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7 Alliance for California Business, Associated California Loggers, Bud Caldwell, Jim Paiva,
Richard McGowan, Tony Hobbs, and Jason Daniels
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO

11 ALLIANCE FOR CALIFORNIA
12 BUSINESS, a California nonprofit
corporation; ASSOCIATED CALIFORNIA
13 LOGGERS, a California nonprofit
corporation; BUD CALDWELL, an
14 individual; JIM PAIVA, an individual;
RICHARD MCGOWAN, an individual;
15 TONY HOBBS, an individual; and JASON
DANIELS, an individual,

16 Plaintiffs,

17 v.

18 CALIFORNIA STATE
19 TRANSPORTATION AGENCY, a state
agency; CALIFORNIA DEPARTMENT OF
20 TRANSPORTATION, a state agency;
CALIFORNIA DEPARTMENT OF
21 MOTOR VEHICLES, a state agency;
CALIFORNIA DIVISION OF
22 OCCUPATIONAL SAFETY AND
HEALTH, a state agency; CALIFORNIA
23 AIR RESOURCES BOARD, a state agency;
and DOES 1-20, inclusive,

24 Defendants.
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27
28

FILED
Superior Court Of California,
Sacramento
11/22/2016
efines
By _____, Deputy
Case Number:
34-2016-80002491

CASE NO.
By FAX
**COMPLAINT FOR DECLARATORY
RELIEF (Code of Civ. Proc. §1060; and
Gov't. Code §11350); PETITION FOR
WRIT OF MANDAMUS (Code Civ. Proc. §
1085)**

Plaintiffs, allege for this Complaint herein as follows:

AN OVERVIEW

1
2
3 1. Nearly a decade ago, the California Air Resources Board (“CARB”) promulgated
4 regulations that require owners and operators of diesel engines in the State of California to be
5 equipped with a device known as the Diesel Particulate Filter (“DPF”). The prevailing philosophy
6 of the regulators was and remains, rush the technology to the market and make California citizens
7 endure the health, safety, and economic consequences of an inadequately designed and tested
8 technology. For many years, CARB denied the flawed technology of the DPF despite many
9 complaints about engine damage and fires. CARB falsely claimed that these problems were due
10 to poor maintenance and misuse. CARB claimed that it would take fast action if a CARB-
11 approved DPF device was found to have more than a four percent (4%) failure rate once on the
12 market. CARB also claimed that there was no increase in truck and bus fires in California. As
13 pressure mounted in the industry, CARB has publicly admitted the real facts about this disastrous
14 technology. CARB has admitted that it has no factual basis on which to opine about truck and bus
15 fires in California – whether there are more or less, or what causes them. When asked about more
16 than twenty-four (24) truck and bus fires in California for the period of 2014-2015, CARB
17 officials admitted that they have never inquired about or investigated these incidents. In March
18 2016 and November 2016, CARB representatives publicly, without fanfare, admitted that the
19 DPF, *as designed*, causes severe engine damage through ordinary use, that it will never operate
20 properly for anything other than long haul trucks, that the CARB verification process has been
21 inadequate and unable to prevent a massive failure rate for DPF devices now on the market, and
22 that the net benefits of the DPF for air quality may be nonexistent. CARB has also admitted that
23 the failure rate for DPF equipped diesel engines is far in excess of four percent (4%), and that
24 these failures are caused by the extreme heat (in excess of 1400° F) of the DPF during
25 regeneration and the resulting back pressure in the engine when the DPF becomes clogged with
26 soot and prevents the flow of air from the engine to and through the exhaust pipe. CARB’s recent
27 admissions of engine damage directly correlate to the increasing occurrence, in California and
28 elsewhere, of fires caused by the DPF device, which has destroyed trucks, buses, and nearby

1 property (*i.e.*, extreme temperatures and a clogged DPF, plus engine back pressure, is a recipe for
2 a catastrophic engine fire, as depicted in **Exhibit A** to the Complaint).

3 2. The requirement that vehicles and other diesel engine-powered equipment in this
4 state be equipped with a DPF as a condition of the right to operate in this State creates an urgent
5 safety risk to owners, operators, and bystanders. Each of the California agencies named as
6 defendants herein are responsible in some way for the safe operation of diesel engines on the
7 roads and in the workplace. These defendant agencies must embrace accountability for a failed
8 technology and the havoc it has wreaked for the past decade under the guise of clean air policy. It
9 is not enough, as CARB has argued, that it “cares about safety” or that “the DPF will get better
10 over time.” Each of the defendant agencies, including CARB, has an obligation to protect the
11 citizens of this State from harm caused by regulatory neglect and foolishness.

12 3. Plaintiffs represent a broad coalition of California individuals and businesses who
13 have been forced to investigate the DPF and publicize the danger it presents because the defendant
14 agencies herein named refuse to do so. Plaintiffs seek an order requiring the defendants and each
15 of them to do their most important jobs – to protect California citizens from dangerous conditions
16 on the road and in the workplace. Plaintiffs are informed and believe that, to date, there is not a
17 single study by any state agency on whether the DPF can be safely operated – despite the fact that
18 there is no longer a debate that the DPF, as designed, will damage diesel engines when it reaches
19 extremely high temperatures during normal operation and thereby increases the risk of engine
20 fires. Plaintiffs therefore seek an independent and peer-reviewed study to determine if the DPF,
21 as designed and implemented, damages diesel engine systems and creates an increased risk of
22 fires in and around diesel-powered engines. Plaintiffs also seek a temporary moratorium on the
23 DPF requirement until this critical safety study is completed.

