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Superior Court of California
County of Fresno
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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF FRESNO**

11 WESTERN STATES TRUCKING
12 ASSOCIATION

13 Petitioner and Plaintiff,

14 v.

15 CALIFORNIA AIR RESOURCES BOARD; and
16 STEVEN S. CLIFF, in his official capacity as
17 Executive Officer of the California Air
Resources Board,

18 Respondents and Defendants.
19

Case No. **23CECG02964**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

20
21 Petitioner and Plaintiff Western States Trucking Association (“Petitioner” or “WSTA”)
22 submits this Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief
23 (the “Petition”), stating claims against Respondents and Defendants the California Air Resources Board
24 (“CARB” or the “Board”) and Steven S. Cliff, in his official capacity as Executive Officer of CARB
25 (collectively, “Respondents”), as set forth below.

26 Petitioner seeks a writ of mandate to invalidate CARB’s Advanced Clean Fleets
27 Regulation (the “ACF Regulation”) on the grounds that CARB (i) failed to fully comply with its mandate
28 to evaluate the ACF Regulation’s potential environmental impacts under the California Environmental

1 Quality Act, Public Resources Code, § 21000, *et seq.* (“CEQA”); (ii) failed to adequately assess the
2 ACF Regulation’s economic impacts and to consider feasible alternatives to the ACF Regulation under
3 the California Administrative Procedure Act, Government Code, § 11340, *et seq.* (the “APA”); and (iii)
4 failed to engage in external peer review of the “scientific portions” of the ACF Regulation in violation
5 of Section 57004 of the Health & Safety Code. Petitioner also seeks a declaratory judgment pursuant
6 to Section 1060 of the Code of Civil Procedure, as well as injunctive relief to compel compliance with
7 the law.

8 **PARTIES, JURISDICTION AND VENUE**

9 1. WSTA is a California Non-Profit Corporation based in Upland, California that advocates
10 on behalf of its owner-operator, fleet, and broker members on issues affecting their businesses. WSTA
11 was founded in 1941 and is the oldest independent non-profit trucking association in the United States.

12 2. While WSTA has no financial interest in the outcome of this action, WSTA has standing
13 to assert the claims presented herein because WSTA and its members are beneficially interested in the
14 subject matter of the proceeding, insofar as the ACF Regulation would impact WSTA’s members. In
15 addition, the interests WSTA seeks to protect in this action include ensuring Respondents’ full and
16 forthright compliance with applicable law regarding the imposition of fees on the trucking industry.
17 WSTA and its members will be injured by the implementation of the ACF Regulation.

18 3. WSTA has performed any and all conditions precedent to the filing of this Petition.
19 WSTA has exhausted any and all administrative remedies required by law by, *inter alia*, participating
20 in the administrative and environmental review process CARB performed in connection with the ACF
21 Regulation.

22 4. Petitioners complied with Public Resources Code section 21167.5 by mailing written
23 notice to Respondent, and proof of service of the letter is attached hereto as **Exhibit “A.”**

24 5. Petitioners complied with Public Resources Code section 21167.6 by filing a request
25 concerning the preparation of the record of administrative proceedings relating to this action
26 concurrently with this Petition, a copy of which is attached hereto as **Exhibit “B.”**

27 6. Petitioners will timely provide notice to the State Attorney General as required by section
28 21167.7 of the Public Resources Code and section 388 of the Code of Civil Procedure.

1 7. CARB is a state agency subject to the California Government Code, with certain powers
2 and duties under the California Health & Safety Code. The agency’s decisionmaking body is comprised
3 of eleven (11) members appointed by the Governor, several of whom are chosen from various air quality
4 control districts in the State, and a full-time Chairperson who is appointed by the Governor with the
5 consent of the California Legislature. CARB is the state agency that approved the ACF Regulation.

6 8. CARB’s current Executive Officer is Dr. Steven S. Cliff, Ph.D, who is made a party to
7 this action in his official capacity only. Dr. Cliff acts as the director and manager of the CARB
8 professional and other staff personnel, who all report to him.

9 9. Collectively, CARB and Dr. Cliff are referred to herein as “Respondents.”

10 10. Petitioner is unaware of the true names and capacities of Respondents fictitiously named
11 Does 1 through 100 and sue such Respondents by fictitious names. Petitioner is informed and believes,
12 and on that basis alleges, that the fictitiously-named Respondents are also responsible for the actions
13 described in this Petition. When the true identities and capacities of these Respondents have been
14 determined, Petitioners will amend this Petition, with leave of the court if necessary, to insert such
15 identities and capacities. Whenever the terms “CARB” or “Respondents” are used herein, said terms
16 shall be construed as including Does 1 through 100, inclusive.

17 11. This Court has jurisdiction over Petitioners’ request for a writ of mandate pursuant to
18 sections 21168 and 21168.5 of the Public Resources Code and sections 526, 1060, 1085 and 1094.5 of
19 the Code of Civil Procedure. This Court has jurisdiction over Petitioners’ requests for injunctive and
20 declaratory relief pursuant to sections 526 et seq. and 1060 et seq. of the Code of Civil Procedure.

