

1 ROB BONTA
Attorney General of California
2 ABIGAIL BLODGETT
Supervising Deputy Attorney General
3 STACY J. LAU (SBN 254507)
Deputy Attorney General
4 1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-1973
7 Fax: (510) 622-2270
E-mail: Stacy.Lau@doj.ca.gov

8 *Attorneys for Plaintiff State of California*

9 *[Additional counsel listed on signature page]*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 **STATE OF CALIFORNIA, STATE OF**
14 **NEW YORK, COMMONWEALTH OF**
15 **PENNSYLVANIA, STATE OF**
16 **COLORADO, STATE OF**
17 **CONNECTICUT, STATE OF**
18 **DELAWARE, STATE OF ILLINOIS,**
19 **STATE OF MAINE, STATE OF**
20 **MARYLAND, PEOPLE OF THE STATE**
21 **OF MICHIGAN, STATE OF NEW**
22 **JERSEY, STATE OF NEW MEXICO,**
23 **STATE OF NORTH CAROLINA, STATE**
24 **OF OREGON, STATE OF RHODE**
25 **ISLAND, STATE OF VERMONT, STATE**
26 **OF WASHINGTON, DISTRICT OF**
27 **COLUMBIA, CITY OF NEW YORK, and**
28 **the BAY AREA AIR QUALITY**
MANAGEMENT DISTRICT,

Plaintiffs,

v.

UNITED STATES POSTAL SERVICE,
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,

Defendants.

Case Nos. 3:22-cv-02583-RFL

FIRST SUPPLEMENTAL COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1
2 1. In this action, Plaintiffs State of California, State of New York, Commonwealth of
3 Pennsylvania, State of Colorado, State of Connecticut, State of Delaware, State of Illinois, State
4 of Maine, State of Maryland, People of the State of Michigan, State of New Jersey, State of New
5 Mexico, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State
6 of Washington, District of Columbia, the City of New York, and the Bay Area Air Quality
7 Management District (“Plaintiffs”) challenge the United States Postal Service’s decision to
8 purchase and deploy 106,480 postal delivery vehicles—more than half of the agency’s active
9 vehicle fleet—without first performing a lawful environmental review as required under the
10 National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321, *et seq.* Plaintiffs file this First
11 Supplemental Complaint pursuant to Federal Rule of Civil Procedure 15(d) to raise allegations
12 based on events that have occurred since Plaintiffs filed their original Complaints on April 28,
13 2022, ECF No. 1 in Case Nos. 3:22-cv-2583-RFL and 3:22-cv-2576-RFL. In particular, the
14 Postal Service has undertaken further environmental review of its vehicle acquisition decision and
15 issued a Final Supplemental Environmental Impact Statement (“Final SEIS”) and revised Record
16 of Decision (“revised ROD”) under NEPA. That further environmental review remains deficient.
17 Plaintiffs hereby challenge the Postal Service’s deficient Final SEIS and revised ROD, and also
18 incorporate by reference the factual and legal allegations in the original Complaints.

19 2. The United States Postal Service has one of the largest civilian vehicle fleets in the
20 world. Its vehicles are on the road six days a week in every community in the United States,
21 including communities that are already overburdened by air pollution, experiencing severe
22 weather due to climate change, and those already in nonattainment with the national ambient air
23 quality standards set by the United States Environmental Protection Agency (“EPA”). While the
24 Postal Service plays a critical role in delivering the nation’s mail, its vehicles also pollute the air
25 in the communities where they operate and emit significant amounts of greenhouse gases. As its
26 current vehicle fleet nears the end of its useful life, the Postal Service has been presented with a
27 tremendous opportunity to convert its fleet to zero-emission, electric vehicles, a change that
28 would alleviate air pollution, particularly in overburdened communities, and help tackle the

1 climate crisis.

2 3. Given the significant environmental and public health implications of this
3 decision, the Postal Service was obligated under NEPA to take a “hard look” at the impacts of its
4 “Next Generation Delivery Vehicle Acquisitions” program – to look before it leaps. The Postal
5 Service failed to do so here. Instead, the Postal Service first chose a manufacturer with minimal
6 experience in producing electric vehicles, signed a contract, and made a substantial down
7 payment for new vehicles. Only then did the Postal Service publish a cursory environmental
8 review setting forth its proposed alternatives and environmental impacts analysis for the project.
9 In doing so, the Postal Service failed to comply with even the most basic requirements of NEPA.

10 4. In particular, the Postal Service violated well-established legal precedent
11 prohibiting “an irreversible and irretrievable commitment of resources” before completing the
12 NEPA process by signing contracts with a defense company (Oshkosh Defense, LLC or
13 “Oshkosh”) to procure vehicles six months before even releasing its initial draft environmental
14 review, and a year prior to issuing the Final Environmental Impact Statement (“Final EIS”) and
15 original Record of Decision (“original ROD”).

16 5. The Postal Service also failed to consider and evaluate reasonable alternatives to
17 its action. During its initial environmental review, the Postal Service put forward a proposed
18 action that would largely continue the status quo by replacing up to 90 percent of its fleet with
19 fossil-fuel powered, internal combustion engine vehicles (“original Preferred Alternative”). The
20 Postal Service then evaluated only 10 percent electric and 100 percent electric vehicle options,
21 while arbitrarily rejecting any consideration of fleets with a mix of electric vehicles between these
22 two extremes.

23 6. The Postal Service further failed to take the required “hard look” at these
24 alternatives. Specifically, the Postal Service did not properly evaluate several environmental
25 impacts of its action, including air quality, climate harms, and impacts on environmental justice
26 communities, such as health risks and cumulative impacts, by simply assuming that any upgrade
27 to its vehicle fleet would have positive impacts on the environment.

28 7. The Postal Service also failed to ensure the scientific integrity of its analysis by

1 relying on unfounded assumptions regarding the costs and performance of electric vehicles,
2 infrastructure, and gas prices, and failing to identify the source of the data relied upon in the Final
3 EIS.

4 8. Additionally, the Postal Service failed to consider inconsistencies between its
5 original Preferred Alternative and Plaintiffs' laws and policies to reduce fossil fuel consumption
6 and to electrify the transportation sector.

7 9. After issuing its Final EIS and original ROD, but prior to completing its
8 supplemental environmental review of the project, the Postal Service made a further irreversible
9 and irretrievable commitment of resources in violation of NEPA by awarding new contracts for
10 the purchase of 18,500 vehicles, half of which would be internal combustion engine vehicles that
11 can stay on the road for decades and prevent the Postal Service from re-evaluating the fleet
12 makeup in the near future. The Postal Service signed these contracts at least four months prior to
13 releasing a Draft Supplemental Environmental Impact Statement ("Draft SEIS"), seven months
14 before issuing a Final SEIS, and nine months before issuing a revised ROD.

15 10. The Final SEIS and revised ROD failed to address many of the inadequacies in the
16 Final EIS and original ROD, and fail to comply with NEPA. Strikingly, the Postal Service again
17 refused to consider a reasonable range of alternatives. Instead, the Postal Service considered only
18 one more vehicle mix – consisting of 62 percent electric and 38 percent internal combustion
19 engine vehicles to be delivered over a period of either six or eight years – despite numerous
20 comments, including from EPA as well as Plaintiffs, urging the Postal Service to consider a
21 higher percentage of electric vehicles or hybrid vehicles. Whether the delivery period will be six
22 or eight years makes only a slight difference to the environmental impact of the program. Here
23 again, the Postal Service considered only the outcome that it intended to reach, without
24 consideration of alternatives that would provide a meaningful contrast. The Postal Service also
25 failed to disclose to the public the underlying information and data explaining why the Postal
26 Service limited its consideration of additional alternatives to an allocation consisting of 62
27 percent battery electric vehicles.

28 11. The Postal Service failed to take the required "hard look" at the alternatives set

1 forth in the SEIS. Specifically, the Postal Service did not adequately consider the air quality,
2 climate change, or environmental justice impacts of its program, including cumulative air quality
3 and health effects on environmental justice communities.

4 12. The Postal Service also failed to ensure the scientific integrity of the analysis in
5 the SEIS. Despite relying on a total cost of ownership model in the Final EIS to evaluate
6 alternatives, the Postal Service set aside best practices in the SEIS by evaluating alternatives
7 based on upfront acquisition costs instead.¹ Moreover, even though the SEIS was finalized more
8 than 18 months after the Final EIS, the SEIS did not consider updated information on the mileage
9 range offered by current battery technology, the costs of charging infrastructure, and the ratio and
10 number of chargers necessary to support a fleet at higher percentages of electrification. Nor did
11 the Postal Service consider regional variations when calculating emissions, as the Postal Service’s
12 Office of Inspector General recommended, but instead used emissions inputs from a single
13 county, Westchester County, New York. The Postal Service also underestimated emissions from
14 the purpose-built delivery vehicles to be manufactured by Oshkosh by classifying them as “light
15 commercial trucks” rather than giving them the more accurate “light-heavy duty” vehicle
16 classification, as defined by EPA, when conducting its analysis. Both Plaintiffs and EPA had
17 alerted the Postal Service of these flaws in its analysis through their comments on the Final EIS
18 and SEIS.

19 13. Finally, the Postal Service failed to consider inconsistencies between its SEIS
20 Preferred Alternative and Plaintiffs’ laws and policies to reduce fossil fuel consumption and to
21 electrify the transportation sector.

22 14. The deficiencies in the Postal Service’s environmental analysis, and the resulting
23 failure to entertain viable options for electrifying the national mail delivery fleet, have grave
24 consequences. In addition to reducing climate change impacts, electrifying the Postal Service
25 fleet would reduce smog and particulate matter pollution in nearly every neighborhood in
26 America. Postal delivery routes are stop-and-go by nature, which means that gas-powered
27

28 _____
¹ Revised ROD, App’x D [EPA NGDV Final SEIS Comment Letter, Oct. 30, 2023, at p. 1].

1 delivery vehicles may idle just outside homes for some of the day. This daily pollution impacts
2 nearly every resident in the country, but the harmful effects are felt most significantly by
3 environmental justice communities, which are often forced to breathe polluted air from multiple
4 and compounding sources. Indeed, highways, ports, railyards, warehouses, oil refineries, and
5 other industrial facilities are often located in or near low-income communities of color,
6 exacerbating the daily, negative health impacts these communities experience. Transitioning to a
7 zero-emission postal fleet would remove many otherwise polluting vehicles from this harmful
8 equation.

9 15. Accordingly, Plaintiffs seek a declaration that the Postal Service's Final EIS,
10 original ROD, Final SEIS and revised ROD for its Next Generation Delivery Vehicle
11 Acquisitions program violated NEPA, request that the Court vacate and set aside the Final EIS,
12 Final SEIS, and both the original and revised ROD, and enjoin actions by the Postal Service
13 under its Next Generation Delivery Vehicle Acquisitions program until it has complied with
14 NEPA.

