MATHEW D. PENG (SBN: 294558)
mpeng@grsm.com
SHIVANI BOMMAKANTY (SBN: 213933)
sbommakanty@grsm.com
GORDON REES SCULLY MANSUKHANI, LLP
315 Pacific Avenue
San Francisco, CA 94111
Telephone: (415) 986-5900
Facsimile: (415) 986-8054

Attorneys for Defendant
JEAR LOGISTICS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

JOHNNY LYNN PAYNE, BARBARA SUE PAYNE,

Plaintiffs,

v.

PLATINUM ROADLINES, INC. a California Corporation; DERRICK TYLER, an individual; ISRAEL DANJALO-SANI; and DOES 1 to 25, inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

CASE NO. 21CECG01118

~~[PROPOSED]~~ **JUDGMENT UPON ORDER GRANTING DEFENDANT JEAR LOGISTICS, LLC'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFFS JOHNNY LYNN PAYNE AND BARBARA SUE PAYNE**

Action Filed: April 21, 2021

Gordon Rees Scully Mansukhani, LLP
315 Pacific Avenue
San Francisco, CA 94111

On August 7, 2024, the Court after considering the papers in support and in opposition issued an Order granting Defendant Jear Logistics LLC's ("Defendant") Motions for Summary Judgment Against Plaintiff Johnny Lynn Payne and Barbara Sue Payne, pursuant to Code of Civil Procedure section 437(c). A copy of the Order is attached as **Exhibit A.** In accordance with that Order, IT IS ADJUDGED AND DECREED as follows

(1) Plaintiff Johnny Lynn Payne shall take nothing by way of his Complaint;

(2) Plaintiff Barbara Sue Payne shall take nothing by way of her Complaint;

(3) the entire action against Defendant be dismissed with prejudice, and all future dates vacated;

(4) Judgment is hereby entered in favor of Defendant and against Plaintiffs; and

(5) that Defendant has and will recover from Plaintiffs costs, to be established by a cost bill.

Date: 8/9, 2024

By: _____
Honorable D. Tyler Tharpe
Judge of the Superior Court

Gordon Rees Scully Mansukhani, LLP
315 Pacific Avenue
San Francisco, CA 94111

EXHIBIT A

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited	Entered by:
TITLE OF CASE: **Johnny Payne vs Platinum Roadlines, Inc.**	
LAW AND MOTION MINUTE ORDER	Case Number: **21CECG01118**

Hearing Date: **August 7, 2024** Hearing Type: **Summary Judgment (x2)**
Department: **501** Judge/Temp. Judge: **Tharpe, D Tyler**
Court Clerk: **Nunez, Sonia** Reporter/Tape: **Not Reported**

Appearing Parties:

Plaintiff:	Defendant:
Counsel: No Appearances	Counsel: No Appearances

[ ] Off Calendar

[ ] Continued to [ ] Set for __ at __ Dept. __ for __

[ ] Submitted on points and authorities with/without argument. [ ] Matter is argued and submitted.

[ ] Upon filing of points and authorities.

[ ] Motion is granted [ ] in part and denied in part. [ ] Motion is denied [ ] with/without prejudice.

[X] No Party requested oral argument pursuant to Local Rule 2.2.5 and CRC 3.1308(a)(1).

[X] Tentative ruling becomes the order of the court. No further order is necessary.

[X] Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

[X] Service by the clerk will constitute notice of the order.

[X] See attached copy of the Tentative Ruling.

[ ] Judgment debtor __ sworn and examined.

[ ] Judgment debtor __ failed to appear.
Bench warrant issued in the amount of $ __

JUDGMENT:
[ ] Money damages [ ] Default [ ] Other __ entered in the amount of:
Principal $__ Interest $__ Costs $__ Attorney fees $__ Total $__
[ ] Claim of exemption [ ] granted [ ] denied. Court orders withholdings modified to $__ per __

FURTHER, COURT ORDERS:
[ ] Monies held by levying officer to be [ ] released to judgment creditor. [ ] returned to judgment debtor.
[ ] $__ to be released to judgment creditor and balance returned to judgment debtor.
[ ] Levying Officer, County of __, notified. [ ] Writ to issue
[ ] Notice to be filed within 15 days. [ ] Restitution of Premises
[ ] Other: __

