

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELITE LOGISTICS CORPORATION)	Case No. CV 11-02952 DDP (PLAx)
and on behalf of all others)	
similarly situated,)	
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S MOTION
)	FOR PARTIAL SUMMARY JUDGMENT
v.)	
)	
MOL AMERICA, INC.,)	[Dkt. No. 63]
)	
Defendants.)	
_____)	

Presently before the court is Plaintiff's Motion for Partial Summary Judgment Regarding Declaratory and Injunctive Relief. Having considered the submissions of the parties and heard oral argument, the court denies the motion and adopts the following order.

I. Background

Defendant MOL (America) Inc. ("MOL") is an international ocean carrier, and transports cargo in shipping containers MOL owns. (Declaration of Don Licata, ¶3). Independent motor carriers, or truckers, such as Plaintiff, transport MOL's cargo containers from ports to inland distribution centers, then return the empty

1 containers to MOL at the port. (Id. ¶ 5.) MOL contracts with the
2 cargo owners, not the truckers, for the overland transport. (Id. ¶
3 6.) The cargo owners, in turn, hire and pay the truckers. (Id. ¶
4 7.)

5 MOL's contracts with cargo owners provide for some period of
6 "free time," during which MOL does not charge customers for the use
7 of its shipping containers. (Id. ¶ 13.) When containers are
8 returned after the expiration of the "free time" period, MOL
9 assesses a "detention charge." (Id. ¶ 10.) In other words, MOL
10 allows its cargo customers to check out, or borrow, the shipping
11 containers containing the cargo owners' property at no charge for a
12 certain time period. Ideally, the container can be delivered,
13 unloaded, then returned to MOL within the "free time" period. If
14 the container is returned late, however, MOL charges a late return
15 fee.¹

16 While cargo owners contract with MOL to transport containers
17 to the inland container yard, the independent truckers actually
18 pick up, transport, and return MOL's containers. The truckers are
19 not, however, parties to the transportation service contract.²
20 Nevertheless, when truckers are late returning MOL's containers,
21 for whatever reason, it is the truckers, not the contracting cargo
22 owners, who must pay the late fee. (Id. ¶ 15.) Truckers pay the
23

24 ¹ The parties refer to this late fee either as a "detention
25 charge" or "per diem."

26 ² Though the record is somewhat unclear, the parties appear to
27 agree that this case only concerns what the parties dub either "CY
28 moves" or "merchant haulage" scenarios where truckers deliver
containers to a container yard. In "door move" scenarios, in
contrast, MOL itself hires a trucker to deliver cargo to the cargo
owner's facility. (Licata Decl. ¶¶ 6-7).

1 late fees, then in turn bill cargo owners for those fees.
2 (Declaration of Erich Wise, Ex. A at 20). If truckers refuse to
3 pay late fees, they may be denied access to shipping containers and
4 essentially foreclosed from doing business. (Id. at 21).

5 In 2005, California enacted Business and Professions Code §
6 2298, which states:

7 (b) An intermodal marine equipment provider or
8 intermodal marine terminal operator shall not impose per
9 diem, detention, or demurrage charges on an intermodal
10 motor carrier relative to transactions involving cargo
11 shipped by intermodal transport under any of the following
12 circumstances:

13 (1) When the intermodal marine or terminal truck
14 gate is closed during posted normal working hours. No per
15 diem, detention, or demurrage charges shall be imposed on
16 a weekend or holiday, or during a labor disruption period,
17 or during any other period involving an act of God or any
18 other planned or unplanned action that closes the truck
19 gate.

20 Cal. Bus. & Profs. Code § 2298.

21 By this motion for partial summary judgment, Elite seeks a
22 declaratory judgment that California Business and Professions Code
23 § 2298 prohibits MOL from charging late fees on any weekend or
24 holiday, as well as related injunctive relief.³

25 **II. Legal Standard**

26 Summary judgment is appropriate where the pleadings,
27 depositions, answers to interrogatories, and admissions on file,
28 together with the affidavits, if any, show "that there is no
genuine dispute as to any material fact and the movant is entitled
to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party
seeking summary judgment bears the initial burden of informing the
court of the basis for its motion and of identifying those portions

³ This motion does not seek summary judgment regarding
damages.

1 of the pleadings and discovery responses that demonstrate the
2 absence of a genuine issue of material fact. See Celotex Corp. v.
3 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from
4 the evidence must be drawn in favor of the nonmoving party. See
5 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986).

6 If the moving party does not bear the burden of proof at trial, it
7 is entitled to summary judgment if it can demonstrate that "there
8 is an absence of evidence to support the nonmoving party's case."
9 Celotex, 477 U.S. at 323.

