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BY _____

1 Christopher C. McNatt Jr. (State Bar #174559)
2 cmcnatt@scopelitis.com
3 SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP
4 2 North Lake Avenue, Suite 460
5 Pasadena, California 91101
6 Tel: (626) 795-4700; Fax (626) 795-4790

7 W. Stephen Cannon (*pro hac vice*)
8 scannon@constantinecannon.com
9 Seth D. Greenstein (*pro hac vice*)
10 sgreenstein@constantinecannon.com
11 Stephen S. Anderson, Jr. (*pro hac vice*)
12 tanderson@constantinecannon.com
13 Richard O. Levine (*pro hac vice*)
14 rlevine@constantinecannon.com
15 CONSTANTINE CANNON LLP
16 1627 Eye Street NW
17 Washington, D.C. 20006
18 Tel: (202) 204-3500; Fax: (202) 204-3501

19 Robert Digges (*pro hac vice*)
20 rdigges@trucking.org
21 Chief Counsel, ATA Litigation Center
22 AMERICAN TRUCKING ASSOCIATIONS, INC.
23 950 North Glebe Road
24 Arlington, VA 22203
25 Telephone (703) 838-1889; Fax (703) 838-1705

26 Counsel for Plaintiff,
27 AMERICAN TRUCKING ASSOCIATIONS, INC.

28 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AMERICAN TRUCKING
ASSOCIATIONS, INC.

Plaintiff,

vs.

THE CITY OF LOS ANGELES, THE
HARBOR DEPARTMENT OF THE
CITY OF LOS ANGELES, THE
BOARD OF HARBOR
COMMISSIONERS OF THE CITY
OF LOS ANGELES, THE CITY OF
LONG BEACH, THE HARBOR
DEPARTMENT OF THE CITY OF
LONG BEACH, and THE BOARD
OF HARBOR COMMISSIONERS
OF THE CITY OF LONG BEACH,

Defendants.

CV 08-04920 CAS (CTX)
Case No.

COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF

INTRODUCTION

1
2 1. Plaintiff American Trucking Associations, Inc. (“ATA”) brings this
3 suit to declare void and to permanently enjoin the enforcement of two “Concession
4 Plans,” separately promulgated and approved by the City of Los Angeles and the
5 City of Long Beach, through their respective Harbor Departments and Boards of
6 Harbor Commissioners, that would unlawfully re-regulate the federally-
7 deregulated trucking industry and, effective October 1, 2008 bar more than one
8 thousand licensed motor carriers from continuing to enter and service routes in
9 interstate commerce directly to and from the ports of San Pedro Bay. Defendants
10 adopted these regulatory plans in clear violation of the Federal Aviation
11 Administration Authorization Act of 1994 (“the FAAA Act,” Public Law 103-305,
12 section 601, codified as 49 U.S.C. § 14501(c)). That Act, to promote uniform
13 federal regulation of motor carriers such as ATA members, directs that “a political
14 subdivision of a state ... may not enact or enforce a law, regulation, or other
15 provision having the force and effect of law related to a price, route, or service of
16 any motor carrier” of property. Because Congress prohibited municipalities and
17 ports from asserting such regulatory powers over motor carrier routes and services
18 in interstate commerce, the Defendants’ Concession Plans are preempted by the
19 FAAA Act under the Supremacy Clause of the United States Constitution and
20 cannot stand. This Court has jurisdiction to hear this Complaint under 28 U.S.C. §
21 1331 (federal question) and 28 U.S.C § 2201 (declaratory judgments).

22 2. The Concession Plans further violate the right and ability of Plaintiff’s
23 members to be free of unreasonable burdens on interstate commerce. The
24 Concession Plans would impose invasive regulatory requirements upon virtually
25 all aspects of the business of a federal motor carrier, including truck maintenance,
26 on-street and off-street parking, employee wages, employee benefits, hiring
27 practices, truck signage, recordkeeping, auditing, frequency of service to the Ports,
28 and even upon sale or transfer of the motor carrier’s business. All such impositions

1 are deemed unreasonable burdens on interstate commerce under both the
2 Commerce Clause of the U.S. Constitution and 49 U.S.C. § 14504a.