21 12. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless
22 this Court grants the requested writ of mandate. In the absence of such relief, Respondents’ inaction
23 will violate state law and Petitioner, Petitioner’s members, and the public at large will be irreparably
24 harmed. No money damages or legal remedy could adequately compensate for such harm.

25 13. Venue in Fresno County Superior Court is proper pursuant to California Code of Civil
26 section 401, subdivision (1), which provides that an action may be commenced in any county the
27 Attorney General has an office whenever any law of the state provides that the action may be
28 commenced in the County of Sacramento. The Attorney General has an office in Fresno County and

1 this action may be commenced in the County of Sacramento pursuant to section 395 of the Code of Civil
2 Procedure because Respondents' administrative headquarters are located in Sacramento County and the
3 alleged violations occurred in Sacramento County.

4 **STATEMENT OF FACTS**

5 14. The ACF Regulation seeks to transition most truck fleets, including those of many of
6 WSTA's members, to medium and heavy duty zero emissions vehicles ("ZEVs") by 2040 and applies
7 to any business that owns or controls a fleet consisting of 50 or more on-road vehicles, off-road tractors,
8 or light-duty package delivery vehicles. Regulated entities must begin purchasing ZEVs by January 1,
9 2024, and must ensure their fleets maintain a specified minimum percentage of ZEVs starting in 2025.
10 The minimum percentage of ZEVs will increase to 100% at some point between 2035 and 2042,
11 depending on the fleet. Beginning in 2040, all medium and heavy-duty vehicles sold in California must
12 be a ZEV.

13 15. Unfortunately, technology has not reached the point where ZEVs are as cost-effective,
14 commonly available, efficient, or reliable as trucks using combustion engines. As a result, the trucking
15 industry in California—which is already subject to the most stringent environmental regulations in the
16 world—will be forced to incur significant additional costs to acquire unproven and inaccessible
17 technologies with uncertain, speculative benefits, thereby further threatening already unstable and
18 overstretched supply chains.

19 16. Making matters worse, the infrastructure needed to accommodate a wholesale transition
20 to ZEVs starting in 2024 simply does not exist. Under current conditions, California's energy grid
21 strains throughout the summer months to cope with existing demand. By CARB's own admission, the
22 transition to ZEVs will require massive infrastructure investments that will result in the need to construct
23 a vast number of new facilities to energize ZEVs, build ZEVs in increasing quantities, and extract new
24 raw materials.

25 17. Unfortunately, in its quest to transition California to an all-ZEV market, CARB declined
26 to consider these real-world issues and to properly assess the ACF Regulation's potential unintended
27 consequences. For example, although CARB goes to great lengths to tout the emissions *reductions*
28 resulting from transitioning to ZEVs, the ACF Regulation's environmental assessment (the "EA") failed

1 to quantify the emissions *increases* that will result from the construction of new facilities and other
2 factors, even though these new emissions will inevitably offset—and could completely eliminate or
3 substantially reduce—the ACF Regulation’s claimed benefits. In so doing, the EA misleadingly
4 obscures the ACF Regulation’s actual environmental impacts while, at the same time, artificially
5 inflating its claimed environmental benefits.

6 18. But that is not all. In its haste to make California the first all-ZEV market, the agency
7 also ignored emissions increases caused by the use of ZEVs themselves, feasible alternatives to the ACF
8 Regulation that would rely upon existing infrastructure and technologies (and thus not require the
9 construction of new facilities), and the ACF Regulation’s impacts on California’s already-stretched
10 energy grid.

11 19. CARB likewise failed to assess adequately the economic impacts the ACF Regulation
12 will have on regulated industries, including the trucking industry. Among other things, CARB greatly
13 overstated the real world efficacy of ZEVs, ignoring numerous factors that will significantly increase
14 cost of ownership and instead painting a picture that the transition would somehow have a beneficial
15 impact on regulated industries in the near term.

16 20. For these and other reasons, WSTA reviewed and commented on the ACF Regulation’s
17 Initial Statement of Reasons (“ISOR”) and draft EA when those documents were released to the public
18 in August of 2022. WSTA submitted extensive written comments prior to the close of public comment
19 and made oral comments at CARB’s October 27, 2022, public hearing. WSTA also made oral comments
20 during a second public hearing on April 27, 2023.

21 21. At the April 27, 2023, meeting, CARB approved Resolution 23-13, which certified the
22 EA as being prepared in compliance with CEQA and approved the ACF Regulation.

23 22. CARB submitted the ACF Regulation to the Office of Administrative Law on June 11,
24 2023, and posted its Notice of Decision on June 22, 2023.

25 23. Throughout the rulemaking process, CARB declined to fully address WSTA’s significant
26 concerns regarding the ACF Regulation. As a result, WSTA was forced to bring this action.

