Western States TRUCKING ASSOCIATION
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October 29, 2018

The Honorable Raymond Martinez
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

RE: California Meal and Rest Break Rules; Petition for Determination of Preemption [Docket No. FMCSA-2018-0304]

Dear Administrator Martinez,

The *Western States Trucking Association* (*WSTA*)[1] submits these comments in response to a Notice of petition for determination of preemption; request for comment published in the Federal Register on October 4, 2018 (FR Vol. 83, No. 193) by the *Federal Motor Carrier Safety Administration* (*FMCSA* or *Agency*) seeking input on a petition filed by the *American Trucking Associations, Inc.* (*ATA*). The *ATA* asks the *Agency* to preempt California from being able to impose its own unique meal and rest break requirements on commercial drivers engaged in interstate commerce and under the authority of the Secretary of Transportation's hours-of-service regulations.

The *California Industrial Welfare Commission Wage Order No.* 9-200, 8 C.C.R. § 11090 is the relevant regulation covering the "transportation industry" operating in California. Within the Wage Order are the pertinent sections related to requirements for meal and rest breaks.

The *WSTA* encourages *FMCSA* to grant *ATA's* request and preempt California from being able to enforce its unique meal and rest break requirements on drivers. It is unquestionable allowing California (and any other state) to impose its own unique work rules on drivers seriously impacts highway safety contrary to phantom assertions of a "safety benefit" from the state of California and organizations or individuals supportive of this type of interference in commerce.

On July 9, 2018 the *WSTA* submitted a similar petition[2] to the *Agency* seeking preemption of California's meal and rest break rules for a much more limited subset of drivers – those hauling permit loads. *FMCSA* acknowledged receipt of the petition on July 30, 2018. We are attaching our petition to this submittal since it contains extensive cites related to the core argument – safety – for FMCSA to preempt California from enforcing its meal and rest break requirements. That imposition directly threatens commercial motor vehicle and highway safety. We ask the *Agency*

[1] The *Western States Trucking Association* is the oldest, independent, nonprofit trucking association in the U.S. originally founded in 1941. We are headquartered in Upland, CA. Our nearly 6,000 member and allied motor carriers are engaged in virtually every mode of trucking including construction, port drayage, cross-border, general freight, heavy-haul and agricultural trucking with most carrier operations focused in the western U.S.
[2] *See* - https://westrk.org/wstas-petition-to-dot-to-preempt-ca-meal-rest-break-law/

to consider the petition we filed on July 9, 2018 be utilized in making a determination to preempt California's meal and rest break rules and to support the *ATA's* petition. While our safety arguments used were in support of preemption for a limited subset of drivers, they are the same safety arguments that would apply to the entirety of the trucking industry regardless of what is hauled.

WSTA comments

While the *ATA* has based its petition on 49 U.S. Code § 31141 (which is appropriate), the *WSTA* relied on 49 U.S. Code § 14501 (federal authority over intrastate transportation). This *ATA* petition is limited to those engaged in "interstate commerce." Congress in 1994 prohibited states from economically regulating their "intrastate" trucking markets, specifically the "price, route, or service" of ANY motor carrier such as those engaged exclusively in "intrastate" commerce.

In choosing to cite 49 U.S. Code § 14501 as the basis of our petition, part of our intent was to get U.S. DOT to revisit its conclusions expressed in what we believe was a highly politicized (and flawed) legal brief[3] filed in the *United States Court of Appeals for the Ninth Circuit,* a case titled *Mickey Lee Dilts, Et. Al., v. Penske Logistics, LLC and Penske Truck Leasing Co., LP.* That decision has cost motor carrier untold millions of dollars with trial lawyers earning huge fees for themselves.

Simply stated, California being able to impose its Wage Order No. 9 which includes the meal and rest break provisions on ANY motor carrier regardless of whether they operate "intra" or "interstate" is a violation of both 49 U.S. Code § 31141 and 49 U.S. Code § 14501 because of its (negative) direct impact on commercial motor vehicle safety as described in our petition filed in July. We've added additional comments in this letter to support a finding to preempt California from being able to continue to impose its meal and rest break requirements on the trucking industry whether they operate "intra" or "interstate."

