

Nos. 12-55705, 12-56250

**In the United States Court of Appeals
for the Ninth Circuit**

—————
MICKEY LEE DILTS, et al.
Plaintiffs-Appellants,

v.

PENSKE LOGISTICS, LLC AND PENSKE TRUCK LEASING CO., LP,
Defendants-Appellees.

—————
BRANDON CAMPBELL, et al.
Plaintiffs-Appellants,

v.

VITRAN EXPRESS, INC.
Defendant-Appellee.

UNOPPOSED MOTION TO CONSOLIDATE ARGUMENT

These appeals are set for argument before the same panel, back-to-back, on March 3, 2014. Plaintiffs-Appellants in both appeals respectfully request that the cases be consolidated for argument. Defendants-Appellees in both cases consent.

1. These two appeals present the same legal issue on materially indistinguishable facts: whether the Federal Aviation Administration Authorization Act preempts California's generally applicable requirement that employers provide workers with meal and rest breaks. The panel would therefore benefit from hearing the cases together rather than back-to-back.

2. The panel issued identical orders in each case inviting the United States to provide its views. The United States has now filed identical briefs in each case and requested leave to participate in oral argument. It would be more efficient for the United States to deliver one ten-minute argument addressing both cases and allow the Defendants-Appellees in both appeals to respond seriatim.

3. Because Plaintiffs-Appellants in both appeals will be represented by the same counsel at argument, consolidating the cases for argument would also allow us to deliver a single opening argument and a single rebuttal, rather than four separate and potentially duplicative presentations.

4. The Court has allocated 15 minutes per side in each of the two cases. The United States has requested 10 minutes. The Defendants-Appellees consent to that request, provided that the 10 minutes are subtracted from our time. Accordingly, we suggest the following division of argument, with a single rebuttal:

- Plaintiffs-Appellants in *Dilts* and *Campbell*: 20 minutes (including rebuttal)
- United States as Amicus Curiae: 10 minutes
- Defendant-Appellee Penske Logistics: 15 minutes
- Defendant-Appellee Vitran Express: 15 minutes

Alternatively, if the government's request is denied or the Court declines to subtract the government's time from ours, we suggest the following division:

- Plaintiffs-Appellants in *Dilts* and *Campbell*: 30 minutes (including rebuttal)
- Defendant-Appellee Penske Logistics: 15 minutes
- Defendant-Appellee Vitran Express: 15 minutes

CONCLUSION

Accordingly, the Court should consolidate these appeals for oral argument and allocate the time as requested in this motion.

Respectfully submitted,

/s/ Deepak Gupta

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Penske and Campbell v. Vitran Express*

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2014, I electronically filed the foregoing motion to consolidate with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system.

Dated: February 19, 2014

/s/ Deepak Gupta
Deepak Gupta