APPENDIX

APPENDIX A

873 F.3d 1074
United States Court of Appeals,
Ninth Circuit.

AIRLINE SERVICE PROVIDERS ASSOCIATION,
Plaintiff–Appellant,

and

Air Transport Association of America, Inc.,
DBA Airlines of America, Plaintiff,

v.

LOS ANGELES WORLD AIRPORTS;
City of Los Angeles, Defendants–Appellees.

Airline Service Providers Association, Plaintiff,

and

Air Transport Association of America, Inc.,
DBA Airlines for America, Plaintiff–Appellant,

v.

Los Angeles World Airports;
City of Los Angeles, Defendants–Appellees.

No. 15–55571, No. 15–55572

|

Argued and Submitted
January 13, 2017 Pasadena, California

|

Filed October 16, 2017

ORDER

Appellants' petitions for panel rehearing are **GRANTED** with respect to their request that the court amend its opinion to affirm the district court's denial of leave to amend but **DENIED** in all other respects. The petitions for rehearing en banc are **DENIED**. No future petitions will be entertained. The opinion filed on August 23, 2017 is withdrawn and a new opinion is filed concurrently with this order.

Dissent by Judge Tallman

OPINION

FRIEDLAND, Circuit Judge:

We must decide whether the City of Los Angeles, which operates Los Angeles International Airport ("LAX"), can require businesses at the airport to accept certain contractual conditions aimed at preventing service disruptions.[1] Two air transport trade associations argue that the conditions are, in effect, municipal regulations preempted by federal labor law. We hold that the City may impose the conditions in its capacity as proprietor of LAX and thus affirm dismissal of the Complaint.

I. Background

Airlines that operate out of LAX hire third-party businesses to refuel and load planes, take baggage and tickets, help disabled passengers, and provide similar services. The City licenses those service providers using a contract that imposes certain conditions. One such condition, section 25, requires service providers

[1] Because the City of Los Angeles operates LAX, we refer in this opinion to both entities collectively as "the City."

to enter a "labor peace agreement" with any employee organization that requests one.[2] If such an agreement is not finalized within sixty days, then the dispute must be submitted to mediation and, if mediation is unsuccessful, to binding arbitration. Any labor peace agreement that results from this process must include "binding and enforceable" provisions that prohibit picketing, boycotting, stopping work, or "any other economic interference."

It might seem at first glance that a labor peace agreement would be detrimental to employees' interests because it deprives them of labor rights. In practice, however, if an employer may not operate without such an agreement, the employer may need to give benefits to its employees to induce them to enter the agreement. Employees have an incentive to trigger negotiations toward labor peace agreements to obtain such benefits. Indeed, here, at least one organization of service employees advocated for inclusion of section 25 when the City was revising its standard LAX licensing contract.

Two trade associations who have members that operate at LAX brought suit in the United States District Court for the Central District of California to challenge section 25: Airline Service Providers Association ("ASPA"), an association of third-party service providers; and the Air Transport Association of America ("Airlines"), an association of American airlines. The associations argue that, because the City of Los Angeles operates LAX, the contractual

---

[2] Section 25 describes broadly the type of employee organization that can make this request and does not require the employees to be unionized.

conditions in LAX's standard licensing agreement are effectively municipal regulations. The associations contend that section 25, as one such "regulation," is preempted by two federal labor statutes—the National Labor Relations Act ("NLRA") and the Railway Labor Act ("RLA")—and by the Airline Deregulation Act ("ADA").

The district court dismissed the Complaint without leave to amend. It dismissed the labor law preemption claims for failure to state a claim and the ADA claim for lack of standing.

II. Standing

The City challenges aspects of Plaintiffs' standing, and, in any event, we have an independent obligation to ensure that we have subject matter jurisdiction. *See*, *e.g.*, *United States v. McIntosh*, 833 F.3d 1163, 1173 (9th Cir. 2016). For the reasons that follow, we hold that the ASPA has standing to pursue all of its claims.[3]

An association like the ASPA has standing if (1) its individual members would have standing in their own right, (2) the interests at stake in the litigation are germane to the organization's purposes, and (3) the case may be litigated without participation by individual members of the association. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000)

---

[3] So long as one plaintiff has standing, an appellate court has jurisdiction to address his claims regardless of whether other plaintiffs have standing. *See*, *e.g.*, *Rumsfeld v. Forum for Acad. & Inst'l Rights, Inc.*, 547 U.S. 47, 52 n.2, 126 S.Ct. 1297, 164 L.Ed.2d 156 (2006). Given our conclusion that the ASPA has standing, we need not evaluate the Airlines' standing.

(citing *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977)).

To have standing in their own right, an association's members must have "suffered an injury in fact," that injury must be "fairly traceable to the challenged conduct of the defendant," and the injury must be "likely to be redressed" by a decision in their favor. *Spokeo, Inc. v. Robins*, ——U.S. ——, 136 S.Ct. 1540, 1547, 194 L.Ed.2d 635 (2016).

The ASPA has alleged a sufficient injury in fact. It alleges that its members will be forced into unwanted negotiations that must terminate in either an agreement or arbitral award—something virtually certain to occur given that an organization of service employees advocated for section 25, suggesting that employees plan to make use of the provision. We have recognized that "[t]he economic costs of complying with a licensing scheme can be sufficient for standing," *Mont. Shooting Sports Ass'n v. Holder*, 727 F.3d 975, 980 (9th Cir. 2013), even if "the extent of [the alleged] economic harm is not readily determinable," *Cent. Ariz. Water Conservation Dist. v. EPA*, 990 F.2d 1531, 1538 (9th Cir. 1993). Here, ASPA members will at least have to devote resources, and thus incur economic costs, to participate in negotiations, mediation, and possibly even binding arbitration over a labor peace agreement, which they would not otherwise be required to discuss. The time spent in those negotiations is itself a concrete injury.[4]

---

[4] Because this injury is sufficient to support standing, we need not consider whether the ASPA's allegations that its members will be forced to accede to employee demands during negotiations triggered under section 25 could support standing.

Second, the ASPA has shown a sufficient "line of causation" between the City's actions and this injury. *See Allen v. Wright*, 468 U.S. 737, 757, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, —— U.S. ——, 134 S.Ct. 1377, 188 L.Ed.2d 392 (2014). The injuries it claims are directly linked to the City's conduct: The City has made section 25 a mandatory component of its standard licensing contract for service providers at LAX, and section 25 will force service providers to spend time negotiating about a labor peace agreement. This is a sufficient causal connection. *See Cent. Ariz.*, 990 F.2d at 1538 (holding that economic injury caused by contractual obligations that stemmed from compliance with a regulation were sufficiently caused by the regulation to support standing).

Finally, the remedies the ASPA seeks would redress the harm it alleges. *See Spokeo*, 136 S.Ct. at 1547. If, as the Complaint requests, section 25 were enjoined on the basis of preemption by federal labor law or the ADA, the ASPA's members would not suffer any adverse consequences of complying with it. *See Cent. Ariz.*, 990 F.2d at 1538 ("[The plaintiff's] economic injury is likely to be redressed by a favorable decision since elimination of the [rule in question] would necessarily eliminate the increased financial burden the rule causes.").

The ASPA's individual members would therefore have standing in their own right, and the first prong of the test for associational standing is satisfied.

The second and third prongs are satisfied as well. The ASPA alleges that it has an organizational interest "in

the consistent enforcement of unitary federal regulation of airline industry labor relations." The association's asserted purpose is therefore related to its legal claims in this action—namely, that section 25 is preempted by federal statutes that regulate airlines—satisfying the germaneness prong. As to the third prong, the parties have identified no reason that the ASPA's members must participate individually in this case, and neither have we. The ASPA thus meets all the requirements for associational standing.[5]

III. Lack of Preemption

Having concluded that the ASPA has standing, we now turn to whether its preemption arguments state a claim on which relief may be granted. We evaluate this question de novo. *Associated Gen. Contractors of Am. v. Metro. Water Dist. of S. Cal.*, 159 F.3d 1178, 1181 (9th Cir. 1998).

"In deciding whether a federal law pre-empts a state [or local] statute, our task is to ascertain Congress'[s] intent in enacting the federal statute at issue." *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 738, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985) (quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983)). The Supreme Court has emphasized, however, that generally "pre-emption

---

[5] The district court's contrary decision with respect to the ASPA's ADA claim rested largely on its conclusion that the ASPA's members are not subject to the ADA and, thus, that it could not assert claims that rely on the ADA. A plaintiff's ability to state a claim under a particular statute is not a question of federal subject matter jurisdiction, however, but rather a question of the merits of that claim. *See*, *e.g.*, *Lexmark*, 134 S.Ct. at 1387 n.4.

doctrines apply only to state [or local] *regulation*." *Bldg. & Constr. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc. (*Boston Harbor*)*, 507 U.S. 218, 227, 113 S.Ct. 1190, 122 L.Ed.2d 565 (1993). When a state or local government buys services or manages property as a private party would, it acts as a "market participant," not as a regulator, and we presume that its actions are not subject to preemption. *See id*. at 229, 113 S.Ct. 1190. Only if a statute evinces an intent to preempt such proprietary actions by a state or local government is the presumption overcome and the action preempted. *See Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031, 1041–42 (9th Cir. 2007).

For the reasons that follow, we hold first that the City was acting as a market participant and not a regulator when it adopted section 25. Second, because nothing in the NLRA, RLA, or ADA shows that Congress meant to preempt states or local governments from actions taken while participating in markets in a non-regulatory capacity, we conclude that section 25 is not preempted by those federal statutes.

A. The City Is Acting as a Market Participant

To decide whether a state or local government is acting as a market participant or instead as a regulator, we apply the two-prong test first articulated in *Cardinal Towing & Auto Repair, Inc. v. City of Bedford*, 180 F.3d 686 (5th Cir. 1999). *See Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1023 (9th Cir. 2010); *accord*, *e.g.*, *Engine Mfrs. Ass'n*, 498 F.3d at 1041. First, is the challenged governmental action undertaken in pursuit of the "efficient procurement of

needed goods and services," as one might expect of a private business in the same situation? *Johnson*, 623 F.3d at 1023 (quoting *Cardinal Towing*, 180 F.3d at 693). Second, "does the narrow scope of the challenged action defeat an inference that its primary goal was to encourage a general policy rather than [to] address a specific proprietary problem"? *Id.* at 1023–24 (quoting *Cardinal Towing*, 180 F.3d at 693). If the answer to either question is "yes," the governmental entity is acting as a market participant. *Id.* at 1024.

Johnson offers an example of how this test works. There, a community college district had sold bonds to fund construction projects. *Id.* at 1016. As the City did here, the college adopted an agreement governing labor conditions for contractors working on those construction projects that prohibited strikes, picketing, and similar labor disruptions. *Id.* at 1017. The agreement also made those unions the exclusive bargaining representatives for workers on the project, required the use of union "hiring halls" for staffing, established mechanisms for resolving disputes, and required the unions to create an apprenticeship program. *Id.* at 1016–17.

Several non-union apprentices and apprenticeship committees challenged those restrictions as preempted by the NLRA and the Employee Retirement Income Security Act ("ERISA"). *Id.* We held that the college was acting as a market participant under both prongs of the *Cardinal Towing* test. *Id.* at 1024–29. Specifically, we determined that the college had a proprietary interest in the efficient procurement of construction services, including in avoiding labor disruptions. This was true even though the college may have spent some of its money

unwisely, and even though a private actor may not have accepted terms as unfavorable as the college had. *Id*. at 1025–27. We also concluded that the scope of the challenged agreement was narrow in that it applied only to construction projects worth more than $200,000 funded by the bond initiative during a certain time period. *Id*. at 1028–29. Accordingly, we held that the college was acting as a market participant and that the restrictions were not preempted. *See id*. at 1024–29.

Applying that precedent here, we hold that the City satisfies both prongs of the *Cardinal Towing* test and so was acting as a market participant when it added section 25 to the LAX licensing contract.

1. Efficient Procurement of Goods and Services

First, like the college in *Johnson*, the City is attempting to avoid disruption of its business: If a private entity operated LAX, that entity would have a pressing interest in avoiding strikes, picket lines, boycotts, and work stoppages. Those interests are not any less pressing simply because the City rather than a private business operates the airport, and labor peace agreements are one way to protect those interests. *See Boston Harbor*, 507 U.S. at 231–32, 113 S.Ct. 1190 (holding that Boston's requiring a no-strike provision in subcontractor agreements was permissible market participation because the city was "attempting to ensure an efficient project that would be completed as quickly and effectively as possible" and because "analogous private conduct would be permitted").

Plaintiffs urge the opposite conclusion on the ground that the City has not directly participated in the

market and has instead dictated contract terms to others who do. The City does, however, participate directly in a market for goods and services. "[A]irports are commercial establishments ... [that] must provide services attractive to the marketplace." *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 682, 112 S.Ct. 2701, 120 L.Ed.2d 541 (1992) (citations omitted). If the City operates the airport poorly, fewer passengers will choose to fly into and out of LAX, fewer airlines will operate from LAX, and the City's business will suffer. It must avoid commercial pitfalls as the proprietor of a commercial enterprise.

That fact makes this case distinguishable from, for example, *Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 106 S.Ct. 1395, 89 L.Ed.2d 616 (1986). In *Golden State*, a plaintiff taxi company alleged that Los Angeles had interfered with labor negotiations by withholding the company's license until a strike against the company ended. *See id.* at 611–12, 106 S.Ct. 1395. The plaintiff argued that Los Angeles's license decision was preempted by the NLRA, and the Supreme Court agreed. *Id.* at 615–19, 106 S.Ct. 1395. The Court rejected Los Angeles's argument that its decision was justified by its general interest in ensuring "uninterrupted [citywide taxi] service to the public by prohibiting a strike." *Id.* at 618, 106 S.Ct. 1395. Los Angeles did not operate the taxi service at issue in *Golden State*, nor did it use the taxi company for any city functions or services. By contrast, here, a department of the City of Los Angeles does operate LAX, and it has taken action to protect its proprietary interest in running the airport smoothly. *Cf. Boston Harbor*, 507 U.S. at 227, 113 S.Ct. 1190 ("[A] very different case would have been

presented had the city of Los Angeles purchased taxi services from *Golden State* in order to transport city employees."). The City is thus participating in the air transportation market.[6]

To the extent Plaintiffs argue more broadly that the City, as the operator of an airport, is not participating in a *private* market at all, we disagree. At first blush, that argument has some intuitive appeal because most airports in the United States are run by or affiliated with a governmental entity. But the same is not true internationally. *See generally*, *e.g.*, David L. Bennett, *Airport Privatization After Midway*, 23 Air & Space Law. 22, 22 (2010) (noting the "trend toward private participation in airport ownership and operation in most other parts of the world"); Zane O. Gresham & Brian Busey, "*Do As I Say and Not As I Do"—United States Behind in Airport Privatization*, 17 Air. & Space Law. 12, 13–14 (2002) (describing airport privatization

---

[6] Plaintiffs relatedly argue that the City is not actually procuring any goods or services but is instead essentially offering licenses, which they describe as a "purely regulatory function." But a private contracting condition may be proprietary even though it could also be called a licensing scheme. *See*, *e.g.*, *Johnson*, 623 F.3d at 1017 (holding that the challenged contractual provisions in a project labor agreement were not preempted by the NLRA even though the defendant college district restricted contractors on the project to employing only members of a particular union, effectively offering a license to only one group). Nor does it matter that the City would not be a party to the contracts that included a labor peace agreement. The challenged municipal action in *Boston Harbor* also involved requiring a no-strike condition in contracts between third parties. 507 U.S. at 220–21, 113 S.Ct. 1190. That did not stop the Supreme Court from concluding that Boston was acting as a market participant. *Id.* at 230–32, 113 S.Ct. 1190.

internationally and experimentation with airport privatization in the United States). And, even domestically, Congress has enacted a "pilot program" for privatization of airports. *See* 49 U.S.C. § 47134.

Moreover, the Supreme Court and other federal appellate courts have recognized the inherently competitive and commercial nature of airport operations. *See Int'l Soc'y for Krishna Consciousness*, 505 U.S. at 682, 112 S.Ct. 2701; *see also Four T's, Inc. v. Little Rock Mun. Airport Comm'n*, 108 F.3d 909, 912–13 (8th Cir. 1997) (holding, in response to a Commerce Clause challenge, that a city that operated an airport was acting as a participant in the market for airport rental car services). Airports also compete against private modes of transportation, like long-distance travel by train, car, or bus. *See*, *e.g.*, Randall O'Toole, Cato Inst., Pol'y Analysis No. 680, Intercity Buses: The Forgotten Mode, (2011), *available at* https://www.cato.org/publications/policy-analysis/intercity-buses-forgotten-mode (noting that intercity buses were "America's fastest growing transportation mode" between 2007 and 2010 (citation and internal quotation marks omitted)).

We therefore conclude that the City is acting as a market participant under the first prong of the *Cardinal Towing* test.

2. Narrow Scope

The City's actions independently qualify as market participation under *Cardinal Towing*'s second prong. The decision to adopt section 25 is narrowly tied to a "specific proprietary problem," *Johnson*, 623 F.3d at 1024 (quoting *Cardinal Towing*, 180 F.3d at 693): service disruptions at LAX, which the City manages as

proprietor. Nothing in the text of section 25 or in the Complaint's allegations suggests that section 25 will be enforced throughout the rest of the City's jurisdiction or that section 25 will hamper service providers' operations elsewhere.

Plaintiffs argue otherwise, asserting that section 25 is in reality a preempted labor regulation because it gives labor unions a powerful bargaining chip, applies broadly to all service providers at LAX, and governs any organization that requests a labor peace agreement.[7] We find these arguments unpersuasive for reasons that become apparent in considering the three cases Plaintiffs primarily rely upon to support their position. Compared to the regulations imposed in those decisions, section 25 reaches a much narrower swath of commercial activity and focuses on specific proprietary needs.

First, Plaintiffs rely on *Wisconsin Department of Industry, Labor & Human Relations v. Gould Inc.*, 475 U.S. 282, 106 S.Ct. 1057, 89 L.Ed.2d 223 (1986). In that case, the Supreme Court affirmed a decision enjoining a Wisconsin law that barred all state procurement agents from transacting with repeat NLRA violators. *See id.* at 283–84, 106 S.Ct. 1057. The Court held that Wisconsin's spending policy swept too broadly to constitute a permissible exercise of market participation, particularly given the lack of an obvious proprietary concern animating the debarment scheme. *Id.* at 289–91, 106 S.Ct. 1057. By contrast,

---

[7] The ASPA also argues that the Service Employees International Union lobbied for section 25, demonstrating a pro-union motivation for its adoption. As discussed *infra* in Part IV, such motive does not matter to the preemption analysis.

section 25 does not govern all of the City's contractual relationships,[8] and the City has a clear proprietary interest in avoiding labor disruptions of airport services.

Second, Plaintiffs cite *Chamber of Commerce of the United States of America v. Brown*, 554 U.S. 60, 128 S.Ct. 2408, 171 L.Ed.2d 264 (2008). There, the Supreme Court analyzed a preemption challenge against a California law that prohibited employers who received state funds from using those funds to "assist, promote, or deter union organizing." *Id.* at 63, 128 S.Ct. 2408. The Court held that the law did not represent permissible market participation because it was "neither 'specifically tailored to one particular job' nor a 'legitimate response to state procurement constraints or to local economic needs.' " *Id.* at 70, 128 S.Ct. 2408 (quoting *Gould*, 475 U.S. at 291, 106 S.Ct. 1057). The law's preamble even explicitly declared that its purpose was to prevent employers from supporting or opposing union organization. *Id.* at 62–63, 128 S.Ct. 2408. The law also imposed onerous requirements for segregating funds and record keeping, and created a right of action for any private taxpayer to sue suspected violators. *Id.* at 72, 128 S.Ct. 2408.[9] Section 25, by comparison, is limited to

---

[8] The dissent suggests that section 25 may affect employment relationships outside LAX, but, as discussed further below, Plaintiffs have not alleged any such effects.

