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9
10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 CALIFORNIA TRUCKING
14 ASSOCIATION,
15 Plaintiff,
16 and
17 AIRLINES FOR AMERICA,
18 Intervenor-Applicant
19 v.

20 SOUTH COAST AIR QUALITY
21 MANAGEMENT DISTRICT, et al.,
22 Defendants,

23 and
24 STATE OF CALIFORNIA and
25 CALIFORNIA AIR RESOURCES
26 BOARD,
27 State Intervenor-Applicants;

28 and
EAST YARD COMMUNITIES FOR
ENVIRONMENTAL JUSTICE, et al.,
Proposed Defendant-Intervenors

Civ. No. 2:21-cv-6341-JAK-MRW

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EAST
YARD COMMUNITIES FOR
ENVIRONMENTAL JUSTICE, ET AL.’S
[NGOs] UNOPPOSED MOTION TO
INTERVENE**

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1 **INTRODUCTION**

2 The South Coast Air Basin (“South Coast”), one of the most polluted regions in
3 the country, is home to over 32,000 warehouses which primarily service two of the
4 busiest container ports in the nation, Ports of Los Angeles and Long Beach. These
5 warehouses, which are disproportionately sited near low-income communities and
6 communities of color, are responsible for a significant amount of air pollution both
7 locally and regionally. Recognizing the growing threat that warehouse pollution poses
8 to its ability to meet obligations under federal and state laws to achieve clean air, the
9 South Coast Air Quality Management District through its Governing Board
10 (collectively, “District”) adopted Rule 2305 (“Warehouse Rule”) on May 7, 2021 to
11 reduce emissions from the warehouse industry and alleviate the disproportionate
12 pollution burdens placed on communities living adjacent to warehouses. The
13 Warehouse Rule, which requires the highly polluting warehouse industry to limit its
14 environmental impacts in the region, provides residents in the South Coast, including
15 those most impacted by warehouse pollution, with vital clean air protections under
16 state and federal law to ensure the air is cleaner and safer to breathe.

17 Proposed Defendant-Intervenors East Yard Communities for Environmental
18 Justice, People’s Collective for Environmental Justice, Sierra Club, Communities for a
19 Better Environment, Natural Resources Defense Council, and Environmental Defense
20 Fund (collectively, “Proposed Intervenors”) are unincorporated associations and non-
21 profit corporations with a history of advocating for the health and environment of
22 communities in the South Coast. Because pollution associated with the warehouse
23 industry is harmful to human health and the natural environment, Proposed
24 Intervenors supported the adoption of the Warehouse Rule. They seek to become
25 parties to this action to protect their significant interests in the implementation of the
26 Warehouse Rule, which requires the under-regulated warehouse industry to curb
27 harmful emissions from warehouse facilities with the greatest pollution impacts.
28 Proposed Intervenors have a direct and immediate interest in the outcome of this

1 litigation, as many of their members reside in areas of the South Coast most impacted
2 by the warehouse industry and breathe some of the dirtiest air in the nation.

3 Proposed Intervenors therefore respectfully request that this Court grant them
4 this unopposed leave to intervene as of right, or in the alternative, permissively, in the
5 above-captioned case.

6 **BACKGROUND**

7 **I. Air Pollution in the South Coast**

8 Although Congress enacted the federal Clean Air Act more than a half century
9 ago to ensure that the public can breathe clean, healthy air, the South Coast region has
10 consistently failed to meet federal and state ozone and particulate matter standards.
11 More than 17 million people—about half the population of the state of California—
12 live within the region, which consists of all of Orange County and the urban portions
13 of Los Angeles, Riverside, and San Bernardino counties, and suffer from unhealthy
14 air. The health harms from air pollution disproportionately fall on low-income
15 communities and communities of color in the South Coast due to the number of
16 industrial facilities, including warehouses, sited in these communities.

17 Starting with the widespread emergence of containerized shipping in the 1950s
18 and 1960s, container ports such as the Ports of Los Angeles and Long Beach have
19 experienced significant growth in cargo handling. Declaration of Adriano Martinez in
20 Support of Motion to Intervene (“Martinez Decl.”), ¶ 6. To accommodate this growth,
21 massive warehouse operations have sprung up across the region, both within the urban
22 core and on the outskirts of the metropolitan region. These warehouse facilities are
23 overwhelmingly sited in low-income communities and communities of color, with
24 nearly 70 percent of warehouse-adjacent communities in the South Coast being made
25 up of people of color and nearly 50 percent experiencing poverty. Martinez Decl., Ex.
26 1 (Final Socioeconomic Impact Assessment), at ES-2. Communities living within a
27 half mile of a warehouse shoulder disproportionate harms, ranking in the 85th
28 percentile of pollution burden statewide, in stark contrast to the rest of the

1 region in the 67th percentile. *Id.*; Martinez Decl., Ex. 2 (Final Staff Report), at 16.

2 Notwithstanding continuous improvements in the logistics industry and the
3 emergence of increasingly diversified ways to move cargo, the rapidly growing and
4 highly profitable warehouse and logistics industry is presently responsible for over
5 *half* of all nitrogen oxide (“NO_x”) emissions contributing to ozone in the South Coast
6 and is one of the top sources of pollution in the region. Martinez Decl., Ex. 2 (Final
7 Staff Report), at 14. A significant percentage of diesel particulate matter emissions
8 associated with warehouses stem from trucks traveling to and from warehouses daily.
9 Reductions of both NO_x and diesel particulate matter (“DPM”)—the particles found
10 in the exhaust of diesel-fueled internal combustion engines—are critical for the South
11 Coast to meet federal and state air quality standards so that residents in the region can
12 breathe safe, clean air. *Id.* In four separate community emission reduction plans,
13 environmental justice communities in the South Coast identified air pollution impacts
14 from warehouses as a concern and requested the development of a warehouse indirect
15 source rule. *Id.* at 9-10.

16 The South Coast has been classified by the U.S. Environmental Protection
17 Agency (“EPA”) as an extreme nonattainment area for all federal ozone pollution
18 standards. 40 C.F.R. § 81.305. The region is also in nonattainment of California’s
19 ozone standards. Ozone, commonly referred to as smog, is formed by the reaction of
20 volatile organic compounds (“VOC”) and NO_x in the atmosphere in the presence of
21 sunlight. 69 Fed. Reg. 23,858, 23,859 (April 30, 2004). VOC and NO_x are emitted by
22 many types of pollution sources, including cars and trucks. *Id.* Short- and long-term
23 exposure to ozone is a significant health concern, particularly for children and people
24 with asthma and other respiratory diseases, and it is associated with school absences,
25 reduced activity and productivity, and increased hospital and emergency room visits
26 for respiratory causes. *Id.* As a region failing to attain national air quality standards,
27 the federal Clean Air Act requires South Coast to either achieve attainment for ozone
28 by 2023, 2031, and 2038, or potentially face sanctions. The California Clean Air Act

1 also mandates that the South Coast, as a nonattainment area, devise a plan to meet
2 state ambient air quality standards “by the earliest practicable date.” Cal. Health &
3 Safety Code § 40913.

