

1 SPENCER C. SKEEN, CA Bar No. 182216
spencer.skeen@ogletree.com
2 OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
3 4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
4 Telephone: 858.652.3100
Facsimile: 858.652.3101

5
6 ROBERT R. ROGINSON, CA Bar No. 185286
robert.roginson@ogletree.com
7 ALEXANDER M. CHEMERS, CA Bar No. 263726
alexander.chemers@ogletree.com
8 OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
400 South Hope Street, Suite 1200
9 Los Angeles, California 90071
Telephone: 213.239.9800
10 Facsimile: 213.239.9045

11 Attorneys for Plaintiffs
12 CALIFORNIA TRUCKING ASSOCIATION,
RAVINDER SINGH, and THOMAS ODOM

13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA TRUCKING
ASSOCIATION, RAVINDER SINGH,
16 and THOMAS ODOM,

17 Plaintiffs,

18 v.

19 XAVIER BECERRA, in his official
capacity as the Attorney General of the
20 State of California; JULIE SU, in her
official capacity as Secretary of the
21 California Labor Workforce and
Development Agency; ANDRE
22 SCHOORL, in his official capacity as
the Acting Director of the Department of
23 Industrial Relations of the State of
California; and LILIA GARCIA-
24 BROWER, in her official capacity as
Labor Commissioner of the State of
25 California, Division of Labor Standards
Enforcement, PATRICK HENNING, in
26 his official capacity as the Director of the
Employment Development Department.

27
28 Defendants.

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

**SECOND AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs CALIFORNIA TRUCKING ASSOCIATION (“CTA”),
2 RAVINDER SINGH, and THOMAS ODOM (collectively, “Plaintiffs”) state their
3 complaint for declaratory and injunctive relief against Defendants as follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this lawsuit to vindicate their rights guaranteed by the
6 Supremacy Clause and Commerce Clause of the United States Constitution.
7 Plaintiffs seek declaratory and injunctive relief prohibiting the Defendants from
8 applying and enforcing California’s new test for whether a worker is an employee or
9 independent contractor, as interpreted by the California Supreme Court in *Dynamex*
10 *Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018) (“*Dynamex*”) and
11 subsequently codified by the California Legislature through Assembly Bill 5 (“AB-
12 5”) at Labor Code § 2750.3.

13 2. In *Dynamex*, the California Supreme Court adopted for the first time the
14 so-called “ABC test” for determining whether a worker is an employee or
15 independent contractor for purposes of Industrial Welfare Commission Wage Order
16 No. 9 (“Wage Order No. 9”), 8 Cal. Code Regs. § 11090:

17 Under this test, a worker is properly considered an
18 independent contractor to whom a wage order does not
19 apply only if the hiring entity establishes: (A) that the
20 worker is free from the control and direction of the hirer in
21 connection with the performance of the work, both under
22 the contract for the performance of such work and in fact;
23 (B) that the worker performs work that is outside the usual
24 course of the hiring entity’s business; and (C) that the
worker is customarily engaged in an independently
established trade, occupation, or business of the same
nature as the work performed for the hiring entity.

25 *Dynamex*, 4 Cal. 5th at 916-917.

26 3. On September 11, 2019, the California Legislature passed AB-5, which
27 was signed by Governor Gavin Newsom a week later on September 18, 2019. It was
28 “the intent of the [California] Legislature in enacting [AB-5] to include provisions

1 that would codify the decision of the California Supreme Court in *Dynamex* and
2 would clarify the decision’s application in state law.” AB-5, Section 1. Pursuant to
3 Section 2 of AB-5, Section 2750.3(a)(1) of the California Labor Code will provide
4 that:

5 [A] person providing labor or services for remuneration
6 shall be considered an employee rather than an independent
7 contractor unless the hiring entity demonstrates that all of
8 the following conditions are satisfied:

9 (A) The person is free from the control and direction
10 of the hiring entity in connection with the
11 performance of the work, both under the contract for
12 the performance of the work and in fact.

13 (B) The person performs work that is outside the
14 usual course of the hiring entity’s business.

15 (C) The person is customarily engaged in an
16 independently established trade, occupation, or
17 business of the same nature as that involved in the
18 work performed.

19 4. The ABC test set forth in the preceding paragraph will apply not only to
20 the determination under Wage Order No. 9 and other wage orders of whether a
21 worker is an employee or independent contractor, but also to whether the worker is
22 an employee under the Labor Code and the Unemployment Insurance Code unless
23 one of the narrow exceptions set forth in AB-5 applies. The new statute takes effect
24 on January 1, 2020.

25 5. Many of CTA’s members regularly contract with individual
26 independent contractors who own and operate their own trucks (“owner-operators”)
27 to provide interstate trucking services to customers in California and other states in
28 accordance with federal and state regulations governing the transportation of
property.

6. Prior to *Dynamex*, it was lawful for CTA’s members who contracted
with owner-operators to treat them as independent contractors and not employees for
purposes of California’s labor laws. Now, however, under the ABC test adopted in
Dynamex and codified at Labor Code § 2750.3, each motor-carrier member of CTA

1 that continues to use individual owner-operators to provide trucking services for their
2 customers must treat such workers as employees and will be required by law to
3 provide them with all protections that California law affords to employees.

4 7. Given the realities of trucking, it would be impracticable if not
5 impossible for CTA's motor-carrier members to provide interstate trucking services
6 by contracting with independent owner-operators and to simultaneously comply with
7 California's onerous requirements for employees. The direct and real consequence
8 of *Dynamex* and AB-5, therefore, is that CTA's motor-carrier members, if they wish
9 to avoid significant civil and criminal penalties, must cease contracting with owner-
10 operators to perform trucking services for customers in California and to shift to
11 using employee drivers only when operating within the State.

12 8. Plaintiffs SINGH and ODOM are owner-operators who regularly
13 contract with licensed motor carriers to provide trucking services in California and in
14 other states. Under the ABC test adopted in *Dynamex* and now codified by AB-5,
15 Plaintiffs SINGH and ODOM will, by operation of law, be deemed to be the
16 employees of any motor carrier that enters into a contract with them to provide
17 trucking services in California. Because it would be impracticable for motor carriers
18 to contract with individual owner-operators to provide such services, motor carriers
19 will risk potential liability whenever they contract with owner-operators to provide
20 trucking services. The prospect of liability resulting from AB-5 will discourage, if
21 not outright prevent, motor carriers from contracting with Plaintiffs SINGH and
22 ODOM, thereby harming their businesses.

