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**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF FRESNO, CENTRAL DIVISION**

JOHN R. LAWSON ROCK & OIL, INC.,

Petitioner and Plaintiff,

v.

CALIFORNIA AIR RESOURCES BOARD; and RICHARD COREY, in his official capacity as Executive Officer of the California Air Resources Board,

Respondents and Defendants.

Case No. 19CECG00331

**PETITIONER'S OPENING BRIEF**

Date: July 17, 2020
Time: 8:30 a.m.
Dept.: 54
Judge: Hon. Kristi Culver Kapetan

Action Filed: January 22, 2019

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### Other Authorities

Petitioner and Plaintiff John R. Lawson Rock & Oil, Inc. ("Petitioner" or "Lawson") submits this Opening Brief on the merits of its Verified Petition for a Writ of Mandate, filed against Respondents and Defendants the California Air Resources Board ("CARB" or the "Board") and Richard Corey, in his official capacity as Executive Officer of CARB (collectively, "Respondents").

## I.

## INTRODUCTION

Lawson is an owner and operator of a large fleet of vehicles. Like many fleet and individual owner operators, Lawson cares about the environment and generally supports measures to improve air quality in California. To that end, Lawson has invested significant private capital in pursuit of that goal. However, because of the integral nature of fleets to ensuring the nation's critical supply chain remains unbroken—particularly in during crises such as the outbreak of COVID-19 and the demand for essential goods—Lawson opposes unreasonable regulations that impose significant costs on truckers in California without the industry's ability to recoup those costs from the public that relies upon the supply chain. Throughout the last decade, CARB has adopted numerous regulations affecting the trucking industry, oftentimes paying short shrift to the potential for these costly and burdensome regulations to undermine the viability of the industry.

This action concerns a rulemaking by CARB concerning proposed amendments to its California Greenhouse Gas Emissions Standards for Medium- and Heavy-Duty Engines and Vehicles ("CA Phase 2 Standards") and the proposed amendments to the Tractor[1]-Trailer Greenhouse Gas ("GHG") Regulation ("Tractor-Trailer GHG Regulation"), which are collectively referred to herein as the "Proposed Amendments." The Proposed Amendments represent just one of numerous regulations promulgated or being considered by CARB that impose significant costs on the trucking industry, including Lawson.

There were several problems with CARB's adoption of the Proposed Amendments. First, CARB completely side-stepped its obligations under California Environmental Quality Act, Pub. Resources Code, § 21000, *et seq.* ("CEQA"), by finding the Proposed Amendments were "exempt"

[1] As used in the trucking industry, a "tractor" is a certain type of truck that has a fifth wheel coupling or hitch mounted over the rear axle that enables the vehicle to pull a trailer.

from CEQA. Second, CARB declined to prepare a full economic analysis of the Proposed Amendments under the California Administrative Procedure Act, Govt. Code, § 11350, *et seq.* (the "APA"). Specifically, CARB asserted it need not prepare a "SRIA" (a Standardized Regulatory Impact Assessment) for the Proposed Amendments because its provisions overlap significantly with federal regulations recently adopted by the U.S. Environmental Protection Agency ("EPA") and the National Highway Traffic Safety Administration ("NHTSA") on October 25, 2016, which are referred to herein as the "Federal Phase 2 standards."

Both of these conclusions are erroneous. At the time CARB considered the Proposed Amendments, CARB's certified regulatory program—*i.e.*, the procedural regulations that govern CARB's compliance with CEQA—did not authorize CARB to find a project was "exempt" from CEQA in those instances where CARB prepared a "staff report" and engaged in a public hearing. And even if CARB had such authority (and it did not), neither of the two exemptions relied upon by CARB are applicable here. As such, CARB violated CEQA.[2]

CARB's failure to prepare a SRIA is also contrary to the APA. Specifically, a SRIA is required for every "major regulation" undertaken by a California agency. A "major regulation" is the adoption, amendment, or repeal of a regulation that would result in an economic impact on California businesses and individuals in an amount of over $50 million/year. CARB found the Proposed Amendments would not exceed this threshold because the majority of the costs of the Proposed Amendments were caused by regulations that were identical to the Federal Phase 2 standards that could be implemented starting January 1, 2021. This argument, however, is contrary to the law and the facts. First, there is nothing in the APA or its implementing regulations that entitled CARB to ignore a regulation's adverse economic impacts solely because of a parallel regulatory obligation that may be implemented by another agency in the future. More fundamentally, the Federal Phase 2 standards were adopted in October 2016 at the end of the Obama Administration. Since that time, the new administration has made numerous pronouncements that it does not intend to implement the Federal Phase 2 standards, and litigation has been filed seeking to invalidate those standards. In other

[2] Likewise, CARB violated CEQA by failing to consider whether the impacts of the Proposed Amendments and other regulations affecting the trucking industry (including the federal Phase 2 standards) were cumulatively considerable.

words, while the regulations promulgated by CARB and U.S. EPA may include similar provisions, there is a significant possibility the Federal Phase 2 standards may never be implemented. Because CARB is required to assess the Proposed Amendment's "potential" to cause "adverse economic impacts," CARB cannot ignore the potential that the United States may never implement the Federal Phase 2 standards. Because CARB did not take the full "economic impact" of the Proposed Amendments into consideration, and on the basis of that incomplete assessment declined to prepare a SRIA, CARB also violated the APA.

CARB has repeatedly demonstrated in this case and others that it believes it can skirt its procedural obligations simply because it believes its regulations are "beneficial." (See, e.g., *John R. Lawson Rock & Oil, Inc. v. State Air Resources Board* (2018) 20 Cal.App.5th 77; *POET, LLC v. State Air Resources Board* (2017) 12 Cal.App.5th 52, 73-74 (*POET II*); *POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681 (*POET I*).) Regardless of CARB's subjective intent regarding the purported benefits of its rulemakings, CARB is not above the law. Under CEQA and the APA, the public (including the directly-regulated), the State Legislature, and CARB's decisionmakers are entitled to full and fair analysis of the potential adverse environmental and economic consequences of a regulation ***before*** CARB decides to adopt the regulation. That did not occur here, and a writ must issue invalidating the Proposed Amendments pending compliance with both CEQA and the APA.

