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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,

20 NATURAL RESOURCES DEFENSE
21 COUNCIL, INC.,

22 Defendant-Intervenor
23

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

**PLAINTIFF'S RESPONSE TO
DEFENDANT-INTERVENOR'S FIRST
SET OF INTERROGATORIES**

24
25 PROPOUNDING PARTY: Defendant-Intervenor the Natural Resources Defense Council, Inc.

26 RESPONDING PARTY: Plaintiff California Dump Truck Owners Association

27 SET NUMBER: One
28

1 Pursuant to rules 26 and 36 of the federal rules of Civil Procedure, Plaintiff provides the
2 following written responses to the interrogatories served on August 11, 2011.

3
4 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

5 The responses which follow are based on plaintiff's present recollection, knowledge,
6 information and belief, and plaintiff specifically reserves the right to amend or withdraw any
7 response to these interrogatories. Plaintiff reserves all objections as to competency, relevancy,
8 materiality, privilege, or admissibility of all information provided. By providing a response to a
9 request for admission, plaintiff does not waive any objection which has been stated generally as
10 to all requests or to that specific request. These introductory comments and general objections
11 shall be incorporated by reference as if fully set forth in all responses herein.

12 **RESPONSES TO REQUESTS FOR ADMISSION**

13 **Admission Request No. 1**

14 Admit that the economic conditions from 2008 to the present have adversely impacted
15 CDTOA motor carrier members' prices.

16
17 **Response to Admission Request No. 1**

18 Plaintiff objects to the request on the grounds of relevancy and hearsay.

19 Without waiving these objections, plaintiff denies the request to the extent it calls for
20 information that plaintiff does not possess. Plaintiff is a trade association comprised of members
21 who often compete against one another in their business dealings. In order to comply with
22 antitrust laws, CDTOA does not collect specific price information charged by members, and
23 actively discourages members from sharing such information with each other. Plaintiff admits
24 that the construction trucking industry is not immune from the effects of the current economic
25 recession, and is generally aware of anecdotal information that many CDTOA members are
26 suffering economically.

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1 **Admission Request No. 2**

2 Admit that economic conditions from 2008 to the present have adversely impacted
3 CDTOA motor carrier members' ability to raise prices.
4

5 **Response to Admission Request No. 2**

6 Plaintiff objects to the request on the grounds of relevancy and hearsay.

7 Without waiving these objections, plaintiff denies the request to the extent it calls for
8 information that plaintiff does not possess. Plaintiff is a trade association comprised of members
9 who often compete against one another in their business dealings. In order to comply with
10 antitrust laws, CDTOA does not collect specific price information charged by members, and
11 actively discourages members from sharing such information with each other. Plaintiff admits
12 that the construction trucking industry is not immune from the effects of the current economic
13 recession, and is generally aware of anecdotal information that many CDTOA members are
14 suffering economically.
15

16 **Admission Request No. 3**

17 Admit that the economic conditions from 2008 to the present have adversely impacted
18 CDTOA motor carrier members' routes.
19

20 **Response to Admission Request No. 3**

21 Plaintiff objects to the request on the grounds of relevancy and hearsay.

22 Without waiving these objections, plaintiff denies the request to the extent it calls for
23 information that plaintiff does not possess. Plaintiff is a trade association comprised of members
24 who often compete against one another in their business dealings. In order to comply with
25 antitrust laws, CDTOA does not collect specific route information used by members, and
26 actively discourages members from sharing such information with each other. Plaintiff admits
27 that the construction trucking industry is not immune from the effects of the current economic
28

1 recession, and is generally aware of anecdotal information that many CDTOA members are
2 suffering economically.

3
4 **Admission Request No. 4**

5 Admit that the economic conditions from 2008 to the present have adversely impacted
6 CDTOA motor carrier members' services.

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8 **Response to Admission Request No. 4**

9 Plaintiff objects to the request on the grounds of relevancy and hearsay.

10 Without waiving these objections, plaintiff denies the request to the extent it calls for
11 information that plaintiff does not possess. Plaintiff is a trade association comprised of members
12 who often compete against one another in their business dealings. In order to comply with
13 antitrust laws, CDTOA does not collect information relating to the specific services provided by
14 members, and actively discourages members from sharing such information with each other.
15 Plaintiff admits that the construction trucking industry is not immune from the effects of the
16 current economic recession, and is generally aware of anecdotal information that many CDTOA
17 members are suffering economically.

18
19 **Admission Request No. 5**

20 Admit that CDTOA motor carrier members utilized government funds, subsidies or grant
21 programs to help defray the costs of complying with the Truck and Bus Regulation.

22
23 **Response to Admission Request No. 5**

24 Plaintiff objects to the request on the grounds of relevancy and hearsay, and also objects
25 that it is overly burdensome. Furthermore, it is likely that defendant is the party more likely to
26 have more accurate information on the number of industry members who have been recipients of
27 government funds, subsidies, or grant programs, and plaintiff therefore objects that collecting
28 such information would be overly burdensome.

