

1 **UNITED STATES DISTRICT COURT**  
2 **CENTRAL DISTRICT OF CALIFORNIA**

3 AMERICAN TRUCKING )  
4 ASSOCIATIONS, INC. )

5 Plaintiff,

6 vs.

7 THE CITY OF LOS ANGELES, THE )  
8 HARBOR DEPARTMENT OF THE )  
9 CITY OF LOS ANGELES, THE )  
10 BOARD OF HARBOR )  
11 COMMISSIONERS OF THE CITY )  
12 OF LOS ANGELES, THE CITY OF )  
13 LONG BEACH, THE HARBOR )  
14 DEPARTMENT OF THE CITY OF )  
15 LONG BEACH, and THE BOARD )  
16 OF HARBOR COMMISSIONERS )  
17 OF THE CITY OF LONG BEACH, )

18 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF**

19 **INTRODUCTION**

20 1. Plaintiff American Trucking Associations, Inc. (“ATA”) brings this  
21 suit to declare void and to permanently enjoin the enforcement of two “Concession  
22 Plans,” separately promulgated and approved by the City of Los Angeles and the  
23 City of Long Beach, through their respective Harbor Departments and Boards of  
24 Harbor Commissioners, that would unlawfully re-regulate the federally-  
25 deregulated trucking industry and, effective October 1, 2008 bar more than one  
26 thousand licensed motor carriers from continuing to enter and service routes in  
27 interstate commerce directly to and from the ports of San Pedro Bay. Defendants  
28 adopted these regulatory plans in clear violation of the Federal Aviation  
Administration Authorization Act of 1994 (“the FAA Act,” Public Law 103-305,  
section 601, codified as 49 U.S.C. § 14501(c)). That Act, to promote uniform  
federal regulation of motor carriers such as ATA members, directs that “a political  
subdivision of a state ... may not enact or enforce a law, regulation, or other  
provision having the force and effect of law related to a price, route, or service of  
any motor carrier” of property. Because Congress prohibited municipalities and

1 ports from asserting such regulatory powers over motor carrier routes and services  
2 in interstate commerce, the Defendants' Concession Plans are preempted by the  
3 FAAA Act under the Supremacy Clause of the United States Constitution and  
4 cannot stand. This Court has jurisdiction to hear this Complaint under 28 U.S.C. §  
5 1331 (federal question) and 28 U.S.C § 2201 (declaratory judgments).

6 2. The Concession Plans further violate the right and ability of Plaintiff's  
7 members to be free of unreasonable burdens on interstate commerce. The  
8 Concession Plans would impose invasive regulatory requirements upon virtually  
9 all aspects of the business of a federal motor carrier, including truck maintenance,  
10 on-street and off-street parking, employee wages, employee benefits, hiring  
11 practices, truck signage, recordkeeping, auditing, frequency of service to the Ports,  
12 and even upon sale or transfer of the motor carrier's business. All such impositions  
13 are deemed unreasonable burdens on interstate commerce under both the  
14 Commerce Clause of the U.S. Constitution and 49 U.S.C. § 14504a.

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

25 4. Although unconstitutional state or municipal interference with  
26 exclusive federal powers over interstate commerce cannot be upheld on any  
27 grounds, the Defendants cannot justify forcing trucking companies and thousands  
28 of independent owner-operator truck drivers to fundamentally change their

1 business models or stop servicing the Ports altogether under the halo of a “Clean  
2 Trucks” plan. ATA would favor a plan *truly* dedicated to funding replacement of  
3 older trucks with new lower-emission trucks, and ATA does *not* challenge the  
4 Ports’ truck engine-retirement programs. However, the Defendants have adopted  
5 Concession Plans laden with extraneous, burdensome regulations regarding wages,  
6 benefits, truck ownership, preferences for certain types of trucks, and frequency of  
7 service to the Ports, which have no material environmental impact (and are  
8 preempted under federal law). Indeed, both Concession Plans would prevent every  
9 non-concessionaire truck from entering the Port regardless if it were a brand new  
10 diesel or natural gas-powered truck that exceeded the clean air standards of the  
11 California Air Resources Board (“CARB”). The Los Angeles plan further would  
12 deny independent owner-operators funding necessary to acquire replacement  
13 trucks that comply with the CARB clean air standards – funds that, according to  
14 CARB Guidelines, were to be awarded on a nondiscriminatory basis also to  
15 independent owner-operators.