24 **THE PARTIES**

25 4. Plaintiff Alliance for California Business (“ACB”) is, and at all times mentioned
26 herein was, a non-profit, voluntary-membership California corporation whose purpose is to
27 protect and promote business interests throughout California, including Sacramento County.
28 ACB strives to protect and improve the availability of affordable, safe transportation for

1 California businesses and consumers through responsible stewardship of California's resources,
2 including air quality. ACB represents a broad spectrum of individuals and businesses who have
3 been forced to contend with the consequences and safety risks of the DPF device. ACB's
4 membership includes owners and operators of trucks; farmers and agricultural producers;
5 ranchers; business owners who provide or depend upon safe and reliable transportation of
6 commercial and agricultural products throughout the state; owners, consumers, and families who
7 rely on buses for safe and reliable transportation; and owners and operators of equipment
8 requiring diesel engines (*e.g.* refrigerator units, cement pumps, and cranes).

9 5. Plaintiff Associated California Loggers ("ACL") is a California non-profit
10 association, founded in 1973 and comprised of primarily small and family-owned businesses of
11 loggers and log truckers. Its members help harvest California's renewable forests, producing and
12 transporting the materials for California's forest-product businesses, including sawmills, plywood
13 plants, and fuel-generating facilities (a significant part of the California economy). The ACL
14 strives to improve safety, efficiency, and professionalism among its members and is headquartered
15 in Sacramento, California.

16 6. There are five individually named plaintiffs in this lawsuit. Four of the five
17 individually named plaintiffs (Messrs. Bud Caldwell, Jim Paiva, Richard McGowan, and Tony
18 Hobbs) have each applied to defendant California Air Resources Board for a safety exemption
19 (*i.e.* that they be permitted to operate their trucks and/or farm equipment without the DPF), as
20 more fully alleged herein. Mr. Caldwell owns and operates trucks in Chico, California that
21 transport diesel fuel, requiring the DPF. Mr. Paiva and Mr. McGowan own and operate farms
22 located in Butte County, California, requiring farm equipment and trucks with the DPF. Mr.
23 Hobbs is the owner of an independent trucking company, located in Willows, California. Messrs.
24 Caldwell, Paiva, McGowan, and Hobbs are each petitioners for writ of mandate in this case, who
25 were denied safety exemption requests from the DPF requirement. Plaintiff Jason Daniels is the
26 other individually named plaintiff; he is the owner of J&T Logging Company, LLC, a family-
27 owned trucking business based out of Eureka, California.

28 7. Defendant California Air Resources Board ("CARB") was established by the

1 California Legislature in 1967 and is overseen by the California Environmental Protection
2 Agency, an agency of state government in the State of California. Mary D. Nichols, its Chairman,
3 and Richard Corey, its Executive Officer, oversee and manage the day-to-day operations of CARB
4 and supervise CARB staff.

5 8. Defendant California State Transportation Agency (“CalSTA”) is a state agency
6 who purpose is to develop and coordinate the policies and programs of California’s various
7 transportation entities, including the Board of Pilot Commissioners, California Highway Patrol,
8 California Transportation Commission, Department of Transportation, Department of Motor
9 Vehicles, High-Speed Rail Authority, Office of Traffic Safety, and New Motor Vehicle Board.

10 9. Defendant California Division of Occupational Safety and Health (“Cal/OSHA”) is
11 a state agency whose purpose is to, *inter alia*, protect California workers and improve their health
12 and safety by setting and enforcing standards for workplace conditions, as well as providing
13 public outreach and education regarding California workers’ health and safety rights.

14 10. Defendant California Department of Transportation (“Caltrans”), headquartered in
15 Sacramento, California, is a state agency whose mission is to provide “a safe, sustainable,
16 integrated, and efficient transportation system to enhance California’s economy and livability.”
17 Among the organization’s goals are to “[p]rovide a safe transportation system for workers and
18 users.”

19 11. The California Department of Motor Vehicles (“DMV”) is a state agency whose
20 purpose is to provide the public with quality licensing and motor vehicle-related services,
21 including educating the public and providing them with accurate and complete information about
22 motor-vehicle and traffic safety on California’s roads and highways.

23 12. Plaintiffs are ignorant of the true names and capacities of defendants sued as Does
24 1 through 20, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs
25 will amend this complaint to allege their true names and capacities when ascertained.

26 13. Plaintiffs are informed and believe, and thereon allege, that at all times herein
27 mentioned, Defendants, including the Doe defendants, and each of them, were agents, servants,
28 alter egos and/or employees of their defendants, and in doing the things hereinafter alleged, were
acting within the scope of their authority as agents, servants, and employees, and with the

1 permission and consent of their co-defendants.

2 **JURISDICTION AND VENUE**

3 14. This Court has jurisdiction over the matters alleged in this complaint under Code
4 of Civil Procedure sections 187, 1060, and 1085 and Government Code section 11350.

5 15. Venue is proper in this Court pursuant to California Code of Civil Procedure
6 section 393 and 395, because some part of the cause of action, herein alleged, arose in the County
7 of Sacramento, California.

