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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAIMLER TRUCK NORTH AMERICA
LLC, et al.,

Plaintiffs,

v.

CALIFORNIA AIR RESOURCES
BOARD, et al.,

Defendants.

No. 2:25-cv-02255-DC-AC

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION

(Doc. Nos. 23, 57)

This matter came before the court on October 31, 2025 for a hearing on Plaintiffs' motion for a preliminary injunction, to which Plaintiffs-Intervenors have joined in part. (Doc. Nos. 23, 57.) Attorneys Benjamin B. Wagner, Miguel Estrada, Rachel Brass, Stacie Fletcher, and Veronica Goodson appeared on behalf of Plaintiff Daimler Truck North America LLC; Attorney Robin Hulshizer appeared on behalf of Plaintiff International Motors, LLC; Attorney Joseph Ostoyich appeared on behalf of Plaintiff PACCAR Inc; Attorney Jeremy Heep appeared on behalf of Plaintiff Volvo Group North America LLC; Attorneys Robert Stander and John Adams appeared on behalf of Plaintiffs-Intervenors United States of America and United States Environmental Protection Agency; and Attorneys Margaret Elaine Meckenstock and Cecilia Segal appeared on behalf of Defendants California Air Resources Board, Steven S. Cliff, and Gavin C. Newsom. For the reasons explained below, Plaintiffs' motion for a preliminary injunction will be granted in part

1 and denied in part.

2 **FACTUAL BACKGROUND¹**

3 This case arises from alleged violations of the Clean Air Act’s provision preempting the
4 State of California from regulating motor vehicle emissions unless the United States
5 Environmental Protection Agency (“EPA”) has issued a preemption waiver for those regulations.

6 This case is brought by Plaintiffs Daimler Truck North America LLC (“Daimler”),
7 International Motors, LLC (“International”), PACCAR Inc. (“PACCAR”), and Volvo Group
8 North America LLC (“Volvo”), four companies that design, develop, manufacture and sell heavy-
9 duty trucks and engines (referred to as “Original Equipment Manufacturers” or “OEMs”).² (Doc.
10 No. 1 at ¶¶ 1, 24.) According to Plaintiffs, in June 2025, President Trump signed joint
11 congressional resolutions of disapproval that “expressly stripped” California’s preemption
12 waivers for three regulation programs that set certain emissions standards for heavy-duty
13 vehicles, and thus, any continued enforcement of those allegedly preempted regulations violates
14 the Clean Air Act. (Doc. No. 1 at 13–16, 21–23.) Plaintiffs also contend California should not be
15 permitted to enforce three other regulation programs on the ground that they are preempted
16 because California has not obtained preemption waivers for those standards. (*Id.* at 16–17.)

17 **A. Regulatory Background**

18 1. The Clean Air Act

19 The Clean Air Act³ provides that the EPA Administrator “shall by regulation prescribe . . .

20
21 ¹ This factual background is derived from Plaintiffs’ operative complaints (Doc. Nos. 1, 56),
22 Plaintiffs’ motion for a preliminary injunction and reply briefs along with their supporting
23 declarations and exhibits (Doc. Nos. 23, 57, 58, 74, 75), and Defendants’ opposition brief and
24 sur-reply along with their supporting declarations and exhibits (Doc. Nos. 73, 80).

25 ² Consistent with Plaintiffs’ complaint, this order refers interchangeably to “heavy-duty trucks”
26 and “heavy-duty vehicles” as shorthand for the vehicles and engines covered by the CARB
27 regulations at issue in this case (including certain medium-duty vehicles and engines), and those
28 terms shall have the same meaning as described in Plaintiffs’ complaint. (Doc. No. 1 at ¶ 4, n.1.)

³ The Clean Air Act was originally called the Air Quality Act of 1967, which was later amended
with the Clean Air Amendments of 1970 and the Clean Air Act Amendments of 1977. *See Engine*
Mfrs. Ass’n v. U.S. E.P.A., 88 F.3d 1075, 1078 (D.C. Cir. 1996); Pub. L. No. 91–604, 84 Stat.
1676 (1970); Pub. L. No. 95–9, 91 Stat. 685 (1977).

1 standards applicable to the emission of any air pollutant from any class or classes of new motor
2 vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air
3 pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C.
4 § 7521(a)(1). In enacting federal emissions standards, the Clean Air Act also included a
5 preemption provision, expressly prohibiting states from “adopt[ing] or attempt[ing] to enforce
6 any standard relating to the control of emissions from new motor vehicles or new motor vehicle
7 engines . . . ” and from “requir[ing] certification, inspection, or any other approval relating to the
8 control of [such] emissions . . . as condition precedent to the initial retail sale, titling (if any), or
9 registration of such motor vehicle, motor vehicle engine, or equipment.” 42 U.S.C. § 7543(a).

10 However, recognizing California’s unique role in pioneering regulations of vehicle
11 emissions, Congress included in the Clean Air Act a preemption waiver provision specifically for
12 California, i.e., an exception for when California “determined that its standards would be ‘more
13 stringent’ than applicable federal standards.” *Motor & Equip. Mfrs. Ass’n, Inc. v. E.P.A.*,
14 (“*MEMA*”) 627 F.2d 1095, 1109 (D.C. Cir. 1979) (summarizing legislative history of the Clean
15 Air Act and the exception made for California); *see also Engine Mfrs. Ass’n v. E.P.A.*, 88 F.3d
16 1075, 1079 (D.C. Cir. 1996) (“In spite of Congress’ determination to protect manufacturers from
17 multiple emissions standards, California was granted an exemption from the [Clean Air Act]
18 preemption.”) (internal citation omitted).

19 Pursuant to that waiver provision, the EPA Administrator “shall, after notice and
20 opportunity for public hearing, waive application” of the preemption provision to California, if
21 California determines that its “standards will be, in the aggregate, at least as protective of public
22 health and welfare as applicable Federal standards.” 42 U.S.C. § 7543(b)(1). The waiver is not
23 necessarily automatic because “the Administrator shall not grant the waiver request if he finds (1)
24 that California’s determination of protectiveness was arbitrary and capricious; (2) that California
25 does not need the standards to meet compelling and extraordinary circumstances; [or] (3) that the
26 standards and accompanying enforcement procedures are [not] . . . technologically feasible.”
27 *MEMA*, 627 F.2d at 1111; 42 U.S.C. § 7543(b)(1)(A)–(C).

28 A preemption waiver allows California to require “certification . . . or any other approval

1 relating to the control of emissions . . . as a condition precedent” to the sale of a vehicle or engine.
2 42 U.S.C. § 7543(a). In 1977, Congress amended the Clean Air Act to permit other states to “opt-
3 in” to using the California vehicle emissions standards, rather than the Federal EPA standards, as
4 conditions precedent for sale of vehicles in their state. 42 U.S.C. § 7507. Following the 1977
5 amendments, motor vehicles had to be either “‘federal cars’ designed to meet the EPA’s standards
6 or ‘California cars’ designed to meet California’s standards.” *Engine Mfrs. Ass’n v.* 88 F.3d at
7 1080 (explaining that “[r]ather than being faced with 51 different standards, as they had feared, or
8 with only one, as they had sought, manufacturers must cope with two regulatory standards under
9 the legislative compromise embodied in [the Clean Air Act]”). Thus, “there have historically been
10 two distinct sets of emissions standards applicable to vehicle manufacturers, including
11 manufacturers of heavy-duty vehicles and engines: (1) standards promulgated by the California
12 Air Resources Board (“CARB”), and then approved by EPA, that apply in California and any
13 other state that has adopted California’s standards; and (2) standards promulgated by the EPA.”
14 (Doc. No. 1 at ¶ 3.)

15 2. Relevant CARB Regulations and EPA Waivers

16 Pursuant to the Clean Air Act, California imposes conditions precedent to the sale of new
17 vehicles and engines sold in the state by requiring manufacturers to apply for certification from
18 CARB. (Doc. No. 56 at ¶ 58.) To obtain CARB certification for a heavy-duty vehicle,
19 manufacturers submit one application and pay an application fee that CARB uses to offset its
20 costs of implementation. (Doc. No. 73-30 at ¶¶ 37, 38.) For example, for model year 2025,
21 applicants for certification of a medium- or heavy-duty compression ignition engine family were
22 charged an application fee of \$121,265. (*Id.* at ¶ 38.)

23 To be certified by CARB, a vehicle must demonstrate that its emissions control systems
24 comply with relevant standards and “are durable such that the vehicle will comply with the
25 emission standards for its useful life.” (*Id.* at ¶ 28.) Manufacturers must also demonstrate
26 compliance with other requirements, as applicable, such as “anti-tampering, fuel tank fill pipe and
27 openings, crankcase emissions, etc.” (*Id.*) If CARB finds the relevant requirements have been
28 satisfied, CARB issues an “executive order” that approves that particular vehicle or engine for

1 sale in California for that model year (“CARB certification”). (Doc. Nos. 56 at ¶ 59; 73-30 at
2 ¶ 30.) CARB processes applications that are submitted after the start, but before the end, of a
3 given model year, and CARB certifications are effective from the date of issuance until December
4 31 of that model year. (Doc. No. 73-30 at ¶ 30.) The certification process takes considerable time,
5 estimated to be at least 60 days, though often longer. (See Doc. No. 23-15 at ¶ 11) (“[F]or model
6 year 2025, [Daimler] began submitting materials to CARB in August of 2024, and did not receive
7 its final certification until December 19, 2024.”); (Doc. No. 23-20 at ¶ 6) (“Given the prolonged
8 process of obtaining CARB certification on any vehicle or engine family, on April 22, 2024,
9 International paid approximately \$823,973 to CARB to initiate the certification process to
10 position itself to obtain Executive Orders for its 2026 model year vehicle and engine families
11 prior to the start of the model year.”).

12 Selling vehicles in California without a CARB certification is a serious offense that
13 subjects the seller to substantial penalties, specifically an inflation-adjusted penalty of up to
14 \$48,788 for each vehicle sold. (Doc. Nos. 1 at ¶ 62; 56 at ¶ 60.)

15 Relevant here, from 2021 to 2023, CARB promulgated a series of emissions standards for
16 heavy-duty trucks and engines, including those manufactured by the OEM Plaintiffs. (Doc. No. 1
17 at ¶ 4.)

18 a. *Advanced Clean Trucks (“ACT”) Regulations*

19 The ACT regulations “require[] manufacturers to sell increasing percentages of zero-
20 emissions vehicles year-over-year, or to buy credits from other entities that exceeded their own
21 percentage obligations,” beginning with model year 2024. (Doc. No. 1 at ¶ 35.) CARB adopted
22 the ACT regulations in 2021. Cal. Code Regs., tit. 13, § 1963.1. CARB submitted a request to
23 EPA for a preemption waiver for the ACT regulations, and EPA published its notice of decision
24 granting CARB’s request on April 6, 2023 in the Federal Register. 88 Fed. Reg. 20688.