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

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

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

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

7 (c) A declaratory judgment that the Los Angeles Defendants'  
8 Concession Plan, which precludes independent owner-operators of licensed  
9 motor carriers from entry into the Ports and conditions the award of financial  
10 assistance under Defendants' "clean trucks" program on the recipient being  
11 a holder of a Concession Agreement, is preempted by the FAAA Act ; and

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

### 17 **PARTIES TO THIS ACTION**

18 7. Plaintiff American Trucking Associations, Inc. ("ATA") is the non-  
19 profit national trade association for the trucking industry established under the laws  
20 of the District of Columbia as a federation of affiliated state trucking associations,  
21 conferences and organizations that includes more than 37,000 motor carrier  
22 members representing every type and class of motor carrier in the country. Its  
23 principal place of business is 950 North Glebe Road, Arlington, Virginia, 22203.  
24 Intermodal Motor Carriers Conference ("IMCC") is an affiliated conference of the  
25 ATA. The IMCC provides educational and training services to the intermodal  
26 (land-sea) motor carrier members of the ATA, as well as representing the interests  
27 of these members in a broad range of federal, state, local and industry policy  
28 forums. Several IMCC members are motor carriers under federal and California

1 law that provide drayage trucking services to and from the Ports of Los Angeles  
2 and Long Beach and would be directly and adversely affected by the actions of  
3 Defendants as set out in this Complaint. The relief sought by this Complaint is  
4 intended to advance the interests of the members of the IMCC, and the filing of  
5 this Complaint has been authorized by the appropriate governing bodies of the  
6 IMCC and the American Trucking Associations. Plaintiff ATA thus has  
7 “associational standing” to pursue this Complaint on behalf of its members.

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

17 9. Defendant City of Long Beach is a municipality established under  
18 Article XI of the Constitution of the State of California and is a political  
19 subdivision of that state. Defendant Long Beach Harbor Department is vested with  
20 responsibility to administer the “Harbor District” of the Port of Long Beach.  
21 Defendant Long Beach Board of Harbor Commissioners controls the assets and  
22 facilities of the Harbor Department and promulgates rules and regulations  
23 governing the maintenance, operation and use of the Harbor District. Collectively,  
24 these defendants are referred to in this Complaint as the “Long Beach Defendants.”

## 25 **JURISDICTION AND VENUE**

26 10. This action arises under the Constitution and Laws of the United  
27 States, including the Supremacy Clause of the Constitution, Article VI, clause 2;  
28 the Commerce Clause of the Constitution, Article I, Section 8, Clause 3; the

1 Federal Aviation Administration Amendments Act of 1994 as re-enacted by the  
2 Interstate Commerce Commission Termination Act of 1995, Public Law 104-88 ,  
3 as amended, (49 U.S.C. §§ 14501(c), 14504a(c), 14506); 42 U.S.C. § 1983; and  
4 the All Writs Act, 28 U.S.C. § 1651. Accordingly, this Court has jurisdiction under  
5 28 U.S.C. § 1331 (federal question) and 28 U.S.C § 2201 (declaratory judgments).  
6 This proceeding for declaratory and injunctive relief presents an actual case and  
7 controversy within the Court’s jurisdiction.

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

### 12 **FACTUAL BACKGROUND**

13 Plaintiff American Trucking Associations states the following facts,  
14 as to itself, upon personal knowledge and, as to others, upon information and  
15 belief:

16 12. The port area of San Pedro Bay, including Terminal Island,  
17 geographically comprises a single contiguous port area bisected by the Los  
18 Angeles-Long Beach city boundary. The Port of Los Angeles comprises that  
19 portion of the port area of San Pedro Bay within the boundaries of the City of Los  
20 Angeles; and Port of Long Beach comprises that portion of the port area of San  
21 Pedro Bay within the boundaries of the City of Long Beach. The Ports of Los  
22 Angeles and Long Beach are located in Los Angeles County. The respective  
23 Harbor Boards of the Ports of Los Angeles and Long Beach (collectively, “the  
24 Boards”) may collaborate on matters of common concern.

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

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

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

#### 19           **The Role Of Independent Owner Operators in Serving the Ports**

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

24           17. One type of contract operator is the “independent owner-operator.”  
25 Under California Vehicle Code, section 34624, independent owner operators  
26 (“IOOs”) are eligible for their own permits as motor carriers of property and are  
27 defined as operators with valid commercial drivers licenses who own no more than  
28 one tractor and three trailers. Approximately 1,300 motor carriers provide drayage

1 services to the Ports, using the services of approximately 17,000 owner operators.  
2 ATA members include in its Intermodal Motor Carriers Conference motor carriers  
3 that rely primarily or almost exclusively upon the use of subcontractor IOOs to  
4 service the Ports of Los Angeles and Long Beach.