15 JURISDICTION AND VENUE

16 16. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the
17 laws of the United States), 28 U.S.C. § 1346 (civil action against the United States), 39 U.S.C.
18 § 401 (authorizing suits against the Postal Service), and 39 U.S.C. § 409 (suits by and against the
19 Postal Service). An actual controversy exists between the parties within the meaning of 28
20 U.S.C. § 2201(a), and this Court may grant declaratory relief, injunctive relief, and other relief
21 pursuant to 28 U.S.C. §§ 2201–02 and its equitable powers.

22 17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(C) and 39 U.S.C.
23 § 409 because this is the judicial district in which Plaintiffs State of California and the Bay Area
24 Air Quality Management District reside, and this action seeks relief against agencies and/or
25 officers of the United States.

26 18. Pursuant to Civil Local Rules 3-5(b) and 3-2(c), there is no basis for assignment of
27 this action to any particular location or division of this Court.
28

PARTIES

1
2 19. Plaintiff STATE OF CALIFORNIA brings this action by and through Attorney
3 General Rob Bonta. The Attorney General is the chief law enforcement officer of the State and
4 has the authority to file civil actions in order to protect public rights and interests, including
5 actions to protect the natural resources of the State. Cal. Const. art. V, § 13; Cal. Gov't Code
6 §§ 12511, 12600-12612. This challenge is brought in part pursuant to the Attorney General's
7 independent constitutional, statutory, and common law authority to represent the people's
8 interests in protecting the environment and natural resources of the State of California from
9 pollution, impairment, or destruction. *Id.*; *D'Amico v. Bd. of Med. Exam'rs*, 11 Cal. 3d 1 (1974).

10 20. Plaintiff STATE OF NEW YORK brings this action by and through Attorney
11 General Letitia James. The Attorney General is the chief legal officer of the State of New York
12 and brings this action on behalf of the State and its citizens and residents to protect their interests,
13 and in furtherance of the State's sovereign and proprietary interests in the conservation and
14 protection of the State's natural resources and the environment.

15 21. Plaintiff the COMMONWEALTH OF PENNSYLVANIA is a sovereign state of
16 the United States of America. This action is brought on behalf of the Commonwealth by
17 Attorney General Michelle Henry, the "chief law officer of the Commonwealth." Pa. Const. art.
18 IV, § 4.1. Attorney General Henry brings this action on behalf of the Commonwealth pursuant to
19 her statutory authority. 71 Pa. Stat. § 732-204.

20 22. Plaintiff STATE OF COLORADO brings this action by and through Attorney
21 General Phil Weiser. The Attorney General of Colorado is authorized to appear for the State and
22 prosecute and defend all actions in which the State is a party or is interested. Colo. Rev. Stat. §
23 24-31-101(1)(a) (2021). Attorney General Phil Weiser brings this action in defense of the State's
24 interest in protecting the public health and environment.

25 23. Plaintiff STATE OF CONNECTICUT brings this action by and through Attorney
26 General William Tong. The Attorney General of Connecticut is generally authorized to have
27 supervision over all legal matters in which the State of Connecticut is a party. He is also
28 statutorily authorized to appear for the State "in all suits and other civil proceedings, except upon

1 criminal recognizances and bail bonds, in which the State is a party or is interested ... in any court
2 or other tribunal, as the duties of his office require; and all such suits shall be conducted by him
3 or under his direction.” Conn. Gen. Stat. § 3-125.

4 24. Plaintiff STATE OF DELAWARE is a sovereign state of the United States of
5 America. This action is brought on behalf of the State of Delaware by Attorney General Kathleen
6 Jennings, the “chief law officer of the State.” *Darling Apartment Co. v. Springer*, 22 A.2d 397,
7 403 (Del. 1941). Attorney General Jennings also brings this action on behalf of the State of
8 Delaware pursuant to her statutory authority. Del. Code Ann. tit. 29, § 2504.

9 25. Plaintiff STATE OF ILLINOIS brings this action by and through Attorney General
10 Kwame Raoul. The Attorney General is the chief legal officer of the State of Illinois (Ill. Const.,
11 art V, § 15) and “has the prerogative of conducting legal affairs for the State.” *EPA v. Pollution*
12 *Control Bd.*, 372 N.E.2d 50, 51 (Ill. Sup. Ct. 1977). He has common law authority to represent
13 the People of the State of Illinois and “an obligation to represent the interests of the People so as
14 to ensure a healthful environment for all the citizens of the State.” *People v. NL Indus.*, 604
15 N.E.2d 349, 358 (Ill. Sup. Ct. 1992).

16 26. Plaintiff STATE OF MAINE brings this action by and through its Attorney
17 General, Aaron M. Frey. The Attorney General of Maine is a constitutional officer with the
18 authority to represent the State of Maine in all matters and serves as its chief legal officer with
19 general charge, supervision, and direction of the State’s legal business. Me. Const. art. IX, Sec.
20 11; Me. Rev. Stat. tit. 5, §§ 191 *et seq.* The Attorney General’s powers and duties include acting
21 on behalf of the State and the people of Maine in the federal courts on matters of public interest.
22 The Attorney General has the authority to file suit to challenge action by the federal government
23 that threatens the public interest and welfare of Maine residents as a matter of constitutional,
24 statutory, and common law authority.

25 27. Plaintiff STATE OF MARYLAND brings this action by and through its Attorney
26 General, Anthony G. Brown. The Attorney General of Maryland is the State’s chief legal officer
27 with general charge, supervision, and direction of the State’s legal business. Under the
28 Constitution of Maryland, and as directed by the Maryland General Assembly, the Attorney

1 General has the authority to file suit to challenge action by the federal government that threatens
2 the public interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); Md. Code
3 Ann., State Gov't § 6-106.1.

4 28. By and through Michigan State Attorney General Dana Nessel, Plaintiff PEOPLE
5 OF THE STATE OF MICHIGAN brings this action to defend their sovereign and proprietary
6 interests. MCL 14.28. Conserving Michigan's natural resources is of "paramount public
7 concern." Mich. Const. art IV, § 52.

8 29. Plaintiff STATE OF NEW JERSEY is a sovereign state of the United States of
9 America and brings this action on behalf of itself and as a trustee, guardian and representative of
10 the residents and citizens of New Jersey. The Attorney General is authorized to file civil suits to
11 vindicate the State's rights and interests, and as he deems necessary to protect the public. N.J.
12 Stat. Ann. § 52:17A-4; *Alexander v. New Jersey Power & Light Co.*, 21 N.J. 373, 380 (1956);
13 N.J. Stat. Ann. § 23:2A-2. Attorney General Matthew J. Platkin brings this action in defense of
14 the State's sovereign interest to protect the public health and the environment.

15 30. Plaintiff STATE OF NEW MEXICO brings this action by and through Attorney
16 General Raúl Torrez. The Attorney General of New Mexico is authorized to prosecute in any
17 court or tribunal all actions and proceedings, civil or criminal, when, in his judgment, the interest
18 of the State requires such action. NMSA 1978, § 8-5-2. Under the Constitution of New Mexico,
19 "protection of the state's beautiful and healthful environment is ... declared to be of fundamental
20 importance to the public interest, health, safety and the general welfare." N.M. Const. art. XX,
21 § 21. This provision "recognizes that a public trust duty exists for the protection of New
22 Mexico's natural resources ... for the benefit of the people of this state." *Sanders-Reed ex rel.*
23 *Sanders-Reed v. Martinez*, 350 P.3d 1221, 1225 (N.M. Ct. App. 2015).

24 31. Plaintiff STATE OF NORTH CAROLINA brings this action by and through
25 Attorney General Joshua H. Stein. The North Carolina Attorney General is the chief legal officer
26 of the State of North Carolina. The Attorney General is empowered to appear for the State of
27 North Carolina "in any cause or matter ... in which the state may be a party or interested." N.C.
28 Gen. Stat. § 114-2(1). Moreover, the Attorney General is authorized to bring actions on behalf of

1 the citizens of the state in “all matters affecting the public interest.” *Id.* § 114-2(8)(a).

2 32. Plaintiff STATE OF OREGON brings this suit by and through Attorney General
3 Ellen Rosenblum. The Oregon Attorney General is the chief legal officer of the State of Oregon.
4 The Attorney General’s duties include acting in federal court on matters of public concern and
5 upon request by any State officer when, in the discretion of the Attorney General, the action may
6 be necessary or advisable to protect the interests of the State. Ore. Rev. Stat. § 180.060(1).

7 33. Plaintiff STATE OF RHODE ISLAND brings this action by and through Attorney
8 General Peter F. Neronha. The Attorney General is the chief law enforcement officer of the State
9 and has the authority to file civil actions in order to protect public rights and interests, including
10 actions to protect the natural resources of the State. R.I. Const. art. I, § 17; R.I. Gen. Laws R.I.
11 § 10-20-1, *et seq.* This challenge is brought in part pursuant to the Attorney General’s
12 independent constitutional, statutory, and common law authority to represent the people’s
13 interests in protecting the environment and natural resources of the State of Rhode Island from
14 pollution, impairment, or destruction. *Id.*; *Newport Realty, Inc. v. Lynch*, 878 A.2d 1021 (R.I.
15 2005).

16 34. Plaintiff STATE OF VERMONT brings this action by and through Attorney
17 General Charity R. Clark. The Attorney General is the chief legal officer of the State of Vermont.
18 *See* Vt. Stat. Ann. tit. 3, § 152 (“The Attorney General may represent the State in all civil and
19 criminal matters as at common law and as allowed by statute.”). Vermont is a sovereign entity
20 and brings this action to protect its own sovereign and proprietary rights. The Attorney General’s
21 powers and duties include acting in federal court on matters of public concern. This challenge is
22 brought pursuant to the Attorney General’s independent constitutional, statutory, and common
23 law authority to bring suit and obtain relief on behalf of the State of Vermont.

24 35. Plaintiff STATE OF WASHINGTON is a sovereign entity and brings this action
25 to protect its sovereign and proprietary rights by and through its Attorney General, Robert W.
26 Ferguson. The Attorney General is the chief legal adviser to the State of Washington, and his
27 powers and duties include acting in federal court on matters of public concern. *See* WASH. REV.
28 CODE § 43.10.030. This challenge is brought pursuant to the Attorney General’s statutory

1 authority to bring suit and obtain relief on behalf of the State of Washington.

2 36. Plaintiff the DISTRICT OF COLUMBIA is a municipal corporation empowered to
3 sue and be sued and is the local government for the territory constituting the permanent seat of the
4 government of the United States. The District is represented by and through its chief legal
5 officer, the Attorney General for the District of Columbia, Attorney General Karl Racine. The
6 Attorney General has general charge and conduct of all legal business of the District and all suits
7 initiated by and against the District and is responsible for upholding the public interest. D.C.
8 Code § 1-301.81(a)(1).