3 3. Perhaps the clearest demonstration of the unlawful and onerous
4 burdens the Concession Plans wreak upon interstate commerce is that the two
5 Defendant cities operate a single contiguous port complex, but have adopted
6 different regulatory schemes. The Port of Los Angeles *prohibits* motor carriers'
7 use of more than 10,000 independent owner-operators of trucks on *their side* of the
8 city line that bisects the San Pedro Bay port complex, while the Port of Long
9 Beach *permits* such subcontracting on *its side* of the line — a text-book case of the
10 need for federal preemption to prevent a patchwork of service-determining laws,
11 rules, and regulations from disrupting the motor carriage of property in interstate
12 commerce.

13 4. Although unconstitutional state or municipal interference with
14 exclusive federal powers over interstate commerce cannot be upheld on any
15 grounds, the Defendants cannot justify forcing trucking companies and thousands
16 of independent owner-operator truck drivers to fundamentally change their
17 business models or stop servicing the Ports altogether under the halo of a “Clean
18 Trucks” plan. ATA would favor a plan *truly* dedicated to funding replacement of
19 older trucks with new lower-emission trucks, and ATA does *not* challenge the
20 Ports’ truck engine-retirement programs. However, the Defendants have adopted
21 Concession Plans laden with extraneous, burdensome regulations regarding wages,
22 benefits, truck ownership, preferences for certain types of trucks, and frequency of
23 service to the Ports, which have no material environmental impact (and are
24 preempted under federal law). Indeed, both Concession Plans would prevent every
25 non-concessionaire truck from entering the Port regardless if it were a brand new
26 diesel or natural gas-powered truck that exceeded the clean air standards of the
27 California Air Resources Board (“CARB”). The Los Angeles plan further would
28 deny independent owner-operators funding necessary to acquire replacement

1 trucks that comply with the CARB clean air standards – funds that, according to
2 CARB Guidelines, were to be awarded on a nondiscriminatory basis also to
3 independent owner-operators.

4 5. Plaintiff American Trucking Associations and its Intermodal Motor
5 Carriers Conference includes among its members trucking companies that
6 currently serve the ports of San Pedro Bay and rely extensively on the ability to
7 retain the services of independent owner-operators for a substantial portion of their
8 motor carriage service capacity. Unless enjoined by this Court, the Concession
9 Plans unconstitutionally will interfere with and work irreparable harm to the right
10 of these ATA members to service the ports of San Pedro Bay and all routes to and
11 from the ports.

12 6. Wherefore, pursuant to Federal Rules of Civil Procedure 7 and 8,
13 Plaintiff American Trucking Associations states for its Complaint the factual
14 allegations set forth below, and requests the Court to enter an Order granting:

15 (a) A declaratory judgment that the Defendants’ Concession Plans are
16 preempted by the FAAA Act;

17 (b) A permanent injunction prohibiting the Defendants from
18 enforcing any Concession Plan or other requirement that has the effect of
19 regulating the prices, routes, or services of motor carriers serving the Ports
20 of San Pedro Bay, including but not limited to conditioning the entry into the
21 Ports upon the signing of a Concession Agreement or other contract that
22 regulates prices, routes, or services;

23 (c) A declaratory judgment that the Los Angeles Defendants’
24 Concession Plan, which precludes independent owner-operators of licensed
25 motor carriers from entry into the Ports and conditions the award of financial
26 assistance under Defendants’ “clean trucks” program on the recipient being
27 a holder of a Concession Agreement, is preempted by the FAAA Act ; and
28

1 (d) A permanent injunction prohibiting the Defendants from
2 enforcing any Concession Plan or other requirement that has the effect of
3 precluding licensed motor carriers, including independent owner-operators
4 and those who subcontract with independent owner-operators, from entry
5 into the Ports.

