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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA TRUCKING
ASSOCIATION *et al.*,

16 Plaintiffs,

17 OWNER-OPERATOR
18 INDEPENDENT DRIVERS
ASSOCIATION,

19 Intervenor- Plaintiff,

20 v.

21 ATTORNEY GENERAL ROB
22 BONTA, *et al.*,

23 Defendants.
24
25
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27
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Case No. 3:18-CV-02458-BEN-DEB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
INTERVENOR-PLAINTIFF
OIDA'S MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Roger T. Benitez

Date: May 1, 2023

Time: 10:30 a.m.

Courtroom: 5A

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1 **I. INTRODUCTION**

2 This motion for a preliminary injunction is the first opportunity for
3 Intervenor Owner-Operator Independent Drivers Association, Inc. (OOIDA) to ask
4 the Court for temporary relief from enforcement of AB-5 for its owner-operator
5 independent contractor truck driver and motor carrier members. Intervenor’s
6 motion is focused on OOIDA’s claim under the dormant Commerce Clause to the
7 United States Constitution. Intervenor asks the court to enjoin the Defendants from
8 enforcing AB-5 against motor carriers whose drivers operate in California (making
9 AB-5 applicable to them), and who operate in interstate commerce (making the
10 Commerce Clause applicable). In the alternative, Intervenor asks the court to
11 enjoin the Defendants from enforcing AB-5 as to motor carriers whose owner-
12 operators are based outside the state and who perform less than 50% of their work
13 within California.

14 The declarations submitted with this memorandum – from OOIDA President
15 Todd Spencer, three OOIDA members who are owner-operator independent
16 contractor truckers, and one OOIDA member who owns a motor carrier – reinforce
17 the Court’s unchallenged findings in its previous order granting a preliminary
18 injunction that AB-5 will cause irreparable harm to motor carriers and drivers that
19 outweighs the State’s interest in the application of AB-5, instead of the back-up
20 *Borello* standard. For motor carriers that contract with owner-operators based
21 outside of the state who operate less than 50% of the time in California, the State’s
22 interest in enforcing AB-5 is even less compelling.

23 Following the spreading of the mandate after a nearly two-year appeal of the
24 Court’s grant of the preliminary injunction motion by the California Trucking
25 Association, the parties participated in a hearing before the Court on August 29,
26 2022. At the hearing the original parties presented to the court a briefing schedule
27 for the Plaintiff California Trucking Association and several individuals to renew
28 their motion for a preliminary injunction. On August 30, 2022, the court entered an

1 order accepting that schedule and staying all other pending trial deadlines. ECF
2 No. 144.

3 On September 22, 2022, this Court granted the motion of the Owner-
4 Operator Independent Drivers Association to intervene in this matter. ECF No.
5 147.

6 **II. FACTUAL BACKGROUND**

7 Movant, Intervenor Owner-Operator Independent Drivers Association
8 (“OOIDA”), is a not-for-profit trade association representing the interests of
9 independent owner-operators, small-business motor carriers, and professional
10 drivers. See Second¹ Declaration of Todd Spencer, submitted in Support of Motion
11 for Preliminary Injunction (Second Spencer Dec.), at ¶ 5. OOIDA was founded in
12 1973, and today has more than 150,000 members based in all fifty states and
13 Canada. *Id.* at ¶ 6. OOIDA members collectively own and operate more than
14 200,000 individual heavy-duty trucks. *Id.* at ¶ 8. OOIDA’s membership consists of
15 both independent owner-operator truck drivers and small business motor carriers.
16 *Id.* at ¶ 10. OOIDA’s independent owner-operator truck driver members who spend
17 at least some time operating in California face the threat of AB-5 enforcement
18 unless they change their business model. This includes OOIDA members as
19 exemplified by its declarants Mr. Stacy R. Williams, Mr. Marc McElroy, and Mr.
20 Albert Hemerson.² OOIDA small business motor carrier members based outside of
21 California are also concerned for the costs and burdens of the application of
22
23

24 _____
25 ¹ OOIDA also cites to evidence previously submitted by Mr. Spencer in support of
its motion to intervene, *i.e.*, his first declaration. [ECF 122-3.]

26 ² Since his declaration was prepared and executed in December 2022, Mr.
27 Hemerson has ceased his relationship with C&A Transportation & Logistics, Inc.,
and now works with a motor carrier that does not transport to or from California.
28 Nevertheless, his situation as represented in his Declaration was accurate at the time
it was prepared and executed. Moreover, it is a situation typical of owner-operators
around the country and supports OOIDA’s motion for preliminary injunction.

1 California’s employment laws to their drivers, as explained by the declarant of
2 Danny R. Schnautz, owner of Clark Freight Lines, Inc., and Mr. Spencer.

3 The owner-operator business model is critical to the health and continuity of
4 the trucking industry. Indeed, independent owner-operators have been a consistent
5 and essential component of interstate commerce and the motor carrier industry for
6 decades. *See* Declaration of Todd Spencer in Support of Motion to Intervene (First
7 Spencer Dec.) [ECF 122-3] at ¶¶ 13, 17.

8 It is common for a truck driver who starts out as an employee, after several
9 years of experience, to start his own small-business trucking company as an
10 independent owner-operator. *Id.* at ¶ 20. Once the driver makes the decision to
11 venture into his own business, his next step is to acquire his own truck and
12 sometimes other equipment, which can cost hundreds of thousands of dollars and
13 which the owner-operator has the responsibility to maintain in accordance with
14 industry requirements. *Id.* at ¶¶ 21; 23-24. Then the driver typically enters into
15 what is referred to as a “leased driver” arrangement with a motor carrier. *Id.* The
16 leased driver operates for a motor carrier under that motor carrier’s interstate
17 operating authority granted by the U.S. Department of Transportation. *Id.* at ¶ 23.

18 Referred to as “independent owner-operators,” these drivers assume business
19 responsibilities and regulatory obligations that employee drivers do not have. *Id.*
20 On the other hand, they have significantly greater independence and control over
21 their own lives and businesses. *Id.* at ¶ 25.

22 An independent owner-operator does not need to live near the motor carrier
23 with whom he is contracted. *Id.* Independent owner-operators transport freight
24 throughout the United States, including California, and are an extremely important
25 component of the interstate motor carrier industry. *Id.* at ¶ 18-23. Unlike
26 employee drivers, owner-operators have the ability to set their own schedules,
27 choose the freight they want to transport, select their own routes in delivering that
28 freight, purchase equipment that best serves their business needs, choose where

1 and how that equipment is maintained, and make numerous other decisions that
2 affect the success of their business. *Id.* at ¶ 26.

3 Prior to California’s enactment of the ABC test, as codified by AB-5,
4 independent owner-operators were free to operate as independent contractors
5 everywhere in the country. If AB-5 is enforced, California will essentially
6 eliminate owner-operators from the state. *Id.* at ¶ 28-29. AB-5 presumes that
7 workers, including independent owner-operators, are employees and makes it
8 difficult to overcome that presumption. Prong B of the ABC test, in particular, will
9 make it impossible for independent owner-operators to work as independent
10 contractors in California because the very nature of the service provided to motor
11 carriers is within “the usual course of the hiring entity’s business.” Cal. Lab. Code
12 § 2775(b)(1)(B). *Id.* at ¶¶ 33-34.