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1 **First Cause of Action -- For a Writ of Mandate against the Board and the CARB Executive**
2 **Officer (Failure to Analyze Environmental Impacts)**

3 24. Petitioner re-alleges and incorporates by reference the precedent paragraphs 1 to 23 in
4 their entirety, as though fully set forth herein.

5 25. State agencies such as CARB must “refrain from approving projects with significant
6 environmental effects if there are feasible alternatives or mitigation measures that can substantially
7 lessen or avoid those effects.” (*City of Arcadia v. State Water Resources Control Bd.* (2006) 135
8 Cal.App.4th 1392, 1421 [citing *Mountain Lion Found. v. Fish & Game Comm.* (1997) 16 Cal.4th 105,
9 134].) To perform this evaluation, CARB must “first . . . identify the environmental effects” of a
10 proposed regulation, “and then . . . mitigate [any] adverse effects through the imposition of feasible
11 mitigation measures or through the selection of feasible alternatives.” (*Sierra Club v. State Bd. of*
12 *Forestry* (1994) 7 Cal.4th 1215, 1233.) “The CEQA process is intended to be a careful examination,
13 fully open to the public, of the environmental consequences of a given project, covering the entire
14 project, from start to finish. This examination is intended to provide the fullest information reasonably
15 available upon which the decision makers and the public they serve can rely in determining whether or
16 not to start the project at all, not merely to decide whether to finish it.” (*NRDC v. City of Los Angeles*
17 (2002) 103 Cal.App.4th 268, 271.)

18 26. State regulatory programs “that meet certain environmental standards and are certified
19 by the Secretary of the California Resources Agency are exempt from CEQA’s requirements for
20 preparation of EIRs, negative declarations, and initial studies.” (*City of Arcadia, supra*, 135 Cal.App.4th
21 at 1421.) CARB’s regulatory program has been so certified.

22 27. The scope of this exemption, however, is narrow, and only excuses CARB from
23 complying with the requirements found in Chapters 3 and 4 of CEQA (*i.e.*, Pub. Res. Code, §§ 21100-
24 21154) in addition to Public Resources Code § 21167. (Pub. Resources Code, § 21080.5(c).) However,
25 “[w]hen conducting its environmental review and preparing its documentation, a certified regulatory
26 program is subject to the broad policy goals and substantive standards of CEQA.” (Kostka & Zischke,
27 Practice Under Cal. Env. Quality Act (2016 update) § 21.10) [“Kostka & Zischke”] [citing *City of*
28 *Arcadia, supra*, 135 Cal.App.4th at 1422; *Sierra Club, supra*, 7 Cal.4th 1215; *Californians for Native*

1 *Salmon & Steelhead Ass'n v. Dept. of Forestry* (1990) 221 Cal.App.3d 1419; *Env'tl Protection Info.*
2 *Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 616].) The broad policy goals of CEQA include: (1)
3 providing public agencies and the public with detailed information about the effect that a proposed
4 project is likely to have on the environment, (2) identifying the ways in which the significant effects of
5 a proposed project might be minimized, and (3) identifying alternatives to the proposed project. (See
6 Pub. Resources Code, §§ 21002, 21002.1(a), 21061; CEQA Guidelines, § 15362.) Thus, the CEQA
7 Guidelines expressly provide that “[i]n a certified program, an environmental document used as a
8 substitute for an EIR must include ‘[a]lternatives to the activity and mitigation measures to avoid or
9 reduce any significant or potentially significant effects that the project might have on the environment.’”
10 (*City of Arcadia, supra*, 135 Cal.App.4th at 1422 [quoting CEQA Guidelines, § 15252(a)(2)(A)].)

11 28. Respondents failed to proceed in a manner required by law and violated CEQA by
12 certifying an environmental document, the EA, that fails to comply with the applicable requirements of
13 CEQA, CEQA’s broad policy goals, the CEQA Guidelines, and CARB’s own CEQA regulations.

14 Among other things:

15 a. The EA failed to adequately analyze the environmental impacts associated with:
16 (i) constructing new facilities, and modifying existing facilities, to increase the supply of ZEVs, (ii)
17 constructing new facilities, and modifying existing facilities, to ensure sufficient electricity is available
18 to accommodate heightened electricity demands resulting from the transition to ZEVs while maintaining
19 grid reliability, (iii) constructing new hydrogen fueling and electrical charging facilities to provide
20 adequate, widely-available ZEV fueling infrastructure, and (iv) extracting raw materials such as lithium,
21 platinum, and other elements needed for, *inter alia*, ZEV components, such as batteries. Although for
22 many resources, including air quality resources, the EA found these activities would cause significant
23 and unavoidable environmental impacts, the EA made no attempt to actually quantify the extent of those
24 impacts, thereby precluding any meaningful analysis of their potential environmental effects. An
25 environmental document, however, cannot simply label an impact “significant and unavoidable” without
26 first providing adequate discussion and analysis, as this would “allow[] the agency to travel the legally
27 impermissible easy road to CEQA compliance.” (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of*
28

1 *Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1370.) The EA, however, did just that, violating one of
2 the fundamental principles of CEQA.