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

### 8 **Defendants' Unlawful Concession Plans**

9 19. On March 20, 2008, the Los Angeles Harbor Board adopted an Order  
10 requiring that only drayage trucks operated under the authority of a motor carrier  
11 holding a Concession Agreement with the City of Los Angeles be permitted to  
12 enter the Port:

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

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

20 20. On July 18, 2008, Defendant Los Angeles Harbor Board released in  
21 final form a Concession Plan (Exhibit A to this Complaint) including an agreement  
22 that must be signed by any motor carrier wishing to serve the Port. To be eligible  
23 to sign a Concession agreement, a motor carrier must submit an Application that,  
24 among other elements, requires an applicant to demonstrate, to the satisfaction of  
25 the Port's Executive Director, its financial capability to fulfill its obligations under  
26 the Concession Agreement, including a three-year business history, "information  
27 pertaining to the company, its principals, and the management and administrative  
28 staff," as well as financial data. Applications should be filed by September 1,

1 2008. The Agreement requires concession holders serving the Ports to use only  
2 employee drivers (after a transition period beginning in 2009) and to comply with  
3 numerous operational, financial, and employee hiring rules, as well as compliance  
4 with various audit and financial responsibility requirements. These include  
5 preparation, maintenance, and/or submission for review by the Ports and their  
6 agents of:

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

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

24 21. Under the Los Angeles Concession Plan Agreement, a concessionaire  
25 must comply with additional wage, employment, development, and employee  
26 benefits requirements applicable to vendors to the City. These include obligations  
27 to:  
28

- a. Permit access to and, upon request, provide certified copies of all of its records pertaining to its benefits policies and its employment policies and practices to the city, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance;
- b. Comply with all lawfully served Wage and Earning Assignment Orders and Notices of Assignments and certify that the principal owner(s) are personally in compliance;
- c. Ensure that all subcontractors similarly comply with all lawfully served Wage and Earning Assignment Orders and Notices of Assignments and certify that the principal owner(s) are personally in compliance;
- d. Perform outreach to and utilize certified small businesses, sign affidavits prior to the hiring of subcontractors, and register itself and any subcontractors with the city's e-DiversityXchange database;
- e. Certify that they are not aware of any financial or economic interest of any public officer or employee of the city relating to this agreement;
- f. Comply with the city's health care spending mandates and wage requirements; and,
- g. Comply with all affirmative hiring provisions of the city's administrative code, including those that requiring the motor carrier to:
  - i. Permit access to and require provision of certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the affirmative action program provisions;
  - ii. Ensure that all subcontractors similarly comply with all such obligations, and be subject to penalties including termination of the

1 motor carrier's contract with the City for failure of any  
2 subcontractor to meet these obligations;

3 iii. Submit an affirmative action plan which shall meet the  
4 requirements of this chapter at the time it submits its bid or  
5 proposal or at the time it registers to do business with the City. The  
6 plan shall be subject to approval by the Office of Contract  
7 Compliance prior to award of the contract. The awarding authority  
8 may also require motor carriers and suppliers to take part in a pre-  
9 registration, pre-bid, pre-proposal, or pre-award conference in  
10 order to develop, improve or implement a qualifying affirmative  
11 action plan;

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

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

18 vi. Agree that the failure to comply with the affirmative action  
19 program provisions of City contracts may result in the motor  
20 carrier's Concession Agreement being cancelled, terminated or  
21 suspended, in whole or in part, by the awarding authority, and all  
22 monies due or to become due may be forwarded to and retained by  
23 the City of Los Angeles. In addition, such breach may be the basis  
24 for disqualifying the motor carrier from being awarded a contract  
25 with the City of Los Angeles (apparently including another  
26 Concession Agreement) for a period of two years.

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

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

8 23. On July 18, 2008, Defendant Long Beach Harbor Department released  
9 the specific Concession Plan Agreement (Exhibit B to this Complaint) that must be  
10 signed by any motor carrier wishing to serve the Port. To be eligible to sign a  
11 Concession Agreement, a motor carrier must submit an Application that differs  
12 from Los Angeles in that Long Beach requires that only motor carriers obtaining  
13 operating authority after June 1, 2008, need demonstrate their financial viability.  
14 The Long Beach Applications also should be filed by September 1, 2008. The  
15 Concession Agreement also is substantially similar to that adopted by Los Angeles,  
16 except that the Agreement: (a) permits Concessionaires to use independent owner-  
17 operators as subcontractors; and (b) allows the required parking plan for each  
18 drayage truck to include provisions for parking at any legal parking space, not just  
19 an off-street space. Because the agreement required by the Long Beach Concession  
20 Plan also is treated as a procurement contract with Defendant City of Long Beach,  
21 a Concessionaire must comply with additional requirements applicable to vendors  
22 to the City. Thus, Defendant Harbor Board unlawfully imposed additional  
23 regulatory conditions upon licensed motor carriers that meet all applicable federal  
24 and state requirements and by law are entitled to service the Ports in interstate  
25 commerce.

