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7 California Dump Truck Owners Association

8  
9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA  
11

12 CALIFORNIA DUMP TRUCK OWNERS  
13 ASSOCIATION

14 Plaintiff,  
15 vs.

16 MARY D. NICHOLS, Chairperson of the  
California Air Resources Board; JAMES  
17 GOLDSTENE, Executive Officer of the  
California Air Resources Board; and DOES 1-  
18 50

19 Defendants.  
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Case No. 2:11-CV-00384-MCE-GGH

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

21  
22 **JURISDICTION AND VENUE**  
23

24 This Court has jurisdiction of this action under 28 U.S.C. §§1331 and 2201, since this  
25 case arises under the Constitution, laws, or treaties of the United States and plaintiff is seeking  
26 declaratory and equitable relief. Specifically, this case concerns whether, under the Supremacy  
27 Clause of the United States Constitution (Article VI, clause 2), a state regulation is preempted by  
28 the Federal Aviation Administration Authorization Act codified at 49 U.S.C. §14501.

1 Venue is appropriate in this district pursuant to 28 U.S.C. §1391, because the defendant  
2 resides in, is found within, and transacts its affairs within this judicial district. In addition, the  
3 promulgation of the preempted regulations occurred within this district.  
4

5 **PARTIES**  
6

7 1. Plaintiff California Dump Truck Owners Association (“CDTOA”) is a trade  
8 association incorporated in 1941 under 26 U.S.C. 501(c)(6). CDTOA represents nearly 1,000  
9 construction industry related trucking companies ranging in size from 1 truck to over 350 trucks  
10 whose business constitutes over 75% of the hauling of dirt, rock, sand, and gravel operations in  
11 California. CDTOA’s member employers provide work for approximately 4,000 drivers,  
12 mechanics, support personnel and managers. Approximately 60% of CDTOA’s members are  
13 sole proprietors – small one-truck independent owner-operators. While the members are  
14 predominately dump truck operators, CDTOA also represent a large segment of the construction  
15 industry that hauls oversized and overweight off-road vehicles and materials, plus a specialized  
16 segment that operates pneumatic bulk trucks, water trucks and flatbed construction trucks within  
17 this state. All operators of such trucks are motor carriers, and the vast majority of CDTOA  
18 members are motor carriers.

19 2. Defendant MARY D. NICHOLS is the Chairperson of the California Air  
20 Resources Board, and is responsible for promulgating and enforcing rules and regulations  
21 relating to air quality. Cal. Health & Saf. Code §§ 39511, 39601, 39602.5. Chairperson Nichols  
22 is named in her official capacity only.

23 3. Defendant JAMES GOLDSTENE is the Executive Officer of the California Air  
24 Resources Board, and oversees the development, implementation, and enforcement of  
25 regulations and policies adopted by the Board, and exercises those powers of the Board that the  
26 Board delegates to him. Cal. Health & Saf. Code § 39515. Executive Officer Goldstene is  
27 named in his official capacity only.  
28

1 **FACTS**

2 4. ARB promulgated 13 CCR § 2025, a lengthy regulation entitled the “Regulation  
3 to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from  
4 In-Use Heavy-Duty Diesel-Fueled Vehicles.” Within the industry, the rule is known as the “Truck and  
5 Bus Regulation.” The Truck and Bus Regulation sets standards for the emissions of virtually all  
6 diesel-fuel vehicles that are registered to be driven on public highways or were originally  
7 designed to be driven on public highways.

8 5. Virtually all of the trucks owned and operated by CDTOA members are covered  
9 by the rule. The rule requires trucks to be replaced or retrofitted beginning on January 1, 2012,  
10 on a schedule based on the truck type and model year of the truck engine. The rule prohibits  
11 older trucks that have not been replaced or retrofitted from operating on the public roadways, and  
12 imposes steep fines and penalties on anyone who operates their trucks in violation of the rule.

13 6. CDTOA members’ primary source of livelihood is their truck. Most members  
14 purchase trucks to be used for decades, and most have lengthy mortgages on their trucks. The  
15 trucks typically cost at least \$150,000 to purchase, but have a useful life of several decades if  
16 maintained properly.

17 7. Available retrofit technology costs tens of thousands of dollars to purchase and  
18 install for each truck. Most CDTOA members do not have the financial resources to purchase  
19 and install retrofit technology for their trucks, and will likely lose their business.

20 8. Once installed, the retrofit technology makes the truck less efficient, less able to  
21 run for long periods of time, and prone to mechanical breakdowns. The vast majority of trucks  
22 that are retrofitted will still have to be ultimately replaced under the rule. Retrofitting the trucks  
23 only delays the date upon which replacement is mandated.

24 9. CDTOA members have based their business on the ability to use their trucks for  
25 decades to come. Because the rule requires replacement of otherwise perfectly useful trucks  
26 much earlier than would otherwise be required, most CDTOA members will be unable to  
27 continue their business.

28



1           18.     An actual controversy has arisen and now exists between Plaintiff and Defendant  
2 regarding the legality of the Truck and Bus Regulation. Plaintiff desires a declaration of its  
3 members' rights under the Constitution and laws of the United States.

4           19.     Unless restrained and enjoined, defendant will implement and enforce the Truck  
5 and Bus Regulation, resulting in irreparable harm to CDTOA members.

6           20.     Plaintiff and its members will suffer irreparable harm and injury if the illegal  
7 Truck and Bus Regulation is permitted to be enforced, including the loss of the businesses and  
8 livelihoods, which in turn will proximately cause some members to be at risk of losing their  
9 trucks, homes, cars, and the ability to purchase the basic necessities of life.

10          21.     Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law,  
11 other than the relief sought in this complaint, in that there is no other legal remedy to prevent or  
12 enjoin the implementation of the Truck and Bus Regulation.

1 **PRAYER FOR RELIEF**

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3 WHEREFORE, Plaintiff CDTOA respectfully prays that:

4  
5 1. This Court issue a declaration that the Truck and Bus Regulation is preempted by federal  
6 law;

7 2. This Court issue a preliminary and permanent injunction prohibiting Defendant from  
8 enforcing the Truck and Bus Regulation.

9 3. Plaintiff be awarded attorneys fees and costs of suit incurred in this action.

10 4. Such other relief as this Court deems just and proper.

11  
12 THE LAW OFFICES OF BROOKS ELLISON

13 Dated: March 1, 2011

14 /s/ Patrick J. Whalen

15 PATRICK J. WHALEN

16 Attorneys for Plaintiff  
17 CALIFORNIA DUMP TRUCK OWNERS  
18 ASSOCIATION  
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