[9] The dissent suggests that the broad effects the Supreme Court discussed in *Brown* may have been discerned through discovery, but the Supreme Court's analysis focused solely on the text of the challenged law. *See* 554 U.S. at 71–73, 128 S.Ct. 2408. The Supreme Court made clear that effects the law would have were obvious on its face. *See Id.* Here, the text of section 25

addressing the needs of LAX and does not announce any sort of regulatory policy, require complicated recordkeeping, or create litigation risks.

Third, Plaintiffs point to *Metropolitan Milwaukee Association of Commerce v. Milwaukee County* (*Metropolitan Milwaukee II*), 431 F.3d 277 (7th Cir. 2005). That case involved a Milwaukee County ordinance governing businesses the county had hired to provide transportation and other services to elderly and disabled residents. *Id*. at 277–78. Like section 25, the Milwaukee ordinance required those businesses to sign labor peace agreements, but unlike section 25, it imposed several additional conditions favorable to union organizing and did little to avoid service interruptions. *See id*. at 278, 281; *see also Metro. Milwaukee Ass'n of Commerce v. Milwaukee County* (*Metropolitan Milwaukee I*), 325 F.3d 879, 880–81 (7th Cir. 2003).

The Seventh Circuit held that the ordinance was preempted by the NLRA. *Metropolitan Milwaukee II*, 431 F.3d at 282. It rejected the county's argument that the ordinance was proprietary, in large part because the ordinance's impact would not be restricted to contracts with the county. *See id*. at 279–82. For example, the ordinance prohibited contractors from scheduling meetings designed to discourage any of their employees from joining a union, regardless of whether those employees worked on county contracts. *Id*. at 280. The Seventh Circuit also reasoned that the county could have achieved its goal of avoiding service interruptions by other means, *see id*. at 282, and that

---

suggests no obvious overbroad effects, and Plaintiffs have alleged none.

several of the requirements it imposed focused on union organizing in particular, *see id.* at 278, 280–81; *see also Metropolitan Milwaukee I*, 325 F.3d at 880–81. Here, by contrast, there is no allegation that the purposes of section 25 could be achieved by other means or that the licensing provision will have spillover effects on the service providers' operations beyond their work for LAX. Rather, the nature of the businesses at issue—services performed at LAX—by definition allows for natural divisions between work for the City and work for private parties: A job is either performed at LAX or it is not, and a strike or other disruption either occurs at LAX or it does not.[10]

These arguments are more specific instances of Plaintiffs' broader allegation that section 25 cannot truly be aimed at minimizing service disruptions because it is a poor fit for that job. Under our previous decisions, evidence that an alternative strategy could more effectively or cheaply accomplish the same goals "bears only on whether [a state or local government] made a good business decision, not on whether it was pursuing regulatory, as opposed to proprietary, goals." *Johnson*, 623 F.3d at 1025. Similarly, we have held that a state or local government may entertain non-economic purposes and yet rely on the market participant doctrine. *See Engine Mfrs. Ass'n*, 498 F.3d

---

[10] We disagree with the dissent that section 25 is written so broadly as to reach the entirety of a given labor organization's membership. In context, it is clear that the provision in question, which refers to "binding and enforceable provision(s) prohibiting the Labor Organization and its members from engaging in" certain disruptive action, is meant to govern service providers at LAX. Section 25 repeatedly refers to operations at LAX, employees at LAX, and the LAX licensing program specifically.

at 1046 ("That a state or local governmental entity may have policy goals that it seeks to further through its participation in the market does not preclude the doctrine's application, so long as the action in question is the state's own market participation."). And although, as the dissent points out, the Seventh Circuit decided *Metropolitan Milwaukee II* partially in reliance on an obvious mismatch between the county's asserted purpose and its means of achieving that purpose, the same court later emphasized that lurking political motives are an inevitable part of a public body's actions and are not "a reason for invalidity." *N. Ill. Chapter of Associated Builders & Contractors, Inc. v. Lavin*, 431 F.3d 1004, 1007 (7th Cir. 2005).

This is not to say that a state's supposedly proprietary actions cannot become regulatory if enacted or enforced overbroadly. Preventing such overbreadth is the purpose of the second prong of the *Cardinal Towing* test. *See Johnson*, 623 F.3d at 1023–24. Concerns about overbreadth were largely what led the Supreme Court to strike down the state-wide spending restrictions at issue in *Brown* and *Gould*. *See Brown*, 554 U.S. at 70–71, 128 S.Ct. 2408; *Gould*, 475 U.S. at 289–91, 106 S.Ct. 1057. But no state-wide restrictions—or, indeed, city-wide restrictions—are even alleged to be at issue here. The City has merely imposed a contract term on those who conduct business at LAX, which the City operates, and that contract term serves a cabined purpose.[11] We

[11] We briefly note our disagreement with two additional arguments Plaintiffs advance. First Plaintiffs (and the dissent) argue that section 25 does not specifically address disruptions by non-union employees. That omission alone does not suggest that the City has advanced a pro-union regulatory policy rather than

therefore conclude that the second prong of the *Cardinal Towing* test is satisfied, and that, in imposing section 25, the City has acted as a market participant, not as a regulator.

B. The Presumption Is Not Rebutted by the NLRA, the RLA, or the ADA

Having concluded that the City is acting as a market participant, we must next consider whether there is "any express or implied indication," *Engine Mfrs. Ass'n.*, 498 F.3d at 1042 (quoting *Boston Harbor*, 507 U.S. at 231, 113 S.Ct. 1190), that Congress intended the NLRA, the RLA, or the ADA to preempt actions taken by states and local governments in their capacity as market participants. Absent such an indication, the presumption that preemption applies only to regulatory conduct remains in place. *See id.*

We begin with the NLRA. In *Boston Harbor*, the Supreme Court held that the NLRA does not preempt

---

a proprietary interest. The LAX licensing scheme includes other protections against non-union disruptions. For example, if the airport believes it is necessary to hire police or to take other steps to protect the "efficient operation of LAX" in the event of a violation of section 25 or some other legal or regulatory violation, the service providers may have to reimburse the airport regardless of what or who caused the disruption. Service providers also guarantee the quality of their work, and the City may demand the removal of a service provider's employees or agents.

Second, Plaintiffs argue that section 25 is overbroad because it applies to all operations at LAX. But LAX would hardly avoid service disruptions by requiring labor peace agreements from some service providers and not others. A contract term that applied to fewer than all of the service providers at LAX would risk disruptions attributable to whatever service providers were not required to accept section 25.

state or local government actions taken as a market participant. *See* 507 U.S. at 231–32, 113 S.Ct. 1190 ("In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction."); *see also id.* at 227, 113 S.Ct. 1190 ("We have held consistently that the NLRA was intended to supplant state labor regulation, not all legitimate state activity that affects labor."). Because the City is acting as a market participant here, Plaintiffs have thus not stated a claim for preemption under the NLRA.

We likewise conclude that Plaintiffs have failed to state a claim for preemption under the RLA. We look to decisions interpreting the NLRA to ascertain the RLA's preemptive extent. *See Bhd. of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383, 89 S.Ct. 1109, 22 L.Ed.2d 344 (1969); *Air Transp. Ass'n v. City & Cty. of San Francisco*, 266 F.3d 1064, 1075–76 & n.4; *Beers v. S. Pac. Transp. Co.*, 703 F.2d 425, 428 (9th Cir. 1983); *see also*, *e.g.*, *Hull v. Dutton*, 935 F.2d 1194, 1197– 99 (11th Cir. 1991); *McCall v. Chesapeake & Ohio Ry. Co.*, 844 F.2d 294, 301–02 (6th Cir. 1988). For that reason, relying on the fact that the NLRA does not preempt market participation by state or local governments, we have stated that the RLA likewise does not preempt such conduct. *See Air Transp. Ass'n*, 266 F.3d at 1076 n.4 (explaining that the "RLA would not preempt actions taken by [a municipal government operating an airport] as a proprietor" (citing *Dillingham Const. N.A., Inc. v. Cty. of Sonoma*, 190

F.3d 1034, 1037 (9th Cir. 1999) (addressing NLRA preemption))).

Finally, we reach the same conclusion about the ADA. Congress enacted the ADA to deregulate "the airline industry through 'maximum reliance on competitive market forces and on actual and potential competition.' " *Northwest, Inc. v. Ginsberg*, —— U.S. —, 134 S.Ct. 1422, 1428, 188 L.Ed.2d 538 (2014) (quoting 49 U.S.C. § 40101(a)(6)). The statute expressly preempts states and their subdivisions from "enact[ing] or enforc[ing] a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1).

We and the Supreme Court have interpreted the phrases "force and effect of law" or "effect of law" in preemption clauses in other statutes as applying to governmental action that is regulatory in nature and thus as not preempting market participation. *See*, *e.g.*, *Am. Trucking Ass'ns v. City of Los Angeles*, 569 U.S. 641, 133 S.Ct. 2096, 2102–03, 186 L.Ed.2d 177 (2013) (interpreting the Federal Aviation Administration Authorization Act of 1994); *Associated Gen. Contractors*, 159 F.3d at 1182–83 (interpreting ERISA). Under these cases, we conclude that Congress did not intend the ADA to upset proprietary conduct like that at issue here.[12] *See Am. Trucking Ass'ns*, 133 S.Ct. at 2102. Plaintiffs therefore have not stated a claim under the ADA.

---

[12] Our conclusion is bolstered by the inclusion of an express statutory carve-out in the ADA that preserves the ability of a governmental actor to "carry[ ] out its proprietary powers and rights." 49 U.S.C. § 41713(b) (3).

* * *

In sum, given the allegations presented in Plaintiffs' Complaint, we conclude that the City was acting as a market participant when it added section 25 to its LAX licensing contract, and that the preemption provisions of the NLRA, the RLA, and the ADA do not apply to state and local governmental actions taken as a market participant.[13] We therefore affirm the dismissal of Plaintiffs' preemption claims for failure to state a claim on which relief may be granted.

IV. Leave to Amend

Having concluded that dismissal of the Complaint was appropriate, all that is left for us to consider is whether the district court erred by denying leave to amend. Plaintiffs have represented that remand for the purpose of amendment would, in their view, serve no purpose. Specifically, Plaintiffs have represented that nothing has occurred in the years since section 25 took effect that would enable them to amend their Complaint to add allegations of spillover effects or other indications that section 25 operates in practice as a regulation. In light of these representations, we conclude that "the complaint could not be saved by any amendment," *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 871 (9th Cir. 2016).

V. Conclusion

The district court's rulings are **AFFIRMED**.

---

[13] In addition to its preemption arguments, the ASPA argues that section 25 is an unconstitutional condition. But the ASPA does not explain what constitutional right has been affected. Nor have Plaintiffs appealed the dismissal of their constitutional claims.

Dissent by Judge Tallman

TALLMAN, Circuit Judge, concurring in part and dissenting in part:

I agree with the majority that the ASPA has standing to assert its claims. But that is where the majority and I part ways. Even as is, the Complaint states a plausible claim that the City enacted section 25 as a regulatory measure rather than a proprietary one. At this stage, we must say that this overly broad and facially suspect regulation of labor relations at Los Angeles International Airport ("LAX")—issued by the City's airport commission ostensibly to promote labor peace—contravenes the delicate congressional balancing of national labor relations policy affecting key facilities of interstate commerce. I respectfully dissent.

I

A

It is well established that, in enacting the National Labor Relations Act ("NLRA"), "Congress largely displaced state regulation of industrial relations." *Wis. Dep't of Indus., Labor, & Human Relations v. Gould Inc.*, 475 U.S. 282, 286, 106 S.Ct. 1057, 89 L.Ed.2d 223 (1986). "The purpose of the [NLRA] was to obtain 'uniform application' of its substantive rules and to avoid the 'diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies.'" *NLRB v. Nash–Finch Co.*, 404 U.S. 138, 144, 92 S.Ct. 373, 30 L.Ed.2d 328 (1971) (quoting *Garner v. Teamsters Local Union No. 776*, 346 U.S. 485, 490, 74 S.Ct. 161, 98 L.Ed. 228 (1953)). To these ends, through the NLRA, Congress

erected "a complex and interrelated federal scheme of law, remedy, and administration" and "entrusted administration of the labor policy for the Nation to a centralized administrative agency." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242–43, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959).

Two complementary preemption doctrines serve to preserve uniformity in national labor policy. The first, *Garmon* preemption, "forbids States to 'regulate activity that the NLRA protects, prohibits, or arguably protects or prohibits.'" *Chamber of Commerce v. Brown*, 554 U.S. 60, 65, 128 S.Ct. 2408, 171 L.Ed.2d 264 (2008) (quoting *Gould*, 475 U.S. at 286, 106 S.Ct. 1057). The second, *Machinists* preemption, "prohibits state and municipal regulation of areas that have been left 'to be controlled by the free play of economic forces.'" *Bldg. & Constr. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc.* (*Boston Harbor*), 507 U.S. 218, 225, 113 S.Ct. 1190, 122 L.Ed.2d 565 (1993) (quoting *Lodge 76*, *Int'l Ass'n of Machinists & Aerospace Workers v. Wis. Emp't Relations Comm'n*, 427 U.S. 132, 140, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976)). Together, *Garmon* and *Machinists* preempt state and local policies that would otherwise balkanize the "integrated scheme of regulation" and disrupt the balance of power between labor and management embodied in the NLRA. *Golden State Transit Corp. v. City of Los Angeles* (*Golden State I*), 475 U.S. 608, 613–14, 106 S.Ct. 1395, 89 L.Ed.2d 616 (1986).

Similarly, the Railway Labor Act ("RLA") established a centralized system of labor dispute resolution for the railway and airline industries to promote the free flow of interstate commerce. *Aircraft Serv. Int'l, Inc. v. Int'l*

Bhd. of Teamsters, *Local 117*, 779 F.3d 1069, 1073 (9th Cir. 2015). *Machinists* and *Garmon* preemption also apply in the RLA context. *Bhd. of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 380–81, 89 S.Ct. 1109, 22 L.Ed.2d 344 (1969).

B

As the majority correctly notes, a "market participation" exception allows state and local policies to avoid preemption analysis altogether if those policies serve to protect a proprietary interest rather than regulate the labor market. *Boston Harbor*, 507 U.S. at 229–30, 113 S.Ct. 1190. But by focusing solely on the market participant exception, the majority glosses over a glaring reality: if the City had no proprietary interest in LAX, section 25 would plainly be preempted by the NLRA.

Section 25 requires service providers to enter into a "labor peace agreement" ("LPA")—a "binding and enforceable" agreement that prohibits affected employees "from engaging in picketing, work stoppages, boycotts, or any other economic interference"—with any labor organization that requests one. If a service provider and requesting labor organization cannot reach a no-strike agreement within sixty days, section 25 requires the parties to submit to binding arbitration. If a service provider refuses to abide by the terms of section 25, the City may revoke its license to do business at the airport.

Section 25 represents precisely the type of local interference in labor-management relations that *Machinists* preemption forbids. In *Golden State I*, the Supreme Court held that while the NLRA "requires an employer and a union to bargain in good faith, ... it

does not require them to reach agreement," nor does it demand a particular outcome from labor negotiations. 475 U.S. at 616, 106 S.Ct. 1395; *see also* 29 U.S.C. § 158(d) (providing that the duty to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession"). The substance of labor negotiations, and the results therefrom, are among those areas Congress intentionally left to the free play of economic forces when it legislated in the field of federal labor law. *See Golden State I*, 475 U.S. at 616, 106 S.Ct. 1395 (describing the NLRA as providing only "a framework for the negotiations").

The facts of *Golden State I* are instructive—and Los Angeles has been in trouble before for flouting federal labor laws. In that case, the Supreme Court found that *Machinists* preempted the City of Los Angeles' refusal to renew a taxi cab company's license when it failed to reach an agreement with striking union members. *Id.* at 618, 106 S.Ct. 1395. By conditioning the renewal of the taxi cab franchise on the acceptance of the union's demands, the City effectively imposed a timeline on the parties' negotiations and undermined the taxi cab company's ability to rely on its own economic power to resist the strike. *Id.* at 615, 106 S.Ct. 1395. The Supreme Court held that the City could not pressure the taxi cab company into reaching a settlement and thereby "destroy[ ] the balance of power designed by Congress, and frustrate[ ] Congress' decision to leave open the use of economic weapons." *Id.* at 619, 106 S.Ct. 1395.

Like the taxi cab company in *Golden State I*, service providers here face a Hobson's choice plausibly inferred from the allegations of the Complaint. If a

service provider refuses to negotiate an LPA with a requesting labor organization, it loses its right to do business at LAX. But if the service provider negotiates an LPA, the union knows full well that it can hold out for significant concessions in exchange for its members giving up one of their most valuable economic weapons—the power to go on strike. If the union is unsatisfied with the terms the service provider offers, the union can request mediation and binding arbitration. Once forced to arbitrate, the tribunal will dictate the result the service provider must accept. The threat of binding arbitration thus seriously limits service providers' ability to rely on their own "economic weapons of self-help" to resist a union's demands.

By forcing unwilling service providers to negotiate and accept LPAs, section 25 compels a result Congress deliberately left to the free play of economic forces. The NLRA does not allow state and local governments to "introduce some standard of properly balanced bargaining power ... or to define what economic sanctions might be permitted negotiating parties in an ideal or balanced state of collective bargaining." *Golden State I*, 475 U.S. at 619, 106 S.Ct. 1395 (alteration in original) (quoting *Machinists*, 427 U.S. at 149–50, 96 S.Ct. 2548). Yet that is exactly what section 25 does. In doing so, it directly contravenes federal law.

II

A

Whether the City can enforce section 25 thus hinges entirely on the applicability of the market participant exception. The majority is willing to conclude—with

little examination of what the full effects of section 25 will be—that the City's proprietary interest in LAX immunizes section 25 from preemption. Supreme Court precedent cautions us against drawing such hasty conclusions, particularly when serious questions persist about whether section 25 advances the City's proprietary interest.

As a preliminary matter, the Supreme Court has made clear that not every government action escapes preemption simply because it touches a proprietary interest. *Gould*, 475 U.S. at 287, 106 S.Ct. 1057 (calling "an exercise of the State's spending power rather than its regulatory power.... a distinction without a difference"). The animating concern of *Gould*, in the words of Judge Posner, was that "[t]he [state's] spending power may not be used as a *pretext* for regulating labor relations." *Metro. Milwaukee Ass'n of Commerce v. Milwaukee County* (*Metropolitan Milwaukee II*), 431 F.3d 277, 279 (7th Cir. 2005) (emphasis added).

The fact that the City of Los Angeles owns and operates LAX through its municipal airport commission, and thus has an interest in minimizing disruptions to air travel, cannot alone qualify section 25 for the market participant exception. Instead we must determine, by examining section 25's "actual content and its real effect on federal rights," *Livadas v. Bradshaw*, 512 U.S. 107, 108, 114 S.Ct. 2068, 129 L.Ed.2d 93 (1994), whether section 25's "manifest purpose and inevitable effect" is to do more than protect the City's proprietary interest in running the

airport, *see Gould*, 475 U.S. at 291, 106 S.Ct. 1057.[14] Because our inquiry is informed by how section 25 might actually work in practice, it "inevitably is fact-specific," Roger C. Hartley, *Preemption's Market Participant Immunity—A Constitutional Interpretation: Implications for Living Wage and Labor Peace Policies,* 5 U. Pa. J. Lab. & Emp. L. 229, 252 (2003), and deserves more than the surface-level review undertaken by the majority.

The Supreme Court's decision in *Chamber of Commerce v. Brown*, 554 U.S. 60, 128 S.Ct. 2408, 171 L.Ed.2d 264 (2008), illustrates the fact-sensitive nature of our analysis. At issue in *Brown* was California's Assembly Bill 1889 (AB 1889), which prohibited certain private employers from using state funds to "assist, promote, or deter union organizing." *Id.* at 63, 128 S.Ct. 2408 (quoting Cal. Gov't Code §§ 16645.1–16645.7). The Court found it "beyond dispute that California enacted AB 1889 in its capacity as a regulator rather than a market participant." *Id.* at 70, 128 S.Ct. 2408. As one obvious example, the preamble to AB 1889 announced an explicit regulatory purpose. *Id.*

The heart of the Court's market participation analysis, however, focused not on AB 1889's official purpose but on its practical consequences. Significantly, although

---

[14] To be clear, examining a challenged policy's purpose does not involve an investigation into policymakers' "subjective reasons for adopting a regulation or agreement." *Johnson v. Rancho Santiago Cmty. Coll. Dist.*, 623 F.3d 1011, 1026 (9th Cir. 2010); *see also Chamber of Commerce v. Reich*, 74 F.3d 1322, 1336 (D.C. Cir. 1996) (clarifying that it was unnecessary "to question the President's motivation in order to determine whether the [Executive] Order" demonstrated a regulatory purpose).