6 **PARTIES TO THIS ACTION**

7 7. Plaintiff American Trucking Associations, Inc. (“ATA”) is the non-
8 profit national trade association for the trucking industry established under the laws
9 of the District of Columbia as a federation of affiliated state trucking associations,
10 conferences and organizations that includes more than 37,000 motor carrier
11 members representing every type and class of motor carrier in the country. Its
12 principal place of business is 950 North Glebe Road, Arlington, Virginia, 22203.
13 Intermodal Motor Carriers Conference (“IMCC”) is an affiliated conference of the
14 ATA. The IMCC provides educational and training services to the intermodal
15 (land-sea) motor carrier members of the ATA, as well as representing the interests
16 of these members in a broad range of federal, state, local and industry policy
17 forums. Several IMCC members are motor carriers under federal and California
18 law that provide drayage trucking services to and from the Ports of Los Angeles
19 and Long Beach and would be directly and adversely affected by the actions of
20 Defendants as set out in this Complaint. The relief sought by this Complaint is
21 intended to advance the interests of the members of the IMCC, and the filing of
22 this Complaint has been authorized by the appropriate governing bodies of the
23 IMCC and the American Trucking Associations. Plaintiff ATA thus has
24 “associational standing” to pursue this Complaint on behalf of its members.

25 8. Defendant City of Los Angeles is a municipality established under
26 Article XI of the Constitution of the State of California and is a political
27 subdivision of that state. Defendant Harbor Department of the City of Los Angeles
28 is vested with responsibility to administer the “Harbor District” of the Port of Los

1 Angeles. Defendant Board of Harbor Commissioners controls the assets and
2 facilities of the Harbor Department and promulgates rules and regulations
3 governing the maintenance, operation and use of the Harbor District. Collectively,
4 these defendants are referred to in this Complaint as the “Los Angeles
5 Defendants.”

6 9. Defendant City of Long Beach is a municipality established under
7 Article XI of the Constitution of the State of California and is a political
8 subdivision of that state. Defendant Long Beach Harbor Department is vested with
9 responsibility to administer the “Harbor District” of the Port of Long Beach.
10 Defendant Long Beach Board of Harbor Commissioners controls the assets and
11 facilities of the Harbor Department and promulgates rules and regulations
12 governing the maintenance, operation and use of the Harbor District. Collectively,
13 these defendants are referred to in this Complaint as the “Long Beach Defendants.”

14 **JURISDICTION AND VENUE**

15 10. This action arises under the Constitution and Laws of the United
16 States, including the Supremacy Clause of the Constitution, Article VI, clause 2;
17 the Commerce Clause of the Constitution, Article I, Section 8, Clause 3; the
18 Federal Aviation Administration Amendments Act of 1994 as re-enacted by the
19 Interstate Commerce Commission Termination Act of 1995, Public Law 104-88 ,
20 as amended, (49 U.S.C. §§ 14501(c), 14504a(c), 14506); 42 U.S.C. § 1983; and
21 the All Writs Act, 28 U.S.C. § 1651. Accordingly, this Court has jurisdiction under
22 28 U.S.C. § 1331 (federal question) and 28 U.S.C § 2201 (declaratory judgments).
23 This proceeding for declaratory and injunctive relief presents an actual case and
24 controversy within the Court’s jurisdiction.

25 11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b). The
26 claims asserted in this Complaint are based on conduct occurring in this district
27 and each of the Defendants maintains its offices and performs its duties within this
28 district.

1 **FACTUAL BACKGROUND**

2 Plaintiff American Trucking Associations states the following facts,
3 as to itself, upon personal knowledge and, as to others, upon information and
4 belief:

5 12. The port area of San Pedro Bay, including Terminal Island,
6 geographically comprises a single contiguous port area bisected by the Los
7 Angeles-Long Beach city boundary. The Port of Los Angeles comprises that
8 portion of the port area of San Pedro Bay within the boundaries of the City of Los
9 Angeles; and Port of Long Beach comprises that portion of the port area of San
10 Pedro Bay within the boundaries of the City of Long Beach. The Ports of Los
11 Angeles and Long Beach are located in Los Angeles County. The respective
12 Harbor Boards of the Ports of Los Angeles and Long Beach (collectively, “the
13 Boards”) may collaborate on matters of common concern.