23 9. Plaintiffs seek a declaration that the ABC test set forth in AB-5 (and,
24 before it, Wage Order No. 9 as interpreted in *Dynamex*) is preempted by the Federal
25 Aviation Administration Authorization Act of 1994 ("the FAAAA"), 49 U.S.C. §
26 14501, and a corresponding injunction prohibiting Defendants from attempting to
27 apply or enforce Prong B of the ABC test under AB-5 or the preceding interpretation
28 in *Dynamex*. Prong B of the ABC test under AB-5 (and, before it, Wage Order No. 9

1 as interpreted in *Dynamex*) is expressly preempted by the FAAAA because the
2 requirement that motor carriers treat all drivers as employees and the concomitant *de*
3 *facto* prohibition on motor carriers contracting with independent owner-operators to
4 perform trucking services in California directly impacts the services, routes, and
5 prices offered by CTA’s motor-carrier members to their customers. Prong B of the
6 ABC test under AB-5 (and the preceding interpretation of Wage Order No. 9) is also
7 impliedly preempted by the FAAAA insofar as the ABC test effectively bars CTA
8 motor-carrier members from using individual owner-operators to provide trucking
9 services to their customers is an obstacle to the achievement of “Congress’
10 overarching goal” of “helping assure transportation rates, routes, and services that
11 reflect ‘maximum reliance on competitive market forces.’” *Rowe v. N.H. Motor*
12 *Transp. Ass’n*, 552 U.S. 364, 371 (2008). Further, Prong B of the ABC test imposes
13 an impermissible burden on interstate commerce and thus violates the Commerce
14 Clause of the United States Constitution.

15 10. Insofar as application of *Dynamex* and AB-5 would compel motor
16 carriers to comply with the meal and rest period requirements under California law,
17 Plaintiffs also seek a declaration that such meal and rest period requirements are
18 preempted by the Motor Carrier Safety Act (the “MCSA”), 49 U.S.C. § 31141, and a
19 corresponding injunction prohibiting Defendants from attempting to apply or enforce
20 such meal and rest period provisions.

21 JURISDICTION AND VENUE

22 11. This action arises under the Constitution and laws of the United States,
23 including the Supremacy Clause, U.S. Const. art. VI, § 3; the Commerce Clause,
24 U.S. Const., art. 1, § 8; the FAAAA, 49 U.S.C. §§ 14501(c), 14504a(c), and 14506;
25 the MCSA, 49 U.S.C § 31141; and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983
26 and 1988. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 2201.

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1 12. This is a proceeding for declaratory judgment and injunctive relief
2 under 28 U.S.C. §§ 2201-2202 and the Supremacy Clause and Commerce Clause of
3 the United States Constitution. This action presents an actual controversy within the
4 Court’s jurisdiction.

5 13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
6 because the transportation services provided by the individual Plaintiffs and other
7 motor carriers whose interests are represented by CTA were contracted for and
8 carried out within the geographical boundaries of this district, such that a substantial
9 part of the events giving rise to the claim occurring in this district.

10 **PARTIES**

11 14. CTA is an association devoted to advancing the interests of its motor-
12 carrier members who provide transportation services in California. CTA promotes
13 advocacy, safety, and compliance with all applicable state and federal laws on behalf
14 of its members, including motor-carrier members operating in California.

15 15. CTA members are licensed motor-carrier companies that manage,
16 coordinate, and schedule the movement of property throughout California in
17 interstate commerce through so-called “motor contract carrier permits” issued by the
18 Federal Motor Carrier Safety Administration (“FMCSA”), a division of the U.S.
19 Department of Transportation (“DOT”). Many of CTA’s members are based in this
20 judicial district, and many other CTA members are based elsewhere but provide
21 transportation services in this judicial district. Many of CTA’s motor-carrier
22 members contract with owner-operators as independent contractors to provide
23 interstate trucking services to their customers in and between several states,
24 including California, and treat these owner-operators as independent contractors
25 rather than employees and are therefore directly impacted the *Dynamex* opinion.

26 16. Plaintiff RAVINDER SINGH is an individual residing in Fremont,
27 California. Plaintiff SINGH owns and operates his own truck and performs trucking
28 services for different motor carriers and brokers in California. He contracts with and

1 is treated by these motor carriers as an independent contractor and not an employee.

2 17. Plaintiff THOMAS ODOM is an individual residing in Madera,
3 California. Plaintiff ODOM owns and operates his own truck and performs trucking
4 services for a national motor carrier hauling property in California and between
5 California and Texas. He contracts with and is treated by these motor carriers as an
6 independent contractor and not an employee.

7 18. Defendant Xavier Becerra is the Attorney General of California and is
8 charged with enforcing and defending all state laws. California's wage orders are
9 constitutionally authorized, quasi-legislative regulations that have the force of law.
10 *See* Cal. Const., art. XIV, § 1; Cal. Labor Code §§ 1173, 1178, 1178.5, 1182, 1185;
11 *Industrial Welfare Comm'n v. Superior Court*, 27 Cal. 3d 690, 700-703 (1980).
12 Because this action challenges the constitutional validity of the wage order as
13 authoritatively interpreted by the California Supreme Court (*see Auto Equity Sales,*
14 *Inc. v. Superior Court of Santa Clara County*, 369 P.2d 937, 939 (1962)
15 ("The decisions of this court are binding upon and must be followed by all the state
16 courts of California")), the Attorney General is an appropriate party to defend this
17 action. *See* Cal. Gov't Code § 12510 *et seq.*

18 19. Defendant Julie Su is the Secretary of the California Labor and
19 Workforce Development Agency. The Labor and Workforce Agency is an executive
20 branch agency overseeing the Department of Industrial Relations and its Divisions,
21 including the Division of Labor Standards Enforcement and the Industrial Welfare
22 Commission, the Employment Development Department, and the California
23 Unemployment Insurance Appeals Board. *See* Cal. Gov't Code § 12813.

24 20. Defendant Andre Schoorl is the Acting Director of the Department of
25 Industrial Relations, an executive agency in California that is charged with
26
27
28

1 defending, amending, and republishing California’s wage orders.¹ See Cal. Labor
2 Code § 1182.