3 b. Although CARB declined to perform a quantitative analysis of the potential
4 **negative** environmental effects associated with the ACF Regulation, such as construction of new
5 facilities and the extraction of raw materials, preferring instead to discuss those effects in the abstract,
6 CARB **did** perform a detailed quantitative analysis of the ACF Regulation's alleged **benefits**, including
7 the claimed emissions benefits. Indeed, the ISOR boldly touted the ACF Regulation's alleged mobile
8 source benefits of, stating that the ACF Regulation would "result in 418,943 tons reduction in NOx,
9 8,638 tons reduction in PM2.5 and 307 million metric tons [] reduction of CO2 [] emissions, relative to
10 the Legal Baseline." When it came to potential adverse impacts, however, the EA simply stated that the
11 ACF Regulation "could result in an increase in manufacturing and associated facilities to increase the
12 supply of ZEVs, along with construction of new hydrogen fueling stations and electric vehicle charging
13 stations to support ZEV operations and associated increase in hydrogen fuel supply and transportation"
14 and that "[c]onstruction-related activities, if they occur would be anticipated to result in an increase in
15 criteria air pollutants and toxic air contaminants." No attempt was made to quantify these increases and
16 no explanation offered as to why such quantification was infeasible.

17 c. CARB's failure to provide the public and CARB's decisionmakers with an
18 apples-to-apples comparison of the ACF Regulation's potential benefits with its potential adverse
19 impacts created the misleading picture that regulation's adoption would bring about the specifically
20 quantified air quality benefits. But this is simply not true. As the EA acknowledges, the ACF Regulation
21 would result in the installation of facilities that would themselves generate criteria pollutant and
22 greenhouse gas emissions. However, because CARB staff declined to estimate those emissions as it had
23 for the emissions benefits, or otherwise perform an apples-to-apples analysis, the Final EA left the public
24 and CARB decisionmakers unable to evaluate the ACF Regulation's net emissions impacts. After all,
25 the EA provided only half of the analysis, and that half focused exclusively on the purported beneficial
26 effects while ignoring the negative effects. CARB's failure to perform this analysis renders the EA
27 inadequate in that it fails to investigate potentially significant environmental effects, (*cf. Sundstrom v.*
28 *County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ["CEQA places the burden of environmental

1 investigation on government rather than the public,” and a lead agency “should not be allowed to hide
2 behind its own failure to gather data.”]), and impermissibly defers environmental analysis to a later date.
3 (*Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th
4 1, 16.)

5 d. As explained above, the EA recognizes that the ACF Regulation would result in
6 the construction of new facilities and the increased extraction of raw materials, and that those activities
7 would have a significant environmental effect. As a result, CEQA requires that CARB identify
8 enforceable mitigation to reduce the potential environmental effects. Here, however, while the EA
9 specifically references potential mitigation to help reduce negative environmental effects, the EA does
10 not actually mandate any enforceable mitigation measures, in violation of CEQA.

11 e. None of the mitigation measures identified in the EA are enforceable through
12 legally binding means. Instead, the Final EA merely identifies “[r]ecognized practices routinely
13 required to avoid and/or minimize impacts to” the relevant resource category. There is nothing in the
14 proposed ACF Regulation, however, that ensures those “recognized practices” will actually be
15 implemented. By failing to adopt and require such mitigation, the EA violates CEQA.

16 f. By failing to perform a lifecycle analysis using the CA-GREET3.0 Model—
17 which CARB frequently uses in other rulemakings—CARB overstates the alleged benefits of the ACF
18 Regulation with respect to GHG emissions. This is of particular concern because, as noted above,
19 CARB likewise did not quantify the GHG emissions that would be expected to occur as a result of the
20 construction of new facilities and the increased extraction of raw materials, obscuring the negative
21 consequences of the ACF Regulation.

22 g. The EA’s discussion of air quality impacts is also incomplete because it does not
23 assess criteria pollutant emissions particular to EVs. Among other things, the EA did not analyze or
24 include an assessment of the impacts on ZEV weight on PM emissions from tire wear and entrained
25 road dust. Likewise, the EA does not address the fact that—due to the 2,000 lb. allowance under AB
26 2061 for alternative fueled vehicles—either more vehicles will be required to transport goods or the
27 weight threshold for the vehicles will need to be further increased.” Under either circumstance, the ACF
28 Regulation will result in PM10 emissions that are not addressed in the EA.

1 h. CARB Staff made no attempt to quantify baseline conditions with respect to
2 energy consumption. As a result, CARB left the public with no way to evaluate whether the ACF
3 Regulation will result in the “wasteful, inefficient, or unnecessary consumption of energy,” and as such
4 the EA violates CEQA.