14 13. The Port of Los Angeles is the most active container port in the
15 United States and, collectively with the Port of Long Beach, comprises the fifth
16 most active container port complex in the world. Together the Ports handle more
17 than 40% of all full international container traffic in the United States.

18 14. Cargo containers transiting the Ports remain in the continuous flow of
19 the interstate and international commerce of the United States. Cargo containers
20 unloaded from a container ship are loaded onto truck trailers, then “drayed” by
21 motor carriers from the Port directly to customers, to off-dock terminals, or to
22 railheads where containers may be changed onto different trucks or may be
23 resorted if not all destined for a single customer. The process occurs in reverse in
24 case of exports. These movements may occur under contract with end users, or
25 under contract with ocean carriers in which the motor carrier serves as the other
26 carriers’ agent or subcontractor for the delivery, receipt, or in-transit transfer of
27 cargo containers.
28

1 15. Because cargo containers remain in the continuous flow of the
2 interstate and foreign commerce of the United States, the drayage of cargo
3 containers to and from the Port constitutes “interstate commerce” under the
4 Constitution and laws of the United States. For this reason, among others, motor
5 carriers serving the Port, including the members of Plaintiff ATA and its IMCC,
6 often are registered motor carriers under the federal Motor Carrier Act, 49 U.S.C.
7 chapter 139, as well as holders of Motor Carrier of Property Permits under the laws
8 of the state of California.

9 **The Role Of Independent Owner Operators in Serving the Ports**

10 16. Licensed motor carriers historically have operated under various
11 business models. Motor carriers may provide port drayage services by using
12 employees of the motor carrier, or by contracting with other operators who are paid
13 per trip, or by combining employee drivers and contract operators.

14 17. One type of contract operator is the “independent owner-operator.”
15 Under California Vehicle Code, section 34624, independent owner operators
16 (“IOOs”) are eligible for their own permits as motor carriers of property and are
17 defined as operators with valid commercial drivers licenses who own no more than
18 one tractor and three trailers. Approximately 1,300 motor carriers provide drayage
19 services to the Ports, using the services of approximately 17,000 owner operators.
20 ATA members include in its Intermodal Motor Carriers Conference motor carriers
21 that rely primarily or almost exclusively upon the use of subcontractor IOOs to
22 service the Ports of Los Angeles and Long Beach.

23 18. At present, any motor carrier may provide drayage services moving
24 cargo containers to and from the Ports of San Pedro Bay, including through the use
25 of independent owner-operators as subcontractors.

26 **Defendants’ Unlawful Concession Plans**

27 19. On March 20, 2008, the Los Angeles Harbor Board adopted an Order
28 requiring that only drayage trucks operated under the authority of a motor carrier

1 holding a Concession Agreement with the City of Los Angeles be permitted to
2 enter the Port:

3 Beginning October 1, 2008, at 8:00 am, no Terminal Operator shall permit
4 access into any Terminal in the Port of Los Angeles to any Drayage truck
5 unless such Drayage Truck is registered under a Concession from the Port of
6 Los Angeles....

7 In approving these requirements, the Board reserved the right to amend Concession
8 requirements at any time, and stated that neither its ordinance nor the grant of a
9 Concession created any property interest in a Concessionaire.