AB 1889 purported to affect only state funds, the statute's combination of compliance burdens and litigation risks effectively deterred employers from using *any* funds, state or otherwise, to exercise speech rights protected under the NLRA. *Id*. at 72–73, 128 S.Ct. 2408. In light of these realities, the Court held that although California had a "legitimate proprietary interest in ensuring that state funds are spent in accordance with the purposes for which they are appropriated," in operation, AB 1889 "effectively reache[d] far beyond the use of funds over which California maintains a sovereign interest."[15] *Id*. at 70–71, 128 S.Ct. 2408.

With respect to section 25, we must be similarly sensitive to the ordinance's real-world impacts. We must also construe the allegations in the Complaint in the light most favorable to the party resisting dismissal. *Syed v. M–I, LLC*, 853 F.3d 492, 499 (9th Cir. 2017). Yet the majority seems content to decide, with little examination of how section 25 might

---

[15] The majority mischaracterizes my analysis of *Brown*. The critical lesson from *Brown* is that preemption analysis requires a careful inquiry into the actual effects of a challenged policy. Contrary to the majority's interpretation, the Court's analysis did not focus "solely on the text of AB 1889." Rather, its ultimate preemption holding rested on how the statute, once operationalized, would affect the real-world choices of entities receiving state funds, and the use of funds over which the state could claim no proprietary interest. *Id*. at 73, 128 S.Ct. 2408 ("AB 1889's enforcement mechanisms put considerable pressure on an employer either to forgo his 'free speech right to communicate his views to his employees,' or else refuse the receipt of any state funds. In so doing, the statute ... chills one side of the 'robust debate which has been protected under the NLRA.' " (citation omitted)).

actually operate, that section 25 serves a purely proprietary function. Applying the *Cardinal Towing* test, the majority makes a conclusory finding that, "like the college in *Johnson*, the City is attempting to avoid disruption of its business." And with similarly scant analysis, the majority decides that section 25 is "narrowly tied to [the City's] specific proprietary problem." Distinguishing between government as market participant and government as regulator, however, requires a closer look at section 25's "actual content" and "real effect[s]." *See Livadas*, 512 U.S. at 108, 114 S.Ct. 2068.

B

Under the first prong of *Cardinal Towing*, we cannot say that section 25 reflects the City's interest in the "efficient procurement of needed goods and services," as we might expect from a private entity. *Johnson*, 623 F.3d at 1023 (quoting *Cardinal Towing & Auto Repair, Inc. v. City of Bedford*, 180 F.3d 686, 693 (5th Cir. 1999)). At the risk of stating the obvious, the City here is not directly procuring goods and services to execute a discrete project, but rather providing ongoing licenses permitting a host of service providers handling baggage, assisting passengers, refueling aircraft, serving food and beverages, and otherwise keeping planes operating on schedule to do business at the airport. The City's proprietary interest here is thus markedly different in kind than that in cases like *Boston Harbor* and *Johnson*, where local governments required project labor agreements that were "specifically tailored to one particular job." *See Boston Harbor*, 507 U.S. at 232, 113 S.Ct. 1190.

Furthermore, unlike the project labor agreements in *Boston Harbor* and *Johnson*, there is no evidence that a private operator of LAX would use LPAs as a means of ensuring labor peace. *See Metro. Milwaukee II*, 431 F.3d at 282. Section 8(e)–(f) of the NLRA specifically authorizes the type of project labor agreements at issue in *Boston Harbor* and *Johnson*, indicating that such agreements "are a tried and true remedy for construction stoppages owing to labor disputes." *Id.* at 281–82. Nothing in the record suggests the same is true for LPAs in the private marketplace.

Indeed, if the City's true purpose here is to minimize work stoppages at LAX, section 25 seems an ill-fitted tool for the job. Section 25 is both too narrow and too broad as a means of achieving its purported objective. It is too narrow because, by its own terms, section 25 does not even apply to service providers' employees, but only to the members of a labor organization that requests an LPA. Therefore, if a service provider's employees currently have no recognized collective bargaining representative, those employees will not be covered by an LPA at all. Nor does section 25 apply to other classes of airport workers who may threaten work stoppages. Section 25 also applies only partial deterrence: it penalizes service providers, but not labor organizations, for violating an LPA.

At the same time, section 25 sweeps more broadly than necessary to achieve its goal. In order for unions to forgo their right to strike, common sense and long experience in labor negotiations tell us we would reasonably expect that service providers will have to make concessions favorable to the unions. These concessions may be totally unrelated to preventing strikes, and may or may not actually promote labor

peace. Instead of forcing service providers and labor organizations into LPA negotiations, the City could have used other, more targeted mechanisms to prevent labor strife. In *Metropolitan Milwaukee II*, Judge Posner observed that

> [t]he usual way of dealing with [service interruptions] is to include contract terms that by adding sticks or carrots or both give the provider of the service a compelling incentive to take effective measures to avoid stoppages. The buyer can offer a premium for timely performance and insist on the inclusion of a stiff liquidated-damages provision as a sanction for untimely performance; there is also, as a further incentive to good performance, the implicit threat of refusing to renew the contract if performance is unsatisfactory.

431 F.3d at 280.[16] Section 25 is far less straightforward. To summarize, it only covers a service provider's employees if: (1) those employees are already represented by a labor organization; (2) that labor organization requests an LPA; (3) the labor organization and service provider enter into LPA negotiations; and (4) the service provider makes concessions acceptable to the union, which may be

---

[16] The majority distinguishes *Metropolitan Milwaukee II* on the grounds that the county ordinance at issue in that case "did little to avoid service interruptions" and "imposed several additional conditions favorable to union organizing," Nothing in the record establishes, however, that section 25 would achieve labor peace any more effectively. And for reasons explained *infra*, it is reasonable to assume that section 25's practical effect is to impose conditions on service providers aimed at facilitating union organizing.

totally unrelated to preventing strikes. If a service provider's employees are not already unionized, once a labor organization secures an LPA, the labor organization must then (5) become the certified bargaining representative of the service provider's employees through NLRB elections. Compared to simple, contract-based incentives, *see id*., section 25 certainly seems a roundabout way to minimize labor disruptions at LAX.

These tailoring problems suggest that section 25's "manifest purpose and inevitable effect" may not be to protect the City's proprietary interest in the airport at all.[17] *See id*. (holding that tailoring problems may indicate a regulatory purpose); *see also Hotel Emps. & Rest. Emps. Union, Local 57 v. Sage Hosp. Res., LLC*, 390 F.3d 206, 214 (3d Cir. 2004) (noting that "[o]ther appellate courts that have examined the regulator/market-participant distinction also focus on the fit between the challenged state requirement and the state's proprietary interest in a particular project or transaction" (citing *Chamber of Commerce v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996))). If section 25 does not directly advance the City's proprietary interest, is it

---

[17] The majority suggests that the poor fit between section 25's actual effects and its purported goals should play no role in our preemption analysis. But tailoring issues are highly relevant to our evaluation of the first prong of the *Cardinal Towing* test—whether a challenged policy "reflect[s] the [government] entity's interest in its efficient procurement of needed goods and services." *Johnson*, 623 F.3d at 1023 (quoting *Cardinal Towing*, 180 F.3d at 693). This inquiry is distinct from examining policymakers' motives, which does not play a role in our analysis, and the narrowness of the challenged policy's scope, which is relevant to *Cardinal Towing* prong two.

instead a pretext for regulating labor relations? The complaint plausibly alleges as much.

Historical experience with LPAs, which the majority does not bother to consider, also provides useful insight into whether section 25 reflects a proprietary interest or a regulatory one. That experience suggests that section 25's true purpose is to alter the balance between labor and management. In typical LPAs, in exchange for relinquishing their right to strike, unions gain concessions from employers to support unionization of the employer's employees. *See* Hartley, *supra*, at 246 (summarizing study of over one hundred LPAs). For example, LPAs often require an employer to remain neutral during union organizing drives. *Id.* LPAs also often require employers to provide unions with employees' contact information and access to the employer's physical premises to assist with organizing efforts.[18] *Id.* at 246–47. A review of LPAs in California similarly found that, in most LPAs, "employers must grant workplace access, provide employee information (names, job titles, contact information, etc.) early in the organizing campaign," "refrain from making disparaging statements about the union," and/or "require that

---

[18] Under the NLRA, by contrast, employers may publicly oppose unionization and refuse to give labor organizations access to workplace facilities. 29 U.S.C. § 158(c) (permitting noncoercive employer speech regarding unionization); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 538, 112 S.Ct. 841, 117 L.Ed.2d 79 (1992) (upholding general rule that employer may not be compelled to allow nonemployee union organizers onto the employer's property for the distribution of union literature). Section 25 thus forces service providers to give up statutory rights that would otherwise be protected.

employers assent to card check recognition and neutrality."[19] Indeed, in this case, counsel for the City admitted at oral argument that unions would likely seek neutrality from service providers as part of LPA negotiations. We should therefore be unsurprised that, as the ASPA has alleged, the Service Employees International Union (SEIU) lobbied heavily for section 25 after it tried unsuccessfully to unionize service provider employees at LAX.

Given that LPAs are generally used to promote union organizing, and given counsel's own admission at oral argument, we cannot conclude at this stage that section 25 simply reflects the City's proprietary interest in preventing work stoppages. Moreover, the City has failed to establish that it enacted section 25 to respond to legitimate concerns about work disruptions at LAX, as we might expect from a private operator of the airport. The "manifest purpose and inevitable effect" of section 25 thus appears to be aimed at altering the balance of power between service providers and organized labor. *See Gould*, 475 U.S. at 291, 106 S.Ct. 1057.

C

Turning to the second prong of the *Cardinal Towing* test, we again cannot say conclusively at this stage that section 25's real-world impacts will be sufficiently narrow to qualify for the market participant exception.

---

[19] John Logan, Innovations in State and Local Labor Legislation: Neutrality Laws and Labor Peace Agreements in California, in The State of California Labor 2003 157, 184 (Ruth Milkman ed., 2003), available at http://www.iir.ucla.edu/publications/documents/StateofCALabor2003.pdf.

Even on cursory facial examination, section 25 does not appear narrowly drawn. In *Johnson*, we found that the challenged project labor agreement condition in that case was narrow in scope because it was both limited in time and limited to construction projects costing over $200,000. 623 F.3d at 1028. By contrast, section 25 applies to any service provider at LAX, no matter how big or small the service provider's operations there. And section 25 is unlimited in duration; service providers must comply with its terms as long as they want to remain licensed to do business at LAX.

The practical effects of section 25 must also inform our determination of whether its scope is narrow. A challenged policy exceeds a state's proprietary interest if the policy effectively reaches employer conduct "unrelated to the employer's performance of contractual obligations to the state." *Boston Harbor*, 507 U.S. at 228–29, 113 S.Ct. 1190; *see also Brown*, 554 U.S. at 71, 128 S.Ct. 2408. In *Metropolitan Milwaukee II*, for example, the court held that a Milwaukee County ordinance was preempted because it affected government contractors' employees regardless of whether they performed work on government contracts. 431 F.3d at 279. The ordinance required government contractors to secure LPAs that would apply to the contractors' "employees," without specifying whether "employees" within the meaning of the ordinance was limited to bargaining units that worked on county contracts. *Id*. The unrestricted language left open the possibility that an employee who performed only some or no work for the county would be covered by an LPA, even for a labor dispute arising out of non-county work. *Id*.

Here, we have no assurances—besides the word of the City—that section 25 will have no similar spillover effects. The majority confidently asserts that section 25 will not "hamper service providers' operations elsewhere." That conclusion apparently rests on the fact that section 25 as a whole is aimed at operations at LAX. But we should be unsurprised that section 25 focuses on LAX, given that the airport authority lacks jurisdiction to *directly* regulate service providers beyond LAX; the City clearly cannot impose contracting conditions on service providers with whom it has no contractual relationship. The key point, however, is that nothing in section 25 limits *private* agreements between service providers and unions from extending beyond LAX. Nothing in section 25, for example, dictates that LPAs shall cover only LAX bargaining units. The ordinance provides only that an LPA must apply to a labor organization's "members," regardless of whether they perform only some or none of their work at LAX. In LPA negotiations, therefore, labor organizations may seek concessions that affect service provider employees well beyond LAX. And, depending on service providers' business arrangements, it may be impracticable for service providers to segregate their workforces so that only employees who work exclusively at LAX are covered by an LPA.[20] *See Metro. Milwaukee II*, 431 F.3d at 279–80.

---

[20] Contrary to the majority's suggestion, we have no indication that any "natural division" between labor performed at and outside LAX exists. It may be, for example, that some service provider employees perform work both at LAX and at one of the many other regional airports in the greater Los Angeles area. Should such an employee become involved in a labor dispute, she

The sheer scale of LAX may also result in spillover effects. According to the City, "LAX is the fourth busiest passenger airport in the world," and the second busiest in the U.S. L.A. World Airports, *General Information*, LAX: Los Angeles World Airports, http://www.lawa.org/welcome_lax.aspx?*id*=40 (last visited July 14, 2017). Last year, LAX handled over 80.9 million passengers and nearly 700,000 aircraft takeoffs and landings. *Id.* In *Reich*, the D.C. Circuit held that an Executive Order affecting all federal contracts over $100,000 served as a regulation, and not market participation, in part because the federal government is such a large purchaser of goods and services. 74 F.3d at 1338. Here, "given the size of [LAX's] portion of the economy," labor negotiations at LAX may similarly "alter ... behavior" in the wider market for worldwide airline services. *See id.* The ASPA should at least be allowed to prove these potential effects.

III

If we are to give effect to Congress' intent to "avoid the 'diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies,' " *Nash–Finch Co.*, 404 U.S. at 144, 92 S.Ct. 373, we cannot allow the market participation exception to become too broad. It is not enough to simply accept state and local governments' assurances that they only seek to enforce labor policies as market participants, particularly when those policies would

---

would be bound by an LPA entered into pursuant to section 25 regardless of whether the dispute arose at LAX or elsewhere. This type of spillover concern was central in *Metropolitan Milwaukee II*, 431 F.3d at 279–80.

directly interfere with core rights protected by the NLRA, itself the product of careful congressional balancing of national labor policy in industries affecting interstate commerce. Even at this early stage of litigation, an inquiry into section 25's "real effect on federal rights," Livadas, 512 U.S. at 108, 114 S.Ct. 2068, raises serious doubts that the City's interest in enforcing section 25 is merely about protecting its proprietary interest in running Los Angeles International Airport. Plaintiffs have pled enough to proceed to discovery. I respectfully dissent.

APPENDIX B

869 F.3d 751
Withdrawn for N.R.S. bound volume
United States Court of Appeals,
Ninth Circuit.

AIRLINE SERVICE PROVIDERS ASSOCIATION,
Plaintiff–Appellant,
and
Air Transport Association of America, Inc.,
DBA Airlines of America, Plaintiff,
v.
LOS ANGELES WORLD AIRPORTS; City of Los Angeles, Defendants–Appellees.
Airline Service Providers Association, Plaintiff,
and
Air Transport Association of America, Inc.,
DBA Airlines for America, Plaintiff–Appellant,
v.
Los Angeles World Airports;
City of Los Angeles, Defendants–Appellees.

No. 15–55571, No. 15–55572
|
Argued and Submitted
January 13, 2017 Pasadena, California
|
Filed August 23, 2017

Editor's Note: The opinion of the United States Court of Appeals, Ninth Circuit, in *Airline Service Providers Association v. Los Angeles World Airports*, published in the advance sheet at this citation, 869 F.3d 751, was withdrawn from the bound volume because it was withdrawn and superseded on rehearing in part October 16, 2017. For superseding opinion, see 2017 WL 4582735.

APPENDIX C

United States District Court,
C.D. California

AIRLINE SERVICE PROVIDERS ASSOCIATION, et al.
v.
LOS ANGELES WORLD AIRPORTS, et al.

Case No. CV 14-8977-JFW (PJWx)
|
Filed 03/18/2015

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING MOTION TO DISMISS COMPLAINT BY DEFENDANTS LOS ANGELES WORLD AIRPORTS AND CITY OF LOS ANGELES [filed 1/6/15; Docket No. 30]

JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

On January 6, 2015, Defendants Los Angeles World Airports and the City of Los Angeles (collectively, "Defendants") filed a Motion to Dismiss Complaint ("Motion"). On February 13, 2015, Plaintiffs Airline Service Providers Association and Air Transport Association of America, Inc., d/b/a Airlines for America (collectively, "Plaintiffs") filed their Opposition. On February 23, 2015, Defendants filed a Reply.

Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's March 9, 2015 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background[1]

In this case, the Airline Service Providers Association ("ASPA"), which is the principle trade association for airport services providers[2], and the Air Transportation Association of America, Inc., d/b/a Airlines of America ("A4A"), which represents passenger and cargo air carriers in the United States[3],

---

[1] Defendants' unopposed January 6, 2015 Request for Judicial Notice in Support of Motion to Dismiss Complaint [Docket No. 31] is granted.

[2] The airport service providers are typically retained by the airlines to provide airline related services at Los Angeles International Airport ("LAX"). The Airline Service Providers are sometimes referred to by the parties as "ASPs," but the Court concludes that they are more appropriately referred to as Certified Service Providers ("CSPs"). ASPA members include Air Serv Corporation, Aviation Safeguards, Calop Aeroground Services, G2 Secure Staff LLC, Gateway Group One, Hallmark Aviation Services, L.P., Integrated Airline Services, Menzies Aviation, PLC, Pacific Aviation Corporation, SAS Airline Services Group, Scientific Concepts, Inc., Servisair, Swissport USA Inc., Total Airport Services Inc., US Aviation Services and World Service West, LLC. Complaint, ¶ 7.

[3] A4A members are Alaska Airlines, Inc., American Airlines Group, Inc. (American Airlines and US Airways), Atlas Air, Inc., Delta Air Lines, Inc., Federal Express Corporation, Hawaiian

challenge on preemption and vagueness grounds Section 25 of the Certified Service Provider License Agreement, which was approved on May 5, 2014 by Defendant City of Los Angeles (the "City") through its Board of Airport Commissioners of Los Angeles World Airport ("LAWA").

According to the Complaint, for many years, airlines operating out of LAX have retained or hired CSPs to provide a wide variety of services including aircraft fueling, aircraft cleaning, baggage sorting and handling, aircraft cooling and heat, aircraft loading and unloading, and counter and gate functions. Beginning in 1985, the CSPs working at LAX were required to enter into Non-Exclusive License Agreements ("NELA") with LAWA which set license fees and imposed various requirements on the CSPs working at LAX.

In 2008, negotiations commenced for a Certified Service Provider License Agreement ("CSPLA") that was intended to replace the NELAs. The CSPLA was designed to establish eligibility criteria, service classifications, and various monitoring and enforcement procedures for companies providing services at LAX.

In August 2012, LAWA approved and adopted the terms of the first CSPLA. The 2012 CSPLA[4] included

---

Airlines, Inc., JetBlue Airways Corp., Southwest Airlines Co., United Continental Holdings, Inc. (United Airlines), and United Parcel Service Co. All A4A members that operate at LAX have contracts with ASPA members that are covered by Section 25. Complaint, ¶ 8.

[4] A copy of the 2012 CSPLA is attached as Exhibit A to the Complaint.

a "Labor Harmony" section which required the CSPs to "abide by the requirements of all applicable labor laws and regulations including the City of Los Angeles Living Wage Ordinance."[5] 2012 CSPLA, § 24 (Complaint, Exh. A (p. 22)).

