Nos. 17-55848 and 17-55935

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSE ANGEL RAMIREZ, ET AL.,

Plaintiffs/Appellees/Cross-Appellants,

v.

XPO CARTAGE, INC. FKA PACER CARTAGE, INC.,

Defendant/Appellant/Cross-Appellee.

On Appeal from the United States District Court
for the Central District of California
No. 2:15-cv-03830

BRIEF OF AMICUS CURIAE THE STATE OF CALIFORNIA IN SUPPORT OF APPELLEES/CROSS-APPELLANTS

XAVIER BECERRA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
SATOSHI YANAI
Supervising Deputy Attorney General

MARISA HERNÁNDEZ-STERN
(SBN 282477)
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
(213) 269-6641
marisa.hernandez-stern@doj.ca.gov
Attorneys for Amicus Curiae State of California

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

FEDERAL CASES

TABLE OF AUTHORITIES
(continued)

Page

STATE CASES

FEDERAL REGULATIONS

STATE STATUTES

COURT RULES

INTRODUCTION AND INTERESTS OF AMICUS CURIAE

The State of California submits this brief as amicus curiae in support of Appellees and Cross-Appellants Jose Angel Ramirez, et al.[1]

California has a substantial interest in this litigation. The State has enacted a broad and comprehensive array of statutes in its Labor Code to regulate the employment relationship and protect California workers. On appeal, Appellant questions California's ability to adopt and enforce employment laws by contending that California Labor Code section 2802 is preempted by federal Truth in Leasing regulations. The State of California submits this brief to reinforce the fundamental principle that its inherent police powers provide it the authority to establish and enforce labor and employment standards, including section 2802.

Moreover, California has consistently maintained this position in similar matters. In the past ten years, the State has brought several enforcement actions against drayage companies, alleging, *inter alia*, that these companies misclassify their drivers as independent contractors when the drivers are, in fact, employees. Among these cases is *People ex rel.*

[1] The State files this brief pursuant to Federal Rule of Appellate Procedure 29(a)(2) ("[A] state may file an amicus-curiae brief without the consent of the parties or leave of court.").

Harris v. Pac Anchor Transportation, Inc., 59 Cal. 4th 772 (2014). In *Pac Anchor*, the California Supreme Court agreed with the State that its state law claims against defendants were not preempted by the Federal Aviation Administration Authorization Act. In its decision, the court underscored that the State's ability to regulate employment did not conflict with federal law. Other decisions of this Court, including *Dilts v. Penske Logistics, LLC,* 769 F.3d 637 (9th Cir. 2014), and *Californians for Safe & Competitive Dump Truck Transp. v. Mendoca*, 152 F.3d 1184 (9th Cir. 1998), affirm the State's authority to regulate employment in the face of federal preemption challenges.

The Court should reach the same result here and hold that Appellee Jose Ramirez's California Labor Code section 2802 claim is not preempted by federal Truth in Leasing regulations.

ARGUMENT

At issue is whether federal Truth in Leasing ("TIL") regulations, 49 C.F.R. §§ 376.1, et seq., preempt California Labor Code section 2802. The traditional police power of the State – including the power to regulate the employment relationship – cannot be preempted except where Congress has clearly intended preemption. In this case, the TIL regulations do not contain

provisions reflecting Congressional intent to preempt state laws, such as section 2802.

I. CALIFORNIA'S SOVEREIGN AUTHORITY TO REGULATE WAGES AND HOURS, INCLUDING CALIFORNIA LABOR CODE § 2802, IS NOT PREEMPTED BY THE FEDERAL TRUTH IN LEASING REGULATIONS

Preemption analysis "starts with the basic assumption that Congress did not intend to displace state law." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). Importantly,

> [i]n all pre-emption cases, and particularly in those in which Congress has legislated ... in a field which the States have traditionally occupied, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.

Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996) (internal quotation marks and citations omitted). This presumption is an essential part of the analysis "because the States are independent sovereigns in our federal system." *Id.*

Court's have long recognized that "[s]tates possess broad authority under their police powers to regulate the employment relationship to protect workers within the State." *DeCanas v. Bica*, 424 U.S. 351, 356 (1976) (superseded by statute on other grounds).

