

1 BROOKS ELLISON  
State Bar No. 122705  
2 PATRICK J. WHALEN  
State Bar No. 173489  
3 THE LAW OFFICES OF BROOKS ELLISON  
1725 Capitol Ave.  
4 Sacramento, CA 95811  
Telephone: (916) 448-2187  
5 Facsimile: (916) 448-5346  
E-mail: [attorneys@ellisonlawoffices.com](mailto:attorneys@ellisonlawoffices.com)

6 Attorneys for Plaintiff  
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 33 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 an  
9 interrogatory, plaintiff does not waive any objection which has been stated generally as to all  
10 interrogatories or to that specific interrogatory. These introductory comments and general  
11 objections shall be incorporated by reference as if fully set forth in all responses herein.

12 **RESPONSES TO INTERROGATORIES**

13 **Interrogatory No. 1**

14 State all facts in support of your allegation in paragraph 6 of your Complaint that  
15 "CDTOA members' primary source of livelihood is their truck."

16  
17 **Response to Interrogatory No. 1**

18 Approximately 60% of CDTOA members are owner-operators, meaning they own three  
19 or fewer trucks and are the sole or primary driver of those trucks. CDTOA members haul  
20 construction aggregate material to and from construction sites. The most common business  
21 model in the industry is for an owner-operator to make a substantial financial investment by  
22 purchasing a truck (usually with financing terms), and then seek to obtain sufficient work so as  
23 to enable them to not only pay the mortgage on and maintenance for their truck but also provide  
24 for food, shelter, and clothing for themselves and their families.

25 CDTOA members comprise a large segment of the "secondary truck market," meaning  
26 they purchase used trucks that have already been driven hundreds of thousands of miles by long  
27 haul truckers. While these trucks generally cost less than brand new trucks, the business model  
28 is such that CDTOA members depend on getting many years of use out of these trucks, and often

1 do not begin to realize a return on their initial investment until they have been able to use the  
2 truck for many years. Many CDTOA members take great care to maintain the trucks so as to  
3 extend their useful life.

4 If they are unable to drive their truck, their business collapses and they are unable to earn  
5 money, but still are responsible for the debt service on their truck mortgage.

6 Any unforeseen costs, such as those imposed by the Truck and Bus Regulation, impacts  
7 the ability of members to keep their business afloat financially. Depending on the particular  
8 economic situations of members, certain small cost increases (like periodic increases in fuel  
9 costs) can be adjusted for or at least temporarily weathered. However, for many of the small  
10 businesses owned and operated by CDTOA members, large costs such as those requiring the  
11 expenditure of tens of thousands of dollars to retrofit trucks or hundreds of thousands of dollars  
12 to replace trucks cannot be sustained.

13  
14 **Interrogatory No. 2**

15 State all facts in support of your allegation in paragraph 6 of your Complaint that "Most  
16 members purchase trucks to be used for decades..."

17  
18 **Response to Interrogatory No. 2**

19 CDTOA members comprise a large segment of the "secondary truck market," meaning  
20 they purchase used trucks that have already been driven hundreds of thousands of miles by long  
21 haul truckers. While these trucks generally cost less than brand new trucks, the business model  
22 is such that CDTOA members depend on getting many years of use out of these trucks, and often  
23 do not begin to realize a return on their initial investment until they have been able to use the  
24 truck for many years. Many CDTOA members take great care to maintain the trucks so as to  
25 extend their useful life.

26 By extending the years of service of the trucks, CDTOA members can use the trucks for  
27 years after they pay off the mortgage for the initial purchase of the trucks. Doing so allows them  
28

1 to generate capital for additional investment in their business, such as purchasing additional  
2 trailers or other equipment that will allow them to bid on a wider variety of construction jobs.

3 The business model is such that there is a high start-up cost for trucks and equipment to  
4 enter the industry. Many members who do not have large sums of liquid assets have to finance  
5 their initial investment. Thus, the business does not become profitable until those start-up costs  
6 are paid off.

7  
8 **Interrogatory No. 3**

9 State all facts in support of your allegation in paragraph 6 of your Complaint that "most  
10 [members] have lengthy mortgages on their trucks."

11  
12 **Response to Interrogatory No. 3**

13 CDTOA does not maintain or have access to the financial information of its member  
14 companies. However, the business model is such that there is a high start-up cost for trucks and  
15 equipment to enter the industry. Trucks and trailers and other equipment can cost many  
16 thousands of dollars, even when some of the equipment is purchased used. Many members who  
17 do not have large sums of liquid assets have to finance their initial investment.

18  
19 **Interrogatory No. 4**

20 State all facts in support of your allegation in paragraph 6 of your Complaint that "The  
21 trucks typically cost at least \$150,000 to purchase."

22  
23 **Response to Interrogatory No. 4**

24 New trucks themselves can cost as much as \$125,000.00. Please see Exhibit B to the  
25 Declaration of Fred Recupido previously filed in this case for a sample price quote for new  
26 trucks. To purchase trailers and dumping equipment it is not uncommon to spend another  
27 \$25,000.00.

