Holland & Knight

50 California Street, Suite 2800 | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Jennifer L. Hernandez
(415) 743-6927
jennifer.hernandez@hklaw.com

February 4, 2019

California Air Resources Board
Board Members
Richard Corey, Executive Officer
1001 "I" Street
P.O. Box 2815
Sacramento, CA 95812

Re: Proposed Update to Regulations Implementing the California Environmental Quality Act

Dear Board Members and Mr. Corey:

We represent The 200, an accomplished group of civil rights leaders from all regions of California. The 200 believes minority home ownership is the cornerstone for creating multi-generational economic security, helping students to go to college and seniors to remain independent. California has for decades adopted and implemented racially discriminatory government policies and practices that harm minority home ownership, and the anti-housing measures in CARB's 2017 Scoping Plan are the latest additions to this Hall of Shame.[1]

Minority homeownership rates have plummeted in California, and minority communities are also disproportionately harmed by California's acute poverty, homelessness and housing crises. We believe it is immoral, as well as illegal, for any agency of the state of California to increase housing costs, or make it easier to use litigation threats or file lawsuits that delay housing projects that are consistent with a

[1] The 200 filed comments to CARB objecting to the four anti-housing measures included in the 2017 Scoping Plan, and the failure of the 2017's environmental and economic analyses to disclose, analyze, or minimize the many significant adverse environmental and equity impacts of these anti-housing measures. (Attachment 1) The 200 filed a lawsuit against CARB, challenging these deficiencies as civil rights and statutory violations. (Attachment 2) CARB unsuccessfully attempted to dismiss most of The 200's lawsuit claims, remarkably asserting through its attorney that it was constitutional for CARB to engage in racially discriminatory housing discrimination in its written briefs and oral argument.

CARB-approved Sustainable Communities Strategies adopted pursuant to Senate Bill 375.

We also believe it is immoral, as well as illegal, for CARB to pursue regressive climate policies that place increasingly higher housing, transportation, and electricity cost burdens on minority families who are forced to drive ever greater distances to live in housing they can afford to buy or rent, and to deprive minority workers of production jobs that are gateways to the middle class and homeownership.

We further believe that CARB's regressive policies are antithetical to its statutory mandate to reduce greenhouse gas emissions (GHG), since California exports its working families to homes they can afford to buy in states with far higher per capita GHG emissions: more than doubling the GHG emissions from former Californians who move to Texas or Arizona for housing they can afford increases global GHG, and countries and states that acknowledge the need for racial equity and upward mobility will not follow the lead of a state that boasts the country's highest poverty and homelessness rates (and related highest housing prices).

CARB has many other, more effective options for reducing GHG; however, CARB has instead elected to burden hard working minority working families with the costs of its programs rather than support equal or more effective GHG reductions that spawn dissent among CARB's environmental advocacy supporters (e.g., forestry management practices to reduce wildfire risks and generate renewable energy from biomass) or increase cost burdens on aligned wealthy political donors (e.g., consumption based GHG costs imposed on imported luxury goods).

We have sued CARB over four anti-housing measures in the 2017 Scoping Plan that establish regressive, unlawful, and ineffective global GHG reduction practices. Climate change is not a license to trample civil rights that our members, and our communities, have fought to establish and must now defend.[2]

We write to inform CARB's Board and its staff of our deep moral disappointment, as well as formal legal objections, to CARB's latest effort to avoid its compliance obligations under the California Environmental Quality Act ("CEQA").

Specifically, CARB has proposed to amend its regulations for implementing CEQA to exempt CARB from complying with CEQA at all for any "government funding mechanism" not yet linked to a particular project, and for "approval of planning documents that contain no commitment to a course of action implemented by a state board." CARB further declines to do any rigorous or systematic environmental analysis at all of its discretionary actions unless CARB staff first determine that there is "substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment." (Proposed amendment adopting §

[2] Although members of The 200 strongly support the environment, the failure of environmental advocacy organizations and agencies to understand or reflect the diversity of our state has been well-documented and, as the most recent 2018 study of philanthropy notes, is getting worse not better. (See Attachment 3)

60004 to Title 17 of the Code of Federal Regulations, referred to herein as "Proposed CEQA Loopholes.")

Each of these provisions is unlawful on its face; each also demonstrates CARB's ongoing refusal to accept its own CEQA compliance obligations, consistent with a litany of costly and embarassing court decisions finding that CARB has – in some cases twice in a row regarding the same CARB action (!) – violated CEQA. Instead of learning its lesson from these repeated court losses, and joining alongside every other state, regional and local agency in California in actually complying with CEQA as required by the Legislature and demanded by the public, CARB has proposed unlawful new CEQA regulations to bypass its CEQA obligations entirely.

- <u>CARB, as a Certified Regulatory Program CEQA agency, must still comply with CEQA</u>. The California Supreme Court as well as numerous appellate courts have confirmed that state agencies that have been granted Certified Regulatory Program status to comply with CEQA must nevertheless comply with CEQA: such agencies may not bypass CEQA mandates, such as considering alternatives which avoid or lessen significant impacts to the environment as a whole (not just the environmental resource falling within the jurisdiction of that agency). As CARB well knows from its CEQA lawsuit losses, CARB must still comply with CEQA's policy goals and substantive standards. *See, e.g., POET, LLC v. State Air Resources Board* (2013); *see also, City of Arcadia v. State Water Resources Control Board* (2006)*; Environmental Protection Info. Center v. Johnson (*1985*); Californians for Native Salmon & Steelohead Association v. Dept of Forestry (*1990*); Sierra Club v. State Bd. Of Forestry (*1994*).*

- <u>CEQA Prohibits Concealing the Environmental Consequences of CARB's Discretionary Decisions by "Piecemealing" – CARB's Obligation is to Disclose and Analyze the Environmental Consequences of the "Whole" of Its Action Including the Reasonably Foreseeable Consequences Thereof</u>. When CARB proposes to undertake a discretionary activity, including but not limited to in this instance establishing a funding program or approving a plan or "planning document," CEQA requires that CARB consider the environmental consequences of "the whole of its action" including reasonably foreseeable implementation actions and consequences thereof, and prohibits "piecemealing" its action into subordinate components that could mislead the public, avoid required levels of transparency about the environmental consequences of its action, and shirk its obligation to adopt all feasible mitigation measures *or alternatives* to the proposed action that would lessen one or more significant adverse effects on the environment. CEQA broadly defines the agency's discretionary action as a "project" to enable maximum protection of the environment, and prohibit concealment of environmental considerations by "separately focusing on isolated parts." *See, e.g., Bozung v. LAFCO (1975), City of Sacramento v. State Water Resources Control Board (1992).* When CARB approves a funding

program, it is reasonably foreseeable that the projects meeting qualification criteria will be funded – and thus will have consequences. When CARB approves a plan or "planning document," it is reasonably foreseeable that this plan will be implemented – either directly upon CARB's approval (e.g., based on CARB's role as an expert agency in the CEQA process), or eventually (e.g., to the extent that later agency actions are needed such as implementing regulations or project approvals may – or may not – trigger the need for some level of additional CEQA review.) *See, e.g., Laurel Heights Improvement Ass'n v. Regents of Univ. of Calif.* (1988).

- CARB's CEQA Compliance Obligations are Not Diminished by the Need for Future Implementing Actions by Public or Private Sector Parties. CEQA does not allow lead agencies to avoid CEQA by relying on future uncertainties, such as the specific later actions to be taken by other agencies or private sector parties. Instead, as noted by one expert commentator, "The principle that EIRs can and should make reasonable forecasts is well established in case law." (*Practice under the California Environmental Quality Act, Kostka & Zischke, §4.20, 12.9; corresponding caselaw citations omitted.)* CEQA demands that CARB forecast, disclose, assess, and impose feasible mitigation measures or alternatives to lessen the adverse environmental consequences of the "reasonably foreseeable" consequences of its discretionary actions.

The three referenced Proposed CEQA Loopholes all violate these fundamental CEQA requirements.

- Unlawful New CEQA "Gateway" Imposed to Avoid CEQA Compliance. The Proposed CEQA Loopholes direct CARB to avoid CEQA entirely once CARB staff first determines, based on an unknown source of "substantial evidence," that its activities would not cause a significant environmental impact. However, the Proposed CARB Loopholes allow CARB to entirely avoid doing any Initial Study, or other methodical assessment of all potential consequences of actions such as completing the questions set forth in the Appendix G of the state CEQA Guidelines, or otherwise creating the "substantial evidence" that the Proposed CEQA Loopholes assert is required to even trigger the CEQA process. Instead, the Proposed CEQA Loopholes require only that CARB staff provide a conclusory "explanation" of staff's conclusion regarding the absence of an impact. Proposed CEQA Loopholes, § 60004.1(a)(2). This turns the "common sense" exemption from CEQA – which the Proposed CEQA Loopholes separately grant to CARB – on its head, and is far outside the scope of any Legislative exemption from CEQA. Adding insult to injury, the Proposed CEQA Loopholes also allow CARB staff to avoid CEQA with this "No Impact" loophole even if staff conclude that CARB's action requires "mitigation measures" to avoid such impacts. Based on this extraordinary and unlawful new CEQA gating process, CARB staff can

simply skip the analysis and disclosure, add (or not) CEQA "mitigation measures," and avoid creating any public transparency – let alone "substantial evidence" – in support of its conclusions. There are over 100 environmental impacts that must now be analyzed under CEQA. There is zero protection to the public or the environment that CARB staff will comply with CEQA in this new CEQA Gating procedure. The new CEQA gating procedure also violates the "fair argument" provisions of CEQA, as CARB itself learned in one of its several CEQA court losses in *John R. Lawson Rock & Oil, Inc. v. State Air Resources Board* (2018). The CEQA statute, as well as more than 40 years of judicial decisions directs that CEQA be broadly construed to protect the environment, and require transparency and disclosure. CARB's climate decisions routinely fail to pass muster in CEQA lawsuits, as shown by nearly 10 years of climate CEQA lawsuit losses inflicted by CARB on the public and the environment, and on taxpayers (since CARB must pay its own attorneys' fees as well as the fees of prevailing party litigants).

- Unlawful Exclusion of Funding Programs from CEQA. CARB's Proposed CEQA Loophole creating a wholesale CEQA exemption for its funding programs because funding is not yet directed to a specific project is another classic example of unlawful CEQA piecemealing, since the funding program itself will establish the qualification criteria for desired projects or types of projects, and implementation of such funded projects are reasonably foreseeable. CARB has already and repeatedly lost this "reasonably foreseeable" issue in lawsuits, when for example it attempted to avoid its obligation to assess the reasonably foreseeable consequence that its action would increase NOx emissions in the two *POET* lawsuits on the unlawful grounds that CARB could not predict the precise future source or magnitude of increased NOx emissions. CARB lacks the legal authority to create or expand a CEQA exemption for its discretionary activities generally, including this proposed funding program loophole. When the Legislature has decided that a funding program is exempt from CEQA, it has enacted a statute to authorize this exemption. (*See, funding activities by California Department of Housing and Community Development for Affordable Housing Projects meeting specified statutory criteria, described in* CEQA Guideline § 15267.) Such Legislative exemptions from CEQA are rare, qualified, and explicit. CARB's Proposed CEQA Loophole meets none of these criteria, and is unlawful.

- Unlawful Exclusion of "Planning Documents" from CEQA. The final egregiously unlawful provision in the Proposed CEQA Loopholes is the wholesale exemption from CEQA for "planning documents." This phrase is at best ambiguous – are these limited to "studies" that inform a future plan, or does this extend to the approval of the plan itself? This ambiguous provision fails even the most basic of Administrative Procedure Act regulatory criteria for clarity. Beyond its ambiguity, however, CEQA unequivocally applies to the discretionary approval of

> "plans" that have reasonably foreseeable environmental consequences, as confirmed by scores of judicial decisions. Further, efforts by agency regulators to divide their activities between regulatory decisions that have no direct environmental consequences (since future physical activities will be undertaken in the future by third parties) have been uniformly rejected by courts in CEQA lawsuits: plans have reasonably foreseeable implementation consequences involving physical activities in the environment, which CEQA demands must be thoroughly disclosed, analyzed, and reduced to the extent feasible through mitigation measures or alternatives. Again, CARB need look no further than the voluminous EIRs prepared for regional Sustainable Communities Strategies to understand the scope and magnitude of CEQA evaluations that must be conducted for the challenged anti-housing and housing-related transportation measures included in the Scoping Plan. To the extent "planning documents" is intended to include a lawful subset of mere "studies" that are used to inform future agency discretionary decisions such as the approval of plans or regulations, then this proposed new regulation must include all elements required to qualify for the statutory exemption from CEQA, which extends only to "feasibility and planning studies for possible future actions which the agency, board or commission has not yet approved." (CEQA Guidelines, § 15262.) To correct this deficiency, at minimum this Proposed CEQA Loophole must be redrafted to expressly apply only to "planning <u>studies</u>" – and even then exclude such studies to the extent they are approved by the CARB board.

The 200 has filed a lawsuit alleging that four anti-housing measures in the 2017 Scoping Plan are violations of constitutional and statutory civil rights laws, as well as violations of other applicable statutes including but not limited to CEQA. If adopted, CARB's Proposed CEQA Loopholes would constitute further civil rights and statutory violations.

The 200's lawsuit describes the fact that the most frequent target of CEQA lawsuits filed statewide are housing projects, and of the challenged housing projects the most frequently targeted are new homes approved in existing communities. California's ugly history of redlining to exclude minorities from communities is also described, as is the disproportionate number of CEQA lawsuits filed to block housing in wealthier (and whiter) communities in locations that are consistent with CARB-approved Sustainable Communities Strategies that meet regional GHG reduction goals established under SB 375.