8 **GENERAL ALLEGATIONS**

9 16. The diesel particulate filter, commonly called DPF, is a form of emissions control
10 technology that directs a vehicle's exhaust through a filter that physically captures particulate
11 matter ("PM"), found in the exhaust of diesel-fueled compression ignition engines, as the exhaust
12 flows through the emissions system. DPF devices can be installed on diesel-powered engines
13 such as trucks, buses, motor coaches, tractors, drilling rigs, concrete pumps, cranes, and other off-
14 road equipment and vehicles. They can be installed as aftermarket retrofits ("retrofits") or they
15 can come on newer vehicles with original equipment manufacturer ("OEM") DPFs. Both retrofit
16 and OEM DPFs act in essentially the same way to capture PM from diesel exhaust. As alleged
17 herein, DPF systems, when working as designed, damage diesel engines and cause explosive,
18 catastrophic fires in and around the vehicles in which the DPFs are installed. Notwithstanding
19 these well documented facts concerning the DPF – both as to retrofit and OEM devices – the
20 members of the plaintiff organizations and the individual plaintiffs named herein are required by
21 law, either now or in the future based on a statutory compliance schedule, to install and operate
22 their diesel-powered vehicles and other equipment with the DPF. As alleged herein, the DPF
23 requirement forces the regulated community to adopt a poorly designed technology, which
24 presents a clear and present public safety risk to drivers, passengers, and the general public
25 throughout the state of California.

26 17. **The DPF Regeneration Process:** Periodically, during operation of the diesel
27 engine, the PM must be either physically removed or oxidized (burned off) in a process called
28 "regeneration." There are two types of regeneration: passive (where the temperature of the

1 engine's diesel exhaust entering the DPF is sufficient to burn the PM within the DPF's core
2 element into a fine white ash on its own) and active (where an external source of heat is required
3 to burn the PM and where the driver must often pull over to a safe place before carrying out the
4 regeneration event). Plaintiffs are informed and believe that the regeneration process causes
5 increased air emissions that may offset the benefits of the DPF's reduction of air emissions.

6 18. **The Consequences of Exposure to High Temperatures:** During regeneration, in
7 addition to the core element of the DPF system becoming extremely hot in order to burn off the
8 PM, the external surface temperature of the DPF device often reaches temperatures as high as 725
9 degrees Fahrenheit, and the internal temperature of the DPF temperatures is typically in excess of
10 1400 degrees Fahrenheit. During regeneration, exhaust and sparks entering the atmosphere after
11 passing through the DPF itself. Auto-regeneration is a process by which regeneration happens
12 when the DPF emissions system decides it is needed. The problem is that auto-regeneration can
13 be triggered when the DPF gets clogged with soot, which creates a greater risk of excessive heat
14 and fires in and around the DPF, engine area, and areas near the exhaust pipe of the diesel engine
15 vehicle or stationary engine. The DPF gets clogged with soot for most diesel engines except long
16 haul trucks because of the inherent design and features of the DPF. As set forth herein, CARB
17 has recently disclosed a CARB-funded study of the DPF, started in 2013 and completed in 2016,
18 that confirms that there is no engineering or design solution to this dangerous flaw in the DPF
19 device.

20 A. **The Deterioration and Disintegration of the DPF.** The above-referenced
21 temperatures are significantly above the temperature that can cause grass and forest products to
22 burn. Additionally, as a result of the extremely high temperatures within the core of the DPF
23 system, often reaching around 2000 degrees Fahrenheit, the ceramic core element and the metallic
24 filter parts of the DPF, over time, has the high potential to melt and disintegrate, shooting blazing-
25 hot pieces of matter out of the vehicle's exhaust pipe and into nearby combustible materials such
26 as grassy areas, roadside vegetation, and forest products. This is not a hypothetical danger.
27 Plaintiffs have documented through deposition testimony by an investigative officer with Cal Fire,
28 that he is aware of as many as ten (10) such fire incidents in the State of California, including a

1 recent incident in San Juan Bautista, California in which the fire spread from the roadside and
2 burned nearby houses.

3 **B. Engine Damage Caused by High Temperatures and Backpressure:** When
4 DPFs are functioning as designed, the DPF creates back pressure within the diesel engine, which
5 increases as PM accumulates in the DPF. This increased pressure, in turn, causes even higher
6 temperatures in the DPF system as well as in the engine (by causing a restriction in air flow, and
7 additional strain, within those systems), both of which present the risk of catastrophic engine
8 damage and/or spontaneous combustion (*i.e.*, fire). The extremely high temperatures and back
9 pressure caused by the DPF cause engine and vehicle failures, especially within the engine's
10 turbocharger ("turbo"), exhaust gas re-circulation system ("EGR"), and fuel system. These same
11 high temperature and back pressure conditions cause the failure of the vehicle's sensors (*i.e.*, the
12 devices that control the DPF and alert a driver to problems such as excess back pressure and
13 equipment failure). This horrific Catch-22 condition – whereby back pressure and high
14 temperatures causes the warning system for back pressure and catastrophic engine damage to fail
15 – compounds the problem and allows dangerous conditions to continue within the vehicle,
16 unbeknownst to the driver/operator. In addition to sudden engine fires, sensor and DPF failures
17 have been linked to situations in which a vehicle undergoes "de-rating," which means that the
18 engine's horsepower becomes significantly limited, or in some instances, shuts off completely.
19 This can happen suddenly and without warning to the driver while driving on the highway or
20 during critical vocational operations. Plaintiff ACL, whose members own and operate logging
21 trucks, are uniquely vulnerable to the de-rating condition because of the steep and narrow roads
22 that they are required to travel to move logs out of mountainous areas to be milled.