1 **Interrogatory No. 5**

2 State all facts in support of your allegation in paragraph 6 of your Complaint that "[The  
3 trucks] have a useful life of several decades if maintained properly."  
4

5 **Response to Interrogatory No. 5**

6 A million miles is a milestone that diesel engines may reach or exceed prior to major  
7 overhaul requirements. Due to the lower mileage nature of construction material hauling (50,000  
8 miles per year) a typical dump truck can travel less than 1 million miles in a twenty year period.  
9 CDTOA members have based their business models on the ability to use their trucks for at least  
10 two decades (or more).  
11

12 **Interrogatory No. 6**

13 State all facts in support of your allegation in paragraph 7 of your Complaint that  
14 "available retrofit technology costs tens of thousands of dollars to purchase and install for each  
15 truck."  
16

17 **Response to Interrogatory No. 6**

18 Retrofit technology is expensive to purchase and install. As demonstrated in Exhibit A to  
19 the Declaration of Fred Recupido, one type of retrofit device can cost over \$18,000.00. As  
20 demonstrated in Exhibit B to the Declaration of Robert McClernon, retrofit devices for certain  
21 trucks can cost nearly \$45,000.00 to purchase and install.  
22

23 **Interrogatory No. 7**

24 State all facts in support of your allegation in paragraph 7 of your Complaint that "Most  
25 CDTOA members do not have the financial resources to purchase and install retrofit technology  
26 for their trucks, and will likely lose their business."  
27

28 ///

1 **Response to Interrogatory No. 7**

2 CDTOA does not maintain or have access to the financial information of its member  
3 companies. However, the cost of retrofitting trucks and/or replacing trucks can be tens or  
4 hundreds of thousands of dollars. Because these trucks tend to be older model trucks, their resale  
5 value does not justify the investment of such expensive retrofit technology, and financing for  
6 such an investment is difficult if not impossible. Because CDTOA members have made business  
7 decisions based on their ability to use their trucks for decades, many do not have the resources  
8 necessary to purchase all new trucks or install retrofit technology.

9  
10 **Interrogatory No. 8**

11 State all facts in support of your allegation in paragraph 8 of your Complaint that "Once  
12 installed, the retrofit technology makes the truck less efficient."

13  
14 **Response to Interrogatory No. 8**

15 Anecdotal stories now abound within the industry and from members related to retrofit  
16 and new engine technology that contributes to a variety of problems for those who have chosen  
17 this early compliance path. There are many stories shared at meetings, through blogs and  
18 publications which suggest that these devices contribute to engines becoming less reliable and  
19 less efficient. In some instances, the truck engine becomes less efficient (8% verified by most  
20 fleet owners) from a mileage perspective.

21 For example, as explained in the Declaration of Jay Pocock previously filed in this case,  
22 Mr. Pocock owns a 2009 truck that has factory-installed diesel particulate filter technology  
23 which makes it currently compliant with the Truck and Bus Regulation promulgated by the Air  
24 Resources Board. He also owns an older truck with a larger, less efficient engine than the 2009  
25 truck. He has driven both trucks under identical circumstances for significant periods of time,  
26 and has discovered that the 2009 truck gets less miles per gallon than the older truck with the  
27 larger engine. Normally, all other things being equal, he would expect a new truck with a  
28 smaller engine to have better fuel economy than an older truck with a larger engine. His

1 discovery that the converse is true reinforces his belief that the filtering technology required to  
2 make trucks compliant with the Truck and Bus Regulation results in decreased fuel efficiency.

3 In addition, his 2009 truck engine with a diesel particulate filter has also completely shut  
4 down while he has been driving it, due to an excess buildup of heat and pressure from the filter  
5 unit. This problem has never occurred with any of his trucks that are not equipped with the  
6 filtering technology.

7  
8 **Interrogatory No. 9**

9 State all facts in support of your allegation in paragraph 8 of your Complaint that "Once  
10 installed, the retrofit technology makes [the truck] less able to run for long periods of time."

11  
12 **Response to Interrogatory No. 9**

13 Mr. Pocock owns a 2009 truck engine with a diesel particulate filter that has completely  
14 shut down while he has been driving it, due to an excess buildup of heat and pressure from the  
15 filter unit. This problem has never occurred with any of his trucks that are not equipped with the  
16 filtering technology.

17  
18 **Interrogatory No. 10**

19 State all facts in support of your allegation in paragraph 8 of your Complaint that "Once  
20 installed, the retrofit technology makes the truck prone to mechanical breakdowns."

21  
22 **Response to Interrogatory No. 10**

23 Mr. Pocock owns a 2009 truck engine with a diesel particulate filter that has completely  
24 shut down while he has been driving it, due to an excess buildup of heat and pressure from the  
25 filter unit. This problem has never occurred with any of his trucks that are not equipped with the  
26 filtering technology.

27 ///

1 **Interrogatory No. 11**

2 State all facts in support of your allegation in paragraph 8 of your Complaint that "The  
3 vast majority of trucks that are retrofitted will still have to be ultimately replaced under the rule."  
4

5 **Response to Interrogatory No. 11**

6 Under the compliance schedule promulgated by the Air Resources Board, installing a PM  
7 retrofit filter merely delays the date upon which the engine must be replaced by a 2010 model  
8 year engine. While the Truck and Bus Regulation speaks for itself on this issue, the result is that  
9 CDTOA members who do manage to come up with the money to purchase and install a retrofit  
10 device on their trucks will merely be delaying the date upon which they have to entirely replace  
11 their engines.  
12

13 **Interrogatory No. 12**

14 State all facts in support of your allegation in paragraph 8 of your Complaint that  
15 "Retrofitting the trucks only delays the date upon which replacement is mandated."  
16

17 **Response to Interrogatory No. 12**

18 Under the compliance schedule promulgated by the Air Resources Board, installing a PM  
19 retrofit filter merely delays the date upon which the engine must be replaced by a 2010 model  
20 year engine. While the Truck and Bus Regulation speaks for itself on this issue, the result is that  
21 CDTOA members who do manage to come up with the money to purchase and install a retrofit  
22 device on their trucks will merely be delaying the date upon which they have to entirely replace  
23 their engines.  
24

25 **Interrogatory No. 13**

26 State all facts in support of your allegation in paragraph 9 of your Complaint that  
27 "CDTOA members have based their business on the ability to use their trucks for decades to  
28 come."

