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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

MORNING STAR PACKING COMPANY; DALTON)
TRUCKING, INC.; CALIFORNIA CONSTRUCTION)
TRUCKING ASSOCIATION; MERIT OIL)
COMPANY; RON CINQUINI FARMING;)
CONSTRUCTION INDUSTRY AIR QUALITY)
COALITION; ROBINSON ENTERPRISES, INC.;)
LOGGERS ASSOCIATION OF NORTHERN)
CALIFORNIA, INC.; NORMAN R. "SKIP" BROWN;)
JOANNE BROWN; ROBERT McCLERNON; and)
NATIONAL TAX LIMITATION COMMITTEE,)

Petitioners and Plaintiffs,

v.

CALIFORNIA AIR RESOURCES BOARD, a state)
agency; MARY D. NICHOLS, in her official capacity)
as Chairman of the Board of the CALIFORNIA AIR)
RESOURCES BOARD; JAMES GOLDSTEIN, in his)
official capacity as Executive Officer of the)
CALIFORNIA AIR RESOURCES BOARD; and)
JOHN BALMES, M.D., SANDRA BERG, HECTOR)
DE LA TORRE, BARBARA RIORDAN, RON)
ROBERTS, PHIL SERNA, ALEXANDER SHERRIFS,)
M.D., DANIEL SPERLING, in their official capacities)
as Members of the CALIFORNIA AIR RESOURCES)
BOARD,)

Respondents and Defendants.

No. _____

**VERIFIED PETITION FOR
WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY RELIEF**
(Code of Civ. Proc. §§ 1060, 1085;
Gov't. Code § 11350)

INTRODUCTION

In this verified petition for writ of mandate and complaint for declaratory relief Petitioners and Plaintiffs seek the Court to declare invalid, enjoin, and order the Respondents and Defendants to rescind certain portions of a regulation of the California Air Resources Board (CARB) governing emissions of carbon dioxide and related gases. The regulation, Cap of Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, 17 C.C.R. §§ 95801-96023 (Cap and Trade Regulation), was promulgated by CARB under the California Global Warming Solutions Act of 2006, (Health & Safety Code § 38500, et seq.) (AB 32), which mandates that California entities reduce greenhouse gas emissions to 1990 levels by the year 2020. The specific portions of the Cap and Trade Regulation for which relief is sought are set forth in 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914. Petitioners and Plaintiffs have a clear, present and substantial legal right to require Respondents and Defendants to refrain from implementing and enforcing the unconstitutional and ultra vires regulatory provisions set forth in 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914. Petitioners and Plaintiffs have no other plain, speedy, or adequate legal remedy for the harm that will be caused by Respondents' and Defendants' implementation and enforcement of 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914.

The Cap and Trade Regulation prohibits Covered Entities (those who are subject to the emissions limitations) from emitting carbon dioxide and related gases without possessing emissions allowances created by CARB. Under the Cap and Trade Regulation, CARB distributes the allowances free of charge to certain Covered Entities and sells the remainder at auction, with the proceeds of auction sales to be used by the State of California for purposes that are not specifically identified in statute or regulation. Annual revenues to be generated by CARB at such auctions have been estimated between \$1 billion and \$14 billion, with a range between \$7 billion and \$75 billion to be generated over the seven-year emissions cap regulatory phase-in period from 2013 to 2020. California Legislative Analyst's Office, "Evaluating the Policy Trade-Offs in ARB's Cap-and-Trade Program," Feb. 9, 2012, at p. 13, figure 4.

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CARB has held two auctions to date at which it has collected over half a billion dollars, and CARB plans to hold auctions every three months for the next several years, as the state emissions cap decreases over time. California Air Resources Board Quarterly Auction Report 1, *available at* http://www.arb.ca.gov/cc/capandtrade/auction/november_2012/auction1_results_2012q4nov.pdf; California Air Resources Board Quarterly Auction Report 2, *available at* http://www.arb.ca.gov/cc/capandtrade/auction/february_2013/auction2_feb2013_summary_results_report.pdf (both web addresses last visited on Apr. 10, 2013.) The revenues CARB has collected and intends to collect by auctioning emission allowances constitute illegal taxes levied on Californians in violation of the California Constitution, while the auctions generating such revenues are not authorized by AB 32.

Through this action, Petitioners and Plaintiffs seek: (1) a **peremptory writ of mandate** ordering the Respondents and Defendants to vacate and rescind the revenue-generating auction provisions of the Cap and Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914, because such regulatory provisions are unconstitutional or not authorized by statute, or both, and (2) a **declaration** that such provisions of the Cap and Trade Regulation are not authorized by statute, or, to the extent they are authorized by statute, constitute illegal taxes under California Constitution, article III A, section 3 (Proposition 13 or, alternatively, Proposition 26, or both).

PARTIES

PETITIONERS AND PLAINTIFFS

1. Petitioner and Plaintiff **THE MORNING STAR PACKING COMPANY** (Morning Star), is a California processor of bulk tomato products, headquartered in Woodland, California. Morning Star's three tomato processing facilities emit carbon dioxide and are Covered Entities subject to the Cap and Trade Regulation. Morning Star participated in both of CARB's auctions held to date. At the first auction, Morning Star successfully bid for and received 12,000, 2013 Vintage Allowances, purchased at the price of \$10.09 (Ten Dollars and Nine Cents) each. In accordance with the Cap and Trade Regulation, Morning Star submitted payment for the allowances on November 30, 2012, in the amount of \$121,080 (One Hundred Twenty-One Thousand, Eighty Dollars). At the second auction, Morning Star successfully bid for and received

1 19,000, 2013 Vintage Allowances, purchased at the auction settlement price of \$13.62 (Thirteen
2 Dollars and Sixty-Two Cents) each. Morning Star submitted payment for such allowances on
3 February 26, 2013, in the amount of \$258,780 (Two Hundred Fifty-Eight Thousand, Seven
4 Hundred Eighty Dollars). To date, Morning Star has purchased 31,000, 2013 Vintage allowances,
5 at a total cost of \$379,860 (Three Hundred Seventy-Nine Thousand, Eight Hundred Sixty Dollars).
6 Morning Star intends to continue purchasing emissions allowances in order to comply with the Cap
7 and Trade Regulation. The purchase of allowances increases Morning Star's costs of doing
8 business.