The previous leadership at *U.S. DOT*, political appointees from the previous Administration were not consistent in how they applied their legal logic to the *Dilts* brief *U.S. DOT* submitted to the *Ninth Circuit* compared with their decision in granting relief from the federal 30-minute break requirement in the case of the *Specialized Carriers and Rigging Association* [4]*(SCRA).* In the first case *U.S. DOT* was unpersuaded by any plea related to how the truck parking issue impacted the trucking industry ability to safely comply with California requirements, and in the second case when granting relief to the SCRA from the federal 30-minute break requirement the Agency used a different rationale as a basis of granting the exemption. The Agency stated:

... Nonetheless, finding suitable parking for trucks with OS/OW loads is particularly difficult, as SC&RA pointed out, and the default option is likely to be parking on the shoulder of a highway, with the load sometimes extending into the lanes of traffic. ***No matter how well marked, trucks parked at roadside, especially at night, are too often mistaken for moving vehicles and struck, frequently with fatal consequences***...(Emphasis Added).

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[3] *See* - http://www.impactlitigation.com/wp-content/uploads/2014/03/Penske-Brief.pdf
[4] See - https://www.gpo.gov/fdsys/pkg/FR-2015-06-18/pdf/2015-15018.pdf

We believe California is improperly imposing its meal and rest break requirements on motor carriers regardless of whether they are engaged in "intra" or "interstate" commerce and the previous Administration, we believe, placated its own special interests (labor and trial attorneys) when *U.S. DOT* rendered its opinion in *Dilts*. How else are we to understand the disconnect in the legal reasoning for the two cited instances above?

U.S. DOT could use this opportunity to rectify and clarify its position related to allowing California to impose it meal in rest break requirements on both "intra" and "interstate" operations and that in fact the brief filed in *Dilts* no longer represents the view of *U.S. DOT*. To do less will insure FMCSA will need to deal with further petitions related to this issue.

Proponents of California meal and rest breaks

49 U.S. Code § 14501 is specific in prohibiting state laws that impact the price, route, or service of motor carriers and contrary to assertions from supporters that compliance costs are "indirect" thus permissible, the cost is measured in the tens of millions of dollars in legal settlements and the alterations necessary in operational and recordkeeping requirements. Many proponents of allowing California to enforce its unique meal and rest break requirements actually help to make the case for preemption by focusing on "driver pay"[5] issues. That focus is purely economic and exactly what is prohibited under 49 U.S. Code § 14501.

Once larger motor carriers have been legally "shook down" for outlandish payments by trial lawyers, their attention turns to smaller motor carriers – they are all that's left to get money from. Most of *WSTA's* members are classified as small businesses and many have been targeted for litigation. For example, while federal regulation exempts those operating under the short-haul exemption from complying with the federal 30-minute break requirement (under Wage Order No. 9 they are not exempt) those operators are allowed to use time sheets or time cards for hours-of-service (HOS) compliance. Because those documents are often kept at the terminal location, break times were not necessarily recorded, thus many of our members have been falsely accused by unscrupulous drivers (and their lawyers) of failing to make breaks available. Without evidence of compliance with the Wage Order these members must submit to being extorted into paying settlements – often out-of-court. To address this problem, many have begun to utilize electronic logging devices (ELD's) with their significant added cost to operations just to protect themselves from liability.

While drivers and motor carriers are able to enter into agreements for a paid "on-duty" meal breaks, this presumes every motor carrier has the financial wherewithal to simply absorb these payments – some do, many don't. Increased rates and surcharges follow where economics allows cost recovery. These are not simply "indirect costs" as proponents (and even *U.S. DOT*

[5] The *WSTA* is not indifferent to issue of how drivers are paid. Many of our members must comply with federal overtime payment requirements because their drivers are not under the authority of the Secretary for hours-of-service compliance. Proponents of driver pay issues could work with legislators to lift the exemption from the Fair Labor Standards Act for drivers but instead the meal and rest break issue is being used as a form of a "Trojan Horse" to get at "pay issues." Organized labor and their allies would likely oppose any such change to federal law since it would dilute their power and advantages in collective bargaining agreements.

opined in *Dilts*) have argued. Depending on a motor carrier's type of operation, compliance costs can easily exceed ten percent of daily payroll costs.

