

1 **ARNOLD & PORTER KAYE SCHOLER LLP**

2 S. Zachary Fayne (SBN 307288)
3 (zachary.fayne@arnoldporter.com)

4 David Barnes (SBN 318547)
5 (david.barnes@arnoldporter.com)
6 Three Embarcadero Center, 10th Floor
7 San Francisco, CA 94111-4024

8 Tel: (415) 471-3100
9 Fax: (415) 471-3400

10 Jonathan S. Martel (*pro hac vice anticipated*)
11 (jonathan.martel@arnoldporter.com)

12 Ethan G. Shenkman (*pro hac vice anticipated*)
13 (ethan.shenkman@arnoldporter.com)

14 601 Massachusetts Ave., NW
15 Washington, D.C. 20001-3743

16 Tel: (202) 942-5000
17 Fax: (202) 942-5999

18 *Attorneys for Engine Manufacturers Association,*
19 *d/b/a Truck & Engine Manufacturers Association*

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 ENGINE MANUFACTURERS
23 ASSOCIATION, d/b/a Truck & Engine
24 Manufacturers Association,

25 Plaintiff,

26 v.

27 CALIFORNIA AIR RESOURCES
28 BOARD; and RICHARD COREY, in his
official capacity as Executive Officer of
the California Air Resources Board,

Defendants.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiff Engine Manufacturers Association, d/b/a Truck & Engine
2 Manufacturers Association (“EMA”), by and through its undersigned counsel, alleges
3 as follows:

4 **PRELIMINARY STATEMENT**

5 1. The claim asserted in this Complaint solely involves a question of
6 express federal law and preemption under the federal Clean Air Act (“CAA”). There
7 are no relevant factual disputes.

8 2. On December 22, 2021, the California Air Resources Board officially
9 adopted a package of revised emission standards, test procedures, and other emission-
10 related requirements applicable to new heavy-duty engines and vehicles, referred to
11 herein as the “Omnibus Regulations.”

12 3. The Omnibus Regulations would require, among other things, that
13 heavy-duty engine manufacturers develop and deploy new technology to reduce
14 nitrogen oxide (“NOx”) emissions initially by 75 percent and particulate emissions by
15 50 percent, demonstrate emissions compliance on entirely new test cycles, and ensure
16 emissions compliance for certain “Class 3” heavy-duty engines using new durability
17 test procedures out to an extended “useful life” range of 150,000 miles instead of
18 120,000 miles. The Omnibus Regulations would require engine manufacturers to
19 redesign, test and build their engines to comply with all of those new requirements
20 starting with Model Year (“MY”) 2024, which begins—at the latest—on January 1,
21 2024. Thus, the Omnibus Regulations leave manufacturers with only *two years* of
22 lead-time to comply. That limited lead-time period directly violates Congress’s
23 explicit command in the CAA that California must abide by the same *four-year* lead-
24 time requirement that applies to federal emission standards adopted by the U.S.
25 Environmental Protection Agency (“EPA”) for new heavy-duty engines and vehicles.
26 The Omnibus Regulations are therefore unlawful and preempted under federal law.

27 4. The CAA expressly preempts States from “adopt[ing] or attempt[ing] to
28

1 enforce any standard relating to the control of emissions from new motor vehicles or
2 new motor vehicle engines.” 42 U.S.C. § 7543(a). Congress provided for a potential
3 preemption exemption for California, if California first qualifies for and obtains a
4 preemption waiver from EPA. However, in providing for that limited exemption,
5 Congress specified that California standards are ineligible for such a preemption
6 waiver if they are not consistent with CAA Section 202(a), codified at 42 U.S.C.
7 § 7521(a).

8 5. CAA Section 202(a) authorizes and governs EPA’s adoption of federal
9 emissions standards for all new motor vehicles and motor vehicle engines. CAA
10 Section 202(a)(2) requires EPA to provide sufficient lead-time in the case of all such
11 standards for developing and implementing the requisite emissions-control
12 technology, considering costs. Separately, and of particular significance here, CAA
13 Section 202(a)(3)(C) requires that any EPA standards applicable to new heavy-duty
14 vehicles or engines may apply beginning no earlier than the model year commencing
15 four years after the standards’ promulgation.

