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THE TWO HUNDRED, *et al.*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF FRESNO**
10 **UNLIMITED CIVIL JURISDICTION**
11

12 THE TWO HUNDRED, an unincorporated
13 association of civil rights leaders, including
LETICIA RODRIGUEZ, TERESA MURILLO,
14 and EUGENIA PEREZ,

15 Plaintiffs/Petitioners,

16 v.

17 CALIFORNIA AIR RESOURCES BOARD,
18 RICHARD COREY, in his Official Capacity, and
DOES 1-50,

19 Respondents/Defendants.
20
21
22
23

Case No. _____.

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

[Code Civ. Proc. §§ 1085, 1094.5, 1060,
526; Gov. Code § 12955 *et seq.* (FEHA);
42 U.S.C. § 3601 *et seq.* (FHA); Cal.
Const. Art. I, § 7; Art. IV, § 16; U.S.
Const. Amd. 14, § 1; 42 U.S.C. § 1983;
Pub. Res. Code § 12000 *et seq.* (CEQA);
Gov. Code § 11346 *et seq.* (APA); H&S
Code § 38500 *et seq.* (GWSA); H&S
Code § 39000 *et seq.* (CCAA); Gov.
Code § 65088 *et seq.* (Congestion
Management Plan)]

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1 **I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF**

2 **A. California’s Greenhouse Gas Policies and Housing-Induced Poverty Crisis**

3 1. California’s reputation as a global climate leader is built on the state’s dual claims
4 of substantially reducing greenhouse gas (“GHG”) emissions while simultaneously enjoying a
5 thriving economy. Neither claim is true.

6 2. California has made far less progress in reducing GHG emissions than other states.
7 Since the effective date of California’s landmark GHG reduction law, the Global Warming
8 Solutions Act,¹ 41 states have reduced per capita GHG emissions by more than California

9 3. California’s lead climate agency, the California Air Resources Board (“CARB”),
10 has ignored California’s modest scale of GHG reductions, as well as the highly regressive costs
11 imposed on current state residents by CARB’s climate programs.

12 4. Others have been more forthcoming. Governor Jerry Brown acknowledged in 2017
13 that the state’s lauded cap-and-trade program, which the non-partisan state Legislative Analyst’s
14 Office (“LAO”) concluded would cost consumers between 24 cents and 73 cents more per gallon
15 of gasoline by 2031,² actually “is not that important [for greenhouse gas reduction]. I know that.
16 I’m Mr. ‘It Ain’t That Much.’ It isn’t that much. Everybody here [in a European climate change
17 conference] is hype, hype to the skies.”³

18 5. Governor Brown’s acknowledgement was prompted by a report from Mother
19 Jones—not CARB—that high rainfall had resulted in more hydroelectric power generation from
20
21

22 _____
23 ¹ The Global Warming Solutions Act of 2006 (“GWSA”) is codified at Health and Safety Code
24 (“H&S Code”) § 38500 *et seq.* and became effective in 2007. The Act is often referred to as “AB
25 32”, the assembly bill number assigned to the legislation. AB 32 required California to reduce
26 GHG emissions from a “business as usual” scenario in 2020 to the state’s 1990 GHG emission
27 level. AB 32 was amended in 2017 by Senate Bill 32 by the same author. SB 32 established a
28 new GHG reduction mandate of 40% below California’s 1990 GHG levels by 2030.

² LAO, Letter to Assembly Member Fong (Mar. 29, 2017), www.lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf.

³ Julie Cart, *Weather Helped California’s Greenhouse Gas Emissions Drop 5% Last Year*, CALMatters (Dec. 2, 2017), <https://timesofsandiego.com/tech/2017/12/02/weather-helped-californias-greenhouse-gas-emissions-drop-5-last-year/>.

1 existing dams than had occurred during the drought, and that this weather pattern resulted in a 5%
2 decrease in California’s GHG emissions.⁴

3 6. GHG emissions data from California’s wildfires are also telling. As reported by
4 the *San Francisco Chronicle* (again not CARB), GHG emissions from all California regulatory
5 efforts “inched down” statewide by 1.5 million metric tons (from total estimated emissions of 440
6 million metric tons),⁵ while just one wildfire near Fresno County (the Rough Fire) produced 6.8
7 million metric tons of GHGs, and other fires on just federally managed forest lands in California
8 emitted 16 million metric tons of GHGs.⁶

9 7. Reliance on statewide economic data for the false idea that California’s economy
10 is thriving conflates the remarkable stock market profits of San Francisco Bay Area technology
11 companies with disparate economic harms and losses suffered by Latino and African American
12 Californians statewide, and by white and Asian American Californians outside the Bay Area.

13 8. Since 2007, which included both the global recession and current sustained period
14 of economic recovery, California has had the highest poverty rate in the country—over 8 million
15 people living below the U.S. Census Bureau poverty line when housing costs are taken into
16 account.⁷ By another authoritative poverty methodology developed by the United Way of
17 California, which counts housing as well as other basic necessities like transportation and medical
18 costs (and then offsets these with state welfare and related poverty assistance programs), about
19 40% of Californians “do not have sufficient income to meet their basic cost of living.”⁸ The
20

21 ⁴ *Ibid.*

22 ⁵ California Air Resources Board, 2017 Edition California Greenhouse Gas Inventory for 2000-
2015 (June 2017), <https://www.arb.ca.gov/cc/inventory/data/data.htm>.

23 ⁶ David R Baker, *Huge wildfires can wipe out California’s greenhouse gas gains*, SF Chronicle,
24 (Nov. 21, 2017), <https://www.sfchronicle.com/bayarea/article/Huge-wildfires-can-wipe-out-California-s-12376324.php>.

25 ⁷ Liana Fox, *The Supplemental Poverty Measure: 2016*, U.S. Census Bureau Report Number:
26 P60-261, Table A-5 (Sept. 21, 2017),
<https://www.census.gov/library/publications/2017/demo/p60-261.html>; Dan Walters, *Why does*
27 *California have the nation’s highest poverty level?*, CALMatters (Aug. 13, 2017),
<https://calmatters.org/articles/california-nations-highest-poverty-level/>.

28 ⁸ Betsy Block et al., *Struggling to Get By: The Real Cost Measure in California 2015*, United
Ways of California (2016), <https://www.unitedwaysca.org/realcost>.

1 Public Policy Institute of California used a methodology that also accounts for the cost of living
2 and independently concluded that about 40% of Californians live in poverty.⁹

3 9. Poverty is just one of several indicators of the deep economic distress affecting
4 California. California also has the highest homeless population, and the highest homelessness
5 rate, in the nation. According to the U.S. Department of Housing and Urban Development, about
6 25% of the nation's homeless, or about 135,000 individuals, are in California.¹⁰

7 10. National homeownership rates have been recovering since the recession levels, but
8 California's rate has plunged to the second lowest in the country—with homeownership losses
9 steepest and most sustained for California's Latinos and African Americans.¹¹

10 11. As shown in Figure 1, with the exception of white and Asian populations in the
11 five-county Bay Area, elsewhere in California—and for Latino and African American residents
12 statewide—incomes are comparable to national averages.

13 **Figure 1**

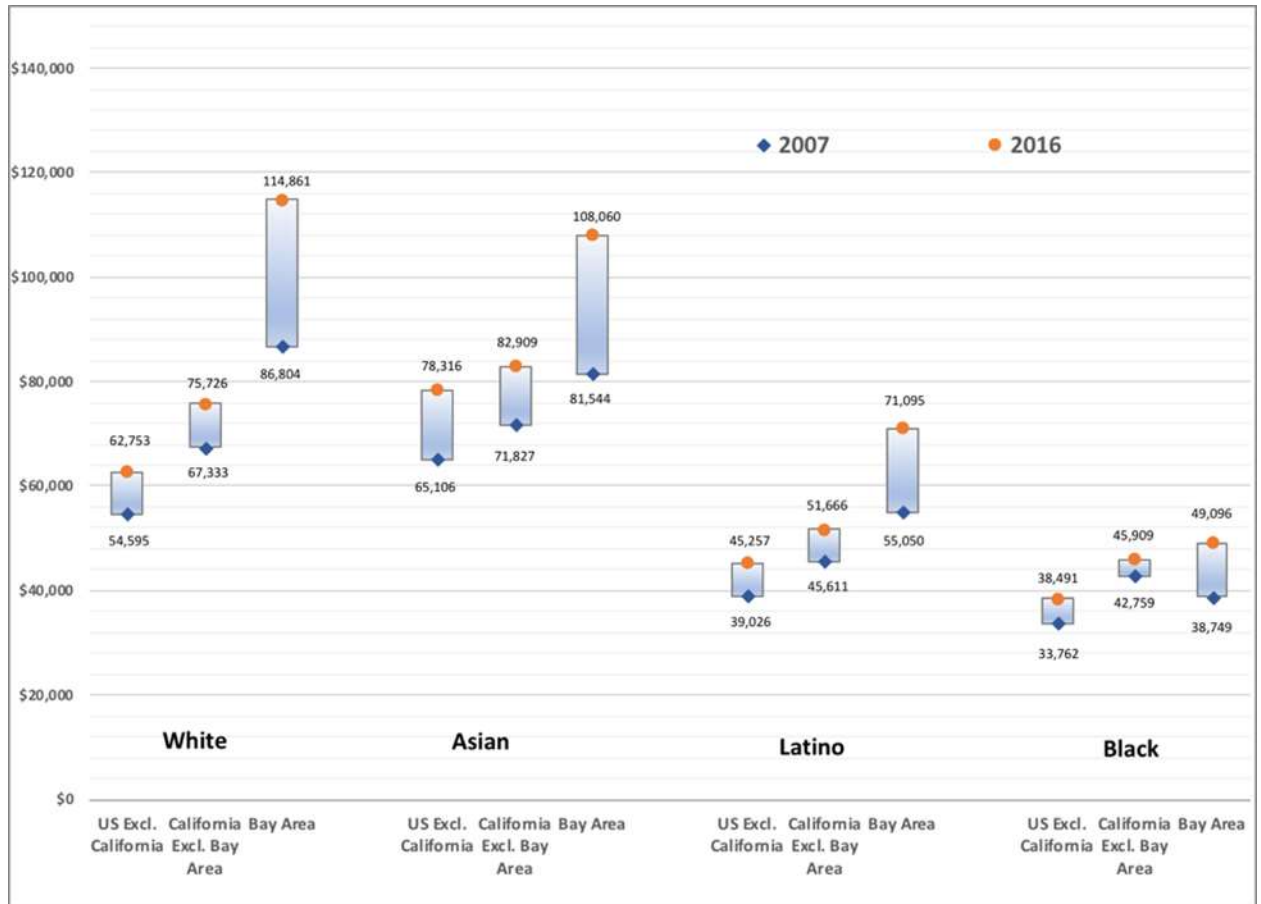
14 **Median Income in 2007 and 2017, White, Asian, Latino and Black Populations**
15 **Bay Area, California excluding the Bay Area, and U.S. excluding California**
16 **(nominal current dollars)¹²**

17
18
19 ⁹ Public Policy Institute of California, *Poverty in California* (Oct. 2017),
20 <http://www.ppic.org/publication/poverty-in-california/>.

21 ¹⁰ U.S. Department of Housing and Urban Development, *2017 Annual Homeless Assessment*
22 *Report to Congress*, <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>;
23 Kevin Fagan et al., *California's homelessness crisis expands to country*, *SF Chronicle* (Sept. 8,
24 2017), <https://www.sfchronicle.com/news/article/California-s-homelessness-crisis-moves-to-the-12182026.php>.

25 ¹¹ U.S. Census Bureau, *Housing Vacancies and Homeownership (CPS/HVS)*, Table 16.
26 *Homeownership Rates for the 75 Largest Metropolitan Statistical Areas: 2015 to 2017*,
27 <https://www.census.gov/housing/hvs/data/ann17ind.html>. See also 2007 and 2016 American
28 *Community Survey 1-Year Estimates*, Table B25003 series (Tenure in Occupied housing units),
California, <https://factfinder.census.gov/>.

26 ¹² Median income estimated from household income distributions for 2007 and 2016 American
27 *Community Survey 1-Year Estimates*, Table B19001 series, <https://factfinder.census.gov/> (using
28 the estimation methodology described by the California Department of Finance at
http://www.dof.ca.gov/Forecasting/Demographics/Census_Data_Center_Network/documents/How_to_Recalculate_a_Median.pdf).



12. However, Californians pay far higher costs for basic necessities. A national survey of housing, food, medical and other costs conducted by the Council for Community & Economic Research showed that in 2017, California was the second most expensive state in the nation (after Hawaii), and had a cost of living index that was 41% higher than the national average.¹³ The LAO reported that “California’s home prices and rents are higher than just about anywhere else,” with average home prices 2.5 times more than the national average and rents 50% higher than the national average.¹⁴ Californians also pay 58% more in average electricity cost per KWh hour (2016 annual average)¹⁵ and about \$0.80 cents more per gallon of gas than the national average.¹⁶

¹³ The 2017 survey by the Council for Community & Economic Research was published by the Missouri Economic Research and Information Center, https://www.missourieconomy.org/indicators/cost_of_living/index.stm.

¹⁴ LAO, California’s High Housing Costs: Causes and Consequences (Mar. 17, 2015), <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

¹⁵ U.S. Energy Information Agency, Electric Power Annual, Table 2.10 (Dec. 2, 2017), <https://www.eia.gov/electricity/annual/> (showing average annual 2016 prices).

¹⁶ American Automobile Association, Regular Gas Prices, <http://gasprices.aaa.com/state-gas-price-averages/>, last visited April 25, 2018.

1 13. These high costs for two basic living expenses—electricity and transportation—are
2 highest for those who live in the state’s inland areas (and need more heating and cooling than the
3 temperate coast), and drive farthest to jobs due to the acute housing crisis the LAO has concluded
4 is worst in the coastal urban job centers like the San Francisco Bay Area and Los Angeles.¹⁷

5 14. An estimated 138,000 commuters enter and exit the nine-county Bay Area
6 megaregion each day.¹⁸ These are workers who are forced to “drive until they qualify” for
7 housing they can afford to buy or rent.

8 15. San Joaquin County housing prices in cities nearest the Bay Area, such as
9 Stockton, are about one-third lower, even though commute times to San Jose are 77 minutes each
10 direction (80 miles and 2.5 hour daily commutes), and to San Francisco are 80 minutes (82 miles
11 and 3 hour daily commutes).¹⁹ The median housing price in Stockton is about \$286,000—still
12 double the national average of \$140,000—while the median housing price in San Jose is over
13 \$1,076,000 and in San Francisco is over \$1,341,000.²⁰

14 16. California’s poverty, housing, transportation and homeless crisis have created a
15 perfect storm of economic hardship that has, in the words of the civil rights group Urban Habitat,
16 resulted in the “resegregation” of the Bay Area.²¹ Between 2000 and 2014, substantial African
17 American and Latino populations shifted from central cities on and near the Bay, like San
18 Francisco, Oakland, Richmond and San Jose, to eastern outer suburbs like Antioch, and Central
19 Valley communities like Stockton and Suisun City.²² As reported:

20 _____
21 ¹⁷ LAO, California’s High Housing Costs: Causes and Consequences (Mar. 17, 2015),
<http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

22 ¹⁸ Bay Area Council, Another Inconvenient Truth (Aug. 16, 2016),
www.bayareaeconomy.org/report/another-inconvenient-truth/.

23 ¹⁹ Commute times from Google navigation, calculated April 25, 2018.

24 ²⁰ Zillow, Stockton CA Home Prices & Home Values, <https://www.zillow.com/stockton-ca/home-values/>;
25 San Jose CA Home Prices and Home Values, <https://www.zillow.com/san-jose-ca/home-values/>;
San Francisco CA Home Prices and Home Values, <https://www.zillow.com/san-francisco-ca/home-values/>.

26 ²¹ Urban Habitat League, Race, Inequality, and the Resegregation of the Bay Area (Nov. 2016),
27 <http://urbanhabitat.org/new-report-urban-habitat-reveals-growing-inequality-and-resegregation-bay-area-reflecting-divided>;
see also LAO, Lower Income Households Moving to Inland California from Coast (Sept. 2015), <http://www.lao.ca.gov/LAOEconTax/Article/Detail/133>.

28 ²² *Id.* p. 10-11, Maps 5 and 6.

1 Low income communities of color are increasingly living at the
2 expanding edges of our region. . . . Those who do live closer to the
3 regional core find themselves unable to afford skyrocketing rents
4 and other necessities; many families are doubling or tripling up in
5 homes, or facing housing instability and homelessness.²³

6 17. Los Angeles (#1) and the Bay Area (#3) are already ranked the worst in the nation
7 for traffic congestion, flanking Washington DC (#2).²⁴ Yet California’s climate leaders have
8 decided to intentionally increase traffic congestion—to lengthen commute times and encourage
9 gridlock—to try to get more people to ride buses or take other form of public transit.²⁵ This
10 climate strategy has already failed, with public transit ridership—particularly by bus—continuing
11 to fall even as California has invested billions in public transit systems.²⁶

12 18. Vehicle miles travelled (“VMT”) by Californians forced to drive ever-greater
13 distances to homes they can afford have also increased by 15% between 2000 and 2015.²⁷ Serious

14 ²³ *Id.* p. 2.

15 ²⁴ INRIX Global Traffic Scorecard (2017), <http://inrix.com/scorecard/>.

16 ²⁵ Governor’s Office of Planning and Research (“OPR”), Updating Transportation Analysis in the
17 CEQA Guidelines, Preliminary Discussion Draft (Aug. 6, 2014),
18 http://www.opr.ca.gov/docs/Final_Preliminary_Discussion_Draft_of_Updates_Implementing_SB_743_080614.pdf, p. 9 (stating that “research indicates that adding new traffic lanes in areas
19 subject to congestion tends to lead to more people driving further distances. (Handy and Boarnet,
20 “DRAFT Policy Brief on Highway Capacity and Induced Travel,” (April 2014).) This is because
21 the new roadway capacity may allow increased speeds on the roadway, which then allows people
22 to access more distant locations in a shorter amount of time. Thus, the new roadway capacity may
23 cause people to make trips that they would otherwise avoid because of congestion, or may make
24 driving a more attractive mode of travel”). In subsequent CEQA regulatory proposals, and in
25 pertinent parts of the 2017 Scoping Plan, text supportive of traffic congestion was deleted but the
26 substantive policy direction remains unchanged. Further, the gas tax approved by the Legislature
27 in 2017 was structured to limit money for addressing congestion to \$250 million (less than 1% of
28 the \$2.88 billion anticipated to be generated by the new taxes). See Jim Miller, *California’s gas
tax increase is now law. What it costs you and what it fixes*. Sacramento Bee (April 28, 2017),
<http://www.sacbee.com/news/politics-government/capitol-alert/article147437054.html>.

²⁶ See, e.g., Bay Area Metropolitan Planning Commission, Transit Ridership Report (Sept. 2017),
<http://www.vitalsigns.mtc.ca.gov/transit-ridership> (showing transit ridership decline on a per
capita basis by 11% since 1990 with per capita bus boardings declining by 33%); see also
University of California Institute for Transportation Studies, Falling Transit Ridership: California
and Southern California (Jan. 2018),
https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf (showing Los Angeles
regional public transit decline).

²⁷ TRIP, California Transportation by the Numbers (Aug. 2016),
[https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.p
df](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf).

1 adverse health impacts to individual commuters,²⁸ as well as adverse economic impacts to drivers
2 and the California economy,²⁹ from excessive commutes have also worsened.

3 19. In 2016 and 2017, the combination of increased congestion and more VMT
4 reversed decades of air quality improvements in California, and caused increased emissions of
5 both GHG and other traditional air pollutants that cause smog and other adverse health effects,³⁰
6 for which reductions have long been mandated under federal and state clean air laws.

7 20. In short, in the vast majority of California, and for the whole of its Latino and
8 African American populations, the story of California's "thriving" economy is built on CARB's
9 reliance on misleading statewide averages, which are distorted by the unprecedented
10 concentration of stock market wealth created by the Bay Area technology industry.

11 21. For most Californians, especially those who lost their home in the Great Recession
12 (with foreclosures disproportionately affecting minority homeowners),³¹ or who never owned a
13 home and are struggling with college loans or struggling to find a steady job that pays enough to
14 cover California's extraordinary living costs, CARB's assertion that California is a booming,
15 "clean and green" economy is a distant fiction.

16 **B. California's Historical Use of Environmental and Zoning Laws and**
17 **Regulations to Oppress and Marginalize Minority Communities**

18 22. The current plight of minority communities in California is the product of many
19 decades of institutional racism, perpetuated by school bureaucrats of the 1940's who defended the
20 "separate but equal" system, highway bureaucrats of the 1950's who targeted minority
21 neighborhoods for demolition to make way for freeway routes, urban planning bureaucrats in the
22

23 ²⁸ Carolyn Kylstra, *10 Things Your Commute Does to Your Body*, Time Magazine (Feb. 2014),
<http://time.com/9912/10-things-your-commute-does-to-your-body/>.

24 ²⁹ TRIP, California Transportation by the Numbers (Aug. 2016),
25 [https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.p](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf)
26 [df](https://mtc.ca.gov/sites/default/files/CA_Transportation_by_the_Numbers_TRIP_Report_2016.pdf) (stating that traffic congestion is estimated to cost California \$28 billion, including lost time
27 for drivers and businesses, and wasted fuels).

28 ³⁰ Next 10, 2017 CA Green Innovation Index (Aug. 22, 2017),
<http://next10.org/sites/default/files/2017-CA-Green-Innovation-Index-2.pdf>.

³¹ Gillian White, *The Recession's Racial Slant*, Atlantic Magazine (June 24, 2015),
<https://www.theatlantic.com/business/archive/2015/06/black-recession-housing-race/396725/>.

1 1960's who destroyed minority communities in pursuit of redevelopment, and those who enabled
2 decades of "redlining" practices by insurance and banking bureaucrats aimed at denying
3 minorities equal access to mortgages and home insurance.³²

4 23. Environmental regulators are no less susceptible to racism and bias than other
5 regulators. Members of The Two Hundred had to intervene when environmental regulators
6 threatened to block construction of the UC Merced campus, which is the only UC campus in the
7 Central Valley and serves the highest percentage of Latino students of any UC campus.³³

8 24. Members of The Two Hundred also had to intervene to require environmental
9 regulators to establish clear standards for the cleanup of contaminated property that blighted
10 many minority neighborhoods, where cleanup and redevelopment could not be financed without
11 the standards that virtually all other states had already adopted.³⁴

12 25. Racial bias in environmental advocacy organizations, including those that heavily
13 lobbied CARB in 2017 Scoping Plan proceedings, was also confirmed in an influential study
14 funded by major foundations that contribute to such organizations.³⁵

20 ³² See Richard Rothstein, *Color of Law: A Forgotten History of How Our Government*
21 *Segregated America* (2017).

22 ³³ UC Merced's Latino undergraduates comprise 53% of the student population, compared to the
23 21% rate of Latino undergraduate enrollment for the UC system as a whole. University of
24 California System Enrollment (2017), [https://www.universityofcalifornia.edu/infocenter/fall-](https://www.universityofcalifornia.edu/infocenter/fall-enrollment-glance)
25 [enrollment-glance](https://www.ucmerced.edu/fast-facts); UC Merced Fast Facts 2017-2018, <https://www.ucmerced.edu/fast-facts>; see
26 also John Gamboa, Greenlining Institute, Brownfields, UC Merced, and Fighting for
27 Environmental Equity (March 2018), [http://greenlining.org/blog/2018/brownfields-uc-merced-](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/)
28 [fighting-environmental-equity/](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/).

³⁴ John Gamboa, Greenlining Institute, Brownfields, UC Merced, and Fighting for Environmental
Equity (Mar. 2018), [http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/)
[environmental-equity/](http://greenlining.org/blog/2018/brownfields-uc-merced-fighting-environmental-equity/).

³⁵ Dorceta E. Taylor, Ph.D., *The State of Diversity in Environmental Organizations: Mainstream*
NOGs, Foundations & Government Agencies (July 2014), [http://vaipl.org/wp-](http://vaipl.org/wp-content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf)
[content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf](http://vaipl.org/wp-content/uploads/2014/10/ExecutiveSummary-Diverse-Green.pdf).

1 26. Additional studies have confirmed racial bias in environmental organizations, and
2 in media reports on environmental issues.³⁶ As the newest President of the Sierra Club Board of
3 Directors, African American Aaron Mair recently confirmed: “White privilege and racism within
4 the broader environmental movement is existent and pervasive.”³⁷

5 27. The simple fact is that vast areas of California, and disproportionately high
6 numbers of Latino and African American Californians, have fallen into poverty or out of
7 homeownership, and California’s climate policies guarantee that housing, transportation and
8 electricity prices will continue to rise while “gateway” jobs to the middle class for those without
9 college degrees, such as manufacturing and logistics, will continue to locate in other states.

10 **C. Four New GHG Housing Measures in CARB’s 2017 Scoping Plan Are**
11 **Unlawful, Unconstitutional, and Would Exacerbate the Housing-Induced**
12 **Poverty Crisis**

13 28. Defendant/Respondent CARB is the state agency directed by the Legislature to
14 implement SB 32, which requires the State to set a target to reduce its GHG emissions to forty
15 percent below 1990 levels by 2030 (“2030 Target”).

16 29. CARB adopts a “Scoping Plan” every five years, as described in the GWSA. The
17 most recent Scoping Plan sets out the GHG reduction measures that CARB finds will be required
18 to achieve the 2030 Target (“2017 Scoping Plan”). The 2017 Scoping Plan was approved in
19 December 2017.