Abuse of CEQA lawsuits for non-environmental purposes by Not-In-My-Backyard (NIMBYs) opposed to "those people" – notably the minorities, millennials and students (MMS) in The 200 who are most harmed by California's housing crisis, by economic competitors, and by labor unions that Governor Brown described as "using CEQA to get PLAs [Project Labor Agreements]," is also well documented and now

includes two pending lawsuits alleging "greenmail" extortionate abuse of CEQA in violation of federal racketeering statutes.[3]

CARB's effort to avoid its own CEQA compliance obligations, while imposing more costs and litigation risks on housing that is critically needed by our communities, would be a further unlawful act by CARB in violation of the same suite of constitutional and statutory claims set forth in The 200's pending lawsuit against CARB. The Proposed CEQA Loopholes are not just unlawful, but another discriminatory and politically deaf echo of the CEQA exemptions granted by the Legislature to billionaire sports team owners. CARB is not the Legislature, cannot grant itself the Proposed CEQA Loopholes, and cannot in the name of climate change deprive Californians of their civil rights, or violate other laws including CEQA.

We urge the CARB Board and staff leaders to join with Legislators and other agencies to undertake your fair share of responsibility for solving our poverty, housing, homelessness crisis – a crisis that extends most deeply into our minority communities, and must include solutions for working families and not just the most wealthy and most poor among us.

We remain dismayed that CARB is "doubling down" on failed and discriminatory Scoping Plan mandates, such as forced reductions in Vehicle Miles Travelled (VMT), notwithstanding overwhelming evidence that VMT tracks population and jobs, that transit ridership (especially bus use) has continued to drop in California and nationally notwithstanding billions of dollars of public investment, and that California has made a huge commitment to low- and no-GHG transportation technologies. As The 200 recently explained to the California Transportation Commission and CARB at its December joint meeting, CARB's math on why VMT reductions are possible, let alone mandated, isn't disclosed – doesn't pencil – and isn't a remotely fair, possible, or effective climate strategy.[4]

In conclusion, the fact that the 2017 Scoping Plan is complex does not relieve CARB of its CEQA obligation to disclose, evaluate, and reduce through mitigation measures or alternatives, the "whole" of the Scoping Plan. With respect to the four anti-housing measures challenged in The 200 lawsuit, CARB staff admitted on the record that these measures were in fact omitted from the CEQA document for the Scoping Plan. Agencies that adopt complex plans must be prepared for and complete complex CEQA analyses, which CARB is well acquainted with based on its review of the CEQA documents prepared by regional MPOs for two rounds of Sustainable Communities Strategies that include the transportation and land use patterns for all major regions of the state.

We again request that CARB Board and leaders withdraw the four challenged anti-housing measures in the 2017 Scoping Plan (none of which result in quantified emission reductions required to meet CARB's statutory GHG reduction targets), and

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[3] Copies of the two RICO lawsuits are included for informational purposes. (Attachment 4 and 5)
[4] Please see The 200 letter to the joint CTC/CARB Board Meeting in November 2018. (Attachment 6)

prioritize less discriminatory, and more equitable and effective, GHG reduction strategies. Wasting further taxpayer resources by attempting to grant itself huge new CEQA compliance Loopholes, like arguing in court that it is constitutional for CARB to engage in racially discriminatory housing practices, is unlawful, and embarrassment, and a complete waste of CARB's (and taxpayers') resources.

Sincerely yours,

HOLLAND & KNIGHT LLP

Jennifer L. Hernandez

JLH:mlm

CC: Ellen Peter, Chief Counsel
The 200 Leadership Council

Attachment 1

The Two Hundred
National Minority Community Leaders & Advocates
1918 UNIVERSITY AVENUE, STE 1B BERKELEY, CA-94704 PHONE: (510) 868-0991 FAX: (510) 291-2975

December 11, 2017

VIA Hand Delivery and Federal Express

California Air Resources Board Members:

Mary D. Nichols
Sandra Berg
John R. Balmes, M.D.
Hector De La Torre
John Eisenhut
Dean Flores
Eduardo Garcia
John Gioia
Senator Ricardo Lara
Judy Mitchell
Barbara Riordan
Ron Roberts
Phil Serna
Alexander Sherriffs, M.D.
Daniel Sperling
Diane Takvorian
Richard Corey
Edie Change
Steven Cliff
Kurt Karperos
Ellen M. Peter
Veronica Eady
Dr. Arie Haagen-Smit

Richard Corey, Executive Officer
1001 "I" Street
Sacramento, CA 95814

RE: Draft 2017 Scoping Plan

Dear Board Members and Mr. Corey:

The Two Hundred is a group of community civil rights leaders advocating for homeownership for California's minority families. We are committed to increasing the supply of housing, to reducing the cost of housing to levels that are affordable to California's hard working families, and to restoring and enhancing homeownership by minorities so that our communities can also benefit from the family stability, enhanced educational attainment over multiple generations, and improved family and individual health outcomes, that white homeowners have long taken for granted.

We also support the quality of the California environment, and the need to protect and improve public health in our communities.

We have, for many decades, watched with dismay as decisions by government bureaucrats discriminate against and disproportionately harm minority communities. We have battled against this discrimination for our entire careers, which for some of us means working to combat discrimination for more than 50 years. In litigation and political action, we have worked to force government bureaucrats to reform policies and programs that included blatant racial discrimination – by, for example, denying minority veterans college and home loans that were

available to white veterans. We sued and lobbied and legislated to force federal and state agencies to end redlining practices that denied loans and insurance to aspiring minority home buyers and small businesses. We sued and lobbied to force regulators and private companies to recognize their own civil rights violations, and end discriminatory services and practices, in the banking, telecommunication, electricity, and insurance industries.

We have learned, the hard way, that environmental regulators and lobbyists are as oblivious to the needs of minority communities, and are as supportive of ongoing racial discrimination in their policies and practices, as their banking, utility and insurance bureaucratic peers. Several years ago, we waged a three year battle in Sacramento to successfully overcome environmentalist opposition to establishing clear rules for the cleanup of the polluted properties in our communities, overcoming the cozy crony relationships between regulators and environmentalists who financially benefited from cleanup delays and disputes instead of creating the clear, understandable, financeable, insurable, and equitable rules for the cleanup and redevelopment of the polluted properties that blighted our communities.

Having successfully fought for decades to overcome government and business discrimination against minority working families, we were deeply saddened – but not surprised – that the predatory lending practices and discriminatory regulatory oversight deficiencies that led to the Great Recession disproportionately harmed minority homeowners, who lost homes to foreclosures at a far greater rate than white families. Just as the civil rights promises of laws enacted in the 1960s and 1970s had reached their stride, and the homeownership race gap was starting to close, the Great Recession wiped out generations of homeownership progress in our communities.

We were not surprised, but were likewise deeply saddened, when the regulatory climate change passions of California's environmental leaders were quickly distorted from their purported goals of reducing global GHG emissions to address climate change, into a series of regulatory proposals that impose stunningly regressive new costs on California middle income families. This regressive new regulatory regime, which punishes most harshly those Californians who work hard in middle income jobs, is presented by CARB as a global necessity – but in fact imposes higher costs for basic necessities like utilities, transportation, and housing that decades of anti-discrimination and pro-consumer protection statutes and agencies have sought to prevent. CARB's regressive and discriminatory agenda also embraces as California GHG "reductions" the relocation of higher wage manufacturing jobs accessible to those with high school degrees to other states and countries that have far higher per capita GHG emissions and then importing these formerly made-in-California products back to California, with still more GHG produced from transportation back to California! It is no surprise that the GHG habits of the wealthy, like jet plane travel, is ignored in favor of charging more for basic necessities, to be paid as a disproportionately greater share of earned income, by California's majority minority households.

We write to object to the 2017 Scoping Plan as a violation of the equal protection clause of the Federal and California constitution by disproportionately placing new cost burdens and regulatory obstacles on aspiring minority homeowners, while also disproportionately and arbitrarily reducing access to the higher wage jobs that allow members of California's minority communities to become homeowners. Approval of the proposed 2017 Scoping Plan would also

violate numerous other federal and state statutes, including but not limited to the federal Clean Air Act and Fair Housing laws, as described below.

We urge your Board to reject the 2017 Scoping Plan, and direct preparation of a revised Scoping Plan (inclusive of a revised environmental and fiscal analysis) that actually advances your climate change goal of reducing global GHG emissions with California leadership that does not discriminate against minority communities or violate constitutional and statutory protections, that advances rather than the discriminates against aspiring minority homeowners, and that results in meaningful global GHG reductions rather than simply causing the "leakage" of people and jobs to higher GHG states and countries that result in higher global GHG emissions.

While we recognize that the Scoping Plan also increases costs and reduces higher wage job access for aspiring white working families and workers, because California is now a minority majority state the imposition of new regulatory programs that unfairly burden middle and working class families and workers – the majority of which are now minorities - are unconstitutional.

CARB's constitutional violation is particularly egregious in the context of GHG emission reduction mandates that allow California to claim GHG reductions for driving people and jobs out of California, while ignoring both the increased GHG emissions caused when people and jobs move to higher per capita and per gross domestic product (GDP) states and countries as well as the GHG emissions created by Californians' consumption of goods and services (like cement imported from China and jet travel for the wealthy). As recently demonstrated in a joint study completed by scholars from the University of California at Berkeley and regulators at the Bay Area Air Quality Management District, high wealth households cause far more global GHG emissions – yet the Scoping Plan ignores this scientific truth and unfairly, and unlawfully, burdens California's minority and middle class households with new regulatory costs and burdens to further reduce the less than 1% of global GHG emissions that are actually produced within California's borders.

Background

As has been our lifelong mission, we have resolved to once again advocate for equity, and against discrimination, on behalf of our communities and against discriminatory bureaucracies.

California has the nation's highest poverty rate, highest housing prices, greatest housing shortage, highest homeless population - and highest number of billionaires. The housing supply and housing cost crisis has resulted in a diaspora of minority families from the core metropolitan cities with the greatest number of jobs and highest wages to ever more distant suburbs, exurbs, and even regions. Hard working families, which are disproportionately minorities in contrast to the wealthier whiter elites who bought into or can afford to remain in our wealthiest job centers, are forced to "drive until they qualify" for housing they can own (or even rent). Workers and their families then suffer a cascading series of adverse health, educational, and financial consequences from their unconscionably long commutes – sometimes sleeping during the week in cars and trucks parked overnight on construction job sites, in industrial neighborhoods, and in abandoned parking lots. This problem is not limited to minimum wage, other low income workers, and college students already struggling with staggering debt burdens: our skilled

construction workers, teachers, nurses, firefighters, police officers and sheriff's deputies, city staffers and truck drivers and union members – all once solid middle class California jobs that produced the world's greatest middle class of homeowners – can no longer afford to buy homes near where they work.

In our communities, homeownership is not a "developer" issue – it is a core value that allows each monthly housing check to contribute to financial security, and it is the only proven pathway to create the family wealth needed to pay for the inevitable periods of illness or lost jobs, and the inevitable multi-generational needs of financing college educations and senior health care.

Yet we see, over and over and over again, our government agencies taking actions to deny our people access to homeownership – always purportedly a "color blind" approach that they are shocked (shocked!) to learn has a disparate impact on minority communities.

If the California Air Resources Board (CARB) approves the October 2017 version of its Scoping Plan, CARB will enter the hall of shame occupied by other federal and state agencies who violate the equal protection clause of the federal and state constitution, and other federal and state laws – not the least of which is the Clean Air Act itself – by discriminating against California's minority communities.

California produces less than 1% of global GHG emissions, and has lower per capita GHG emissions than any other large state except New York – which unlike California still has multiple operating nuclear power plants. As everyone from Governor Brown to members of this Board have repeatedly stated, California climate change leadership depends not on further mass reductions in the 1% of global GHG emissions generated within our boundaries, and instead demands leadership that can and will be politically emulated by other states and countries.

Promoting leakage of jobs and people to higher per capita GHG states and jurisdictions, and exacerbating the state's extreme poverty, homelessness and housing crisis while depriving hard working minority Californians from homeownership and middle class stability, achieves only the twin goals of increasing global GHG emissions and promoting ever more acute income inequality and racial discrimination. The Legislature and Governor directed CARB to reduce GHG emissions – and did not direct CARB to violate applicable constitutional and statutory protections and mandates. California's climate leadership in promoting renewable energy and other technologies, such as solar panels and electric vehicles, can and has spurred GHG reduction measures that can and have been replicated by other states and countries. CARB's proposed expansion of the California Environmental Quality Act, and its promotion of "Vibrant Community" state agency land use interventions designed to intentionally increase road congestion and home prices throughout California, do not create meaningful reductions in GHG emissions in California – they just increase costs and misery for California's working families, and promote migration to other higher GHG states.

We Urge You To Direct Staff To Revise The 2017 Scoping Plan To Avoid Increasing Poverty and Worsening Housing Crisis for California's Minorities and Other Working Families

There are four components of the Scoping Plan that must be eliminated, and a revised Scoping Plan along with corresponding revisions to the Scoping Plan's statutorily required fiscal and environmental analyses must be completed and circulated for public review and comment, to avoid federal and state constitutional and statutory violations, and avoid increasing California's acute poverty, homelessness, and housing crisis.

