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CONFORMED COPY

July 31, 2013

VIA OVERNIGHT DELIVERY

Chief Justice Tani Gorre Cantil-Sakauye and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

RE: *People v. Pac Anchor Transportation, Inc., et al.*
Supreme Court of California, Case No. S194388

Dear Chief Justice and Associate Justices:

This reply is submitted in response to the letter brief by Pac Anchor Transportation, Inc. and Alfredo Barajas (collectively, "Pac Anchor") dated July 19, 2013. Pac Anchor asserts that the decision of the United States Supreme Court in *American Trucking Associations, Inc. v. City of Los Angeles* (2013) 569 U.S. ___ [133 S. Ct. 2096, 186 L.Ed.2d 177] [hereafter "*ATA*"] has "paramount significance" in the present case because it demonstrates that the People's UCL action has the "force and effect of law." (Pac Anchor Letter Brief, dated July 19, 2013 [hereafter "Letter Brief"], at p. 4.) By contrast, Pac Anchor minimizes the importance of the decision in *Dan's City Used Cars v. Pelkey* (2013) 569 U.S. ___ [133 S. Ct. 1769, 185 L.Ed.2d 909] [hereafter "*Dan's City*"] and claims that it "has no significant impact" on these proceedings. (Letter Brief, at p. 7.) Pac Anchor is wrong in both instances. Even as characterized by Pac Anchor, the *ATA* decision has little significance in this case because it has never been in dispute that the People's UCL action has the "force and effect of law." Meanwhile, the *Dan's City* decision speaks directly to the instant matter by making clear that unfair competition lawsuits like the People's UCL action are not "facially preempted" as Pac Anchor claims, and that the scope of FAAAA preemption is limited to actions that implicate transportation-related "prices, routes, or services."

I. There Has Never Been a Dispute in this Case that the People's UCL Action Constitutes an Enactment or Enforcement of Law, thus the *ATA* Decision's Findings on that Issue Do Not Provide Guidance to this Court.

In *ATA*, the U.S. Supreme Court found the "concession agreements" entered into between the City of Los Angeles and port trucking firms to be provisions "having the force and effect of law" since they were enforceable by criminal penalties against any terminal operators that allowed non-concession trucking firms to enter their facilities. (*ATA*, *supra*, 133 S. Ct. at p. 2103.) Pac Anchor points to the People's UCL action seeking civil penalties as a similar government enforcement action having the force and effect of law. (Letter Brief, at p. 4.)

However, there has never been any dispute that the instant civil law enforcement action brought by the Attorney General is an enforcement of "a law, regulation, or other provision having the force and effect of law." (49 U.S.C. § 14501(c)(1).) The People have made this point clear throughout these proceedings. (See, e.g., Answer Brief on the Merits, at p. 9, fn. 4 ["There is no dispute that the People's enforcement at issue derives from 'the enactment or enforcement of state law'"].) Thus, while Pac Anchor is correct in concluding that the People's UCL action has the "force and effect of law," that conclusion contributes nothing toward a better understanding of the instant case.

II. Pac Anchor Downplays the Significance of the Decision in *Dan's City* Finding an Unfair Competition Claim Not Preempted and Narrowing the Scope of Preemption Under the FAAAA.

In *Dan's City*, the U.S. Supreme Court found no preemption of a plaintiff's claim under the New Hampshire Consumer Protection Act – the very type of unfair competition legislation that Pac Anchor asserts is "facially preempted." (*Dan's City*, *supra*, 133 S. Ct. at p. 1775; Opening Brief on the Merits, at p. 13.) Pac Anchor glosses over this inconvenient fact by asserting that the Supreme Court "had no occasion to consider arguments for facial preemption,"[1] even though the Court in *Dan's City* was directly addressing an unfair competition claim. (Letter Brief, at p. 6.)

Moreover, Pac Anchor has previously contended that the facial preemption of unfair competition-type claims is mandated by the Supreme Court's decision in *American Airlines, Inc. v. Wolens* (1995) 513 U.S. 219 [115 S. Ct. 817, 130 L.Ed.2d 715] [hereafter *Wolens*]. (See Opening Brief on the Merits, at p. 13 ["[*Wolens*] also held that claims under state consumer protection statutes are preempted on their face because they impose state policies regarding

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[1] Pac Anchor offers that part of the reason why the Supreme Court had "no occasion" to address the issue of facial preemption was because the *Dan's City* decision preceded the Court's later decision during the same term in *ATA*. (Letter Brief, at p. 6.) However, no explanation is given for why this would have made any difference. *ATA* does not discuss or allude to any issues that relate to Pac Anchor's proposed doctrine of "facial preemption" for unfair competition claims.

competition on motor carriers"].) It is difficult to imagine that the Supreme Court, faced with an unfair competition claim and presumably aware of its prior decision in *Wolens*, would bypass any discussion of that prior decision if – as Pac Anchor contends – *Wolens* had set forth any special rule regarding unfair competition claims. More likely, the true reason for the Court's silence on the issue of "facial preemption" is simply that Pac Anchor misreads *Wolens*, and that the Supreme Court has never held unfair competition claims to be preempted *per se*. (Cf. Answer Brief on the Merits, at pp. 12-14 [discussion of *Wolens*].)

Pac Anchor ultimately dismisses *Dan's City* as unimportant, standing only for "the limited proposition that FAAAA preemption does not extend to claims regarding services or acts performed by motor carriers that do not relate to the provision of transportation services at all, such as the sale of a vehicle." (Letter Brief, at p. 6.) Pac Anchor then concludes that as "previously demonstrated," the People's UCL claim is related to motor carrier prices, routes, or services and therefore preempted. (*Ibid.*)

However, even utilizing Pac Anchor's own definition of the *Dan's City* standard, it is difficult to see how the People's UCL claim can be construed as "related to" Pac Anchor's prices, routes, or services. Rather, the more sensible conclusion is that remitting taxes, securing insurance, and paying proper wages – or enforcing these requirements through a UCL action – "do not relate to the provision of transportation services at all." (Letter Brief, at p. 6.) Certainly, Pac Anchor has failed to clearly articulate just how the People's allegations are any more closely related to transportation-related prices, routes, or services than the storage and disposal allegations at issue in *Dan's City*.

Respectfully submitted,

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DECLARATION OF SERVICE BY OVERNIGHT COURIER & U.S. POSTAL SERVICE

Case: *People v. Pac Anchor Transportation, Inc., et al.*
Supreme Court of California Case No. S194388

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On July 31, 2013, I served the attached ***Reply Letter Brief Re: People v. Pac Anchor Transportation, Inc., et al.***, by placing true copies thereof enclosed in sealed envelopes with **Federal Express Overnight Delivery Service**, and the **U.S. Postal Service**, as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 31, 2013, at Los Angeles, California.

R.L. NORRINGTON
Declarant

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Signature

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