13 Motor carriers will also be harmed by the enforcement of AB-5, because
14 they will either be prohibited from contracting to carry freight on California’s
15 roads or forced to become employers who work only with employee drivers and no
16 longer use the services of independent owner-operators. If they conducted their
17 business contrary to these rules, they would operate in California under threat of
18 criminal prosecution. Declarant and OOIDA member Danny R. Schnautz has
19 testified in his Declaration that his company, Clark Freight Lines, Inc., rarely hauls
20 freight into or out of California currently, because the cost of adhering to
21 California’s regulations governing the trucking industry, including AB-5, is more
22 costly and burdensome than the revenue that could be generated by such loads.
23 Mr. Schnautz states that it typically generated revenue of approximately \$40,000 to
24 \$50,000 per week on 8 to 10 loads going to California, revenue which it has
25 decided to forgo. *See* Declaration of Danny R. Schnautz in Support of Motion for
26 Preliminary Injunction (Schnautz Dec.) at ¶¶ 9-12.

27 Because AB-5 is not limited on its face to independent owner-operators or
28 small-business motor carriers that are based in California or those who conduct

1 most of their business in California, many independent owner-operators across the
 2 nation are concerned that they will lose all their business that requires them to
 3 travel to California. Spencer Dec. at ¶ 29. Indeed, a plain reading of the ABC test
 4 appears to exclude independent owner-operators throughout the United States from
 5 hauling freight from, to, or through California. *Id.* Thus, the ABC test could
 6 threaten the very existence of independent owner-operators and small-business
 7 motor carriers that rely on independent owner-operators far beyond California’s
 8 borders. *Id.* at ¶¶ 28-40.

9 AB-5 presents independent owner-operators with an intolerable choice:
 10 cease working in California, abandon their businesses, or fundamentally change
 11 the way in which they operate at significant cost. Even the very threat of AB-5
 12 raises the prospect that independent owner-operators will be unable to work in
 13 California, which will likely deter some individuals from becoming independent
 14 owner-operators at all and deter existing independent owner-operators from
 15 investing in additional equipment. *Id.* at ¶¶ 29-30. Although worker
 16 misclassification is a problem in the trucking industry that can lead to the abuse of
 17 drivers and the degradation of their working conditions, AB-5 does not address that
 18 problem. Instead, its impact is to irrationally eliminate a critical segment of the
 19 motor carrier industry –the independent owner-operator. *Id.* at ¶ 19.

20 **III. ARGUMENT**

21 **A. OOIDA has standing to bring this litigation.**

22 In its January 16, 2020, Order Granting Preliminary Injunction, this Court
 23 stated:

24 “One of the essential elements of a legal case or
 25 controversy is that the plaintiff have standing to sue.”
 26 *Trump v. Hawaii*, 138 S.Ct. 2392, 2416 (2018). To
 27 demonstrate Article III standing, a plaintiff must show a
 28 “concrete and particularized” injury that is “fairly
 traceable” to the defendant’s conduct and “that is likely
 to be redressed by a favorable decision.” *Spokeo, Inc. v.*

1 *Robins*, 136 S.Ct. 1540, 1547-48 (2016). “At least one
 2 plaintiff must have standing to seek each form of relief
 3 requested, and that party bears the burden of establishing
 4 the elements of standing with the manner and degree of
 5 evidence required at the successive stages of the
 6 litigation.” *City & Cty. of San Francisco v. U.S. Dept. of*
Homeland Security, 944 F.3d 773, 786-87 (9th Cir. 2019)
 (internal quotation marks and citations omitted).

7 ECF No. 89 at pp. 5-6. First, to establish standing at this preliminary stage of these
 8 proceedings, OOIDA may rely on the allegations in its Complaint and the
 9 testamentary evidence submitted in support of its motion for preliminary injunction
 10 to meet this burden. *See City & Cty. of San Francisco*, 944 F.3d at 787.

11 Second, OOIDA has satisfied the imminent injury requirement by the
 12 statements in the declarations in support of its motion that its members face the
 13 choice of either implementing significant, costly compliance measures or—for
 14 motor carriers—risking criminal and civil prosecution. *See, e.g.*, Second Spencer
 15 Declaration at ¶¶ 18-39 (Second Spencer Dec.). *See also* Declaration of Albert
 16 Hemerson in Support of Motion for Preliminary Injunction, (Hemerson Dec.) at ¶¶
 17 12-16; Declaration of Mark McElroy in Support of Motion for Preliminary
 18 Injunction, (McElroy Dec.) at ¶¶ 11-16; Declaration of Stacy R. Williams in
 19 Support of Motion for Preliminary Injunction, (Williams Dec.) at ¶¶ 12-16;
 20 Schnautz Dec. at ¶¶ 9-13. *See also* Cal. Unemp. Ins. Code § 2117; Cal. Labor
 21 Code § 1199.5; Cal. Labor Code §§ 226.6 and 226.8.

22 Finally, OOIDA “need only establish a risk or threat of injury to satisfy the
 23 actual injury requirement.” *City & Cty. of San Francisco*, 944 F.3d at 787 (quoting
 24 *Harris v. Bd. of Supervisors*, 366 F.3d 754, 762 (9th Cir. 2004) (emphasis in
 25 original)). OOIDA has accomplished that here in its testamentary evidence that
 26 many of its motor carrier members contract with independent-contractor drivers,
 27 who can no longer be classified as independent contractors under the ABC test.
 28 *See* Second Spencer Dec. at ¶¶ 35-39. OOIDA has satisfied its burden to

1 demonstrate that its owner-operator members are at risk or threat of injury
 2 sufficient to satisfy the Article III standing requirement by its submission of the
 3 declarations of its members, Mr. Hemerson, Mr. McElroy, Mr. Williams, and Mr.
 4 Schnautz, each of whom has already or will soon suffer significant economic
 5 injury if AB-5 takes effect. *See* Hemerson Dec. at ¶15; McElroy Dec. at ¶ 15;
 6 Williams Dec. at ¶ 15; Schnautz Dec. at ¶¶ 9, 12.

7 **B. OOIDA meets the standard for a preliminary injunction.**

8 Parties seeking a preliminary injunction must demonstrate: “(1) that he is
 9 likely to succeed on the merits; (2) that he is likely to suffer irreparable harm in the
 10 absence of preliminary relief; (3) that the balance of equities tips in his favor; and
 11 (4) that an injunction is in the public interest.” *Rhode v. Becerra*, 445 F. Supp. 3d
 12 902, 928 (S.D. Cal. 2020). The Ninth Circuit also recognizes an alternative of this
 13 standard, which allows a court to enter an injunction even where there are “serious
 14 questions” as to the likelihood of success on the merits. *See Zest Anchors, LLC v.*
 15 *Geryon Ventures, LLC*, __ F. Supp. 3d. __, No. 22-CV-230 TWR (NLS), 2022 WL
 16 2811646, at *7 (S.D. Cal. July 18, 2022) (quoting *Ramos v. Wolf*, 975 F.3d 872,
 17 887-88 (9th Cir. 2020)). Under this “sliding scale” variant, motions with “serious
 18 questions” as to the merits can still warrant an injunction if “the balance of
 19 hardships tips sharply in the plaintiff’s favor and the other two factors are
 20 satisfied.” *See id.*

21 **1. The court has already resolved that (1) the likelihood of**
 22 **irreparable harm, (2) that the balance of equities favors**
 23 **truckers against the state, and (3) that an injunction is in the**
 24 **public interest.**

25 Below, OOIDA establishes a likelihood of success on the merits of its
 26 dormant Commerce Clause claim, that OOIDA’s members will suffer substantial
 27 irreparable harm in the absence of an injunction, that the balance of equities
 28 weighs in favor of the truckers, and that an injunction is in the public interest. But

1 for the last three of these factors, which were not the subject of the Ninth Circuit’s
2 decision in this case, this Court’s prior determinations are the law of the case.