According to Plaintiffs, in March 2014, LAWA presented the CSPs with a completely rewritten "Labor Harmony" section, which contained a provision requiring a "Labor Peace Agreement" ("LPA"). Although Plaintiffs raised numerous questions and objections to the Labor Harmony section of the CSPLA in the brief time allowed for comment, on May 5, 2014, LAWA approved the revised CSPLA.[6] In this action, Plaintiffs challenge Section 25 of the 2014 CSPLA, which provides as follows:[7]

> **Section 25**. **Labor Harmony**. Licensee covenants that its employees at LAX shall be able to work in labor harmony in order to protect LAWA's proprietary and economic interests. In order to comply with this provision:

---

[5] The City's Living Wage Ordinance ("Ordinance") was challenged on many of the same grounds relied on by Plaintiffs in this action. Those challenges were rejected and the Ordinance was held constitutional. *Calop Business Systems, Inc. v. City of Los Angeles*, 984 F.Supp. 2d 981, 989 (C.D. Cal. 2013). An appeal of that decision is pending in the Ninth Circuit.

[6] Plaintiffs suggest that as a result of lobbying by SEIU, the CSPLA was adopted by LAWA. However, Plaintiffs' suggestions are based on mere speculation.

[7] A copy of the May 5, 2014 CSPLA is attached as Exhibit B to the Complaint.

25.1 Licensee shall have in place, at all required times, a labor peace agreement ("Labor Peace Agreement") with any organization of any kind, or an agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with service providers at LAX concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work ("Labor Organization"), which requests a Labor Peace Agreement.

25.2 The Labor Peace Agreement shall include a binding and enforceable provision(s) prohibiting the Labor Organization and its members from engaging in the picketing, work stoppages, boycotts, or any other economic interference for the duration of the Labor Peace Agreement, which must include the entire term of any CSPLA.

25.3 Licensee shall, upon LAWA's request, submit to LAWA a certification, signed by Licensee and any Labor Organizations, indicating the parties have entered into a Labor Peace Agreement.

25.4 In the event that Licensee and a Labor Organization are unable to agree to a Labor Peace Agreement within 60 days of the Labor Organization's written request, they shall submit the dispute to a mutually agreed upon mediator to assist the parties in reaching a reasonable Labor Peace

> Agreement. In the event that Licensee and a Labor Organization are unable to reach a reasonable Labor Peace Agreement through mediation, the parties shall submit the dispute to the American Arbitration Association …
>
> 25.5 Licensee may continue to operate at LAX during any negotiation, mediation or arbitration related to a Labor Peace Agreement conducted pursuant to Section 25.
>
> 25.6 In the event LAWA determines it necessary for public safety or the efficient operation of LAX to post police details or take other actions resulting from Licensee's violation of Section 25 or Section 26, LAWA shall have the authority to require that Licensee reimburse LAWA for all reasonable costs incurred by doing so.
>
> 25.7 Nothing in Section 25 shall be construed as requiring Licensee, through arbitration or otherwise, to change terms and conditions of employment for its employees, recognize a Labor Organization as the bargaining representative for its employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a Labor Organization.

On November 20, 2014, Plaintiffs filed their Complaint, seeking to invalidate Section 25 of the CSPLA. Specifically, Plaintiffs allege claims for: (1) violation of the National Labor Relations Act and the Railway Labor Act (Preemption); (2) violation of the

Airline Deregulation Act of 1978 (Preemption); and (3) Due Process (Void for Vagueness) (Fifth and Fourteenth Amendments of the United States Constitution). Defendants now move to dismiss Plaintiffs' Complaint.

II. Legal Standard

A. Federal Rule of Civil Procedure 12(b)(1)

The party mounting a Rule 12(b)(1) challenge to the Court's jurisdiction may do so either on the face of the pleadings or by presenting extrinsic evidence for the Court's consideration. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) ("Rule 12(b)(1) jurisdictional attacks can be either facial or factual"). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In ruling on a Rule 12(b)(1) motion attacking the complaint on its face, the Court accepts the allegations of the complaint as true. *See, e.g., Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). "By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air*, 373 F.3d at 1039. "With a factual Rule 12(b)(1) attack ... a court may look beyond the complaint to matters of public record without having to convert the motion into one for summary judgment. It also need not presume the truthfulness of the plaintiff['s] allegations." *White*, 227 F.3d at 1242 (internal citation omitted); *see also Thornhill Pub. Co., Inc. v. General Tel & Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) ("Where the jurisdictional issue is separable from the merits of the

case, the judge may consider the evidence presented with respect to the jurisdictional issue and rule on that issue, resolving factual disputes if necessary... '[N]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.' ") (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (9th Cir. 1977)). "However, where the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits, the jurisdictional determination should await a determination of the relevant facts on either a motion going to the merits or at trial." *Augustine v. U.S.*, 704 F.2d 1074, 1077 (9th Cir. 1983). It is the plaintiff who bears the burden of demonstrating that the Court has subject matter jurisdiction to hear the action. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994); *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989).

B. Rule 12(b)(6)

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.' " *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a

plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level." *Id*.

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g.*, *Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations." *Summit Technology*, 922 F. Supp. at 304 (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031 (1981)).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990) (citations omitted). However, a court may consider material which is properly submitted as part of the complaint and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201 without converting the motion to dismiss into a motion for summary judgment. *See, e.g., id.; Branch v. Tunnel*, 14 F.3d 449, 454 (9th Cir. 1994).

Where a motion to dismiss is granted, a district court must decide whether to grant leave to amend.

Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a Court does not need to grant leave to amend in cases where the Court determines that permitting a plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. Discussion

A. Section 25 Does Not Violate the National Labor Relations Act or the Railway Labor Act.

In their Complaint, Plaintiffs allege that the provisions of Section 25 constitute an impermissible attempt by Defendants to regulate labor relations of the CSPs in violation of the National Labor Relations Act ("NLRA") and the Railway Labor Act ("RLA"), and that those efforts are preempted under the *Garmon* or *Machinists* preemption doctrines. Specifically, Plaintiffs allege that Section 25 violates federal labor policy because it impermissibly requires a CSP to agree to negotiate and enter into a LPA with a labor organization that does not represent the employees of the CSPs, regardless of the wishes of its employees. According to Plaintiffs, this would effectively result in the labor organization becoming the bargaining representative of the CSP's employees, which would circumvent the processes and requirements of the NLRA and RLA. In addition, Plaintiffs allege that

Section 25 requires a "binding and enforceable" agreement preventing the labor organization and its members from striking or engaging in any type of economic interference during the term of the CSPLA, and thereby allowing the labor organization to become the representative of the employees without the requisite certification of the National Mediation Board ("NMB") or the National Labor Relations Board ("NLRB").

In their Motion, Defendants argue that Plaintiffs' NLRA and RLA preemption claim fails as a matter of law based on a simple reading of the plain language of Section 25, which merely mandates a single substantive provision prohibiting a labor organization and its members from engaging in picketing, work stoppages, boycotts, or any other economic interference for the duration of the agreement. Contrary to and in response to Plaintiffs' preemption claim, Defendants argue that Section 25 does not mandate any provision in a LPA that binds a CSP, and Section 25.7 expressly provides that it does not require a CSP to alter the terms of its employee's employment, recognize labor organizations, or agree to any particularized process for recognizing a labor organization.

1. Article III Standing.

Before addressing the preemption arguments under the NLRA and the RLA, the Court must resolve Defendants' claim that Plaintiffs have no standing to challenge Section 25.

a. The Legal Standard for Article III Standing.

To establish standing, Plaintiffs must demonstrate: "(1) he or she has suffered an injury in fact that is concrete and particularized, and actual or imminent; (2) the injury is fairly traceable to the challenged conduct; and (3) the injury is likely to be redressed by a favorable court decision." *Salmon Spawning & Recovery Alliance v. Gutierrez*, 545 F.3d 1220, 1225 (9th Cir. 2008); *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 654–55 (9th Cir. 2011) ("To invoke the jurisdiction of the federal courts, a plaintiff must demonstrate that it has Article III standing— *i.e.*, that it has suffered an injury-in-fact that is both 'concrete and particularized,' and 'actual or imminent, not conjectural or hypothetical'; that the injury is 'fairly ... traceable to the challenged action of the defendant'; and that it is 'likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision' on the plaintiff's claims for relief); *see also Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733 (2008) ("To qualify for standing, a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling").

Article III standing is a "threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490 (1975). Hence, "a defect in standing cannot be waived; it must be raised, either by the parties or by the court, whenever it becomes apparent." *U.S. v. AVX Corp.*, 962 F.2d 108, 116 n. 7 (1st Cir.1992).

The inquiry into Article III standing "involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Warth*, 422 U.S. at 498 (1975). "In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art[icle] III." *Id*.

Beyond the "irreducible constitutional minimum of standing" (*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)), the Supreme Court recognizes other prudential limitations on the class of persons who may invoke the courts' decisional remedial powers, including the requirement that a party must assert its own legal interest as the real party in interest.[8] *Warth*, 422 U.S. at 499. To obtain relief in federal court, a party must meet both the constitutional and prudential requirements for standing. *Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1339 (Fed. Cir.2007); *see also In the Matter of Village Rathskeller, Inc.*, 147 B.R. 665, 668 (S.D.N.Y. 1992) (holding that "[t]he concept of standing subsumes a blend of constitutional requirements and prudential considerations").

---

[8] These prudential limitations are self-imposed rules of judicial restraint, and principally concern whether the litigant (1) asserts the rights and interests of a third party and not his or her own, (2) presents a claim arguably failing outside the zone of interests protected by the specific law invoked, or (3) advances abstract questions of wide public significance essentially amounting to generalized grievances more appropriately addressed to the representative branches. *See In re Newcare Health Corp*. 244 B.R. 167, 170 (1st Cir. BAP 2000).

b. A4A Does Not Have Standing to Challenge Section 25 Under the NLRA or the RLA.

In this case, neither A4A nor its members are covered by the NLRA, and, thus, neither A4A nor its members have any legally protected interests under the NLRA with which the CSPLA could interfere. In addition, even though the airlines are subject to the RLA, Section 25 establishes requirements solely for the CSPs, not for A4A or its members, the airlines. Because Section 25 does not apply to A4A or its members, A4A cannot demonstrate that it will suffer any injury as a result of the enactment of Section 25.

However, the Court recognizes that "when the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily 'substantially more difficult' to establish." *Lujan*, 504 U.S. at 562. In attempting to establish standing, A4A alleges that the airlines will be harmed through a theoretical and tenuous chain of causation. For example, A4A alleges Section 25 will cause unnamed CSPs to cease conducting business at LAX and discourage new CSPs from conducting any business at LAX. Complaint, ¶ 44. A4A speculates that this will result in fewer CSPs at LAX, and that the remaining CSPs will raise their prices for their services which will be passed on to the airlines which will necessarily face higher costs.[9] *Id*.

---

[9] A4A has alleged other speculative scenarios in an attempt to demonstrate its standing, but those allegations simply ignore the plain language of Section 25. For example, A4A alleges that unnamed CSPs will "fail to reach an agreement," at some undetermined point in the future, with a labor organization,

The Court concludes that A4A has failed to demonstrate that it has standing to challenge Section 25. In addition, even if A4A or the airlines had some legally protected—albeit tenuous—interest with which Section 25 might possibly interfere, the harms that the airlines allege are neither imminent nor concrete. "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes-that the injury is certainly impending." *Clapper v. Amnesty International USA*, — U.S. —, 133 S. Ct. 1138, 1147 (2013) (internal quotation omitted). The Supreme Court has "repeatedly reiterated that 'threatened injury must be certainly impending to constitute injury in fact,' and that

---

leading those CSPs to be decertified, which again will result in the airlines absorbing higher prices that might be charged by the remaining CSPs. ¶ 45. However, these allegations conveniently ignore Section 25.4 of the CSPLA, which provides that if a CSP and a labor organization are unable to negotiate or mediate terms of an agreement, an arbitrator will set the initial terms of the LPA, thereby preventing the loss of any qualified CSPs. In addition, A4A alleges that requiring CSPs to enter into a LPA with a labor organization will result in the labor organization seeking some unspecified "something in return" or will somehow alter the terms of employment for the CSP's employees, which again will result in increased costs that will be passed on to the airlines. *Id.*, ¶¶ 28 and 43. However, Plaintiffs again ignore Section 25.7 of the CSPLA, which specifically states that Section 25 does not require recognition of a labor organization as a bargaining representative or require a CSP to alter its employees' terms and conditions of employment. Because each of Plaintiffs' hypothetical scenarios is impossible when viewed in the context of the clear language of Section 25, the Court concludes that they do not establish A4A's standing.

'[a]llegations of possible future injury' are not sufficient." *Id.* In this case, A4A's allegations of highly speculative future harms resulting from Section 25's implementation are plainly insufficient to establish standing.[10]

Accordingly, the Court grants Defendants' Motion with respect to A4A's first count alleging that Section 25 violates the NLRA and the RLA because A4A lacks standing, and, because amendment is futile, it is dismissed without leave to amend.

2. The NLRA and the RLA.

Although A4A does not have standing to challenge Section 25 , the parties appear to agree that ASPA has the requisite standing to challenge Section 25 under the NLRA.

a. *Garmon* and *Machinists* Preemption Under the NLRA and the RLA.

The NLRA's primary effect is to require collective bargaining and reduce labor disruptions. *St. Elizabeth Community Hospital v. NLRB*, 708 F.2d 1436, 1441 (9th Cir.1983). Congress passed the NLRA to minimize industrial strife by protecting employees' rights to organize and bargain collectively. *NLRB v. Jones & Laughlin*, 301 U.S. 1, 42–43 (1937). Thus, when Congress enacted the NLRA, it took away from the courts much of the power to regulate "the relations between employers of labor and workingmen" by granting authority to an administrative agency.

---

[10] As Defendants point out, there are no allegations in the Complaint that any CSP has actually entered into a LPA or, more importantly, Plaintiffs have not and undoubtedly cannot plausibly allege what they mean by "something in return."

Duplex Printing Press Co. v. Deering, 254 U.S. 443, 486 (1921) (Brandeis, J., dissenting).

The RLA regulates the negotiation of collective bargaining agreements in the railway and airline industries. *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994). Congress passed the RLA "to promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes." *Id.* It "imposes a duty on employers and employees 'to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions.' " *Air Transport Association of America v. City and County of San Francisco*, 266 F.3d 1064, 1075 (9th Cir. 2001) (citing 45 U.S.C. § 152).

Neither the NLRA nor the RLA contain express preemption provisions. *Building and Constr. Trades Council v. Associated Builders & Contractors of Mass/RI, Inc.* ("*Boston Harbor*"), 507 U.S. 218, 224 (1993). However, the Supreme Court has articulated two distinct preemption principles that apply to both the NLRA and the RLA, known as *Garmon* preemption and *Machinists* preemption. *Id.*; *Beers v. Southern Pacific Transportation Co.*, 703 F.2d 425, 428–29 (9th Cir. 1983) (holding that *Garmon* preemption applies to the RLA); *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969) (holding that a state court could not enjoin a union from picketing a railroad where that union was involved in a dispute governed by the RLA); *Lodge 76, Int'l Assoc. of Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 147–48 (1976) (citing *Jacksonville Terminal* as precedent for its holding that state and municipalities are

preempted by the NLRA from regulating those areas that have been left by Congress to be controlled by the free play of economic forces).

Garmon preemption precludes several kinds of state intrusions on the NLRA's and RLA's "integrated scheme of regulation," including "potential conflict of rules of law, of remedy, and of administration."[11] *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959). To protect against such conflicts, *Garmon* preemption prohibits states from regulating activity that the NLRA and RLA protects, prohibits, or arguably protects or prohibits. *Wis. Dep't of Indus., Labor & Human Relations v. Gould, Inc.*, 475 U.S. 282, 286 (1986). The purpose of *Garmon* preemption is to preserve the integrity of the "comprehensive and integrated regulatory framework" Congress established in the NLRA and the RLA. *Garmon*, 359 U.S. at 239–40. Under the NLRA, "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties." *Garner v. Teamsters, Chauffeurs & Helpers Local Union No. 776*, 346 U.S. 485, 490 (1953). Rather, "Congress evidently

---

[11] Different dangers attend each conflict: (1) "[t]he danger from the first kind of conflict is that the State will require different behavior than that prescribed by the NLRA (the substantive concern)"; (2) "the danger from the second is that the State will provide different consequences for the behavior (the remedial concern)"; and (3) "the danger from the third is that Congress's design to entrust labor questions to an expert tribunal—the NLRB—would be defeated by state tribunals exercising jurisdiction over labor questions (the primary jurisdiction concern)." *Healthcare Ass'n of New York State, Inc. v. Pataki*, 471 F.3d 87, 94–95 (2nd Cir. 2006).

considered the NLRB, with its centralized administration and specially designed procedures, necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garmon*, 359 U.S. at 239–40.

Garmon preemption does not apply when the activity a state seeks to regulate falls beyond the reach of the NLRA or the RLA. However, this does not mean that activities ungoverned by the NLRA or the RLA can be controlled by the states. More than indicating Congress' desire for centralized administration and uniformity in the application of its provisions, the NLRA and RLA reveal that Congress intended certain concerted activities to remain unfettered by any governmental interference, including the NLRB. "Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces." *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 480 (1955). Thus, the Supreme Court recognized a second line of preemption analysis known as *Machinists* preemption, which forbids both the NLRB and the states from regulating conduct or activities that Congress intended to leave to "the free play of economic forces." *Machinists*, 427 U.S. at 140. *Machinists* preemption reflects the NLRA's and RLA's broader purposes of restoring equal bargaining power between labor and management, and it prevents both the states and the NLRB from "picking and choosing which economic devices of labor and management shall be branded as unlawful." *Nat'l Labor Relations Bd. v. Ins. Agents' Internat'l. Union, AFL-CIO*, 361 U.S. 477, 498 (1960); *Alameda*

Newspapers, Inc. v. City of Oakland, 95 F.3d 1406, 1413 (9th Cir. 1996) (holding that the doctrine "is based on the premise that 'the use of economic pressure by the parties to a labor dispute is ... part and parcel of the process of collective bargaining,' " which means that "neither a state nor the National Labor Relations Board is 'afforded flexibility in picking and choosing which economic devices of labor and management shall be branded unlawful' ") (*quoting Machinists*, 427 U.S. at 144). Therefore, *Machinists* preemption preserves Congress' intentional balance between the uncontrolled power of management and labor to further their respective interests" in an area free from regulation. *Boston Harbor*, 507 U.S. at 226 (internal quotation marks and citation omitted).

b. Section 25 Is Not Preempted Under the NLRA or the RLA.

As stated above, Plaintiffs' preemption claim under the NLRA or the RLA is primarily based on Plaintiffs' argument that Section 25 requires CSPs to recognize labor organizations as the representatives of the CSP's employees, and, thus, Plaintiffs claim that it makes that labor organization the "bargaining representative" of the CSP's employees "without regard to the [RLA's and NLRA's] processes and requirements."[12] Complaint, ¶¶ 24–25. However,

[12] Plaintiffs also allege that the "NMB and NLRB have exclusive jurisdiction to resolve disputes over whether and by whom employees are represented for collective bargaining purposes." Complaint, ¶ 22. However, both the NLRA and the RLA have long allowed the voluntary recognition of labor organizations, without the necessity of resorting to NLRB or NMB procedures. *NLRB v. Gissel Packing Co., Inc.*, 395 U.S. 575, 600 (1969); *Texas & New Orleans R.R. Co. v. Brotherhood of Ry.*

Plaintiffs ignore the plain language of Section 25, which states that no CSP is required to "recognize a Labor Organization" or to agree to "any particular recognition process." Moreover, Section 25 clearly provides that there is no obligation, through negotiation, mediation, arbitration, or otherwise, imposed on a CSP to "change terms and conditions of employment" or to "enter into a collective bargaining agreement."[13] In fact, Section 25 does not require a CSP to seek out a union to obtain a LPA, but only applies when a labor organization represents or seeks to represent a CSP's employees. It is not uncommon for labor organizations and employers to negotiate enforceable agreements prior to a labor organization's recognition as the employees' representative, and such agreements frequently address issues related to the labor organizations' waiver of its right to strike, boycott, or picket; ground rules applicable to any organization drive; and arbitration of disputes. *See,*

& S.S. Clerks, 281 U.S. 548, 555 (1930). Even assuming *arguendo* that Plaintiffs were correct, it would not mean that Section 25 was preempted because Section 25 makes clear that it does not require a CSP to "recognize a Labor Organization as the bargaining representative of its employees" or to "adopt any particular recognition process." 2014 CSPLA, § 25.7.