I. Disapprove Expanding the California Environmental Quality Act.

Numerous non-partisan analyses and expert studies have confirmed that CEQA is a significant factor in discouraging, downsizing, delaying, and increasing the cost of housing – especially in urban job centers. *See generally,* several housing crisis reports confirming that CEQA as a problem prepared by the non-partisan California Legislative Analyst office such as http://www.lao.ca.gov/Publications/Report/3470 ; *see also,* https://www.mckinsey.com/global-themes/urbanization/closing-californias-housing-gap ; http://www.milkeninstitute.org/videos/view/if-you-lived-here-youd-be-home-by-now-addressing-californias-housing-shortfall ; https://www.sandiego.gov/blog/housing-action-plan ; https://bpr.berkeley.edu/2017/04/11/housingcare-how-to-solve-californias-affordable-housing-crisis/ ; https://www.bizjournals.com/sanfrancisco/blog/real-estate/2016/08/unions-against-gov-browns-as-of-right-housing-plan.html ; http://www.sacbee.com/news/politics-government/politics-columns-blogs/dan-walters/article25352200.html ; http://www.caeconomy.org/content/landing-page/housing-landing . [1]

Earlier this month, the Office of Planning and Research (OPR) separately released a massive regulatory amendment package that would make changes to the regulatory requirements implementing CEQA (CEQA Guidelines) with the convenient (for state agency bureaucrats assured lifetime employment, pension and medical insurance) and disgraceful (for California working families hoping to spend any quality time at home instead of in multi-hour daily commutes) public review process to begin over the holidays.

The Scoping Plan's vague and ambiguous CEQA provisions, coupled with the massive unknowns and ambiguities in OPR's proposal, would raise housing and homeowner transportation costs - and further delay completion of critically needed housing by increasing CEQA litigation risks – and thereby exacerbate California's acute housing and poverty crisis. This effect would be disparately felt by the disproportionately minority population of renters unable to afford homeownership, younger workers more generally including even the well-paid technology, artist and internet workforce that organized the new Yes In My Backyard (YIMBY) party with the bold motto that "Housing Is Not Illegal," and Californians that do not already have

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[1] A recent report prepared for the Senate Environmental Quality Committee concluded that CEQA litigation was not a problem – a conclusion made possible by the study's omission of housing entirely notwithstanding the housing crisis, with a methodology that ignores both the cost and time required to deal with CEQA compliance and litigation in relation to taxpayer funded public projects such as the CEQA lawsuit threat against expiring federal funding that caused "Carmageddon). http://sd10.senate.ca.gov/news/2017-12-07-survey-state-projects-finds-ceqa-not-barrier; *see also*, http://ceqaworkinggroup.com/carmageddon

adequate housing supply options at prices they can afford. Recent studies have confirmed that higher density infill housing is the most frequent target of CEQA lawsuits statewide. https://www.hklaw.com/news/holland-knight-study-uncovers-widespread-ceqa-litigation-abuse-08-04-2015/; http://sites.uchastings.edu/helj/publications/recent-volume/

For example, in the part of our state that has the greatest population, highest density, and most acute housing affordability problem – the six-county area that comprises the Southern California Association of Governments (SCAG) region – 98% of the 14,000 housing units targeted by CEQA lawsuits between 2013 and 2015 are located in urban infill locations, 70% are within one-half mile of transit, and almost 80% are located in the whiter, wealthier and healthier areas of the region. Another study confirmed that California's transit projects were more frequently targeted by CEQA lawsuits than roadway and highway projects combined! *Ibid.*

If CARB actually cared about increasing density and transit services as a GHG reduction strategy, the Scoping Plan should have identified CEQA litigation – pursued by anonymous shadowy groups, business competitors, NIMBYs and labor unions - as a major obstacle and delay factor in achieving its ambitious GHG reduction goals for promoting infill housing, transit and public services. If CARB cared about working Californians, or about the poverty or housing crisis, or the transportation gridlock that is causing criteria air emissions from the transportation sector to actually increase for the first time in decades, then the Scoping Plan would have strongly advocated for statutory amendments to CEQA that would expedite housing, transportation, schools, parks and public infrastructure. If CARB cared about global climate change, the Scoping Plan would have strongly advocated for amendments to CEQA and other statutes that help California retain its middle income workforce instead of driving this disproportionately minority population to higher per capita GHG states for housing they can afford based on jobs they can access based on the educational attainment levels delivered by California's schools and colleges.[2]

Instead of taking any of these constructive steps, all of which would improve the political resiliency of climate change policies in the face of hyper-partisanship and staggering income inequality, the Scoping Plan proposes to actually expand CEQA by adding ambiguous, litigious, and unlawful new expert agency net zero CEQA thresholds, substantial reductions in total Vehicle Miles Travelled (VMT), land use growth controls such as urban limit lines and new ecosystem service fees which further increase housing costs in existing communities, and legally infeasible local climate action plan standards under CEQA. These components of the Scoping

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[2] With respect to education, we note that separate legal action is again underway to force California leaders to meet even minimal educational standards for its minority students, including an elementary school for which fewer than ten percent of students pass reading competency tests in yet another round of litigation forced by California leaders' repeated inaction on core civil rights in the educational arena. Elitist special interests continue patterns of discrimination against California's minority communities with many established policies, but only CARB (and OPR) are proposing to launch a new generation of "environmental" mandates to actually worsen the housing, poverty, and transportation gridlock crises that continue this unlawful history of racial discrimination against minorities.

Plan, like the massive OPR rulemaking just initiated, will benefit only the "CEQA industry" of lawyers, consultants, special interests, and bureaucrats who profit from repetitive studies, gain financial advantages from secret lawsuit settlements and duplicative lawsuits against projects that have already gone through one or more rounds of CEQA. The Scoping Plan is an elitist tool that will further empower our BANANA (Build Absolutely Nothing Anywhere Near Anyone) republics of wealthy coastal elites who refuse to build their fair share of housing that is affordable to California's hard working families.

A. Eliminate Presumptive Net Zero GHG CEQA Threshold

The Scoping Plan recommends, based on CARB's status as an expert state agency on GHG, that all new development projects – of all kinds – achieve no net increase in GHG emissions ("net zero GHG") unless the lead agency or project proponent can prove that a project cannot meet this CEQA threshold based on "substantial evidence."

This Scoping Plan component is not proposed to go through any future rulemaking proceeding: it stands, as senior CARB official Kurt Karperos recently confirmed at a Sacramento Climate Conference, as a "self-implementing" element of the Scoping Plan that takes legal effect as of CARB's adoption of the Scoping Plan.

First, this Scoping Plan component is flatly at odds with OPR's contradictory legal conclusion that CEQA cannot be interpreted to impose a "zero molecule" standard and prior definitive rejection of a "net zero" GHG mandate in the only completed CEQA GHG rulemaking in effect today. OPR's voluminous new proposal on CEQA rulemaking includes a variant of this Scoping Plan CEQA threshold, but this new OPR proposal is the beginning – not the end – of the rulemaking process. There is zero evidence in the CARB record supporting presumptive imposition by a lead agency of this net zero GHG threshold for each type of individual project – from home renovations to high-rise towers, from rail to ferry to carpool lane expansions, from wineries to hotels, from universities to hospitals, from parks to schools – that is subject to CEQA.

Second, GHG emissions are the most litigated CEQA topic, and notwithstanding several decade-long lawsuits, the California Supreme Court declined to decide in two recent cases what CEQA (a 1970 statute) actually requires in the context of determining when a GHG emission is potentially "significant" under CEQA.

It is the height of agency irresponsibility and racial insensitivity, given the severity of the housing, poverty and homelessness crisis and their collective effect on California's minority communities, for CARB in its expert agency role to interpret CEQA as requiring use of this net zero GHG CEQA threshold unless a lead agency can prove otherwise with substantial evidence.

It is also the height of arrogance, similar to decisions by California's redevelopment agencies to demolish whole minority communities, for a billion dollar Sacramento agency staffed with hundreds of well-paid scientists and policy advisors to suggest that a CEQA lead agency – most often a city struggling with numerous complex budget and policy priorities, operating with minimal staff and no climate change experts – to develop its own "substantial evidence" to

withstand a CEQA court challenge to rejection of this expert agency net zero GHG CARB standard.

There have been examples of "net zero" buildings which rely on a combination of rooftop solar generation, various voluntary building construction materials and techniques that have not met California's statutory consumer protection mandate of a ten year payback in reduced energy costs, and elimination of natural gas for heating and cooking (which thereby raises monthly utility costs for building occupants). All of these "net zero" buildings increase housing costs, which are already nearly triple the average housing costs for the nation.

However, none of these examples included the other components of a "project" as defined under CEQA, which span a much larger group of project-related activities including initial construction and ongoing occupancy as well as transportation fuel use by future project residents, guests, employees, and service providers.

CARB's version of a CEQA net zero GHG threshold imposes even higher housing costs than the "net zero" housing structures in existence by including all of these project-related construction and future occupant transportation emissions, such that new project occupants will double pay in perpetuity for driving: once at the pump under the cap and trade program, and again (and again) as part of owning or renting and doing the same routine transportation activities living next door in pre-Scoping Plan housing. Since CEQA applies only to new projects, the Scoping Plan also doubles down on the broadly perceived generational inequities created by Proposition 13, where a new home owner can pay ten thousand dollars more than their next door neighbor – under the Scoping Plan, the new neighbor will also pay tens of thousands of dollars more in transportation-related GHG offsets or allowances than households not subject to this new CEQA regime.

Further, the CARB CEQA expansion proposal for net zero GHG would be triggered today for new projects (at the height of the housing crisis) notwithstanding the fact that over time less and less fossil fuel/GHG emissions are expected from future vehicle fleets.

In short, the direct effect of CARB's net zero GHG project threshold CEQA expansion is to impose even higher housing costs on California families that are already suffering from an acute housing supply and affordability crisis.

Third, as noted in the studies cited above, the most frequent targets of CEQA lawsuits statewide are housing projects – and the most frequently challenged category of housing projects is higher density, multi-unit projects located in existing communities served by public transit. Anti-housing lawsuits are the reality of CEQA litigation, which is at odds with the academic theory of planners who believe that all neighbors (and CEQA leverage litigants like competitors and labor unions) welcome high density and crowded parks, schools and roads - or the idealized vision of what CEQA lawsuits "should be" in the minds of Sacramento agency lawyers bureaucrats.

If it is indeed a climate goal of CARB to promote costly, high density housing over the objections of neighboring voters, then again the solution is to reform and update CEQA – not to create a new litigious "net zero" standard for each new housing project that can be litigated for a decade or more while no housing is built, and California workers continue to suffer as well as migrate to other higher per capita GHG states.

Fourth, this "net zero" CEQA approach violates consumer protection statutes that were separately enacted to prevent Sacramento's regulators from imposing on California homeowners (and renters) every last bell, whistle, and gizmo with a lobbyist or agency special interest champion behind it. CEQA is not, as courts have consistently held, a giant "workaround" to avoid compliance – or mandate "beyond compliance" measures that conflict with specific statutory mandates, or that attempt to impose through bureaucratic fiat what the Legislature has itself repeatedly rejected as a statutory mandate such as the Scoping Plan's unlawful conflation of the SB 32 enacted mandate of reducing GHG 40% by 2030 with the decidedly NOT approved notwithstanding multiple years of unsuccessful legislative proposals mandate of reducing GHG 80% by 2050.

The Legislature, and not CARB, enacts new statutory standards.

California already has, and can enact future amendments to, vehicle standards and fuel standards that make vehicles and gas more costly for California consumers. The Legislature has done this twice already in 2017, with the new vehicle tax and the expansion of the cap and trade program. However, expanding CEQA to require ***only*** future occupants of acutely needed housing units to double-and triple-pay to get to and from work with a CEQA mitigation obligation to purchase GHG credits/offsets to satisfy CARB's new "net zero" CEQA threshold unlawfully and unfairly discriminates against new occupants in violation of Constitutional protections for interstate commerce and equal protection, in addition to other fatal legal deficiencies.

California already has, and can enact future amendments to, building code standards that result in lower GHG emissions while also protecting consumers from excessive costs; expanding CEQA to impose "net zero" building mandates that are not cost-effective even over the ten year statutory payback period harms consumers in violation of this statute.

California already has, and can enact future amendments to, its renewable portfolio standards and electricity generation grid physical and governance configurations. Given the "duck curve" challenge of California's current inability to consume the solar/wind power produced during some afternoons (as documented by the California Energy Commission's building standards staff) coupled with the far lower rooftop ratios available in multi-story higher density housing advocated by CARB, forcing new home occupants to pay for ever more costly (and currently unproductive) rooftop solar arrays and/or pay for offsite renewable energy generation facilities in addition to paying normal consumer costs for electricity and natural gas (or banning natural gas entirely) increases housing project costs and CEQA uncertainties with virtually no corresponding GHG reduction benefits from lost afternoon renewable generation peaks.

Other GHG emissions of simply occupying a home – like composting and reusing trash or using a transit system instead of owning a car – likewise cannot be meaningfully assumed by the vast majority of individual housing projects, because these are community-scale facilities and systems that are neither feasible nor cost-effective measures applied to the individual projects subject to CEQA (and CEQA lawsuit challenges).

For example, does an apartment project near transit maximize density – or decide to use part of its property for composting its food waste but not the food waste of its neighbors, and then spending more money to arrange for the offsite use of the composted materials? Marin County is

among the most famously hostile to new housing, and notwithstanding its purported "environmental" values has also declined to allow any food waste composting facility to be built within the County. Is it CARB's intention to hand Marin County NIMBYs still more CEQA lawsuit claims to block apartments near transit that decline to compost their own food waste because Marin County won't provide this GHG reduction service to its residents?

