Court of Appeals No. 12-55705

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MICKEY LEE DILTS, RAY RIOS, AND DONNY DUSHAJ, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Plaintiffs-Appellants,

vs.

PENSKE LOGISTICS, LLC AND PENSKE TRUCK LEASING CO., L.P.

Defendants-Appellees

On Appeal from the United States District Court For the Southern District of California
Case No. 08CV0318 CAB (BLM)

MOTION OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS FOR LEAVE TO FILE *AMICUS* BRIEF IN SUPPORT OF APPELLANTS

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I. INTEREST OF AMICUS

International Brotherhood of Teamsters ("IBT") represents over 50,000 Californians who work as truck drivers, and several hundred thousand FAAAA-covered truck drivers in the U.S. (including at UPS, Arkansas Best Freight and Yellow Freight). IBT members do not directly benefit from California's statutes requiring rest and meal periods because almost all enjoy labor agreements guaranteeing them such breaks.[1] However, IBT-signatory employers have to compete against non-signatory employers who in light of the lower court's opinion in the instant case, have increasingly argued they are exempt from California's rest and meal period statutes. This threatens to lower the standards in the market in which IBT members and their employers compete, eventually pressuring unionized trucking companies to demand at the bargaining table that meal and rest breaks be discontinued. IBT has accordingly sought and been permitted to file an amicus

[1] See, e.g., *Cicarios v. Summit Logistics Inc.*, 133 Cal.App.4th 949, 35 Cal.Rptr.3d 243 (2005) ("The plaintiffs worked for the defendant as truck drivers and were members of the Teamsters Union Local 439. The union and the defendant were parties to a collective bargaining agreement which provided for meal periods and rest breaks. * * * the provisions relating to meal periods and rest breaks in the collective bargaining agreement are almost identical or even more generous than under state law."). Similar labor agreements are cited at notes 7-8 of the amicus brief.

brief on the issue of FAAAA preemption in *People v. Pac Anchor*, Cal. Supreme Ct. Case No. S194388.[2]

II. REASONS WHY AN AMICUS BRIEF WOULD BE DESIRABLE HERE

Subsequent to Appellants filing their reply brief in this case back in January 2013, the U.S. Supreme Court has decided a case involving FAAAA preemption which narrows the scope of such preemption, according to a number of recent federal district court decisions rejecting preemption challenges to labor standards laws. Moreover, two recent Northern District of California decisions expressly reject the logic of the decision below here as to meal and rest break requirements. The proposed amicus brief seeks to briefly present this recent caselaw. The undersigned are experienced appellate counsel who have repeatedly been granted leave to file amicus briefs in appellate courts in addition to *Pac Anchor, supra*. The undersigned's firm have extensive experience in litigating preemption issues. See, e.g., *Livadas v. Bradshaw*, 512 U.S. 107 (1994); *Garcia v. Four Points*

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[2] Just as the Chamber of Commerce was earlier allowed to file an amicus in this case, having some interest in the rule of law to be determined does not disqualify an entity or person from filing an amicus. See, e.g., *Hoptowit v. Ray*, 682 F. 2d 1237, 1260 (9th Cir. 1982) ("There is no rule, however, that amici must be totally disinterested."); *Strasser v. Doorley*, 432 F. 2d 567, 569 (1st Cir. 1970) ("by the nature of things an amicus is not normally impartial.").

Sheraton LAX, 188 Cal.App.4th 364 (2010).[3] Leave has been granted the undersigned to file amicus briefs in a number of appellate cases.[4]

III. CONCLUSION

The Court should allow IBT to file its proposed amicus brief in this matter.

Dated: September 12, 2013 Respectfully submitted,

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[3] See also *Hotel Employees & Restaurant Employees Union, Local 57 v. Sage Hospitality Resources, LLC*, 390 F.3d 20 (3rd Cir. 2004); *520 South Michigan Ave. Associates v. Shannon*, 549 F. 3d 1119 (7th Cir. 2008); *Pullen v. Standard Drywall, Inc.*, 2006 WL 3259199 (Cal. App. 4th DCA Div. 2 2006; Case No. E039352); *Illinois Hotel and Lodging Ass'n v. Ludwig*, 869 N.E.2d 846 (Ill. App. 2007); *Medina v. Chas Roberts Air Cond'g, Inc.*, 2006 WL 2091665, 11 Wage & Hour Cas.2d (BNA) 1870 (D. Ariz. 2006); *Chas Roberts Air Cond'g, Inc. v. Sheet Metal Workers Int'l Ass'n*, 2005 WL 3358217 ((D. Ariz. 2005).

