



WRD

1 Meredith E. Brown - 142134
2 Guy A. Bryant -146190
3 The Law Office of Bryant & Brown
4 476 Third Street
5 Oakland, CA 94607
6 (510) 836-7563 (Telephone)
7 (510) 836-7564 (Facsimile)

FILED
ALAMEDA COUNTY

OCT 29 2012

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

8 Attorney for Defendant
9 OAKLAND PORT SERVICES CORP. d/b/a
10 AB TRUCKING, a California Corporation,

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA

13 LAVON GODFREY and GARY GILBERT,
14 on behalf of themselves and all other similarly
15 situated,
16 Plaintiffs,
17 vs.
18 OAKLAND PORT SERVICES CORP. d/b/a
19 AB TRUCKING, and DOES 1-20
20 Defendant.

) Case No.: RG 08-379099
)
) **DEFENDANT'S OPPOSITION TO**
) **PLAINTIFF'S SUPPLEMENTAL**
) **MEMORANDUM AFTER TRIAL**
)
) Action Filed: March 28, 2008
) Hearing Date: November 16, 2012
) Dept.: 20
) Time: 2:00 p.m.
) Trial Date: February 14, 2012
) Before Honorable Judge Robert B. Freedman

21 **I. Introduction**

22 Pursuant to the October 2, 2012, Notice of Intended Decision ("NOID"), Defendant
23 OAKLAND PORT SERVICES CORP. d/b/a AB TRUCKING, a California Corporation,
24 (collectively hereinafter referred to as "AB Trucking" or "Defendant") respectfully continues to
25

1 oppose Plaintiffs' Supplemental Memorandum ("PSM") requesting damages in the amount of
2 \$1,376,160.99.

3 By way of background, the Court conducted a 10 day bench trial between February 14,
4 2012 and March 12, 2012, which included several rulings on motions that substantially reduced
5 the number of claims. On October 11, 2012, Defendant filed a written Request for Statement of
6 Decision and the matter is currently scheduled for further compliance hearing on November 16,
7 2012. At an Ex Parte hearing on October 19, 2012, the Court acknowledged that it would be
8 helpful to receive additional information regarding the applicability of the Federal Aviation
9 Administration Authorization Act ("FAAAA") which was raised during the trial. Defendant
10 appreciates the Court's careful analysis of the case and welcomes this opportunity to explain
11 further why the FAAAA is applicable to this case and precludes a judgment in favor of Plaintiffs.

12 During the trial the Court found that AB Trucking drivers and trainees were "motor
13 carriers" required to obtain Class A commercial driver's licenses and follow the Department of
14 Transportation ("DOT") Safety regulations due to the weight and size of the commercial vehicles
15 they drive (Class 8).¹ The purpose of this Opposition is to explain the relevance of the FAAAA
16 to this case given AB Trucking's status as a Motor Carrier.²

17 **II. Argument:**

18
19 **1. Under California Law FAAAA Preempts Wage and Hour Claim Against Defendant.**

20 Congress passed the Federal Aviation Administration Authorization Act ("FAAAA") in
21

22
23 ¹ Exempted from California overtime compensation requirements are "employees whose hours of service are regulated by . . . the United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13."(IWC Wage Order, 9-2001, §3.)

24 ² The FAAAA contains a broad preemption statute which declares that a state may not enact or enforce a law or regulation that is related to a price, route, or service of any motor carrier. (49 U.S.C. § 14501(c)(1).) The term "motor carrier" means a person providing commercial motor vehicle transportation for compensation. (49 U.S.C. § 13102 [14]; Mr. Aboudi testified at trial that AB Trucking's Motor Carrier number is **MC-310575**.)

1 1994, effective on January 1, 1995. As part of the FAAAA, Congress also enacted
2 §§14501(c)(1).