10 20. On July 18, 2008, Defendant Los Angeles Harbor Board released in
11 final form a Concession Plan (Exhibit A to this Complaint) including an agreement
12 that must be signed by any motor carrier wishing to serve the Port. To be eligible
13 to sign a Concession agreement, a motor carrier must submit an Application that,
14 among other elements, requires an applicant to demonstrate, to the satisfaction of
15 the Port's Executive Director, its financial capability to fulfill its obligations under
16 the Concession Agreement, including a three-year business history, "information
17 pertaining to the company, its principals, and the management and administrative
18 staff," as well as financial data. Applications should be filed by September 1,
19 2008. The Agreement requires concession holders serving the Ports to use only
20 employee drivers (after a transition period beginning in 2009) and to comply with
21 numerous operational, financial, and employee hiring rules, as well as compliance
22 with various audit and financial responsibility requirements. These include
23 preparation, maintenance, and/or submission for review by the Ports and their
24 agents of:

- 25 a. Maintenance plans and schedules for each truck that may enter the
26 Ports;

- 1 b. Plans requiring off-street parking for each truck that may enter the
- 2 Ports;
- 3 c. Financial qualifications of each concessionaire;
- 4 d. Financial and operational records to determine whether the
- 5 Concessionaire and each truck that may enter the Ports remain in
- 6 compliance with all concession requirements;
- 7 e. Inspections and audits of a Concessionaire's property, equipment, and
- 8 offices;
- 9 f. Requests to transfer a Concession to a new owner (which may be
- 10 subject to a reissuance of the Concession under such terms and
- 11 conditions as may be in effect at that time); and,
- 12 g. Placards on each truck that identify the concession holder.

13 Each Concessionaire also must submit to comprehensive default, enforcement, and
14 remedy provisions imposed by the Ports, including termination of the Concession.

15 21. Under the Los Angeles Concession Plan Agreement, a concessionaire
16 must comply with additional wage, employment, development, and employee
17 benefits requirements applicable to vendors to the City. These include obligations
18 to:

- 19 a. Permit access to and, upon request, provide certified copies of all of
- 20 its records pertaining to its benefits policies and its employment
- 21 policies and practices to the city, for the purpose of investigation or to
- 22 ascertain compliance with the Equal Benefits Ordinance;
- 23 b. Comply with all lawfully served Wage and Earning Assignment
- 24 Orders and Notices of Assignments and certify that the principal
- 25 owner(s) are personally in compliance;
- 26 c. Ensure that all subcontractors similarly comply with all lawfully
- 27 served Wage and Earning Assignment Orders and Notices of
- 28

1 Assignments and certify that the principal owner(s) are personally in
2 compliance;

- 3 d. Perform outreach to and utilize certified small businesses, sign
4 affidavits prior to the hiring of subcontractors, and register itself and
5 any subcontractors with the city's e-DiversityXchange database;
- 6 e. Certify that they are not aware of any financial or economic interest of
7 any public officer or employee of the city relating to this agreement;
- 8 f. Comply with the city's health care spending mandates and wage
9 requirements; and,
- 10 g. Comply with all affirmative hiring provisions of the city's
11 administrative code, including those that requiring the motor carrier
12 to:
 - 13 i. Permit access to and require provision of certified copies of all of
14 its records pertaining to employment and to its employment
15 practices by the awarding authority or the Office of Contract
16 Compliance, for the purpose of investigation to ascertain
17 compliance with the affirmative action program provisions;
 - 18 ii. Ensure that all subcontractors similarly comply with all such
19 obligations, and be subject to penalties including termination of the
20 motor carrier's contract with the City for failure of any
21 subcontractor to meet these obligations;
 - 22 iii. Submit an affirmative action plan which shall meet the
23 requirements of this chapter at the time it submits its bid or
24 proposal or at the time it registers to do business with the City. The
25 plan shall be subject to approval by the Office of Contract
26 Compliance prior to award of the contract. The awarding authority
27 may also require motor carriers and suppliers to take part in a pre-
28 registration, pre-bid, pre-proposal, or pre-award conference in

1 order to develop, improve or implement a qualifying affirmative
2 action plan;

3 iv. Certify on an electronic or hard copy form, to be supplied, that
4 the contractor has not discriminated in the performance of City
5 contracts against any employee or applicant for employment;