9 2. Petitioner and Plaintiff **MERIT OIL COMPANY** (Merit Oil), is a third-generation
10 California family business whose operations include storing, transporting, and selling as a
11 wholesale jobber a variety of petroleum products, including gasoline, diesel fuels, solvents,
12 kerosene, and lubricants. Doing business through several California locations, Merit Oil's
13 operations emit carbon dioxide, and Merit Oil supplies end users with fuels and other petroleum
14 products that emit carbon dioxide. Merit Oil's costs of doing business have increased and will
15 continue to increase because: (a) its fuels suppliers are either Covered Entities under 17 C.C.R.
16 §§ 95811(d) and (f), and 95852(d) and (f), or purchasers from Covered Entities, and the fuels
17 suppliers pass on their increased costs attributable to the Cap and Trade Regulation to their
18 customers, including Merit Oil; and (b) as business costs of Covered Entities other than fuels
19 suppliers rise due to their purchase of allowances at the CARB auctions, they pass on such
20 increased costs through the supply chain to consumers of end use products, including Merit Oil.

21 3. Petitioner and Plaintiff **CALIFORNIA CONSTRUCTION TRUCKING**
22 **ASSOCIATION** (CCTA), is a nonprofit California trade association representing nearly 1,000
23 members who own and operate on-road and non-road vehicles, engines, and equipment, primarily
24 in connection with construction projects. Approximately 60% of CCTA's members are sole
25 proprietors of one-truck operations. CCTA acts on behalf of its members to improve business
26 conditions in California for independent truck owner-operators by representing their interests in
27 a variety of legislative, regulatory, and legal issues. CCTA members include entities that emit
28 carbon dioxide from their vehicles, engines, and equipment, and use fuels in their operations. The

1 business costs of CCTA's members have increased and will continue to increase because: (a) fuels
2 suppliers are Covered Entities under 17 C.C.R. §§ 95811(d) and (f), and 95852(d) and (f), who pass
3 on the costs of purchasing allowances through the supply chain to fuels consumers, including
4 members of CCTA; and (b) as business costs of Covered Entities other than fuels suppliers rise due
5 to their purchase of allowances at the CARB auctions, they pass on such increased costs through
6 the supply chain to consumers of end use products, including members of CCTA.

7 4. Petitioner and Plaintiff **DALTON TRUCKING, INC.** (Dalton Trucking), is a
8 California corporation in the business of operating and leasing loaders, dozers, blades, and water
9 trucks. In addition, Dalton Trucking performs specialized services in open top bulk transportation,
10 lowbed, general freight on flatbeds and vans, as well as rail and intermodal services. Dalton
11 Trucking's operations use fuel and emit carbon dioxide. Dalton Trucking's costs of doing business
12 have increased and will continue to increase because: (a) fuels suppliers are Covered Entities under
13 17 C.C.R. §§ 95811(d) and (f), and 95852(d) and (f), who pass on the costs of purchasing
14 allowances through the supply chain to fuels consumers, including Dalton Trucking; and (b) as
15 business costs of Covered Entities other than fuels suppliers rise due to their purchase of
16 allowances at the CARB auctions, they pass on such increased costs through the supply chain to
17 consumers of end use products, including Dalton Trucking.

18 5. Petitioner and Plaintiff **NORMAN R. "SKIP" BROWN**, is an individual who was
19 born, raised, and for his entire life has resided in California. He is married to Petitioner and
20 Plaintiff Joanne L. Brown. Mr. Brown is a California homeowner who has been paying California
21 utility bills since 1965, and has seen his utility bills increase over time. Mr. Brown understands
22 that the Cap and Trade Regulation will increase his utility costs because First Deliverers of
23 Electricity and Suppliers of Natural Gas are Covered Entities under 17 C.C.R. §§ 95811(b) and (c),
24 respectively, and such Covered Entities pass on the costs of purchasing allowances to their
25 customers, including the utility companies that supply electricity and natural gas to Mr. Brown's
26 California home. The utility companies pass on their increased costs to Mr. Brown, who is
27 required to pay higher utility bills as a consumer of electricity and natural gas. Because he is retired
28 and supplements his fixed income only by part-time consulting, Mr. Brown is concerned that the

1 cost increases may require him to move out of California. He does not wish to move out of the
2 state because California has been his home for his entire life, his children and grandchildren reside
3 in the State, and he wishes to remain near them. In addition, Mr. Brown owns and operates a motor
4 vehicle that uses fuel. Fuel suppliers, which are Covered Entities under 17 C.C.R. §§ 95811(d) and
5 (f), and 95852(d) and (f), pass on their costs of compliance with the Cap and Trade Rule through
6 the supply chain to fuels consumers like Mr. Brown, whose fuels costs are increasing and will
7 continue to increase as a result. Mr. Brown is also a California taxpayer, who has been paying
8 California taxes since 1961.