25 b. *Omnibus Low NOx (“Omnibus”) Regulations*

26 In 2001, CARB amended its standards for emissions of oxide of nitrogen (“NOx”), a
27 smog precursor, beginning with model year 2007, and EPA granted CARB’s request for a
28 preemption waiver of those standards in 2005. (Doc. No. 73-30 at ¶ 6); see also 70 Fed. Reg.

1 50322. CARB made some technical amendments to those standards in 2007, and EPA confirmed
2 in a notice of decision published in 2017 that those amendments were within the scope of the
3 previous waivers issued by EPA.⁴ (Doc. No. 73-30 at ¶ 6); *see also* 82 Fed. Reg. 4867.

4 In 2021, CARB further amended NOx emissions standards and other standards affecting
5 heavy-duty engines and vehicles by adopting the Omnibus regulations, beginning with model
6 year 2024. (Doc. Nos. 1 at ¶ 35; 73-30 at ¶ 14.) The Omnibus regulations “require manufacturers
7 to reduce heavy-duty vehicle emissions of nitrogen-oxide (NOx) and particulate matter.” (Doc.
8 Nos. 1 at ¶ 35.) The Omnibus regulations “reduce[] the amount of NOx emissions permitted from
9 heavy-duty trucks from 0.20⁵ to 0.05 grams per brake horsepower-hour for [model year] MY
10 2024 through 2026, Cal. Code Regs., tit. 13, § 1956.8(a)(2)(C), and then reduce[] that figure to
11 0.02 for MY 2027 and subsequent [model years], *id.* § 1956.8(a)(2)(D).”⁶ (Doc. No. 73-30 at
12 ¶ 14.)

13 CARB submitted a request for a preemption waiver for the Omnibus regulations to EPA
14

15 ⁴ As explained in EPA’s notice of decision:

16 If California amends regulations that have been previously
17 authorized by EPA, California may ask EPA to determine that the
18 amendments are within the scope of the earlier authorization. A
19 within-the-scope determination for such amendments is permissible
20 without a full authorization review if three conditions are met. First,
21 the amended regulations must not undermine California’s previous
22 determination that its standards, in the aggregate, are as protective
of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 209 of the Act, following the same criteria discussed above in the context of full authorizations. Third, the amended regulations must not raise any new issues affecting EPA’s prior waiver or authorization decisions.

23 82 Fed. Reg. 4869.

24 ⁵ The “pre-Omnibus” regulations that began with model year 2007 had imposed a limit of no
25 more than 0.20 grams per brake horsepower hour emissions of NOx. (Doc. No. 73-30 at 3, ¶ 6.)

26 ⁶ After Plaintiffs filed the complaint and the pending motion for a preliminary injunction in this
27 action, CARB commenced emergency rulemaking and changed many of the sections of the
28 California Code of Regulations at issue in this case, effective October 2, 2025. In this order,
citations to the California Code of Regulations refers to the versions of those regulations in effect
prior to CARB’s emergency rulemaking.

1 in 2022. *See* 90 Fed. Reg. 643. While that request was pending, in 2023, CARB made modest
2 amendments to the Omnibus regulations. (Doc. No. 73-30 at ¶ 14.) EPA published its notice of
3 decision granting CARB’s request for a preemption waiver for the Omnibus regulations,
4 including the 2023 amendments, on January 6, 2025 in the Federal Register. 90 Fed. Reg. 643.

5 c. *Advanced Clean Cars II Regulations*

6 The Advanced Clean Cars II regulations primarily apply to light-duty vehicles like cars
7 and pickup trucks, but those regulations also modified certain standards for heavy-duty vehicles
8 and engines and medium-duty vehicles. (Doc. No. 1 at ¶ 35.) For heavy-duty vehicles and
9 engines, the standards for evaporative emissions and refueling emissions were modified. (*Id.*) For
10 medium-duty vehicles, on-board diagnostics standards were also modified. (*Id.*)

11 CARB adopted the Advanced Clean Cars II regulations in 2022. Cal. Code Regs., tit. 13,
12 §§ 1976, 1978. On December 26, 2023, EPA published a Federal Register notice announcing its
13 receipt of CARB’s waiver request for the Advanced Clean Cars II regulations. 90 Fed. Reg. 642,
14 642. EPA published its notice of decision granting CARB’s request on January 6, 2025 in the
15 Federal Register. 90 Fed. Reg. 642, 643.

16 d. *Advanced Clean Fleets (“ACF”) Regulations*

17 In 2023, CARB promulgated the ACF regulations, which require that “all new, medium-
18 and heavy-duty vehicles sold in California beginning with the 2036 model year be zero-emissions
19 vehicles.”⁷ (Doc. No. 73-30 at ¶ 18); Cal. Code Regs., tit. 13, § 2016. On November 15, 2023,
20 CARB submitted a request for a preemption waiver to EPA for parts of the ACF regulations,
21 including the model year 2036 zero-emissions requirement. (Doc. No. 73-30 at ¶ 20); 89 Fed.
22 Reg. 57151. However, on January 13, 2025, CARB withdrew that request. (Doc. Nos. 1 at ¶ 36;
23 73-30 at ¶ 20.) CARB did not obtain a preemption waiver for the ACF regulations and has agreed

24 ////

25 ////

26 ⁷ The ACF regulations also require the gradual phasing-in of zero-emissions vehicles to three
27 categories of fleets (state and local government fleets, drayage fleets, and high priority and
28 federal fleets). (Doc. No. 73-30 at ¶ 18); Cal. Code Regs., tit. 13, §§ 2013–2015. Plaintiffs do not
challenge these other requirements of the ACF regulations in this lawsuit.

1 //

2 that it will not enforce those regulations until it obtains a waiver.⁸

3 e. *Phase 2 Greenhouse Gas Regulations*

4 In 2014, CARB adopted greenhouse gas (“GHG”) emissions standards applicable to
5 heavy-duty vehicles beginning with model year 2014, and EPA granted CARB’s request for a
6 preemption waiver as to those “Phase 1” GHG emissions standards in 2016. (Doc. No. 73-30 at
7 ¶ 9); 81 Fed. Reg. 95982. In EPA’s notice of decision granting that preemption waiver, EPA
8 stated: “This regulation generally aligns California’s GHG emission standards and test procedures
9 with the federal GHG emission standards and test procedures that EPA adopted in 2011. A
10 deemed-to-comply provision is included in CARB’s regulation whereby manufacturers may
11 demonstrate compliance with California’s Phase 1 GHG Regulation by complying with EPA’s
12 Phase 1 regulation.” 81 Fed. Reg. 95982, 95983.

13 In 2018, CARB adopted more stringent “Phase 2” GHG standards beginning with model
14 year 2021, though those standards likewise aligned with EPA’s federal standards applicable to the
15 same model years. (Doc. Nos. 1 at ¶ 36; 73-30 at ¶ 9.) Thus, similar to Phase 1, the Phase 2 GHG
16 regulations provide for manufactures to demonstrate compliance with both CARB and federal
17 standards simultaneously. (Doc. No. 73-30 at ¶ 9.)

18 CARB has not requested a preemption waiver from EPA for the Phase 2 GHG
19 regulations.⁹ (Doc. Nos. 1 at 16, ¶ 36; 73-30 at ¶ 9.) CARB is not enforcing Phase 2 GHG

20
21 ⁸ Shortly after the ACF regulations were promulgated, a trucking association sued CARB to
22 challenge certain requirements of those regulations. *Cal. Trucking Assoc. v. Cal. Air Res. Bd., et*
23 *al.*, 2:23-cv-02333-TLN-CKD (E.D. Cal. Oct. 16, 2023). The parties stipulated to stay
24 proceedings in that case given CARB’s withdrawal of its request for a preemption waiver, and in
25 their stipulation, CARB agreed that it “will not enforce the part of the Advanced Clean Fleets
26 regulation requiring 100% zero-emission-vehicle sales in the medium- and heavy-duty categories
beginning with model year 2036 (Cal. Code Regs., tit. 13, § 2016), until CARB obtains a Clean
Air Act preemption waiver from EPA for that regulatory requirement.” *Cal. Trucking Assoc.*, No.
2:23-cv-02333-TLN-CKD, Stipulation and Order, Doc. Nos. 55, 56 (E.D. Cal. Apr. 25, 2025);
(*see also* Doc. No. 73-7).

27 ⁹ In the support document CARB submitted to EPA with its request for a waiver of the Omnibus
28 regulations in 2022, CARB noted that it “will submit a separate waiver request for the California
Phase 2 GHG Regulation.” (Doc. Nos. 1 at 16, ¶ 36.) CARB did not thereafter submit such

1 standards or requiring manufacturers to certify to those standards, and CARB will not do so
2 unless it obtains a preemption waiver. (Doc. No. 73-30 at ¶ 9.) CARB clarified in an advisory to
3 manufacturers that it will process any applications for certifications to these standards if
4 manufacturers voluntarily submit them. (Doc. Nos. 1 at ¶ 36; 73-30 at ¶ 9.)

5 f. *Heavy-Duty On-Board Diagnostic Regulations*

6 In addition to the emissions standards themselves, CARB also requires vehicles to be
7 equipped with on-board diagnostic (“OBD”) devices “to monitor vehicle and engine components
8 that can impact emissions performance.” (Doc. No. 1 at ¶ 36.) The OBD devices also “store
9 information about emissions system faults for later retrieval by regulatory agencies,
10 manufacturers, or mechanics,” and the devices “warn drivers of problems through features such
11 as the ‘check engine’ light.” (Doc. No. 73-30 at ¶ 16.)

12 CARB has required OBDs in medium- and heavy-duty vehicles sold in California since
13 model years 1988 and 2010, respectively. (Doc. No. 73-30 at ¶ 16.) CARB has amended its OBD
14 requirements several times and received CARB preemption waivers. (*Id.*); *see also* 81 Fed. Reg.
15 78143, 78149 (“EPA is hereby granting a waiver for California’s 2007, 2010, 2012, and 2013
16 amendments to its OBD II Requirements and OBD II Enforcement Regulation.”); 81 Fed. Reg.
17 78149, 78154 (granting EPA waiver to 2013 OBD requirements for heavy-duty vehicles).

18 According to Defendants, in 2023, CARB amended the OBD requirements for heavy-duty
19 vehicles as part of the Omnibus regulations, (Doc. No. 73-30 at ¶ 17); Cal. Code Regs., tit. 13, §
20 1971.1, and for medium-duty vehicles as part of the Advanced Clean Cars II regulations, (Doc.
21 No. 73-30 at ¶ 17); Cal. Code Regs., tit. 13, § 1968.2. Relying on the preemption waivers granted
22 for the Omnibus regulations and the Advanced Clean Cars II regulations, Defendants contend
23 EPA has waived preemption for these OBD requirements, as amended. (Doc. No. 73 at 17.)