9 37. Plaintiff the CITY OF NEW YORK brings this action by and through the
10 Corporation Counsel Hon. Sylvia O. Hinds-Radix. The Corporation Counsel is the chief legal
11 officer of the City of New York and brings this action on behalf of the City and its residents to
12 protect New York City's sovereign and proprietary interest in the conservation and protection of
13 its natural resources and the environment and the health of its residents. *See* New York City
14 Charter Chap. 17, § 394.

15 38. Plaintiff BAY AREA AIR QUALITY MANAGEMENT DISTRICT
16 ("BAAQMD") is the regional governmental agency charged with the primary responsibility for
17 maintaining healthy air quality in the San Francisco Bay Area. California Health and Safety
18 Code ("Health & Saf. Code") §§ 39002, 40000 & 40200. BAAQMD is a body corporate and
19 politic and a public agency of the State of California with the power to sue in all actions and
20 proceedings in all courts and tribunals of competent jurisdiction. Health & Saf. Code §§ 40700 &
21 40701. BAAQMD is represented by and through its General Counsel, Alexander G. Crockett.

22 39. Plaintiffs have a strong interest in preventing the adverse environmental and public
23 health impacts of vehicle emissions, including air quality degradation and other associated public
24 health harms. Not only does the transportation sector account for a significant percentage of
25 emissions of both criteria pollutants and greenhouse gases, but Postal Service facilities are often
26 located within environmental justice communities that are exposed to disproportionate emissions
27 from mail delivery vehicles. For example, in the San Francisco Bay Area, tailpipe emissions
28 from 5.3 million light duty vehicles account for approximately 31 percent of the region's carbon

1 monoxide and 12 percent of its nitrogen oxides, as well as 28 percent of the region's greenhouse
2 gas emissions. The Postal Service operates a major mail distribution facility at 1675 7th Street in
3 the West Oakland neighborhood of Oakland, a site that contributes to the heavy pollution burden
4 already experienced in neighboring communities from industrial facilities, an adjacent port,
5 highways, and distribution centers. The Postal Service's San Francisco Processing & Distribution
6 Center is located in the Bayview neighborhood, where the population is predominantly Black,
7 Hispanic or Latino, and Asian, and which is already overburdened by air pollution and the related
8 negative health effects from multiple industrial facilities operating in and around the
9 neighborhood.

10 40. As another example, transportation is currently the largest in-state source of
11 greenhouse gas emissions in Delaware, as well as a significant source of carbon monoxide,
12 nitrous oxide, and particulate matter, which disproportionately affects communities near
13 highways and industrial centers.

14 41. Likewise, in New York City, a 2016 study estimated that fine particulate (PM 2.5)
15 emissions from vehicle traffic alone caused 320 premature deaths in the City each year (5,850 life
16 years lost), as well as 870 asthma-related emergency room visits and cardiovascular or respiratory
17 hospitalizations.² The health impacts were especially severe in neighborhoods where poverty is
18 very high, such as East New York, Brooklyn, where a major Postal Service distribution facility is
19 located at 1050 Forbell Street. Those neighborhoods are burdened with 70 percent more PM 2.5
20 emissions from trucks and buses, and over eight times as many asthma-related emergency room
21 visits attributable to those emissions, compared to low poverty neighborhoods.

22 42. Plaintiffs also have a strong interest in preventing and mitigating harms that
23 climate change poses to human health and the environment, including increased heat-related
24 deaths, damaged coastal areas, increased wildfire risk, disrupted ecosystems, more severe weather
25 events, and longer and more frequent droughts. *See Massachusetts v. EPA*, 549 U.S. 497, 521

26
27 ² *See Iyad Kheirbek, et al., The contribution of motor vehicle emissions to ambient fine*
28 *particulate matter public health impacts in New York City: a health burden assessment*,
Environmental Health Vol. 15, Article 89 (2016), <https://doi.org/10.1186/s12940-016-0172-6>
(article) and <https://a816-dohbesp.nyc.gov/IndicatorPublic/Traffic/index.html> (infographic).

1 (2007). For example, California is already experiencing the adverse effects of climate change,
2 including increased risk of wildfires, a decline in the average annual snowpack that provides
3 approximately 35 percent of the State's water supply, increased erosion of beaches and low-lying
4 coastal properties from rising sea levels, and increased formation of ground-level ozone (also
5 known as smog), which is linked to asthma, heart attacks, and pulmonary problems, especially in
6 children and the elderly. In Washington, warmer temperatures have led to diminished snowpack,
7 harming downstream communities that rely on snowmelt for hydroelectric power, drinking water,
8 and agriculture.³

9 43. For these reasons, among others, Plaintiffs have long been leaders in adopting laws
10 and plans to reduce greenhouse gas emissions and slow the pace of climate change, including
11 policies to promote the development and adoption of zero-emission technologies in the
12 transportation sector.

13 44. For example, California's laws and plans include (1) California's statutory target
14 of reducing greenhouse gas emissions by 40 percent below 1990 levels by 2030, Cal. Health &
15 Safety Code § 38566; (2) California's regulation to phase out the sale of new conventional
16 passenger cars and trucks by 2035, Cal. Code Regs., tit. 13, § 1962.4 (2022); (3) California's
17 regulation calling for all medium and heavy duty vehicles sold for use in the state to be zero-
18 emission beginning in 2036, Cal. Code Regs., tit. 13, § 2016.100 (2023); and (4) California's
19 policy to achieve carbon neutrality by 2045, Executive Order B-55-18. Local efforts are often
20 more ambitious. For example, BAAQMD has set a target that 90 percent of vehicles in the Bay
21 Area should be zero emission by 2050, with an interim target of 1.5 million such vehicles by
22 2030. Access to electric vehicle charging stations will increase as governments work to meet
23 these targets.

24 45. Connecticut must reduce the level of greenhouse gas emissions in the state by at
25 least 45 percent below the 2001 level by 2030 and by at least 80 percent below the 2001 level by
26

27 ³ See H.A. Roop, *et al.*, Univ. Wash. Climate Impacts Group, *Shifting Snowlines and Shorelines*
28 (2020), https://cig.uw.edu/wp-content/uploads/sites/2/2020/02/CIG_SnowlinesShorelinesReport_2020.pdf.

1 2050. Conn. Gen. Stat. § 22a-200a(a).

2 46. Pursuant to the Climate Leadership and Community Protection Act, New York
3 must reduce economy-wide greenhouse gas emissions 40 percent below 1990 levels by 2030 and
4 at least 85 percent below 1990 levels by 2050. *See* N.Y. Env'tl. Conserv. L. § 75-0107(1).

5 47. Washington State must reduce overall greenhouse gas emissions in the state by 45
6 percent below 1990 levels by 2030. Wash. Rev. Code § 70A.45.020(1)(a)(ii). Washington has
7 also set a target of 100 percent electric passenger and light-duty vehicle sales starting in model
8 year 2030. § 43.392.020(1).

9 48. In response to the dangers posed by greenhouse gases, New Mexico has enacted an
10 Energy Transition Act, which sets standards for electric utilities of 50 percent renewable energy
11 by 2030, 80 percent by 2040, and zero-carbon resources by 2050.

12 49. Pennsylvania has adopted a Climate Action Plan to comply with the governor's
13 commitment to reach a 26 percent reduction in greenhouse gases by 2025 and an 80 percent
14 reduction by 2050. Executive Order 2019-01.⁴

15 50. In Rhode Island, these laws and plans include, among others: Rhode Island's 2021
16 Act on Climate which, *inter alia*, mandates greenhouse gas emission reductions to forty-five
17 percent below 1990 levels by 2030; eighty percent below 1990 levels by 2040, and to net-zero
18 emissions by 2050. *See* R.I. Gen Laws § 42-6.2-9. As of 2026, there will be a statutory right to
19 bring actions, including actions against the State and its agencies, for failure to comply with the
20 2021 Act on Climate. *See* R.I. Gen Laws § 42-6.2-9.

21 51. Effective June 1, 2022, Maryland law requires the State to reduce greenhouse gas
22 emissions 60 percent below 2006 levels by 2031, and to achieve net-zero greenhouse gas
23 emissions by 2045. Climate Solutions Now Act of 2022, 2022 Md. Laws, ch. 38, §§ 3-4.

24 52. The City of New York has committed to reducing greenhouse gas emissions 80
25 percent below 2005 levels by 2050, *see* NYC Admin. Code § 24-803, and has issued numerous
26

27 _____
28 ⁴ <https://www.governor.pa.gov/newsroom/executive-order-2019-01-commonwealth-leadership-in-addressing-climate-change-and-promoting-energy-conservation-and-sustainable-governance/>
and <https://www.dep.pa.gov/Citizens/climate/Pages/PA-Climate-Action-Plan.aspx>.

1 plans describing its path to achieving this goal, all of which call for increased electrification of the
2 transportation sector.

3 53. The Global Warming Response Act commits New Jersey to reducing greenhouse
4 gas emissions to 80 percent below their 2006 levels by 2050. N.J.S.A. 26:2C-39, 26:2C-40.

5 54. Colorado has established a goal to eliminate net statewide greenhouse gas
6 pollution by the middle of the twenty-first century and has set targets to reduce greenhouse gas
7 emissions a minimum of 26 percent by 2025, 50 percent by 2030, 65 percent by 2035, 75 percent
8 by 2040, 90 percent by 2045, and 100 percent by 2050, compared to 2005 levels. Colo. Rev. Stat.
9 § 25-7-102(2)(g) (2023).

10 55. The Vermont Global Warming Solutions Act requires Vermont to reduce
11 greenhouse gas emissions to 26% below 2005 levels by 2025, to 40% below 1990 levels by 2030,
12 and 80% below 1990 levels by 2050. Vt. Stat. Ann. tit. 10, § 578.

13 56. The Postal Service failed to consider the impacts of its decision on state and local
14 government laws and policies, and could undermine the achieved reductions of those state and
15 local government laws and policies, and make it more difficult for those states and localities to
16 achieve their environmental goals. The Postal Service's procurement of a new highly emitting
17 gas-powered fleet will adversely impact Plaintiffs by continuing substantial and unnecessary
18 emissions of air pollutants, including greenhouse gases; adversely affecting public health; and
19 undermining and increasing the costs of Plaintiffs' efforts to address these critical problems.
20 Further, the Postal Service's decision could make it more difficult for some Plaintiffs to meet the
21 National Ambient Air Quality Standards set by EPA.

