Gary J. Smith, Esq. (SBN 141393)
GSmith@bdlaw.com
BEVERIDGE & DIAMOND PC
456 Montgomery Street, Suite 1800
San Francisco, CA 94104-1251
Telephone: 415-262-4000
Facsimile: 415-262-4040

Attorney for Intervenor-Applicant
Airlines for America

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA TRUCKING ASSOCIATION, and AIRLINES FOR AMERICA, Intervenor-Applicant, Plaintiffs, v. SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, et al., Defendants.	Case No. 2:21-cv-6341-JAK-MRW **AIRLINES FOR AMERICA COMPLAINT IN INTERVENTION** Hon. John A. Kronstadt Date: January 24, 2022 Time: 8:30 a.m.

INTRODUCTION

1. Under authorities granted by the Supremacy Clause of the U.S. Constitution, and the associated interest of promoting the national commerce, Congress has enacted certain statutory schemes that include broad preemption provisions intended to avoid the balkanization of vehicle emissions standards as well as prevent local economic regulation that would interfere with the operation of vehicles owned by air carriers or their affiliates. Those provisions prohibit local rules (a) that conflict with the federal statutory scheme governing the control of emissions from trucks, (b) that could impact the price, routes, or services provided by commercial airlines engaged in air commerce, and (c) that unlawfully burden the operations of common carriers transporting freight. South Coast Air Quality Management District (the "District") has violated those prohibitions by adopting a regional warehouse regulation (Rule 2305) that has been designed to, and effectively does establish emissions standards, imposes economic burdens on the vehicles and facilities operated by commercial air carriers, and impacts the prices, routes and services of both those air carriers, their affiliated carriers and other common carriers.

2. Intervenor Airlines for America ("A4A") brings this action to declare the local regulations enacted by the District to be preempted by federal law and to permanently enjoin enforcement of Rule 2305.

3. The federal Clean Air Act ("CAA") establishes what the United States Supreme Court has explained is "Congress's carefully calibrated regulatory scheme," *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 255 (2004). As part of that comprehensive federal regime, CAA Section 202(a)(1) directs EPA to "prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines." 42 U.S.C. § 7521(a)(1). "Because the regulation of mobile source

emissions is a federal responsibility, Congress has expressly preempted states from setting emissions standards for mobile sources. . . .” *Jensen Family Farms, Inc. v. Monterey Bay Unified Air Pollution Control Dist.*, 644 F.3d 934, 939 (9th Cir. 2011). Mobile sources are defined as “on-road (highway) vehicles (e.g., automobiles, trucks and motorcycles) and nonroad vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels).” 40 C.F.R. § 51.491. More specifically, Section 209(a) of the CAA provides that “no State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions of new motor vehicles.” 42 U.S.C. § 7543(a) (“CAA 209(a)”). According to the United States Supreme Court, “[t]he language of [the CAA] is categorical.” *Engine Mfrs. Ass’n,* 541 U.S. at 256. There is no exception for the “Indirect Regulation” the District purports to undertake.

4. In contravention of that carefully calibrated regulatory scheme, the District has adopted regulations intended to implement rules forcing zero emission (“ZE”) or near zero emission (“NZE”) standards upon heavy-duty trucks operated in the District, *i.e.*, the “Warehouse Indirect Source Rule 2305.” In so doing, the District has issued “[a] command, accompanied by sanctions” that certain purchasers may buy only vehicles with particular emission characteristics. The United States Supreme Court has determined such local regulatory action to be “as much as [preempted] ‘attempt to enforce’ a ‘standard’ as a command, accompanied by sanctions, that a certain percentage of a *manufacturer’s* sales volume must consist of such vehicles.” *Engine Mfrs. Ass’n.*, 541 U.S. at 255 (emphasis added). As explained therein: “The aggregate effect of allowing every state or political subdivision to enact seemingly harmless rules would create an end result [that] would undo Congress’s carefully calibrated regulatory scheme.” *Id*.

5. The District, in carefully limited circumstances, is authorized to pursue state and federal air quality standards by exercising those powers lawfully granted to it under the statutory scheme of the federal CAA. However, the District has no lawful authority over emissions from "mobile sources." Nonetheless, in an effort to reach such sources, the District has attempted to mandate emissions standards for one significant category of mobile sources *i.e.* trucks, by implementing Rule 2305.

6. The CAA, 42 U.S.C. § 7401, *et seq.*, contemplates that certain Indirect Source Rules ("ISR") promulgated by California's legislatively created air districts may be incorporated into California's State Implementation Plan ("SIP") for stationary sources by the California Air Resources Board ("CARB"). The CAA defines such regulated indirect sources to mean "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." S*ee* 42 U.S.C. § 7410(a)(5)(C), hereinafter "CAA § 110". Such sources include, for example, parking lots, parking garages, and other similar facilities. *Id.*

7. Rule 2305 is nominally styled as such an ISR, but instead is a thinly veiled attempt to establish vehicle emission standards, which address none of the emissions sources contemplated by the CAA.

8. Rule 2305 is not, in fact, an Indirect Source Rule as contemplated by the CAA. Rather, Rule 2305 is a regulation that effectively establishes emissions standards for the category of mobile sources that includes medium and heavy-duty trucks.

9. Much like Congress has expressly preempted state and local rules "related to" the control of emissions from new motor vehicles, 42 U.S.C. § 7543(a) ("CAA § 209"), in the realm of interstate commerce and aviation, Congress enacted the Airline Deregulation Act ("ADA") to prohibit state or local

interference with air commerce by broadly preempting any state and local rules that "relate to" (directly or indirectly) a price, route, or service of any air carrier. 49 U.S.C. § 41713(A); *Morales v. Trans World Airlines*, 504 U.S. 374, 383-384 (1992).

10. That preemption applies not only to commercial air carriers but to motor carriers affiliated with direct air carriers when the carrier is transporting property by motor vehicle, whether or not such property has had, or will have, a prior or subsequent movement by air. *Id*.

11. The ADA preemption of such local regulation was extended to unaffiliated common carriers with the enactment of Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501(c)(1).

12. Echoing the primacy of federal regulation under the CAA and ADA, the FAAAA's purpose is to '"prevent States from undermining federal deregulation of interstate trucking' through a "patchwork of state-service determining laws, rules, and regulations." *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008). The FAAAA's express-preemption provision prohibits the State of California or any subdivision thereof from making, applying, or enforcing laws "related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1).

13. Rule 2305 creates precisely the type of interference with aviation precluded by ADA and FAAAA not only because it effectively requires "carriers to modify their services and routes to acquire and support ZE/NZE vehicles" in order to comply with the regulation; it also interferes by creating a compliance obligation that is a function of the number of trips and types of trucks used, inasmuch as the only way to reduce one's compliance obligation is to reduce truck trips or change the types of trucks making those trips to vehicles meeting zero

emissions standards, the type of direct regulation, which is precluded by the ADA and FAAAA.

14. Because Rule 2305 relates to prices, routes and services and has the purpose and effect of interfering with air commerce and common carrier interstate freight operations, facilities and equipment related to the transportation of property, it is both expressly and impliedly preempted by the ADA and the FAAAA. 49 U.S.C. §§ 41713 and 14501.

15. As set forth hereafter in the recited counts of the Intervenor's Complaint, Rule 2305 further exceeds the District's limited authority to adopt ISR rules under the California Health and Safety Code, § 40000, *et seq.*; and it constitutes an unlawful tax adopted in contravention of the California Art. XIII C, § 1(e).