9 6. Petitioner and Plaintiff **JOANNE L. BROWN**, is an individual who has resided in
10 California since 1959. She is married to Norman R. "Skip" Brown. Mrs. Brown is a California
11 homeowner who has been paying California utility bills since 1968, and has seen her utility bills
12 increase over time. She understands that the Cap and Trade Regulation will increase her utility
13 costs because First Deliverers of Electricity and Suppliers of Natural Gas are Covered Entities
14 under 17 C.C.R. §§ 95811(b) and (c), respectively, and such Covered Entities pass on the costs of
15 purchasing allowances to their customers, including the utility companies that supply electricity
16 and natural gas to Mrs. Brown's California home. The utility companies pass on their increased
17 costs to Mrs. Brown, who is required to pay higher utility bills as a consumer of electricity and
18 natural gas. Because she and her husband live on a fixed income supplemented only by her
19 husband's part-time consulting activities, she is concerned that the utility rate increases may require
20 her to move out of California. She does not wish to move out of the state because California has
21 been her home for over 50 years, her children and grandchildren reside in the State, and she wishes
22 to remain near them. In addition, Mrs. Brown owns and operates a motor vehicle that uses fuel.
23 Fuel suppliers, which are Covered Entities under 17 C.C.R. §§ 95811(d) and (f), and 95852(d) and
24 (f), pass on their costs of compliance with the Cap and Trade Rule through the supply chain to fuel
25 consumers like Mrs. Brown, whose fuel costs are increasing and will continue to increase as a
26 result. Mrs. Brown is also a California taxpayer, who has been paying California taxes since 1963.

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1 7. Petitioner and Plaintiff **ROBERT MICHAEL McCLERNON**, is an individual
2 California taxpayer who was born, raised, and for his entire life has resided in California. He has
3 been paying California taxes since 1976. In addition, Mr. McClernon owns and operates a motor
4 vehicle that uses fuel. Fuel suppliers, which are Covered Entities under 17 C.C.R. §§ 95811(d) and
5 (f), and 95852(d) and (f), pass on their costs of compliance with the Cap and Trade Rule through
6 the supply chain to fuels consumers like Mr. McClernon, whose fuels costs are increasing and will
7 continue to increase as a result.

8 8. Petitioner and Plaintiff **LOGGERS ASSOCIATION OF NORTHERN**
9 **CALIFORNIA** (LANC), is a California nonprofit trade association whose mission is to support,
10 promote, and advocate for the logging industry in Northern California. LANC has 160 members,
11 many of whom are family logging businesses that have been involved in logging operations in
12 California for generations. LANC members use fuel and emit carbon dioxide in their operations.
13 The business costs of LANC's members have increased and will continue to increase because: (a)
14 fuels suppliers are Covered Entities under 17 C.C.R. §§ 95811(d) and (f), and 95852(d) and (f),
15 who pass on the costs of purchasing allowances through the supply chain to fuels consumers,
16 including members of LANC; and (b) as business costs of Covered Entities other than fuels
17 suppliers rise due to their purchase of allowances at the CARB auctions, they pass on such
18 increased costs through the supply chain to consumers of end use products, including members of
19 LANC.

20 9. Petitioner and Plaintiff **RON CINQUINI FARMING**, is a farming operation in
21 Chico, California, owned and operated by Ron Cinquini. Mr. Cinquini personally owns and farms
22 30 acres, farms another 125 acres under contract, manages his family's farm of 400 acres, and
23 performs custom farming work on another 600 acres. Ron Cinquini Farming's operations involve
24 growing and harvesting almonds and walnuts. The farming operations involve the use of vehicles,
25 engines, and equipment that emit carbon dioxide and use fuel. Ron Cinquini Farming's costs of
26 doing business have increased, and will continue to increase because: (a) fuels suppliers are
27 Covered Entities under 17 C.C.R. §§ 95811(d) and (f), and 95852(d) and (f), who pass on the costs
28 of purchasing allowances through the supply chain to fuels consumers like Ron Cinquini Farming;

1 and (b) as business costs of Covered Entities other than fuels suppliers rise due to their purchase
2 of allowances at the CARB auctions, they also pass on their increased costs through the supply
3 chain to consumers of end use products, including Ron Cinquini Farming.

4 10. Petitioner and Plaintiff **ROBINSON ENTERPRISES, INC.** (Robinson
5 Enterprises), is a California company headquartered in Nevada City, California. Robinson
6 Enterprises is engaged in several businesses, including logging, petroleum products storage and
7 transportation, construction services, heavy equipment fleet operation and management, and
8 trucking. Robinson Enterprises's operations emit carbon dioxide and use fuel. Robinson
9 Enterprises' costs of doing business have increased and will continue to increase because: (a) fuels
10 suppliers are Covered Entities under 17 C.C.R. §§ 95811(d) and (f), and 95852(d) and (f), who pass
11 on the costs of purchasing allowances through the supply chain to fuels sellers, distributors, and
12 consumers, including Robinson Enterprises; and (b) as business costs of Covered Entities other
13 than fuels suppliers rise due to their purchase of allowances at the CARB auctions, they pass on
14 such increased costs through the supply chain to consumers of end use products, including
15 Robinson Enterprises.

16 11. Petitioner and Plaintiff **CONSTRUCTION INDUSTRY AIR QUALITY**
17 **COALITION** (CIAQC), is a California nonprofit group founded in 1989 by four southern
18 California trade associations: Associated General Contractors of California, Building Industry
19 Association of Southern California, Engineering Contractors Association, and Southern California
20 Contractors Association. Since then, its membership has grown statewide to include the
21 Associated General Contractors America, San Diego Chapter, United Contractors and the
22 California Construction Trucking Association. CIAQC represents approximately 2,500 member
23 companies, and its members from these associations build much of the public and private
24 infrastructure and land development projects in California. CIAQC provides its members with
25 information concerning environmental regulatory issues, and provides regulatory agencies with
26 information regarding the impacts of environmental regulations on the construction industry. Many
27 of the business interests represented by CIAQC emit carbon dioxide and use fuel. The business
28 costs of CIAQC's members have increased and will continue to increase because: (a) fuels

1 suppliers are Covered Entities under 17 C.C.R. §§ 95811(d) and (f), and 95852(d) and (f), who pass
2 on the costs of purchasing allowances through the supply chain to fuels consumers, including
3 members of CIAQC; and (b) as business costs of Covered Entities other than fuels suppliers rise
4 due to their purchase of allowances at the CARB auctions, they pass on their increased costs
5 through the supply chain to consumers of end use products, including members of CIAQC.

