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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  
21 NATURAL RESOURCES DEFENSE  
COUNCIL, INC.,

22 Defendant-Intervenor  
23

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

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

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 34 of the federal rules of Civil Procedure, Plaintiff provides the  
2 following written responses to the document requests 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 document requests. Plaintiff reserves all objections as to competency,  
8 relevancy, materiality, privilege, or admissibility of all information provided. By providing a  
9 response to a document request, plaintiff does not waive any objection which has been stated  
10 generally as to all document requests, or to that specific document request. These introductory  
11 comments and general objections shall be incorporated by reference as if fully set forth in all  
12 responses herein.

13 All responsive documents have been copied onto electronic media and are attached to this  
14 response.

15 **RESPONSES TO DOCUMENT REQUESTS**

16 **Document Request No. 1**

17 Any documents that demonstrate, discuss, or make reference to the number of trucks  
18 belonging to CDTOA members that are subject to the Truck and Bus Regulation.

19 **Response to Document Request No. 1**

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21 and the data CDTOA possesses may not be accurate because it is out of date and depends on  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

27 Based on the membership dues charged by members according to the number of trucks,  
28 CDTOA estimates there are at more than 2,049 trucks belonging to CDTOA members. This

1 number is likely significantly lower than the actual total of trucks belonging to CDTOA  
2 members, because of the fact that larger members tend to have many hundreds of trucks, but are  
3 still categorized in the “10 or more trucks” category. CDTOA does not track the model year of  
4 the trucks, and thus it is impossible to say how many of the trucks belonging to CDTOA  
5 members are subject to the Truck and Bus Regulation.

6 The attached spreadsheet was compiled based on current membership data.

7  
8 **Document Request No. 2**

9 Any analyses, studies, reviews, summaries, or any other type of assessment of the Truck  
10 and Bus Regulation performed, on behalf of you or your members or at the request of you or  
11 your members.

12 **Response to Document Request No. 2**

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

18 A copy of that study is attached. In addition, emails referencing that study are attached.

19  
20 **Document Request No. 3**

21 Any documents that demonstrate, quantify, analyze, discuss, or make reference to the  
22 harm incurred by CDTOA members because of the Truck and Bus Regulation.

23 **Response to Document Request No. 3**

24 It is impossible to detail precisely each harm that will occur, because the harms will occur  
25 in the future, and CDTOA does not maintain or have access to the financial records of each of its  
26 member companies. Accordingly, CDTOA objects to the interrogatory to the extent it calls for  
27 speculation about information that does not yet exist and in any event is outside the knowledge  
28

1 that CDTOA has or will have. However, the list of likely harms includes but is not limited to the  
2 following:

- 3 • Loss of use of trucks
- 4 • Loss of income
- 5 • Loss of businesses operated for years if not generations
- 6 • Loss of homes
- 7 • Bankruptcy
- 8 • Loss of investment capital by those who are able to replace or retrofit their trucks
- 9 • Opportunity cost of diverting capital to replace/retrofit trucks rather than expand the  
10 business

11 To that extent, the following responsive documents are attached:

- 12 • Declaration of Rob McClernon and Supporting Exhibits
- 13 • Declaration of Fred Recupido and Supporting Exhibits
- 14 • Declaration of Jay Pocock
- 15 • Declaration of Lee Brown
- 16 • Email dated Sept. 21, 2011 re CARB Suspension of Sales of and remedial Actions for  
17 Claire LongMile and AllMetal Systems

#### 18 **Document Request No. 4**

19 Any documents that demonstrate, quantify, analyze, discuss, or make reference to the  
20 costs incurred by CDTOA members because of the Truck and Bus Regulation.

#### 21 **Response to Document Request No. 4**

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

27 Therefore, the following responsive documents are attached.

- 28 • Declaration of Rob McClernon and Supporting Exhibits
- Declaration of Fred Recupido and Supporting Exhibits

1 ///

2 ///

3  
4 **Document Request No. 5**

5 Any Documents that demonstrate, quantify, analyze, discuss, or make reference to the  
6 costs incurred by CDTOA motor carrier members in carrying out their business in the absence of  
7 the Truck and Bus Regulation, including but not limited to fuel and/or tire costs.

8 **Response to Document Request No. 5**

9 CDTOA objects to this document request 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 information  
13 relating to costs incurred by its members, and actively discourages members from sharing such  
14 information with each other.

15  
16 **Document Request No. 6**

17 Any documents that demonstrate, quantify, analyze, discuss, or make reference to the  
18 percentage increase CDTOA motor carrier members would need to raise their prices in order to  
19 cover the costs attributable to complying with the Truck and Bus Regulation.

20 **Response to Document Request No. 6**

21 CDTOA objects to this document request 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 price  
25 information charged by members, and actively discourages members from sharing such  
26 information with each other.

27 To the extent the request is seeking nonconfidential information, the following responsive  
28 documents are attached.

- 1       • California Department of Transportation Price Index, Second Quarter 2011

2     ///

3

4     **Document Request No. 7**

5             Any documents that demonstrate, quantify, analyze, discuss, or make reference to the  
6     impact the Truck and Bus Regulation has on the prices CDTOA members charge.