## II.

## FACTUAL BACKGROUND

On October 25, 2016, the EPA and NHTSA jointly published the final rulemaking for the Federal Phase 2 standards, which follow the same regulatory structure as Federal Phase 1 and set GHG emission standards for tractors, vocational vehicles, and PUVs. (Administrative Record ("AR")[3] at A-007359-8155; *see also* 81 Fed. Reg. 73478 (Oct. 25, 2016).) Additionally, for the first time, Federal Phase 2 established federal emissions requirements for trailers hauled by heavy duty ("HD") tractors. (AR at A-000034) The Federal Phase 2 standards were designed to be more technology-forcing than Federal Phase 1 standards, requiring manufacturers to improve existing technologies or

[3] "AR" refers to the Administrative Record of Proceedings lodged with this Court on February 21, 2020.

develop new technologies to meet the standards. (*Id.*) The Federal Phase 2 standards were projected to be phased-in from 2021 to 2027 for tractors, vocational vehicles, and PUVs. The standards for trailers were set to phase-in from 2018 through 2027. (*Id.*)

To achieve further GHG emissions reductions under the Federal Phase 2 standards, manufacturers would be required to employ more advanced compliance options such as engine waste-heat recovery ("WHR"), hybrids, fully electric vehicles, advanced transmissions, intelligent vehicle controls, heat rejection management, electrification of ancillary equipment, and other technologies, including improvements in vehicle aerodynamics and low rolling resistance tires. (*Id.*) Trailer manufacturers would be required to utilize aerodynamic technologies, including skirts, and rear fairings, as well as LRR tires, automatic tire inflation systems ("ATIS"), and weight reducing materials to meet the Federal Phase 2 standards. (*Id.*) All of this, of course, comes at a significant cost to regulated parties, including truckers like Lawson.

On December 19, 2017, Respondents announced a February 8, 2018, hearing to consider the adoption of the Tractor-Trailer Regulation Amendments and CA Phase 2. (AR at A-000001-19.) The Proposed Amendments largely, but not entirely, overlap with the Federal Phase 2 standards. (AR at A-000062 ["While staff is proposing to maintain the same compliance flexibility as in the federal program to minimize manufacturers' compliance burden, there will be some minor distinctions between California Phase 2 and the federal Phase 2 rules as discussed further in subsection d below."] The proposed Tractor-Trailer Regulation Amendments and CA Phase 2 were accompanied by a "Staff Report: Initial Statement of Reasons, dated December 19, 2017 (the "Staff Report/ISOR"). (AR at A-000021-127.)

As a result of the industry's concerns regarding the significant cost of the Proposed Amendments, CARB received numerous comments expressing concern about aspects of the regulation. The hearing on the Tractor-Trailer Regulation Amendments and CA Phase 2 began on February 8, 2018, and several members of the public offered substantive comments. (AR, A-012036-69.) Again, many of those comments opposed the Regulation, based on the burden of the Proposed Amendments on the trucking industry. (See, e.g., AR at A-012058.)

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Despite these concerns, the process as undertaken by CARB did not include an evaluation of the Proposed Amendments' environmental impacts under CEQA. Rather, CARB staff took the position that the Proposed Amendments were "exempt" from CEQA under the "common sense" exemption, and the Class 8 categorical exemption. (AR at A-000101-102.) CARB staff likewise asserted that CARB need not prepare a full economic analysis of the Proposed Amendments—*i.e.*, a SRIA—because the costs of the Proposed Amendments were largely identical to those contemplated under the Federal Phase 2 standards. (AR at A-000112.)

Lawson participated in the administrative process, taking issue with both of the above positions. (AR at B-000058-124.) Specifically, Lawson informed CARB that its certified regulatory program did not authorize CARB to determine projects were "exempt" from CEQA in instances where CARB prepared a staff report and conducted a public hearing. (AR at B-000060-61.) Lawson also explained that CARB could not ignore the increased costs Lawson and other truckers would be required to incur as a result of the portions of the Proposed Amendments that were similar to the Federal Phase 2 standards. (AR at B-000062-66.)

The practical problem with both of these issues is that they are largely predicated on the presumption that the United States would fully implement the Federal Phase 2 standards, which were adopted in October 2016 at the end of the Obama administration. (AR at A-007359-8155; see also 81 Fed. Reg. 73478 (Oct. 25, 2016).) This no longer appears to be the case. For instance, on March 28, 2017, President Trump issued Executive Order 13783 ("EO 13783") on Promoting Energy Independence and Economic Growth, which mandates that all agencies review and identify actions that are related to or arose from President Obama's June 2013 Climate Action Plan. (Exec. Order No. 13783, 82 Fed. Reg. 16093 (Mar. 28, 2017).) The Federal Phase 2 standards are within the scope of this EO 13783, because they are related to and arose from the 2013 Climate Action Plan. (*See* 82 Fed. Reg. 16093 (Mar. 28, 2017) ["The Phase 1 program, as well as the many additional actions called for in the President's 2013 Climate Action Plan including this Phase 2 rulemaking, not only result in meaningful decreases in GHG emissions and fuel consumption, but also support—indeed are critical for—United States leadership to encourage other countries to also achieve meaningful GHG reductions and fuel conservation."].) On August 17, 2017, the former EPA Administrator Scott Pruitt,

indicated that the EPA would revise the Federal Phase 2 trailer provisions and the issue of the EPA's authority to regulate trailers, and would develop and issue a Federal Register notice of proposed rulemaking on this matter. (Request for Judicial Notice in Support of Petitioner's Opening Brief ["RJN"], **Ex. "A"**.) Moreover, since early 2018, the EPA has been working to develop proposed regulations that would revisit significant portions of the Federal Phase 2 standards. (See *Id*. [stating that, "We intend to develop and issue a Federal Register notice of proposed rulemaking on this matter, consistent with the requirements of the Clean Air Act"].)