Examples of historic police powers include "[c]hild labor laws, minimum and other wage laws, laws affecting occupational health and

safety, and workmen's compensation laws." *Id.* Indeed, "the establishment of labor standards falls within the traditional police power of the State." *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 21 (1987). Moreover, states have a compelling interest in ensuring that businesses comply with state requirements imposed upon employers, including compliance with state employment standards regarding minimum wages. *See, e.g., Yoder v. Western Express, Inc.*, 181 F. Supp. 3d 704, 720 (C.D. Cal. 2015) ("California has an indisputably legitimate public interest in enforcing labor laws which protect its workers.").

Section 2802 is just one example of the State exercising its inherent authority to regulate wages and hours to protect workers from unscrupulous employers. Section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Cal. Lab. Code § 2802. When the California legislature enacted section 2802, its purpose was "to prevent employers from passing their operating expenses on to their employees." *James v. Dependency Legal Group*, 253 F. Supp. 3d

1077, 1106 (S.D. Cal. 2015).[2] Relatedly, section 2804 of the Labor Code expressly prohibits waiver of the rights provided by section 2802.

Section 376.12 of the TIL regulations provides, *inter alia*, that lease agreements between drivers and motor carriers shall clearly specify the responsibility of each party with respect to the costs of various expenses, including fuel, permits, and insurance, and the terms of any charge-back provisions. 49 C.F.R. § 376.12(e), (h), (i). Appellant contends that because the TIL regulations contemplate the possibility of differing arrangements as to whether the company or the driver assumes certain expenses, California Labor Code § 2802 may not require motor carrier employers to reimburse or indemnify employees for particular expenses.

Yet, the TIL regulations Appellant relies upon do not reveal any clear intent of Congress or the regulatory bodies empowered by Congress to supplant a state's firmly-entrenched authority to regulate employment matters. The TIL regulations do not include any express preemption provision displacing state law. And section 2802 does not conflict with the TIL regulations because it does not interfere with the federal purpose of

[2] See also *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 561-562 (2007) (providing legislative history of California Labor Code § 2802).

transparency animating the regulations, or make it impossible for a company to obey both the state and federal mandates.

Indeed, a "primary goal" of the TIL regulatory scheme is to require disclosure to "prevent large carriers from taking advantage of individual owner-operators due to their weak bargaining position." *Owner Operator Independent Drivers Ass'n, Inc. v. Swift Transp. Co., Inc.*, 367 F.3d 1108, 1110 (9th Cir. 2004). Thus, the intent of the federal TIL regulations complements rather than conflicts with California Labor § 2802 and by no means interferes with or supplants California's power to regulate employment.

Moreover, Appellant's contention that it is unable to comply with its obligations under both the TIL regulations and section 2802 rings hollow. There is no reason Appellant cannot both reimburse expenses as required by section 2802 and disclose the details of its reimbursement as required by the TIL regulations. Therefore, no conflict exists between the state and federal requirements. See *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (conflict preemption only exists "where it is impossible for a private party to comply with both state and federal requirements" or "where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and

objectives of Congress.'") (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

II. COURTS HAVE CONSISTENTLY FOUND IN VARIOUS TRUCKING CASES THAT CALIFORNIA WAGE AND HOUR LAWS ARE NOT PREEMPTED BY FEDERAL LAWS

Relying on the principle that California may exercise its authority to enact employment laws to protect workers, in *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca,* 152 F.3d 1184 (9th Cir. 1998), *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014), and *People ex rel. Harris v. Pac Anchor Transportation, Inc.*, 59 Cal. 4th 772 (2014), courts have found that generally applicable state employment regulations were not preempted by federal laws.

A. In *Mendonca* and *Dilts*, this Court found that California employment laws were not preempted by the FAAAA.

This court has previously confronted similar preemption issues in *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca,* 152 F.3d 1184 (9th Cir. 1998), and *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014).

In *Mendonca*, an association of motor carrier entities filed suit against several California State agencies seeking to prohibit the enforcement of California's Prevailing Wage Law ("CPWL"). *Mendonca*, 152 F.3d at 1186.

The motor carrier entities alleged that the CPWL was preempted by the Federal Aviation Administration Authorization Act ("FAAAA"). *Id.*

In rejecting the entities' preemption argument, this Court stated that its conclusion was "reinforced by the absence of any *positive* indication in the legislative history that Congress intended preemption in this area of traditional state power." *Id*. at 1188 (emphasis in original).

Much like in *Mendonca,* there is a paucity of any "positive indication" that the TIL regulations were intended to preempt California Labor Code section 2802. As previously indicated, the intent of both the TIL regulations and section 2802 to protect workers do not conflict with each other, and there is no other specific regulatory intent that suggests preemption.