I. THE PARTIES

16. Intervenor applicant A4A is the principal trade and service organization for the U.S. commercial airlines, representing the interests of the nation's passenger airlines and cargo carriers.[1] A4A member carriers facilitate commercial passenger and air cargo service in this judicial district, providing service to their customers in and between several states, including California. The South Coast Area Basin is home to several commercial airports where A4A members own, lease, maintain, and operate facilities, engines, and vehicles directly regulated by the Warehouse Indirect Source Rule ("Warehouse ISR" or "Rule 2305").[2]

---

[1] A4A members are: Alaska Airlines, Inc., American Airlines Group, Atlas Air, Inc., Delta Air Lines, Federal Express Corp., Hawaiian Airlines, JetBlue Airways Corp., Southwest Airlines Co., United Airlines Holdings, Inc., and United Parcel Service Co. Air Canada is an associate member.

[2] South Coast Area Basin airports include but are not limited to: Hollywood Burbank ("BUR"), Los Angeles International ("LAX"), Long Beach ("LGB"),

17. As the trade organization for these carriers, A4A regularly represents commercial air carrier interests in rulemakings related to interstate freight operations and related commercial air transportation and operations, such as the Rule 2305. A4A has participated in the South Coast Air Quality Management District's rulemaking process for the Rule 2305. A4A provided comments on this rule and participated as an active member on the District's Mobile Source Working Group.[3] Those comments are attached as Exhibit A to the complaint and hereby incorporated by reference. The Rule 2305 regulates activities related to A4A members' operations. Only this Court's order to set aside this illegal rule and enjoining its enforcement can redress the injuries A4A members have suffered and will suffer.

18. Defendant District is a political subdivision of California responsible for air pollution control in counties that include the Los Angeles metropolitan area. Its authority is defined and circumscribed, by enabling legislation found at California Health & Safety Code § 40400, *et seq.*, aka the "Lewis-Presley Air Quality Management Act." Under California law, the District has the authority to sue and be sued in the name of the District in all actions and proceedings in all courts and tribunals of competent jurisdiction. Cal. Health & Safety Code § 40701. The District's agents administer the Rule 2305.

19. Defendant Members of the District Governing Board are all residents of the State of California.

Ontario International ("ONT"), Palm Springs International ("PSP"), San Bernardino International ("SBD"), and John Wayne ("SNA").

[3] *See* Airlines for America, Comments on Proposed Rule (PR) 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions ("WAIRE") Program and PR 316 – Fees for Rule 2305 ("Warehouse ISR Comments"), May 4, 2021, attached hereto as Exhibit A.

JURISDICTION AND VENUE

20. The claims asserted herein arise under, *inter alia*, the Clean Air Act ("CAA"), 42 U.S.C. § 7401, *et seq.*, the Airline Deregulation Act of 1978 ("ADA"), 49 U.S.C. § 1371 *et seq.*, the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501, and Article VI of the United States Constitution. Thus, this Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331.

21. Under 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over A4A's claims that the District does not have authority under the California Health & Safety Code § 40000, *et seq.* to adopt the regulations at issue and that these regulations impose an unauthorized tax under California Constitution Art. XIII, C.

22. The Court has the authority to issue declaratory judgment and appropriate relief in this matter pursuant to 28 U.S.C. §§ 2201-2202.

23. Venue in this district is appropriate under 29 U.S.C. § 1391(b), as the District's headquarters are located in the Western Division of the Central District of California and the District's contested Rule 2305, the subject of this action, pertains to operations of warehouses, facilities, engines, and vehicles in the Western Division of the Central District of California.

STATEMENT OF FACTS

I. THE CLEAN AIR ACT

24. The CAA is a comprehensive federal law, which regulates air quality. The EPA promulgates regulations implementing the CAA and is responsible for enforcing its provisions including certifying that new motor vehicle engines comply with applicable standards and regulations promulgated under the CAA. 42 U.S.C. § 7401, *et seq.*

25. The CAA makes "the States and the Federal Government partners in the struggle against air pollution." *General Motors Corp. v. United States*, 496 U.S. 530, 532 (1990). The direct regulation of emissions from stationary sources is primarily left to the states (42 U.S.C. § 7416, hereinafter CAA § 116"; *see also Engine Mfrs. Ass'nv. United States EPA*, 88 F.3d 1075, 1079 (1996) (describing a "history of detailed state regulation of stationary sources")), while the federal government sets nationwide emissions standards for mobile sources. The category of "mobile sources" includes both motor vehicles ("on-road") and "nonroad" vehicles and equipment. Section 202(a)(1) of the CAA directs EPA to "prescribe . . . standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines." *See* CAA § 202; 42 U.S.C. § 7547 ("CAA § 213) (same for nonroad sources).

26. The CAA regulates mobile sources both through emissions standards for motor vehicles and engines, and fuel standards applicable to the fuels combusted in these engines. 42 U.S.C. §§ 7521-7544 ("CAA §§ 202-210") (engine standards), §§ 7545-7549 ("CAA §§ 211-215") (fuels standards). Mobile sources are not, however, regulated under the stationary source programs, even when used in a stationary manner (*e.g.*, stationary internal combustion engines). 42 U.S.C. §§ 7411(a)(3), 7602(z) ("CAA §§ 111(a)(3), 302(z)").

27. Because the regulation of mobile source emissions is a federal responsibility, Congress has expressly preempted states from setting emissions standards for mobile sources. CAA§ 209(a) (preempting state regulation of new motor vehicle emissions); *see* Para. 3 above.

28. The term "standard" has been interpreted broadly to include any governmental restriction that was "established by authority, custom, or general consent, as a model or example; criterion; test." *Engine Mfrs. Ass'n.*, 541 U.S. at 252-53 (striking down as preempted a previous District rule that, as here, used fees

or economic sanctions to effectively coerce the purchase of lower emission vehicles); *see also Metropolitan Taxicab Bd. of Trade v. City of New York*, 633 F. Supp. 2d 83, 100 (S.D.N.Y., 2009) ("Metropolitan Taxicab") (finding New York City rule increasing the maximum allowable taxi lease rate in order to coerce taxi owners to purchase hybrid vehicles by rendering conventional fleets substantially less profitable than hybrid fleets, a preempted state or local "mandate to switch to hybrid vehicles").

29. Under CAA § 209(b), California can seek EPA approval for a waiver of preemption to adopt its own mobile source emissions standards, provided they are at least as protective of health and welfare as federal standards. CARB is the California agency designated as "the air pollution control agency for all purposes set forth in federal law" (Cal. Health & Safety Code § 39602), and, as such, the agency responsible for applying for such a waiver.

30. CARB has not requested or received any preemption waivers with respect to the de facto emission standards adopted by the District under Rule 2305.

31. Moreover, under the provisions of CAA § 209(b), the District does not have the authority to request or receive such a waiver, nor can an ISR either directly or indirectly lawfully create an emission standard for motor vehicles.

II. CALIFORNIA AIR QUALITY REGULATION

32. CARB is the state agency that California law designates as "the air pollution control agency for all purposes set forth in federal law." Cal. Health & Safety Code § 39602. CARB's statutory mandate includes "preparation of the [SIP] required by the [CAA] . . ." and coordination of " the activities of all districts necessary to comply" with the CAA and SIP. *Id*.

33. The "districts" with which CARB is required to coordinate are those "created or continued in existence pursuant to . . . [Health & Safety Code] Section 40000." Cal. Health & Safety Code § 39025. The South Coast District is one of

35 such districts throughout the state. The District is responsible for developing and implementing a "comprehensive basinwide air quality management plan" to reduce emission levels from stationary sources and thereby achieve and maintain "state and federal ambient air quality standards." Cal. Health & Safety Code § 40402(e). The District's authority in that regard is limited to "adopt[ing] rules and regulations that carry out the [P]lan *and are not in conflict with state law and federal laws and rules and regulations*." Cal. Health & Safety Code § 40440 (emphasis added).

