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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 CALIFORNIA DUMP TRUCK OWNERS
13 ASSOCIATION

14 Plaintiff,

15 vs.

16 AIR RESOURCES BOARD and DOES 1-50

17 Defendants.
18

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

19
20 **JURISDICTION AND VENUE**

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

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 Air Resources Board (“ARB”) is an 11-member board established
20 within the California Environmental Protection Agency. Cal. Health & Saf. Code § 39510.
21 ARB is charged with adopting rules and regulations relating to air quality. Cal. Health & Saf.
22 Code §§ 36901, 39602.5.

23
24 **FACTS**

25 3. ARB promulgated 13 CCR § 2025, a lengthy regulation entitled the “Regulation
26 to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants, from
27 In-Use Heavy-Duty Diesel-Fueled Vehicles.” Within the industry, the rule is known as the “Truck and
28 Bus Regulation.” The Truck and Bus Regulation sets standards for the emissions of virtually all

1 diesel-fuel vehicles that are registered to be driven on public highways or were originally
2 designed to be driven on public highways.

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

8 5. CDTOA members' primary source of livelihood is their truck. Most members
9 purchase trucks to be used for decades, and most have lengthy mortgages on their trucks. The
10 trucks typically cost at least \$150,000 to purchase, but have a useful life of several decades if
11 maintained properly.

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

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

19 8. CDTOA members have based their business on the ability to use their trucks for
20 decades to come. Because the rule requires replacement of otherwise perfectly useful trucks
21 much earlier than would otherwise be required, most CDTOA members will be unable to
22 continue their business.

23 9. Not only will CDTOA members be prohibited from purchasing replacement
24 trucks due to a lack of financial resources, they will be prohibited from earning any income at all
25 because the rule prohibits them from operating their current trucks.

26 10. The rule also greatly diminishes the resale value of their current trucks, precisely
27 because they cannot be operated on California roadways. As a result, CDTOA members will be
28

1 able to sell their current trucks for only a fraction of the balance they owe, and will default on
2 their truck mortgages.

3 11. The only way CDTOA members will be able to comply with the rule will be to
4 expend tens of thousands if not hundreds of thousands of dollars per truck. This will necessarily
5 impact the price they have to charge for their services.

6 12. For those members who are not able to replace or retrofit their trucks, their only
7 option may be to relocate their trucks outside of California, which will necessarily affect their
8 routes.

9 13. The high cost of the retrofit technology and the limitations it places on the utility
10 of the trucks will impact the level of service that CDTOA members are able to provide.

11
12 **COUNT ONE**

13 **(Violation of Supremacy Clause)**
14

15 14. The Federal Aviation Administration Authorization Act of 1994 (“FAAAA”) is
16 codified at 49 U.S.C. § 14501 et seq.

17 15. The FAAAA prohibits any state or any political subdivision thereof from enacting
18 or enforcing any law or regulation related to the price, route, or service of a motor carrier.

19 16. The Truck and Bus Regulation promulgated by ARB directly impacts the price,
20 route, and service of the motor carrier members of CDTOA, and is therefore preempted by
21 federal law pursuant to the supremacy clause of Article VI of the United States Constitution.

22 17. An actual controversy has arisen and now exists between Plaintiff and Defendant
23 regarding the legality of the Truck and Bus Regulation. Plaintiff desires a declaration of its
24 members’ rights under the Constitution and laws of the United States.

25 18. Unless restrained and enjoined, defendant will implement and enforce the Truck
26 and Bus Regulation, resulting in irreparable harm to CDTOA members.

27 19. Plaintiff and its members will suffer irreparable harm and injury if the illegal
28 Truck and Bus Regulation is permitted to be enforced, including the loss of the businesses and

1 livelihoods, which in turn will proximately cause some members to be at risk of losing their
2 trucks, homes, cars, and the ability to purchase the basic necessities of life.

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

6
7 **PRAYER FOR RELIEF**

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9 WHEREFORE, Plaintiff CDTOA respectfully prays that:

- 10
11 1. This Court issue a declaration that the Truck and Bus Regulation is preempted by federal
12 law;
13 2. This Court issue a preliminary and permanent injunction prohibiting Defendant from
14 enforcing the Truck and Bus Regulation.
15 3. Plaintiff be awarded attorneys fees and costs of suit incurred in this action.
16 4. Such other relief as this Court deems just and proper.

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19 THE LAW OFFICES OF BROOKS ELLISON

20 Dated: February 11, 2011

/s/ Patrick J. Whalen

21 PATRICK J. WHALEN

22 Attorneys for Plaintiff
23 CALIFORNIA DUMP TRUCK OWNERS
24 ASSOCIATION
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