16 6. Congress established the minimum four-year lead-time requirement for
17 the emission standards that apply to new heavy-duty vehicles and engines to account
18 for the unique nature of the heavy-duty industry, where production and sales volumes
19 are much lower than for passenger cars and light-duty trucks, and where the heavy-
20 duty engine manufacturing industry is not fully integrated with the heavy-duty
21 vehicle manufacturing industry. In that regard, the manufacturers of heavy-duty
22 truck engines and the manufacturers of heavy-duty trucks are not always the same
23 entities. Accordingly, Congress determined that those heavy-duty manufacturers
24 require more lead-time and more time between changes in emission standards—a
25 minimum of four years of lead-time and three years of regulatory stability—not only
26 to afford them time to develop, integrate and implement new emission-control
27 technology, but also to ensure that they can recover their capital investments that
28 enable the development of those technologies. Those Congressional objectives as

1 specifically tailored to the heavy-duty engine and vehicle industry apply equally to
2 emission standards adopted by EPA or by California.

3 7. Because the Omnibus Regulations, which were officially adopted in
4 December 2021, include new emission standards for new heavy-duty engines starting
5 with MY 2024—a time period unequivocally less than four years—those standards
6 are not consistent with the four-year lead-time requirement of CAA Section
7 202(a)(3)(C), and are therefore preempted.

8 8. Plaintiff EMA is the trade association that represents the world’s leading
9 manufacturers of heavy-duty engines and vehicles. EMA’s members are and will
10 continue to be adversely impacted by the Omnibus Regulations. EMA’s members are
11 being compelled now to take rapid steps to redesign, test and certify their heavy-duty
12 engines in order to try to comply with the multiple provisions of the Omnibus
13 Regulations that apply starting in MY 2024. The efforts, costs, and burdens involved
14 are significant. Plaintiff EMA and its members therefore urgently need relief from
15 this Court to resolve this purely legal question under the federal CAA and the
16 Supremacy Clause of the U.S. Constitution.

17 9. Accordingly, Plaintiff EMA brings this civil action for declaratory and
18 injunctive relief, seeking (1) a declaration, pursuant to 28 U.S.C. § 2201, that the
19 provisions of the Omnibus Regulations that would take effect starting in MY 2024
20 are expressly preempted by the CAA insofar as they would apply prior to MY 2026
21 and are not eligible for a waiver of preemption as a matter of law; and (2) a
22 permanent injunction precluding the California Air Resources Board from enforcing
23 or attempting to enforce any of the provisions of the Omnibus Regulations that would
24 take effect starting in MY 2024 insofar as they would apply prior to MY 2026.

25 **JURISDICTION AND VENUE**

26 10. This Court has subject matter jurisdiction over this action pursuant to 28
27 U.S.C. § 1331, which confers original jurisdiction on federal district courts over
28 actions arising under the Constitution or laws of the United States.

1 attempt to enforce any standard relating to the control of emissions from new motor
2 vehicles or new motor vehicle engines subject to this part.” 42 U.S.C. § 7543(a).

3 23. CAA Section 209(b) provides a limited exception solely for California,
4 pursuant to which EPA may waive preemption “if the State determines that the State
5 standards will be, in the aggregate, at least as protective of public health and welfare
6 as applicable Federal standards.” 42 U.S.C. § 7543(b)(1).

7 24. However, CAA Section 209(b) goes on to provide that “[n]o such waiver
8 shall be granted if [EPA] finds that—(A) the determination of the State is arbitrary
9 and capricious, (B) such State does not need such State standards to meet compelling
10 and extraordinary conditions, or (C) such State standards and accompanying
11 enforcement procedures are not consistent with section 7521(a) [Section 202(a)] of
12 this title.” *Id.*

13 25. It is the subpart (C) requirement of Section 209(b) that is most directly
14 at issue in this case.

15 **FACTUAL ALLEGATIONS**

16 **A. CARB’s Omnibus Regulations**

17 26. On December 22, 2021, CARB officially adopted a series of exhaust
18 emission standards and other emission-related requirements applicable to new MY
19 2024 and subsequent on-road medium- and heavy-duty engines and vehicles as those
20 terms are defined under California law (the “Omnibus Regulations”).