[4] See, e.g., *American Hosp. Assn v. NLRB*, 499 U.S. 606, 111 S. Ct. 1539 (1999); *Eason v. Clark County School Dist.*, 303 F. 3d 1137(9th Cir. 2002); *Witte v. Clark County School Dist.*, 303 F. 3d 1137 (9th Cir. 2002); *Artichoke Joe's v. Norton*, 216 F. Supp. 2d 1084 (E.D. Cal. 2002); *In re Indian Gaming Related Cases*, 147 F. Supp. 2d 1011 (N.D. Cal. 2001); *Cal. Grocers Ass'n v. City of Los Angeles*, 254 P.3d 1019, 1027 (Cal. 2011) (federal preemption case); *Mileikowsky v. West Hills Hosp. and Medical Center*, 45 Cal.4th 1259 (2009); *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal.4th 1065 (2006); *City of Long Beach v. Department of Industrial Relations*, 34 Cal.4th 942 (2004); *Metropolitan Water Dist. of Southern California v. Superior Court*, 32 Cal.4th 491 (2004); *Zuckerman v. State Board of Chiropractic Examiners*, 29 Cal.4th 32 (2002); *Arnett v. Dal Cielo*, 14 Cal.4th 4 (1996); *Grier v. Kizer*, 219 Cal.App.3d 422 (1990); *Associated Builders & Contractors v. So. Nev. Water Authority*, 115 Nev. No. 23, 979 P.2d 224 (Nev. 1999) (federal preemption).

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Defendants-Appellees

On Appeal from the United States District Court For the Southern District of California
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BRIEF *AMICUS CURIAE* OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN SUPPORT OF APPELLANTS

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I. IDENTITY OF AMICUS AND INTEREST IN THE CASE

International Brotherhood of Teamsters (IBT) represents over 50,000 truck drivers in California and over 300,000 nationwide. Currently IBT's members usually enjoy rest and meal breaks due to their labor agreements, but must compete against employers increasingly contending they are exempt from state break requirements due to FAAAA preemption.

Filing of this amicus is permitted by FRAP Rule 29. As required by Rule 29(c)(5), IBT discloses that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money to fund preparing or submitting this brief; no one other than IBT contributed money to fund preparing or submitting this brief.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

IBT thanks this Court for the opportunity to file this brief explaining recent caselaw on FAAAA preemption. A recent Supreme Court decision has limited FAAAA preemption, *Dan's City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769 (2013). Meal and rest break laws which are not unique to trucking (as those here) are shown by recent caselaw to not be preempted by the FAAAA. That a state law increases an employer's operating costs or motivates it to treat its workforce differently cannot logically suffice to preempt state break laws because numerous basic state laws (such as workers compensation and minimum wage) have such

effects, and no appellate court has ever held those to be preempted. Indeed, the recent weight of authority in other federal courts has regularly rejected trucking company claims to FAAAA exemption from generally-applicable state minimum labor standards laws. Rest period laws are not materially different from the laws upheld elsewhere, for the notion that delivery speed is a federally-protected right for trucking companies borders on the absurd in the modern world where traffic constantly makes delivery times unpredictable. Trucking companies could go faster if no workers at warehouses or customer facilities were allowed to take breaks or take the time needed to use safety equipment, or if these companies could run trucks across private property without concern for state trespass laws, or if zoning laws did not limit the hours of operation of loading docks at numerous businesses, but Congress could never have intended to sweep away every state and local law which impacts delivery speed.

III. THE SUPREME COURT CLARIFIED FAAAA PREEMPTION IN THE *DAN'S CITY* CASE

After the last brief filed in the instant case, the Supreme Court confronted the issue of FAAAA preemption in *Dan's City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769 (2013). There, a vehicle owner brought suit against a towing company alleging that it had improperly stored and sold his vehicle in violation of state laws regulating the storage and sale of towed vehicles. *Id.* at 1775. In holding the state statutes were not preempted, the Court noted the FAAAA, unlike the ADA, only

preempts claims that relate to price, routes, or services "with respect to the transportation of property." *Id.* at 1778. Adopting language from a dissent by Justice Scalia in an earlier case, the Court noted that this phrase "`massively limits the scope of preemption' ordered by the FAAAA." Id. at 1778 (quoting *Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 449 (2002) (Scalia, J., dissenting). The Court then reasoned the plaintiffs' claims were not preempted because they were based on conduct which occurred after the vehicle was towed and were not within the preemption statute's concern with "a State's direct substitution of its own governmental commands for competitive market forces in determining (to a significant degree) the services that motor carriers will provide." *Id.* at 1779-80.