[13] Plaintiffs also allege that Section 25 will enable labor organizations to obtain "significant concessions, either through negotiation, mediation or arbitration" from CSPs, and, therefore, alter "the terms of employment for the [CSP's] employees." Complaint,¶¶ 28 and 43. Once again, Plaintiffs ignore Section 25's plain language which specifically states, among other things, that there is no obligation, through negotiation, mediation, arbitration, or otherwise, imposed on a CSP to "change terms and conditions of employment" or to "enter into a collective bargaining agreement." 2014 CSPLA, § 25.7.

e.g., Retail Clerks v. Lion Dry Goods, 369 U.S. 17, 20 (1962); *Hotel Employees Local 2 v. Marriott Corp.*, 961 F.2d 1464 (9th Cir. 1992); *Hotel Employees & Restaurant Employees, Local 57 v. Sage Hospitality Resources, LLC*, 390 F.3d 206, 219 (3d Cir. 2004). No court has ever held that such pre-recognition agreements interfere with the election and certification processes overseen by the NLRB or the NMB.

In addition, Plaintiffs allege that Section 25 requires the negotiation of a LPA that would cover all employees of a CSP, and then argue that this requirement mandates recognition of a labor organization's representation of all of the employees of the CSP, whether all the employees are members of that labor union or not. Complaint, ¶¶ 25 and 43(f). However, Section 25.2 specifically states that it only requires a LPA that covers "the Labor Organization and its members," and, thus, no labor organization will negotiate a LPA on behalf of CSP employees who are not represented by that labor organization.[14]

---

[14] As Defendants correctly argue in their Reply, there is no contradiction between a labor organization only being able to negotiate a LPA on behalf of its members and Section 25's general requirement that a CSP covenant "that its employees at LAX shall be able to work in labor harmony." In fact, it is what is required by federal labor law. *Metropolitan Edson Co. v. NLRB*, 460 U.S. 693, 705–06 (1983) (holding that unions have no ability under federal law to waive the right of unrepresented employees to take economic action). Thus, although Plaintiffs are correct that Section 25 only offers Defendants incomplete protection against labor actions, Defendants, in apparent recognition of that limitation, have carefully crafted Section 25 to extend as far as the federal labor laws allow. Moreover, the scope of Section 25.2 reflects Defendants' belief that disruptive labor disputes are most

Accordingly, Section 25 does not ignore or attempt to modify the protections given to CSP employees under the RLA and NLRA with respect to collective bargaining, but, instead, it was carefully drafted to fit well within the contours of those protections. *NLRB v. Magnavox Co.*, 415 U.S. 322, 325–26 (1974) (holding that federal law recognizes that labor organizations may waive their own and their members right to take economic action, prior to and separate from certification under the NLRA); *Sage Hospitality*, 390 F.3d at 208 (upholding pre-recognition agreement containing "a no-picketing promise"). At the same time, there is no requirement in Section 25 that CSPs must give up a federally protected right or regulate an employer's economic weapons of self-help. Instead, Defendants are merely seeking to protect their proprietary interest in ensuring that labor disputes do not interfere with the efficient, revenue-generating operations of LAX to the extent allowable under the existing federal labor laws. *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 682 (1992) ("[A]irports are commercial establishments funded by users fees and designed to make a regulated profit ... As commercial enterprises, airports must provide services attractive to the marketplace").

Finally, Plaintiffs allege that Section 25 is preempted because it "does not appear to provide any sanction against a Labor Organization that violates a no-strike provision entered into as part of a Labor Peace Agreement." Complaint, ¶ 29. However, federal labor

---

likely to occur when a labor organization represents, or seeks to represents, the workforce of a CSP, rather than by individual employees.

law already provides a CSP with ample remedies against a labor organization that breaches a no-strike clause. For example, a CSP can seek an injunction against the labor organization and its members (*Boys Markets, Inc. v. Retail Clerks*, 398 U.S. 235 (1970)), or damages against the labor organization under 29 U.S.C. § 185.[15] Plaintiffs fail to explain why Defendants' reliance on private incentives and pre-existing legal mechanisms to enforce a LPA's no-strike pledge is preempted. In fact, any attempt by Defendants to add their own penalties for a labor organization's violation of its contractual no-strike pledge would be preempted by Section 301 of the LMRA, 29 U.S.C. § 185, and by the RLA, because it would add extra-contractual remedies and require interpretation of the LPA to determine if a violation had occurred. *Livadas v. Bradshaw*, 512 U.S. 107, 121–23 (1994); *Espinal v. Northwest Airlines*, 90 F.3d 1452, 1459 (9th Cir. 1996) (holding that RLA preempts state breach-of-contract claims because they require interpretation of labor-management agreement); *Aguilera v. Pirelli Armstrong Tire Corp.*, 223 F.3d 1010, 1013–14 (9th Cir. 2000) (holding that LMRA preempts state breach-of-contract claims because they require interpretation of labor-management agreement).

The Court concludes that Section 25 does not frustrate the purpose of the NLRA or the RLA, and, thus, Section 25 is not preempted by the NLRA or the RLA. Accordingly, the Court grants Defendants' Motion

---

[15] Damages for violating the no-strike pledge would not be available against individual employees. C*omplete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 415–16 (1981).

with respect to Plaintiffs' first count alleging that Section 25 violates the NLRA and the RLA, and, because amendment is futile, it is dismissed without leave to amend.

B. The Airline Deregulation Act of 1978.

Plaintiffs also allege that Section 25 is preempted by the Airline Deregulation Act of 1978 ("ADA") because it effectively targets entities that are hired by airlines to provide air carrier services to the airlines, and, thus, is substantially related to and connected with air carrier services in violation of the ADA. In their Motion, Defendants argue that Plaintiffs lack standing to raise the ADA preemption claim. Defendants also argue that the ADA claim fails as a matter of law because the ADA does not preempt the enforcement of local rules like the CSPLA that only govern the providers of services to airlines and do not bind or otherwise affect the airlines' operations related to prices, routes, or services.

1. Plaintiffs Do Not Have Standing Under the ADA.

As discussed in detail above, standing "requires federal courts to satisfy themselves that 'the plaintiff has alleged a personal stake in the outcome of the controversy' as to warrant [their] invocation of federal-court jurisdiction." *Summers v. Earth Island Institute*, 555 U.S. 488, 493 (2009). Standing is more than a mere pleading requirement; it is an indispensable part of a plaintiff's case. *Lujan*, 504 U.S. at 561.

In this case, ASPA does not have standing to assert a claim that Section 25 violates the ADA because neither the ASPA nor its members are subject to the ADA, and, thus, they do not have a legally protected

interest under the ADA. *See, e.g.*, 49 U.S.C. § 41713(b)(1) (ADA preempts only local laws "related to a price, route or service of *an air carrier*") (emphasis added); *Branche v. Airtran Airways, Inc.*, 342 F.3d 1248, 1256 (11th Cir. 2003) (holding that preempting local laws relating to other aspects of airline operations outside the air carrier-passenger relationship does "not further the goal of promoting competition in the airline industry" and, therefore, is outside the zone of interests protected by the ADA). Thus, any injury ASPA and its members may suffer as a result of Section 25 will not be based on their rights and interests under the ADA.

With respect to A4A, the Court easily concludes that it has no standing to assert a claim that Section 25 violates the ADA because neither A4A nor its members are subject to or governed by Section 25. As discussed above, Section 25 only establishes or imposes requirements for the CSPs, not for A4A or its members. Because Section 25 does not apply to A4A or its members, A4A cannot demonstrate that it suffered an injury as a result of Section 25.

Accordingly, the Court grants Defendants' Motion with respect to Plaintiffs' second count alleging that Section 25 violates the ADA because Plaintiffs lack standing, and, because amendment is futile, it is dismissed without leave to amend.

2. Preemption Under the ADA.

Although the Court concludes that Plaintiffs do not have standing, the Court will also address Plaintiffs' preemption claim under the ADA so that the parties will have a complete resolution of the issues raised by Defendants' Motion.

a. Legal Standard for Preemption Under the ADA.

Congress enacted the ADA after "determining that maximum reliance on competitive market forces would best further efficiency, innovation, and low prices as well as variety [and] quality ... of air transportation services." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992) (internal quotations and citations omitted); *see also Rowe v. N.H. Motor Trans. Assoc.*, 552 U.S. 364, 367–68 (2008). To determine whether the ADA preempts a particular state law, the court must "start with the assumption that the historic police powers of the States [are] not to be superseded by the [ADA] unless that was the clear and manifest purpose of Congress." *Air Transport Association of America v. City and County of San Francisco*, 266 F.3d 1064, 1070 (9th Cir.2001).

"Congress's 'clear and manifest purpose' in acting the [ADA] was to achieve ... the economic deregulation of the airline industry." *Charas v. Trans World Airlines, Inc.*, 160 F.3d 1259, 1265 (9th Cir.1998) (*en banc*). The statute includes an express preemption provision, which states that "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 an air carrier." 49 U.S.C. § 41713(b)(1). The word "service" means "the prices, schedules, origins and destinations of the point-to-point transportation of passengers, cargo, or mail. In the context in which it was used in the Act, 'service' was not intended to include an airline's provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities." *Charas*, 160 F.3d at 1261.

The "key phrase" in the ADA's preemption provision —"related to"— means having a connection with, or reference to, the prices, routes, or services of an air carrier. *Id.* "[S]tate enforcement actions [that have such a] connection with, or reference to, airline rates, routes, or services are [thus] pre-empted [.]" *Id.* at 384 (internal quotations and citations omitted). A state law may "relate to" the subject matter of the ADA, and "run afoul of the [Deregulation Act's] preemption clause, even though such law has only an indirect effect on the rates, routes, or services of an air carrier." *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1188 (9th Cir.1998) (*citing* Morales, 504 U.S. at 385-86);[16] *see also Rowe*, 552 U.S. at 370–71 (holding that a state law may be preempted even if its effect on rates, routes, or services "is only indirect"). However, some state laws affect an air carrier's fares in "too tenuous, remote, or peripheral a manner" to trigger preemption. *Mendonca*, 152 F.3d at 1188 (*citing Morales*, 504 U.S. at 390). Where a state law has an indirect effect on the rates, routes, or services of an air carrier, it will be preempted only where that interference is acute. *Id.* at 1189. In fact, courts have regularly upheld local

---

[16] *Mendonca* concerned the Federal Aviation Administration Authorization Act ("FAAA") rather than the Airline Deregulation Act. *See Mendonca*, 152 F.3d at 1185. However, the FAAA contains a preemption provision that is "identical to an existing provision deregulating air carriers (the Airline Deregulation Act ("ADA"))." *Id.* at 1187. In addition, *Mendonca* interpreted the FAAA's preemption provision by looking to cases that had interpreted the preemption provision of the Airline Deregulation Act. *Id.* at 1188. Thus, the scope of the preemption under both statutes is virtually identical.

laws affecting the employment conditions of airport workers, even where airports were singled out for regulation and even when the effect of the local laws on the costs of airport service providers was immediate and direct. *See, e.g., Calop*, 984 F.Supp. 2d at 989 (upholding Los Angeles's living wage ordinance even though it bound only "certain employers," including "airport employers and subcontractors of airport employers who perform work on contracts subject to the" living wage ordinance); *Amerijet International, Inc. v. Miami-Dade County*, 7 F. Supp. 3d 1231, 1238 (S.D. Fla. 2014) (holding that the ADA did not preempt the application of the living wage ordinance to ground service providers at Miami International Airport because it did not reach the "air carrier-air passenger relationship" and cautioned that the excessively broad reading of the ADA preemption clause "would preempt every law that regulates a business providing services to airlines ... even though the business has some remote or tenuous affect [*sic*] on airlines' rates, routes or services").

b. Section 25 Is Not Preempted Under the ADA.

In their Complaint, Plaintiffs allege that because Section 25 specifically and exclusively targets entities that provide core airline services at LAX, it is, by definition, "related to" airline services, and, therefore, is preempted by the ADA. *See, e.g.*, Complaint ¶¶ 31–37. In their Opposition, Plaintiffs argue that because the "related to" language of the ADA's preemption provision should be given a "broad scope" and an "expansive sweep," Section 25 certainly falls within the preemption provision of the ADA. Opposition, p. 11. Defendants disagree and argue that the ADA's

preemption provision should be narrowly and strictly construed in the context of the ADA's stated object and policy.

The Court agrees with Defendants and concludes that Section 25 does not reach, nor is it intended to reach, the air carrier-air passenger relationship. *See, e.g, Branche*, 342 F.3d at 1255 (holding that "through the ADA Congress sought to leave the bargained for aspects of the air carrier-air passenger relationship to the workings of the market"). There is nothing in the language of Section 25 which makes it even remotely applicable to A4A's members. Instead, Section 25 applies only to the CSPs, who are third party service contractors that provide various ground services to the airlines, not the airlines themselves. Because none of the services provided by the CSPs, covered by Section 25, have anything to do with the "price, route, or service of an air carrier," Section 25 is not preempted by the ADA. 49 U.S.C. § 41713(b)(1).

In addition, notwithstanding Plaintiffs' efforts to allege some undefined causal relationships between Section 25 and perceived harm to the "price, route, or service of an air carrier," any connection is "too tenuous, remote, or peripheral" to trigger preemption. *Calop*, 984 F. Supp. 2d at 1007–1008 (ADA does not preempt City's LWO where plaintiffs produced no evidence to support allegations that LWO "increases the price of labor, and therefore has an impact on an air carrier's prices, routes, or services"); *see also California Division of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. 316, 329 (1997) (provision that merely "alters the incentives, but does not dictate the choices," will survive preemption); *Dilts v. Penske Logistics, LLC*,

769 F.3d 637, 643 (9th Cir. 2014) ("Nor does a state law meet the 'related to' test for FAAA preemption just because it shifts incentives and makes it more costly for motor carriers to choose some routes or services relative to others, leading the carriers to reallocate resources or make different business decisions"); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998) (rejecting FAAA preemption argument based on claim that wage laws increased prices by 25%, noting that "the effect is no more than indirect, remote, and tenuous").

Plaintiffs have failed to allege, nor could they, that Section 25 has had an acute or any direct impact on the prices the CSPs charge the air carriers, or that there has been any impact on the prices, routes, or services of those carriers. *Mendonca*, 152 F.3d at 1188–89 (holding, although plaintiffs alleged that their rates for services were based on labor costs, including prevailing wage requirements, that a wage law was only indirectly related to plaintiff trucking company's prices, routes, and services, that it did not "frustrate[ ] the purpose of deregulation by acutely interfering with the forces of competition," and that it was therefore not preempted by the FAAA); *Air Transport Association of America v. City and County of San Francisco*, 992 F.Supp. 1149, 1183 (N.D. Cal. 1998) (holding that an ordinance that prohibited the city from contracting with companies whose provision of employee benefits discriminated between employees with spouses and employees with domestic partners was not preempted by the ADA because any effect on service was too tenuous, and stating that "[i]f any string of contingencies is sufficient to establish a

connection with price, route or service, there will be no end to ADA preemption ... Congress did not [ ] through the [ADA], exempt the airlines from generally applicable employment laws"), *aff'd*, 266 F.3d 1064 (9th Cir.2001); *see also Alim v. Aircraft Service Intern., Inc.*, 2012 WL 3647403, (N.D. Cal. Aug. 23, 2012) (stating, without deciding whether various California wage and hours laws were preempted by the ADA, that "[b]ecause ASII is not itself an airline, but rather a provider of contract services to airlines, it is possible that the application of California meal-and-rest break regulations to ASII's employees would affect airline services 'in too tenuous, remote or peripheral a manner to have a preemptive effect' ").

Finally, there are no provisions in Section 25 that could be rationally construed to require air carriers either directly or indirectly to change their prices, routes or services. Section 25 merely requires CSPs to reach an agreement if they can with labor organizations. However, Section 25 does not dictate the terms of those agreements—other than that they must contain a LPA—and certainly does not require the air carriers to alter their operations in any way. Therefore, Section 25 does not "force" air carriers to do anything with respect to "price, route or service," and is not preempted by the ADA.

Accordingly, the Court grants Defendants' Motion with respect to Plaintiffs' second count alleging that Section 25 violates the ADA, and, because amendment is futile, it is dismissed without leave to amend.

C. Vagueness in Violation of the Fifth or Fourteenth Amendment Right to Due Process.

In the Complaint, Plaintiffs allege that Section 25 is impermissibly vague and, thus, violates the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution. In their Motion, Defendants acknowledge that ASPA has standing to assert the claim, but argue that A4A does not have standing because Section 25 does not apply or cover A4A or its members. Defendants also argue that this constitutional challenge should be dismissed on the merits because Section 25 establishes standards of conduct that easily satisfy constitutional standards.

1. A4A Does Not Have Standing to Challenge Section 25 on Vagueness Grounds.

In this case, A4A does not have standing to challenge Section 25 on vagueness grounds. As discussed above, Section 25 establishes requirements applicable to the CSPs, not A4A or its members. Because Section 25 does not apply to A4A or its members, A4A cannot demonstrate that it suffered an injury as a result of Section 25.

In addition, due process claims "are personal and cannot be asserted vicariously." *Johns v. Cnty. of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997); *NAACP v. Alabama*, 357 U.S. 449, 459 (1958). Only entities whose conduct is directly implicated have standing to challenge state enactments as void for vagueness. *United States v. Dischner*, 974 F.2d 1502, 1510 (9th Cir. 1992) ("Outside the first amendment context,

however, a defendant has standing to raise a vagueness challenge only if the statute is vague as applied to his or her specific conduct."), *overruled on other grounds by United States v. Morales*, 108 F.3d 1031 (9th Cir.1997) (*en banc*). Therefore, A4A does not have standing to challenge Section 25 on behalf of the ASPA or the CSPs.

Accordingly, the Court grants Defendants' Motion with respect to A4A's third count alleging that Section 25 is impermissibly vague and, thus, violates the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution because A4A lacks standing, and, because amendment is futile, it is dismissed without leave to amend.

2. Section 25 Is Not Unduly Vague In Violation of Due Process.

Because the parties agree that ASPA has the requisite standing, the Court will address the merits of Plaintiffs' claim that Section 25 is impermissibly vague and, thus, violates the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

a. Legal Standard for Vagueness.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). The Supreme Court has stated in relevant part:

> Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know

> what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

Id. at 108–109.

In addition, where a law does not implicate First Amendment rights, it "may nevertheless be challenged on its face as unduly vague in violation of due process." *Village of Hoffman Estates v. Flipside*, *Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982). "To succeed, however, the complainant must demonstrate that the law is impermissibly vague in all of its applications." *Id.*

Courts examining whether the language of an ordinance is unconstitutionally vague on its face frequently begin their analysis by referring to the dictionary definition of the terms used in the ordinance that are allegedly vague. *See, e.g., Village of Hoffman Estates*, 455 U.S. at 500–01 (looking to Webster's New International Dictionary of the English Language to determine the meaning of the term "design"); *Hunt v. City of Los Angeles*, 638 F.3d 703, 711 (9th Cir. 2011) (looking to the dictionary definition of "ideology" after concluding an ordinance was ambiguous because "it fails to define or provide any examples of when merchandise carries a 'religious,

political, philosophical or ideological' message, and these terms have such amorphous meanings that it makes it difficult, if not impossible, for an individual to determine whether his conduct is proscribed by the ordinance"). However, where the terms are clear, the court need not look to the dictionary, but can determine from the plain words of the ordinance that the language is not vague. *Hoffman Estates*, 455 U.S. at 500–01 ("Whatever ambiguities the 'design ...' standard may engender, the alternative 'marketed for use' standard is transparently clear: it describes a retailer's intentional display and marketing of merchandise. The guidelines refer to the display of paraphernalia and to the proximity of covered items to otherwise uncovered items"); *Cameron v. Johnson*, 390 U.S. 611, 616 (1968) ("the statute prohibits only 'picketing … in such a manner as to obstruct or unreasonably interfere with free ingress or egress to and from any ... county ... courthouses ...' The terms 'obstruct' and 'unreasonably interfere' plainly require no 'guess[ing] at [their] meaning.' Appellants focus on the word 'unreasonably.' It is a widely used and well understood word and clearly so when juxtaposed with 'obstruct' and 'interfere.' We conclude that the statute clearly and precisely delineates its reach in words of common understanding. It is 'a precise and narrowly drawn regulatory statute evincing a legislative judgment that certain specific conduct be ... proscribed' ").

b. Section 25 Is Not Vague.