20 30. The most staggering, unlawful, and racist components of the 2017 Scoping Plan
21 target new housing. The Plan includes four measures, challenged in this action, that increase the
22 cost and litigation risks of building housing, intentionally worsen congestion (including commute
23

24 ³⁶ See, e.g., Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company
25 (June 30, 2017), <https://billmoyers.com/story/unsustainable-whiteness-green/>; Jedidiah Purdy,
26 *Environmentalism’s Racist History*, *The New Yorker* (Aug. 13, 2015),
27 <https://www.newyorker.com/news/news-desk/environmentalisms-racist-history>; Brentin Mock,
28 *The Green Movement Is Talking About Racism? It’s About Time*, *Outside Magazine* (Feb. 27,
2017), <https://www.outsideonline.com/2142326/environmentalism-must-confront-its-social-justice-sins>.

³⁷ Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company (June 30,
2017), <https://billmoyers.com/story/unsustainable-whiteness-green/>

1 times and vehicular emissions) for workers who already spend more than two hours on the road
2 instead of with their families, and further increase the cost of transportation fuels and electricity.

3 31. These newly-adopted measures (herein the “GHG Housing Measures”) are: (A)
4 The new VMT mandate; (B) The new “net zero” CEQA threshold; (C) The new CO₂ per capita
5 targets for local climate action plans for 2030 and 2050; and (D) The “Vibrant Communities”
6 policies in Appendix C to the 2017 Scoping Plan, to the extent they incorporate the VMT, net
7 zero and new CO₂ per capita targets.³⁸

8 32. The presumptive “net zero” GHG threshold requires offsetting GHG emissions for
9 all new projects including housing under CEQA, the “Vibrant Communities” measures include
10 limiting new housing to the boundaries of existing developed communities, and a mandate to
11 substantially reduce VMT even for electric vehicles by (among other means) intentionally
12 increasing congestion to induce greater reliance on buses and other transit modes.

13 33. The development of, and the measures included in, the 2017 Scoping Plan was
14 required to be informed by an environmental analysis (“EA”) pursuant to the California
15 Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) (“CEQA”), and an economic fiscal
16 analysis (“FA”) as mandated by both the GWSA and the Administrative Procedure Act, Gov.
17 Code § 11346 *et seq.* (“APA”).

18 34. However, in one of many examples of the lack of analysis in the 2017 Scoping
19 Plan and related documents, CARB does not disclose the GHG emission reductions it expects
20 from the GHG Housing Measures. The Scoping Plan also omits any economic analysis that
21 accounts for the cost of these measures on today’s Californians, and omits any environmental
22 analysis of the Plan’s effects on existing California communities and infrastructure.

23 35. CARB concluded that in 2017 California’s entire economy will emit 440 million
24 metric tons of GHGs per year, and that California will need to reduce emissions by 181.8 million
25

26 ³⁸ While CARB styled the GHG Housing Measures as “guidelines”, they are self-implementing
27 and unlawful underground regulations. All other components of the 2017 Scoping Plan will be
28 implemented as regulations, such as the cap-and-trade program and low carbon fuel standard, and
thus will undergo a formal rulemaking process. However, CARB refused to undertake the same
legislatively-mandated public process for the four GHG Housing Measures.

1 metric tons to meet the 2030 Target. Notwithstanding widespread reports, and public and agency
2 concern about the housing crisis, the homelessness crisis, the housing-induced poverty crisis, and
3 the transportation crisis (collectively referred to herein as the “housing crisis”), neither the 2017
4 Scoping Plan, nor the environmental or economic analyses, disclose how much of this 181.8
5 million metric ton GHG reduction must or even may be achieved by constructing the at least three
6 million new homes that experts,³⁹ and all candidates for Governor,⁴⁰ agree California must
7 produce to resolve the current housing shortfall.

8 36. The core elements of the Scoping Plan related to housing call for new housing in
9 California’s existing communities (which comprise 4% of California’s lands), with smaller multi-
10 family units instead of single family homes located near public transit to reduce VMT. The 2017
11 Scoping Plan does not contemplate the need for any new regulations to implement this housing
12 regime. Instead, it includes expert agency conclusions about how CEQA, a 1970 environmental
13 law, must be implemented to achieve California’s statutory climate change mandates as well as
14 the unlegislated 2050 GHG reduction goal (80% reduction from 1990 GHG emissions by 2050)
15 included in various Executive Orders from California Governors.

16 37. The best available data on the actual GHG reductions that will be achieved by the
17 Scoping Plan’s GHG Housing Measures is the “Right Type, Right Place” report, prepared by a
18 multi-disciplinary team of housing and environmental law experts at the University of California,
19 Berkeley, that examined some of the consequences from the housing crisis solution embedded in
20 the 2017 Scoping Plan’s GHG Housing Measures (“UCB Study”).⁴¹
21
22

23 ³⁹ Jonathan Woetzel et al., Closing California’s Housing Gap, McKinsey Global Institute (Oct.
24 2016), <https://www.mckinsey.com/global-themes/urbanization/closing-californias-housing-gap>.

25 ⁴⁰ Liam Dillon, *We asked the candidates how they planned to meet housing production goals. Here’s how they responded*, LA Times (March 6, 2018),
26 <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-we-asked-the-candidates-how-they-planned-1520382029-htlstory.html>.

27 ⁴¹ Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic
28 Impacts of Infill Residential Development through 2030, U.C. Berkeley Turner Center for
Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017),
<https://turnercenter.berkeley.edu/right-type-right-place>.

1 38. The UCB Study anticipates constructing only 1.9 million new homes, less than
2 two-thirds of California’s 3.5 million shortfall identified by other experts. The Study examines
3 the continuation of existing housing production, which is dominated by single family homes with
4 fewer than 1% of Californians living in high rise structures, and compares this with a changed
5 housing pattern that would confine new housing to the boundaries of existing cities and towns and
6 replace traditional single family homes with smaller apartments or condos (thereby equating
7 2,000 square foot homes with 800 square foot apartments).

8 39. The UCB Study concludes that high rise and even mid-rise (e.g., six story)
9 buildings are far more costly to build on a per unit basis than single family homes—three to five
10 time higher—and are thus infeasible in most markets for most Californians. The Study thus
11 recommends focusing on less costly housing units such as quadplexes (four units in two-story
12 buildings) and stacked flats (one or two units per floor, generally limited to four stories)—which
13 are still approximately 30% more costly than single family homes on a per unit basis.

14 40. The UCB Study then concludes that it would be possible for California to build all
15 1.9 million new homes in existing communities with these small multi-family structures, but to
16 confine all new units to the 4% of California that is already urbanized would require the
17 demolition of “tens, if not hundreds of thousands, of single family homes.” The Study does not
18 quantify the GHG emissions from such massive demolition activities, nor does it identify any
19 funding source or assess any non-GHG environmental, public service, infrastructure, historic
20 structure, school, traffic, or other impact associated with this new housing vision.

21 41. Unlike CARB’s 2017 Scoping Plan, the UCB Study does quantify the GHG
22 reductions to be achieved by remaking California’s existing communities and housing all
23 Californians harmed by the current housing crisis in small apartments. With this new housing
24 future, California will reduce annual GHG emissions by 1.79 million metric tons per year, less
25 than 1% of the 181.8 million metric tons required to meet the 2030 Target in SB 32.

26 42. The Scoping Plan’s new CEQA provisions, which have already been cited as
27 CEQA legal mandates by opponents to a Los Angeles County housing project called
28

1 “Northlake,”⁴² would increase still further the cost of new housing (and thereby make it even less
2 affordable to California’s minority and other families). Since new housing—especially infill
3 housing—is already the top target of CEQA lawsuits statewide,⁴³ the GHG Housing Measures
4 will encourage even more anti-housing lawsuits, with attendant increases in project litigation
5 costs and construction delays, as well as vehement opposition from existing residents.

6 43. CEQA lawsuits also disproportionately target multi-family housing such as
7 apartments in existing urbanized “infill” locations. In a recent 3-year study of all CEQA lawsuits
8 filed statewide, the approximately 14,000 housing units challenged in the six county region
9 comprising the Southern California Association of Governments (“SCAG”), which includes Los
10 Angeles, Orange, San Bernadino, Ventura, Imperial, and Riverside counties and all cities within
11 those counties, SCAG determined that 98% of the challenged housing units were located in
12 existing urbanized areas, 70% were within areas designated for transit-oriented high density
13 development, and 78% were located in the whiter, wealthier and healthier areas of the region
14 (outside the portions of the regions with higher minority populations, poverty rates, pollution, and
15 health problems associated with adverse environmental conditions such as asthma).⁴⁴

16 44. CEQA lawsuit petitioners also have an unusually high success rate against the
17 cities and other government agencies responsible for CEQA compliance. A metastudy of
18 administrative agency challenges nationally showed that agencies win approximately 70% of such
19 cases. In contrast, three different law firm studies of CEQA reported appellate court opinions
20 showed that CEQA petitioners prevailed in almost 50% of such cases.⁴⁵

21 _____
22 ⁴² Center for Biological Diversity, Letter to Los Angeles County (April 16, 2018),
http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

23 ⁴³ Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California’s
24 Housing Crisis, 24 Hastings Env’tl. L.J. (2018),
[https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.p
df](https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf).

25 ⁴⁴ Jennifer Hernandez, David Friedman, Stephanie DeHerrera, In the Name of the Environment
26 Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), p. 31-34,
[https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALaws
uits.pdf](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf).

27 ⁴⁵ Jennifer Hernandez, Spencer Potter, Dan Golub, Joanna Meldrum, CEQA Judicial Outcomes:
28 Fifteen Years of Reported California Appellate and Supreme Court Decisions (2015), p. 3-4, 10,
<https://www.hklaw.com/files/Uploads/Documents/Articles/0504FINALCEQA.pdf>.

1 45. As noted by senior CEQA practitioner William Fulton, “CEQA provides a way for
2 anybody who wants anything out of a public agency to get some leverage over the situation –
3 whether that's unions, environmentalists, businesses, developers, and even local governments
4 themselves.”⁴⁶

5 46. As the founder of California’s first law firm focused on filing CEQA lawsuit
6 petitions, E. Clement Shute, recently reported when accepting a lifetime environmental law firm
7 award from the California State Bar Environmental Section:

8 Moving to the bad and ugly side of CEQA, projects with merit that
9 serve valid public purposes and not be harmful to the environment
10 can be killed just by the passage of the time it takes to litigate a
CEQA case.

11 In the same vein, often just filing a CEQA lawsuit is the equivalent
12 of an injunction because lenders will not provide funding where
13 there is pending litigation. This is fundamentally unfair. There is no
14 need to show a high probability of success to secure an injunction
and no application of a bond requirement to offset damage to the
15 developer should he or she prevail.

16 CEQA has also been misused by people whose move is not
17 environmental protection but using the law as leverage for other
18 purposes. I have seen this happen where a party argues directly to
19 argue lack of CEQA compliance or where a party funds an unrelated
20 group to carry the fight. These, in my opinion, go to the bad or ugly
21 side of CEQA’s impact.⁴⁷

22 47. African American radio host and MBA, Eric L. Frazier, called this climate-based
23 CEQA housing regime “environmental apartheid” since whiter, wealthier and older homeowners
24 were less likely to be affected, while aspiring minority homeowners were likely to be denied
25 housing even longer based on community opposition to widespread density increases and
26 destruction of single family homes, bear even higher housing costs given the absence of funding

26 _____
27 ⁴⁶ William Fulton, Insight: Everyone wants to keep leverage under CEQA, California Planning &
Development Report (Sept. 30, 2014), <http://www.cp-dr.com/node/3585>.

28 ⁴⁷ E. Clement Shute, Jr., Reprise of Fireside Chat, Yosemite Environmental Law Conference, 25
Envtl Law News, 3 (2016).

1 sources to expand and replace undersized infrastructure and public services, and never be within
2 reach of purchasing a family home.⁴⁸

3 48. CARB’s 2017 Scoping Plan, and its required CEQA analysis, also provide no
4 assessment of alternatives for achieving the only 1% reduction in GHG emissions that the new
5 housing future will accomplish from other sectors or sources, which could avoid adverse impacts
6 to California’s minority communities, avoid increased housing costs and CEQA litigation risks,
7 and avoid impacting existing California communities by—for example—allowing urbanization of
8 even 1% more of California’s land.

9 49. CARB also ignores a history of success in reducing traditional pollutants from
10 cars, as required by the federal and state Clean Air Acts, while preserving the transportation
11 mobility of people and goods. U.S. Environmental Protection Agency (“EPA”) reported in 2016
12 that most auto tailpipe pollutants had declined by 98-99% in comparison to 1960’s cars, gasoline
13 got cleaner with the elimination of lead and reduction in sulfur, and even though it had not been
14 directly regulated, the primary GHG from cars (carbon dioxide) has risen nationally by less than
15 20% even as VMT nationally more than doubled as a co-benefit of mandatory reductions of
16 traditional pollutants.⁴⁹

17 50. In contrast to this success, CARB’s VMT reduction scheme and its ongoing efforts
18 to intentionally increase congestion are an assault on the transportation mobility of people, which
19 disparately harm minority workers who have been forced by the housing crisis to drive ever
20 greater distances to work.

21 51. CARB staff’s response to The Two Hundred’s December 2017 comment letter on
22 the 2017 Scoping Plan is plain evidence of the intentional concealment and willful omission of
23 the true impacts of the 2017 Scoping Plan and the GHG Housing Measures on California. CARB
24

25
26 _____
27 ⁴⁸ Eric L. Frazier, The Power is Now, Facebook Live Broadcast (Feb. 28, 2018),
<https://thepowerisnow.com/events/event/jennifer-hernandez/>.

28 ⁴⁹ U.S. EPA, Historic Success of the Clean Air Act (2016), <https://www.epa.gov/air-pollution-transportation/accomplishments-and-success-air-pollution-transportation>.

1 staff said that GHG Housing Measures were in a separate chapter and thus not part of the 2017
2 Scoping Plan after all.⁵⁰

3 52. California’s climate change policies, and specifically those policies that increase
4 the cost and delay or reduce the availability of housing, that increase the cost of transportation
5 fuels and intentionally worsen highway congestion to lengthen commute times, and further
6 increase electricity costs, have caused and will cause unconstitutional and unlawful disparate
7 impacts to California’s minority populations, which now comprise a plurality of the state’s
8 population. These impacts also disproportionately affect younger Californians including
9 millennials (the majority of whom are minorities), as well as workers without college degrees.

10 53. In short, in the midst of California’s unprecedented housing, homeless, poverty
11 and transportation crisis, CARB adopted a 2017 Scoping Plan which imposes still higher housing,
12 transportation and electricity costs on Californians. CARB did so without disclosing or assessing
13 the economic consequences or the significant adverse environmental consequences of its GHG
14 Housing Measures on California residents.

15 54. In doing so, CARB again affirmed its now-wanton and flagrant pattern of violating
16 CEQA—a pattern consistent with what an appellate court termed “ARB’s lack of good faith” in
17 correcting earlier CEQA violations as ordered by the courts.

18 55. The GHG Housing Measures have a demonstrably disproportionate adverse
19 impact on already-marginalized minority communities and individuals, including but not limited
20 to Petitioners LETICIA RODRIGUEZ, TERESA MURILLO and EUGENIA PEREZ, who are
21 Latina residents of Fresno County that are personally, directly and disproportionately adversely
22 affected by the affordable housing shortage and the future exacerbation of that shortage if the
23 GHG Housing Measures are allowed to remain in effect.

24 56. The Legislature has recognized the equal right to access to housing, *inter alia*, in
25 the California Fair Employment and Housing Act (Gov. Code § 12900 *et seq.*) (“FEHA”). FEHA
26

27 ⁵⁰ Supplemental Responses to Comments on the Environmental Analysis Prepared for the
28 Proposed Strategy for Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p.
14-16, <https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

1 § 12921(b) provides that: “The opportunity to seek, obtain, and hold housing without
2 discrimination because of race, color, . . . source of income . . . or any other basis prohibited by
3 Section 51 of the Civil Code is hereby recognized and declared to be a civil right.”

4 57. California’s housing crisis is particularly acute, and has long-lasting adverse
5 impacts. As the Director of the California Department of Housing and Community Development,
6 Ben Metcalf, recently reported: “Research has been unequivocal in supporting two undeniable
7 conclusions: Low-income households paying more than half their income in rent have profoundly
8 reduced expenditures on food, retirement, health care, and education compared with non-rent-
9 burdened households. And children growing up in neighborhoods of concentrated poverty are
10 more likely to have psychological distress and health problems.”⁵¹

11 58. The 2017 Scoping Plan is also violative of the due process and equal protection
12 clauses of the California and U.S. Constitutions (Cal. Const. Art. I, § 7, U.S. Const., Amd. 14, §
13 1). Accordingly, Petitioners in this action seek declaratory and injunctive relief from these
14 violations pursuant to 42 U.S.C. § 1983. The GHG Housing Measures are thus unconstitutional
15 on their face and as applied to Petitioners.

16 59. While the unlawful and unconstitutional disparate impact of the GHG Housing
17 Measures on minority communities, including Petitioners, is the most egregious feature of the
18 regulations, there are numerous other flaws, *each* of which is fatal to the 2017 Scoping Plan and
19 the GHG Housing Measures. As detailed herein, these include violations of CEQA, the APA, the
20 GWSA, the California Health and Safety Code, including the California Clean Air Act (H&S
21 Code § 39607 *et seq.*) (“CCAA”), and the California Congestion Management Act (Gov. Code §
22 65088 *et seq.*). Moreover, CARB has acted in excess of its statutory authority (*ultra vires*).

23 60. The GHG Housing Measures are unlawful both procedurally (because they were
24 adopted in violation of numerous statutory requirements, including but not limited to CEQA) and
25 substantively (because they frustrate and violate a wide range of state and federal laws and
26 regulations prohibiting housing regulations that have an unjustified discriminatory effect).

27
28 ⁵¹ Donna Kimura, Pop Quiz with Ben Metcalf, Affordable Housing Finance (July 8, 2016),
http://www.housingfinance.com/news/pop-quiz-with-ben-metcalf_o.

1 61. California’s commitment to climate leadership does not require or allow CARB to
2 violate the civil rights of California’s minority communities, or constitutional and statutory
3 mandates for clean air, fair housing, historic preservation, consumer protection, transportation
4 mobility, CEQA, or administrative rulemaking.

5 62. With climate change repeatedly described as a “catastrophe” that could destroy
6 civilizations, perhaps it is necessary for CARB to plunge more of California’s minority residents
7 into poverty and homelessness. If so—if climate change requires that the state ignore civil rights,
8 federal and state clean air, fair housing, transportation and consumer protection mandates, and
9 ignore the administrative law checks and balances that require a thorough environmental and
10 economic assessment of regulatory proposals—then this is a conclusion that may only be
11 implemented by the Legislature, to the extent it can do so consistent with the California and
12 federal Constitutions.

13 63. For this reason, this action seeks declaratory and injunctive relief setting aside the
14 four GHG Housing Measures, each of which places a disproportionate burden on California’s
15 minority community members, including Petitioners, and for the court to direct CARB to
16 complete a thorough economic and environmental analysis prior to adopting any new regulations
17 or taking other actions to implement the 2017 Scoping Plan, and to return to this court with a
18 revised Scoping Plan that complies with state and federal law.

19 **II. JURISDICTION AND VENUE**

20 64. This Court has jurisdiction over this proceeding pursuant to California Code of
21 Civil Procedure (“CCP”) §§ 410.10, 1085, 1094.5, 526, *et seq.* and 1060. Defendants are subject
22 to personal jurisdiction because their new GHG Housing Measures would, if allowed to remain in
23 effect, pertain to Petitioners and others located within the County of Fresno. Defendants may be
24 properly be served here, and jurisdiction and venue are proper here under CCP § 401, because
25 Defendants are being sued in their official capacities as members of an agency of the State of
26 California, and the Attorney General maintains an office in Fresno, California and the GHG
27 regulations complained of herein have an effect in, and apply in, the County of Fresno, California.
28

1 **III. PARTIES**

2 65. Petitioners/Plaintiffs THE TWO HUNDRED are a California-based
3 unincorporated association of community leaders, opinion makers and advocates working in
4 California (including in Fresno County) and elsewhere on behalf of low income minorities who
5 are, and have been, affected by California’s housing crisis and increasing wealth gap.⁵²

6 66. The Two Hundred is committed to increasing the supply of housing, to reducing
7 the cost of housing to levels that are affordable to California’s hard working families, and to
8 restoring and enhancing home ownership by minorities so that minority communities can also
9 benefit from the family stability, enhanced educational attainment over multiple generations, and
10 improved family and individual health outcomes, that white homeowners have long taken for
11 granted. The Two Hundred includes civil rights advocates who each have four or more decades of
12 experience in protecting the civil rights of our communities against unlawful conduct by
13 government agencies as well as businesses.

14 67. The Two Hundred supports the quality of the California environment, and the need
15 to protect and improve public health in our communities.

16 68. The Two Hundred have for many decades watched with dismay decisions by
17 government bureaucrats that discriminate against and disproportionately harm minority
18 communities. The Two Hundred have battled against this discrimination for entire careers, which
19 for some members means working to combat discrimination for more than 50 years. In litigation
20 and political action, The Two Hundred have worked to force two government bureaucrats to
21 reform policies and programs that included blatant racial discrimination—by for example denying
22 minority veterans college and home loans and benefits that were available to white veterans, and
23 promoting housing segregation as well as preferentially demolishing homes in minority
24 communities.

25 69. The Two Hundred sued and lobbied and legislated to force federal and state
26 agencies to end redlining practices that denied loans and insurance to aspiring minority home
27

28 ⁵² See www.the200leaders.org.

1 buyers and small businesses. The Two Hundred sued and lobbied to force regulators and private
2 companies to recognize their own civil rights violations, and end discriminatory services and
3 practices, in the banking, telecommunication, electricity, and insurance industries.

4 70. The Two Hundred have learned, the hard way, that California's purportedly
5 liberal, progressive environmental regulators and environmental advocacy group lobbyists are as
6 oblivious to the needs of minority communities, and are as supportive of ongoing racial
7 discrimination in their policies and practices, as many of their banking, utility and insurance
8 bureaucratic peers.

9 71. Several years ago, The Two Hundred waged a three year battle in Sacramento to
10 successfully overcome state environmental agency and environmental advocacy group opposition
11 to establishing clear rules for the cleanup of the polluted properties in communities of The Two
12 Hundred, and experienced first-hand the harm caused to those communities by the relationships
13 between regulators and environmentalists who financially benefited from cleanup delays and
14 disputes instead of creating the clear, understandable, financeable, insurable, and equitable rules
15 for the cleanup and redevelopment of the polluted properties that blighted these communities.

16 72. THE TWO HUNDRED's members include, but are not limited to, members of and
17 advocates for minority communities in California, including the following:

- 18 • Joe Coto- Joe Coto is Chair of THE TWO HUNDRED. Mr. Coto is an American
19 educator, city council member, and Democratic politician. From 2004-2010, he
20 was a member of the California State Assembly, representing the 23rd Assembly
21 District. He served as Chair of the Assembly's Insurance committee, and held
22 positions on the Elections and Redistricting, Governmental Organization, and
23 Revenue and Taxation committees. He also served on the Special committee on
24 Urban Education. Coto served as Chair of the 26 member Latino Legislative
25 Caucus for a 2-year term, and as Vice Chair for a 2-year term..
- 26 • John Gamboa – John Gamboa is Vice-Chair of THE TWO HUNDRED. Mr.
27 Gamboa is the former Executive Director of the Greenlining Institute and has
28 experience in academia, the private sector and the non-profit sector. Prior to the

1 Greenlining Institute, he was Executive Director of Latino Issues Forum,
2 Communications Manager at U.C. Berkeley, Executive Director of Project
3 Participar, a citizenship program, and Marketing and Advertising Manager at
4 Pacific Bell. At the Greenlining Institute, Mr. Gamboa focuses on public policy
5 issues that promote economic development in urban and low-income areas, and in
6 developing future leaders within the country's minority youth. He has been active
7 in combating redlining and in providing a voice for the poor and underserved in
8 insurance, philanthropy, banking, housing, energy, higher education and
9 telecommunications. He has served on numerous boards and commissions.

- 10 • Cruz Reynoso – Cruz Reynoso serves as Legal Counsel for THE TWO
11 HUNDRED. Mr. Reynoso has dedicated his life to public service championing
12 civil rights, immigration and refugee policy, government reform, and legal services
13 for the poor. Mr. Reynoso began his career in private practice then moved to
14 public service as the assistant director of the California Fair Employment
15 Practices Commission, the associate general counsel of the Equal Employment
16 Opportunity Commission, and head of the California Rural Legal Assistance
17 (CRLA). Mr. Reynoso was a faculty member at the University of New Mexico
18 School of Law and in 1976, he was appointed associate justice of the California
19 Courts of Appeal. In 1982, he became the first Latino to be appointed an associate
20 justice of the California Supreme Court. Mr. Reynoso later returned to private
21 practice, and resumed his teaching career by joining the UCLA School of Law and
22 then the UC Davis School of Law. Mr. Reynoso has served as Vice Chair of the
23 U.S. Commission on Civil Rights, was a member of the Select Commission on
24 Immigration and Human Rights, and received the Presidential Medal of Freedom.
- 25 • José Antonio Ramirez – José Antonio Ramirez is a Council Member of THE TWO
26 HUNDRED. He has dedicated his life to public service, especially for the residents
27 of the Central Valley, seeking to improve economic vitality, strengthen community
28

1 life, and increase educational opportunities and housing affordability for all
2 Californians, including disadvantaged members of the Latino community. He
3 currently serves as President of Community Development Inc. and as City
4 Manager for the City of Livingston. He was previously Program Manager,
5 International Affairs Coordinator and Security Engineer and Emergency
6 Management Coordinator for the U.S. Bureau of Reclamation. He served on the
7 San Joaquin River Resource Management board, the Valley Water Alliance Board
8 and as Chairman of the Technical Review Boards for Merced and Fresno County.