26 **The Prohibition Against Use of Independent Owner-Operators in the Los**  
27 **Angeles Concession Plan, and Its Impact on Service to the Port of Long Beach**  
28

1           24. The language of the Ports’ respective Concession Plans diverge in one  
2 primary respect. The Los Angeles Concession Plan adopts an express mechanism  
3 that prohibits use of independent owner-operators and requires use only of  
4 employee-drivers (after a phase-in). The Long Beach Concession Plan, on its face,  
5 permits a concession holder to use employee-drivers or independent owner-  
6 operators as subcontractors.

7           25. In reality, however, permission for an independent owner-operator to  
8 service the Port of Long Beach is meaningless when shackled by a prohibition  
9 against serving the Port of Los Angeles. It generally is commercially impractical, if  
10 not infeasible, for a motor carrier to provide drayage services only on the Port of  
11 Long Beach and not also to the Port of Los Angeles. For example, agreements  
12 among shippers may route cargo initially destined for the Port of Long Beach to  
13 the Port of Los Angeles, and may require emptied containers from cargo initially  
14 drayed from the Port of Long Beach to be returned to a terminal on the Port of Los  
15 Angeles. Further, under “Vessel Sharing Agreements” entered into among ocean  
16 common carriers, a contract for the trans-Pacific movement of cargo containers  
17 between a shipper and an ocean carrier with a terminal facilities at one San Pedro  
18 Port may actually be fulfilled by moving the container on the ship of another ocean  
19 carrier that docks at the other Port. As a result, a Concession Plan that prohibits  
20 subcontracting independent owner-operators to provide drayage services at the Port  
21 of Los Angeles also precludes any practical ability of motor carriers relying on the  
22 services of independent owner operators to serve the Port of Long Beach, and,  
23 therefore, to enter into short or long term drayage contracts with shipping  
24 companies, ocean carriers, or cargo owners.

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

26           26. On December 7, 2007, The California Air Resources Board  
27 (“CARB”) adopted rules expressly directed at limiting emissions from heavy duty  
28 diesel trucks providing drayage services at California’s ports (including the Port of

1 Los Angeles) and intermodal rail yards. The CARB regulations imposed limits on  
2 drayage diesel trucks in two phases:

- 3 a. By December 31, 2009, all drayage trucks must be equipped with  
4 either: (i) a 1994-2003 model year engine with specified emissions-  
5 reduction equipment; (ii) a 2004 model year engine meeting federal or  
6 California standards; or (iii) a 1994 or newer model year engine that  
7 meets or exceeds 2007 emissions standards; and
- 8 b. By December 31, 2013, all drayage trucks must be equipped with a  
9 1994 or newer model year engine that meets or exceeds 2007  
10 emissions standards.

11

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

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

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

- 24 a. Ban pre-1989 trucks from Port service by 10/1/2008  
25 b. Ban 1989-1993 trucks from Port service by 1/1/2010  
26 c. Ban unretrofitted 1994-2003 trucks from Port service by 1/1/2010  
27 d. Ban trucks not meeting 2007 emissions standards from Port service by  
28 1/1/2012.

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

12           31. On April 4, 2008, the Ports jointly submitted a proposal to CARB to  
13 award \$211 million in Proposition 1B funds to replace older drayage diesel trucks  
14 with ones that would be in compliance with regulations adopted by CARB and the  
15 Ports (the “Joint Application”). The Joint Application emphasized that their  
16 administration of the grant funds would not restrict funding availability to a  
17 preferred individual, company, business entity, or other group of equipment  
18 owners, and that it would involve outreach to, and participation of, independent  
19 owner-operators.