21 27. The Omnibus Regulations are codified in 13 Cal. Code Regs. §§ 2139.5
22 and 2169.1 through 2169.8; amendments to 13 Cal. Code Regs. §§ 1900, 1956.8,
23 1961.2, 1965, 1968.2, 1971.1, 1971.5, 2035, 2036, 2111, 2112, 2113, 2114, 2115,
24 2116, 2117, 2118, 2119, 2121, 2123, 2125, 2126, 2127, 2128, 2129, 2130, 2131,
25 2133, 2137, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149,
26 2166, 2166.1, 2167, 2168, 2169, 2170, 2423, and 2485; and amendments to 17 Cal.
27 Code Regs. §§ 95662 and 95663. The Omnibus Regulations also include revisions to
28 the “California Exhaust Emission Standards and Test Procedures for 2004 and

1 Subsequent Model Heavy-Duty Diesel Engines and Vehicles” (Amended Sept. 9,
2 2021) (hereinafter “Heavy-Duty Test Procedures”), which are incorporated by
3 reference in 13 Cal. Code Regs. § 1956.8(b).

4 28. CARB classifies vehicles with a gross vehicle weight rating (“GVWR”)
5 from 8,501 to 14,000 pounds as medium-duty vehicles, and vehicles with a GVWR of
6 14,001 pounds or greater as heavy-duty vehicles. 13 Cal. Code Regs. §§ 1900(b)(6),
7 (13). A medium-duty engine is an engine used to propel a medium-duty vehicle, and
8 a heavy-duty engine is an engine used to propel a heavy-duty vehicle. *See, e.g., id.*
9 § 1900(b)(5).

10 29. The medium- and heavy-duty engines and vehicles covered by the
11 Omnibus Regulations, as classified by CARB, are heavy-duty engines and vehicles,
12 respectively, within the meaning of CAA Sections 202(a)(3)(C) and 202(b)(3)(C)
13 (defining “heavy duty vehicle” as having a gross vehicle weight under EPA
14 regulations in excess of 6,000 pounds). Those engines and vehicles are hereinafter
15 referred to collectively as “Heavy-Duty Engines and Vehicles” and individually as
16 “Heavy-Duty Engines” and “Heavy-Duty Vehicles,” respectively.

17 30. The Omnibus Regulations impose numerous standards applicable to
18 Heavy-Duty Engines and Vehicles beginning in MY 2024, less than four years after
19 CARB finalized the Omnibus Regulations. Those requirements include, but are not
20 limited to, the standards described in paragraphs 31 through 47 below.

21 31. The Omnibus Regulations establish more stringent emission standards
22 for oxides of nitrogen (“NOx”) and particulates (“PM”) for new MY 2024 and
23 subsequent Heavy-Duty Engines that are used in Heavy-Duty Vehicles.

24 32. Specifically, the Omnibus Regulations establish a NOx emission
25 standard of 0.050 grams per brake-horsepower-hour (“g/bhp-hr”) for MY 2024
26 through 2026 Heavy-Duty Engines, as measured using the heavy-duty transient
27 Federal Test Procedure (“FTP”) duty cycle and the Ramped Model Cycle (“RMC”)
28

1 duty cycle.¹ *See* 13 Cal. Code Regs. § 1956.8(a)(2)(C)1. That revised NOx standard
2 is 75 percent more stringent than CARB’s preexisting NOx emission standard of
3 0.200 g/bhp-hr.

4 33. Likewise, the Omnibus Regulations establish a new PM emission
5 standard of 0.005 g/bhp-hr for MY 2024 and subsequent MY Heavy-Duty Engines, as
6 measured using the FTP and RMC test cycles.² *See* 13 Cal. Code Regs.
7 § 1956.8(a)(2)(C)1. That revised standard is 50 percent more stringent than CARB’s
8 preexisting emission standard for PM for Heavy-Duty Engines of 0.010 g/bhp-hr.

9 34. The Omnibus Regulations also establish a new “low load” test cycle
10 (“LLC”) that is intended to reflect engine operations in low load and low speed urban
11 driving operations. *See* Heavy-Duty Test Procedures § I.11.B.8; 13 Cal. Code Regs.
12 § 1956.8(j)(15). For MY 2024 through 2026 diesel-cycle Heavy-Duty Engines, the
13 Omnibus Regulations establish a new NOx emission standard of 0.200 g/bhp-hr and a
14 new PM standard of 0.005 g/bhp-hr as measured over the new LLC test cycle. *See* 13
15 Cal. Code Regs. § 1956.8(a)(2)(C)1.