10 Once the moving party meets its burden, the burden shifts to
11 the nonmoving party opposing the motion, who must "set forth
12 specific facts showing that there is a genuine issue for trial."
13 Anderson, 477 U.S. at 256. Summary judgment is warranted if a
14 party "fails to make a showing sufficient to establish the
15 existence of an element essential to that party's case, and on
16 which that party will bear the burden of proof at trial." Celotex,
17 477 U.S. at 322. A genuine issue exists if "the evidence is such
18 that a reasonable jury could return a verdict for the nonmoving
19 party," and material facts are those "that might affect the outcome
20 of the suit under the governing law." Anderson, 477 U.S. at 248.
21 There is no genuine issue of fact "[w]here the record taken as a
22 whole could not lead a rational trier of fact to find for the non-
23 moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
24 475 U.S. 574, 587 (1986).

25 It is not the court's task "to scour the record in search of a
26 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,
27 1278 (9th Cir. 1996). Counsel has an obligation to lay out their
28 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d

1 1026, 1031 (9th Cir. 2001). The court "need not examine the entire
2 file for evidence establishing a genuine issue of fact, where the
3 evidence is not set forth in the opposition papers with adequate
4 references so that it could conveniently be found." Id.

5 **III. Discussion**

6 A. Preemption

7 MOL argues that Section 2298 is preempted by the Federal
8 Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. §
9 14501(c)(1). That statute states, in relevant part, that "a State
10 . . . may not enact or enforce a law, regulation, or other
11 provision having the force and effect of law related to a price,
12 route, or service of any motor carrier . . . with respect to the
13 transportation of property." 49 U.S.C. § 14501(c)(1).

14 The question presented here is whether Section 2298 is
15 sufficiently connected with, or makes reference to, motor carrier
16 rates, routes, or services. Rowe v. New Hampshire Motor Transp.
17 Assoc., 552 U.S. 364, 370 (2008)(citing Morales v. Trans World
18 Airlines, Inc., 504 U.S. 374, 378 (1992)). MOL appears to argue
19 that because truckers pass the cost of late fee charges on to cargo
20 owners, any law affecting the upstream fees charged to the truckers
21 affects or is related to the fees the truckers themselves charge,
22 and is therefore preempted. (Opp. at 13).

23 Section 2298 regulates the fees that marine equipment
24 providers such as MOL may charge motor carriers. The statute does
25 not require anything of the carriers themselves. Thus, the effect
26 of Section 2298 on motor carriers' rates or services with respect
27 to transportation of property is indirect, at best. While a law
28 having even an indirect effect on rates, routes, or services may,

1 in some cases, be preempted, the FAAA does not preempt state laws
2 that affect prices, routes, or services "in only a tenuous, remote,
3 or peripheral manner." Dan's City Used Cars, Inc. v. Pelkey, 133
4 S.Ct. 1769, 1778 (2013) (citations and alteration omitted); Rowe,
5 552 U.S. at 370.

6 In Rowe, Maine passed a law (1) requiring tobacco retailers to
7 use delivery services that used particular recipient-verification
8 services and (2) forbidding transportation of tobacco under certain
9 circumstances and from certain shippers. Rowe, 552 US. at 368.
10 The Supreme Court held that Maine's recipient-verification law,
11 which regulated shippers rather than carriers, was "less 'direct'
12 than it might be," but nevertheless effectively required motor
13 carriers to offer services that they otherwise would not provide,
14 thus hampering the competitive market forces that the FAAA was
15 designed to protect. Id. at 371-72. More damningly for preemption
16 purposes, the state statute's imposition of civil liability upon
17 motor carriers for failure to conduct certain specific inspection
18 procedures directly regulated shippers' services. Id. at 372-73.
19 Accordingly, the Court held Maine's law preempted.⁴ Id. at 377.

20 Here, unlike the statute at issue in Rowe, California Business
21 & Professions Code § 2298 has no regulatory effect, whether direct
22 or indirect, on motor carriers' services. At most, by limiting
23

24 ⁴ In American Trucking Associations, Inc. v. City of Los
25 Angeles, the Supreme Court recently held that the FAAA preempted a
26 Port of Los Angeles requirement that truckers display certain
27 placards and submit parking plans to city authorities. Am.
28 Trucking Ass'ns, Inc. v. City of Los Angeles, 133 S.Ct. 2096, 2100,
2105. There, however, there was no dispute whether the Port's
regulations were related to truckers' services. Id. at 202. The
issue rather, was whether the Port's regulations had the force and
effect of law. Id.

1 truckers' exposure to certain fees, Section 2298 has a tenuous
2 impact on truckers' prices. Elite, for its part, disputes even
3 this peripheral link, asserting that it invoices per diem fees
4 separate and apart from its freight rates, which are independent of
5 such charges. (Wise Decl., Ex. A.) Even if Elite did build late
6 fees into its fee structure, the effect of that increased cost
7 would be remote, akin to that of other state-imposed input costs
8 resulting from such regulations as highway weight and clearance
9 restrictions, speed limits, and fuel taxes. Section 2298's impact
10 on truckers' prices, routes, and services, if any, is sufficiently
11 remote as to fall outside the ambit of the FAAA preemption
12 provision.