On a much more significant cost and GHG emission scale, the existence of effective transit systems is far outside the control of an individual 20-unit housing project. The University of Minnesota's authoritative, multi-year national metro region study of transit system confirms that far less than 10% of a metro region's jobs can be accessed in a 60-minute one-way ride on public transit anywhere in California with the sole exception of the 49-square mile San Francisco peninsula. Notwithstanding billions of transit investments, and robust rail and express bus transit ridership, routine bus ridership has plummeted in California and nationally with transportation mode shifts to Uber/Lyft (and soon automated vehicles. Reforming CEQA – and rail projects in California routinely take 20 years or more (and multiple rounds of CEQA lawsuits) to get completed. Is it really CARB's intention to let our whitest, wealthiest, healthiest enclaves – the wealthy communities who have fought for decades to block affordable housing, "crime trains" and transit stations – use the absence of effective transit systems as yet another reason to claim CEQA deficiencies in a lawsuit against housing??

The Scoping Plan's "net zero" CEQA threshold violates multiple provisions of the state and federal constitution, and discriminates against future occupants of new housing units who are disproportionately members of minority communities, in violation of federal and state fair housing laws.

B. Eliminate CEQA Numeric Standards for Local Climate Action Plans

The Scoping Plan purports to endorse current CEQA Guidelines and court decisions upholding project compliance with locally-approved climate action plans as an alternative to the "net zero" CEQA compliance pathway. Our courts have struggled, to no clear outcome, to understand and apply CEQA to global climate change. Appellate courts and the current CEQA Guidelines both recognize that a project that complies with an approved local climate action plan is a valid compliance pathway through CEQA, and the California Supreme Court has opined that this "may" be a compliance pathway but also urged establishment of clearer CEQA thresholds for GHG emissions.

As with the "net zero" threshold itself, however, CARB's proposal that local governments – cities and counties – adopt climate action plans that are themselves designed to reduce per capita greenhouse emissions from current levels of eleven metric tons per year, to six metric tons per year by 2030, and then two metric tons per year by 2050, demonstrates willful ignorance of the statutory jurisdictional authority of local government to substantially reduce the sources of GHG emissions that result in already low per capita emissions.

As the 2017 Scoping Plan itself acknowledges, the vast majority of GHG emissions are from the transportation sector (where local governments lack any legal authority to regulate passenger vehicle fuels or technology), from electricity generation (where local governments have made substantial strides in encouraging and producing rooftop and canopy solar power generation, but

at tiny fractions of what would be needed for an entire community), from stationary sources (which are regulated through the cap and trade program, with fees collected and disbursed by the state and not local government), and from sector-specific activities like agriculture and landfills that typically are not located in the cities where most new housing is proposed to be developed based on the eight-state agency "Vibrant Community" Scoping Plan Appendix vision of focusing future development only in higher density, transit-oriented cities).

Even the CARB Scoping Plan Appendix recommending local government actions does not identify any measures that would contribute more than a tiny fraction toward reducing the community's per capita GHG emissions to CARB's six and two metric tons per year numeric criteria, respectively. The mandate for achieving a "declining trajectory" in mass GHG emissions is likewise inconsistent with substantially increasing population densities in California cities, since GHG emissions do indeed track population growth – and any substantial increase in population includes a mass increase in GHG emissions even if per capita greenhouse emissions are reduced.

There is no question that cities and counties can reduce GHG emissions, by for example reducing emissions from their own municipal facilities. Even these strategies can have a significant fiscal consequence to financially struggling communities burdened with ever-increasing pension and other costs. For example, converting a municipal swimming pool to solar and eliminating gas heating will reduce GHG emissions, but also reduces the ability of the young and infirm to swim during the winter and on cloudy or cool days. Backup electricity generation from the grid will help maintain appropriate pool temperatures, but at a much higher operating cost give the availability of inexpensive natural gas. If CARB believes that local jurisdictions must never use natural gas to heat swimming pools, then it should conduct a rulemaking to impose this requirement. Country club kids will continue to swim; poor kids and the infirm will not. How important is eliminating occasional natural gas use in public swimming pools to global climate change is an issue to be appropriately addressed in a separate rulemaking, but the CARB-mandated six and two ton per year numeric thresholds for legally adequate local climate action plans demand an immediate "all of the above" GHG reduction strategy regardless of the tradeoffs.

Although the two ton per person metric has won support from many scientists, the hard work of approaching that target – even from California's very low 11 ton per year per person rate – is appropriately managed with regulation, not a bureaucratic putsch. In the 1970's, the chairwoman of CARB believed that the only possible strategy for reducing air pollution from cars was to prohibit driving every other day – an impossible proposition for middle income workers who must be physically present at their jobs or risk falling into homelessness and poverty, even then. Over time, through methodical and transparent rulemaking, US EPA officials under President Obama reported that vehicular emissions were reduced by 98-99% in relation to tailpipe emissions from the 1960s. We removed lead from gasoline entirely, eliminated the risk of carbon monoxide poisoning at intersections, and vastly decreased other smog-creating pollutants. If CARB was serious about local climate action plans, it would prioritize, quantify, fiscally and environmentally assess, and then recommend regulatory standards to be met by local government. Instead, by again conflating the statutory 2030 statutory reduction standard with the 2050 unenacted policy, CARB's local climate action plan numeric standards are accompanied only by an unquantified and unquantifiable list of Appendix mush measures. Cities

and counties have already experienced the joys of being targeted by – and losing - CEQA lawsuits seeking to overturn local climate action plans. The Legislature has also repeatedly declined to mandate local agency adoption of climate action plans. It is illusory, disingenuous, and hugely litigious, for CARB to suggest that a 2 ton per capita climate action plan is an alternate compliance pathway for projects under CEQA.

The Scoping Plan is a major step in the wrong direction: it prescribes a clearly unattainable numerical per capita GHG emission standards for 2030 and 2050, identifies loosely framed and largely unquantifiable examples of potential measures that local government can seek to achieve in local climate action plans, and utterly fails to provide any clear direction on what local governments should do about the vast majority of GHG emissions sources over which local governments have no jurisdiction or control. CARB's impractical, legally infeasible, and poorly-conceived mandatory numeric standards for local climate action plans will spawn even more CEQA lawsuits against local climate action plans, and spawn more judicial confusion and conflicting outcomes. Because adoption of climate action plans itself triggers CEQA, it will also discourage rather than encourage local jurisdictions to adopt such plans and face costly environmental impact report preparation and litigation defense gauntlets.

Like the ill-considered "net zero" presumptive CEQA threshold for projects, the bottom line of this Scoping Plan local climate action plan CEQA compliance pathway is to increase costs, add more delays, and expand litigation risks, for those filing CEQA lawsuits against housing, transit, and other critical local services and infrastructure projects.

Like the "net zero" presumptive CEQA threshold for projects, the numerical GHG per capita and trajectory criteria for climate action plans should be removed from the Scoping Plan. The quantum of GHG emissions that can feasibly be attained under existing legal authorities by local governments should be separately and clearly calculated and explained, and if this is indeed a new mandate then it should be separately legislated as such so that it can be placed in the context of the multitude of other legal and policy priorities, and fiscal opportunities and constraints, placed on local government.

At minimum, if this Scoping Plan numeric per capita and trajectory adequacy standard for local climate action plans is to be incorporated into CEQA, then this – like the GHG threshold issue – should be deleted from the Scoping Plan and assessed in the context of the OPR CEQA Guidelines update proposal for which the formal rulemaking process has just begun.

C. Delete CEQA and Land Use "Vibrant Communities" Appendix Scoping Plan Components, All of Which Ignore Regional, Racial, Economic, and Project Diversity

CARB is a state agency, with an extremely poor track record of CEQA compliance and multiple CEQA litigation lawsuit losses, and has virtually no experience, expertise, or statutory authority to regulate local land uses. CARB's mission does not encompass even a small fraction of the public health and welfare, safety, economic development, public services, infrastructure development and maintenance, representative government by elected officials, or law enforcement duties or obligations placed on local government by the California constitution and myriad state laws.

At even the most conceptual level, the Scoping Plan's assertion that a single "net zero" GHG emissions threshold should apply to projects in climates as varied as Mendocino and Palm Springs, and should apply equally to all project types including wineries, universities, hospitals, housing, carpool lanes, reclaimed water plants, bike lanes on busy urban streets, replacement homes lost to fires and earthquakes, ski resorts and marijuana grows, the High Speed Rail project and the Twin Tunnel project (to name just a few), confirms why CARB is not the appropriate agency to assert its "expert agency opinion" on how either GHG or land uses should be regulated under CEQA.

With respect to climate variants, to impose "net zero" as a threshold in a wealthier milder climate such as the Bay Area will increase housing costs and reduce the affordability of housing for minority communities. In the inland and desert areas of the state, in contrast, pricing new projects to achieve "net zero" compounds already extraordinarily high utility costs and will literally kill people – disproportionately minorities – who cannot afford either new housing, or monthly utility bills in excess of $1000 during the summer. A "net zero" structure that deprives new homes of far less costly natural gas extends this new CARB CEQA death zone to mountainous regions during cold winters.

Utility subsidies for the very poor do not come close to recognizing the scale of suffering and economic distress that already affects working Californians and their families, and it ignores in the housing context conclusions by the Governor and numerous other political and academic experts that we simply cannot count on public funding to solve this problem for us.

While CARB staff will undoubtedly point to utility cost assistance programs for the very poor, United Way of California determined that a full 40% of the state's population cannot regularly meet even routine monthly costs even when taking into account public subsidies for food and health care. https://www.unitedwaysca.org/realcost How much more will Scoping Plan implementation cost these families – our teachers, health and food workers, retail clerks and truck drivers, construction workers and public safety employees – to heat and cool their homes, cook their foods, and get to and from work, school, and medical care?

Similarly, with respect to project variants, how much more will a "net zero" mandate add to the cost of subsidized affordable and supportive housing? How much more will it cost transit projects? How much more will reclaimed water treatment facilities cost, and how much will water cost consumers, with a "net zero" mandate? And is "net zero" paid up front, over time – and if over time is this a brand new annual cost imposed on the residents of all new housing everywhere??

Using CEQA – which applies solely to "new" projects - to impose these new costs – means that wealthier existing homeowners will never pay the same high cost as the unhoused victims of California's current NIMBY-driven housing crisis, it means that existing businesses will always have a permanent economic advantage over competitors even if that drives up prices for consumers, and it means that the already extraordinarily high infrastructure costs in California will get higher still – at a time of diminishing availability of federal infrastructure investment.

As patiently, and exhaustively explained by NAACP and Haas Business School Fellow Richard Rothstein in his book, The Color of Law, government bureaucrats don't always intentionally and

expressly engage in racial discrimination – but the repeated pattern of agency actions in California and nationally does indeed have this disparate discriminatory effect.

Discriminating against minorities by expanding CEQA will do nothing to advance California's leadership role in global climate change. It will instead cement the growing reputation of Californians as elitists that openly demonstrate their contempt for middle class workers.

We do not believe that the Legislature enacted climate laws that authorized or anticipated that CARB would expand CEQA to intentionally increase housing costs, drive up poverty rates, and increase global climate change by eliminating homeownership opportunities for middle class workers. We do not believe that the Legislature intended CARB to drive middle income families to states with far higher per capita GHG emissions, and within California to further burden housing costs and CEQA litigation risks while still protecting CEQA litigation abusers that have forced more Californians to live in housing located ever-further from temperate climate coastal jobs centers to inland areas with health-critical needs for more summer air conditioning and winter heating.

d. Conclusion: Delete All CEQA Provisions from Scoping Plan

Prescribing new CEQA requirements that are practical, lawful, equitable and affordable given our poverty, homeless and housing crisis, existed as a Scoping Plan opportunity for CARB, us, and other Californians committed to the twin goals of civil rights and equal protection, along with environmental protection and climate change leadership.

However, the political sloganeering behind the 2017 Scoping Plan's "net zero" CEQA threshold and local climate action plan numeric standards is irresponsible, inequitable, and unlawful. Because approval of the Scoping Plan is intended by CARB to give these CEQA expansions immediate legal effect as expert agency determinations regardless of the OPR or any other rulemaking, CARB's CEQA expansions also cause the greatest harms to the housing, transit, public service, infrastructure, park and school projects, that are most likely to be targeted, threatened, forced to pay "greenmail" in secret settlements using taxpayer dollars or private sector dollars that get rolled into increased housing costs, and ultimately delayed or derailed, in CEQA lawsuits.

The Scoping Plan's expansions to CEQA were also entirely ignored in the environmental and fiscal analyses prepared for the Scoping Plan, and thus also violated applicable rulemaking mandates for the Scoping Plan, as yet another set of legal violations by CARB in this ill-considered CEQA power grab.

CARB has previously received comments on its draft Scoping Plan, which instead of "net zero" proposed an equally opaque, litigious, and inequitable "all feasible" GHG mitigation standard on new projects. The 2017 Scoping Plan is even more extreme, and more unlawful, than earlier drafts by adopting the numeric "zero" threshold, and unveiling for the first time the six/two ton per capita standards for climate action plans.

All CEQA components of the 2017 Scoping Plan should be deleted (including the related land use measures in the Vibrant Communities Appendix). CEQA GHG requirements should be determined in the context of the just-commenced rulemaking process for amending the CEQA

Guidelines. We close these comments with a simple resolution that we ask you to approve in lieu of staff's recommended approval of the entirety of the Scoping Plan.