3 There is a current split in the Court of Appeal over whether California wage and hour
4 laws are preempted by 49 U.S.C. §14501(c). (See *Fitz-Gerald v. Skywest Airlines, Inc.* (2007)
5 155 Cal.App.4th 411 ("*Fitz-Gerald*") (holding the UCL is preempted under the Airline
6 Deregulation Act of 1978 because the challenged employment related practices related to the
7 airline's "prices, routes or services") and *People ex rel. Harris v. Pac Anchor Transportation,*
8 *Inc.* (2011) 195 Cal.App.4th 765 (holding the UCL is not preempted by 49 U.S.C. §14501(c)
9 because Pac Anchor's allegedly improper practice of treating its truckers as independent
10 contractors and not employees and not paying various employment taxes was not sufficiently
11 related to a motor carrier's "prices, routes or services.") On August 12, 2011 the California
12 Supreme Court granted Pac Anchor's petition for review in Case No. S194388. As a result, the
13 *Pac Anchor* decision cannot be cited,³ and **the decision in *Fitz-Gerald* is the current**
14 **expression of California law on the issue.**⁴

15
16 In *Fitz-Gerald*, the court ruled via summary judgment that a wage & hour class action
17 (including meals and breaks violation) filed by flight attendants was preempted by the federal
18 Railway Labor Act (RLA; 45 U.S.C. § 151 et seq.), and specifically relevant to this case, that
19
20
21
22

23 ³ The grant of review determines that the court of appeal opinion will not be published unless the supreme court
24 determines otherwise. [Cal. Rules of Court, Rule 8.1105] Unpublished opinions may not be cited as precedent. [Cal.
25 Rules of Court, rule 8.1115].

⁴ See also, *Tanen v. Southwest Airlines* (2010) 187 Cal.App. 4th 1156 holding that the ADA (49 U.S.C.
41713(b)(4).) preempts California law including a UCL cause of action for a violation of California Civil Code
§1749.5, which makes it unlawful for any person or entity to sell a gift certificate to a purchaser containing an
expiration date. The gift certificates at issue were found to be within the realm of an airline's "service".

1 application of IWC Order No. 9-2001 would violate the Airline Deregulation Act of 1978
2 (“ADA”) (49 U.S.C. §41713). (*Fitz-Gerald*, 155 Cal.App.4th at 413-414, 420.)⁵

3 The FAAAA's preemption provisions establish that Congress intended for such
4 provisions to be applied in an identical manner as the preemption provision of the ADA.⁶ Thus,
5 cases interpreting the Airline Deregulation Act's preemption clause are instructive in interpreting
6 section 14501(c) of the FAAAA. (See *City of Rockford v. Raymond*, 1999 WL 218549 at 2 n. 2
7 (N.D.Ill. 1999) (citing H.R.Rep. No. 103-677, at 85 (1994).)

8 49 U.S.C. §14501(c) states as follows:

9 “(c) Motor carriers of property.—

10 (1) General rule.--Except as provided in paragraphs (2) and (3), a State, political subdivision of a
11 State, or political authority of 2 or more States may not enact or enforce a law, regulation, or
12 other provision having the force and effect of law related to a price, route, or service of any
13 motor carrier (other than a carrier affiliated with a direct air carrier covered by section
14 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the
15 transportation of property.... ”

16 In *Rowe v. N.H. Motor Transp. Ass'n* (2008) 552 U.S. 364 (“*Rowe*”), the Supreme Court
17 held that 49 U.S.C. §14501(c) preempted two provisions of a Maine tobacco law which regulated
18 the delivery of tobacco to customers within the State. The first of the two Maine statutes at issue
19 forbade licensed tobacco retailers from employing a “delivery service” unless that service
20 followed particular delivery procedures. The Supreme Court’s opinion observed that the law
21 would require carriers to offer a system of services that the market did not provide and which the

22 ⁵ Citing *Vinnick v. Delta Airlines, Inc.*, (2001) 93 Cal.App.4th 859 [supporting ADA preemption of state labor law
23 claims] and two United States Supreme Court decisions holding that claims under a state unfair business practices
24 statute are preempted by the ADA because the state claims would impose economic regulations on airlines. (See
25 *Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374 [class action based on frequent flier program.]; *American
Airlines, Inc. v. Wolens* (1995) 513 U.S. 219 [same].)