(20)

Tentative Ruling

Re: ***Johnny Payne v. Platinum Roadlines, Inc.***
Superior Court Case No. 21CECG01118

Hearing Date: August 7, 2024 (Dept. 501)

Motion: by Defendant Jear Logistics, LLC, for Summary Judgment Against Plaintiffs Johnny Payne and Barbara Payne

Tentative Ruling:

To grant both motions for summary judgment. Within seven days of service of the order, Jear Logistics, LLC ("Jear"), shall submit a proposed judgment consistent with the court's summary judgment order.

Explanation:

This is a personal injury negligence action arising from a motor vehicle versus tractor-trailer accident that occurred in Oklahoma. Plaintiffs Johnny and Barbara Payne sue Jear, the broker that hired Gurjot Transportation Corp. ("Gurjot"), the trucking company hired to transport the load and owner of the trailer, and Platinum Roadlines, Inc., who Gurjot brokered to transport the load and owner of the tractor.

Jear now moves for summary judgment against both plaintiffs contending, in part, that plaintiffs' claims against it are barred by the Federal Aviation Administration Authorization Act ("FAAAA"), 49 U.S.C. §14501, subd. (c)(1). "Preemption is an affirmative defense that the defendant has the burden to prove." (*Lupian v. Joseph Cory Holdings LLC* (3d Cir. 2018) 905 F.3d 127, 130.)

> In relevant part, the FAAA states:
> Except as provided in paragraph (2) and (3), a State ... may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier [...] or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

(49 U.S.C. §14501(c)(1).)

As such, the FAAAA expressly prohibits the enforcement of state laws related to the service any broker provides with respect to the transportation of property. (*Id.*) Although California courts have not specifically addressed the issue of a freight ***broker*** when considering FAAAA preemption, they have held that preemption is found when defendants show that a plaintiff's claim (1) derives from the enactment or enforcement of state law, and (2) relates to the defendant's process, routes or services with respect to the transportation of property. (*People ex rel. Harris v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772, 782.) Preemption occurs with respect to state common law claims

as well as enforcement of state statutes. (*See e.g. United Airlines, Inc. v. Mesa Airlines, Inc.* (7th Cir. 2000) 219 F.3d 605, 607.)

The claim against Jear, as the broker, is based on common law negligence and negligent hiring, retention, supervision, training and entrustment of Gurjot, an independent subhauler. Plaintiffs' negligence claim against Jear relates to its "process, routes or services with respect to the transportation of property" insofar as the negligence claim relies on Jear's involvement selecting and retaining a carrier to transport the cargo and any claim it negligently hired Gurjot.

> There is an exception to this preemption, however. In this regard, the Act provides: *[The FAAAA shall not restrict the safety regulatory authority of a State with respect to motor vehicles,* the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

(49 U.S.C. § 14501(c)(2)(A), emphasis added.)

On the question of whether plaintiffs' claims are preempted by the FAAAA, the most persuasive and on-point case relied upon by plaintiffs is the Ninth Circuit Court of Appeals decision in *Miller v. C.H. Robinson Worldwide, Inc.* (9th Cir. 2020) 976 F.3d 1016. In *Miller*, like in this case, the plaintiff claimed that a freight broker negligently hired an unsafe motor carrier, who caused an accident resulting in the plaintiff's bodily injury. (*Id.* at p. 1020.) The court determined that selection of a motor carrier strikes at the core function of a broker and while state negligence laws do not specifically dictate brokers' services, they nevertheless impose "an obligation on brokers at the point at which they arrange for transportation by [a] motor carrier," and thus "related to" brokers' services. (*Id.* at pp. 1024–25.) The court found that such negligence claims against a broker fall within the scope of the general preemption provision. (*Id.* at p. 1023.) However, the court also found that the claims were saved by the safety exception, 49 U.S.C. 14501(c)(2)(A), since under the FAAAA states retain power to "regulate safety through common-law tort claims." (*Id.* at p. 1026.)