34. The California Legislature has declared that "local and regional authorities have the primary responsibility for control of air pollution from all sources, *other than emissions from motor vehicles*. The control of emissions from motor vehicles, except as otherwise provided in this division, shall be the responsibility of the state board." Cal. Health & Safety Code § 40000 (emphasis added); *see also* Health & Safety Code §§ 39002, 43000.5, 43013, 43018(b) and (d). Under state law, CARB and the air districts are each charged with, and limited to, regulating specific sources of air pollution.

III. INDIRECT SOURCE REVIEW AUTHORITY

35. "Indirect sources" are facilities which, by their nature "attract[], or may attract, mobile sources of pollution." CAA § 110(a)(5)(C). Typical indirect sources include shopping centers, stadiums, and other places of public assembly. The CAA provides that states may, but are not required to, adopt an ISR program as part of their SIPs. *Id*. at (a)(5)(A). The CAA defines ISR programs to mean "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a *new or modified* indirect source *will not attract* mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations exceeding any

national primary ambient air quality standard. . . ." *Id*. at (a)(5)(D) (emphasis added).

36. Rule 2305 is, by its terms, not limited to new or modified facilities as required of an ISR under the CAA, and for that reason and the others set forth in this complaint, it is preempted by federal law.

37. As outlined in CAA § 110(a)(5), California's Health & Safety Code § 40716 gives California air districts general authority to adopt and implement regulations to "[r]educe or mitigate emissions from indirect and areawide sources of air pollution" and "[e]ncourage or require the use of measures which reduce the *number or length* of vehicle trips." (emphasis added).

38. However, the principal purpose of Rule 2305 is to induce reduction in vehicle emissions from trucks by forcing carriers to operate trucks that meet Zero Emission Vehicle standards. Such a purpose is preempted by the CAA, and similarly prohibited by California law.

39. Additionally, California's Health & Safety Code § 40716(b) provides that "[n]othing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district."

40. Similarly, Cal. Health & Safety Code § 40440 gives the District specific authority to "provide for indirect source controls in those areas of the South Coast District in which there are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin," but only to the extent such indirect source controls or ISR regulations are "consistent" with the mandates of Health & Safety Code § 40414. Cal. Health & Safety Code § 40414, in turn, provides indirect source controls shall not infringe *"on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be*

interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." (emphasis added).

41. In authorizing the air districts to implement ISR rules, the Legislature "was aware of the congressional objections to indirect source review when it provided specific authorization in section 40716" and designed the provision to be "reflective of Congress' aversion to placing an undue regulatory burden on indirect sources." 75 Op. Cal. Att'y Gen. 256 (1993). The authorization to the District was intended to be consistent with federal law, which describes categories of indirect sources, how and when they could be reviewed, and the bounds of the controls that could be imposed on them.

42. Under California law, the District's purported authority to promulgate and enforce indirect source controls or ISR regulations is expressly limited to only "new" sources and to regulate in areas of the District with demonstrated high-level localized concentrations of pollutants.

43. Furthermore, no ISR may "infringe" on local land use authorities or controls, assess the equivalent of an operational permit, or confer upon the District or CARB "new authority" with respect to local land use or controls.

44. Further, no ISR can be contrary to federal law, *e.g.*, violate either the "categorical" preemption of CAA § 209(a) or the broad preemption of the ADA and FAAAA.

45. Under the CAA, no ISR can have as its principal purpose or effect (aka "domain," *see Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996)) the attempted adoption or enforcement of any standard - *e.g.*, zero emissions or near zero emissions, relating to the control of emissions from new motor vehicles.

46. Rule 2305 violates all of these prohibitions.

IV. CONTROL OF MOBILE SOURCE EMISSIONS IN CALIFORNIA

47. CARB has specifically addressed the adoption of Zero Emission Vehicles ("ZEV") standards in the exercise of its exclusive authority over such mobile sources, subject to federal approval. On June 25, 2020, CARB passed the Advanced Clean Trucks rule ("ACT"). The ACT sets specific timetables and ZEV standards for different classes of medium and heavy-duty vehicles. In particular, CARB's ACT regulations provide for Zero Emission vehicles to represent a certain percentage of sales, beginning with the 2024 vehicle model year. The ACT phases in over a period of 10 years, culminating in 2035 with a requirement that Zero Emission trucks and tractors meeting a ZEV standard comprise 55% of all Class 2b-3, 75% of all Class 4-8, and 40% of all Class 7-8 trucks and tractors sold each year.

48. To address emissions associated with the *remaining* conventional medium and heavy-duty diesel trucks, CARB has adopted the Heavy Duty Engine and Vehicle Omnibus Regulation, often referred to as the "Low NOx Omnibus." This complex regulation mandates, among other things, further reductions of oxides of nitrogen ("NOx") emissions from heavy-duty on-road engines, to be phased-in beginning in 2024; overhauls engine testing procedures; and an extension of engine useful life and warranty periods in order to secure durable emissions reductions.

49. CARB further circumscribed its comprehensive scheme of mobile source standards for Zero Emission Vehicles with its proposed Advanced Clean Fleet rule ("ACF"). The ACF, slated for an initial public hearing in December 2021, will require that a certain percentage of vehicles acquired by fleets meet a Zero Emission standard. For example, the ACF proposes that 50% of public fleet vehicle purchases for model years 2024 to 2026 must meet a Zero Emission standard, ramping up to 100% in 2027. As proposed, the ACF will become

effective for certain fleets in 2024 and phase in over time, with (1) the goal of achieving a zero-emission truck and bus fleet standard by 2045 where feasible, and (2) significantly earlier transitions for certain market segments such as last mile delivery and drayage applications that are associated with warehouse freight operations.

50. Notwithstanding CARB's adoption of these zero emissions vehicle standards, the District had called upon CARB to "go even further" with ZEV sales requirements.[4]

51. CARB, nonetheless, in the exercise of its exclusive standard-setting authority has taken a measured approach to the regulation of mobile sources, declining to require more stringent Zero Emission Vehicle standards "due to concerns about the feasibility of manufacturers to comply with even higher sales requirements especially for Class 2b-3 vehicles and tractors."[5] As such, the relevant regulatory authorities designated by the CAA have weighed competing policy interests and technological feasibility and concluded that the specific timetables for the Zero Emission Vehicle standards related to trucks and tractors that have already been adopted are the appropriate ones. Local air quality districts do not have the authority to "undo Congress's carefully calibrated regulatory scheme" or to modify the regulatory approach to vehicle emissions standards that CARB has adopted.

/ / /

[4] South Coast Air Quality Management District Letter to CARB, Comment Letter on Proposed Advanced Clean Trucks Regulation (December 6, 2019), https://www.arb.ca.gov/lists/com-attach/60-act2019-VzYHYlciWVUBZFM8.pdf.

[5] Advanced Clean Trucks Regulation, Final Statement of Reasons (March 2021), at 99, https://ww3.arb.ca.gov/regact/2019/act2019/fsor.pdf.

V. THE DISTRICT'S ISR

52. The District is responsible for air quality in the South Coast Basin, an area including all of Orange County and the non-desert portions of Los Angeles, Riverside and San Bernardino Counties. The Basin is home to the "megaports" of Los Angeles and Long Beach (San Pedro), the origin points for 40 percent of all container cargo traffic in the United States, and a well-developed logistics system designed to disseminate those goods across the region, state, and nation.