- 9 • Herman Gallegos – Herman Gallegos is a Council Member of THE TWO
10 HUNDRED. He has provided active leadership in a wide variety of community,
11 corporate and philanthropic affairs spanning local, national and international
12 interests. As a pioneer civil rights activist in the early 1950s, Gallegos was a leader
13 in the formation of the Community Service Organization, a civil rights-advocacy
14 group organized to promote the empowerment and well-being of Latinos in
15 California. In 1965, while serving as a Consultant to the Ford Foundation’s
16 National Affairs Program, Gallegos, with Dr. Julian Samora and Dr. Ernesto
17 Galarza, made an assessment with recommendations on how the foundation might
18 initiate support to address the critical needs of the rapidly growing Latino
19 population in the U.S.. As a result, he was asked to organize a new conduit for
20 such funds—the Southwest Council of La Raza, now the National Council of La
21 Raza. Gallegos went on to become the council’s founding executive director.
22 Gallegos also served as CEO of several business firms, including the U. S. Human
23 Resources Corporation and Gallegos Institutional Investors Corporation. He
24 became one of the first Latinos elected to the boards of publicly traded
25 corporations and the boards of preeminent private and publicly supported
26 philanthropic organizations, such as the Rockefeller Foundation, The San
27 Francisco Foundation, The Poverello Fund and the California Endowment.
28

1 • Hyepin Im – Hyepin Im is a Council Member of THE TWO HUNDRED. She
2 currently serves as the Founder and President of Korean Churches for Community
3 Development (KCCD) whose mission is to help churches build capacity to do
4 economic development work. Under Ms. Im’s leadership, KCCD has implemented
5 a historic homeownership fair in the Korean community, a Home Buyer Center
6 Initiative with Freddie Mac, a national database and research study on Korean
7 American churches, and ongoing training programs. Previously, Ms. Im was a
8 venture capitalist for Renaissance Capital Partners, Sponsorship and Community
9 Gifts Manager for California Science Center, a Vice President with GTA
10 Consulting Company, and a Consultant and Auditor with Ernst & Young LLP. Ms.
11 Im serves on the Steering Committee of Churches United for Economic
12 Development, as Chair for the Asian Faith Commission for Assemblymember
13 Herb Wesson, and has served as the President of the Korean American Coalition,
14 is a member of the Pacific Council, was selected to be a German Marshall Fund
15 American Memorial Marshall Fellow, and most recently, was selected to take part
16 in the Harvard Divinity School Summer Leadership Institute.

17 • Don Perata – Don Perata is a Council Member of THE TWO HUNDRED. Mr.
18 Perata began his career in public service as a schoolteacher. He went on to serve
19 on the Alameda County Board of Supervisors (1986-1994) and the California State
20 Assembly (1996-1998). In 1998, he was elected to the California State Senate and
21 served as president pro tem of the Senate from 2004-2008. As president pro tem,
22 Mr. Perata oversaw the passage of AB 32, California’s cap and trade regulatory
23 scheme to reduce greenhouse gases. Mr. Perata has guided major legislation in
24 health care, in-home services, water development and conservation and cancer,
25 biomedical and renewable energy. Mr. Perata has broad experience in water,
26 infrastructure, energy, and environmental policies, both as an elected official and a
27 consultant. He is versed in the State Water Project, Bay Delta restoration,
28

1 renewable energy, imported water and water transfers, recycling, conservation,
2 groundwater regulation, local initiative, storage and desalination.

- 3 • Steven Figueroa – Steven Figueroa is a Council Member of THE TWO
4 HUNDRED. He was born in East L. A., with a long history in California. Working
5 on his first political campaign at age nine he learned that if you want change you
6 have to be involved. As an adult he was involved in the labor movement through
7 the California School Employees Association and later as a union shop steward at
8 the U.S.P.S. A father of three, Steven has been advocating for children with
9 disabilities for 30 years, beginning in 1985, for his own son, who is autistic. He
10 took the Hesperia School District to court for violating his disabled son’s rights
11 and prevailed. He advocates for disabled children throughout the United States,
12 focusing on California. Currently, he serves as president of the Inland Empire
13 Latino Coalition and sits on the advisory boards of California Hispanic Chambers
14 of Commerce, the National Latina Business Women Association Inland Empire
15 the Disability Rights and Legal Center Inland Empire, and as Executive Director
16 for Latin PBS. He previously served as the vice president of the Mexican
17 American Political Association Voter Registration & Education Corp.
- 18 • Sunne Wright McPeak – Sunne McPeak is a Council Member of THE TWO
19 HUNDRED. She is the President and CEO of the California Emerging Technology
20 Fund, a statewide non-profit whose mission is to close the Digital Divide by
21 accelerating the deployment and adoption of broadband. She previously served for
22 three years as Secretary of the California Business, Transportation and Housing
23 Agency where she oversaw the largest state Agency and was responsible for more
24 than 42,000 employees and a budget in excess of \$11 billion. Prior to that she
25 served for seven years as President and CEO of the Bay Area Council, as the
26 President and CEO of the Bay Area Economic Forum, and for fifteen years as a
27 member of the Contra Costa County Board of Supervisors. She has led numerous
28 statewide initiatives on a variety of issues ranging from water, to housing, to child

1 care, and served as President of the California State Association of Counties in
2 1984. She was named by the San Francisco League of Women Voters as “A
3 Woman Who Could Be President.” She also served on the Boards of Directors of
4 First Nationwide Bank and Simpson Manufacturing Company.

- 5 • George Dean – George Dean is a Council Member of THE TWO HUNDRED. Mr.
6 Dean has been President and Chief Executive Officer of the Greater Phoenix
7 Urban League since 1992. As such, he has brought a troubled affiliate back to
8 community visibility, responsiveness and sound fiscal accountability. Mr. Dean, a
9 former CEO of the Sacramento, California and Omaha, Nebraska affiliates boasts
10 more than 25 years as an Urban League staff member. His leadership focuses on
11 advocacy toward issues affecting the African-American and minority community,
12 education, training, job placement and economic development. Mr. Dean annually
13 raises more than 3 million dollars from major corporations, local municipalities
14 and state agencies for the advancement of minority enterprises, individuals,
15 families and non-profits. Mr. Dean is nationally recognized in the field of minority
16 issues and advancement, and affordable housing.

- 17 • Joey Quinto – Joey Quinto is a Council Member of THE TWO HUNDRED. Mr.
18 Quinto’s has made many contributions to the advancement of the API community.
19 He began his professional career as a mortgage banker. As a publisher, his weekly
20 newspaper advances the interests of the API community and addresses local,
21 consumer and business news, and community events. He is a member of several
22 organizations including the Los Angeles Minority Business Opportunity
23 Committee and The Greenlining Coalition. Mr. Quinto is the recipient of the
24 Award for Excellence in Journalism during the Fourth Annual Asian Pacific
25 Islander Heritage Awards in celebration of the Asian Pacific Islander American
26 Heritage Month. He was also listed among the Star Suppliers of the Year of the
27 Southern California Regional Purchasing Council, received the Minority Media
28

1 Award from the U.S. Small Business Administration, and earned a leadership
2 award from the Filipino American Chamber of Commerce based in Los Angeles.

- 3 • Bruce Quan, Jr. – Bruce Quan is a Council Member of THE TWO HUNDRED.
4 Mr. Quan is a fifth generation Californian whose great grandfather, Lew Hing
5 founded the Pacific Coast Canning Company in West Oakland in 1905, then one
6 of the largest employers in Oakland. Bruce attended Oakland schools, UC
7 Berkeley, and Boalt Hall School of Law. At Berkeley, he was a community
8 activist for social justice, participated in the Free Speech Movement and the
9 Vietnam Day Committee and was elected student body president. In 1973, he was
10 chosen as one of three students to clerk for the Senate Watergate Committee and
11 later returned to Washington to draft the “Cover-up” and “Break-in” sections of
12 the committee’s final report. He worked in the Alameda’s City Attorney office, his
13 own law practice advising Oakland’s Mayor Lionel Wilson on economic
14 development issues in Chinatown and serving Mayor Art Agnos as General
15 Counsel for the San Francisco-Shanghai Sister City Committee and the San
16 Francisco-Taipei Sister City Committee. In 2000, he moved to Beijing, continued
17 his law practice, worked as a professor with Peking Law School, and became
18 senior of counsel with Allbright Law Offices. Now in Oakland, he has reengaged
19 in issues affecting the Chinese community and on issues of social justice, public
20 safety and economic development in Oakland.

- 21 • Robert J. Apodaca – Robert Apodaca is a Council Member of THE TWO
22 HUNDRED. He is a Founder of ZeZeN Advisors, Inc., a boutique financial
23 services firm that connects institutional capital with developers and real estate
24 owners. He has a 45-year career that spans private and public sectors. He was
25 Chairman and Trustee of Alameda County Retirement Board (pension fund) and
26 then joined Kennedy Associates, an institutional investor for pension funds as
27 Senior Vice President & Partner. He represented Kennedy Companies on Barings
28 Private Equity’s “Mexico Fund” board of directors. He later joined McLarand

1 Vasquez Emsiek & Partners, a leading international architectural and planning
2 firm, as Senior Vice President of Business Development. He currently serves on
3 numerous board of directors including Jobs and Housing Coalition, Greenlining
4 Institute, California Community Builders and California Infill Federation.

- 5 • Ortensia Lopez – Ortensia Lopez is a Council Member of THE TWO HUNDRED.
6 She is a nationally recognized leader in creating coalitions, collaboratives and
7 partnerships, resulting in innovative initiatives that ensure participation for low-
8 income communities. Ms. Lopez has worked in the non-profit sector for over
9 forty-one years in executive management positions. She is the second of 11
10 children born to parents from Mexico and the first to graduate from college. She
11 currently serves on the California Public Utilities Commission’s Low-Income
12 Oversight Board, as Co-Chairperson and founding member of the Greenlining
13 Institute, as Vice-President Chicana/Latina Foundation, as Director of Comerica
14 Advisory Board, and on PG&E’s Community Renewables Program Advisory
15 Group. Ms. Lopez has earned numerous awards, including Hispanic Magazine’s
16 “Hispanic Achievement Award”, San Francisco’s “ADELITA Award”, the
17 prestigious “Simon Bolivar Leadership Award”, the League of Women Voters of
18 San Francisco “Woman Who Could Be President” award, California Latino Civil
19 Rights Network award, and the Greenlining Lifetime Achievement.
- 20 • Frank Williams – Frank Williams is a Council Member of THE TWO
21 HUNDRED. He is an established leader in the mortgage banking industry, with
22 over 25 years of experience, and is an unwavering advocate for creating wealth
23 through homeownership for underrepresented communities. Frank began his real
24 estate finance career in 1990, emphasizing Wholesale Mortgage Banking. He
25 founded Capital Direct Funding, Inc. in 2009. Today, as Co-founder and
26 Divisional Manager, Mr. Williams has made Capital Direct Funding into
27 California’s premier private lending firm. Capital Direct Funding’s foundations are
28 built on giving back to the community by supporting several non-profits. He

1 currently serves as President of East LA Classic Theater, a non-profit that works
2 with underserved school districts in California. Frank was also Past President for
3 Los Angeles' National Association of Hispanic Real Estate Professionals.

- 4 • Leticia Rodriguez - Leticia Rodriguez is a resident of Fresno County, California.
5 She is a low-income single mother and Latina who suffers ongoing personal harm
6 from the severe shortage of housing that is affordable to working-class families.
7 Within the last three years, she has spent more than 30% of her income on rent.
8 She has been forced to move into her parents' home because she cannot afford a
9 decent apartment for herself and her family.
- 10 • Teresa Murillo – Teresa Murillo is a resident of the City of Parlier in Fresno
11 County, California. She is a young Latina with a low income. In recent years, she
12 has spent approximately 30% of her income on housing. She currently is unable to
13 afford a decent apartment and has been forced to move back in with her parents.
- 14 • Eugenia Perez – Eugenia Perez is a resident of Fresno County, California. She is a
15 Latina grandmother. The majority of her income goes to pay rent. She currently is
16 renting a room on E. Fremont Avenue in Fresno. She struggles to pay rent and
17 lives in fear of becoming homeless if housing prices and rent continue to increase.

18 73. Defendant CALIFORNIA AIR RESOURCES BOARD is an agency of the State
19 of California. On information and belief, current members of the CALIFORNIA AIR
20 RESOURCES BOARD are: Mary D. Nichols, Sandra Berg, John R. Balmes, Hector De La Torre,
21 John Eisenhut, Dean Flores, Eduardo Garcia, John Gioia, Ricardo Lara, Judy Mitchell, Barbara
22 Riordan, Ron Roberts, Phil Serna, Alexander Sherriffs, Daniel Sperling, and Diane Takvorian.

23 74. Defendant RICHARD COREY, sued herein in his official capacity, is Executive
24 Officer of the CALIFORNIA AIR RESOURCES BOARD.

25 75. Petitioners are ignorant of the true names or capacities of the defendants sued
26 herein under the fictitious names DOES 1 through 20 inclusive. When their true names and
27 capacities are ascertained, Petitioners will amend this Petition/Complaint to show such true names
28 and capacities. Petitioners are informed and believe, and thereon allege, that DOES 1 through 20,

1 inclusive, and each of them, are agents or employees of one or more of the named Defendants
2 responsible, in one way or another, for the promulgation and prospective enforcement of the
3 GHG Housing Measures sought to be invalidated and set aside herein.

4 **IV. GENERAL ALLEGATIONS**

5 **A. California’s Statutory Scheme To Reduce Greenhouse Gas Emissions and**
6 **Avoid Disparate Impacts**

7 76. As part of developing solutions to global warming, the California Legislature
8 adopted the California Global Warming Solutions Act of 2006 (otherwise known as “AB 32” or
9 the “GWSA”) and established the first comprehensive greenhouse gas regulatory program in the
10 United States. H&S Code § 38500 *et seq.*

11 77. Under AB 32, CARB is the state agency charged with regulating and reducing the
12 sources of emissions of GHGs that cause global warming. H&S Code § 38510.

13 78. AB 32 required CARB to set a statewide GHG emissions limit equivalent to
14 California’s 1990 GHG emissions to be achieved by 2020. H&S Code § 38550.

15 79. AB 32 also required CARB to prepare, approve, and periodically update a scoping
16 plan detailing how it would achieve the maximum technologically feasible and cost-effective
17 GHG emissions reductions by 2020. H&S Code § 38561(a). The scoping plan is required to
18 identify and make recommendations on direct emissions reductions measures, alternative
19 compliance mechanisms, market-based compliance mechanisms, and potential monetary and
20 nonmonetary incentives for sources to achieve reductions of GHGs by 2020. H&S Code
21 § 38561(b). The scoping plan must be updated at least every five years. H&S Code § 38561(h).

22 80. In adopting a scoping plan, CARB must evaluate the total potential costs and total
23 potential benefits of the plan to California’s economy, environment, and public health. H&S Code
24 § 38561(d).

25 81. Each scoping plan update also must identify, for each emissions reduction
26 measure, the range of projected GHG emissions reductions that result from the measure, the range
27 of projected air pollution reductions that result from the measure, and the cost-effectiveness,
28 including avoided social costs, of the measure. H&S Code § 38562.7.

1 82. The initial scoping plan⁵³ was discussed in public hearings on or about December
2 11, 2008. The initial scoping plan was adopted by CARB on or about May 7, 2009.

3 83. On or about December 23, 2009, the initial scoping plan was challenged in the
4 Superior Court for the City and County of San Francisco for failing to meet the statutory
5 requirements of AB 32, the APA, and CEQA. The superior court accepted the challenge in part
6 and the appeal was thereafter resolved after a further environmental document was filed.⁵⁴

7 84. The Low Carbon Fuel Standard (“LCFS”) was an early action item under AB 32.
8 The LCFS was adopted on or about November 25, 2009 by CARB’s executive officer. CARB’s
9 action to adopt the LCFS also was challenged for CEQA and APA violations. On or about
10 November 2011, the Superior Court of Fresno County found that CARB had not violated the
11 APA or CEQA. On or about July 15, 2013 the Fifth District Court of Appeal reversed the
12 superior court’s judgment and ordered it to issue a preemptory writ of mandate ordering CARB to
13 revise and recertify its environmental assessment to meet CEQA’s standards.⁵⁵

14 85. The first update to the scoping plan⁵⁶ was adopted on or about May 22, 2014.

15 86. Thereafter, on or about May 30, 2017, the Fifth District Court of Appeal again
16 found that CARB had violated CEQA and the APA, and that it had not acted in good faith in
17 responding to certain of the Court’s prior orders.⁵⁷ Specifically, the court found that CARB
18 violated CEQA in deferring its analysis and mitigation of potential increases in nitrogen oxide
19 emissions resulting from impacts of the LCFS regulations.

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22 ⁵³ California Air Resources Board, Climate Change Scoping Plan (Dec. 2008),
https://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf.

23 ⁵⁴ *Ass’n. of Irrigated Residents v. Cal. Air Res. Bd.*, 2011 WL 8897315 (Cal. Super. May 20,
24 2011) (approving challenges to alternatives analysis and improper “pre-approval” under CEQA)
and *Ass’n. of Irrigated Residents v. Cal. Air Res. Bd.* (2012) 206 Cal.App.4th 1487.

25 ⁵⁵ *POET, LLC v. California Air Resources Board* (2013) 217 Cal.App.4th 1214 (holding that
26 CARB prematurely approved the LCFS and improperly deferred analysis and mitigation of
potential NOx emissions increased by the rule).

27 ⁵⁶ California Air Resources Board, First Update to the Climate Change Scoping Plan (May 2014),
https://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf.

28 ⁵⁷ *POET, LLC v. State Air Resources Board* (2017) 12 Cal.App. 5th 52.

1 87. In 2016, the California Legislature adopted SB 32, which required CARB to
2 ensure that rules and regulations adopted pursuant to the GWSA would target California’s GHG
3 emissions for reductions of 40% below 1990 levels by 2030. H&S Code § 38566.

4 88. AB 32 requires CARB to update the scoping plan at least every five years. CARB
5 superseded its 2014 Scoping Plan with the current 2017 Scoping Plan adopted on December 14,
6 2017. The 2017 Scoping Plan contains the new GHG Housing Measures complained of herein.⁵⁸

7 89. Between December, 2017 and mid-April, 2018, Petitioners, through counsel,
8 sought to persuade CARB to eliminate or materially modify the four new GHG Housing
9 Measures complained of herein, without success. During this time, the parties entered into a series
10 of written tolling agreements that were continuously operative until April 30, 2018.

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12 **B. The 2017 Scoping Plan**

13 90. Throughout 2016 and 2017, CARB prepared the 2017 Scoping Plan. CARB held
14 meetings on or about January 27, 2017, February 16-17, 2017 and December 14, 2017 to accept
15 public comment on the proposed 2017 Scoping Plan.

16 91. Because the Scoping Plan is both sweeping and vague, and because it was not
17 preceded by a notice of proposed rulemaking, Petitioners THE TWO HUNDRED, *et al.* did not
18 initially appreciate the significance of the new GHG regulations and standards embedded in the
19 2017 Scoping Plan by CARB staff.

20 92. Petitioners submitted a detailed letter commenting on the 2017 Scoping Plan on
21 December 11, 2017, in advance of CARB’s meeting to vote on the 2017 Scoping Plan.⁵⁹ The
22 letter included extensive citations to documents and publications analyzing California’s ongoing
23 housing crisis and the disproportionate impact of the worsening housing shortage on marginalized
24 minority communities.

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26 ⁵⁸ California Air Resources Board, The 2017 Climate Change Scoping Plan Update (Jan. 20,
2017), https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf.

27 ⁵⁹ The Two Hundred Comment Letter dated Dec. 11, 2017, can be found in the Supplemental
28 Responses to Comments on the Environmental Analysis Prepared for the Proposed Strategy for
Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p. 74,
<https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>

1 93. On December 14, 2017, CARB adopted the 2017 Scoping Plan.

2 94. While the 2017 Scoping Plan is replete with protestations to the effect that it is
3 only providing “guidance” rather than a “directive or mandate to local governments” (see, e.g.,
4 Scoping Plan, p. 99), it is plain that CARB’s pronouncements on the GHG Housing Measures, by
5 their nature, will be given the force and effect of law. Numerous courts have stated that when an
6 agency has specific expertise in an area and/or acts as lead or responsible agency under CEQA,
7 and publishes guidance, that guidance must be taken into consideration and will be given heavy
8 weight.

9 95. In *California Building Industry Assn. v. Bay Area Air Quality Mgmt. Dist.* (2016)
10 2 Cal.App.5th 1067, 1088, the court rejected the notion that the District’s CEQA guidelines were
11 a nonbinding, advisory document. The court stated that the guidelines suggested a routine
12 analysis of air quality in CEQA review and were promulgated by an air district that acts as either
13 lead or responsible agency on projects within its jurisdictional boundaries.

14 96. In addition, in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife*
15 (2015) 62 Cal.4th 204, 229, the court recognized the value of “performance based standards” as
16 CEQA thresholds, as outlined in the Scoping Plan or other authoritative body of regulations.

17 97. Further, in *Cleveland Nat. Forest Foundation, et al v. San Diego Assoc. of*
18 *Governments* (2017) 3 Cal.5th 497, 515, the court held that even though the 2050 Executive
19 Order was not an adopted GHG reduction plan and there was no legal requirement to use it as a
20 threshold of significance, that was not dispositive of the issue. Although lead agencies have
21 discretion in designing an Environmental Impact Report (“EIR”) under CEQA, the court stated
22 that the exercise of that discretion must be “based to the extent possible on scientific and factual
23 data” and thus the scientific basis for the Executive Order’s and CARB’s emission reduction
24 goals must be considered in a CEQA analysis.

25 98. Thus, because CEQA documents must take a long term view of GHG compliance
26 and because of the deference and weight other agencies are required to give to CARB guidance,
27 the measures alleged to be “guidance” are in reality self-implementing regulations having an
28 immediate “as applied” effect.

1 99. The LAO also has recognized that CARB’s Scoping Plans include “a wide variety
2 of regulations intended to help the state meet its GHG goal...”⁶⁰

3 **C. CARB’s Improper “Cumulative Gap” Reduction Requirement**

4 100. In AB 32, the Legislature directed CARB to reduce statewide GHG emissions to
5 1990 levels by 2020 via measures in the first Scoping Plan. This legislative mandate is simple and
6 uncontested. CARB concluded that California’s GHG emissions were 431 million metric tons of
7 carbon dioxide equivalent (“MMTCO₂e”) in 1990.

8 101. SB 32 established the more stringent mandate of reducing GHG emissions to 40%
9 below 1990 levels by 2030, even though California’s population and economic activities are
10 expected to continue to increase during this period. The 2030 Target is simple math: 40% below
11 431 MMTCO₂e equals 258.6 MMTCO₂e.⁶¹ Thus, the 2017 Scoping Plan created measures to
12 reduce statewide emissions to 260 MMTCO₂e by 2030.

13 102. The 2017 Scoping Plan first evaluates the “Reference Scenario”, which is the
14 emissions expected in 2030 by continuing “Business as Usual” and considering existing legal
15 mandates to reduce GHG emissions that have been implemented, but without adopting any new
16 GHG reduction measures. The Scoping Plan concludes that in this scenario California’s GHG
17 .emissions will fall to 389 MMTCO₂e by 2030.

18 103. Because numerous GHG reduction mandates are being phased in over time, CARB
19 also evaluated a “Known Commitments Scenario” (which CARB confusingly named the
20 “Scoping Plan Scenario”) which estimates GHG emissions in 2030 based on compliance with all
21 legally required GHG reduction measures, including those that have not yet been fully
22 implemented. Under the “Known Commitments Scenario” the 2017 Scoping Plan concludes that
23 California’s GHG emissions will fall to 320 MMTCO₂e by 2030.

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27 ⁶⁰ LAO, Cap-and-Trade Revenues: Strategies to Promote Legislative Priorities (Jan. 21, 2016),
<http://www.lao.ca.gov/reports/2016/3328/cap-trade-revenues-012116.pdf>, at p. 5-6.

28 ⁶¹ CARB generally rounds this to 260 MMTCO₂e.

1 104. Given that SB 32 required a reduction to 260 MMTCO₂e, this left a gap of 60
2 MMTCO₂e for which CARB was required to identify measures in the 2017 Scoping Plan in the
3 “Known Commitments Scenario” and 129 MMTCO₂e in the “Reference Scenario”.

4 105. CARB declined to comply with this legislated mandate, and instead invented a
5 different “cumulative gap” reduction requirement which requires far more GHG emission
6 reductions.

7 106. Neither the Scoping Plan nor any of its appendices explain how this “cumulative
8 gap” reduction requirement was derived, and the methodology and assumptions CARB used can
9 only be located in one of several modeling spreadsheets generally referenced in the plan.

