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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

HIREEM ELIJAHJUAN et al., Plaintiffs and Appellants, v. MIKE CAMPBELL & ASSOCIATES, LTD. et al., Defendants and Respondents.	B255533 (Los Angeles County Super. Ct. No. BC441598)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard Fruin, Judge. Reversed.

Schonbrun Desimone Seplow Harris & Hoffman, LLP, Wilmer J. Harris and Isabel M. Daniels for Plaintiffs and Appellants.

Hanson Bridgett LLP, Raymond F. Lynch, Michael B. McNaughton, and Gilbert J. Tsai for Defendants and Respondents.

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This case concerns the preemption provision of the Federal Aviation Administration Authorization Act of 1994 (49 U.S.C. § 14501 et seq.) (FAAAA), which provides: "[A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." (§ 14501, subd. (c)(1).)[1] "'[P]re-emption may be either express or implied, and is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.'" (*Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 383.)

The United States Supreme Court explained the background and purpose of the FAAAA, which was similar to the Airline Deregulation Act of 1978 (49 U.S.C. App. § 1301 et seq.) as follows: "In 1978, Congress 'determin[ed] that "maximum reliance on competitive market forces"' would favor lower airline fares and better airline service, and it enacted the Airline Deregulation Act. [Citations.] In order to 'ensure that the States would not undo federal deregulation with regulation of their own,' that Act 'included a pre-emption provision' that said 'no State . . . shall enact or enforce any law . . . relating to rates, routes, or services of any air carrier.' [Citations.] [¶] In 1980, Congress deregulated trucking. [Citation.] And a little over a decade later, in 1994, Congress similarly sought to pre-empt state trucking regulation." (*Rowe v. New Hampshire Motor Transp. Assn.* (2008) 552 U.S. 364, 367-368 (*Rowe*).)

In *Rowe*, the United States Supreme Court applied its jurisprudence interpreting the Airline Deregulation Act to the FAAAA including the following principles: "(1) . . . '[s]tate enforcement actions *having a connection with, or reference to*,' carrier '"rates, routes, or services" are pre-empted,' [citation]; (2) . . . such pre-emption may occur even if a state law's effect on rates, routes, or services 'is only indirect,' [citation]; (3) . . . in respect to pre-emption, it makes no difference whether a state law is 'consistent' or 'inconsistent' with federal regulation, [citation]; and (4) . . . pre-emption occurs at least where state laws have a

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[1] A motor carrier is "a person providing motor vehicle transportation for compensation." (49 U.S.C. § 13102(14).)

'significant impact' related to Congress' deregulatory and pre-emption-related objectives, [citation]." (*Rowe, supra*, 552 U.S. at pp. 370-371.)

In addition to the FAAAA and the Airline Deregulation Act, the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.) has a similar preemption provision. (See *American Airlines, Inc. v. Wolens* (1995) 513 U.S. 219, 223 [cases applying ERISA preemption are helpful in evaluating preemption under the Airline Deregulation Act].) Interpreting the phrase "related to" in ERISA, the Supreme Court concluded that a statute which "alters the incentives, but does not dictate the choices, facing ERISA plans . . . is 'no different from myriad state laws in areas traditionally subject to local regulation, which Congress could not possibly have intended to eliminate.'" (*California Div. of Labor Standards Enforcement v. Dillingham Constr., N. A., Inc.* (1997) 519 U.S. 316, 334.) Preemption occurs from "reference to" price, route, or service "[w]here a State's law acts immediately and exclusively upon [price, route, or service] or where the existence of [a price, route, or service] is essential to the law's operation." (*Id.* at p. 325.)

Turning to this case, plaintiffs and appellants are motor carriers who transport food from warehouses to grocery stores, primarily Trader Joe's. The parties' agreements identified plaintiffs as independent contractors. The gravamen of plaintiffs' lawsuit is that they were misclassified as independent contractors when they should have been classified as employees. The trial court concluded that the FAAAA prevented plaintiffs' lawsuit stemming from their alleged misclassification. The trial court granted summary judgment in favor of defendants and respondents Mike Campbell & Associates, Ltd. (Associates) and Mike Campbell & Associates Logistics, LLC (Logistics), who we refer to collectively as Campbell.