In the recent decision in *Schwann v. FedEx Ground Package System Inc.*, 2013 WL 3353776, at *4 (D. Mass. July 3, 2013, Case No. 11-11094-RGS), the court granted summary judgment to parcel company employees arguing the FAAAA did not preempt a state law which invalidated the company's classification of its drivers as independent contractors, thus subjecting it to numerous employer obligations under state law. The court held that prior cases finding FAAAA preemption of state labor laws were wrong, particularly in light of the later decision in *Dan's City*:

> Applying the holding in *Dan's City*, the court finds that the FAAAA does not preempt plaintiffs' claims. The Independent Contractor

Statute on which FedEx relies for its preemption argument serves largely a definitional purpose, identifying the class of workers protected by the Wage Laws. The Wage Laws, in turn, apply broadly to all employees of businesses located in the Commonwealth. The statute has nothing to do with the regulation of the "carriage of property." *Id.* at 1775. *** In rejecting a virtually identical preemption claim, Judge Woodlock wrote that to find the "FAAAA preempts wage laws because they may have an indirect impact on [a motor carrier]'s pricing decisions amounts to an invitation to immunize it from all state economic regulation." *Martins v. 3PD, Inc.*, 2013 WL 1320454, at *12 (D. Mass. Mar. 28, 2013). "[T]he First Circuit specifically rejected the position . . . that state regulation is preempted simply because it affects the market forces at work in its pricing decisions." *Id.*, citing *DiFiore v. Am. Airlines, Inc.*, 646 F.3d 81, 89 (1st Cir. 2011) ("We do not endorse American [Airlines]'s view that state regulation is preempted wherever it imposes costs on airlines and therefore affects fares because costs must be made up elsewhere . . . . This would effectively exempt airlines from state taxes, state lawsuits of many kinds, and perhaps most other state regulation of any consequence." (internal quotations omitted)).

Even if the Independent Contractor Statute prevents FedEx from implementing its preferred business model of classifying its delivery drivers as independent contractors (there is no reason to believe that it does not), this does not create a sufficient relationship to its prices, routes, or services to trigger preemption. Almost by definition, state employment laws (which almost always place constraints on an employer's freedom of contract) will impact the operating costs of a business subject to its regulation. But the indirect economic impact of a state law of general applicability is precisely the attenuated cause-and-effect that the First Circuit held in *DiFiore* would not trigger preemption. See also *S.C. Johnson & Son, Inc. v. Transp. Corp. of Am., Inc*, 697 F.3d 544, 558 (7th Cir. 2012) ("[L]abor inputs are affected by a network of labor laws, including minimum wage laws . . . . Changes to these background laws will ultimately affect the costs of these inputs, and thus, in turn, the price . . . or service of the outputs. Yet no one thinks the . . . FAAAA preempts these and the many comparable state laws . . . because their effect on price is too `remote.'"). Although FedEx's "significant impact" argument may have seemed plausible prior to the Supreme Court's decision in *Dan's*

> *City*, it cannot seriously be contended that the Independent Contractor Statute "concern[s] a motor carrier's transportation of property." Thus, FedEx's motion for summary judgment on the ground of preemption will be denied.

More recently, in *Gennell v. FedEx Ground Package System, Inc.*, 2013 WL 4478026 (D. N. H. August 21, 2013; Case No. 05-cv-145-PB), the court followed the same logic:

> Almost all state laws that affect a motor carrier's transportation business will have the kind of logical relation to its prices or services that FedEx complains of in this case. Zoning laws limit the places where a carrier can locate its facilities. Tax laws affect the cost of a carrier's operations. Traffic laws affect the number of deliveries that a driver can make in a day. Wage and hour laws impact the conditions under which a carrier's employees can be made to work. All of these laws have a logical relation to a carrier's prices and services because they either affect the way in which a carrier provides its services or they potentially impose costs on a carrier that could affect the prices it charges its customers. Laws of this type, however, are not ordinarily subject to preemption. See *Dan's City*, 133 S. Ct. at 1780 (noting that zoning regulations are not preempted); *DiFiore*, 646 F.3d at 89 (rejecting argument that state laws that affect a carrier's costs are necessarily preempted).
>
> As the Supreme Court recently noted in *Dan's City*, the FAAAA's preemption provision is targeted at "a State's direct substitution of its own governmental commands for competitive market forces in determining (to a significant degree) the services that motor carriers will provide." 133 S. Ct. at 1780 (quoting *Rowe*, 522 U.S. at 372). This purpose is not served when the FAAAA is construed so broadly as to require the preemption of every employee compensation statute that has a logical connection to a carrier's prices, routes, or services. Thus, FedEx's argument from logic is not sufficient to justify its preemption defense.
>
> *** FedEx conceded at oral argument that it presented no evidence to suggest that either statute actually interfered with FedEx's pricing or services. Tr. 34-35. Moreover, this is not a case where I can rely on an

> understanding of basic economics to substitute for evidence. See, e.g., *Morales*, 504 U.S. at 388 (noting that "it is clear as an economic matter that state restrictions on fare advertising have the forbidden significant effect upon fares"). In fact, in the absence of evidence, basic economics suggests that, as in fact happened in this case, FedEx should be able to comply with both statutes without changing either its prices or services merely by renegotiating its contracts with its drivers.

The very same option of renegotiation applies here: state law does not preclude an employee from waiving his break rights if done so voluntarily. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1033-40, 139 Cal.Rptr.3d 315, 273 P.3d 513 (2012). If an employer would prefer drivers not take breaks, it can offer them something which will persuade them to waive such breaks. Moreover, the amount of breaks called for by state law are brief compared to all the other things which often cause equal or greater delay for the short-haul delivery drivers at issue here, such as unexpected traffic, warehouse delays in loading, and customer delays in unloading.[1]

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[1] Indeed, state occupational laws and regulations requiring workers who wish to move heavy materials to put on back braces and/or use automatic lifting equipment so as to prevent injuries will also cause delays in movement of goods, yet is absurd to think Congress therefore intended to preempt such laws. Similarly, a motor carrier's scheduling efficiency will be impaired by state laws requiring reasonable accommodation of disabled workers by limiting their amount of driving time, or providing employees with rights to take leave for their own health conditions or for caring for family members. See, e.g., Cal. Gov. Code sections 12940, 12945.2.

The existing briefs in this action did not cite two significant Northern District of California decisions rejecting the district court's holding below and rejecting FAAAA preemption claims as to meal and rest break requirements. In *Mendez v. R & L Carriers Inc.*, 2012 WL 5868973 (N.D.Cal., Nov.19, 2012; Case No. C 11–2478 CW), Chief Judge Wilken explained:

> the decided cases offer only limited guidance here because none of them recognizes the full flexibility that California's meal and rest break laws offer employers. For instance, the decisions fail to address the fact that an employer may comply with section 226.7's rest break requirement by simply paying its employees an additional hour of wages. Cal. Lab. Code § 226.7(b); Cal. Code. Regs. tit. 8, §11090(12)(B). This option allows motor carriers to satisfy the rest break requirement without altering their routes or services whatsoever. Although the additional wages might have a slight impact on a motor carrier's prices, this impact would not be large enough to raise preemption concerns. As the Ninth Circuit recognized in *Mendonca*, generally applicable wage protections can affect a motor carrier's prices without falling under the FAAA Act's preemptive scope. 152 F.3d at 1189 (holding that even if the CPWL raised a motor carrier's prices by twenty-five percent, the effect would still be considered "no more than indirect, remote, and tenuous" for the purposes of determining FAAA Act preemption). The wage alternative thus significantly reduces section 226.7's impact on motor carrier prices, routes, and services and undercuts the reasoning of the four cases that Defendants cite, all of which assume that section 226.7 inflexibly requires motor carriers to provide drivers with numerous breaks throughout the day. Cf. *Dilts*, 819 F. Supp. 2d at 1118 ("The fairly rigid meal and break requirements impact the types and lengths of routes that are feasible.").
>
> Because of this wage alternative, the only breaks that motor carriers must actually provide to drivers are the less-frequent meal breaks. And California law allows even that requirement to be partially waived at the employee's discretion. Cal. Lab. Code § 512(a). State regulations also permit employers to provide "on-duty" meal periods