In their Complaint, Plaintiffs allege that many of the terms used in Section 25 are vague, including "Labor Organization," "Labor Peace Agreement," "reasonable Labor Peace Agreement," and arbitration conducted in

accordance with the AAA rules." *See, e.g.*, Complaint, ¶ 39. Plaintiffs also allege that there are "missing terms" in Section 25 that render it unconstitutional. *Id.*, ¶ 43. In response to Plaintiffs' vagueness challenge, Defendants argue that Section 25 uses well understood words and phrases, and that there are no "missing terms," and, therefore, easily survives a vagueness challenge.

The Court agrees with Defendants that the suspect terms are clear and unambiguous. For example, Plaintiffs claim that the term "labor organization" is vague is patently frivolous. Section 25 defines a labor organization as: "any organization of any kind, or an agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with service providers at LAX concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 2014 CSPLA, § 25.1. This definition of "labor organization" is taken *verbatim* from the definition of a "labor organization" in § 2(5) of the LMRA, 29 U.S.C. § 152(5), and is also mirrors this term in countless other federal and state statutes. *See, e.g.*, 29 U.S.C. § 402(I) (Labor Management Reporting and Disclosure Act); 42 U.S.C. § 2000e(d) (Title VII); Cal. Lab. Code § 1140.4(f) (Agricultural Labor Relations Act). Thus, the term "labor organization" has been interpreted many times, and is a well-understood legal term of art.

In addition, despite Plaintiffs' argument to the contrary, Section 25 contains adequate guidance on what a "reasonable Labor Peace Agreement" should

look like.[17] Specifically, Section 25.2 defines a "Labor Peace Agreement" and Section 25.7 clarifies that an arbitrator may not require a CSP to change employment terms and conditions, recognize a labor organization, or enter into a collective bargaining agreement. Moreover, reasonableness standards have long been upheld over vagueness challenges. *Rath Packing Co. v. Becker*, 530 F.2d 1295, 1309 (9th Cir. 1975) (holding that the reasonableness standard "is of ancient provenance in English and American law and is not obnoxious in itself to the Fifth Amendment of the Constitution").

Furthermore, Plaintiffs' argument that Section 25 will create confusion in its application is unpersuasive. For example, Plaintiffs argue that Section 25 is vague because it is missing terms, and, thus, does not explicitly state whether Section 25.4's arbitration process is "final and binding" or what happens after arbitration. Opposition, p. 25. But under the AAA's rules, which will guide any arbitration under Section 25, any arbitration will be final and binding. *See, e.g., McKee v. Home Buyers Warranty Corp. II*, 45 F.3d 981, 983 (5th Cir. 1995) ("The decisions holding that reference to AAA rules as permitting entry of judgment are longstanding. Consequently, all parties are on notice that resort to AAA arbitration will be deemed both binding and subject to entry of judgment unless the parties expressly agree otherwise.").

---

[17] If a labor organization requests a LPA from a CSP, and the parties are unable to agree to terms and a mediation is unsuccessful, Section 25 requires that an arbitrator resolve the dispute and determine the contents of a "reasonable Labor Peace Agreement."

Importantly, CSPs and labor organizations retain their normal rights to challenge any arbitration award under the Labor–Management Relations Act § 301, 29 U.S.C. § 185(a), and the Federal Arbitration Act, 9 U.S.C. § § 1 *et seq*.

Moreover, maintaining the same or similar number of CSPs offering services at LAX and at the current ground–service prices-even if those prices were affected by Section 25—are not issues the void-for-vagueness doctrine is intended to safeguard. *HSH, Inc. v. City of El Cajon*, 2014 WL 4385475, at (S.D. Cal. Sept. 4, 2014) ("[T]he allegation that Plaintiffs' businesses suffer 'diminution in value' is not an injury that the void for vagueness doctrine aims to prevent."); *see also Individuals for Responsible Gov't, Inc. v. Washoe Cnty.*, 110 F.3d 699, 703 (9th Cir. 1997). Finally, as discussed above, there is no inconsistency between Section 25's general requirement that a CSP covenant that "its employees at LAX shall be able to work in labor harmony" and the fact that a "Labor Peace Agreement" only binds on a "Labor Organization and its members."

Therefore, the Court concludes that the Section 25 is not impermissibly vague in all of its applications, or even in a single application as argued by Plaintiffs. Accordingly, the Court grants Defendants' Motion with respect to Plaintiffs' third count alleging that Section 25 is impermissibly vague and, thus, violates the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, and, because amendment is futile, it is dismissed without leave to amend.

IV. Conclusion

For all the foregoing reasons, Defendants' Motion is **GRANTED**. Because the findings with respect to standing, preemption, and vagueness render amendment futile, the Complaint is **DISMISSED without leave to amend**. The Court appreciates and commends counsel for their excellent briefs and finds that this important question is now ready for appellate review, and, thus, this action is **DISMISSED with prejudice**.

IT IS SO ORDERED.

APPENDIX D

CERTIFIED SERVICE PROVIDER LICENSE AGREEMENT

BETWEEN

CITY OF LOS ANGELES

AND

_____

AT

LOS ANGELES INTERNATIONAL AIRPORT

TABLE OF CONTENTS

**CERTIFIED SERVICE PROVIDER LICENSE AGREEMENT
BETWEEN THE CITY OF LOS ANGELES AND
[INSERT LICENSEE'S NAME] FOR
ENTRY ONTO AND USE OF THE AIRFIELD
AT LOS ANGELES INTERNATIONAL AIRPORT**

THIS CERTIFIED SERVICE PROVIDER LICENSE AGREEMENT (the "**Agreement**") is made and entered on _____, 20__, by and between the **CITY OF LOS ANGELES**, acting by order of and through its Board of Airport Commissioners ("**Board**") of Los Angeles World Airports ("**LAWA**"), and **[INSERT LICENSEE'S NAME]** ("**Licensee**").

The parties hereto, for and in consideration of the covenants and conditions hereinafter contained to be kept and performed, DO HEREBY AGREE AS FOLLOWS:

ARTICLE 1. SPECIFIC TERMS AND PROVISIONS

Section 1. **Licensee's Services**. Licensee agrees to provide the services described and set forth in Exhibit A ("Scope of Services") in strict compliance with the conditions and specifications contained under the Certified Service Licensee Program ("CSPP"). Licensee shall provide such services to its airlines, or other clients, at Los Angeles International Airport ("LAX") on a non-exclusive basis.

Section 2. **Term of Agreement**. The term of this License shall commence on [**INSERT DATE**] and terminate no later than **[INSERT DATE]** (the

"**Term**"), subject, however, to prior termination, with or without cause, by either party, upon giving to the other a thirty (30) day advance written notice thereof and further subject to prior termination as provided herein.

Section 3. Incorporation by Reference. It is expressly understood and agreed that the CSPP Policy, CSPP Administrative Processes, and CSPP Requirements including all forms, plans, specifications, and addenda thereto, and the Licensee's submitted documents including all applications and responses required for certification under the CSPP and all forms, plans, specifications, and addenda or amendments thereto, shall constitute and are hereby incorporated, and made a part of this Agreement, and each of the parties hereto does hereby expressly covenant and agree to carry out and fully perform each and all of the provisions of said documents upon its part to be performed. Licensee also expressly acknowledges that this Agreement is based upon the performance requirements in the CSPP. If there is a conflict between the City's CSPP requirements and the Licensee's agreement with its airline or client, the City's CSPP requirements will prevail. Licensee's submitted documents are attached hereto as Exhibit B.

Section 4. Payments to City.

4.1 Fees. For the license rights granted herein, Licensee shall pay to City (i) an Application Fee, (ii) a Monthly Administrative Fee, and (iii) all other applicable fees required under the CSPP, all of which are fully described and set forth in Exhibit C ("Payments to City").

4.2 Payment. All fees and compensation payable hereunder shall be paid to the City of Los Angeles, LAWA, P.O. Box 54078, Los Angeles, California 90054-0078, unless and until City designates some other party or place to receive fees and compensation. All payments shall be made in legal tender of the United States.

4.3 The Board reserves the right, power, and duty to fix, determine, revise, and readjust all fees and charges required under the CSPP at any time throughout the Term of this Agreement.

Section 5. Notice.

5.1 Notice to City. Written notices to City hereunder, shall be sent to the Executive Director with a copy to the City Attorney of the City of Los Angeles, must be given by registered or certified mail, postage prepaid, and addressed to:

Executive Director of the Department of Airports c/o LAX APS 1 World Way Post Office box 92216 Los Angeles, CA 90009-2216	**City Attorney Department of Airports 1 World Way Post Office Box 92216 Los Angeles, CA 90009-2216**

or to such other address as City may designate by written notice to Licensee.

5.2 Notice to Licensee. Written notices to Licensee hereunder shall be given by registered or certified mail, postage prepaid, and addressed to:

[INSERT CONTACT PERSON FOR LICENSEE]

or to such other address as Licensee may designate by written notice to City.

5.3 The execution of any such notice by the Executive Director shall be as effective as to Licensee as if it were executed by the Board, or by resolution or order of said Board, and Licensee shall not question the authority of Executive Director to execute any such notice.

5.4 All such notices, except as otherwise provided herein, may either be delivered personally to Executive Director with a copy to the Office of the City Attorney, Airport Division, in the one case, or to Licensee in the other case, or may be deposited in the United States mail, properly addressed as aforesaid with postage fully prepaid by certified or registered mail, return receipt requested, and shall be effective five (5) days after deposit in the mail. Such notice may also be delivered by a nationally recognized overnight commercial courier service that requires the recipient's signature for delivery, and shall be effective one (1) business day after delivery by such courier.

Section 6. Subcontracting. During the term of this Agreement, Licensee shall not subcontract any certified services to a service provider that does not have a valid CSBP License Agreement.

ARTICLE 2. STANDARD TERMS AND PROVISIONS

Section 1. Limitations on Use of Airport.

1.1. Licensee shall not use the Airport, nor any portion thereof, for any purpose other than that set forth above, without first having had and obtained the

written consent of the Executive Director, which consent may be withheld in the Executive Director's sole discretion, and which written consent is approved as to form by the City Attorney.

1.2. There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of Airport. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on Airport. Licensee agrees not to make any claim or institute legal action against City under any theory of recovery for any interference with Licensee's use and enjoyment of the Airport which may result from noise emanating from the operation of aircraft to, from, or upon Airport except for claims or actions brought by third parties against Licensee arising from City's operation of Airport [USE GUIDE, paragraph 5][1].

1.3. Licensee, by accepting this Agreement, agrees for itself and its successors and assigns that it will not make use of Airport in any manner which might interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard to such operations. In the event the aforesaid covenant is breached, City reserves the right to take all action it deems necessary to cause the abatement of such

---

[1] The paragraph references are to mandatory requirements contained in a document entitled, "LEASE AND USE AGREEMENT GUIDE", dated June 6, 1984, revised May 2011, published by the Federal Aviation Administration.

interference at the expense of Licensee [USB GUIDE, paragraph 8].

1.4. Licensee shall conduct its operations on Airport in such manner as to reduce as much as is reasonably practicable, considering the nature and extent of said operations, any and all activities which interfere unreasonably with the use of other premises at Airport, including, but not limited to, the emanation from Airport of' noise, vibration, movements of air, fumes, and odors.

1.5. Licensee is prohibited from installing or using any wireless workstations, access control equipment, wireless internet servers, application or system software such as transceivers, modems, or other interface units that access frequencies from 2.0 Gigahertz to 6.0 Gigahertz, inclusive, without first obtaining approval from the Executive Director.

1.6. Licensee has no rights under this Agreement to install or use any antennae or telecommunications equipment on the roof or exterior of any building or structure on the Airport, unless such installation or use is directly related to the conduct of Licensee's business and in full compliance with City's permit process and telecommunications policies as- they may be modified from time to time at the sole discretion of the Executive Director. Licensee may not license or sublicense to others the right to install or use antennae or other telecommunications equipment on the Airport.

Section 2. <u>Late Charge and Interest for Delinquent Payment</u>.

2.1. Licensee hereby acknowledges that late payment by Licensee of compensation, fees and

charges provided herein will cause City to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any amount due City is not received by City within 10 days after such amount shall be due, then, without any requirement for notice to Licensee, Licensee shall immediately pay to City a one-time late charge equal to 10% of such overdue amount or $200, whichever is greater. The parties agree that such late charge represents a fair and reasonable estimate of the costs the City will incur by reason of such late payment. Acceptance of such late charge by City shall in no event constitute a waiver of Licensee's default or breach with respect to such overdue amount, nor prevent the exercise of any other rights and remedies granted herein.

2.2. Any monetary payment due City hereunder shall bear interest from the date when due. The interest rate shall be 10% per annum, compounded monthly, but shall not exceed the maximum rate allowed by law. The interest that applies shall be in addition to the late charge.

Section 3. Default and Right of Termination.

3.1. In the event Licensee falls to abide by the terms, covenants and conditions of this Agreement, including, but not limited to, any default in payment(s) by Licensee of the fees or other compensation provided for herein, City may give Licensee written notice to correct the defect or default, and if the same is not

corrected in accordance with the City's notice, City may terminate this Agreement forthwith.

3.2. In case of the bankruptcy of Licensee, or the appointment of a receiver for Licensee, or if a receiver is appointed to take possession of Licensee's business operations as a result of any act or omission of Licensee, or if Licensee makes an assignment of this Agreement for the benefit of creditors, City, at its election, may, without notice, terminate this Agreement.

3.3. Cross Default. A material default or breach of the terms of any other lease, license, permit, or contract held by Licensee with City shall constitute a material breach of the terms of this Agreement and shall give City the right to terminate this Agreement tor cause in accordance with the procedures set forth herein.

3.4. Notwithstanding anything herein to the contrary, either party may terminate this Agreement, with or without cause, upon thirty (30) days advance written notice to the other party.

Section 4. Performance Guarantee.

4.1. Licensee shall furnish to City and maintain throughout the term of this Agreement a Faithful Performance Guarantee to secure the faithful performance by Licensee of all the terms, provisions, and covenants contained herein including, but not limited to, the payment of fees and any other specified compensation. Such Guarantee shall be separate from any other Guarantee(s) required by City. The initial amount of said Guarantee shall be three (3) times Licensee's initial Monthly Administrative Fee.

4.2. If Licensee has previously provided such Guarantee to City and if, for any reason, Licensee's monthly monetary obligation to City is thereafter increased in excess of ten percent (10%), then the amount of Licensee's Guarantee shall, within thirty (30) days after receiving written notice from City, correspondingly be increased to a sum three (3) times the new amount.

4.3. If Licensee has previously provided such Guarantee to City and if, for any reason, Licensee's monthly monetary obligation to City is thereafter decreased in excess of ten percent (10%), then the amount of Licensee's Guarantee may be correspondingly decreased to a sum three (3) times the new amount thirty (30) days following written notice to City by Licensee.

4.4. Performance Guarantees of Five Thousand Dollars ($5,000) or less shall be in the form of a Cashier's Check, Company Check, Money Order, Certificate of Deposit or Irrevocable Letter of Credit. Performance Guarantees in excess of Five Thousand Dollars ($5,000) shall be in the form of an Irrevocable Letter of Credit. Letters of Credit shall be self-renewing from year-to-year and subject to termination upon sixty (60) days written notice. All Performance Guarantees must be approved as to form by the City Attorney.

4.5. Licensee shall furnish such Guarantee in duplicate prior to die commencement of this Agreement, or within thirty (30) days following notice of adjustment of payments to City. If, for any reason, said Guarantee is not provided by Licensee and/or is not thereafter maintained in sufficient amount

throughout the term hereof, City, subject to the notice requirements of Article 2, Subsection 3.1, City may terminate this Agreement forthwith. Upon the expiration or earlier termination of this Agreement, and if Licensee has satisfied all of its obligations to City hereunder, City shall relinquish to Licensee said Guarantee following such expiration or earlier termination and satisfaction of all obligations to City. The Guarantee shall be submitted to:

Los Angeles World Airports
Attn: Accounting Revenue FPG
Administrator
PC Box 92216
Los Angeles, CA 90009-2216

For overnight mail and private carriers, the Guarantee shall be submitted to:

Los Angeles World Airports
60S3 West Century Boulevard, Suite 500
Los Angeles, CA 90045

Section 5. Reports.

5.1. Monthly Accounting Report. Licensee shall establish and maintain such accounting and recording systems and practices at Airport as will correctly reflect the gross amount billed by Licensee for all Services provided at Airport. During the Term, Licensee shall transmit to City a monthly accounting report of the gross amount billed by it for all Services provided at the Airport in such manner and detail and upon such forms as are prescribed by City. Further, said report shall list the names of the persons or entities served and the precise services provided to each person or entity during the prior month. Said accounting report shall reach City within ten (10) days

after the last day of the month covered by said accounting report. Licensee shall furnish this accounting report to City each month whether or not any amount has been received by Licensee for any Services. A FIFTY DOLLAR ($50) late fee shall apply to all accounting reports that are not received by City within ten (10) days after the last day of the month covered by said accounting report.

Section 6. **Audits**.

6.1. City, or its duly authorized representatives, shall, at all reasonable times, have the right of access to and the right to examine and audit all records of Licensee pertaining to the operation of its business under this Agreement for the purpose of ascertaining the correctness of said accounting. Licensee hereby authorizes its officers, agents and employees to disclose to City any and all information pertaining to its operations under the license rights herein granted, including all account books, ledgers, journals, accounts, records and things done or performed by Licensee in connection therewith during the term of this Agreement. Such books, ledgers, journals, accounts, and records necessary to conduct the audit must be made available to City in the greater Los Angeles metropolitan area at Licensee's expense, upon notice by City.

6.2. It is agreed that examinations of the books, ledgers, journals and accounts of Licensee will be conducted in accordance with generally accepted auditing standards applicable to the circumstances and that as such, said examinations do not require a detailed, audit of all transactions. Testing and sampling methods may be used in verifying reports

submitted by Licensee. Deficiencies ascertained by the use of such testing and sampling methods by applying the percentages of error obtained from such testing and sampling to the entire period of reporting under examination will be binding upon Licensee and to that end shall be admissible in court to prove any amounts due City from Licensee. In the event there is any net deficiency in the amount of two percent (2%) or greater of the compensation payable to City hereunder, Licensee agrees to pay City for the cost of the audit as well as any other deficiencies, payments and liquidated damages due under this or any other provision of this Agreement.

6.3. City's right to access such records and information shall survive three (3) years beyond the expiration or early termination of this Agreement. Licensee shall retain all records and other information necessary to perform an audit as described above for a minimum of seven (7) years.

Section 7 Agreement Rights and Motor Vehicle Operating Rights.

7.1 **Agreement Rights.**

7.1.1 City grants to Licensee, during the Term and on a non-exclusive basis at Airport, the right to conduct the Services. It is understood that City will not require any of the users of such type of services to use Licensee.

7.1.2 This Agreement does not include the right or privilege to deliver petroleum products including aviation fuels, lubricants or solvents, to Airport premises. In order to deliver petroleum products to Airport, including aviation fuels, lubricants and/or solvents, a fuel

delivery permit is required to be obtained from City authorizing the person(s) to conduct such business at Airport.