"Congress' clear purpose in § 14501(c)(2)(A) is to ensure that its preemption of States' economic authority over motor carriers of property, § 14501(c)(1), 'not restrict' the preexisting and traditional state police power over safety." (*City of Columbus v. Ours Garage & Wrecker Serv., Inc.* (2002) 536 U.S. 424, 439.)

There is disagreement among federal courts as to whether the safety regulation exception in section 14501(c)(2)(A) saves negligence claims against brokers when the contracted carrier is involved in a vehicle collision. (See, e.g., *Lopez v. Amazon Logistics, Inc.* (N.D. Texas 2020) 458 F.Supp.3d 505, 515 ["Because it is feasible to read 'state safety regulatory authority' as encompassing common law claims, the Court declines to adopt a plausible but narrower construction."]; but see, e.g., *Krauss v. IRIS USA, Inc.*, E.D.Pennsylvania No. 17-778, 2018 WL 2063839, *5 (May 3, 2018) ["The Court concludes that it is more true to persuasive precedential and common-sense analysis to hold that the claim for personal injuries arising out of the shipment in this case is preempted."].)

Plaintiffs cannot credibly argue that the negligence claim against broker Jear does not fall within the FAAAA's general preemption provision. Even the Ninth Circuit in *Miller* concluded that it does. The question is whether the exception to preemption applies.

Miller concluded that the safety regulatory exception saved negligence claims against brokers, pointing out that in enacting the FAAAA, "Congress was primarily concerned with the States regulating economic aspects of the trucking industry by, for example, enacting tariffs, price regulations, and other similar laws" and not with restricting the safety authority of the state. (*Miller, supra,* 976 F.3d at p.1026.) The *Miller* court reasoned that the state's authority over safety matters includes "the ability to regulate safety through common-law tort claims." (*Id.*) The court found that nothing in the FAAAA's legislative history suggested that "Congress intended to eliminate this important component of the States' power over safety." (*Id.*) The court also noted that, "while it is possible to construe 'the safety regulatory authority of a State' more narrowly, 'when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily "accept the reading that disfavors pre-emption." ' " (*Id.* at p. 1027, quoting *CTS Corp. v. Waldburger* (2014) 573 U.S. 1, 19.)

The *Miller* court explained that the safety regulatory exception for negligence claims against brokers is with respect to "motor vehicles":

> We have previously held that the phrase "with respect to" in the safety exception is synonymous with "relating to." [*California Tow Truck Assn. v. City & Cty. of San Francisco,* 807 F.3d 1008, 1021 (9th Cir. 2015), quoting *In re Plant Insulation Co.,* 734 F.3d 900, 910 (9th Cir. 2013)]. "Consequently, the FAAAA's safety exception exempts from preemption safety regulations that 'hav[e] a connection with' motor vehicles," whether directly or indirectly. *Id.* at 1021-22[, quoting] *Dan's City Used Cars,* 569 U.S. at 260, 133 S.Ct. 1769[.] For example, we have held that the safety exception applies to municipal regulations governing who may obtain a tow truck permit, including a requirement that permit applicants disclose their criminal history. *Id.* at 1026-27. In reaching this conclusion, we rejected the argument that the "valid safety rationales" in this context are limited "to those concerned only with the safe physical operation of the tow trucks themselves." *Id.* at 1023. "Rather, regulations that are 'genuinely responsive' to the safety of other vehicles and individuals involved in the towing process may also be exempted from preemption." *Id.*

Jear relies on a Seventh Circuit Court of Appeals case that disagrees with *Miller*. (See *Ye v. GlobalTranz Enterprises, Inc.* (7th Cir. 2023) 74 F.4th 453, 464.) The court finds *Ye* to be the better reasoned opinion. *Ye* discussed *Miller* as follows:

> The only other circuit court to have considered the issue presented is the Ninth Circuit. The dispute in *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016 (9th Cir. 2020), arose from near-identical facts to those here: Allen Miller sought to recover damages from a freight broker that he alleged was negligent in hiring an unsafe motor carrier whose driver caused a highway accident leaving Miller a quadriplegic. See *id.* at 1020. Consistent with our

analysis, the court first held that negligent hiring claims against brokers are expressly preempted by § 14501(c)(1) under its view that "related to" requires a broad construction. See *id.* at 1021–25.