16 35. In addition, the Omnibus Regulations also establish new durability
17 demonstration requirements for MY 2024 and subsequent Heavy-Duty Engines. In
18 general, to certify an engine, manufacturers must demonstrate to CARB that their
19 engines comply with applicable emission standards throughout specified periods of
20 time or engine operation, referred to as the engine’s regulatory “useful life.”
21 Traditionally, engine manufacturers have demonstrated engine durability either by
22 aging the engine (in the field or on an engine dynamometer) to its full regulatory
23 useful life or by aging the engine to a percentage of useful life and then extrapolating
24 the emission level to full useful life.

25 36. The Omnibus Regulations make several changes to the durability
26

27 ¹ For Otto-cycle engines, the NOx standard is measured over the FTP test cycle only.

28 ² For Otto-cycle engines, the PM standard is measured over the FTP test cycle only.

1 demonstration requirements for MY 2024 and subsequent Heavy-Duty Engines,
2 including:

- 3 a. extending the hours of service an engine must accumulate before an
4 emissions test (the “break-in period”) from 125 hours to 300 hours;
- 5 b. requiring manufacturers to use one of two standardized aging cycles for
6 conducting durability demonstrations, whereas under preexisting law
7 manufacturers are allowed to determine the form and extent of aging
8 cycles, consistent with good engineering judgment, and have flexibility
9 to propose and use customized aging cycles in conducting durability
10 demonstration programs; and
- 11 c. extending the length of the durability demonstration program to the full
12 useful life of the engine, whereas under preexisting law manufacturers
13 typically use aging cycles that are intended to represent aging of the
14 engine and aftertreatment system to approximately 35 to 50 percent of
15 the applicable useful life and then extrapolate the durability emissions
16 data to the full useful life.

17 *See* Heavy-Duty Test Procedures §§ I.26.B.

18 37. The Omnibus Regulations also extend the “useful life” period for MY
19 2024 and subsequent Heavy-Duty Engines used in “Class 3” Heavy-Duty Vehicles
20 with GVWR from 10,001 to 14,000 pounds to 15 years or 150,000 miles, whichever
21 occurs first. 13 Cal. Code Regs. § 2111(l)(18). The preexisting useful life for such
22 engines under California law was 11 years or 120,000 miles, whichever occurs first.
23 To seek certification for those engines for MY 2024, after completing all of the
24 development efforts to design and manufacture the new emissions-control technology
25 to comply with the new standards, manufacturers must demonstrate the durability of
26 that new technology by running tests to show continued compliance throughout this
27 extended useful life, which is inherently time-consuming and costly. Those extended
28 durability demonstration efforts, as a practical matter, are required to start now.

1 38. The Omnibus Regulations also make changes to the emissions warranty
2 information and reporting and corrective action procedures for MY 2024 and
3 subsequent Heavy-Duty Engines.

4 39. Under existing law, manufacturers are required to track and report to
5 CARB warranty claims for emission-related components. Preexisting California law
6 requires manufacturers to submit an Emissions Warranty Information Report
7 (“EWIR”) once a component reaches an unscreened warranty claim rate of 1 percent
8 or 25 claims, whichever is greater;³ to submit a Field Information Report (“FIR”) if
9 the unscreened warranty claim rate is 4 percent or 50 claims, whichever is greater;
10 and to file an Emissions Information Report (“EIR”) if the screened warranty claim
11 rate is 4 percent or 50 claims, whichever is greater. The Omnibus Regulations reduce
12 those reporting thresholds for MY 2024 through 2026 Heavy-Duty Engines to 1
13 percent or 12 unscreened claims for EWIRs (13 Cal. Code Regs. § 2144(a)(4)); 4
14 percent or 25 unscreened claims for FIRs (13 Cal. Code Regs. §§ 2143, 2145(a)); and
15 4 percent or 25 screened warranty claims for EIRs (13 Cal. Code Regs. §§ 2143,
16 2146(a)(1)).

17 40. The Omnibus Regulations also change the procedure for corrective
18 action for MY 2024 and subsequent Heavy-Duty Engines and Vehicles by specifying
19 that corrective actions, including recalls, for defective emission control components
20 are required based solely on whether the failure rates of emission-related components
21 meet or exceed 4 percent or 25 failures. 13 Cal. Code Regs. § 2143.

22 41. The Omnibus Regulations also make changes to the in-use compliance
23 requirements for Heavy-Duty Engines. Under current law, manufacturers are
24 required periodically to screen, procure, and test diesel-cycle Heavy-Duty Engines
25 used in Heavy-Duty Vehicles using portable emission measurement systems
26

27 ³ Unscreened warranty claims include all parts replaced during an emissions warranty
28 period for any reason, regardless of whether the part actually experienced a failure.