1  
2 **Response to Interrogatory No. 13**

3 CDTOA members comprise a large segment of the “secondary truck market,” meaning  
4 they purchase used trucks that have already been driven hundreds of thousands of miles by long  
5 haul truckers. While these trucks generally cost less than brand new trucks, the business model  
6 is such that CDTOA members depend on getting many years of use out of these trucks, and often  
7 do not begin to realize a return on their initial investment until they have been able to use the  
8 truck for many years. Many CDTOA members take great care to maintain the trucks so as to  
9 extend their useful life.

10 A million miles is a milestone that diesel engines may reach or exceed prior to major  
11 overhaul requirements. Due to the lower mileage nature of construction material hauling (50,000  
12 miles per year) a typical dump truck can travel less than 1 million miles in a twenty year period.  
13 CDTOA members have based their business models on the ability to use their trucks for at least  
14 two decades (or more).

15 By extending the years of service of the trucks, CDTOA members can use the trucks for  
16 years after they pay off the mortgage for the initial purchase of the trucks. Doing so allows them  
17 to generate capital for additional investment in their business, such as purchasing additional  
18 trailers or other equipment that will allow them to bid on a wider variety of construction jobs.

19 The business model is such that there is a high start-up cost for trucks and equipment to  
20 enter the industry. Many members who do not have large sums of liquid assets have to finance  
21 their initial investment. Thus, the business does not become profitable until those start-up costs  
22 are paid off.

23  
24 **Interrogatory No. 14**

25 State all facts in support of your allegation in paragraph 9 of your Complaint that  
26 "Because the rule requires replacement of otherwise perfectly useful trucks much earlier than  
27 would otherwise be required, most CDTOA members will be unable to continue their business."  
28

1 **Response to Interrogatory No. 14**

2 But for the Truck and Bus Regulation at issue in this case, the trucks owned and operated  
3 by CDTOA members would be serviceable for years to come, if properly maintained. Many  
4 CDTOA members take great care to maintain the trucks so as to extend their useful life. By  
5 extending the years of service of the trucks, CDTOA members can use the trucks for years after  
6 they pay off the mortgage for the initial purchase of the trucks.

7  
8 **Interrogatory No. 15**

9 State all facts in support of your allegation in paragraph 10 of your Complaint that "Not  
10 only will CDTOA members be prohibited from purchasing replacement trucks due to a lack of  
11 financial resources, they will be prohibited from earning any income at all because the rule  
12 prohibits them from operating their current trucks."

13  
14 **Response to Interrogatory No. 15**

15 CDTOA members who are unable to spend the money to either retrofit or replace their  
16 trucks will be unable to continue operating their businesses because, commencing on January 1,  
17 2012, the Truck and Bus Regulation prohibits the operation of the trucks unless they have either  
18 been retrofitted or replaced with a 2010 model year engine. CDTOA members that are  
19 prohibited from operating their trucks will be unable to earn income, because their businesses  
20 and thus their income depend on them being able to operate their trucks.

21  
22 **Interrogatory No. 16**

23 State all facts in support of your allegation in paragraph 11 of your Complaint that "The  
24 rule also greatly diminished the resale value of their current trucks, precisely because they cannot  
25 be operated on California roadways."

26 ///

27 ///

1 **Response to Interrogatory No. 16**

2 The resale value of trucks currently owned by CDTOA members depends on traditional  
3 market forces of supply and demand. Because of the Truck and Bus Regulation at issue in this  
4 case, most older trucks that are not retrofitted will not be allowed to operate in California.  
5 Consequently, a large number of these trucks have been and continue to be put up for sale. At  
6 the same time as the supply of these trucks on the market increases, the demand is decreasing,  
7 because many purchasers are also aware of the Truck and Bus Regulation. Consequently, the  
8 only real market for older California trucks is out of state. Selling trucks out of state often  
9 involves additional costs to the seller, like marketing and transportation of the truck to a willing  
10 buyer, which further decreases their net resale value.

11  
12 **Interrogatory No. 17**

13 State all facts in support of your allegation in paragraph 11 of your Complaint that "As a  
14 result, CDTOA members will be able to sell their current trucks for only a fraction of the balance  
15 they owe, and will default on their truck mortgages."

16  
17 **Response to Interrogatory No. 17**

18 Because the resale value of the trucks has been artificially decreased by the imposition of  
19 the Truck and Bus Regulation at issue in this case, CDTOA members who still owe money on  
20 their trucks will be placed in an impossible dilemma. They will not be able to continue to drive  
21 their trucks under the Truck and Bus Regulation without a substantial investment of money to  
22 retrofit them. They will not be able to earn money without driving those trucks. Without  
23 income, they will be unable to continue to pay the mortgages on those trucks. They will be  
24 unable to sell them for what they owe because the resale value is so depressed.

25 Most financing arrangements in the truck industry are not "non-recourse" as is the case in  
26 residential mortgage lending. This means that, even if the trucks are repossessed by the lender  
27 for nonpayment, the truck owner is responsible to the lender for the difference between the  
28

1 amount owed and the amount the truck garners at an auction sale. As a result, many CDTOA  
2 members will be forced into bankruptcy.

3  
4 **Interrogatory No. 18**

5 State all facts in support of your allegation in paragraph 12 of your Complaint that "The  
6 only way CDTOA members will be able to comply with the rule will be to expend tens of  
7 thousands if not hundreds of thousands of dollars per truck."