4 The South Coast also violates air quality standards for fine particulate matter.
5 Particulate matter describes a broad class of chemically and physically diverse
6 substances existing as distinct solid or liquid particles that become suspended in the
7 ambient air. *See* 62 Fed. Reg. 38,652, 38,653 (July 18, 1997). When these particles
8 bypass the body’s natural defenses, they can be inhaled into the lungs and even pass
9 into the bloodstream. Particles with a diameter of 2.5 micrometers or smaller
10 (“PM2.5”) come primarily from combustion activities. 71 Fed. Reg. 61,144, 61,146
11 (Oct. 17, 2006). PM2.5 exposure can cause aggravation of respiratory and
12 cardiovascular diseases, lung disease, asthma attacks, heart attacks, and premature
13 death. *See* 70 Fed. Reg. 65,984, 65,988 and 65,991 (Nov. 1, 2005). Individuals with
14 heart and lung disease, the elderly, and children are most sensitive to PM2.5 exposure.
15 *Id.* at 65988. The South Coast has been designated as a moderate nonattainment area
16 for the 1997 federal PM2.5 standards and a serious nonattainment area for the 2006
17 and 2012 federal PM2.5 standards. 40 CFR § 81.305. In September 2020, EPA
18 determined that the South Coast had failed to attain the 2006 24-hour PM2.5 national
19 ambient air quality standard by the attainment date for serious nonattainment areas. 85
20 Fed. Reg. 57,733 (Sep. 16, 2020). The region is also in nonattainment of California’s
21 PM2.5 standard. Martinez Decl., Ex. 3 (Final 2016 AQMP), at 2-10.

22 Warehouse-adjacent communities are subject to greater health risks from
23 exposure to fine particulate matter and diesel particulate matter. For example,
24 communities living within a half mile of a warehouse experience asthma and heart
25 attacks at significantly higher rates than the rest of the region. Martinez Decl., Ex. 1,
26 (Final Socioeconomic Impact Assessment) at ES-2. The air pollution and resulting
27 health impacts on communities have only worsened during the COVID-19 pandemic,
28 as the warehouse industry has seen exponential growth in the South Coast due to

1 consumers’ increased reliance on e-commerce. Declaration of Jamila Cervantes
2 Aceves in Support of Motion to Intervene (“Aceves Decl.”), ¶¶ 14, 18; Declaration of
3 Taylor Thomas in Support of Motion to Intervene (“Thomas Decl.”), ¶ 12;
4 Declaration of Yassamin Kavezade in Support of Motion to Intervene (“Kavezade
5 Decl.”), ¶¶ 11-12; Declaration of Andrea Vidaurre in Support of Motion to Intervene
6 (“Vidaurre Decl.”), ¶ 12.

7 **II. Indirect Source Review and the Warehouse Rule**

8 The federal Clean Air Act, 42 U.S.C. §§ 7401-7671q, “divides regulatory
9 authority between the states and the federal government.” *Nat’l Ass’n of Home*
10 *Builders v. San Joaquin Valley Unified Air Pollution Control Dist.*, 627 F.3d 730, 733
11 (9th Cir. 2010). Under the Act, the United States Environmental Protection Agency
12 (“EPA”) sets national ambient air quality standards. The states meet those standards
13 by adopting and implementing state implementation plans (“SIP”) that are submitted
14 to EPA for approval. The Act states that a SIP may include “any indirect source
15 review program,” leaving the states to decide whether and how to regulate indirect
16 sources. 42 U.S.C. § 7410(a)(5)(A)(i). The Act defines an indirect source as “a
17 facility, building, structure, installation, real property, road, or highway which attracts,
18 or may attract, mobile sources of pollution.” *Id.* § 7410(a)(5)(C). An indirect source
19 review program is “the facility-by-facility review of indirect sources of air pollution,
20 including such measures as are necessary to assure, or assist in assuring, that a new or
21 modified indirect source will not attract mobile sources of air pollution” *Id.*
22 § 7410(a)(5)(D).

23 The District is the regulatory agency responsible for improving air quality in the
24 South Coast. Under the California Health and Safety Code, the District’s air quality
25 management plan (“AQMP”) and its subsequent revisions serve as the federally
26 required SIP for the South Coast. Cal. Health & Safety Code §§ 40460-40462. Using
27 the discretion conferred on the state by the Clean Air Act, section 40440 of the
28 California Health and Safety Code requires SCAQMD to include indirect source

1 review when carrying out its AQMP. SCAQMD must therefore “provide for indirect
2 source controls in those areas of the south coast district in which there are high-level,
3 localized concentrations of pollutants or with respect to any new source that will have
4 a significant effect on air quality in the South Coast.” *Id.* § 40440(b)(3). Warehouses
5 are indirect sources that the District can and must regulate in order to reduce toxic air
6 contaminants and emissions of air pollutants. Martinez Decl., Ex. 2 (Final Staff
7 Report), at 12-13, 17-20.

8 After six years of thorough deliberation, SCAQMD adopted the Warehouse
9 Rule on May 7, 2021, to reduce warehouse pollution and bring clean air to the region.
10 *Id.* at 13-14. The Warehouse Rule’s stated purpose is “to reduce local and regional
11 emissions of nitrogen oxides and particulate matter, and to facilitate local and regional
12 emission reductions associated with warehouses, in order to assist in meeting state and
13 federal air quality standards for ozone and fine particulate matter.” *Id.* at 22. The
14 Warehouse Rule applies to warehouses that are 100,000 square feet or larger. *Id.* at
15 22-23. It requires each warehouse to meet an annual “points” obligation by selecting
16 from a menu of 32 different compliance options to reduce emissions on- or off-site. *Id.*
17 at 29-30.

18 These 32 compliance options are intended to reduce pollution from all aspects
19 of warehouse operations and provide real, near-term health benefits to warehouse-
20 adjacent communities. For example, warehouses may earn points by installing or
21 replacing air filters in residences, schools, and hospitals; and by installing solar
22 panels, on-site charging infrastructure, onsite yard equipment, and zero-emissions
23 trucks; and by incentivizing and tracking visits of zero-emission trucks to their
24 facility. *Id.* at 25, 30-32, 61. Warehouses may also earn points by paying a mitigation
25 fee. *Id.* at 33. Finally, warehouses also have the option of developing a customized
26 plan, for the District’s approval, to earn points. *Id.* at 32. Additionally, the rule
27 establishes reporting requirements that will reveal key operations data for specific
28 facilities, including the number of truck trips and the identity of facility operators such

1 as Amazon or Target. *Id.* at 34-36. These reporting requirements are vital to
2 empowering citizens, including Proposed Intervenors’ members, to understand more
3 about the facilities polluting their communities and to enforce the Warehouse Rule.