23 **C. The Increased Risk of Fires in and around DPF-Equipped Diesel Engines:**
24 The DPF device system has all the operative components to ensure a volatile, dangerous situation
25 within the DPF-equipped diesel engine: high heat, back pressure, accelerated wear and tear on
26 component parts of the engine due to the constant exposure to high temperatures, fuel, oxygen,
27 various spark sources (*e.g.*, electrical wiring and high-temperature exhaust), and flammable
28 materials or conditions that are internal and external to the vehicle. Examples of internal

1 materials are loose wiring and flammable “sleeper” materials, such as bedding or wooden
2 components. Examples of external materials are nearby grasslands, roadside vegetation, and
3 flammable debris. A further internal condition includes flammable off-gasses, such as ammonia,
4 which can ignite in a closed system, has a flashpoint of just over 1200 degrees Fahrenheit, and is a
5 byproduct of diesel exhaust fluid (“DEF”), an aqueous urea solution, being sprayed into the
6 exhaust system of diesel vehicles to reduce NOx.

7 19. Plaintiffs are informed and believe that CARB has acknowledged each of the
8 foregoing problems caused by the DPF, including engine damage, mechanical defects, flawed
9 design, and the inherent danger of fires and catastrophic engine failures. CARB has confirmed
10 this as recently as March 2016, in publicly-released findings, indicating the flawed nature of the
11 DPF device, stating, *inter alia*, the following (emphasis added): “[r]egeneration can represent a
12 **potential failure mode and/or severe aging condition** due to the high temperature conditions
13 during the process”; “[r]egular regeneration places **significant stress** on the DPF”; “[a]n in-field
14 problem would be difficult to determine if the device was the cause or the engine, or that the
15 device causes another part on the engine to fail”; “[o]perating the engine at excessive
16 backpressure for extended periods will **impact engine performance and eventually cause engine**
17 **damage**”; “[f]requent regeneration will increase the . . . **risks of DPF failures.**”

18 20. At the CARB Heavy Duty Low Nox Program Workshop held on November 3,
19 2016, CARB spoke frankly about the limitations of the DPF and its failure as an agency to ensure
20 that the DPF device is actually safe for the intended use. At this meeting, CARB acknowledged
21 that its verification process is inadequate. It is supposed to ensure that CARB-approved DPF
22 devices meet certain standards of durability and safety. However, CARB now acknowledges that
23 its durability analysis of CARB-approved DPFs do not reflect how the DPF actually functions in
24 the real world. Jeff Lowry from CARB’s Mobile Source Division, in his presentation at the
25 meeting, discussed the results of CARB’s internal audit of DPF component failures for the period
26 of 2003 to 2011. Mr. Lowry reported that CARB found evidence of massive component failures
27 well beyond the 4% failure rate that was the benchmark CARB had earlier set as the point for
28 catastrophic failures of the DPF and related emission system, including as much as 100%

1 component failures for turbochargers, 40% failures for DPFs, and 50% failures on injector
2 systems. CARB acknowledged the historical problem of relying on voluntary reporting by
3 manufacturers as a means of monitoring design failures and durability problems. Though still
4 attributing DPF emissions systems failures to owner maintenance neglect, CARB representatives
5 offered no data to support that as a causation factor. CARB also disclosed that it had funded (for
6 \$2.7 million) a major study on the DPF through Southwest Research Institute (“Southwest”) in
7 San Antonio, Texas, starting in 2013. Southwest found that CARB’s reliance on historical data
8 from the 1970s and 1980s concerning DPF devices was not borne out by real world testing of the
9 device. Southwest reported that for vocational vehicles (*i.e.*, diesel engines other than long haul
10 trucks) the DPF does not function properly and there is no technology available to address that
11 problem. For owners and operators of short haul diesel engine vehicles, buses, tractors, and
12 stationary engines, this means that the DPF device does not function properly and will not do so.
13 The principal problem is that short haul or “stop and start” use for diesel engines with the DPF
14 device causes soot buildup in the DPF. The effect is to essentially store “fuel” for a massive blast
15 of heat when the DPF goes through regeneration. This, in turn, causes back pressure and related
16 engine damage. Southwest reported that for these diesel engines, there is no available DPF (nor
17 one that can be designed) that can meet both the NOx reduction levels and the particulate matter
18 (“PM”) standards now set by CARB.

19 21. Plaintiffs and Plaintiffs’ members have been severely impacted by the negative
20 effects of the DPF, which has placed not only them, but their employees, their businesses, and all
21 of those around them at great risk due to the inherent safety and mechanical reliability problems
22 associated with the DPF. For example, below are listed just some of the many stakeholders
23 affected by the DPF and some of the many negative consequences associated with the device:

24 A. **Truck Owners, Drivers, and Passengers:** Truck fires and constant fear of
25 fires/overheating; disruptive and dangerous “de-rating events”; continual mechanical breakdowns;
26 unaffordable repairs and lost time/work; insurance unaffordability;

27 B. **Bus and Motor Coach Owners, Operators, and Passengers:** Bus and motor
28 coach fires/overheating events; mechanical breakdowns and stranded passengers; constant repairs

1 and high maintenance costs; massive liability and moral concerns due to fires and breakdowns on
2 school buses and motor coaches;

3 C. **Loggers and Log Truckers:** Logging truck fires and high risk of forest fires;
4 dangerous de-rating and mechanical breakdown events on steep-graded mountains;

5 D. **Farmers and the Agricultural Industry:** Tractor and farming equipment
6 fires, which can spread to crop fields and property; crop loss and massive lost profits; constant
7 repairs and high maintenance costs;

8 E. **Crane Operators:** Risk of crane and equipments fires; risk of mechanical
9 breakdowns in precarious situations on construction, and other, sites;

10 F. **Drill Rig Operators:** Risk of drill rig mechanical breakdowns and fire,
11 especially for water, oil, and natural gas drilling projects (because of the risk of unanticipated
12 natural gas deposits);

13 G. **Concrete Pump Operators:** Because the operation of concrete pumps is
14 normally done remotely, the risk of a breakdown or mechanical failure, including fire, is increased
15 and puts at risk workers from other trades working in and around the area;

16 H. **Repair and Maintenance Professionals:** Risk of exposure to fire and other
17 volatile vehicle conditions; exposure to highly toxic substances (fine PM) when cleaning DPF
18 devices;

19 I. **Property Owners:** Damage to and loss of property and personal belongings due
20 to fires emanating from the sparks and debris that the vehicles spew during the DPF regeneration
21 or deterioration of the DPF device; and

22 J. **General Public:** Safety risk from vehicle and roadside fires, mechanical
23 malfunctions, and stranded vehicles; increased costs of goods (from costs being passed to the
24 consumer); pollution and environmental damage from truck/bus fires throughout the state of
25 California.