24 Plaintiffs allege that CARB has not obtained a waiver for its OBD requirements since
25 EPA’s grant of the waivers for the 2013 amendments, and thus any subsequent amendments (such
26 as amendments CARB made in 2016 and 2019) lack waivers. (Doc. No. 1 at ¶ 36.) Yet, elsewhere

27
28 request. (*Id.*)

1 in Plaintiffs’ complaint, their allegations are consistent with Defendants’ position. In describing
2 the Advanced Clean Cars II regulations in their complaint, Plaintiffs allege “[t]he on-board
3 diagnostics standards applicable to medium-duty vehicles were also modified in Advanced Clean
4 Cars II,” and “EPA approved the waiver for Advanced Clean Cars II.” (Doc. No. 1 at 15.) In
5 describing the Omnibus regulations as a regulatory package that “included extensive changes to
6 other CARB standards affecting heavy-duty engines and vehicles,” Plaintiffs noted the numerous
7 sections of title 13 of the California Code of Regulations amended by the Omnibus regulations,
8 including sections 1971.1 and 1971.5. (Doc. No. 1 at 14 n.5.) Those sections are entitled “On-
9 Board Diagnostic System Requirements—2010 and Subsequent Model-Year Heavy-Duty
10 Engines,” and “Enforcement of Malfunction and Diagnostic System Requirements for 2010 and
11 Subsequent Model-Year Heavy-Duty Engines,” respectively. Cal. Code Regs., tit. 13, §§ 1971.1,
12 1971.5. Further, these two sections were explicitly noted by EPA in its decision document
13 granting a preemption waiver for the Omnibus regulations as being included in the waiver. (Doc.
14 No. 73-8 at 6–7 n.5) (“The 2023 Targeted Amendments are comprised of title 13, California Code
15 of Regulations [] sections 1956.8, 1971.1, and 1971.5.”); (Doc. No. 73-8 at 7) (“By today’s
16 decision EPA finds that Omnibus Low NOx Regulation, including the 2023 Targeted
17 Amendments, meets the criteria for a new waiver under section 209(b) for portions that pertain to
18 onroad requirements and meets the criteria for a new authorization under section 209(e) for the
19 portions that pertain to nonroad requirements.”).

20 **B. The Clean Truck Partnership**

21 During the years that CARB promulgated the regulations at issue in this case,
22 manufacturers of heavy-duty trucks, including the OEM Plaintiffs, and their industry trade
23 association, the Truck and Engine Manufacturer’s Association (“EMA”), raised serious concerns
24 regarding the legality of those regulations and the technical feasibility of meeting CARB’s
25 standards within the time allotted. (Doc. No. 1 at ¶¶ 37–39.) For example, in 2020, the EMA
26 expressed concerns during CARB’s rulemaking for the Omnibus regulations that the NOx
27 emissions standards were unachievable, and in 2022, the EMA sued CARB alleging the Omnibus
28 regulations violated the Clean Air Act because they did not provide the requisite four-year lead

1 time. (*Id.* at 38–40.) The EMA withdrew that lawsuit when EPA commenced a waiver proceeding
2 regarding the Omnibus regulations and accepted comments on the lead time issue. (*Id.* at ¶ 40.)
3 Nonetheless, manufacturers still wanted assurances that CARB would provide four years of lead
4 time in their regulations, and they continued to express concerns that CARB’s standards were too
5 stringent and diverged too much from EPA’s federal standards. (Doc. No. 73-34 at ¶¶ 8, 12.) For
6 its part, CARB was concerned about the risks of further legal challenges to their regulations and
7 to any preemption waivers granted for those regulations, as defending against those legal
8 challenges would negatively impact CARB’s ability to develop plans to improve air quality in
9 California. (Doc. No. 73-34 at ¶¶ 11–14.) To address these concerns, in the fall of 2022, CARB
10 initiated discussions with the EMA, and negotiations continued over the next nine months,
11 leading to the announcement in July 2023 of an agreement, which the parties refer to as the
12 “Clean Truck Partnership.”¹⁰ (Doc. Nos. 1 at ¶ 41; 73-34 at ¶ 15–24.) The Clean Truck
13 Partnership was signed by CARB, EMA, and certain heavy-duty on-highway manufacturers,
14 including the OEM Plaintiffs in this case. (Doc. No. 1-2 at 5–7.) Several manufacturers of internal
15 combustion-engines operating in California did not sign on to the Clean Truck Partnership, and
16 manufacturers of zero-emissions vehicles (such as Tesla) also did not sign on to the Clean Truck
17 Partnership. (Doc. No. 73-34 at ¶ 25.)

18 The Clean Truck Partnership outlined a plan for CARB to undertake several of the
19 regulatory actions sought by the industry. (Doc. No. 1 at ¶ 41.) The Clean Truck Partnership
20 consists of an introductory paragraph in which the signatories acknowledge the importance of
21 several environmental and industry goals, followed by eight paragraphs of agreed upon
22 commitments. (Doc. No. 1-2 at 2–4.) Certain of those commitments are set forth in further detail
23 in the appendices attached to the Clean Truck Partnership and referenced therein: “Appendix A –
24 Amendments to Omnibus Legacy Provisions in Title 13 California Code of Regulations (CCR)
25 1956.8 to Ease Transition”; “Appendix B – CARB Truck Regulations Compliance and U.S. EPA
26 Clean Trucks Plan Harmonization”; “Appendix C – Emission Warranty Information Reporting, In

27 ¹⁰ The agreement itself is simply titled “Agreement” and does not mention “Clean Truck
28 Partnership.” (Doc. Nos. 1-2 at 2; 73-35 at 2.)

1 Use Compliance, Advanced Clean Trucks and Advanced Clean Fleet Regulatory Implementation
2 Efforts”; “Appendix D – Support for CARB’s Regulations and for States that have Adopted
3 CARB Regulations per [Section 177 of the Clean Air Act].” (*Id.* at 8–17.)

4 The Clean Truck Partnership states that the signatory manufacturers:

5 commit to meet, in California, the relevant provisions of the CARB
6 regulations set forth in Appendices A and B, and any agreed upon
7 modifications to such regulations as set forth in this Agreement,
8 irrespective of the outcome of any litigation challenging the waivers
or authorizations for those regulations or of CARB’s overall
authority to implement those regulations.

9 (*Id.* at 3.) Further, the signatory manufacturers and EMA agreed that they:

10 will not (i) challenge CARB’s issuance of the regulations set forth
11 in Appendix B; (ii) file a Petition for Review or otherwise challenge
12 any U.S. EPA waiver or authorization granted for such regulations;
13 (iii) file amicus briefs supporting challenges to such waivers or
authorizations, or such regulations; or (iv) support stay motions or
similar motions practice challenging such waiver or authorization
decisions, or such regulations.

14 (*Id.*)

15 Notably, in Appendix B, the signatory manufacturers “commit to meet, in California, the
16 requirements” of several listed regulations, including “the 100 percent ZEV sales
17 requirement set forth in Cal. Code Regs title 13, section 2016, as it existed on April 28, 2023.”
18 (Doc. No. 73-35 at 12.) That is the model year 2036 zero-emissions requirement from the ACF
19 regulations for which CARB had not yet obtained a preemption waiver, and although CARB
20 subsequently submitted a preemption waiver request, it later withdrew its request. (*See* Doc. No.
21 73-30 at ¶ 20).

22 The Clean Truck Partnership states that the “[t]he Parties acknowledge the efforts that
23 have resulted in this Agreement and their respective commitments to follow through in
24 implementing the Agreement,” *id.*, though the agreement does not include any enforcement or
25 penalty provisions or otherwise set forth any general consequences for failure to follow through
26 with the commitments made in the agreement.¹¹

27 _____
28 ¹¹ Appendix A does state that, “[t]o give certainty regarding what happens if legacy thresholds
are exceeded, CARB has clarified the consequence if the legacy caps are exceeded, as detailed in

1 On July 6, 2023, EMA issued a press release titled, “CARB and truck and engine
2 manufacturers announce unprecedented partnership to meet clean air goals: The new Clean Truck
3 Partnership agreement offers flexibility to address public health of Californians and the needs of
4 fleet manufacturers that build the technology required for the transition to zero-emissions.” (Doc.
5 No. 73-37 at 2.) That press release included several quotes from signatories to the agreement:
6 EMA’s president stated, “[t]hrough this agreement, we have aligned on a single nationwide
7 nitrogen oxide emissions standard, secured needed lead time and stability for manufacturers, and
8 agreed on regulatory changes that will ensure continued availability of commercial vehicles”; a
9 vice president at Daimler stated, “[a]t Daimler Truck we continue working towards achieving our
10 goal of offering only carbon-neutral vehicles by 2039. For the overall industry transformation to
11 become a reality, we believe the key to success is a close collaboration with all our stakeholders”;
12 PACCAR’s chief technology officer stated, “[t]his agreement provides regulatory certainty and
13 supports a balanced transition to zero emissions by ensuring continued supply of product into
14 California and opt-in states”; and a vice president at Volvo stated, “[t]he Volvo Group is pleased
15 to support this joint agreement between [CARB] and [EMA]. We believe this lays the foundation
16 for our customers to have the greatest possible product availability consistent with California’s
17 climate change and air quality goals. Through cooperative efforts such as this, the Volvo Group
18 believes we can achieve the quickest and least disruptive transition to a commercial zero-emission
19 vehicle future.” (*Id.* at 3–4.) Other signatory manufacturers who are not plaintiffs in this case,
20 such as Cummins Inc. and Ford Motor Company, similarly lauded the Clean Truck Partnership.¹²

21
22 footnotes 1 and 2,” and those footnotes in turn provide that all vehicles sold above those
23 thresholds “would be considered as non-compliant sales.” (Doc. No. 1-2 at 8 n.1, 2.)

24 ¹² One of the commitments made by the signatory manufacturers was to meet the requirement of
25 Cal. Code Regs., tit. 13, § 2016, which requires “all new, medium- and heavy-duty vehicles sold
26 in California beginning with the 2036 model year be zero-emissions vehicles.” (Doc. No. 73-35 at
27 12.) As described above, that sales requirement was part of the Advanced Clean Fleets regulation,
28 for which CARB did not obtain a preemption waiver. In part for this reason, in December 2024,
the American Free Enterprise Chamber of Commerce (on behalf of its members, manufacturers of
internal-combustion engines and their customers) filed a lawsuit against all signatories to the
Clean Truck Partnership, alleging that the agreement is an attempt to enforce standards that are
preempted by the Clean Air Act. *See Am. Free Enter. Chamber of Com.v. Engine Mfrs. Ass’n*,
No. 3:24-cv-50504 (N.D. Ill. Dec. 16, 2024); (Doc. No. 1 at ¶ 46). That litigation remains

1 (Id.)

