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Chris Shimoda  
Senior Vice President, Government Affairs  
California Trucking Association  
4148 E. Commerce Way  
Sacramento, California 95834  
[cshimoda@caltrux.org](mailto:cshimoda@caltrux.org)

RE: CTA v. CARB

Dear Chris Shimoda:

This letter memorializes discussions the California Air Resources Board (CARB) and the California Trucking Association (CTA) have had, through their respective counsel in *CTA v. CARB*, Case No. 2:23-cv-02333, E.D. Cal.<sup>1</sup>

In that case, CTA challenges components of CARB's Advanced Clean Fleets (ACF) regulation, including provisions governing drayage and high-priority fleets (as defined in the regulation) and require or prohibit certain conduct, as a matter of state law, beginning January 1, 2024. As CTA is aware, on November 17, 2023, CARB requested a preemption waiver from the United States Environmental Protection Agency (U.S. EPA), pursuant to 42 U.S.C. § 7543(b)(1). The parties' recent discussions have centered on the potential for enforcement of the challenged ACF provisions during the period CARB's waiver request is pending at U.S. EPA.

As CARB has conveyed through its counsel, CARB will not take enforcement action as to the high-priority or drayage fleet reporting requirements or registration prohibitions until U.S. EPA grants a preemption waiver applicable to those regulatory provisions or determines a waiver is not necessary. Accordingly, CARB's registration system will not prevent fleets from adding new internal-combustion-engine vehicles in this period. CARB also will not take enforcement action against vehicles that exceed their useful life periods (as defined in the regulation and including 2007-2009 model-year natural gas drayage trucks)—meaning CARB will not de-register those vehicles—until U.S. EPA grants a preemption waiver applicable to the relevant regulatory provisions or determines a waiver is not necessary.

CARB encourages fleets to comply while the waiver request is pending and reserves all of its rights to enforce the ACF regulation in full for any period for which a waiver is granted or for which a waiver is determined to be unnecessary. This includes, but is not limited to, the right to de-register non-compliant vehicles that were added to, or remained in, the drayage

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<sup>1</sup> By engaging in these discussions with CTA, CARB has not waived any defenses it may have in the litigation, including, but not limited to, sovereign immunity.

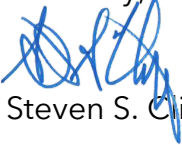
registration system while the waiver request was pending. Accordingly, if fleets add non-compliant vehicles (*e.g.*, new internal-combustion-engine vehicles) from January 1, 2024, onwards, those fleets should expect to receive a notice from CARB indicating that CARB may remove those vehicles in the event it receives the requested waiver or U.S. EPA decides no waiver is necessary.

CARB encourages fleets to voluntarily comply with the reporting requirements while the waiver request is pending to, among other things, facilitate future compliance. CARB will also accept requests for the extensions and exemptions available under the ACF regulation during this period.

In light of these representations from CARB, I understand CTA has agreed not to file a preliminary injunction motion seeking to enjoin enforcement of the challenged provision of the ACF regulation while the waiver request is pending before U.S. EPA.

As always, we appreciate the opportunity to discuss issues with regulated parties and other stakeholders. And we are pleased the parties were able to come to an understanding to avoid resource-intensive motion practice in this litigation. We look forward to continued discussions with CTA and its members.

Sincerely,



Steven S. Cliff, Ph.D., Executive Officer

cc: Marne Sussman, Counsel for CTA  
Holland & Knight LLP  
560 Mission Street, 19<sup>th</sup> Floor  
San Francisco, California 94105  
[Marne.Sussman@hklaw.com](mailto:Marne.Sussman@hklaw.com)