10 107. CARB’s unlegislated “cumulative gap” requirement is based on the unsupportable
11 assumption that state emissions must decline in a fixed trajectory from 431 MMTCO₂e in 2020 to
12 258.6 MMTCO₂e in 2030 despite the fact that SB 32 does not require that the state reach the
13 2030 Target in any specific way. CARB arbitrarily created the “cumulative gap” requirement by
14 summing the annual emissions that would occur from 2021-2030 if emissions declined in a
15 straight line trajectory, which totaled 3,362 MMTCO₂e, as follows:

	Annual emissions based on a straight line trajectory from 2020 to 2030 (MMTCO ₂ e)
2020	431.0
2021	413.8
2022	396.5
2023	379.3
2024	362.0
2025	344.8
2026	327.6
2027	310.3
2028	293.1
2029	275.8
2030	258.6
2021-2030 Cumulative Emissions	3,362

1 108. CARB then summed the annual emissions projected to occur from 2021-2030
2 under the “Reference Scenario” without the implementation of the measures included in the
3 “Known Commitments Scenario,” as 3,982 MMTCO₂e.

4 109. CARB then subtracted the cumulative “Reference Scenario” emissions (3,982
5 MMTCO₂e) from the cumulative emissions based on the straight line trajectory (3,362
6 MMTCO₂e) and illegally used the difference, 621 MMTCO₂e, as a new, unlegislated GHG
7 “cumulative gap” reduction requirement.

Year	“Reference Scenario” Annual Emissions (MMTCO ₂ e)
2020	415.8
2021	411.0
2022	405.5
2023	400.3
2024	397.6
2025	398.7
2026	396.8
2027	395.5
2028	394.4
2029	393.9
2030	388.9
2021-2030 Cumulative Emissions	3,982
Difference from Straight Line Cumulative Emissions Total	621

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22 110. Scoping Plan Figure 7, for example, is titled “Scoping Plan Scenario – Estimated
23 Cumulative GHG Reductions by Measure (2021–2030).” The identified measures show the
24 amount of reductions required to “close” the 621 MMTCO₂e GHG “cumulative gap” CARB
25 invented from the difference in cumulative emissions from 2021-2030 between a hypothetical
26 straight line trajectory to the 2030 Target and the “Reference Scenario” projections.

1 111. Figure 8 of the Scoping Plan and associated text provide an “uncertainty analysis
2 to examine the range of outcomes that could occur under the Scoping Plan policies and measures”
3 which is entirely based on the 621 MMTCO_{2e} GHG “cumulative gap” metric.⁶²

4 112. CARB also calculated that the cumulative annual emissions projected to occur
5 under the “Known Commitments Scenario” from 2021-2030 would be 3,586 MMTCO_{2e} and
6 subtracted this amount from the cumulative emissions generated by the straight line trajectory
7 (3,362 MMTCO_{2e}). The difference is 224 MMTCO_{2e}, which is incorrectly shown as 236
8 MMTCO_{2e} in Table 3 of the Scoping Plan and in the text following Table 3. CARB illegally
9 characterized the 224 MMTCO₂ difference as the “cumulative emissions reduction gap” in the
10 “Known Commitments Scenario” in the Scoping Plan and evaluated the need for additional
11 measures on the basis of “closing” this unlegislated and unlawful “cumulative gap”.

Year	“Known Commitments Scenario” Annual Emissions (MMTCO _{2e})
2020	405.5
2021	396.8
2022	387.1
2023	377.6
2024	367.4
2025	362.7
2026	354.4
2027	347.1
2028	340.4
2029	331.8
2030	320.4
2021-2030 Cumulative Annual Emissions	3,586
Difference from Straight Line Cumulative Emissions Total	224

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⁶² The analysis discussion references Scoping Plan Appendix E for more details.

1 113. The California legislature in no way authorized CARB to invent a “cumulative
2 gap” methodology based on an unreasonable and arbitrary straight line trajectory from 2020 to
3 the 2030 Target, which counted each year’s shortfall against the 2030 Target and then added all
4 such shortfalls to inflate reduction needed from the 129 and 60 MMTCO₂e (depending on
5 scenario) required by the 2030 Target to the 621 and 224 MMTCO₂e “cumulative gap”
6 requirements.

7 114. SB 32 does not regulate cumulative emissions and only requires that the 2030
8 Target of 260 MMTCO₂e be achieved by 2030. CARB’s own analysis shows that existing legal
9 requirements will reduce emissions to 320 MMTCO₂e in 2030. At most, CARB was authorized to
10 identify measures in the Scoping Plan that would further reduce emissions by 60 MMTCO₂e in
11 2030 under the “Known Commitments Scenario”. CARB instead illegally created new, and much
12 larger “cumulative gap” reduction requirements of 224 MMTCO₂e and 621 MMTCO₂e.

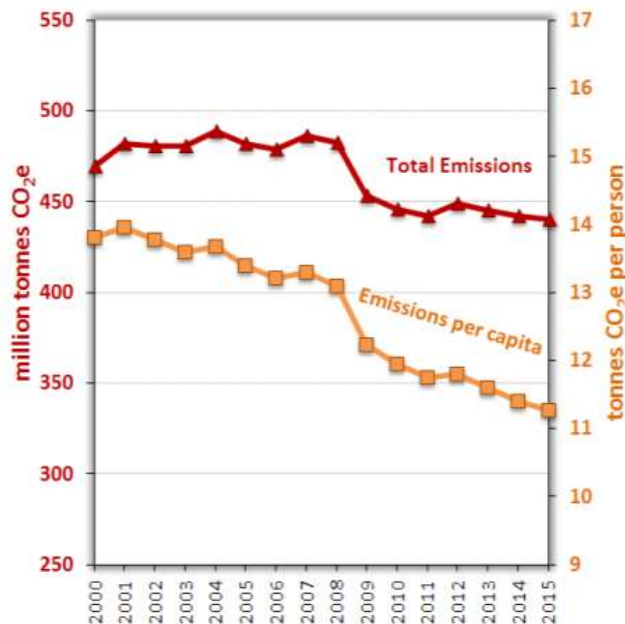
13 115. CARB arbitrarily determined that the straight line trajectory to the 2030 Target
14 was the only way to reach the mandate of 260 MMTCO₂e by 2030 when there are numerous
15 potential paths that California’s GHG emission reductions could take between 2021 and 2030.

16 116. For example, as shown in Figure 1 below, in reaching the 2020 Target,
17 California’s GHG emissions reductions have not followed a straight line trajectory, but have gone
18 up and down based on the economy and other factors.⁶³

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28 ⁶³ Figure 1 is from the California Air Resources Board’s 2017 Edition of California’s GHG
Emission Inventory (June 6, 2017), p. 2,
https://www.arb.ca.gov/cc/inventory/pubs/reports/2000_2015/ghg_inventory_trends_00-15.pdf.

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Figure 1. California Total and Per Capita GHG Emissions



117. CARB’s arbitrary and capricious requirement that reductions must meet a cumulative GHG reduction total, rather than take any path feasible that gets the state to the 2030 Target is unlawful.

118. Both AB 32 (and earlier Scoping Plans) and SB 32 contemplated a “step down” of GHG emissions to the quantity established for the target year, with the “step down” increments occurring as new technologies, regulations, and other measures took effect. This step down approach has been part of air pollution control law for decades.

119. Under the federal Clean Air Act (“CAA”), the EPA sets National Ambient Air Quality Standards (“NAAQS”) that set air quality levels in certain years for specific pollutants (e.g., the 2015 NAAQS for ozone is 70 ppb and it must be achieved as expeditiously as possible). States then create and adopt State Implementation Plans (“SIPs”) which include control measures to indicate how the state will meet the NAAQS standard. The reductions that the SIPs must achieve via their control measures to reach the NAAQS are always interpreted as being applicable to the target year, *i.e.*, how much reduction will need to occur in one year to reduce emissions from business as usual to the NAAQS level? The SIPs do not plan for emission reduction measures that must reduce emissions cumulatively over time (from the time of adoption of the

1 2015 ozone NAAQS until the year it is reached), such that not meeting the NAAQS in earlier
2 years means that those excess emissions must be added to future years to create the required
3 emissions reductions to balloon over time as the NAAQS goes unmet.

4 120. In addition, criteria air pollutants regulated by EPA, CARB, and California’s local
5 air districts are always regulated under a cost/ton disclosure metric in which the expected cost to
6 reduce emissions must be not only explained in rulemaking documents, but taken into
7 consideration in deciding whether to adopt any rule controlling emissions. This system has
8 worked to reduce tailpipe emissions of criteria pollutants from passenger cars by 99% over time.

9 121. Given this clear and consistent pattern of EPA and CARB interpretation of the
10 legal status of air quality levels to be achieved by a certain time, it was arbitrary and capricious
11 for CARB to create this “deficit accounting” metric in the cumulative gap analysis rather than
12 merely creating measures which would meet the 2030 Target by 2030.

13 122. CARB also used the unlawful “cumulative gap” reduction metric to identify the
14 nature and extent of Scoping Plan reduction measures, including the GHG Housing Measures,
15 address uncertainties in achieving these reductions, and to complete the legally mandated FA and
16 EA for the 2017 Scoping Plan.

17 123. CARB’s unilateral creation and use of the “cumulative gap” reduction
18 requirement instead of the statutory SB 32 2030 Target is unlawful, and imposes new cost
19 burdens, including on housing, that will further exacerbate the housing-induced poverty crisis.

20 **D. The Four New, Unlawful GHG Housing Measures the 2017 Scoping Plan**
21 **Authorizes**

22 **1. Unlawful VMT Reduction Requirement**

23 124. Among the new regulations and standards added to CARB’s 2017 Scoping Plan—
24 which were not in any of its earlier scoping plans—is a requirement to reduce VMT. This
25 requirement is part of the Scoping Plan Scenario presented in Chapter 2 in the “Mobile Source
26 Strategy.”⁶⁴

27 _____
28 ⁶⁴ See Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy
(Cleaner Technology and Fuels [CTF] Scenario)).

1 125. The “Mobile Source Strategy” includes a requirement to reduce VMT. This
2 allegedly would be achieved by continued implementation of SB 375, regional Sustainable
3 Communities Strategies, statewide implementation of SB 743, and potential additional VMT
4 reduction strategies included in Appendix C (“Potential VMT Reduction Strategies for
5 Discussion”). Scoping Plan, p. 25.

6 126. The 2017 Scoping Plan states that “VMT reductions will be needed to achieve the
7 2030 target” and to meet the 2050 GHG emission reduction goal set in Executive Order S-3-05.
8 Scoping Plan, p. 75.

9 127. CARB states that VMT reductions of 7 percent below projected VMT are
10 necessary by 2030 and 15 percent below projected VMT by 2050. Scoping Plan, p. 101.

11 128. The “Mobile Source Strategy” measure requires a 15 percent reduction in total
12 light-duty VMT from the business as usual scenario by 2050. Scoping Plan, p. 78. It also requires
13 CARB to work with regions to update SB 375 targets to reduce VMT to reach the 2050 goal and
14 to implement VMT as the CEQA metric for assessing transportation impacts. *Id.*

15 129. The “Mobile Source Strategy” as a whole is estimated to result in cumulative GHG
16 emission reductions of 64 MMTCO_{2e} per year. Scoping Plan, p. 28.

17 130. These VMT reduction requirements are included in the 2017 Scoping Plan without
18 appropriate recognition of the counterproductive effects of such a fixation on reducing VMT in
19 the context of affordable housing proximate to job centers.

20 131. The 2017 Scoping Plan notes that promoting stronger boundaries to suburban
21 growth, such as urban growth boundaries, will reduce VMT. Scoping Plan, p. 78. This also raises
22 housing prices within the urban growth boundary and pushes low-income Californians, including
23 minorities, to unacceptable housing locations with long drive times to job centers.

24 132. Other VMT reduction measures in the 2017 Scoping Plan, such as road user and/or
25 VMT-based pricing mechanisms, congestion pricing, and parking pricing, further disadvantage
26 low-income and minority residents who must drive farther through more congested roads.

27 133. The VMT reductions called for in Chapters 2 and 5 of the Scoping Plan make no
28 distinction for miles driven by electric vehicles with zero GHG emissions or for miles driven by

1 hybrid vehicles when using only electric power. Instead, they would advance a suite of new
2 burdens, including charging individual drivers for each vehicle mile travelled, and intentionally
3 increasing overall roadway congestion to induce more workers to use public transit.

4 134. CARB's new VMT requirements, which purport to encourage public transit,
5 essentially ignore the fact that far fewer than 10% of Californians can get from their home to their
6 jobs in less than one hour on public transit, and that public transit ridership has fallen nationally
7 and in California.⁶⁵ CARB's new VMT requirements fail to rationally address the reality that
8 VMT continues to increase rather than decrease in California due to increasing population and
9 employment levels.⁶⁶

10 135. CARB's answer to reducing VMT by increasing bicycling, walking, and transit
11 use is a laughable solution for low-income Californians, such as those living in the San Joaquin
12 Valley and commuting to jobs in the San Francisco Bay Area.⁶⁷

13 136. The burden of CARB's VMT reduction measures falls disproportionately on
14 minority workers already forced by the housing crisis to endure long and even "mega" commutes
15 lasting more than three hours per day.⁶⁸ The vast majority of middle and lower-income jobs
16 (disproportionately performed by minority workers) require those workers to be physically
17 present at their job sites to be paid. Affected job categories include teachers, nurses, emergency
18

19 ⁶⁵ Laura J. Nelson, *L.A. Bus Ridership Continues to Fall: Officials Now Looking to Overhaul the*
20 *System*, L.A. Times (May 23, 2017) <http://www.latimes.com/local/lanow/la-me-ln-bus-ridership-study-20170518-story.html>; Center for Transportation Studies, Access Across America, University of Minnesota (2017) <http://www.cts.umn.edu/research/featured/access>.

21 ⁶⁶ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
22 Greenhouse Gas Emission Reduction Targets, Feb. 2018, https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf, p. 19.

23 ⁶⁷ Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7*
24 *A.M.*, N.Y. Times (Aug. 17, 2017), <https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html>.

25 ⁶⁸ 2007 and 2016 American Community Survey 1-Year Estimates, Table B08303 series (Travel
26 Time To Work, Workers 16 years and over who did not work at home), <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (showing increase
27 in commute time from 2007 to 2016 in California and Bay Area); 2007 and 2016 American
28 Community Survey 1-Year Estimates, Table S802 series (Means of transportation to work by
selected characteristics), <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (showing more
Latino and noncitizen workers commuting to work by driving alone).

1 responders, courtroom and municipal service workers, construction workers, day care and home
2 health care workers, retail clerks, and food service workers.⁶⁹

3 137. In addition to being ill-conceived, CARB’s new VMT measures are not statutorily
4 authorized. The Legislature has repeatedly rejected proposed legislation to mandate that
5 Californians reduce their use of cars and light duty trucks (e.g., personal pickup trucks), including
6 most recently in 2017 (Senate Bill 150, Allen).

7 138. Only a different agency, the Office of Planning and Research (“OPR”), has
8 legislative authority to regulate VMT. It has not done so. In Senate Bill 743 (2013), the
9 Legislature authorized OPR to consider adopting VMT as a new threshold for assessing the
10 significance of transportation impacts under CEQA, but only after OPR completed a rulemaking
11 process and amended the regulatory requirements implementing CEQA, *i.e.*, the CEQA
12 Guidelines (14 C.C.R. § 15000 *et seq.*) (“CEQA Guidelines”). OPR has commenced but not
13 completed the process for amending the CEQA Guidelines as authorized by SB 743.

14 139. Instead of regulating VMT, CARB’s role under SB 375 is to encourage higher
15 density housing and public transit and thereby reduce GHGs. In this context, CARB has included
16 VMT reduction metrics for helping achieve GHG reduction goals in current SB 375 targets.

17 140. In the past, when CARB proposed to establish standalone VMT reduction targets
18 (independent of GHG emission reduction targets) it has been swamped with objections and
19 concerns, including challenges to its legal authority to attempt to impose fees and restrictions on
20 driving as a standalone mandate independent of regional GHG reduction targets.

21 141. Until its adoption of the 2017 Scoping Plan, CARB had rightly stopped short of
22 purporting to set out standalone VMT reduction targets and methods. At the same meeting that
23 CARB approved the 2017 Scoping Plan, CARB agreed to indefinitely postpone establishing
24 regional VMT reduction targets for a variety of reasons (including but not limited to the fact that
25 notwithstanding current efforts, VMT is actually increasing).

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27 ⁶⁹ Adam Nagourney and Conor Dougherty, *The Cost of a Hot Economy in California: A Severe*
28 *Housing Crisis*, N.Y. Times (July 17, 2017), <https://www.nytimes.com/2017/07/17/us/california-housing-crisis.html>.

1 142. Immediately following its determination to indefinitely postpone its proposal to
2 adopt standalone VMT reduction targets, CARB nevertheless voted to approve the 2017 Scoping
3 Plan’s VMT reduction mandate, which includes in pertinent part a GHG measure requiring
4 additional VMT reductions beyond the reductions achieved via SB 743 and SB 375. See Scoping
5 Plan p. 25, Table 1, p. 101.

6 143. The inherent contradiction between the morning CARB agenda discussion
7 indefinitely postponing establishing SB 375 VMT reduction targets, and CARB’s afternoon
8 agenda item approving the 2017 Scoping Plan, going above and beyond the VMT reductions
9 CARB elected not to set a few hours earlier, caused widespread confusion. Even the CARB
10 Board chair reported that she was “confused” – but CARB’s unlawful action to mandate reduced
11 driving by individual Californians was nevertheless unanimously approved in the 2017 Scoping
12 Plan that CARB has now adopted.

13 144. In order to achieve these newly-mandated reductions in VMT, CARB intends to
14 intentionally increase congestion to induce transit use. OPR’s proposal for updating the CEQA
15 Guidelines to include VMT as a metric for analyzing transportation impacts states that adding
16 new roadway capacity increases VMT.⁷⁰ The OPR proposal further states that “[r]educing
17 roadway capacity (i.e. a “road diet”) will generally reduce VMT and therefore is presumed to
18 cause a less than significant impact on transportation. Building new roadways, adding roadway
19 capacity in congested areas, or adding roadway capacity to areas where congestion is expected in
20 the future, typically induces additional vehicle travel.” *Id.* at p. III:32.

21 145. Attempting to reduce VMT by purposefully increasing congestion by reducing
22 roadway capacity will not lead to GHG emission reductions. Instead, increasing congestion will
23 cause greater GHG emissions due to idling, not to mention increased criteria air pollutant⁷¹ and
24

25 _____
26 ⁷⁰ OPR, Revised Proposal on Updates to the CEQA Guidelines Evaluating Transportation Impacts
in CEQA (Jan. 20, 2016), p. I:4,
http://www.opr.ca.gov/docs/Revised_VMT_CEQA_Guidelines_Proposal_January_20_2016.pdf.

27 ⁷¹ The six criteria air pollutants designated by the Environmental Protection Agency (“EPA”) are
28 particulate matter (“PM”), ozone, nitrogen dioxide (“NO₂” or “NO_x”), carbon monoxide (“CO”),
sulfur dioxide (“SO₂”), and lead.

1 toxic air contaminant⁷² emissions. CARB has no authority to impose a VMT limit and any VMT
2 limit imposed by an agency must be approved in a formal rulemaking process.

3 146. As implemented, CARB's VMT reduction measure will not achieve the GHG
4 reductions ascribed to it in the 2017 Scoping Plan and has no rational basis. In fact, it will
5 increase air quality and climate related environmental impacts, something not analyzed in the EA
6 for the 2017 Scoping Plan.

7 147. In addition, CARB has recently undergone an update of regional GHG emission
8 reduction targets under SB 375 in which CARB stated that: "In terms of tons, CARB staff's
9 proposed [SB 375] targets would result in an estimated additional reduction of approximately 8
10 million metric tons of CO₂ per year in 2035 compared to the existing targets. The estimated
11 remaining GHG emissions reductions needed would be approximately 10 million metric tons
12 CO₂ per year in 2035 based on the Scoping Plan Update scenario. These remaining GHG
13 emissions reductions are attributed to new State-initiated VMT reduction strategies described in
14 the Scoping Plan Update."⁷³

15 148. Thus, CARB's only stated support for needing the VMT reduction mandates in the
16 2017 Scoping Plan is to close a gap to the Scoping Plan Update Scenario that the SB 375 targets
17 will not meet. However, all of the allegedly "necessary" reductions in the Scoping Plan Update
18 Scenario are based on CARB's unlawful "cumulative gap" reduction requirement, which, as
19 described above, improperly ballooned the GHG reductions required from 60 to 224 MMTCO_{2e}
20 based on the "Known Commitments Scenario" and from 129 to 621 MMTCO_{2e} based on the
21 "Reference Case Scenario."

22 149. Because of CARB's unlawful "cumulative gap" calculation, CARB now argues
23 that the VMT reduction mandates are necessary, but the only reason they are necessary is to meet
24 the unlawful "cumulative gap" reduction requirements.

25 _____
26 ⁷² Toxic air contaminants, or TACs, include benzene, hexavalent chrome, cadmium, chloroform,
vinyl chloride, formaldehyde, and numerous other chemicals.

27 ⁷³ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
28 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 35,
https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

1 150. There is also no evidence that CARB’s estimated 10 MMTCO₂e per year
2 reductions based on the VMT reduction mandate is in any way achievable. The Right Type, Right
3 Place report⁷⁴ estimates only 1.79 MMTCO₂e per year will be reduced from both lower VMT and
4 smaller unit size houses using less energy and thus creating lower operational emissions.

5 151. The Staff Report for SB 375 acknowledges that VMT has increased, that the
6 results of new technologies are at best mixed in early reports as to VMT reductions, and that the
7 correlation between VMT and GHG is declining.⁷⁵ There is no evidence that the 10 MMTCO₂e
8 per year reductions based on the VMT reduction mandate in the 2017 Scoping Plan is in any way
9 something other than a number created solely based on the fundamental miscalculation about the
10 2030 target demonstrated by the “cumulative gap” methodology in the 2017 Scoping Plan.

11 **2. Unlawful CEQA Net Zero GHG Threshold**

12 152. The 2017 Scoping Plan also sets a net zero GHG threshold for all projects subject
13 to CEQA review, asserting that “[a]chieving no net additional increase in GHG emissions,
14 resulting in no contribution to GHG impacts, is an appropriate overall objective for new
15 development”. Scoping Plan, p. 101-102.

16 153. The Scoping Plan directs that this new CEQA “zero molecule” GHG threshold be
17 presumptively imposed by all public agencies when making all new discretionary decisions to
18 approve or fund projects in all of California, where under CEQA “project” is an exceptionally
19 broad legal term encompassing everything from transit projects to recycled water plants, from the
20 renovation of school playgrounds to building six units of affordable housing, from the adoption of
21 General Plans applicable to entire cities and counties to the adoption of a single rule or regulation.

22 154. This is an unauthorized, unworkable and counterproductive standard as applied to
23 new housing projects. CEQA applies to the “whole of a project”, which includes construction
24

25 ⁷⁴ Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic
26 Impacts of Infill Residential Development through 2030, U.C. Berkeley Turner Center for
Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017),
<https://turnercenter.berkeley.edu/right-type-right-place>.

27 ⁷⁵ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
28 Greenhouse Gas Emission Reduction Targets (Feb. 2018), p. 19,
https://www.arb.ca.gov/cc/sb375/sb375_target_update_final_staff_report_feb2018.pdf.

1 activities, operation of new buildings, offsite electricity generation, waste management,
2 transportation fuel use, and a myriad of other activities. Meeting a net zero threshold for these
3 activities is not possible. While there have been examples of “net zero” buildings—which are
4 more expensive than other housing⁷⁶—none of these examples included the other components of
5 a “project” as required by CEQA.

6 155. The Scoping Plan’s “net zero” CEQA provisions also would raise housing and
7 homeowner transportation costs and further delay completion of critically needed housing by
8 increasing CEQA litigation risks—thereby exacerbating California’s acute housing and poverty
9 crisis.⁷⁷

10 156. Despite CARB’s claim that this “net zero” threshold is “guidance”, CARB’s status
11 as the expert state agency on GHG emissions means that all lead agencies or project proponents
12 will have to accept this standard in CEQA review unless they can prove by substantial evidence
13 that a project cannot meet the standard.

14 157. The threshold has immediate evidentiary weight as the expert conclusion of the
15 state’s expert GHG agency. An agency’s failure to use the 2017 Scoping Plan’s CEQA threshold
16 has already been cited as legal error in the comment letter preceding the expected lawsuit against
17 the Northlake housing project in Los Angeles.⁷⁸

18 158. A “net zero” GHG threshold is inconsistent with current California precedent
19 affirming that compliance with law is generally an acceptable CEQA standard. See, e.g., *Center*
20 *for Biological Diversity v. Dept. of Fish and Wildlife* (2016) 62 Cal.4th 204, 229 (“*Newhall*”) (a
21 lead agency can assess consistency with AB 32 goal by looking to compliance with regulatory
22 programs). This includes, but is not limited to, using compliance with the cap-and-trade program
23 as appropriate CEQA mitigation for GHG and transportation impacts.

24 _____
25 ⁷⁶ LAO, *Evaluating California’s Pursuit of Zero Net Energy State Buildings* (Nov. 14, 2017),
<http://www.lao.ca.gov/Publications/Report/3711>.

26 ⁷⁷ Chang-Tai Hsieh and Enrico Moretti, *How Local Housing Regulations Smother the U.S.*
27 *Economy*, N.Y. Times (Sept. 6, 2017), <https://www.nytimes.com/2017/09/06/opinion/housing-regulations-us-economy.html>.

28 ⁷⁸ Center for Biological Diversity, *Letter to Los Angeles County* (April 16, 2018),
http://planning.lacounty.gov/assets/upl/case/tr073336_correspondence-20180418.pdf.