7     **Response to Document Request No. 7**

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

14

15    **Document Request No. 8**

16             Any documents that demonstrate, quantify, analyze, discuss, or make reference to the  
17    impact the Truck and Bus Regulation has on CDTOA members' routes.

18    **Response to Document Request No. 8**

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

25

26    **Document Request No. 9**

27             Any documents that demonstrate, quantify, analyze, discuss, or make reference to the  
28    impact the Truck and Bus Regulation has on CDTOA members' services.

1 **Response to Document Request No. 9**

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. In  
5 any event, in order to comply with antitrust laws, CDTOA does not collect specific information  
6 relating to the services provided by members, and actively discourages members from sharing  
7 such information with each other.

8  
9 **Document Request No. 10**

10 Any and all documents related to the actual or expected financial impact of the Truck and  
11 Bus Regulation on CDTOA members.

12 **Response to Document Request No. 10**

13 Because the Truck and Bus Regulation will require each truck owner to retrofit and/or  
14 replace their trucks, the following responsive documents are attached.

- 15 • Declaration of Rob McClernon and Supporting Exhibits  
16 • Declaration of Fred Recupido and Supporting Exhibits

17  
18 Some members will not be able to afford the costs of retrofit or replacement. To the extent the  
19 request calls for other consequential damages that members will face as a result of the loss of  
20 their ability to use their truck and keep their businesses, including but not limited to the loss of  
21 income, homes, and vehicles, CDTOA objects because the harms have not yet occurred and  
22 would be speculative at this point. Moreover, because the type, year, and number of trucks  
23 owned varies among the membership, it is unduly burdensome to quantify the precise impact on  
24 each individual member, and CDTOA objects to the request on that basis.

25  
26 **Document Request No. 11**

1 Any documents demonstrating, making reference to, or reflecting those CDTOA  
2 members, if any, who have gone out of business or stopped doing business in California because  
3 of the Truck and Bus Regulation.

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5  
6 **Response to Document Request No. 11**

7 CDTOA does not have any documents responsive to this request. The information that  
8 CDTOA has been made aware of with respect to this topic is generally communicated orally by  
9 members at various CDTOA Chapter Meetings. Accordingly, all of the meeting notices for the  
10 Chapter Meetings that are still in the possession of CDTOA are attached. Similar information is  
11 occasionally orally relayed to the CDTOA Board of Directors at Board Meetings. Accordingly,  
12 all of the Board Meeting Agendas are attached.

13  
14 **Document Request No. 12**

15 Any and all documents relating to or referring to the availability of government funds,  
16 subsidies, or grant programs that were or are currently available to CDTOA members that would  
17 help defray the costs associated with complying with the Truck and Bus Regulation.

18 **Response to Document Request No. 12**

19 CDTOA objects to this document request because it calls for trade secrets or other  
20 confidential business information possessed by its member companies. CDTOA also objects  
21 because it seeks information that is neither relevant nor likely to lead to admissible evidence.  
22 Furthermore, it is likely that defendant is the party more likely to have more accurate information  
23 on the number of industry members who have been recipients of government funds, subsidies, or  
24 grant programs, and plaintiff therefore objects that collecting such information would be overly  
25 burdensome.

26 Without waiving these objections, 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 Attached is an email exchange dated September 23, 2011 that documents one such  
6 circumstance.

7  
8 **Document Request No. 13**

9 Any and all documents relating to or referring to government funds, subsidies, or grant  
10 programs utilized by CDTOA members that helped defray the costs associated with complying  
11 with the Truck and Bus Regulation.

12 **Response to Document Request No. 13**

13 CDTOA objects to this document request because it calls for trade secrets or other  
14 confidential business information possessed by its member companies. CDTOA also objects  
15 because it seeks information that is neither relevant nor likely to lead to admissible evidence.  
16 Furthermore, it is likely that defendant is the party more likely to have more accurate information  
17 on the number of industry members who have been recipients of government funds, subsidies, or  
18 grant programs, and plaintiff therefore objects that collecting such information would be overly  
19 burdensome. Moreover, it appears that this document request is not materially different from an  
20 earlier request, and therefore, CDTOA objects on the grounds that it is duplicative.

21  
22 **Document Request No. 14**

23 Any and all documents relating or referring to the effect of the Truck and Bus Regulation  
24 on the ability of CDTOA members to compete with its competitors, as "competitors" is defined  
25 in Interrogatory No. 41.

26 **Response to Document Request No. 14**

27 CDTOA objects to the document request because it seeks information that is neither  
28 relevant nor likely to lead to admissible evidence. CDTOA also objects because the document

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

5  
6 **Document Request No. 15**

7 Any and all documents relating or referring to how the retrofit technology that can be  
8 utilized by CDTOA members to comply with the Truck or Bus Regulation impacts motor carrier  
9 prices, routes or services.