4 The Warehouse Rule brings significant public health benefits for communities
5 in the South Coast. For example, the rule will result “in 150 to 300 fewer deaths,
6 2,500 to 5,800 fewer asthma attacks, and 9,000 to 20,000 fewer work [days missed
7 due to air pollution] from 2022-2031. Expected total discounted monetized public
8 health benefits range from \$1.2 to \$2.7 billion over the compliance period.” Martinez
9 Decl., Ex. 1 (Final Socioeconomic Impact Assessment), at ES-9.

10 **III. Proposed Intervenors and their Interest in this Litigation**

11 Each of the Proposed Intervenors in this case has a long history of working to
12 improve air quality in the South Coast.

13 East Yard Communities for Environmental Justice (“EYCEJ”), founded in
14 2001, is an environmental health and justice non-profit corporation working towards a
15 safe and healthy environment for communities that are disproportionately suffering
16 the negative impacts of industrial pollution. EYCEJ represents approximately 1,000
17 members in East Los Angeles, Southeast Los Angeles, Long Beach, Carson, and
18 Wilmington. Thomas Decl. ¶ 4. Through grassroots organizing and leadership
19 building skills, EYCEJ prepares community members to engage in policy issues of
20 environmental justice and air quality at the regional, statewide, and national level. For
21 decades, EYCEJ has advocated for indirect source rules at the District. *Id.* ¶ 16.
22 Because the Warehouse Rule will reduce pollution in areas where its members reside,
23 EYCEJ seeks to defend this rule to protect the health and safety of its members. *Id.* ¶¶
24 12-15; Aceves Decl. ¶ 21.

25 People’s Collective for Environmental Justice (“PCEJ”) is an unincorporated
26 nonprofit association dedicated to building community power in the Inland Empire to
27 fight against pollution and environmental racism. Founded in 2020, PCEJ represents
28 over 1,000 community members in the Inland Empire who are impacted by the freight

1 and logistics industry. Vidaurre Decl. ¶ 5. Since its inception, PCEJ has advocated for
2 strong indirect source rules to reduce pollution from the freight and logistics industry.
3 For the past five years, PCEJ staff and members have advocated for regulatory
4 measures to reduce pollution from indirect sources, such as warehouses. *Id.* ¶ 14;
5 Declaration of Ivette Torres in Support of Motion to Intervene (“Torres Decl.”), ¶ 12-
6 16. The Warehouse Rule is essential to reducing the pollution burdens of PCEJ
7 members. *Id.* ¶ 19.

8 Sierra Club is a national environmental organization, founded in 1892, that is
9 dedicated to exploring, enjoying and protecting the planet; to practicing and
10 promoting the responsible use of the earth’s ecosystems and resources; to educating
11 and enlisting humanity to protect and restore the quality of the natural and human
12 environment; and to using all lawful means to carry out those objectives. Sierra Club
13 currently has approximately 3.1 million members and supporters nationwide and
14 around 47,000 members in the South Coast. Kavezade Decl. ¶ 8. For many years,
15 Sierra Club has advocated for strong regulatory measures to control indirect source
16 emissions. *Id.* ¶ 9; Declaration of Angelica Balderas in Support of Motion to Intervene
17 (“Balderas Decl.”), ¶¶ 15-17.

18 Natural Resources Defense Council (“NRDC”) is a national non-profit
19 organization founded in 1970 dedicated to protecting public health and the
20 environment. NRDC has 1.3 million members and activists nationwide and more than
21 250,000 members and activists in California. Declaration of David Pettit in Support of
22 Motion to Intervene (“Pettit Decl.”), ¶ 3. NRDC works on both state and federal levels
23 to reduce emissions from major industry sectors. *Id.* NRDC participated in the
24 rulemaking process of the Warehouse Rule, including by attending meetings at the
25 District and submitting comments in support of the rule. *Id.* ¶ 4. The Warehouse Rule
26 is important to NRDC members because pollution from the growing warehouse
27 industry in the South Coast poses a substantial health risk. *Id.* ¶ 5.

28 Communities for a Better Environment (“CBE”) is a California non-profit

1 health and justice organization. Since 1978, CBE has been organizing residents living
2 in frontline communities around issues of environmental, racial, and social justice.
3 Declaration of Alison M. Hahm in Support of Motion to Intervene (“Hahm Decl.”), ¶
4 2. CBE has hundreds of members in Los Angeles, with a large representation in
5 frontline communities like Southeast Los Angeles and Wilmington. *Id.* ¶ 3. Through
6 organizing, education, and leadership development, CBE is committed to empowering
7 communities to transform environmental conditions and improve health outcomes in
8 low-income communities and communities of color. CBE is seeking to defend this
9 Warehouse Rule because it offers a way to reduce cumulative impacts, especially air
10 pollution, in environmental justice communities near the Ports of Los Angeles and
11 Long Beach, where CBE has a vast membership base. *Id.* ¶¶ 8-9. Defending this rule
12 is an opportunity to protect and advance rulemaking processes that prioritize
13 community health and wellbeing.

14 Environmental Defense Fund (“EDF”) is a national non-profit membership
15 organization dedicated to protecting and restoring the quality of our air, water and
16 other natural resources through science, economics and the law. Through its programs
17 aimed at protecting human health, EDF has long pursued initiatives at the state and
18 national levels designed to reduce emissions of health-harming air pollutants from a
19 variety of sources, including the warehouse sector. Declaration of John Stith in
20 Support of Motion to Intervene (“Stith Decl.”), ¶ 8. In addition, EDF has undertaken a
21 series of emissions monitoring studies in communities impacted by warehouse-related
22 pollution, and has found significant health impacts associated with proximity to
23 commercial and industrial facilities like those addressed by Rule 2305. *Id.* EDF
24 participated as a stakeholder in the rulemaking process for the Warehouse Rule,
25 submitting comments in support of the rule. EDF currently has approximately 15, 312
26 members in the South Coast Air Quality Management District. *Id.* ¶ 12.

27 **STANDARDS FOR INTERVENTION**

28 The Ninth Circuit has established a four-part test for deciding applications for

1 intervention as of right under Federal Rule of Civil Procedure 24(a)(2):

2 (1) the motion must be timely; (2) the applicant must claim a “significantly
3 protectable” interest relating to the property or transaction which is the subject
4 of the action; (3) the applicant must be so situated that the disposition of the
5 action may as a practical matter impair or impede its ability to protect that
6 interest; and (4) the applicant’s interest must be inadequately represented by
7 the parties to the action.