Furthermore, ongoing litigation in federal courts diminishes the certainty that the United States will implement the Federal Phase 2 standards. In December 2016, after the 2016 United States Presidential Election, the Truck Trailer Manufacturers Association, Inc. ("TTMA") and the Racing Enthusiasts and Suppliers Coalition filed petitions for review in the D.C. Circuit Court of Appeals, challenging the Federal Phase 2 standards on the grounds that the regulations exceeded the EPA and NHTSA's authority, were contrary to the Clean Air Act and Energy Independence and Security Act, and were arbitrary, capricious, and otherwise contrary to law. (RJN, **Ex. "H"**.) On October 27, 2017, the D.C. Circuit Court of Appeals granted the TTMA's motion to stay the EPA and NHTSA's implementation of the Federal Phase 2 standards, stating that the TTMA had satisfied the stringent requirements for a stay pending judicial review and stayed the rule "insofar as it purports to regulate trailers." (See RJN, **Ex. "I"**.) The D.C. Circuit also granted the respondents' motion to continue holding the case in abeyance pending the completion of administrative proceedings that the agencies said "could obviate the need for judicial resolution" of the issues raised by the trade group. (*Id*.) On December 26, 2019, the D.C. Circuit Court of Appeals granted the TTMA's motion to lift the stay on the EPA and NHTSA's implementation of the Federal Phase 2 standards, requiring the parties' final briefs to be filed by June 2, 2020. (See also RJN, **Ex. "J"**.) The D.C. Circuit's act of lifting the stay could expedite the potentially permanent demise of the Federal Phase 2 standards. In short, it is by no means certain that the Federal Phase 2 standards will ever be implemented, undermining CARB's factual basis for skirting its obligations under both the APA and CEQA.

As a result of these failures, Lawson filed its Verified Petition for Writ of Mandate (the "Petition") in this action on January 22, 2019. The Petition seeks a writ of mandate compelling CARB

to set aside the Proposed Amendments due to CARB's failure to adequately assess the economic and environmental consequences of the Proposed Amendments under the APA and CEQA.

Further, the Court should note that just one month after Petitioner commenced this proceeding, CARB initiated a rulemaking to overhaul its certified regulatory program by filing its Notice of Public Hearing to Consider Proposed Amendments to the California Air Resources Board's Certified Regulatory Program in the California Code of Regulations, Title 17, Sections 60000-60007. (RJN, **Ex. "B"**.) The rulemaking addressed many of the regulations referenced by Petitioner in this action, such as expanding CARB's ability to determine a proposed regulation is categorically "exempt" from the CEQA environmental review process. (See RJN, **Ex. "F"**; 17 Cal. Code Regs, § 60004, subd. (d).) As such, Lawson understands that the rulemaking was, in large part, in direct response to this lawsuit, and a tacit admission that CARB's certified regulatory program at the time the Proposed Amendments were adopted did not authorize CARB to issue an exemption in this case.

## III.

## ARGUMENT

### A. CARB's Obligations Under CEQA

Before any agency considers a "project," CEQA requires the agency to first "identify the environmental effects of [the] project[], and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives." (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1233.) Under CEQA, public agencies must "refrain from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects." (*City of Arcadia v. SWRCB* (2006) 135 Cal.App.4th 1392, 1421 [citing *Mountain Lion Found. v. Fish & Game Comm.* (1997) 16 Cal.4th 105, 134].) "The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish. This examination is intended to provide the fullest information reasonably available upon which the decision makers and the public they serve can rely in determining whether or not to start the project at all, not merely to decide whether to finish it." (*NRDC v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271.)

### 1. Certified Regulatory Programs Under CEQA

"State regulatory programs that meet certain environmental standards and are certified by the Secretary of the California Resources Agency are exempt from CEQA's requirements for preparation of EIRs, negative declarations, and initial studies." (*Arcadia*, *supra*, 135 Cal.App.4th at 1421.) "Environmental review documents prepared by certified programs may be used instead of environmental documents that CEQA would otherwise require." However, these "programs remain subject. . . to other CEQA requirements." (*Id.* at 1421-22.) CEQA documents prepared under certified programs are considered to be the "functional equivalent" of the documents CEQA otherwise requires. (*Mountain Lion*, *supra*, 16 Cal.4th at 113.)

An "agency seeking certification must adopt regulations requiring that final action on the proposed activity include written responses to significant environmental points raised during the decisionmaking process." (*Id.* at 127 [citing Pub. Res. Code, § 21080.5(d)(2)(F)].) "The agency must also implement guidelines for evaluating the proposed activity consistently with the environmental protection purposes of the regulatory program." (*Id.*) "The document generated pursuant to the agency's regulatory program must include alternatives to the proposed project and mitigation measures to minimize significant adverse environmental effects [citation], and be made available for" public review. (*Id.*)

Agencies with qualifying programs are excused only from complying with the requirements found in Chapters 3 and 4 of CEQA—*i.e.*, Pub. Res. Code, §§ 21100-21154, in addition to Public Resources Code § 21167. (Pub. Res. Code, § 21080.5(c).) However, "[w]hen conducting its environmental review and preparing its documentation, a certified regulatory program is subject to the broad policy goals and substantive standards of CEQA." (Kostka & Zischke, *Practice Under Cal. Env. Quality Act* (2016 update) § 21.10] ["Kostka & Zischke"] [citing *City of Arcadia*, *supra*, 135 Cal.App.4th at 1422; *Sierra Club, supra,* 7 Cal.4th 1215; *Californians for Native Salmon & Steelhead Ass'n v. Dept. of Forestry* (1990) 221 Cal.App.3d 1419; *Envt'l Protection Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 616].) The CEQA Guidelines implementing section 21080.5 provide that, "[i]n a certified program, an environmental document used as a substitute for an EIR must include '[a]lternatives to the activity and mitigation measures to avoid or reduce any significant or potentially

significant effects that the project might have on the environment.'" (*City of Arcadia*, *supra*, 135 Cal.App.4th at 1422 [quoting CEQA Guidelines, § 15252(a)(2)(A)].)

**2. CARB's Certified Regulatory Program**

CARB's functional equivalent document is the "staff report." When CARB considered the Proposed Amendments, the section of its certified regulatory program governing "staff reports" was Section 60005.[4] That section required the staff report to be "published at least 45 days before the date of the public hearing" on the rulemaking, and to "be available for public review and comment." (RJN, **Ex. "G"** [prior version of § 60005].) The provision also states that staff reports must be prepared "in a manner consistent" "with the goals and policies of" CEQA, and "shall contain":

> a description of the proposed action, an assessment of anticipated significant long or short term adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts. The analysis shall address feasible mitigation measures and feasible alternatives . . . which would substantially reduce any significant adverse impact identified.