5 i. The EA recognizes that electrification of the various sectors affected by the ACF
6 Regulation would (i) increase local and regional energy use and impact supplies and requirements for
7 additional capacity, and (ii) impact peak and base load period demands for electricity and other forms
8 of energy. The EA, however, ultimately finds the energy impacts would be less than significant and
9 beneficial due to ambiguous asset management, system design practices, and managed charging by
10 California utilities, and other long-term planning initiatives. This method of analysis violates CEQA.
11 First, the practices referenced above are not part of the “project” under CEQA, nor are they identified
12 as mitigation measures. If construed as mitigation, they would fail because they are neither binding nor
13 enforceable. There is likewise no explanation of exactly how these measures would supposedly avoid
14 the potential energy effects of the ACF Regulation, much less any attempt to quantify the potential
15 impacts of the regulation.

16 j. There is no discussion in the EA about grid reliability and the potential for the
17 ACF Regulation to impact the ability of the state’s electricity grid to deliver electricity reliably with
18 projected load demand, particularly in the early evening hours when ZEV drivers return from work—at
19 the same time much of the stress on the grid is felt.

20 k. Although fleet sizes will need to expand due to the 2,000 lbs, weight allowance
21 of AB 2061, the EA did not evaluate additional vehicle miles traveled by the increased number of
22 vehicles on California roadways.

23 l. Instead of examining a reasonable range of alternatives, as required under CEQA,
24 the EA instead provided artificially narrow objectives for the ACF Regulation, which resulted in a range
25 of project alternatives that were simply variations of the ACF Regulation. This unduly narrow range of
26 alternatives resulted in the alternatives analysis being a “foregone conclusion” and an “empty
27 formality.” (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.4th
28 683, 692.)

1 m. CARB impermissibly rejected project alternatives proposed by various members
2 of the public that would rely more heavily than the ACF Regulation on existing technologies and
3 infrastructure. Because virtually all of the impacts in the EA that were found to be significant and
4 unavoidable were created by the need for new facilities or the development of new infrastructure, the
5 three alternatives would either significantly reduce or avoid all of the significant and unavoidable impact
6 identified in the EA. Because CARB must “focus on alternatives to the project . . . which are capable
7 of avoiding or substantially lessening any significant effects of the project, even if these alternatives
8 would impede to some degree the attainment of the project objectives,” (CEQA Guidelines, §
9 15126.6(b)), CARB violated CEQA by simply rejecting the proposed alternatives.

10 29. As a result of the foregoing failures, Respondents prejudicially abused their discretion
11 by certifying an inadequate EA that does not comply with the requirements of CEQA, the CEQA
12 Guidelines, or CARB’s certified regulatory program.

13 **Second Cause of Action – Writ of Mandate for Violation of APA**

14 **(Code Civ. Proc., §§ 1085, 1094.5; Govt. Code, § 11350)**

15 30. Petitioner re-alleges and incorporates by reference the precedent paragraphs 1 to 29 in
16 their entirety, as though fully set forth herein.

17 31. The “APA provides a procedural vehicle to review proposed regulations or modifications
18 thereto in order to ‘advance meaningful public participation in the adoption of administrative regulations
19 by state agencies’ and create ‘an administrative record assuring effective judicial review.’” (*John R.*
20 *Lawson Rock & Oil, Inc. v. State Air Res. Bd.* (2018) 20 Cal.App.5th 77, 111.)

21 32. When, as here, CARB “makes an initial determination that the action will not have a
22 significant, statewide adverse economic impact directly affecting business, including the ability of
23 California businesses to compete with businesses in other states, it shall make a declaration to that effect
24 in the notice of proposed action.” (Govt. Code, § 11346.5, subd. (a)(8).) Prior to making this
25 determination, CARB must “assess the potential for adverse economic impact on California business
26 enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations or
27 reporting, recordkeeping, or compliance requirements” through the preparation of “a standardized
28 regulatory impact analysis,” which “shall address” several factors including the “creation or elimination

1 of jobs within the state,” the “creation of new businesses or the elimination of existing businesses within
2 the state,” and the “competitive advantages or disadvantages for businesses currently doing business
3 within the state.” (*Id.*, subd. (c)(1).)

4 33. In addition to an assessment of the potential for a regulation to have a “significant,
5 statewide adverse economic impact directly affecting business,” CARB must also describe “all cost
6 impacts . . . that a representative private person or business would necessarily incur in reasonable
7 compliance with the proposed action,” (Govt. Code, § 11346.5, subd. (a)(9)), a summary of the
8 conclusions of the standardized regulatory impact analysis, (*id.*, subd. (a)(10)); and a summary of
9 impacts on small businesses. (Cal. Code Regs., tit. 1, § 4.)