FMCSA has just closed a docket that sought public input on possible changes to federal hours-of-service regulations[6]. With well over 5,000 submitted comments a random read within the docket shows overwhelming support for elimination of the federal 30-minute break requirement. Even the *Owner-Operator Independent Drivers Association* (OOIDA) supports the elimination of the federal 30-minute break requirement in their filed comments stating:

The needless and unfounded 30-minute rest break requirement does not correspond to the realities of freight movement. There are many operational situations where the 30-minute rest break requires drivers to stop when they simply do not need to, making the mandate either impractical or ***unsafe****... In many cases, drivers will stop on highway shoulders to wait out their break because it's their only option to be compliant.* (Emphasis added).

OOIDA has publicly in its media supported California's imposition of its meal and rest break requirements under the guise of a "driver pay" issue. While we agree with them that forced break times can be unsafe. We also believe that a driver who must comply with a much more rigid set of break requirements such as meeting California requirements places the driver in an equally unsafe position as *OOIDA* claimed in their comments related to federal HOS. There is no difference. A state has no right to use regulations such as meal and rest break requirements as a "back-door" to enforce a form of economic regulation on the trucking industry whether operations are "intra" or "interstate."

Organized labor's attention to this issue is curious since California specifically exempts those covered by a collective bargaining agreement from complying with Wage Order No. 9 meal and rest break requirements. This exemption clearly undercuts comments made by officials of the state, labor, and trial attorneys that compliance with the break requirements are a safety issue. If it was truly a safety issue, there would be no exemptions – period. The exemption is in place to benefit labors ability to organize employers by offering them protection from liability for violating the Wage Order – it's a bargaining chip embraced by the political leaders in California to reward one of their largest constituents and campaign contributors.

Conclusion

The *WSTA* encourages *FMCSA* to determine that California's imposition of its meal and rest break requirements is prohibited by both 49 U.S. Code § 31141 and 49 U.S. Code § 1450. The safety related rationale necessary to make this preemption decision is described in our separate July 9th petition submitted to the Agency. Additionally, there should be no distinction between whether a motor carrier is engaged in "intra" or "interstate" operations, the Agency should preempt California from enforcing its unique break requirements on the entirety of the trucking industry.

[6] See - https://www.gpo.gov/fdsys/pkg/FR-2018-08-23/pdf/2018-18379.pdf

States are required by federal regulation (49 C.F.R §355.5) to have compatible state laws and regulations applicable to interstate commerce and to intrastate movement of hazardous materials are identical to the FMCSRs and the HMRs or have the same effect as the FMCSRs; and that State laws applicable to **intrastate commerce** are either identical to, or have the same effect as, the FMCSRs or fall within the established limited variances under §§350.341, 350.343, and 350.345. (Emphasis added).

California's "intrastate" hours-of-service rules MUST meet the above requirement and Wage Order No. 9 dictates hours-of-service rules outside of what is permissible by federal law.

Respectfully submitted,

Joe Rajkovacz
Director of Governmental Affairs & Communications
Western States Trucking Association

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U.S. Department
of Transportation

**Federal Motor Carrier
Safety Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

July 30, 2018

Mr. Joe Rajkovacz
Director of Governmental Affairs
Western States Trucking Association
334 North Euclid Avenue
Upland, CA 91786

Dear Mr. Rajkovacz:

Thank you for your letter of July 9, 2018, to Secretary Elaine L. Chao regarding application by the Western States Trucking Association for a Determination that California's meal and rest break requirements as applied to federally regulated truck drivers transporting oversized/overweight permit loads is preempted by 49 U.S.C. 1450l(c)(l).

It will take additional time for the Department to complete its response, which we will provide as soon as possible. We appreciate your patience.

For your reference, we have assigned control number FMC-180719-005 to your letter.

Sincerely yours,

Charles Medalen

Charles Medalen
Senior Attorney-Advisor

Western States TRUCKING ASSOCIATION

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July 9, 2018

The Honorable Elaine Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

The Honorable Raymond Martinez
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

RE: **Application by the Western States Trucking Association for a Determination that California's meal and rest break requirements as applied to federally regulated truck drivers transporting oversized/overweight permit loads is preempted by 49 U.S.C. § 14501(c)(1)**

Dear Secretary Chao and Administrator Martinez:

The *Western States Trucking Association* (WSTA) hereby petitions the U.S. Department of Transportation (US DOT) for a determination that California's unique meal and rest break rules as applied to drivers of oversized/overweight (OS/OW) loads whose hours-of-service (HOS) are federally regulated be preempted.

