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12 UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
13 SACRAMENTO DIVISION

14 ASSOCIATION OF AMERICAN  
RAILROADS and AMERICAN SHORT  
15 LINE AND REGIONAL RAILROAD  
ASSOCIATION,

16 Plaintiffs,

17 v.

18 LIANE M. RANDOLPH, in her official  
capacity as Chair of the California Air  
19 Resources Board; STEVEN S. CLIFF, in  
his official capacity as Executive Officer of  
20 the California Air Resources Board; and  
ROB BONTA, in his official capacity as  
21 Attorney General of the State of California,

22 Defendants,

23 and

24 EAST YARD COMMUNITIES FOR  
ENVIRONMENTAL JUSTICE, PEOPLE’S  
25 COLLECTIVE FOR ENVIRONMENTAL  
JUSTICE, and SIERRA CLUB,

26 Defendant-Intervenors.  
27  
28

Civ. No. 2:23-cv-01154-DJC-JDP

**DEFENDANT-INTERVENORS’  
OPPOSITION TO PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT**

Date: April 25, 2024

Time: 1:30 PM

Courtroom: 10

Judge: Hon. Daniel J. Calabretta

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**INTRODUCTION**

1  
2 The rail industry challenges California’s federally protected right to safeguard its  
3 residents from locomotive pollution that has a host of harms ranging from asthma to  
4 premature death. California’s In Use Locomotive Regulation (the “Regulation”), adopted  
5 pursuant to its federally preserved Clean Air Act authority to reduce emissions from non-  
6 “new” locomotives, 42 U.S.C. § 7543(e)(2), addresses one sector of diesel-polluting  
7 equipment that exacerbates California’s pervasive air pollution and public health crises.  
8 Plaintiffs Association of American Railroads and American Short Line and Regional  
9 Railroad Association (collectively, “Plaintiffs”) complain that California singles out the rail  
10 industry to clean up its equipment, but this is not true. In fact, over the last decade, the  
11 California Air Resources Board (“CARB”) promulgated dozens of regulations tackling  
12 emissions from other sources of pollution like motor vehicles, leaf blowers, ships, and  
13 cargo handling equipment before turning to locomotives. California’s pervasive air  
14 pollution problems mean that it can no longer ignore locomotive pollution. Californians  
15 deserve the immense emission reduction and public health benefits from the Regulation,  
16 which will save 3,200 lives and provide Californians \$32 billion in health benefits.

17 In an effort to rush through this litigation as quickly as possible, Plaintiffs argue  
18 this Motion for Summary Judgment turns on purely legal questions of federal law and  
19 preemption. But the issues in this case rest on highly technical determinations and mixed  
20 questions of law and fact that Plaintiffs have not addressed. Regardless, even if this  
21 Court accepts Plaintiffs’ premise that this lawsuit presents purely legal questions,  
22 Plaintiffs’ mischaracterization of the law paints a skewed and inaccurate picture of  
23 federal preemption law and the Dormant Commerce Clause. Accordingly, for the  
24 foregoing reasons, this Court should deny Plaintiffs’ Motion for Summary Judgment.

**BACKGROUND<sup>1</sup>**

1  
2 Millions of Californians breathe unsafe air. A primary culprit of this air pollution is  
3 diesel-powered equipment. Defendant-Intervenors East Yard Communities for  
4 Environmental Justice, People’s Collective for Environmental Justice, and Sierra Club  
5 (collectively, “Intervenors”) represent members on the front lines of railyards and rail  
6 lines in Southern California and face the air pollution, noise, vibrational, and safety risks  
7 associated with diesel locomotives on a regular basis. Decl. of Darby Osnaya in Supp. of  
8 Opp’n to Mot. for Summ. J. (“Osnaya Decl.”), ¶ 17; Decl. of Bernard De La Garza in  
9 Supp. of Opp’n to Mot. for Summ. J. (“De La Garza Decl.”), ¶ 7; Decl. of Paola Vargas in  
10 Supp. of Opp’n to Mot. for Summ. J. (“Vargas Decl.”), ¶ 10; Decl. of Jan Victor Andasan  
11 in Supp. of Mot. to Intervene (“Andasan Decl.”), ECF No. 19-13 ¶¶ 17–19; Decl. of Ivette  
12 Torres in Supp. of Mot. to Intervene (“Torres Decl.”), ECF No. 19-14 ¶¶ 10, 21.  
13 Intervenors’ members experience similar life-threatening health effects from other diesel-  
14 polluting machinery, like trucks, ships, and cargo-handling equipment. Torres Decl. ¶¶  
15 17, 24; Vargas Decl. ¶¶ 10, 16, 24; Osnaya Decl. ¶ 19; De La Garza Decl. ¶ 15; see  
16 Defendant-Intervenors’ Request for Judicial Notice (“RJN”) Ex. A at 2-3.

17 Locomotives are a significant source of California’s overall air pollution. See ECF  
18 No. 19-5 at 110. One train, comprised of four locomotives pulling 130 double-stacked  
19 containers, emits more nitrogen oxides (“NOx”) and particulate matter 2.5 micrometers  
20 or smaller (“PM2.5”) pollution than 260 trucks transporting the equivalent amount of  
21 goods over the same distance. RJN Ex. B. In fact, in California, “[e]xposure to the  
22 emissions from one train is worse than being exposed to the emissions from 400 trucks.”  
23 RJN Ex. C at 4. By 2030, locomotive emissions are expected to grow—locomotive  
24 operations will contribute 14 percent of California’s freight diesel NOx inventory and 16  
25 percent of the state’s freight diesel PM2.5 emissions. ECF No. 19-5 at 110.

26 \_\_\_\_\_  
27 <sup>1</sup> Defendant-Intervenors join Defendants’ Response to Plaintiffs’ Statement of Undisputed Facts.  
28 While the document notes that Defendants will seek discovery, Intervenors will not seek  
discovery on Plaintiffs. See ECF No. 40 at 2 (Order granting intervention on condition that  
Intervenors will not pursue discovery on Plaintiffs).