10 34. If CARB ultimately “decides to enact the regulation” following the public comment
11 period, “it must prepare a ‘final statement of reasons’ for adopting the proposed rule, which must include
12 ‘[a]n update of the information contained in the initial statement of reasons.’” (*John R. Lawson, supra*,
13 20 Cal.App.5th at 111 [quoting *Western States, supra*, 57 Cal.4th at 426].) “This final statement “must
14 also include ‘[a] summary of each objection or recommendation made regarding the specific adoption,
15 amendment, or repeal proposed, together with an explanation of how the proposed action has been
16 changed to accommodate each objection or recommendation, or the reasons for making no change.’”
17 (*Id.* [quoting *Western States, supra*, 57 Cal.4th at 426].)

18 35. While the initial determination need not be “all-inclusive,” it must evaluate adverse
19 economic impacts that are “significant,” and make an “initial showing” that there was at least “some
20 factual basis for [its] decision.” (*Western States, supra*, 57 Cal.4th at 428-29.) “Once the initial
21 assessment is complete, ‘affected parties may comment on the agency’s initial determination and supply
22 additional information relevant to the issue,’” and CARB “must respond to the public comments and
23 either change its proposal in response to the comments or explain why it has not.” (*John R. Lawson,*
24 *supra*, 20 Cal.App.5th at 111 [quoting *Western States, supra*, 57 Cal.4th at 429].)

25 36. Respondents violated the APA by failing to comply with several of its mandatory
26 provisions that require agencies to consider the effects of rulemaking on competition, to accurately
27 disclose economic information relating to rulemakings, and to administer their delegated authority in a
28 manner consistent with legislative directives. These failures include:

1 a. CARB’s assessment of cost of ownership is not supported by substantial
2 evidence. In addition, CARB’s public notice for the ACF Regulation did not comply with Section
3 11346.5(a)(9) of the Government Code. Specifically, prior to the release of the Notice of Public
4 Hearing, various entities, including WSTA, submitted evidence to CARB demonstrating CARB’s
5 projected cost of the ACF Regulation on regulated parties was far too low. These issues were never
6 addressed by CARB.

7 b. The conclusions of CARB’s Total Cost of Ownership (“TCO”) analysis attached
8 as Appendix G to the ISOR, which purports to support CARB’s economic determinations, are likewise
9 not supported by substantial evidence. The TCO is also flawed as an informational document because
10 it does not include important information regarding costs of ownership, including CARB’s own
11 information.

12 c. The TCO ignores data presented to CARB showing CARB’s presumed ZEV
13 purchase costs that are too low; to the contrary, ZEVs cost a company much more to purchase than
14 traditional vehicles. The ZEV residual values presented in the TCO are too high. The TCO does not
15 take into consideration the fact that ZEVs are not able to perform the same amount of work as traditional
16 trucks, requiring the purchase of additional ZEVs to perform the same tasks as a smaller number of
17 traditional vehicles. The TCO also does not take into account the fact that the transition from traditional
18 ZEVs will require new maintenance facilities and equipment investments on the part of fleet owners, as
19 well as the build-out and maintenance of a completely new electricity charging or hydrogen fueling
20 infrastructure. There is no effort in the TCO to quantify the “lost productivity” associated with charging
21 ZEVs, the infrastructure costs for sleeper cab tractors, and the maintenance costs for electric
22 infrastructure. Each of these issues will substantially increase the costs to fleet owners beyond that
23 stated in the TCO. As a result, the TCO is incomplete and unsupported by substantial evidence.

24 d. The TCO also fails to take into consideration data collected by CARB that is
25 central to the cost of ownership. For instance, CARB, working in collaboration with the U.S.
26 Department of energy’s National Renewable Energy Laboratory (“NREL”), recently published a report
27 on a demonstration project concerning heavy-duty EVs at Foothill Transit (the “Foothill Report”). The
28 purpose of the Foothill Report was to “compare performance and cost of the BEBs [Battery-Electric

1 Buses] to that of conventional technology in similar service and track progress over time.” The Foothill
2 Report included numerous important findings that undermine the conclusions in the TCO, including the
3 fact that “electricity is 5 to 6.5 times more expensive than CNG fuel,” that EVs have much higher per-
4 mile maintenance costs than CNG vehicles, and that EVs have much greater downtime than CNG
5 vehicles. (*Id.*) Despite the fact that CARB participated in the Foothill Report, the TCO contains none
6 of the data or lessons learned in the report.

7 e. The TCO significantly understates the upfront costs of ZEV trucks, and ignores
8 evidence submitted to CARB showing the actual price of certain ZEVs is over twice as much as the
9 TCO presumes. The TCO also erroneously assumes that the price of ZEVs will decrease. In fact, data
10 presented to CARB from 2022 showing that the price of ZEVs is actually increasing substantially.