Founded in 1941, the *WSTA* is the nation's oldest, independent, nonprofit trucking association representing over 1,000 motor carriers with another 5,000 allied motor carriers primarily operating on the west coast. The *WSTA* advocates on behalf of our owner-operator, fleet, and broker members for sensible legislation and regulations that affect their businesses. Our members are engaged in virtually every mode of trucking including; construction, port drayage, cross-border, general freight, heavy-haul and agricultural operations. Importantly and related to this petition, we have members who transport loads that must move under special permits within California and whose driver HOS are regulated by the *US Secretary of Transportation,* not state HOS regulations.

BACKGROUND

Numerous *WSTA* members transport OS/OW on California highways. These types of shipments require unique permits to operate on-highway and sometimes will require police escort. Many of the loads transported by our members originate at California federal military bases or ports for transport to and from. As such, the motor carriers must have federal operating authority and their drivers must operate under federal HOS regulations since the shipments are within the stream of interstate/foreign commerce.

On November 24, 2014 the *Federal Motor Carrier Safety Administration* (FMCSA) published in the Federal Register a Notice of an application for exemption from the *Specialized Carriers & Rigging Association* (SC&RA) requesting an exemption from the federal 30-minute break requirement for specialized carriers transporting OS/OW loads.[1]

[1] *See* - https://www.gpo.gov/fdsys/pkg/FR-2014-11-24/pdf/2014-27743.pdf

On June 18, 2015 after an open public comment period in which the *WSTA* (then named the *California Construction Trucking Association*) filed comments supportive of the exemption request,[2] FMCSA approved the petition. Importantly in granting the exemption request, *FMCSA* cited a safety related rationale for approving the exemption:

> *"FMCSA has evaluated SC&RA's application and the public comments and decided to grant the exemption. The arguments against the exemption are not trivial... **Nonetheless, finding suitable parking for trucks with OS/OW loads is particularly difficult, as SC&RA pointed out, and the default option is likely to be parking on the shoulder of a highway, with the load sometimes extending into the lanes of traffic. No matter how well marked, trucks parked at roadside, especially at night, are too often mistaken for moving vehicles and struck, frequently with fatal consequences,** before an inattentive driver can correct his mistake."*[3] (Emphasis added).

The exemption from the federal 30-minute break requirement for drivers of OS/OW is in place to 2020.

Our petition for a determination to deny California the ability to enforce its meal and rest break requirements on drivers transporting OS/OW within the state who operate under federal HOS rules is based on the safety rationale used by *FMCSA* in granting the *SC&RA* exemption from the federal 30-minute rest break requirement.

Drivers of OS/OW shipment within California are effectively barred from taking advantage of the federal exemption because they must still comply with a state requirement mandating meal and rest break times. Negative impacts to highway safety are precisely the problem with allowing California to insist on compliance with its meal and rest break requirements. The very point made by *FMCSA* that trucks parking alongside a highway to comply with mandatory break times are unsafe "frequently with fatal consequences" is why we believe that California must be preempted from enforcing its own meal and break requirements on drivers of OS/OW shipments.

CALIFORNIA MEAL AND REST BREAK REQUIREMENTS

The California Industrial Welfare Commission publishes wage orders for specific industries. Wage order No. 9-2001 specifically applies to the transportation industry.[4] California has been unique nationally in enforcing its wages; hour and working conditions requirements on federally regulated motor carriers engaged in interstate commerce. The application of these workplace rules to drivers transporting OS/OW loads effectively renders the exemption from the federal 30-minute break requirement moot since drivers must now comply with an even more onerous subset of rules that directly impact their HOS. Worse, the application of California rules in-place of complying with federal HOS for OS/OW drivers can have fatal consequences as described in *FMCSA's* justification for granting an exemption from the federal 30-minute break requirement.

The issue of California being able to apply its own unique subset of workplace rules to truck drivers has been the subject of endless litigation and congressional attempts to clarify federal law. Much of this came to the fore after the *United States Court of Appeals for the Ninth Circuit* issued a decision on March 3, 2014 in a legal case titled *Dilts v. Penske Logistics, Inc.*, that found California's meal and rest break requirements were not federally preempted by 49 U.S.C. § 14501(c)(1)[5] which is intended to preempt states from enforcing laws pertaining to "prices, routes and services" of motor carriers.

