UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CALIFORNIA TRUCKING ASSOCIATION, Plaintiff, v. JULIE SU, Defendant.	Case No.: 16-CV-1866 CAB MDD **ORDER GRANTING MOTION TO DISMISS** [Doc. Nos. 4, 5]

This matter is before the Court on the Court's order requiring Plaintiff to show cause as to whether this Court has subject matter jurisdiction, and on Defendant's motion to dismiss for failure to state a claim. The motion to dismiss has been fully briefed, and Plaintiff filed a written response to the Court's order to show cause. The Court deems the issues before the Court suitable for submission without oral argument. For the reasons set forth below, the motion to dismiss is granted.

I. Allegations in the Complaint

Plaintiff California Trucking Association ("CTA") is an association with membership consisting of licensed motor carrier companies. The complaint alleges that CTA members sometimes contract with drivers that own or lease their own trucks. These drivers are referred to as "owner-operators." According to the complaint, California's

Labor Commissioner, who is the named defendant here, has applied the factors listed in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341, 350-51 (1989), to determine whether, notwithstanding the terms of their contracts with CTA members, these owner-operators are employees and therefore subject to the protections of California's labor laws. The complaint seeks a declaration that the Labor Commissioner's application of these *Borello* factors is pre-empted by the Federal Aviation Administration Authorization Act of 1994 (the "FAAAA") and asks for injunctive relief preventing the Labor Commissioner from enforcing California's definition of employee using the *Borello* factors when a motor carrier has a contract with an owner-operator. The Labor Commissioner now moves to dismiss the complaint.

II. Subject Matter Jurisdiction

While the motion to dismiss was pending, the Court issued an order to show cause as to this Court's subject matter jurisdiction insofar as whether the complaint raises a federal question, and if so, whether CTA has standing. Upon consideration of Plaintiff's response, and the absence any argument of a lack of subject matter jurisdiction from Labor Commissioner, the Court is satisfied that subject matter jurisdiction exists.

A. Federal Question Subject Matter Jurisdiction

In the order to show cause, the Court questioned the existence of a federal question because "[a] declaratory judgment plaintiff may not assert a federal question in his complaint if, but for the declaratory judgment procedure, that question would arise only as a federal defense to a state law claim brought by the declaratory judgment defendant in state court." *Janakes v. U.S. Postal Serv.*, 768 F.2d 1091, 1093 (9th Cir. 1985). Thus, to determine subject matter jurisdiction, the Court can "reposition the parties in a declaratory relief action by asking whether [it] would have jurisdiction had the declaratory relief defendant been a plaintiff seeking a federal remedy." *Standard Ins. Co. v. Saklad*, 127 F.3d 1179, 1181 (9th Cir. 1997). Based on this authority, the Court noted that the complaint could be framed as an attempt to obtain a holding that a federal preemption defense would succeed in a wage and hour claim before the California Labor Commission.

In its response, Plaintiff argued that federal question jurisdiction exists under the Supremacy Clause of the Constitution. Because Plaintiff is seeking to enjoin *state officials* from interfering with Constitutional rights, the Court is satisfied the federal question jurisdiction exists. *See Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n. 14 (1983) ("It is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights."); *see also California Shock Trauma Air Rescue v. AIG Domestic Claims, Inc.*, No. 2:09-CV-00759MCEJFM, 2009 WL 2230772, at *4 (E.D. Cal. July 24, 2009) ("While it is clear that a conflict between a state statute and federal regulations presents a justiciable controversy . . . that controversy is capable of federal adjudication, in other words is ripe, only when the State is a party to the action.") (internal quotation marks and citation omitted).

B. Associational Standing

"[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); *see also Assoc. Gen. Contractors of Am. v. Metro. Water Dist. of S. California*, 159 F.3d 1178, 1181 (9th Cir. 1998) (same). The latter two requirements are satisfied because CTA is seeking to protect its members interests and only seeks injunctive relief. The Court's concern in issuing the order to show cause related primarily to the first requirement. However, because it appears that Plaintiff's members would be able to assert a claim against the Labor Commissioner seeking the injunctive relief requested here, the Court is satisfied that Plaintiff has standing to sue on behalf of its members here.

III. FAAAA Preemption

"[S]tate laws dealing with matters traditionally within a state's police powers are not to be preempted unless Congress's intent to do so is clear and manifest." *Californians For Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1186 (9th Cir.