II. Delete Limits on New Vehicle Miles Travelled from Scoping Plan.

The 2017 Scoping Plan states that CARB staff is "more convinced than ever" about the need for Californians to drive less – a lot less. However, CARB staff also recently issued a notice confirming that CARB staff was not ready to propose updated targets for GHG and vehicle mile travelled (VMT) reductions as part of the SB 375 process, and would not be ready to do so until sometime next year.

Like the CEQA components of the Scoping Plan discussed in Part I, the VMT reduction component of the Scoping Plan is not quantified or assessed in either the required environmental or fiscal analysis, and accordingly CARB has violated the fiscal and environmental review statutory requirements applicable to the Scoping Plan.

As background, while it has become a "political truth" that higher density transit oriented housing reduces VMT, the actual truth as documented in numerous studies including those funded by CARB and others is that adding density to transit-served urban neighborhoods adds VMT (even if it potentially reduces per capita VMT), that VMT is higher for the higher wealth households that can afford to pay the $4000/month rents charged in the tony Bay Area and Los Angeles neighborhoods that have sprouted high rise residential density in recent years, and that the only peer reviewed academic study of VMT reduction in higher density transit neighborhoods confirmed that there is almost no correlation between VMT reductions and the expensive high density transit oriented housing development sought by the Scoping Plan authors. See, e.g., https://www.arb.ca.gov/research/apr/past/13-310.pdf, www.tandfonline.com/doi/abs/10.1080/01944363.2016.1240044

Add to this the fact that bus ridership has plummeted nationally and throughout California, even in San Francisco, which is the West Coast's most transit-oriented city (and the only city that largely took shape before the automobile became the dominant mode of transportation). Gentrification and the outmigration of minorities and working class families from the central city neighborhoods with the most transit has also been well documented, including the "diaspora" for example of African Americans to the San Joaquin Valley and distant suburbs like Antioch, Fairfield and Santa Rosa from the cities of Oakland, San Francisco and San Jose. While lower income workers may feasibly take transit where transit service can reasonably connect people to jobs (e.g., within cities like San Francisco), once such workers are forced by the housing crisis to "drive until they qualify" for housing they can afford regional VMT actually increases. Emerging transportation technologies and services like Uber and Lyft provide increasingly popular last-mile service between rail stations and work/home, but studies have confirmed these services also increase VMT. Automated vehicles likewise are projected to increase rather than decrease VMT.

Intentionally increasing road congestion as a climate strategy, as was explained in the "road diet" proposed in OPR's second Discussion Draft of SB 743 CEQA Guidelines, and as has been with less inflammatory words adopted as policy by Caltrans without benefit of notice to or statutory authorization from the Legislature, compounds the racial injustice of the housing crisis since the

victims of intentionally increasing congestion are the workers already forced to more distant inland locations away from higher wage jobs and more ample job opportunities.

The "cause more gridlock" transportation strategy also doesn't work from an environmental and public health perspective: for the first time in the many decades since the state started comprehensively tracking air pollution from vehicles, criteria and GHG and toxic air emissions actually increased rather than decreased – even as cars and fuels emit less pollution – because people are forced to drive longer distances, and spend more time stuck in traffic congestion. And who lives closest to the freeways and ports where vehicular emissions increase from this intentional gridlock? No surprise answer: these are neighborhoods dominated by poor and minority residents, who also have disproportionately high rates of pollution-induced asthma and other adverse health conditions.

Increasing congestion to induce bus transit has never been approved by Californians, is contrary to several existing federal and state laws, and is absolutely contrary to the political will of California voters. In recent years, several of California's most congested counties voted to approve roadway and transit system improvements in an effort to get the transportation systems working again. The state's congestion management statutes, the enacted duties of Caltrans and regional transportation agencies, federal transportation statues, and the federal and state clean air act, all require efficient goods movement and vehicular passenger mobility as strategies to reduce air pollution and protect and enhance the efficient movement of passenger and commercial vehicles. California's agricultural sector, its ports, and its tourism industry – to name just a few examples – must have adequate transportation mobility.

We have watched with dismay the enforced "road diet" that CARB and other bureaucrats and academic want to impose on California's minority communities, and we will weigh in when next the opportunity arises in the SB 375 context, as regional transportation agencies and CARB attempt to identify ever more stringent VMT reduction targets. We will again, in that context and all others, note the real truth that differs from the political truth: VMT has actually risen (by about 3% in the SCAG region for example) as a common sense outcome of increased population, jobs, and economic activities notwithstanding billions spent on transit improvements

Ahead of the new SB 375 targets, we have been stunned by CARB's willful refusal to accept the reality of the multi-year national study coordinated by the University of Minnesota that confirms that less than 10% of jobs even in California's metro regions can be accessed in 60-minutes by public transit, and that roadway gridlock makes bus ridership – which has plummeted nationally – even less viable for minority residents forced by the housing crisis to live far from their jobs.

We have remained stunned by CARB's refusal to accept the inequitable and unlawfully discriminatory outcome of VMT fees, which take the same poorer and browner populations forced to travel the longest distances – and impose regressive new VMT fees and mandatory reduction crackdowns on people who are barely making ends meet notwithstanding having two or more jobs per household.

We already have the most economically regressive vehicle use taxation scheme in the nation: Californians pay about 75 cents more for gasoline than the national average, and this high fuel price will further increase with new cap and trade costs, new transportation system taxes charged

for each gallon of gas, and higher vehicle registration fees. California's middle income families, forced to live ever greater distances from their jobs and ever closer to the poverty line, also have the dubious privilege of paying far higher taxes and fees to the state than their proximate, wealthy, whiter work colleagues fortunate enough to be able to afford to live in coastal job centers – helped with financial inheritances or other contributions from parents who actually received the veteran home and college and small business loans that were denied to minority veterans by agency bureaucrats who also sincerely believed themselves to be acting in the public interest.

While recognizing that electric cars will comprise the majority of California's future car fleet under the Scoping Plan, the Plan provides no transition plan – and certainly no practical or equitable transition plan – for the 25 million registered California vehicles that are not electric, or for the 95% of the 2 million new cars sold annually in California that are not electric, or for the fact that new cars generally – electric or otherwise – are typically well outside the budget reality for Californians already burdened with excessive housing costs. It should come as no surprise that the majority of hard-working Californians driving used cars are minorities, or that the modest subsidies and occasional give-aways of green cars to the lowest income Californians or politically favored workers, such as public employees, do not "trickle down" to the vast majority of California's financially strapped middle income workers.

The social and racial inequity of imposing a VMT reduction mandate on California families cannot be overstated. A recent Stanford study shows that construction workers spend the absolute highest percentage of their income on transportation: is it really equitable, or necessary, to make that worker spend even more in VMT taxes and fees? Or perhaps CARB actually endorses the all-too common practice of having construction workers sleep in pickup truck beds at job sites or in city streets since they can't afford to live near work, and can't manage the 4+ hour daily commute between the Central Valley and Bay Area? Or is it better still for California to import construction workers from out of state, crammed into extended stay hotels with infrequent plane trips to their home state, since the residential GHG emissions for these workers and their families aren't counted as GHG emissions within California so this temporary worker import model helps us achieve the illusive 80% GHG reduction target?

Assuming CARB is not trying to force workers to sleep in cars during the work, and not trying to play a shell game by counting only GHG emissions of California's residents rather than its non-resident Reno/Phoenix/Las Vegas-based workforce, the fact is that mandating reductions in VMT discriminates against minority workers who drive the farthest because they can't afford to live near their jobs. It is also arbitrary and capricious in relation to CARB's focus on supporting clean car technologies that have steadily eroded the correlation between a vehicle mile driven and GHG emissions.

In fact, when asked to quantify the GHG reduction from an avoided vehicle mile travelled, CARB's senior executive and VMT staff could not do so in meetings in both Los Angeles and Sacramento. This equation (one mile travelled = how much GHG?) is, however, the single most important metric to understanding the need for, and effectiveness of, CARB's unquantified but unambiguous decision that significant VMT reductions are necessary and must be achieved as part of the Scoping Plan. If arbitrarily reducing VMT causes a million more Californians to slip into poverty, and 10,000 more to slip into homelessness, while only reducing GHG by 100,000

metric tons per year – is that really a necessary component of the Scoping Plan? Will this example really inspire other states or countries to follow California's lead?

Or is this another example of the radical, unjust, and never implemented CARB proposal of this Governor's first term, when allowing people to drive to work only every other day was identified as a necessary regulatory mandate to reduce criteria air pollutants? Of course this was not true, but the past is indeed the prologue in this tale – rather than embrace its own vision of an electric car future that reduces GHG emissions to a small fraction of today's fleet, in reliance on the absolutely technically feasible existing electric car technology that already exists, the Scoping Plan imposes the longstanding desire environmentalists well before climate change policies took center stage to force people out of cars. Federal and state Clean Air Act mandates require cost-effectiveness transparency and accountable rulemaking, and absolutely worked to dramatically reduce criteria and toxic air pollutants based on technology that hadn't even been invented at the time – without depriving people of the ability to get to work, school, and medical appointments.

CARB should have learned from the error of its over-the-top green advocacy against people thirty years ago, and engaged in a methodical GHG emission reduction regulatory process that focused on the most cost-effective, least harmful measures first. There is no mystery in identifying these measures: in 2017's Drawdown: The Most Comprehensive Plan Ever Proposed To Reduce Global Warming," an award-winning, New York Times bestselling treatise on reducing climate change by renowned environmentalist Paul Hawkins, scores of measures are identified that do not discriminate against the working poor by depriving them of the right to drive to necessary destinations via a mandatory vehicle mile travelled reduction regime. In fact, transportation changes (trains and ridesharing) rank as 74th and 75th of the 80 GHG reduction strategies that made the cut for inclusion in the plan at all – while electric vehicles ranked a respectable 26th in effectiveness ratings, with cleaner cars slotting in at 49th. The Scoping Plan's CEQA, VMT and Vibrant Communities fixation on high density urbanized "walkable" communities slotted in at 54th of 80 – which when coupled with its racial and economic disparate incomes, including perpetuating the virtual end of homeownership for middle income and minority families in California, would not make the political cut of any elected decisionmaker as a politically resilient or lawful component of the Scoping Plan.

CARB's decision effectively limits the ability of the vast majority of Californians to get to work, school, and medical care. While asserting that "on average" Californians will only have to drive a mile or two less each day, CARB ignores both assumed population growth in California as well as the fact that the "average" driving distance increases dramatically for minorities forced to move inland and away from their jobs in order to pay rent or purchase homes. While a wealthy Santa Monica or San Francisco resident may have the luxury of walking to work, or catching an Uber or Lyft ride, or hopping on a luxury employer-provided direct service bus, the rest of California is stuck – for hours and hours – in traffic. Long gone are the days when average Californians decided to take a drive for fun: today Californians grit their teeth and suffer backaches, headaches, high blood pressure and heightened stress – and miss hours of time which should have been spent helping children with homework or afterschool activities – because CARB and other California bureaucrats have managed our most populated regions into gridlock.

Of course there are people – mostly wealthier and whiter people – who will flock to luxury city apartments after college, spending every spare nickel on rent and student loans, before getting

married and having kids – and moving to a suburb where they can buy a house and raise their kids. Notwithstanding the academic hopes and aspirations of the "green blob," data compiled from non-partisan experts (including Obama-era federal agencies like Fannie Mae) confirm that millennials want to raise their kids in the suburbs, and baby boomers are staying in their homes as long as their health allows. Suburbs are the fasting growing areas nationally, and a humane – and respectful of humans – transportation agenda would focus on expediting (inclusive of CEQA reform) construction of efficient rail service between suburban nodes so that suburbs can increase downtown densities and provide a more affordable range of multi-family housing options without worsening gridlock. Instead, the Scoping Plan engages in the "magic thinking" that there will be no future Californians needing to drive anywhere, that the steep fall in transit ridership in California metro areas (especially buses) notwithstanding major new transit funding investments can simply be ignored, and the use of our desired future fleet of electric cars – which have negligible GHG emissions – must be shut down in the same GHG reduction effort as a 1970 muscle car. If this makes no common sense, it's because – as Mark Twain says – common says isn't so common, and climate bureaucrats talking to each other have managed to park common sense – and the needs of California's workforce – in a dark closet and tried to close the door.

We are not willing to be put in a dark closet and deprived of the ability to access work, school, medical care, and other driving destinations that wealthier white elites take for granted. Dedicated Latino leaders in the California Legislature battled for years to provide drivers' licenses to undocumented immigrants: understanding and complying with traffic laws, and having appropriate insurance, were among the many reasons why providing drivers licenses to immigrants and driving is a necessity, and not an option, in our communities.

CARB's "back to the future" version of forcing people to drive less, now expressed as a VMT reduction rather than the easier-to-understand "you can only drive to work every other day" proposal, represents an advance in obfuscatory communications in a failed attempt to mask its racial and economically disparate, and unconstitutional, effect.

CARB's refusal to postpone Scoping Plan approval until the SB 375 VMT reduction target decision can be appropriately disclosed and factored into the unspecified VMT reduction Scoping Plan mandate is also unlawful piecemealing, in violation of both the environmental and fiscal disclosure, analysis and mitigation mandates applicable to the Scoping Plan. This unlawful bureaucratic tactic splits the whole of CARB's Scoping Plan action into smaller pieces – which in this case include OPR's proposed amendments to the CEQA Guidelines and CARB's future decision to adopt VMT reduction targets for all California regions.