1 159. The Scoping Plan’s expansive new “net zero” GHG CEQA threshold is directly at
2 odds with, and is dramatically more stringent than, the existing CEQA regulatory threshold for
3 GHG emissions. This existing threshold was adopted by OPR pursuant to specific authorization
4 and direction from the Legislature in SB 97. In the SB 97 rulemaking context, OPR, in its
5 Statement of Reasons, expressly rejected a “zero molecule” or “no net increase” GHG threshold
6 (now adopted by CARB without Legislative authority) as being inconsistent with, and not
7 supported by, CEQA’s statutory provisions or applicable judicial precedent. OPR stated that
8 “[n]otably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of
9 significance. As case law makes clear, there is no “one molecule rule” in CEQA.”⁷⁹

10 160. In January of 2017, OPR commenced a formal rulemaking process for what it
11 describes as a “comprehensive” set of regulatory amendments to the CEQA Guidelines. After
12 adoption of the 2017 Scoping Plan, OPR has not proposed to change the existing GHG thresholds
13 in the Guidelines to conform with CARB’s unauthorized new “net zero” GHG threshold. Instead,
14 OPR has expressly criticized reliance on a numerical project-specific assessment of GHGs.

15 161. In short, CARB’s “net zero” GHG threshold is inconsistent with OPR’s legal
16 conclusion that CEQA cannot be interpreted to impose a “net zero” standard.⁸⁰

17 162. In addition to being Legislatively unauthorized and unlawful, the “net zero” GHG
18 threshold would operate unconstitutionally so as to disproportionately disadvantage low income
19 minorities in need of affordable housing relative to wealthier, whiter homeowners who currently
20 occupy the limited existing housing stock.⁸¹ This disadvantage arises because of the use of CEQA

22 ⁷⁹ OPR, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA
23 Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97
(Dec. 2009), p. 25, http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

24 ⁸⁰ See OPR, Proposed Updates to the CEQA Guidelines (Nov. 2017), p. 81-85,
http://opr.ca.gov/docs/20171127_Comprehensive_CEQA_Guidelines_Package_Nov_2017.pdf.

25 ⁸¹ See Richard Rothstein, *Color of Law: A Forgotten History of How Our Government*
26 *Segregated America* (2017) for a historical review of how zoning and land use laws were
27 designed to promote discrimination against African Americans and other communities of color,
28 patterns that, in many instances, have been maintained to this day; see also *Housing Development*
Toolkit, The White House (Sept. 2016),
https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf.

1 litigation by current homeowners to block new housing for others, including especially low
2 income housing for minorities.⁸²

3 163. Under CEQA, once an impact is considered “significant”, it must be “mitigated”
4 by avoidance or reduction measures “to the extent feasible.” Pub. Res. Code §§ 21002, 21002.1;
5 14 C.C.R. § 15020(a)(2). By imposing a presumptive “net zero” GHG threshold on all new
6 projects pursuant to CEQA, CARB has instantly and unilaterally increased the GHG CEQA
7 mitigation mandate to “net zero” unless a later agency applying CEQA can affirmatively
8 demonstrate, through “substantial evidence”, that this threshold is not “feasible” as that term is
9 defined in the CEQA Guidelines.

10 164. Under CEQA, any party—even an anonymous litigant—can file a CEQA lawsuit
11 challenging the sufficiency of a project’s analysis and mitigation for scores of “impacts,”
12 including GHG emissions. *See Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011)
13 52 Cal.4th 155.

14 165. Anonymous use of CEQA lawsuits, as well as reliance on CEQA lawsuits to
15 advance economic objectives such as fast cash settlements, union wage agreements, and
16 competitive advantage, has been repeatedly documented—but Governor Brown has been unable
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23 ⁸² See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California’s
24 Housing Crisis, 24 Hastings Env’tl. L.J. (2018),
25 [https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.p](https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf)
26 [df](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf); see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
27 Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016),
28 [https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALaws](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf)
[uits.pdf](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/); Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
Environment: Litigation Abuse Under CEQA (August 2015),
[https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/)
[ceqa-august-2015/](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/).

1 to secure the Legislature’s support for CEQA because, as he explains, unions use CEQA to
2 leverage labor agreements.⁸³

3 166. Using CEQA to advance economic rather than environmental objectives, and
4 allowing anonymous lawsuits to mask more nefarious motives including racism and extortion, has
5 established CEQA litigation (and litigation threats) as among the top reasons why adequate
6 housing supplies have not been built near coastal jobs centers.⁸⁴

7 167. The “net zero” threshold, as applied to new housing projects in California, adds
8 significantly to the risk and CEQA litigation outcome uncertainty faced by persons who wish to
9 build such housing.⁸⁵ Not even the California Supreme Court, in *Newhall, supra*, 62 Cal.4th 204,
10 could decide how CEQA should apply to a global condition like climate change in the context of
11 considering the GHG impacts of any particular project. Instead, the Supreme Court identified four
12 “potential pathways” for CEQA compliance. Notably, none of these was the “net zero” threshold
13 adopted by CARB in its 2017 Scoping Plan.

14 168. The California Supreme Court has declined to mandate, under CEQA, a non-
15 statutory GHG threshold. Instead, the California Supreme Court has recognized that this area
16 remains in the province of the Legislature, which has acted through directives such as SB 375.
17 *Cleveland National Forest Foundation v. San Diego Assn. of Gov’ts* (2017) 3 Cal.5th 497
18 (“*SANDAG*”).

19 169. As explained in The Two Hundred’s comment letter, and referenced academic and
20 other studies in that letter, the top litigation targets of CEQA lawsuits statewide are projects that

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22 ⁸³ See Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
23 Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016),
24 <https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf>, p. 10-12 (stating Governor Brown’s 2016 conclusion that CEQA litigation reform was
25 politically impossible because labor unions use litigation threats to “hammer” project sponsors
26 into agreeing to enter into union labor agreements, and Building Trades Council lobbyist Caesar
27 Diaz testimony in “strong opposition” to legislative proposal to require disclosure of the identity
28 and interests of those filing CEQA lawsuits at the time CEQA lawsuits are filed, rather than at the
end of the litigation process when seeking attorneys’ fees, wherein Mr. Diaz concluded that
requiring such disclosure would “dismantle” CEQA).

⁸⁴ Legislative Analyst’s Office, California’s High Housing Costs: Causes and Consequences, May
17, 2015, <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

⁸⁵ See *Id.*

1 include housing.⁸⁶ Over a three year period in the SCAG region, nearly 14,000 housing units were
2 challenged in CEQA lawsuits, even though 98% of these units were located in already developed
3 existing communities and 70% were located within a short distance of frequent transit and other
4 existing infrastructure and public services. This and a referenced prior study also showed that the
5 vast majority of CEQA lawsuits filed statewide are against projects providing housing,
6 infrastructure and other public services and employment uses within existing communities.⁸⁷

7 170. Thus, the same minority families victimized by the housing-induced poverty crisis,
8 and forced to drive ever longer distances to qualify for housing they can afford to rent or buy are
9 disproportionately affected by CEQA lawsuits attacking housing projects that are proximate to
10 jobs.

11 171. Expanding CEQA to require only future occupants of acutely needed housing units
12 to double- and triple-pay to get to and from work with a CEQA mitigation obligation to purchase
13 GHG offsets to satisfy a “net zero” threshold unlawfully and unfairly discriminates against new
14 occupants in violation of equal protection and due process.

15 172. Finally, CARB’s “net zero” threshold fails to address the likelihood that it will
16 actually be counterproductive because of “leakage” of California residents driven out to other
17 states because of unaffordable housing prices.⁸⁸ Including this measure in the 2017 Scoping Plan
18 bypasses statutory requirements to discourage and minimize “leakage”—movement of
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20 ⁸⁶ See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California’s
21 Housing Crisis, 24 Hastings Env’tl. L.J. (2018),
22 [https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.p](https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf)
23 [df](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf); see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
24 Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016),
25 [https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALaws](https://www.hklaw.com/files/Uploads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf)
26 [uits.pdf](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/); Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the
27 Environment: Litigation Abuse Under CEQA (August 2015),
28 [https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/)
[ceqa-august-2015/](https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/)

⁸⁷ *Ibid.*

⁸⁸ California experienced a net loss of 556,710 former residents to other states during 2010 to
2017. U.S. Census Bureau, Table 4. Cumulative Estimates of the Components of Resident
Population Change for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July
1, 2017 (NST-EST2017-04) (Dec. 2017),
<https://www.census.gov/data/datasets/2017/demo/popest/nation-total.html>.

1 economically productive activities to other states or countries that have much higher GHG
2 emissions on a per capita basis than California. Imposing “net zero” standards that end up
3 shutting down or blocking economic activities in California results in a global increase in GHGs
4 when those activities move to other states or countries with higher per capita GHG emissions.⁸⁹

5 173. It is noteworthy that the GWSA and SB 32 “count” only GHG emissions produced
6 within the state, and from the generation of out-of-state electricity consumed in the state. When a
7 family moves from California to states such as Texas (nearly three times higher per capita GHG
8 emissions) or Nevada (more than double California’s per capita GHG emissions), *global* GHG
9 emissions increase even though California’s GHG emissions decrease.

10 174. The housing crisis has resulted in a significant emigration of families that cannot
11 afford California housing prices, and this emigration increases global GHG emissions—precisely
12 the type of “cumulative” contribution to GHGs that OPR explains should be evaluated under
13 CEQA, rather than CARB’s net zero GHG threshold which numerically-focuses on project-level
14 GHG emissions and mitigation.⁹⁰

15 175. The Scoping Plan’s CEQA threshold is appropriately justiciable, and should be
16 vacated for the reasons set forth herein.

17 3. Unlawful Per Capita GHG Targets for Local Climate Action Plans

18 176. California’s per capita GHG emissions are already far lower than all but two
19 states. The only state with low per capita GHG emissions that is comparable to California is New
20 York, which has a lower per capita GHG emission level but also six nuclear power plants

21 ⁸⁹ Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move*
22 *In*, The Sacramento Bee (Mar. 5, 2017),
23 <http://www.sacbee.com/news/state/california/article136478098.html>; Drew Lynch, *Californians*
24 *Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017),
<https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/>;
U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

25 ⁹⁰ Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move*
26 *In*, The Sacramento Bee (Mar. 5, 2017),
27 <http://www.sacbee.com/news/state/california/article136478098.html>; Drew Lynch, *Californians*
28 *Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017),
<https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/>;
U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

1 (compared to California’s one) as well as more reliable hydropower from large dams that are less
2 affected by the cyclical drought cycles affecting West Coast rivers.⁹¹

3 177. California’s current very low per capita GHG emissions are approximately 11
4 MMTCO₂e.

5 178. The existing CEQA Guidelines include a provision that allows projects that
6 comply with locally-adopted “climate action plans” (“CAPs”) to conclude that project-related
7 GHG emissions are less than significant, and thus require no further mitigation that would add to
8 the cost of new housing projects.

9 179. In *Newhall, supra*, 62 Cal.4th at 230, the California Supreme Court endorsed
10 CAPs, and wrote that a project’s compliance with an approved CAP could be an appropriate
11 “pathway” for CEQA compliance. No local jurisdiction is required by law to adopt a CAP, but if
12 a CAP is adopted, then the Supreme Court has held that it must have enforceable measures to
13 actually achieve the CAP’s GHG reduction target. *SANDAG, supra*, 3 Cal.5th 497.

14 180. The CAP compliance pathway through CEQA was upheld in *Mission Bay Alliance*
15 *v. Office of Community Invest. & Infrastructure* (2016) 6 Cal.App.5th 160. This compliance
16 pathway provides a more streamlined, predictable, and generally cost-effective pathway for
17 housing and other projects covered by the local CAP.

18 181. In stark contrast, CARB’s unlawful new per capita GHG requirements effectively
19 direct local governments—cities and counties—to adopt CAPs that reduce per capita GHG
20 emissions from eleven to six MMTCO₂e per capita by 2030, and to two MMTCO₂e per capita by
21 2050. This mandate is unlawful.

22 182. First, CARB has no statutory authority to impose any 2050 GHG reduction
23 measure in CAPs or otherwise since the Legislature has repeatedly declined to adopt a 2050 GHG
24 target (including by rejecting earlier versions of SB 32 that included such a 2050 target), and the
25 California Supreme Court has declined to interpret CEQA to mandate a 2050 target based on an
26 Executive Order. *SANDAG, supra*, 3 Cal.5th at 509; *Newhall, supra*, 62 Cal.4th at 223.

27 _____
28 ⁹¹ U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

1 183. Second, the Scoping Plan attributes the vast majority of state GHG emissions to
2 transportation, energy, and stationary source sectors over which local governments have little or
3 no legal jurisdiction or control. A local government cannot prohibit the sale or use of gasoline or
4 diesel-powered private vehicles, for example—nor can a local government regulate and redesign
5 the state’s power grid, or invent and mandate battery storage technology to capture intermittent
6 electricity produced from solar and wind farms for use during evening hours and cloudy days.

7 184. The limited types of GHG measures that local governments can mandate (such as
8 installation of rooftop solar, water conservation, and public transit investments) have very
9 small—or no—measurable quantitative effect on GHG emission reductions. The 2017 Scoping
10 Plan Appendix recommending local government action does not identify any measure that would
11 contribute more than a tiny fraction toward reducing a community’s per capita GHG emissions to
12 six metric tons or two metric tons, respectively.

13 185. Additionally, under state law, local governments’ authority to require more
14 aggressive GHG reductions in buildings is subject to a cost-effectiveness test decided by the
15 California Building Standards Commission (“CBSC”)—the same CBSC that has already
16 determined that “net zero”, even for single family homes and even for just the electricity used in
17 such homes, is *not* yet feasible or cost-effective to impose.⁹²

18 186. Third, it is important to consider the per capita metrics that the 2017 Scoping Plan
19 wants local governments to achieve in their localized climate action plans in a real world context.
20 Since most of the world’s energy is still produced from fossil fuels, energy consumption is still
21 highly correlated to economic productivity and per capita incomes and other wealth-related
22 metrics such as educational attainment and public health.⁹³ The suggested very low per capita
23

24 ⁹² California Energy Commission, 2019 Building Energy Efficiency Standards PreRulemaking
25 Presentation - Proposed 2019 Building Energy Efficiency Standards ZNE Strategy (Aug. 24,
2017), [http://docketpublic.energy.ca.gov/PublicDocuments/17-BSTD-
01/TN220876_20170824T105443_82217_ZNE_Strategy_Presentation.pdf](http://docketpublic.energy.ca.gov/PublicDocuments/17-BSTD-01/TN220876_20170824T105443_82217_ZNE_Strategy_Presentation.pdf).

26 ⁹³ See Mengpin Ge, Johannes Friedrich, and Thomas Damassa, 6 Graphs Explain the World’s
27 Top 10 Emitters, World Resources Institute (Nov. 25, 2014), [https://wri.org/blog/2014/11/6-
graphs-explain-world%E2%80%99s-top-10-emitters](https://wri.org/blog/2014/11/6-graphs-explain-world%E2%80%99s-top-10-emitters) (see tables entitled “Per Capita Emissions
28 for Top 10 Emitters” and “Emissions Intensity of Top 10 Emitters” showing that emissions are
generally linked to GDP).

1 metrics in the 2017 Scoping Plan are currently only achieved by countries with struggling
2 economies, minimal manufacturing and other higher wage middle income jobs, and extremely
3 high global poverty rates.

4 187. Growing economies such as China and India bargained for, and received,
5 permission to substantially increase their GHG emissions under the Paris Accord precisely
6 because economic prosperity remains linked to energy use.⁹⁴ This is not news: even in the 1940's,
7 the then-Sierra Club President confirmed that inexpensive energy was critical to economic
8 prosperity AND environmental protection.

9 188. Nor has CARB provided the required economic or environmental analysis that
10 would be required to try to justify its irrational and impractical new per capita GHG target
11 requirements. As with CARB's project-level "net zero" CEQA threshold, the per capita CEQA
12 expansion for CAPs does not quantify the GHG emission reductions to be achieved by this
13 measure.

14 189. Finally, these targets effectively create CEQA thresholds as compliance with a
15 CAP is recognized by the California Supreme Court as a presumptively valid CEQA compliance
16 pathway. *Newhall, supra*, 62 Cal.4th at 230 (stating that local governments can use climate action
17 plans as a basis to tier or streamline project-level CEQA analysis). The targets clearly establish
18 CARB's position on what would (or would not) be consistent with the 2017 Scoping Plan and the
19 State's long-term goals. Courts have stated that GHG determinations under CEQA must be
20 consistent with the statewide CARB Scoping Plan goals, and that CEQA documents taking a
21 goal-consistency approach to significance need to consider a project's effects on meeting the
22 State's longer term post-2020 goals. Thus, these per capita targets are essentially self-
23 implementing CEQA requirements that lead and responsible agencies will be required to use.

24 190. The CAP measure thus effectively eliminates the one predictable CEQA GHG
25 compliance pathway that has been upheld by the courts, compliance with an adopted CAP. The
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27 ⁹⁴ Marianne Lavelle, *China, India to Reach Climate Goals Years Early, as U.S. Likely to Fall Far*
28 *Short*, Inside Climate News (May 16, 2017), <https://insideclimatenews.org/news/15052017/china-india-paris-climate-goals-emissions-coal-renewable-energy>.

1 pathway that CARB’s per capita GHG targets would unlawfully displace is fully consistent with
2 the existing CEQA Guidelines adopted pursuant to full rulemaking procedures based on express
3 Legislative direction.

4 191. In short, the 2017 Scoping Plan directs local governments to adopt CAPs—which
5 the Supreme Court has explained must then be enforced—with per capita numeric GHG reduction
6 mandates in sectors that local governments have no legal or practical capacity to meet, without
7 any regard for the consequential losses to middle income jobs in manufacturing and other
8 business enterprises, or to the loss of tax revenues and services from such lost jobs and
9 businesses,⁹⁵ or to the highly disparate impact that such anti-jobs measures would have on
10 minority populations already struggling to get out of poverty and afford housing.

11 192. While the 2017 Scoping Plan acknowledges that some local governments may
12 have difficulty achieving the per capita targets if their communities have inherently higher GHG
13 economic activities, such as agriculture or manufacturing, such communities are required to
14 explain why they cannot meet the numeric targets—and withstand potential CEQA lawsuit
15 challenges from anyone who can file a CEQA lawsuit.

16 193. As with CARB’s project-level “net zero” CEQA threshold, CARB’s new per
17 capita GHG targets are entirely infeasible, unlawful, and disparately affect those in most need of
18 homes they can afford with jobs that continue to exist in manufacturing, transportation, and other
19 sectors having GHG emissions that are outside the jurisdiction and control of local governments.

21 ⁹⁵ Just four states—Ohio, Pennsylvania, Georgia and Indiana—collectively have a population and
22 economy comparable with California. With a combined gross product of \$2.25 trillion in 2016,
23 these four states would be the 8th largest economy in the world if considered a nation. Yet despite
24 achieving five times more GHG emission reductions than California since 2007, in 2016 these
25 four states had 560,000 fewer people in poverty and 871,000 more manufacturing jobs (including
26 200,000 new jobs from 2009 to 2017 compared with just 53,000 in California). U.S. Bureau of
27 Labor Statistics, Monthly Total Nonfarm Employment, Seasonally Adjusted,
28 <https://www.bls.gov/data/>; U.S. Bureau of Economic Analysis, Table 3. Current-Dollar Gross
Domestic Product (GDP) by State, 2016:Q1-2017:Q3,
https://www.bea.gov/newsreleases/regional/gdp_state/qgdpstate_newsrelease.htm; Liana Fox,
The Supplemental Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261 (Sept.
21, 2017), <https://www.census.gov/library/publications/2017/demo/p60-261.html>; U.S. Census
Bureau, 2016 American Community Survey 1-Year Estimates, Table B15001, Sex by age by
educational attainment for the population 18 years and over, <https://factfinder.census.gov/>.

1 They are also inconsistent with current standards and common sense and result in unjustifiable
2 disproportionate adverse impacts on California minorities, including Petitioners.

3 **4. Appendix C “Vibrant Communities” Policies Incorporating Unlawful**
4 **VMT, “Net Zero” and CO2 Per Capita Standards**

5 194. Chapter 5 of CARB’s 2017 Scoping Plan explains that notwithstanding the other
6 GHG Housing Measures (*e.g.*, the VMT reduction mandated in Chapter 2), California must do
7 “more” to achieve the 2030 Target. With this in mind, CARB purports to empower eight new
8 state agencies—including itself—with a new, non-legislated role in the plan and project approval
9 process for local cities and counties. This hodgepodge of unlegislated, and in many cases
10 Legislatively-rejected, new “climate” measures is included in what the Scoping Plan calls a
11 “Vibrant Communities” appendix.

12 195. Cities and counties have constitutional and statutory authority to plan and regulate
13 land use, and related community-scale health and welfare ordinances. Cities and counties are also
14 expressly required to plan for adequate housing supplies, and in response to the housing crisis and
15 resulting poverty and homeless crisis, in 2017 the Legislature enacted 15 new bills designed to
16 produce more housing of all types more quickly. These include: Senate Bills (“SB”) 2, SB 3, SB
17 35, SB 166, SB 167, SB 540, SB 897, and Assembly Bills (“AB”) 72, AB 73, AB 571, AB 678,
18 AB 1397, AB 1505, AB 1515, and AB 1521.

19 196. The Legislature has periodically, and expressly, imposed new statutory obligations
20 on how local agencies plan for and approve land use projects. For example, in recent years, the
21 Legislature required a greater level of certainty regarding the adequacy of water supplies as well
22 as expressly required new updates to General Plans, which serve as the “constitution” of local
23 land use authority, to expressly address environmental justice issues such as the extent to which
24 poor minority neighborhoods are exposed to disproportionately higher pollution than wealthier
25 and whiter neighborhoods.

26 197. Local government’s role in regulating land uses, starting with the Constitution and
27 then shaped by scores of statutes, is where the “rubber hits the road” on housing: without local
28

1 government approval of housing, along with the public services and infrastructure required to
2 support new residents and homes, new housing simply cannot get built.

3 198. The Legislature has repeatedly authorized and/or directed specific agencies to have
4 specific roles in land use decisionmaking.

5 199. The Legislature also is routinely asked to impose limits on local land use controls
6 that have been rejected during the legislative process, such as the VMT reduction mandates
7 described above. The Vibrant Communities Scoping Plan appendix is a litany of new policies,
8 many of which were previously considered and rejected by the Legislature, directing eight state
9 agencies to become enmeshed in directing the local land use decisions that under current law
10 remain within the control of cities and counties (and their voting residents) and not within any
11 role or authority delegated by the Legislature.

12 200. Just a few examples of Vibrant Community Scoping Plan measures adopted by
13 CARB that have been expressly considered and rejected by the Legislature or are not legal
14 include:

15 (A) **Establishing mandatory development area boundaries (urban growth**
16 **boundaries) around existing cities**, that cannot be changed even if approved by local voters as
17 well as the city and county, to encourage higher density development (*e.g.*, multi-story apartments
18 and condominiums) and to promote greater transit use and reduce VMT. An authoritative study
19 that CARB funded, as well as other peer reviewed academic studies, show that there is no
20 substantial VMT reduction from these high density urban housing patterns—although there is
21 ample confirmation of “gentrification” (displacement of lower income, disproportionately
22 minority) occupants from higher density transit neighborhoods to distant suburbs and exurbs
23 where workers are forced to drive greater distances to their jobs.⁹⁶ Mandatory urban growth
24 boundaries have been routinely rejected in the Legislature. See AB 721 (Matthews, 2003)

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26
27 ⁹⁶ UCLA Department of Urban and Regional Planning, *Oriented For Whom? The Impacts of*
28 *TOD on Six Los Angeles Neighborhoods* (June 2, 2015),
http://www.urbandisplacement.org/sites/default/files/images/spring_2015_tod.pdf.

1 (proposing the addition of mandatory urban growth boundaries in the land use element of
2 municipalities' general plans).

3 (B) **Charging new fees for cities and counties to pay for “eco-system services”**
4 such as carbon sequestration from preserved vegetation on open space forests, deserts,
5 agricultural and rangelands. Taxes or fees could not be imposed on residents of Fresno or Los
6 Angeles to pay for preservation of forests in Mendocino or watersheds around Mount Lassen
7 unless authorized by votes of the people or the Legislature—*except* that payment of fees has
8 become a widespread “mitigation measure” for various “impacts” under CEQA. The 2017
9 Scoping Plan’s express approval of the “Vibrant Communities” Appendix creates a massive
10 CEQA mitigation measure work-around that can be imposed in tandem with agency approvals of
11 local land use plans and policies that entirely bypasses the normal constitutional and statutory
12 requirements applicable to new fees and taxes. Since CEQA applies only to new agency
13 approvals, this unlawful and unauthorized framework effectively guarantees that residents of
14 newly-approved homes will be required to shoulder the economic costs of the additional
15 “mitigation” measures. This idea of taxation has been rejected by voter initiatives such as
16 Proposition 13 (which limits ad valorem tax on real property to 1 percent and requires a 2/3 vote
17 in both houses to increase state tax rates or impose local special taxes) and Proposition 218
18 (requiring that all taxes and most charges on property owners are subject to voter approval).