3 21. Defendant Lilia Garcia-Brower is the Labor Commissioner of the
4 California Department of Industrial Relations, which is a department of the
5 California Labor and Workforce Development Agency. The Office of the Labor
6 Commissioner (also known as the State “Division of Labor Standards Enforcement,”
7 or “DLSE”) is specifically empowered by the Legislature to interpret and enforce the
8 Industrial Welfare Commission (“IWC”) wage orders, including Wage Order No. 9.
9 See Cal. Labor Code §§ 61 and 1193.5. The DLSE investigates complaints and takes
10 enforcement actions against companies, including motor carriers, seeking to impose
11 penalties on the basis that the company has misclassified employees as independent
12 contractors. Enforcement actions taken by the DLSE include audits of payroll
13 records, collection of unpaid wages, and issuing citations for violations of any
14 applicable wage order and Labor Code provisions. The DLSE also adjudicates wage
15 claims, pursuant to California Labor Code §§ 96 and 98, on behalf of drivers who
16 file claims contending that they are employees misclassified as independent
17 contractors.

18 22. Defendant Patrick Henning is the Director of the Employment
19 Development Department. The Employment Development Department is
20 specifically empowered by the Legislature to interpret and enforce the
21 Unemployment Insurance Code. See Unemployment Ins. Code § 317.

22 GENERAL ALLEGATIONS

23 Federal Regulation Of The Trucking Industry

24 23. Prior to 1980, both federal and state governments regulated the trucking
25

26 ¹ The Industrial Welfare Commission, a five-member commission within the
27 Department of Industrial Relations (Cal. Labor Code § 70), is charged by statute with
28 promulgating wage orders for various industries. Cal. Labor Code § 517. Although
the IWC was defunded by the Legislature effective July 1, 2004, its wage orders
remain in effect. *Bearden v. U.S. Borax, Inc.*, 138 Cal. App. 4th 429, 434 (2006).

1 industry. These regulations dictated, both directly and indirectly, how transportation
2 services could be provided and the prices that could be charged for those services.

3 24. In 1980, Congress passed the Motor Carrier Act, which deregulated
4 interstate trucking so that the rates and services offered by licensed motor carriers
5 and related entities would be set by the market rather than by government regulation.
6 79 Stat. 793.

7 25. Fourteen years later, in 1994, to bolster deregulation, Congress included
8 a provision within the FAAAA that expressly preempts state regulation of the
9 trucking industry:

10 [A] State... may not enact or enforce a law, regulation, or
11 other provision having the force and effect of law *related*
12 *to a price, route, or service of any motor carrier* (other
13 than a carrier affiliated with a direct air carrier covered by
14 section 41713(b)(4)) or any motor private carrier, broker,
or freight forwarder with respect to the transportation of
property.

15 49 U.S.C. § 14501(c)(1) (emphasis added).

16 26. In enacting the FAAAA, Congress' "overarching goal" was "helping
17 ensure transportation rates, routes, and services that reflect maximum reliance on
18 competitive market forces, thereby stimulating efficiency, innovation, and low
19 prices, as well as variety and quality." *Rowe*, 552 U.S. at 371 (internal quotations
20 omitted). The FAAAA's express-preemption provision furthers this purpose by
21 "prevent[ing] States from undermining federal regulation of interstate trucking"
22 through a 'patchwork' of state regulations." *Am. Trucking Ass'ns v. City of Los*
23 *Angeles*, 660 F.3d 384, 395-96 (9th Cir. 2011), *rev'd on other grounds*, 133 S. Ct.
24 2096 (2013).

25 27. The United States Supreme Court has explained that the "ban on
26 enacting or enforcing any law 'relating to rates, routes, or services is most sensibly
27 read . . . to mean States may not seek to impose their own public policies or theories
28 of competition or regulation on the operations of [a motor] carrier." *Am. Airlines*,

1 *Inc. v. Wolens*, 513 U.S. 219, 229 n.5 (1995).²

2 28. Deregulation requires not only that states not interfere with the ability of
3 private parties to contract, but also that they not interfere with the enforcement of
4 those contracts. “Market efficiency requires effective means to enforce private
5 agreements.” *Wolens*, 513 U.S. at 230 (quotation marks omitted). Moreover, “[t]he
6 stability and efficiency of the market depend fundamentally on the enforcement of
7 agreements freely made, based on the needs perceived by the contracting parties at
8 the time.” *Id.*

9 **The Owner-Operator Model**

10 29. For decades, the trucking industry has heavily relied on the owner-
11 operator model—which involves the use by licensed motor carriers of independent
12 contractors who own and operate their own trucks—to provide the transportation of
13 property in interstate commerce. A motor carrier’s ability to contract with
14 independent contractors is necessary because the demand for, duration of, and
15 volume of trucking services provided by individual motor carriers fluctuates
16 significantly.

17 30. In many segments of the national economy, the volume of trucking
18 services needed varies over time based on numerous factors. In the agricultural
19 industry, for example, the demand for trucking services varies depending on the
20 time of year, the price at which the produce can be sold, the available markets (both
21 foreign and domestic) for the produce, the length of the growing season, and the size
22 of the crop, which itself varies based on the temperature, rainfall, and other factors.
23 Likewise, a motor carrier could have an abundance of jobs during the growing
24 season, but a small number of such jobs during the winter months.

25

26 ² Although *Wolens* was interpreting the Airline Deregulation Act (“ADA”), the
27 FAAAA’s preemption clause borrows its language directly from the ADA and courts
28 analyze the two acts similarly. *Rowe*, 552 U.S. at 370 (“when judicial interpretations
have settled the meaning of an existing statutory provision, repetition of the same
language in a new statute indicates, as a general matter, the intent to incorporate its
judicial interpretations as well”) (internal quotation marks and alteration omitted).

1 31. Motor carriers offer many types of trucking services including, but not
2 limited to, conventional trucking, the transport of hazardous materials, refrigerated
3 transportation, flatbed conveyance, intermodal container transport, long-haul
4 shipping, movement of oversized loads, dedicated trucking, less-than-truckload
5 shipping, and dump-truck haulage.

6 32. In order to meet this fluctuating demand for highly varied services,
7 motor carriers contract with owner-operators to provide trucking services. Because
8 the demand for shipment of goods fluctuates depending on the season, consumer
9 demand, overseas orders, natural disasters, type of truck, and a multitude of other
10 factors, many motor carriers depend on the use of individual owner-operators to
11 provide consistent, uninterrupted, skilled, and specialized trucking services to their
12 customers.