8 *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011) (quoting
9 *Sierra Club v. U.S. Eenv’t Prot. Agency*, 995 F.2d 1478, 1481 (9th Cir. 1993)). If an
10 applicant meets these standards, they must be permitted to intervene. *Yniguez v.*
11 *Arizona*, 939 F.2d 727, 731 (9th Cir. 1991). An applicant need not separately establish
12 Article III standing. *Vivid Ent., LLC v. Fielding*, 774 F.3d 566, 573 (9th Cir. 2014).

13 To facilitate “efficient resolution of issues and broadened access to the courts,”
14 Rule 24(a) is construed “broadly in favor of proposed intervenors,” taking into
15 account “practical and equitable considerations.” *United States v. City of Los Angeles*,
16 288 F.3d 391, 397-98 (9th Cir. 2002) (citations omitted). Rule 24(a) does not require a
17 specific legal or equitable interest, and “the ‘interest’ test is primarily a practical guide
18 to disposing of lawsuits by involving as many apparently concerned persons as is
19 compatible with efficiency and due process.” *Fresno Cnty. v. Andrus*, 622 F.2d 436,
20 438 (9th Cir. 1980). The allegations of a proposed intervenor must be credited “as true
21 absent sham, frivolity or other objections.” *Sw. Ctr. for Biological Diversity v. Berg*,
22 268 F.3d 810, 820 (9th Cir. 2001).

23 Additionally, under Rule 24(b)(1)(B), courts have “broad discretion” to grant
24 permissive intervention to applicants that, through a timely motion, assert a claim or
25 defense that shares a common question of law or fact with the principal action.
26 *Orange Cnty. v. Air Cal.*, 799 F.2d 535, 539 (9th Cir. 1986) (citation omitted). In
27 exercising its discretion, a court must consider whether intervention will cause undue
28 delay or prejudice existing parties. *See Fed. R. Civ. P. 24(b)(3).*

ARGUMENT

For the following reasons, the Court should grant Proposed Intervenors’

1 intervention as of right under Federal Rule of Civil Procedure 24(a), or, in the
2 alternative, the Court should grant permissive intervention under Rule 24(b).

3 **I. Proposed Intervenors are entitled to intervene as of right in this litigation.**

4 As detailed below, Proposed Intervenors satisfy the four-part test and are
5 entitled to intervene as a matter of right. Their motion is timely, they have
6 demonstrated they have significantly protectable interests, those interests may be
7 impaired by the disposition of this action, and the existing parties to this litigation
8 “may not” adequately represent their interests.

9 **A. The unopposed motion is timely.**

10 A motion to intervene under Rule 24(a) must be timely. Fed. R. Civ. P. 24(a).
11 Timeliness is evaluated according to three factors: “(1) the stage of the proceeding at
12 which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the
13 reason for and length of the delay.” *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854
14 (9th Cir. 2016) (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th
15 Cir. 2004)). A motion made “at an early stage of the proceedings” will neither
16 prejudice other parties nor delay the proceeding. *Citizens for Balanced Use v. Mont.*
17 *Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011).

18 Proposed Intervenors’ motion is timely because this case is in its earliest stages.
19 Less than three months have passed since the California Trucking Association filed its
20 complaint on August 5, 2021. ECF No. 1. This motion is being filed shortly after the
21 Defendant filed its first responsive pleading on October 7, 2021. ECF No. 15. No
22 administrative record has been filed, the first Case Management Conference has not
23 yet been conducted, and the Court has not yet issued any substantive orders or rulings.
24 Proposed Intervenors are able to abide by the Court’s Scheduling Order. Plaintiff has
25 indicated they will not oppose this motion, and Defendants support this request for
26 intervention. Martinez Decl. ¶¶ 7-8. Under these circumstances, intervention will not
27 prejudice the existing parties or delay the proceeding. *See, e.g., Citizens for Balanced*
28 *Use*, 647 F.3d at 897 (finding motion timely when filed three months after the

1 complaint and less than two weeks after defendant filed its answer); *Idaho Farm*
2 *Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (holding motion timely
3 when filed four months after complaint and two months after answer and
4 administrative record, but “before any hearings or rulings on substantive matters”);
5 *Martin v. Mundo*, No. 2:20-cv-01437-ODW-(ASx), 2020 WL 6743591, at *2-3 (C.D.
6 Cal. Sep. 29, 2020) (finding motion timely when filed four months after complaint
7 and before rulings on any substantive motions).

8 **B. Proposed Intervenors have significant protectable interests in the**
9 **Warehouse Rule.**

10 Proposed Intervenors meet the second element of intervention as of right
11 because they have multiple “significantly protectable” interests related to the issues
12 relevant to this action. *Wilderness Soc’y*, 630 F.3d at 1177. The interest test is a
13 threshold question and “does not require a specific legal or equitable interest.” *Id.* at
14 1179. Nor does it require that the asserted interest be protected by the statutes under
15 which litigation is brought. *Id.* Instead, “the operative inquiry should be whether the
16 ‘interest is protectable under some law’ and whether ‘there is a relationship between
17 the legally protected interest and the claims at issue.’” *Id.* at 1180. “[I]f the resolution
18 of the plaintiff’s claims actually will affect the applicant,” the relationship requirement
19 is met. *Donnelly v. Glickman*, 159 F.3d 405, 410 (9th Cir. 1998); *see also California*
20 *ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (An applicant for
21 intervention satisfies the interest test “if it will suffer a practical impairment of its
22 interests as a result of the pending litigation.”).

23 **1. Proposed Intervenors’ interests in the Warehouse Rule are**
24 **protected by law.**

25 As set forth above, Proposed Intervenors are nonprofit organizations and
26 unincorporated associations whose purposes and missions include the protection of
27 their communities and the environment. *See, e.g.*, Thomas Decl. ¶ 3; Vidaurre Decl. ¶
28 3; Kavezade Decl. ¶¶ 6-7; Pettit Decl. ¶ 3; Hahm Decl. ¶ 2; Stith Decl. ¶¶ 3, 7.
Members of the Proposed Intervenors live, work, and recreate in the South Coast,

1 including in areas with a high concentration of warehouses. *See, e.g.*, Aceves Decl. ¶¶
2 2-3; Thomas Decl. ¶¶ 4, 13; Balderas Decl. ¶¶ 2, 5-6; Kavezade Decl. ¶ 9; Torres
3 Decl. ¶¶ 7, 9; Vidaurre Decl. ¶¶ 5-6; Hahm Decl. ¶¶ 3-4; Stith Decl. ¶ 12.

