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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 CALIFORNIA DUMP TRUCK OWNERS
13 ASSOCIATION

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

14 Plaintiff,
15 vs.

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

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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22 **JURISDICTION AND VENUE**
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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.
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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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