6 12. Petitioner and Plaintiff **NATIONAL TAX LIMITATION COMMITTEE**
7 (NTLC), was established in 1975 to devise strategies to control the size of government. NTLC's
8 mission is to: (1) make structural changes in fiscal and governance practices at all levels of
9 government, and (2) limit and control taxes and spending so as to enhance the power and freedom
10 of individuals and their enterprises. As a taxpayer advocacy group, NTLC uses its resources to
11 participate in lawsuits and regulatory issues on a variety of tax-related issues, in order to protect
12 taxpayers from the imposition of unconstitutional or unauthorized taxes.

13 **RESPONDENTS AND DEFENDANTS**

14 13. Respondent and Defendant **CALIFORNIA AIR RESOURCES BOARD (CARB)**,
15 is an agency of state government. CARB is responsible for implementation of AB 32 and
16 promulgated the Cap and Trade Regulation.

17 14. Respondent and Defendant **MARY D. NICHOLS**, is Chairman of the California
18 Air Resources Board and is named in her official capacity.

19 15. Respondent and Defendant **JAMES GOLDSTENE**, is the Executive Officer of the
20 California Air Resources Board and is named in his official capacity.

21 16. Respondents and Defendants **JOHN R. BALMES, M.D., SANDRA BERG,**
22 **HECTOR DE LA TORRE, BARBARA RIORDAN, RON ROBERTS, ALEXANDER**
23 **SHERRIFS, M.D., DANIEL SPERLING, and PHIL SERNA**, are members of the California Air
24 Resources Board and are named in their official capacities.

25 **JURISDICTION AND VENUE**

26 17. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
27 sections 526, 1060, 1085, 187, and Government Code section 11350.

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18. Venue is proper in this Court pursuant to Code of Civil Procedure, section 395, because CARB's principal place of business is in Sacramento County.

GENERAL ALLEGATIONS

STATUTORY AND REGULATORY BACKGROUND

19. The California Legislature enacted AB 32 in 2006 to limit greenhouse gas emissions in California. Health and Safety Code §§ 38550, 38560.

20. AB 32 expresses the Legislature's intent that CARB implement its provisions "in a manner that minimizes costs and maximizes benefits for California's economy." *Id.* § 38501(h).

21. To cover costs of administration and implementation, AB 32 authorizes CARB to collect regulatory fees from Covered Entities in accordance with a "schedule of fees." *Id.* § 38597.

22. There is no authorization in AB 32, other than that described in paragraphs 20 and 21 hereof, for CARB to collect revenue of any kind from any entity for any other purpose.

23. The regulatory fees to be collected pursuant to Health and Safety Code Section 38597 "shall be deposited in the Air Pollution Control Fund and are available upon appropriation, by the Legislature, for carrying out the purposes of [AB 32]." *Id.* § 38597.

24. AB 32 does not create or authorize the creation of any fund, but provides that the pre-existing Air Pollution Control Fund "is continued in existence in the State Treasury." *Id.* § 43015.

25. In 2009, CARB promulgated a regulatory fee provision setting forth a "schedule of fees" authorized in Health and Safety Code § 38597. Cal. Code of Regs., 17 C.C.R. §§ 95200-95207.

26. CARB's costs of implementing AB 32 are intended to be, and are, covered by revenues generated by the regulatory fee provisions of 17 C.C.R. §§ 95200-95207.

27. In 2007 CARB established the statewide greenhouse gas emissions limit at 427-million metric tons of CO₂e, which is the maximum amount of carbon dioxide and related gases that may be emitted in the state by the compliance deadline of 2020. That amount equals statewide emissions of such gases in 1990. California Air Resources Board, Resolution 07-55, Dec. 6, 2007, available at http://www.arb.ca.gov/cc/inventory/1990level/arb_res07-55_1990-ghg-level.pdf (last

1 viewed Apr. 10, 2013). CARB determined that 174 million metric tons CO₂e in reductions were
2 necessary to meet the statewide greenhouse gas emissions limit. California Air Resources Board,
3 Resolution 08-47, available at [http://www.arb.ca.gov/cc/scopingplan/document/proposed_res_12_](http://www.arb.ca.gov/cc/scopingplan/document/proposed_res_12_11_08.pdf)
4 [11_08.pdf](http://www.arb.ca.gov/cc/scopingplan/document/proposed_res_12_11_08.pdf) (last viewed on Apr. 10, 2013).

5 28. CARB developed a menu of various greenhouse gas emission reduction measures,
6 and identified the amount of emission reductions expected from each measure. CARB Scoping
7 Plan Document, at p. 17. CARB determined that those listed measures result in reductions of
8 139.6-million metric tons, leaving an additional 34.4-million metric tons of reductions to be
9 achieved. CARB Scoping Plan, at pp. 18-24. CARB targeted those 34.4-million tons of reductions
10 to be achieved through a cap and trade program. *Id.* The Scoping Plan and its supporting
11 documents are available at [http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_](http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf)
12 [plan.pdf](http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf). (last viewed on Apr. 10, 2013.)

13 29. On December 13, 2011, CARB adopted the Cap and Trade Regulation, 17 C.C.R.
14 §§ 95810-96022, under which it established an annual aggregate descending statewide greenhouse
15 gas emissions limit for the years 2013-2020. 17 C.C.R. § 95841. Under the Cap and Trade
16 Regulation, Covered Entities must obtain emissions allowances in order to emit greenhouse gases,
17 and the allowances are created by CARB. *Id.* §§ 95820, 95850(b), 95855.