26 22. There have also been innumerable specific examples and instances of DPF device
27 failures, which have been voiced by stakeholders across California and its diverse population and
28 industries. Plaintiff Bud Caldwell has been forced to replace over 20 turbochargers on his trucks

1 since bringing his trucking fleet into compliance with the DPF requirement (compared with just 3
2 turbochargers needing replacement in his 20 years within the industry prior to compliance). These
3 repairs have not only come at great economic cost, but also at great safety cost for Mr. Caldwell
4 and his drivers, who must now be constantly wary about their vehicle breaking down on a road or
5 highway. An even clearer example of the safety risks associated with DPFs is revealed from the
6 situation Mr. Daniels encountered when, in February 2016, his company's truck erupted in fire
7 when the vehicle was parked and undergoing "regeneration" at a rest stop area along northbound
8 Highway 101. An investigation into the fire by Mr. Daniels's insurance company and a former
9 state fire investigator revealed that the fire was almost certainly caused by the DPF.

10 23. **The So-Called Safety Exemption.** CARB has repeatedly told the regulated
11 community, including associations representing the needs and interests of the regulated
12 community, that if they can present evidence to CARB that the DPF is unsafe and/or creates
13 unsafe engine or operating conditions, CARB will issue a safety exemption, and not require the
14 installation and/or continued use of a DPF device. Plaintiffs are informed and believe that CARB
15 has, to date, granted exemptions to at least one group – owners and operators of emergency
16 response vehicles (ambulances and fire fighting equipment). However, despite requests by many
17 other persons and organizations representing various types of diesel engine operators impacted by
18 the DPF requirement (*e.g.*, owners and operators of short haul trucks, logging trucks, concrete
19 pumps, and crane operators) subjected to the safety concerns of the DPF, as herein alleged, CARB
20 has refused to grant a safety exemption or provide a meaningful inquiry into the validity of the
21 request.

22 A. The DPF requirement has been promulgated and enforced through a regulation
23 known as the "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen
24 and Other Criteria Pollutants, from In-Use Heavy-Duty Diesel-Fueled Vehicles" ("Truck and Bus
25 Regulation"), which is codified in California Code of Regulations, Title 13, Article 4.5, Chapter
26 1, section 2025, *et seq.*, and the "Verification Procedure, Warranty and In-use Compliance
27 Requirements for In-use Strategies to Control Emissions from Diesel Engines" ("Verification
28 Procedure"), which is codified in the California Code of Regulations, Title 13, Chapter 14, section

1 2700, *et seq.* California Code of Regulations, Title 13, section 2025(q)(5). Section 2025(q)(5)
2 allows “[a] fleet owner [to] request that the [CARB] Executive Officer find that a [Verified Diesel
3 Emission Control Strategy (“VDECS”)] should not be considered the highest level VDECS
4 available because . . . it cannot be safely installed or operated[.]” However, one may only apply
5 for this administrative remedy if one is a *truck owner* who has a DPF *retrofit* device that cannot be
6 safely installed on a particular truck. This necessarily excludes the vast majority of stakeholders
7 subjected to, and affected by, the DPF requirement, including drivers and operators of vehicles
8 equipped with DPFs, passengers, organizations and citizens’ groups seeking to protect their
9 members, owners of OEM DPFs, owners of off-road vehicles, repair and maintenance
10 professionals, farmers and agricultural producers, loggers and log truckers, and the general public.

11 B. CARB has represented to the public that the process for obtaining a safety
12 exemption is to simply write a letter to CARB making the request and persuading CARB that the
13 DPF device was unsafe.

14 C. Following that direction, numerous individuals and companies have applied
15 for the DPF exemption. They did so because this was effectively their only potential
16 administrative recourse according to CARB’s directives. Plaintiff Alliance for California
17 Business is informed and believe that nearly 100 California-based applicants have applied for the
18 DPF exemption, providing CARB with extensive evidence pertaining to DPF safety concerns.
19 *None* of these applications, as far as Plaintiffs are aware, have been approved or even seriously
20 considered by CARB. These denials were made without any meaningful review or any true
21 consideration of Plaintiffs’ safety concerns and evidence, often offering only blanket statements
22 about the supposed safety of DPF devices and reference to a discredited May 2015 “study” on
23 DPF safety, which was generated by CARB internally without any true expert or peer review
24 process. Plaintiffs and many others who are subjected to the unsafe operational conditions of the
25 DPF have effectively been left without recourse or remedy for challenging the DPF requirement
26 and the grave dangers that the DPF device poses to their businesses, communities, and families.