6 v. State, in all solicitations or advertisements for employees placed by
7 or on behalf of the contractor, that all qualified applicants will
8 receive consideration for employment; and,

9 vi. Agree that the failure to comply with the affirmative action
10 program provisions of City contracts may result in the motor
11 carrier's Concession Agreement being cancelled, terminated or
12 suspended, in whole or in part, by the awarding authority, and all
13 monies due or to become due may be forwarded to and retained by
14 the City of Los Angeles. In addition, such breach may be the basis
15 for disqualifying the motor carrier from being awarded a contract
16 with the City of Los Angeles (apparently including another
17 Concession Agreement) for a period of two years.

18 Thus, Defendant Harbor Board unlawfully imposed additional regulatory
19 conditions upon licensed motor carriers that meet all applicable federal and state
20 requirements and by law are entitled to service the Ports in interstate commerce.

21 22. On February 19, 2008, the Defendant Long Beach Harbor Board
22 approved a plan requiring that only drayage trucks operated under the authority of
23 a motor carrier holding a Concession Agreement with the City of Long Beach
24 would be permitted to enter the Port beginning on October 1, 2008.

25 23. On July 18, 2008, Defendant Long Beach Harbor Department released
26 the specific Concession Plan Agreement (Exhibit B to this Complaint) that must be
27 signed by any motor carrier wishing to serve the Port. To be eligible to sign a
28 Concession Agreement, a motor carrier must submit an Application that differs

1 from Los Angeles in that Long Beach requires that only motor carriers obtaining
2 operating authority after June 1, 2008, need demonstrate their financial viability.
3 The Long Beach Applications also should be filed by September 1, 2008. The
4 Concession Agreement also is substantially similar to that adopted by Los Angeles,
5 except that the Agreement: (a) permits Concessionaires to use independent owner-
6 operators as subcontractors; and (b) allows the required parking plan for each
7 drayage truck to include provisions for parking at any legal parking space, not just
8 an off-street space. Because the agreement required by the Long Beach Concession
9 Plan also is treated as a procurement contract with Defendant City of Long Beach,
10 a Concessionaire must comply with additional requirements applicable to vendors
11 to the City. Thus, Defendant Harbor Board unlawfully imposed additional
12 regulatory conditions upon licensed motor carriers that meet all applicable federal
13 and state requirements and by law are entitled to service the Ports in interstate
14 commerce.

15 **The Prohibition Against Use of Independent Owner-Operators in the Los**
16 **Angeles Concession Plan, and Its Impact on Service to the Port of Long Beach**

17 24. The language of the Ports' respective Concession Plans diverge in one
18 primary respect. The Los Angeles Concession Plan adopts an express mechanism
19 that prohibits use of independent owner-operators and requires use only of
20 employee-drivers (after a phase-in). The Long Beach Concession Plan, on its face,
21 permits a concession holder to use employee-drivers or independent owner-
22 operators as subcontractors.

23 25. In reality, however, permission for an independent owner-operator to
24 service the Port of Long Beach is meaningless when shackled by a prohibition
25 against serving the Port of Los Angeles. It generally is commercially impractical, if
26 not infeasible, for a motor carrier to provide drayage services only on the Port of
27 Long Beach and not also to the Port of Los Angeles. For example, agreements
28 among shippers may route cargo initially destined for the Port of Long Beach to

1 the Port of Los Angeles, and may require emptied containers from cargo initially
2 drayed from the Port of Long Beach to be returned to a terminal on the Port of Los
3 Angeles. Further, under “Vessel Sharing Agreements” entered into among ocean
4 common carriers, a contract for the trans-Pacific movement of cargo containers
5 between a shipper and an ocean carrier with a terminal facilities at one San Pedro
6 Port may actually be fulfilled by moving the container on the ship of another ocean
7 carrier that docks at the other Port. As a result, a Concession Plan that prohibits
8 subcontracting independent owner-operators to provide drayage services at the Port
9 of Los Angeles also precludes any practical ability of motor carriers relying on the
10 services of independent owner operators to serve the Port of Long Beach, and,
11 therefore, to enter into short or long term drayage contracts with shipping
12 companies, ocean carriers, or cargo owners.

