor carriers and independent
23 owner-operators) from such burdens.

24 117. Under the ABC test, motor carriers will no longer be able to contract
25 with independent owner-operators as independent contractors to transport freight
26 from, to, or through California regardless of where the independent owner-operators
27 or motor carriers are based.
28

1 118. For independent owner-operators, the ABC test means the end of their
2 business as they know it today. Under AB 5, they must choose to change the way
3 they operate, cease serving the California market, or cease working as truck drivers
4 entirely.

5 119. Regardless of how independent owner-operators attempt to adapt to the
6 ABC test, independent owner-operators will incur unreasonable financial burdens in
7 increased costs/reduced freight transportation opportunities. Accordingly, the
8 interstate transportation of freight will be less efficient and more expensive.

9 120. The ABC test intentionally and effectively discriminates against
10 business relationships with independent contractors—motor carrier relationships
11 with independent owner-operators—that are otherwise lawful throughout the nation,
12 creating an undue burden on interstate commerce.

13 121. Accordingly, the ABC test is unlawful and unenforceable pursuant to
14 the Commerce Clause of the United States Constitution because it imposes undue
15 burdens on interstate commerce.

16 **SECOND CLAIM FOR RELIEF**

17 **Article IV, Section 3 of the United States Constitution (Supremacy Clause)**
18 **FAAAA preemption, 49 U.S.C. § 14501(c)**

19 122. OOIDA incorporates by reference preceding paragraphs 1-105 of its
20 Proposed Amended Complaint.

21 123. The FAAAA prohibits states from enacting or enforcing a “law,
22 regulation, or other provision having the force and effect of law related to a price,
23 route, or service” of a motor carrier. 49 U.S.C. § 14501(c)(1).

24 124. The Supremacy Clause of the United States Constitution prohibits
25 states from enacting and enforcing state-imposed laws that have been expressly
26 preempted by federal law.

27 125. Prong B of the ABC test violates both the FAAAA and the Supremacy
28 Clause by making it impossible for motor carriers operating in California to continue

1 to contract with independent owner-operators for the transportation of freight into,
2 out of, or through California regardless of where they are based.

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THIRD CLAIM FOR RELIEF

**Amendment XIV, Section 1 and Amendment V, Section of the United States
Constitution (Equal Protection)**

126. OOIDA incorporates by reference preceding paragraphs 1-125 of its Proposed Amended Complaint.

127. AB 5 violates the Equal Protection Clause of the U.S. Constitution because it draws a distinction between similarly-situated workers—by exempting commercial vehicle operators working in the construction industry from its scope and including other commercial vehicle operators within its scope—with no rational basis or justification for such distinction.

128. This carve-out for construction industry truckers bears no rational relationship to the claimed purpose of the law of protecting workers through proper classification. No rational basis exists for using one classification test for construction industry truckers—the *Borello* test—and another—AB 5—for other truckers, including OOIDA’s members.

129. The true basis in fact for this treatment of the trucking industry is political animus. As set forth above, AB 5’s sponsor repeatedly stated AB 5’s purpose of ending the independent owner-operator model. Yet the law carves out an exception for owner-operators in construction.

130. Similarly, the dozens of other exemptions and exceptions for thousands of other workers bear no rational basis related to AB 5’s claimed purpose of protecting workers. Rather than protect workers, the true purpose as repeated over and over again by AB 5’s sponsors and proponents was to target specific groups of workers—namely, app-based workers and commercial truckers—based on political

1 expediency. The Legislature’s repeated, myriad efforts to exclude thousands of
2 workers from the so-called protections offered by AB 5’s ABC test demonstrate that
3 the claimed purpose of worker protection is an illusion.

4 131. The sheer volume and diversity of exemptions and exceptions shows
5 that AB 5 is not motivated by any rational basis. The disparate treatment of
6 commercial truckers serves as one of many examples of textbook irrational and
7 illegal economic classification and unequal treatment of similarly-situated persons.

8 132. There exists no rational basis related to the protection of workers
9 through proper classification that justifies the disparate treatment between
10 construction and non-construction truckers or truckers and the dozens of workers
11 whose political influence warranted a carve-out from AB 5.

12 133. Truckers, particularly interstate truckers like OOIDA’s members, are a
13 frequent target of unpopular taxation and regulation due in large part to their
14 transient nature and corresponding lack of political influence in any one state. It is
15 no surprise that the construction trucking exemption disproportionately affects
16 workers and companies that operate *intrastate*—local entities with more influence
17 on California politics. Yet the exemption shows no reason why those local truckers
18 should be treated differently for the purposes of worker classification. And the public
19 record demonstrates that the only motivation was political animus.

20 134. That the trucking industry as a whole—an industry that employs
21 thousands of *legitimate* independent contractors whose jobs are threatened by
22 AB 5—was not able to secure an exemption but a subcategory of the powerful local
23 construction industry was shows the true motivation for the disparate treatment of
24 truckers.

25 135. Furthermore, the obvious benefit to the Teamsters stemming from tens
26 of thousands of independent contractor drivers being considered employees looms
27 large in light of the pro-Teamster comments made by AB 5’s sponsor throughout the
28 adoption and implementation of the new, rigid classification rule.

1 136. AB 5 exempts some construction truckers from the ABC test and
2 subjects most other truckers—including thousands of OOIDA’s members—to the
3 ABC test. This arbitrary distinction finds no rational basis in law or fact. AB 5
4 violates the Equal Protection Clause of the U.S. Constitution.

5 137. OOIDA’s members, furthermore, have no adequate remedy at law, as
6 application of the ABC test to their industry will cause thousands of trucking
7 companies and drivers to change their business models and/or leave the state.

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FOURTH CLAIM FOR RELIEF

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**Article I, Sections 3(b)(4) & 7 of the California Constitution
(Equal Protection)**

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138. OOIDA incorporates by reference preceding paragraphs 1-137 of its
15 Proposed Complaint.

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139. AB 5 violates Article I, Section 3(b)(4) and Section 7 of the California
Constitution for substantially the same reasons it violates the Equal Protection
Clause of the U.S. Constitution: Generally speaking, it draws a distinction between
similarly-situated workers with no rational basis or justification for such distinction.

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140. Enforcement of AB 5 against OOIDA’s members will deprive them of
Equal Protection of the law as guaranteed by the California Constitution.

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REQUEST FOR RELIEF

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WHEREFORE, OOIDA demands judgment against Defendants as follows:

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1. This Court issue a declaration that, as it pertains to the interstate motor
carrier industry and interstate independent owner-operators, the ABC test, codified
by AB 5, and Prong B in particular, violates the Commerce Clause.

1 2. This Court issue a declaration that, as it pertains to the motor carrier
2 industry, the ABC test, codified by AB 5, and Prong B in particular, is preempted by
3 the FAAAA.

4 3. This Court issue a declaration that, as it pertains to the motor carrier
5 industry, the ABC test, codified by AB 5 violates the Equal Protection Clauses of the
6 United States and California Constitutions.

7 4. This Court issue an injunction prohibiting the enforcement of the ABC
8 test, codified by AB 5, and Prong B in particular, against the motor carrier industry.

9 5. For an award of attorneys’ fees, costs, and expenses in this action
10 pursuant to 42 U.S.C. § 1988; and

11 6. Such other relief as this Court deems just and proper.

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Dated: May 19, 2023

Respectfully submitted,

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By: /s/ Timothy A. Horton
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