22 57. Plaintiffs rely upon the Postal Service's compliance with the procedural
23 requirements of NEPA to obtain timely and accurate information about activities that may have
24 significant adverse effects on the environment, so that Plaintiffs and their residents can
25 meaningfully participate in the decisionmaking process. The Postal Service's failure to comply
26 with NEPA adversely affects Plaintiffs by thwarting public participation and by failing to
27 adequately inform the decisionmakers of the environmental impacts of the Next Generation
28 Vehicle Delivery Acquisitions program before the program was approved. An adequate NEPA

1 review that identifies and evaluates those impacts would provide additional information that
2 could result in a different decision regarding the program – a termination of the program,
3 modification of the program, or other mitigations that would redress Plaintiffs’ injuries and
4 protect the environment and public health.

5 58. Therefore, Plaintiffs have suffered legal wrong because of the Postal Service’s
6 action, have been adversely aggrieved by the approval of the Final EIS, Supplemental EIS, and
7 original and revised RODs, and have standing to bring this action.

8 59. Defendant UNITED STATES POSTAL SERVICE is “an independent
9 establishment of the executive branch” of the U.S. government, 39 U.S.C. § 201, and bears
10 responsibility, in whole or in part, for the acts complained of in this Complaint.

11 60. Defendant LOUIS DeJOY is the United States Postmaster General and bears
12 responsibility, in whole or in part, for the acts complained of in this Complaint.

13 61. Defendant-Intervenor OSHKOSH DEFENSE, LLC, is a private defense contractor
14 that was awarded a contract to manufacture vehicles for the Postal Service pursuant to the Postal
15 Service’s Next Generation Delivery Vehicle Acquisitions program.

16 STATUTORY BACKGROUND

17 I. NATIONAL ENVIRONMENTAL POLICY ACT.

18 62. NEPA “is our basic national charter for protection of the environment.” *Ctr. for*
19 *Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020). NEPA has two
20 fundamental purposes: (1) to guarantee that an agency takes a “hard look” at the consequences of
21 its actions before the action occurs by ensuring that “the agency, in reaching its decision, will
22 have available, and will carefully consider, detailed information concerning significant
23 environmental impacts,” and (2) to ensure that “the relevant information will be made available to
24 the larger audience that may also play a role in both the decisionmaking process and the
25 implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332,
26 349-50 (1989).

27 63. To achieve these purposes, NEPA requires the preparation of a detailed EIS for
28 any “major federal action significantly affecting the quality of the human environment.” 42

1 U.S.C. § 4332(2)(C). In preparing the EIS, NEPA requires federal agencies to take a “hard look,”
2 which involves considering the direct, indirect, and cumulative impacts of their proposed actions.
3 *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002). When a proposed action
4 has a potential adverse impact on minority or low-income populations, agencies should include an
5 environmental justice analysis as part of this “hard look” under NEPA. *See* Exec. Order No.
6 12898, § 1-101, 59 Fed. Reg. 7,629 (Feb. 16, 1994); *Vecinos para el Bienestar de la Comunidad*
7 *Costera v. FERC*, 6 F.4th 1321, 1330 (D.C. Cir. 2021) (reviewing challenge to agency’s
8 environmental justice analysis under NEPA). Moreover, an agency must provide to the public
9 “the underlying environmental data” from which the agency develops its opinions and arrives at
10 its decisions. *WildEarth Guardians v. Montana Snowmobile Ass’n*, 790 F.3d 920, 925 (9th Cir.
11 2015. “[A]n agency may not rely on incorrect assumptions or data.” *Native Ecosystems Council*
12 *v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005). Fundamentally, these “disclosure
13 requirement[s] obligate the agency to make available to the public high-quality information,
14 including accurate scientific analysis, expert agency comments and public scrutiny, before
15 decisions are made and actions are taken.” *Ctr. for Bio. Diversity v. U.S. Forest Serv.*, 349 F.3d
16 1157, 1167 (9th Cir. 2003).

17 64. NEPA further requires that federal agencies provide a “detailed statement”
18 regarding the “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). This
19 requirement “lies at the heart of any NEPA analysis.” *California ex rel. Lockyer v. U.S. Dep’t of*
20 *Agric.*, 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006). Agencies must explore and evaluate all
21 reasonable alternatives that relate to the purposes of the project, and must briefly discuss the
22 reasons for eliminating any alternatives from detailed study. *See* 40 C.F.R. § 1502.14. The
23 existence of “a viable but unexamined alternative renders [an] environmental impact statement
24 inadequate.” *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 814 (9th Cir. 1999).

25 65. A fundamental requirement of NEPA is that an agency must not commit resources
26 to a particular course of action prior to completing its environmental review. *See* 40 C.F.R.
27 § 1502.2(f) (“Agencies shall not commit resources prejudicing selection of alternatives before
28 making a final decision”), *see also id.* § 1506.1 (headed “Limitations on actions during NEPA

1 process”). The Ninth Circuit has construed this requirement “as requiring agencies to prepare
2 NEPA documents ... before any irreversible and irretrievable commitment of resources.” *Metcalf*
3 *v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000). “The point of commitment” constituting an
4 irreversible and irretrievable commitment of resources can occur when an agency “sign[s] the
5 contract” with a project proponent “and then work[s] to effectuate the Agreement.” *Id.*

6 66. The Postal Service is an “independent establishment of the executive branch of the
7 Government of the United States,” 39 U.S.C. § 201, and, as an agency of the federal government,
8 the Postal Service is subject to the requirements of NEPA. 42 U.S.C. § 4332; 40 C.F.R. §
9 1500.3(a); see *Akiak Native Cmty. v. U.S. Postal Serv.*, 213 F.3d 1140 (9th Cir. 2000); *Chelsea*
10 *Neighborhood Ass’ns v. U.S. Postal Serv.*, 516 F.2d 378 (2d Cir. 1975).

11 67. The Postal Service has recognized its NEPA obligations by, among other things,
12 promulgating agency-specific NEPA procedures in 39 C.F.R. Part 775, in which the Postal
13 Service recognizes its responsibilities to “[i]nterpret and administer applicable policies,
14 regulations, and public laws of the United States in accordance with the policies set forth in
15 [NEPA] and the NEPA Regulations” 39 C.F.R. §§ 775.2(a). These regulations stress that
16 the Postal Service’s policy is to “[e]mphasize environmental issues and alternatives in the
17 consideration of proposed actions,” to “identify and assess reasonable alternatives to proposed
18 actions in order to avoid or minimize adverse impacts on the environment,” and to “[u]se all
19 practicable means to protect, restore, and enhance the quality of the human environment.” *Id.*
20 § 775.2(c), (e), (f). In addition, the regulations state that the consideration of alternatives in an
21 EIS “is vitally important.” *Id.* § 775.11(c)(5).

22 68. Courts review the Postal Service’s compliance with NEPA under an arbitrary and
23 capricious standard of review. See *Akiak*, 213 F.3d at 1144.

24 **II. POSTAL SERVICE HISTORY, OPERATIONS, AND GOVERNING LAWS.**

25 69. The United States Constitution empowers Congress to “establish Post Offices and
26 post Roads.” U.S. Const., art. I, § 8, cl. 7. In 1789, Congress established the first Post Office
27 under the Constitution and made the Postmaster General subject to the President’s direction. U.S.
28 *Postal Serv., The United States Postal Service: An American History* 1, 4 (2020),

1 <https://about.usps.com/publications/pub100.pdf>.

2 70. The Postal Service has played “a vital yet largely unappreciated role in the
3 development of” the United States. *U.S. Postal Serv. v. Council of Greenburgh Civic Assocs.*,
4 453 U.S. 114, 121 (1981). During the early years of this country’s development, “the Post Office
5 was to many citizens situated across the country the most visible symbol of national unity.” *Id.*
6 at 122. Since its beginnings in the pre-Revolutionary period, the Postal Service “has become the
7 nation’s oldest and largest public business.” *U.S. Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540
8 U.S. 736, 739 (2004) (citations and quotations omitted).

9 71. Since its founding, “the Postal Service’s efforts to deliver mail quickly and reliably
10 have been a force for innovation in the American transportation sector.” USPS Office of Inspect.
11 Gen., *Electric Delivery Vehicles and the Postal Service*, at 3 (Mar. 17, 2022). The Postal Service
12 has spurred nationwide adoption of the stagecoach, nationwide expansion of railroads, nationwide
13 use of air transportation, and the development of electric vehicles. *Id.*

14 72. In 1970, Congress passed the Postal Reorganization Act (“PRA”), *see* Pub. L. No.
15 91-375, 84 Stat. 719, in large part to “convert the Post Office Department into an independent
16 establishment in the Executive Branch of the Government freed from direct political pressures.”
17 H.R. Rep. No. 91-1104, at 1 (1970) (Conf. Rep.), *as reprinted in* 1970 U.S.C.C.A.N. 3649, 3650.

18 73. The PRA renamed the agency the U.S. Postal Service, restructured its operations,
19 removed it from the Cabinet to ensure its political independence, provided that the Postmaster
20 General would be appointed by a newly-established Board of Governors rather than the President,
21 and stated it had the power “to sue and be sued in its official name.” 39 U.S.C. § 401(a). The
22 PRA provides that “[t]he United States Postal Service shall be operated as a basic and
23 fundamental service provided to the people by the Government of the United States, authorized
24 by the Constitution, created by Act of Congress, and supported by the people.” *Id.* § 101(a). The
25 PRA further affirms that the Postal Service’s “basic function” is “to bind the Nation together
26 through the personal, educational, literary, and business correspondence of the people.” *Id.* To
27 do so, the Postal Service “shall render postal services to all communities.” *Id.*

28 74. The PRA provides that it “shall be the responsibility of the Postal Service to

1 maintain an efficient system of collection, sorting, and delivery of the mail nationwide.” 39
2 U.S.C. § 403(b)(1). The PRA further requires that “[i]n selecting modes of transportation, the
3 Postal Service shall give highest consideration to the prompt and economical delivery of all mail.
4 Modern methods of transporting mail by containerization and programs designed to achieve
5 overnight transportation to the destination of important letter mail to all parts of the Nation shall
6 be a primary goal of postal operations.” 39 U.S.C. § 101(f).

7 75. The Postal Service has adopted new transportation technologies when necessary to
8 carry out its mission—from boats, to airplanes, to motorized delivery vehicles. U.S. Postal Serv.,
9 The United States Postal Service: An American History, at 12-24, 40, 57, 80-81, 110-118.

10 76. In 2022, the Postal Service had 216,456 delivery and collection vehicles in its
11 inventory. U.S. Postal Serv., FY 2022 Annual Report to Congress, at 29.

12 **FACTUAL AND PROCEDURAL BACKGROUND**

13 **I. THE POSTAL SERVICE’S NEXT GENERATION DELIVERY VEHICLE ACQUISITIONS** 14 **PROGRAM.**

15 77. The Postal Service has one of the largest civilian vehicle fleets in the world,
16 consisting of approximately 216,000 vehicles that are on the road delivering mail at least six days
17 per week to nearly 165 million delivery points in every community in the United States. Most of
18 these vehicles, known as Long Life Vehicles, were manufactured between 1986 and 1994 and are
19 now beyond their intended service life and becoming increasingly expensive and dangerous to
20 operate and maintain.