1998). Here, CTA argues that the FAAAA pre-empts factors set forth in *Borello* to guide the determination of whether a worker is an independent contractor or an employee. This determination is significant because employees are entitled to certain benefits under California labor laws that are not provided to independent contractors.

The relevant portion of the FAAAA's preemption provision states:

> 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.

49 U.S.C. § 14501(c)(1). Although the "statutory 'related to' text is deliberately expansive and conspicuous for its breadth", it "does not mean the sky is the limit." *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 643 (9th Cir. 2014) (internal quotation marks and citations omitted). Thus, "§ 14501(c)(1) does not preempt state laws affecting carrier prices, routes, and services in only a tenuous, remote, or peripheral manner." *Dan's City Used Cars, Inc. v. Pelkey*, 133 S.Ct. 1769, 1778 (2013); *see also Mendonca*, 152 F.3d at 1188 ("[S]tate 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."). To that end, "it is not sufficient that a state law relates to the 'price, route, or service' of a motor carrier in any capacity; the law must also concern a motor carrier's 'transportation of property.'" *Dan's City Used Cars*, 133 S.Ct. at 1778-79.

In *Dilts*, the Ninth Circuit held that California's meal and rest break requirements as applied to motor carriers are not preempted under the FAAAA. *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014). With this lawsuit, CTA nevertheless argues that its members should be able to avoid California's labor laws (which include meal and rest break requirements) under the guise of labeling truck drivers as independent contractors, even if the drivers would otherwise qualify as an employees under California law. This interpretation of the FAAAA's preemption provision cannot be reconciled with *Dilts*. To the contrary, if the labor laws themselves are not preempted because they do not relate to rates, routes, or services, California's determination as to which truck drivers are protected

by such laws necessarily does not relate to rates, routes or services either. *See generally Harris v. Pac. Anchor Transp., Inc.*, 59 Cal. 4th 772, 775 (2014) (holding that FAAAA did not pre-empt lawsuit by the state of California against a trucking company for misclassifying drivers and independent contractors). Further, the *Borello* factors are not preempted by the FAAAA because they are generally applicable to all workers and do not concern the transportation of property. *Dan's City Used Cars*, 133 S.Ct. at 1778-79; *see also Harris*, 59 Cal. 4th at 786 ("*Dan's City* emphasized the FAAAA limiting phrase 'with respect to the transportation of property,' which strongly supports a finding that California labor and insurance laws and regulations of general applicability are not preempted as applied under the FAAAA. . . .").[1]

CTA relies heavily on *Northwest, Inc. v. Ginsberg*, 134 S.Ct. 1422, 1430 (2014), where the Court held that a claim for breach of the implied covenant of good faith and fair dealing is "pre-empted [by the FAAAA] if it seeks to enlarge the contractual obligations that the parties voluntarily adopt." *Nw*, 134 S.Ct at 1426. The flaw in CTA's argument is that unlike *Northwest*, which concerned a common law claim for breach of the covenant of good faith and fair dealing, the issue of whether a truck driver is an employee or independent contractor is not a common law *claim*. Rather, it is a finding that must be made to determine whether and how California's labor laws (which are not pre-empted by the FAAAA) apply to a worker. In other words, the determination of whether a worker is an employee is merely an element of (or prerequisite for) a claim for violation of the labor laws, not a common law claim itself. *See, e.g., Taylor v. Shippers Transp. Exp., Inc.*, No.

---

[1] CTA incorrectly argues in a footnote that "there can be no question here that the Commissioner's application of the *Borello* test to owner-operators relates to the transportation of property." This is incorrect. Every law, *when applied to the trucking industry*, could be argued to relate to the transportation of property. The relevant question, however, is whether the law itself relates to the transportation of property. Just as California's labor laws are generally applicable to all industries, so is the use of the *Borello* factors to determine whether the labor laws protect workers. Thus, California's generally applicable laws concerning the classification of employees do not relate to the transportation of property within the meaning of *Dan's City*. 134 S.Ct. at 1430.

CV 13-2092 BRO (PLAx), 2014 WL 7499046, at *8-10 (C.D. Cal. Sept. 30, 2014) (holding that truck drivers' labor code claims were not pre-empted by the FAAAA in light of *Dilts*, and using the *Borello* factors to analyze whether the drivers are independent contractors or employees).

