

1 Timothy A. Horton (S.B.N. 205414)
THE LAW OFFICE OF TIMOTHY A. HORTON
2 600 W. Broadway, Suite 700
3 San Diego, CA 92101
4 Telephone: (619) 272-7017
timhorton@timhortonlaw.com

5 Paul D. Cullen, Jr. (pro hac vice)
6 pxc@cullenlaw.com
7 Charles R. Stinson (pro hac vice)
8 crs@cullenlaw.com
9 THE CULLEN LAW FIRM, PLLC
10 1101 30th Street, NW, Suite 300
Washington, DC 20007
Telephone: (202) 944-8600

11 *Attorneys for Intervenor-Plaintiff*
12 *Owner-Operator Independent Drivers Association*

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

15 CALIFORNIA TRUCKING
16 ASSOCIATION *et al.*,

17 Plaintiffs,

18 OWNER-OPERATOR
19 INDEPENDENT DRIVERS
ASSOCIATION,

20 Intervenor- Plaintiff,

21 v.

22 ATTORNEY GENERAL ROB
23 BONTA, *et al.*,

24 Defendants.

Case No. 3:18-CV-02458-BEN-DEB

**DECLARATION OF
TODD SPENCER IN SUPPORT
OF INTERVENOR-PLAINTIFF
OIDA'S MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Roger T. Benitez

Date: April 10, 2023

Time: 10:30 a.m.

Courtroom: 5A

25
26 I, Todd Spencer, do hereby declare:

27 1. The facts set forth herein are of my own personal knowledge, and if
28 called to testify thereto, I could and would do so under oath.

1 2. I am the President of the Owner-Operator Independent Drivers
2 Association, Inc. (“OOIDA”). I have held this position since 2018.

3 3. I have been in the trucking industry since 1974 and worked as an
4 independent owner-operator.

5 4. I have held an executive position in OOIDA, advocating for the rights
6 of truck drivers, since 1981.

7 5. A substantial part of my work and that of my staff is talking to our
8 members on a daily basis about their work and lives, including the challenges they
9 face from motor carriers, brokers, shippers, receivers, and roadside inspectors, and
10 their experiences operating under the laws and regulations that govern everything
11 from how they maintain and operate their vehicles, their health status, when they
12 must rest, and the form of their business agreements and activities. This declaration
13 is based on my personal understanding of the experiences, fears, and beliefs of
14 OOIDA members as to how enforcement of AB-5 will affect independent owner-
15 operators and motor carriers from across the country whose business requires them
16 to drive, at least some of the time, in California.

17 6. OOIDA is a not-for-profit trade association representing the interests
18 of independent owner-operators, small-business motor carriers, and professional
19 drivers.

20 7. OOIDA was founded in 1973 and today has more than 150,000
21 members based in all fifty states and Canada.

22 8. OOIDA has approximately 6,103 members based in California. An
23 additional 7,050 members reside nearby in Arizona, Nevada, Oregon, and
24 Washington.

25 9. OOIDA members collectively own and operate more than 200,000
26 individual heavy-duty trucks.

27 10. The overwhelming majority of OOIDA’s members are part of the
28 interstate motor carrier industry.

1 11. OOIDA's membership consists of both independent owner-operator
2 truck drivers and small business motor carriers.

3 12. Small businesses represent nearly half of the total active motor carriers
4 in the United States.

5 13. Independent owner-operator truck drivers who spend at least some time
6 operating in California are the parties whose employment status is at issue under the
7 AB 5 test.

8 14. Declarants and OOIDA members Marc McElroy, Stacy R. Williams,
9 and Albert Hemerson present good examples of owner-operator OOIDA members
10 who are concerned that AB-5 is or will cause the injury by forcing them 1) to give
11 up their business opportunities that puts them on roads in California or 2) to change
12 their business model to become employees to continue to take that business.

13 15. My earlier Declaration in this matter detailed the importance of the
14 owner-operator business model to the trucking industry. *See* Declaration of Todd
15 Spencer in Support of Motion to Intervene (ECF No. 122-3).

16 16. Motor carriers are businesses that have received federal operating
17 authority from the U.S. Department of Transportation to haul freight in interstate
18 commerce. Motor carriers may operate as sole proprietor truck drivers or as a
19 business with multiple trucks owned by the motor carrier and operated by employee
20 truck drivers or owned and operated by independent owner-operator truck drivers.
21 Motor carriers whose drivers spend at least some of their time operating in California
22 are the businesses required to comply with California employment laws, if
23 applicable to their drivers, under AB-5.

24 17. The effect of AB-5 to classify traditional independent owner-operators
25 as employees would cause irreparable harm to both motor carriers and the
26 independent owner-operator truckers they contract with. To avoid costly defense
27 from California prosecution for violating AB-5, both entities would have to either
28

1 (1) give up the business they currently have hauling freight to and from California,
2 or (2) bear the enormous expense of changing their business models.

3 **Owner-operators faced with reclassification as employees would face**
4 **significant irreparable harm.**

5 18. While the independent owner-operator model has taken different forms
6 over the years, independent owner-operators have been an important component of
7 interstate commerce and the motor carrier industry for decades.

8 19. There are between 350,000 and 400,000 independent owner-operators
9 on the road across the country today.

10 20. Typically, truck drivers begin their career as employees, operating
11 trucks owned and provided by their motor carrier. Eventually, after becoming
12 familiar with the trucking business, some employee drivers decide to start their own
13 businesses as independent owner-operators.