1 (“PEMS”) to assess the compliance of such engines with specified criteria, as
2 measured using Not-to-Exceed (“NTE”) test procedures. The current test procedure
3 allows manufacturers to exclude certain test data from the evaluation of compliance,
4 including test data generated under low engine power or extreme ambient
5 temperatures and altitudes, as well as test data collected when engines fail to
6 continuously operate within specified NTE control boundaries for thirty seconds or
7 more.

8 42. The Omnibus Regulations establish new, more encompassing test
9 procedures and in-use compliance criteria for MY 2024 and subsequent Heavy-Duty
10 Engines used in Heavy-Duty Vehicles with a GVWR greater than 14,000 pounds
11 based on a new moving-average window (“MAW”) and “binning” approach. *See*
12 *Heavy-Duty Test Procedures* § 86.1370.B.6.

13 43. Under the new in-use testing requirements, manufacturers must measure
14 and record exhaust emissions using a PEMS device. Those measurements are
15 segregated into “windows.” Each window is a specified period of time (300
16 consecutive seconds) during which the measured emissions are averaged. Those
17 windows, which are overlapping, are then segregated into different “bins” based on
18 the percentage engine-load corresponding to different engine operating modes (idle,
19 low-load, and medium/high-load engine operations). The exhaust emissions reflected
20 in each bin are then evaluated against new specified in-use emission standards.

21 44. The Omnibus Regulations also subject MY 2024 and subsequent Otto-
22 cycle Heavy-Duty Engines used in Heavy-Duty Vehicles with a GVWR greater than
23 14,000 pounds to the PEMS-based heavy-duty in-use compliance program described
24 above. Under preexisting California law, such engines were not subject to CARB’s
25 PEMS-based heavy-duty in-use compliance program.

26 45. The Omnibus Regulations also make changes to the idling requirements
27 for Heavy-Duty Engines. Under preexisting California law, diesel-cycle Heavy-Duty
28 Engines installed in Heavy-Duty Vehicles with a GVWR greater than 14,000 pounds

1 must be equipped with a system that automatically shuts down the engine after five
2 minutes of continuous idle operation, or to be certified to a NOx idling emission
3 standard of 30 grams per hour. Certain engines are exempt from those requirements,
4 including those produced for use in buses, recreational vehicles, medium-duty
5 vehicles, military tactical vehicles, authorized emergency vehicles, armored cars, and
6 workover rigs.

7 46. The Omnibus Regulations establish a new NOx idling emission standard
8 of 10 grams per hour for MY 2024 through 2026 engines, which is more stringent
9 than the current optional NOx idling emission standard of 30 grams per hour. 13 Cal.
10 Code Regs. § 1956.8(a)(6)(C)1.b.

11 47. The Omnibus Regulations also eliminate the preexisting exemptions for
12 Heavy-Duty Engines used in buses, recreational vehicles, medium-duty vehicles,
13 armored cars, and workover rigs starting in MY 2024, thereby subjecting engines
14 used in those vehicles to more stringent emission standards. 13 Cal. Code Regs.
15 § 1956.8(a)(6)(B).

16 48. The multiple new requirements established by the Omnibus Regulations
17 as described in paragraphs 31 through 47 constitute standards applicable to heavy-
18 duty vehicles or engines within the meaning of CAA Section 202(a)(3)(C).

19 49. CARB officially adopted each of the requirements described in
20 paragraphs 31 through 47 in December 2021, and will apply and enforce them
21 beginning in MY 2024—less than four years after adoption—in direct conflict with
22 the requirements in CAA Section 202(a)(3)(C), 42 U.S.C. § 7521(a)(3)(C).

23 **B. CARB’s Promulgation of the Omnibus Regulation**

24 50. CARB first proposed to adopt the Omnibus Regulations and issued an
25 Initial Statement of Reasons (“ISOR”) in June 2020.

26 51. Numerous interested stakeholders, including EMA, submitted comments
27 on the proposed Omnibus Regulations. Among other comments, EMA and others
28 commented that CARB’s adoption of the Omnibus Regulations would be unlawful

1 because it would violate the four-year lead-time requirement in Section 202(a)(3)(C)
2 of the CAA, 42 U.S.C. § 7521(a)(3)(C), as applicable to CARB’s Regulations
3 through the waiver provisions in CAA Section 209(b)(1)(C), 42 U.S.C.
4 § 7543(b)(1)(C).