As described in the proposed conditional approval of most of the Scoping Plan described below, all references to VMT reductions and reduction proposals should be deleted from the Scoping Plan. Any future VMT reduction proposal, including imposition of VMT reduction mandates that are separate from GHG reduction mandates in SB 375 plans, must be subject to its own comprehensive rulemaking process which includes environmental and fiscal disclosures that do not conceal today's costs on today's Californians behind the veil of the "social cost of carbon."

We also note that the Legislature provided zero express authority to CARB to regulate VMT, just as it provided zero express authority to CARB to impose a "drive only every other day" mandate

several decades ago. Then, like now, legislation to vest this authority to limit Californians' ability to drive created unconstitutional limitations on both intrastate and interstate commerce, and was considered and rejected by the California Legislature.

CARB should focus on measures to hasten completion of regional transit systems at lower costs, making such systems more quickly accessible, and more affordable, for more Californians. The Legislature and direct voter approval of taxes and bonds to fund designated transportation projects are aimed at improving transportation and mobility, in direct democracy opposition to the highway gridlock and increase in health-damaging vehicle pollution promoted as a climate strategy in the VMT components of the Scoping Plan and OPR proposal. More CEQA lawsuits targeted transit projects than highway and roadway projects combined over the first three year study cited above: why doesn't the Scoping Plan find transportation solutions to keep more California workers here with their families, rather than forced to move to higher per capita GHG emitting states, as a global climate strategy?

Meanwhile, methodical and cost-effective promotion of lower GHG emitting vehicles – notably the Clean Car initiative for which Californians have invested hundreds if not billions of dollars – remains the signature transportation objective that actually does fall within CARB's statutory mission, unlike VMT reductions even for electric cars and CEQA expansions creating new litigation risks for critically needed housing, transportation and infrastructure projects. Trying to falsely "balance the books" with an 80% GHG reduction scheme that has no practical or foreseeable alternative to replacing California's 25M registered vehicles, or converting the 5% of electric vehicles sold annually to 95% of vehicles sold in 5 years, are just examples of the difference between the radicalized/politicized GHG regime which ignores people, and the success of the methodical rulemaking process (inclusive of technology promotion and recognition) that delivered 98+% decreases in vehicular tailpipe emissions under the federal Clean Air Act, thereby protecting both people and the environment.

III. Delete "Vibrant Communities" Appendix

Further increasing the threat to the timely development of more than a million critically-needed housing units that are affordable to working families, and restore homeownership opportunities to California minorities, is the EIGHT-state agency consortium that has appointed itself in the "Vibrant Communities" Appendix to the Scoping Plan to "help" local governments manage land use. This EIGHT-agency cabal formed in the absence of any statutory authorization from the Legislature, under the cover of addressing global climate change. With the exception of the California Department of Housing and Community Development (HCD), none of the other seven agency participants in "Vibrant Communities" has the expertise or statutory authority to regulate the approval of local land use plans and housing projects. In fact, based on the extreme housing emergency, the Legislature enacted, and the Governor signed, a package of 15 housing bills in 2017 – none of which authorized EIGHT state agencies to interfere with local and state agency statutorily-prescribed housing roles. Both the Legislature and the Governor have committed to taking further action to address the housing crisis in 2018, and again there is not a single introduced piece of Legislation that brings EIGHT state agencies into housing land use decisions.

No sane human being would agree that adding EIGHT state agencies in an unstructured and unauthorized consortium to the housing approval process will expedite the timely completion of

more than a million new homes, at costs that are actually affordable to Californians. The only state agency that has this direct land use authority in California communities is the Coastal Commission, with prescribed authorities and procedures enacted by both the Legislature and separately approved by popular vote. Even within this very prescribed legal structure, no sane human being would agree that the Coastal Commission in its state agency role has expedited (or even tolerated) much new housing construction.

The fact is that we need a lot more housing built, at prices that are affordable to working Californian families including our majority minority community members. Neither we nor the Legislature want EIGHT state bureaucracies waging turf battles for money and staff and control in an unstructured "Vibrant Communities" groupthink paradigm shift away from the enhanced local government accountability measures and the strengthened state enforcement tools like the Housing Accountability Act that were actually enacted by the Legislature in 2017. The "Vibrant Communities" appendix is yet another Scoping Plan workaround for decades of failed aspirational legislative proposals by environmental activists seeking top-down state control of local communities so they can impose urban growth boundaries (consistently shown to increase housing costs) and new urban ecosystem service taxes (direct new tax on urban area residents).

The Scoping Plan's Vibrant Communities appendix, like the Scoping Plan's proposal to expand CEQA's litigation risks while doing nothing to expedite critically needed housing and related infrastructure for California's low per capita GHG residents, and imposing regressive new costs and driving restrictions on the minority workforce forced by the housing crisis to drive the most, collectively reflect the profoundly negative cultural shift in the environmental advocacy community to an openly anti-human agenda.

Succinctly described by the co-founder of Greenpeace 1986, this anti-human agenda continues to persist today among the environmental advocacy community and environmental agency representatives.

It was not until 2017 and the election of Donald Trump that the Sierra Club and other environmental groups executed an accord to recognize the importance of civil rights and social justice to the environmental agenda. In describing the schism this caused (including membership resignations from protesting Sierra Club members), on November 18 of 2017 the Sierra Club's Executive Director Michael Brune noted in defense of the accord that he was "proud of how the Sierra Club has begun to address the intersection of climate with inequality, race, class and gender, and I guarantee that we'll go even deeper." As described in an Outside Magazine article chronicling the environmental movement's troubling history of ignoring minority community concerns:

> What Brune is acknowledging is the darker legacy of the green movement. Some may believe that environmentalism has little to do with social justice issues, but the mission of the Sierra Club, and many conservation groups like it throughout the late-19th century and most of the 20th century, was anything but race neutral. In many ways, racial exclusivity actually shaped the environmental mission, which is what makes the Sierra Club's leap toward civil rights advocacy such a radical move. . . . Given the history of conservationists elevating endangered plant life over endangered people of color, it is environmentalism's soul that most needs saving.

https://www.outsideonline.com/2142326/environmentalism-must-confront-its-social-justice-sins

This profoundly racist historical underpinning of the environmental movement continues to exist today. Look no further than political deference still provided to special interests NIMBY environmentalist donor strongholds, such as the Legislature's 2017 capitulation to Marin County's demand for still more delays in ever having to build its share of affordable housing – this in a California subject to a consent agreement for violations of federal Fair Housing Act laws.

The CEQA, VMT and Vibrant Communities components of the Scoping Plan represent either the oblivious or intentional continuation of this environmentalist racist tradition; neither attitude, however, makes these Scoping Plan components morally acceptable or lawful.

As the San Francisco Chronicle reported on December 10, the reason the Oakland A's aren't leaping at the opportunity to build a stadium at the Coliseum site to be paid for by the "profit" from redeveloping the sea of surface parking into acutely needed dense transit-oriented housing comes down to the simple math, and hash, that has created the housing crisis:

> At a minimum cost of $4.50 per square foot for construction, a 1,000-square-foot, two-bedroom apartment at the Coliseum would have to rent for as much as $4,500 a month. You might be able to charge that downtown, but it would be a tough sell in East Oakland. http://www.sfchronicle.com/bayarea/matier-ross/article/Oakland-has-a-Plan-B-for-A-s-It-s-called-the-12418059.php

The United Way report and numerous other non-partisan sources report that households are supposed to spend 30% of their income on housing so that there is enough money to pay for food, medicine, childcare, insurance, taxes, and savings. Under this 30% criteria, households would need to earn nearly $170,000 per year to rent one of these new urbanist, transit-oriented, dense apartments. Given that the median household income in Alameda County is less than half of that amount (just under $80,000), the "infill" high density apartments favored by the environmental community and threatened to be enshrined by CARB into the Scoping Plan can't even be rented, let alone owned, by the vast majority of Alameda households, including Alameda's hard-working minority families.
https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk
https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF

Confronted with the harsh reality of an entire region's housing costs, Alameda's households – the majority of whom are minorities - can leave the region or the state (an outward migration pattern that surveys report is in fact occurring, *see, e.g.,* https://sf.curbed.com/2017/3/31/15140036/bay-area-leaving-poll-san-francisco). It should come as no surprise that this "environmental" agenda of intentionally displacing minorities from California's coastal communities has occurred only now in our minority majority state.

The EIGHT agency Vibrant Communities appendix, like the CEQA and VMT components of the Scoping Plan, should be deleted as unlawful and discriminatory, and as exacerbating rather than helping solve our housing, homeless, poverty, and transportation gridlock problems.

III. Correct Environmental and Fiscal Analytic and Procedural Deficiencies Prior to Implementation of Remaining Scoping Plan Provisions

The 2017 CARB Scoping Plan fails to comply with applicable statutory mandates requiring completion of CEQA and fiscal analyses and public review process for the remainder of the Scoping Plan components. Even with deletion of the CEQA Expansions, VMT restrictions, and Vibrant Community appendix, final agency approval of any implementing actions under the Scoping Plan must be postponed pending lawful completion of the required CEQA and fiscal review procedures.

a. Violations of the California Environmental Quality Act

Notwithstanding its foray into expanding CEQA in the 2017 Scoping Plan, CARB has been sued, and has appropriately lost, numerous CEQA lawsuits. The same pattern of CEQA compliance deficiencies plague this Scoping Plan's environmental document. No version of the Scoping Plan can be approved until these CEQA deficiencies are corrected. Specifically:

Regional agencies charged with implementing just the transportation/land use planning requirements of SB 375 have approved environmental impact reports documenting scores of significant impacts warranting mitigation, and scores of unavoidable adverse impacts that remain even after mitigation, which are associated with high density, transit oriented development of housing and transit systems required to comply with CARB's panoply of GHG mandates, policies and directives including but not limited to those identified in the Scoping Plan. Examples of significant impacts warranting mitigation, and significant unavoidable impacts, from significantly increasing density and reducing vehicular mobility as a climate strategy include:

- adverse aesthetic impacts (e.g., from changes to public and private views and the character of existing communities based on increased building intensities and population densities),

- adverse air quality impacts (e.g., from increases in per capita emissions of GHG, criteria and toxic air pollutants, which has already occurred from the longer commutes caused by intentionally increasing auto congestion in advance and independent of the availability of any time- or cost-effective transportation alternatives for Californians forced to "drive until they qualify" for rental or ownership homes they can afford),

- adverse biological resource impacts (e.g., from increased usage intensities in urban parks from substantial infill population increases),

- adverse cultural impacts (e.g., including adverse changes to historic buildings and districts from increased building and population densities, and changes to culturally and religiously significant resources within urbanized areas, from increased building and population densities),

- adverse impacts to urban agriculture (e.g., from the conversion of low intensity urban agricultural uses to high intensity, higher density uses from increasing populations in urbanized areas, including increasing in the urban heat island GHG effect),

- adverse impacts to geology/soils (e.g., from building more structures and exposing more people to earthquake fault and other geologic/soil hazards in intensifying the intensity and use of these urbanized areas),[3]

- adverse impacts hazards and hazardous materials (e.g., by locating more intense/dense housing and other sensitive uses such as schools and senior care facilities near freeways, ports, and stationary sources in urbanized areas)

- adverse impacts hydrology/water quality (e.g., by increasing volumes and pollutant loads from stormwater runoff from higher density/intensity uses in transit-served areas as allowed by current stormwater standards),

- adverse impacts from noise (e.g., from substantial ongoing increases in construction noise from increasing the density and intensity of development in existing communities, and ongoing operational noise from more intensive uses of community amenities such as extended nighttime hours for parks and playfields),

- adverse impacts to population/housing (e.g., from substantially increasing both the population and housing units in existing communities,

- adverse impacts to recreation/parks (e.g., from substantially increasing the population using natural preserve and open space areas as well as recreational parks and other amenities),

- adverse impacts to transportation/traffic (e.g., from substantial total increases in total vehicle miles travelled in higher density communities, increased VMT from rideshare/carshare services and future predicted VMT increases from automated vehicles notwithstanding predicted future decrease in private car ownership),

- adverse impacts from traffic-related gridlock and multi-modal congestion impacts (e.g., noise increases, adverse transportation safety hazards in multi-modal dense areas including bike/pedestrian/bus/truck/car accidents and fatalities),

- adverse impacts to first responder fire, police, and paramedic services (e.g., from congested and gridlocked urban streets with high population densities;

- adverse impacts to public utilities and public services (e.g., from substantial increases in population and housing/employment uses and demands on existing water, wastewater, electricity, natural gas, emergency services, libraries and schools).

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[3] Although the California Supreme Court has determined that CEQA does not encompass impacts from existing environmental conditions on a project, OPR has repeatedly declined to recognize this decision and hence it is included here and in most other SB 375 SCS EIRs).

CARB is legally obligated to complete a comprehensive CEQA evaluation of these and related reasonably foreseeable impacts from forcing all or most development into higher densities within existing urban area footprints, intentionally increasing congestion and prohibiting driving, and implementing each of the many measures described in the "Vibrant Communities" appendix.

This CEQA analysis does not presuppose that CARB is prohibited from proceeding with these provisions of the Scoping Plan, or of the other provisions of the Scoping Plan. CEQA requires full disclosure, a comprehensive analysis, and approval of feasible mitigation measures. CEQA also requires an analysis of other feasible alternatives for achieving the Legislatively mandated GHG reductions, and separately considering the feasibility and differential impacts of achieving an 80% GHG reduction based solely on existing technologies, services, incomes, and constraints.

While outside the scope of CEQA, we also urge CARB to evaluate the gentrification and displacement impacts of its Scoping Plan.