3 “The law of the case doctrine generally prohibits a court from considering an
4 issue that has already been decided by that same court or a higher court in the same
5 case.” *Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012). The
6 doctrine serves the “principle that in order to maintain consistency during the
7 course of a single lawsuit, reconsideration of legal questions previously decided
8 should be avoided.” *United States v. Houser*, 804 F.2d 565, 567 (9th Cir. 1986).
9 “A court [has] discretion to depart from the law of the case where: (1) the first
10 decision was clearly erroneous; (2) an intervening change in the law has occurred;
11 (3) the evidence on remand is substantially different; (4) other changed
12 circumstances exist; or (5) a manifest injustice would otherwise result.” *United*
13 *States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997). “Failure to apply the
14 doctrine of the law of the case absent one of the requisite conditions constitutes an
15 abuse of discretion.” *Id.*

16 This Court’s prior determinations in this case, that (1) impacted truckers are
17 likely to suffer irreparable harm in the absence of preliminary relief, (2) that the
18 balance of equities tips in favor of the truckers and against the State, and (3) that an
19 injunction is in the public interest, were not disturbed by the Ninth Circuit and
20 should remain the law of the case. There has been no intervening change in law or
21 other material circumstances, and the evidence of harm before the Court explained
22 herein is cumulative.

23 **2. OOIDA is likely to succeed on its Commerce Clause claim.**

24 The Commerce Clause gives Congress the authority to regulate commerce
25 between the states. U.S. Const. art. I, § 8, cl. 3. This grant of authority implies a
26 restriction on states’ authority to interrupt—by discriminating against or imposing
27 improper burdens on—interstate commerce. *See, e.g., South Dakota v. Wayfair,*
28 *Inc.*, 138 S. Ct. 2080, 2089-90 (June 21, 2018). Giving Congress the authority over

1 economic relations between the states “reflects a central concern of the Framers that
 2 was an immediate reason for calling the Constitutional Convention: the conviction
 3 that in order to succeed, the new Union would have to avoid the tendencies toward
 4 economic Balkanization that had plagued relations among the Colonies and later
 5 among the States under the Articles of Confederation.” *Id.* at 2089 (quoting
 6 *Hughes v. Oklahoma*, 441 U.S. 322, 325-26 (1979)). Courts analyze Commerce
 7 Clause challenges to state conduct according to the type of activity at issue,
 8 applying one of three standards: (1) *Pike*³ balancing for state regulatory laws; (2)
 9 *Evansville*⁴ for state user fees; or (3) *Complete Auto*⁵ for state taxation. *See Wayfair*,
 10 138 S. Ct. at 2091 (noting *Pike* standard and applying *Complete Auto* to state sales
 11 tax); *W. Oil & Gas Ass’n v. Cory*, 726 F.2d 1340, 1344 (9th Cir. 1984), *aff’d*, 471
 12 U.S. 81 (1985) (applying *Evansville* to local user fee).

13 AB-5, a state regulatory enactment, must satisfy the *Pike* standard, which
 14 invalidates a state law that does not discriminate on its face but imposes burdens
 15 on interstate commerce that clearly exceed the law’s putative local benefits. *See*
 16 *Union P. R. Co. v. Cal. Pub. Utilities Comm’n*, 346 F.3d 851, 872 (9th Cir. 2003)
 17 (quoting *Pike*, 397 U.S. at 142).

18 **a. The public benefit to California enforcing AB-5 against**
 19 **truckers operating in interstate commerce is**
 20 **insubstantial.**

21 *Pike* requires a careful examination of the benefits resulting from the state
 22 action at issue. *See, e.g., Pike*, 397 U.S. at 143-44. Merely determining whether a
 23 local interest or benefit is legitimate does not answer the question; indeed, the *Pike*
 24 Court recognized that the interests advanced by Arizona’s rules were “surely

25 ³ *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

26 ⁴ *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines, Inc.*, 405 U.S. 707
 27 (1972), *superseded by statute on other grounds, Nw. Airlines, Inc. v. County of*
 28 *Kent*, 510 U.S. 355 (1994).

⁵ *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

1 legitimate” before overturning them. *See id.*; *see also Union Pacific*, 346 F.3d at
2 871 (overturning railroad configuration rules despite claimed railway safety
3 benefit).

4 Here, the state presumably has an interest in ensuring that workers are not
5 misclassified as independent contractors and instead enjoy the protections of
6 California’s employment laws. OOIDA is aware that there are circumstances in
7 the trucking industry where such protections should be applied. First Spencer Dec.
8 (ECF No. 122-3) at ¶ 42. But OOIDA is not aware of any description of how AB-
9 5 is materially better at serving this purpose than the *Borello* classification test that
10 would take its place if the Defendants were enjoined, temporarily or permanently,
11 from applying AB-5 to the interstate trucking industry. OOIDA is not aware of
12 any instance when the application of *Borello* has failed to address misclassification
13 problems that may be found in the trucking industry. From the experience of
14 declarant owner-operators Mr. Williams and Mr. McElroy, there is evidence that
15 the effects of AB-5 on owner-operators will not necessarily be to bring them into
16 the employee fold. McElroy Dec. at ¶ 13; Williams Dec. at ¶ 16. Therefore, to the
17 extent there might be a public benefit to California in enforcing AB-5 in the
18 trucking industry, that benefit may flow only from some of the parties to whom
19 AB-5 will apply.

20 **b. The public benefit of AB-5 to California is even lower**
21 **when applied to out-of-state truckers.**

22 With respect to workers whose principal place of work is not California,
23 AB-5’s purported local benefits fall even farther short of the extraordinary burdens
24 the law would impose on interstate commerce. Critically, any benefit flowing to
25 California cannot be analyzed without considering geography. As two recent
26 Supreme Court of California cases make clear, California’s interest in applying its
27 labor rules wanes with increased distance from the state’s borders. *See Ward v.*
28 *United Airlines, Inc.*, 9 Cal.5th 732 (2020); *Oman v. Delta Air Lines, Inc.*, 9

1 Cal.5th 762 (2020). In these two cases, the Supreme Court of California examined
2 labor rules to determine whether they covered airline workers who were not based
3 in and did not do a majority of their work in California. In both cases, the court
4 held that the California rules, which did not expressly limit their geographic reach,
5 covered only workers whose principal place of work is California—that is, workers
6 who performed a majority of their work in California or, for workers who did not
7 perform a majority of their work in any one state, workers based in California. *See*
8 *Ward*, 9 Cal.5th at 755-56; *Oman*, 9 Cal.5th at 773.

9 Those cases, although they did not involve Commerce Clause challenges,
10 reveal much about the reach of the state’s interests in the field of labor regulation.
11 First, the court recognized the presumption against extraterritoriality—legislatures
12 are presumed to legislate within their borders. *See Ward*, 9 Cal.5th at 749. But
13 that does not fully answer the question of a labor law’s reach, because “many
14 employment relationships and transactions will have elements of both”
15 extraterritoriality and intraterritoriality. *See id.* at 752. Thus, the court must look to
16 the statutory scheme and the challenged law’s place therein. In *Ward*, the wage
17 rule at issue contained “no language specifying its intended geographic scope.” *Id.*
18 The court thus inferred from the law’s purpose of “ensur[ing] workers are correctly
19 and adequately compensated for their work,” that the geographic reach should be
20 determined by the location of the work. *Id.* at 753. Similarly, the *Oman* court
21 recognized that legislation “requires some degree of connection between the
22 subject matter of the statutory claim and the State of California.” *Oman*, 9 Cal.5th
23 at 773.