19 (C) **Intentionally worsening roadway congestion**, even for voter-funded and CARB-
20 approved highway and roadway projects, to “induce” people to rely more on walking, biking, and
21 public transit, and reduce VMT. Efficient goods movement, and avoidance of congestion, on
22 California’s highways and roads is required under both federal and state transportation and air
23 quality laws. This component of “Vibrant Communities” is another example of a VMT reduction
24 mandate, but is even more flatly inconsistent with applicable laws and common sense. Voters
25 have routinely approved funding for new carpool lanes and other congestion relief projects. The
26 goods movement industry—which is linked to almost 40% of all economic activity in Southern
27 California and is critical to agricultural and other product-based business sectors throughout
28

1 California—cannot function under policies that intentionally increase congestion.⁹⁷ CARB has
2 itself approved hundreds of highway improvement projects pursuant to the Legislative mandates
3 in SB 375—yet the “Vibrant Communities” appendix unilaterally rejects this by telling
4 Californians not to expect any relief from gridlock, ever again. The Legislature and state agencies
5 have also consistently rejected VMT reduction mandates. See SB 150 (Allen, 2017) (initially
6 requiring regional transportation plans to meet VMT reductions but modified before passage); SB
7 375 (Steinberg, 2008) (early version stating bill would require regional transportation plan to
8 include preferred growth scenario designed to achieve reductions in VMT but modified before
9 passage).

10 (D) **Mileage-based road pricing strategies which charge a fee per miles driven.**

11 These types of “pay as you drive” fees are barred by current California law, which prohibits local
12 agencies from “imposing a tax, permit fee or other charge” in ways that would create congestion
13 pricing programs. Vehicle Code § 9400.8. Yet CARB attempts to override a Legislative mandate
14 via the 2017 Scoping Plan and its “Vibrant Communities” strategies.

15 201. Through the Vibrant Communities strategies, CARB attempts to give state
16 agencies expansive authority and involvement in city and county decisionmaking. The 2017
17 Scoping Plan asserts that the Vibrant Communities strategies will reduce GHG emissions by an
18 amount that is “necessary” to achieving California’s 2030 Target. However, no effort is made by
19 CARB to quantify the reductions it anticipates would result from injecting these agencies into
20 local decisionmaking processes. Instead, CARB merely states that the “Vibrant Communities”
21 appendix is a supposedly-necessary step to meet the 2030 Target.

22 202. The eight named state agencies CARB attempts to give unauthorized authority
23 over local actions are:⁹⁸

24 ⁹⁷ Edward Humes, *Four Easy Fixes for L.A. Traffic*, L.A. Times (Apr. 10, 2016),
25 <http://www.latimes.com/opinion/livable-city/la-oe-humes-why-cant-trucks-and-cars-just-get-along-20160410-story.html>; Eleanor Lamb, *California Eyes Future Projects to Relieve Freight*
26 *Congestion*, Transport Topics (Mar. 26, 2018), <http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion>.

27 ⁹⁸ Several of the eight named agencies are parent agencies, each of which has several subordinate
28 agencies and departments. If these are counted, they collectively elevate the number of state agencies being coopted to join in CARB’s local land use power grab to nearly twenty.

1 (1) **Business, Consumer Services and Housing Agency**, which among other
2 subordinate agencies includes the Department of Housing and Community Development (HCD),
3 which alone among these agencies has direct statutory responsibility for designating housing
4 production and corresponding land use planning requirements for cities and counties;

5 (2) **California Environmental Protection Agency**, which is the parent agency for
6 CARB as well as several other agencies and departments;

7 (3) **California Natural Resources Agency**, another parent agency of subordinate
8 agencies and departments;

9 (4) **California State Transportation Agency**, most notably **Caltrans** – which the
10 Scoping Plan would redirect from implementing their statutory responsibilities to reduce
11 congestion and facilitate transportation on the state’s highways to instead advancing CARB’s
12 “road diet” policy of intentionally increasing congestion to satisfy CARB’s desire to induce more
13 public transit ridership;

14 (5) **California Health and Human Services Agency**, which among other duties
15 administers health and welfare assistance programs;

16 (6) **California Department of Food and Agriculture**, which among other duties
17 regulates food cultivation and production activities;

18 (7) **Strategic Growth Council**, formed in 2008 by SB 732, which is tasked with
19 “coordinating” activities of state agencies to achieve a broad range of goals but has no
20 independent statutory authority to regulate housing or local land use plans and projects; and

21 (8) **Governor’s Office of Planning and Research**, which has statutory responsibility
22 to issue the CEQA Guidelines as well as “advisory” guidelines for local agency preparation of
23 General Plans pursuant to Gov. Code § 65040.

24 203. The “Vibrant Communities” Appendix includes provisions that conflict with
25 applicable law and/or have been rejected by the Legislature and cannot now be imposed by
26 CARB through the 2017 Scoping Plan given California’s comprehensive scheme of agency-
27 allocated land use obligations (certain agencies—such as California Department of Fish and
28

1 Game, the Regional Water Quality Control Boards, and the Coastal Commission—already
2 possess land use authority or obligations based on statutory or voter-approved schemes).

3 204. If CARB intends that other agencies be imbued with similar land use authority, it
4 should ask the Legislature for such authority for those agencies, not its own Board. The “Vibrant
5 Communities” Appendix should be struck from the 2017 Scoping Plan for this reason.

6 205. Less housing that is more expensive (urban growth boundary)⁹⁹, increased housing
7 cost (CEQA mitigation measure fees), and ever-worsening gridlock resulting in ever-
8 lengthier commutes with ever-increasing vehicular emissions and ever-reduced time at home with children,
9 is the dystopian “necessity” built into the “Vibrant Communities” appendix.

10 206. Bureaucrats and tech workers in the “keyboard” economy who can work remotely,
11 with better wages, benefits and job security that remove the economic insecurity of lifetime renter
12 status, should be just fine. They can live in small apartments in dense cities filled with coffee
13 shops and restaurants, rely on home delivery of internet-acquired meals and other goods, and
14 enjoy “flextime” jobs that avoid the drudgery of the five-day work week model.

15 207. But for the rest of the California populace—including particularly the people
16 (disproportionately minorities) staffing those restaurants and coffee shops, delivering those
17 goods, providing home healthcare and building and repairing our buildings and infrastructure, and
18 those Californians that are actually producing food and manufacturing products that are
19 consumed in California and around the world—“Vibrant Communities” is where they can’t afford
20 to live, where they sleep in their cars during the week, where they fall into homelessness for
21 missing rental payments because of an illness or injury to themselves or a family member.¹⁰⁰ For
22 these folks, “Vibrant Communities” amounts to an increase in poverty, homelessness, and
23 premature “despair deaths” as well as permanent drop outs from the work force.

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25 _____
26 ⁹⁹ Shishir Mathur, *Impact of Urban Growth Boundary on Housing and Land Prices: Evidence*
27 *from King County, Washington*, *Journal of Housing Studies* Vol. 29 – Issue 1 (2014),
28 <https://tandfonline.com/doi/abs/10.1080/02673037.2013.825695>.

¹⁰⁰ Alastair Gee, *Low-income workers who live in RVs are being 'chased out' of Silicon Valley streets*, *The Guardian* (June 29 2017), <https://www.theguardian.com/us-news/2017/jun/29/low-income-workers-rvs-palo-alto-california-homeless>.

1 208. For the foregoing reasons, the “Vibrant Communities” appendix is an unlawful
2 and unconstitutional attempt by CARB to supplant existing local land use law and policy
3 processes with a top-down regime that is both counterproductive and discriminatory against
4 already-disadvantaged minority Californians, including but not limited to Petitioners.

5 **E. CARB’s Inadequate Environmental Analysis and Adverse Environmental**
6 **Effects of the 2017 Scoping Plan**

7 209. Along with the 2017 Scoping Plan, CARB prepared an EA purporting to comply
8 with CEQA requirements.¹⁰¹

9 210. Under its certified regulatory program, CARB need not comply with requirements
10 for preparing initial studies, negative declarations, or environmental impact reports. CARB’s
11 actions, however, remain subject to other provisions of CEQA. CEQA Guidelines § 15250.

12 211. CARB’s regulatory program is contained in 17 C.C.R. §§ 60005, 60006, and
13 60007. These provisions require the preparation of a staff report at least 45 days before the public
14 hearing on a proposed regulation, which report is required to be available for public review and
15 comment. It is also CARB's policy “to prepare staff reports in a manner consistent with the
16 environmental protection purposes of [ARB’s] regulatory program and with the goals and policies
17 of [CEQA].” The provisions of the regulatory program also address environmental alternatives
18 and responses to comments on the EA.

19 212. For purposes of its CEQA review, CARB defined the project as the Proposed
20 Strategy for Achieving California’s 2030 Greenhouse Gas Target (Scoping Plan) and the
21 recommended measures in the 2017 Plan (Chapter 2).

22 213. The Draft EA was released on or about January 20, 2017 for an 80-day public
23 review period that concluded on or about April 10, 2017.

24 214. On or about November 17, 2017, CARB released the Final EA. CARB did not
25 modify the Draft EA to bring it into compliance with CEQA’s requirements.

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¹⁰¹ CARB has a regulatory program certified under Pub. Res. Code § 21080.5 and pursuant to this
program CARB conducts environmental analyses to meet the requirements of CEQA.

1 215. The Final EA provides a programmatic analysis of the potential for adverse
2 environmental impacts associated with implementation of the 2017 Scoping Plan. It also
3 describes feasible mitigation measures for identified significant impacts.

4 216. The Final EA states that, although the 2017 Scoping Plan is a State-level planning
5 document that recommends measures to reduce GHG emissions to achieve the 2030 target, and its
6 approval does not directly lead to any adverse impacts on the environment, implementation of the
7 measures in the Plan may indirectly lead to adverse environmental impacts as a result of
8 reasonably foreseeable compliance responses.

9 217. The Final EA also states that CARB expects that many of the identified potentially
10 significant impacts can be feasibly avoided or mitigated to a less-than-significant level either
11 when the specific measures are designed and evaluated (e.g., during the rulemaking process) or
12 through any project-specific approval or entitlement process related to compliance responses,
13 which typically requires a project-specific environmental review.

14 218. The EA violated CEQA by failing to comply with its requirements in numerous
15 ways, as described below.

16 **1. Deficient Project Description**

17 219. The EA's Project description was deficient because CARB did not assess the
18 "whole of the project" as required by CEQA. The GHG Housing Measures are included in the
19 2017 Scoping Plan (in Chapters 2 and 5) and thus the "project" for CEQA purposes should have
20 been defined to include potential direct and indirect impacts on the environment from the four
21 GHG Housing Measures. Instead, CARB described the Project for CEQA purposes as the
22 measures only in Chapter 2 of the 2017 Scoping Plan.

23 220. CARB has acknowledged that Chapter 5 of the 2017 Scoping Plan (which sets out
24 the new GHG Housing Measures) was not part of what it analyzed in issuing the Scoping Plan. In
25 CARB's words, "These recommendations in the 'Enabling Local Action' subchapter of the
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1 Scoping Plan are not part of the proposed ‘project’ for purposes of CEQA review.”¹⁰² Thus,
2 CARB admits that it did not even pretend to analyze the consequences of the provisions of
3 Chapter 5 of the Scoping Plan.

4 221. The VMT reduction requirement is part of the Scoping Plan Scenario presented in
5 Chapter 2 in the “Mobile Source Strategy”.¹⁰³ Chapter 2 is included in the description of the
6 Project in the EA but Chapter 5 is not, despite the fact that the VMT reduction mandate is found
7 in both chapters.

8 222. For this reason, CARB applied an unreasonable and unlawful “project” definition
9 and undermined CEQA’s informational and decision-making purposes.

10 2. Improper Project Objectives

11 223. The Project objectives in the EA are also improperly defined in relation to the
12 2017 Scoping Plan, the unlawful GHG Housing Measures, and the goals explained in the 2017
13 Scoping Plan.¹⁰⁴ The EA states that the primary objectives of the 2017 Scoping Plan are:

- 14 • Update the Scoping Plan for achieving the maximum technologically feasible and
15 cost-effective reductions in GHG emissions to reflect the 2030 target;
- 16 • Pursue measures that implement reduction strategies covering the State’s GHG
17 emissions in furtherance of executive and statutory direction to reduce GHG
18 emissions to at least 40 percent below 1990 levels by 2030;
- 19 • Increase electricity derived from renewable sources from one-third to 50 percent;
- 20 • Double efficiency savings achieved at existing buildings and make heating fuels
21 cleaner;
- 22 • Reduce the release of methane and other short-lived climate pollutants;

24 ¹⁰² Supplemental Responses to Comments on the Environmental Analysis Prepared for the
25 Proposed Strategy for Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p.
14-16, <https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

26 ¹⁰³ Scoping Plan, p. 25 Table 1: Scoping Plan Scenario (listing Mobile Source Strategy (Cleaner
Technology and Fuels [CTF] Scenario)).

27 ¹⁰⁴ Appendix F to 2017 Scoping Plan, Final Environmental Analysis for the Strategy for
28 Achieving California’s 2030 Greenhouse Gas Target, p. 10-11,
https://www.arb.ca.gov/cc/scopingplan/2030sp_appf_finalea.pdf.

- 1 • Pursue emission reductions that are real, permanent, quantifiable, verifiable and
- 2 enforceable;
- 3 • Achieve the maximum technologically feasible and cost-effective reductions in
- 4 GHG emissions, in furtherance of reaching the statewide GHG emissions limit;
- 5 • Minimize, to the extent feasible, leakage of emissions outside of the State;
- 6 • Ensure, to the extent feasible, that activities undertaken to comply with the
- 7 measures do not disproportionately impact low-income communities;
- 8 • Ensure, to the extent feasible, that activities undertaken pursuant to the measures
- 9 complement, and do not interfere with, efforts to achieve and maintain the
- 10 NAAQS and CAAQS and reduce toxic air contaminant (“TAC”) emissions;
- 11 • Consider overall societal benefits, including reductions in other air pollutants,
- 12 diversification of energy sources, and other benefits to the economy, environment,
- 13 and public health;
- 14 • Minimize, to the extent feasible, the administrative burden of implementing and
- 15 complying with the measure;
- 16 • Consider, to the extent feasible, the contribution of each source or category of
- 17 sources to statewide emissions of GHGs;
- 18 • Maximize, to the extent feasible, additional environmental and economic benefits
- 19 for California, as appropriate;
- 20 • Ensure that electricity and natural gas providers are not required to meet
- 21 duplicative or inconsistent regulatory requirements.

22 224. Because CARB used the unlawful “cumulative gap” methodology to calculate the
23 emission reductions that it was required to achieve by 2030, the 2017 Scoping Plan does not meet
24 the project objectives as described in the EA, *i.e.*, to meet the 2030 Target.

25 225. As explained throughout this Petition, CARB’s 2017 Scoping Plan and the
26 unlawful GHG Housing Measures are not cost-effective, are contrary to law, are not equitable to
27 all Californians, and will increase criteria and TAC emissions preventing attainment of the
28 NAAQS and CAAQS

1 226. For this reason, other alternatives to the 2017 Scoping Plan, including an
2 alternative without the GHG Housing Measures, should have been assessed in the EA.

3 **3. Illegal Piecemealing**

4 227. CEQA requires an environmental analysis to consider the whole of the project and
5 not divide a project into two or more pieces to improperly downplay the potential environmental
6 impacts of the project on the environment.

7 228. CARB improperly piecemealed its 2017 Scoping Plan and the GHG Housing
8 Measures within it from its similar and contemporaneous SB 375 GHG target update.¹⁰⁵ Both
9 projects address mandated GHG reductions based on VMT and thus should have been addressed
10 as one project for CEQA purposes.

11 229. In separately issuing the 2017 Scoping Plan and the SB 375 GHG target update,
12 CARB improperly piecemealed a project under CEQA and thus the EA is inadequate as a matter
13 of law.

14 **4. Inadequate Impact Analysis**

15 230. The analysis in the EA also was deficient because the EA did not analyze impacts
16 from implementing the four GHG Housing Measures in Chapter 5, including, but not limited to,
17 the CEQA net zero threshold, the VMT limits, and per capita GHG CAP targets, and the suite of
18 Vibrant Communities measures.

19 231. Potential environmental impacts from these GHG Housing Measures overlap
20 substantially with similar high density, transit-oriented, automobile use reduction measures
21 included in regional plans to reduce GHGs from the land use and transportation sectors under SB
22 375. CARB has reviewed and approved more than a dozen SB 375 regional plans, each of which
23 is informed by its own “programmatic environmental impact report (“PEIR”).

24 232. Each PEIR for each regional plan has identified multiple significant adverse
25 environmental impacts which cannot be avoided or further reduced with feasible mitigation
26

27 ¹⁰⁵ California Air Resources Board, Updated Final Staff Report, Proposed Update to the SB 375
28 Greenhouse Gas Emission Reduction Targets (Feb. 2018),
<https://www.arb.ca.gov/cc/sb375/sb375.htm>.

1 measures or alternatives.¹⁰⁶ In the first regional plan adopted for the SCAG region, California’s
2 most-populous region, the PEIR compared the impacts of developing all new housing within
3 previously-developed areas in relation to developing half of such new housing in such areas, and
4 the other half in previously-undeveloped areas near existing major infrastructure like freeways.

5 233. The SCAG 2012 PEIR concluded that the all-infill plan caused substantially more
6 unavoidable significant adverse environmental impacts in relation to the preferred plan which
7 divided new development equally between infill and greenfield locations.¹⁰⁷

8 234. Following public comments and refinement of the PEIR (inclusive of the addition
9 and modification of various mitigation measures to further reduce significant adverse
10 environmental impacts), SCAG approved the mixed infill/greenfield plan instead of the all-infill
11 alternative. CARB then approved SCAG’s plan—first in 2012 and then again in 2016—as
12 meeting California’s applicable statutory GHG reduction mandates.¹⁰⁸

13 235. The Scoping Plan’s GHG Housing Measures now direct an infill only (or mostly
14 infill) outcome, which SCAG’s 2012 PEIR assessed and concluded caused far worse
15 environmental impacts, even though it would result in fewer GHG emissions. In other words,
16 SCAG’s PEIR—and the other regional land use and transportation plan PEIRs prepared under SB
17 375—all disclosed a panoply of adverse non-GHG environmental impacts of changing
18 California’s land use patterns, and shaped both their respective housing plans and a broad suite of
19 mitigation measures to achieve California’s GHG reduction mandates while minimizing other
20 adverse environmental impacts to California.

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22
23 _____
24 ¹⁰⁶ See SB 375 “Sustainable Communities Strategies” review page at
25 <https://www.arb.ca.gov/cc/sb375/sb375.htm>, which includes links to the regional land use and
26 transportation plans for multiple areas (which then further link to the PEIRs).

27 ¹⁰⁷ SCAG, Final PEIR for the 2012-2035 RTP/SCS (April 2012),
28 <http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx>.

¹⁰⁸ CARB Executive Order accepted the SCAG determination that its regional plan that balanced
infill and greenfield housing development, and increased transit investments to encourage greater
transit use without any VMT reduction mandate, would meet the GHG reduction targets
mandated by law. See generally <https://www.arb.ca.gov/cc/sb375/sb375.htm>.

1 236. CARB's willful refusal to acknowledge, let alone analyze, the numerous non-GHG
2 environmental impacts of its GHG Housing Measures in the 2017 Scoping Plan EA is an
3 egregious CEQA violation.

4 237. Based on the greater specificity and the significant unavoidable adverse non-GHG
5 environmental impacts identified in regional SB 375 plan PEIRs, the EA here clearly did not fully
6 analyze the potential adverse environmental impacts from creating high-density, transit-oriented
7 development that will result from the measures in the 2017 Scoping Plan, such as:

- 8 • Aesthetic impacts such as changes to public or private views and character of existing
9 communities based on increased building intensities and population densities;
- 10 • Air quality impacts from increases in GHG, criteria pollutants, and toxic air
11 contaminant emissions due to longer commutes and forced congestion that will occur
12 from the implementation of the VMT limits in the 2017 Scoping Plan;
- 13 • Biological impacts from increased usage intensities in urban parks from substantial
14 infill population increases;
- 15 • Cultural impacts including adverse changes to historic buildings and districts from
16 increased building and population densities, and changes to culturally and religiously
17 significant resources within urbanized areas from increased building and population
18 densities;
- 19 • Urban agriculture impacts from the conversion of low intensity urban agricultural uses
20 to high intensity, higher density uses from increasing populations in urban areas,
21 including increasing the urban heat island GHG effect;
- 22 • Geology/soils impacts from building more structures and exposing more people to
23 earthquake fault lines and other geologic/soils hazards by intensifying land use in
24 urban areas;
- 25 • Hazards and hazardous materials impacts by locating more intense/dense housing and
26 other sensitive uses such as schools and senior care facilities near freeways, ports, and
27 stationary sources in urbanized areas;
- 28

- 1 • Hydrology and water quality impacts from increasing volumes and pollutant loads
2 from stormwater runoff from higher density/intensity uses in transit-served areas as
3 allowed by current stormwater standards;
- 4 • Noise impacts from substantial ongoing increases in construction noise from
5 increasing density and intensity of development in existing communities and ongoing
6 operational noise from more intensive uses of community amenities such as extended
7 nighttime hours for parks and fields;
- 8 • Population and housing impacts from substantially increasing both the population and
9 housing units in existing communities;
- 10 • Recreation and park impacts from increasing the population using natural preserve and
11 open space areas as well as recreational parks;
- 12 • Transportation/traffic impacts from substantial total increases in VMT in higher
13 density communities, increased VMT from rideshare/carshare services and future
14 predicted VMT increases from automated vehicles, notwithstanding predicted future
15 decrease in private car ownership;
- 16 • Traffic-gridlock related impacts and multi-modal congestion impacts including noise
17 increases and adverse transportation safety hazards in areas of dense multi-modal
18 activities;
- 19 • Public safety impacts due to impacts on first responders such as fire, police, and
20 paramedic services from congested and gridlocked urban streets; and
- 21 • Public utility and public service impacts from substantial increases in population and
22 housing/employment uses and demands on existing water, wastewater, electricity,
23 natural gas, emergency services, libraries and schools.

24 238. CARB failed to complete a comprehensive CEQA evaluation of these and related
25 reasonably foreseeable impacts from forcing all or most development into higher densities within
26 existing urban area footprints, intentionally increasing congestions and prohibiting driving, and
27 implementing each of the many measures described in the “Vibrant Communities” appendix. The
28

1 EA failed to identify, assess, and prescribe feasible mitigation measures for each of the significant
2 unavoidable impacts identified above.

3 **F. CARB’s Insufficient Fiscal Analysis and Failure To Comply with the APA’s**
4 **Cost-Benefit Analysis Requirements**

5 239. The APA sets out detailed requirements applicable to state agencies proposing to
6 “adopt, amend or repeal any administrative regulation”. Gov. Code § 11346.3.

7 240. CARB is a state agency with a statutory duty to comply with the rulemaking laws
8 and procedures set out in the APA.

9 241. The APA requires that CARB, “prior to submitting a proposal to adopt, amend, or
10 repeal a regulation to the office [of Administrative Law], shall consider the proposal’s impact on
11 business, with consideration of industries affected including the ability of California businesses to
12 compete with businesses in other states. For purposes of evaluating the impact on the ability of
13 California businesses to compete with businesses in other states, an agency shall consider, but not
14 be limited to, information supplied by interested parties.” Gov. Code § 11346.3(a) (2).

15 242. The APA further requires that “[a]n economic assessment prepared pursuant to this
16 subdivision for a major regulation proposed on or after November 1, 2013, shall be prepared in
17 accordance with subdivision (c), and shall be included in the initial statement of reasons as
18 required by Section 11346.2.” Gov. Code § 11346.3(a)(3).

19 243. CARB’s new GHG Housing Measures will have an economic impact on California
20 business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000)
21 and therefore constitute a “major regulation” within the meaning of the APA and the California
22 Department of Finance regulations incorporated therein. Gov. Code § 11346.3(c); 1 C.C.R. §
23 2000(g).

24 244. In adopting its 2017 Scoping Plan, CARB has failed to comply with these and
25 other economic impact analysis requirements of the APA.

26 245. The 2017 Scoping Plan continues CARB’s use of highly aggregated
27 macroeconomic models that provide almost no useful information about potential costs and
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1 impacts in industries and households. The LAO, an independent state agency, has consistently
2 pointed out the flaws in CARB’s approach since the first Scoping Plan was developed in 2008.

3 246. CARB’s disregard of the APA’s economic impact analysis requirements in issuing
4 the 2017 Scoping Plan is only the latest example of a repeated flouting of the APA’s requirements
5 in pursuit of its pre-determined regulatory goals. The inadequacy of CARB’s compliance with
6 APA requirements has been documented in multiple LAO documents, including the following:

- 7 ● In a November 17, 2008 letter to Assembly Member Roger Niello,¹⁰⁹ the LAO found
8 that “ARB’s economic analysis raises a number of questions relating to (1) how
9 implementation of AB 32 was compared to doing BAU, (2) the incompleteness of
10 the ARB analysis, (3) how specific GHG reduction measures are deemed to be cost-
11 effective, (4) weak assumptions relating to the low-carbon fuel standard, (5) a lack
12 of analytical rigor in the macroeconomic modeling, (6) the failure of the plan to lay
13 out an investment pathway, and (7) the failure by ARB to use economic analysis to
14 shape the choice of and reliance on GHG reduction measures.”
- 15 ● In a March 4, 2010 letter to State Senator Dave Cogdill,¹¹⁰ the LAO stated that while
16 large macroeconomic models used by CARB in updated Scoping Plan assessments
17 can “capture some interactions among broad economic sectors, industries, consumer
18 groupings, and labor markets,” the ability of these models to “adequately capture
19 behavioral responses of households and firms to policy changes is more limited.
20 Additionally, because the data in such models are highly aggregated, they capture at
21 best the behavioral responses of hypothetical “average” households and firms and do
22 not score well in capturing and predicting the range of behavioral responses to
23 policy changes that can occur for individual or subgroupings of households or firms.
24 As a result, for example, the adverse jobs impacts—including job losses associated
25 with those firms that are especially negatively impacted by the Scoping Plan—can
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27 ¹⁰⁹ LAO, http://www.lao.ca.gov/2008/rsrc/ab32/AB32_scoping_plan_112108.pdf.