8  
9 **Response to Interrogatory No. 18**

10 Retrofit technology is expensive to purchase and install. As demonstrated in Exhibit A to  
11 the Declaration of Fred Recupido, one type of retrofit device can cost over \$18,000.00. As  
12 demonstrated in Exhibit B to the Declaration of Robert McClernon, retrofit devices for certain  
13 trucks can cost nearly \$45,000.00 to purchase and install. New trucks themselves can cost as  
14 much as \$125,000.00. Please see Exhibit B to the Declaration of Fred Recupido previously filed  
15 in this case for a sample price quote for new trucks.

16  
17 **Interrogatory No. 19**

18 State all facts in support of your allegation in paragraph 13 of your Complaint that "For  
19 those members who are not able to replace or retrofit their trucks, their only option may be to  
20 relocate their trucks outside of California, which will necessarily affect their routes."

21  
22 **Response to Interrogatory No. 19**

23 Commencing on January 1, 2012, The Truck and Bus Regulation at issue in this case  
24 prohibits the operation in California of trucks that are not either retrofitted or replaced. Some  
25 CDTOA members may elect to continue to do business, but do so outside of California. To the  
26 extent they are able to relocate their businesses, prohibiting them from driving within California  
27 necessarily will affect the routes they travel.

1 **Interrogatory No. 20**

2 State all facts in support of your allegation in paragraph 14 of your Complaint that "The  
3 high cost of the retrofit technology and the limitations it places on the utility of the trucks will  
4 impact the level of service that CDTOA members are able to provide."  
5

6 **Response to Interrogatory No. 20**

7 Retrofit technology is expensive to purchase and install. As demonstrated in Exhibit A to  
8 the Declaration of Fred Recupido, one type of retrofit device can cost over \$18,000.00. As  
9 demonstrated in Exhibit B to the Declaration of Robert McClernon, retrofit devices for certain  
10 trucks can cost nearly \$45,000.00 to purchase and install. In addition to the cost, the decrease in  
11 efficiency caused by the retrofit devices will make it more costly to operate the trucks.

12 Most CDTOA members operate their businesses on extremely low profit margins. Any  
13 increase in the costs they incur in operating their trucks will necessarily impact the prices they  
14 must charge to stay in business, as well as the level, frequency, and quality of service they are  
15 able to provide to their customers, and still stay in business. CDTOA members cannot simply  
16 absorb the cost of purchasing and installing the retrofit technology without it dramatically  
17 impacting their prices and services.  
18

19 **Interrogatory No. 21**

20 State all facts in support of your allegation in paragraph 17 of your Complaint that "The  
21 Truck and Bus Regulation promulgated by ARB directly impacts the price... of the motor carrier  
22 members of CDTOA, and is therefore preempted by federal law..."  
23

24 **Response to Interrogatory No. 21**

25 Retrofit technology is expensive to purchase and install. As demonstrated in Exhibit A to  
26 the Declaration of Fred Recupido, one type of retrofit device can cost over \$18,000.00. As  
27 demonstrated in Exhibit B to the Declaration of Robert McClernon, retrofit devices for certain  
28 trucks can cost nearly \$45,000.00 to purchase and install. In addition to the cost, the decrease in

1 efficiency caused by the retrofit devices will make it more costly to operate the trucks. New  
2 trucks themselves can cost as much as \$125,000.00. Please see Exhibit B to the Declaration of  
3 Fred Recupido previously filed in this case for a sample price quote for new trucks.

4 Most CDTOA members operate their businesses on extremely low profit margins. Any  
5 increase in the costs they incur in operating their trucks will necessarily impact the prices they  
6 must charge to stay in business, as well as the level, frequency, and quality of service they are  
7 able to provide to their customers, and still stay in business. CDTOA members cannot simply  
8 absorb the cost of purchasing and installing the retrofit technology without it dramatically  
9 impacting their prices and services.

10  
11 **Interrogatory No. 22**

12 State all facts in support of your allegation in paragraph 17 of your Complaint that "The  
13 Truck and Bus Regulation promulgated by ARB directly impacts the... route..of the motor carrier  
14 members of CDTOA, and is therefore preempted by federal law..."

15  
16 **Response to Interrogatory No. 22**

17 Retrofit technology is expensive to purchase and install. As demonstrated in Exhibit A to  
18 the Declaration of Fred Recupido, one type of retrofit device can cost over \$18,000.00. As  
19 demonstrated in Exhibit B to the Declaration of Robert McClernon, retrofit devices for certain  
20 trucks can cost nearly \$45,000.00 to purchase and install. In addition to the cost, the decrease in  
21 efficiency caused by the retrofit devices will make it more costly to operate the trucks. New  
22 trucks themselves can cost as much as \$125,000.00. Please see Exhibit B to the Declaration of  
23 Fred Recupido previously filed in this case for a sample price quote for new trucks.

24 Most CDTOA members operate their businesses on extremely low profit margins. Any  
25 increase in the costs they incur in operating their trucks will necessarily impact the prices they  
26 must charge to stay in business, as well as the level, frequency, and quality of service they are  
27 able to provide to their customers, and still stay in business. CDTOA members cannot simply  
28

1 absorb the cost of purchasing and installing the retrofit technology without it dramatically  
2 impacting their prices and services.

3 The rule will directly impact the routes that motor carriers of property take, because the  
4 retrofit technology limits the length of time trucks can run continuously. As a result, those  
5 CDTOA members who opt to retrofit their trucks may have to choose different routes in order to  
6 accommodate the more limited hours of service of their trucks. In addition, to the extent  
7 CDTOA members will be forced to limit the services they can provide to their customers, they  
8 may have to refrain from bidding on certain jobs based on geography. As a result, the routes  
9 CDTOA members drive will be impacted.