21 78. To address this problem, the Postal Service launched its Next Generation Delivery
22 Vehicle Acquisitions program. The initial goal of this program was to evaluate, test, and
23 eventually purchase up to 165,000 new purpose-built vehicles over the next ten years.

24 79. On February 23, 2021, the Postal Service announced a contract award to a defense
25 contractor, Oshkosh, for the future production of these vehicles. The contract covers non-
26 recurring engineering and tooling costs and allows the Postal Service to order between 50,000 and
27 165,000 Next Generation Delivery Vehicles over a ten-year period. The Postal Service has
28 claimed that the contract requires the company to be able to support two powertrain alternatives:

1 (1) a modern and efficient internal combustion engine, and (2) a battery electric vehicle
2 powertrain. At the time the contract was awarded, though, Oshkosh did not manufacture any
3 electric vehicles. The contract was allegedly “contingent on the satisfactory completion of the
4 NEPA process.” However, the Postal Service provided as much as \$482 million to Oshkosh
5 under the contract prior to initiating the NEPA process.

6 80. In June 2021, Oshkosh announced that it would open a new facility in
7 Spartanburg, South Carolina, to construct vehicles for the Postal Service under this contract.
8 Since then, Oshkosh has actively built out its facility, including installing manufacturing
9 equipment, tooling, and assembly systems. Dkt. 82-1.

10 **II. NEPA EIS AND RECORD OF DECISION FOR THE PROGRAM.**

11 81. On August 26, 2021, the Postal Service announced the availability of a draft EIS
12 for its Proposed Action—namely, to “purchase and deploy[] up to 165,000 Next Generation
13 Delivery Vehicles (“NGDVs”) over a ten-year period.” *See* 86 Fed. Reg. 47,662 (Aug. 26, 2021).
14 The stated purpose and need of the Proposed Action in the draft EIS were “to replace the end-of-
15 life and high-maintenance long life vehicles (“LLVs”) and flexible fuel vehicles (“FFVs”) with
16 vehicles with more energy-efficient powertrains, updated technology, reduced emissions,
17 increased cargo capacity and improved loading characteristics, improved ergonomics and carrier
18 safety, and reduced maintenance costs,” and “to enable the Postal Service to meet its
19 Congressional mandate to maintain efficient nationwide delivery of the mail and to provide
20 prompt, reliable, and efficient services to patrons.”

21 82. In evaluating the Proposed Action and alternatives, the draft EIS considered (1) the
22 purchase and deployment of custom-made vehicles with 90 percent gas-powered, internal-
23 combustion engines and 10 percent electric vehicles (Alternative 1, or the “original Preferred
24 Alternative”); (2) the purchase and deployment of 100 percent custom-made electric vehicles (a
25 different “scenario” under Alternative 1); (3) an alternative of purchasing 100 percent commercial
26 off-the-shelf gas-powered vehicles with right-hand drive (Alternative 1.1); (4) an alternative of
27 purchasing 100 percent commercial off-the-shelf electric vehicles with left-hand drive
28 (Alternative 1.2); and (5) the required “No Action Alternative” of attempting to maintain the

1 Postal Service’s existing fleet.

2 83. The Postal Service accepted comments on the draft EIS until October 18, 2021.
3 Comments critical of the draft EIS were submitted by EPA, BAAQMD, the International Union,
4 United Automobile, Aerospace & Agricultural Implement Workers of America, and several non-
5 governmental organizations, among others.

6 84. For example, EPA explained that while the Postal Service identified a clear need
7 to update its vehicle fleet, the draft EIS lacked adequate data and presented biased cost and
8 emissions estimates, thereby precluding “meaningful consideration of the proposed action and
9 alternatives.”

10 85. BAAQMD also commented that the Postal Service’s proposal (1) would
11 negatively impact the region’s progress in improving local air quality and reducing GHG
12 emissions, especially in vulnerable communities; (2) did not reflect current and rapidly expanding
13 electric vehicle technology; (3) would unnecessarily delay the transition to clean technologies,
14 and (4) would likely cost the Postal Service and taxpayers more money in the long term because
15 gas-powered vehicles are more expensive than electric vehicles to operate and maintain.

16 86. On January 7, 2022, the Postal Service released the Final EIS with minimal
17 changes from the draft EIS. 87 Fed. Reg. 994 (Jan. 7, 2022).

18 87. In the Final EIS, the Postal Service decided to move forward with its original
19 Preferred Alternative of procuring custom-made, right-hand-drive delivery vehicles with 90
20 percent internal combustion engines and 10 percent battery electric vehicles. The Final EIS noted
21 that the actual delivery vehicle types purchased would be contingent, in part, “upon the supplier’s
22 production and delivery capabilities.”

23 88. The Final EIS stated that the original Preferred Alternative was chosen because
24 battery electric vehicles involved a higher total cost of ownership and would have limited range,
25 rendering their use infeasible on longer rural routes, despite comments and evidence submitted to
26 the agency contradicting these conclusions. In fact, the Final EIS assumes fuel costs for gas-
27 powered vehicles of \$2.19 per gallon, grossly underestimating even current gasoline prices, let
28 alone future ones. The Final EIS rejected an alternative of 100 percent battery electric vehicles as

1 infeasible, and evaluated no other percentage of electric powertrains between the 10 percent it
2 selected and the 100 percent it rejected.

3 89. The Final EIS relied on acquisition and maintenance cost data at least in part based
4 on the contract awarded to Oshkosh, which was not provided to the public, despite requests for
5 the Postal Service to make this information public as required by NEPA.

6 90. The Final EIS failed to fully evaluate environmental justice impacts from the
7 program.

8 91. The Final EIS did not consider the inconsistency of the original Preferred
9 Alternative with State and local laws and plans that require reductions in greenhouse gas
10 emissions and fossil fuel consumption, including from the transportation sector. Further, the
11 Final EIS did not consider the likelihood that the original Preferred Alternative could undermine
12 any air quality and climate pollution achievements made, already or in the future, by State and
13 local governments, or how it might interfere with the ability of those State and local governments
14 to meet their federal environmental obligations under the Clean Air Act.

15 92. On February 2, 2022, EPA Associate Administrator Vicky Arroyo wrote to the
16 Postal Service to express the agency's disapproval of the Final EIS. In particular, EPA wrote that
17 its "concerns with the draft EIS were not adequately addressed and the final EIS remains
18 seriously deficient," and "preparation of a supplemental EIS is particularly important to maintain
19 the integrity of the NEPA process." For example, using well-established metrics for estimating
20 greenhouse gas emissions, EPA calculated that carbon dioxide emissions from the use of gas-
21 powered vehicles would be 2.5 times greater than what the Postal Service had estimated.

22 93. On the same day, the White House Council on Environmental Quality ("CEQ"),
23 the federal agency responsible for implementing NEPA, wrote to the Postal Service to express
24 similar concerns. In a letter addressed to Defendant DeJoy, CEQ Chair Brenda Malloy reiterated
25 EPA's "grave concerns" with the adequacy of the Final EIS, criticized the Postal Service's
26 decision to contract with Oshkosh prior to completing the NEPA review, and urged the Postal
27 Service to redo its analysis.

28 94. On February 4, 2022, these concerns were echoed in a letter to the Postal Service

1 signed by several members of Congress, who wrote to express “strong opposition to the failure of
2 the United States Postal Service (USPS) to plan to electrify its fleet of mail delivery vehicles and
3 contribute to the fight against climate change.” The letter continued: “After an unjustifiable,
4 truncated, and deficient process, it is unacceptable that the USPS intends to cling to an
5 overwhelmingly fossil fuel-powered fleet whose emissions are endangering our planet.”

6 95. On February 23, 2022, the Postal Service signed the original ROD, which
7 incorporated the findings and analysis of the Final EIS, and announced the agency’s
8 determination that it would implement the original Preferred Alternative. *See* 87 Fed. Reg.
9 14,588 (Mar. 15, 2022).

10 96. On March 17, 2022, the United States Postal Service Office of Inspector General
11 released a report titled “Electric Delivery Vehicles and the Postal Service,” which found that
12 “electric vehicle technology is generally capable of meeting the Postal Service’s needs” and is
13 generally more cost-effective than using gas-powered vehicles. Contrary to the findings in the
14 Final EIS and original ROD, the Inspector General found that the average 24-mile postal route
15 was well within the ability of current electric vehicle technology, and even the 2 percent of routes
16 that are 70 miles or longer could be more suited to electric vehicles because the Postal Service
17 saves money on each mile driven compared to gas-powered vehicles.

18 97. On April 28, 2022, Plaintiffs filed a complaint challenging the Postal Service’s
19 Final EIS and original ROD for its Next Generation Delivery Vehicle Acquisitions Program
20 under NEPA.

21 **III. SEIS AND REVISED RECORD OF DECISION FOR THE PROGRAM.**

22 98. In June 2022, the Postal Service announced that it would prepare an SEIS in light
23 of substantial changes to its delivery network. On June 10, 2022, it published a draft scope
24 identifying several issues requiring supplementation, including “network refinements and route
25 optimization efforts” that could increase the minimum number of electric vehicles acquired under
26 the program. 87 Fed. Reg. 35,581 (June 10, 2022). The notice also identified the need to
27 accelerate replacement of the fleet with a combination of Next Generation Delivery Vehicles and
28 commercially available vehicles. *Id.*

1 99. On July 21, 2022, the Postal Service published a revised draft notice regarding the
2 SEIS scope, which stated that the Postal Service’s preferred alternative would include: (1) the
3 purchase and deployment of 50,000 Next Generation Delivery Vehicles; and (2) acquisition of up
4 to 20,000 left-hand-drive commercial vehicles and 14,500 right-hand-drive gas-powered vehicles
5 within the next two years. 87 Fed. Reg. 43,561 (July 21, 2022). The Postal Service accepted
6 public comments on the scope of the SEIS until August 15, 2022. *Id.*

7 100. Many commenters encouraged the Postal Service to consider alternatives in the
8 SEIS that would include mostly electric vehicles. For example, the California Air Resources
9 Board advocated for electrification of the fleet and emphasized the availability of more than 100
10 commercial models of zero-emission vehicles in medium- and heavy-duty configurations. On
11 August 15, 2022, Plaintiffs submitted a comment letter urging the Postal Service to consider 80
12 percent and 95 percent electric and hybrid vehicles.

13 101. In August 2022, Congress passed the Inflation Reduction Act, which provides \$3
14 billion to the Postal Service, including \$1.29 billion in subsidies for the purchase of zero-emission
15 vehicles and \$1.71 billion for the purchase, design, and installation of infrastructure to support
16 them. Pub. L. No. 117-169, § 70002, 136 Stat. 1818, 2086-87 (2022).