(RJN, **Ex. "G"** [prior version of § 60005(b)].)

At the time the Proposed Amendments were considered, the certified regulatory program provided that an action, "for which significant adverse environmental impacts have been identified during the review process shall ***not*** be approved or adopted as proposed if there are feasible mitigation measures or feasible alternatives available which would substantially reduce such adverse impact." (RJN, **Ex. "G"** [prior version of § 60006].) Notably, the certified regulatory program did not include any provisions authorizing CARB to find a proposed rulemaking was "exempt" from CEQA. (RJN, **Ex. "G"** [prior version of §§ 60001-60007].)

**3. Standard of Review Applicable to a Challenge to a Certified Regulatory Program**

The standard "applicable to a challenge to a certified program's environmental documentation is the same as that applied to an EIR." (Kostka & Zischke, § 21.14 at 1093; see *Sierra*

[4] Just one month after Lawson filed this proceeding, CARB initiated a rulemaking to overhaul its certified regulatory program. (RJN, **Ex. "B"**.) As explained *infra*, the rulemaking addressed many of the regulations referenced by Lawson in this action. (See *infra*, § III.) As such, Lawson understands that the rulemaking was, in large part, in direct response to this lawsuit.

*Club*, *supra*, 7 Cal.4th at 1235-36; *City of Arcadia*, *supra*, 135 Cal.App.4th 1392, 1409.) The Court is therefore required to determine whether CARB prejudicially abused its discretion. (Pub. Resources Code, § 21168.5.) An abuse of discretion occurs where "the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Id.*)

The courts demand strict compliance with CEQA's provisions and their functional equivalents. For example, "when an agency fails to proceed as required by CEQA, harmless error analysis is inapplicable. The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation. Case law is clear that, in such cases, the error is prejudicial." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1497.) This mandate is particularly true where the failure to proceed in a manner required by law concerns CEQA's information disclosure requirements. This is due to the fact that such failures serve to "preclude[] informed decisionmaking and public participation," and thus "thwart" the goals of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220 [quoting *Save Our Peninsula Comm. v. Monterey County Bd. of Supers.* (2001) 87 Cal.App.4th 99, 118].) As such, "[f]ailure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decisionmaking and informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements." (*Id.* at 1198.)

### B. Respondents Failed to Perform an Environmental Review of the Proposed Amendments in Violation of CEQA [First Cause of Action]

#### 1. CARB's Certified Regulatory Program Did Not Authorize a Finding of Exemption From CEQA At the Time the Proposed Amendments Were Considered

When it considered the Proposed Amendments, CARB asserted its adoption of Proposed Amendments was exempt from CEQA under two theories:

- ***Class 8 Exemption.*** The Proposed Amendments were exempt under a "Class 8" exemption, which exempts certain actions taken "to assure the maintenance, restoration, enhancement, or protection or the environment where the regulatory process involves procedures for protection of the environment, (CEQA Guidelines, § 15308), and there is purportedly no "reasonable possibility that

the activity will have a significant effect on the environment due to unusual circumstances." (CEQA Guidelines, § 15300.2).

- ***Common Sense Exemption.*** The Proposed Amendments fall under CEQA's "common sense exemption," because it can purportedly be "seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment . . . ." (CEQA Guidelines, § 15061(b)(3).)

(See AR at D-000260; *see also* AR at A-000101-102.)

At the time CARB considered the Proposed Amendments, however, CARB lacked the authority under its certified regulatory program to determine the Proposed Amendments were "exempt" from CEQA. Specifically, at the time of the adoption of the Proposed Amendments, Section 60005(a) of CARB's certified regulatory program required that, in any instance where "a public hearing is required by law," "the staff of the state board" must prepare "a staff report." (RJN, **Ex. "G"** [former § 60005(a)].) Section 60005, subdivision (b), in turn, provided that "***[a]ll staff reports shall contain . . . an assessment of anticipated significant long or short term adverse and beneficial environmental impacts associated with the proposed action***," in addition to "feasible mitigation measures and feasible alternatives to the proposed action . . . ." (RJN, **Ex. "G"** [former § 60005(b)] [emphasis added].) In other words, in those instances where CARB was required to conduct a public hearing, and thereafter prepare a "staff report," CARB was required to include in the staff report "an assessment of anticipated significant long or short term adverse and beneficial environmental impacts associated with the proposed action" to comply with its CEQA obligations. (*Id.*)

Further, at the time the Proposed Amendments were considered, there were no provisions in CARB's certified regulatory program authorizing CARB to determine an action was "exempt" from CEQA, or filing a document called a "Notice of Exemption." (See generally RJN, **Ex. "G"** [former §§ 60001-60007].) Rather, at the time the Proposed Amendments were adopted, the only "notice" CARB's certified regulatory program authorized CARB to file was a "[n]otice of the final action" under former Section 60007(b). (*See* RJN, **Ex. "G"** [former § 60007].)

In this case, CARB staff prepared a "staff report" for the Proposed Amendments pursuant to former Section 60005(a), and released that document for public review on December 19, 2017. (AR at A-000021-000127.) Contrary to former Section 60005(b), however, CARB did not

prepare "an assessment of [the] environmental impacts associated with the" Proposed Amendment. (AR at A-000101-102.) Rather, CARB determined the Proposed Amendments were "exempt" from CEQA. (*Id*.) CARB then posted a "Notice of Exemption" on December 21, 2018. (AR at D-000260-261.)

None of these actions were authorized under CARB's certified regulatory program at the time of adoption. Although Section 60005(b) at the time required "[a]ll staff reports" to include an "an assessment of [the] environmental impacts associated with the" Proposed Amendments, (RJN, **Ex. "G"** [former § 60005(b)]), CARB's staff report instead found CARB need not comply with CEQA because the Proposed Amendments were purportedly "exempt from CEQA." (AR at A-000102.) Likewise, although the certified regulatory program did not at the time authorize the filing of a Notice of Exemption, (see generally RJN, **Ex. "G"** [former §§ 60001-60007]), CARB purported to post a "Notice of Exemption"—as opposed to the "[n]otice of the final action" required under former Section 60007(b). (*Cf.* AR at D-000260-61 *with* RJN, **Ex. "G"** [former § 60007].)