53. There are over 2,600 warehouses located within the District comprising over 662 million square feet of rentable building area. The District's own consultant estimates that of all of the goods passing through these warehouses, barely a quarter both originate in and are destined for use within the District.[6] The remainder is transported to or from areas beyond the District's reach, *e.g.*, to Northern California, other states, and nations. More specifically, the District's own staff have asserted that more than 40 percent of goods warehoused in the District are intended for national distribution.[7]

54. The warehouses and distribution centers located in the District are not simply participants in, but integral and essential components of, interstate and international commerce.

55. Recent delays and backlogs in container cargo traffic at these key ports have highlighted their importance to national supply chains and the

---

[6] Indus. Econ., Inc., et al., Assessment of Warehouse Relocations Associated with the South Coast Air Quality Management District Warehouse Indirect Source Rule (December 23, 2020), http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/iec_pr-2305-warehouse-relocation-report-(12-23-20).pdf?sfvrsn=8.

[7] South Coast Air Quality Management District Mobile Source Committee Meeting Agenda (February 19, 2021), at 10, http://www.aqmd.gov/docs/default-source/Agendas/Mobile-Source/msc021921.pdf?sfvrsn=22.

associated impacts on the economic health of the country and the financial well-being of all of its people.

56. Air quality in the South Coast Basin has dramatically improved with the implementation of the CAA regulatory scheme and its allocation of respective authorities that govern the regulatory efforts of EPA, CARB, the District, and California's other legislatively created air districts.

57. In 2017, as part of those continuing efforts, the South Coast District adopted its 2016 Air Quality Management Plan ("AQMP"). Included therein was provision "MOB-03 - Emission Reductions at Warehouse Distribution Centers," the goal of which was to assess and identify potential actions to further reduce emissions associated with emission sources operating in and out of warehouse distribution centers." The approved language in MOB-03 contains no reference to an ISR.[8] Indeed, during the hearing on its adoption, the District's Governing

[8] MOB-03 – Emission Reductions at Warehouse Distribution Centers: "The goal of this measure is to assess and identify potential actions to further reduce emissions associated with emission sources operating in and out of warehouse distribution centers. The South Coast District is currently working with industry stakeholders on conducting in-use truck trip studies and obtaining emissions information from various warehouse distribution types. This information along with emissions occurring in and around individual warehouse distribution centers will serve as the basis for seeking opportunities to reduce emissions beyond existing requirements. A stakeholder working group will be convened to discuss warehouse emissions related issues and provide input and comments on identifying actions that will result in further emission reductions. To the extent that these actions are voluntary in nature and are sustained over a long-term basis and the emission reduction levels are maintained, the emission reductions may be credited as surplus reductions (as defined by the U.S. EPA) into the SIP. If emission reductions are to be included in the SIP, enforceable commitments to ensure that the emissions are permanent will need to be made and may be in the form of a regulation adopted by the South Coast District within its legal authority or by other enforceable mechanisms."

Board specifically rejected an amendment that would have required the drafting and consideration of an ISR for warehouses.[9]

58. Nevertheless, in 2018, District staff returned to the Governing Board with a proposal for facility-based mobile source controls, including the development of an ISR for warehouses directed at vehicle emissions.

59. Despite this and other expressed reservations about employing a purported warehouse ISR to control mobile source emissions, on May 4, 2018, the Governing Board directed staff to develop reduction strategies for warehouses through regulatory measures.[10]

60. On March 3, 2021, the District made its draft staff report in support of Rule 2305 publicly available. Explaining the need for the new regulation, the report stated "[t]rucks are the largest source of NOx emissions in the air basin" and Rule 2305 is "expected to increase industry's interest in incentive programs" that provide "incentive funding to clean up vehicle and engine fleets."[11] Per the report, Rule 2305 would support "efforts to increase the number of ZE [Zero Emissions] vehicles" by "provid[ing] a mechanism to require warehouse operators to encourage ZE vehicle use at their facilities."[12] The staff report posited that Rule 2305 would correct the perceived gap in CARB's regulations by forcing the

---

[9] Minutes of the South Coast Air Quality Management District Governing Board (March 3, 2017), at 16, http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2017/2017-apr7-001.pdf?sfvrsn=4.

[10] Minutes of the South Coast Air Quality Management District Governing Board (May 4, 2018), at 9, http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2018/2018-jun1-001.pdf?sfvrsn=8.

[11] South Coast Air Quality Management District, Draft Staff Report on Proposed Rule 2305 and Proposed Rule 316 (March 3, 2021), at 14, http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/pr2305_draft-staff-report_03032021.pdf?sfvrsn=8.

[12] *Id*. at 15.

acquisition and use of vehicles meeting Zero Emissions standards within the South Coast Basin.[13]

61. The District has further explained that complying with Rule 2305 could require warehouses, goods owners, and motor carriers to modify their contractual relationships to impose such Zero Emission Vehicle standards: "Under Rule 2305, some warehouse operators may choose to include contract provisions either with motor carriers or with goods owners who contract with motor carriers, that take into account the requirements of the rule. This could include requiring or incentivizing NZE or ZE truck visits, or increasing the price charged for warehousing operations so that the operator can comply with Rule 2305 in other ways."[14]

62. In response to comments on Rule 2305, the District also noted that while contracting for ZE or NZE trucks was not current industry practice, in order to comply with Rule 2305, warehouse operators could contract with trucking companies to require the trucks visiting their warehouses to meet Zero Emission Vehicle standards.[15]

63. The District's environmental analysis of Rule 2305 correspondingly stated that the proposed project was intended to accelerate the use of trucks that meet the Zero Emission Vehicle standard that operate at warehouses in the South Coast AQMD region.[16]

---

[13] *Id.*

[14] *Id.* at 43-44.

[15] *Id.* at 125.

[16] South Coast Air Quality Management District, Final Environmental Assessment for Proposed Rule 2305, Appendix C: NOP/IS Comments and Responses (April 2021), at C-26, C-32, C-34, C-46,

64. Despite objections from A4A and a wide range of stakeholders, Rule 2305 and its companion Rule 316 were adopted on May 7, 2021. The provisions of Rule 2305 altering the operations at warehouses became effective throughout the District beginning July 1, 2021.

VI. RULE 2305

65. Nominally styled as an ISR, Rule 2305's actual purpose and effect is to control mobile source emissions by imposing preempted Zero Emission Vehicle standards on medium to heavy-duty trucks used at warehouses through the coercive threat of economic sanctions styled as a mitigation fee. The use of a sanction-backed ISR for this purpose is intended as an economically coercive "hammer" to be employed to impose Zero Emission Vehicle standards where the so-called "carrots" of earlier incentive programs have failed to produce desired results.[17]

66. Rule 2305 applies to both new and existing warehouses, whether or not those warehouses have been modified.

67. It creates a regulatory scheme in which qualifying warehouses accrue a compliance obligation based solely on the number, type, and emission characteristics of trucks that visit their facilities.

68. Rule 2305 does not address vehicle trips from workers coming to or leaving warehouses, the construction equipment used in developing new warehouses, the length of trips to and from the warehouse, or any direct emissions from the warehouse itself, such as forklifts, yard hostlers, or back-up generators.

---

http://www.aqmd.gov/docs/default-source/ceqa/documents/aqmd-projects/2021/attachment_j_pr2305_finalea.pdf?sfvrsn=6.

[17] SCAQMD Governing Board Meeting - March 3, 2017, at 2:00:05 (Governing Board Member Judith Mitchell), YOUTUBE, https://www.youtube.com/watch?v=e2wBwNM1LKY.