10  
11 **Interrogatory No. 23**

12 State all facts in support of your allegation in paragraph 17 of your Complaint that "The  
13 truck and Bus Regulation promulgated by ARB directly impacts the... service of the motor  
14 carrier members of CDTOA, and is therefore preempted by federal law..."

15  
16 **Response to Interrogatory No. 23**

17 Retrofit technology is expensive to purchase and install. As demonstrated in Exhibit A to  
18 the Declaration of Fred Recupido, one type of retrofit device can cost over \$18,000.00. As  
19 demonstrated in Exhibit B to the Declaration of Robert McClernon, retrofit devices for certain  
20 trucks can cost nearly \$45,000.00 to purchase and install. In addition to the cost, the decrease in  
21 efficiency caused by the retrofit devices will make it more costly to operate the trucks. New  
22 trucks themselves can cost as much as \$125,000.00. Please see Exhibit B to the Declaration of  
23 Fred Recupido previously filed in this case for a sample price quote for new trucks.

24 Most CDTOA members operate their businesses on extremely low profit margins. Any  
25 increase in the costs they incur in operating their trucks will necessarily impact the prices they  
26 must charge to stay in business, as well as the level, frequency, and quality of service they are  
27 able to provide to their customers, and still stay in business. CDTOA members cannot simply  
28

1 absorb the cost of purchasing and installing the retrofit technology without it dramatically  
2 impacting their prices and services.

3  
4 **Interrogatory No. 24**

5 Identify each harm that CDTOA members will suffer from compliance with the Truck  
6 and Bus Regulation. For each harm, identify the nature of the harm that CDTOA members will  
7 incur and describe how the Truck and Bus Regulation causes or contributes to such harm.

8  
9 **Response to Interrogatory No. 24**

10 It is impossible to detail precisely each harm that will occur, because the harms will occur in  
11 the future, and CDTOA does not maintain or have access to the financial records of each of its  
12 member companies. Accordingly, CDTOA objects to the interrogatory to the extent it calls for  
13 speculation about information that does not yet exist and in any event is outside the knowledge  
14 that CDTOA has or will have. However, the list of likely harms includes but is not limited to the  
15 following:

- 16 • Loss of use of trucks
- 17 • Loss of income
- 18 • Loss of businesses operated for years if not generations
- 19 • Loss of homes
- 20 • Bankruptcy
- 21 • Loss of investment capital by those who are able to replace or retrofit their trucks
- 22 • Opportunity cost of diverting capital to replace/retrofit trucks rather than expand the  
23 business

24 **Interrogatory No. 25**

25 Explain the impact, including quantifying the financial impact, of any harm identified in  
26 response to Interrogatory No. 24.

27 ///

28 ///

1 **Response to Interrogatory No. 25**

2 It is impossible to detail precisely each harm they will occur, because the harms will occur in  
3 the future, and CDTOA does not maintain or have access to the financial records of each of its  
4 member companies. Accordingly, CDTOA objects to the interrogatory to the extent it calls for  
5 speculation about information that does not yet exist and in any event is outside the knowledge  
6 that CDTOA has or will have. CDTOA also objects to the interrogatory to the extent it is not  
7 discrete, and incorporates an earlier interrogatory. CDTOA also objects to the interrogatory  
8 because it seeks information that is neither relevant nor likely to lead to admissible evidence.

9 However, the likely financial impacts include but are not limited to the following:

- 10 • Expenditure of tens of thousands of dollars in truck retrofit costs
- 11 • Expenditure of hundreds of thousands of dollars in truck replacement costs
- 12 • Unknown costs involved in layoffs of hundreds of employees
- 13 • Loss of hundreds of thousands of dollars in businesses that are either completely  
14 destroyed or significantly curtailed
- 15 • Unknown losses, potentially in the millions of dollars, in collective revenue of CDTOA  
16 members

16 **Interrogatory No. 26**

17 Identify any CDTOA members that are "motor carriers" as that term is used in 49 U.S.C.  
18 section 14501(c).

19  
20 **Response to Interrogatory No. 26**

21 The terms used in 49 U.S.C. § 14501 are defined in § 13102, which defines “[m]otor  
22 carrier” as “a person providing motor vehicle transportation for compensation.” 49 U.S.C. §  
23 13102(14). Any CDTOA member who transports construction material is therefore a motor  
24 carrier under federal law. To the extent this interrogatory is requesting all, or a portion of,  
25 CDTOA’s membership list, CDTOA objects because it seeks information that is neither relevant  
26 nor likely to lead to admissible evidence.

27 ///

1 **Interrogatory No. 27**

2 Identify the number of trucks belonging to CDTOA members that are subject to the  
3 Truck and Bus Regulation.

4  
5 **Response to Interrogatory No. 27**

6 CDTOA does not keep an exact count of the numbers of trucks owned by its members,  
7 and the data CDTOA possesses may not be accurate because it is out of date and depends on  
8 voluntary reporting by members. The amount of annual dues charged by CDTOA to members is  
9 based on a graduated scale depending on the number of trucks owned. The highest step on this  
10 scale is for members with 10 or more trucks. CDTOA is aware of some member companies that  
11 own more than 400 trucks, but these members are still categorized in the “10 or more trucks”  
12 category.

13 Based on the membership dues charged by members according to the number of trucks,  
14 CDTOA estimates there are at more than 2,049 trucks belonging to CDTOA members. This  
15 number is likely significantly lower than the actual total of trucks belonging to CDTOA  
16 members, because of the fact that larger members tend to have many hundreds of trucks, but are  
17 still categorized in the “10 or more trucks” category. CDTOA does not track the model year of  
18 the trucks, and thus it is impossible to say how many of the trucks belonging to CDTOA  
19 members are subject to the Truck and Bus Regulation.