24 The “connection” for those wage laws was the worker’s principal place of
25 work (measured either by time spent working in California or where a worker is
26 based). This analysis demonstrates that California has minimal, if any, interest in
27 the various rights and obligations of workers who do not spend a majority of their
28 time working in California and are based outside the state. Moreover, to the extent

1 that California does have an interest in regulating those out-of-state workers, pre-
2 AB-5 law adequately protected that interest. *See, e.g.*, OOIDA’s Complaint [ECF
3 No. 122-2] at ¶ 10 (“[U]nder the *Borello* test, the State found in the worker’s favor
4 in 97% of cases.”).

5 In short, California holds only a minimal, if any, interest in applying AB-5
6 to out-of-state workers. Under the *Pike* analysis, the benefits to California from
7 the imposition of AB-5 to motor carriers contracting with drivers based outside of
8 California do not come close to justifying the burden AB-5 would impose on those
9 parties.

10 **c. The burden of AB-5 on motor carriers and owner-**
11 **operators operating in interstate commerce exceeds the**
12 **putative benefit of the law to the state.**

13 AB-5 will impose significant burdens on the trucking industry operating in
14 interstate commerce. Applying AB-5 to the motor carrier industry means that
15 carriers will no longer be able to use independent owner-operators in California,
16 ending a business model that has long served as the lifeblood of the industry. *See,*
17 *e.g.*, Order Granting Preliminary Injunction [ECF No. 89] at 13-15 (collecting
18 cases and noting that ABC test likely prevents carriers from using independent
19 drivers); *id.* at 14 n.9 (noting that during the Court’s hearing on Plaintiffs’
20 preliminary injunction request, Defendants could not provide an example of how a
21 motor carrier could contract with an owner-operator as an independent contractor
22 rather than employee); *see also* First Spencer Dec. (ECF No. 122-3) at ¶¶ 13, 23,
23 30.

24 Thus, those carriers who currently use independent owner-operators will be
25 required to choose one of three extremely disruptive options: (1) cease operating in
26 California and ignore one of the world’s largest markets; (2) change their business
27 model for all of their operations that work at least in part in California to comport
28 with AB-5; or (3) use independent owner-operators for their non-California loads
and employee drivers for their California loads. The adverse effects of all three

1 options are plain. Should a carrier wish to continue serving the California market,
2 it must incur the substantial costs associated with using employee drivers. *See*
3 *Second Spencer Dec.* at ¶¶ 35-39. Mr. Schnautz states in his declaration that his
4 motor carrier, Clark Freight Lines, Inc., has decided to forgo revenue of
5 approximately \$40,000 to \$50,000 per week from loads going to California rather
6 than risk being required to apply California's employment laws to its drivers. *See*
7 *Schnautz Dec.* at ¶¶ 9-12. Mr. Spencer states that Clark Freight Line's decision is
8 typical of those of motor carriers he has spoken to in OOIDA's membership. Mr.
9 Spencer states that the effect of these motor carriers' decisions, resulting in fewer
10 motor carriers hauling freight to California, will negatively impact the supply chain
11 to and from California. *See Second Spencer Dec.* at ¶¶ 14, 40.

12 Independent owner-operators face similar unsatisfactory options: (1) stop
13 driving in California; (2) give up their independent status; and (3) for California
14 residents, move out of the state altogether. *See Hemerson Dec.* at ¶¶ 12-16;
15 *McElroy Dec.* at ¶¶ 11-16; *Williams Dec.* at ¶¶ 11-16. Indeed, Mr. Williams has
16 already relocated to Arizona based on the alternatives presented to him by his
17 motor carrier. *Id.* at ¶¶ 11-12.

18 Intervenor OOIDA is likely to succeed on its dormant Commerce Clause
19 claim under the *Pike* standard because the certain burdens that AB-5 would impose
20 on motor carriers and owner-operator drivers operating in interstate commerce on
21 California's roads would exceed the public benefits to California which will come
22 from only some of the universe of entities falling under AB-5. Motor carriers and
23 independent owner-operators will suffer irreparable harm if AB-5 applies to them.
24 It is difficult to imagine what benefits California achieves given these actions by
25 motor carrier and owner-operators in light of AB5, especially balanced against the
26 burdens these small businesses are and would experience.

27 This Court already determined that AB-5 causes irreparable harm to motor
28 carriers by forcing them to change their business model completely or stop serving

1 the California market. *See* Order Granting Preliminary Injunction [ECF No. 89] at
2 21. The Ninth Circuit did not disturb this finding on appeal, and it remains the law
3 of the case. *See Houser*, 804 F.2d at 567. There have been no factual or legal
4 changes in the interim that would support a different conclusion now. Motor
5 carriers and owner-operators face substantial harm absent injunctive relief.

6 **d. Motor carriers will be forced to choose between**
7 **changing their business model or refusing to carry loads**
8 **to, from, and within California.**

9 As was the case for Plaintiffs, motor carriers whose principal place of
10 business is not California will suffer significant irreparable harm if Defendants are
11 permitted to enforce AB-5 against them. *See* Order Granting Preliminary
12 Injunction [ECF No. 89] at 20-21. These carriers will be required to change their
13 business models and incur significant administrative and other costs or stop
14 working in California. *See* Order Granting Preliminary Injunction [ECF No. 89] at
15 13-15 (collecting cases and noting that the ABC test likely prevents carriers from
16 using independent drivers). These changes will likely alter these motor carriers'
17 businesses permanently. They "are being put to a kind of Hobson's choice":
18 continually violate the law and face potential liability or violate the law once to
19 serve as test case and completely alter their business during the pendency of
20 litigation to avoid further violations. *Am. Trucking Ass'ns, Inc. v. City of Los*
21 *Angeles*, 559 F.3d 1046, 1057 (9th Cir. 2009) (quoting *Morales v. Trans World*
22 *Airlines, Inc.*, 504 U.S. 374 (1992)).

23 Like Plaintiffs before, and the carriers in *American Trucking*, motor carriers
24 whose principal place of work is not California face a similar "Hobson's choice"
25 without an injunction: continually violate AB-5 and risk significant liability,
26 entirely change their businesses to comply with the law, or give up business that
27 takes their drivers into California. Declarant Danny Schnautz, whose declaration
28 accompanies this motion and memorandum, has provided testimony regarding the

1 injury his company has already suffered in anticipation of the application of AB-5
2 and California employment laws to it and its drivers. Schnautz Dec. ¶¶ 9-12.

3 Intervenor-Plaintiff has demonstrated that these motor carriers will suffer
4 irreparable harm without an injunction during the pendency of this litigation.

5 **e. Owner-operator truckers operating in interstate**
6 **commerce will face irreparable harm under AB-5's**
7 **enforcement.**

8 Many independent owner-operators face a similar dilemma: become
9 employees of motor carriers or get out of California. Independent owner-operators
10 will not be engaged by motor carriers to do business in California, and the drivers
11 will permanently lose that business. *See* Hemerson Dec., ¶¶ 12-16; McElroy Dec.,
12 ¶¶ 11-16; Williams Dec., ¶¶ 12-16. Alternatively, they will have to give up their
13 independence and become employee drivers who are answerable to an employer.
14 *Id.* Intervenor-Plaintiff has demonstrated that these motor carriers will suffer
15 irreparable harm without an injunction during the pendency of this litigation. *See*
16 *Id.* The equities and the public interest favor an injunction, as the state can
17 employ existing classification standards and trucking companies can continue
18 supporting the economy without interruption.