13 33. Given the sizable investment that is necessary to acquire and maintain a
14 truck, the fluctuating demand for trucking services generally, the sporadic demand
15 for specialized trucking services in particular, and other related considerations, it
16 would be extremely difficult if not impossible for a motor carrier doing business in
17 California, particularly a smaller motor carrier, to own (or finance) and maintain a
18 fleet of trucks operated by employee drivers that is sufficiently large to service their
19 customers' needs for specialized trucking services or haulage during times of peak
20 demand.

21 34. Rather, because demand for their various services fluctuates, sometimes
22 widely, throughout the year, motor carriers need to be able to expand and contract
23 their capacity to provide transportation services at a moment's notice. For example,
24 if a motor carrier owned and operated its own fleet of sixty (60) trucks and employed
25 only sixty (60) employee drivers to operate those trucks, that motor carrier would not
26 be able to provide trucking services to a customer or group of customers when such
27 customers needed a total of eighty (80) trucks on a particular day. Conversely, a
28 motor carrier that is permitted to use independent contractor owner-operators could

1 simply contract with individual owner-operators to provide the twenty (20)
2 additional trucks needed.

3 35. Employing a business model that is common both nationally and in
4 California, individual owner-operators typically work for themselves for a period of
5 time to build up their experience and reputation in the industry. When such an
6 owner-operator is ready to expand his or her business, that owner-operator will
7 contract for or bid on jobs that require more than one truck. At that time, the owner-
8 operator will subcontract with one or more other owner-operators to complete the
9 job.

10 36. Eventually, the owner-operator may have enough business to warrant
11 hiring one or more employee-drivers. In this way, the owner-operator model enables
12 small businesses to grow from one-truck, one-driver operations to larger fleets with
13 multiple trucks and multiple employee-drivers.

14 37. Many individual owner-operators have invested in specialized
15 equipment and have obtained the skills to operate that equipment efficiently. Some
16 of these owner-operators have unique and expensive equipment not available in the
17 fleet of other trucking companies. This can make them more attractive to other
18 motor carriers that need to increase their freight-hauling capacity during the course
19 of the year, because they can obtain the services of additional drivers and equipment
20 without having to make large capital investments in either skilled operators or
21 expensive equipment.

22 **The ABC Test Prevents Motor Carriers**
23 **From Contracting With Owner-Operators**

24 38. Individually and together, the California Labor Code and Wage Order
25 No. 9 set forth wide-ranging requirements on employers.

26 39. The California Labor Code imposes numerous obligations on
27 “employers” with respect to “employees.” Such obligations attach “[a]t the time of
28 hiring,” when an employer must provide a detailed notice to employees setting forth

1 many categories of information. Labor Code § 2810.5. And these obligations
2 continue through the last day that the employee works, with all wages due on the last
3 day of employment. Labor Code § 202. Each day in between and during
4 employment, the employer is subject to detailed requirements governing hours and
5 days of work, minimum wages, reporting time pay, recordkeeping and wage
6 statements, meal periods, rest periods, uniforms and equipment, expense
7 reimbursement, and other matters.

8 40. In order to satisfy these obligations, employers must exercise sufficient
9 control over the working conditions of their employees to ensure that they are
10 provided the protections set forth in the Labor Code. The requisite control includes,
11 among other things, tracking all hours worked by the employee to fulfill the
12 recordkeeping and minimum-wage requirements; implementing and maintaining
13 lawfully compliant compensation plans; issuing itemized wage statements that
14 include many categories of information; managing the employee’s tasks and work
15 schedule to ensure compliance with the meal and rest-period requirements as well as
16 the reporting-time requirements; identifying, providing, and maintaining the tools
17 and equipment necessary to the performance of the job; as well as reimbursing
18 employees for such items.

19 41. Similar obligations exist in Wage Order No. 9, which was promulgated
20 by the IWC to govern the working conditions of employees in the transportation
21 industry. Wage Order No. 9 defines the “Transportation Industry” to mean “any
22 industry, business, or establishment operated for the purpose of conveying persons or
23 property from one place to another whether by rail, highway, air, or water, and all
24 operations and services in connection therewith; and also includes storing or
25 warehousing of goods or property, and the repairing, parking, rental, maintenance, or
26 cleaning of vehicles.” Wage Order No. 9, § 2(P).

27 42. Like the Labor Code, Wage Order No. 9 imposes numerous obligations
28 on “employers” with respect to “employees,” including detailed requirements

1 governing hours and days of work, minimum wage, reporting time pay,
2 recordkeeping, and so forth. Wage Order No. 9 also requires that employers engage
3 in a similarly high level of control over their employees to ensure that these
4 obligations are met.

5 43. Prior to the adoption of the ABC test in *Dynamex* and now AB-5,
6 CTA's motor-carrier members operating in California could—and did—lawfully
7 contract with and treat owner-operators as independent contractors and not as
8 “employees” within the meaning of the Labor Code and Wage Order No. 9.
9 Accordingly, prior to *Dynamex* and AB-5, CTA's motor-carrier members contracted
10 with owner-operators without incurring obligations to them under the Labor Code or
11 Wage Order No. 9 and without risking an enforcement action or private
12 misclassification suit in which such owner-operators would inevitably be deemed
13 employees for purposes of California law.

14 44. In *Dynamex*, the California Supreme Court announced a new
15 interpretation of Wage Order No. 9 for purposes of classifying workers as either
16 employees (and thus covered by numerous obligations) or independent contractors
17 (and thus outside the ambit of numerous rules).

18 45. As noted above, *Dynamex* adopted the so-called “ABC test” for
19 classifying workers, which has now been codified by AB-5. Under Prong B of the
20 ABC test, an individual is deemed an employee rather than an independent
21 contractor unless he or she “performs work that is outside the usual course of the
22 hiring entity's business.”

23 46. Because drivers perform work that is within rather than outside the
24 usual course of a motor carrier's business, the unavoidable effect of Prong B is to
25 automatically classify every driver who works for a motor carrier as an “employee”
26 under the Labor Code and Wage Order No. 9, no matter the actual and contractual
27 relationship between the driver and the motor carrier. As a consequence, under the
28 new ABC test, all motor carriers operating in California, including CTA's motor-

1 carrier members, are required to extend to all drivers, including owner-operators who
2 heretofore have been lawfully treated as independent contractors under prior law, the
3 full range of benefits mandated by the Labor Code and Wage Order No. 9 and to
4 otherwise comply with the regulatory and statutory requirements with respect to such
5 drivers. Motor carriers that fail to do so face the significant risk of civil and criminal
6 liability arising from the violation of the Labor Code and Wage Order No. 9.