18 30. The Cap and Trade Regulation provides CARB with two methods for distributing
19 allowances. Approximately half are distributed by CARB without charge to Covered Entities
20 (those who are subject to greenhouse gas emissions limitations), while the other half are sold at
21 auction to the highest bidders. The auction provisions are set forth 17 C.C.R. §§ in 95830-95834,
22 95870, and 95910-95914. Both Covered Entities and those who are not Covered Entities are
23 permitted to bid at the auctions. *Id.* §§ 95814(a)(1), 95830(b)-(c), 95912(d)(2).

24 31. CARB will raise billions of dollars of revenues from the auctions, but AB 32 does
25 not authorize such revenue collection by CARB.

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PROPOSITION 13

32. In June, 1978, California voters added article XIII A, the “People’s Initiative to Limit Property Taxation,” commonly known as the Jarvis-Gann Property Tax Initiative or Proposition 13 (art. XIII A), to the state constitution.

33. The initiative’s purpose was to assure effective real property tax relief by means of an “interlocking ‘package’” consisting of a real property tax rate limitation (art. XIII A, § 1), a real property assessment limitation (art. XIII A, § 2), a restriction on state taxes (art. XIII A, § 3), and a restriction on local taxes (art. XIII A, § 4).

34. In relevant part, section 3 of article XIII A restricts the enactment of changes in state taxes, as follows: “From and after the effective date of this article, any changes in State taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an Act passed by not less than two-thirds of all members . . . of the Legislature.” *Id.* § 3.

35. AB 32 was *not* passed by at least “two-thirds of all members . . . of the Legislature.” *Id.*

36. Any revenues generated by CARB under the Cap and Trade Regulation that are not regulatory fees under AB 32 constitute illegal taxes under Proposition 13.

PROPOSITION 26

37. In November, 2010, California voters approved Proposition 26, the Supermajority Vote to Pass New Taxes and Fees Act, which in relevant part amended the provisions of Proposition 13 that were designated as article XIII A, section 3, of the California Constitution.

38. Proposition 13 applies to legislative enactments before the effective date of Proposition 26, while Proposition 26 applies to enactments after its effective date. Cal. Const. art. XIII A, section 3.

39. In passing Proposition 26, the people of the State of California found and declared the following:

a. “Since the people overwhelmingly approved Proposition 13 in 1978, the Constitution of the State of California has required that increases in state taxes be adopted by not

1 less than two-thirds of the members elected to each house of the Legislature.” Voter Information
2 Guide, Gen. Elec. (Nov. 2, 2010) text of Prop. 26, § 1(a), at p. 114.

3 b. “Despite these limitations, California taxes have continued to escalate.
4 Rates for state personal income taxes, state and local sales and use taxes, and a myriad of state and
5 local business taxes are at all-time highs. Californians are taxed at one of the highest levels of any
6 state in the nation.” Voter Information Guide, Gen. Elec. (Nov. 2, 2010) text of Prop. 26, § 1(c),
7 at p. 114.

8 c. “This escalation in taxation does not account for the recent phenomenon
9 whereby the Legislature and local governments have disguised new taxes as ‘fees’ in order to
10 extract even more revenue from California taxpayers without having to abide by these
11 constitutional voting requirements. Fees couched as ‘regulatory’ but which exceed the reasonable
12 costs of actual regulation or are simply imposed to raise revenue for a new program and are not part
13 of any licensing or permitting program are actually taxes and should be subject to the limitations
14 applicable to the imposition of taxes.” Voter Information Guide, Gen. Elec. (Nov. 2, 2010) text
15 of Prop. 26, § 1(e), at p. 114.

16 d. “In order to ensure the effectiveness of these constitutional limitations,
17 [Proposition 26] defines a ‘tax’ for state and local purposes so that neither the Legislature nor local
18 governments can circumvent these restrictions on increasing taxes by simply defining new or
19 expanded taxes as ‘fees.’” Voter Information Guide, Gen. Elec. (Nov. 2, 2010) text of Prop. 26,
20 § 1(f), at p. 114.

21 40. In relevant part, Proposition 26 amended section 3 of article XIII A of the California
22 Constitution to read:

23 a. “Any change in state statute which results in any taxpayer paying a higher
24 tax must be imposed by an act passed by not less than two-thirds of all members elected to each
25 of the two houses of the Legislature.” Cal. Const., art. XIII A § 3(a).

26 b. “As used in [Section 3 of article XIII A of the California Constitution], ‘tax’
27 means any levy, charge, or exaction of any kind imposed by the State.” Cal. Const., art. XIII A
28 § 3(b).

1 c. "The State bears the burden of proving by a preponderance of the evidence
2 that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover
3 the reasonable costs of the governmental activity, and that the manner in which those costs are
4 allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits
5 received from, the governmental activity." Cal. Const., art. XIII A, section 3(d). (Emphasis added.)

6 **THE 2012 LEGISLATION**

7 41. No provision in AB 32 directs CARB to collect billions of dollars of revenues
8 pursuant to an auction of greenhouse gas emission allowances.

9 42. AB 32 is silent with regard to what, if anything, is to be done with any such
10 revenues.

11 43. In 2012, the California Legislature enacted four bills which together purport to
12 allocate the revenues generated at auction under CARB's Cap and Trade Regulation.

13 44. **Senate Bill 1018 (SB 1018)** was signed into law by Governor Edmund G. Brown,
14 Jr., on June 27, 2012.

15 45. SB 1018 provides that, except for fines and penalties, all moneys collected by
16 CARB from the auction or sale of allowances "shall be deposited in the Greenhouse Gas Reduction
17 Fund and available for appropriation by the Legislature." Gov't Code § 16428.8(b).

18 46. SB 1018 provides that the State Controller may use the moneys in the Greenhouse
19 Gas Reduction Fund for cash flow loans to the General Fund. Gov't Code § 16428.8(d).