After judgment, our Supreme Court decided *People ex rel. Harris v. Pac Anchor Transportation, Inc*. (2014) 59 Cal.4th 772, 783 (*Pac Anchor*), in which our high court stated that the FAAAA "does not preempt generally applicable employment laws that affect prices, routes, and services." The court held that a claim under the unfair competition law (Bus. & Prof. Code, § 17200 et seq.) based on a trucking company's alleged misclassification of employees as independent contractors was not preempted. (*Pac*

Anchor, at p. 775.) Applying *Pac Anchor* here, the FAAAA did not preempt the state law claims based on the alleged misclassification of plaintiffs as independent contractors. We reverse the judgment and remand the case to the trial court.

FACTS

Plaintiffs operate under authority issued by the United States Department of Transportation Federal Motor Carrier Safety Administration and are permitted by the California Department of Motor Vehicles. Plaintiffs owned their own trucks, and some owned multiple trucks. Plaintiffs paid their own operating expenses including insurance, administrative fees, vehicle parts, repair and maintenance cost, fuel, and other expenses. Some plaintiffs formed corporations and hired employees.

Plaintiffs entered into agreements with Logistics to provide motor carrier services. Logistics is a licensed transportation broker; it was not licensed as a motor carrier. Logistics does not own the trucks driven by the motor carriers. Associates has not contracted with any of the plaintiffs since mid-2007 and currently has no agreements.

Timely deliveries are critical to Campbell's business, and Campbell presented evidence that it would need to alter its method of doing business if plaintiffs are deemed to be employees. For example, Logistics would need to employ additional motor carriers to continue providing the same level of services. Logistics would need additional drivers to cover current drivers' meal and rest breaks. Taking meal and rest breaks would require drivers to alter their planned route in order to find a safe place to take a break. Reimbursement of operating expenses including the plaintiffs' cost of purchasing their trucks could exceed $90 million. If plaintiffs are found to be employees, those who have hired their own employees may also have to restructure their businesses.

PROCEDURE

Plaintiffs sued Campbell, alleging they were misclassified as independent contractors when they should have been classified as employees. They alleged causes of action for failure to reimburse business expenses (Lab. Code,[2] § 2802); unlawful deduction from

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[2] Undesignated statutory citations are to the California Labor Code.

wages (§§ 221, 223, 400-410); unlawful coerced purchases (§ 450 et seq.); failure to keep accurate payroll records and itemized wage statements (§ 226); failure to authorize meal periods and rest breaks (§ 226.7); failure to pay wages as earned upon termination or resignation (§§ 201-204); and negligent misrepresentation. Plaintiffs brought claims under the Private Attorneys General Act of 2004 (§ 2698 et seq.), alleged a violation Business and Professions Code section 17200 et seq., and asserted a claim for declaratory relief. All of the causes of action were contingent on plaintiffs demonstrating they are employees. Plaintiffs sought to bring the lawsuit as a class action of all persons who signed agreements to operate as drivers for Campbell in the State of California. Plaintiffs allege that the class would exceed 1,000 persons.

The trial court entered summary judgment in favor of Campbell. The court concluded that if plaintiffs were employees, Logistics would need to hire additional drivers, would need to reimburse operating expenses and purchase trucks at a cost of over $90 million. Campbell would be precluded from contracting with incorporated motor carriers that employ multiple drivers. The trial court also found that Campbell would have to obtain its own motor carrier authorization from the United States Department of Transportation. The court concluded these necessary changes would affect prices, routes, and services as defined by the FAAAA. This appeal followed.[3]

DISCUSSION

After the trial court entered summary judgment, several courts including our Supreme Court have held that similar lawsuits were not preempted by the FAAAA. As we shall explain, under this recent authority the judgment in favor of Campbell must be reversed.

1. Background

In *Pac Anchor, supra*, 59 Cal.4th 772, the People on behalf of the State of California filed an action alleging a violation of the unfair competition law (UCL) based on the

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[3] This is the second appeal. The first concerned whether the plaintiffs were required to arbitrate their claims. (*Elijahjuan v. Superior Court* (2012) 210 Cal.App.4th 15.)

defendants' alleged misclassification of its employees as independent contractors and violations of labor laws and unemployment insurance laws. (59 Cal.4th at p. 775.) The Supreme Court unanimously held that the FAAAA does not preempt the UCL action based on the alleged misclassification. (*Pac Anchor*, at p. 775.)