7 47. As a practical matter, for a motor carrier to comply with the Labor Code
8 and Wage Order No. 9—which include detailed requirements governing hours and
9 days of work, minimum wages, reporting-time pay, meal periods, rest periods,
10 uniforms and equipment, recordkeeping, itemized wage statements, reimbursement,
11 and other matters—the motor carrier must exercise significant control over each
12 driver’s route and working conditions. It would be impracticable if not impossible
13 for CTA’s motor-carrier members to continue using the owner-operator model, under
14 which they contract with independent drivers to perform particular shipments, while
15 exercising the degree of control over the drivers that would be required to ensure
16 compliance with the Labor Code and Wage Order No. 9. Therefore, to avoid
17 violating the Labor Code and Wage Order No. 9 under the new ABC test, motor
18 carriers operating in California, including CTA’s members, will be forced to
19 discontinue using the owner-operator model and instead use only employees to
20 provide trucking services to their customers.

21 48. Conversely, because motor carriers cannot as a practical matter comply
22 with the substantive requirements of the Labor Code and Wage Order No. 9 when
23 they contract with individual owner-operators to perform trucking services, motor
24 carriers that continue to employ that business model will risk significant civil and
25 criminal liability arising from the violation of these statutes. As a result, motor
26 carriers will cease using individual owner-operators to perform trucking services and
27 will hire employee drivers to perform such services. The ABC test, as construed in
28 *Dynamex* and codified by AB-5, therefore, undermines the economic viability of

1 independent owner-operators. As a consequence, owner-operators, who have
2 invested considerable amounts in their businesses (including for the purchase of
3 vehicles), face the prospect of being forced to abandon their business and losing the
4 freedom that comes with being small-business owners.

5 49. AB-5 contains a series of exceptions for specific professions and
6 industries, which can be found at the newly enacted Labor Code § 2750.3(b)-(h).
7 None of these exceptions apply to the relationships between motor carriers and
8 individual owner-operators. For example, there is a narrow exception for persons
9 performing work “pursuant to a subcontract in the construction industry,” or
10 providing “construction trucking services” (with the latter exception also set to
11 expire on December 31, 2021). Labor Code § 2750.3(f).

12 50. Likewise, there is a narrow exception for a “*bona fide* business-to-
13 business contracting relationship,” which requires the independent contractor to
14 satisfy twelve separate criteria. Labor Code § 2750.3(e). Plaintiffs SINGH and
15 ODOM cannot satisfy those criteria, including the requirements that a business
16 operate a “business location that is separate from the business or work location of the
17 contracting business,” “advertise[] and hold[] itself out to the public” to provide
18 services, “negotiate its own rates,” and “set its own hours and location of work.” For
19 similar reasons, CTA’s motor-carrier members will be unable to recast their historic
20 use of owner-operators as falling within the “business-to-business” exception. That
21 AB-5 specifically excludes motor carriers and owner-operators like SINGH and
22 ODOM from the scope of Section 2750.3(e) was made clear by the sponsor of AB-5,
23 Assembly Member Lorena Gonzalez. On September 11, 2019, shortly before AB-5
24 was enacted, Assembly Member Gonzalez discussed the “business-to-business”
25 exception during floor debate. She noted that Section 2750.3(e) was not intended to
26 encompass Plaintiffs, since “we are . . . getting rid of an outdated broker model that
27 allows companies to basically make money and set rates for people that they called
28 independent contractors that act a lot like employees.”

1 51. The intent and impact of the *Dynamex* decision and now AB-5 is
2 clear—motor carriers can no longer contract with independent owner-operators and
3 must shift to using an employee-only business model.

4 **The Impact Of The ABC Test On Services, Routes, And Prices**

5 52. Because the ABC test effectively makes it unlawful for motor carriers to
6 contract with individual owner-operators to provide trucking services, and as a
7 practical matter, requires them to use employee drivers instead if they wish to avoid
8 liability, it will significantly alter the services that the motor carriers provide to their
9 customers. Forced by *Dynamex* and now AB-5 to cease using the owner-operator
10 model, motor carriers will no longer have the ability to provide the diverse and
11 specialized services they were able to provide prior to adoption of the ABC test.
12 Until now, motor carriers have contracted with owner-operators to acquire access on
13 a short-term basis to the trucks and skilled drivers necessary to accommodate peak
14 demand and customers' specialized trucking needs. Given their limited
15 capitalization and access to financing, it is not feasible for motor carriers to maintain
16 the diverse fleets and large workforces that they would need in order to offer
17 equivalent service using employee drivers. As a result, because they do not currently
18 have and cannot feasibly acquire and maintain the equipment, personnel, and
19 experience necessary to perform certain jobs using employee drivers, these motor
20 carriers must either stop providing certain services for their customers or continue
21 doing so using owner-operators and face the risk of civil and criminal liabilities
22 arising from the violation of the Labor Code and Wage Order No. 9.

23 53. Due to the variable demand for freight transportation, effectively
24 compelling motor carriers to cease contracting with independent owner-operators
25 and to instead use only employee drivers will significantly impact the services that
26 motor carriers provide to their customers. Customers of motor carriers rely upon
27 motor carriers for the timely pick-up and delivery of freight, which is typically
28 required by a specified time or within a specified window of time. Customers rely

1 upon these pick-up and delivery times for the efficiencies of their own operations
2 (*i.e.*, scheduling personnel to perform loading and unloading, arranging for future
3 distribution of the goods, etc.). Customers factor compliance with pick-up and
4 delivery times into the compensation paid to motor carriers to ensure efficient
5 productivity and to avoid disruption to the movement of goods. Motor carriers
6 contract with owner-operators to fulfill these customer demands, recognizing that the
7 owner-operator is limited only by federal safety and hours-of-service regulations and
8 the owner-operator's own capacity and willingness to perform the requested services.
9 By effectively rendering all drivers employees within the meaning of the Labor Code
10 and Wage Order No. 9 and thereby imposing burdens and constraints on motor
11 carriers far beyond those imposed on the owner-operators with whom they have
12 contracted until now and would otherwise continue to contract, *Dynamex* and now
13 AB-5 significantly impair motor carriers ability to provide—and their customers'
14 ability to obtain—timely, peak, and/or specialized trucking services.