2 ////

3 **C. Congressional Review Act**

4 In the “Statutory and Executive Order Reviews” section of EPA’s notices of decision
5 granting preemption waivers for the ACT regulations, the Omnibus regulations, and the
6 Advanced Clean Cars II regulations, EPA states, “the Congressional Review Act, 5 U.S.C. [§]
7 801, *et seq.*, . . . , does not apply because this action is not a rule for purposes of 5 U.S.C. [§]
8 804(3).” 88 Fed. Reg. 20688, 20725; 90 Fed. Reg. 643, 645; 90 Fed. Reg. 642, 643.

9 The Congressional Review Act (“CRA”), codified at 5 U.S.C. §§ 801–808, was “enacted
10 as part of the Contract with America Advancement Act of 1996” and “was designed to give
11 Congress an expedited procedure to review and disapprove federal regulations.” *Ctr. for*
12 *Biological Diversity v. Bernhardt*, 946 F.3d 553, 556 (9th Cir. 2019); (Doc. No. 56 at ¶ 27). “The
13 CRA establishes a set of Congressional procedures for reviewing and disapproving certain agency
14 rules through joint resolutions passed by majority vote of both the House and Senate and
15 presented to the President.” (Doc. No. 56 at ¶ 27.) The CRA “provides that ‘[b]efore a rule can
16 take effect, the Federal agency promulgating such rule shall submit’ a report that includes ‘a
17 concise general statement relating to the rule’ and a ‘proposed effective date.’” *Bernhardt*, 946
18 F.3d at 556 (quoting 5 U.S.C. § 801(a)(1)(A)). Congress then has a specific period of time after
19 receiving the agency’s report to—if it chooses to do so—“enact a joint resolution that disapproves
20 the regulation and states that ‘such rule shall have no force or effect.’” *Bernhardt*, 946 F.3d at 557
21 (quoting 5 U.S.C. § 802(a)). “If the House and Senate pass a joint resolution of disapproval, and
22 the President signs it into law,¹³ the agency’s rule ‘shall not take effect (or continue).’”
23 *Bernhardt*, 946 F.3d at 557 (quoting 5 U.S.C. § 801(b)(1)). The CRA also provides that “[a]ny
24 rule that takes effect and later is made of no force or effect by enactment of a joint resolution
25 pending.

26 ¹³ When Congress passes resolutions of disapproval in both houses pursuant to the CRA and
27 presents them to the President for signature or veto, Congress complies with the process of
28 bicameralism and presentment. *Bernhardt*, 946 F.3d at 562 (“Under the Presentment Clause, the
House of Representatives and the Senate must each pass a bill, and then present it to the
President, who may then sign the bill into law.”) (citing U.S. Const. art. I, § 7, cl. 2).

1 under section 802 shall be treated as though such rule had never taken effect.” 5 U.S.C. § 801(f).
2 Further, a disapproved rule “may not be reissued in substantially the same form, and a new rule
3 that is substantially the same as such a rule may not be issued, unless the reissued or new rule is
4 specifically authorized by a law enacted after the date of the joint resolution disapproving the
5 original rule.” 5 U.S.C. § 801(b)(2). Moreover, the CRA provides that “[n]o determination,
6 finding, action, or omission under this chapter [i.e., the CRA] shall be subject to judicial review.”
7 5 U.S.C. § 805.

8 The CRA defines the term “rule” by referring to the definition of “rule” in the
9 Administrative Procedure Act, codified at 5 U.S.C. § 551–559, with some exceptions. 5 U.S.C.
10 § 804(3). Under the Administrative Procedure Act,

11 “rule” means the whole or a part of an agency statement of general
12 or particular applicability and future effect designed to implement,
13 interpret, or prescribe law or policy or describing the organization,
14 procedure, or practice requirements of an agency and includes the
15 approval or prescription for the future of rates, wages, corporate or
financial structures or reorganizations thereof, prices, facilities,
appliance, services or allowances therefor or of valuations, costs,
or accounting, or practices bearing on any of the foregoing.

16 5 U.S.C. § 551(4). The CRA incorporates this definition of “rule” but also provides some
17 exceptions, clarifying that for CRA purposes, the term “rule” does not include:

18 (A) any rule of particular applicability, including a rule that
19 approves or prescribes for the future rates, wages, prices, services,
20 or allowances therefor, corporate or financial structures,
reorganizations, mergers, or acquisitions thereof, or accounting
practices or disclosures bearing on any of the foregoing;

21 (B) any rule relating to agency management or personnel; or

22 (C) any rule of agency organization, procedure, or practice that
23 does not substantially affect the rights or obligations of non-agency
parties.

24 5 U.S.C. § 804(3).

25 The CRA itself does not provide a process for Congress to review an agency’s
26 determination that an action it has taken constitutes a “rule” (or does not constitute a rule) under
27 the CRA. However, as described in detail in a Congressional Research Service report, Congress
28

1 and the Government Accountability Office¹⁴ (“GAO”) have developed a process by which
2 members of Congress can request GAO to provide a formal legal opinion on whether a particular
3 agency action qualifies as a “rule,” and an affirmative answer from GAO enables Congress to use
4 the CRA procedures notwithstanding the agency’s decision not to submit its action to Congress as
5 a “rule.” *See* Valerie C. Brannon & Maeve P. Carey, Cong. Rsch. Serv., R45248, The
6 Congressional Review Act: Determining Which “Rules” Must Be Submitted to Congress (Oct.
7 22, 2024). For example, in May 2022, U.S. Senator Shelley Moore Capito sought such a legal
8 opinion from GAO regarding whether EPA’s notice of its decision to reinstate a preemption
9 waiver granted to CARB for its Advanced Clean Car Program was a “rule” under CRA. (*See* Doc.
10 No. 73-10 at 2.) On November 30, 2023, GAO issued its decision on that request and concluded
11 that EPA’s notice was not a “rule” and was instead “an adjudicatory order because it is a final
12 disposition rescinding a waiver withdrawal for California’s Advanced Clean Car Program,
13 bringing back into force a waiver of preemption to enforce the program.” (*Id.* at 8.)

14 No member of Congress sought a GAO legal opinion following the issuance of EPA’s
15 notices of decision to grant preemption waivers for the CARB regulations at issue in this case.
16 (Doc. No. 73-16 at 6.) In a “one-pager” for his proposed legislation to repeal the Clean Air Act’s
17 waiver provision (the Stop CARB Act), U.S. Senator Mike Lee noted that California’s Clean Air
18 Act “federal preemption waivers cannot be reviewed under the Congressional Review Act (CRA)
19 because the waiver granted by EPA is not a rule as that term is defined in the CRA.” (Doc. No.
20 73-11.) Similarly, a House member’s press release announcing introduction of the Stop CARB
21 Act states, “CARB has over 100 active waivers that set higher emissions standards than [EPA],
22 and none of them are subject to congressional review.” (Doc. No. 73-12.)

23 Nevertheless, on February 14, 2025, President Trump and the new EPA Administrator
24 issued a press release announcing that EPA is transmitting to Congress “California’s Advanced
25 Clean Cars II, Advanced Clean Trucks, and Omnibus NOx rules” for review in “accordance with
26 statutory review requirements.” (Doc. No. 73-13.) On February 19, 2025, EPA submitted to

27 ¹⁴ “The GAO is an independent agency within the legislative branch that exists in large part
28 to serve the needs of Congress.” *Bowsher v. Merck & Co., Inc.*, 460 U.S. 824, 844 (1983).

1 Congress for its review under the CRA the notices of decision EPA issued for the ACT
2 regulations and Advanced Clean Cars II regulations. (Doc. Nos. 73-14 at 2, 4; 73-15 at 3.) On
3 March 5, 2025, EPA similarly submitted the Omnibus regulations to Congress for review under
4 the CRA.¹⁵ (Doc. No. 73-17 at 2, 4.)

5 **D. Resolutions of Disapproval**

6 On April 2, 2025, members of the U.S. House of Representatives introduced resolutions of
7 disapproval under the CRA, specifically House Joint Resolution 87 to disapprove of the ACT
8 regulations (“H.J. Res. 87”), House Joint Resolution 88 to disapprove of the Advanced Clean
9 Cars II regulations (“H.R. Res. 88”), and House Joint Resolution 89 to disapprove of the Omnibus
10 regulations (“H.J. Res. 89”), as follows:

11 H.J. Res. 87. A joint resolution providing congressional disapproval
12 under chapter 8 of title 5, United States Code, of the rule submitted
13 by the Environmental Protection Agency relating to “California
14 State Motor Vehicle and Engine Pollution Control Standards;
15 Heavy-Duty Vehicle and Engine Emission Warranty and
Maintenance Provisions; Advanced Clean Trucks; Zero Emission
Airport Shuttle; Zero-Emission Power Train Certification; Waiver
of Preemption; Notice of Decision”; to the Committee on Energy
and Commerce.

16 H.J. Res. 88. A joint resolution providing congressional disapproval
17 under chapter 8 of title 5, United States Code, of the rule submitted
18 by the Environmental Protection Agency relating to” California
19 State Motor Vehicle and Engine Pollution Control Standards;
Advanced Clean Cars II; Waiver of Preemption; Notice of
Decision”; to the Committee on Energy and Commerce.

20 H.J. Res. 89. A joint resolution providing congressional disapproval
21 under chapter 8 of title 5, United States Code, of the rule submitted
22 by the Environmental Protection Agency relating to ” California
State Motor Vehicle and Engine and Nonroad Engine Pollution
Control Standards; The ‘Omnibus’ Low NOX Regulation; Waiver
of Preemption; Notice of Decision”; to the Committee on Energy

23
24 ¹⁵ Shortly after EPA’s submission to Congress in February 2025, three U.S. Senators (Sheldon
25 Whitehouse, Alex Padilla, and Adam Schiff) requested GAO provide a legal decision regarding
26 whether those preemption waivers and notices of decision are “rules” subject to the CRA. (*See*
27 Doc. No. 73-16 at 2.) In GAO’s letter responding to that request, GAO referred to its November
28 30, 2023 response to Senator Capito’s request for a legal opinion as to the Advanced Clean Car
Program and explained that its “prior analysis and conclusion”—that the preemption waiver
notice is an order, not a rule—“would apply to the three notices at issue here.” (*Id.* at 8, 10.) GAO
also noted that “EPA did not explain in either submission why the agency was submitting the
notices under CRA given its statement in each notice that CRA did not apply.” (*Id.* at 7.)