1 Dirty air is deadliest and most inescapable near industrial hotspots like railyards,  
2 ports, refineries, warehouses, airports, and freeways. Intervenors' members live near at  
3 least four major Class I railyards, including the Burlington Northern Santa Fe ("BNSF")  
4 San Bernardino and Commerce railyards, and Union Pacific's ("UP") Colton railyard and  
5 Intermodal Container Transfer Facility, and experience negative health effects because  
6 of their forced proximity to these polluting facilities. Andasan Decl. ¶¶ 6, 15; Osnaya  
7 Decl. ¶ 17; Torres Decl. ¶¶ 10, 12; Vargas Decl. ¶ 10; Decl. of Yassamin Kavezade in  
8 Supp. of Mot. to Intervene ("Kavezade Decl."), ECF No. 19-12 ¶ 12. Residents who live  
9 on the fenceline of railyards are deeply concerned about the health impacts of diesel  
10 locomotive pollution. These fears are driven by the high level of air pollutants inside and  
11 outside people's homes, and the health impacts that ravage railyard-adjacent  
12 communities. Torres Decl. ¶¶ 28, 33–38. Extreme air contamination from diesel  
13 locomotives translates to childhood asthma and infants using nebulizers to breathe  
14 through the night. Andasan Decl. ¶¶ 14–21. It leads to debilitating migraines,  
15 nosebleeds, allergies, and persistent itchy throats. Torres Decl. ¶ 28; Vargas Decl. ¶ 14.  
16 Exposure to excessive air pollution leads to cancer clusters like the one identified by  
17 CARB near the BNSF San Bernardino Railyard. Torres Decl. ¶ 30. Air pollution is so  
18 thick during the day that residents often stay indoors to escape bouts of heavy coughing  
19 and buildup in the throat. See, e.g., De La Garza Decl. ¶¶ 12–13.

20 When presented with this pollution crisis posed by rail operations, Plaintiffs claim  
21 that their members—some of which are amongst the wealthiest companies in the  
22 world—"continue[] to explore and invest in emissions-reducing initiatives." See Am.  
23 Compl., ECF No. 18 at ¶ 3. Little evidence has been presented to support this  
24 contention. In fact, reality shows an industry that is barely creeping towards cleaner,  
25 modern equipment. The U.S. Environmental Protection Agency's ("EPA") adoption of the  
26 most recent Tier 4 emission standard in 2008—which can control ninety percent of NOx  
27 and 95 percent of particulate matter compared to pre-Tier 0 locomotives—should have  
28 led to a noticeable uptick in Plaintiffs' members' deployment of less-polluting Tier 4

1 locomotives. See 73 Fed. Reg. 37,096, 37,098 (June 30, 2008); ECF No. 19-6 at 8. But  
2 today, sixteen years later, only six percent of Class I line-hauls and two percent of Class  
3 I switchers are Tier 4. RJN Ex. D at 11. Instead, an outlandish eighty percent of switcher  
4 locomotives remain at pre-Tier 0 and Tier 0 emission levels today. ECF No. 19-6 at 14.  
5 This failure to deploy modern equipment continues to harm local communities and our  
6 regional air quality as “[o]ne Pre-Tier 0 switcher emits the same toxic diesel PM as 24  
7 Tier 4 switchers.” RJN Ex. C at 13. While Plaintiffs may be “exploring” cleaning up their  
8 pollution, they appear to have little concern with the important federally prescribed  
9 deadlines to meet clean air standards and the real consequences of California’s failure  
10 to meet these standards, including the lives lost prematurely, the children forced to miss  
11 school due to pollution, and other harms Californians face daily.

12 Moreover, far from “moving aggressively to pursue lower- and zero-emissions  
13 locomotive technologies,” see Am. Compl. ¶ 3, Plaintiffs’ members have a long legacy of  
14 fighting any attempt by federal, state, and local air regulators to encourage locomotive  
15 emission reductions. See, e.g., RJN Ex. E at 38–39. At the CARB Board public hearing  
16 on the Regulation on November 18, 2022, the representative for the Association of  
17 American Railroads threatened that “[w]ere the Board to adopt these proposals, the  
18 inevitable result will be litigation and judicial decisions prohibiting the Board from  
19 proceeding.” *Id.* BNSF and UP also recently attempted to derail the South Coast Air  
20 Quality Management District’s (“District”) Railyard Indirect Source Review rule by, in the  
21 final months of the rulemaking process, approaching the agency to pursue a voluntary  
22 agreement with the railroads to avoid regulation. RJN Ex. F. The District paused the  
23 rulemaking for four months to engage with BNSF and UP in an attempt to reach a  
24 favorable solution. Talks broke down when the District learned that a non-negotiable  
25 term for the Class I railroads was for the District to fund a portion of any fleet turnover  
26 agreed to by the parties. *Id.*

27 The clean air context for how CARB came to regulate a broad suite of equipment,  
28 including locomotives, is noticeably absent from any paper Plaintiffs have filed in this

1 case. The Regulation was the result of more than a half-century of work battling the most  
2 notoriously polluted skies in the country. Under the Clean Air Act, EPA sets National  
3 Ambient Air Quality Standards, which are standards set at levels “requisite to protect the  
4 public health” with an adequate margin of safety. 42 U.S.C. § 7409(b)(1). Areas that fail  
5 to meet these standards are considered nonattainment areas, and they must develop  
6 roadmaps, called State Implementation Plans (“SIPs”), which demonstrate how the  
7 regions will meet air standards. *Id.* § 7410. Congress recognized that California, as a  
8 state that began regulating air pollution before the federal Clean Air Act was even  
9 adopted, should retain authority to reduce pollution from various sources, including non-  
10 new locomotives. *See id.* § 7543. Thus, in certain instances, California is entitled to  
11 adopt regulations that would otherwise be preempted by the Clean Air Act.

12 Over the last two decades, California regulators have adopted several plans to  
13 achieve air quality standards. The 2022 State Strategy, CARB’s component of the State  
14 Implementation Plan, marked an important reflective moment for California. The plan  
15 acknowledged the heavy stakes of air planning in noting that “[e]ven with this progress,  
16 more than half (21 million out of nearly 40 million) of Californians live in areas that  
17 exceed the most stringent 70 ppb ozone standard, with many areas also exceeding the  
18 previous ozone standards of 75 and 80 ppb.” ECF No. 19-5 at 12–13. To make matters  
19 more complicated, in some parts of California like the South Coast Air Basin, which  
20 hosts the nation’s second-largest metropolitan area, to comply with federal mandates to  
21 meet the current ozone standard, California needs to reduce emissions by a staggering  
22 67 percent above and beyond current regulations adopted and approved in prior plans.

23 *Id.* at 25.