While we very much respect the work of the environmental justice advocates assigned by law to a seat at CARB's table, the civil rights of minority communities extend well beyond environmental justice: we are constitutionally entitled to equal protection under all laws, from education to housing to financial services to health care. California's top national ranking in poverty and homelessness, and its acute housing shortage and extreme housing prices, require all agencies – including "environmental" agencies such as CARB, to carefully weigh their actions through the prism of equal protection – and not thoughtlessly ignore or dismiss the disparate racial consequences of purportedly color-blind actions like expanding CEQA or limiting driving.

Although the CARB Scoping Plan and environmental assessment are fulsome in their praise of GHG reductions and open space protection – including imposition of still more costs in the form of "ecosystem service fees" on urban area residents – the Scoping Plan's willful refusal to acknowledge the corresponding adverse environmental and public health/welfare impacts of Scoping Plan implementation violates CEQA. The Scoping Plan's equally unlawful inclusion of numerous strategies that will actually increase housing costs and poverty, and reduce housing affordability and homeownership opportunities in California communities, is equally unlawful. The purported "Vibrant Communities" appendix and the Scoping Plan itself include such discriminatory housing and pro-poverty strategies as growth control boundaries that numerous studies have confirmed actually increase in-boundary housing costs and reduce supplies (*see, e.g., http://www.tandfonline.com/doi/abs/10.1080/02673037.2013.825695*), its priority on the development of small high density housing units that cost 3-5 times more per square foot to build than homeownership units like single family, duplex, and town homes (*see, e.g.,* https://ternercenter.berkeley.edu/right-type-right-place), and its endorsement of raising taxes on urban residents still higher to achieve "eco-system service" wealth transfers to rural areas, and for imposing VMT fees and restrictions on all new.

The only honest effort to translate the "Vibrant Community" vision into actual housing cost and housing production, completed by UC Berkeley professors, confirms that under the CARB vision families will pay the same for an 800 square foot apartment as they pay for a 2000 square foot home or town home – and that building the necessary number of homes to address California's housing crisis within the growth control constraints imposed under this Vibrant Communities

vision will require the "demolition of tens of thousands, if not hundreds of thousands, of single family homes." *(Ibid.)*

The 200 has lived through the last round of bureaucratic "do gooder" land use policies in the form of redevelopment programs that wiped out minority communities, permanently deprived minority homeowners of their equity and homeownership status, and took the already "vibrant" minority neighborhoods that white middle class agency elites concluded were "blighted" with sterile, failed, and largely unrealized new land uses more than 40 years later. Using climate change is this generation of bureaucrat's new excuse to wipe out minority homeowners – since it's obvious the "tens if not hundreds of thousands" of demolished homes will not be in Malibu or Marin, or Hillsborough or Beverly Hills, but will again be the last remaining homes owned by California's minority and working class communities. Everyone associated with this latest "vision" of what constitutes a "vibrant community" should visit the actual existing minority vibrant communities that they are intent on demolishing, and visit with the minority families who have actually attained homeownership and used their equity to weather financial setbacks from temporary job losses and illnesses, fund college or senior care, and provide a modicum of multi-generational middle class security that is so scornfully dismissed by the anti-human environmentalist elites driving so much of California's climate politics (and policies). As the co-founder of Greenpeace, ecologist Dr. Patrick Moore, announced when he resigned from that organization:

> Greenpeace is an "evil organization" which has "lost concern for humans" and is part of an environmental movement that is now dominated by the "self-serving" and "highly-paid" network of environmental pressure groups that comprise the "green blob."

The Scoping Plan is a dream come true for the "green blob" – it will further accelerate the elimination of younger, browner, working class people off of that piece of the planet that it governs: the state of California.

The CEQA expansion and driving limit provisions of the Scoping Plan are also unconstitutional, and unlawful.

For example, the Scoping Plan's CEQA analysis wholly ignores substantial evidence of significant adverse impacts – conclusions reached by the SB 375 implementing agencies in the Bay Area, Sacramento, San Diego and Southern California – in violation of CEQA. Sustainable Communities Strategy EIRs approved throughout the state likewise identify scores of significant impacts warranting mitigation, and significant unavoidable impacts even with mitigation. The Program EIRs for current Sustainable Communities Strategies in each of these jurisdictions is hereby incorporated by reference in this comment letter, and all are available on the websites maintained by each regional agency. The Scoping Plan's failure to identify, assess, and prescribe feasible mitigation measures, for each of the significant unavoidable impacts identified in each of these Program EIRs, and in a programmatic CEQA evaluation of the many components of the Scoping Plan such as the increase in transportation emissions associated with the production of goods once produced in California but now produced in other jurisdictions and transported to California (e.g., cement), is a prejudicial abuse of discretion and per se violation of CEQA given the ready availability and substantial evidence of significant adverse CEQA impacts identified in the regional SB 375 certified EIRs, in CARB's prior environmental

assessments, and in the EIRs and CEQA equivalent documents approved by other agencies charged with the past and ongoing implementation of Scoping Plan components such as the California Energy Commission and California Public Utilities Commission. The Scoping Plan certainly does not acknowledge, nor does its environmental analysis disclose or assess, the environmental – or any other – impacts of the "demolition of tens or hundreds of thousands of single family homes" and the dispossession of minority homeowners and denial of aspiring minority homeowners.

b. Violations of Fiscal Evaluation Requirements

CARB was required to conduct a comprehensive fiscal evaluation to allow members of the public as well as Board members to understand the fiscal impact of its Scoping Plan.

CARB's fiscal evaluation makes a mockery of this statutory requirement by completely failing to identify the reasonably foreseeable costs to California households of Scoping Plan implementation. Instead, CARB relies on the "social cost of carbon" metric to justify its determination that the Scoping Plan meets applicable fiscal consequence legal requirements. CARB's reliance on the social cost of carbon includes two fundamental legal deficiencies.

First, this methodology allows CARB to fully conceal costs to current Californians in reliance on a methodology that presumes that all adverse future climate change costs will be avoided based on worldwide GHG emissions achieved at some future time. Current Californians struggling with poverty and the homeless crisis will bear these fiscal costs; future avoided costs will benefit future Californians.

Second, this methodology assumes that climate change adaptation costs will be avoided because the rest of the world will reduce GHG to the prescribed metric of two tons per capita per day – a metric that is indeed achieved by some of the poorest countries in the world, which no countries seek to emulate. Instead, growing economies like China and Indian continue to substantially increase their GHG emissions with robust ongoing growth in such technologies as coal-fired electric plants and petroleum-powered vehicles – and even countries committed to reducing GHG like Germany continue to derive nearly half of their electricity from coal. It is simply delusional – and economically false - to think that today's Californians will never be burdened with the cost of climate adaptation infrastructure and related improvements, given the ongoing strong linkage in international and national GHG emission trajectories and economic productivity and human health.

The social cost of carbon is not a lawful "McGuffin" factor that can be used to mask the Scoping Plan's actual costs on actual Californians today. At minimum, the Scoping Plan's fiscal analysis needs to identify those actual projected costs to California households, by region, to allow for informed decisionmaking. The social cost of carbon is at a supplemental narrative explanation of this theory, and a hypothetical emissions and cost adjustment tables at the back of this real world analysis. The actual fiscal analysis, presented ahead of and separately from the social cost of carbon factor, must be a far more realistic assessment of the adaptation costs of climate change that must also be borne by today's Californians.

These comments should not be interpreted to dismiss future climate change costs and risks to society in general, and Californians in particular. The scale of pain to individual Californians, especially the minority hard working Californians in our communities, needs to be assessed in relation to today's costs as well as tomorrow's costs. We have read with alarm that "leakage" of people from California to much higher per capita GHG states may have nearly offset all of California's GHG reduction regulatory achievements. We have read that California successfully reduced GHG emissions this past year by almost 5%, but that this was almost entirely due to the unusually high rainfall that allowed greater reliance on hydropower from dams and reduced use of fossil fuels to produce electricity. http://www.mercurynews.com/2017/12/10/walters-the-ironic-cause-of-our-greenhouse-gas-decline/ We have read that California's greenhouse gas emission reductions were in turn wiped out by the Northern California fires; with Southern California we assume that California's total GHG emissions for the year are far higher than our reductions. http://www.sfchronicle.com/bayarea/article/Huge-wildfires-can-wipe-out-California-s-12376324.php

We do not intend that our comments be interpreted in any way that could be read as denying the importance of addressing climate change, or reducing greenhouse gas emissions. We do not believe that that this objective can only be achieved, or is politically or scientifically required to be implemented, so as to worsen California's housing and poverty crisis. An honest cost-benefit analysis of measures to reduce GHG emissions should be completed as required by law, which steps back from the chaotic paralysis of an EIGHT-agency Vibrant Community policy, expanding CEQA, a mythic local climate plan, and regressive schemes to punish those forced to drive the longest distances – or the end of homeownership as an achievable aspiration for hard working California families.

It is a testament to the power the "green blob" that the intentional obfuscation of fiscal consequences and racial equity has been allowed to permeate climate policy. California has a remarkably effective track record in vastly reducing air and water pollution over 40 years, to levels that could not be effectively predicted based on technologies and processes that existed 40 years ago. Instead, the hard work of science and politics required a methodical cost-benefit analysis of potential air pollution reduction strategies, it required implementation of the most cost-effective strategies first to avoid or minimize economic disruption to California's working families, and it established future objectives that could be – and were – ultimately met by innovative solutions such as technological advances.

The hard work of science and politics in reducing criteria and toxic air pollutants could not have been accomplished in the retaliatory echo chamber culture of what the Greenpeace co-founder calls the "green blob."

Instead of rationally attempting to reduce GHG emissions to address climate change while also respecting the role of people on the planet (and the state), the Scoping Plan's priorities and California's climate change politics are hemmed in by a long list of "we oppose" environmentalist admonitions: we must shutdown nuclear plants and tear down hydro power (the only non-fossil fuel electric production options that provide close to the reliability of fossil fuel power generation); we must oppose utility-scale solar and wind in favor of far less efficient rooftop solar (and indeed solar/wind utility plants were the most frequent industrial/utility CEQA litigation target in California), we may not build powerline improvements anywhere near any one

or any species, we must shut down dairies and farms, we must end California extraction of oil and gas and "keep it in the ground" even though leading climate scientists like UC's Severin Borenstein agree that this will simply result in importation of fossil fuels from other states with higher resultant GHG emissions while eliminating workforce jobs often held by minorities for which there are no financially equivalent proximate replacement job opportunities. Most unbelievably, given documented evidence of routine CEQA litigation abuse for non-environmental reasons by all major newspapers, the Governor, and other leaders, the 2017 Scoping Plan avoids suggesting revisions to CEQA that would expedite its desired transit and dense housing priorities because CEQA reform is, as the Governor reported, blocked by construction unions demanding project labor agreements. Instead the Scoping Plan proposes to expand CEQA with the litigation magnets of "net zero" GHG projects (unless they aren't) and local climate action plans to reduce per capita GHG emissions by 80% (although local governments lack authority to do anything to come close to that outcome).

The Scoping Plan vision for minorities in California consists of bus riders calmly sitting through 4 hour daily commutes, giving an exhausted hour or two to their kids (or better yet having no kids at all) in a tenth floor micro-apartment in a neighborhood that once had porches and playgrounds, and where grandma used to own her own home (imagine!). And the alternative Scoping Plan vision is for California to achieve its 80% GHG reductions by simply exporting its people and jobs to other states, and not counting that pesky GHG consumption that's so nettlesome to billionaires – and who cares about "global" greenhouse emissions anyway?

Californians didn't vote for this vision, nobody's figured out how to pay for it, and CARB's environmental and fiscal assessments didn't come close to honestly disclosing or "mitigating" the adverse equity, environmental and economic impacts of implementing the Scoping Plan's CEQA expansions and driving restrictions. These components of the Scoping Plan make fundamental necessities (housing, transportation, utilities) more expensive for precisely the people who cannot afford it and are victims of the environmental NIMBYists who use (and continue to use) CEQA to block housing and transit projects. These components of the Scoping Plan would permanently end the ability of minorities to become homeowners, to raise kids safely, and to get where each of us needs to go without three bus transfers and highway gridlock. The biggest difference between the 2017 Scoping Plan and Paul Hawken's vision for effective global climate change strategies, is encapsulated in the mission statement of Drawdown:

> Drawdown is a message grounded in science; it also is a testament to the growing stream of humanity who understands the enormity of the challenge we face, and is willing to devote their lives to a future of kindness, security, and regeneration.

Expanding CEQA and restricting driving shows neither a commitment to science, nor a vision of the future that includes kindness, security, and regeneration to actual people (including minorities and the poor). Instead, the Scoping Plan's CEQA, driving restrictions, and Vibrant Community measures, are an extension of the "green glob" political culture of "no" to the needs of people and "no" to "win-win" solutions that benefit the environment and also solve the state's housing and poverty crisis.

None of this is news to CARB: we and our colleagues have submitted comment letters and had multiple conversations with CARB and OPR staff, to no avail.

We have been forced to sue government agencies in the past to protect the civil rights of our communities, and we anticipate needing to do so again if CARB approves the proposed Scoping Plan as is. We do not want to obstruct California climate change leadership activities that avoid disparate impacts to California's minority community members who aspire to homeownership, and accordingly urge CARB to approve the following resolution when acting on the 2017 Scoping Plan:

"Resolved, in approving the 2017 Scoping Plan it is not the intent or mission of the California Air Resources Board to increase poverty, homelessness, or the housing crisis – or to discriminate against California minorities and working households. We therefore conditionally approve the Scoping Plan, subject to the following modifications:

1. All Scoping Plan recommendations and references to CEQA, VMT, Vibrant Communities and land use planning be removed, and replaced with a recommendation that the Office of Planning and Research complete a rulemaking process to clarify GHG compliance requirements under CEQA in the CEQA Guidelines (including but not limited to thresholds of significance).