⁶ As part of the FAAAA, Congress enacted §§14501(c)(1) along with § 41713(b)(4) together. Sections
14501(c)(1) and 41713(b)(4) are related preemption statutes which remove the states' regulatory power over motor
and intermodal carriers. The FAAAA's preemption provisions show that Congress intended for such provisions to be
applied in an identical manner as the preemption provision of the Airline Deregulation Act.

1 carriers would prefer not to offer, and the law would freeze into place services that carriers might
2 prefer to discontinue in the future. The Maine law, the Court stated, thereby produces the very
3 effect that the federal law sought to avoid, namely, a State's direct substitution of its own
4 governmental commands for "competitive market forces" in determining, to a significant degree,
5 the services that motor carriers will provide. (*Id.* at 378.)

6 The construction of the exemption given by the Supreme Court in *Rowe* was applied in
7 the two Ninth Circuit decisions of *Am. Trucking Ass'ns, Inc. v. City of L.A.* (9th Cir.2009)
8 559 F.3d 1046 and *American Trucking Associations, Inc. v. City of Los Angeles* (9th Cir.
9 2011) 660 F.3d 384 ("ATA").⁷ The Ninth Circuit's *ATA* decisions deal with the Concession
10 Agreements adopted by the Ports of Los Angeles and Long Beach which required trucking firms
11 to register and comply with various operating requirements in furtherance of the Clean Air Act
12 initiatives. The ATA challenged five requirements of the Concession Agreements on §14501
13 preemption grounds, the most significant of which was the requirement that the concessionaires
14 transition over five years to using 100% employee drivers rather than using independent owner-
15 operators. The Ninth Circuit found this provision was "... pre-empted because it is tantamount to
16 regulation" in violation of the FAAAA. (*ATA*, 660 F.3d 384 at 403.)

17
18 In *Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th
19 929 (*Viva! International*) the California Supreme Court recognized "four species of federal
20 preemption: express, conflict, obstacle, and field." (*Viva! International, supra*, 41 Cal.4th at p.
21 935.) 'First, express preemption arises when Congress 'define[s] explicitly the extent to which its
22 enactments pre-empt state law. [Citation.]....' [Citations.] Second, conflict preemption will be
23
24
25

⁷ Petition for Certiorari filed, 80 USLW 3404 (Dec 22, 2011)(NO. 11-798).

1 found when simultaneous compliance with both state and federal directives is impossible.
2 [Citations.] Third, obstacle preemption arises when ‘ “under the circumstances of [a] particular
3 case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the
4 full purposes and objectives of Congress.” ’ [Citations.] Finally, field preemption, i.e., ‘Congress’
5 intent to pre-empt all state law in a particular area,’ applies ‘where the scheme of federal
6 regulation is sufficiently comprehensive to make reasonable the inference that Congress “left no
7 room” for supplementary state regulation.’ [Citation.]” (Id. at p. 936; accord, *Bronco Wine Co. v.*
8 *Jolly* (2004) 33 Cal.4th 943, 955.)

9 In this case, express preemption under 49 U.S.C. §14501(c) prohibits the enforcement of
10 California’s meals and break law because it relates to a motor carrier’s prices, routes or services.
11 (See *Fitz-Gerald*, supra., 155 Cal.App.4th at 413-414, 420.) Field preemption requires that
12 California’s meals and break law yield to federal law where the federal statutory scheme, here
13 the FAAAA, evinces Congressional intent to occupy the entire area of regulation. (See *Parks v.*
14 *MBNA America Bank, N.A.* (June 21, 2012) ___ Cal.4th ___; Case No. WL 2345006 [holding the
15 National *Bank Act* of 1864 (13 Stat. 99) (NBA) preempts Civil Code section 1748.9 and state
16 UCL claims].)