13 **“Clean Truck” Programs Of The State Of California And Of The Defendants**

14 26. On December 7, 2007, The California Air Resources Board
15 (“CARB”) adopted rules expressly directed at limiting emissions from heavy duty
16 diesel trucks providing drayage services at California’s ports (including the Port of
17 Los Angeles) and intermodal rail yards. The CARB regulations imposed limits on
18 drayage diesel trucks in two phases:

- 19 a. By December 31, 2009, all drayage trucks must be equipped with
20 either: (i) a 1994-2003 model year engine with specified emissions-
21 reduction equipment; (ii) a 2004 model year engine meeting federal or
22 California standards; or (iii) a 1994 or newer model year engine that
23 meets or exceeds 2007 emissions standards; and
24 b. By December 31, 2013, all drayage trucks must be equipped with a
25 1994 or newer model year engine that meets or exceeds 2007
26 emissions standards.

1 27. On November 6, 2006, the voters of California approved a bond-
2 funding program known as Proposition 1B that, among other things, authorized \$1
3 billion in bonds to reduce emissions associated with the movement of freight along
4 California's trade corridors, and the legislature adopted necessary funding
5 authority.

6 28. On November 20, 2006, the Los Angeles Board of Harbor
7 Commissioners and the Long Beach Board of Harbor Commissioners jointly
8 approved the San Pedro Bay Ports Clean Air Action Plan ("CAAP"). One of
9 CAAP's stated goals was to eliminate older trucks from the San Pedro Bay
10 terminals within 5 years.

11 29. In September 2007, the Harbor Boards of both Ports adopted "Clean
12 Truck" standards as amendments to their respective harbor tariffs that would:

- 13 a. Ban pre-1989 trucks from Port service by 10/1/2008
- 14 b. Ban 1989-1993 trucks from Port service by 1/1/2010
- 15 c. Ban unretrofitted 1994-2003 trucks from Port service by 1/1/2010
- 16 d. Ban trucks not meeting 2007 emissions standards from Port service by
17 1/1/2012.

18 30. On February 28, 2008, CARB approved Guidelines for the awarding
19 of Proposition 1B funds used to retrofit or replace drayage diesels *in advance* of
20 the deadlines established by the CARB drayage diesel regulations. The Guidelines
21 specifically contemplate these CARB funds would be made available to
22 independent-owner operators, and requires that independent owner-operators
23 receiving funds must purchase replacement trucks to be operational at least two (2)
24 years prior to the ordinary regulatory requirement. Thus, for example, if a drayage
25 diesel needs funding assistance to meet the Phase II December 31, 2013
26 requirement of 2007 standard trucks, funding assistance for replacement would be
27 available only if the compliant truck is put in service by December 31, 2011 for
28 independent owner-operators.

- (A) imposed an unreasonable burden on interstate commerce;
- (B) impeded the free flow of trade, traffic, and transportation of interstate commerce; and
- (C) placed an unreasonable cost on the American consumers...

Public Law 103-305, section 601(a).

35. 49 U.S.C. § 14506(a), as added by Public Law 109-59, states:

No State, political subdivision of a State, interstate agency, or other political agency of two or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier ... to display any form of identification on or in a commercial motor vehicle ... other than forms of identification required by the Secretary of Transportation....

36. As political subdivisions of the state of California and their proprietary departments, the Defendants are subject to the FAAA Act preemption.