From there, however, the court found Miller's claim against the broker to be saved by the Act's safety exception in § 14501(c)(2)(A). The Ninth Circuit interpreted "with respect to motor vehicles" broadly to support exemption of state laws with an indirect link to motor vehicles, including negligent hiring claims against brokers. See *id.* at 1030–31. We see three major analytical differences that account for our opposing interpretations of § 14501(c)(2)(A).

First, in our view, the Ninth Circuit unduly emphasized Congress's stated deregulatory purpose in passing the Act at the expense of the insights that come from an analysis of the broader statutory scheme. Consideration of congressional purpose is wholly appropriate. But given the plain meaning and import of the text, both in § 14501(c) itself and throughout the rest of Title 49, we do not see how Congress's deregulatory goals can overcome the clear statutory mandate that the exception in § 14501(c)(2)(A) saves only those safety regulations directly concerning motor vehicles. See *id.* at 1031 (Fernandez, J., concurring in part and dissenting in part) ("[A broker] and the services it provides have no direct connection to motor vehicles or their drivers .... That attenuated connection is simply too remote for the safety exception to encompass [the] negligence claim.").

A second difference is the Ninth Circuit's reliance on a presumption against preemption to resolve any ambiguity in the breadth of the safety exception's scope. See *id.* at 1021. In a later Ninth Circuit case, however, the court acknowledged that its reliance on the presumption against preemption—in *Miller v. C.H. Robinson* specifically—stood in direct conflict with the Supreme Court's instruction to "focus on the plain wording of the clause" instead of "invok[ing] any presumption against pre-emption." *R.J. Reynolds Tobacco Co. v. County of Los Angeles*, 29 F.4th 542, 553 n.6 (9th Cir. 2022) (quoting *Puerto Rico v. Franklin California Tax-Free Tr.*, 579 U.S. 115, 125, 136 S.Ct. 1938, 195 L.Ed.2d 298 (2016)). Consistent with *Franklin*, we focus on the text of § 14501(c)(2)(A), which is "the best evidence of Congress' preemptive intent," 579 U.S. at 125, 136 S.Ct. 1938 (quoting *Chamber of Com. v. Whiting*, 563 U.S. 582, 594, 131 S.Ct. 1968, 179 L.Ed.2d 1031 (2011)), and come to a different outcome than the Ninth Circuit. We cannot be sure how the Ninth Circuit would interpret § 14501(c)(2)(A) absent such a presumption against preemption.

Finally, we disagree with the Ninth Circuit's conclusion that the phrase "with respect to" in § 14501(c)(2)(A) is "synonymous" with "relating to." *Miller*, 976 F.3d at 1030 (citing *Cal. Tow Truck Ass'n v. City & Cnty. of San Francisco*, 807 F.3d 1008, 1021 (9th Cir. 2015)). We read the Supreme Court's decision in *Dan's City Used Cars* to say that "with respect to" more narrowly means "concerns." See 569 U.S. at 261, 133 S.Ct. 1769. Given Congress's choice in § 14501(c)(1) to use "relating to," its use of "with respect to" in §

> 14501(c)(2)(A) implies a different scope. No doubt "with respect to" is broad, but we decline to equate it to "relating to." Our different view of this phrase offers another reason why our construction of the safety exception is narrower than the Ninth Circuit's.
> In the end, the plain text and statutory scheme indicate that 49 U.S.C. § 14501(c)(1) bars Ye's negligent hiring claim against GlobalTranz and that the Act's safety exception in § 14501(c)(2)(A) does not save it from preemption.

(*Ye, supra,* 74 F.4th at pp. 464–466.)

This court finds *Ye* to be the better reasoned opinion, and adopts *Ye*'s analysis and conclusion on the issue.