1 Without waiving these objections, plaintiff denies the request to the extent it calls for
2 information that plaintiff does not possess. Plaintiff does not maintain any records of any grants,
3 subsidies or other government funds that our members may have applied for. Plaintiff admits
4 that it is aware OF a number of CDTOA members who have obtained government funds to
5 partially defray the costs of complying with the Truck and Bus Regulation and who have
6 subsequently been unable to continue their businesses.

7 For example, some members obtained funding from SECAT, the Sacramento Emergency
8 Clean Air & Transportation Grant Program. After trading in older but still serviceable trucks to
9 upgrade to newer trucks, the members suffered the assessment of fines and penalties from
10 SECAT for not maintaining adequate mileage. Other companies that had not made similar
11 investments were able to underbid these members. When the business could no longer be
12 operated profitably, the members sold their trucks at a loss and still owed money to the lenders
13 who had helped them finance the new trucks.

14
15 **Admission Request No. 6**

16 Admit that the costs of complying with the Truck and Bus Regulation are not the only
17 costs that affect CDTOA motor carrier members' profits.

18
19 **Response to Admission Request No. 6**

20 Plaintiff objects to the request on the grounds of relevancy and hearsay. Plaintiff objects
21 to the term “profits” as vague.

22 Without waiving these objections, plaintiff denies the request to the extent it calls for
23 information that plaintiff does not possess. Plaintiff is a trade association comprised of members
24 who often compete against one another in their business dealings. In order to comply with
25 antitrust laws, CDTOA does not collect specific information regarding profits earned by
26 members, and actively discourages members from sharing such information with each other.
27 Plaintiff admits that the construction trucking industry is not immune from ordinary market
28 forces, and is generally aware that any number of factors can impact the economic livelihood of

1 its members, including, but not limited to, the costs of fuel, tires, vehicle maintenance, the
2 availability of work in the geographic areas in which are members are located, the number of
3 competitors in a particular market, and weather and other acts of god.

4
5 **Admission Request No. 7**

6 Admit that an out of state market exists for trucks owned by CDTOA motor carrier
7 members.

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9 **Response to Admission Request No. 7**

10 Plaintiff objects to the request on the grounds of relevancy and hearsay. Plaintiff objects
11 to the term “out of state market” as vague.

12 Without waiving these objections, plaintiff admits that its members could theoretically
13 attempt to sell their trucks to out-of-state purchasers, provided they are willing to bear the costs
14 of transporting the truck to wherever the purchaser may reside. Because the marketability of
15 trucks depends to a great deal on factors like the age of the truck, plaintiff denies that each and
16 every member has a realistic prospect of selling each and every one of their trucks at a price
17 sufficient to compensate them for the costs of the sale and transport and the concomitant loss of
18 the use of the truck.

19
20 **Admission Request No. 8**

21 Admit that the trucks owned and/or operated by CDTOA motor carrier members emit
22 diesel pollution.

23
24 **Response to Admission Request No. 8**

25 Plaintiff objects to the request on the grounds of relevancy and hearsay. Plaintiff objects
26 to the term “diesel pollution” as vague.

1 Without waiving these objections, plaintiff admits that it is aware that many members
2 regularly have Snap-Idle tests performed on their trucks to test for smoke opacity, and those
3 trucks routinely test far below the maximum opacity standards set by the Air Resources Board.
4

5 **Admission Request No. 9**

6 Admit that trucks owned and/or operated by CDTOA motor carrier members will emit
7 less diesel pollution if such trucks comply with the Truck and Bus Regulation.
8

9 **Response to Admission Request No. 9**

10 Plaintiff objects to the request on the grounds of relevancy and hearsay. Plaintiff objects
11 to the term “diesel pollution” as vague.

12 Without waiving these objections, plaintiff admits that replacing engines and or
13 retrofitting engines to comply with the rule is purportedly intended to reduce the total amount of
14 PM 2.5 and NOx emissions produced by the entire truck and bus population traveling in
15 California. Plaintiff admits that to the extent complying with the rule will require many
16 members to go out of business, there will likely be fewer CDTOA members driving construction
17 trucks, and thus there will likely be a reduction in total PM 2.5 and NOx emissions produced by
18 the construction trucking industry. Plaintiff denies that any reduction in total PM 2.5 and NOx
19 emissions by the construction trucking industry will necessarily be attributable to the
20 replacement or retrofitting of truck engines.
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THE LAW OFFICES OF BROOKS ELLISON

Dated: September 9, 2011

/s/ Patrick J. Whalen

PATRICK J. WHALEN
Attorneys for Plaintiff
CALIFORNIA DUMP TRUCK OWNERS
ASSOCIATION

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VERIFICATION

I am the Executive Director of the California Dump Truck Association, and I have read the foregoing Response to Defendant-Intervenor’s First Set of Requests for Admission and know its contents. The matters stated in the Response to Defendant-Intervenor’s First Set of Requests for Admission are true based on my own knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and based on my personal knowledge, and if called to testify to these facts, I would do so competently and truthfully.

Executed this ____ day of _____, 2011, in _____, California.

Lee Brown