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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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STEPHEN P. BERZON (SBN 46540)
JONATHAN WEISSGLASS (SBN 185008)
BARBARA J. CHISHOLM (SBN 224656)
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
E-Mail: sberzon@altshulerberzon.com
E-Mail: jweissglass@altshulerberzon.com
E-Mail: bchisholm@altshulerberzon.com

Attorneys for All Plaintiffs except Owner-Operator Independent Drivers Association

ALBERT H. MEYERHOFF (SBN 54134)
Lerach Coughlin Stoia Geller Rudman & Robbins, LLP
9601 Wilshire Blvd., Suite 510
Los Angeles, CA 90210
Telephone: (310) 859-3100
Facsimile: (310) 278-2148
E-Mail: alm@lerachlaw.com

Attorney for All Plaintiffs

BONNIE I. ROBIN-VERGEER
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, D.C. 20009
Telephone: (202) 588-1000
Facsimile: (202) 588-7795
E-Mail: bonnierv@citizen.org

Attorney for Plaintiff Public Citizen **EMC**

LC 07 2210

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

SIERRA CLUB; PUBLIC CITIZEN;
ENVIRONMENTAL LAW FOUNDATION;
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS; BROTHERHOOD OF
TEAMSTERS, AUTO AND TRUCK
DRIVERS, LOCAL 70; and OWNER-
OPERATOR INDEPENDENT DRIVERS
ASSOCIATION,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
TRANSPORTATION; FEDERAL MOTOR
CARRIER SAFETY ADMINISTRATION;
MARY E. PETERS, Secretary of the U.S.
Department of Transportation; JOHN H.
HILL, Administrator of the Federal Motor
Carrier Safety Administration; and THE
UNITED STATES,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Administrative Procedure Act Case

1 **INTRADISTRICT ASSIGNMENT**

2 6. Assignment of this case to the San Francisco and Oakland Division is proper under N.D.
3 Cal. Local Rule 3-2(c) and (d). Plaintiff Sierra Club is headquartered in San Francisco, California.
4 Plaintiffs Environmental Law Foundation (“ELF”) and Brotherhood of Teamsters, Auto and Truck
5 Drivers Local 70 (“Local 70”) are headquartered in Oakland, California. Plaintiffs have numerous
6 members adversely affected by Defendants’ failure to comply with the statutorily required notice and
7 comment provisions of 49 U.S.C. §31315, who live in the counties encompassed by the San Francisco
8 and Oakland Division of this Court.

9 **THE PARTIES**

10 7. Plaintiff Sierra Club is a nonprofit public benefit corporation based in San Francisco,
11 California, and is the largest and oldest environmental organization in the United States. The purposes
12 of the Sierra Club are to explore, enjoy, and protect the wild places of the earth; to practice and promote
13 the responsible use of the earth’s ecosystems and resources; to educate and enlist humanity to protect
14 and restore the quality of the natural and human environment; and to use all lawful means to carry out
15 these objectives. The Sierra Club has more than 750,000 members nationwide, including thousands of
16 members in this District and in the states affected by the agency action challenged here. Sierra Club
17 members live, work, and recreate in the areas affected by implementation of the cross-border trucking
18 pilot program, are at risk of concrete injuries posed by the program’s implementation, and seek
19 participation in a public process on the approval of the program.

20 8. Plaintiff Public Citizen is a consumer advocacy non-profit organization founded in 1971
21 that has a long history of advocacy on matters relating to highway safety and environmental protection
22 before Congress, administrative agencies, and the courts. Public Citizen has approximately 100,000
23 members nationwide, including members in the U.S.-Mexico border region and in this District. Public
24 Citizen’s members are adversely affected by implementation of the pilot program.