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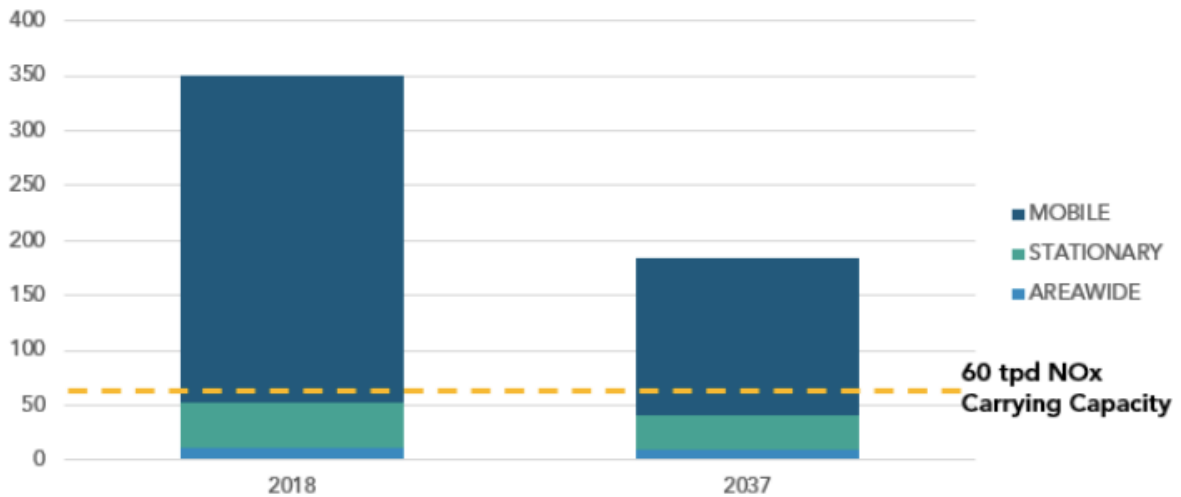
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1 The chart below demonstrates the daunting challenge California faces in  
 2 providing more than half of its residents the most fundamental right to breathe clean air.

3 **Figure 9 – South Coast Air Basin NOx Emissions under Current Control Program**  
 4 **(emissions out to 100 nautical miles)<sup>9</sup>**



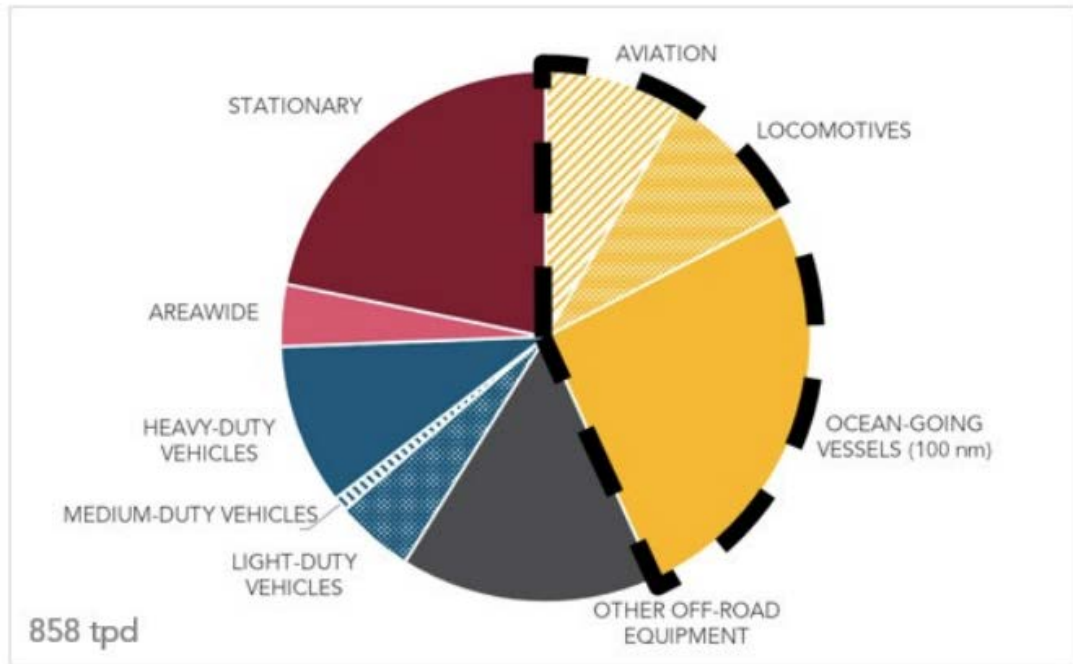
13 The gold dotted line shows the range of emissions reductions that must be achieved by  
 14 2037 to meet clean air standards in the South Coast Air Basin. Even with the dozens of  
 15 regulations already adopted and projected to be adopted prior to the adoption of the  
 16 2022 State Implementation Plan, the South Coast Air Basin would *still* have 196 tons per  
 17 day of NOx emissions pumped into its air. *Id.* at 14. To meet these federally mandated  
 18 air quality standards, California estimates based on modeling that it needs to reduce 124  
 19 tons per day of NOx emissions to achieve 60 tons per day of NOx emissions carrying  
 20 capacity. *Id.*

21 This great need to cut California’s NOx pollution in half on top of current  
 22 measures means California must turn over every pollution stone to succeed in bringing  
 23 clean air to tens of millions of people. Importantly, the 2022 State Strategy identified  
 24 several under-regulated areas, one of which is locomotives. The following chart outlines  
 25 a glimpse into statewide NOx emissions. *Id.* at 106.

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**Figure 17 - 2037 Statewide NOx Baseline Emissions Inventory<sup>82</sup>**



As this pie chart shows, California’s locomotive emissions alone will be responsible in 2037 for more than all aviation emissions in the State. *Id.*

Moreover, in a document that preceded and informed the 2022 State Strategy called the Draft Measures Document, CARB noted that, “[w]hile enforceable agreements and federal locomotive standards have achieved emission reductions, more stringent emission standards are needed to address the air quality, public health, and climate change concerns associated with locomotive operations.” RJN Ex. G at 37. Plainly stated, while California may have been able to get by without regulating locomotive emissions previously, in the 2022 State Strategy, it could no longer ignore the large contributions of emissions from locomotives. Giving the rail industry time to “explore” cleaning up pollution—as opposed to California actually using its clearly articulated authority to regulate—was not good enough to address the air quality crisis in California. See Am. Compl., ECF No. 18 ¶ 3.

California’s commitment to its clean air obligations produced this life-saving Regulation with exceptional anticipated health benefits. Exposure to emissions from diesel-powered equipment—whether locomotives, trucks, ships, aircraft or other

1 machinery—causes cancer, respiratory issues, cardiovascular concerns, reproductive  
2 problems, and more. ECF No. 19-5 at 15. Reducing non-new locomotive emissions,  
3 including shifting to zero emissions over time, will avoid more than 3,233 premature  
4 deaths, 1,486 emergency room visits, 500 hospitalizations for cardiovascular illness, and  
5 close to 600 hospitalizations for respiratory illness. ECF No. 19-3 at 159. The largest  
6 estimated health benefits correspond to regions in California with the most locomotive  
7 activity, and as it turns out, the worst air pollution: South Coast, San Joaquin Valley, and  
8 Mojave Desert air basins. See *id.* at 2, 160. Translating these health benefits into dollars  
9 equates to \$32 billion in health benefits from this Regulation alone. *Id.* At the height of  
10 implementation, the Regulation will prevent 63 tons *per day* of NOx emissions, making it  
11 the single largest NOx emission reduction measure in California’s 2022 State  
12 Implementation Plan. See ECF No. 19-3 at 160; ECF No. 19-5 at 38, 110–13.  
13 Californians cannot afford to continue to live with this daily bombardment of diesel  
14 pollution.