27 24. CARB’s vetting process for reviewing and approving DPF devices, outlined in the
28 Verification Procedure, is inherently flawed and ineffective because it does not (a) prevent

1 clogging, excessive heat, damage to the engine, damage to other vehicle parts and functions, and
2 disintegration of the interior of the DPF device; (b) prevent sudden fires or de-rating events; (c)
3 warn when the device is about to cause a fire or de-rating incident; or (d) warn when the device is
4 disintegrating or has reached critical failure levels. The Verification Procedure also fails to
5 simulate real-world applications of the device and scenarios where the DPF may pose a public
6 danger. Plaintiffs are informed and believe that while the Verification Procedure has a recall
7 process for DPF devices proven to be flawed or defective, the process does not address what
8 CARB acknowledges to be inherently dangerous conditions, including engine damage, caused by
9 the normal and expected operation of the DPF. Nor does the Verification Procedure adequately
10 protect against such dangers in the first instance because it places an official state sanctioned
11 approval of DPF devices that thereafter cause engine damage and fires in and around DPF-
12 equipped diesel engines.

13 25. Plaintiff Alliance for California Business has been tracking and investigating
14 numerous truck and bus fires throughout the past several years, including 15 bus fires and over 50
15 truck fires between years of 2014 and 2016. In just this year so far (2016), Plaintiff Alliance for
16 California Business are aware of 36 truck fires and 10 bus fires. Plaintiff Alliance for California
17 Business are informed and believe that the vast majority of these fires have been caused by the
18 DPF device, either directly or indirectly. For example, among these fires was a school bus fire
19 from September 2015 where a bus carrying 30 high school students back from a water polo match
20 in Orange County caught on fire. A report by the Irvine CHP noted that smoke and flames were
21 coming from underneath the rear of the bus, and a report from the Orange County Fire Authority
22 noted that prior to the fire the bus experienced a sudden loss of power (*i.e.*, de-rating) and that the
23 fire was determined to have originated in the engine compartment – all indications that the DPF
24 device was a likely cause. An example of a truck fire that was caused by the DPF is revealed by
25 the evidence from Plaintiff Mr. Daniels, whose truck caught on fire within a matter of minutes
26 after going into regeneration while parked at a rest stop. An insurance investigation by a former
27 state fire investigator indicated that the DPF was almost certainly the cause of the fire. Plaintiffs
28 are further informed and believe of another commercial bus fire event in Kern County, California

1 in August 2016, where 50 passengers had disembarked at a gas station, the bus burst into flames
2 while backing up, the bus was completely destroyed, and the suspected cause of the fire was a
3 DPF device malfunctioning during regeneration.

4 26. The DPF device has also been linked to several high-profile California fires that
5 have affected hundreds of acres of California land, threatened residential neighborhoods,
6 endangered lives, and caused devastating property damage. For example, in July 2015, a semi-
7 truck caused four grassland fires along Highway 156 near San Juan Bautista and even burned a
8 residential home. A local fire chief stated that all four fires were started by a DPF on a semi-
9 truck, and this was confirmed through the deposition of the Cal Fire chief battalion officer who
10 conducted the investigation into the fires and determined that extremely hot pieces of a catalytic
11 converter (*i.e.*, pieces of the DPF's honeycomb core element) had disintegrated and shot out
12 through the truck's exhaust, thereby setting the nearby grassland on fire at various points along the
13 highway. The Cal Fire chief stated that he had personally investigated numerous similar incidents
14 (between 10 to 50 others). An even more recent example is seen through the September 2016
15 Saddle Fire in Butte County, California – a fire that burned through 850 acres, destroyed 3 homes,
16 and resulted in numerous evacuations orders – which was determined to have been caused by a
17 malfunctioning vehicle exhaust system, likely a DPF on a truck.

18 27. The DPF requirement, in operation in trucks and buses as required, and the CARB
19 verification process for the DPF device to be marketed and used on vehicles in California, violate
20 the federal and state laws pertaining to vehicle safety as well as public health and safety (*e.g.* 49
21 Code of Federal Regulations section 393.83(a); Vehicle Code section 24002; Labor Code section
22 6400; and Cal/OSHA section 3328). The DPF requirement has subjected Plaintiffs, and the
23 association Plaintiffs, to extreme danger to themselves and their property, but also their
24 employees, their business affiliates, and the general public. Plaintiffs, including members of the
25 association Plaintiffs, are thereby placed in the difficult position of having to chose between the
26 bad option of installing an inherently dangerous and destructive device on their vehicles and
27 equipment and the equally bad option of suffering fines, penalties, and the eventual loss of their
28 livelihood as a result of non-compliance. Plaintiffs are also faced with the risk of facing ever-

1 increasing rates by insurance companies, which threaten to make insurance for these vehicles
2 reach a point of complete unaffordability. Defendants and each of them, as California agencies,
3 are responsible in some part for enforcing the laws that require the DPF, responding to the fires
4 and damage caused by the DPF device, or accurately and publicly documenting, as well as
5 responding to, the significant health and safety risks presented by the continued and ever
6 expanding use of the DPF device, in the face of evidence that the DPF, on a near daily basis,
7 causes catastrophic truck and bus fires on public roads and private property. Defendants and each
8 of them must be a part of being held accountable for the serious health and safety risks presented
9 by the continued use of the DPF, spreading quite literally throughout the state of California.

10 **FIRST CAUSE OF ACTION**
11 **Declaratory Relief**
12 **(As Against All Defendants)**

13 28. Plaintiffs incorporate by reference paragraphs 1 through 27 of this Complaint as if
14 fully set forth herein.