20 47. The Legislature passed SB 1018 by a simple majority vote and *not* by a two-thirds
21 majority vote.

22 48. **Assembly Bill 1532 (AB 1532)** was signed into law by Governor Brown on
23 September 30, 2012.

24 49. AB 1532 provides that the uses of funds to be deposited in the Greenhouse Gas
25 Reduction Fund may be determined after the revenues have been collected. Health & Safety Code
26 §§ 39712(a)-(c), 39716(a)-(c), 39718(a)-(b).

27 50. The Legislature passed AB 1532 by a simple majority vote and *not* by a two-thirds
28 majority vote.

51. AB 1532 was not to become operative unless Senate Bill 535 of the 2011–2012 Regular Session was enacted.

52. **Senate Bill 535 (SB 535)** was signed into law by Governor Brown on September 30, 2012.

53. SB 535 directs that a minimum of 25% of CARB’s auction revenues must be spent *for the benefit* of certain “disadvantaged communities” described in Health and Safety Code § 39713(a).

54. SB 535 requires that a minimum of 10% of the available moneys in the Greenhouse Gas Reduction Fund must be allocated to *projects located within* certain “disadvantaged communities” described in SB 535. Health and Safety Code § 39713(b).

55. The Legislature passed SB 535 by a simple majority and *not* by a two-thirds majority.

56. **AB 1463** was signed into law by Governor Brown on June 27, 2012.

57. AB 1463 provides that, notwithstanding any other provision of law, the Director of Finance may allocate or otherwise use an amount of at least \$500,000,000 (Five Hundred Million Dollars) from moneys derived from the sale of greenhouse gas emission allowances, which are deposited to the credit of the Greenhouse Gas Reduction Fund, and make commensurate reductions to General Fund expenditure authority. 2012 Stats., Ch. 21, § 15.11(a).

58. The Legislature passed AB 1463 by a simple majority and *not* by a two-thirds majority.

FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF
BY ALL PETITIONERS AND PLAINTIFFS AGAINST
ALL RESPONDENTS AND DEFENDANTS
(Code of Civil Procedure § 1060, Government Code § 11350)
(Unauthorized Tax In Violation of Article XIII A, Section 3,
of the California Constitution—Proposition 13)

59. Petitioners and Plaintiffs reallege and incorporate by reference, as though fully set forth herein, the allegations contained in Paragraphs 1 through 58 inclusive, of this Petition and Complaint.

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60. At the time of enactment of AB 32, article XIII A, section 3, of the California Constitution (Proposition 13) required at least two-thirds approval by both chambers of the Legislature for any new or increased state taxes generating new or increased state revenues.

61. The auction provisions of the Cap and Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914, increase state revenues by requiring Covered Entities to pay the state for allowances to emit carbon dioxide and related gases, but such revenue-raising was not approved by at least a two-thirds vote in the Legislature.

62. An actual controversy exists between the parties in that Petitioners and Plaintiffs contend that the revenues generated at the auctions established by the Cap and Trade Regulation constitute taxes that were not enacted constitutionally, while Respondents and Defendants contend that the revenues generated at the auctions are not taxes.

63. Petitioners and Plaintiffs seek a declaration that the revenues generated by the auctions under the Cap and Trade Regulation constitute illegal taxes promulgated by Respondents and Defendants in violation of the California Constitution, article XIII A, section 3 (Proposition 13), and that 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914 are invalid and of no effect.

SECOND CAUSE OF ACTION FOR WRIT OF MANDATE
BY ALL PETITIONERS AND PLAINTIFFS AGAINST
ALL RESPONDENTS AND DEFENDANTS
(Code of Civil Procedure § 1085)
(Unauthorized Tax In Violation of Article XIII A, Section 3,
of the California Constitution—Proposition 13)

64. Petitioners and Plaintiffs reallege and incorporate by reference, as though fully set forth herein, the allegations contained in Paragraphs 1 through 63 inclusive, of this Petition and Complaint.

65. Respondents and Defendants are responsible for promulgating, implementing, and enforcing the provisions of 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914.

66. Petitioners and Plaintiffs have a clear, present, and substantial legal right to have the Respondents and Defendants refrain from implementing and enforcing the auction and revenue generating provisions of the Cap and Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and

1 95910-95914 to impose a tax that was not established constitutionally under California
2 Constitution, article XIII A (Proposition 13).

3 67. Petitioners and Plaintiffs have no plain, speedy, or adequate remedy at law or
4 otherwise for the harm that will be caused by Respondents' and Defendants' enforcement of the
5 unconstitutional tax pursuant to 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914.

6 68. Petitioners and Plaintiffs seek an order mandating Respondents and Defendants to:
7 (a) comply with the California Constitution's requirement that no tax shall be imposed absent
8 approval by two-thirds vote of the legislature, (b) refrain from enforcing and implementing, and
9 collecting revenues under, the Cap and Trade Regulation so as to impose a tax under the auction
10 provisions, 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914 that was not established
11 constitutionally under California Constitution, article XIII A (Proposition 13), and (c) vacate and
12 rescind 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914.

13 **THIRD CAUSE OF ACTION FOR DECLARATORY RELIEF**
14 **BY ALL PETITIONERS AND PLAINTIFFS AGAINST**
15 **ALL RESPONDENTS AND DEFENDANTS**
16 **(Code of Civil Procedure § 1060)**
17 **(Violation of AB 32, Statutes 2006, chapter 488;**
18 **Health & Safety Code § 38500, et seq.)**

19 69. Petitioners and Plaintiffs reallege and incorporate by reference as though fully set
20 forth herein the allegations of paragraphs 1 through 68.

21 70. Respondents and Defendants are not authorized by AB 32 to generate billions of
22 dollars of revenue for the State of California by selling allowances at auction pursuant to the Cap
23 and Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914.