20  
21 **Interrogatory No. 28**

22 Identify any and all benefits incurred by CDTOA motor carrier members that comply  
23 with the Truck and Bus regulation.

24  
25 **Response to Interrogatory No. 28**

26 CDTOA is unaware of any such benefits.

27 ///

1 **Interrogatory No. 29**

2 Identify and quantify any and all costs incurred by CDTOA motor carrier members in  
3 relation to complying with the Truck and Bus Regulation.  
4

5 **Response to Interrogatory No. 29**

6 CDTOA does not maintain or have access to the financial information of its member  
7 companies. CDTOA does not know how many members have already invested capital to retrofit  
8 or replace their trucks so as to comply with the rule, although it is aware that some members  
9 have done so. However, to the best of CDTOA's knowledge, representative price quotes for  
10 replacing and retrofitting trucks has been provided in the declarations already filed in this case.

11 New trucks themselves can cost as much as \$125,000.00. Please see Exhibit B to the  
12 Declaration of Fred Recupido previously filed in this case for a sample price quote for new  
13 trucks. Retrofit technology is expensive to purchase and install. As demonstrated in Exhibit A  
14 to the Declaration of Fred Recupido, one type of retrofit device can cost over \$18,000.00. As  
15 demonstrated in Exhibit B to the Declaration of Robert McClernon, retrofit devices for certain  
16 trucks can cost nearly \$45,000.00 to purchase and install.  
17

18 **Interrogatory No. 30**

19 Identify and quantify any and all costs incurred by CDTOA motor carrier members in  
20 carrying out their business in the absence of the Truck and Bus Regulation, including but not  
21 limited to fuel and/or tire costs.  
22

23 **Response to Interrogatory No. 30**

24 CDTOA objects to this interrogatory because it calls for trade secrets or other  
25 confidential business information possessed by its member companies. CDTOA also objects  
26 because it seeks information that is neither relevant nor likely to lead to admissible evidence. In  
27 any event, in order to comply with antitrust laws, CDTOA does not collect specific information  
28

1 relating to costs incurred by its members, and actively discourages members from sharing such  
2 information with each other.

3  
4 **Interrogatory No. 31**

5 By what percentage will CDTOA motor carrier members need to raise their prices in  
6 order to cover the costs attributable to compliance with the Truck and Bus Regulation? State all  
7 facts in support of your answer.

8  
9 **Response to Interrogatory No. 31**

10 CDTOA objects to this interrogatory because it calls for trade secrets or other  
11 confidential business information possessed by its member companies. CDTOA also objects  
12 because it seeks information that is neither relevant nor likely to lead to admissible evidence. In  
13 any event, in order to comply with antitrust laws, CDTOA does not collect specific price  
14 information charged by members, and actively discourages members from sharing such  
15 information with each other.

16 However, because the size of CDTOA member companies varies significantly, from  
17 single-truck owners to companies with fleets of hundreds of trucks, their response to the  
18 increased costs imposed by the Truck and Bus Regulation will likely vary. Some members will  
19 likely attempt to raise prices to defray the costs of compliance. Others may likely be forced out  
20 of business entirely because they will not have sufficient customers or credit to pay for  
21 compliance.

22  
23 **Interrogatory No. 32**

24 State all facts with respect to the availability of government funds, subsidies, or grant  
25 programs that were or are available to CDTOA motor carrier members that would defray the  
26 costs associated with complying with the Truck and Bus Regulation.

27 ///

1 **Response to Interrogatory No. 32**

2 CDTOA objects to this interrogatory because it calls for trade secrets or other  
3 confidential business information possessed by its member companies. CDTOA also objects  
4 because it seeks information that is neither relevant nor likely to lead to admissible evidence.  
5 Furthermore, it is likely that defendant is the party more likely to have more accurate information  
6 on the number of industry members who have been recipients of government funds, subsidies, or  
7 grant programs, and plaintiff therefore objects that collecting such information would be overly  
8 burdensome.

9 Without waiving these objections, CDTOA is aware that some members obtained funding  
10 from SECAT, the Sacramento Emergency Clean Air & Transportation Grant Program. After  
11 trading in older but still serviceable trucks to upgrade to newer trucks, the members suffered the  
12 assessment of fines and penalties from SECAT for not maintaining adequate mileage. Other  
13 companies that had not made similar investments were able to underbid these members. When  
14 the business could no longer be operated profitably, the members sold their trucks at a loss and  
15 still owed money to the lenders who had helped them finance the new trucks.

16  
17 **Interrogatory No. 33**

18 State all facts with respect to any government funds, subsidies, or grant programs utilized  
19 by CDTOA members to help defray the costs associated with complying with the Truck and Bus  
20 Regulation.

21  
22 **Response to Interrogatory No. 33**

23 CDTOA objects to this interrogatory because it calls for trade secrets or other  
24 confidential business information possessed by its member companies. CDTOA also objects  
25 because it seeks information that is neither relevant nor likely to lead to admissible evidence.

26 Without waiving these objects, CDTOA is aware that some members obtained funding  
27 from SECAT, the Sacramento Emergency Clean Air & Transportation Grant Program. After  
28 trading in older but still serviceable trucks to upgrade to newer trucks, the members suffered the

1 assessment of fines and penalties from SECAT for not maintaining adequate mileage. Other  
2 companies that had not made similar investments were able to underbid these members. When  
3 the business could no longer be operated profitably, the members sold their trucks at a loss and  
4 still owed money to the lenders who had helped them finance the new trucks.