11 f. Although the APA requires CARB to consider reasonable alternatives presented
12 by the public that are “less burdensome and equally effective in achieving the purposes of the regulation
13 in a manner that ensures full compliance with the authorizing statute or other law being implemented or
14 made specific by the proposed regulation,” (Govt. Code, § 11346.2, subd. (b)(4)(A)), CARB declined
15 to do so. Specifically, CARB failed to adequately consider numerous alternatives to the ACF
16 Regulation, including alternatives proposed by EMA (Match Advanced Clean Trucks and Advanced
17 Clean Fleets Zero-Emission Vehicle Deployments Exactly), CTA (Exempt Group 2 and 3 Vehicles and
18 Extend Timeline Six Years to Purchase Group 1 Zero-Emission Vehicles), and WSTA (Credit for Zero-
19 Emission or Natural Gas Vehicles). Each of the above alternatives would achieve CARB’s objective of
20 reducing criteria pollutant and GHG emissions. They would also be far “less burdensome to affected
21 private persons than the proposed action,” and would also “be more cost effective to affected private
22 persons and equally effective” in meeting the proposal’s legislative objective.” (Govt. Code, §§
23 11346.5, subd. (a)(13), 11346.9, subd. (a)(4).)

24 37. As a result of the foregoing failures, Respondents prejudicially abused their discretion
25 by approving the ACF Regulation without first complying with its obligations under the APA.

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1 **Third Cause of Action -- For a Writ of Mandate Against the Board and the CARB Executive**
2 **Officer (Noncompliance with Health & Safety Code § 57004)**

3 38. Petitioner re-alleges and incorporates by reference the precedent paragraphs 1 to 37 in
4 their entirety, as though fully set forth herein.

5 39. Section 57004 of the Health & Safety Code was enacted by the Legislature in response
6 to “[s]ignificant questions . . . raised by both the environmental and regulated communities about the
7 scientific basis for some rules.” (California Bill Analysis, S.B. 1320 Assem., 8/11/1997.) It provides,
8 among other things, that CARB may not “take any action to adopt the final version of a rule unless” it
9 undertakes a peer review to evaluate the “scientific portions” of the rule. (Health & Saf. Code, §
10 57004(d).)

11 40. Section 57004 first requires CARB to submit the “scientific portions” of a proposed
12 regulation to an external peer reviewer “for the purpose of conducting an analysis of the science on
13 which the regulation is based.” (Health & Saf. Code, § 57004(d).) The peer reviewer must then “provide
14 a written evaluation as to whether the scientific portion of the rule is based on sound scientific
15 knowledge, methods and practices.” (*Id.*) The “scientific portions” of a proposed regulation include
16 “those foundations of a rule that are premised upon, or derived from, empirical data or other scientific
17 findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for
18 the protection of public health or the environment.” (*Id.*, subd. (a)(2).)

19 41. The proposed regulation contains numerous “scientific portions” that must be subjected
20 to external peer review pursuant to § 50074 because they “are premised upon, or derived from, empirical
21 data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard,
22 or other requirement for the protection of public health or the environment.” (*Id.*, subd. (a)(2).) These
23 “scientific portions” include, but are not limited to:

- 24 a. The total cost of ownership of ZEVs, including the analysis in Appendix
25 G to the ISOR.
- 26 b. The alleged emissions benefits of the ACF Regulation as discussed in
27 Appendix F of the ISOR, as well as the potential negative criteria pollutant
28

1 and GHG emissions impacts associated with the new construction and
2 infrastructure required to accommodate demand for new ZEVs.

3 c. The assessment of the ACF Regulation’s impact on the California energy
4 grid and grid reliability.

5 42. CARB, however, did not submit these portions of the rule, “along with a statement of the
6 scientific findings, conclusions, and assumptions on which [they] are based and the supporting scientific
7 data, studies, and other appropriate materials, to the external scientific peer review entity for its
8 evaluation.” (*Id.* at subd. (d)(2).) Nor did CARB obtain a peer review for any of these items.

9 43. Respondents have clear, present, and ministerial duties to comply with the Health &
10 Safety Code, including the provisions for peer review that applied to the ACF Regulation. Those duties
11 include an obligation to seek and obtain external scientific peer reviews concerning the “scientific
12 portions” of the ACF Regulation. The substantial failure of Respondents to perform their duties requires
13 this Court to issue a writ of mandate pursuant to Section 1085 of the Code of Civil Procedure directing
14 them to discharge their duties.

15 **PRAYER FOR RELIEF**

16 1. For a peremptory writ of mandate under CEQA, the APA, the Health & Safety Code, and
17 the Code of Civil Procedure ordering Respondents to set aside the certification of the EA and approval
18 of the ACF Regulation until such time as Respondents have fully discharged their obligations under
19 California law;

20 2. A temporary restraining order, preliminary injunction, and a permanent injunction,
21 enjoining Respondents from enforcing the ACF Regulation until they comply with their obligations
22 under CEQA, the APA, the Health & Safety Code, and the Code of Civil Procedure; and

23 3. For fees and costs available under the laws of California, incidental or necessary in
24 procuring the relief sought in this Petition, including reasonable attorneys’ fees pursuant to Section
25 1021.5 of the Code of Civil Procedure, and for such other relief that the Court deems just and proper
26 under California law.

