## Case 2:06-cv-02791-WBS -KJM Document 54 Filed 06/05/07 Page 1 of 4 Edmund G. Brown Jr., Attorney General of the State of California 1 Mary E. Hackenbracht, Sr. Asst. Attorney General Linda Berg, Deputy Attorney General, CA Bar. # 194667 2 Nicholas Stern, Deputy Attorney General, CA Bar # 148308 1300 I Street, Suite 125 P.O. Box 944255 Sacramento, CA 94244-2550 4 Telephone: (916) 323-3840 Facsimile: (916) 327-2319 5 Email: Nicholas.Stern@doj.ca.gov 6 Attorneys for Defendant Catherine E. Witherspoon 7 Kurt R. Wiese, District Counsel, CA Bar #127251 Barbara Baird, Principal Deputy District Counsel, CA Bar #81507 8 Michael Harris, Sr. Deputy District Counsel, CA Bar #179544 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT 9 21865 E. Copley Drive Diamond Bar, CA 91765-0940 10 Telephone: (909) 396-3535 Facsimile: (909) 396-2961 11 Email: bbaird@aqmd.gov 12 Attorneys for Defendant-Intervenor South Coast Air Quality Management District 13 14 UNITED STATES DISTRICT COURT 15 EASTERN DISTRICT OF CALIFORNIA -- SACRAMENTO 16 PACIFIC MERCHANT SHIPPING ASSOCIATION, a California Mutual Benefit Civ No. 2:06-CV-02791-WBS-KJM 17 Corporation, STIPULATION TO AMEND ANSWERS 18 Plaintiff. OF DEFENDANT CATHERINE E. 19 WITHERSPOON AND DEFENDANTv. INTERVENOR SOUTH COAST AIR 20 CATHERINE E. WITHERSPOON, in her **QUALITY MANAGEMENT DISTRICT;** official capacity as Executive Officer of the PROPOSED ORDER 21 California Air Resources Board, 22 Pretrial Conference: August 11, 2008 Defendant, 23 Trial Date: October 7, 2008 NATURAL RESOURCES DEFENSE Judge: Hon. William B. Shubb 24 COUNCIL, INC., COALITION FOR CLEAN AIR, INC., SOUTH COAST AIR QUALITY 25 MANAGEMENT DISTRICT, and CITY OF 26 LONG BEACH, 27 Defendants-Intervenors. 28

## TO THE COURT AND ALL PARTIES:

IT IS HEREBY STIPULATED by and between Plaintiff Pacific Merchant Shipping
Association, Defendant Catherine E. Witherspoon, and Defendant-Intervenor South Coast Air
Quality Management District ("SCAQMD"), through their counsel of record, that:

- 1. Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, which provides that "a party may amend the party's pleading only by leave of court or by written consent of the adverse party," Defendant Witherspoon and Intervenor-Defendant SCAQMD may file Amended Answers in this action (a copy of the proposed First Amended Answer of Defendant Witherspoon is attached hereto as Exhibit A; a copy of the First Amended Answer of Defendant-Intervenor SCAQMD is attached hereto as Exhibit B);
- 2. The proposed Amended Answer of Defendant Witherspoon differs from the original Answer only in one respect: where Paragraph 12, Section V, Response to First Claim for Relief, read, "Defendant admits the allegations in Paragraph 12," the First Amended Answer now reads:

To the extent that the first sentence of Paragraph 12 seeks a legal conclusion, no response is necessary in that the regulations speak for themselves. However, to the extent a response is necessary, Defendant denies the allegations in the first sentence of Paragraph 12. Defendant admits the allegations in the second sentence of Paragraph 12;

3. Similarly, the proposed Amended Answer of Intervenor-Defendant SCAQMD differs from the original Answer only in one respect: where Paragraph 12, Section V, Response to First Claim for Relief, read, "Intervenor admits the allegations contained in Paragraph 12," the SCAQMD's First Amended Answer now reads:

To the extent that the first sentence of Paragraph 12 seeks a legal conclusion, no response is necessary in that the regulations speak for themselves. However, Intervenor generally denies that legally "both regulations establish standards relating to the emission of diesel particulate matter (PM), sulfur oxides (SOx), and nitrogen

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oxides (NOx) from diesel auxiliary and diesel electric engines of ocean going vessels, including U.S. and foreign-flag ships that operate within twenty-four nautical miles of the base low water line along the California coast." Intervenor admits the allegations contained in the second sentence of Paragraph 12;

- 4. These proposed amendments were due to an oversight by the attorneys of record for Defendant Witherspoon and the SCAQMD. Paragraph 12 of the Complaint contains a conclusion regarding the legal effect of the two regulations promulgated by the California Air Resources Board that are at issue in this case. The Defendants are not required to deny or admit to any legal conclusion in the Complaint, and in any event mistakenly admitted to the statement;
- 5. There is no bad faith or dilatory motive associated with these amendments, and granting of this stipulation will not result in any delay of these proceedings;
- 6. The First Amended Answers shall be deemed filed upon the issuance of the proposed Order set out below;
  - 7. The Plaintiffs waive service and notice of the First Amended Answers.

17 Dated: June 1, 2007 By: /s/ Michael Harris Kurt R. Wiese 18 District Counsel 19 Barbara B. Baird Principal Deputy District Counsel 20 Michael Harris Sr. deputy District Counsel 21 Attorneys for Defendant-Intervenor SOUTH COAST AIR QUALITY 22 MANAGEMENT DISTRICT 23 24 25 /// 26

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1	Dated: June 1, 2007 Edmund G. Brown Jr. Attorney General of the State of
2	California
3	By: /s/ Nicholas Stern (as authorized on 6/01/07)
4	Nicholas Stern Linda Berg
5	Deputy Attorneys General Attorneys for Defendant
6	CATHERINE E. WITHERSPOON
7	Dated: June 1, 2007 FLYNN, DELICH & WISE LLP
8	
9	By: /s/ Erich P. Wise (as authorized on 6/01/07 Erich P. Wise
10	Attorneys for Plaintiff
11	PACIFIC MERCHANT SHIPPING ASSOCIATION
12	ORDER
13	
14	Based on the foregoing Stipulation, IT IS ORDERED that:
15	1. Defendant Catherine E. Witherspoon and Inervenor-Defendant South Coast Air
16	Quality Management District may file First Amended Answers in the form attached as Exhibit A
17	and Exhibit B, respectively.
18	2. The First Amended Answers shall be deemed filed as of the date of the issuance of
19	
20	this order.
21	3. The Plaintiff has waived service and notice of the First Amended Complaint.
22	IT IS SO ORDERED.
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24	DATED: June 4, 2007
25	Milliam Va Shable
26	WILLIAM B. SHUBB UNITED STATES DISTRICT JUDGE
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