## 15 **REGULATION OVERVIEW**

16 CARB adopted the Regulation under its federally preserved Clean Air Act  
17 authority, 42 U.S.C. § 7543(e), to reduce emissions from non-new nonroad engines  
18 operating in California, including freight, passenger, and industrial locomotives. The  
19 Regulation includes four main components: (1) the Spending Account (§ 2478.4)<sup>2</sup>, which  
20 requires operators, starting July 1, 2026, to deposit funds into an account annually  
21 determined by the locomotive’s annual usage in megawatt hours (MWh) and the  
22 locomotive’s emission factors; (2) the In-Use Operational Requirements (§ 2478.5),  
23 which establish, among other things, that starting January 1, 2030 only locomotives with  
24 original engine build dates 23 years old or less may operate in California unless the  
25 locomotive is zero-emissions capable; (3) the Idling Requirements (§ 2478.9), which  
26 specify procedures to ensure that locomotives do not idle for more than 30 minutes

27 \_\_\_\_\_  
28 <sup>2</sup> The Regulation is codified at Cal. Code Regs., tit. 13 §§ 2478-2478.17. Unless otherwise  
noted, all citations of regulatory provisions refer to that title.

1 before the engine must be shut down, unless the locomotive meets certain exemptions;  
2 and (4) Recordkeeping and Reporting Requirements (§ 2478.11), which require  
3 locomotive operators to annually submit a report detailing operations and emissions for  
4 all non-zero-emissions capable locomotives. Finally, an Administrative Payment  
5 provision (§ 2478.12) authorizes CARB to collect an annual payment of \$175 per  
6 locomotive with certain exceptions for the costs of implementing and enforcing the  
7 Regulation.

### 8 **PROCEDURAL HISTORY**

9 On February 16, 2024, this Court dismissed all of Plaintiffs' claims regarding the  
10 Spending Account and In-Use Operational Requirements for lack of ripeness. Order,  
11 ECF No. 48 at 9–11. Plaintiffs' facial Interstate Commerce Commission Termination Act  
12 ("ICCTA") preemption and facial Dormant Commerce Clause claims as to the Idling  
13 Requirements and Reporting and Recordkeeping Requirements were also dismissed. *Id.*  
14 at 17, 19. Additionally, this Court dismissed Plaintiffs' Idling Requirements claims relating  
15 to locomotive equipment (including the Locomotive Inspection Act claim in its entirety) for  
16 lack of standing (§ 2478.9(a)-(c)(1)). Order, ECF No. 48 at 12–14.

17 Plaintiffs chose to rest on their Motion for Summary Judgment filed November 24,  
18 2023. As such, the following claims remain live on this Motion: as-applied claims under  
19 ICCTA and the Dormant Commerce Clause against § 2478.9(c)(2) and (d) of the Idling  
20 Requirements; as-applied claims under ICCTA and the Dormant Commerce Clause  
21 against the Reporting and Recordkeeping Requirements, and an as-applied claim under  
22 the Dormant Commerce Clause against the Administrative Payment provision. Order,  
23 ECF No. 48 at 14, 19–20, 22.

### 24 **STANDARD OF REVIEW**

25 A party seeking summary judgment "bears the burden of establishing the basis for  
26 its motion and identifying evidence that demonstrates the absence of a genuine issue of  
27 material fact." *Davis v. United States*, 854 F.3d 594, 598 (9th Cir. 2017) (citing *Celotex*  
28 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). A dispute is genuine "if the evidence is such



1 that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v.*  
2 *Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). An issue of fact is material if it “might  
3 affect the outcome of the suit under the governing law.” *Id.* Importantly, “[o]n summary  
4 judgment the inferences to be drawn from the underlying facts . . . must be viewed in the  
5 light most favorable to the party opposing the motion.” *Matsushita Elec. Indus. Co. v.*  
6 *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). A party may object that the material cited  
7 to support or dispute a fact cannot be presented in a form that would be admissible in  
8 evidence. Fed. R. Civ. P. 56(c)(2). “An affidavit or declaration used to support or oppose  
9 a motion must be made on personal knowledge, set out facts that would be admissible in  
10 evidence, and show that the affiant or declarant is competent to testify on the matters  
11 stated.” Fed. R. Civ. P. 56(c)(4).

## 12 ARGUMENT

### 13 I. Plaintiffs are not entitled to summary judgment on their ICCTA claim 14 because EPA’s authorization process is underway, and the Regulation must 15 be harmonized once it becomes federal law.

16 Plaintiffs argue that the Regulation is categorically preempted under ICCTA, Pls.’  
17 Mot. Summ. J. (“Pls.’ MSJ”), ECF No. 29 at 12–17, but they ignore the fact that the  
18 Clean Air Act’s express preservation of state authority to regulate emissions from non-  
19 new locomotives must be harmonized with ICCTA. Plaintiffs are not entitled to summary  
20 judgment on their ICCTA claim until EPA finalizes its recently noticed authorization  
21 process. *California State Nonroad Engine Pollution Control Standards; In-Use*  
22 *Locomotive Regulation; Requests for Authorization; Opportunity for Public Hearing and*  
23 *Comment*, 89 Fed. Reg. 14,484 (Feb. 27, 2024) (EPA’s notice initiating the public  
24 comment portion of the authorization process for the Regulation, including setting a  
25 virtual public hearing date for March 20, 2024); see *San Francisco Herring Ass’n v. Dep’t*  
26 *of Interior*, 946 F.3d 564, 578 (9th Cir. 2019) (“[C]ourts do not intrude on the agency’s  
27 turf and thereby meddle in the agency’s ongoing deliberations.”). This is because until  
28 EPA acts, the Court cannot know whether it needs to harmonize ICCTA with the Clean



1 Air Act, and if so, which provision it must harmonize with—Section 209(e), 42 U.S.C. §  
2 7543(e)(2)(A), or Section 213(d), 42 U.S.C. § 7547(d). Likewise, California included the  
3 Regulation as a proposed measure in its 2022 State SIP Strategy, and when EPA  
4 incorporates the Regulation into the SIP, it will have the force and effect of federal law  
5 and must be harmonized with ICCTA.