CARB itself has tacitly conceded that, at the time it considered the Proposed Amendments, CARB's certified regulatory program did not authorize a finding of exemption. Specifically, after Lawson filed this action on January 22, 2019, CARB—apparently in response to the issues raised in this action—immediately initiated an overhaul of its certified regulatory program on February 27, 2019. (RJN, **Ex. "B"** [February 27, 2019, Notice of Public Hearing on Amendments to CARB's Certified Regulatory Program].) These amendments went into effect October 1, 2019. (RJN, **Ex. "F"**; 17 Cal. Code. Regs., § 60000, et seq.) Notably, these amendments—for the first time—provided CARB the ability to (i) determine a proposed regulation was "exempt" from CEQA under either a "Class 8" categorical exemption, (17 Cal. Code. Regs., § 60004(d)(3)(5)), or the "common sense exemption," (17 Cal. Code. Regs., § 60004(d)(1)), and (ii) file a Notice of Exemption. (17 Cal. Code. Regs., § 60004(f).) CARB's rush to subsequently modify its certified regulatory program to directly address the legal errors specifically raised by Petitioners in this action is proof that CARB

itself understood that, when it adopted the Proposed Amendments, it lacked the authority to find the amendments exempt from CEQA.[5]

At the time CARB considered the Proposed Amendments, it lacked the authority under its certified regulatory program to find the amendments were exempt from CEQA, and to file a Notice of Exemption. Because CARB did not proceed in a manner required by law, a writ should issue invalidating the Proposed Amendments.

### 2. Even if CARB's Certified Regulatory Program Authorized the Filing of a Notice of Exemption At the Time the Proposed Amendments Were Considered, Neither Exemption Applies

As explained above, CARB did not have the authority to find the Proposed Amendments were exempt from CEQA. But, even if CARB did have that authority—and it did not—the exemptions relied upon by CARB are inapplicable.

#### a. The Common Sense Exception Is Inapplicable

CARB first relied upon the "common sense" exemption under Section 15061(b)(3) of the CEQA Guidelines. That section provides that a project may be found exempt from CEQA where "it can be seen ***with certainty*** that there is ***no possibility*** that the activity in question ***may have a significant effect on the environment*** . . . ." (CEQA Guidelines, § 15063(b)(3).) CARB found the Proposed Amendments were exempt under this provision based on two assertions: first, the Proposed Amendments "harmonize[] with the federal Phase 2 regulation"; second, there is "no substantial evidence indicating the proposal could adversely affect air quality or any other environmental resource area . . . ." (AR at A-000102.) CARB's stated rationale is not supported by the facts.

***CARB Cannot Rely Upon the Potential Implemental of the Federal Phase 2 Regulations to Avoid Environmental Review.*** First, CARB's assertion that the Proposed Amendments merely "harmonize[] with the federal Phase 2 regulation" is predicated on the

[5] Neither the Resolution approving the amendments nor the amendments themselves contain language suggesting CARB would attempt to apply the amendments retroactively. (See RJN, **Exs. "E," "F"**.) California law also includes a presumption of nonretroactivity. (*Evangelatos v. Superior Court (Van Waters & Rogers, Inc.)* (1988) 44 Cal.3d 1188, 1206-27.) Further, because the public relied upon the provisions of the certified regulatory program in existence at the time the Proposed Amendments were considered, and CARB is bound to follow its own procedural rules, (see, e.g., *Layton v. Merit Sys. Comm.* (1976) 60 Cal.App.3d 58, 63-64), any attempt to apply the new procedural requirements retroactively would be contrary to law, and would violate the due process rights of both Lawson and the public. (See also *Marriage of Buol* (1985) 39 Cal.3d 751, 761.)

assumption that the United States will implement the federal Phase 2 regulation. CARB, however, did not take into consideration the very real possibility that the federal Phase 2 regulations would never go into effect.

The Federal Phase 2 regulations were originally promulgated on October 2016 at the end of the Obama administration. (AR at A-007359-8155; *see also* 81 Fed. Reg. 73478 (Oct. 25, 2016).) Since that time, ongoing litigation in federal courts diminishes the certainty that the United States will implement the Federal Phase 2 standards. On October 27, 2017, the D.C. Circuit Court of Appeals ordered a stay on the implementation of the Federal Phase 2 standards, in part to allow the EPA and NHTSA to commence action that, "could obviate the need for judicial resolution." (See RJN, **Ex. "I"**.) On December 26, 2019, the D.C. Circuit lifted the stay, requiring the parties' final briefs to be filed by June 2, 2020. (See also RJN, **Ex. "J"**.) The D.C. Circuit's act of lifting the stay could expedite the potentially permanent demise of the Federal Phase 2 standards.

Even if it were probable the Federal Phase 2 regulations would go into effect—contrary to the above facts—this is not sufficient to allow CARB to rely upon the exemption. Indeed, even a remote or outlandish possibility of an environmental impact will not remove a project from the common sense exemption; rather, if legitimate, reasonable questions can be raised about whether the project might have a significant impact, the agency cannot find with certainty the project is exempt. (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 117–118.) The common sense exemption is "reserved for those 'obviously exempt' projects, 'where its absolute and precise language clearly applies.'" (*Id.* at 117 [quoting *Myers v. Bd. of Supervisors* (1976) 58 Cal.App.3d 413, 425].)

CARB's reliance on the ***potential*** implementation of the Federal Phase 2 regulations is also contrary to foundational CEQA principles. Specifically, CARB appears to be asserting that the implementation of the Federal Phase 2 regulations is part of the environmental baseline conditions against which the Proposed Amendments should be evaluated. This position, however, is contrary to CEQA because the environmental baseline includes the "existing physical conditions," (CEQA Guidelines, § 15125(e)), as opposed to hypothetical future conditions, such as the ***possibility*** the United States will implement the Federal Phase 2 regulations. (See, e.g., *Communities for a Better*

*Envt. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 322.) But even if the potential, future implementation of the Federal Phase 2 regulations could lawfully be considered part of the baseline, the implementation of the Federal Phase 2 regulations should—at the very least—be considered a "probable future project" for purposes of CEQA's mandated cumulative impacts analysis. (See CEQA Guidelines, § 15065(a)(3); *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1228.)