1 and Commerce.

2 171 Cong. Rec. H1411-02, H1412.

3 On April 30, 2025 and May 1, 2025, the full House considered those resolutions and
4 passed all three of them. *See* Pub. L. No. 119-15, June 12, 2025, 139 Stat. 65 (ACT); Pub. L. No.
5 119-16, June 12, 2025, 139 Stat. 66 (Advanced Clean Cars II); Pub. L. No. 119-17, June 12,
6 2025, 139 Stat. 67 (Omnibus). On May 21 and 22, 2025, the Senate likewise considered and
7 passed each of the joint resolutions. *Id.* On June 12, 2025, the President signed the joint
8 resolutions, which state:

9 Resolved by the Senate and House of Representatives of the United
10 States of America in Congress assembled, That Congress
11 disapproves the rule submitted by the Environmental Protection
12 Agency relating to “California State Motor Vehicle and Engine
13 Pollution Control Standards; Heavy-Duty Vehicle and Engine
14 Emission Warranty and Maintenance Provisions; Advanced Clean
15 Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train
16 Certification; Waiver of Preemption; Notice of Decision” (88 Fed.
17 Reg. 20688 (April 6, 2023)), and such rule shall have no force or
18 effect.

15 Resolved by the Senate and House of Representatives of the United
16 States of America in Congress assembled, That Congress
17 disapproves the rule submitted by the Environmental Protection
18 Agency relating to “California State Motor Vehicle and Engine
19 Pollution Control Standards; Advanced Clean Cars II; Waiver of
20 Preemption; Notice of Decision” (90 Fed. Reg. 642 (January 6,
21 2025)), and such rule shall have no force or effect.

19 Resolved by the Senate and House of Representatives of the United
20 States of America in Congress assembled, That Congress
21 disapproves the rule submitted by the Environmental Protection
22 Agency relating to “California State Motor Vehicle and Engine and
23 Nonroad Engine Pollution Control Standards; The “Omnibus” Low
24 NOX Regulation; Waiver of Preemption; Notice of Decision” (90
25 Fed. Reg. 643 (January 6, 2025)), and such rule shall have no force
26 or effect.

23 *Id.* In the President’s signing statement, the President stated, “[b]ecause of the joint resolutions I
24 signed today, California’s Advanced Clean Cars II, Advanced Clean Trucks, and Omnibus Low
25 NOX programs are fully and expressly preempted by the Clean Air Act and cannot be
26 implemented.” (Doc. No. 56 at 83.)

27 **E. California’s Response to the Resolutions of Disapproval**

28 After Congress passed the resolutions of disapproval, but before the President signed them

1 into law, CARB issued guidance to manufacturers informing them that CARB will continue to
2 accept and process certification applications for model year 2026, a process that was already well
3 underway. (Doc. Nos. 1 at ¶ 61; 23-16 at 3–4.) Specifically, CARB issued a manufacturers
4 advisory correspondence ECCD-2025-03 on May 23, 2025 (“the May MAC”) clarifying CARB’s
5 intention to continue enforcing its regulations (including ACT, Omnibus, and Advanced Clean
6 Cars II) even if the President signed the joint resolutions of disapproval, which CARB “contends
7 are the result of illegal actions and thus invalid.” (Doc. No. 23-16 at 2.)

8 In the hours following the President’s signing of the joint resolutions on June 12, 2025,
9 California filed a lawsuit challenging those allegedly unlawful resolutions,¹⁶ (Doc. No. 1 at ¶ 8),
10 and California’s Governor Gavin Newsom issued Executive Order N-27-25 (the “Executive
11 Order”) to “reaffirm[] [California’s] commitment to accelerate the deployment of zero-emission
12 technologies,” (Doc. No. 23-17). The Executive Order sets forth several directives to CARB and
13 other state agencies and departments. (*Id.*) The Executive Order directs CARB to develop and
14 propose regulations “to advance progress towards the deployment of clean air vehicles and
15 technologies in the State, as an additional measure to build on existing regulations or as an
16 alternative measure for deployment if the federal disapprovals of the Advanced Clean Cars II,
17 [ACT], and [Omnibus] regulations are not invalidated in court.” (*Id.* at 3–4.) The Executive Order
18 also directs CARB to maintain lists of manufacturers who continue to comply with CARB

19
20 ¹⁶ On June 12, 2025, California and ten other states filed a declaratory relief action against the
21 United States, the EPA, the EPA Administrator Lee Zeldin, and President Donald J. Trump in the
22 United States District Court for the Northern District of California. *State of California, et al. v.*
23 *United States of America, et al.*, No. 4:25-cv-04966-HSG (N.D. Cal. June 12, 2025). The
24 plaintiffs in that case seek a declaration that “the Resolutions are unconstitutional and have no
25 effect on the status or enforceability of state emissions control programs,” or alternatively, that
26 the resolutions “were not enacted under the CRA because these waivers are not ‘rules’ under that
27 statute.” *California*, No. 4:25-cv-04966-HSG, First Am. Compl., Doc. No. 157 at ¶ 13 (N.D. Cal.
28 Oct. 10, 2025). Those plaintiffs also request the court “declare that EPA’s post-hoc purported
reclassification and submission of these waivers as supposed ‘rules’ subject to the CRA were
unlawful actions and enjoin EPA from similarly targeting other preemption waivers.” *Id.* Pursuant
to a stipulation by the parties, and due to the federal government shutdown and lapse in
appropriations to fund defense counsel, the court granted an extension of time for the United
States to file its anticipated motion to dismiss and set a hearing for January 29, 2026 on that
motion. *California*, No. 4:25-cv-04966-HSG, Order, Doc. No. 162 (N.D. Cal. Oct. 23, 2025).

1 requirements and to use those lists to prioritize those manufacturers when making decisions on
2 procurement, funding, and incentive programs. (*Id.* at 4.) Further, the Executive Order directs
3 CARB to “continue to work with manufacturers consistent with the commitments made in the
4 Clean Truck Partnership,” and to provide the Governor with a report “every six months on
5 manufacturer progress towards those commitments.” (*Id.*)

6 **F. Cease-and-Desist Letters**

7 On August 7, 2025, the U.S. Department of Justice sent letters to Plaintiffs Daimler,
8 Volvo, and International stating that CARB’s “so-called ‘Clean Truck Partnership’ is an illegal
9 attempt to enforce preempted state vehicle emission regulations.”¹⁷ (Doc. Nos. 23-19, 23-21, 23-
10 24.) In that letter, the DOJ explains its view that in light of the joint resolutions of disapproval,
11 “[f]ederal law [] prohibits CARB from adopting or attempting to enforce those regulations,” and
12 “CARB may not circumvent federal law by disguising its enforcement of vehicle emissions
13 regulations as an ‘agreement,’” especially “where the purported agreement was entered into under
14 threat of enforcement of the very regulations that federal law preempts.” (Doc. Nos. 23-19 at 2.)
15 Further, the DOJ states that “by its own terms, the Clean Truck Partnership is the regulatory
16 mechanism by which CARB attempts to enforce preempted California emissions standards.” (*Id.*
17 at 3.) The DOJ’s letter concludes with the following directive: “[B]ecause CARB’s regulations
18 are preempted, the Clean Truck Partnership is preempted and unlawful. You must therefore
19 immediately cease and desist your compliance with both the Clean Truck Partnership and its
20 preempted state vehicle emission regulations.” (*Id.*)

21 The DOJ letter does not mention any consequences that would befall a recipient who did
22 not comply with the cease-and-desist directive, such as penalties, fines, or other enforcement
23 action that the federal government would take in response.

24 **G. Manufacturers Advisory Correspondence Issued August 25, 2025**

25 On August 25, 2025, CARB issued a new manufacturers advisory correspondence ECCD-
26

27 ¹⁷ The declaration of Carl Hergart, a senior director at PACCAR, does not mention PACCAR
28 receiving a cease-and-desist letter nor attach a copy of a cease-and-desist letter as an exhibit. (*See*
Doc. No. 23-22.)

1 2025-08 (“the August MAC”), which supersedes the May MAC, to address manufacturers’
2 questions and “provide further clarity on how CARB will process the applications for
3 certifications that it continues to receive, so that vehicle and engine manufacturers may continue
4 to offer, sell, and deliver new vehicles and engines in the state amid the ongoing legal uncertainty
5 caused by the federal government.” (Doc. No. 73-32 at 3.) The August MAC explains that
6 manufacturers may obtain approval from CARB to sell vehicles and engines in California through
7 three pathways: (1) certify to the CARB regulations that were disapproved of by the
8 congressional resolutions (i.e., ACT, Omnibus, and Advanced Clean Cars II); (2) certify to the
9 CARB regulations “that immediately preceded those covered by the waivers that were targeted by
10 the congressional resolutions”; and/or (3) certify to the federal EPA standards and submit that
11 EPA certification to CARB. (*Id.*) However, as to manufacturers who opt for the second and third
12 pathway, the August MAC advises:

13 CARB reserves its right to enforce the regulations covered by the
14 waivers targeted by the congressional resolutions in the event a
15 court of law holds those resolutions invalid, including with respect
16 to model years that such manufacturers ask CARB to certify under
these alternative pathways. Whether CARB opts to pursue such
enforcement would be decided if and when that question becomes
ripe.

17 (*Id.* at 4.)

18 PROCEDURAL BACKGROUND

19 On August 11, 2025, the OEM Plaintiffs filed this lawsuit for declaratory judgment and
20 injunctive relief against Defendants CARB, Steven S. Cliff in his official capacity as the
21 Executive Officer of CARB, and Gavin C. Newsom in his official capacity as the Governor of
22 California. (Doc. No. 1.) Plaintiffs bring this action “with the goal of clarifying and establishing
23 the regulatory obligations that they must follow to lawfully offer products for sale in California
24 and the various opt-in states, and to prevent California officials from violating their constitutional
25 rights.” (*Id.* at ¶ 16.)