69. Warehouses with 100,000 or more square feet of indoor floor space, including those owned and operated by A4A members, are required to monitor the number and type of trucks that visit their facilities. This data includes the weighted-annual truck trips ("WATT") in which the heaviest class of truck is considered the equivalent of 2.5 trips in lighter duty vehicles.

70. The WATT is then multiplied by a stringency factor and by an annual variable designed to phase in the stringency factor over time.[18] The resulting number is the "WPCO," or WAIRE Points Compliance Obligation, which is specifically calibrated to ensure that the Rule imposes financial impacts, requires changes to business practices, and has the purpose and effect of requiring acquisition of trucks that meet zero emissions vehicle standards. Each year, regulated warehouses must earn "WAIRE Points" greater or equal to their WPCO in order to comply with the Rule.

71. As part of Rule 2305, the District developed a menu of so-called "options" whereby warehouse operators can earn WAIRE points ("WAIRE Menu"). In theory, these options are tied to emissions reductions and relative cost.

72. The WAIRE Menu options can be broadly classified into three groups: (1) those requiring warehouse operators to directly purchase and use ZE/NZE vehicles ("direct acquisition"), (2) those requiring warehouse operators to

---

[18] South Coast Air Quality Management District, Second Draft Staff Report on Proposed Rule 2305 and Proposed Rule 316 (April 2021) ("Second Draft Staff Report"), at 90, http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/pr-2305_sr_2nd-draft_4-7-21_clean.pdf?sfvrsn=8 ("The Stringency factor is defined as 0.0025 WAIRE Points per WATTs."); *see also* Second Draft Staff Report at 58, 283, and 356 ("a screening analysis of the commentor's proposed tripling of the recommended stringency indicates that it could require NZE/ZE truck sales to significantly surpass the limited number of new NZE and ZE truck sales projected by CARB modeling, and could lead to some warehouses relocating to other areas outside South Coast AQMD.").

rely on the purchase and use of ZE/NZE vehicles by others ("indirect acquisition"), and (3) nonacquisition pathways. During the rulemaking process, the District analyzed 18 different compliance pathways, styled as scenarios, using these options. Eight are direct acquisition pathways; five rely on indirect acquisition; and the remaining five are independent of ZE/NZE acquisition and use.

73. Direct acquisition pathways are those that require a warehouse operator itself to acquire and use ZE/NZE vehicles. The average projected cost of compliance as modeled by the District for direct acquisition is $0.19 per year per square foot.

74. Indirect acquisition pathways are those that require visits to the warehouse of ZE/NZE vehicles from non-warehouse owned fleets. Under these pathways, warehouses rely on their fleet contractors purchasing ZE/NZE vehicles and then using those vehicles to serve their warehouse to satisfy their WPCO. The average projected cost of compliance as modeled by the District for indirect acquisition is $0.42 per year per square foot.

75. Non-acquisition pathways are methods of accumulating points, which are neither directly nor indirectly related to the purchase of ZE/NZE trucks. There are essentially three non-acquisition options: (1) pay an assessed fee, (2) install and use solar panels, (3) purchase filter systems for nearby sensitive receptors. The average projected cost of compliance as modeled by the District for these non-acquisition pathways is $0.85 per year per square foot, approximately four and one-half times greater than the cost of directly acquiring new ZE or NZE trucks, and more than twice the cost of indirectly acquiring new fleets.

76. Using the District's own modeling, the average annual cost of using a direct acquisition pathway for compliance for a 250,000 square foot warehouse, is $47,500, the average annual cost of using an indirect acquisition pathways for

compliance is $105,000, while the average annual cost of using the non-acquisition pathways for compliance is $212,500.

77. This dramatic cost differential can have but one effect - assuming rational behavior, it will compel the purchase and use of ZE and NZE vehicles. This has been the District's unambiguously stated goal since Rule 2305 was first proposed.

78. The District claims that its menu of options saves Rule 2305 from preemption, but the cost differential belies the claim.

79. Further, the mitigation fee proposed by the District imposes burdens in excess of any benefit conferred upon the warehouses and is designed to generate revenue to fund a variety of projects that are neither directly nor indirectly related to the specific emissions from warehouses. The mitigation fee funds the WAIRE Mitigation Program, which would provide incentives toward the purchase of NZE and ZE trucks.[19] But the WAIRE Mitigation Program goes far beyond the trucks themselves, it is also intended to fund the purchase and installation of ZE charging or hydrogen fueling infrastructure, neither of which reduce emissions of NOx or particulate matter.[20]

VII. FEDERAL REGULATION OF AVIATION-RELATED COMMERCE

80. The Airline Deregulation Act of 1978 ("ADA"), 49 U.S.C. § 1371 *et seq*. prohibits the State of California from enacting or enforcing a "law, regulation, or other provision having the force and effect of law related to the price, route, or service of an air carrier . . . ." 49 U.S.C. § 41713(b)(1). Under the ADA, state

---

[19] South Coast Air Quality Management District, Final Staff Report—Proposed Rule 2305 and Proposed Rule 316 (May 2021), at 40-41, www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10.

[20] *Id*.

laws "related to" an air carrier's price, route, or service are broadly preempted. *Morales*, 504 U.S. at 383-384.

81. The United States Supreme Court has explained that the "ban on enacting or enforcing any law 'relating to rates, routes, or services' is most sensibly read . . . to mean States may not seek to impose their own public policies or theories of competition or regulation on the operations of [a motor] carrier." *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 229 n.5 (1995) ("*Wolens*"). Deregulation requires not only that states not interfere with the ability of private parties to contract, but also that they not interfere with the enforcement of those contracts. "Market efficiency requires effective means to enforce private agreements." *Wolens*, 513 U.S. at 230 (quotation marks omitted). Moreover, "[t]he stability and efficiency of the market depend fundamentally on the enforcement of agreements freely made, based on the needs perceived by the contracting parties at the time." *Id*.

82. The preemption of local regulation under the ADA should be read through the prism of federal authority which Congress expressed in the Federal Aviation Act ("FAA") as the "promotion of adequate, economical, and efficient service by air carriers," 49 U.S.C. § 1302(c) and the "adaptation of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States." 49 U.S.C. § 1302(a)(5). In matters that impact air commerce, federal preemption includes not only the movement and/or operation of aircraft, *see Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633 (1973) ("[f]ederal control [over aviation] is intensive and exclusive"), but regulations which impact vehicles transporting property as part of the ground operations integral to the flow of air commerce. 49 U.S.C. § 41713(b)(1).

83. As the Ninth Circuit has explained, an air carrier's "trucking operations are not some separate business venture; they are part and parcel of the

air delivery system. Every [air carrier's] truck carries packages that are in interstate commerce by air." *Federal Express Corporation v. California Public Utilities Commission*, 936 F.2d 1075, 1078 (1991).

84. Federal preemption of local regulation not only applies to air carriers and their carrier affiliates as set forth in 49 U.S.C. § 41713(B)(1), but has been extended to unaffiliated common motor carriers who may transport property that enters to stream of air commerce. Specifically, the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501, added an express preemption provision that mirrored the ADA, prohibiting the District from making, applying, or enforcing laws "related to a price, route, or service of *any motor carrier* . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1) (emphasis added).

85. Prior to 1980, both federal and state governments regulated the trucking industry. These regulations dictated, both directly and indirectly, how transportation services could be provided and the prices that could be charged for those services.

86. In 1980, Congress passed the Motor Carrier Act, which deregulated interstate trucking so that the rates and services offered by licensed motor carriers and related entities would be set by the market rather than by government regulation. 49 U.S.C. § 11503(a).

