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 9 Natural Resources Defense Council, Inc.

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 11 UNITED STATES DISTRICT COURT
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 CALIFORNIA DUMP TRUCK OWNERS
 14 ASSOCIATION,
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 Plaintiff,
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 v.
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 18 MARY D. NICHOLS, Chairperson of the
 California Air Resources Board; and JAMES
 19 GOLDSTENE, Executive Officer of the
 California Air Resources Board,
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 Defendants,
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 22 NATURAL RESOURCES DEFENSE
 23 COUNCIL, INC.,
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 Defendant-Intervenor.

Case No. 2:11-CV-00384-MCE-GGH

JOINT REQUEST TO STRIKE
 PLAINTIFF'S OPPOSITION TO
 DEFENDANTS AND DEFENDANT-
 INTERVENOR'S CROSS-MOTIONS FOR
 SUMMARY JUDGMENT, OR IN THE
 ALTERNATIVE, REQUEST TO MOVE
 HEARING DATE FOR MOTIONS FOR
 SUMMARY JUDGMENT AND ORDER

Date: January 26, 2012
 Time: 2:00 p.m.
 Judge: Hon. Morrison C. England, Jr.
 Courtroom 7

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 REQUEST TO STRIKE, OR IN THE ALTERNATIVE, MOVE HEARING DATE
 Case No. 2:11-CV-00384-MCE-GGH

1 Defendant-Intervenor the Natural Resources Defense Council (“NRDC”) and Defendants
2 Nichols and Goldstene (“Defendants”) jointly request that the Court strike, as untimely, Plaintiff
3 California Dump Truck Owners Association’s (“Plaintiff”) opposition papers filed on January 12,
4 2012 in response to NRDC and Defendants’ cross-motions for summary judgment.

5 In the alternative, NRDC and Defendants request that the Court move the hearing date for
6 Plaintiff’s motion for summary judgment and NRDC and Defendants’ cross-motions for summary
7 judgment by one week or to the next available hearing date thereafter (February 9, 2012) to give
8 NRDC and Defendants adequate time to reply to Plaintiff’s opposition. The facts supporting this
9 request are as follows:

10 1. WHEREAS, on November 17, 2011, Plaintiff filed a motion for summary judgment
11 with a hearing noticed for January 26, 2012;

12 2. WHEREAS, on December 22, 2011 Defendants and NRDC separately filed cross-
13 motions for summary judgment in accordance with the deadline prescribed in this Court’s Pretrial
14 Scheduling Order (Dkt. # 27);

15 3. WHEREAS, pursuant to that Scheduling Order, Plaintiff’s opposition to Defendants
16 and NRDC’s cross-motions were due by January 5, 2012, and Defendants’ and NRDC’s replies are
17 due January 19, 2012;

18 4. WHEREAS, Plaintiff did not file any opposition papers by the deadline set forth in
19 this Court’s Scheduling Order, but instead, filed an opposition brief and accompanying papers one
20 week later, on January 12, 2012;

21 5. WHEREAS, Plaintiff never attempted to contact Defendants or NRDC to seek an
22 extension of time to file its opposition;

23 6. WHEREAS, Plaintiff’s untimely filing cuts short Defendants’ and NRDC’s time to
24 draft and file replies to Plaintiff’s opposition by one full week, and Defendants and NRDC
25 anticipate needing the full two weeks afforded to them under the Scheduling Order to adequately
26 respond to Plaintiff’s opposition; and

27 7. WHEREAS, Defendants and NRDC contemplated requesting that the Court extend
28 the time for Defendants and NRDC to file their respective replies by one week, but any such

1 extension would make the replies due on the hearing date set for the parties' respective motions for
2 summary judgment, making such a request unworkable;

3 Therefore, NRDC and Defendants request that the Court strike Plaintiff's opposition brief
4 and accompanying papers filed on January 12, 2012 (Documents #'s 46, 47, 48, 49 and 50) in
5 response to NRDC and Defendants' cross-motions for summary judgment.

6 In the alternative, NRDC and Defendants request that the Court move the hearing date
7 currently set for Plaintiff's motion for summary judgment and NRDC and Defendants' cross-
8 motions from January 26, 2012 to February 9, 2012, which is the first available date for a hearing
9 according to the calendaring information located on this Court's website. Based on a February 9,
10 2012 hearing date and this Court's Scheduling Order, NRDC and Defendants' replies would be
11 due by February 2, 2012.

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13 Dated: January 13, 2012

David Pettit
Melissa Lin Perrella
Morgan Wyenn
Natural Resources Defense Council, Inc.

16 By: /s/ Melissa Lin Perrella
17 Attorneys for Defendant-Intervenor Natural
18 Resources Defense Council, Inc.

19 KAMALA D. HARRIS
20 Attorney General of California
21 SARA J. RUSSELL
22 Supervising Deputy Attorney General

23 By: /s/ Nicholas Stern
24 Deputy Attorney General
25 Attorneys for Defendants

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1 **ORDER**

2 Based on the facts presented in Defendants and Defendant-Intervenor's Request To
3 Strike, Or In The Alternative, Move The Hearing Date For Motions For Summary Judgment:

4 IT IS HEREBY ORDERED that the hearing date for Plaintiff's motion for summary
5 judgment and Defendants' and Defendant-Intervenor's respective cross-motions for summary
6 judgment will be moved to February 9, 2012 at 2:00 p.m. in courtroom 7 at the above captioned
7 court. Based on this hearing date and this Court's Pretrial Scheduling Order, NRDC and
8 Defendants' replies to Plaintiff's opposition would be due by February 2, 2012.

9 Dated: January 18, 2012

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12 MORRISON C. ENGLAND, JR.
13 UNITED STATES DISTRICT JUDGE
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