5  
6 **Interrogatory No. 34**

7 Identify the range in age of the vehicles owned and/or operated by CDTOA members and  
8 that are subject to the Truck and Bus Regulation.

9  
10 **Response to Interrogatory No. 34**

11 CDTOA does not track the model year of the trucks owned by its members, and thus it is  
12 impossible to say with any precision how many of the trucks belonging to CDTOA members are  
13 subject to the Truck and Bus Regulation. However, CDTOA is informed and believes that the  
14 vast majority of the trucks owned by its members are pre-2010 model year engines and thus will  
15 require retrofit and/or replacement under the Truck and Bus Regulation.

16  
17 **Interrogatory No. 35**

18 State all facts with respect to the number of years which the Truck and Bus Regulation  
19 accelerates turn over or replacement of CDTOA members' trucks.

20  
21 **Response to Interrogatory No. 35**

22 CDTOA objects to the interrogatory because it seeks information that is neither relevant  
23 nor likely to lead to admissible evidence.

24 However, because each CDTOA member maintains their trucks differently, the number  
25 of useful years of service varies from member to member and from truck to truck. The trucks  
26 currently owned by CDTOA members may have from 1 to 20 remaining years of useful service.  
27 However, effective January 1, 2012, all of those trucks will cease to be operational without  
28

1 substantial capital investment that would not otherwise be required without the Truck and Bus  
2 Regulation.

3  
4 **Interrogatory No. 36**

5 Identify all factors or variables that contribute to how CDTOA members subject to the  
6 Truck and Bus Regulation establish their prices.

7  
8 **Response to Interrogatory No. 36**

9 CDTOA objects to this interrogatory because it calls for trade secrets or other  
10 confidential business information possessed by its member companies. CDTOA also objects  
11 because it seeks information that is neither relevant nor likely to lead to admissible evidence. In  
12 any event, in order to comply with antitrust laws, CDTOA does not collect specific price  
13 information charged by members, and actively discourages members from sharing such  
14 information with each other.

15  
16 **Interrogatory No. 37**

17 Identify all factors or variables that contribute to how CDTOA motor carrier members  
18 subject to the Truck and Bus Regulation establish their routes.

19  
20 **Response to Interrogatory No. 37**

21 CDTOA objects to this interrogatory because it calls for trade secrets or other  
22 confidential business information possessed by its member companies. CDTOA also objects  
23 because it seeks information that is neither relevant nor likely to lead to admissible evidence. In  
24 any event, in order to comply with antitrust laws, CDTOA does not collect specific route  
25 information maintained by members, and actively discourages members from sharing such  
26 information with each other.

27 ///

1 **Interrogatory No. 38**

2 Identify all factors or variables that contribute to how CDTOA motor carrier members  
3 subject to the Truck and Bus Regulation establish their services.  
4

5 **Response to Interrogatory No. 38**

6 CDTOA objects to this interrogatory because it calls for trade secrets or other  
7 confidential business information possessed by its member companies. CDTOA also objects  
8 because it seeks information that is neither relevant nor likely to lead to admissible evidence. In  
9 any event, in order to comply with antitrust laws, CDTOA does not collect specific information  
10 relating to the services provided by members, and actively discourages members from sharing  
11 such information with each other.  
12

13 **Interrogatory No. 39**

14 State all facts that relate or refer to any and all analyses, studies, reviews, summaries, or  
15 any other type of assessment of the Truck and Bus Regulation performed, or requested to be  
16 performed, on behalf of you or your members or at the request of you or your members.  
17

18 **Response to Interrogatory No. 39**

19 The Air Resources Board has prepared numerous studies and analyses of the Truck and  
20 Bus Regulation, and those documents are already in possession of the defendants. Sierra  
21 Research, Inc. prepared a study entitled “Review of CARB On-Road Heavy-Duty Diesel  
22 Emissions Inventory,” Report No. SR2010-11-01, for the Ad Hoc Working Group, which in turn  
23 provided the report to the Air Resources Board.  
24

25 **Interrogatory No. 40**

26 Identify any person who provided or was requested to provide information, or was  
27 contacted or consulted with respect to your responses to these Interrogatories, or the concurrently  
28 served Requests for Production or Requests for Admission, and for each person specify each

1 Interrogatory, Request for Production and/or Request for Admission for which he or she  
2 contributed information.

3  
4 **Response to Interrogatory No. 40**

5 CDTOA objects to the extent the interrogatory calls for privileged information. CDTOA  
6 also objects because it seeks information that is neither relevant nor likely to lead to admissible  
7 evidence.

8  
9 **Interrogatory No. 41**

10 Identify CDTOA motor carrier members' competitors.

11  
12 **Response to Interrogatory No. 41**

13 CDTOA objects to the interrogatory because it seeks information that is neither relevant  
14 nor likely to lead to admissible evidence. CDTOA also objects to this interrogatory because it  
15 calls for trade secrets or other confidential business information possessed by its member  
16 companies. CDTOA also objects because the interrogatory is vague as to the term  
17 "competitors," and to the extent it calls for information relating to all CDTOA members, the  
18 request is overly burdensome.

19  
20 **Interrogatory No. 42**

21 State all facts that relate or refer to the effect of the Truck and Bus Regulation on the  
22 ability of CDTOA members to compete with its competitors, as "competitor" is defined in  
23 Interrogatory No. 41.