15 54. Effectively prohibiting motor carriers from contracting with individual
16 owner-operators and requiring that such drivers be treated as employees entitled to
17 the protections of the Labor Code and Wage Order No. 9 also directly impacts the
18 routes that a motor carrier must use when providing services to its customers. This is
19 true for at least three distinct reasons. First, routes must be reconfigured by the
20 motor carriers to ensure drivers are able to park the trucks legally and safely in order
21 to take the meal and rest periods mandated by California law. Second, motor carriers
22 must reconfigure and consolidate routes to minimize, through increased efficiency,
23 the effect of the higher fixed costs associated with owning vehicles and the decreased
24 productivity, greater fuel consumption, and increased emissions in using employee
25 drivers subject to the Labor Code and Wage Order No. 9. Third, for motor carriers
26 that contract with owner-operators to provide interstate trucking services originating
27 or terminating in other states, such motor carriers must reconfigure routes to arrange
28 for the transfer and movement of any cargo within California by employee drivers

1 only.

2 55. The prices that a motor carrier charges its customers are also directly
3 impacted by the effective foreclosure of the use of independent-contractor owner-
4 operators. Because a motor carrier incurs significantly more expenses maintaining a
5 fleet of trucks and employee drivers than it does using individual owner-operators
6 driving trucks that they own, forcing motor carriers to hire employees rather than
7 contracting with independent contractors will materially increase motor carriers'
8 costs. The additional costs include the expenses of exercising the control over the
9 drivers and the drivers' operations that is necessary to ensure that the full panoply of
10 protections required under the Labor Code and Wage Order No. 9 are provided to the
11 drivers; the related training and benefits costs; costs in lower productivity from
12 employee drivers as compared to individual owner-operators; and the capital
13 expenditures necessary to obtain and maintain the trucks needed to provide the
14 trucking services. Although not completely insensitive to changes in price, the
15 demand for trucking services is relatively inelastic given shippers' needs. A farmer,
16 for example, is unlikely to let his or her crop rot in the field merely because the cost
17 of shipping it to market has increased a few percent. Given the relative inelasticity
18 of demand for trucking services, much of the increased cost that motor carriers will
19 incur as a result of having to hire employees rather than contracting with independent
20 contractors will be passed on to their customers and reflected in higher shipping
21 prices.

22 56. The *Dynamex* decision and now AB-5 put Plaintiffs in an impossible
23 bind. CTA's motor-carrier members must either completely revamp their traditional
24 business model, and change the prices, routes, and services that they offer their
25 customers, or risk criminal and civil liability for violation of the Labor Code and
26 Wage Order No. 9.

27 57. For their part, if they are to comply with the Labor Code and Wage
28 Order No. 9, motor carriers must begin to acquire trucks, to hire and train employees,

1 and to establish the administrative infrastructure necessary to ensure compliance
2 with these statutes. This is particularly true since AB-5 is scheduled to take effect on
3 January 1, 2020, which is less than two months away and which highlights the
4 immediate need for the injunctive relief requested by Plaintiffs.

5 58. Obtaining the necessary capital, finding the appropriate employees, and
6 building the requisite administrative capacity to comply with *Dynamex* and now AB-
7 5 requires long-term planning. Such planning is difficult if not impossible so long as
8 the legal validity of the ABC test remains in dispute. A bank is unlikely to lend
9 money to a motor carrier to acquire a fleet of trucks, which represents a durable
10 asset, when the bank knows that a motor carrier using owner-operators could provide
11 the same trucking services at much lower cost and could thus make it hard for the
12 borrower to service its debt if the ABC test is found to be preempted by federal law,
13 as it has been in other jurisdictions and as is requested here. Ironically, therefore, a
14 failure to resolve the status of California's new ABC test will make it difficult for
15 most motor carriers to comply with that test, thereby placing them in a terrible bind.
16 If a motor carrier fearful of an enforcement action somehow manages to overcome
17 the obstacles and obtain the necessary capital, that motor carrier risks competitive
18 disadvantage and possible financial ruin if California's narrow ABC test is ultimately
19 overturned and the motor carrier is saddled with capital expenses and administrative
20 overhead that its competitors, who instead risked an enforcement action, are not
21 burdened with. Debt servicing and competitors aside, a motor carrier who, out of
22 fear of enforcement, begins acquiring trucks and hiring employees in light of
23 *Dynamex* and now AB-5 will be unable to recover certain costs—and will thus suffer
24 irreparable injury—even if the ABC test is ultimately found to be unenforceable. A
25 motor carrier should not have to risk criminal and civil penalties to avoid those
26 consequences.

27 59. Alternatively, a motor carrier may decide to abandon the use of
28 independent contractors in California and cease operating in California, as some

1 motor carriers have done. The fact that motor carriers which had previously
 2 operated throughout the United States cease operating in California illustrates the
 3 effect that *Dynamex* and now AB-5 are having on prices, routes, and services, and on
 4 interstate commerce. Less competition in the California market for trucking services
 5 necessarily results in heightened prices, diminished services, and the elimination of
 6 certain routes.

7 60. Uncertainty as to the legal status of the ABC test also places owner-
 8 operators in a difficult bind. As small-business owners, owner-operators, such as the
 9 two individual Plaintiffs in this action, must also make long-term capital
 10 investments—most importantly, in purchasing or leasing a truck. They cannot
 11 reasonably do so until the legal status of *Dynamex* has been resolved. They cannot
 12 afford to invest in a new truck, which will take years to pay off, if the motor carriers
 13 that have hired them until now will no longer do so. The inability to invest in new
 14 trucks will cause owner-operators irreparable harm, by either forcing them out of
 15 business if their current truck dies or by preventing them from expanding their
 16 business despite otherwise feasible opportunities to do so. Such losses are
 17 irreparable.

FIRST CLAIM FOR RELIEF

Supremacy Clause, U.S. Const. art. VI, § 3,

Preemption by the FAAAA, § 49 U.S.C. 14501(c)

21 61. Plaintiffs incorporate by reference the preceding paragraphs of this
 22 complaint.