17
18 Based on the foregoing, *Fitz-Gerald*, *Tanen*, and *Viva! International* is the law in
19 California and should be followed at this time by this Court to rule that the FAAAA preempts the
20 California meals and break law.

21 **2. Recent Federal Case Law Shows Trend Toward FAAAA Preemption Doctrine**

22
23 In *Dilts v. Penske Logistics, LLC*, (S.D. Cal. Oct. 19, 2011) 819 F.Supp.2d 1109, a
24 federal district court held that the FAAAA preempted the application of California's meal and
25 rest break laws on truck drivers. This federal court, relying on the Ninth Circuit *ATA* decision,

1 concluded that the California meal and rest break law interfered with competitive market forces
2 (price, route or service) in violation of the FAAAA. The *Dilts* court held that the goal of the
3 FAAAA is to deregulate the motor carrier industry and to help ensure that transportation rates,
4 routes, and services rely on competitive market forces. Relation to price, route, or service is
5 found where “the regulation has more than an indirect, remote, or tenuous effect on the motor
6 carrier’s prices, routes, or services.” (*Id.* at p. 9.) Even if the law does not directly regulate motor
7 carriers, preemption will apply if the effect of the regulation would be to make carriers offer
8 different services than what the market would dictate. In *Dilts*, the court concluded the
9 California meal break laws imposed conditions that affected the “frequency and scheduling of
10 transportation” and the laws impacted Penske’s “prices” because of the increased cost of
11 additional drivers, helpers, tractors, and trailers necessary to ensure off-duty breaks under
12 California law. (*Id.*)⁸

13 The plaintiffs in *Esquivel* claimed that throughout their employment, the defendants
14 scheduled their delivery routes in a way that prevented the drivers from taking duty-free meal
15 breaks and that time pressures to make deliveries by a certain time of day also prevented them
16 from taking breaks. The plaintiffs further alleged that their wage statements were inaccurate
17 because they did not include amounts allegedly due for missed meal break premiums.

18 Defendant Performance Food Group moved to dismiss the case on the grounds that the plaintiffs’
19 claims were preempted by the FAAAA, 49 U.S.C. § 14501 *et seq.* The Court agreed and
20 dismissed the case, finding the reasoning in *Dilts* applicable and persuasive, and that, as in *Dilts*,
21 “the length and timing of meal and rest breaks seems directly and significantly related to such
22

23 ⁸ Several federal courts in California since *ATA* have recently dismissed wage and hour putative class actions
24 brought by truck drivers alleging claims based on violations of California’s meal break laws, on the ground that
25 those laws (as applied to motor carrier truck drivers) are preempted by the FAAAA. (See *Esquivel et al. v. Vistar Corp. et al.*, Case No. 2:11-cv-07284 [C.D. Cal. Feb. 8, 2012]; *Campbell v. Vitran Express*, 2012 U.S. Dist. LEXIS 85509 (C.D. Cal, 2012). Please note that *Dilts*, *Esquivel* and *Campbell* are currently under appeal to the Ninth Circuit.

1 things as the frequency and scheduling of transportation,' such that requiring off-duty breaks 'at
2 specific times throughout the workday . . . would interfere with competitive market forces within
3 the . . . industry.'" (quoting *Dilts*, 2011 WL 4975520 at p. 9).