The *Pac Anchor* court described the facts alleged in the People's complaint as follows. One of the multiple defendants entered into contracts with drivers to drive the defendants' trucks. (*Pac Anchor, supra*, 59 Cal.4th at p. 776.) Defendants classified the drivers as independent contractors even though they did not invest capital, did not own their trucks, and did not use their own tools or equipment. (*Ibid*.) Further, according to the complaint, the drivers had no operational control. (*Ibid*.) The People alleged that the plaintiffs were misclassified and the defendants "therefore illegally lowered their costs of doing business by engaging in acts of unfair competition" including failing to reimburse employees their business expenses and loses (§ 3700), failing to provide written wage statements (§ 226), and failing to ensure payment at California's minimum wage (§ 1194). (*Pac Anchor*, at p. 776.)

The Supreme Court then summarized general principles of preemption and reviewed the United States Supreme Court case law applying both the Airline Deregulation Act and the FAAAA. It distilled the following important rules: Preemption applies when claims "derive from the enactment or enforcement of state law and . . . relate to a motor carrier's prices, routes, or services with respect to the transportation of property." (*Pac Anchor, supra*, 59 Cal.4th at p. 781.) Some state actions may have "'"too tenuous, remote, or peripheral"'" effect to be preempted. (*Id*. at p. 780.)

With respect to facial preemption, our high court concluded that the FAAAA does not preempt generally applicable employment laws. (*Pac Anchor, supra*, 59 Cal.4th at p. 783.) "The sections of the Labor Code and the Unemployment Insurance Code that anchor the People's UCL claim make no reference to motor carriers, or the transportation of property. Rather, they are laws that regulate employer practices in all fields and simply require motor carriers to comply with labor laws that apply to the classification of their employees." (*Id*. at p. 785.) Any effect on prices, routes, or services is indirect. (*Ibid*.)

The high court also rejected the defendants' "as applied" challenge. The defendants argued that the UCL claim "will significantly affect motor carrier prices, routes, and services" because enforcing the labor laws would prevent their using independent contractors, potentially affecting their prices and services. The defendants "claim that if the People's UCL action is successful, they will have to reclassify their drivers as employees, driving up their cost of doing business and thereby affecting market forces." (*Pac Anchor, supra*, 59 Cal.4th at p. 785.) In rejecting this argument, our Supreme Court explained: "[E]ven though the People's UCL action may have some indirect effect on defendants' prices or services, that effect is '"too tenuous, remote, [and] peripheral . . . to have pre-emptive effect."'" (*Id.* at p. 786.)

In *Pac Anchor*, our high court relied on among other cases *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca* (9th Cir. 1998) 152 F.3d 1184 in which the Ninth Circuit held that the FAAAA did not preempt California's prevailing wage law. (*Pac Anchor, supra*, 59 Cal.4th at pp. 783-784.) The Ninth Circuit concluded that "state regulation in an area of traditional state power having no more than an indirect, remote, or tenuous effect on a motor carriers' prices, routes, and services are not preempted." (*Californians for Safe & Competitive Dump Truck Transp. v. Mendoca*, at p. 1188.) California's prevailing wage law does not fall "into the 'field of laws' regulated prices, routes, or services." (*Id.* at p. 1189.) Thus, any relation to prices, services, and routes is "indirect, remote, and tenuous." (*Ibid.*)

About the same time our high court decided *Pac Anchor*, the Ninth Circuit considered similar issues in *Dilts v. Penske Logistics, LLC* (9th Cir. 2014) 769 F.3d 637 (*Dilts*). In *Dilts*, the plaintiffs were a class of drivers who brought claims under the California Labor Code for violation of meal and rest breaks (claims also raised in this case). The *Dilts* court rejected the argument that the claims were preempted under the FAAAA. It concluded that the "state laws at issue are not 'related to' prices, routes or services, and therefore are not preempted by the FAAAA." (*Dilts*, at p. 640.)

To reach this conclusion, the court considered the definition of "related to" as used in the statutory phrase "related to a price, route, or service." (*Dilts, supra*, 769 F.3d at p. 643.)

"The statutory 'related to' text is 'deliberately expansive' and 'conspicuous for its breadth.' [Citation.] That said, the FAAAA does not go so far as to preempt state laws that affect prices, routes, or services in 'only a tenuous, remote, or peripheral manner . . . .'" (*Id.* at p. 643.) "We must draw a line between laws that are significantly 'related to' rates, routes, or services, even indirectly, and thus are preempted, and those that have 'only a tenuous, remote, or peripheral' connection to rates, routes, or services, and thus are not preempted." (*Ibid.*)

The Ninth Circuit reviewed congressional intent in passing the FAAAA and concluded, "Congress did not intend to preempt generally applicable state transportation, safety, welfare, or business rules that do not otherwise regulate prices, routes, or services." (*Dilts, supra*, 769 F.3d at p. 644.) Instead Congress was concerned with states undermining federal deregulation of trucking. (*Ibid.*) Congress did not intend "to exempt motor carriers from every state regulatory scheme of general applicability." (*Id.* at p. 646.)