Thus, because is it "possible"—and perhaps even probable—that the Federal Phase 2 regulations will not go into effect, CARB cannot rely upon the existence of the Federal Phase 2 regulations as evidence that "it can be seen ***with certainty*** that there is ***no possibility*** that the activity in question ***may have a significant effect on the environment*** . . . ." (CEQA Guidelines, § 15063(b)(3) [emphasis added].)

***CARB Itself Admits the Proposed Amendments Will Create GHG Disbenefits in the Short Term***. Nor can CARB otherwise argue it can be seen with "certainty" that there is "no possibility" the Proposed Amendments could have "a significant effect on the environment." Indeed, CARB's own rationale for the exemption states negative effects could occur. In the Staff Report, CARB concedes aspects of the Proposed Amendments could, "[i]n the short term . . . ***create a GHG disbenefit*** . . . ." (AR at A-000102 [emphasis added].) "Disbenefit," of course, is defined as "something disadvantageous or objectionable." ("Disbenefit." *Merriam-Webster Online Dictionary*. 2020. https://www.merriam-webster.com/dictionary/disbenefit. (Apr. 9, 2020).) While the Staff Report elsewhere contends "the long-term GHG benefit would outweigh the potential short-term disbenefit," (*Id.*), CARB's balancing of environmental pros and cons necessarily means there is at least a "possibility" the Proposed Amendments could potentially "have a significant effect on the environment," (CEQA Guidelines, § 15063(b)(3) [emphasis added]), particularly "[i]n the short-term," as recognized by CARB staff. (AR at A-000102.)

Because it cannot be seen, "***with certainty***," that "there is ***no possibility***" the Proposed Amendments "may have a significant effect on the environment," (CEQA Guidelines, § 15063(b)(3) [emphasis added]), CARB lacked the legal basis to rely upon the "common sense" exemption, even if it had the legal authority to rely upon an exemption at the time.

### b. A "Class 8" Exception Is Also Unavailable

In addition to the "Common Sense" exemption, CARB also attempted to rely upon the Class 8 exemption to avoid conducting any CEQA analysis. The "Class 8" exemption does not apply here. That exception states:

> Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.

(CEQA Guidelines § 15308.) An agency invoking the Class 8 exception bears the burden of demonstrating with substantial evidence that the project in question constitutes an action to assure the maintenance, restoration, or enhancement of the environment. (See *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 710-11 [citing *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1102].)

As a threshold matter, CARB asserts the Proposed Amendments were supposedly intended to overlap with the Federal Phase 2 Regulations, as opposed to "achieving additional emission reductions."[6] (AR at A-000096.) If this were in fact true, the Class 8 exemption would not apply, as the intent of the Proposed Amendments is not "to assure the maintenance, restoration, enhancement, or protection of the environment . . . ." (CEQA Guidelines, § 15308.)

Moreover, CARB itself concedes the Proposed Amendments could, "[i]n the short term . . . ***create a GHG disbenefit*** . . . ." (AR at A-000102 [emphasis added].) Thus, because the Proposed Amendments would "allow[] environmental degradation," Class 8 does not apply based on its plain language.

But even if this were not so, several "exceptions" to the use of the Class 8 exemption are applicable here. For example, due to CARB's assertion that it need not evaluate impacts because the Proposed Amendments are simply duplicative of the Federal Phase 2 Regulations, the exception

[6] As explained above, even if CARB exclusively intended the Proposed Amendments to overlap with the Federal Phase 2 Regulations, this does not excuse CARB from conducting environmental review under CEQA.

under Section 15300.2(b) of the CEQA Guidelines applies. That section does not allow an agency to rely upon a categorical exemption where cumulative impacts from projects ***of the same type*** will occur. (See CEQA Guidelines, § 15300.2(b) ["All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant."].)

Further, Section 15300.2(c) prohibits CARB from relying upon a Class 8 exemption "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Indeed, courts have repeatedly declined to allow agencies to rely upon a Class 8 exemption for projects with putative environmental benefits where the evidence shows a potentially significant impact could result. (See *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.* (1992) 9 Cal.App.4th 644 [finding agency could not rely on Class 8 exemption for action tightening standards for volatile organic carbon (VOC) architectural coatings where industry groups provided evidence VOCs would increase due to the need for increased coatings of paint], *disapproved on other grounds by Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559; see also *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694 [invalidating ordinance designed to protect heritage trees where aspects of ordinance could result in greater impacts to tree resources].) Thus, even if CARB could assert the Class 8 exemption facially applies to the Proposed Amendments, CARB's admission that the Proposed Amendments could, "[i]n the short term . . . create a GHG disbenefit," (AR at A-000102), renders the exemption inapplicable here.

In short, CARB did not have the authority to utilize an exemption under its certified regulatory program to side-step the CEQA process. But even if it did have that authority, CARB's attempt to rely upon the "common sense" exemption and "Class 8" is contrary to law. Because this proceeding concerns CARB's obligation to comply with CEQA in the first instance, CARB's reliance on the exemptions resulted in the omission of material necessary to informed decisionmaking and informed public participation, necessarily resulting in prejudicial error." (See *Sierra Club*, *supra*, 121 Cal.App.4th at 1497.) This Court should therefore issue a writ directing CARB to rescind its approval of the Proposed Amendments pending full compliance with CEQA.

### C. Respondents Impermissibly Piecemealed the Environmental Review of the Proposed Amendments in Violation of CEQA [Second Cause of Action]

Respondents also prejudicially abused their discretion and violated CEQA by performing piecemeal environmental reviews and comment periods, rather than the "whole of the action," for several proposed regulatory amendments which constitute one project under CEQA.

The "requirements of CEQA cannot be avoided by piecemeal review which results from chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences." (*Envt'l Prot. Info. Ctr. v. Calif. Dept. of Forestry & Fire Prot.* (2008) 44 Cal.4th 459, 503.) CEQA, therefore, "forbids 'piecemeal' review of the significant environmental impacts of a project." (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2011) 91 Cal.App.4th 1344, 1358.) Rather, when a lead agency undertakes the environmental review process, the lead agency must review and consider the "***whole*** of the action," (CEQA Guidelines, § 15378 [emphasis added]), and consider "the effects, both individual and ***collective***, of all activities involved in [the] project." (Pub. Resources Code, § 21002.1, subd. (d).) It is only through a complete and accurate "view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance." (*Berkeley Keep Jets*, *supra*, 91 Cal.App.4th at 1358.)