6 When there is a potential conflict between ICCTA and another federal law, the  
7 courts “do not use the analytic framework applicable to federal preemption of state and  
8 local regulation.” *Swinomish Indian Tribal Cmty. V. BNSF Ry. Co.*, 951 F.3d 1142, 1152–  
9 53 (9th Cir. 2020). Rather, if “an apparent conflict exists between ICCTA and a *federal*  
10 law, then the courts must strive to harmonize the two laws, giving effect to both laws if  
11 possible.” *Ass’n of Am. R.Rs. v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1097  
12 (9th Cir. 2010). The “principal example of federal laws that should be harmonized with  
13 the ICCTA, if possible, is environmental laws.” *BNSF Ry. Co. v. Clark Cnty.*, 11 F.4th  
14 961, 966 (9th Cir. 2021). The Surface Transportation Board recognized as much when it  
15 concluded that “nothing in [ICCTA] is intended to interfere with the role of state and local  
16 agencies in implementing Federal environmental statutes, such as the Clean Air Act.”  
17 *Boston & Maine Corp. & Town of Ayer*, 5 S.T.B. 500, 2001 WL 458685, at \*5 (2001).  
18 Congress carefully designed this system to “preserve[] a role for state and local agencies  
19 in the environmental regulation of railroads.” *Ass’n of Am. R.Rs.*, 622 F.3d at 1098.

20 Importantly, on February 27, 2024, EPA formally initiated the public comment part  
21 of its authorization process under Section 209(e)(2)(A) for all components of the  
22 Regulation, including the Idling Requirements and the Reporting and Recordkeeping  
23 Requirements. 89 Fed. Reg. 14,484. EPA’s authorization decision will determine  
24 whether the Regulation is or is “not consistent with” California’s authority to “adopt and  
25 enforce standards and other requirements relating to the control of emissions from” non-  
26 new locomotives. *Id.* at 14,485–86; 42 U.S.C. § 7543(e)(2)(A)(iii). “To be consistent with  
27 section 209(e)(1), California’s nonroad standards and enforcement procedures must not  
28 attempt to regulate engine categories that are permanently preempted from state

1 regulation.” 89 Fed. Reg. at 14,486. Each component EPA determines is authorized by  
2 Section 209(e)(2)(A) cannot be preempted by ICCTA. This is because Section  
3 209(e)(2)(A) must be harmonized with ICCTA. See *BNSF Ry. Co. v. Cal. Dep’t of Tax &*  
4 *Fee Admin.*, 904 F.3d 755, 763–65 (9th Cir. 2018) (Hazardous Materials Transportation  
5 Act, which affirmatively authorized state to charge a fee for transportation of hazardous  
6 materials by rail, protected against ICCTA preemption). Alternatively, EPA may conclude  
7 through the authorization process that part or all of the Regulation’s provisions are “in-  
8 use requirements” subject to Section 213(d) of the Clean Air Act. 42 U.S.C. § 7543(d)  
9 (“Nothing in this part shall preclude or deny to any State or political subdivision therefor  
10 the right otherwise to control, regulate, or restrict the use, operation, or movement of  
11 registered or licenses motor vehicles.”). In that case, Section 213(d) must be  
12 harmonized with ICCTA. See *also* 40 C.F.R. Part 1074, Appendix A to Subpart A  
13 (codifying EPA’s interpretation).

14 The lack of certainty regarding EPA’s authorization determination underscores  
15 that Plaintiffs’ motion for summary judgment on their ICCTA claim cannot be decided  
16 until EPA has issued a final authorization decision. EPA’s authorization decision is  
17 already underway and is only appealable in the appropriate Court of Appeals, 42 U.S.C.  
18 § 7607(b)(1). Plaintiffs’ route to challenge EPA’s authorization determination is to  
19 engage in the public comment process and then, after EPA issues a final decision,  
20 Plaintiffs’ challenge must be brought in the appropriate Court of Appeals. 42 U.S.C. §  
21 7607(b)(1). Plaintiffs are not entitled to summary judgment on their ICCTA claim before  
22 EPA issues its authorization decision.

23 Likewise, it is undisputed that EPA-approved SIPs must be harmonized with  
24 ICCTA. *Ass’n of Am. R.Rs.*, 622 F.3d at 1098. The Regulation is expected—even by  
25 Plaintiff Association of American Railroads—to be adopted into California’s most recent  
26 SIP and thereafter be treated as federal law. RJN Ex. H at 18 (representative of Plaintiff  
27 Association of American Railroads noting that CARB will “incorporate[] the proposed In-  
28 Use Locomotive regulation into its SIP”). Under the Clean Air Act, the states maintain a

1 statutory obligation to develop SIPs that include proposed methods to attain the federal  
2 air quality standards. 42 U.S.C. § 7410; see *id.* § 7407(a) (“Each State shall have the  
3 primary responsibility for assuring air quality within the entire geographic area  
4 comprising such State”). States submit SIPs to EPA for review, which then have the  
5 “force and effect of federal law” upon EPA’s approval. *Safe Air For Everyone v. U.S.*  
6 *EPA*, 488 F.3d 1088, 1091 (9th Cir. 2007) (internal quotation marks omitted). California  
7 included the Regulation as a proposed measure—adopted pursuant to California’s  
8 obligation to meet the federal air quality standards set forth in 42 U.S.C. § 7410—in its  
9 2022 State SIP Strategy. ECF No. 19-5 at 34; RJN Ex. G at 36–38. If EPA approves  
10 California’s 2022 SIP submission, this will have the force and effect of federal law and  
11 must be harmonized with ICCTA. Moreover, when CARB submits the Regulation itself  
12 into the SIP, this will similarly mean the Regulation has the force and effect of federal law  
13 upon EPA approval. See *Safe Air For Everyone*, 488 F.3d at 1097 (“the SIP became  
14 *federal law*, not *state law*, once EPA approved it”).

15 **II. Plaintiffs have failed to show that the Idling Requirements and the**  
16 **Reporting and Recordkeeping Requirements are not generally applicable**  
17 **rules.**

18 Even if this Court finds that the Regulation is not protected from ICCTA  
19 preemption by the Clean Air Act, Plaintiffs are still not entitled to summary judgment on  
20 their categorical ICCTA preemption claim because they fail to show that the remaining  
21 provisions of the Regulation are not generally applicable rules. Plaintiffs allege that the  
22 Idling Requirements and the Reporting and Recordkeeping Requirements are  
23 categorically preempted because they “directly target[]” locomotives and thus are not  
24 “rule[s] of general applicability.” Pls.’ MSJ, ECF No. 29 at 13–14. Contrary to Plaintiffs’  
25 assertions, this issue is not “beyond fair debate.” *Id.* at 14.

26 Although ICCTA preemption is broad, “it does not categorically sweep up all state  
27 regulation that touches upon railroads.” *Island Park, LLC v. CSX Transp.*, 559 F.3d 96,  
28 104 (2d Cir. 2009). ICCTA does not preempt “laws of general applicability that do not

1 unreasonably interfere with interstate commerce.” *Ass’n of Am. R.Rs.*, 622 F.3d at 1097.  
2 This is because Congress intended to preserve certain traditional police powers  
3 exercised by states, including “direct environmental regulations enacted for the  
4 protection of the public health and safety, and other generally applicable, non-  
5 discriminatory regulations.” *Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 643  
6 (2d Cir. 2005); see also H.R. Rep. No. 104-311, at 96 (1995), *reprinted in* 1995  
7 U.S.C.C.A.N. 793, 808 (noting that under ICCTA, “States retain the police powers  
8 reserved by the Constitution”).