20           32. In disregard of its explicit commitments to CARB to fund independent  
21 owner-operators, the Joint Application indirectly sought to reserve authority to  
22 refuse funding to any motor carriers that did not enter into a Concession  
23 Agreement with the Ports. Thus, although the Ports professed compliance with  
24 CARB Guidelines requiring that Proposition 1B funds be available to replace  
25 independent owner-operator trucks, the Port of Los Angeles in fact intended to  
26 deny support to independent owner operators themselves and to the many motor  
27 carriers that rely on the services of independent-owner operators as contractors.  
28



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

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

5           38. The Concession Plans adopted by the Defendants impose restrictions  
6 on the routes and services of motor carriers providing the intermodal transportation  
7 of property in interstate commerce. Specifically, the Concession Plans condition  
8 entry onto the Ports of San Pedro Bay and, therefore, the ability to serve routes to  
9 and from the Ports, upon acceptance by motor carriers of terms that affect the  
10 methods by which motor carriers may provide service to the Ports. These terms,  
11 set forth in Exhibits A and B to this Complaint, include regulation of wages and  
12 benefits offered by motor carriers to their employees or subcontractor independent  
13 owner-operators, the frequency with which motor carriers serve the Ports, licensing  
14 and signage that must be displayed by a motor carrier serving the Ports, and even  
15 the ability of motor carriers to use on-street parking.

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

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

25           41. 49 U.S.C. § 14501(c), prohibits the Defendants from enacting or  
26 enforcing any law, regulation, or other provision having the force and effect of law  
27 related to a route or service of any motor carrier with respect to the transportation  
28 of property.





1 [I]t shall be considered an unreasonable burden upon interstate  
2 commerce for any State or any political subdivision of a State, or any  
3 political authority of two or more States—

4 to enact, impose, or enforce any requirement or standards with  
5 respect to, or levy any fee or charge on, any motor carrier or motor  
6 private carrier providing transportation or service subject to  
7 jurisdiction under subchapter I of chapter 135 (in this section referred  
8 to as an ‘interstate motor carrier’) ... in connection with--

9 (D) the annual renewal of the intrastate authority, or the insurance  
10 filings, of the motor carrier or motor private carrier, or other intrastate  
11 filing requirement necessary to operate within the State if the motor  
12 carrier ... is—

13 (i) registered under section 13902 or section 13905(b); and

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

17 58. The Concession Plans establish requirements that unlawfully  
18 condition the right of motor carriers registered under the laws of the United States  
19 and the State of California to engage in the movement of cargo containers in  
20 interstate commerce.

21 59. The Concession Plans deprive Plaintiff’s members of the right to  
22 engage in interstate commerce free of unreasonable burdens, as protected by the  
23 Commerce Clause, including unreasonably burdening the ability of Plaintiff’s  
24 members who engage in the movement of cargo containers in interstate commerce  
25 at one of the San Pedro Bay Ports from engaging in the interstate movement of  
26 cargo containers at the other Port.

27 60. The Concession Plans have the purpose and effect of discriminating  
28 against and unreasonably burdening Plaintiffs’ members and other incumbent

1 motor carriers, and denying them their right to service the Ports of San Pedro Bay  
2 using independent owner-operators.

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

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

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

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

14 65. Defendants' Concession Plans unreasonably discriminate against  
15 incumbent motor carriers providing drayage services to the Port of Los Angeles, in  
16 violation of the Commerce Clause of the Constitution.

17 66. Plaintiff's members will incur irreparable harm from this  
18 constitutional violation.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff American Trucking Associations, on behalf of its  
21 Intermodal Motor Carriers Conference and its members, prays that this Honorable  
22 Court find in favor of Plaintiff on its Complaint and grant the following relief:

23 I. A declaratory judgment finding Defendants to be in violation of the  
24 Supremacy Clause of the United States Constitution, on the grounds set forth in  
25 each of Counts I and II;

26 II. A permanent injunction to remedy and prevent Defendants' violation  
27 of the Supremacy Clause, on the grounds set forth in each of Counts I and II;  
28

1 III. A declaratory judgment finding the Defendants' Concession  
2 Agreements void and unenforceable as an unlawful burden upon interstate  
3 commerce under finding to 42 U.S.C. § 1983, on the grounds set forth in Count III;

4 IV. A permanent injunction against enforcement of those agreements, on  
5 the grounds set forth in Count III;

6 V. An award under Count III of such other relief as may be appropriate,  
7 including attorneys' fees, authorized by 42 U.S.C. § 1988; and

8 VI. Such further relief as to which the Court may find Plaintiff to be  
9 entitled.

10 Respectfully submitted,

11 Dated: July 28, 2008

SCOPELITIS, GARVIN, LIGHT,  
HANSON & FEARY, LLP

12 By:

13 Christopher C. McNatt, Jr.  
14 Attorneys for Plaintiff  
15 American Trucking Associations, Inc.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28