28 ¹¹⁰ LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_impact/ab32_impact_030410.aspx.

1 be hard to identify since they are obscured within the average outcome.” The letter
2 further noted multiple ways that the SP could affect jobs.

- 3 ● Similarly, in a June 16, 2010 letter to Assembly Member Dan Logue,¹¹¹ the LAO
4 found that CARB’s revision to CARB’s 2008 Scoping Plan analysis “still exhibits a
5 number of significant problems and deficiencies that limit its reliability. These
6 include shortcomings in a variety of areas including modeling techniques,
7 identification of the relative marginal costs of different SP measures, sensitivity and
8 scenario analyses, treatment of economic and emissions leakages, identification of
9 the market failures used to justify the need for the regulations selected, analysis of
10 specific individual regulations to implement certain Scoping Plan measures, and
11 various data limitations.” As a result, the LAO concluded that, contrary to CARB’s
12 statutory mandates, “The SP May Not Be Cost-Efficient.” Given these and other
13 issues, it is unclear whether the current mix and relative importance of different
14 measures in the Scoping Plan will achieve AB 32’s targeted emissions reductions in
15 a cost-efficient manner as required.”

- 16 ● In a June 2017 presentation to the Joint Committee on Climate Change Policies,
17 *Overview of California Climate Goals and Policies*,¹¹² and after the draft 2017
18 Scoping Plan had been released for public review, the LAO concluded that “To date,
19 there have been no robust evaluations of the overall statewide effects—including on
20 GHG reductions, costs, and co-pollutants—of most of the state’s major climate
21 policies and spending programs that have been implemented.”

22 247. CARB’s persistent failure to address the APA’s economic analysis requirements,
23 and its penchant for “jumping the gun” by taking actions without first complying with CEQA and
24 other rulemaking requirements, also has drawn criticism from the courts.

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27 ¹¹¹ LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_logue_061610/ab32_logue_061610.pdf.

28 ¹¹² LAO, <http://lao.ca.gov/handouts/resources/2017/Overview-California-Climate-Goals-Policies-061417.pdf>.

1 248. In *Lawson v. State Air Resources Board*, 20 Cal.App.5th 77, 98, 110-116 (2018)
2 (“*Lawson*”), the Fifth District Court of Appeal, in upholding Judge Snauffer’s judgment, found
3 both that CARB “violated CEQA by approving a project too early” and that it also violated the
4 APA. The Court explained the economic impact assessment requirements of the APA
5 “granularly” to provide guidance to CARB for future actions and underscored that “an agency’s
6 decision to include non-APA compliant interpretations of legal principles in its regulations will
7 not result in additional deference to the agency”, because to give weight or deference to an
8 improperly-adopted regulation “would permit an agency to flout the APA by penalizing those
9 who were entitled to notice and opportunity to be heard but received neither.” *Id.* at 113. Despite
10 these recent warnings, CARB has chosen to proceed without complying with CEQA or the APA.

11 249. CARB’s use of the improper “cumulative gap” methodology to determine the
12 GHG reductions it claims are necessary for the 2017 Scoping Plan to meet the 2030 Target means
13 that the inputs for the CARB FA were improper. The FA, which is supposed to inform
14 policymakers and the public about the cost-effectiveness and equity of the Scoping Plan
15 measures, is based on meeting the 621 MMTCO_{2e} GHG “cumulative gap” reduction requirement
16 invented by CARB.

17 250. In fact, the final FA adopted by CARB indicates that an earlier version was based
18 on the asserted “need” to fill an even larger “cumulative gap” of 680 MMTCO_{2e}. This improper
19 analysis renders the FA and the cost analysis required under the APA invalid.

20 **G. The Blatantly Discriminatory Impacts of CARB’s 2017 Scoping Plan**

21 251. CARB has recognized that “[i]t is critical that communities of color, low-income
22 communities, or both, receive the benefits of the cleaner economy growing in California,
23 including its environmental and economic benefits.” Scoping Plan, p. 15.

24 252. The GWSA specifically provides, at H&S Code § 38565, that: “The state board
25 shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms,
26 and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and
27 private investment toward the most disadvantaged communities in California and provide an
28 opportunity for small businesses, schools, affordable housing associations, and other community

1 institutions to participate in and benefit from statewide efforts to reduce greenhouse gas
2 emissions.”

3 253. CARB’s standards, rules, and regulations also must, by statute, be consistent with
4 the state goal of providing a decent home and suitable living environment for every Californian.
5 H&S Code § 39601(c). This includes affordable housing near jobs for hard working, low-income
6 minority families.

7 254. California produces less than one percent of global GHG emissions, and has lower
8 per capita GHG emissions than any other large state except New York, which unlike California
9 still has multiple operating nuclear power plants to reduce its GHG emissions.¹¹³

10 255. As Governor Brown and many others have recognized, California’s climate
11 change leadership depends not on further mass reductions of the one percent of global GHG
12 emissions generated within California, but instead on having other states and nations persuaded to
13 follow the example already set by California.

14 256. In any event, as recently demonstrated in a joint study completed by scholars from
15 the University of California at Berkeley and regulators at the Bay Area Air Quality Management
16 District (“BAAQMD”)¹¹⁴, high wealth households cause far more global GHG emissions than
17 middle-class and poor households. The Scoping Plan ignores this undisputed scientific fact and
18 unfairly, and unlawfully, seeks to burden California’s minority and middle-class households in
19 need of affordable housing with new regulatory costs and burdens that do not affect existing,
20 wealthier homeowners who “already have theirs”.

21 257. California has the nation’s highest poverty rate, highest housing prices, greatest
22 housing shortage, highest homeless population—and highest number of billionaires.¹¹⁵ While it is

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24 ¹¹³ U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

25 ¹¹⁴ BAAQMD and Cool Climate Network at UC Berkeley, Consumption Based GHG Emissions
26 Inventory (2016), [http://www.baaqmd.gov/research-and-data/emission-inventory/consumption-
based-ghg-emissions-inventory](http://www.baaqmd.gov/research-and-data/emission-inventory/consumption-based-ghg-emissions-inventory).

27 ¹¹⁵ David Friedman, Jennifer Hernandez, California’s Social Priorities, Holland & Knight,
28 Chapman University Press (2015), <https://perma.cc/XKB7-4YK4>; Liana Fox, The Supplemental
Poverty Measure: 2016, U.S. Census Bureau Report Number: P60-261, Table A-5 (Sept. 21,
2017), <https://www.census.gov/library/publications/2017/demo/p60-261.html>.

1 not the function of the courts to address economic inequalities, the federal and state Constitutions
2 prohibit the State from enacting regulatory provisions that have the inevitable effect of
3 unnecessarily and disproportionately disadvantaging minority groups by depriving them of access
4 to affordable housing that would be available in greater quantity but for CARB’s new GHG
5 Housing Measures.

6 258. Members of hard working minority families, in contrast to wealthier white elites,
7 currently are forced to “drive until they qualify” for housing they can afford to own, or even
8 rent.¹¹⁶ As a result, long-commute minority workers and their families then suffer a cascading
9 series of adverse health, educational and financial consequences.¹¹⁷

10 259. It is well-documented and undisputed, in the record that the current housing
11 shortage—which CARB’s regulations would unnecessarily exacerbate—falls disproportionately
12 on minorities. As stated in a United Way Study, “Struggling to Get By: The Real Cost Measure in
13 California 2015”¹¹⁸: “Households led by people of color, particularly Latinos, disproportionately
14 are likely to have inadequate incomes. Half (51%) of Latino households have incomes below the
15 Real Cost Measure,¹¹⁹ the highest among all racial groups. Two in five (40%) of African
16 American households have insufficient incomes, followed by other races/ethnicities (35%), Asian
17 Americans (28%) and white households (20%).” Put simply, approximately 80% of the poorest
18 households in the State are non-white families.

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21 ¹¹⁶ Mike McPhate, *California Today: The Rise of the Super Commuter*, N.Y. Times (Aug. 21,
22 2017), <https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html>;
23 Conor Dougherty, Andrew Burton, *A 2:15 Alarm, 2 Trains and a Bus Get Her to Work by 7 A.M.*,
N.Y. Times (Aug. 17, 2017), <https://www.nytimes.com/2017/08/17/business/economy/san-francisco-commute.html>.

24 ¹¹⁷ Rebecca Smith, Here’s the impact long commutes have on your health and productivity,
25 *Business Insider* (May 22, 2017), <http://www.businessinsider.com/long-commutes-have-an-impact-on-health-and-productivity-2017-5>.

26 ¹¹⁸ Betsy Block et al, *Struggling to Get By: The Real Cost Measure in California 2015* (2016), p.
27 10,
28 https://www.norcalunitedway.org/sites/norcalunitedway.org/files/Struggling_to_Get_By_3.pdf.

¹¹⁹ The United Way study uses the “Real Cost Measure” to take account of a family budget to
meet basic needs, composed of “costs all families must address such as food, housing,
transportation, child care, out-of-pocket health expenses, and taxes.” *Id.*, p. 8.

1 260. As noted in the same report: “Housing costs can consume almost all of a
2 struggling household’s income. According to Census Bureau data, housing (rent, mortgage,
3 gas/electric) makes up 41% of household expenses in California. . . . Households living above the
4 Federal Poverty Level but below the Real Cost Measure spend almost half of their income on rent
5 (and more in many areas), and households below the Federal Poverty Level, however, report
6 spending 80% of their income on housing, a staggering amount that leaves precious little room
7 for food, clothing and other basics of life.” *Id.*, p. 65.¹²⁰

8 261. As further documented in the United Way report presented to CARB:
9 “Recognizing that households of all kinds throughout the state are struggling should not obscure
10 one basic fact: race matters. Throughout *Struggling to Get By*, we observe that people of Latino
11 or African American backgrounds (and to a lesser extent Asian American ones) are less likely to
12 meet the Real Cost Measure than are white households, even when the families compared share
13 levels of education, employment backgrounds, or family structures. While all families face
14 challenges in making ends meet, these numbers indicate that families of color face more obstacles
15 in attempting to achieve economic security.”¹²¹

16 262. Against this background, CARB’s new GHG Housing Measures, which
17 disproportionately harm housing-deprived minorities while not materially advancing the cause of
18 GHG reductions, cannot be justified. CARB’s new GHG Housing Measures, facially and as
19 applied to the housing sector in particular, are not supported by sound scientific analysis and are
20 in fact counterproductive. By creating a regulatory requirement that further discourages the
21 development of new, low-cost housing, CARB’s GHG Housing Measures are simply promoting
22 the leakage of jobs and people (disproportionately minorities) to higher per capita GHG states and
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24 ¹²⁰ In addition, family wealth of homeowners has increased in relation to family wealth of renters
25 over time and a homeowners’ net worth is 36 times greater than a renters’ net worth. Jesse
26 Bricker, et al., *Changes in US Family Finances from 2010 to 2013: Evidence from the Survey of
Consumer Finances*, 100 Fed. Reg. Bull. 4 (Sept. 2014),
<https://www.federalreserve.gov/pubs/bulletin/2014/articles/scf/scf.htm>.

27 ¹²¹ *Id.* P. 75. Studies predict that the 2014-2016 dataset will show a wealth differential between
28 homeowners and renters of 45 times. Lawrence Yun, *How Do Homeowners Accumulate Wealth?*,
Forbes (Oct. 14, 2015), <https://www.forbes.com/sites/lawrenceyun/2015/10/14/how-do-homeowners-accumulate-wealth/#227e7c171e4b>.

1 jurisdictions. This exacerbates the State’s extreme poverty, homelessness and housing crisis while
2 *increasing* global GHG emissions by driving Californians to higher per capita GHG states.¹²²

3 263. CARB’s new GHG Housing Measures, individually and collectively, on their face
4 and as applied, deprive Petitioners, including but not limited to RODRIGUEZ, MURILLO and
5 PEREZ, and other historically-disadvantaged minorities, of the fundamental right to live in
6 communities that are free from arbitrary, government-imposed standards whose inevitable effect
7 is to perpetuate their exclusion from participation in the housing markets in or near the
8 communities in which they work. CARB’s new GHG Housing Measures, individually and
9 collectively, on their face and as applied, have a disparate adverse impact on Petitioners,
10 including but not limited to RODRIGUEZ, MURILLO and PEREZ, and other historically-
11 disadvantaged minorities, as compared to similarly-situated non-minorities who currently enjoy
12 affordable access to housing near their workplaces.

13 264. CARB’s new GHG Housing Measures, on their face and as applied to the sorely-
14 needed development of new, affordable housing, are arbitrary and not rationally related to the
15 furtherance of their purported regulatory goal of reducing overall GHG emissions.

16 **H. CARB’S GHG Housing Measures Are “Underground Regulations” and Ultra**
17 **Vires**

18 265. A regulation is defined as “every rule, regulation, order, or standard of general
19 application or the amendment, supplement, or revision of any rule, regulation,
20 order, or standard adopted by any state agency to implement, interpret, or make specific the law
21 enforced or administered by it, or to govern its procedure.” Gov. Code § 11342.600.

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25 ¹²² Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People*
26 *Move In*, The Sacramento Bee (Mar. 5, 2017),
27 <http://www.sacbee.com/news/state/california/article136478098.html>; Drew Lynch, *Californians*
28 *Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017),
<https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-housing-costs-poll-finds/>; U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017,
<https://www.eia.gov/environment/emissions/state/>.

1 266. State agencies are required to adopt regulations following the procedures
2 established in the APA and are prohibited from issuing and enforcing underground regulations.
3 Gov. Code § 11340.5. Under the APA, an underground regulation is void.

4 267. Each of CARB’s new GHG Housing Measures is intended to be implemented by
5 CARB, or other state and local agencies, without further rulemaking in accordance with the APA.
6 The GHG Housing Measures are de facto regulations requiring APA compliance.

7 268. CARB’s new GHG Housing Measures infringe on areas reserved for other State
8 agencies in several ways:

- 9 ● Senate Bill (“SB”) 97 directs OPR to develop CEQA significance thresholds via
10 the CEQA Guidelines. OPR’s update does not include the Scoping Plan’s presumptive
11 CEQA GHG threshold. CARB was expressly allowed by the Legislature in SB 97 to
12 adopt a CEQA significance threshold only in the context of updates to the CEQA
13 Guidelines, which must undergo a rigorous rulemaking process. CARB has acted *ultra*
14 *vires* and contrary to the express command of the Legislature in adopting its
15 recommended CEQA significance threshold in the Scoping Plan.
- 16 ● California has adopted new building standards, which are designed to assure that
17 new building code requirements are cost effective (with payback to the consumer). “Net
18 zero” new home building standards were not included. CARB has no Legislative authority
19 to bypass and frustrate this consumer protection law by using CEQA as a workaround to
20 require “net zero”.¹²³

21 269. In articulating and publishing its new GHG Housing Measures, CARB has not
22 complied with the APA’s rulemaking procedures and requirements. As a consequence, CARB’s
23 new GHG Housing Measures are unlawful underground regulations, and should be held to be
24 void and of no effect.

25
26
27 _____
28 ¹²³ See generally California Department of Housing and Community Development, State Housing
Law Program Laws and Regulations, <http://www.hcd.ca.gov/building-standards/state-housing-law/state-housing-laws-regulations.shtml>.

1 **FIRST CAUSE OF ACTION**

2 **(Fair Employment and Housing Act, Gov. Code § 12955 et seq.)**

3 270. Petitioners hereby re-allege and incorporate herein by reference the allegations
4 contained in paragraphs 1-269 above.

5 271. The Fair Employment and Housing Act (Gov. Code , § 12955 et seq.) (“FEHA”) provides, *inter alia*, that: “It shall be unlawful . . . (l) To discriminate through public or private
6 land use practices, decisions, and authorizations, because of race, color, . . . national origin,
7 source of income or ancestry.”

8 272. CARB’s new GHG Housing Measures, on their face and as applied, constitute
9 public land use practices decisions and/or policies subject to the FEHA.

10 273. CARB’s new GHG Housing Measures actually and predictably have a disparate
11 negative impact on minority communities and are discriminatory against minority communities
12 and their members, including but not limited to Petitioners RODRIGUEZ, MURILLO and
13 PEREZ.

14 274. CARB’s new GHG Housing Measures and their discriminatory effect have no
15 legally sufficient justification. They are not necessary to achieve (nor do they actually tend to
16 achieve) any substantial, legitimate, nondiscriminatory interest of the State, and in any event such
17 interests can be served by other, properly-enacted standards and regulations having a less
18 discriminatory effect.

19 275. Because of their unjustified disparate negative impact on members of minority
20 communities, including Petitioners, CARB’s new GHG Housing Measures violate the FEHA, and
21 should be declared unlawful and enjoined.

22 **SECOND CAUSE OF ACTION**

23 **(Federal Housing Act and HUD Regulations, 42 U.S.C. § 3601 et seq.; 24 C.F.R. Part 100)**

24 276. Petitioners hereby re-allege and incorporate herein by reference the allegations
25 contained in paragraphs 1-275 above.

26 277. The Federal Housing Act (42 U.S.C. § 3601 et seq.) (“FHA”) was enacted in 1968
27 to combat and prevent segregation and discrimination in housing. The FHA’s language
28

1 prohibiting discrimination in housing is broad and inclusive, and the purpose of its reach is to
2 replace segregated neighborhoods with truly integrated and balanced living patterns.

3 278. In formal adjudications of charges of discrimination under the FHA over the past
4 20-25 years, the U.S. Department of Housing and Urban Development (“HUD”) has consistently
5 concluded that the FHA is violated by facially neutral practices that have an unjustified
6 discriminatory effect on the basis of a protected characteristic, regardless of intent.

7 279. Pursuant to its authority under the FHA, HUD has duly promulgated and published
8 nationally-applicable federal regulations implementing the FHA’s Discriminatory Effects
9 Standard at 24 C.F.R. Part 100 (*see* 78 Fed.Reg. 11460-01 (February 15, 2013)) (“HUD
10 Regulations”). These HUD Regulations continue to apply, and have the force and effect of law.

11 280. HUD Regulations provide, *inter alia*, that liability under the FHA may be
12 established “based on a practice’s discriminatory effect . . . even if the practice was not motivated
13 by a discriminatory intent.” 24 C.F.R. § 100.500.

14 281. HUD Regulations further provide that: “A practice has a discriminatory effect
15 where it actually or predictably results in a disparate impact on a group of persons or perpetuates
16 segregated housing patterns because of race, color, . . . or national origin.”

17 282. CARB’s GHG Housing Measures actually and predictably result in a disparate
18 impact on members of minority communities, including but not limited to Petitioners, and
19 perpetuates segregated housing patterns because of race, color, and/or national origin within the
20 meaning of the FHA and HUD Regulations.

21 283. Because of the discriminatory effect of CARB’s GHG Housing Measures, CARB
22 has the burden of proving that these GHG Housing Measures do not violate the FHA as
23 interpreted and implemented through the HUD Regulations.

24 284. CARB has not met, and cannot meet, its burden of trying to justify the
25 discriminatory effect of its challenged GHG Housing Measures, which are not necessary to
26 achieve the stated goals, which could and should be pursued through other measures having a less
27 discriminatory effect.
28

1 292. Non-discriminatory access to housing is a fundamental interest for purposes of
2 evaluating regulations under the equal protection provisions of the California Constitution. Art. I,
3 § 7 and Art. IV, § 16.

4 293. Non-discriminatory access to housing is a fundamental interest for purposes of
5 evaluating regulations under the equal protection clause of the United States Constitution. U.S.
6 Const. Amd. 14, § 1.

7 294. CARB's GHG Housing Measures disproportionately affect members of minority
8 communities, including Petitioners RODRIGUEZ, MURILLO and PEREZ, by making affordable
9 housing unavailable to them, as compared with non-minority homeowners unaffected by the new
10 GHG regulations, while imposing arbitrary, counter-productive State regulations and standards.

11 295. Race and ethnicity are suspect classes for purposes of evaluating regulations under
12 the equal protection provisions of the California Constitution. Art. I, § 7 and Art. IV, § 16.

13 296. Race and ethnicity are suspect classes for purposes of evaluating regulations under
14 the equal protection clause of the United States Constitution. U.S. Const. Amd. 14, § 1.

15 297. CARB's GHG Housing Measures violate the equal protection provisions of the
16 California Constitution because they make access to new, affordable housing a function of race.

17 298. CARB's GHG Housing Measures violate the equal protection clause of the United
18 States Constitution because they make access to new, affordable housing a function of race.

19 **FIFTH CAUSE OF ACTION**

20 **(Violations of CEQA, Pub. Res. Code § 21000 *et seq.* and CEQA Guidelines, 14 C.C.R.**

21 **§ 15000 *et seq.*)**

22 299. Petitioners hereby re-allege and incorporate herein by reference the allegations
23 contained in paragraphs 1-298 above.

24 300. CARB violated CEQA by approving the 2017 Scoping Plan in violation of the
25 Act's requirements and by certifying a legally deficient environmental analysis.

26 301. CARB did not write its Final EA in plain language so that members of the public
27 could readily understand the document.

28

1 302. CARB did not assess the “whole of the project” as required by CEQA. The GHG
2 Housing Measures are included in the 2017 Scoping Plan and thus the “project” for CEQA
3 purposes should have included potential direct and indirect impacts on the environment from the
4 four GHG Housing Measures. CARB did not include an analysis of the four GHG Housing
5 Measures in the EA.

6 303. CARB did not base its Final EA on an accurate, stable, and finite project
7 description. The EA did not include the four GHG Housing Measures in its project description.
8 For this reason CARB applied an unreasonable and unlawful “project” definition and undermined
9 CEQA’s informational and decision-making purposes. The project description was misleading,
10 incomplete, and impermissibly vague.

11 304. CARB did not properly identify the Project objectives in its EA.

12 305. CARB’s unlawful use of the “cumulative gap” methodology created multiple legal
13 deficiencies in the EA, including in the project description, project objectives, and impact
14 analysis. Had CARB used the appropriate project objective—reducing GHG 40% below the 1990
15 California GHG inventory by 2030—the estimated 1% of GHG reductions (1.79 tons per year)
16 achieved by the GHG Housing Measures would have been entirely unnecessary, and all disparate
17 and unlawful adverse civil rights, environmental, housing, homelessness, poverty, and
18 transportation consequences of the GHG Housing Measures could have been avoided.

19 306. At most, CARB could have clearly identified its “cumulative gap” methodology as
20 an alternative to the project that would have further reduced GHG emissions beyond the SB 32
21 statutory mandate, to further inform the public and decisionmakers of the comparative impacts
22 and consequences of SB 32’s legislated GHG reduction mandate, and the more substantial GHG
23 reductions sought by CARB staff. CARB’s failure to use the SB 32 statutory mandate of
24 achieving 40% GHG reduction from 1990 levels as of 2030 is a fatal legal flaw.

25 307. CARB also failed to adequately evaluate the direct, indirect, and cumulative
26 environmental impacts of the 2017 Scoping Plan in its Final EA, even after commenters identified
27 numerous review gaps in their comments on the Draft EA. As discussed above, CARB was fully
28 on notice of the scale and nature of the impacts associated with the GHG Housing Measures

1 based on CARB's review and approval of more than a dozen regional plans to intensify housing
2 densities near transit, and improve public transit, from all of California's most significant
3 population centers; each of these regional plans identified multiple unavoidable significant
4 adverse environmental impacts from implementation of current plans. The deficiencies in the
5 Final EA include but are not limited to the following:

- 6 • Aesthetic impacts such as changes to public or private views and character of existing
7 communities based on increased building intensities and population densities;
- 8 • Air quality impacts from increases in GHG, criteria pollutants, and toxic air
9 contaminant emissions due to longer commutes and forced congestion that will occur
10 from the implementation of the VMT limits in the 2017 Scoping Plan;
- 11 • Biological impacts from increased usage intensities in urban parks from substantial
12 infill population increases;
- 13 • Cultural impacts including adverse changes to historic buildings and districts from
14 increased building and population densities, and changes to culturally and religiously
15 significant resources within urbanized areas from increased building and population
16 densities;
- 17 • Urban agriculture impacts from the conversion of low intensity urban agricultural uses
18 to high intensity, higher density uses from increasing populations in urban areas,
19 including increasing the urban heat island GHG effect;
- 20 • Geology/soils impacts from building more structures and exposing more people to
21 earthquake fault lines and other geologic/soils hazards by intensifying land use in
22 urban areas;
- 23 • Hazards and hazardous materials impacts by locating more intense/dense housing and
24 other sensitive uses such as schools and senior care facilities near freeways, ports, and
25 stationary sources in urbanized areas;
- 26 • Hydrology and water quality impacts from increasing volumes and pollutant loads
27 from stormwater runoff from higher density/intensity uses in transit-served areas as
28 allowed by current stormwater standards;

- 1 • Noise impacts from substantial ongoing increases in construction noise from
2 increasing density and intensity of development in existing communities and ongoing
3 operational noise from more intensive uses of community amenities such as extended
4 nighttime hours for parks and fields;
- 5 • Population and housing impacts from substantially increasing both the population and
6 housing units in existing communities;
- 7 • Recreation and park impacts from increasing the population using natural preserve and
8 open space areas as well as recreational parks;
- 9 • Transportation/traffic impacts from substantial total increases in VMT in higher
10 density communities, increased VMT from rideshare/carshare services and future
11 predicted VMT increases from automated vehicles, notwithstanding predicted future
12 decrease in private car ownership;
- 13 • Traffic-gridlock related impacts and multi-modal congestion impacts including noise
14 increases and adverse transportation safety hazards in areas of dense multi-modal
15 activities;
- 16 • Public safety impacts due to impacts on first responders such as fire, police, and
17 paramedic services from congested and gridlocked urban streets; and
- 18 • Public utility and public service impacts from substantial increases in population and
19 housing/employment uses and demands on existing water, wastewater, electricity,
20 natural gas, emergency services, libraries and schools.