26 In their complaint, Plaintiffs bring the following seven declaratory and injunctive relief
27 claims seeking: (1) a declaration that CARB’s emissions standards for heavy-duty vehicles are
28 preempted by the Clean Air Act, and an injunction barring Defendants from enforcing those

1 preempted standards; (2) a declaration that CARB’s May 23, 2025 MAC and the Governor’s
2 Executive Order N-27-25 violate the Clean Air Act and the Supremacy Clause of the U.S.
3 Constitution, and an injunction barring Defendants “from carrying out the enforcement,
4 compliance, and punishment directives described in the May 23, 2025 MAC and Executive Order
5 N-27-25”; (3) a declaration that the Clean Truck Partnership violates the Clean Air Act and the
6 Supremacy Clause of the U.S. Constitution, and an injunction barring Defendants enforcing the
7 Clean Truck Partnership; (4) a declaration that the May 23, 2025 MAC, the Executive Order N-
8 27-25, and the Clean Truck Partnership violate Plaintiffs’ First Amendment freedom of speech
9 rights, and an “injunction barring Defendants from using Executive Order N-27-25, the May 23,
10 2025 MAC, or the Clean Truck Partnership to insulate themselves from legitimate legal
11 challenges or to punish entities that raise such challenges”; (5) a declaration that the May 23,
12 2025 MAC, the Executive Order N-27-25, and the Clean Truck Partnership violate Article I
13 Section 3 of the California Constitution, and “an injunction barring Defendants from enforcing
14 Executive Order N-27-25, the May 23, 2025 MAC, or the Clean Truck Partnership to restrict
15 [Plaintiffs’] petitioning rights under Article I Section 3 of the California Constitution”; (6) a
16 declaration that the May 23, 2025 MAC constitutes an underground regulation in violation of the
17 California Administrative Procedure Act, and an injunction barring Defendants from enforcing
18 the May 23, 2025 MAC; (7) a declaration that the Clean Truck Partnership constitutes an
19 underground regulation in violation of the California Administrative Procedure Act, and an
20 injunction barring Defendants from enforcing the Clean Truck Partnership. (*Id.* at ¶¶ 78, 86, 94,
21 114, 121, 132, 137.)

22 On August 12, 2025, Plaintiffs filed the pending motion for a preliminary injunction to
23 prohibit Defendants from implementing or enforcing: (i) six CARB emissions regulations
24 (namely, Advanced Clean Trucks, Omnibus Low NOx, Advanced Clean Cars II, Advanced Clean
25 Fleets, Phase 2 Greenhouse Gas, and Heavy-Duty On-Board Diagnostic); (ii) the Clean Truck
26 Partnership; (iii) the May 23, 2025 MAC; and (iv) Executive Order N-27-25. (Doc. No. 23.) In
27 support of their motion, Plaintiffs concurrently filed the declarations of Rachel S. Brass
28 (Plaintiffs’ counsel), Andrea Brown (a director of product management at Plaintiff Volvo), Carl

1 Hergert (a senior director at Plaintiff PACCAR), Jed Mandel (the president of a non-party trade
2 group representing medium- and heavy-duty OEMs), Mike Noonan (a vice president at Plaintiff
3 International), and Daniel Potter (a manager of compliance and regulatory affairs at Plaintiff
4 ////
5 Daimler).¹⁸ (Doc. Nos. 23-1–23-14.)

6 On August 14, 2025, the United States of America and the United States Environmental
7 Protection Agency filed a motion to intervene in this action as plaintiffs, which the court granted
8 on August 20, 2025. (Doc. Nos. 43, 54.) Plaintiffs-Intervenors filed their complaint-in-
9 intervention on August 22, 2025. (Doc. No. 56.) Therein, Plaintiffs-Intervenors bring two claims
10 for declaratory and injunctive relief. (*Id.* at 23–26.) Like the OEM Plaintiffs’ first claim,
11 Plaintiffs-Intervenors likewise seek a declaration that CARB’s emissions standards for heavy-
12 duty vehicles (specifically Advanced Clean Trucks, Omnibus Low NOx, and Advanced Clean
13 Fleet) are preempted by the Clean Air Act and the Supremacy Clause, and seek an injunction
14 barring Defendants from enforcing those preempted standards. (*Id.* at 23–25.) In addition, like the
15 OEM Plaintiffs’ third claim, Plaintiffs-Intervenors likewise seek a declaration that the Clean
16 Truck Partnership violates the Clean Air Act and the Supremacy Clause, and seek an injunction
17 barring Defendants enforcing the Clean Truck Partnership. (*Id.* at 25–26.)

18 On August 27, 2025, Plaintiffs-Intervenors filed a joinder in the OEM Plaintiffs’ pending
19 motion for a preliminary injunction, specifically joining the portions of that motion that argue
20 CARB’s emissions regulations and the Clean Truck Partnership are preempted and urge the court

21 ¹⁸ On August 29, 2025, OEM Plaintiffs filed a request for judicial notice, specifically asking the
22 court to take judicial notice of two state agency documents: (1) a copy of a decision from the
23 State of California’s Office of Administrative Law (“OAL”) issued on August 18, 2025; and (2) a
24 copy of the August MAC. (Doc. No. 58.) Public records are properly the subject of judicial notice
25 because the contents of such documents contain facts that are not subject to reasonable dispute,
26 and the facts therein “can be accurately and readily determined from sources whose accuracy
27 cannot reasonably be questioned.” Fed. R. Evid. 201(b); *see Intri-Plex Techs. v. Crest Grp., Inc.*,
28 499 F.3d 1048, 1052 (9th Cir. 2007); *W. Radio Servs. Co. v. Qwest Corp.*, 530 F.3d 1186, 1192
(9th Cir. 2008) (taking judicial notice of the state public utility commission’s decision to approve
a network interconnection agreement); *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282
(9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501
U.S. 104 (1991) (“[A] court may take judicial notice of ‘records and reports of administrative
bodies.’”). Accordingly, the court will grant OEM Plaintiffs’ request for judicial notice.

1 to enjoin Defendants’ enforcement of them on that basis. (Doc. No. 57.)

2 On September 16, 2025, Defendants filed an opposition to the pending motion for a
3 preliminary injunction, including Plaintiffs-Intervenors’ partial joinder therein. (Doc. No. 73.) In
4 support of their opposition, Defendants concurrently filed the declarations of M. Elaine
5 Meckenstock (Defendants’ counsel), Robin U. Lang (division chief of emissions certification and
6 compliance at Defendant CARB), and Kimberly Ayn Heroy-Rogalski (chief of the mobile source
7 regulatory development branch at Defendant CARB). (Doc. No. 73-1–73-42.) Defendants also
8 filed evidentiary objections to certain portions of the declarations Plaintiffs filed in support of
9 their pending motion. (Doc. No. 73-43.)

10 On September 30, 2025, Plaintiffs-Intervenors and OEM Plaintiffs filed their respective
11 replies in response to Defendants’ opposition. (Doc. Nos. 74, 75.) The OEM Plaintiffs also
12 concurrently filed a second declaration from Daniel Potter and a response to Defendants’
13 evidentiary objections.¹⁹ (Doc. Nos. 75-6, 76.) Further, in their reply, OEM Plaintiffs state they
14 “withdraw their state law allegations as a basis for this court to preliminarily enjoin Defendants’
15 conduct.”²⁰ (Doc. No. 75 at 18 n.10.)

16 On October 14, 2025, Defendants filed an authorized sur-reply and a request for judicial
17 //

18 ¹⁹ In their evidentiary objections, Defendants object to certain portions of the declarations of Jed
19 Mandel (EMA president), Daniel Potter (Daimler compliance manager), Mike Noonan
20 (International vice president), Carl Hergert (PACCAR senior director), and Andrea Brown (Volvo
21 director), on the grounds that they “present lay opinion, argument, and legal conclusions
22 regarding the legal status of CARB’s regulations” and “regarding the provisions of the Clean
23 Truck Partnership.” (Doc. No. 73-43.) Defendants’ objections are based largely on the declarants’
24 use of the phrase “preempted regulations” to refer to the regulations at issue,” which the court
25 views as the declarants’ way of identifying the referenced regulations, rather than the declarants’
26 attempt to offer an improper legal opinion or conclusion. Having reviewed and considered
27 Defendants’ evidentiary objections and Plaintiffs’ responses thereto, the court finds Defendants’
28 objections lack merit. Accordingly, Defendants’ evidentiary objections (Doc. No. 73-43) are
overruled.

²⁰ The court notes that in the motion to dismiss filed by Defendants on October 10, 2025,
Defendants state that “[d]uring the parties’ meet and confer, Plaintiffs stated they are willing to
have their state law claims dismissed without prejudice.” (Doc. No. 78 at 19 n.8.) Indeed, in their
opposition to the pending motion to dismiss, Plaintiffs confirm that they are willing to dismiss
their state law claims (claims 5, 6, and 7) without prejudice. (Doc. No. 84 at 8 n.1.)

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4 notice of certain facts and documents.²¹ (Doc. Nos. 80, 81.)

5 LEGAL STANDARD

6 Under Federal Rule of Civil Procedure 65, the court has the authority to issue preliminary
7 injunctive relief. An injunction is a matter of equitable discretion and is “an extraordinary remedy
8 that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*
9 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).

10 ²¹ Defendants request the court take judicial notice of three facts, and the existence and contents
11 of six documents. (Doc. No. 81.) Pursuant to Federal Rule of Evidence 201(b), a court may
12 “judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known
13 within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined
14 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). First,
15 Defendants request the court take judicial notice of the fact that “manufacturers received CARB
16 approval—in the form of an Executive Order—to sell model year 2025 medium- and heavy-duty
17 engines in California that meet two different standards—the “legacy” standard (which mirrors the
18 “pre-Omnibus” emission standard) and the more stringent Omnibus standard for model years
19 2024-2026.” (*Id.* at 1.) Defendants contend that fact can be ascertained from “CARB’s lists of
20 Executive Orders for these engines, which are publicly available on a government website,” for
21 which Defendants provide a hyperlink to an online Excel spreadsheet and direct the court to
22 certain rows and columns of a tab that contains over 4,000 rows and 61 columns. (*Id.*) Contrary to
23 Defendants’ assertion, their purported fact is not subject to judicial notice because it cannot be
24 “readily” determined from the source identified (the spreadsheet), nor is it clear that this Excel
25 spreadsheet is a “source whose accuracy cannot reasonably be questioned.” *See* Fed. R. Evid.
26 201(b). Thus, the court will deny Defendants’ request for judicial notice of this fact. The other
27 two facts that Defendants request the court judicially notice—(1) that “in December 2022, the
28 [EPA] announced new, more stringent emission standards for heavy-duty vehicles which take
effect beginning with model year 2027,” and (2) “that EPA routinely enters into settlement
agreements in which the agency agrees to take a particular action in a regulatory matter by a
specified deadline”—are derived from press releases on the EPA’s website. Thus, the court will
grant Defendants’ request to take judicial notice of these two facts. *See Jarose v. Cnty. of*
Humboldt, No. 18-cv-07383-SBA, 2020 WL 999791, at *4 (N.D. Cal. Mar. 2, 2020) (taking
judicial notice of information publicly available on the EPA’s website). For the same reason, the
court will grant Defendants’ request to take judicial notice of the existence and contents of the six
documents requested by Defendants, which consist of (i) a webpage from the CARB’s website
regarding a summary of credits under the Advanced Clean Trucks regulation, (ii) a template
Fireplace Partnership Agreement from EPA’s website, (iii) an EPA webpage regarding EPA’s
Voluntary Fireplace Program, (iv) an EPA webpage regarding EPA’s GreenChill Program, (v) a
proposed settlement agreement described on EPA’s website, and (vi) a Federal Trade
Commission press release posted on its website.