24 71. An actual controversy exists between the parties in that Petitioners and Plaintiffs
25 contend that the revenues generated at the auctions established by the Cap and Trade Regulation
26 are unauthorized by AB 32, while Respondents and Defendants contend that the revenues and the
27 auctions are authorized by AB 32.

28 72. Petitioners and Plaintiffs seek a declaration that the generation of revenues for the
state in the manner set forth in the auction provisions of the Cap and Trade Regulation, 17 C.C.R.
§§ 95830-95834, 95870, and 95910-95914, is not authorized by AB 32, that Respondents and

1 Defendants exceeded their authority in promulgating such regulatory requirements, and that such
2 regulatory requirements are illegal and of no effect.

3 **FOURTH CAUSE OF ACTION FOR WRIT OF MANDATE**
4 **BY ALL PETITIONERS AND PLAINTIFFS AGAINST**
5 **ALL RESPONDENTS AND DEFENDANTS**
6 **(Code of Civil Procedure § 1085)**
7 **(Violation of AB 32, Statutes 2006, chapter 488;**
8 **Health & Safety Code § 38500, et seq.)**

7 73. Petitioners and Plaintiffs reallege and incorporate by reference as though fully set
8 forth herein the allegations of paragraphs 1 through 72.

9 74. Respondents and Defendants are not authorized by AB 32 to generate billions of
10 dollars of revenues for the State of California by selling emissions allowances at auction pursuant
11 to the auction provisions of the Cap and Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and
12 95910-95914.

13 75. Respondents and Defendants are responsible for promulgating, implementing, and
14 enforcing 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914.

15 76. Petitioners and Plaintiffs have a clear, present, and substantial legal right to have
16 the Respondents and Defendants refrain from enforcing, implementing, and collecting revenues
17 under 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914 to impose an unauthorized and illegal
18 auction scheme.

19 77. Petitioners and Plaintiffs have no plain, speedy, or adequate remedy at law or
20 otherwise for the harm that will be caused by Respondents' and Defendants' implementation,
21 enforcement, and collection of revenues pursuant to the illegal auction provisions of 17 C.C.R.
22 §§ 95830-95834, 95870, and 95910-95914.

23 78. Petitioners and Plaintiffs seek an order mandating Respondents and Defendants to:
24 (a) not exceed their authority under AB 32, (b) vacate and rescind 17 C.C.R. §§ 95830-95834,
25 95870, and 95910-95914, (c) refrain from conducting any further auctions pursuant thereto, and
26 (d) refrain from collecting any further revenues pursuant thereto.

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FIFTH CAUSE OF ACTION FOR DECLARATORY RELIEF
BY ALL PETITIONERS AND PLAINTIFFS AGAINST
ALL RESPONDENTS AND DEFENDANTS
(Code of Civil Procedure § 1060, Government Code § 11350)
(AB 32 Violates California Constitution, Article XIII A, Section 3; Proposition 13)

79. Petitioners and Plaintiffs incorporate by reference, as though fully set forth herein, the allegations contained in Paragraphs 1 through 78 inclusive, of this Petition and Complaint.

80. An actual controversy exists between the parties in that Petitioners and Plaintiffs contend that AB 32 cannot authorize Respondents and Defendants to generate billions of dollars of revenues at auctions established by the Cap and Trade Regulation consistent with California Constitution, article XIII A, section 3 (Proposition 13), while Respondents and Defendants contend that, in authorizing the generation of such revenues, AB 32 is consistent with California Constitution, article XIII A, section 3 (Proposition 13).

81. Petitioners and Plaintiffs seek a declaration that AB 32 is unconstitutional and unenforceable to the extent it authorizes Respondents and Defendants to impose a tax that was not established constitutionally under California Constitution, article XIII A, section 3 (Proposition 13).

SIXTH CAUSE OF ACTION FOR WRIT OF MANDATE
BY ALL PETITIONERS AND PLAINTIFFS AGAINST
ALL RESPONDENTS AND DEFENDANTS
(Code of Civil Procedure Section 1085)
(AB 32 Violates California Constitution Article XIII A, Section 3; Proposition 13)

82. Petitioners and Plaintiffs incorporate by reference, as though fully set forth herein, the allegations contained in Paragraphs 1 through 81 inclusive, of this Petition and Complaint.

83. Respondents and Defendants are responsible for promulgating, implementing, and enforcing 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914.

84. Petitioners and Plaintiffs have a clear, present, and substantial legal right to require Respondents and Defendants to refrain from enforcing AB 32 to the extent it imposes or authorizes CARB to impose a tax that was not enacted constitutionally under California Constitution, article XIII A, section 3 (Proposition 13).

85. Petitioners and Plaintiffs have no plain, speedy, or adequate remedy at law or otherwise for the harm that will be caused by Respondents' and Defendants' implementation and

1 enforcement of AB 32 in a manner that violates article XIII A, section 3, of the California
2 Constitution (Proposition 13).

3 86. Petitioners and Plaintiffs seek an order mandating Respondents and Defendants to:
4 (a) comply with the California Constitution's requirement that no tax shall be imposed absent
5 approval by two-thirds vote of the Legislature, (b) vacate and rescind 17 C.C.R. §§ 95830-95834,
6 95870, and 95910-95914, and (c) refrain from implementing any part of AB 32 in such a manner
7 as to impose a tax that was not established constitutionally under California Constitution, article
8 XIII A, section 3 (Proposition 13).

9 **SEVENTH CAUSE OF ACTION FOR DECLARATORY RELIEF**
10 **BY ALL PETITIONERS AND PLAINTIFFS AGAINST**
11 **ALL RESPONDENTS AND DEFENDANTS**
12 **(Code of Civil Procedure § 1060, Government Code § 11350)**
13 **(Unauthorized Tax in Violation of California Constitution, Article XIII A,**
14 **Section 3, as Amended in 2010—Proposition 26)**

13 87. Petitioners and Plaintiffs incorporate by reference, as though fully set forth herein,
14 the allegations contained in Paragraphs 1 through 86 inclusive, of this Complaint and Petition.

