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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 BNSF RAILWAY COMPANY and
17 UNION PACIFIC RAILROAD COMPANY,

18 Plaintiffs,

19 vs.

20 CALIFORNIA STATE BOARD OF
EQUALIZATION, DAVID J. GAU, in his official
capacity as Executive Director of the California
21 State Board of Equalization; GEORGE RUNNER,
FIONA MA, JEROME HORTON, DIANE L.
22 HARKEY, BETTY T. YEE, in their official
capacities as Board Members of the California
23 State Board of Equalization; KAMALA D.
HARRIS, in her official capacity as Attorney
24 General of California; CALIFORNIA
GOVERNOR'S OFFICE OF EMERGENCY
25 SERVICES; MARK GHILARDUCCI, in his
official capacity as Director of the California
26 Governor's Office of Emergency Services,

27 Defendants.
28

Case No. 3:16-cv-04311-JCS

**DECLARATION OF ROBYN M.
BOERSTLING IN SUPPORT OF
PLAINTIFFS BNSF RAILWAY
COMPANY AND UNION PACIFIC
RAILROAD COMPANY'S MOTION
FOR PRELIMINARY INJUNCTION**

DECLARATION OF ROBYN M. BOERSTLING

I, Robyn M. Boerstling, declare as follows:

1. I am Vice President of Infrastructure, Innovation and Human Resources Policy at the National Association of Manufacturers (NAM). I submit this declaration in support of Plaintiffs BNSF Railway Co. and Union Pacific Railroad Co.'s challenge to the hazardous materials charge imposed by California Senate Bill 84 (SB 84). Except as noted, I make this declaration based upon my personal knowledge and, if called as a witness, I could and would testify competently to the facts set forth below.

2. I joined NAM in 2008 as a Director of Transportation and Infrastructure Policy and now serve in the new role as described above. In this capacity, I lead the policy and advocacy work on issues covering transportation, infrastructure, innovation and technology, health care, immigration and workforce. As part of that responsibility, I ensure the manufacturing voice is brought to these legislative and regulatory issues before Congress and the Executive Branch. Prior to working at the NAM, I served as the Counselor to the Assistant Secretary for Transportation Policy in the Office of the Secretary at the U.S. Department of Transportation (DOT).

3. As part of my professional responsibilities, I am in regular conversations with the membership of the NAM, the nation's largest industrial trade association and the voice of 12 million men and women who make things in America. I am readily familiar with the concerns and interests of my association's membership as they relate to freight transportation by air, rail, water and truck, including transportation of hazardous materials (hazmat).

4. Manufacturers recognize that transportation is the lifeblood of the economy and that economic growth, jobs and competitiveness are the direct results of a robust and competitive transportation network that carefully balances safety, efficiency and the movement of people and goods. Manufacturers greatly appreciate safety and efforts that address public safety, but believe that excise taxes and other fees related to transportation should be used only for transportation-related infrastructure expenses because public infrastructure is in need of greater investment to support manufacturing competitiveness. In addition, NAM transportation policy reflects the view

1 that “state laws and regulations must recognize and concede to the inherent interstate local and
2 international nature of most transportation movements, and refrain from imposing policies that
3 hinder the free flow of goods.” To that end, SB 84 is contrary to the policy goals and interests of
4 the NAM and manufacturers have serious concerns that this law will add new burdens as well as
5 costs to rail shippers and rail transportation providers alike.

6 5. Manufacturers have consistently worked with federal policymakers and regulatory
7 agencies to improve transportation safety regulations and legislation while encouraging a thorough
8 assessment and accounting of various impacts to the manufacturing sector. Due to the
9 complexities of manufacturing supply chains, mounting regulatory burdens and the interstate
10 nature of rail service, I believe this new \$45 charge on rail cars carrying certain hazardous
11 materials paid by rail shippers will create an additional burden that harms efficiency with no direct
12 improvements to rail safety. Further, such state-based taxes and fees as set out in SB 84 will risk
13 the creation of a patchwork of state rules, regulations and taxes that federal law seeks to prohibit.

14 6. Members of the NAM rely heavily on all modes of transportation and rail in
15 particular provides important and efficient cross-country links for shipments of both manufacturing
16 inputs as well as finished products. Intermodal transportation services that include movements
17 from rail to truck or truck to rail continue to be in high demand. However, for various reasons that
18 are unique to each rail shipper, there are some shipments that are best equipped to move only by
19 rail and the fee called for in SB 84 is a punitive charge that will disadvantage those shippers. Any
20 transportation shipper is sensitive to cost and a transportation shipper will, if possible, avoid certain
21 modes of transportation or even avoid locating manufacturing production facilities in places that
22 are disadvantaged due to high costs imposed by regulatory burdens and taxes.

23 7. Because manufacturers are constantly moving key inputs and finished products on
24 the nation’s transportation network, the importance of maintaining uniform and consistent
25 regulation of interstate commerce is relevant to all modes of transportation, including rail. The fee
26 imposed by SB 84 is a new burden and the added expense of certain hazardous materials shipments
27 could further limit competition for transportation services in California.

1 8. The impact of the new charge on owners of certain hazardous materials as defined
2 by SB 84, will be felt by customers, shippers, railroads and beyond. In manufacturing, the impacts
3 of charges like the one imposed by SB 84 are borne by the customer, its supplier and/or end
4 consumers. In some cases, a manufacturer may have to absorb the added cost due to long-term
5 contracts with its customers and suppliers, not only losing revenue but facing a broader competitive
6 disadvantage.

7 9. Manufacturers are tied to many industry sectors across California and the rest of the
8 nation—construction, housing, heavy equipment, energy, aviation, automotive, consumer care and
9 agriculture to name a few. The SB 84 charge runs contrary to the long-standing benefits of federal
10 preemption of transportation-related state statutes, which ultimately help manufacturers by keeping
11 transportation costs affordable and competitive. For members of the NAM, efficiency and
12 competitiveness of the entire transportation network is not a California issue—it's a national
13 imperative.

14 I declare under penalty of perjury under the laws of the United States that the foregoing is
15 true and correct.

16 Executed this 26th day of July, 2016, at Washington, D.C.

17
18 By:


ROBYN M. BOERSTLING