As relevant here, the *Dilts* court further explained: "Laws are more likely to be preempted when they operate at the point where carriers provide services to customers at specific prices." (*Dilts, supra*, 769 F.3d at p. 646.) "On the other hand, generally applicable background regulations that are several steps removed from prices, routes, or services, such as prevailing wage laws or safety regulations, are not preempted, even if employers must factor those provisions into their decisions about the prices that they set, the routes that they use, or the services that they provide. Such laws are not preempted even if they raise the overall cost of doing business or require a carrier to re-direct or reroute some equipment." (*Ibid.*) "[E]ven if state laws increase or change motor carrier's operating costs, 'broad law[s] applying to hundreds of different industries' with no other 'forbidden connection with prices[, routes,] and services'—that is, those that do not directly or indirectly mandate, prohibit, or otherwise regulate certain prices, routes, or services—are not preempted by the FAAAA." (*Id.* at p. 647.)

Applying these principles the Ninth Circuit concluded that meal and rest breaks required under the California Labor Code were not related to prices, routes or services. ". . . California's meal and rest break laws plainly are not the sorts of laws 'related to'

prices, routes, or services that Congress intended to preempt. They do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly. They are 'broad law[s] applying to hundreds of different industries' with no other 'forbidden connection with prices[, routes,] and services.' [Citation.] They are normal background rules for almost *all* employers doing business in the state of California. And while motor carriers may have to take into account the meal and rest break requirements when allocating resources and scheduling routes—just as they must take into account state wage laws [citation] or speed limits and weight restrictions [citation] the laws do not 'bind' motor carriers to specific prices, routes, or services [citation]." (*Dilts, supra*, 769 F.3d at p. 647.)

The *Dilts* court noted it was unclear whether federal law can preempt state law on an """as applied""" basis. (*Dilts, supra,* 769 F.3d at p. 648, fn. 2.) The court did not need to decide the issue because the defendants' as applied challenge was not persuasive. (*Ibid*.) "Plaintiff drivers work on short-haul routes and work exclusively within the state of California. They therefore are not covered by other state laws or federal hours-of-service regulations [citation] and would be without *any* hours-of-service limits if California laws did not apply to them." (*Ibid*.)

The *Dilts* court rejected the defendants' argument that enforcing the Labor Code sections governing meal and rest breaks would require a cessation of work and would require longer times to drive the same distance. (*Dilts, supra*, 769 F.3d at p. 648.) While it may increase the cost of doing business, it does not dictate the services an employer may provide. (*Ibid*.) The court rejected the argument that the laws require the employer to alter the frequency and scheduling of transportation and the selection of markets where transportation is provided. (*Id*. at pp. 648-649.) The court reasoned "this argument conflates requirements for *individual drivers* with requirements imposed on motor carriers. Motor carriers may schedule transportation as frequently or as infrequently as they choose, at the times that they choose, and still comply with the law." (*Id*. at p. 648.) With respect to scheduling services, the court concluded "the mere fact that a motor carrier must take into account a state regulation when planning services is not sufficient to require FAAAA

preemption, so long as the law does not have an impermissible effect, such as binding motor carriers to specific services [citation] . . . ." (*Id.* at p. 649.) Requiring drivers to pull over for a break was not equivalent to forbidden route control. (*Ibid*.)

Following *Pac Anchor* and *Dilts*, the California First District Court of Appeal held that the FAAAA did not preempt Labor Code statutes governing meal and rest breaks. (*Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1277.)

To the same effect is *Rodriguez v. RWA Trucking Co., Inc*. (2015) 238 Cal.App.4th 1375, 1407-1408, republished following *Pac Anchor*. In *Rodriguez,* Division Four of this court concluded that the FAAAA did not preempt a statute prohibiting charging employees for workers' compensation insurance. *Rodriguez* explained: "Generally applicable state labor laws are not preempted if they do not '*acutely* interfere[] with the forces of competition' or prevent carriers from making 'their own decisions about [routes] and how many resources to devote to each route and service.' [Citations.] However, if the state labor laws are such that they 'bind' the motor carrier's prices, routes, or services, they interfere with competitive market forces and are preempted by the FAAAA." (*Id*. at p. 1407.) The statute prohibiting charging employees for workers' compensation insurance was a "law of general application that does not apply exclusively to motor carriers." (*Ibid*.) Additionally, the workers' compensation laws have only an indirect economic influence on motor carriers and did not bind motor carriers to anything specific. (*Id*. at pp.1407-1408.) The state law "may 'alter[] the incentives, but does not dictate the choices' facing motor carriers." (*Id*. at p. 1408.) The court also concluded that the statute at issue did not necessarily increase the motor carrier's operating expenses. (*Ibid*.)