25 9. Plaintiff ELF is a California nonprofit founded on Earth Day, 1991, dedicated to the
26 preservation and enhancement of human health and the environment, and headquartered in Oakland,
27 California. ELF is dedicated to working for environmental justice through a program of effective
28 enforcement of federal, state, and local environmental laws on behalf of people who are

1 disproportionately affected by environmental harm, including workers, communities without power,
2 minority communities, women of child-bearing age, and children. ELF is adversely affected by
3 implementation of the pilot program.

4 10. Plaintiff International Brotherhood of Teamsters (“Teamsters”) is a labor union as that
5 term is defined by the National Labor Relations Act, 29 U.S.C. §151 *et. seq.* The Teamsters represents
6 the interests of 1.4 million members (approximately 10 percent of the entire unionized workforce in the
7 United States) and is one of the largest and most diverse labor unions in the world. These members are
8 located in all 50 states of the union, including in this District. The Teamsters’ broad purposes include
9 furthering the interests of its members and advancing the welfare of all people, including by protecting
10 the environment and the safety and health of its members. The Teamsters’ members are adversely
11 affected by implementation of the pilot program.

12 11. Plaintiff Local 70 is a labor union as that term is defined by the National Labor Relations
13 Act, 29 U.S.C. §151 *et. seq.* Local 70 is headquartered in Oakland, California, and has jurisdiction in
14 Alameda County, California. Local 70 has approximately 4,000 members residing primarily in this
15 District and its primary jurisdiction is truck drivers. Local 70’s broad purposes include furthering the
16 interests of its members and advancing the welfare of all people, including by protecting the
17 environment and the safety and health of its members. Local 70’s members are adversely affected by
18 implementation of the pilot program.

19 12. Plaintiff Owner-Operator Independent Drivers Association (“OOIDA”) is a not-for-profit
20 501(c)(6) corporation organized under the laws of Missouri and headquartered in Grain Valley,
21 Missouri. OOIDA is an international trade association representing the interests of professional truckers.
22 OOIDA has more than 150,000 members across the United States and Canada with approximately 5,300
23 of those members residing in California. OOIDA’s mission is to serve owner-operators, small fleets,
24 and professional truckers; to work for a business climate where truckers are treated equally and fairly; to
25 promote highway safety and responsibility among all highway users; and to promote a better business
26 climate and efficiency for all truck operators. OOIDA’s members are adversely affected by
27 implementation of the pilot program.

1 19. On or about February 22, 2007, the Secretary announced a pilot program that will
2 authorize up to 100 Mexican trucking companies to perform long-haul operations within the United
3 States, beyond the current commercial zone. The Secretary announced that safety inspectors from the
4 FMCSA were traveling to Mexico as part of the pilot program.

5 20. On or about February 23, 2007, the Secretary specifically announced a “year-long pilot
6 program” that authorizes a “select group of Mexican trucking companies . . . to make deliveries beyond
7 the 20-25 mile commercial zones currently in place along the Southwest border.” The Secretary further
8 stated: “In about 60 days, when the initial safety audits are done and proof-of-insurance verified, the
9 first Mexican trucks to be authorized under the pilot program will begin traveling beyond the border
10 areas.”

11 21. On or about March 8, 2007, the Secretary testified before the United States Senate
12 Transportation, Housing and Urban Development, and Related Agencies Appropriations Subcommittee
13 that “the Administration is implementing a limited one-year demonstration project to authorize up to 100
14 Mexican trucking companies to perform long-haul operations within the U.S.” The Secretary further
15 testified that DOT expected “the 100 Mexican trucking companies in this program [to] operate
16 approximately 1,000 trucks in the U.S.,” and that, pursuant to the pilot program, FMCSA is conducting
17 100 percent of pre-authorization safety audits of Mexico-domiciled trucks in Mexico.

18 22. On information and belief, DOT and FMCSA have begun implementing the pilot
19 program, including by conducting safety inspections in Mexico of trucks that will take part in the pilot
20 program, and by reviewing, accepting, and processing applications from trucking companies that will be
21 participants in the pilot program.