In this case, CARB did not consider the "whole of the action." Rather, the Proposed Amendments are only one part of a larger effort by CARB to overhaul its regulations relating to the trucking industry, and to impose significantly greater costs and burdens on truckers. In addition to the Proposed Amendments, these efforts include:

- The Federal Phase 2 regulations;
- Tractor-Trailer Regulations, (13 Cal. Code Regs., §§ 1956.8, 1961.2, 1965, 2036, 2037, 2065, 2112, and 2141; 17 Cal. Code Regs., §§ 95300, 95301, 95302, 95303, 95304, 95305, 95306, 95307, 95311, 95662, and 95663);
- Heavy-Duty Vehicle Inspection Program ("HDVIP"), (13 Cal. Code Regs., §§ 2180.1, 2181, 2182, 2185, 2186, 2187);

- Periodic Smoke Inspection Program ("PSIP"), (13 Cal. Code Regs., §§ 2190-2194);
- Innovative Clean Transit Regulations, (13 Cal. Code Regs., §§ 2023, 2023.1 – 2023.11);
- HD Warranty, (13 Cal. Code Regs., §§ 1956.8, 2035, 2036, and 2040);
- HD OBD Regulations, (13 Cal. Code Regs., § 1971.1);
- Innovative Clean Transit Regulations, (13 Cal. Code Regs., §§ 2023, 2023.1, 2023.2, 2023.3, 2023.4).

Anticipated future rulemakings affecting the trucking industry, including the HD Zero Certification Procedures, EWIR Regulation Amendments, and HD Low-NOx Standards, TPs, In-Use Compliance Step 2 Warranty.

These continuous and separate environmental reviews and comment periods constitute impermissible segmentation of environmental review in violation of CEQA. The Tractor-Trailer Regulation Amendments and CA Phase 2, contemplated regulations relating to HD trucks and trailers, and any modifications to those regulations and amendments, are all aimed at reducing GHG emission for HD-vehicles, which is a "reasonably foreseeable consequence" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396), and are thus one project under CEQA. CARB was ***required*** to conduct a full environmental review and consideration of the Tractor-Trailer Regulation Amendments and CA Phase 2, and contemplated regulations relating to HD trucks and trailers, including all the details pertaining thereto, ***before*** the Tractor-Trailer Regulation Amendments and CA Phase 2 and contemplated regulations relating to HD trucks and trailers were adopted and implemented.

Respondents prejudicially abused their discretion by taking the above-described actions in violation of CEQA. Respondents failed to proceed in the manner required by law, and Respondents' decisions were not supported by substantial evidence in the record. Respondents further violated CEQA by failing to independently review and analyze the effects of their actions prior to approving and implementing those actions. Because CEQA prohibits such a disjointed, piecemeal

process, the Court should issue a writ invalidating the Proposed Amendments pending Respondents' compliance with CEQA.

### D. Respondents Failed to Perform a Standardized Regulatory Impact Assessment, and Performed an Inadequate Economic Impact Assessment of the Proposed Amendments in Violation of the APA [Third Cause of Action]

Respondents also prejudicially abused their discretion and violated the APA by erroneously concluding the Proposed Amendments did not constitute a "major regulation," and based on that erroneous conclusion did not prepare a Standardized Regulatory Impact Assessment ("SRIA") to determine the Proposed Amendments' "potential for adverse economic impact on California business enterprises and individuals," and instead prepared an inadequate Economic Impact Assessment ("EIA").

#### 1. CARB's Obligation to Assess the Environmental Impacts of Regulatory Actions Under the APA

As a state agency, CARB is required to comply with the APA. Under the APA, state agencies proposing to "adopt, amend, or repeal any administrative regulation" must first perform an assessment of "the potential for adverse economic impact on California business enterprises and individuals." (Govt. Code, § 11346.3, subd. (a).) If CARB determines a proposal is a "major regulation"—*i.e.*, a regulation that will have "economic impact on California business enterprises and individuals" of more than $50 million/year, (1 Cal. Code Regs., § 2000(g))—CARB must prepare a full a "standardized regulatory impact analysis" ("SRIA") under Section 11346.3(c) of the Government Code. Where CARB finds the proposal will have an economic impact of less than $50 million/year, CARB can prepare an abbreviated economic analysis, called an "economic impact analysis" ("EIA"). (Govt. Code, § 11346.3, subd. (b).) If an agency makes an initial determination that the action ***will not*** have a significant, statewide adverse economic impact, the agency must declare in the notice of proposed action any initial determination that the action will not have a significant statewide adverse economic impact directly affecting business. (Govt. Code, § 11346.5, subd. (a)(8); *WSPA v. Board of Equalization* (2013) 57 Cal.4th 401, 428.) Once the initial assessment is complete, "affected parties may comment on the agency's initial determination and supply additional information relevant to the issue." (*Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th

401, 429.) The agency "must respond to the public comments and either change its proposal in response to the comments or explain why it has not." (*Id.*)

Upon review of CARB's determinations under the APA, the courts evaluate whether CARB "substantially complied with its obligations, and whether [CARB's determination] is supported by some substantial evidence." (*John R. Lawson Rock & Oil, Inc. v. Air Resources Board* (2018) 20 Cal.App.5th 77, 112 [quoting *Calif. Ass'n of Medical Prods. Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 307].) The interpretation of the relevant statutes to determine whether CARB substantially complied with its obligations is a question of law. (*Id.* [citing *POET, LLC v. Air Resources Board* (2013) 218 Cal.App.4th 681, 748].)

**2. CARB Failed to Prepare an SRIA for the Proposed Amendments**

Here, CARB did not prepare a SRIA because it classified the Proposed Amendments as a non-major regulation. (AR at A-000112.) In support, CARB staff asserted that "[t]he annual economic impacts of the proposed California Phase 2 regulation do not exceed $50 million, and hence a SRIA is not required." (*Id.*)

These findings are belied by the evidence. Throughout the administrative process, numerous representatives of the trucking industry testified about the severe impacts the Proposed Amendments would have on their businesses. For example, members of the public explained that "the use of technology-forcing standards," such as the Proposed Amendments, "have caused trucking companies to re-evaluate their investment in new trucks that are more expensive, less reliable and require increased maintenance." (AR, A-011862.) He explained that "federal Phase 2 regulation is projected to increase the price of a new Class 8 truck by more than $12,000 and a new 53-foot box trailer by roughly $1,000." (*Id.*) Spread across the industry, these costs would be far greater than the $50 million threshold under the APA; indeed, CARB acknowledges the total costs of the federal Phase 2 program—which the Proposed Amendments are seeking to enforce and duplicate—would be $35 ***billion*** in 2017 dollars between 2018 and 2028, (AR at A-000109; AR at A-011782 [footnote omitted]), of which California's share would be substantial.