4 The plaintiffs in *Esquivel* argued that the FAAAA does not preempt California's meal
5 and rest break laws by citing to various state and federal cases, which the Court found were
6 either "fundamentally distinguishable" from cases involving meal and rest break laws or
7 unpersuasive because they predated *ATA* and *Dilts*. The plaintiffs further argued that *Dilts* was
8 an "outlier decision" and was "wrongly decided", but the Court disagreed, finding that *Dilts*
9 applied a novel test enunciated by the Ninth Circuit in *ATA* to cover a previously unanswered
10 question regarding FAAAA preemption.
11

12 In the recent case of *Campbell v. Vitran Express, Inc.*, the United States District Court for
13 the Central District of California dealt with a class action lawsuit filed against a trucking
14 company alleging that it had not provided truck drivers with meal and rest breaks as required by
15 California law. The District Court held that meal and rest break lawsuits may not be maintained
16 against California motor carriers or others who employ drivers.
17

18 In *Campbell v. Vitran Express, Inc.*, the issue presented was again whether California's
19 meal and rest break requirements related to the "rates, routes, and services" provided by the
20 motor carrier defendant. The court found that the length and timing of meal and rest breaks
21 directly affect the scheduling of transportation. The court found that when employees must stop
22 and take breaks, it takes longer to drive the same distance and companies may only use routes
23 that are amenable to the logistical requirements of scheduled breaks. Thus the court found, the
24 requirement to take breaks may interfere with otherwise tight scheduling requirements.
25

1 Defendant acknowledges that this Court is not bound by *Dilts, Esquivel, and Campbel*
2 and Defendant is not citing these cases as required authority for this Court to follow. However,
3 these cases that are pending review before the Ninth Circuit that has previously decided the *ATA*
4 decision are instructive as to how the FAAAA may soon be ultimately deemed to apply to
5 California wage and hour claims brought against motor carriers.

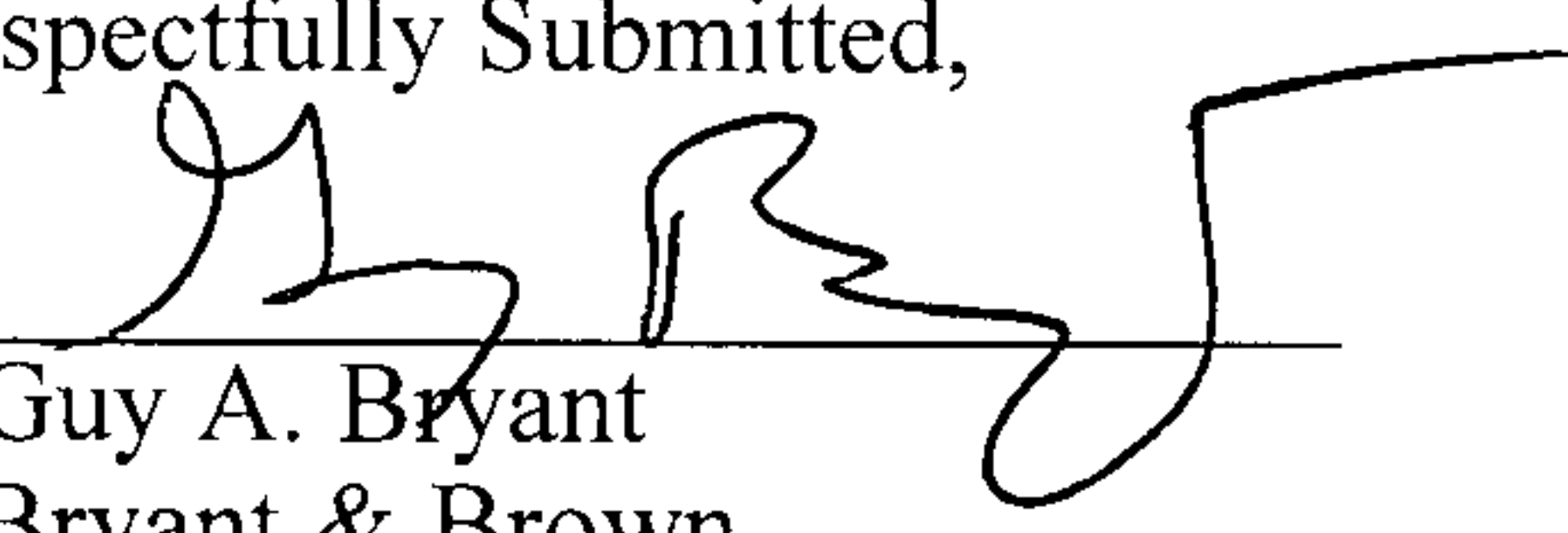
6
7 As outlined above, the Ninth Circuit in *ATA* followed the U.S. Supreme Courts rational
8 for preemption succinctly articulated in *Rowe*. As a result, the federal case law should be
9 analyzed carefully by this Court in reviewing the applicability of the FAAAA to this case.
10 Similarly, it is Defendant's strong opinion that *Fitz-Gerald, Tanen, and Viva! International*
11 requires this Court to rule that the FAAAA preempts Plaintiffs' meals and break state law claims.