> when "the nature of the work" makes off-duty meal periods infeasible and the employee consents. Cal. Code. Regs. tit. 8, § 11090(11)(C). When combined with section 226.7's wage alternative, these waivers and on-duty meal period options could reduce the overall burden on motor carriers to providing a single thirty-minute break during any six- to twelve-hour shift. The meal and rest break laws therefore offer motor carriers significantly more flexibility than Defendants and other courts have recognized.
>
> In light of this flexibility, it is unlikely that California's meal and rest break provisions would rigidly "bind" motor carriers to particular rates, routes, or services. Accordingly, these provisions do not "relate to" motor carrier rates, routes, or services and are not preempted by the FAAA Act.

Accord, *Brown v. Wal-Mart Stores*, 2013 WL 1701581 (N.D. Cal. April 18, 2013; Case No. C 08-5221 SI) at pp. *3-4 (agreeing with Chief Judge Wilken).

In *Dan's City*, the Court mentioned zoning laws as an example of non-preempted state laws. 133 S.Ct. at 1380. Yet zoning laws significantly impact truck delivery speed and efficiency because these laws often result in restrictions upon hours of loading dock operation, or limit loading dock size or access so as to slow deliveries.[2] Decisions under zoning laws also often get in the way of truck

[2] See, e.g., Pasadena Zoning Code 17.40.070(C)("In the CD, CG, CL, CO, and IG zoning districts and within the commercial districts of specific plan areas, truck loading, unloading, and trash pick-up for any use that is located within 300 feet of a residential zoning district is allowed only between the hours of 7:00 a.m. to 9:00 p.m., Monday through Friday, and between 9:00 a.m. to 5:00 p.m. on Saturdays. No truck loading, unloading, or trash pick-up is allowed on Sundays."); *Saber v. Zoning Hearing Bd. of Borough of Roaring Spring* 526 A.2d 464, 465 (Pa. Commw. Ct. 1987)("In 1975, Appellant applied for a variance to construct a loading dock on its existing structure in the residential zone. The ZHB granted the variance, subject to conditions including the restriction of loading and unloading to

delivery speed by attracting large traffic generators (such as sports stadiums and big-box stores) to particular locations.[3] Surely Congress did not intend to turn into federal FAAAA preemption lawsuits all the many disputes over state and local decisions impacting trucking efficiency.

At the time of the FAAAA's adoption in 1994, meal break requirements existed in more than 15 states in addition to California.[4] If Congress had intended

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the hours of 7:30 am to 5:30 pm. In 1985, Appellant applied for a variance to extend the hours of operation at the loading dock to 7:30 am to 10:30 pm. *** We agree with the trial court that Appellant has not established the requisite unnecessary hardship for the grant of a variance and that the variance is not necessary to enable a reasonable use of the property."); *Milt-Nik Land Corp. v. City of Yonkers*, 24 A.D.3d 446, 449, 806 N.Y.S.2d 217, 220-21 (N.Y. App. Div. 2005) ("so much of the determination as imposed Special Condition 15, which limits the pizzeria's hours of operation, must be confirmed. The condition is proper because it relates directly to the use of the property and is intended to protect the neighboring residential properties from the possible adverse effects of the petitioner's operation, such as the anticipated increase in traffic congestion, parking problems, and noise [cites]."); *HuffPost Miami*, "Midtown Miami WalMart Denied Loading Docks Amendment by Planning and Zoning Appeals Board" (July 19, 2012)(Miami Zoning Appeals Board voted to "deny a controversial proposal that would allow WalMart to build loading docks on busy Miami Avenue in Midtown, rather than a side street as currently required.")(available at http:// www. huffingtonpost.com/2012/07/19/midtown-miami-walmart-denied-planning-zoning-vote_n_1686823.html).

[3] See, e.g., *American Canyon Community United for Responsible Growth v. City of American Canyon* , 145 Cal.App.4th 1062, 1078-80, 52 Cal. Rptr. 3d 312 (2006) (noting new project would daily add thousands of trips during each day's peak hour, likely causing increased delays at intersections).