4 An intervenor need only show that its interest “is protectable under any statute,”
5 and is not required to show that its interest is protected by the federal Clean Air Act,
6 the Federal Aviation Administration Authorization Act, the Supremacy Clause of the
7 U.S. Constitution, and the California Health & Safety Code—the laws under which
8 this litigation is brought. *Alisal Water Corp.*, 370 F.3d at 919. Proposed Intervenors’
9 interests in improving air quality in the South Coast and protecting the health of their
10 members are protectable under several environmental statutes, including the federal
11 Clean Air Act. *See, e.g.*, 42 U.S.C. §§ 7401(b)(1) (purpose of Clean Air Act includes
12 protection and enhancement of air quality for public health and welfare); 7604(a)(1)
13 (creating citizen suit authority to enforce state pollution control measures adopted
14 under the Clean Air Act). Because the District adopted the Warehouse Rule as a key
15 part of its strategy to meet the federal Clean Air Act requirement to achieve state and
16 national ambient air quality standards for ozone and fine particulate matter, Proposed
17 Intervenors’ involvement in this case to defend the legality of the rule is key to
18 protecting their interests in improving the air quality in the South Coast for the health
19 of their members. *See, e.g.*, Aceves Decl. ¶ 21; Torres Decl. ¶ 19; Balderas Decl. ¶ 18;
20 Pettit Decl. ¶ 5; Hahm Decl. ¶ 4, 8-9; Stith Decl. ¶ 12.

21 **2. Proposed Intervenors’ participation in the administrative**
22 **process was critical to the District’s development and ultimate**
23 **adoption of the Warehouse Rule.**

24 Proposed Intervenors have an interest in this litigation because their members
25 and professional staff were actively engaged in the development and adoption of the
26 Warehouse Rule. When a public interest group has been involved in a decision-
27 making process that leads to a legal challenge of a decision it supported, it satisfies the
28 protectable interest prong for intervention as of right. *Idaho Farm Bureau Fed’n*, 58
F.3d at 1397 (citations omitted) (“A public interest group is entitled as a matter of

1 right to intervene in an action challenging the legality of a measure it has supported.”).
2 In *Sagebrush Rebellion, Inc. v. Watt*, the Audubon Society was entitled to intervene in
3 an action challenging the creation of a conservation area the Society had supported.
4 713 F.2d 527, 527-28 (9th Cir. 1983). The Society had actively participated in the
5 administrative process surrounding the designation of the conservation area, and based
6 on that participation, the Ninth Circuit held that “there can be no serious dispute in
7 this case concerning . . . the existence of a protectable interest on the part of the
8 applicant.” *Id.* at 528; *accord Idaho Farm Bureau Fed’n*, 58 F.3d at 1397-98 (finding
9 environmental groups that were active in the administrative process leading to
10 endangered species listing were entitled to intervene in litigation seeking to invalidate
11 listing); *see also Prete v. Bradbury*, 438 F.3d 949, 955 (9th Cir. 2006) (allowing
12 “chief petitioner” and “main supporter” of ballot measure to intervene in action
13 challenging measure’s constitutionality).

14 Here, not only did Proposed Intervenors actively participate in the
15 administrative process for the Warehouse Rule, but they engaged in a campaign for
16 years to advocate for indirect source review programs at the District. Thomas Decl. ¶
17 16; Kavezade Decl. ¶ 10. This advocacy by Proposed Intervenors was integral to the
18 District’s decision to pursue the Warehouse Rule. *See* Thomas Decl. ¶¶ 16-17;
19 Kavezade Decl. ¶ 10. The District identified indirect source review programs as a
20 potential emissions reduction strategy in its 2016 AQMP, released in March 2017.
21 Martinez Decl., Ex. 2 (Final Staff Report), at 9. The inclusion of indirect source rules
22 in the 2016 AQMP is in part attributed to longstanding efforts by Proposed
23 Intervenors and their members to advocate for strong regulatory measures at the
24 District to reduce emissions in the South Coast. Beginning in May 2017, Proposed
25 Intervenors and their members regularly attended public working group meetings at
26 the District to advocate for mandatory regulations—rather than voluntary measures—
27 to control pollution from warehouses and other indirect sources of pollution. Balderas
28 Decl. ¶¶ 15-16; Kavezade Decl. ¶ 13; Thomas Decl. ¶¶ 16, 20; Vidaurre Decl. ¶¶ 14,

1 16. Proposed Intervenors and their members also regularly participated in working
2 groups and testified at numerous meetings of the District’s Governing Board to
3 support the development of an indirect source rule to reduce warehouse-related
4 pollution. Kavezade Decl. ¶ 13; Pettit Decl. ¶ 4; Thomas Decl. ¶¶ 19-20; Vidaurre
5 Decl. ¶¶ 14, 16. In May 2018, the Board directed staff to initiate a rulemaking for a
6 warehouse indirect source rule. Martinez Decl., Ex. 2 (Final Staff Report) at 9. From
7 2018 until the District adopted the rule in May 2021, Proposed Intervenors and their
8 members continued to regularly attend public workshops on the Warehouse Rule,
9 providing extensive input and shaping the regulatory process. Balderas Decl. ¶ 16;
10 Kavezade Decl. ¶ 13; Pettit Decl. ¶ 4; Thomas Decl. ¶¶ 19-20; Vidaurre Decl. ¶ 16.
11 Proposed Intervenors and their members also advocated for a strong indirect source
12 rule by sending comment letters and giving testimony at numerous Board meetings as
13 the Warehouse Rule was considered. Balderas Decl. ¶ 16; Pettit Decl. ¶ 4; Thomas
14 Decl. ¶¶ 19-20, 22; Kavezade Decl. ¶ 13; Torres Decl. ¶ 18; Vidaurre Decl. ¶¶ 16-17,
15 19. To highlight the significant health benefits of the Warehouse Rule, Proposed
16 Intervenor People’s Collective for Environmental Justice collected and analyzed data
17 to assess warehouse locations in the South Coast and the associated disproportionate
18 pollution burdens on nearby communities. Torres Decl. ¶¶ 12-16.

19 Proposed Intervenors easily satisfy the protectable interest requirement as their
20 involvement in and support for the District’s administrative process exceeds the extent
21 of participation by intervenors in *Sagebrush Rebellion, Inc.* In this case, Proposed
22 Intervenors did not merely “support” the Warehouse Rule. Rather, Proposed
23 Intervenors participated extensively in the regulatory process that led to the
24 development of the indirect source review programs even prior to the District
25 initiating an administrative process for the Warehouse Rule. Thomas Decl. ¶ 16;
26 Kavezade Decl. ¶ 10. Given their deeply personal interests in reducing warehouse
27 pollution, Proposed Intervenors continued to participate in the development of the
28 regulation throughout the decision-making process. Thomas Decl. ¶¶ 7-16, 19-20, 22;

1 Kavezade Decl. ¶¶ 10-13; Vidaurre Decl. ¶¶ 6-14; Torres Decl. ¶¶ 6-11. As consistent
2 participants advocating for the adoption of the Warehouse Rule before the District,
3 Proposed Intervenors have demonstrated a protectable interest in this suit that
4 challenges the Warehouse Rule’s validity.