17 102. This \$3 billion in funding for zero-emission vehicles was intended to close the
18 purported gap in funding identified in the Final EIS and original ROD between the cost of gas-
19 powered replacement vehicles and an electric vehicle fleet. However, in December 2022, before
20 releasing its Draft SEIS, the Postal Service announced that it expected to acquire at least 66,000
21 electric vehicles as part of a 106,000-vehicle acquisition plan between 2022 and 2028. Under this
22 plan, the proportion of electric vehicles would amount to 62 percent of the acquisition. Up to 38
23 percent of the Postal Service’s acquisition would remain gas-powered internal combustion engine
24 vehicles. The new electric vehicle acquisitions would total only 31.4 percent of the Postal
25 Service’s entire delivery fleet.

26 103. In February 2023, again before completing even its Draft SEIS, the Postal Service
27 awarded new contracts to purchase 9,250 commercial gas-powered vehicles, 9,250 commercial
28

1 electric vehicles, and 14,000 electric vehicle charging stations.⁵

2 104. In April 2023, the United States Government Accountability Office (“GAO”)
3 issued a report entitled, “Action Needed to Improve Credibility of Cost Assumptions for Next
4 Generation Delivery Vehicles.” The GAO found that assumptions about two cost factors—the
5 price of gas and the cost of installing electric charging infrastructure—had the potential to
6 considerably affect the recommendation of the number of electric and gas vehicles to purchase.
7 For example, increasing the gas price by \$1.00 within a selected range of gas prices resulted in a
8 recommendation that almost 90 percent of the delivery vehicles be electric.

9 105. On June 30, 2023, the Postal Service made the Draft SEIS available for public
10 review and comment. Despite scoping comments urging the Postal Service to consider
11 alternatives including higher percentages of electric vehicles, the Draft SEIS evaluated only one
12 new alternative allocation of electric and gas vehicles, which consisted of 62 percent electric
13 vehicles and 38 percent gas-powered vehicles. The vehicles would be acquired and deployed
14 over a period of either six or eight years.

15 106. Specifically, the Draft EIS considered: (1) the acquisition of 106,480 vehicles,
16 consisting of 62 percent electric vehicles and 38 percent gas-powered vehicles, and including
17 60,000 purpose-built vehicles, 14,500 right hand drive off-the-shelf gas-powered vehicles, and
18 31,980 off-the-shelf or purpose-built vehicles, to be deployed over a period of six years (the
19 “SEIS Preferred Alternative”); (2) the acquisition of 106,480 vehicles, consisting of 62 percent
20 electric vehicles and 38 percent gas-powered vehicles, all of which would be purpose-built
21 vehicles, to be deployed over a period of eight years; and (3) the required No-Action Alternative,
22 consisting of up to 165,000 purpose-built vehicles with a minimum of 10 percent electric
23 vehicles.

24 107. The Postal Service ignored public scoping comments urging it to consider
25 alternatives with a greater percentage of electric vehicles, such as 80 to 95 percent electric
26 vehicles. The Postal Service also did not consider other potential alternatives that would include
27

28 ⁵ <https://about.usps.com/newsroom/local-releases/ny/2023/0228-usps-moves-forward-with-awards-to-modernize.htm>

1 hybrid vehicles, cargo bikes, small battery electric vehicles, or low-speed options. Instead, the
2 Postal Service limited its consideration of alternatives to the proportion of electric and gas-
3 powered vehicles that it had announced it would proceed with in December 2022, six months
4 before releasing its Draft SEIS for public comment.

5 108. In comments on the Draft SEIS, dated August 14, 2023, Plaintiffs expressed
6 continued concern with the Postal Service’s limited range of alternatives. Others stated similar
7 concerns. As the California Air Resources Board commented, “the two proposed action
8 alternatives appear nearly identical in terms of their respective electrification percentages,
9 differing only slightly in terms of their procurement schedules” and the Draft SEIS “ignores other
10 feasible options” including “a more ambitious electrification alternative.” Similarly, the Natural
11 Resources Defense Council, Union of Concerned Scientists, Coltura, and Zero Emission
12 Transportation Association commented that the 62 percent electrification level is “seemingly
13 arbitrarily set given that the Office of the Postal Service Inspector General asserts that greater
14 electrification levels are not only feasible, but beneficial to the agency’s long-term delivery
15 needs.”

16 109. EPA identified “additional shortcomings” in the Postal Service’s analysis, such as
17 the Postal Service’s use of upfront costs rather than the total cost of ownership to select and
18 compare alternatives. EPA further commented that the Postal Service’s methodology to
19 determine the alternatives was unclear, and that “the optimal, cost-effective strategy would be to
20 purchase a much higher percentage of [electric vehicles] than the approximately 60 percent
21 proposed by the Postal Service.” EPA also pointed out that the GAO analysis suggested that the
22 Postal Service should purchase 90 percent electric vehicles.

23 110. On September 29, 2023, the Postal Service published its Final SEIS. 88 Fed. Reg.
24 67277 (Sept. 29, 2023).

25 111. The Final SEIS did not evaluate any alternatives besides those included in the
26 Draft SEIS. Rather, the Postal Service selected its SEIS Preferred Alternative of procuring a
27 combination of off-the-shelf and custom vehicles, with a mix of 62 percent battery electric
28 vehicles and 38 percent internal combustion engine vehicles – the exact same allocation of

1 vehicles that the Postal Service had announced it would acquire nine months earlier.

2 112. The Final SEIS ignored viable alternatives that would allocate a greater percentage
3 of the acquisition to electric vehicles.

4 113. The Final SEIS failed to present complete information to the public regarding the
5 Postal Service’s selection of alternative vehicle allocations. While the Postal Service provided
6 generalized statements about the urgent need to replace its outdated vehicles with “some” internal
7 combustion engine vehicles, route suitability, and financial considerations, the Postal Service did
8 not explain why it considered only an allocation of 62 percent battery electric vehicles and 38
9 percent gas-powered vehicles. Notably, the Postal Service acknowledged that electric vehicles
10 are suitable for more than 90 percent of its routes. And the Postal Service did not disclose
11 adequate information on how the \$3 billion provided under the Inflation Reduction Act would be
12 spent, or the cost assumptions that would purportedly preclude the purchase of a greater
13 percentage of zero-emission vehicles.

14 114. The Final SEIS failed to fully evaluate environmental justice impacts from the
15 program, including air quality impacts, health risks, and cumulative impacts that environmental
16 justice communities will face.

17 115. The Final SEIS also improperly relied on an upfront acquisition cost analysis,
18 rather than using the best practice of a total cost of ownership analysis.

19 116. The Final SEIS did not consider the inconsistency of the SEIS Preferred
20 Alternative with State and local laws and plans that require reductions in greenhouse gas
21 emissions and fossil fuel consumption.

22 117. In an October 30, 2023 comment on the Final SEIS, EPA remained critical of the
23 Postal Service’s analysis. EPA recommended that the Postal Service provide greater disclosure in
24 its revised ROD, consider alternatives that would exceed the minimum battery electric vehicle
25 commitment of 62 percent, and strengthen its environmental justice commitments. EPA also
26 disagreed with the Postal Service’s abandonment of the best practice of using a total cost of
27 ownership analysis. Notably, EPA stated that “the Final SEIS does not clearly articulate what is
28 motivating the Postal Service’s vehicle acquisition strategy.” EPA also stated, “the Final SEIS

1 does not provide sufficient information for the public to understand whether the Postal Service is
 2 selecting the most cost-effective mix of vehicles,” and route optimization efforts do not explain
 3 “why the Postal Service is proposing to purchase 40,250 [internal combustion engine] vehicles,”
 4 resulting in a total of 140,250 gas-powered vehicles in the Postal Service’s fleet.

5 118. On December 5, 2023, the Postal Service signed and certified the revised ROD,
 6 selecting the SEIS Preferred Alternative, and finalizing the NEPA process for its vehicle
 7 acquisition program. The Postal Service published its revised ROD in the Federal Register on
 8 December 11, 2023.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of NEPA:**

11 **Irreversible Commitment of Resources**

12 **42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.2(f); 39 C.F.R. § 775.11(b)(2)(vi)**

13 119. Paragraphs 1 through 118 are realleged and incorporated herein by reference.

14 120. Plaintiffs have a right of action to seek that the court declare unlawful and set aside
 15 agency action that is arbitrary and capricious, exceeds the agency’s statutory authority, and
 16 violates NEPA.

17 121. A fundamental requirement of NEPA is that agencies must not commit resources
 18 to a particular course of action prior to completing their environmental review. *See* 40 C.F.R.
 19 § 1502.2(f) (“Agencies shall not commit resources prejudicing selection of alternatives before
 20 making a final decision”), *see also id.* § 1506.1 (Limitations on actions during NEPA process); 39
 21 C.F.R. § 775.11(b)(2)(vi) (EIS must “[s]erve to assess the environmental impact of proposed
 22 actions, rather than to justify decisions already made”). As the Ninth Circuit has found, agencies
 23 are required to prepare NEPA documents “*before* any irreversible and irretrievable commitment
 24 of resources.” *Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000) (emphasis added). “The
 25 point of commitment” constituting an irreversible and irretrievable commitment of resources can
 26 occur when an agency “sign[s] the contract” with a project proponent “and then work[s] to
 27 effectuate the Agreement.” *Id.*

28 122. Here, the Postal Service awarded a contract for the manufacture of Next

1 Generation Delivery Vehicles to Oshkosh in February 2021, roughly six months before the
2 agency even issued its Draft EIS, and a year before it finalized the EIS and issued the original
3 ROD. The Final EIS states that “[a]t the time of awarding the contract, the Postal Service placed
4 an order that funds the production design, assembly tooling, and factory start-up costs to support
5 the production of both vehicle types in parallel” – even though Oshkosh had only minimal
6 experience producing electric vehicles. As EPA noted, the contract with Oshkosh was “not the
7 most competitive” for battery electric vehicles, and three other contract bids had higher rated
8 battery electric vehicles. The Final EIS notes that the type of vehicles ultimately purchased will,
9 in part, “be contingent upon the supplier’s production and delivery capabilities.” According to
10 CEQ, the Postal Service committed more than \$480 million to begin engineering and factory
11 construction for its procurement decision before completing this NEPA process.

12 123. In the original ROD, the Postal Service incorporated the Final EIS’s findings and
13 analysis and determined that it would implement the original Preferred Alternative.

14 124. After announcing substantial changes would be made to its vehicle acquisition
15 program, and that it would perform supplemental environmental review, the Postal Service
16 refused to withdraw or suspend its original ROD while its supplemental environmental review
17 process was pending. Instead, the Postal Service allowed work under its contract with Oshkosh to
18 advance without completing NEPA review.