19 Just as motor carriers face significant hardships if AB-5 is enforced against
20 them, owner-operators will face devastating injury as well, including the loss of
21 their investment in their business, loss of income, and loss of independence. Worst
22 of all, they will lose the sense of control and safety they maintain by conducting or
23 overseeing any repairs to their trucks. *See* Hemerson Dec., ¶¶ 12-16; McElroy
24 Dec., ¶¶ 11-16; Williams Dec., ¶¶ 12-16.

25 **3. The balance of equities favors a preliminary injunction to**
26 **protect truckers operating in interstate commerce for the**
27 **remainder of this litigation.**

28 The trucking industry's interest in avoiding irreparable damage favor an
injunction even were the harm to the public's interests significant. But Defendants

1 do not face such harm here. Indeed, although proper worker classification is an
2 important public interest, Defendants have the means to enforce proper
3 classification against motor carriers without AB-5's new test. The *Borello*
4 standard, which guided worker classification before AB-5, would apply. *See* Cal.
5 Labor Code § 2750.3(a)(3). Defendants have successfully employed this standard
6 to enforce labor rules in the motor carrier industry. *See, e.g.*, OOIDA Complaint
7 [ECF No. 122-2] ¶ 10. Finally, the proposed injunction would not preempt the
8 state from enforcing AB-5 against the *intrastate* operations of motor carriers and
9 owner-operators who operate solely within the borders of California.

10 This Court reached this conclusion concerning irreparable harm in
11 consideration of the earlier preliminary injunction based on the Federal Aviation
12 Administration Authorization Act ("FAAAA") preemption, though completely
13 independent of the FAAAA issues: "the hardships faced by Plaintiffs significantly
14 outweigh those faced by Defendants." *See* Order Granting Preliminary Injunction
15 [ECF No. 89] at 21. The same paradigm applies here under the Commerce Clause
16 with respect to motor carriers operating in interstate commerce who work some of
17 the time in California.

18 **4. The public interest tips in favor of an injunction.**

19 "The public interest tips sharply" in favor of an injunction here. *See* Order
20 Granting Preliminary Injunction [ECF No. 89] at 22. While Defendants have an
21 important interest in properly classifying workers, that interest must be balanced
22 against the harm to the transportation industry and supply chain that will follow
23 from an entire segment of the trucking industry being required to change its
24 business model or cease servicing the California market during the pendency of
25 this litigation.

26 **IV. CONCLUSION**

27 Absent an injunction, AB-5 will impact interstate trucking operations
28 nationwide, causing carriers throughout the U.S. to reevaluate their ability to serve

1 the country’s most important shipping market. Thousands of trucking companies
2 will be forced to decide between changing their business model or ceasing work in
3 California altogether. The harm resulting from these decisions will be irreparable
4 for many and will have a negative impact on supply chains. Enjoining
5 enforcement of AB-5 against those truckers lacking a significant connection to
6 California pending final resolution of this case is a crucial step in safeguarding the
7 nation’s supply chain and the livelihoods of thousands of small business truckers.

8 For the reasons set forth in this Memorandum of Points and Authorities, the
9 concurrently filed Notice of Motion and Motion, the declarations of Todd Spencer,
10 Albert Hemerson, Marc McElroy, Stacy R. Williams, and Danny R. Schnautz, the
11 pleadings and papers on file in this action, and any further evidence or argument
12 that may be presented at or before the hearing of this Motion, Intervenor OOIDA
13 respectfully requests that the Court should enjoin enforcement of Assembly Bill 5
14 (codified in Cal. Labor Code § 2750.3(a)(1)) against the motor carriers and owner-
15 operator truckers operating in interstate commerce. Alternatively, the Court should
16 enjoin enforcement of AB-5 against motor carriers whose owner-operators are
17 based outside of California and whose owner-operators spend less than 50% of
18 their work time in California, where the state has minimal, if any, interest in
19 enforcing AB-5.

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Dated: January 11, 2023

Respectfully submitted,
Timothy A. Horton
The Law Office of Timothy A. Horton
By: /s/ Timothy A. Horton
Timothy A. Horton

Local counsel for Intervenor-Plaintiff
Owner-Operator Independent Drivers
Association

Paul D. Cullen, Jr. (pro hac vice)
Charles R. Stinson (pro hac vice)

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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 ATTORNEY GENERAL ROB
28 BONTA, *et al.*,

Defendants.

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

**DECLARATION OF
TODD SPENCER IN SUPPORT
OF MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Roger T. Benitez

Date: May 1, 2023

Time: 10:30 a.m.

Courtroom: 5A

I, Todd Spencer, do hereby declare:

1. The facts set forth herein are of my own personal knowledge, and if called to testify thereto, I could and would do so under oath.

1 2. I am the President of the Owner-Operator Independent Drivers
2 Association, Inc. (“OOIDA”). I have held this position since 2018.

3 3. I have been in the trucking industry since 1974 and have worked as an
4 independent owner-operator.

5 4. I have held an executive position in OOIDA, advocating for the rights
6 of truck drivers, since 1981.

7 5. OOIDA is a not-for-profit trade association representing the interests
8 of independent owner-operators, small-business motor carriers, and professional
9 drivers.

10 6. OOIDA was founded in 1973 and today has more than 150,000
11 members based in all fifty states and Canada.

12 7. OOIDA has approximately 6,103 members based in California. An
13 additional 7,050 members reside nearby in Arizona, Nevada, Oregon, and
14 Washington.

15 8. OOIDA members collectively own and operate more than 200,000
16 individual heavy-duty trucks.

17 9. The overwhelming majority of OOIDA’s members are part of the
18 interstate motor carrier industry.

19 10. OOIDA’s membership consists of both independent owner-operator
20 truck drivers and small business motor carriers.

21 11. Small businesses represent nearly half of the total active motor carriers
22 in the United States.

23 12. Independent owner-operator truck drivers who spend at least some time
24 operating in California are the parties whose employment status is at issue under the
25 AB-5 test.

26 13. Declarants and OOIDA members Marc McElroy, Stacy R. Williams,
27 and Albert Hemerson present good examples of owner-operator OOIDA members
28 who are concerned that AB-5 is or will cause them injury by forcing them 1) to give

1 up their business opportunities that put them on roads in California or 2) to change
2 their business model to become employees to continue to take that business.

3 14. The declaration of Danny R. Schnautz, the owner of Clark Freight
4 Lines, Inc., reflects the position of most of the motor carriers I have spoken to who
5 are based outside of California that, in the past, have dispatched their drivers to haul
6 freight to, from, and through the state. Anticipating the application of AB-5 and
7 California employment regulations to their drivers, they have decided to avoid the
8 burden and expense of complying with California rules by refusing to haul freight
9 to California.

10 15. My earlier Declaration in this matter detailed the importance of the
11 owner-operator business model to the trucking industry. *See* Declaration of Todd
12 Spencer in Support of Motion to Intervene (Dkt. 122-3).

13 16. Motor carriers are businesses that have received federal operating
14 authority from the U.S. Department of Transportation to haul freight in interstate
15 commerce. Motor carriers may operate as sole proprietor truck drivers or as a
16 business with multiple trucks owned by the motor carrier and operated by employee
17 truck drivers or owned and operated by independent owner-operator truck drivers.
18 Motor carriers whose drivers spend at least some of their time operating in California
19 are the businesses required to comply with California employment laws, if
20 applicable to their drivers, under AB-5.