Additionally, in *Aspen Am. Ins. Co. v. Landstar Ranger, Inc.* (11th Cir. 2023) 65 F.4th 1261, 1272, the Eleventh Circuit held that the negligence claim against a broker for selection of the shipping carrier was barred by the FAAAA's express preemption provision and was not saved by the FAAAA's safety exception.) *Aspen* held that negligent hiring claims against brokers are expressly preempted by section 14501(c)(1) under the Supreme Court's broad reading of "related to." (*Id.* at p. 1268.) Selecting a carrier to transport shipments, according to *Aspen*, "is precisely the brokerage service that" a negligent hiring claim against a freight broker challenges: the broker's "allegedly inadequate selection of a motor carrier to transport ... shipment." (*Aspen*, 65 F.4th at 1267.) An allegation of negligence "against a transportation broker for its selection of a motor carrier to transport property in interstate commerce" relates to a freight broker's "core transportation-related services." (*Id.* at p. 1268.)

Enforcing state negligence laws against freight brokers would directly impact how brokers conduct their business in terms of the hiring and oversight of transportation companies they partner with. While California courts have not dealt specifically with the issue of FAAA preemption as to claims against freight brokers, when courts in other states have faced this issue, they have held that the FAAA preempts personal injury claims for negligence brought against freight brokers because such claims go to "the core" of a broker's function, i.e. the careful selection of a freight carrier. (*See Krauss v. IRIS USA, Inc.* (E.D. Pa. May 3, 2018) No. CV 17-778, 2018 WL 2063839, at *5; *ASARCO LLC v. England Logistics Inc.* (D. Ariz. 2014) 71 F.Supp.3d 990, 1006 [noting that the FAAA expressly includes "brokers," and holding that state law negligence claims are pre-empted]; *Non Typical, Inc. v. Transglobal Logistics Grp. Inc.* (E.D. Wis. May 28, 2012) No. 10-C-1058, 2012 WL 1910076, at *3 [brokers treated the same as traditional carrier for purposes of federal preemption analysis under FAAAA]; *AIG Eur. Ltd. v. Gen. Sys., Inc.* (D. Md. July 22, 2014) No. CIV.A. RDB-13-0216, 2014 WL 3671566, at *4 [common law negligence claim alleging that broker was negligent in the selection of the motor carrier is preempted].)

The court looks to whether there are any California state decisions taking one side or the other. Plaintiffs contend that there are numerous such decisions, but does not point the court to any decision applying the FAAAA's safety exception to preemption to brokers. The Seventh, Ninth and Eleventh Circuits each concluded that the general preemption provision does apply. None of the California cases cited by plaintiffs address this scenario (broker liability for negligent hiring and the safety exception), and therefore

are not controlling or particularly informative on the issue. (See *Vinnick v. Delta Airlines, Inc.* (2001) 93 Cal.App.4th 859; *Charas v. Trans World Airlines, Inc.* (9th Cir. 1998) 160 F.3d 1259; *Dilts v. Penske Logistics, LLC* (9th Cir. 2014) 769 F.3d 637; *National Federation of the Blind v. United Airlines Inc.* (9th Cir. 2016) 813 F.3d 718.)

Accordingly, the court intends to grant Jear's motions for summary judgment on the ground that the negligence claims against Jear as broker are preempted by the FAAAA, and the safety exception does not apply. With the claims preempted, there is no need to evaluate the merits of the negligent hiring theory.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 8/2/2024.
(Judge's initials) (Date)

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000	*FOR COURT USE ONLY*
TITLE OF CASE: **Johnny Payne vs Platinum Roadlines, Inc.**	
CLERK'S CERTIFICATE OF MAILING	CASE NUMBER: **21CECG01118**

I certify that I am not a party to this cause and that a true copy of the:

Minute order and tentative ruling

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **08/07/2024** Clerk, by S. Nunez, Deputy

S. Nunez

Todd A Jones
Mokri, Vanis & Jones, LLP
3620 American River Dr., Suite 218
Sacramento, CA 95864

Suzanne A Tollefson
Law Offices of John A Biard
Post Office Box 64093
St. Paul, MN 55164

Stacey R. Cutting
Bish & Cutting, APC
22505 Market St.
Suite 104
Newhall, CA 91321

Thomas J. Tarkoff
Gordon Rees Scully Mansukhani, LLP
315 Pacific Avenue
San Francisco, CA 94111

Michael J. Czeshinski
Wilkins, Drolshagen & Czeshinski, LLP
6785 N Willow Ave
Fresno, CA 93710

☐ Clerk's Certificate of Mailing Additional Address Page Attached