19 125. Indeed, during its supplemental environmental review of the vehicle acquisition
20 program, the Postal Service made a further irreversible and irretrievable commitment of resources
21 by awarding a contract for the acquisition of 9,250 gas-powered vehicles, 9,250 battery electric
22 vehicles, and 14,000 electric vehicle charging stations at least four months before issuing its Draft
23 SEIS.

24 126. Accordingly, the Postal Service’s issuance of the Final EIS and original ROD, and
25 Final SEIS and revised ROD, was arbitrary and capricious, did not demonstrate reasoned
26 decision-making, exceeded the Postal Service’s statutory authority, and was contrary to the
27 requirements of NEPA, 42 U.S.C. § 4332(2)(C), 40 C.F.R. § 1502.2(f), and 39 C.F.R.
28 § 775.11(b)(2)(vi). The Final EIS, original ROD, Final SEIS, and revised ROD should be held

1 unlawful and set aside, and the Postal Service should be enjoined from taking action under its
2 Next Generation Delivery Vehicle Acquisitions program until it has complied with NEPA.

3 SECOND CAUSE OF ACTION

4 (Violation of NEPA:

5 Failure to Consider Reasonable Alternatives

6 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.14; 39 C.F.R. § 775.11(c)(5)

7 127. Paragraphs 1 through 118 are realleged and incorporated herein by reference.

8 128. Plaintiffs have a right of action to declare unlawful and set aside agency action that
9 is arbitrary and capricious, exceeds the agency's statutory authority, and violates NEPA.

10 129. NEPA requires that Defendants provide a "detailed statement" regarding the
11 "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.14(a); 39 C.F.R.
12 § 775.11(c)(5); *see also* 30 C.F.R. §§ 775.8(a)(4), 775.11(b)(2)(iv)-(v). The requirement to
13 consider reasonable alternatives "lies at the heart of any NEPA analysis." *California ex rel.*
14 *Lockyer v. U.S. Dept. of Agric.*, 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006). "The existence of a
15 viable but unexamined alternative renders" an EIS inadequate. *W. Watersheds Project v. Abbey*,
16 719 F.3d 1035, 1050 (9th Cir. 2013) (internal quotations and citations omitted).

17 130. Here, the Postal Service failed to consider reasonable alternatives to its SEIS
18 Preferred Alternative of procuring 38 percent gas-powered vehicles and 62 percent electric
19 vehicles.

20 131. While the Postal Service put forward 100 percent electric vehicle alternatives for
21 both custom-made and commercial off-the-shelf vehicles, it summarily rejected these alternatives
22 as impractical and infeasible without any legitimate justification for doing so. The Postal Service
23 claims to have identified at least 12,500 delivery routes where length, environmental conditions,
24 or facility constraints do not allow for electric vehicles. However, these routes account for only 5
25 percent of the agency's total delivery routes, and the Postal Service's assumptions regarding the
26 infeasibility of using electric vehicles for the vast majority of its routes have no factual basis. The
27 Postal Service unreasonably failed to consider alternatives that would have involved a greater mix
28 of electric vehicles between 62 percent and 100 percent that could still meet its delivery needs.

1 dissemination of relevant environmental information”) (citations and internal quotes omitted).
2 When preparing an EIS, an agency must disclose and consider any “environmental impacts of the
3 proposed action and reasonable alternatives to the proposed action and the significance of those
4 impacts.” 40 C.F.R. § 1502.16(a)(1); 42 U.S.C. § 4332(2)(C); 39 C.F.R. § 775.11(c)(6); *see also*
5 40 C.F.R. § 1508.1(g).

6 138. Here, the Final EIS and Final SEIS fail to take the required “hard look” at
7 numerous environmental impacts from the Proposed Action and alternatives, including impacts
8 related to air quality, climate, and environmental justice, including air quality, health, and
9 cumulative impacts on environmental justice communities.

10 139. The Final EIS and Final SEIS fail to properly consider the specific impacts of
11 continued fossil fuel use on environmental justice communities that are located near postal
12 facilities and that are already suffering from significantly degraded air quality. *See Vecinos para*
13 *el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1330-31 (D.C. Cir. 2021).

14 140. The Final EIS and Final SEIS also significantly underestimate the climate impacts
15 of maintaining a massive fleet of gas-powered vehicles for potentially the next several decades,
16 rather than electrifying its fleet in the near term. Moreover, the conclusion that “[n]o effects of
17 climate change are expected” is inconsistent with even the estimates in the Final EIS and is
18 contrary to Ninth Circuit precedent. *See Center for Biological Diversity v. NHTSA*, 538 F.3d
19 1172, 1224 (9th Cir. 2008) (finding that “simply because the Final Rule may be an improvement
20 over the [prior] standard does not necessarily mean that it will not have a ‘significant effect’ on
21 the environment”).

22 141. In the revised ROD, the Postal Service incorporated the Final EIS’s and Final
23 SEIS’s findings and analysis and determined that it would implement the SEIS Preferred
24 Alternative.

25 142. Accordingly, the Postal Service’s issuance of the Final EIS and original ROD, and
26 Final SEIS and revised ROD, was arbitrary and capricious, did not demonstrate reasoned
27 decision-making, exceeded the Postal Service’s statutory authority, and was contrary to the
28 requirements of NEPA, 42 U.S.C. § 4332(2)(C), 40 C.F.R. § 1502.16(a)(1), and 39 C.F.R. §

1 775.11(c)(6), the Final EIS and original ROD, and Final SEIS and revised ROD, should be held
2 unlawful and set aside, and the Postal Service should be enjoined from taking action under its
3 Next Generation Delivery Vehicle Acquisitions program until it has complied with NEPA.

4 **FOURTH CAUSE OF ACTION**

5 **(Violation of NEPA:**

6 **Failure to Maintain Scientific Integrity**

7 **42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.23)**

8 143. Paragraphs 1 through 118 are realleged and incorporated herein by reference.

9 144. Plaintiffs have a right of action to declare unlawful and set aside agency action that
10 is arbitrary and capricious, exceeds the agency's statutory authority, and violates NEPA.

11 145. NEPA requires that federal agencies "shall ensure the professional integrity,
12 including scientific integrity, of the discussions and analyses in environmental documents," "shall
13 make use of reliable existing data and resources," and "shall identify any methodologies used and
14 shall make explicit reference to the scientific and other sources relied upon for conclusions in the
15 statement." 40 C.F.R. § 1502.23.

16 146. The Final EIS fails to ensure the scientific integrity of its analysis by relying upon
17 unsupported assumptions and undisclosed methodologies to justify its original Preferred
18 Alternative. Many of the Final EIS's statements do not reflect electric vehicle technology
19 available today or developments in this rapidly expanding industry, but instead incorrectly
20 assume that conditions today will continue decades into the future.

21 147. For example, the Final EIS claims that, if used on "routes that exceed 70 miles,"
22 electric vehicles "might not have sufficient power to complete the route, especially as the battery
23 ages and has less capacity," despite the current availability of electric vehicles that far exceed
24 such mileage on a single charge and rapid advances in battery technology. Moreover, such routes
25 constitute just five percent of the Postal Service's total delivery routes. The Final EIS also fails to
26 account for declining electric vehicle costs and proliferating charging infrastructure, while grossly
27 underestimating costs for gasoline and assuming that such fuel costs will remain largely constant
28 several years into the future. The Final EIS further ignores that many other private delivery fleets

1 are rapidly adopting electric vehicle fleets that are well suited to meet similar needs. And, in
2 many areas of the Final EIS, such as the economic analysis that estimates a “total cost of
3 ownership” for different vehicles, the document does not provide the underlying data or sources
4 of information necessary to evaluate or replicate the results.

5 148. Although it was issued more than 18 months after the Final EIS, the Final SEIS
6 failed to update previous assumptions such as the mileage range offered by current battery
7 technology, the costs of charging infrastructure, and the ratio and number of chargers necessary to
8 support a fleet at higher percentages of electrification.

9 149. Moreover, the Postal Service arbitrarily and capriciously abandoned the total cost
10 of ownership methodology, using an upfront acquisition cost analysis instead, which skews the
11 analysis in favor of internal combustion engine vehicles.

12 150. Nor did the Postal Service consider regional variations in its emissions-related
13 assumptions, but instead arbitrarily and capriciously applied assumptions for Westchester County,
14 NY on a national scale.

15 151. The Postal Service also underestimates emissions from its proposed purpose-built
16 vehicles by classifying them as “light commercial trucks” rather than giving them the more
17 accurate “light-heavy duty” vehicle classification when conducting its analysis.

18 152. Taken as a whole, the Final EIS and Final SEIS present information regarding
19 environmental impacts and costs that is incomplete and biased in favor of the SEIS Preferred
20 Alternative, at the expense of providing the public and decision makers with accurate information
21 to allow for a meaningful consideration of the Proposed Action and alternatives.

22 153. In the revised ROD, the Postal Service incorporated the Final EIS’s and Final
23 SEIS’s findings and analysis and determined that it would implement the SEIS Preferred
24 Alternative.

25 154. Accordingly, the Postal Service’s issuance of the Final EIS and original ROD, and
26 Final SEIS and revised ROD, was arbitrary and capricious, did not demonstrate reasoned
27 decision-making, exceeded the Postal Service’s statutory authority, and was contrary to the
28 requirements of NEPA, 42 U.S.C. § 4332(2)(C) and 40 C.F.R. § 1502.23; the Final EIS, Final

1 SEIS, and original and revised RODs should be held unlawful and set aside, and the Postal
2 Service should be enjoined from taking action under its Next Generation Delivery Vehicle
3 Acquisitions program until it has complied with NEPA.

4 **FIFTH CAUSE OF ACTION**

5 **(Violation of NEPA:**

6 **Failure to Consider Inconsistencies with State Laws and Plans**

7 **42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1506.2(d)**

8 155. Paragraphs 1 through 118 are realleged and incorporated herein by reference.

9 156. Plaintiffs have a right of action to declare unlawful and set aside agency action that
10 is arbitrary and capricious, exceeds the agency’s statutory authority, and violates NEPA.

11 157. “To better integrate environmental impact statements into State, Tribal, or local
12 planning processes,” NEPA provides that an EIS “shall discuss any inconsistency of a proposed
13 action with any approved State, Tribal, or local plan or law[,] and [w]here an inconsistency exists,
14 the statement should describe the extent to which the agency would reconcile its proposed action
15 with the plan or law.” 40 C.F.R. § 1506.2(d).

16 158. Here, the Final EIS fails to discuss the inconsistency of the original Preferred
17 Alternative with numerous State and local laws and plans to reduce greenhouse gas emissions and
18 fossil fuel consumption to mitigate the devastating consequences of global climate change,
19 address the public health impacts of air pollution and climate change, electrify the transportation
20 sector, and meet federal air quality requirements.

21 159. The Final Supplemental EIS also fails to discuss the inconsistency of the SEIS
22 Preferred Alternative with State and local laws and plans to reduce greenhouse gas emissions and
23 fossil fuel consumption, reduce transportation sector emissions to comply with federal, State, and
24 local laws, and to electrify the transportation sector.

