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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

California Trucking Association, et al.,
Plaintiffs,
v.
Attorney General Rob Bonta, et al.,
Defendants.

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

**ORDER GRANTING OWNER-
OPERATOR INDEPENDENT
DRIVERS ASSOCIATION’S
MOTION TO INTERVENE**

[Doc. 122].

Owner-Operator Independent Drivers Association (“OOIDA”) moves for leave to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) and in the alternative, for permissive intervention under Rule 24(b). For the following reasons, the motion is **GRANTED**.

I. DISCUSSION

This action has been described in detail in this Court’s prior orders and by the United States Court of Appeals for the Ninth Circuit. *See California Trucking Assn. v. Bonta*, 996 F.3d 644 (9th Cir. 2021). Plaintiff’s lawsuit contends California’s AB5 is preempted by the Federal Aviation Administration Authorization Act or violates the dormant Commerce Clause of the United States Constitution. AB5 imposes a standard for determining whether a person seeking to earn a livelihood in the state is to be deemed

1 an employee or an independent contractor for purposes of California Wage Orders.¹
2 While there are exceptions for some livelihoods, there are no statutory exceptions for
3 people who drive trucks in the freight transportation industry. According to the motion,
4 OOIDA principally represents truck drivers that are independent truck owner-operators
5 based throughout the nation. They have purchased or leased their own trucks and work
6 on their own terms as independent contractors contracting with motor carriers. Mot. at
7 10. There are between 350,000 and 400,000 independent truck owner-operators in the
8 United States. *Id.* at 11. Of those, OOIDA has 150,000 members located in all 50 states
9 who collectively own and operate more than 200,000 heavy-duty trucks. *Id.* at 13.
10 OOIDA contends that AB5 imposes a test that makes it impossible for independent truck
11 owner-operators to continue contracting in California because they will be statutorily
12 deemed to be employees of the firms with which they contract.

13 The International Brotherhood of Teamsters was previously granted leave to
14 intervene to defend AB5. OOIDA seeks leave to intervene to challenge AB5. OOIDA
15 seeks to challenge AB5 by contending that it violates the dormant Commerce Clause (*i.e.*,
16 Congress' power to regulate commerce among the several states (U.S. Const. Art. 1 § 8)).
17 OOIDA seeks to intervene either as of right or as a matter of discretion under Federal
18 Rule of Civil Procedure 24. There is no party to the current litigation that primarily
19 represents interstate truck owner-operator independent contractors who want to continue
20 to do business in California.

21 Existing Plaintiff California Trucking Association initiated this action in 2018. At
22 that time, the legislature had not yet codified the ABC test. That came later in the fall of
23 2019 with the enactment of AB5 and its effective date of January 1, 2020. AB5 was the
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26 ¹ During the pendency of the stay in this case, AB5 was repealed (effective 9/4/2020) and
27 its provisions were revised and recast in AB2257 as Labor Code §§ 2275, *et seq.*, but the
28 part of AB5 that set forth the “ABC” test has been left unchanged (*see* § 2275(b)(1)).
The new law continuing the ABC test and its various exceptions is referred to herein by
its previous name simply as AB5.

1 impetus for Plaintiff to amend its complaint and seek a temporary restraining order and
2 preliminary injunction. Plaintiff pressed two main arguments that were mutually
3 exclusive: federal preemption and the Commerce Clause. This Court preliminarily found
4 AB5 to be preempted by the Federal Aviation Administration Authorization Act of 1994
5 and dismissed the incompatible Commerce Clause claim. An interlocutory appeal was
6 taken and proceedings in this Court were stayed shortly thereafter in early 2020.

7 Although in early April 2021 it appeared that Plaintiff California Trucking
8 Association was succeeding in its federal preemption attack on AB5, OOIDA moved to
9 intervene to press the Commerce Clause theory from its unique standpoint as truck
10 owner-operators based outside of California. OOIDA immediately agreed to stay its
11 motion while district court proceedings were stayed and the appeal proceedings
12 continued. The OOIDA motion was not only timely, but prescient. One week after the
13 filing of its motion to intervene, the United States Court of Appeals for the Ninth Circuit
14 reversed this Court's order and held, instead, that AB5 was not federally preempted (996
15 F.3d 644). The Court of Appeals stayed its mandate while California Trucking
16 Association sought a writ of certiorari from the United States Supreme Court. The
17 United States recently denied certiorari and the Court of Appeals issued its mandate.

18 This Court has now reconsidered its prior order dismissing the Commerce Clause
19 claim in view of the Court of Appeals' decision. Neither summary judgment nor trial has
20 been scheduled. Meanwhile, the California statute has been repealed and reenacted with
21 changes. Because the Commerce Clause question has yet to be fleshed out and because
22 OOIDA members would be the individuals most impacted by enforcement of AB5
23 among people seeking a livelihood driving their trucks into and out of California, OOIDA
24 is better-suited to prosecute its claim for relief. OOIDA's intervention as a plaintiff is
25 also timely in that while preliminary proceedings have been stayed, the statutory
26 landscape has changed and certain controlling judicial precedent has been established.