7.1.3 This Agreement does not include the right or privilege to conduct any business or activity other than the Services, Licensee does not have the right to enter onto the restricted area of the airfield, unless in possession of, and fully compliant with, a valid "City of Los Angeles Department of Airports Motor Vehicle Operating Permit For Los Angeles International Airport." In order to conduct any activity other than that specifically provided for herein, Licensee will be required to obtain separate authorization through the appropriate license, permit or agreement authorizing such activity.

7.2 **Motor Vehicle Operating Rights**. If all applicable conditions are met, City grants to Licensee, subject to all the terms, conditions and covenants of the "City of Los Angeles Department of Airports Motor Vehicle Operating Permit For Los Angeles International Airport" attached hereto as Exhibit D and which is incorporated by reference to this Agreement, the motor vehicle operating rights contained therein. Licensee acknowledges and agrees that the obligations contained therein are in addition to the obligations set forth in this Agreement. If applicable, Licensee shall pay fees for both the non-exclusive license rights and the motor vehicle operating rights granted by this Agreement and the issuance of the "City of Los Angeles Department of Airports Motor Vehicle Operating Permit For Los Angeles international Airport".

Section 8. Insurance.

8.1. Licensee shall procure at its expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified on Exhibit E, attached hereto and incorporated by reference herein. The specified insurance shall also, either by provisions in the policies, by City's own endorsement form or by other endorsement attached to such policies, include and insure City, LAWA, its Board and all of City's officers, employees, and agents, their successors and assigns, as additional insureds, against the areas of risk described on Exhibit E, hereof with respect to Licensee's acts or omissions in its operations, use, and occupancy of the Airport or other related functions performed by or on behalf of Licensee in, on or about Airport.

8.2. Each specified insurance policy other than workers' compensation and employers' liability and fire and extended coverages) shall contain a severability of interest (cross liability) clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a contractual endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."

8.3. All such insurance shall be primary and noncontributing with any other insurance held by LAWA where liability arises out of or results from the acts or omissions of Licensee, its agents, employees,

officers, assigns, or any person or entity acting for or on behalf of Licensee. Such policies may provide for reasonable deductibles and/or retentions acceptable to the Executive Director based upon the nature of Licensee's operations and the type of insurance involved.

8.4. City shall have no liability for any premiums charged for such coverage(s). The inclusion of City, LAWA, its Board and all of City's officers, employees, and agents, their successors and assigns, as insureds is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Licensee in Licensee's operations at Airport. In the event Licensee falls to furnish City evidence of insurance and maintain the insurance as required, City, upon ten (10) days prior written notice to comply, may (but shall not be required to) procure such insurance at the cost and expense of Licensee, and Licensee agrees to promptly reimburse City for the cost thereof plus fifteen percent (15%) for administrative overhead. Payment shall be made within thirty (30) days of invoice date.

8.5. At least ten (10) days prior to the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with City. If such coverage is canceled or reduced, Licensee shall, within fifteen (15) days of such cancellation of coverage, file with City evidence that the required insurance has been reinstated or provided through another insurance company or companies.

8.6. Licensee shall provide proof of all specified insurance and related requirements to City either by production of the actual insurance policy(ies), by use

of City's own endorsement form(s), by broker's letter acceptable to the Executive Director in both form and content in the case of foreign insurance syndicates, or by other written evidence of insurance acceptable to the Executive Director. The documents evidencing all specified coverages shall be filed with City in duplicate and shall be procured and approved in strict accordance with the provisions in Sections 11.47 through 11.56 of City's Administrative Code prior to Licensee's use of Airport. The documents shall contain the applicable policy number, the inclusive dates of policy coverages, and the insurance carrier's name, shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, reduction in coverage, or nonrenewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) days prior to the effective date thereof. City reserves the right to have, submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance.

8.7. City and Licensee agree that the insurance policy limits specified herein shall be reviewed for adequacy annually throughout the term of this Agreement by the Executive Director who may, thereafter, require Licensee, on thirty (30) days prior, written notice, to adjust the amounts of insurance coverage to whatever reasonable amount said Executive Director deems to be adequate.

8.8. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code Sections 1760 through

1780, and any other regulations and/or directives from the State Department of Insurance or other regulatory board or agency. Licensee agrees, except where exempted, to provide City proof of said insurance by and through a surplus lines broker licensed by the State of California.

Section 9. **City Held Harmless.** In addition to the provisions of Section 8 herein, Licensee shall indemnify, defend, keep, and hold City, including Board, and City's officers, agents, servants, and employees, harmless from any and all costs, liability, damage, or expense (including costs of suit and fees and reasonable expenses of legal services) claimed by anyone by reason of injury to or death of persons, including Licensee, damage to or destruction of property, including property of Licensee, sustained in, on, or about the Airport or arising out of Licensee's use or occupancy of Airport or arising out of the acts or omissions of Licensee, its agents, servants, or employees acting within the scope of their agency or employment.

Section 10. **Attorneys' Fees**. If City shall, without any fault, be made a party to any litigation commenced by or against Licensee arising out of Licensee's use or occupancy of the Airport, then Licensee shall pay all costs, expenses, and reasonable attorneys' fees incurred by or imposed upon City in connection with such litigation. Each party shall give prompt notice to the other of any claim or suit instituted against it that may affect the other party.

Section 11. Hazardous and Other Regulated Substances.

11.1. **Definition of "hazardous substances(s)".** For the purposes of this Agreement, "hazardous substances" means:

11.1.1. Any substance the presence of which requires the investigation or remediation under any federal, state or local statute, regulation, rule, ordinance, order, action, policy or common law; or

11.1.2. Any substance which is or becomes defined as a hazardous waste, extremely hazardous waste, hazardous material, hazardous substance, hazardous chemical, toxic chemical, toxic substance, cancer causing substance, substance that causes reproductive harm, pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C, Section 6901 et seq.); or

11.1.3. Any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, council, board, or instrumentality of the United States,

the State of California, the City of Los Angeles, or any political subdivision of any of them; or

11.1.4. Any substance the presence of which on the Airport causes or threatens to cause a nuisance upon the Airport or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Airport; or

11.1.5. Any substance the presence of which on adjacent properties could constitute a trespass by Licensee; or

11.1.6. Any substance, without limitation, which contains gasoline, aviation fuel, jet fuel, diesel fuel or other petroleum hydrocarbons, lubricating oils, solvents, polychlorinated bipheynols (PCBs) asbestos, urea formaldehyde or radon gases,

11.2. **Environmental Indemnity**. Except for conditions existing prior to the original operation and use of Airport by Licensee, Licensee agrees to accept sole responsibility for full compliance with any and all applicable present and future rules, regulations, restrictions, ordinances, statutes, laws, and/or other orders of any governmental entity regaling the use, storage, handling, distribution, processing, and/or disposal of hazardous substances, regardless of whether the obligation for such compliance or responsibility is placed on the owner of the land, on the owner of any improvements on the Airport, on the user of the land, or on the user of the improvements. Licensee agrees that any claims, damages, penalties, or fines asserted against or levied on City and/or the Licensee as a result of noncompliance with any of the

provisions in this Section shall be the sole responsibility of the Licensee and that Licensee shall indemnify and hold City harmless from all such claims, damages, penalties, or fines. Further, City may, at its option, pay such claims, damages, penalties, or fines resulting from Licensee's non-compliance with any of the terms of this Section, and Licensee shall indemnify and reimburse City for any such payments.

11.3. In the case of any hazardous substance spill, leak, discharge, release or contamination by Licensee or its employees, servants, agents, or contractors, or subcontractors on the Airport or as may be discharged or released in, on or under adjacent property which affects other property of City or its tenants, Licensee agrees to make or cause to be made any necessary corrective actions to clean up and remove any such spilt, leakage, discharge, release or contamination. If Licensee falls to repair, clean up, properly dispose of, or take any other corrective actions as required herein, City may (but shall not be required to) take all steps it deems necessary to properly repair, clean up, or otherwise correct the conditions resulting from the spill, leak, discharge, release or contamination. Any such repair, cleanup, or corrective actions taken by City shall be at Licensee's sole . cost and expense and Licensee shall indemnify and pay for and/or reimburse City for an)' and all costs (including any administrative costs) City incurs as a result of any repair, cleanup, or corrective action it takes.

11.4. If Licensee installs or uses already installed underground storage tanks, above-ground storage tanks, pipelines, or other improvements on the Airport for the storage, distribution, use, treatment, or disposal of any hazardous substances, Licensee agrees,

upon the expiration and/or termination of this Agreement, to remove and/or clean up, at the sole option of the Executive Director, the above-referred-to improvements. Said removal and/or cleanup shall be at the Licensee's sole cost and expense and shall be undertaken and completed in full compliance with all federal, state, and local laws and regulations, as well as with the reasonable directions of the Executive Director.

11.5. **Licensee's Provision to City of Environmental Documents**. Licensee shall promptly supply City with complete and legible copies of all notices, reports, correspondence, and other documents sent by Licensee to or received by Licensee from any governmental entity regarding any hazardous substance. Such written materials include, without limitation, all documents relating to any threatened or actual hazardous substance spill, leak, or discharge, or to any investigations into or clean up of any actual or threatened hazardous substance spill, leak, or discharge including all test results.

11.6. **Survival of Obligations**. This Section and the obligations herein shall survive the expiration or earlier termination of this Agreement.

Section 12. Airfield Security.

12.1. Licensee shall be responsible for fully complying with any and all applicable present and/or future rules, regulations, restrictions, ordinances, statutes, laws, airport security agreements, and/or orders of any federal, state, and/or local governmental entity regarding airfield security. Licensee shall be responsible for Airport gates and doors that are controlled or used by Licensee. Licensee shall comply

fully with applicable provisions of the Transportation Security Administration Regulations, 49 Code of Federal Regulations ("CFR"), Sections 1500 through 1550 and 14 CFR Part 129, if applicable, including the establishment and implementation of procedures acceptable to the Executive Director to control access to air operation areas in accordance with the Airport Security Program required by CFR Sections 1500 through 1550.

12.2. In addition to the foregoing, gates and doors controlled or used by Licensee which permit entry into restricted areas at Airport shall be kept locked by Licensee at all times when not in use or under Licensee's constant security surveillance. Gate or door malfunctions which permit unauthorized entry into restricted areas shall be reported to LAWA's Operations Bureau without delay and shall be maintained under constant surveillance by Licensee until repairs are affected by Licensee or City and/or the gate or door is properly secured.

12.3. Licensee shall cooperate with City to maintain and improve Airport security, and shall cooperate in investigations of violations of state and local laws, ordinances, and rules and regulations, of any federal, state and/or local governmental entity regarding airport and airfield security. Licensee shall provide necessary assistance to, and cooperate with, City in case of any emergency. Licensee shall, upon request, provide City relevant information which will enable City to provide efficient and effective management in response to any airport or airfield emergency.

12.4. All civil penalties levied by the TSA for violation of TSA regulations pertaining to security gates or doors controlled or used by Licensee shall be the sole responsibility of Licensee. Licensee agrees to indemnify City for any federal civil penalty amounts City must pay due to any security violation arising from the breach of any obligation imposed by this Section. Licensee is also responsible for City's attorneys' fees and costs.

Section 13. <u>Assignments and Encumbrances</u>.

13.1. Licensee shall not, in any manner assign, transfer or encumber this Agreement, or any portion thereof or any interest therein, nor shall Licensee license or otherwise authorize the use of in whole or in part, the rights granted by this Agreement, without the prior written consent of the Executive Director. Any attempts to assign, transfer or encumber this Agreement, or any licensing or authorizing the use of, in whole or in part, the rights granted by this Agreement, shall be void and shall confer no right, title or interest in or to this Agreement, upon any such assignee, transferee, or encumbrancer. Consent to one assignment, transfer, or encumbrance shall not be deemed to be a consent to any subsequent assignment, transfer or encumbrance. This Agreement shall not, nor shall any interest therein, be assignable as to the interest of Licensee by operation of law without the prior written consent of the Executive Director.

13.2. For purpose of this Agreement, the terms "transfer" and "assign" shall include, but is not limited to, the following: (i) if Licensee is a joint venture, a limited liability company, or a partnership, the

transfer of fifty percent (50%) or more of the interest or membership in the joint venture, the limited liability company, or the partnership; (ii) if Licensee is a corporation, any cumulative or aggregate sale, transfer, assignment, or hypothecation of fifty percent (50%) or more of the voting shares of Licensee; (iii) the dissolution by any means of Licensee; and, (iv) a change in business or corporate structure. Any such transfer, assignment, mortgaging, pledging, or encumbering of Licensee without the written consent of the Executive Director is a violation of this Agreement and shall be voidable at LAWA's option and shall confer no right, title, or interest in or to this Agreement upon the assignee, mortgagee, pledgee, encumbrancer, or other lien holder, successor, or purchaser.

13.3. When proper consent has been given by the Executive Director, the provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the heir(s), successor(s), executor(s), administrator(s) and assign(s) of the parties hereto.

Section 14. <u>Nondiscrimination and Equal Employment Practices/Affirmative Action Program</u>.

14.1. **<u>Federal Non-Discrimination Provisions.</u>**

14.1.1. Licensee for itself its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on said property described in this Agreement, for a purpose for which a

Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Licensee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. [USE GUIDE, Paragraph 1).

14.1.2. Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination, (3) that Licensee shall use the Airport in compliance with all other requirements imposed by or pursuant to 49 CPR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. [USE GUIDE, Paragraph 1].

14.1.3. Licensee assures that it will comply with pertinent statutes, Executive Orders, and such rules as are promulgated to assure that no

person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance, This provision obligates Licensee or its transferee for the period during which Federal assistance is extended to toe airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. [USE GUIDE, paragraph 1]

14.1.4. Licensee shall furnish its services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that Licensee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. [USE GUIDE, paragraph 11]

14.1.5. Licensee agrees that it shall insert the provisions found in Subsections 14.1.3 and 14.1.4 above in any assignment, license,

transfer or sublicense by which said Licensee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Airport.

14.2. **Municipal Non-Discrimination Provisions.**

14.2.1. **Non-Discrimination In Use Of Airport**. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, religion, national origin, ancestry, sex, sexual orientation, age, gender identity, gender expression, physical handicap, marital status, domestic partner status, or medical condition in the Agreement, transfer, use, occupancy, tenure, or enjoyment of the Airport or any operations or activities conducted on the Airport. Nor shall Licensee or any person claiming under or through Licensee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants, or vendees of the Airport. Any assignment or transfer which may be permitted under this Agreement shall also be subject to all non-discrimination clauses contained in Section 14.2.

14.2.2. **Non-Discrimination In Employment**. During the Term, Licensee agrees and obligates itself in the performance of this Agreement not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual

orientation, gender identity, gender expression, age, physical handicap, marital status, domestic partner status, or medical condition. Licensee shall take affirmative action to insure that applicants for employment are treated, during the term of this Agreement, without regard to the aforementioned factors and shall comply with the affirmative action requirements of the Los Angeles Administrative Code, Sections 10.8, et seq., or any successor ordinances or law concerned with discrimination.

14.2.3. **Equal Employment Practices**. If the total payments made to City under this Agreement are $1,000 (one thousand dollars) or more, this provision shall apply. During the performance of this Agreement, Licensee agrees to comply with Section 10.8.3 of the Los Angeles Administrative Code ("Equal Employment Practices"), which is incorporated herein by this reference. By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of the Los Angeles Administrative Code, the failure of Licensee to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Licensee. Upon a finding duly made that Licensee has failed to comply with the Equal Employment Practices provisions of

this Agreement, this Agreement may be forthwith terminated, cancelled or suspended.

14.2.4. **Affirmative Action Program**. If the total payments to City under this Agreement are $100,000 (one hundred thousand dollars) or more, this provision shall apply. During the performance of this Agreement, Licensee agrees to comply with Section 10.8.4 of the Los Angeles Administrative Code ("Affirmative Action Program"), which is incorporated herein by this reference. By way of specification but not limitation, pursuant to Sections 10.8.4.E and 10.8.4.F of the Los Angeles Administrative Code, the failure of Licensee to comply with the Affirmative Action Program provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Licensee. Upon a finding duly made that Licensee has failed to comply with the Affirmative Action Program provisions of this Agreement, this Agreement may be forthwith terminated, cancelled or suspended.

Section 15. Living Wage Ordinance.

15.1. **Living Wage Ordinance**

15.1.1. General Provisions: Living Wage Policy. This Agreement is subject to the Living Wage Ordinance ("LWO") (Section 10.37, et seq., of the Los Angeles Administrative Code) which is incorporated herein by this reference. The

LWO requires that, unless specific exemptions apply, any employees of tenants or licensees of City property who render services on the leased premises or licensed premises are covered by the LWO if any of the following applies: (1) the services are rendered on premises at least a portion of which are visited by substantial numbers of the public on a frequent basis, (2) any of the services could feasibly be performed by City of Los Angeles employees if the awarding authority had the requisite financial and staffing resources, or (3) the designated administrative agency of the City of Los Angeles has determined in writing that coverage would further the proprietary interests of the City of Los Angeles. Employees covered by the LWO are required to be paid not less than a minimum initial wage rate, as adjusted each year. The LWO also requires that employees be provided with at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request, and at least ten (10) additional days per year of uncompensated time pursuant to Section 10.37.2(G). The LWO requires employers to inform employees making less than twelve dollars ($12) per hour of their possible right to the Federal Earned Income Tax Credit ("EITC") and to make available the forms required to secure advance EITC payments from the employer pursuant to Section 10.37.4. Licensee shall permit access to work sites for authorized City representatives to review the operation, payroll, and related

documents, and to provide certified copies of the relevant records upon request by the City. Whether or not subject to the LWO, Licensee shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to Section 10.37.6(c), Licensee agrees to comply with federal law prohibiting retaliation for union organizing.

15.1.2. Living Wage Coverage Determination. An initial determination has been made that this is a public license under the LWO, and, that it is not exempt from coverage by the LWO.' Determinations as to whether this Agreement is a public lease or license covered by the LWO, or whether an employer or employee are exempt from coverage under the LWO are not final, but are subject to review and revision as additional facts are examined and/or other interpretations of the law are considered. In some circumstances, applications for exemption must be reviewed periodically. City shall notify Licensee in writing about any redetermination by City of coverage or exemption status. To the extent Licensee claims non-coverage or exemption from the provisions of the LWO, the burden shall be on Licensee to prove such non-coverage or exemption.

15.1.3. Compliance; Termination Provisions And Other Remedies: Living Wage Policy. If Licensee is not initially exempt from the LWO, Licensee shall comply with all of the provisions of the LWO, including payment to employees at

the minimum wage rates, effective on the Commencement Date of this Agreement. If Licensee is initially exempt from the LWO, but later no longer qualifies for any exemption, Licensee shall, at such time as Licensee is no longer exempt, comply with the provisions of the LWO and execute the then currently used Declaration of Compliance Form, or such form as the LWO requires. Under the provisions of Section 10.37.6(c) of the Los Angeles Administrative Code, violation of the LWO shall constitute a material breach of this Agreement and City shall be entitled to terminate this Agreement and otherwise pursue legal remedies that may be available, including those set forth in the LWO, if City determines that Licensee violated the provisions of the LWO. The procedures and time periods provided in the LWO are in lieu of the procedures and time periods provided elsewhere in this Agreement. Nothing in this Agreement shall be construed to extend the time periods or limit the remedies provided in the LWO.

15.1.4. Subcontractor Compliance. Licensee agrees to include, in every subcontractor sublease covering City property entered into between Licensee and- any subcontractor, a provision pursuant to which such subcontractor (A) agrees to comply with the Living Wage Ordinance and the Service Contractor Worker Retention Ordinance with respect to City's property; (B) agrees not to retaliate against any employee lawfully asserting noncompliance on

the part of the Subcontractor with the provisions of either the Living Wage Ordinance or the Service Contractor Worker Retention Ordinance; and (C) agrees and acknowledges that City, as the intended third-party beneficiary of this provision may (i) enforce the Living Wage Ordinance and Service Contractor Worker Retention Ordinance directly against the subcontractor with respect to City property, and (ii) invoke, directly against the subcontractor with respect to City property, all the rights and remedies available to City under Section 10.37,5 of the Living Wage Ordinance and Section 10.36.3 of the Service Contractor Worker Retention Ordinance, as same may be amended from time to time.