23 62. The Supremacy Clause, which makes the federal constitution and laws
 24 “the supreme Law of the Land,” U.S. Const. art. VI, § 3, together with the express
 25 preemption provision of the FAAAA, prohibit the State of California from making,
 26 applying, and enforcing laws “related to a price, route, or service of any motor
 27 carrier . . . or any private carrier, broker, or freight forwarder with respect to the
 28 transportation of property.” 49 U.S.C. § 14501(c)(1).

1 63. At all relevant times, Plaintiffs, CTA members, and all others similarly
2 situated, had, have, and will have the right under the Supremacy Clause not to be
3 subjected to or punished under state laws that interfere with, are contrary to, or are
4 otherwise preempted by federal law.

5 64. An actual controversy exists among the parties because CTA members
6 cannot simultaneously contract with owner-operators and satisfy the ABC test as
7 construed in *Dynamex* and codified by AB-5 and therefore are forced to cease
8 contracting with Plaintiffs SINGH and ODOM and other similarly situated
9 independent contractors to provide trucking services.

10 65. Application of Prong B of the ABC test, as mandated by *Dynamex* and
11 AB-5, directly impacts the services, routes and prices that CTA's members and other
12 similarly situated motor carriers offer their customers for the transportation of
13 property.

14 66. Under the interpretation of Wage Order No. 9 that prevailed prior to
15 *Dynamex*, motor carriers were able to contract with an extensive network of
16 independent contractors to provide virtually any type and number of trucks, trailers,
17 drivers, and equipment needed for a particular job on very short notice. Following
18 *Dynamex* and now AB-5, motor carriers that continue to use individual owner-
19 operators to provide such services face the risk of significant civil and criminal
20 penalties arising from the violation of the Labor Code and Wage Order No. 9.

21 67. If they wish to avoid incurring such liability, motor carriers will be
22 forced to cease using independent contractors to provide trucking services. If they
23 do so, licensed motor carriers will also be forced to cease providing the services of
24 certain trucks, trailers, drivers, and equipment because they do not have them
25 available in their own fleet or workforce. It is cost-prohibitive for motor carriers to
26 acquire every possible type of truck, trailer, and equipment that might possibly be
27 needed at any given time, especially those that are only utilized occasionally. A
28 motor carrier that chooses to invest in specialized trucks demanded only sporadically

1 by its customers will have to charge its customers higher prices than before for those
2 specialized services—services that the motor carrier had previously provided on an
3 as-needed basis by contracting with owner-operators. As independent contractors
4 providing services to the customers of various motor carriers, owner-operators could
5 aggregate the demand for specialized services and could thus amortize the cost of the
6 specialized equipment over more loads—and thus charge lower per load prices—
7 than is possible for any one motor carrier.

8 68. Thus, under the new ABC test announced in *Dynamex* and codified by
9 AB-5, licensed motor carriers must scale back their service offerings to only those
10 trucks, trailers, drivers, equipment, and skilled drivers for which there is regular
11 demand, must charge higher prices for those services, or must incur the risk of
12 enforcement and civil actions and significant civil and criminal liability. Similarly,
13 under the new ABC test, Plaintiffs SINGH and ODOM face the threat of losing their
14 businesses because they are not able to lawfully contract as individual owner-
15 operators with motor carriers to provide trucking services in California to the motor
16 carriers' customers.

17 69. The ABC test is also impliedly preempted by the FAAAA because,
18 insofar as the new rule effectively bars CTA motor-carrier members from using
19 individual owner-operators to provide trucking services to their customers, it is an
20 obstacle to "Congress' overarching goal" of "helping assure transportation rates,
21 routes, and services that reflect 'maximum reliance on competitive market forces.'" *Rowe*, 552 U.S. at 371.

22
23 70. Unless Defendants are restrained and enjoined from enforcing the newly
24 created Labor Code § 2750.3 and Wage Order No. 9 as construed by the California
25 Supreme Court in *Dynamex*, CTA members and other similarly situated motor
26 carriers will suffer irreparable harm. Under the new ABC test, CTA members and
27 other similarly situated motor carriers that continue to engage owner-operators when
28 needed to provide services to their customers face the prospect of the civil and

1 criminal penalties and enforcement actions authorized by the Labor Code and Wage
2 Order No. 9, as well as costly litigation, including class-action worker-
3 misclassification lawsuits initiated by private parties who claim to be improperly
4 classified as independent contractors. If motor carriers instead cease contracting
5 with *bona fide* independent contractors like Plaintiffs SINGH and ODOM in order to
6 avoid liability, that change to their business model will directly impact the types of
7 services the motor carriers provide to their customers, the routes the drivers must
8 take, and the prices that the motor carriers charge their customers for services.

9 71. The threat that Labor Code § 2750.3 and Wage Order No. 9 as
10 construed in *Dynamex* will be enforced against the CTA's members, and the fact that
11 the ABC test is currently being used to challenge their use of independent contractors
12 in private class actions, constitutes an irreparable harm that makes injunctive relief
13 appropriate.

14 72. Plaintiffs suffer irreparable harm from the existing and future
15 enforcement of the ABC test. Such irreparable harm to the CTA motor carriers
16 includes, but is not limited to, civil and criminal liability authorized under the Labor
17 Code and Wage Order No. 9, costly litigation, including class actions initiated by
18 private parties who claim to be improperly classified as independent contractors, and
19 being compelled to cease providing to their customers the trucking services which
20 can be afforded only by specialized independent owner-operators. The irreparable
21 harm to Plaintiffs SINGH and ODOM, and other owner-operators who are similarly
22 situated, is the loss of their respective businesses, their ability to operate and grow as
23 independent small businesses providing trucking services, and the attendant loss of
24 personal freedom and opportunity.

25 73. Plaintiffs have no plain, speedy, and adequate remedy at law, making
26 injunctive relief necessary.

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28

SECOND CLAIM FOR RELIEF

Commerce Clause of the United States Constitution,

Article 1, Section 8

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2
3
4 74. Plaintiffs incorporate by reference the preceding paragraphs of this
5 complaint.

6 75. The Commerce Clause of the United States Constitution, Article 1,
7 section 8, protects the right to engage in interstate commerce free of undue burdens
8 and discrimination by state governments.

9 76. California’s test for determining whether a worker is an employee or an
10 independent contractor, as interpreted in *Dynamex* as to Wage Order No. 9 and now
11 codified by AB-5, means that motor carriers must cease contracting with individual
12 owner-operators to provide trucking services in California or face the risk of
13 significant civil and criminal penalties arising from the violation of California law.
14 Accordingly, the new ABC test deprives CTA’s motor-carrier members, and other
15 similarly situated motor carriers of the right to engage in interstate commerce—in
16 particular, the interstate transportation of property—free of unreasonable burdens, as
17 protected by the Commerce Clause.