[4] See, e.g., *Industrial Welfare Com. v. Superior Court*, 27 Cal.3d 690, 613 P. 2d 579, 166 Cal. Rptr. 331 (1980); New York State Labor Law section 162, discussed in *Matter of American Broadcasting Cos. v. Roberts*, 61 NY 2d 244, 473 NYS 2d

to strike these down, then it is most curious that the legislative history of the FAAAA contains no mention of this. See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 491 (1996) (relying on absence of legislative history indicating Congress intended to preempt state law actions prevalent at time of enactment). One likely reason for this absence is that Congress here as elsewhere recognizes state preeminence on motor safety matters,[5] but break requirements serve safety interests. A study published by the Federal Motor Carrier Safety Administration (FMCSA) from experts at Virginia Tech confirms what is known to most anyone who has ever tried to drive many hours in a day: that taking a break from driving helps prevent inattention at the wheel resulting in accidents. See Prof. M. Blanco et al, "*The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor Vehicle Operations*" (FMCSA/Virginia Tech Transportation Institute, May 2011; available at http://www.fmcsa.dot.gov/facts-research/research-technology/report/Work-Hours-HOS.pdf) at p. 76: "The results from the break analyses indicated that significant safety benefits can be afforded when

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370, 461 NE 2d 856 (1984); Society of Human Resources Management, "State Meal/Rest Break Requirements" at http://www. shrm.org./ LegalIssues/ StateandLocalResources/Stateand LocalStatutesandRegulations /Documents/ statebreaklaws.pdf (listing all states' break statutes and regulations).

[5] See 49 U.S.C. § 14501(c)(2)(A)(exempting safety from preemption clause); *City of Columbus v. Ours Garage and Wrecker Service*, 536 U.S. 424, 439 (2002) ("Congress' clear purpose in § 14501(c)(2)(A) is to ensure that its preemption of States' economic authority over motor carriers of property, § 14501(c)(1), 'not restrict' the preexisting and traditional state police power over safety.").

drivers take breaks from driving. This was a key finding in the current study and clearly shows that breaks can ameliorate the negative impacts associated with time-on-task. The benefits from breaks from driving ranged from a 30–50-percent reduction of rate of SCE[Safety-Critical Event] occurrence in the hour following a break, depending on the type of break from driving, with the most benefit occurring for off-duty (non-working) breaks."

As to Appellees' argument that compliance with California meal and rest break requirements would impose insurmountable difficulties and costs upon Appellees and similar trucking operations, it should be noted that United Parcel Service (UPS) has built a business with net profits of over $3.8 billion in 2011-2012[6] while operating under collective bargaining agreements which guarantee its many hundreds of thousands of drivers both meal and rest breaks similar to those required by California law.[7] Many tens of thousands of additional drivers work for companies, such as UPS Freight, Yellow Freight and Arkansas Best Freight

[6] SEC 10K Filing 2/28/13 by UPS at p. 21 (available at www.sec.gov/edgar).

[7] The collective bargaining agreement between the IBT and UPS consists of a National Master Agreement and various Supplementary Agreements covering different geographic regions. Meal and rest break provisions appear in the Supplementary Agreements, available at www.teamsters.org/ content/ package /download-national-master-united-parcel-service-ups.

(ABF), who successfully compete under labor agreements guaranteeing breaks similar to those required by California law.[8]

IV. CONCLUSION

The grant of summary judgment below should be reversed.

Dated: September 16, 2013 Respectfully submitted,

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International Brotherhood of Teamsters

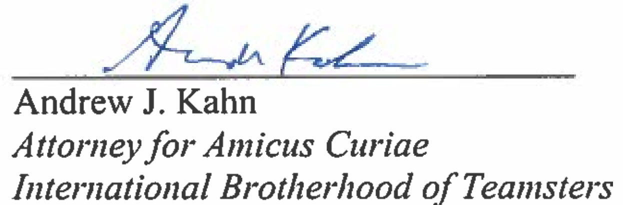
[8]The structure of the Master Freight Agreement covering Yellow Freight and ABF is similar to that of UPS – a master agreement with regional supplements. Meal and rest breaks are contained in the regional supplements available at www. teamsters.org/content/freight/view-national-master-freight-agreement-nmfa--and-regional-supplements. See,www.teamsters.org/content/freight/view-national-master-freight-agreement-nmfa-and-regional-supplements. Article 30 of the UPS Freight agreement requires the scheduling of meal periods of between thirty (30) minutes to one (1) hour, but further provides that "[m]eal periods must be taken in accordance with applicable Federal, State and Local Laws." See www.teamsters .org/content/package/UPS Freight 2008-2013-Contract.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,448 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007, font size 14, Times New Roman.

Dated: 9-16-13



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