5 **3. Proposed Intervenors’ environmental concerns constitute a**
6 **legally protectable interest.**

7 Lastly, Proposed Intervenors’ concern for the environment constitutes a legally
8 protectable interest sufficient to support intervention. *See Citizens for Balanced Use*,
9 647 F.3d at 897 (“Applicants have a significant protectable interest in conserving and
10 enjoying the wilderness character of the Study Area”); *United States v.*
11 *Carpenter*, 526 F.3d 1237, 1240 (9th Cir. 2008) (“[I]ntervenors were entitled to
12 intervene because they had the requisite interest in seeing that the wilderness area be
13 preserved for the use and enjoyment of their members.”); *WildEarth Guardians v.*
14 *Nat’l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010).

15 Proposed Intervenors are environmental and public health advocacy
16 organizations with specific, demonstrated, and longstanding interests in protecting and
17 improving air quality in the South Coast. In addition, Proposed Intervenors have a
18 protectable interest in “conserving and enjoying” the environment in the South Coast.
19 *Citizens for Balanced Use*, 647 F.3d at 897. Proposed Intervenors’ members recreate
20 in and enjoy that surrounding environment. Thomas Decl. ¶ 4; Vidaurre Decl. ¶¶ 5-6;
21 Kavezade Decl. ¶ 9; Hahm Decl. ¶ 3; Stith Decl. ¶ 12. Their use and enjoyment of this
22 area will be harmed if the Warehouse Rule is invalidated and warehouse-related
23 pollution continues unabated. Aceves Decl. ¶¶ 10, 14, 17-18; Thomas Decl. ¶ 13-14;
24 Kavezade Decl. ¶¶ 11-12; Stith Decl. ¶ 7.

25 **C. The disposition of this case may impair Proposed Intervenors’ ability**
26 **to protect their interests.**

27 Rule 24(a) requires intervenors to show that “disposing of the action may as a
28 practical matter impair or impede the movant’s ability to protect its interest.” Fed. R.
Civ. P. 24(a)(2). If a proposed intervenor “would be substantially affected in a

1 practical sense by the determination made in an action, he should, as a general rule, be
2 entitled to intervene.” *Sw. Ctr. for Biological Diversity*, 268 F.3d at 822 (quoting Fed.
3 R. Civ. P. 24 advisory committee’s notes). A determination of impairment tends to
4 follow once intervenors have satisfied the interest test’s inquiry into whether the
5 applicant “will suffer a practical impairment of its interests as a result of the pending
6 litigation.” *California ex rel. Lockyer*, 450 F.3d at 441-42 (“Having found that
7 appellants have a significant protectable interest, we have little difficulty concluding
8 that the disposition of this case may, as a practical matter, affect it.”).

9 As described above, CTA asks this Court to declare the Warehouse Rule invalid
10 and bar the District from implementing or enforcing the rule. *See* ECF No. 1 at 6.
11 Such a result would eliminate the projected emission reductions provided by the
12 Warehouse Rule and hamper the ability of the District to achieve cleaner air in the
13 South Coast, as required by the Clean Air Act. Because Proposed Intervenors were
14 actively engaged in the development and approval of the Warehouse Rule,
15 invalidation of the rule will undermine the efforts of Proposed Intervenors to ensure
16 the adoption of the rule and threaten their overall interests in protecting the
17 environment and achieving clean air in the South Coast.

18 **D. Proposed Intervenors’ interests are not adequately represented by**
19 **existing parties.**

20 Proposed Intervenors should be granted intervention as of right because their
21 interests are not adequately represented by CTA or the District. Nor will these
22 interests be adequately represented by the California Air Resources Board and
23 California Attorney General (“State Intervenor-Applicants”). The three factors a court
24 must consider in determining whether a proposed intervenor’s interests are adequately
25 represented by existing parties are:

- 26 (1) whether the interest of a present party is such that it will undoubtedly make all
27 of a proposed intervenor’s arguments; (2) whether the present party is capable and
28 willing to make such arguments; and (3) whether a proposed intervenor would
offer any necessary elements to the proceeding that other parties would neglect.

1 *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). “The burden on proposed
2 intervenors in showing inadequate representation is minimal, and would be satisfied if
3 they could demonstrate that representation of their interests ‘*may be*’ inadequate.” *Id.*
4 (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)
5 (emphasis added)); *see also Citizens for Balanced Use*, 647 F.3d at 900
6 (“[I]ntervention of right does not require an absolute certainty that ... existing parties
7 will not adequately represent” a proposed intervenor’s interests.”).

8 While some courts apply a rebuttable presumption of adequate representation
9 when a proposed intervenor and a party have the same ultimate objective, or when the
10 government is acting on behalf of its constituency, a “compelling showing” to the
11 contrary rebuts the presumption. *Citizens for Balanced Use*, 647 F.3d at 898.
12 Moreover, even when that presumption arises, the Ninth Circuit has “emphasize[d]
13 that the burden of showing inadequacy of representation is generally minimal”
14 *Prete*, 438 F.3d at 959. Ultimately, “[t]he most important factor in assessing the
15 adequacy of representation is how the interest compares with the interests of existing
16 parties.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation marks and
17 citation omitted).

18 Because the interests of the District and State Intervenor-Applicants diverge
19 from that of Proposed Intervenor, Proposed Intervenor easily meet their minimal
20 burden to show that the District and State Intervenor-Applicants may not
21 “undoubtedly make all of a proposed intervenor’s arguments” or may not be “capable
22 and willing to make such arguments.” *See Arakaki*, 324 F.3d at 1086.

23 **1. Proposed Intervenor’s interests are narrower and more**
24 **focused than interests of the District and State Intervenor-**
25 **Applicants.**

26 The first significant way in which Proposed Intervenor’s interests diverge from
27 the District and State Intervenor-Applicants’ interests is that Proposed Intervenor’s
28 interests are narrow and focused specifically on public health and environmental
impacts. In contrast, the District and State Intervenor-Applicants’ interests lie in the

1 administration of its legal obligations. As such, the District and State Intervenor-
2 Applicants are influenced by cost, administrative resource constraints, and political
3 pressures that are not coextensive with the interests of the Proposed Intervenors.