COUNT I

PREEMPTION OF DEFENDANTS' CONCESSION PLANS UNDER THE SUPREMACY CLAUSE AND THE FAAA ACT

37. Plaintiff incorporates by reference paragraphs 1 through 36 as though set forth fully herein.

38. The Concession Plans adopted by the Defendants impose restrictions on the routes and services of motor carriers providing the intermodal transportation of property in interstate commerce. Specifically, the Concession Plans condition entry onto the Ports of San Pedro Bay and, therefore, the ability to serve routes to and from the Ports, upon acceptance by motor carriers of terms that affect the methods by which motor carriers may provide service to the Ports. These terms, set forth in Exhibits A and B to this Complaint, include regulation of wages and benefits offered by motor carriers to their employees or subcontractor independent owner-operators, the frequency with which motor carriers serve the Ports, licensing

1 and signage that must be displayed by a motor carrier serving the Ports, and even
2 the ability of motor carriers to use on-street parking.

3 39. Moreover, the Port of Los Angeles has adopted an onerous
4 Concession Plan requirement requiring compliance with different regulatory terms
5 than those imposed by the Port of Long Beach Concession Plan. Consequently, a
6 motor carrier that obtains a concession from Long Beach but not from Los Angeles
7 can only serve drayage customers whose containers arrive on ships that dock on
8 the Long Beach side of the Los Angeles-Long Beach city line.

9 40. The requirement to sign a Concession Agreement, and the specific
10 additional conditions imposed by each Concession Plan, constitute regulation of
11 the routes and services of a motor carrier.

12 41. 49 U.S.C. § 14501(c), prohibits the Defendants from enacting or
13 enforcing any law, regulation, or other provision having the force and effect of law
14 related to a route or service of any motor carrier with respect to the transportation
15 of property.

16 42. 49 U.S.C. § 14506(a), prohibits the Defendants from enacting or
17 enforcing any law, regulation, or other provision that requires a motor carrier to
18 display any form of identification on or in a commercial motor vehicle, other than
19 forms of identification required by the Secretary of Transportation.

20 43. Article VI, clause 2 of the U.S. Constitution (the “Supremacy
21 Clause”) provides: “This Constitution, and the Laws of the United States which
22 shall be made in Pursuance thereof ...shall be the supreme Law of the Land; and
23 the Judges in every State shall be bound thereby, any Thing in the Constitution or
24 Laws of any State to the Contrary notwithstanding.”

25 44. Defendants’ use of contractual Concession Plans to regulate access to
26 the Port of Los Angeles by motor carriers engaged in port drayage, violates the
27 FAAA Act.

28 45. The Concession Plans are preempted under the Supremacy Clause.

1 (ii) in compliance with the laws and regulations of the State
2 authorizing the carrier to operate in the State in accordance with
3 section 14501(c)(2)(A) ...

4 58. The Concession Plans establish requirements that unlawfully
5 condition the right of motor carriers registered under the laws of the United States
6 and the State of California to engage in the movement of cargo containers in
7 interstate commerce.

8 59. The Concession Plans deprive Plaintiff's members of the right to
9 engage in interstate commerce free of unreasonable burdens, as protected by the
10 Commerce Clause, including unreasonably burdening the ability of Plaintiff's
11 members who engage in the movement of cargo containers in interstate commerce
12 at one of the San Pedro Bay Ports from engaging in the interstate movement of
13 cargo containers at the other Port.

14 60. The Concession Plans have the purpose and effect of discriminating
15 against and unreasonably burdening Plaintiffs' members and other incumbent
16 motor carriers, and denying them their right to service the Ports of San Pedro Bay
17 using independent owner-operators.

18 61. By adopting the Concession Plans, the Defendants have deprived
19 Plaintiff's members of the right to engage in interstate commerce free of
20 unreasonable burdens and discrimination, as protected by the Commerce Clause.

21 62. The Los Angeles Defendants have acted, and continue to act, in
22 concert and conspiracy with the Long Beach Defendants to carry out this unlawful
23 scheme.

24 63. Defendants have engaged in this conduct and have adopted their
25 Concession Plans under color of state law.

26 64. Defendants' Concession Plans are unlawful, and are void and
27 unenforceable pursuant to 42 U.S.C. § 1983 and the Commerce Clause of the
28 Constitution as unreasonable burdens on interstate commerce.