5 52. Following a public hearing, CARB approved the adoption of the
6 Omnibus Regulations by Executive Order dated September 9, 2021.

7 53. In its Final Statement of Reasons (“FSOR”) for the Omnibus
8 Regulations, CARB responded to the comments from interested stakeholders,
9 including the comments that the Omnibus Regulations violate the four-year lead-time
10 requirement in Section 202(a)(3)(C) of the CAA, 42 U.S.C. § 7521(a)(3)(C).

11 54. In its response to comments in the FSOR, CARB stated its position that
12 the lead-time and stability requirements of Section 202(a)(3)(C) of the CAA do not
13 apply to emission standards and other emission requirements in the Omnibus
14 Regulations. CARB further stated its position that Section 202(a)(3)(C) “only applies
15 to standards ‘promulgated or revised under this paragraph [section 202(a) of the
16 CAA],’ that is, to standards promulgated by the Administrator of the U.S. EPA.”

17 55. CARB submitted the final rulemaking package for the Omnibus
18 Regulations to the California Office of Administrative Law (“OAL”) on October 15,
19 2021.

20 56. The California OAL approved the Omnibus Regulations and filed them
21 with the California Secretary of State on December 22, 2021, at which time the
22 Regulations became final and operative under California law.

23 57. CARB submitted a preemption waiver request to EPA on January 31,
24 2022, requesting that EPA waive preemption with respect to the Omnibus
25 Regulations pursuant to section 209(b) of the CAA, 42 U.S.C. § 7543(b).

26 58. As of the date of this filing, EPA has not acted on CARB’s waiver
27 request, and EPA has no statutory deadline to do so.
28

1 standards relating to the control of emissions from new motor vehicles or new motor
2 vehicle engines.

3 65. Section 209(b) of the CAA provides that no waiver of preemption shall
4 be granted if EPA finds that the State standards and accompanying enforcement
5 procedures are not consistent with Section 202(a) of the CAA, 42 U.S.C. § 7521(a).
6 *See* 42 U.S.C. § 7543(b)(1)(C).

7 66. The Omnibus Regulations do not qualify for a waiver of preemption
8 under Section 209(b) of the CAA, 42 U.S.C. § 7543(b), as a matter of law, because
9 the standards are not consistent with CAA Section 202(a), 42 U.S.C. § 7521(a).
10 Specifically, the Omnibus Regulations require compliance with emission standards
11 and accompanying enforcement procedures applicable to Heavy-Duty Engines and
12 Vehicles beginning in MY 2024 and thus do not afford the required four years of
13 lead-time as specified in CAA Section 202(a)(3)(C), 42 U.S.C. § 7521(a)(3)(C).

14 67. Plaintiff's members include manufacturers of Heavy-Duty Engines and
15 Vehicles that have suffered and will continue to suffer substantial and irreparable
16 harm if the Omnibus Regulations that would apply in MY 2024 or MY 2025 are not
17 invalidated.

18 68. Plaintiff is therefore entitled to declaratory and injunctive relief pursuant
19 to 28 U.S.C. § 2201, 42 U.S.C. § 1983, and other provisions of law.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff EMA respectfully requests that the Court enter
22 judgment in its favor and order the following relief:

23 1. Declare that the provisions of the Omnibus Regulations that would take
24 effect starting in MY 2024 are invalid and unconstitutional under the Supremacy
25 Clause of the U.S. Constitution insofar as they would apply prior to MY 2026, since
26 those provisions do not afford four-years lead-time, and so are expressly preempted
27 by Section 209(a) of the Clean Air Act, 42 U.S.C. § 7543(a), and are not eligible for a
28 waiver of preemption under Section 209(b) of the Clean Air Act, 42 U.S.C.

1 § 7543(b);

2 2. Permanently enjoin Defendant and its officers, employees, and agents
3 from enforcing or attempting to enforce any provisions of the Omnibus Regulations
4 that would apply in MY 2024 or MY 2025; and

5 3. Grant such other relief as may be just and proper.

6
7 Dated: May 27, 2022

Respectfully submitted,

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ S. Zachary Fayne

S. Zachary Fayne

Jonathan S. Martel

Ethan G. Shenkman

David Barnes

*Attorneys for Plaintiff Engine Manufacturers
Association, d/b/a Truck & Engine
Manufacturers Association*