18 77. For example, in order to comply with the ABC test, motor carriers that
19 contract with individual owner-operators to provide trucking services to customers
20 for movements that originate in other states and terminate in California can no longer
21 use that same individual owner-operator to perform the entire movement. Instead,
22 under the new ABC test, the motor carrier must terminate that movement by the
23 individual owner-operator at the California border and arrange for the final leg of
24 that movement within California by an employee driver entitled to the protections of
25 the Labor Code and Wage Order No. 9. Similarly, for movements that originate in
26 California and terminate in a different state, the motor carrier cannot contract with an
27 individual owner-operator for that entire movement but must instead employ a driver
28 entitled to the protections afforded by the Labor Code and Wage Order No. 9 to

1 complete that first leg of the movement to the California border.

2 78. The new ABC test is unlawful, and is void and unenforceable pursuant
3 to the Commerce Clause of the United States Constitution as an unreasonable burden
4 on interstate commerce.

5 79. Individual Plaintiffs, CTA’s motor-carrier members, and other similarly
6 situated motor carriers will incur irreparable harm from this constitutional violation.

7 **THIRD CLAIM FOR RELIEF**

8 **Supremacy Clause, U.S. Const. art. VI, § 3,**

9 **Preemption Under 49 U.S.C. § 31141(a)**

10 80. Plaintiffs incorporate by reference the preceding paragraphs of this
11 complaint.

12 81. The Supremacy Clause, which makes the federal constitution and laws
13 “the supreme Law of the Land,” U.S. Const. art. VI, § 3, together with the express
14 preemption provision of 49 U.S.C. § 31141, prohibit states from enforcing a law or
15 regulation on commercial motor vehicle safety that the Secretary of Transportation
16 has determined to be preempted. 49 U.S.C. § 31141 (a).

17 82. At all relevant times, Plaintiffs, CTA members, and all others similarly
18 situated, had, have, and will have the right under the Supremacy Clause not to be
19 subjected to or punished under state laws that interfere with, are contrary to, or are
20 otherwise preempted by federal law.

21 83. Pursuant to 49 U.S.C. § 31136, the Secretary of Transportation is
22 responsible for promulgating regulations prescribing the minimum safety standards
23 for commercial motor vehicles. Among the regulations prescribed by the Secretary
24 of Transportation are the federal Hours-of-Service (“HOS”) regulations promulgated
25 by the Federal Motor Carrier Safety Administration (“FMCSA”), which are found at
26 49 C.F.R. §§ 395.1–395.13 and set forth various requirements for property-carrying
27 drivers, including that a driver may drive a maximum of 11 hours after 10
28 consecutive hours off duty and may drive only if eight hours or less have passed

1 since the driver’s last off-duty or sleeper berth period of at least 30 minutes.

2 84. On December 21, 2018, the FMCSA issued an Order pursuant to 49
3 U.S.C. § 31141(a) granting petitions filed by industry trade associations representing
4 motor carriers, concluding that: (1) the California’s meal and rest period
5 requirements under Wage Order No. 9 and the California Labor Code (“meal and
6 rest period rules”) are laws and regulations “on commercial motor vehicle safety,” to
7 the extent they apply to drivers of property-carrying commercial motor vehicles
8 subject to the FMCSA’s HOS rules; (2) the California meal and rest period rules are
9 additional to or more stringent than the FMCSA’s HOS rules; (3) the California meal
10 and rest period rules have no safety benefit; (4) the California meal and rest period
11 rules are incompatible with the FMCSA’s HOS rules; and (5) enforcement of the
12 California meal and rest period rules would cause an unreasonable burden on
13 interstate commerce.

14 85. The FMCSA Order ruled that California may no longer enforce the
15 meal and rest period rules with respect to drivers of property-carrying commercial
16 motor vehicles subject to FMCSA’s HOS rules.

17 86. In accordance with the FMCSA Order issued pursuant to 49 U.S.C.
18 31141, the application of California’s meal and rest period rules with respect to
19 drivers of property-carrying commercial motor vehicles subject to FMCSA’s HOS
20 rules is unlawful, void and unenforceable.

21 87. Individual Plaintiffs, CTA’s motor-carrier members, and other similarly
22 situated motor carriers who employ, or are deemed to employ, drivers of property-
23 carrying commercial motor vehicles subject to FMCSA’s HOS rules will incur,
24 among other things, irreparable harm in lost and decreased productivity and
25 increased administrative burdens and costs from any continuing enforcement of the
26 California meal and rest period rules by Defendants.

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28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

1. This Court issue a declaration that, with respect to the trucking industry, the ABC test set forth in AB-5 and, before it, Wage Order No. 9 as construed by the California Supreme Court in *Dynamex*, are expressly and impliedly preempted by federal law;

2. This Court issue a declaration that, with respect to the trucking industry, the ABC test set forth in AB-5 and, before it, Wage Order No. 9 as construed by the California Supreme Court in *Dynamex*, violate the Commerce Clause and is therefore unconstitutional;

3. This Court issue a declaration that California’s meal and rest period requirements are expressly preempted and may not be enforced with respect to drivers of property-carrying commercial motor vehicles subject to the federal HOS rules.

4. This Court issue a preliminary and permanent injunction prohibiting Defendants, and any division, board or commission within such Defendants, from enforcing the ABC test set forth in AB-5 or Wage Order No. 9 as construed by the California Supreme Court in *Dynamex* and, pursuant to Labor Code § 2750.3(a)(3), issue a declaration that the determination of employee or independent-contractor status with respect to Plaintiffs ODOM and SINGH and drivers of property-carrying commercial motor vehicles performing trucking services for motor-carrier members of Plaintiff CTA shall be governed by the California Supreme Court’s decision in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341 (1989).

5. For an award of attorneys’ fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

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1 6. Such other relief as this Court deems just and proper.

2 DATED: November 12, 2019

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

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By: /s/ Alexander M. Chemers

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Robert R. Roginson

Spencer C. Skeen

Alexander M. Chemers

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Attorneys for Plaintiffs
CALIFORNIA TRUCKING ASSOCIATION,
RAVINDER SINGH, and THOMAS ODOM

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