27 4. That this Court retain continuing jurisdiction over this matter until such time as the Court
28 has determined that Respondents have fully and properly complied with this Court’s orders.

1 5. For such other and further relief as may be just and appropriate.
2

3 Dated: July 21, 2023

WANGER JONES HELSLEY PC

4
5 By: 

John P. Kinsey

Nicolas R. Cardella

Attorneys for Petitioner and Plaintiff

Western States Trucking Association
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1 **VERIFICATION**

2 I, Leo Brown, am the Chief Executive Officer of Western States Trucking Association, Petitioner
3 and Plaintiff in the above-entitled action. I have read the foregoing Petition for Writ of Mandate and
4 Complaint for Declaratory and Injunctive Relief and know the contents thereof. The same is true of my
5 own knowledge, except as to those matters that are alleged therein on information and belief, and, as to
6 those matters, I believe them to be true.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct.

9 Date: July 21, 2023



10 Leo Brown

EXHIBIT “A”

WANGER JONES HELSLEY PC
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† Of Counsel

July 21, 2023

U.S. MAIL CERTIFIED MAIL RETURN RECEIPT

Honorable Board Members
California Air Resources Board
c/o Clerk of the Board
1001 "I" Street
Sacramento, CA 95814

**Re: Notice of Intent to Sue: Adoption of Advanced
Clean Fleets Regulation**

Dear Hon. Members of the California Air Resources Board:

PLEASE TAKE NOTICE that, pursuant to section 21167.5 of the Public Resources Code, on or about July 21, 2023, Petitioner and Plaintiff the Western States Trucking Association ("Petitioner") will file a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition") in Fresno County Superior Court challenging the actions of Respondents and Defendants the California Air Resources Board (the "Board") and Steven S. Cliff, in his official capacity as the Board's Executive Director (collectively, "Respondents"), pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA").

Petitioner alleges violations of CEQA in connection with Respondents' adoption of Resolution 23-13, approving amendments to Title 13 of the California Code of Regulations known as the "Advanced Clean Fleets Regulation" (the "ACF Regulation") and the Final Environmental Assessment (the "Final EA") prepared for the ACF Regulation. Specifically,

WANGER JONES HELSLEY PC

July 21, 2023

Page 2

Petitioner alleges that Respondents violated CEQA by, inter alia, failing to adequately analyze environmental impacts, failing to adopt adequate mitigation measures for environmental impacts, and improperly rejecting feasible alternatives that could avoid or substantially lessen significant environmental impacts.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



John P. Kinsey

JPK/nc

1 **PROOF OF SERVICE**

2 **Fresno County Superior Court No.**

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

5 On the date indicated below, I served the foregoing document described as **LETTER -**
6 **NOTICE OF INTENT TO SUE: ADOPTION OF ADVANCED CLEAN FLEET**
7 **REGULATIONS** on all interested parties in this action by placing a true copy thereof enclosed in
8 sealed envelopes addressed as follows:

9 Honorable Board Members
10 California Air Resources Board
11 c/o Clerk of the Board
12 1001 "I" Street
13 Sacramento, CA 95814
14 zevfleet@arb.ca.gov

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

20 _____
21 X (BY E-MAIL) I caused the document to be sent to the person(s) listed above through
22 electronic mail. I did not receive, within a reasonable time after the transmission, any electronic
23 message or other indication that the transmission was unsuccessful.

24 **EXECUTED ON** July 21, 2023, at Fresno, California.

25 _____
26 X (STATE) I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

28 /s/ Hannah Wilhelm
Hannah Wilhelm
E-mail: hwilhelm@wjhattorneys.com

EXHIBIT “B”

1 **WANGER JONES HELSLEY PC**
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6

7 Attorneys for: Petitioner and Plaintiff Western States Trucking Association

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF FRESNO**

11 WESTERN STATES TRUCKING
12 ASSOCIATION
13
14 Petitioner and Plaintiff,

14 v.

15 CALIFORNIA AIR RESOURCES BOARD; and
16 STEVEN S. CLIFF, in his official capacity as
17 Executive Officer of the California Air
Resources Board,

18 Respondents and Defendants.
19

Case No.

**NOTICE OF ELECTION TO PREPARE
ADMINISTRATIVE RECORD**

20 **PLEASE TAKE NOTICE**, pursuant to section 21167.6 of the Public Resources Code,
21 Petitioner and Plaintiff Western States Trucking Association (“Petitioner”) hereby notifies Respondents
22 and Defendants the California Air Resources Board (the “Board”) and Steven S. Cliff, in his official
23 capacity as the Board’s Executive Director of Petitioner’s election to prepare the administrative record
24 of proceedings in this action.

25 Dated: July , 2023

WANGER JONES HELSLEY PC

26
27 By: _____
John P. Kinsey
Nicolas R. Cardella
28 Attorneys for Petitioners and Plaintiffs