4 Throughout their long history advocating before the District, Proposed
5 Intervenors have sought strong policies that set stringent mandatory emissions
6 reductions—an approach sometimes rejected by the District. *See* Thomas Decl. ¶ 26;
7 Vidaurre Decl. ¶ 20. During the development of the Warehouse Rule, Proposed
8 Intervenors consistently advocated for positions that differed from those of the
9 District. Kavezade Decl. ¶¶ 14, 16; Thomas Decl. ¶¶ 25-26; Vidaurre Decl. ¶ 22. For
10 example, Proposed Intervenors submitted numerous comment letters requesting,
11 among other things, a more stringent regulation than that proposed by the District.
12 Thomas Decl. ¶ 25; Vidaurre Decl. ¶ 22. Although Proposed Intervenors ultimately
13 supported the Warehouse Rule because of the significant health benefits to their
14 members and residents throughout the South Coast, the final regulation adopted by the
15 District falls short of what Proposed Intervenors sought. Thomas Decl. ¶ 25; Vidaurre
16 Decl. ¶ 22. The District’s adoption of a warehouse indirect source rule that does not
17 align with Proposed Intervenors’ recommendations as stakeholders during the
18 rulemaking process proves that the District’s interests diverge from those of Proposed
19 Intervenors. Thomas Decl. ¶¶ 25-26; Kavezade Decl. ¶ 16, Vidaurre Decl. ¶¶ 22.
20 Therefore, it is quite possible that the District will not advance the same legal
21 arguments as Proposed Intervenors in this case and is unable to adequately represent
22 Proposed Intervenors’ more narrow, particularized interests.

23 Similarly, State Intervenor-Applicants will not adequately represent the focused
24 interests of Proposed Intervenors. As State Intervenor-Applicants note, their interests
25 “have a broader focus and mission than the District.” ECF No. 19-1 at 7. While State
26 Intervenor-Applicants have interests in reducing air pollution and protecting the
27 environment, like the District, they must weigh competing obligations and priorities.
28 The California Air Resources Board’s interest in defending the legality of the

1 Warehouse Rule relates to its legal obligations to reduce emissions to meet state and
2 federal air quality standards, while the California Attorney General’s interests lie in
3 the preservation of state authority. These broader interests may not align with
4 Proposed Intervenors’ specific interests in protecting the health of their members and
5 residents of the South Coast most impacted by warehouse pollution.

6 Courts have found that more focused interests of this type are sufficient to make
7 a “compelling showing” of inadequate representation and to defeat any presumption
8 of adequate representation. *Arakaki*, 324 F.3d at 1087 (citing Ninth Circuit precedent
9 that “permit[s] intervention on the government’s side [when] the intervenors’ interests
10 are narrower than that of the government and therefore may not be adequately
11 represented”). The presumption of adequate representation is overcome when a
12 government entity “is required to represent a broader view than the more narrow,
13 parochial interests” of the proposed intervenor. *Forest Conservation Council v. U.S.*
14 *Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995), *abrogated on other grounds by*
15 *Wilderness Soc’y*, 630 F.3d 1173; *see also Sw. Ctr. for Biological Diversity*, 268 F.3d
16 at 823-24 (narrower interests of intervening developers defeated presumption of
17 adequate representation by government defendants).

18 In *National Association of Home Builders v. San Joaquin Valley Unified Air*
19 *Pollution District*, proposed intervenors argued that because their interests lay solely
20 in the health of their members, the San Joaquin Valley Air Pollution Control District,
21 with its broader interests, may not adequately represent proposed intervenors’
22 interests. No. 1:07-cv-0820-LJO-DLB, 2007 WL 2757995, at *5 (E.D. Cal. Sept. 21,
23 2007). The court agreed, finding that “[w]hile Proposed Intervenors and the District
24 share a general interest in public health, the District has a much broader interest in
25 balancing the need for regulations with economic considerations” such that “it is not
26 likely that the District will ‘undoubtedly make all the intervenor’s arguments.’” *Id.*
27 The situation here is similar, and this Court should reach the same conclusion.

28 Proposed intervenors are not required to anticipate and identify specific

1 differences in arguments and strategy in advance. “It is sufficient for [proposed
2 intervenors] to show that, because of the difference in interests, it is likely that [an
3 existing party] will not advance the same arguments as [proposed intervenors].” *Sw.
4 Ctr. for Biological Diversity*, 268 F.3d at 824. Because the District’s interests differ
5 from that of Proposed Intervenors, it is likely that the District and State Intervenor-
6 Applicants will not make all of Proposed Intervenors’ arguments.

7 Accordingly, Proposed Intervenors have made the requisite showing that the
8 District and State-Intervenor Applicants may not adequately represent their interests.

9 **2. Some of Proposed Intervenors’ interests relate directly to their
10 own health, and are therefore more personal than the interests
11 of the District and State Intervenor-Applicants.**

12 The second significant way in which Proposed Intervenors’ interests diverge
13 from the interests of the District and State Intervenor-Applicants is that Proposed
14 Intervenors and their members have a significant and deeply personal stake in
15 upholding the Warehouse Rule. Proposed Intervenors represent communities who
16 reside in areas dominated by warehouses and are disproportionately impacted by
17 pollution from this industry. Their members live, work, and recreate near warehouse
18 facilities and, as a result, are regularly exposed to the particulate matter and nitrogen
19 oxide emissions associated with warehouse operations. Because this litigation will
20 determine the legality of the Warehouse Rule, the only regulation requiring
21 warehouses in the South Coast to reduce emissions, its outcome will directly impact
22 the health of Proposed Intervenors’ members and other community members.

23 While the health of community members may be a key consideration for the
24 District, the deeply personal health interests held by Proposed Intervenors differs
25 markedly from the District’s overall consideration of public health. It is the physical
26 health of Proposed Intervenors’ individual members—not that of the District—that are
27 impacted and put at risk daily by warehouse-related pollution. Aceves Decl. ¶¶ 14-18;
28 Thomas Decl. ¶¶ 12-15; Balderas Decl. ¶¶ 6, 12-13; Kavezade Decl. ¶¶ 11-12;
Vidaurre Decl. ¶¶ 6-9; Torres Decl. ¶¶ 6-9; Hahm Decl. ¶¶ 4-5; Stith Decl. ¶¶ 7-12.

1 The District adopted the Warehouse Rule to fulfill its legal obligation to reduce
2 emissions in the South Coast, whereas Proposed Intervenors’ members vigorously
3 supported the regulation to alleviate the disproportionate health risks they face every
4 day living next to warehouses and breathing in noxious pollution. Martinez Decl., Ex.
5 2 (Final Staff Report), at 13-14; Thomas Decl. ¶¶ 13-14, 17-20; Balderas Decl. ¶¶ 16-
6 17; Vidaurre Decl. ¶ 14; Torres Decl. ¶¶ 12-19. Thus, the District’s interest in public
7 health, and in the outcome of this litigation, differs from that of Proposed Intervenors
8 and their individual members, who are forced to shoulder disproportionate pollution
9 burdens from the warehouse industry.