1 A preliminary injunction may issue if a plaintiff establishes that (1) they are likely to
2 succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary
3 relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest.
4 *See Winter*, 555 U.S. at 20. When the nonmovant is the government, the last two *Winter* factors
5 merge. *See Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023).

6 The Ninth Circuit has adopted a “sliding-scale approach” where “a stronger showing of
7 one [*Winter*] element may offset a weaker showing of another.” *All. for Wild Rockies v. Cottrell*,
8 632 F.3d 1127, 1131 (9th Cir. 2011). Under this approach, “serious questions going to the merits
9 and a balance of hardships that tips sharply towards the plaintiff can support issuance of a
10 preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable
11 injury and that the injunction is in the public interest.” *Id.* at 1135. “[T]he serious questions
12 standard is ‘a lesser showing than likelihood of success on the merits.’” *Flathead-Lolo-Bitterroot*
13 *Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (quoting *All. for the Wild*
14 *Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017)). “Serious questions are ‘substantial,
15 difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative
16 investigation.’” *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988)
17 (citation omitted). Serious questions “need not promise a certainty of success, nor even present a
18 probability of success, but must involve a ‘fair chance of success on the merits.’” *Id.* (citation
19 omitted).

20 ANALYSIS

21 The OEM Plaintiffs seek preliminary injunctive relief based on their three preemption
22 claims—(claim 1) preemption of six regulations – ACT, Omnibus, Advanced Clean Cars II, ACF,
23 Phase 2 Greenhouse Gas, and Heavy-Duty On-Board Diagnostic; (claim 2) preemption of the
24 May MAC and Executive Order N-27-25; (claim 3) preemption of the Clean Truck Partnership—
25 and their First Amendment free speech claim (claim 4). (Doc. Nos. 23; 75 at 18 n.10.) Plaintiffs-
26 Intervenors join in seeking a preliminary injunction based on preemption of those regulations and
27 preemption of the Clean Truck Partnership. (Doc. No. 57 at 2.) The court will address each claim
28 in turn, beginning with the second *Winter* factor of whether Plaintiffs have shown “they are likely

1 to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20

2 **A. Preemption of Six CARB Regulations (Claim 1)**

3 The court first addresses the regulations for which CARB concedes it has neither sought
4 nor obtained a waiver: Advanced Clean Fleets and Phase 2 Greenhouse Gas. Because CARB did
5 not obtain waivers for those regulations and has acknowledged it cannot enforce them unless and
6 until it receives a waiver, there is no showing of irreparable harm in the absence of an injunction
7 prohibiting CARB from enforcing those regulations. Indeed, as noted above, CARB stipulated
8 that it will not enforce the Advanced Clean Fleets’s requirement of 100% zero-emission-vehicle
9 sales beginning with model year 2036. CARB has also confirmed that it is not requiring
10 manufacturers to certify to the Phase 2 Greenhouse Gas standards. Thus, Plaintiffs have not
11 demonstrated irreparable harm is likely, as is required under *Winter*. See *Ctr. for Food Safety v.*
12 *Vilsack*, 636 F.3d 1166, 1172 (9th Cir. 2011) (citation omitted) (“After *Winter*, ‘plaintiffs must
13 establish that irreparable harm is likely, not just possible, in order to obtain a preliminary
14 injunction.’”).

15 As for the Heavy-Duty On-Board Diagnostic regulations, Plaintiffs’ allegations and
16 arguments are not consistent regarding whether CARB obtained a preemption waiver. As far as
17 the court can tell from the evidence submitted by the parties, the on-board diagnostics standards
18 were not submitted to EPA as a stand-alone regulation for its consideration in granting a
19 preemption waiver. Rather, CARB’s on-board diagnostic standards were part of the amendments
20 CARB made to the Omnibus and Advanced Clean Cars II regulations, for which EPA granted a
21 preemption waiver specifically including those amendments. Because the challenged Heavy-Duty
22 On-Board Diagnostic regulations are included in the Omnibus and Advanced Clean Cars II
23 regulations, the court’s analysis below regarding the Omnibus and Advanced Clean Cars II
24 applies to those regulations as well; the court will not separately address the Heavy-Duty On-
25 Board Diagnostic regulations.

26 As for the ACT, Omnibus, and Advanced Clean Cars II regulations, Defendants argue that
27 Plaintiffs have not met their burden of establishing irreparable harm because “CARB is not
28 currently enforcing those regulations,” and “the prospect of future enforcement is speculative.”

1 (Doc. No. 73 at 29.) In light of the August MAC clarifying that manufacturers may sell vehicles
2 that comply with federal EPA standards—specifically through “[s]ubmission to CARB of U.S.
3 EPA certification to its motor vehicle emission standards applicable to the given vehicle in the
4 relevant model year, as those regulations are currently codified” (Doc. No. 73-32 at 3)—
5 manufacturers are not required to comply with ACT, Omnibus, and Advanced Clean Cars II. That
6 is, manufacturers are not required to obtain CARB certification to those standards (or any CARB
7 standards) to sell vehicles in California. As a result, OEM Plaintiffs’ arguments regarding the
8 harms they would suffer from having to obtain CARB certification based on allegedly preempted
9 standards are no longer viable arguments. OEM Plaintiffs may sell federal vehicles in California
10 by certifying to federal EPA standards. OEM Plaintiffs have not shown how they would suffer
11 harm from certifying to federal EPA standards; indeed, that is the relief they are ultimately
12 seeking in this action.

13 OEM Plaintiffs argue they are nonetheless harmed because in the August MAC, CARB
14 threatens to impose penalties on manufacturers who choose to sell federal trucks in California,
15 instead of opting to certify to CARB standards. (Doc. No. 75 at 21.) But these retroactive
16 penalties are highly speculative, given that there are multiple levels of contingencies that may
17 never happen. For example, by the August MAC’s own terms, any such retroactive penalties are
18 contingent on a particular outcome of litigation. (Doc. No. 73-32 at 4) (“CARB reserves its right
19 to enforce the regulations covered by the waivers targeted by the congressional resolutions in the
20 event a court of law holds those resolutions invalid.”). A court would first have to find in CARB’s
21 favor that the resolutions of disapproval are invalid and find that reinstatement of the preemption
22 waivers for the challenged CARB regulations is the appropriate relief. The court would also have
23 to rule that such relief applies retroactively for vehicles that have already been sold, as opposed to
24 just prospectively for manufacturers to continue or begin selling new vehicles in California. On
25 top of those layers of contingency, CARB would also have to decide whether to impose
26 retroactive penalties, a decision CARB has not made, as the August MAC makes clear. (Doc. No.
27 73-32 at 4) (“Whether CARB opts to pursue such enforcement would be decided if and when that
28 question becomes ripe.”) For these reasons, OEM Plaintiffs have not shown that they will suffer

1 irreparable harm in the absence of an injunction prohibiting CARB from enforcing the ACT,
2 Omnibus, and Advanced Clean Cars II regulations. *See Caribbean Marine*, 844 F.2d at 675–76
3 (finding an injury was “too speculative to constitute an irreparable harm justifying injunctive
4 relief” where multiple contingencies must occur before an injury becomes concrete).

5 Likewise, the court is not persuaded by Plaintiffs-Intervenors’ arguments that they are
6 suffering “per se irreparable” harm. (*See* Doc. No. 57 at 4). Plaintiffs-Intervenors argue “the
7 United States suffers irreparable harm so long as California enforces preempted regulations or
8 compels certification.” (*Id.*) But as shown in the August MAC, because manufacturers can choose
9 to comply with federal EPA standards and are not required to certify to CARB standards,
10 California is not “enforc[ing] preempted regulations or compel[ing] certification.” (*Id.*)

11 Because Plaintiffs have not satisfied their burden of showing they would suffer irreparable
12 harm as to their first preemption claim, the court need not address the remaining *Winter* factors,
13 such as whether Plaintiffs are likely to succeed on the merits as to this claim. Plaintiffs’ motion
14 for a preliminary injunction based on their first claim will be denied.

15 **B. Preemption of the May MAC and Executive Order N-27-25 (Claim 2)**

16 In their second claim, Plaintiffs seek a declaration that CARB’s May 23, 2025 MAC and
17 the Governor’s Executive Order N-27-25 violate the Clean Air Act and the Supremacy Clause.
18 (Doc. No. 1 at 33.) As an initial matter, because the May MAC was superseded by the August
19 MAC, Plaintiffs’ arguments with regard to the May MAC have been rendered moot. Plaintiffs
20 argue in their reply that the August MAC similarly indicates CARB’s intent to continue enforcing
21 its regulations and is therefore likewise preempted. (Doc. No. 75 at 14.) However, as discussed
22 above, the August MAC provides an option for manufacturers to sell vehicles in California by
23 complying with federal EPA standards; compliance with CARB’s standards is not required. Thus,
24 for the same reasons that Plaintiffs have not sufficiently demonstrated they are likely to suffer
25 irreparable harm if CARB is not enjoined from enforcing the ACT, Omnibus, and Advanced
26 Clean Cars II regulations, Plaintiffs have similarly failed to demonstrate they would likely suffer
27 irreparable harm if the court does not enjoin implementation and enforcement of the August
28 MAC.

1 As for Executive Order N-27-25, the court agrees with Defendants that the Executive
2 Order merely provides policy priorities and directives for state agencies and departments. (See
3 Doc. No. 73 at 44–45.) Those directives pertain to future actions that might be undertaken by
4 state agencies and departments. But those actions have not happened and might not happen.
5 Consequently, Plaintiffs’ purported injuries from the Executive Order are neither concrete nor
6 ripe. Here too, Plaintiffs’ assertion of irreparable harm is too speculative to justify granting an
7 injunction barring Defendants from carrying out the directives in the Executive Order.