21 308. As stated above, although the Scoping Plan’s CEQA threshold is not binding on a
22 lead agency, it nevertheless has immediate evidentiary weight as the expert conclusion of the
23 state’s expert GHG agency. Thus, the Scoping Plan’s CEQA threshold is appropriately
24 justiciable, and should be vacated for the reasons set forth herein.

25 309. As a result of these defects in the Final EA, CARB prejudicially abused its
26 discretion by certifying an EIR that does not comply with CEQA and by failing to proceed in the
27 manner required by law.
28

1 310. Petitioners objected to CARB’s approvals of the GHG Housing Measures prior to
2 the close of the final public hearings on CARB’s 2017 Scoping Plan and raised each of the legal
3 deficiencies asserted in this Petition.

4 311. Petitioners have performed all conditions precedent to the filing of this Petition,
5 including complying with the requirements of Pub. Res. Code section 21167.5 by serving notice
6 of the commencement of this action prior to filing it with this Court.

7 **SIXTH CAUSE OF ACTION**

8 **(Violations of APA, Gov. Code § 11346 *et seq.*)**

9 312. Petitioners hereby re-allege and re-incorporate herein by reference the allegations
10 of paragraphs 1-311 above.

11 313. Under the APA and other applicable law, CARB is required to comply with
12 regulations issued by the Department of Finance (“DOF”) before issuing a “major regulation.”
13 Specifically, the APA (Gov. Code § 11346.3(c)) requires that CARB prepare a standardized
14 regulatory impact assessment (“SRIA”) in a form, and with content, that meets requirements set
15 by the DOF in its separate regulations (1 C.C.R. § 2000 *et seq.*).

16 314. CARB’s GHG Housing Measures constitute a major regulation subject to the
17 APA’s requirement that such regulations be promulgated in compliance with DOF regulations.

18 315. Section 2003 of DOF regulations (1 C.C.R. § 2003(a)) (“Methodology for Making
19 Estimates”) provides that, “[i]n conducting the SRIA required by Section 11346.3”, CARB “shall
20 use an economic impact method and approach that has all of the following capabilities:

21 (1) Can estimate the total economic effects of changes due to regulatory policies over a multi-
22 year time period.

23 (2) Can generate California economic variable estimates such as personal income,
24 employment by economic sector, exports and imports, and gross state product, based on inter-
25 industry relationships that are equivalent in structure to the Regional Industry Modeling
26 System published by the Bureau of Economic Analysis.

27 (3) Can produce (to the extent possible) quantitative estimates of economic variables that
28 address or facilitate the quantitative or qualitative estimation of the following.

- 1 (A) The creation or elimination of jobs within the state;
- 2 (B) The creation of new businesses or the elimination of existing businesses within the
- 3 state;
- 4 (C) The competitive advantages or disadvantages for businesses currently doing business
- 5 within the state;
- 6 (D) The increase or decrease of investment in the state;
- 7 (E) The incentives for innovation in products, materials, or processes; and
- 8 (F) The benefits of the regulations, including but not limited to benefits to the health,
- 9 safety, and welfare of California residents, worker safety, and the state’s environment and
- 10 quality of life, among any other benefits identified by the agency.”

11 316. DOF regulations require that DOF’s “most current publicly available economic

12 and demographic projections, which may be found on the department’s website, shall be used

13 unless the department approves the agency’s written request to use a different projection for a

14 specific proposed major regulation.” 1 C.C.R. § 2003(b).

15 317. DOF regulations also provide that: “An analysis of estimated changes in behavior

16 by businesses and/or individuals in response to the proposed major regulation shall be conducted

17 and, if feasible, an estimate made of the extent to which costs or benefits are retained within the

18 business and/or by individuals or passed on to others, including customers, employees, suppliers

19 and owners.” 1 C.C.R. § 2003(f).

20 318. In grafting its new GHG Housing Measures onto the 2017 Scoping Plan, CARB

21 has failed to comply with the APA, including DOF regulations applicable to CARB.

22 319. More significantly, and consistent with the LAO’s repeated findings that the

23 CARB analysis methodology fails to provide sufficiently detailed information about impacts to

24 individuals, households and businesses, CARB’s 2017 Scoping Plan completely ignores the fact

25 that California has the greatest inequality in the United States, and that energy costs, loss of

26 energy-intensive jobs and housing costs related to Scoping Plan policies play a major role in that

27 unwanted outcome. To fulfill its statutory mandates, CARB must start by recognizing that, as

28

1 meticulously documented in a United Way Study, more than 30% of all California households
2 lack sufficient means to meet the real cost of living in the state.

3 320. In addition, as described above, by using the unlawful “cumulative gap”
4 methodology to calculate the GHG reductions it claims are needed in the 2017 Scoping Plan,
5 CARB improperly created inputs for the FA that render the entire document invalid.

6 321. In its present form, the Scoping Plan embodies multiple violations of the APA and
7 should be set aside as unlawful and void.

8 **SEVENTH CAUSE OF ACTION**

9 **(Violations of the California Global Warming Solutions Act, Health & Safety Code § 38500**

10 *et seq.*)

11 322. Petitioners hereby re-allege and incorporate herein by reference the allegations
12 contained in paragraphs 1-321 above.

13 323. The GWSA provides in pertinent part that, in promulgating GHG regulations,
14 CARB “shall do all of the following:

- 15 (1) Design the regulations, including distribution of emissions allowances where appropriate,
16 in a manner that is equitable, seeks to minimize costs and maximize the total benefits to
17 California, and encourages early action to reduce greenhouse gas emissions.
 - 18 (2) Ensure that activities undertaken to comply with the regulations do not disproportionately
19 impact low-income communities.
 - 20 (3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to
21 the implementation of this section receive appropriate credit for early voluntary
22 reductions.
 - 23 (4) Ensure that activities undertaken pursuant to the regulations complement, and do not
24 interfere with, efforts to achieve and maintain federal and state ambient air quality
25 standards and to reduce toxic air contaminant emissions.
 - 26 (5) Consider cost-effectiveness of these regulations.
- 27
28

1 (6) Consider overall societal benefits, including reductions in other air pollutants,
2 diversification of energy sources, and other benefits to the economy, environment, and
3 public health.”

4 324. In responses to Petitioners’ comments on the 2017 Scoping Plan, CARB has
5 acknowledged that Chapter 5 of the Scoping Plan (which sets out the new GHG Housing
6 Measures) was not part of what it analyzed in issuing the Scoping Plan. In CARB’s words,
7 “These recommendations in the ‘Enabling Local Action’ subchapter of the Scoping Plan are not
8 part of the proposed ‘project’ for purposes of CEQA review.”¹²⁴ Thus, CARB admits that it did
9 not even pretend to analyze the consequences of the provisions of Chapter 5 of the Scoping Plan.

10 325. CARB’s assertion that the new GHG Housing Measures set out in Chapter 5 of the
11 Scoping Plan do not constitute “major regulations” is belied by their content and the legal and
12 regulatory setting in which they were issued, as described above.

13 326. Each scoping plan update must also identify for each emissions reduction measure,
14 the range of projected GHG emission reductions that result from the measure, the range of
15 projected air pollution reductions that result from the measure, and the cost-effectiveness,
16 including avoided social costs, of the measure. H&S Code § 38562.7.

17 327. The 2017 Scoping Plan contains no such analysis for CARB’s new GHG Housing
18 Measures. The Plan lists potential emission reductions from the “Mobile Source Strategy” which
19 includes the VMT reduction requirements, but does not analyze proposed emission reductions,
20 projected air pollution reductions, or cost-effectiveness of the other measures.

21 328. CARB’s new GHG Housing Measures, as set out in its 2017 Scoping Plan, were
22 issued in violation of some or all of the specific statutory requirements set out in the GWSA, as
23 described above.

24 329. As a consequence, CARB’s new GHG Housing Measures were adopted in a
25 manner that is contrary to law, and should be set aside.

26
27 ¹²⁴ Supplemental Responses to Comments on the Environmental Analysis Prepared for the
28 Proposed Strategy for Achieving California’s 2030 Greenhouse Gas Target (Dec. 14, 2017), p.
14-16, <https://www.arb.ca.gov/cc/scopingplan/final-supplemental-rtc.pdf>.

1 **EIGHTH CAUSE OF ACTION**

2 **(Violations of the Health & Safety Code, § 39000 *et seq.*, including the California Clean Air**
3 **Act, Stats. 1988, ch. 1568 (AB 2595))**

4 330. Petitioners hereby re-allege and incorporate herein by reference the allegations
5 contained in paragraphs 1-329 above.

6 331. California has ambient air quality standards (“CAAQS”) which set the maximum
7 amount of a pollutant (averaged over a specified period of time) that can be present in outdoor air
8 without any harmful effects on people or the environment.

9 332. CAAQS are established for particulate matter (“PM”), ozone, nitrogen dioxide
10 (“NO₂”), sulfate, carbon monoxide (“CO”), sulfur dioxide (“SO₂”), visibility-reducing particles,
11 lead, hydrogen sulfide (“H₂S”), and vinyl chloride.

12 333. In California, local and regional authorities have the primary responsibility for
13 control of air pollution from all sources other than motor vehicles. H&S Code § 39002.

14 334. Under the California Clean Air Act (“CCAA”), air districts must endeavor to
15 achieve and maintain the CAAQS for ozone, carbon monoxide, sulfur dioxide, and nitrogen
16 dioxide by the earliest practicable date. H&S Code § 40910. Air districts must develop attainment
17 plans and regulations to achieve this objective. *Id.*; H&S Code § 40911.

18 335. Each plan must be designed to achieve a reduction in districtwide emissions of five
19 percent or more per year for each nonattainment pollutant or its precursors. H&S Code §
20 40914(a). CARB reviews and approves district plans to attain the CAAQS (H&S Code § 40923;
21 41503) and must ensure that every reasonable action is taken to achieve the CAAQS at the
22 earliest practicable date (H&S Code § 41503.5).

23 336. If a local district is not effectively working to achieve the CAAQS, CARB may
24 establish a program or rules or regulations to enable the district to achieve and maintain the
25 CAAQS. H&S Code § 41504. CARB may also exercise all the powers of a district if it finds the
26 district is not taking reasonable efforts to achieve and maintain ambient air quality standards.
27 H&S Code § 41505.

28

1 337. Fresno County is part of the San Joaquin Valley Air Pollution Control District
2 (“SJVAPCD”). The SJVAPCD is currently nonattainment/severe for the CAAQS for ozone and
3 nonattainment for PM.

4 338. The vast majority of California is designated nonattainment for the CAAQS for
5 ozone and PM.

6 339. Nitrogen oxides, including NO₂, CO, and volatile organic compounds (“VOCs”)
7 are precursor pollutants for ozone, meaning they react in the atmosphere in the presence of
8 sunlight to form ozone.

9 340. PM is a complex mixture of extremely small particles and liquid droplets found in
10 the air which can cause serious health effects when inhaled, including asthma and other lung
11 issues and heart problems. Some particles are large enough to see while others are so small that
12 they can get into the bloodstream. PM is made up of PM₁₀ (inhalable particles with diameters 10
13 micrometers and smaller) and PM_{2.5} (fine inhalable particles with diameters 2.5 micrometers and
14 smaller).

15 341. PM emissions in California and in the SJVAPCD increased in 2016 as compared
16 to prior years.

17 342. As detailed above, the VMT reduction requirements in the 2017 Scoping Plan will
18 result in increased congestion in California.

19 343. Increasing congestion increases emissions of multiple pollutants including NO_x,
20 CO, and PM. This would increase ozone and inhibit California’s ability to meet the CAAQS for
21 ozone, NO₂, and PM, among others.

22 344. Because CARB intends to achieve the VMT reduction standard by intentionally
23 increasing congestion, which will increase emissions of criteria pollutants such as NO₂ and PM,
24 CARB is violating its statutory duty to ensure that every reasonable action is taken to
25 expeditiously achieve attainment of the CAAQS.

26 345. In addition to a responsibility under the CCAA to meet the CAAQS, CARB has a
27 statutory duty under the Health & Safety Code to ensure that California meets the National
28 Ambient Air Quality Standards (“NAAQS”) set by the EPA.

1 346. Like the CAAQS, the NAAQS are limits on criteria pollutant emissions which
2 each air district must attain and maintain. EPA has set NAAQS for CO, lead, NO₂, ozone, PM,
3 and SO₂.

4 347. CARB is designated the air pollution control agency for all purposes set forth in
5 federal law. H&S Code § 39602. CARB is responsible for preparation of the state implementation
6 plan (“SIP”) required by the federal Clean Air Act (“CAA”) to show how California will attain
7 the NAAQS. CARB approves SIPs and sends them to EPA for approval under the CAA. H&S
8 Code § 40923.

9 348. While the local air districts have primary authority over nonmobile sources of air
10 emissions, adopt rules and regulations to achieve emissions reductions, and develop the SIPs to
11 attain the NAAQS (H&S Code § 39602.5), CARB is charged with coordinating efforts to attain
12 and maintain ambient air quality standards (H&S Code § 39003) and to comply with the CAA
13 (H&S Code § 39602).

14 349. CARB also must adopt rules and regulations to achieve the NAAQS required by
15 the CAA by the applicable attainment date and maintain the standards thereafter. H&S Code §
16 39602.5. CARB is thus responsible for ensuring that California meets the NAAQS.

17 350. SJVAPCD is nonattainment/extreme for the ozone NAAQS and nonattainment for
18 PM_{2.5}.

19 351. The vast majority of California is nonattainment for the ozone NAAQS and much
20 of California is nonattainment for PM₁₀.

21 352. It is unlawful for CARB to intentionally undermine California’s efforts to attain
22 and maintain the NAAQS by adopting measures in the 2017 Scoping Plan that will increase NO_x
23 and PM by intentionally increasing congestion in an attempt to lower VMT to purportedly
24 achieve GHG emission reductions.

25 353. In adopting the VMT reduction requirements in the 2017 Scoping Plan, CARB is
26 violating its statutorily mandated duty in the Health & Safety Code to attain and maintain the
27 NAAQS, and preventing the local air districts from adequately discharging their duties under law
28 to do everything possible to attain and maintain the NAAQS.

1 **NINTH CAUSE OF ACTION**

2 **(Congestion Management Plan Law, Gov. Code § 65088 – 65089.10)**

3 354. Petitioners hereby re-allege and incorporate herein by reference the allegations
4 contained in paragraphs 1-353 above.

5 355. As described above, the VMT reduction standards in the 2017 Scoping Plan will
6 be implemented by intentionally creating congestion in order to purportedly create VMT
7 reductions via increased transit use. This intentional creation of congestion is a violation of the
8 statutory requirements in California’s Congestion Management Plan law.

9 356. In adopting the Congestion Management Plan law, the Legislature stated that all
10 federal, state, and local agencies must coordinate to develop and implement comprehensive
11 strategies to respond to transportation needs. Gov. Code § 65088(e).

12 357. The Congestion Management Plan law requires every county that includes an
13 urbanized area to develop and adopt a congestion management plan. Gov. Code § 65089.

14 358. The plan must include traffic level of service standards established for the
15 highways and roadways in the county in order to ensure level of service above the level E. Gov.
16 Code § 65089(b). The plan must be submitted to the regional agency who must include them in
17 the regional transportation improvement program. Gov. Code § 65089.2.

18 359. Creating traffic congestion is contrary to the statutory requirements in the
19 Congestion Management Plan to reduce congestion and maintain level of service E on roadways
20 and highways.

21 360. The Congestion Management Plan law also recognizes that, in addition, to solving
22 California’s traffic congestion crisis, rebuilding California’s cities and suburbs, with particular
23 emphasis on affordable housing, is an important part of accommodating future growth, as
24 homeownership for most Californians is only available on the fringes of metropolitan areas and
25 far from employment centers. Gov. Code § 65088(f).

26 361. The law also recognizes that regulatory barriers around the development of in-fill
27 housing must be removed to provide more housing choices for all Californians. Gov. Code §
28 65088(g).

1 362. As described above, the CEQA no net increase GHG threshold and the per capita
2 GHG targets for local climate action plans included in CARB’s 2017 Scoping Plan will preclude
3 infill and affordable housing near job centers from being developed in California.

4 363. Preventing affordable and in-fill housing is contrary to the Congestion
5 Management Plan law’s requirements to remove regulatory barriers to in-fill housing and place an
6 emphasis on developing affordable housing near California job centers. It also severely
7 disadvantages low-income and minority Californians looking to purchase a home near
8 employment centers.

9 **TENTH CAUSE OF ACTION**

10 **(Violations of the APA - Underground Regulations, Gov. Code § 11340 – 11365)**

11 364. Petitioners hereby re-allege and incorporate herein by reference the allegations
12 contained in paragraphs 1-363 above.

13 365. As explained above, the GHG Housing Measures are standards of general
14 application for state agencies and standards to implement and interpret the 2017 Scoping Plan and
15 the reductions in GHG emissions it is designed to achieve.

16 366. The four GHG Housing Measures in CARB’s 2017 Scoping Plan are underground
17 regulations in violation of APA standards requiring formal rulemaking.

18 367. As to the CEQA net zero GHG threshold specifically, the Legislature directed
19 OPR to adopt CEQA guidelines as regulations and CEQA itself requires that public agencies that
20 adopt thresholds of significance for general use must do so through ordinance, resolution, rule, or
21 regulations developed through a public review process. CEQA Guidelines § 15064.7(b). Thus,
22 any state agency that purports to adopt CEQA guidelines must do so via regulations, following
23 the full formal rulemaking process in the APA.¹²⁵

24
25
26 ¹²⁵ *California Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2016) 2 Cal.App. 5th
27 1067 (stating that air district adoption of CEQA guidelines, including GHG thresholds of
28 significance, must be adopted as regulations, including with public notice and comment, and are
not mere advisory expert agency opinion).

1 368. CARB has not adopted the GHG Housing Measures through a public review
2 process and thus it violates the APA.

3 **ELEVENTH CAUSE OF ACTION**

4 **(Ultra Vires Agency Action, Code of Civil Proc. §1085)**

5 369. Petitioners hereby re-allege and incorporate herein by reference the allegations
6 contained in paragraphs 1-368 above.

7 370. In adopting the 2017 Scoping Plan, including the GHG Housing Measures, CARB
8 has acted beyond its statutorily delegated authority and contrary to law.

9 **CEQA Net Zero GHG Threshold**

10 371. The 2017 Scoping Plan would apply a CEQA net zero GHG emissions threshold
11 to all CEQA projects. CEQA applies to the “whole of a project”, which includes construction
12 activities, operation of new buildings, offsite electricity generation, waste management,
13 transportation fuel use, and a myriad of other activities.

14 372. This threshold is unlawful under *Newhall, supra*, 62 Cal.4th 204, and other current
15 California precedent affirming that compliance with law is generally an acceptable CEQA
16 standard. This includes, but is not limited to, using compliance with the cap-and-trade program as
17 appropriate CEQA mitigation for GHG and transportation impacts. *Association of Irrigated*
18 *Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708.

19 373. This threshold is also unlawful under OPR’s GHG CEQA rulemaking package
20 which stated that there was not a CEQA threshold requiring no net increase in GHG emissions
21 (i.e., no one molecule rule). See “Final Statement of Reasons for Regulatory Action”,
22 Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse
23 Gas Emissions Pursuant to SB 97, Dec. 2009, p. 25 ([n]otably, section 15064.4(b)(1) is not
24 intended to imply a zero net emissions threshold of significance. As case law makes clear, there is
25 no “one molecule rule” in CEQA. (CBE, *supra*, 103 Cal.App.4th 120”).

26 **Regulating In An Attempt to Achieve the 2050 GHG Emission Reduction Goal**

1 374. CARB also acted ultra vires by attempting to mandate GHG Housing Measures
2 that purportedly would help California achieve the 2050 GHG reduction goal in Executive Order
3 S-3-05.

4 375. CARB has no Legislative authority to regulate towards achieving the 2050 goal, a
5 GHG emission reduction target which has not been codified and which the Legislature has
6 repeatedly refused to adopt. Mandating actions in an attempt to reach the 2050 goal is outside
7 CARB’s statutory authority under the GWSA which only contains GHG emission reduction
8 standards for 2020 and 2030.

9 376. The Legislative Analyst’s Office has stated that, based on discussions with
10 Legislative Counsel, it is unlikely that CARB has authority to adopt and enforce regulations to
11 achieve more stringent GHG targets. LAO report, p. 7.

12 **VMT Reduction Requirements**

13 377. In addition, the VMT reduction standards mandated in the Scoping Plan are ultra
14 vires and beyond CARB’s statutory authority.

15 378. The Legislature rejected legislation as recently as 2017 requiring VMT
16 reductions/standards.

17 379. The only agency authorized to consider VMT under CEQA is OPR under SB 743.
18 OPR’s proposed SB 743 regulations are going through a formal rulemaking process now and
19 CARB cannot jump the gun and, with zero statutory authority, adopt VMT regulations in the
20 2017 Scoping Plan.

21 **SB 97 and OPR Promulgation of CEQA Guidelines**

22 380. Similarly, the only method by which the Legislature authorized OPR (with
23 CARB’s permissive but not mandatory cooperation) to adopt new CEQA significance thresholds
24 is via updates to the CEQA Guidelines.

25 381. OPR has not included CARB’s new GHG Housing Measures in its proposed new
26 Guidelines, and CARB has no authority to make an “end run” around the rulemaking process
27 established by the Legislature.

28 **New Building Code Requirements**

1 382. The Legislature has enacted new consumer protection requirements, including new
2 building standards, designed to assure that new building code requirements are cost effective.
3 CARB's "net zero" new home building standard was not included in these new building
4 standards.

5 383. CARB has no Legislative authority to impose new "net zero" building standards.

6 384. CARB's new "net zero" building standards are contrary to, and will substantially
7 frustrate, the Legislature's purpose in adopting new building code requirements.

8 385. CARB's decision to adopt the 2017 Scoping Plan and the GHG Housing Measures
9 within it was also fraught with procedural defects, including violations of the APA, CEQA, and
10 GWSA, as explained above. These procedural defects are further actions that are *ultra vires* and
11 were taken contrary to law.

12 PRAYER FOR RELIEF

13 WHEREFORE Petitioners THE TWO HUNDRED, including LETICIA RODRIGUEZ,
14 TERESA MURILLO and EUGENIA PEREZ, request relief from this Court as follows:

15 A. For a declaration, pursuant to Code of Civil Procedure § 1060, that the following
16 GHG regulations and standards, as set out in CARB's Scoping Plan, are unlawful, void, and of no
17 force or effect:

- 18 • The Vehicle Miles Traveled ("VMT") mandate.
- 19 • The Net Zero CEQA threshold
- 20 • The CO₂ per capita targets for local climate action plans for 2030 and 2050
- 21 • The "Vibrant Communities" policies in Appendix C.

22 B. For a writ of mandate or peremptory writ issued under the seal of this Court
23 pursuant to Code of Civil Procedure § 1094.5 or in the alternative § 1085, directing Respondents
24 to set aside the foregoing provisions of the Scoping Plan and to refrain from issuing any further
25 GHG standards or regulations that address the issues described in subsection A. above until such
26 time as CARB has complied with the requirements of the APA, CEQA, and the requirements of
27 the Due Process and Equal Protection clauses of the California and United States Constitutions;
28

1 C. For permanent injunctions restraining Respondents from issuing any further GHG
2 standards or regulations that address the issues described in subsection A. above until such time
3 as CARB has complied with the requirements of the APA, CEQA, and the requirements of the
4 Due Process and Equal Protection clauses of the California and United States Constitutions;

5 D. For an award of their fees and costs, including reasonably attorneys' fees and
6 expert costs, as authorized by Code of Civil Procedure § 1021.5, and 42 U.S. Code section 1988.

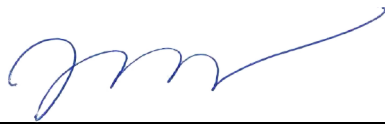
7 E. That this Court retain continuing jurisdiction over this matter until such time as the
8 Court has determined that CARB has fully and properly complied with its Orders.

9 F. For such other and further relief as may be just and appropriate.

10 Dated April 27, 2018

Respectfully submitted,

11 HOLLAND & KNIGHT LLP

12
13 By: 

14 Jennifer L. Hernandez
15 Charles L. Coleman III
16 Marne S. Sussman

17 Attorneys for Plaintiffs/Petitioners
18 THE TWO HUNDRED, LETICIA RODRIGUEZ,
19 TERESA MURILLO, GINA PEREZ, *et al.*

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VERIFICATION

I, Jennifer L. Hernandez, am one of the attorneys for, and am a member of, THE TWO HUNDRED, an unincorporated association, Plaintiffs/Petitioners in this action. I am authorized to make this verification on behalf of THE TWO HUNDRED and its members named herein. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof. I am informed and believe and on that ground allege that the matters stated therein are true. I verify the foregoing Petition and Complaint for the reason that Plaintiffs/Petitioners named in the Petition/Complaint are not present in the county where my office is located.

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

Executed this 27th day of April, 2018, at San Francisco, California.



JENNIFER L. HERNANDEZ