2. Application

Campbell concedes that the claims brought in this case are not facially preempted. They argue their "as applied" challenge is significantly stronger than that in *Pac Anchor*. Campbell emphasizes that in contrast to *Pac Anchor*, here, Campbell does not own the drivers' trucks and does not have authority to engage in cargo transport. Additionally, here some of the plaintiffs have corporations, which also have employees. According to Campbell the $90 million price Logistics would have to reimburse their drivers if they are

determined to be employees is so exorbitant it would necessarily affect prices. Campbell further claims that if plaintiffs were successful Logistics would be required to hire drivers employed by plaintiffs and would effectively be prohibited from contracting with incorporated motor carriers.

Assuming that an "as applied" challenge is viable, Campbell failed to demonstrate a direct impact on prices, routes, or services, as applied to them. Although the evidence of $90 million in economic costs is more substantial than in *Pac Anchor* or *Dilts*, neither case turns on the amount at stake for the defendant. *Dilts* made clear that "[n]early every form of state regulation carries some cost." (*Dilts, supra*, 769 F.3d at p. 646.) The "related to" test requires more than simply showing that following a law would result in a greater cost to doing business. (*Id*. at p. 647.) Similarly, *Pac Anchor* rejected the argument that an increase in prices demonstrated FAAAA preemption. (*Pac Anchor, supra*, 59 Cal.4th at p. 786.)

Campbell argues this case is distinguishable from *Pac Anchor* because in *Pac Anchor*, the complaint alleged the defendants did not own their own trucks, use their own equipment and had no operational control. (*Pac Anchor, supra*, 59 Cal.4th at p. 776.) Campbell points out that plaintiffs own their own trucks, have licenses authorizing them to work as motor carriers, and some even employ their own employees. A distinction on this ground may be relevant to the ultimate determination of whether plaintiffs are independent contractors but it has no bearing on FAAAA preemption. The FAAAA is not contingent on motor carriers owning their own trucks, using their own equipment or having operational control. The issue instead is whether the statutes at issue are related to a price, route, or service.

The other evidence Campbell emphasizes does not show that the statutes at issue in this case are related to prices, routes, and services. None compels Campbell to set a specific price or route. None limits the routes or services Campbell can provide or binds them to a particular route, price, or service. Campbell remains free to select the market in which they provide service. Campbell may hire independent contractors; they simply cannot hire employees and classify them as independent contractors. Even if Campbell were required to

restructure its business model, for example, by obtaining its own motor carrier license, the statutes do not dictate the choices facing Campbell with respect to price, route, and service. Campbell therefore failed to establish a sufficient relationship to price, route, and service to prompt preemption.[4]

DISPOSITION

The judgment is reversed. The cause is remanded to the superior court for further proceedings. Appellants are entitled to costs on appeal.

FLIER, Acting P. J.

WE CONCUR:

GRIMES, J.

OHTA, J.*

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[4] *Mass. Delivery Assn. v. Coakley* (1st Cir. 2014) 769 F.3d 11 (*Coakley*) lends some support to Campbell's position that the FAAAA preempts plaintiffs' claims, but we do not find that case persuasive. In *Coakley*, the First Circuit Court of Appeals held that the FAAAA possibly preempted a Massachusetts statute requiring workers that perform a service "'outside the usual course of the business of the employer' to be classified as independent contractors." (*Coakley*, at p. 14.) The court remanded to the district court to determine whether the effect of the law on companies' prices, routes, and services and rose to the level necessary for preemption. (*Id*. at p. 23.) In reaching its holding, the court disagreed with *Dilts*'s use of a categorical rule exempting generally applicable state labor laws. (*Coakley*, at p. 20.) The court concluded instead "we must carefully evaluate even generally applicable state laws for an impermissible effect on carriers' prices, routes, and services." (*Ibid*.) The approach in *Dilts*, however, is consistent with *Pac Anchor*, which we are required to follow. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) We therefore conclude *Dilts* is more persuasive than *Coakley*.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.