10 **Response to Document Request No. 15**

11 The following responsive documents are attached.

- 12 • Declaration of Rob McClernon and Supporting Exhibits
- 13 • Declaration of Fred Recupido and Supporting Exhibits
- 14 • Declaration of Jay Pocock
- 15 • Declaration of Lee Brown
- 16 • Email dated Sept. 21, 2011 re CARB Suspension of Sales of and remedial Actions for  
17 Claire LongMile and AllMetal Systems

18  
19 **Document Request No. 16**

20 Any documents relating to any communications between CDTOA and its members  
21 regarding the Truck and Bus Regulation.

22 **Response to Document Request No. 16**

23 CDTOA objects to this request because it seeks information that is neither relevant nor  
24 likely to lead to admissible evidence.

25 Without waiving the objection, CDTOA's primary method of communicating with its  
26 members is via its monthly magazine. Accordingly, the issues from the last two years are  
27 attached.

1 **Document Request No. 17**

2 Any and all document relating to any communications between CDTOA members and  
3 their customers regarding the Truck and Bus Regulation.

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5 **Response to Document Request No. 17**

6 CDTOA objects to this document request 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.

9  
10 **Document Request No. 18**

11 Any and all documents relating to any communications between CDTOA members with  
12 third parties regarding the Truck and Bus Regulation.

13 **Response to Document Request No. 18**

14 CDTOA objects to this document request to the extent it implies that CDTOA has access  
15 to or maintains records of all communications that its hundreds of members may have with third  
16 parties. The request on its face is overly burdensome, and seeks information that is neither  
17 relevant nor likely to lead to admissible evidence.

18 However, CDTOA has, on behalf of its members, communicated to third parties  
19 regarding the Truck and Bus Regulation. Accordingly, the following responsive documents are  
20 attached.

- 21 • 9/3/09 Comments to Truck and Bus Regulation
- 22 • 4/15/08 Letter to Air Resources Board
- 23 • 4/10/08 Letter to Jeanne Cain
- 24 • 6/16/10 Letter to Air Resources Board
- 25 • 12/15/10 Comments to Proposed Amendments to Truck and Bus Regulation
- 26 • 8/25/09 Letter to Air Resources Board
- 27 • 12/16/09 Letter to Governor

1 **Document Request No. 19**

2 Any documents that support any fact or contention that may impeach or challenge a  
3 defense set forth by Defendant-Intervener Natural Resources Defense Council or Defendants  
4 Nichols and Goldstene.

5 **Response to Document Request No. 19**

6 Any and all documents produced to date by plaintiff CDTOA may in some way impeach  
7 or challenge one or more defenses set forth by Defendant-Intervener Natural Resources Defense  
8 Council or Defendants Nichols and Goldstene. Accordingly, all documents heretofore produced  
9 are incorporated into this response.

10  
11 **Document Request No. 20**

12 Any documents relating to or supporting CDTOA's motion for summary judgment.

13 **Response to Document Request No. 20**

14 Any and all documents produced to date by plaintiff CDTOA may in some way relate to  
15 or support CDTOA's motion for summary judgment. Accordingly, all documents heretofore  
16 produced are incorporated into this response. In addition, copies of the documents for which  
17 judicial notice has previously been sought are attached.

18  
19 **Document Request No. 21**

20 Any documents relating to or supporting each declaration filed in this litigation on behalf  
21 of CDTOA.

22 **Response to Document Request No. 21**

23 Any and all documents produced to date by plaintiff CDTOA may in some way relate to  
24 or support the declarations filed in this litigation on behalf of CDTOA. Accordingly, all  
25 documents heretofore produced are incorporated into this response.

26  
27 **Document Request No. 22**

1 All documents relating to or supporting CDTOA's response to Defendant-Intervenor  
2 Natural Resources Defense Council's First Set of Interrogatories propounded to CDTOA.

3 **Response to Document Request No. 22**

4 Any and all documents produced to date by plaintiff CDTOA may in some way relate to  
5 or support CDTOA's response to Defendant-Intervenor Natural Resources Defense Council's  
6 First Set of Interrogatories propounded to CDTOA. Accordingly, all documents heretofore  
7 produced are incorporated into this response.

8  
9 **Document Request No. 23**

10 All documents relating to or supporting CDTOA's response to Defendant-Intervenor  
11 Natural Resources Defense Council's First Requests For Admission propounded to CDTOA.

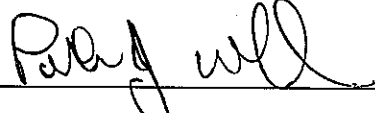
12 **Response to Document Request No. 23**

13 Any and all documents produced to date by plaintiff CDTOA may in some way relate to  
14 or support CDTOA's response to Defendant-Intervenor Natural Resources Defense Council's  
15 First Requests For Admission propounded to CDTOA. Accordingly, all documents heretofore  
16 produced are incorporated into this response. Specifically, the following responsive documents  
17 are attached.

- 18 • SBA Roundtable Powerpoint re PM 2.5
- 19 • Valberg's Comments re PM 2.5

20  
21  
22 THE LAW OFFICES OF BROOKS ELLISON

23 Dated: September 26, 2011



24 PATRICK J. WHALEN  
25 Attorneys for Plaintiff  
26 CALIFORNIA DUMP TRUCK OWNERS  
27 ASSOCIATION  
28