1 The standards for intervention as of right have been described in this Court's
 2 previous Order (dated January 14, 2019; Dkt. No. 21).² Courts normally “construe the
 3 Rule broadly in favor of proposed intervenors.” *United States v. City of L.A.*, 288 F.3d
 4 391, 397 (9th Cir. 2002) (quoting *United States ex rel. McGough v. Covington Techs.*
 5 *Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992)). OOIDA meets all four requirements for
 6 intervention of right.

7 For permissive intervention an applicant should show: (1) an independent ground
 8 for jurisdiction; (2) that the motion is timely; and (3) that the applicant's claim or
 9 defense, and the main action, have a question of law or a question of fact in common.
 10 *City of L.A.*, 288 F.3d at 403 (quoting *Northwest Forest Res. Council v. Glickman*, 82
 11 F.3d 825, 839 (9th Cir. 1996)). OOIDA also meets these requirements and its
 12 participation in the action would assist the Court by representing those whom the
 13 Commerce Clause generally protects, *i.e.*, truck owner-operators engaged in commerce in
 14 other states who also want to do business driving into and out of California.

15 The State Defendants oppose OOIDA's intervention. The State Defendants say
 16 that the motion is not timely. The State Defendants rely on *Kalbers v. U.S. Dep't of*
 17 *Justice*, 22 F.4th 816 (9th Cir. 2021). *Kalbers* is the most recent opinion on intervention
 18 from the Ninth Circuit. But *Kalbers* is not the most persuasive case for the State
 19 Defendants. The *Kalbers* court reversed and remanded, ordering the district court to
 20 grant intervention, because the district court abused its discretion in denying intervention.
 21 *Id.* at 828.

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 24 ² For intervention as of right under Federal Rule of Civil Procedure 24(a), the proposed
 25 intervenor must satisfy four requirements:

26 (1) the motion must be timely;

27 (2) the applicant must claim a significantly protectable interest in the action;

28 (3) the disposition of the action must as a practical matter impair or impede the
 applicant's ability to protect that interest; and

(4) the applicant's interest may be inadequately represented by the other parties.

Allied Concrete and Supply Co. v. Baker, 904 F.3d 1053, 1067 (9th Cir. 2018).

1 The State Defendants argue that the motion is untimely because it comes years
2 after multiple iterations of the complaint. Responsibility for this is properly placed upon
3 the State. Since the initial filing of the complaint, the legislature has twice enacted
4 legislation bearing on the case. AB5 was enacted September 18, 2019, only months
5 before the preliminary injunction was issued and appealed and proceedings in this court
6 were stayed. Then, during the appeal, AB2257 was enacted on September 4, 2020 while
7 proceedings in this court were stayed.

8 *Kalbers* teaches that “delay” is measured from the date the proposed intervenor
9 should have known that the existing plaintiff would no longer adequately protect its
10 interests. *Kalbers*, 22 F.4th at 824. Focusing on the date of the lawsuit or knowledge of
11 the lawsuit is “the wrong inquiry.” *Id.* Applying the correct rule to the facts here make
12 clear that OOIDA’s motion is timely. Until the Court of Appeals decided that AB5 was
13 not preempted the California Trucking Association appeared to be adequately protecting
14 OOIDA’s interests. OOIDA filed its motion, but could not very well press its motion to
15 intervene while proceedings in this Court were stayed. Once jurisdiction was returned to
16 this Court and the stay lifted, OOIDA stood ready to intervene. The motion is not
17 untimely.

18 The State Defendants also argue “undue prejudice” because intervention, in their
19 words, “is likely to lead to complication of the procedural and substantive posture of this
20 litigation.” *Oppo.* at 6. *Kalbers* dispatched a similar argument. In *Kalbers* the district
21 court’s prejudice analysis incorrectly focused on how permitting intervention would raise
22 additional complicating issues that would delay the action. The Court of Appeals was
23 unmoved, explaining, “every motion to intervene will complicate or delay a case to some
24 degree – three parties are more than two. That is not a sufficient reason to deny
25 intervention.” *Kalbers*, 22 F.4th at 825. If permitting intervention here leads to
26 complication of the issues, it will be primarily because the law at issue is complicated.
27 Complication here is not a reason to deny intervention by OOIDA. OOIDA is entitled to
28 press its interests through participation in this case.

II. CONCLUSION

For these reasons OOIDA is entitled to intervene as of right. OOIDA may also intervene as a matter of discretion. The Motion for Leave to Intervene is **GRANTED**.

IT IS SO ORDERED.

Date: September 21, 2022



HON. ROGER T. BENITEZ
United States District Judge

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