15 88. The Legislature failed to pass SB 535, SB 1018, AB 1463, and AB 1532, or any of
16 them, by at least a two-thirds majority vote.

17 89. To the extent SB 535, SB 1018, AB 1463, and AB 1532, or any combination of two
18 or more such enactments authorize, ratify, or otherwise adopt the auction and revenue generating
19 provisions of 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914, such enactments are
20 inconsistent with article XIII A, section 3(b), of the California Constitution, as amended in 2010
21 (Proposition 26).

22 90. An actual controversy exists between the parties in that Petitioners and Plaintiffs
23 contend that the revenues generated at the auctions established by the Cap and Trade Regulation,
24 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914, constitute taxes that were not enacted
25 constitutionally and that the auctions are invalid, while Respondents and Defendants contend that
26 the revenues are not unconstitutional taxes and that the auctions are valid.

27 91. Petitioners and Plaintiffs seek a declaration that SB 535, SB 1018, AB 1463, and
28 AB 1532, are unconstitutional and unenforceable to the extent such enactments authorize, ratify,

1 or otherwise adopt the imposition by Respondents and Defendants of a tax that was not established
2 constitutionally under California Constitution, article XIII A, section 3 (Proposition 26).

3 **EIGHTH CAUSE OF ACTION FOR WRIT OF MANDATE**
4 **BY ALL PETITIONERS AND PLAINTIFFS AGAINST**
5 **ALL RESPONDENTS AND DEFENDANTS**
6 **(Code of Civil Procedure Section 1085)**
7 **(Unauthorized Tax in Violation of California Constitution, Article XIII A,**
8 **Section 3, as Amended in 2010—Proposition 26)**

9 92. Petitioners and Plaintiffs incorporate by reference, as though fully set forth herein,
10 the allegations contained in Paragraphs 1 through 91 inclusive, of this Complaint and Petition.

11 93. Respondents and Defendants are responsible for promulgating, implementing, and
12 enforcing 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914.

13 94. Petitioners and Plaintiffs have a clear, present, and substantial legal right to have
14 the Respondents and Defendants refrain from enforcing the auction provisions of the Cap and
15 Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914, to impose a tax that was
16 not established constitutionally under California Constitution, article XIII A, section 3, as amended
17 in 2010 (Proposition 26).

18 95. Petitioners and Plaintiffs have no plain, speedy, or adequate remedy at law or
19 otherwise for the harm that will be caused by Respondents' and Defendants' enforcement of the
20 unconstitutional tax pursuant to 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914.

21 96. Petitioners and Plaintiffs seek an order mandating Respondents and Defendants to:
22 (a) comply with the California Constitution's requirement that no tax shall be imposed absent
23 approval by two-thirds vote of the Legislature, (b) vacate and rescind 17 C.C.R. §§ 95830-95834,
24 95870, and 95910-95914, and (c) refrain from implementing SB 535, SB 1018, AB 1463, and
25 AB 1532, or any parts thereof, in such a manner as to impose a tax that was not established
26 constitutionally under California Constitution, article XIII A, section 3, as amended in 2010
27 (Proposition 26).

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PRAYER FOR RELIEF

WHEREFORE, Petitioners and Plaintiffs pray for the following relief:

1. For a declaration that the auction and revenue generating provisions of the Cap and Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914, are unconstitutional and invalid under California Constitution, article XIII A, section 3 (Proposition 13 or, alternatively, Proposition 26, or both);

2. For a peremptory writ of mandate ordering CARB to vacate and rescind, and not to implement or enforce, the unconstitutional auction and revenue generating provisions of the Cap and Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914, in violation of California Constitution, article XIII A, section 3 (Proposition 13 or, alternatively, Proposition 26, or both);

3. For a declaration that the auction and revenue generating provisions of the Cap and Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914, are not authorized by AB 32 and are invalid and of no effect or, alternatively, if AB 32 authorizes such auction and revenue generating provisions of the Cap and Trade Regulation, for a declaration that AB 32, Health & Safety Code, § 38500, et seq., itself is unconstitutional and invalid to the extent it authorizes the imposition of an unconstitutional tax in violation of California Constitution, article XIII A, section 3 (Proposition 13).

4. For a peremptory writ of mandate ordering CARB to vacate and rescind, and not to implement or enforce, the auction and revenue generating provisions of the Cap and Trade Regulation, 17 C.C.R. §§ 95830-95834, 95870, and 95910-95914, which are not authorized by AB 32 or, alternatively, if AB 32 authorizes such provisions of the Cap and Trade Regulation, for a peremptory writ of mandate directing CARB to refrain from implementing any portion of AB 32, Health & Safety Code § 38500, et seq., that authorizes such auction and revenue generating provisions of the Cap and Trade Regulation in violation of California Constitution, article XIII A, section 3 (Proposition 13);

5. For costs of suit;

6. For reasonable attorneys' fees; and

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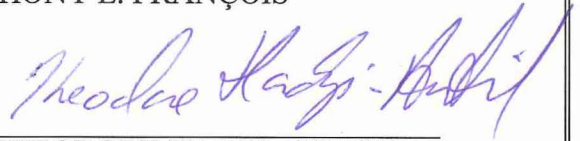
1 7. For such other relief as the Court deems just and proper.

2 DATED: April 16, 2013.

3 Respectfully submitted,

4 R.S. RADFORD
5 THEODORE HADZI-ANTICH
6 RALPH W. KASARDA
7 ANTHONY L. FRANÇOIS

8 By


THEODORE HADZI-ANTICH

9 Attorneys for Petitioners and Plaintiffs
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