22 23. The Secretary has not provided detailed information about the pilot program to the public.
23 Indeed, despite numerous requests by Congress and by environmental, public interest, labor, and
24 industry organizations to the Secretary and DOT for information about the pilot program, the details of
25 the pilot program have been shrouded in secrecy.

1 Statutory Background

2 49 U.S.C. Section 31315

3 24. 49 U.S.C. §31315 governs the Secretary’s authority to implement pilot programs relating
4 to commercial motor vehicle operators. The statute provides in part:

5 The Secretary may conduct pilot programs to evaluate alternatives to regulations relating
6 to, or innovative approaches to, motor carrier, commercial motor vehicle, and driver
7 safety. . . . The Secretary shall publish in the Federal Register a detailed description of
8 each pilot program, including the exemptions to be considered, and provide notice and an
9 opportunity for public comment before the effective date of the program.

8 49 U.S.C. §31315(c)(1). The statute also specifies several elements that must be included in each pilot
9 program plan. *Id.* §31315(c)(2).

10 The Administrative Procedure Act

11 25. The APA provides that “[a] person suffering legal wrong because of agency action, or
12 adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to
13 judicial relief thereof.” 5 U.S.C. §702. The APA further provides that “[a]gency action made
14 reviewable by statute and final agency action for which there is no other adequate remedy in a court are
15 subject to judicial review.” 5 U.S.C. §704. The APA defines “agency action” as an “agency rule, order
16 . . . or the equivalent or denial thereof, or failure to act.” 5 U.S.C. §551(13).

17 26. The APA provides that a reviewing court “shall – (1) compel agency action unlawfully
18 withheld” 5 U.S.C. §706(1). The APA further provides that a reviewing court “shall – . . . (2) hold
19 unlawful and set aside agency action, findings and conclusions found to be – (A) arbitrary, capricious, an
20 abuse of discretion, or otherwise not in accordance with law; . . . [or] (D) without observance of
21 procedure required by law.”

22 The Pilot Program Does Not Comply with 49 U.S.C. §31315

23 27. Defendants have not complied with the requirements of 49 U.S.C. §31315.

24 28. Defendants have proposed, approved, adopted, and begun implementing a pilot program
25 that would authorize up to 100 trucking companies based in Mexico to perform long-haul operations
26 within the United States. This pilot program is a pilot program within the meaning of 49 U.S.C. §31315.

27 29. The Secretary has provided very little public information about the pilot program. The
28 Secretary has not issued any public decisional document regarding the pilot program.

1 3. Award Plaintiffs their costs, attorneys' fees, and other disbursements in this action
2 pursuant to the Equal Access Justice Act, 28 U.S.C. §2412(d), and other authority; and

3 4. Grant Plaintiffs such other and further relief as the Court may deem just and proper.

4 Dated: April 23, 2007

STEPHEN P. BERZON
JONATHAN WEISSGLASS
BARBARA J. CHISHOLM
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064

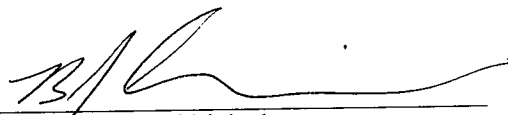
8 Attorneys for All Plaintiffs except Owner-Operator
9 Independent Drivers Association

10 ALBERT H. MEYERHOFF
11 LERACH COUGHLIN STOIA GELLER
12 RUDMAN & ROBBINS, LLP
13 9601 Wilshire Blvd., Suite 510
14 Los Angeles, CA 90210
15 Telephone: (310) 859-3100
16 Facsimile: (310) 278-2148

17 Attorney for All Plaintiffs

18 BONNIE I. ROBIN-VERGEER
19 PUBLIC CITIZEN LITIGATION GROUP
20 1600 20th Street, N.W.
21 Washington, D.C. 20009
22 Telephone: (202) 588-1000
23 Facsimile: (202) 588-7795

24 Attorney for Plaintiff Public Citizen

25 By: 
26 Barbara J. Chisholm