14 21. To become an independent owner-operator, a driver will typically
15 assume loans to purchase their own truck, and sometimes additional equipment, that
16 can cost hundreds of thousands of dollars.

17 22. Owner-operators' businesses are often independently incorporated or
18 operate as sole proprietorships.

19 23. Owner-operators who drive as independent contractors under a motor
20 carrier's DOT operating authority typically enter into exclusive lease agreements
21 with their motor carrier for one-year periods, meaning that the driver is leased to a
22 particular carrier and works only with that carrier. Those agreements can
23 automatically renew or be set for longer durations. Many independent owner-
24 operators work exclusively for the same motor carrier for several years.

25 24. As truck owners and operators, independent owner-operators assume
26 business responsibilities and regulatory obligations that employee drivers do not
27 have.

28

1 25. Under the typical lease agreement, owner-operators are responsible for
2 the maintenance of their trucks and equipment and the cost of tolls, taxes, fuel,
3 insurance, and personal expenses on the road.

4 26. When the independent owner-operator model functions properly, motor
5 carriers comply with the federal Truth-in-Leasing regulations set forth at 49 C.F.R.
6 Part 376, and their drivers have the ability to set their own schedules, choose the
7 freight they want to transport, select their own routes in delivering that freight,
8 purchase equipment that best serves their business needs and personal taste, choose
9 where and how that equipment is maintained, and make numerous other decisions
10 that affect the success of their business.

11 27. Owner-operators build business relationships, routines, and practices
12 that make them successful business owners.

13 28. For owner-operators from around the country who haul loads to, from,
14 and within California as a part of their business, the prospect of being reclassified as
15 employees under AB-5 would cause significant irreparable harm.

16 29. Faced with the prospect of giving up their owner-operator business and
17 becoming employees to continue to haul loads to and from California, most owner-
18 operators would likely choose to give up the business in California instead,
19 foregoing potentially thousands of dollars in annual income.

20 30. Alternatively, to keep hauling loads to California, they would be forced
21 to give up the businesses they have worked to build and become employees instead
22 of business owners. They would have to forgo the opportunity to maximize their
23 income through their own effort and hard work. They would likely have to give up
24 the truck they have invested in, customized, and maintained as their home to serve
25 their work and personal needs. They would give up business relationships they have
26 cultivated to make their business successful. They would give up the discretion they
27 enjoyed setting their own schedules and lose the ability they have as owner-operators
28

1 to make their own decisions about their operations that gave them a sense of control
2 over their own success.

3 31. We have heard from our owner-operator members that their motor
4 carriers have begun to impose requirements upon their owner-operators that they
5 apparently intend to help those motor carriers avoid having to use employee drivers.
6 Declarants Mr. Williams and Mr. McElroy describe such experiences and explain
7 that their businesses have already been affected by AB-5.

8 32. Just as the employee driver position can be the stepping stone to
9 becoming an owner-operator, owner-operators with several years of experience
10 often choose to obtain federal DOT authority to operate as a motor carrier. As a
11 motor carrier, a trucker takes on even more responsibility and greatly expands his or
12 her business opportunities. Being forced to give up an owner-operator business cuts
13 off the driver's career path to wider business opportunities as a motor carrier.

14 33. Employee drivers are assigned the truck they drive (which may not
15 regularly be the same vehicle), told what loads to haul and what routes to take, and
16 are denied all manner of self-determinative decisions and flexibility that they
17 formerly enjoyed and profited from as owner-operators. Owner -operators forced to
18 become employee drivers would lose control of the maintenance of their truck and
19 be forced to rely on the maintenance provided by the motor carrier.

20 34. It would be extremely difficult for an owner-operator, once forced to
21 become an employee driver, to later recreate their previous business as an owner-
22 operator.

23 **Motor Carriers faced with the requirement to reclassify their owner-operator**
24 **drivers as employees under AB-5 would face significant irreparable harm.**

25 35. For motor carriers that contract with owner-operators and for whom a
26 part of their business is hauling loads into or out of California, they too are likely to
27 give up many dollars in freight hauling work to and from California rather than bear
28 the expense of changing their business model to use employee truck drivers.

1 36. Motor carriers forced to switch to an employee model would be
2 required to purchase the trucks to be driven by their employees (up to \$200,000 per
3 vehicle), take on the costs of maintaining and repairing that equipment, hire human
4 resource professionals to ensure their compliance with California's employment
5 laws, and either convince their owner-operators to become employee drivers (which
6 is highly unlikely to occur) or recruit all new drivers to serve their existing customers
7 (a difficult task).


8 37. Relying on independent owner-operators rather than employee drivers
9 allows small-business motor carriers to adjust to market conditions, bid for and
10 accept opportunities to haul specialized freight, and manage costs to strategically
11 grow their businesses over time. Motor carriers who must begin to use employee
12 drivers would lose this flexibility in their businesses and, therefore, lose that
13 business.

14 38. AB-5 would impose harm to the businesses of OOIDA's independent
15 owner-operator and small-business motor carrier members from which they would
16 not easily be able to recover.

17 39. Failure to comply with AB-5 while hauling freight in interstate
18 commerce on California's road would subject motor carriers to civil and criminal
19 prosecutions.

20
21 I declare under penalty of perjury under the laws of the United States that the
22 foregoing is true and correct.

23
24 Executed this 7th day of December 2022, at Grain Valley, Missouri.

25
26
27 

28 Todd Spencer