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[2] *See* - https://www.regulations.gov/document?D=FMCSA-2014-0420-0078

[3] *See* - https://www.gpo.gov/fdsys/pkg/FR-2015-06-18/pdf/2015-15018.pdf

[4] See - https://www.dir.ca.gov/iwc/IWCArticle9.pdf, specifically, sections 11 and 12.

[5] *See* - https://www.gpo.gov/fdsys/pkg/FR-2015-06-18/pdf/2015-15018.pdf

The court invited the US DOT to file an *amicus* brief in the case to which the US DOT submitted a sixty eight page brief.[6] US DOT addressed only three questions in its filed brief:

1- Whether the FAAA Act preempts the California meal and rest break law as applied to motor carriers.
2- Whether the Federal Motor Carrier Safety Administration continues to adhere to a prior administrative ruling that the California law is not a law regulating commercial motor vehicle safety.
3- Whether the federal government's views on preemption, as set forth in this amicus brief, should be accorded deference.

The response by *FMCSA* to each of the questions ultimately was a significant factor in the final decision rendered by the *Ninth Circuit*.

In its brief *FMCSA* maintained a consistency of its previously made determination related to the application of California meal and rest break requirements.

In 2008 *FMCSA* denied a petition from a group of motor carriers asking that California's meal and rest break requirements be federally preempted.[7] *FMCSA* issued the denial of the preemption request saying the laws are not "**laws and regulations on commercial motor vehicle safety**." (Emphasis added).

The federal government's consistent positions expressed in 2008[8] and the 2014 brief supplied in *Dilts v. Penske Logistics, Inc.*, stating that absent a safety linkage the US DOT couldn't preempt California's meal and rest break requirements is now in conflict with the reasoning used to justify the *SC&RA* petition. In light of *FMCSA's* rationale in approving the *SC&RA* exemption request we believe the safety linkage is now conclusively obvious. The rationale advanced in the SC&RA exemption proceeding is identical to the safety issue related to the application of California's meal and rest break requirement, and in fact, renders action taken by US DOT in granting the SC&RA exemption null and void in California.

The written decision from the Ninth Circuit in *Dilts v. Penske Logisitics, Inc.*, gave tremendous deference to US DOT's brief stating:

> *But three factors specific to this issue lead us to "place some weight upon DOT's interpretation," Geier v. Am. Honda Motor Co., 529 U.S. 861, 883 (2000): (1) the agency's general expertise in the field of transportation and regulation, (2) the fact that the position taken in the brief represents the agency's reasoned consideration of the question, and (3) the fact that the government's position is generally consistent with its approach to other preemption questions concerning California's meal and rest break laws (although this is the first time that the government has taken a position on FAAAA preemption specifically).*

In a concurring opinion district Judge Zouhary noted "Penske failed to carry its burden." Judge Zouhary pointedly expressed the view that specific examples of drivers being restricted in their ability to find parking may or may not have been persuasive. The US DOT brief claims not being able to find "legal parking" spots adequate to accommodate a large truck doesn't support preemption. That statement is in conflict with the logic applied in granting the *SC&RA* exemption request.

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[6] *See* - http://www.impactlitigation.com/wp-content/uploads/2014/03/Penske-Brief.pdf
[7] *See* - https://www.gpo.gov/fdsys/pkg/FR-2008-12-24/pdf/E8-30646.pdf
[8] *Ibid*

TRUCK PARKING

The linkage between adequate truck parking and highway safety is well documented to the point Congress included specific language (Jason's Law) within the highway bill, *Moving Ahead for Progress in the 21st Century Act* (MAP-21; P.L. 112-141)[9] signed into law by President Barak Obama on July 6, 2012 that states in part:

> *It is the sense of Congress that it is a national priority to address projects under this section for the shortage of long-term parking for commercial motor vehicles on the National Highway System to* ***improve the safety*** *of motorized and nonmotorized users and for* ***commercial motor vehicle operators.***(Emphasis added).

Federal Highway Administration contains on its website extensive information related to the shortage of truck parking.[10] For the purposes of this petition we'd note that the *Federal Highway Administration* states the following pertaining to truck parking:

> *An inadequate supply of truck parking spaces can result in negative consequences. Tired truck drivers may continue to drive because they have difficulty finding a place to park for rest. Truck drivers may choose to park at unsafe locations, such as on the* ***shoulder of the road, exit ramps****, or vacant lots, if they are unable to locate official, available parking.* (Emphasis added).