87. Fourteen years later, in 1994, to bolster deregulation and bring common motor carrier operations into line with the ADA, Congress included a broad provision within the FAAAA expressly preempting *state* regulation of the trucking industry.

88. Section 14501 of the FAAAA provides that, "[a] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of

law *related to a price, route, or service of any motor carrier* (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1) (emphasis added).

89. In enacting the FAAAA, Congress' "overarching goal" was "helping ensure transportation rates, routes, and services that reflect maximum reliance on competitive market forces, thereby stimulating efficiency, innovation, and low prices, as well as variety and quality." *Rowe*, 552 U.S. at 371 (internal quotations omitted). The FAAAA's express-preemption provision furthers this purpose by '"prevent[ing] States from undermining federal deregulation of interstate trucking' through a "'patchwork' of state-service determining laws, rules, and regulations." *Rowe*, 552 U.S. at 373.

90. The EPA and CARB are cooperatively advancing cleaner fleet vehicles through their respective regulatory activities. Additionally, while EPA and CARB continue to evaluate regulatory steps for cleaner vehicles, market participants are already making choices based on their needs and ZE availability.

91. Rule 2305 will fundamentally redefine the economics of warehouse and freight operations in the South Coast Basin. Rule 2305 will affect contractual relationships between motor carriers and good owners/warehouses and will directly affect the services motor carriers offer to their customers in the District. As such, it is a law which "requires carriers to offer a system of services that the market does not now provide (and which the carriers would prefer not to offer)" and is therefore preempted not only be the ADA but also by the FAAAA.

92. Rule 2305, by purpose and design, produces "the very effect that the [FAAAA] sought to avoid, *i.e.*, a State's direct substitution of its own governmental commands for 'competitive market forces' in determining (to a

significant degree) the services that motor carriers will provide." *Rowe*, 552 U.S. at 374.

93. The added cost of accelerated Zero Emission or Near Zero Vehicle fleet acquisition, or alternatively payment of monetary sanctions in the form of the "mitigation fee," will also drive many warehouses to shut down or move. For those that move, it will interfere with existing contracted routes, distribution channels, and pricing, cost hundreds if not thousands of local jobs. For those who stay, the additional operational costs will be borne by truck owner/operators, and warehouse owner/operators who in turn will need to increase freight charges, the cost of which contractual realignment ultimately will be borne by commercial and retail consumers, including commercial airlines, in and outside of the District's territory.

94. The District expressly acknowledged that operators may be forced to engage in "rerouting so that the usage points are accumulated at multiple warehouses."[21]

95. The marked increase in warehouse operations costs undoubtedly will also affect contracted traffic in and out of the Los Angeles Airport and the mega ports of Los Angeles and Long Beach thereby resulting in (1) the loss of further jobs and (2) a marked increase in the cost of moving freight and goods regionally, nationally and internationally. Finally, the secondary impact of this contractual realignment on the manufacturers and others dependent on the flow and warehousing of goods in and through the South Coast Basin could cause goods

[21] South Coast Air Quality Management District, Final Environmental Assessment for Proposed Rule 2305 (April 2021), at 4.1-17, http://www.aqmd.gov/docs/default-source/ceqa/documents/aqmd-projects/2021/attachment_j_pr2305_finalea.pdf?sfvrsn=6.

purveyors to reassess the economics of their ties to, or continued operations within, the South Coast Basin.

COUNT 1

(Declaratory/Injunctive Relief - Violation of the Clean Air Act)

96. A4A realleges and incorporates all of the foregoing paragraphs.

97. Under the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, EPA has the responsibility and authority to establish national emissions standards and other requirements for mobile sources of air pollution.

98. Federal laws and regulations are "the supreme Law of the Land." U.S. Const., art. VI, cl. 2 ("Supremacy Clause"). A4A and its members have legally protected interests under the Constitution, the CAA, and other federal laws. Together with the CAA, the Supremacy Clause prohibits the District from enacting or enforcing Rule 2305 because the Rule is preempted by the CAA.

99. A clear and judicially cognizable controversy exists between A4A and its members, on the one hand, and the District, on the other, over whether Rule 2305 is preempted by the CAA. A4A contends that the CAA preempts the regulation from imposing requirements on the vehicles its members own and operate, thereby rendering the rule unenforceable as a matter of law. The District has rejected arguments to this effect from A4A and other interested parties (as well its own Governing Board members' observations).

100. Section 209(a) of the CAA provides in pertinent part: "Prohibition. No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part."

101. Rule 2305 is a "standard relating to the control of emissions from new motor vehicles." Rule 2305's purpose and effect is to control emissions from new motor vehicles because it requires warehouse operators, and others similarly

situated, to acquire, directly or indirectly, new fleets of vehicles that meet Zero Emission Vehicle standards. Rule 2305 is thus preempted.

102. The CAA also preempts Rule 2305 because the Rule creates incentives sufficiently burdensome as to be, in effect, a purchase mandate. CAA Section 110(a)(5) preempts any such rule otherwise authorized under Section 110(a)(5) if the rule "creates incentives so onerous as to be in effect a purchase mandate." 76 Fed. Reg. 26609, 26611 (May 9, 2011). Under Rule 2305, A4A members and others similarly situated, must either acquire, and/or mandate that others acquire, trucks that meet Zero Emission or Near Zero Emission Vehicle standards or face significant sanctions in the form of a "mitigation fee" in order to use existing conventional transportation services. Thus, the Rule creates a *de facto* accelerated fleet purchase mandate.

103. To redress the violations of federal law and the interference with such rights, and pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and other provisions of law, including the Supremacy Clause, A4A requests a declaration that Rule 2305 is preempted and unenforceable under the Clean Air Act. Rule 2305 will actually and irreparably injure A4A and its members' federally protected interests if this Court does not both declare this Rule unlawful and enjoin its implementation.

104. The District is now implementing and will continue to implement the Rule and additional coercive standard-setting regulations in violation of federal law unless this Court enjoins them from doing so. Thus, A4A also requests injunctive relief restraining and redressing these violations of federal law, and the Supremacy Clause, and other provisions of law.

/ / /

COUNT 2

(Declaratory/Injunctive Relief — Violation of the ADA)

105. A4A realleges and incorporates all the foregoing paragraphs.

106. The Airline Deregulation Act of 1978 ("ADA"), 49 U.S.C. § 1371 *et seq*. prohibits States and the political subdivisions thereof, including the State of California and the District, from enacting or enforcing a "law, regulation, or other provision having the force and effect of law related to the price, route, or service of an air carrier. . . ." 49 U.S.C. § 41713(b)(1). Under the ADA, state laws "related to" an air carrier's price, route, or service are broadly preempted. *Morales*, 504 U.S. at 383-384. The ADA is complemented by the Federal Aviation Act of 1958, ("FAA"), which preempts Rule 2305 insofar as the Rule interferes with the FAA's exclusive jurisdiction over matters that affect air commerce, including not only the movement and/or operation of aircraft, *see Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 633 (1973) ("[f]ederal control [over aviation] is intensive and exclusive." (quoting *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944))), but regulations which impact vehicle operations of air carriers and their affiliates that contribute to the flow of air commerce.

107. The Supremacy Clause protects the rights of A4A, its members, and all others similarly situated, from laws that interfere with, are preempted by, or are otherwise contrary to federal law. The ADA as applied through the Supremacy Clause, prohibits the District from enacting or enforcing Rule 2305 by virtue of federal preemption. Under the ADA, the District is prohibited from implementing Rule 2305 because the Rule "relates to" A4A member air carrier prices, routes, and services.