25 160. In the revised ROD, the Postal Service incorporated the Final EIS’s and Final
26 SEIS’s findings and analysis and determined that it would implement the SEIS Preferred
27 Alternative.

28 161. Accordingly, the Postal Service’s issuance of the Final EIS and original ROD, and

1 of the Final SEIS and revised ROD, was arbitrary and capricious, did not demonstrate reasoned
2 decision-making, exceeded the Postal Service’s statutory authority, and was contrary to the
3 requirements of NEPA, 42 U.S.C. § 4332(2)(C) and 40 C.F.R. § 1506.2(d), and the Final EIS and
4 original ROD, and the Final SEIS and revised ROD, should be held unlawful and set aside, and
5 the Postal Service should be enjoined from taking action under its Next Generation Delivery
6 Vehicle Acquisitions program until it has complied with NEPA.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully request that this Court:

- 9 1. Issue a declaratory judgment that the Postal Service violated NEPA in issuing the
10 Final EIS, Final SEIS, and Records of Decision;
- 11 2. Issue an order vacating and setting aside the Final EIS, Final SEIS, and Records of
12 Decision unless and until the Postal Service complies with applicable law;
- 13 3. Issue an order enjoining action by the Postal Service under its Next Generation
14 Vehicle Acquisition Program until it has complied with NEPA;
- 15 4. Award Plaintiffs their costs, expenses, and reasonable attorneys’ fees; and
- 16 5. Award such other relief as the Court deems just and proper.
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Dated: February 2, 2024

ROB BONTA
Attorney General of California
ABIGAIL BLODGETT
Supervising Deputy Attorney General

/s/ Stacy J. Lau
STACY J. LAU
Deputy Attorneys General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 879-1973
E-mail: Stacy.Lau@doj.ca.gov

Attorneys for Plaintiff State of California

FOR THE COMMONWEALTH OF
PENNSYLVANIA
MICHELLE A. HENRY
Attorney General

/s/ Ann R. Johnston
ANN R. JOHNSTON
Assistant Chief Deputy Attorney General
Office of Attorney General
Civil Environmental Enforcement Unit
Strawberry Square
14th Floor
Harrisburg, PA 17120
Email: ajohnston@attorneygeneral.gov
(717) 497-3678

*Attorneys for Plaintiff
Commonwealth of Pennsylvania*

Respectfully submitted,

LETITIA JAMES
Attorney General of New York

/s/ Claiborne E. Walthall
CLAIBORNE E. WALTHALL (*pro hac vice*)
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
State Capitol
Albany, NY 12224
(518) 776-2380
claiborne.walthall@ag.ny.gov

Attorneys for Plaintiff State of New York

WILLIAM TONG
Attorney General of Connecticut

/s/ Daniel Salton
DANIEL SALTON
Assistant Attorney General
Office of the Attorney General of Connecticut
165 Capitol Avenue
Hartford, CT 06106
Telephone: (860) 808-5250
Email: daniel.salton@ct.gov

Attorneys for Plaintiff State of Connecticut

1 KATHLEEN JENNINGS
2 Attorney General of Delaware

3 /s/ Vanessa L. Kassab

4 CHRISTIAN DOUGLAS WRIGHT
5 Director of Impact Litigation
6 VANESSA L. KASSAB (*pro hac vice*)
7 JAMESON A. L. TWEEDIE
8 RALPH K. DURSTEIN, III
9 Deputy Attorneys General
10 Delaware Department of Justice
11 820 N. French Street
12 Wilmington, DE 19801
13 (302) 683-8899

14 *Attorneys for Plaintiff State of Delaware*

15 KWAME RAOUL
16 Attorney General of Illinois

17 /s/ Jason E. James

18 JASON E. JAMES (*pro hac vice*)
19 Assistant Attorney General
20 MATTHEW J. DUNN
21 Chief, Environmental Enforcement/Asbestos
22 Litigation Division
23 Office of the Attorney General
24 201 West Pointe Drive, Suite 7
25 Belleville, IL 62226
26 Tel: (872) 276-3583
27 Email: Jason.james@ilag.gov

28 *Attorneys for Plaintiff State of Illinois*

29 MATTHEW J. PLATKIN
30 Attorney General of New Jersey

31 /s/ Lisa Morelli

32 LISA MORELLI, State Bar No. 137092
33 Deputy Attorney General
34 Division of Law
35 25 Market Street
36 P.O. Box 093
37 Trenton, NJ 08625-093
38 Telephone: 609-376-2740
39 Email: lisa.morelli@law.njoag.gov

40 *Attorneys for Plaintiff State of New Jersey*

AARON M. FREY
Attorney General of Maine

/s/ Jillian R. O'Brien

JILLIAN R. O'BRIEN, Cal. State Bar No. 251311
JASON ANTON
PAUL SUITTER
Assistant Attorneys General
Six State House Station
Augusta, Maine 04333-0006
Telephone: (207) 626-8800
Fax: (207) 287-3145
Email: Jason.Anton@maine.gov
Email: Paul.Suitter@maine.gov
Email: Jill.Obrien@maine.gov

Attorneys for Plaintiff State of Maine

ANTHONY G. BROWN
Attorney General of Maryland

/s/ Steven J. Goldstein

STEVEN J. GOLDSTEIN (*pro hac vice*)
Special Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Telephone: (410) 576-6414
Email: sgoldstein@oag.state.md.us

Attorneys for Plaintiff State of Maryland

RAÚL TORREZ
Attorney General of New Mexico

/s/ William Grantham

WILLIAM GRANTHAM (*pro hac vice*)
Assistant Attorney General
201 Third St. NW, Suite 300
Albuquerque, NM 87102
Telephone: (505) 717-3520
E-Mail: wgrantham@nmag.gov

Attorneys for Plaintiff State of New Mexico

1 ELLEN F. ROSENBLUM
2 Attorney General of Oregon

3 /s/ Steve Novick
4 PAUL GARRAHAN (*pro hac vice*)
5 Attorney-in-Charge
6 STEVE NOVICK (*pro hac vice*)
7 Special Assistant Attorney General
8 Natural Resources Section
9 Oregon Department of Justice
10 1162 Court Street NE
11 Salem, OR 97301-4096
12 Telephone: (503) 947-4593
13 Email: Steve.Novick@doj.state.or.us

14 *Attorneys for Plaintiff State of Oregon*

15 FOR THE PEOPLE OF THE
16 STATE OF MICHIGAN

17 /s/ Elizabeth Morrisseau
18 ELIZABETH MORRISSEAU (*pro hac vice*)
19 Assistant Attorney General
20 Environment, Natural Resources,
21 and Agriculture Division
22 Michigan Attorney General's Office
23 6th Floor, G. Mennen Williams Building
24 525 West Ottawa Street
25 PO Box 30755
26 Lansing, MI 48933
27 Telephone: (517) 335-7664
28 Email: MorrisseauE@michigan.gov

Attorneys for Plaintiff the People of the State of Michigan

29 CHARITY R. CLARK
30 Attorney General of Vermont

31 /s/ Ryan Kane
32 RYAN KANE (*pro hac vice*)
33 Assistant Attorney General
34 Office of the Attorney General
35 109 State Street
36 Montpelier, VT 05609
37 (802) 828-2153
38 ryan.kane@vermont.gov

Attorneys for Plaintiff State of Vermont

JOSHUA H. STEIN
Attorney General of North Carolina

/s/ Francisco Benzoni
ASHER SPILLER
Assistant Attorney General
FRANCISCO BENZONI
Special Deputy Attorney General
114. W. Edenton Street
Raleigh, NC 27063
Telephone: (919)716-7600
Email: fbenzoni@ncdoj.gov
aspiller@ncdoj.gov

Attorneys for Plaintiff State of North Carolina

ROBERT W. FERGUSON
Attorney General of Washington

/s/ Megan Sallomi
MEGAN SALLOMI, State Bar. No. 300580
Assistant Attorney General
Environmental Protection Division
Washington State Attorney General's Office
800 5th Ave Suite 2000,
Seattle, WA 98104-3188
Telephone: (206) 389-2437
Email: Megan.Sallomi@atg.ca.gov

Attorney for Plaintiff State of Washington

PETER F. NERONHA
Attorney General of Rhode Island

/s/ Nicholas M. Vaz
NICHOLAS M. VAZ (*pro hac vice*)
Special Assistant Attorney General
Office of the Attorney General
Environmental and Energy Unit
150 South Main Street
Providence, Rhode Island 02903
Telephone: (401) 274-4400 ext. 2297
nvaz@riag.ri.gov

Attorneys for Plaintiff State of Rhode Island

1 BRIAN L. SCHWALB
2 Attorney General for the District of Columbia

3 /s/ Adam Teitelbaum

4 ADAM TEITELBAUM, State Bar. No. 310565
5 Deputy Director
6 Office of the Attorney General
7 District of Columbia
8 400 6th St. NW
9 Washington, DC 20001
10 Telephone: 202-256-3713
11 Email: Adam.Teitelbaum@dc.gov

12 *Attorneys for Plaintiff District of Columbia*

ALEXANDER G. CROCKETT
District Counsel

13 /s/ Marcia L. Raymond

14 MARCIA L. RAYMOND, State Bar No. 215655
15 Assistant Counsel
16 Bay Area Air Quality Management District
17 350 Beale Street, Suite 600
18 San Francisco, CA 94105
19 (415) 749-5158
20 mraymond@baaqmd.gov

21 *Attorneys for Plaintiff*
22 *Bay Area Air Quality Management District*

23 HON. SYLVIA O. HINDS-RADIX
24 Corporation Counsel
25 of the City of New York

26 /s/ Alice R. Baker

27 ALICE R. BAKER (*pro hac vice*)
28 Senior Counsel
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-2314
E-mail: albaker@law.nyc.gov

Attorneys for Plaintiff City of New York

PHILIP J. WEISER
Attorney General of Colorado

29 /s/ Carrie Noteboom

30 CARRIE NOTEBOOM (*pro hac vice*)
31 Assistant Deputy Attorney General
32 Natural Resources and Environment Section
33 Colorado Department of Law
34 1300 Broadway, 7th Floor
35 Denver, CO 80203
36 (720) 508 6285
37 carrie.noteboom@coag.gov

38 *Attorneys for Plaintiff State of Colorado*

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1

I hereby certify that the above counsel have concurred in the filing of this document.

/s/ Stacy J. Lau
Stacy J. Lau

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CERTIFICATE OF SERVICE

I hereby certify that, on February 2, 2024, I electronically filed the foregoing document with the Clerk of the Court using the ECF System, which will send notification of such filing to all counsel of record by operation of the Court’s ECF System.

/s/ Stacy J. Lau
Stacy J. Lau