In *Borello*, the California Supreme Court merely identified some considerations relevant to the determination of whether a worker is an employee, but the *claims* to which such determination is relevant are claims under California labor laws that the Ninth Circuit has held are not preempted by the FAAAA.[2] Although CTA members' contracts with truck drivers may be evidence as to whether the truck drivers are employees entitled to the benefits provided by California's labor laws, a finding that the drivers are employees and therefore entitled to such benefits "do[es] not arise out of the contract, involve[] the interpretation of any contract terms, or otherwise require there to be a contract." *Narayan v. EGL, Inc.*, 616 F.3d 895, 899, 903 (9th Cir. 2010) (holding that the existence of contracts expressly acknowledging that the workers were independent contractors is not dispositive). Thus, unlike in *Northwest*, the Labor Commissioner's use of the *Borello* factors to hold that a truck driver is an employee entitled to benefits under the labor code, notwithstanding the existence of a contract between the driver and a CTA member, is not a "common law claim" and does not "enlarge the contractual obligations that the parties voluntarily adopted." Accordingly, *Northwest* does not support CTA's position.[3]

American Trucking Associations, Inc. v. City of Los Angeles, 559 F.3d 1046 (2009), is also distinguishable. In that case, the Los Angeles Port attempted to require that motor

---

[2] In *Borello*, the issue was whether agricultural laborers who worked pursuant to a "sharefarmer" agreement were independent contractors exempt from workers' compensation coverage. *Borello*, 48 Cal. 3d at 345.

[3] As set forth in *Dilts*, *Northwest* is also distinguishable because it concerned an airline's relationship with its customers, whereas the labor laws are "generally applicable background regulations that are several steps removed from prices, routes, or services." *See Dilts*, 769 F.3d at 646. "Laws are more likely to be preempted when they operate at the point where carriers provide services to customers at specific prices." *Id*.

carriers use employees instead of independent contractors. Here, the Labor Commissioner is setting no such requirements. CTA members are free to use independent contractors or employees. *Cf. Villalpando v. Exel Direct Inc.*, No. 12-cv-4137-JCS, 2015 WL 5179486, at *25-26 (N.D. Cal. Sept. 3, 2015) (finding *ATA* to be inapposite because there was no requirement that the trucking company use independent contractors); *Robles v. Comtrak Logistics, Inc.*, No. 2:13-cv-161-JAM-AC, 2014 WL 7335316, at *4 (E.D. Cal. Dec. 19, 2014) (same). However, CTA members must do more than simply label a truck driver as an independent contractor; the truck driver must in fact be an independent contractor under California law. The label applied by a CTA member may be evidence of the status of a truck driver, but it is not dispositive. The concurrence in *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981, 998 (9th Cir. 2014) (Trott, J., concurring), a case concerning the classification of Federal Express truck drivers, artfully explains why CTA's position is untenable:[4]

> Abraham Lincoln reportedly asked, "If you call a dog's tail a leg, how many legs does a dog have?" His answer was, "Four. Calling a dog's tail a leg does not make it a leg." Justice Cardozo made the same point in *W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56, 62 (1935), counseling us, when called upon to characterize a written enactment, to look to the "underlying reality rather than the form or label." The California Supreme Court echoed this wisdom in *Borello*, saying that the "label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced." 256 Cal. Rptr. 543. As noted by Judge Fletcher, "[N]either [FedEx's] nor the drivers' own perception of their relationship as one of independent contracting" is dispositive. *JKH Enters, Inc. v. Dept. of Indus. Relations*, 48 Cal. Rptr. 3d 563, 580 (2006).
>
> Bottom line? Labeling the drivers "independent contractors" in FedEx's Operating Agreement does not conclusively make them so when viewed in the light of (1) the entire agreement, (2) the rest of the relevant "common policies and procedures" evidence, and (3) California law.

[4] Although the opinion does not address FAAAA preemption, in *Alexander* the Ninth Circuit used the *Borello* factors to analyze whether Federal Express truck drivers were employees. *Alexander*, 765 F.3d at 988.

IV. Conclusion

The *Borello* factors used by the Labor Commissioner to determine whether a truck driver is an employee or independent contractor are not preempted by the FAAAA. Accordingly, the motion to dismiss is **GRANTED**.

It is **SO ORDERED**.

Dated: January 6, 2017

Hon. Cathy Ann Bencivengo
United States District Judge