In response, CARB did not dispute the costs of the California and federal Phase 2 standards would exceed $50 million. Rather, CARB asserted that it need not evaluate most of the

costs associated with industry's compliance with the Phase 2 standards, CARB reasoned that the costs of the Proposed Amendments largely overlapped with the projected costs associated with the Federal Phase 2 standards, and that the costs associated with the Proposed Amendments were duplicative of the costs associated with the Federal Phase 2 standards. (AR at A-000105.) As such, CARB only considered the costs associated with the Proposed Amendments to be those instances where the Proposed Amendments differ from the Federal Phase 2 standards. (AR at A-000109 and E-000002.) And, on that basis, CARB suggested the costs were minimal, and less than $50 million/year. (*Id*.) As explained by CARB:

> If CA did not adopt its own Phase 2 regulation, manufacturers would still need to meet the federal Phase 2 standards to legally sell vehicles in the United States. The proposed CA Phase 2 program is intended to allow CARB to verify and enforce Phase 2 regulatory standards, thereby leading to higher levels of compliance. Hence, most of the costs and cost savings associated with Phase 2 in CA are due to the federal Phase 2 GHG regulation, and would occur regardless of the proposed CA Phase 2 GHG regulation.

(AR at E-000002.) CARB also explained in its Staff Report that the "the costs added by the proposed CA Phase 2 program, about $55 million (2017$) over 11 years, are minimal compared to the federal Phase 2 program costs of $35 billion (2017$) over the same timeframe from 2018 to 2028 (only about 0.2 percent of the total federal Phase 2 program's costs)." (AR at A-000109; AR at A-011782 [footnote omitted].) On this basis, CARB found the costs of the regulation would be less than $50 million, and declined to fulfill its obligation under the APA to prepare a SRIA. This was error.

There is no language in either the Code of Regulations or the Government Code that allows CARB to exclude costs associated with purportedly duplicative federal regulations. Rather, the implementing regulations require all adverse economic impacts, whether direct or indirect, and without regard to offsetting cost benefits. (See 1 Cal. Code Regs., § 2000, subds. (e), (g) [definitions of "major regulation" and "economic impact"].) Moreover, Section 11346.3 of the Government Code requires assessment of "the potential for adverse economic impact[s] on California business enterprises and individuals," (Govt. Code, § 11346.3, subd. (a)), and not merely those regulations that

are in some manner different from potential parallel federal regulations that could be implemented at some time in the future.

Moreover, Section 11346.3 focuses on the "***potential***" for a regulation to have "***adverse*** economic impacts . . . ." (Govt. Code, § 11346.3, subd. (a) [emphasis added].) The problem here, however, is that there is far more than a mere "potential" that the United States will not implement the Federal Phase 2 standards, as explained above. (See *supra*, § III.) If the United States does not implement the Federal Phase 2 standards, California would be the only entity implementing the portions of the Proposed Amendments that are duplicative of the Federal Phase 2 standards. As a result, California's share of the total cost of the Federal Phase 2 standards—$35 ***billion*** nationwide—would indisputably be borne by Californian individuals and businesses.[7] (AR at A-000109; AR at A-011782; AR at E-000002.) Because there is a "potential" that the cost of the Proposed Amendments would exceed $50 million/year for California business and individuals, CARB erred by declining to evaluate the Proposed Amendments as a "major regulation" and prepared a supporting SRIA, as opposed to an EIA. As a result, CARB violated Section 11346.3 of the Government Code.

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[7] Of course, due to the size of its economy and population, California share of the projected $35 billion in costs incurred over a 10-year period would be larger than most states. But even if California's share of the annual costs associated with the duplicative portions of the Proposed Amendments were divided *pro rata* between all 50 states, California's share would significantly exceed the $50 million/year threshold [$35,000,000,000 / 10 years / 50 states = $70,000,000/year]. (*Cf.* 1 Cal. Code Regs., § 2000(g) *with* AR at A-000109; AR at A-011782.)

## IV.

## CONCLUSION

For all of the foregoing reasons, as well as for those set forth at the hearing on this matter, Petitioner respectfully requests that this Court to grant its Petition for Writ of Mandate on its First, Second, and Third Causes of Action, and enter judgment in Petitioner's favor on the aforesaid causes of action.

Dated: April 10, 2020

WANGER JONES HELSLEY PC

By: _____

Timothy Jones
John P. Kinsey
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## PROOF OF SERVICE

My business address is 265 E. River Park Circle, Suite 310, Post Office Box 28340, Fresno, California 93720. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as **PETITIONER'S OPENING BRIEF** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

| | |
|---|---|
| Xavier Becerra, Attorney General of California<br>Gary E. Tavetian, Supervising Deputy Attorney General<br>John S. Sasaki, Deputy Attorney General<br>**CALIFORNIA DEPARTMENT OF JUSTICE**<br>**OFFICE OF THE ATTORNEY GENERAL**<br>300 S. Spring Street, Suite 1702<br>Los Angeles, CA 90013<br>E-mail: john.sasaki@doj.ca.gov<br>Phone: 213-269-6335 | Defendants/Respondents<br>California Air Resources Board and<br>Richard Corey |

_____ (BY MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.

_____ (BY PERSONAL SERVICE) I caused delivery of such envelope(s), by hand, to the office(s) of the addressee(s).

__X__ **(BY ELECTRONIC MAIL)** I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.

_____ (BY FACSIMILE) I caused the above-referenced document to be delivered by facsimile to the facsimile number(s) of the addressee(s).

__X__ **(BY OVERNIGHT COURIER)** I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

**EXECUTED ON April 10, 2020**, at Fresno, California.

__X__ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

BOrdway

**Belinda Ordway**