9 For a law to be generally applicable, “it must address state concerns generally,  
10 without targeting the railroad industry.” *N.Y. Susquehanna & W. Ry. Corp. v. Jackson*,  
11 500 F.3d 238, 254 (3d Cir. 2007). “This is a fact-intensive inquiry.” *Id.* at 253. That a  
12 state law “applies specifically” to railroads does not end the inquiry. *Adrian & Blissfield*  
13 *R.R. Co. v. Vill. of Blissfield*, 550 F.3d 533, 541–42 (6th Cir. 2008) (holding that a state  
14 law requiring railroads to pay for sidewalks across railroad tracks is not discriminatory).  
15 Rather, such a law may be considered generally applicable if it sets requirements for  
16 railroads that parallel those for “similarly situated entities.” *Id.* In that instance, evaluating  
17 general applicability “requires comparing the substance of the . . . regulations that apply  
18 to railroads with those that apply to similar industries . . . to determine if the State is  
19 discriminating against rail carriage.” *N.Y. Susquehanna*, 500 F.3d at 256.

20 Plaintiffs fail to conduct the fact-intensive inquiry necessary to establish that the  
21 Idling Requirements and the Reporting and Recordkeeping Requirements are not  
22 generally applicable. While Plaintiffs point to the Regulation’s name and overarching  
23 goal, Pls.’ MSJ, ECF No. 29 at 14, these allegations are insufficient. Plaintiffs ignore the  
24 fact that the Idling Requirements and the Reporting and Recordkeeping Requirements  
25 are part of a comprehensive regulatory scheme enacted by CARB to address air  
26 pollution from the full sweep of mobile sources, including cars, motorcycles, trucks,  
27 locomotives, ships, construction equipment, and utility engines. See ECF No. 19-5 at 45.  
28 See, e.g., Cal. Code Regs. tit. 13 §§ 1958 (motorcycles), 1962.2 (passenger cars and

1 light-duty trucks), 2013 (state and local government fleets, including but not limited to  
2 box trucks, dedicated snow removal vehicles, pickup trucks, and tractors), 2014  
3 (drayage trucks), 2023 (transit buses), 2400 (small off-road engines), 2410 (off-highway  
4 recreational vehicles and engines), 2440 (spark-ignition marine engines), 2449 (off-road  
5 diesel fueled fleets), 2468 (portable outboard marine tanks and components).

6 The California State Legislature charges CARB with regulating emissions from all  
7 vehicles, including on-road vehicles like cars, motorcycles, and trucks, and off-road, and  
8 nonvehicle engine categories. See Cal. Health & Safety Code §§ 39002, 43013.

9 Pursuant to this mandate, CARB has enacted idling, reporting, and recordkeeping  
10 requirements for a wide range of mobile source categories. In adopting requirements for  
11 locomotives in the Regulation, CARB incorporated locomotives into a comprehensive  
12 regulatory scheme generally applicable to mobile emission sources. *Massachusetts v.*  
13 *Env't Prot. Agency*, 549 U.S. 497, 499 (2007) ("Agencies . . . do not generally resolve  
14 massive problems in one fell swoop, . . . but instead whittle away over time, refining their  
15 approach as circumstances change and they develop a more nuanced understanding of  
16 how best to proceed . . .") (citations omitted).

17 The Idling Requirements in the Regulation require operators to manually shut off  
18 locomotive engines within 30 minutes of idling if an automatic engine start/stop (AESS)  
19 device is inoperative, subject to certain exceptions. Cal. Code Regs. tit. 13  
20 § 2478.9(c)(2). CARB has promulgated idling limits for myriad other mobile sources.  
21 See, e.g., *id.* § 2480 (idling provisions for school buses, transit buses, school pupil  
22 activity buses, youth buses, general public paratransit vehicles, and other commercial  
23 motor vehicles at schools); *id.* § 2485 (idling provisions for diesel fueled commercial  
24 motor vehicles).

25 The Reporting and Recordkeeping Requirements require locomotive operators to  
26 gather and report operational data, including locomotive emissions and idling incidents.  
27 *Id.* § 2478.11. These requirements are similar to reporting and recordkeeping mandates  
28 that CARB has enacted for other mobile sources. See, e.g., *id.* § 2014.1(a)(4)(B), (C)

1 (drayage trucks recordkeeping requirements); *id.* § 2023.8 (reporting requirements for  
2 transit agencies).

3 Finally, Plaintiffs' reliance on *American Association of Railroads v. South Coast*  
4 *Air Quality Management District*, 622 F.3d 1094 (9th Cir. 2010) is unavailing. Pls.' MSJ,  
5 ECF No. 29 at 15. That case did not involve a comprehensive regulatory scheme that  
6 imposed idling and reporting requirements across mobile sources. *Ass'n of Am. R.Rs.*,  
7 622 F.3d at 1098. Accordingly, the court did not address the relationship between the  
8 locomotive regulations at issue and analogous requirements for other mobile sources.  
9 Here, the state legislature has granted CARB broad authority to set emission standards  
10 for all mobile sources. CARB has acted on this authority to enact comprehensive idling,  
11 reporting, and recordkeeping requirements applicable to a multitude of mobile sources,  
12 including locomotives.

13 Because the Idling Requirements and the Reporting and Recordkeeping  
14 Requirements impose analogous requirements on locomotives to those on other mobile  
15 sources, these provisions of the Regulation are generally applicable rules that address  
16 general state concerns about the public health impacts from air pollution, without  
17 targeting the railroad industry for discriminatory treatment. Plaintiffs fail to consider this  
18 relationship between the Regulation and other idling, reporting, and recordkeeping  
19 requirements set by CARB. Accordingly, Plaintiffs fail to show that the Idling  
20 Requirements and the Reporting and Recordkeeping Requirements are not generally  
21 applicable rules and therefore are not entitled to summary judgment on their categorical  
22 ICCTA preemption claim. *See N.Y. Susquehanna*, 500 F.3d at 256 (remanding to the  
23 district court for consideration of whether solid waste regulations specific to rail carriers  
24 are discriminatory given similar regulations on other facilities).

25 Plaintiffs have failed to show that the Regulation's remaining provisions are not  
26 generally applicable, and Plaintiffs have explicitly disavowed moving on their as-applied  
27 preemption claim. Pls.' MSJ, ECF No. 29 at 13. Regardless, Plaintiffs have not alleged  
28 facts sufficient to show that the Idling Requirements and the Reporting and

1 Recordkeeping Requirements impose an unreasonable burden on interstate commerce  
 2 that is “so draconian that it prevents the railroad from carrying out its business in a  
 3 sensible fashion.” See *N. Y. Susquehanna*, 500 F.3d at 254.