15 29. An actual controversy has arisen and now exists between Plaintiffs and
16 Defendants regarding whether DPFs are actually safe to operate within California and whether
17 they are in fact the highest VDECS that can be safely installed and operated in Plaintiffs' and
18 Plaintiffs' members' vehicles and equipment. Plaintiffs therefore desire a declaration of their (and
19 their members') rights under the laws of the State of California. Specifically, Plaintiffs desire a
20 declaration that the DPF devices, currently approved and required by CARB, are mechanically
21 unreliable and unsafe as designed and when operating exactly as designed, and that the use of
22 such devices in the State of California endangers who are required to work and live in and around
23 the DPF, including individuals, businesses, owners, operators of the DPF-equipped engines, other
24 trade groups forced to work along side diesel-powered equipment in which there is an OEM or
25 retrofit DPF, property owners and innocent bystanders to fires and explosions caused by the DPF
26 emissions systems. Plaintiffs seek an order requiring the defendant agencies and each of them to
27 protect California citizens from dangerous conditions on the road and in the workplace. Plaintiffs
28 seek an independent and peer-reviewed study to determine if the DPF, as designed and
implemented, damages diesel engine systems and creates an increased risk of fires in and around

1 diesel engines. Plaintiffs also seek a temporary moratorium on the DPF requirement until this
2 critical safety study is completed. suspend future DPF requirements and compliance deadlines,
3 including those for farm equipment, until safety and OSHA issues have been resolved; and
4 reimburse individuals and companies who have, as a result of the DPF requirement, suffered
5 monetary harm by having their vehicles subject to repairs and other costs associated with the DPF
6 and its destructive symptoms.

7 30. Unless restrained and enjoined, Defendants and each of them will continue to
8 implement and enforce the DPF requirement, or support the implementation of the same through
9 direct action or acquiescence in this dangerous regulatory requirement, resulting in irreparable
10 harm to Plaintiffs and Plaintiffs' members. Among this irreparable harm and injury that will
11 occur if the DPF requirement is permitted to be enforced, includes, *inter alia* the following: (a)
12 being forced to install, purchase and/or operate diesel engines with a defective and inherently
13 dangerous technology – to wit, the DPF device; and (b) being put in the untenable position of
14 either being subjected to fines and penalties for operating a vehicle or equipment in California
15 without a DPF device installed, or putting their employees, themselves, and the general public at
16 risk by continuing to operate vehicles and equipment with DPF devices installed on them.

17 31. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of
18 law, other than the relief sought in this complaint, in that there is no other legal remedy to prevent
19 or enjoin the implementation of the DPF requirement as set forth in the Truck and Bus Regulation
20 and the Verification Regulation.

21 **SECOND CAUSE OF ACTION**
22 **Petition for Writ of Mandamus**
(By Plaintiffs Caldwell, Paiva, McGowan and Hobbs as
Against Respondent and Defendant CARB)

23 32. Plaintiffs and Petitioners Caldwell, Paiva, McGowan and Hobbs re-allege and
24 incorporate by reference the allegations of Paragraphs 1 through 31, inclusive, as though fully set
25 forth herein.

26 33. Messrs. Caldwell, Paiva, McGowan and Hobbs allege, for the foregoing reasons,
27 that Defendant and Respondent CARB has claimed that it will grant an exemption from the DPF
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1 requirement to any regulated party who provides to CARB evidence that the DPF presents a safety
2 danger to the vehicle or diesel engine owner or operator. Messrs. Caldwell, Paiva, McGowan and
3 Hobbs made such application to CARB in or about April 2016 and specifically allege as follows:

4 A. Plaintiff and Petitioner Caldwell applied for a safety exemption on or about
5 April 5, 2016, which CARB denied with a form letter dated May 12, 2016. Mr. Caldwell
6 administratively appealed that denial on June 16, 2016, and CARB forwarded a form letter, dated
7 July 19, 2016, in which it denied that appeal. In each instance of denial by CARB herein alleged,
8 CARB provided a summary denial without consideration of the particular facts and circumstances
9 presented by the applicant.

10 B. Plaintiff and Petitioner Paiva applied for a safety exemption on or about April
11 8, 2016, which CARB denied with a form letter. Mr. Paiva administratively appealed that denial
12 on June 3, 2016, and CARB forwarded a form letter, dated July 19, 2016, in which it denied that
13 appeal. In each instance of denial by CARB herein alleged, CARB provided a summary denial
14 without consideration of the particular facts and circumstances presented by the applicant.

15 C. Plaintiff and Petitioner Hobbs applied for a safety exemption on or about April
16 5, 2016, which CARB denied with a form letter dated May 12, 2016. Mr. Hobbs administratively
17 appealed that denial on July 6, 2016, and CARB forwarded a form letter, dated July 19, 2016, in
18 which it denied that appeal. In each instance of denial by CARB herein alleged, CARB provided
19 a summary denial without consideration of the particular facts and circumstances presented by the
20 applicant.

21 D. Plaintiff and Petitioner McGowan applied for a safety exemption on or about
22 April 15, 2016, which CARB denied with a form letter in May 2016. CARB provided a summary
23 denial without consideration of the particular facts and circumstances presented by the applicant.

24 34. Messrs. Caldwell, Paiva, McGowan and Hobbs are informed and believe that there
25 is no further administrative process within CARB to further pursue this request for a safety
26 exemption.

27 35. Messrs. Caldwell, Paiva, McGowan and Hobbs have each exhausted all
28 administrative remedies, and there is no plain, speedy, and adequate alternative remedy at law.

1 36. Respondent and Defendant CARB is associated with a state agency. Messrs.
2 Caldwell, Paiva, McGowan and Hobbs each allege a violation of their fundamental safety and
3 property rights.