108. An actual controversy presently exists between A4A and its members, on the one hand, and the District, on the other, with regard to the legality of the District's implementation of Rule 2305 because the Rule "relates to" the prices,

routes, and services of A4A members in the South Coast who operate warehouses, vehicles and aircraft in that stream of commerce and interstate freight operations.

109. The Rule directly affects the prices, routes, and services that A4A's members, and their affiliated commercial cargo carriers, warehouse owners and operators, offer their customers. Before Rule 2305's adoption, A4A members and others similarly situated, were free to operate their own vehicles or contract with an extensive network of contractors who comprise the vehicle and warehouse operations that support commercial aviation operations. Following Rule 2305's adoption, A4A members and others similarly situated, must either acquire, and/or mandate that others acquire, trucks that meet Zero Emission Vehicle standards or face significant coercive economic sanctions in the form of a "mitigation fee" in order to continue using their existing conventional freight transportation services and vehicles.

110. Rule 2305 also indirectly affects prices, routes, and services. A law may be preempted even if its effect on prices, routes or services "is only indirect." *Morales*, 504 U.S. at 386. The Rule indirectly affects A4A member operations by imposing requirements on commercial carriers that differ significantly from those that the market would otherwise dictate. Regulations cannot impose such requirements on carriers. *Rowe*, 552 U.S. at 374 (holding that regulations are preempted if the "effect of the regulation is that carriers will have to offer . . . services that differ significantly from those that, in the absence of regulation, the market might dictate."). *Id*. at 372. The market does not currently dictate that motor carriers provide ZEV or NZE vehicles as part of their operations, and most do not.

111. Rule 2305 indirectly affects prices because the Rule, in purpose and effect, compels the acquisition of trucks meeting ZEV or NZE standards on an accelerated basis, regardless of whether ZEV and/or NZE trucks are commercially

available on the open market. ZEV and NZE freight vehicles remain in the experimental/demonstration phase and are not commercially available through all Classes. ZEV and NZE acquisition represents a significant cost increase above conventional vehicles, long before the end of the current fleet's useful life. A4A members must make this investment while simultaneously cease using, and/or allowing others to use, conventional trucks. As a result, A4A members must charge higher prices for services.

112. Rule 2305 indirectly affects routes and services. Once ZE/NZE vehicles are acquired, A4A members must then modify their routes and services, not only in the South Coast Basin but nationally. To comply with the Rule 2305, A4A member operations' routes and services are limited by electric charging infrastructure availability and dictated by narrow commercial cargo carrier scheduling requirements, particularly in compliance with strict air traffic control for A4A member commercial aviation operations.

113. Rule 2305 compels A4A members to change their business operations in ways that directly and indirectly affect the prices A4A members charge their customers for services, the routes the cargo carriers must take, and the types of services provided to their customers. Unless this Court restrains and enjoins Defendants from enforcing the Rule, A4A members and others similarly situated will suffer irreparable harm.

114. A4A and its members have no plain, speedy, and adequate remedy at law, making injunctive relief necessary.

COUNT 3

(Declaratory/Injunctive Relief — Violation of the FAAAA)

115. A4A realleges and incorporates all the foregoing paragraphs.

116. The express preemption provision of the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), 49 U.S.C. § 14501, also

prohibits the District from making, applying, or enforcing laws "related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1).

117. The Supremacy Clause protects the rights of A4A, its members, and all others similarly situated, from laws that interfere with, are preempted by, or are otherwise contrary to federal law. Together with the FAAAA, the Supremacy Clause prohibits the District from enacting or enforcing Rule 2305 because the Rule is "related to" A4A member carrier prices, routes, and services with respect to the transportation of property and interstate freight operations.

118. An actual controversy exists among the parties because warehouse owners, operators, freight forwarder and/or brokers, who work directly with A4A members, or are similarly situated, will be required to change their prices, routes, and services in order to comply with Rule 2305, as stated above. Thus, the Rule impedes transportation operations relating to prices, routes, and services and limits the free flow of materials in local and interstate commerce.

119. Rule 2305 aims squarely at the transportation of goods. The Rule directly affects the prices, routes, and services of commercial motor carriers, warehouse owners, operators, freight forwarders, and/or brokers offer their customers, including A4A members, for the transportation of goods in local and interstate commerce.

120. Unless this Court restrains and enjoins Defendants from enforcing the Rule, A4A members will suffer irreparable harm with respect to their business relationships and operations that involve services provided by non-affiliated motor carriers.

121. A4A and its members have no plain, speedy, and adequate remedy at law, making injunctive relief necessary.

COUNT 4

(Declaratory/Injunctive Relief — Violation of State Law— Authority)

122. A4A realleges and incorporates all the foregoing paragraphs.

123. The California Health and Safety Code provides that, subject to limits under federal law, the California Air Resources Board ("CARB") has exclusive authority in California over mobile source emissions. Cal. Health & Safety Code §§ 39002, 40000, 43000.5, 43013, 43018(b) and (d).

124. The District is a local agency created by the California State Legislature and possess only the authority specifically granted to it by state law. The District has no inherent police power nor any other authority beyond that explicitly conferred on it by statute. *PaintCare v. Mortensen*, 233 Cal. App. 4th 1292, 1305 (2015) ("an administrative agency 'has only as much rulemaking power as is invested in it by statute'"); *see also Friends of the Kings River v. County of Fresno*, 232 Cal. App. 4th 105, 117 (2014).

125. An actual controversy presently exists between the parties regarding the legality of the District's Rule 2305 due to the District's overreach of its delegated authority to implement indirect source controls under controlling federal and state law.

126. CAA § 209(a) prohibits state or local regulations imposing "standard[s] relating to the control of emissions from new motor vehicles or new motor vehicle engines" without an EPA approved waiver. In California, only CARB has the right to apply for such a waiver. The CARB has not sought a waiver with respect to the Rule 2305.

127. The District has limited ability to regulate mobile source emissions through indirect source controls. Federal law allows, but does not require, states to adopt an "indirect source review program" as part of the State Implementation Plan

("SIP"). The CAA further limits these SIPs to review of only "new or modified indirect source[s]." CAA §§110(a)(5)(A)(i); (a)(5)(D).

128. The District has authority to "adopt and implement Regulations" to "[r]educe or mitigate emissions from indirect and area wide sources of pollution." Cal. Health & Safety Code § 40716(a). Applicable to the District's limited authority to adopt "indirect source controls," the CAA limits these indirect source controls to "*new or modified* indirect source[s]" and California Law further limits them to "areas of the south coast district in which there are high-level, localized concentrations or pollutants or with respect to any *new source* that will have a significant effect on air quality in the South Coast Air Basin." Cal. Health & Safety Code § 40440 (emphasis added).

129. The California Health and Safety Code provides that the "south coast district board shall adopt rules and regulations . . . that are not in conflict with state law and federal laws and rules and regulations." Cal. Health & Safety Code § 40440(a). These limitations apply to "indirect source rules." Cal. Health & Safety Code § 40440(b).

130. Such regulations also cannot "infringe[] on the existing authority of counties and cities to plan or control land use" and do not "provide[] or transfer[] new authority over such land use to" the District or CARB. Cal. Health & Safety Code §§ 40716(b), 40414.

131. Rule 2305 applies to all warehouses operating within the South Coast Basin meeting the Rule's minimum 100,000 square foot indoor floor space requirement. As the Rule applies to *all existing*, as opposed to simply "new or modified," sources of emissions, its enactment, not only violates the CAA, but exceeds the "power conferred [to the District] by statute" and its adoption infringes on the existing authority of counties and cities to plan and control land use.