4 **III. Plaintiffs have not shown, and cannot show, that any of the remaining**  
 5 **provisions at issue violate the Dormant Commerce Clause.**

6 Plaintiffs claim that the Dormant Commerce Clause preempts the “entire field” of  
 7 locomotives—and therefore also CARB’s Regulation—from state regulation “because ‘a  
 8 lack of national uniformity would impede the flow of interstate goods.’”<sup>3</sup> Pls.’ MSJ, ECF  
 9 No. 29 at 23–25 (quoting *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 379 n.2  
 10 (2023)). But this theory is completely misguided. “[T]he Supreme Court has interpreted  
 11 the [Commerce] clause to prohibit the states from unduly interfering with interstate  
 12 commerce *absent congressional intent*.” *Union Pac. R. Co. v. Cal. Pub. Utilities Comm’n*,  
 13 346 F.3d 851, 870 (9th Cir. 2003) (emphasis added). Here, Congress specifically  
 14 articulated in the text of the Clean Air Act that California retains authority “to adopt and  
 15 enforce standards and other requirements relating to the control of emissions from” non-  
 16 new locomotives and engines. 42 U.S.C. § 7543(e)(2). Indeed, by the time Congress  
 17 adopted the federal Clean Air Act, California had already been regulating air pollution for  
 18 years in an effort to clean the State’s smog-filled skies. Accordingly, Congress ensured  
 19 that California retained authority in Section 209(e)(2) to follow through on its commitment  
 20 to ensure it is safe for Californians to breathe. See U.S. Senate, 136 Cong. Rec.  
 21 S16895-01, Clean Air Act Amendments-Conference Report (Oct. 27, 1990), 1990 WL  
 22 164490, at S16976 (“States also fully retain existing authority to regulate emissions from  
 23 all types of existing or in-use nonroad engines or vehicles.”); see *also* 88 Fed. Reg.  
 24 77,004, 77,005–06 (Nov. 8, 2023) (“California retained the ability to regulate . . . non-

25 \_\_\_\_\_  
 26 <sup>3</sup> Plaintiffs do not assert on this Motion that any part of the Regulation imposes a burden on  
 27 interstate commerce that is “clearly excessive in relation to the putative local benefits.” *Pike v*  
 28 *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); Pls.’ MSJ, ECF No. 29 at 23. The overwhelming  
 negative health and air quality costs of operating highly-polluting diesel locomotives close to  
 communities practically ensures that the benefits analysis of this inquiry would outweigh any  
 burdens to Plaintiffs.



1 new locomotives and locomotive engines.”). Indeed, unlike in *Southern Pacific Co. v.*  
2 *Arizona ex rel. Sullivan*, 325 U.S. 761 (1945), where Arizona adopted a state law  
3 prohibiting in-state operation of trains greater than a certain length pursuant to state  
4 authority alone, *id.* at 764, California adopted the Regulation pursuant to its authority  
5 outlined in the federal Clean Air Act and in fulfillment of California’s SIP obligations. See  
6 42 U.S.C. § 7543(e)(2).

7 The Regulation in its entirety fits squarely within California’s congressionally  
8 recognized authority to “adopt and enforce standards and other requirements relating to  
9 the control of emissions from” non-new locomotives and engines. *Id.* A “standard,” as  
10 defined in this title of the Clean Air Act, “denote[s] requirements such as numerical  
11 emission levels with which vehicles or engines must comply” or “emission-control  
12 technology with which they must be equipped.” *Engine Mfrs. Ass’n v. S. Coast Air*  
13 *Quality Mgmt. Dist.*, 541 U.S. 246, 253 (2004) (citations omitted). By preserving  
14 California’s authority to adopt and enforce not only “standards” but also “other  
15 requirements” to support its efforts to reduce air pollution, Congress ensured California  
16 retained authority to effectuate the measures needed to reduce emissions from non-new  
17 nonroad sources. 42 U.S.C. § 7543(e)(2).

18 Each of the Regulation’s components is within the scope of congressionally  
19 preserved authority. The Idling Requirements control emissions from non-new  
20 locomotives by setting parameters for the use of pollution control equipment. See, e.g., §  
21 2478.9(c)(2) (“For the time an AESS is inoperative, the Locomotive shall be manually  
22 shut off no more than 30 minutes after the Locomotive becomes stationary . . .”); §  
23 2478.9(d) (“Locomotives equipped to connect to Wayside Power shall turn off all  
24 engines, . . . and use Wayside Power if stationary for longer than 30 minutes and if  
25 Wayside Power is available.”); § 2478.9(a) (“A Locomotive Operator shall ensure an  
26 AESS equipped Locomotive Engine is shut off no more than 30 minutes after the  
27 Locomotive becomes stationary.”). The Reporting and Recordkeeping Requirements  
28 “relat[e] to the control of emissions,” from non-new locomotives, 42 U.S.C. § 7543(e)(2),



1 by guaranteeing California has accurate, timely data regarding locomotive emissions for  
2 those locomotives operating in the state, deposited Spending Account funds, and  
3 purchases made with Spending Account funds, among other things. § 2478.11. The  
4 Administrative Payment provision supports the administration of the Regulation, which  
5 was adopted in line with California’s authority. § 2478.12.

6 Moreover, in line with Section 209(e)(2), the Regulation only regulates non-“new”  
7 locomotives.<sup>4</sup> A locomotive is “new” if “its equitable or legal title has never been  
8 transferred to an ultimate purchaser” or “it is remanufactured or refurbished.” 40 C.F.R.  
9 § 1033.901. Importantly, “[a] remanufactured locomotive or engine *ceases to be new*  
10 *when placed back into service.*” *Id.* (emphasis added). If, as Plaintiffs suggest, the  
11 additional “useful life” period given to a remanufactured locomotive made a locomotive  
12 “new” again, 40 C.F.R. § 1033.901 would include contradictory language and effectively  
13 nullify Section 209(e)(2) by allowing manufacturers to evade state regulation by  
14 remanufacturing locomotives. See Pls.’ MSJ, ECF No. 29 at 19.

15 Again, every component of the Regulation regulates only those locomotives  
16 already placed into service in California. See, e.g., Cal. Code Regs., tit. 13,  
17 § 2478.9(c)(2) (“For the time an AESS is inoperative, the Locomotive shall be manually  
18 shut off no more than 30 minutes after the Locomotive becomes stationary . . .”);  
19 § 2478.9 (d) (“Locomotives equipped to connect to Wayside Power shall turn off all  
20 engines, . . . and use Wayside Power if stationary for longer than 30 minutes and if  
21 Wayside Power is available.”); § 2478.9(a) (“A Locomotive Operator shall ensure an  
22 AESS equipped Locomotive Engine is shut off no more than 30 minutes after the  
23 Locomotive becomes stationary.”). The Reporting and Recordkeeping Requirements  
24 relate only to locomotives already in service in California. See, e.g., § 2478.11(b)  
25 (“[R]eport the Locomotive Operator name and contact information . . . for each non-ZE  
26 Locomotive or ZE Capable Locomotive Operated in California . . .”); § 2478.11(c)

27 \_\_\_\_\_  
28 <sup>4</sup> Intervenors do not ask this Court to decide whether the Regulation’s components are non-  
“new.” This question is reserved for EPA. 42 U.S.C. § 7543(e)(2).