24  
25 **Response to Interrogatory No. 42**

26 CDTOA objects to the interrogatory because it seeks information that is neither relevant  
27 nor likely to lead to admissible evidence. CDTOA also objects to the interrogatory to the extent  
28 it is not discrete, and incorporates an earlier interrogatory. CDTOA also objects to this

1 interrogatory because it calls for trade secrets or other confidential business information  
2 possessed by its member companies. CDTOA also objects because the interrogatory is vague as  
3 to the term “competitors,” and to the extent it calls for information relating to all CDTOA  
4 members, the request is overly burdensome.

5  
6 **Interrogatory No. 43**

7 State all facts that describe the effect of the economic conditions from 2008 to the present  
8 on CDTOA motor carrier members' prices, including but no limited to, the effect of any decline  
9 in home building and/or public works projects.

10  
11 **Response to Interrogatory No. 43**

12 CDTOA objects to the interrogatory because it seeks information that is neither relevant  
13 nor likely to lead to admissible evidence. CDTOA also objects to this interrogatory because it  
14 calls for trade secrets or other confidential business information possessed by its member  
15 companies. CDTOA also objects because the interrogatory calls for specific price information  
16 for each CDTOA member, and is therefore overly burdensome.

17  
18 **Interrogatory No. 44**

19 State all facts that describe the effect of the economic conditions from 2008 to the present  
20 on CDTOA motor carrier members' routes, including but not limited to, the effect of any decline  
21 in home building and/or public works projects.

22  
23 **Response to Interrogatory No. 44**

24 CDTOA objects to the interrogatory because it seeks information that is neither relevant  
25 nor likely to lead to admissible evidence. CDTOA also objects to this interrogatory because it  
26 calls for trade secrets or other confidential business information possessed by its member  
27 companies. CDTOA also objects because the interrogatory calls for specific route information  
28 for each CDTOA member, and is therefore overly burdensome.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Interrogatory No. 45**

State all facts that describe the effect of the economic conditions from 2008 to the present on CDTOA motor carrier members' services, including but not limited to, the effect of any decline in home building and /or public works projects.

**Response to Interrogatory No. 45**

CDTOA objects to the interrogatory because it seeks information that is neither relevant nor likely to lead to admissible evidence. CDTOA also objects to this interrogatory because it calls for trade secrets or other confidential business information possessed by its member companies. CDTOA also objects because the interrogatory calls for specific service information for each CDTOA member, and is therefore overly burdensome.

**Interrogatory No. 46**

State all facts that describe the effect of the economic conditions from 2008 to the present on CDTOA motor carrier members profits, including but not limited to, the effect of any decline in home building and/or public works projects.

**Response to Interrogatory No. 46**

CDTOA objects to the interrogatory because it seeks information that is neither relevant nor likely to lead to admissible evidence. CDTOA also objects to this interrogatory because it calls for trade secrets or other confidential business information possessed by its member companies. CDTOA also objects because the interrogatory calls for specific profit information for each CDTOA member, and is therefore overly burdensome.

**Interrogatory No 47**

Quantify the percentage of CDTOA motor carrier members that conduct business outside of California.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Response to Interrogatory No. 47**

CDTOA objects to the interrogatory because it seeks information that is neither relevant nor likely to lead to admissible evidence. CDTOA also objects to this interrogatory because it calls for trade secrets or other confidential business information possessed by its member companies.

Notwithstanding these objections, CDTOA does not maintain or have access to the financial information of its member companies. However, CDTOA is aware that some members whose businesses are located near the California border do transact business in other states. CDTOA is also aware that some larger members are multistate businesses. However, CDTOA does not know how much of their business is conducted in other states. However, the vast majority of CDTOA members are owner-operators who own three or fewer trucks, and who are not equipped to operate in multiple states.

**Interrogatory No. 48**

For those motor carrier member identified in response to Interrogatory No. 47, specify what percentage of business each motor carrier conducts outside of California.

**Response to Interrogatory No. 48**

CDTOA objects to the interrogatory because it seeks information that is neither relevant nor likely to lead to admissible evidence. CDTOA also objects to this interrogatory because it calls for trade secrets or other confidential business information possessed by its member companies.

**Interrogatory No. 49**

State all facts that relate or refer to any efforts undertaken by CDTOA members to retrofit their trucks in compliance with the Truck and Bus Regulation.

1 **Response to Interrogatory No. 49**

2 CDTOA objects to the interrogatory because it seeks information that is neither relevant  
3 nor likely to lead to admissible evidence. CDTOA also objects to this interrogatory because it  
4 calls for trade secrets or other confidential business information possessed by its member  
5 companies.

6  
7 **Interrogatory No. 50**

8 State all facts that relate or refer to how the retrofit technology that can be utilized by  
9 CDTOA members to comply with the Truck or Bus Regulation impacts motor carrier prices,  
10 routes or services.

11  
12 **Response to Interrogatory No. 50**

13 Retrofit technology is expensive to purchase and install. As demonstrated in Exhibit A to  
14 the Declaration of Fred Recupido, one type of retrofit device can cost over \$18,000.00. As  
15 demonstrated in Exhibit B to the Declaration of Robert McClernon, retrofit devices for certain  
16 trucks can cost nearly \$45,000.00 to purchase and install. Most CDTOA members operate their  
17 businesses on extremely low profit margins. Any increase in the costs they incur in operating  
18 their trucks will necessarily impact the prices they must charge to stay in business, as well as the  
19 level, frequency, and quality of service they are able to provide to their customers, and still stay  
20 in business. CDTOA members cannot simply absorb the cost of purchasing and installing the  
21 retrofit technology without it dramatically impacting their prices, routes, and services.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 Interrogatories and know its contents. The matters stated in the Response to Defendant-Intervenor’s First Set of Interrogatories 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