COUNT 5

(Declaratory/Injunctive Relief — Violation of State Law— Unlawful Tax)

132. A4A realleges and incorporates all the foregoing paragraphs.

133. Proposition 26, Cal. Const. Art. XIII C, § 1(e), states that "any levy, charge, or exaction of any kind imposed by a local government" is a tax except for certain enumerated exemptions.

134. The District is a "local government" and "special district" as defined by Article XIII C 1(b)(c). The Rule 2305 fee does not fall within any of the exemptions in Proposition 26, including:

135. A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and that does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege. Cal. Const., Art. XIII C, § 1(e)(1).

136. Thus, the Rule 2305 "mitigation fees" are an unlawful tax.

137. An actual controversy presently exists between A4A and its members, on the one hand, and the District, on the other, with regard to the legality of the District's imposition, or threatened imposition, of purported "mitigation fees" as unlawful, invalid and in violation of controlling state law.

138. The District has established charges or "fees" ostensibly to be dedicated to the specific purpose of funding District programs relating to air quality management. Instead, the Rule 2305 revenue exceeds the reasonable or estimated costs of the District's programs or services, and actually constitute new "special tax" revenues for the District. The District failed to seek or obtain the requisite voter approval for such "special taxes" as required by the California Constitution Article XIII C 2(d), and Cal. Gov. Code § 53722.

139. A levy only qualifies as a regulatory fee if (1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is

charged, (2) the fee is not levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship to the burdens created by the feepayors' activities or operations. If those conditions are not met, the levy is a tax. *California Bldg. Indus. Ass'n v. State Water Res. Control Bd.*, 4 Cal. 5th 1032, 1046 (2018).

140. The District calibrated the Rule 2305 fee to the Carl Moyer program cost effectiveness threshold, but did not analyze whether this threshold adequately represents the cost to implement emission reduction projects in the South Coast Basin specifically or to implement the projects necessary to offset emissions from the specific warehouses the Rule regulates.

141. The District failed to demonstrate, and cannot demonstrate, that the Rule 2305 fees are not established or imposed for general revenue purposes, in excess of any reasonable regulatory program costs. "What a fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue becomes a tax." *California Farm Bureau Fed'n v. State Water Res. Control Bd.*, 51 Cal. 4th 421, 438 (2011).

142. The fee does not seek to regulate the specific fee-payors' indirect source emissions, but instead aims to raise money for the control of emissions in the South Coast Basin generally. The District's stated purpose is to "reduce local and regional emissions of NOx and PM associated with warehouses in order to assist in meeting state and federal air quality standards." The District also stated that proceeds from this new tax will be used to provide financial incentives for truck owners to purchase NZE or ZEV trucks, for the installation of fueling and charging infrastructure, with priority given for projects in the communities near warehouses that paid the fee, and to fund grid upgrades.

143. Some of these projects, such as electric charging infrastructure and utility projects, will not even achieve emission reductions, let alone reductions from the warehouses that will pay the "fee." There is no nexus between the fees and the specific fee-payors' generation of indirect emissions, and the exaction therefore constitutes a tax. *Morning Star Co. v. Board of Equalization*, 201 Cal. App. 4th 737, 755 (2011) (charge to company that did not seek to regulate the Company's use, generation, or storage of hazardous material but to raise money for the control of hazardous material generally was a tax).

144. The District failed to demonstrate that the amount of the new ISR fees bear a reasonable relationship to the social or economic burdens that may fairly be attributed to warehouses and fleet operators or to demonstrate a causal connection or "nexus" between warehouses and the amount of the fee, as required by *Sinclair Paint Co. v. Board of Equalization*, 15 Cal. 4th 866 (1997).

145. The District bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity. *California Ass'n of Prof. Scientists v. Dept. of Fish and Game*, 79 Cal. App. 4th 935, 935, 945 (2000).

146. The District failed to demonstrate the basis for determining, if any, the manner in which the costs of the new ISR programs are apportioned, or to assure that the charges allocated to a fee payer bear a fair and reasonable relationship to the fee payer's burdens on or benefits from the regulatory activity.

/ / /

COUNT 6

(Declaratory Relief)

147. A4A realleges and incorporates the foregoing paragraphs.

148. This case presents a justiciable issue in that warehouses and fleet operators operating in the South Coast Basin must already comply with the Rule 2305 or face significant penalties.

149. A declaratory judgment in this matter would terminate and afford relief from the uncertainty, cost, disruption, conflict, and controversy giving rise to this proceeding and prevent a similar situation from arising in the future.

150. This matter is most properly resolved through this Court's declaratory judgment. The matter involves important federal and state law questions, and a ruling in this case will have significant impact on the national system of freight transportation. It is, therefore, of critical importance to the commercial air carriers, the freight transportation industry, and the public at large.

COUNT 7

(Preliminary and Permanent Injunctive Relief)

151. A4A realleges and incorporates the foregoing paragraphs.

152. A4A and its members will suffer irreparable harm if the Court does not enjoin the District's implementation and enforcement of Rule 2305. The Rule's significant impact on both the efficiency and economics of the nation's logistics system is incalculable, as is the economic loss attributable to the delays, equipment shortages, and interference with dispatching and the efficient allocation of freight vehicles, and aircraft operations as a consequence. The threat of facing substantial, and perpetually on-going economic sanctions for noncompliance also threatens to cause A4A's members and other local and interstate commercial transportation and logistics operators doing business in the South Coast Basin - together with their customers and the public-at-large - irreparable harm.

153. If the novel Rule 2305 is not enjoined and the District were emboldened to likewise assume the authority of EPA and adopt the Airport ISR, a similar regional regulation, the irreparable harm to the commercial carrier and logistics industry and to the public interest would be compounded.

154. If the novel Rule 2305 is not enjoined and other jurisdictions were emboldened to likewise assume the authority of EPA and adopt similar regional or state regulations, the irreparable harm to the commercial carrier and logistics industry and to the public interest would be likewise compounded.

155. A4A and its members have no adequate remedy at law for the injuries alleged herein. Even if the monetary value of the perpetually on-going injuries to A4A and its members could be ascertained, there is no action at law available to A4A and its members to recover such losses from the District. Only this Court's exercise of its equitable powers can protect A4A, its members, and other similarly situated operators from the threatened irreparable harm.

156. Whereas injunctive relief would prevent irreparable injury to A4A, its members, other similarly situated operators, and the public-at-large, on balance, the injury to the District, if any, would only amount to a judicial declaration of the prescribed constitutional and statutory limits on its authority.

/ / /

PRAYER FOR RELIEF

WHEREFORE, Intervenor Plaintiffs A4A and its members pray:

A. For a declaration that (1) Rules 2305 and 316 are invalid and (2) it is contrary to law for Defendants to enforce Rules 2305 and 316 against warehouses and fleet owners operating in the South Coast Basin;

B. For a preliminary and permanent injunction requiring Defendants to conform their conduct to such judicial declaration and barring them from implementing or enforcing in any way Rules 2305 and 316;

C. For such costs and attorneys' fees to which Intervenor Plaintiffs may be entitled by law; and

D. For such other, further or different relief as this Court may deem just and proper.

Dated: January 14, 2022

BEVERIDGE & DIAMOND P.C.

By: /s/ Gary J. Smith

Gary J. Smith, Esq. (SBN 141393)
GSmith@bdlaw.com
BEVERIDGE & DIAMOND PC
456 Montgomery Street, Suite 1800
San Francisco, CA 94104-1251
Telephone: 415-262-4000
Facsimile: 415-262-4040

Attorney for Intervenor-Applicant Airlines for America