When it comes to finding adequate space to park a tractor-trailer few states have as severe of an available truck parking issue as exists within California. Finding parking for a 65 foot or longer commercial motor vehicle is far different (and difficult) than a two-axle, less than 26,000 pound straight truck which can virtually pull into any gas station or fast food restaurant while its operator complies with California meal and rest break requirements.

California has the distinction of having two of the most congested metropolitan areas not just in the U.S. but also on the planet. The Los Angeles basin and San Francisco (Bay area) are ranked #1 and #5 respectively as most congested. The metropolitan San Diego area doesn't fare much better.

Within those three metropolitan areas encompassing approximately 29 million people many jurisdictions specifically prohibit any commercial truck parking on their local surface streets. The only truck stops of any size with available truck parking in the LA basin are located in Ontario and Fontana (50+ miles from downtown), there are none in San Diego, and in the Bay area one must travel either south to Gilroy or east towards Sacramento or into the Central Valley. Bluntly, there simply are no meaningful, safe and available options for drivers of long combination commercial motor vehicles to park in order to comply with California's meal and rest break requirements. In order to comply with California requirements they necessarily will park alongside freeways and illegally on on/off ramps – exactly the behavior both Congress and US DOT have recognized as inherently unsafe.

We'd also note that many routes commercial drivers may travel within California have little or no available truck parking. A driver of an OD/OW shipment traveling I-15 between San Diego and the Inland Empire will not locate parking until they reach Ontario, CA. a distance of 115 miles. Traveling I-5 between San Diego and Los Angeles there is only one rest area with limited truck parking spaces at Camp Pendleton. From San Diego on I-5 one would have to travel 166 miles to Castaic, CA. to find available truck parking. Both routes experience congestion at levels rarely experienced in most of the rest of the

[9] MAP-21, Sec. 1401. https://www.gpo.gov/fdsys/pkg/PLAW-112publ141/pdf/PLAW-112publ141.pdf
[10] US DOT, Federal Highway Administration, Freight Management and Operations - https://ops.fhwa.dot.gov/freight/infrastructure/truck_parking/

country. In our opinion if California is to insist on compliance with its own work rules for federally regulated drivers, the state has an obligation then to make safe and adequate truck parking available – something it has chosen not to pursue.

Our statements regarding the truck parking issue and linkage to highway safety in support of our preemption request are not anecdotal. The *University of California – Berkley's Transportation Sustainability Research Center* performed a study titled *Commercial Vehicle Parking in California: Exploratory Evaluation of the Problem and Possible Technology-Based Solutions*[11] and stated in the abstract for the study:

> *The United States is experiencing dramatic growth in commercial vehicle truck travel on our nation's roadway system as well as critical shortages in truck parking. California ranks first in the nation in overall (private and public) commercial vehicle parking shortage. Recent estimates of the demand for truck parking in California indicate that demand exceeds capacity at all public rest areas; this is the case at 88 percent of private truck stops on the 34 corridors in California with the highest truck travel volumes...* ***The truck parking shortage in California and the U.S. has a number of serious consequences that threaten our roadway safety****, public health, and economic productivity.*(Emphasis added).

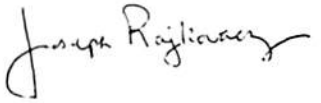
Contrary to assertions by supporters of allowing states such as California to regulate HOS of federally regulated truck drivers citing specious "safety" related justifications, the effect of allowing California to insist on adherence to its own break requirements for federally regulated OS/OW drivers is to measurably compromise highway safety. A truck parking alongside highways to comply with restrictive state rules is unsafe.

CONCLUSION

Many *WSTA* members are small-businesses that have faced adverse legal action as a result of the 2014 decision in *Dilts v. Penske Logistics, Inc*. For our members transporting OS/OW loads they are unable to take advantage of the flexibility allowed as a result of the successful *SC&RA* petition related to the 30-minute break requirement, they must still comply with California requirements. Highway safety should be everyone's primary goal however allowing California to continue its interference with the HOS of OS/OW drivers engaged in interstate/foreign commerce is compromising that goal.

On behalf of our members transporting OS/OW loads we request that US DOT preempt California meal and rest break laws as applied to those types of operations.

Sincerely,



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[11] http://tsrc.berkeley.edu/commercialparking