Section 16. **Service Contract Worker Retention Ordinance**. This Agreement may be subject to the Service Contract Worker Retention Ordinance ("SCWRO") (Section 10.36, et seq, of the Los Angeles Administrative Code), which is incorporated herein by this reference. If applicable, Licensee must also comply with the SCWRO which requires that, unless specific exemptions apply, all employers under contracts that are primarily for the furnishing of services to or for the City of Los Angeles and that involve an expenditure or receipt in excess of $25,000 and a contract term of at least three (3) months shall provide retention by a successor contractor for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRO. Under the provisions of

Section 10.36.3(c) of the Los Angeles Administrative Code, City has the authority, under appropriate circumstances, to terminate this Agreement and otherwise pursue legal remedies that may be available if City determines that the subject contractor violated the provisions of the SCWRO.

Section 17. Alternative Fuel Vehicle Requirement Program (LAX Only).

Licensee shall comply with the provisions of the Alternative Fuel Vehicle Requirement Program. The rules, regulations, and requirements of the Alternative Fuel Vehicle Program are attached as Exhibit F and made a material term of this Agreement.

Section 18. Compliance with All Applicable Laws.

18.1. Licensee shall, at all times during the performance of its obligations under this Agreement, comply with all applicable present and future local, Department of Airports, State and Federal laws, statutes, ordinances, rules, regulations, restrictions and orders, including the hazardous waste and hazardous materials regulations, and the Americans With Disabilities Act of 1990 and any amendments thereto, or successor statutes. Licensee shall be solely responsible for any and all damages caused, and/or penalties levied, as the result of Licensee's noncompliance with such enactments. Further, Licensee agrees to cooperate fully with City in its efforts to comply with the Americans With Disability Act of 1990 and any amendments thereto, or successor statutes.

18.2. Licensee shall be solely responsible for fully complying with any and all applicable present and future orders, directives, or conditions issued, given or imposed by LAWA's executive director (the "Executive Director") or the Board which are now in force or which may be hereafter adopted by the Board or the Executive Director with respect to the operation of Airport.

18.3. Licensee shall comply with the applicable provisions of (i) the Certified Service Licensee Program (the "CSPP"), as may be amended from time to time, (ii) guidelines issued by the Executive Director pursuant to the CSPP, as may be amended from time to time, and (iii) the "Rules and Regulations Manual for Los Angeles International Airport (LAX)" [2] as may be amended from time to time. It is expressly understood and agreed that all items referenced herein are hereby incorporated and made a part of this Agreement.

18.4. Licensee shall be responsible for requesting in writing City-issued Identification ("ID") badges for all employees who will have access to the Security Identification Display Areas on Airport, as designated in Airport's security program. Each employee must complete the Transportation Security Administration ("TSA") mandated training program before an ID badge is issued. As part of the badging process, City will conduct background investigations, including fingerprinting of Licensee's employee badge applicants. Licensee shall assist City as necessary to facilitate the badging process. Licensee shall be

---

[2] The current version is available on the LAWA Website at www.lawa.org/alrops/rules.cjm.

responsible for the immediate reporting of all lost or stolen ID badges and the immediate return of the ID badges of all personnel, transferred from Airport assignments or terminated from the employ of the Licensee or upon termination of this Agreement. In addition, Licensee shall pay, or cause to be paid, to City such charges, as may be established from time to time, for the acquisition of ID badges, for lost or stolen ID badges, and for those badges not returned to City in accordance with this Section. City shall also have the right to audit Licensee's compliance with security and ID badge rules and regulations.

18.5. Licensee shall be solely responsible for any and all civil or criminal penalties assessed as a result of its failure to comply with any of these rules, regulations, restrictions, ordinances, statutes, laws, orders, directives or conditions.

18.6. Nothing herein contained shall be deemed to impair Licensee's right to contest, under federal, state or local law, any such rules, regulations, orders, restrictions, directives or conditions or the reasonableness thereof.

Section 19. Business Tax Registration. Licensee represents that it has registered its business with the Office of Finance of the City of Los Angeles and has obtained and presently holds from that office a Business Tax Registration Certificate, or a Business Tax Exemption Number, required by City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 and following, of City's Municipal Code). Licensee shall maintain, or obtain as necessary, all such certificates required of it under said ordinance and

shall not allow any such certificate to be revoked or suspended during the term hereof.

Section 20. Taxes, Fees and Licenses.

20.1. Licensee shall pay all taxes of whatever character that may be levied or charged upon Licensee's operations at Airport, or upon Licensee's improvements, fixtures, equipment, or other property on Airport, or upon Licensee's use thereof.

20.2. Licensee shall also pay for, and cause to be maintained in full force and effect during the term of this Agreement, all licenses or permits necessary or required by law or regulation for the conduct and operation of Licensee's business authorized herein, or for use of Airport. Such licenses and permits shall cover not only Licensee, but also all of Licensee's employees and agents required to be licensed to transact Licensee's business at Airport.

20.3. If a claim is made against City for any of the above charges, City shall notify Licensee in writing and Licensee shall promptly pay said charges; provided, however, that failure by City to give such notice shall not constitute a waiver of Licensee's obligation to pay such taxes, license and/or license fees.

20.4. The obligations of Licensee under this Section, however, shall not prevent Licensee from contesting the validity and/or applicability of any of the above charges and, during the period of any such lawful contest, Licensee may refrain from making, or direct the withholding of, any such payment without being in breach of the above provisions. Upon a final determination in which Licensee is held responsible for such taxes and/or fees, Licensee shall promptly pay the required amount, plus all legally imposed interest,

penalties and surcharges. If all or any part of such taxes and/or fees, penalties, or surcharges are refunded to City, City shall remit to Licensee such sums to which Licensee is legally entitled.

20.5. In addition, by executing this Agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest." If such possessory interest is created, Licensee, as the party in whom the possessory interest is vested, shall be subject to the payment of the property taxes levied upon such interest.

Section 21. Disabled Access.

21.1. Licensee shall be solely responsible for fully complying with any and all applicable present and/future rules, regulations, restrictions, ordinances, statutes, laws, and/or orders of any federal, state, and/or local governmental entity and/or court regarding disabled access, including any services, programs, improvements or activities provided by Licensee. Licensee shall be solely responsible for any and all damages caused by, and/or penalties levied as the result of, Licensee's noncompliance. Further, Licensee agrees to cooperate fully with City in its efforts to comply with the Americans with disabilities Act of 1990 and any amendments thereto, or successor statutes.

21.2. Should Licensee fall to comply with Subsection 20.1, then City shall have the right, but not the obligation, to perform, or have performed, whatever work is necessary to achieve equal access compliance. Licensee will then be required to reimburse City for the actual cost of achieving

compliance, plus a fifteen percent (15%) administrative charge.

Section 22. **Child Support Orders**. This Agreement is subject to Section 10.10, Article I, Chapter I, Division 10 of the Los Angeles Administrative Code related to Child Support Assignment Orders, which is incorporated herein by this reference. Pursuant to this Section, Licensee shall (1) fully comply with all State and Federal employment reporting requirements for Licensee's employees applicable to Child Support Assignments Orders; (2) certify that the principal owner(s) of Licensee are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230, et seq.; and (4) maintain such compliance throughout the term of this Agreement. Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, failure of Licensee to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Licensee to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Agreement subjecting this Agreement to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Licensee by City (in lieu of any time for cure provided elsewhere in this Agreement).

Section 23, Contractor Responsibility Program.

23.1. Pursuant to Resolution No. 21601 adopted by the Board of Airport Commissioners, effective August 23, 2011, it is the policy of Los Angeles World Airports (LAWA) to ensure that Licensee shall have the necessary quality, fitness and capacity to perform the work set forth in the contract.

23.2. Licensee is required to complete and submit with the "Contractor Responsibility Program Questionnaire" that provides information LAWA needs in order to determine if Licensee is responsible and has the capability to perform the contract. The information contained in the CRP Questionnaire is subject to public review for a period of not less than 14 days. Licensee also required to complete, sign and submit the attached "Contractor Responsibility Program Pledge of Compliance." Licensee is also required to respond within the specified time to LAWA's request for information and documentation needed to support a Contractor Responsibility determination. Subcontractors will be required to submit the Pledge to Licensee prior to commencing work. The CRP Rules and Regulations are available at http://www.lawa.org.

Section 24. Training.

24.1. Licensee must establish a written training program to ensure that all employees are thoroughly trained and qualified to perform their job duties, including all applicable airport emergency preparedness, evacuation, and first aid procedures. The training program must contain detailed instruction in job duty requirements for each job

classification. Employees who use equipment must be trained and certified by Licensee in the operation of every piece of equipment they will use. Training programs will be updated to reflect changes, including, but not limited to, alterations in scope of work, operational procedures, and equipment. Training syllabi, records of completion, and a list of all employees on Licensee's payroll shall be provided to LAWA on an annual basis and as requested by LAWA.

24.2. Training must include, at minimum, a review of: LAX Rules and Regulations, safety and security including Rules and Guidelines from the Transportation Security Administration, U.S. Customs and Border Protection (if applicable) and LAWA Airport Police. In addition, as applicable, training should include airport familiarization, emergency notifications, waste disposal, proper handling of Dangerous Goods and Hazardous materials, and federally-mandated training regarding transporting people with disabilities.

Section 25. **Labor Harmony**. Licensee covenants that its employees at LAX shall be able to work in labor harmony in order to protect LAWA's proprietary and economic interests. In order to comply with this provision:

25.1. Licensee shall have in place, at all required times, a labor peace agreement ("Labor Peace Agreement") with any organization of any kind, or an agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with service providers at LAX concerning grievances, labor disputes, wages, rates of pay, hours of employment, or

conditions of work ("Labor Organization"), which requests a Labor Peace Agreement.

25.2. The Labor Peace Agreement shall include a binding and enforceable provisions) prohibiting the Labor Organization and its members from engaging in picketing, work stoppages, boycotts, or any other economic interference for the duration of the Labor Peace Agreement, Which must include the entire term of any CSPLA.

25.3. Licensee shall, upon LAWA's request, submit to LAWA a certification, signed by Licensee and any Labor Organizations, indicating the parties have entered into a Labor Peace Agreement.

25.4. In the event that Licensee and a Labor Organization are unable to agree to a Labor Peace Agreement within 60 days of the Labor Organization's written request, they shall submit the dispute to a mutually agreed upon mediator to assist the parties in reaching a reasonable Labor Peace Agreement. In the event that Licensee and a Labor Organization are unable to reach a reasonable Labor Peace Agreement through mediation, the parties shall submit the dispute to the American Arbitration Association ("AAA") for arbitration conducted in accordance with the AAA rules.

25.5. Licensee may continue to operate at LAX during any negotiation, mediation, or arbitration relating to a Labor Peace Agreement conducted pursuant to Section 25.

25.6. In the event that LAWA determines it necessary for public safety or the efficient operation of LAX to post police details or take other actions resulting from Licensee's violation of Section 25 or

Section 26, LAWA shall have the authority to require that Licensee reimburse LAWA for all reasonable costs incurred by doing so.

25.7. Nothing in Section 25 shall be construed as inquiring Licensee, through arbitration or otherwise, to change terms and conditions of employment for its employees, recognize a Labor Organization as the bargaining representative for its employees, adopt any particular recognition process, or enter into a collective bargaining agreement with a Labor Organization.

Section 26. Labor Compliance. Licensee will abide by the requirements of all applicable labor laws and regulations, including the City of Los Angeles' Living Wage Ordinance, Service Contract Worker Retention Ordinance, and Contractor Responsibility Program. A finding of non-compliance with any applicable labor laws and regulations, including the aforementioned ordinances and programs, for any Licensee by any agency of jurisdiction may result in progressive penalties leading up to decertification, as described in the CSPP.

Section 27. Whistleblower Protection.

27.1. Licensee shall not take all adverse employment action against any employee for making a complaint, cooperating with an audit or investigation, or participating in any administrative or judicial proceedings relating to Licensee's compliance or lack thereof with the CSPP or any City policy. A finding of whistleblower retaliation by Licensee by any agency or court of jurisdiction may result in progressive penalties leading up to decertification, as described in the CSPP.

27.2. Licensee must fully cooperate with any investigation or audit of their operations or facilities, including, but not limited to, providing access to any relevant- records or facilities by LAWA, or any other local, state, or federal agency of jurisdiction.

Section 28. First Source Hiring Program For Airport Employers (LAX only). Licensee shall comply with the provisions of the first source hiring program adopted by the Board (the "First Source Hiring Program"). The rules, regulations, requirements and penalties of the First Source Hiring Program are attached as Exhibit A and made a material term of this Agreement. Licensee shall be an "Airport Employer" under the First Source Hiring Program.

Section 29. City's Right to Contract With Others Regarding Agreement Rights. The rights granted hereunder by this Agreement are not exclusive in nature, and City specifically reserves the right to enter into similar additional Agreement agreements at Airport, at any time.

Section 30. Warranty and Quality of Licensee's Services.

30.1. Licensee covenants and warrants that the services provided herein shall conform to high professional standards and shall be completed in a manner consistent with professional standards practice among those firms within Licensee's profession, doing the same or similar work under the same or similar condition.

30.2. Licensee covenants and warrants that it shall hold all necessary consultations and conferences with personnel of any and all airline, City, county,

state, or federal agencies, as applicable, which may have jurisdiction over, or be concerned with elements of the work to be performed by Licensee under this Agreement.

30.3. If in City's sole discretion, through the Executive Director, any of Licensee's agents or employees are not performing his or her duties under this Agreement to the satisfaction of the City, then the City, through the Executive Director, shall have the right to request that such agent or employee be removed, and Licensee shall comply with such request and promptly assign a new agent or employee to replace the removed agent or employee within a reasonable time thereafter, but not longer than ten (10) business days.

30.4. Licensee covenants and warrants that it shall, at all times during the term this Agreement, comply with all safety rules and regulations promulgated by any government authority having control over Licensee's operations under this License.

30.5. Licensee covenants and warrants that all vehicles, automotive equipment, machinery, appliances, underground installations and other equipment used by Licensee in its operations under this License shall, at no cost to City, be maintained in good mechanical condition and appearance and shall be modern up-to-date equipment which shall, at all times, meet all requirements necessary or lawfully required for fire protection and for the enhancement of the safety of operations considering the nature of the business in which Licensee is engaged.

Section 31. **Waiver**. The waiver by either party of any breach of any term, covenant, or condition

herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or of any subsequent breach of the same term, covenant, or condition. The subsequent acceptance of compensation hereunder by City shall not be deemed to be a waiver of any preceding breach by Licensee of any term, covenant, or condition of this Agreement other than the failure of Licensee to pay the particular compensation so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such compensation.

Section 32. Miscellaneous Provisions.

32.1. **Fair Meaning**. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Licensee.

32.2. **Section Headings**. The section headings appearing herein are for the convenience of City and Licensee, and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

32.3. **Void Provisions**. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect.

32.4. **Two Constructions**. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the

provision shall have the meaning which renders it valid.

32.5. **Laws of California**. This Agreement shall be construed and enforced in accordance with the laws of the State of California and venue shall lie at Airport.

32.6. **Gender**. The use of any gentler herein shall include all genders, and the use of any number shall be constructed as the singular or the plural, all as the context may require.

32.7. **Exclusivity**. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act [49 U.S.C. 40103(e) and 47107(a)(4) (Public Law 103-272; 108 STAT. 1102). [USB GUIDE, paragraph 9]

32.8. **Rights of United States Government**. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States relative to the development, operation, or maintenance of Airport. [USE GUIDE, paragraph 4]

32.9. **War or National Emergency**. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of Airport or the exclusive or nonexclusive use of Airport by the United States during the time of war or national emergency. [USE GUIDE, paragraph 10]

32.10. **Time**. Time shall be of the essence in complying with the terms, conditions, and provisions of this Agreement,

32.11. **Integration Clause**. It is understood that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement, not incorporated herein in writing, shall be binding on any of the parties hereto.

32.12. **Force Majeure**. Except as otherwise provided in this Agreement, whenever a day is established in this Agreement on which, or a period of time, including a reasonable period of time, is designated within which, either party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days on or during which such party is prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of strikes, lookouts, embargoes, unavailability of services, labor or materials, disruption of service or brownouts from utilities not due to action or inaction of City, wars, insurrections, rebellions, civil disorder, declaration of national emergencies, acts of God, or other causes beyond such party's reasonable control (financial inability excepted) ("**Force Majeure**"); provided, however, that nothing contained in this Subsection shall excuse Licensee from the prompt payment of any compensation, fees or other monetary charge required of Licensee hereunder.

32.13. **Approvals**. Any approvals required by City under this Agreement shall be approvals of LAWA

acting as licensor and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental approvals or rights of the City as a governmental agency, including the approval of any permits required for construction or maintenance on the Airport and the passage of any laws including those relating to zoning, land use, building and safety.

32.14. **Ordinance and Los Angeles Administrative Code (hereinafter referred to as "Code") Language Governs**. Ordinance and code exhibits are provided as a convenience to the parties only. In the event of a discrepancy between the exhibits and the applicable ordinance and/or code language, or amendments thereto, the language of the ordinance and/or code shall govern.

32.15. **Amendments to Ordinances and Codes**. The obligation to comply with any ordinances and codes which have been incorporated into this Agreement by reference, shall extend to any amendments which may be made to those ordinances and codes during the term of this Agreement.

32.16. **Days**. Unless otherwise specified, "days" shall mean calendar days.

32.17. **Deprivation of Licensee's Rights**. City shall not be liable to Licensee for any diminution or deprivation of Licensee's rights under this Agreement which may result from Licensee's obligation to comply with any and all applicable laws, rules, regulations, restrictions, ordinances, statutes, and/or orders of any federal, state and/or local government authority and/or court hereunder on account of the exercise of any such authority as is provided in this Subsection,

nor shall Licensee be entitled to terminate the whole or any portion of the Agreement by reason thereof.

32.18. **City's Consent**. In each instance herein where City's, Board's or the Executive Director's approval or consent is required before Licensee may act, such approval or consent shall not be unreasonably withheld, unless otherwise provided.

32.19 **Incorporation by Reference**. All exhibits and other items referenced herein are hereby incorporated herein by this reference.

[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, City has caused this Agreement to be executed by Executive Director this ___ day of _____, 20___.

CITY OF LOS ANGELES

By: _____
Executive Director
Department of Airports

The foregoing Agreement has been read, is thoroughly understood by the undersigned, and the same is hereby accepted.

_____

By:_____ By:_____
Signature Signature

_____ _____
Print Name Print Name

_____ _____
(Print Title) (Print Title)

APPROVED AS TO FORM
Michael N. Feuer, City Attorney

Dated: _____

By: _____
Assistant/Deputy City Attorney

APPENDIX E

TITLE 29 UNITED STATES CODE

§ 151. Findings and declaration of policy

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of

competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating

the terms and conditions of their employment or other mutual aid or protection.

TITLE 45 UNITED STATES CODE

§ 151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

TITLE 49 UNITED STATES CODE

§ 41713. Preemption of authority over prices, routes, and service

(a) Definition.--In this section, "State" means a State, the District of Columbia, and a territory or possession of the United States.

(b) Preemption.--(1) Except as provided in this subsection, a State, political subdivision of a State, or

political authority of at least 2 States 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 an air carrier that may provide air transportation under this subpart.

(2) Paragraphs (1) and (4) of this subsection do not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of this title.

(3) This subsection does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.

(4) Transportation by air carrier or carrier affiliated with a direct air carrier.–

(A) General rule.--Except as provided in subparagraph (B), a State, political subdivision of a State, or political authority of 2 or more States 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 an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

(B) Matters not covered.--Subparagraph (A)--

(i) 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; and

(ii) does not apply to the transportation of household goods, as defined in section 13102 of this title.

(C) Applicability of paragraph (1).--This paragraph shall not limit the applicability of paragraph (1).