21 17. The effect of AB-5 to classify traditional independent owner-operators
22 as employees would cause irreparable harm to both motor carriers and the
23 independent owner-operator truckers they contract with. To avoid costly defense
24 from California prosecution for violating AB-5, both entities would have to either
25 (1) give up the business they currently have hauling freight to and from California,
26 or (2) bear the enormous expense of changing their business models.

1 **Owner-operators faced with reclassification as employees would face**
2 **significant irreparable harm.**

3 18. While the independent owner-operator model has taken different forms
4 over the years, independent owner-operators have been an important component of
5 interstate commerce and the motor carrier industry for decades.

6 19. There are between 350,000 and 400,000 independent owner-operators
7 on the road across the country today.

8 20. Typically, truck drivers begin their career as employees, operating
9 trucks owned and provided by their motor carrier. Eventually, after becoming
10 familiar with the trucking business, some employee drivers move on to start their
11 own businesses as independent owner-operators.

12 21. To become an independent owner-operator, a driver will typically
13 assume loans to purchase a truck, and sometimes additional equipment, which can
14 cost hundreds of thousands of dollars.

15 22. Owner-operators' businesses are often independently incorporated or
16 operate as sole proprietorships.

17 23. Owner-operators drive as independent contractors under a motor
18 carrier's DOT operating authority. They typically enter into exclusive lease
19 agreements with motor carriers for one-year periods, meaning that the driver is
20 leased to a particular carrier and works only with that carrier. Those agreements can
21 automatically renew or be set for longer durations. Many independent owner-
22 operators work exclusively for the same motor carrier for several years.

23 24. As truck owners and operators, independent owner-operators assume
24 business responsibilities and regulatory obligations that employee drivers do not
25 have.

26 25. Under the typical lease agreement, owner-operators are responsible for
27 the maintenance of their trucks and equipment, and the cost of tolls, taxes, fuel,
28 insurance, and personal expenses on the road.

1 26. When the independent owner-operator model functions properly, motor
2 carriers comply with the federal Truth-in-Leasing regulations set forth at 49 C.F.R.
3 Part 376, and their drivers have the ability to set their own schedules, choose the
4 freight they want to transport, select their own routes in delivering that freight,
5 purchase equipment that best serves their business needs and personal taste, choose
6 where and how that equipment is maintained, and make numerous other decisions
7 that affect the success of their business.

8 27. Owner-operators build business relationships, routines, and practices
9 that make them successful business owners.

10 28. For owner-operators from around the country who haul loads to, from,
11 and within California as a part of their business, the prospect of being reclassified as
12 employees under AB-5 would cause significant irreparable harm.

13 29. Faced with the prospect of giving up their owner-operator business and
14 becoming employees to continue to haul loads to and from California, most owner-
15 operators would likely choose to give up the business in California instead,
16 foregoing potentially thousands of dollars in annual income.

17 30. Alternatively, to keep hauling loads to California, they would be forced
18 to give up the business they have worked to build and become employees instead of
19 business owners. They would have to forgo the opportunity to maximize their
20 income through their own effort and hard work. They would likely have to give up
21 the truck they have invested in, customized, and maintained as their home to serve
22 their work and personal needs. They would give up business relationships they have
23 cultivated to make their business successful. They would give up the discretion they
24 enjoyed in setting their own schedules and lose their ability as owner-operators to
25 make their own decisions about their operations, which gave them control over their
26 success.

27 31. We have heard from our owner-operator members that their motor
28 carriers have begun to make requirements upon their owner-operators that they

1 apparently intend to help them avoid having to use employee drivers. Declarants
2 Mr. Williams and Mr. McElroy describe such experiences and explain that their
3 businesses have already been affected by AB-5.

4 32. Just as the employee driver position can be the steppingstone to
5 becoming an owner-operator, owner-operators with several years of experience
6 often choose to obtain federal DOT authority to operate as a motor carrier. As a
7 motor carrier, a trucker takes on even more responsibility and greatly expands their
8 business opportunities. Being forced to give up an owner-operator business cuts off
9 the driver's career path to wider business opportunities as a motor carrier.

10 33. Employee drivers are assigned the truck they use, told what loads to
11 haul and what routes to take, and are denied all manner of self-determinative
12 decisions and flexibility that they formerly enjoyed and profited from as owner-
13 operators. Owner-operators forced to become employee drivers would lose control
14 of the maintenance of their truck and be forced to rely on the maintenance provided
15 by the motor carrier.

16 34. It would be very challenging for an owner-operator, once forced to
17 become an employee driver, to later recreate their previous business as an owner-
18 operator.

19 **Motor Carriers faced with the requirement to reclassify their owner-operator**
20 **drivers as employees under AB-5 would face significant irreparable harm.**

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22 35. For motor carriers that contract with owner-operators for whom a part
23 of their business is hauling loads into or out of California, they too are likely to give
24 up many dollars in freight hauling work to and from California rather than bear the
25 expense of changing their business model to use employee truck drivers.

26 36. Motor carriers forced to switch to an employee model would be
27 required to purchase the trucks to be driven by their employees (up to \$200,000 per
28 vehicle), take on the costs of maintaining and repairing that equipment, hire human

1 resource professionals to ensure their compliance with California’s employment
2 laws, and either convince their owner-operators to become employee drivers (which
3 is highly unlikely to occur) or recruit all new drivers to serve their existing customers
4 (a difficult task).

5 37. Relying on independent owner-operators rather than employee drivers
6 allows small-business motor carriers to adjust to market conditions, bid for and
7 accept opportunities to haul specialized freight, and manage costs to strategically
8 grow their businesses over time. Motor carriers who must begin to use employee
9 drivers would lose this flexibility in their businesses and, therefore, lose that
10 business.

11 38. AB 5 would impose harm to the businesses of OOIDA’s independent
12 owner-operator and small-business motor carrier members from which they would
13 not easily be able to recover.

14 39. Failure to comply with AB-5 while hauling freight in interstate
15 commerce on California’s road would subject motor carriers to civil and criminal
16 prosecutions.

17 40. Declarant Danny R. Schnautz, owner of the motor carrier Clark Freight
18 Lines, LLC, whose declaration is submitted with this Motion for Preliminary
19 Injunction, has attested to his determination that giving up thousands of dollars in
20 business per week to California was a lesser burden than complying with
21 California’s regulations.

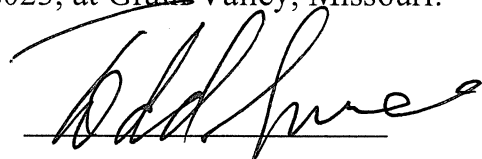
22 41. The effect of fewer motor carriers contracting to haul freight to
23 California will likely cause the cost of trucking services to California rise and make
24 worse an already constricted supply-chain in and out of California.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 11th day of January 2023, at Grain Valley, Missouri.



Todd Spencer
President, OOIDA

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12 *Owner-Operator Independent Drivers Association*

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA TRUCKING
ASSOCIATION *et al.*,
16
17 Plaintiffs,
18 OWNER-OPERATOR
INDEPENDENT DRIVERS
ASSOCIATION,
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20 Intervenor- Plaintiff,
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22 v.
ATTORNEY GENERAL ROB
BONTA, *et al.*,
23
24 Defendants.