12
13 **III. Conclusion:**

14 In this case, factual evidence at trial demonstrated how providing meal breaks and rest
15 breaks is related to a motor carrier's "prices, routes or services" and would interfere with
16 competitive market forces within the industry. Based on the foregoing, Defendant respectfully
17 requests the Court to deny Plaintiffs' claim for meals and rest break damages.

18
19 Dated this 29th day of October, 2012.

20
21 Respectfully Submitted,

22 
23 _____
24 Guy A. Bryant
25 Bryant & Brown
Attorney for Defendant

1 Meredith E. Brown - 142134
Guy A. Bryant -146190
2 The Law Office of Bryant & Brown
476 Third Street
3 Oakland, CA 94607
(510) 836-7563 (Telephone)
4 (510) 836-7564 (Facsimile)
5 Attorney for Defendant
OAKLAND PORT SERVICES CORP. d/b/a
6 AB TRUCKING, a California Corporation,

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA

10) Case No.: RG 08-379099
11 LAVON GODFREY and GARY GILBERT,)
on behalf of themselves and all other similarly) **PROOF OF SERVICE**
12 situated,)
13 Plaintiffs,) Action Filed: March 28, 2008
Date: May 11, 2012
14 vs.) Dept.: 20 for Trial: February 14, 2012
Before Honorable Judge Robert B. Freedman
15) Hearing Date; November 9, 2012
OAKLAND PORT SERVICES CORP. d/b/a)
16 AB TRUCKING, and DOES 1-20)
17 Defendant.)
18)
19)
20)

22 **PROOF OF SERVICE**

23 I am employed in the County of Alameda, State of California. I am over the age of 18
24 and not a party to the within action. My business address is 476 Third Street, Oakland,
California, 94607.
25 On October 29, 2012, I served the foregoing documents described as:

1 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM**
2 **AFTER TRIAL**

3 on the interested parties in this action by placing a true copy thereof enclosed in a
4 sealed envelope addressed as follows:

5 **SEE MAILING LIST INCLUDED HEREIN**

6

7 (BY MAIL) I am readily familiar with the firm's practice of collection and
8 processing correspondence for mailing. Under that practice it would be
9 deposited with U.S. postal service on that same day with postage thereon fully
10 prepaid at Oakland, California in the ordinary course of business.

11

12 (BY FACSIMILE) by faxing a true and correct copy thereof to the person(s) at the
13 fax number set forth above.

14

15 (BY FEDERAL EXPRESS) by using express mail service and causing to be
16 delivered overnight next day delivery a true copy thereof to the person(s) at the
17 address set forth above.

18

19 (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand
20 to the offices of the addressee.


21

22 (FEDERAL) I declare that I am employed in the office of a member of the bar
23 of this court at whose direction the service was made.

24

25 (STATE) I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.

GUY A. BRYANT


Signature

SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VIA U.S. MAIL ON ALL PARTIES LISTED HEREIN:

Attorney for: LAVON GODFREY and GARY GILBERT, ET AL.

David A. Rosenfeld
Lisl R. Duncan
Weinberg, Roger & Rosenfeld
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501-1091