1 (“R]eport the . . . total amount deposited in the Spending Account to meet the Funding  
2 Requirement . . . for the immediately preceding Calendar Year”); § 2478.11(d) (“For each  
3 ZE Capable Locomotive Operated in California during the immediately preceding year . .  
4 . .”). Finally, the Administrative Payment requires an annual payment only “for each  
5 Locomotive they Operated in California during the immediately preceding Calendar  
6 Year.” § 2478.12. Accordingly, each carefully crafted component of the Regulation fits  
7 squarely within Congress’ clear authorization in Section 209(e)(2) that California retains  
8 authority to regulate non-new locomotives, and therefore do not violate the Dormant  
9 Commerce Clause.

10 Plaintiffs’ fear that this Regulation opens the floodgates to a “patchwork regulatory  
11 scheme” where other states are empowered to adopt their own unique regulations is  
12 expressly limited by Section 209(e)(2)(B) of the Clean Air Act. See Pls.’ MSJ, ECF No.  
13 29 at 23–24. This argument ignores that Section 209(e)(2)(B) explicitly provides that  
14 other states may only adopt and enforce standards that are “identical . . . to the  
15 California standards.” 42 U.S.C. § 7543(e)(2)(B)(i). See *Union Pac. R.R. Co.*, 346 F.3d  
16 at 871 (noting that “the extra-territorial effects of only one state regulatory regime are  
17 relatively minor”). Contrary to Plaintiffs’ contentions, the Regulation will not lead to fifty  
18 different locomotive regulations.

19 Finally, it is unclear how broadly Plaintiffs seek to find unconstitutional any state  
20 regulation of locomotives. See Pls.’ MSJ, ECF No. 29 at 23 (“In these cases, because ‘a  
21 lack of national uniformity would impede *the flow* of interstate goods,’ the Court has held  
22 that the Commerce Clause ‘pre-empts [that] entire field from state regulation.’” (citation  
23 omitted)). Under Plaintiffs’ theory, any state law regulating trains in some way violates  
24 the Dormant Commerce Clause. But courts have upheld other state and local regulations  
25 touching locomotives. See, e.g., *Borough of Riverdale Petition for Declaratory Ord. the*  
26 *N.Y. Susquehanna & W. Ry. Corp.*, 4 S.T.B. 380 (1999) (“[N]ot all state and local  
27 regulations that affect railroads are preempted” (citation omitted)); *Norfolk S. Ry. v.*  
28 *Alexandria*, 608 F.3d 150, 158 (4th Cir. 2010) (state laws that fall within the State’s

1 “general police powers” are not preempted by ICCTA even when they affect “railroad  
2 activity.”); *Burlington N. R.R. Co. v. Dep’t of Pub. Serv. Regul.*, 763 F.2d 1106, 1114 (9th  
3 Cir. 1985) (upholding Montana statute requiring railroad to maintain and staff certain  
4 freight rail offices in the state); *Swinomish Indian Tribal Cmty. v. BNSF Ry. Co.*, 951 F.3d  
5 1142, 1158 (9th Cir. 2020) (upholding enforcement of easement agreement between  
6 Indian tribe and BNSF specifying the maximum number of trains and cars that could  
7 travel over reservation land). Plaintiffs’ attempt to invalidate this Regulation by way of  
8 arguing that *any and all* non-federal regulations that have an impact on rail are  
9 preempted is unsupported.

10 **IV. The public interest strongly weighs against issuing an injunction.**

11 Based on all these reasons, the Court should deny Plaintiffs’ Motion for Summary  
12 Judgment on the merits. But even if it does not, this Court should nonetheless deny  
13 Plaintiffs’ request for a permanent injunction because the public interest would be  
14 overwhelmingly disserved by such course of action. A plaintiff seeking a permanent  
15 injunction must satisfy a four-factor test before a court may grant such relief: “(1) that it  
16 has suffered an irreparable injury; (2) that remedies available at law are inadequate to  
17 compensate for that injury; (3) that considering the balance of hardships between the  
18 plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest  
19 would not be disserved by a permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*,  
20 547 U.S. 388, 391 (2006) (citations omitted).

21 Even if Plaintiffs can show they satisfy the first three factors of this test, given that  
22 California has failed to meet many federal air quality standards, which creates large  
23 public health concerns that Californians are facing, the public interest would be  
24 extremely disserved by this Court issuing a permanent injunction. Indeed, the result of  
25 such an injunction would be “[e]nvironmental injury, [which] by its nature, can seldom be  
26 adequately remedied by money damages and is often permanent or at least of long  
27 duration, *i.e.*, irreparable.” *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545  
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1 (1987). The harm that would occur to the state and public if an injunction were granted  
2 would be severe—this would amount to the equivalent of emitting 63 tons per day of  
3 dangerous NOx pollution into California’s already extremely polluted air. See ECF No.  
4 19-10 at 2. Frontline communities would continue to endure elevated cancer rates,  
5 respiratory illness, cardiovascular disease, and other debilitating health issues  
6 associated with exposure to carcinogenic locomotive pollution. See ECF No. 19-3 at  
7 157–60. The high exposure of air pollutants inside and outside people’s homes and the  
8 health impacts that ravage railyard-adjacent communities would remain. Torres Decl. ¶¶  
9 28, 33-38. The extreme air contamination that imposes a lifetime of asthma on children  
10 and forces infants to rely on nebulizers to breathe through the night would persist.  
11 Andasan Decl. ¶ 19–21. The air pollution that leads to debilitating migraines,  
12 nosebleeds, allergies, and persistent itchy throats would continue. Torres Decl. ¶ 28;  
13 Vargas Decl. ¶ 14. Air pollution so thick that it keeps residents sequestered to their  
14 homes during peak smog hours would remain a reality for millions of Californians. See,  
15 e.g., De La Garza Decl. ¶¶ 12–13. The toll of a permanent injunction would fall hardest  
16 on California’s already injured residents who are just trying to breathe. For these  
17 reasons, even if this Court grants Plaintiffs’ Motion for Summary Judgment, Defendant  
18 Intervenors urge the Court to deny their request for a permanent injunction.

19 **CONCLUSION**

20 For all the foregoing reasons, Defendant Intervenors respectfully request that this  
21 Court deny Plaintiffs’ Motion for Summary Judgment and request for a permanent  
22 injunction.

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Respectfully submitted,

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