8 Thus, Plaintiffs have not satisfied their burden of showing they would suffer irreparable
9 harm as to their second preemption claim. Plaintiffs’ motion for a preliminary injunction based on
10 their second claim will be denied

11 **C. Preemption of the Clean Truck Partnership (Claim 3)**

12 In their third claim, Plaintiffs seek a declaration that the Clean Truck Partnership violates
13 the Clean Air Act and the Supremacy Clause of the U.S. Constitution, and an injunction barring
14 Defendants from enforcing the Clean Truck Partnership. (Doc. No. 1 at 94.) Plaintiff OEMs
15 allege in their complaint that in the absence of an injunction, they “will be irreparably harmed as
16 they are forced to choose between investing substantial resources to comply with ultimately
17 preempted standards on the one hand, and risking significant liability (and a loss of customer
18 goodwill) from regulatory noncompliance on the other hand.” (Doc. No. 1 at ¶ 36.) Substantiating
19 these allegations with evidence, the OEM Plaintiffs point to the declarations from their
20 representatives, which describe the manufacturer’s side of the CARB certification process,
21 including the time and investments made to satisfy CARB’s extensive testing requirements that
22 exceed the testing required by EPA. (*See* Doc. No. 23-15 ¶¶ 9–10) (“Each year, [Daimler]
23 employees and contractors spend well over ten thousand manhours planning, preparing, and
24 submitting the required certification paperwork to CARB.”); (*Id.* at ¶ 10) (“CARB’s annual
25 certification requirements will conservatively cost [Daimler] at least \$3.6 million for model year
26 2026 in internal expenses.”); (Doc. No. 23-20 at ¶ 7) (“CARB’s annual certification process
27 requires that International invest a significant amount of time and money to design, develop and
28 test its vehicles and engines. This work entails tens of millions of dollars and thousands of hours

1 that International and its employees are currently investing to obtain Executive Orders for each of
2 its 2026 model year vehicle and engine families.”); (*Id.* at ¶ 8) (explaining that if CARB were
3 enjoined from attempting to enforce its standards “International could immediately seek to
4 modify its current California certification applications to align with federal-based requirements.
5 This would, for instance, allow International to suspend ongoing costly testing, including the
6 aging of engines, that California requires above and beyond federal testing requirements”); (Doc.
7 No. 23-23 at ¶ 11) (“It is very burdensome for Volvo to comply with CARB’s emissions
8 certification processes. To receive a certification from CARB, Volvo must conduct significant
9 testing of Volvo’s [Medium- and Heavy-Duty Vehicles] and engines. This process takes months
10 of preparation, testing, and analysis.”).

11 In contrast to the absence of irreparable harm discussed above that was based on the
12 August MAC’s provision for manufacturers to comply with federal EPA standards and the lack of
13 current enforcement by CARB of the challenged regulations, the same cannot be said of the Clean
14 Truck Partnership. Defendants argue that Plaintiffs face “no harm from continuing to comply”
15 with the Clean Truck Partnership as “[t]hey have made their choice and do not intend to comply,”
16 emphasizing the OEM Plaintiffs’ disavowal of the Clean Truck Partnership. (Doc. No. 73 at 24.)
17 Specifically, Defendants point to the OEM Plaintiffs’ disavowal of the Clean Truck Partnership in
18 their letters to the Federal Trade Commission on August 10, 2025, affirming that the Clean Truck
19 Partnership “became unenforceable on June 12, 2025,” and that they “will independently make
20 decisions about the type and quantity of vehicles it sells without regard to whether those decisions
21 are compliant with any restrictive terms of the [Clean Truck Partnership].” (Doc. Nos. 73-38
22 (Daimler); 73-39 (International); 73-40 (PACCAR); 73-41 (Volvo).) At the time Defendants
23 raised these arguments in their opposition brief, there may have been some persuasive weight to
24 them. But whatever weight those arguments may have carried has since evaporated, and
25 Defendants’ arguments now ring hollow: On October 27, 2025, just days before the scheduled
26 hearing on Plaintiffs’ motion for a preliminary injunction, CARB filed a breach-of-contract
27 lawsuit against the OEM Plaintiffs seeking specific performance of the Clean Truck Partnership,
28 i.e., seeking a court order requiring OEM Plaintiffs to certify to CARB’s standards—regardless of

1 whether those standards were ever the subject of a preemption waiver. (*See* Doc. No. 85.) Even if
2 the validity of the resolutions of disapproval as to the ACT, Omnibus, and Advanced Clean Cars
3 II regulations remain in doubt, CARB’s filing of that lawsuit is clearly an attempt to enforce
4 preempted standards as least in part, because the model year 2036 zero-emissions requirement is
5 included in the Clean Truck Partnership yet CARB never obtained a preemption waiver for that
6 requirement. Thus, Plaintiffs have shown at a minimum that there are serious questions going to
7 the merits of their claim that the Clean Truck Partnership is preempted, and there is concrete,
8 irreparable harm due to the attempted enforcement by CARB through its recently-filed lawsuit
9 against the OEM Plaintiffs. Moreover, as a result of that lawsuit seeking specific performance as
10 a remedy, the harms identified by the OEM Plaintiffs are no longer speculative.

11 Similarly, given that CARB’s lawsuit represents its attempts to enforce at least some
12 standards for which it admittedly never obtained preemption waivers, the court is persuaded by
13 Plaintiffs-Intervenors’ arguments that they will suffer per se irreparable harm in the absence of an
14 injunction barring enforcement of the Clean Truck Partnership. *See Vermont Agency of Nat. Res.*
15 *v. U.S. ex rel. Stevens*, 529 U.S. 765, 771 (2000) (“It is beyond doubt that the complaint asserts an
16 injury to the United States—[] the injury to its sovereignty arising from violation of its laws.”);
17 *United States v. Idaho*, 623 F. Supp. 3d 1096, 1115 (D. Idaho 2022) (finding the United States
18 met its burden to show it is likely to suffer irreparable harm “as Supremacy Clause violations
19 trigger a presumption of irreparable harm when the United States is a plaintiff”) (citing *United*
20 *States v. Arizona*, 641 F.3d 339, 366 (9th Cir. 2011), rev’d in part on other grounds, 567 U.S. 387
21 (2012) (“[A]n alleged constitutional infringement will often alone constitute irreparable harm.”)
22 (citation omitted)); *United States v. Alabama*, 691 F.3d 1269, 1301 (11th Cir. 2012) (“The United
23 States suffers injury when its valid laws in a domain of federal authority are undermined by
24 impermissible state regulations.”);

25 Thus, as to Plaintiffs’ claim that the Clean Truck Partnership is preempted and should be
26 enjoined, Plaintiffs have satisfied the first and second *Winter* factors. As to the third *Winter*
27 factor, the court also finds that the balance of equities tips in Plaintiffs’ favor. The harm on
28 CARB’s side of the scale if the court were to preliminarily enjoin enforcement of the Clean Truck

1 Partnership is minimal given that CARB’s August MAC already provides for manufacturers to
2 sell vehicles that certify to federal EPA standards during the pendency of this litigation. As to the
3 fourth and final *Winter* factor, the court also finds that an injunction is in the public interest. *See*
4 *United States v. California*, 921 F.3d 865, 893 (9th Cir. 2019) (explaining that the district court’s
5 conclusion that the plaintiff United States will suffer irreparable harm based on alleged
6 constitutional violations “was consistent with [the Ninth Circuit’s] previous recognition that
7 preventing a violation of the Supremacy Clause serves the public interest”) (citing *Arizona*, 641
8 F.3d at 366); *Cal. Pharmacists Ass’n v. Maxwell-Jolly*, 563 F.3d 847, 852–53 (9th Cir. 2009),
9 *vacated and remanded sub nom. Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 565 U.S. 606
10 (2012) (granting preliminary injunction barring enforcement of a state law that conflicts with
11 federal law and finding “it is clear that it would not be equitable or in the public’s interest to
12 allow the state to continue to violate the requirements of federal law”).

13 In sum, as to their Clean Truck Partnership preemption claim, Plaintiffs have satisfied
14 their burden to show that a preliminary injunction is warranted. Accordingly, the court will grant
15 Defendants’ motion for a preliminary injunction based on their claim that the Clean Truck
16 Partnership violates the Clean Air Act and the Supremacy Clause of the U.S. Constitution. The
17 court will preliminarily enjoin Defendants from enforcing the Clean Truck Partnership.

18 **D. First Amendment Free Speech (Claim 4)**

19 In their fourth claim, the OEM Plaintiffs seek a declaration that the May 23, 2025 MAC,
20 the Executive Order N-27-25, and the Clean Truck Partnership violate Plaintiffs’ First
21 Amendment freedom of speech rights, and an “injunction barring Defendants from using
22 Executive Order N-27-25, the May 23, 2025 MAC, or the Clean Truck Partnership to insulate
23 themselves from legitimate legal challenges or to punish entities that raise such challenges.”
24 (Doc. No. 1 at ¶ 114.)

25 As discussed above, the May MAC was superseded by the August MAC, so the OEM
26 Plaintiffs’ First Amendment free speech arguments as to the May MAC have been rendered moot.

27 As for the Executive Order, the OEM Plaintiffs do not advance any arguments in their
28 motion or reply brief to show how the Executive Order restricts their exercise of free speech

1 rights, let alone show that they would suffer irreparable harm in the absence of an injunction
2 barring Defendants from carrying out the directives in the Executive Order. Thus, the OEM
3 Plaintiffs' motion to preliminary enjoin the Executive Order based on their First Amendment free
4 speech claim will be denied.

5 As for the Clean Truck Partnership, the court need not address the parties' First
6 Amendment arguments because the court is already enjoining Defendants from enforcing that
7 agreement.

8 CONCLUSION

9 For the reasons explained above,

- 10 1. Plaintiffs' request for judicial notice (Doc. No. 58) is GRANTED;
- 11 2. Defendants' request for judicial notice (Doc. No. 81) is GRANTED in part and
12 DENIED in part, as set forth in this order;
- 13 3. Plaintiffs' motion for a preliminary injunction (Doc. Nos. 23, 57) is GRANTED in
14 part, and DENIED in part, as follows:
 - 15 a. Plaintiffs' motion for a preliminary injunction based on their claim that the
16 Clean Truck Partnership is preempted is GRANTED; and
 - 17 b. Plaintiffs' motion for a preliminary injunction is otherwise DENIED;
- 18 4. While this litigation is pending or until further order of this court, Defendants are
19 ENJOINED from implementing, enforcing, attempting to enforce, or threatening
20 to enforce the Clean Truck Partnership²²; and

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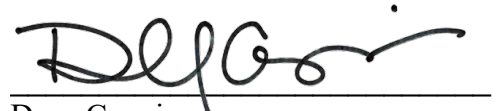
26 ²² At the October 31, 2025 hearing, Plaintiffs-Intervenors requested the court enjoin CARB from
27 pursuing the breach-of-contract lawsuit it filed against OEM Plaintiffs in Alameda County
28 Superior Court. The court clarifies that this injunction includes enjoining CARB from enforcing
the Clean Truck Partnership by seeking specific performance as a remedy in that lawsuit.

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5. The court finds no bond under Federal Rule of Civil Procedure 65(c) to be necessary as to the OEM Plaintiffs, and the bond requirement does not apply to the Plaintiffs-Intervenors. *See* Fed. R. Civ. P. 65(c) (“The United States, its officers, and its agencies are not required to give security.”).

IT IS SO ORDERED.

Dated: October 31, 2025



Dena Coggins
United States District Judge