10 Proposed Intervenors’ personal health interest in the outcome of litigation is
11 enough to overcome the presumption that a government entity defending an ordinance
12 will adequately represent the interests of proposed intervenors. In *Syngenta Seeds, Inc.*
13 *v. County of Kauai*, the court granted intervention to community and public interest
14 groups with personal health interests in defending an ordinance that required
15 disclosures related to the application of restricted-use pesticides. No. Civ. 14-
16 00014BMK, 2014 WL 1631830 (D. Haw. Apr. 23, 2014). In that case, the proposed
17 intervenors lived and worked in close proximity to plaintiffs’ agricultural operations
18 and argued that the challenged ordinance would eliminate or decrease their exposure
19 to harmful restricted-use pesticides. *Id.* at *4. The court acknowledged that proposed
20 intervenors were directly affected by the activities of plaintiffs that the ordinance
21 would regulate. *Id.* at *7. In finding that the county would not adequately represent the
22 proposed intervenors’ interests, the court noted that the county’s public health
23 concerns were tempered by the need to balance regulation with economic and political
24 considerations. *Id.* at *8. The court found that proposed intervenors’ “interests in
25 upholding the law are decidedly more palpable than the County’s generalized
26 interest.” *Id.* at *7. As with *Syngenta Seeds*, Proposed Intervenors’ individual members
27 are directly affected by the industry that the Warehouse Rule seeks to regulate. These
28 members live and work in close proximity to warehouses and, like intervenors in

1 *Sygenta Seeds*, will benefit from reduced exposure to air pollutants as a result of the
2 Warehouse Rule. The District, on the other hand, must take into account political
3 considerations and only possesses a “generalized interest” in public health. Because
4 this case is similar, this Court should reach the same conclusion here.

5 Additionally, the Ninth Circuit has found that a government entity may not be
6 able to adequately represent a proposed intervenor who has a more personal stake in
7 the outcome of the litigation than the government. In *Californians for Safe and*
8 *Competitive Dump Truck Transportation v. Mendonca*, the Ninth Circuit considered
9 whether the state adequately represented the interests of union truck drivers in a case
10 challenging California’s Prevailing Wage Law, which mandated increased wages for
11 truck drivers. 152 F.3d 1184 (9th Cir. 1998). The court held that, even though the state
12 defended the law, the union truck drivers overcame the presumption of adequate
13 representation by the government because their interests were “potentially more
14 narrow and parochial than the interests of the public at large” *Id.* at 1190.
15 Similarly, Proposed Intervenors have demonstrated that their personal health interests
16 are narrower than those of the District and therefore cannot be adequately represented.

17 **3. Because of their uniquely situated position, Proposed**
18 **Intervenors will provide necessary elements the existing parties**
19 **cannot.**

20 Finally, Proposed Intervenors will provide “necessary elements to the
21 proceeding that other parties would neglect,” a factor that weighs heavily in favor of
22 permitting intervention in this case. *Arakaki*, 324 F.3d at 1086. Proposed Intervenors
23 will bring the voices of community members living next to and working at or near
24 warehouses, who are most directly impacted from pollution from these facilities and
25 would offer a unique perspective in the proceedings. *See Sagebrush Rebellion*, 713
26 F.2d at 528 (granting intervention where “the intervenor offers a perspective which
27 differs materially from that” of existing parties). Proposed Intervenors worked
28 alongside community members who reside in the South Coast, including in areas with
a high concentration of warehouses, to encourage the District to pursue and adopt the

1 Warehouse Rule. Proposed Intervenors consequently have deep familiarity with the
2 concerns of those community members. Thomas Decl. ¶ 8, 18; Kavezade Decl. ¶ 13;
3 Balderas Decl. ¶ 17; Torres Decl. ¶ 8; Vidaurre Decl. ¶ 6; Hahm Decl. ¶¶ 4-5. The
4 interests of those community members who have been advocating for their interests to
5 reduce pollution from the logistics industry for years, and even decades in some cases,
6 will be missing from this litigation. Proposed Intervenors’ participation is necessary to
7 ensure that the interests of their members—residents in the South Coast most affected
8 by the highly polluting warehouse industry—are adequately represented. Without
9 Proposed Intervenors’ participation, the Court will only hear from the trucking and
10 airline industries, the District, and State Intervenor-Applicants, and not from those
11 who are directly impacted by the pollution the Rule aims to reduce.

12 Proposed Intervenors have made a compelling showing that the existing parties
13 may not adequately represent their interests, and thus overcome any presumption to
14 the contrary. Accordingly, each of the four requirements under Rule 24(a)(2) is
15 satisfied and the Court should grant Proposed Intervenors intervention as of right.

16 **II. Alternatively, the Court should grant permissive intervention.**

17 As set forth above, Proposed Intervenors meet the requirements for intervention
18 as of right under Federal Rule of Civil Procedure 24(a)(2). Alternatively, Proposed
19 Intervenors also satisfy the requirements for permissive intervention under Rule 24(b).
20 Permissive intervention is appropriate when (1) a movant files a timely motion; (2) the
21 prospective intervenor has a claim or defense that shares a common question of law or
22 fact with the main action; and (3) intervention will not unduly delay or
23 prejudice existing parties. Fed. R. Civ. P. 24(b)(1), (b)(3).

24 Proposed Intervenors easily meet the three-part test for intervention. As
25 discussed above, this motion is timely. Because Proposed Intervenors’ motion is made
26 at an early stage of the proceedings, intervention will neither cause delay nor prejudice
27 the existing parties. *See Citizens for Balanced Use*, 647 F.3d at 897. *Cf. Air Cal.*, 799
28 F.2d at 538 (finding motion untimely and prejudicial where applicant moved to

1 intervene after parties agreed to stipulated judgment following five years of litigation).
2 Proposed Intervenors do not intend to duplicate the District’s efforts. Additionally,
3 Proposed Intervenors will work within the confines of the schedule set by the Court
4 and the existing parties and not delay the resolution of any matters.

5 Additionally, Proposed Intervenors intend to defend the Warehouse Rule
6 against the claims raised in Plaintiffs’ complaint, and those defenses share common
7 questions of law with the main action. *See Kootenai Tribe of Idaho v. Veneman*, 313
8 F.3d 1094, 1110-11 (9th Cir. 2002) (conservation groups met test for permissive
9 intervention where they asserted defenses “directly responsive” to plaintiffs’
10 complaint), *abrogated on other grounds by Wilderness Soc’y*, 630 F.3d at 1179;
11 *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

12 In sum, given the importance of the issues involved, the significant interests of
13 Proposed Intervenors in the Warehouse Rule, and the early stage of this case,
14 Proposed Intervenors meet the requirements for permissive intervention under Rule
15 24(b). *See Kootenai Tribe of Idaho*, 313 F.3d at 1111 (holding that an “interest in the
16 use and enjoyment” of roadless areas was sufficient to support permissive intervention
17 in a case challenging rules protecting those areas from harmful development).

18 **CONCLUSION**

19 For all the foregoing reasons, Proposed Intervenors have satisfied the
20 requirements for intervention as a matter of right under Rule 24(a), and alternatively,
21 permissive intervention under Rule 24(b). Proposed Intervenors therefore respectfully
22 request that the Court grant this unopposed motion to intervene.

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Respectfully submitted,

Dated: October 28, 2021

/s/ Adriano L. Martinez _____

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