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

**DECLARATION OF DANNY R.
SCHNAUTZ IN SUPPORT OF
INTERVENOR-PLAINTIFF
OIDA'S MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Roger T. Benitez
Date: May 1, 2023
Time: 10:30 a.m.
Courtroom: 5A

25
26 I, Danny R. Schnautz, do hereby declare:

27 1. I am over the age of eighteen years and am competent to testify as to
28 all the facts and subjects set forth in this declaration.

1 2. The facts herein are known to me and based on my personal knowledge.

2 3. I have been a member of the Owner-Operator Independent Drivers
3 Association, Inc. (“OOIDA”) for about 30 years. I am currently a member of
4 OOIDA’s Board of Directors.

5 4. Approximately one year ago, I became the owner of Clark Freight
6 Lines, Inc. (“Clark”) based in Pasadena, Texas.

7 5. Prior to purchasing Clark Freight Lines, I worked for the company,
8 beginning as a driver 36 years ago, and starting to work in the office 33 years ago.

9 6. Clark is a motor carrier registered with the U.S. Department of
10 Transportation to haul freight in interstate commerce. Clark does business in 49
11 states and Canada.

12 7. Clark has 140 drivers.

13 8. Clark drivers operate a variety of equipment, including flatbeds, vans,
14 specialized trailers, and intermodal chassis. This allows Clark to serve the needs of
15 a diverse range of shippers, including general freight, freight for the petrochemical
16 industry, freight that is time-sensitive, hazardous materials, and freight that requires
17 a temperature-controlled environment.

18 9. At one time Clark ran between 8 and 10 loads a week into and out of
19 California, which resulted in between \$40,000 and \$50,000 per week in revenue.

20 10. California’s regulatory scheme applicable to the trucking industry—
21 including AB-5—has become prohibitively burdensome and expensive for Clark to
22 operate on California’s roads.

23 11. Clark concluded that the added burden and expense of adhering to
24 California’s regulations, including the prospect of being required to comply with the
25 state’s employment rules because of AB-5, was more than the revenue we received
26 for taking loads to California. As a result, Clark rarely runs any loads into or out of
27 California.

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1 12. When Clark stopped running loads into and out of California, we gave
2 up between \$40,000 and \$50,000 per week that we once earned from such work.

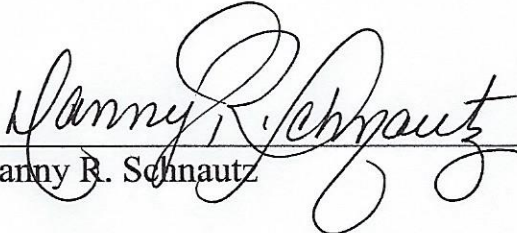
3 13. If we could be assured that California’s laws imposing burdens on
4 trucking businesses do not apply to out-of-state motor carriers whose drivers and
5 trucks that would not spend much of their time in California, like Clark, we may
6 reevaluate the business of providing transportation to the state.

7

8 I declare under penalty of perjury, under the laws of the United States and the
9 State of Texas, that the foregoing is true and correct and that this declaration was
10 executed on this 11th day of January 2023.

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Danny R. Schnautz

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16 *Owner-Operator Independent Drivers Association*

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 ATTORNEY GENERAL ROB
28 BONTA, *et al.*,

Defendants.

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

**DECLARATION OF ALBERT
HEMERSON IN SUPPORT OF
INTERVENOR-PLAINTIFF
OUIDA'S MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Roger T. Benitez

Date: May 1, 2023

Time: 10:30 a.m.

Courtroom: 5A

I, Albert Hemerson, do hereby declare:

1. I am over the age of eighteen years and am competent to testify as to all the facts and subjects set forth in this declaration.

1 2. The facts set forth herein are known to me and based on my own
2 personal knowledge.

3 3. I am an Iowa native and live with my wife of 39 years, Kimberly
4 Hemerson, in Ankeny, IA. My wife rides with me on my hauls and does the
5 paperwork and bookkeeping for the business.

6 4. I am a member of the Owner-Operator Independent Drivers
7 Association, Inc. (“OOIDA”) and have been a Lifetime Member since 2010.

8 5. I started my career as a truck driver in 1975. Throughout my career, I
9 have been an independent owner-operator leased to a motor carrier. During my 48
10 years as a truck driver, I have driven more than 6,000,000 miles without a single
11 accident.

12 6. I am currently an owner-operator for C&A Transportation & Logistics,
13 Inc. in Ankeny, IA, and have been operating for them since earlier in 2022. Prior to
14 this position, I operated for 18 years as an owner-operator for Concorde
15 Refrigerated, Inc., based in Des Moines, IA.

16 7. I haul refrigerated loads, typically meat from Iowa into California and
17 refrigerated produce from California back to Iowa. Consequently, I spend
18 approximately 10-12% of my driving time in California.

19 8. I choose to work as an owner-operator because the business model
20 allows me more independence and flexibility than I would have as an employee
21 driver. For example, I determine what equipment I drive and how I drive it (in part,
22 to achieve maximum fuel efficiency).

23 9. Moreover, I receive better compensation than I would as an employee
24 driver, and I am building equity in my business as I pay off my equipment. I enjoy
25 owning my own business. I drive a 2022 Volvo BNL 860 truck. I have immense
26 pride in ownership of my equipment, and I maintain it in near-perfect condition,
27 which maintains the truck’s resale value and increases its safety.

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1 10. Additionally, since I am my own boss, I choose which loads to haul, I
2 choose the days and times I am available (within the Hours-of-Service regulations),
3 and I choose where and when I drive my truck.

4 11. I also select my own insurance at the best price and coverage level to
5 protect my business. I choose where I buy fuel, allowing me to control my costs
6 better.

7 12. I understand that if AB-5 goes into effect, I may only be able to lawfully
8 provide trucking service into, out of, and within California by obtaining my own
9 DOT authority or as an employee driver, which I choose not to be for reasons already
10 explained.

11 13. I have chosen not to obtain my own DOT authority to become a motor
12 carrier because the added expenses outweigh the revenue I derive from hauling to
13 California. In addition, with my own DOT authority, I would be taking on both more
14 responsibility and more risk, which I choose not to do.

15 14. If AB-5 goes into effect, I will suffer immediate, irreparable harm as I
16 believe I will no longer be able to lawfully provide trucking services on California's
17 highways for C&A Transportation & Logistics, Inc. or any other motor carrier as an
18 independent owner-operator, as I have done for decades.

19 15. The loss of the business that takes me onto California's highways will
20 also result in immediate financial harm to me because I will be forced to find a motor
21 carrier who does not need me to haul on California's highways, and in the meantime,
22 despite no income, I would be obligated to continue incurring costs directly related
23 to owning, storing, and maintaining my truck while I am looking for a new motor
24 carrier.

25 16. I will also suffer immediate, irreparable harm if I must work as an
26 employee driver to continue driving to and from California. I do not want to work
27 as an employee driver because it would deprive me of the independence, control,
28 and opportunity for profit that I have enjoyed for 48 years working as an independent

1 owner-operator. Most importantly, I would be giving up the business that I have
2 worked so hard to make a success for the last 48 years.

3

4 I declare under penalty of perjury, under the laws of the United States and the
5 State of Iowa, that the foregoing is true and correct and that this declaration was
6 executed on this 7th day of December 2022.

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s/Albert Hemerson

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Albert Hemerson

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11 *Attorneys for Intervenor-Plaintiff*
12 *Owner-Operator Independent Drivers Association*

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA TRUCKING
16 ASSOCIATION *et al.*,

17 Plaintiffs,

18 OWNER-OPERATOR
19 INDEPENDENT DRIVERS
ASSOCIATION,

20 Intervenor- Plaintiff,

21 v.