4 37. Because CARB proceeded with an regulatory enforcement process that was
5 unreasonable, arbitrary, and capricious, Messrs. Caldwell, Paiva, McGowan, and Hobbs were
6 denied their right to a fair and impartial hearing and administrative process. Moreover, Messrs.
7 Caldwell, Paiva, McGowan, and Hobbs were effectively not provided with any recourse under the
8 law. Thus, Messrs. Caldwell's, Paiva's, McGowan's and Hobbs's rights were irreparably injured.
9 In addition, CARB's reasons for denying said safety exemption applications are not supported by
10 sufficient evidence or the law. CARB's denials of exemption applications should therefore be
11 reversed, as should its general promulgation and enforcement of the DPF requirement.

12 38. As a direct and proximate result of CARB's conduct, Messrs. Caldwell, Paiva,
13 McGowan, and Hobbs have been damaged in an amount to be proved at trial.

RELIEF REQUESTED

14 1. As to the First Cause of Action by All Plaintiffs:

15 A. For a declaration that DPFs are inherently unsafe and mechanically
16 unreliable, and that continued enforcement of the DPF requirement, whether OEM or retrofit
17 devices, places Plaintiffs and Plaintiffs' members in the position of violating federal and
18 California public health and safety laws, such as, *inter alia*, 49 Code of Federal Regulations
19 section 393.83(a); Vehicle Code section 24002; Labor Code section 6400; and Cal/OSHA section
20 3328.

21 B. That this Court issue an order requiring CARB to undertake the following
22 actions: (1) make a full disclosure of all information that it has on DPF devices malfunctioning
23 and causing fires; (2) disclose all test data on DPF devices; (3) suspend enforcement of the DPF
24 requirement, until all current CARB-approved DPF devices have undergone comprehensive, peer
25 reviewed safety testing and are proven to be safe and mechanically reliable; (4) immediately
26 suspend verification or approval for public of any DPF device that is involved in a fire pending
27 further comprehensive, peer reviewed testing and safety verification (which must comport with
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1 real-world applications and scenarios); (5) immediately authorize owners and operators of buses,
2 to remove or bypass DPF devices on all buses and motor coaches until bus and motor coach fires
3 are fully investigated; (6) suspend present and future DPF requirements and compliance deadlines,
4 including those for farm equipment, until all safety and OSHA issues have been resolved; and (7)
5 establish a state agency supervised fund and associated process to provide reimbursement to
6 individuals and businesses who have, as a result of the DPF requirement, suffered monetary harm
7 by having their vehicles subject to repairs and engine damage caused by the DPF.

8 2. As to the Second Cause of Action by Petitioners and Plaintiffs Caldwell, Paiva,
9 McGowan, and Hobbs:

10 A. That a writ of mandamus be issued against CARB ordering that the safety
11 exemption applications be granted;

12 B. In the alternative, that CARB be required to engage in a meaningful review
13 process of the safety exemption application.

14 3. That Plaintiffs be awarded attorneys fees' and costs of suit incurred in this action
15 for responding to and protecting Plaintiffs' rights in connection with the harm caused by
16 Defendants.

17 4. That Plaintiffs be awarded such other and further relief as the Court may deem just
18 and proper.

19
20 Dated: November 21, 2016

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP

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23 _____
24 THERESE Y. CANNATA
25 Attorneys for Plaintiffs Alliance for California Business,
26 Associated California Loggers, Bud Caldwell, Jim Paiva,
27 Richard McGowan, Tony Hobbs, and Jason Daniels
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EXHIBIT A



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VERIFICATION

I, Bud Caldwell, declare that:

1. I am a plaintiff and petitioner in this action.

2. I have read paragraphs 6, 23, 33, 33a, 34-38 of the **COMPLAINT FOR DECLARATORY RELIEF (Code of Civ. Proc. §1060; and Gov't. Code §11350); PETITION FOR WRIT OF MANDAMUS (Code Civ. Proc. § 1085)** and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed in Chico, California on the 21st day of November, 2016.


BUD CALDWELL

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VERIFICATION

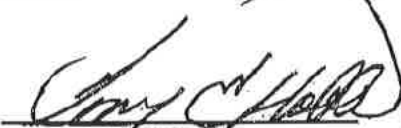
I, Tony Hobbs, declare that:

1. I am a plaintiff and petitioner in this action.
2. I have read paragraphs 6, 23, 33, 33o, 34-38 of the **COMPLAINT FOR**

DECLARATORY RELIEF (Code of Civ. Proc. §1060; and Gov't. Code §11350);
PETITION FOR WRIT OF MANDAMUS (Code Civ. Proc. § 1085) and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed in Willows, California on the 21st day of November, 2016.


TONY HOBBS

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VERIFICATION

I, Jim Paiva, declare that:

1. I am a plaintiff and petitioner in this action.
2. I have read paragraphs 6, 23, 33, 33b, 34-38 of the **COMPLAINT FOR**

DECLARATORY RELIEF (Code of Civ. Proc. §1060; and Gov't. Code §11350);
PETITION FOR WRIT OF MANDAMUS (Code Civ. Proc. § 1085) and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed in Chico, California on the 21st day of November, 2016.


JIM PAIVA

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VERIFICATION

I, Richard McGowan, declare that:

1. I am a plaintiff and petitioner in this action.

2. I have read paragraphs 6, 23, 33, 33d, 34-38 of the **COMPLAINT FOR DECLARATORY RELIEF (Code of Civ. Proc. §1060; and Gov't. Code §11350); PETITION FOR WRIT OF MANDAMUS (Code Civ. Proc. § 1085)** and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed in Chico, California on the 21st day of November, 2016.


RICHARD MCGOWAN