Similarly, in *Dilts v. Penske Logistics, LLC,* 769 F.3d 637 (9th Cir. 2014), this Court concluded that the meal and rest break claims of delivery truck driver and installer employees were not preempted by the FAAAA. In *Dilts,* the plaintiff employees worked as drivers and installers, and argued that defendant Penske created a working environment that discouraged them from taking their lawfully permitted meal and rest breaks. *Id.* at 640. Defendant Penske then moved for summary judgment, contending that plaintiffs' meal and rest break allegations were preempted by the FAAAA.

This Court held that California's meal and rest break laws are not

preempted by the FAAAA. Significantly, the Court stated that California's laws are "broad laws applying to hundreds of different industries with no other forbidden connection with [the FAAAA] prices, routes, and services. They are normal background rules for almost all employers doing business in the state of California." *Id*. at 647 (internal quotation marks, citations, and alterations omitted). After dispensing with each of Penske's preemption arguments, the Court independently came to the same conclusion as amicus curiae U.S. Department of Transportation that "in the absence of explicit instructions from Congress, there is a presumption against preemption in areas of traditional state police power, including employment[.]" *Id*. at 650.

Like the meal and rest break laws at issue in *Dilts*, section 2802 is a generally applicable "background" employment regulation that applies to "hundreds of different industries." Once again, the principle that absent clear federal intent, California may exercise its sovereign power to regulate the workplace should prevail.

B. *People ex rel. Harris v. Pac Anchor Transportation, Inc.* reinforces California's police power to regulate wage and hour laws.

Decided almost simultaneously with *Dilts*, the California Supreme Court in *People ex rel. Harris v. Pac Anchor Transportation, Inc*., 49 Cal. 4th 772 (2014), examined a similar question of whether the State's unfair

competition law ("UCL") claims against a drayage trucking company were preempted by the FAAAA.[3]

In *Pac Anchor*, the State brought suit against a drayage company and its owner alleging, *inter alia*, that the defendants misclassified their employee drivers as independent contractors, failing to pay the drivers the minimum wage or reimburse employee expenses. Defendants contended that the State's UCL claims were preempted by the FAAAA.

The California Supreme Court concluded that the State's UCL claims were not preempted by the FAAAA. Relying on *Mendonca*, the court noted that "nothing in the congressional record establishes that Congress intended to preempt states' ability to tax motor carriers, *to enforce labor and wage standards*, or to exempt motor carriers from generally applicable insurance laws." *Id*. at 786 (emphasis added).

Like the courts in *Dilts*, *Penske*, and *Pac Anchor*, this court is confronted with a California State law that seeks to protect workers and arguments by a defendant employer that the law in question is preempted by

[3]*Pac Anchor* continues to be litigated by the State in Los Angeles Superior Court (*People v. Pac Anchor Transportation, Inc. et al.*, Los Angeles Superior Court No. BC397600). The court in *Pac Anchor* is not currently adjudicating any preemption claims. Its main focus is resolving issues of restitution and penalties stemming from the defendants' misclassification of its drivers.

federal authority. Much like the previously discussed decisions, the State urges this Court to recognize and extend the fundamental precedent that a state may exercise its sovereign police power in traditional matters such as employment law absent clear congressional intent to preempt state power. In the instant matter, there is no evidence that the TIL regulations seek to supplant State employment laws.

CONCLUSION

The judgment of the district court should be affirmed, and this Court should hold that Appellee Jose Ramirez's California Labor Code § 2802 claim is not preempted by federal Truth in Leasing regulations.

Dated: September 6, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
SATOSHI YANAI
Supervising Deputy Attorney General

/s/Marisa Hernández-Stern

MARISA HERNÁNDEZ-STERN
Deputy Attorney General
Attorneys for Amicus Curiae State of California

STATEMENT OF RELATED CASES

Amicus Curiae is not aware of any cases pending in this Court that are related to this case as defined in Circuit Rule 28-2.6.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Ninth Circuit Rules 32-1, and the requirements of Federal Rules of Appellate Procedure 29(a)(5), 32(a)(5) and 32(a)(6), because it is proportionately spaced serif font, has a typeface of 14 points, and contains 2120 words.

Dated: September 6, 2018

/s/Marisa Hernández-Stern

9th Circuit Case Number(s) 17-55848 and 17-55935

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

****

CERTIFICATE OF SERVICE
When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) Sep 6, 2018 .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) /s/ Alma Llamas

****

CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Signature (use "s/" format)