22 ATTORNEY GENERAL ROB
23 BONTA, *et al.*,

24 Defendants.
25

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

**DECLARATION OF MARC
MCELROY IN SUPPORT OF
INTERVENOR-PLAINTIFF
OIDA'S MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Roger T. Benitez

Date: May 1, 2023

Time: 10:30 a.m.

Courtroom: 5A

26 I, Marc McElroy, do hereby declare:

27 1. I am over the age of eighteen years and am competent to testify as to
28 all the facts and subjects set forth in this declaration.

1 2. The facts set forth herein are known to me and based on my own
2 personal knowledge.

3 3. I am a California resident. I have been a truck driver for approximately
4 35 years. I have never applied for nor been on unemployment. I have never applied
5 for nor been on disability. I have been a taxpayer for all that time.

6 4. I have been a member of the Owner-Operators Independent Drivers
7 Association for many years and have been a lifetime member for approximately four
8 years.

9 5. I started my career as an employee driver.

10 6. After gaining experience as an employee driver, I determined that it
11 was time to take the next step in my career. Beginning in 1998, via a lease-purchase
12 agreement, I purchased my own truck and became an owner-operator. By doing this,
13 I took more control over many aspects of my work and improved my income.

14 7. I obtained my own DOT operating authority to operate as a motor
15 carrier in 2006. I allowed it to lapse, however, after about ten years when I
16 determined that the costs and risks of operating as a motor carrier outweighed the
17 benefits of operating as an owner-operator.

18 8. After giving up my DOT authority, I worked as an owner-operator for
19 PCT Logistics, a company that specializes in shipping wine, for about one year.

20 9. I have been an owner-operator for my current carrier for about four and
21 a half years.

22 10. Although I have hauled loads starting or ending in California, the vast
23 majority of the miles I drive and the time I spend driving are outside of California.

24 11. My current carrier appears to be doing everything in their power to
25 prepare for the impact of AB-5 on their business and on the owner-operators who
26 haul for them. My current carrier has required me to sign an addendum to my
27 contract stating that I will no longer take any loads within, out of, or into California.

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1 12. I have recently been required to pick up loads in Nevada and/or Arizona
2 rather than in California. Any driving that I do on California roads to pick up these
3 loads is uncompensated.

4 13. I understand that if AB-5 goes into effect, I will only be able to lawfully
5 provide trucking services out of California as an employee driver or if I reacquire
6 my own operating authority. I do not want to work as an employee driver because it
7 would deprive me of the independence, control, and opportunity for profit that I have
8 enjoyed for years working as an independent owner-operator. I do not want to
9 operate under my own DOT authority, a business model I have already rejected
10 because I believe that the risks outweigh the benefits in my case. Either change
11 would subject me to immediate irreparable harm by ending the owner-operator
12 business that I have successfully built up for many years.

13 14. If AB-5 is enforced, I will suffer immediate, irreparable harm as I will
14 no longer be able to lawfully provide trucking services on California's highways for
15 any motor carrier as an independent owner-operator.

16 15. The loss of the business that takes me onto California's highways is
17 already resulting in financial harm and will result in further financial harm to me
18 because my business opportunities will be fewer. Nevertheless, I am still obligated
19 to incur costs directly related to owning, storing, and maintaining my truck.

20 16. I am 66 years old and have been considering retirement. I live near my
21 family. It makes no sense for me to move outside the state away from my family
22 and home for any period in order to try to preserve my work that I perform, part of
23 the time, in California.

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I declare under penalty of perjury, under the laws of the United States and the State of California, that the foregoing is true and correct and that this declaration was executed on this 7th day of December 2022.

s/Marc McElroy

Marc McElroy

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16 *Owner-Operator Independent Drivers Association*

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 ATTORNEY GENERAL ROB
28 BONTA, *et al.*,

Defendants.

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

**DECLARATION OF STACY R.
WILLIAMS IN SUPPORT OF
INTERVENOR-PLAINTIFF
OIDA'S MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Roger T. Benitez

Date: May 1, 2023

Time: 10:30 a.m.

Courtroom: 5A

I, Stacy R. Williams, do hereby declare:

1. I am over the age of eighteen years and am competent to testify as to all the facts and subjects set forth in this declaration.

1 2. The facts set forth herein are known to me and based on my own
2 personal knowledge.

3 3. I am a member of the Owner-Operator Independent Drivers
4 Association, Inc. (“OOIDA”) and have been for approximately two years.

5 4. I am a veteran of the United States Navy, in which I served for 24 years.
6 I retired as a Chief Petty Officer.

7 5. In 2007, I started my career as a truck driver by leasing and then
8 purchasing my own truck and becoming an independent owner-operator.

9 6. I am currently an owner-operator for Landstar and have been operating
10 for them since 2016.

11 7. I was an employee driver for three years, from 2013 through most of
12 2016. Otherwise, all my work as a truck driver has been as an owner-operator. This
13 was a personal decision based on the independence and the potential for greater
14 income that I would enjoy as an owner-operator rather than an employee.

15 8. Additional reasons for choosing to work as an owner-operator are that,
16 because I am my own boss, I choose which loads to haul, I choose the days and times
17 I am available (within the Hours-of-Service regulations), and I choose where and
18 when I drive my truck.

19 9. I also select my own insurance at the best price and coverage level to
20 protect my business. I choose where I buy fuel, allowing me to control my costs
21 better.

22 10. My wife passed away on October 23, 2022. Because I am an owner-
23 operator rather than an employee, I was able to take the necessary time off to bury
24 my wife and settle her affairs without hauling loads for a sufficient time to weather
25 this personal storm. I would not have had the discretion to take this time off had I
26 been an employee driver.

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1 11. I am based in Yuma, Arizona since September 2022. I largely haul
2 Rheem water heaters out of Calexico, CA to destinations all over the country and
3 into Canada. I spend far less than 50% of my working time in California.

4 12. Prior to September 2022, I was based in California. In the face of the
5 law known as “AB-5,” my motor carrier presented me with the following three
6 choices: (1) to obtain my own DOT authority; (2) to not haul freight out of
7 California; or (3) to move out of California. Given these choices, I relocated to
8 Yuma, AZ. My motor carrier does not hire employee truck drivers.

9 13. I understand that if AB-5 goes into effect, I may only be able to lawfully
10 provide trucking service into, out of, and within California as an employee driver.

11 14. If AB-5 goes into effect, I will suffer immediate, irreparable harm as I
12 believe I will no longer be able to lawfully provide trucking services on California’s
13 highways for Landstar or other motor carriers as an independent owner-operator as
14 I have done for decades.

15 15. The loss of the business that takes me onto California’s highways will
16 also result in immediate financial harm to me because I will be forced to find a motor
17 carrier who does not need me to haul on California’s highways. In the meantime,
18 despite no income, I would be obligated to continue incurring costs directly related
19 to owning, storing, and maintaining my truck.

20 16. I will also suffer immediate, irreparable harm in that if I would like to
21 continue driving in California, I must do so as an employee driver only. I do not
22 want to work as an employee driver because it would deprive me of the
23 independence, control, and opportunity for profit that I have enjoyed for years
24 working as an independent owner-operator. But most significantly, becoming an
25 employee driver would require me to abandon the small business that I have worked
26 hard for years to make into a profitable enterprise.

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I declare under penalty of perjury, under the laws of the United States and the State of Arizona, that the foregoing is true and correct and that this declaration was executed on this 7th day of December 2022.

s/Stacy R. Williams

Stacy R. Williams