13 B. Meaning of Section 2298

14 Section 2298 prohibits late fees "[w]hen the intermodal
15 marine or terminal truck gate is closed during posted normal
16 working hours." A trucker cannot, of course, return an overdue
17 container if the truck gate is closed. The parties appear to agree
18 that MOL cannot, and does not, currently charge late fees when the
19 truck gate is closed.

20 Elite contends, however, that Section 2298 forbids the
21 imposition of late fees on any weekend or holiday, regardless
22 whether the terminal is open for business. Specifically, Elite
23 points to the second sentence of Section 2298(b)(1), which reads,
24 "No per diem, detention, or demurrage charges shall be imposed on a
25 weekend or holiday, or during a labor disruption period, or during
26 any other period involving an act of God or any other planned or
27 unplanned action that closes the truck gate."

28

1 Courts need not look beyond the clear language of a statute
2 to determine its meaning. Clayworth v. Pfizer, Inc., 49 Cal.4th
3 758, 770 (2010). The second sentence of Section 2298(b)(1) sets
4 forth a number of "planned and unplanned action[s]" that could
5 conceivably result in the closing of the truck gate. Absent any
6 limitation other than the closed gate language, the statute would
7 be so broad as to be meaningless. See Metcalf v. Country of San
8 Joaquin, 42 Cal. 4th 1121, 1135 (2008); Hensel Phelps Const. Co. v.
9 San Diego Unified Port Dist., 197 Cal. App. 4th 1020, 1034 (2011).
10 Without any geographical or temporal restriction on the terms
11 "labor disruption period" or "act of God," the statute might
12 theoretically be applicable at any given moment. Nor would it make
13 sense to read into those phrases a requirement that each scenario
14 disrupt operations at the terminal, as the "closes the truck gate"
15 language, which Plaintiff seeks to ignore with respect to weekends
16 and holidays, serves precisely that purpose.

17 To the extent the statutory language is ambiguous, Section
18 2298's legislative history confirms that it applies only when the
19 truck gate is closed. See Alejo v. Torlakson, 212 Cal. App. 4th
20 768, 787 (2013). The legislative analysis of the bill that became
21 Section 2298 stated that the bill "stems from the complaints of the
22 commercial vehicle operators . . . regarding the penalties imposed
23 for the late return of cargo containers which they characterize as
24 unfair and unwarranted. These vehicle operators argue that they
25 are 'charged late fees for the return of empty containers, even
26 when terminals are closed" CA. B. An., S.B. 45 Assem.,
27 7/1/2005. A later analysis specified that the bill prohibits late
28 charges "[w]hen the marine terminal or terminal truck terminal is

1 closed." CA. B. An., S.B. 45 Sen., 8/18/2005. This history
2 confirms that Section 2298 applies only when the truck gate is
3 closed, and not, as Plaintiff contends, on any and all weekends and
4 holidays.

5 Because Section 2298 prohibits late fees only on weekends and
6 holidays when the truck gate is closed, Elite's Motion for Summary
7 Judgment Regarding Declaratory and Injunctive relief is denied,
8 insofar as it seeks a declaratory judgment that MOL cannot charge
9 late fees on any weekend or holiday and injunctive relief against
10 such charges.

11 C. Pass-On Defense

12 MOL also contends that Elite lacks standing to pursue the
13 relief requested because it passes on any late fee charges to the
14 cargo customer, and therefore has not sustained any injury. (Opp.
15 at 20.) MOL did not, however, fully brief its argument. In any
16 event, the court need not reach the issue, having rejected Elite's
17 interpretation of Section 2298 and determined that Elite's motions
18 must be denied. The court notes, however, that the California
19 Supreme Court has rejected such a "pass-on" defenses, even outside
20 the antitrust context. Kwikset Corp. v. Superior Court, 51 Cal.4th
21 310, 334; Clayworth, 49 Cal. 4th at 789 ("That a party may
22 ultimately be unable to prove a right to damages . . . does not
23 demonstrate that it lacks standing to argue for its entitlement to
24 them. . . . [M]itigation, while it might diminish a party's
25 recovery, does not diminish the party's interest in proving it is
26 entitled to recovery.).

27 ///

28 ///

1 **IV. CONCLUSION**

2 For the reasons stated above, Plaintiff's Motion for Summary
3 Judgment Regarding Declaratory and Injunctive relief is DENIED.

4

5

6

7 IT IS SO ORDERED.

8

9

10 Dated: August 29, 2013

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



DEAN D. PREGERSON
United States District Judge