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## **U.S. DISTRICT COURT ISSUES TEMPORARY RESTRAINING ORDER ENJOINING ENFORCEMENT OF AB 5 AS TO MOTOR CARRIERS**

On Tuesday, December 31, 2019, Judge Roger T. Benitez of the United States District Court for the Southern District of California entered a temporary restraining order (TRO) in a lawsuit brought by the California Truckers Association (CTA).

The TRO enjoins enforcement of Assembly Bill 5 (AB 5) as to “any motor carrier operating in California” until the district court resolves CTA’s motion for a preliminary injunction that is currently set for hearing on January 13, 2020.

It is important to note that the TRO is:

- Temporary and will remain in effect only until the District Court rules on CTA’s motion.
- Only affects motor carriers transporting passengers and property.

The TRO is not the final word as to whether AB 5 is enforceable. Nor does the TRO address the enforceability of AB 5 as to individuals providing services other than those related to the transportation of persons and property. For example, the TRO would not enjoin the enforcement of AB 5 as to (a) licensed subcontractors providing construction services, not transportation services or (b) owner-operators who provide other types of services that do not involve transportation of persons or property, such as street sweeping.

In addition, the TRO does not expressly enjoin the enforcement of *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018). The State of California, Teamsters, and attorneys representing claimants may attempt to argue that the “ABC” test under *Dynamex* continues to remain in effect.

### **Additional Background**

The CTA is one of a number of plaintiffs who have filed lawsuits challenging AB 5 and the *Dynamex* decision. Other courts have issued differing and conflicting results on the issues presented in CTA’s lawsuit.

Judge Benetiz, who was appointed by George Bush in 2003, granted the TRO based on the doctrine of federal preemption. The CTA argues that the Federal Aviation Administration Authorization Act (FAAAA) preempts AB 5. The FAAAA is one of a series of laws that deregulated the trucking industry.

Judge Benetiz has not yet made a final decision regarding preemption of AB 5. However, the text of the TRO ruling states that it is likely that AB 5, as applied to motor carriers, is preempted by the FAAAA.

The TRO cites the Ninth Circuit Court of Appeals opinion in *American Trucking Associations, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1053-56 (9th Cir. 2009). According to Judge Benítez, *American Trucking* stands for the proposition that “an ‘all or nothing’ rule requiring services to be performed by certain types of employee drivers was likely preempted.”

Since *American Trucking* was decided, however, the Supreme Court issued a ruling that narrowed the scope of preemption under the FAAAA. *Dan’s City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1775 (2013). The State of California and the Teamsters will argue that *American Trucking* should not be followed because it used a standard for preemption that is broader than the one that the Supreme Court announced in *Dan’s City Used Cars*.

The TRO also appears to have overlooked that, at least with regard to construction trucking services, there is a safe harbor exemption that does allow the use of owner-operators instead of drivers in certain circumstances.

The enforceability of AB 5 will not be determined in the near future. There may be conflicting rulings until the Ninth Circuit, and possibly the U.S. Supreme Court, finally decides the issue.

For example, a U.S. District Court in 2016 sustained a challenge to AB 219, which required sellers of ready-mix concrete used on public projects to pay prevailing wages to workers who drove vehicles delivering the concrete. The challenge to AB 219 was not resolved by the Ninth Circuit Court of Appeals until September 20, 2018. The Ninth Circuit’s final decision reversed an injunction that had been issued against AB 219.

CTA will try to use its lawsuit and the TRO as leverage to obtain favorable amendments to AB 5. Such amendments probably would not take effect before 2021, however, unless the Legislature passes an urgency bill.

For further information, please contact Bob Rosin, Patricia Walsh, or Michael Lum at (650) 691-2888.

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