2. The remainder of the Scoping Plan be adopted as proposed, provided that no new or amended regulations may be approved pursuant to the Scoping Plan until a revised environmental and fiscal analysis of the Scoping Plan is completed, and subject to additional public review and comment, that clearly describes the environmental and fiscal consequences of Scoping Plan implementation for current California households, that includes recommendations for increasing housing supplies and related transportation and other local infrastructure to help alleviate the current poverty, homeless and housing crisis, and that restores and improves opportunities for members of our hard working minority communities and other workforce Californians to become homeowners.

3. Legislative oversight hearings be convened and completed, with the enactment of further authorization legislation, prior to CARB's proposal or adoption any fees, restrictions, CEQA provisions, or any other action or recommendation associated with reductions in VMT, or associated with any increase in the involvement of any state agency in local agency land use and housing approval decisions beyond those expressly authorized by current law, or imposition of regulations, mandates or recommendations that extend beyond the target of reducing GHG emissions 40% by 2030 as expressly set forth in SB 32, or any such additional deadline and emission mandate expressly specified in any other law mandating GHG reductions in California.

In conclusion, we have won many hard fought civil rights battles in our careers, and we ultimately win – because the law is on our side, and what we seek is justice. We did not anticipate needing to engage in this battle again, in deep blue California, to protect California's minority community from environmentalists. We did battle with the environmentalists almost 20 years ago, and won, so we could access the financing and insurance needed to cleanup polluted properties in our neighborhoods and not just wealthy communities. We are ready to fight this next battle, which has caused much more severe hardship for millions of Californians in our communities, until we win, again.

We urge you to avoid this unnecessary fight, and take the right action by adopting the alternate resolution we have suggested above as you consider the proposed Scoping Plan

We would also welcome the opportunity to meet and confer about other potentially mutually acceptable paths forward.

Joe Coto, Chair

John Gamboa, Co-Chair

Jennifer Hernandez

Cruz Reynoso

Herman Gallegos

Hyepin Im

Jose Antonio Ramirez

Sunne Wright McPeak

Ortensia Lopez

Additional references:

Color of Law, Richard Rothstein (2017): Federal, state and local agency use of rulemaking, planning and practices to create and perpetuate racial segregation in housing and transportation projects, and in lending and funding practices

Drawdown, Paul Hawken (2017): Ranked list of effective strategies for reducing global GHG emissions

Right Type, Right Place, Terner Center/Berkeley Law (2017): mid-rise and high-rise buildings cost 3-5 times more per unit than single family/townhome/duplex/quadplex units (lower density units), and confirming that building necessary housing within existing communities with more affordable lower density units would require the demolition of tens if not hundreds of thousands of existing single family homes.

Summary Table of Impacts and Mitigation Measures for Regional Sustainable Communities Strategies that reduce GHG emissions from increasing density and intensity of development in urban cores, while causing significant new impacts:

> For SCAG region see http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx , with updates reviewing only changes from 2012 RTP/SCS at http://rtpscs.scag.ca.gov/Pages/2016-PEIR.aspx
>
> For MTC/ABAG region see http://www.planbayarea.org/previous-plan/final-supplementary-reports-and-additional-resources with updates reviewing only changes from 2013 RTP/SCS at http://www.planbayarea.org/2040-plan/environmental-impact-report
>
> For SANDAG region see http://www.sandag.org/index.asp?projectid=349&fuseaction=projects.detail

California Environmental Quality Act Lawsuits and California's Housing Crisis, Hastings Environmental Law Journal, Jennifer Hernandez (2017) http://www.uchastings.edu/news/articles/2017/12/introducing-hastings-environmental-law-journal.php : *see* all citations and text for increases in vehicle miles travelled notwithstanding billions invested in transit infrastructure (rail ridership up; bus ridership down), absence of VMT reduction outcomes in newer higher density urban housing and wealth/racial data, top target status of housing in CEQA lawsuits filed statewide, greenhouse gas emissions from outmigration of Californians to higher per capita GHG states, and prior CEQA litigation studies.

Attachment 2

Jennifer L. Hernandez (State Bar No. 114951)
Charles L. Coleman III (State Bar No. 65496)
Marne S. Sussman (State Bar No. 273712)
David I. Holtzman (State Bar No. 299287)
HOLLAND & KNIGHT LLP
50 California Street, 28th Floor
San Francisco, California 94111
Tel: (415) 743-6900 Fax: (415) 743-6910
Email: jennifer.hernandez@hklaw.com
charles.coleman@hklaw.com

Attorneys for Plaintiffs/Petitioners
THE TWO HUNDRED, *et al.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

UNLIMITED CIVIL JURISDICTION

THE TWO HUNDRED, an unincorporated association of civil rights leaders, including LETICIA RODRIGUEZ, TERESA MURILLO, and EUGENIA PEREZ, Plaintiffs/Petitioners, v. CALIFORNIA AIR RESOURCES BOARD, RICHARD COREY, in his Official Capacity, and DOES 1-50, Respondents/Defendants.	Case No. 18CECG01494 **FIRST AMENDED[1] 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)]**

[1] Principal added and revised allegations are at ¶¶ 262-351 and 379 (pages 79-108, 112) below. A full comparison between this First Amended Petition/Complaint and the original Petition/ Complaint, generated using Adobe Acrobat® Compare software, is attached as Exhibit 3.

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I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF

A. California's Greenhouse Gas Policies and Housing-Induced Poverty Crisis

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

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

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

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

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

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

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

[4] 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/.

existing dams than had occurred during the drought, and that this weather pattern resulted in a 5% decrease in California's GHG emissions.[5]

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

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

8. Since 2007, which included both the global recession and current sustained period of economic recovery, California has had the highest poverty rate in the country—over 8 million people living below the U.S. Census Bureau poverty line when housing costs are taken into account.[8] By another authoritative poverty methodology developed by the United Way of California, which counts housing as well as other basic necessities like transportation and medical costs (and then offsets these with state welfare and related poverty assistance programs), about 40% of Californians "do not have sufficient income to meet their basic cost of living."[9] The

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[5] *Ibid.*

[6] 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.

[7] David R Baker, *Huge wildfires can wipe out California's greenhouse gas gains,* SF Chronicle, (Nov. 21, 2017), https://www.sfchronicle.com/bayarea/article/Huge-wildfires-can-wipe-out-California-s-12376324.php.

[8] 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; Dan Walters, *Why does California have the nation's highest poverty level?*, CALMatters (Aug. 13, 2017), https://calmatters.org/articles/california-nations-highest-poverty-level/.

[9] 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.

Public Policy Institute of California used a methodology that also accounts for the cost of living and independently concluded that about 40% of Californians live in poverty.[10]

9. Poverty is just one of several indicators of the deep economic distress affecting California. California also has the highest homeless population, and the highest homelessness rate, in the nation. According to the U.S. Department of Housing and Urban Development, about 25% of the nation's homeless, or about 135,000 individuals, are in California.[11]

10. National homeownership rates have been recovering since the recession levels, but California's rate has plunged to the second lowest in the country—with homeownership losses steepest and most sustained for California's Latinos and African Americans.[12]

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

Figure 1

Median Income in 2007 and 2017, White, Asian, Latino and Black Populations

Bay Area, California excluding the Bay Area, and U.S. excluding California

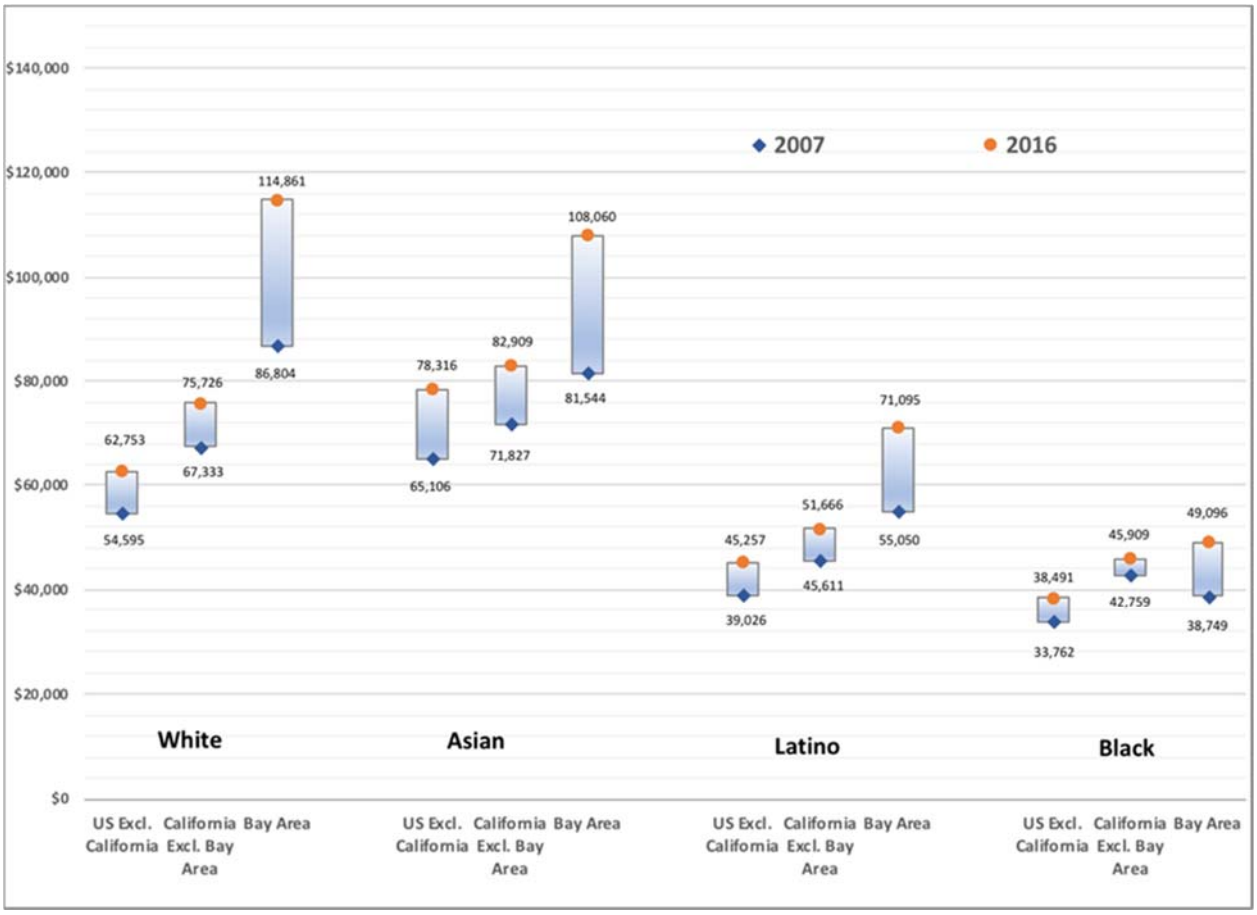
(nominal current dollars)[13]

[10] Public Policy Institute of California, Poverty in California (Oct. 2017), http://www.ppic.org/publication/poverty-in-california/.

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

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

[13] Median income estimated from household income distributions for 2007 and 2016 American Community Survey 1-Year Estimates, Table B19001 series, https://factfinder.census.gov/ (using 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.[14] 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.[15] Californians also pay 58% more in average electricity cost per KWh hour (2016 annual average)[16] and about $0.80 cents more per gallon of gas than the national average.[17]

[14] 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.

[15] 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.

[16] 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).

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

13. These high costs for two basic living expenses—electricity and transportation—are highest for those who live in the state's inland areas (and need more heating and cooling than the temperate coast), and drive farthest to jobs due to the acute housing crisis the LAO has concluded is worst in the coastal urban job centers like the San Francisco Bay Area and Los Angeles.[18]

14. An estimated 138,000 commuters enter and exit the nine-county Bay Area megaregion each day.[19] These are workers who are forced to "drive until they qualify" for housing they can afford to buy or rent.

15. San Joaquin County housing prices in cities nearest the Bay Area, such as Stockton, are about one-third lower, even though commute times to San Jose are 77 minutes each direction (80 miles and 2.5 hour daily commutes), and to San Francisco are 80 minutes (82 miles and 3 hour daily commutes).[20] The median housing price in Stockton is about $286,000—still double the national average of $140,000—while the median housing price in San Jose is over $1,076,000 and in San Francisco is over $1,341,000.[21]

16. California's poverty, housing, transportation and homeless crisis have created a perfect storm of economic hardship that has, in the words of the civil rights group Urban Habitat, resulted in the "resegregation" of the Bay Area.[22] Between 2000 and 2014, substantial African American and Latino populations shifted from central cities on and near the Bay, like San Francisco, Oakland, Richmond and San Jose, to eastern outer suburbs like Antioch, and Central Valley communities like Stockton and Suisun City.[23] As reported:

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[18] 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.

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

[20] Commute times from Google navigation, calculated April 25, 2018.

[21] Zillow, Stockton CA Home Prices & Home Values, https://www.zillow.com/stockton-ca/home-values/; 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/.

[22] Urban Habitat League, Race, Inequality, and the Resegregation of the Bay Area (Nov. 2016), 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.

[23] *Id.* p. 10-11, Maps 5 and 6.

> Low income communities of color are increasingly living at the expanding edges of our region. . . . Those who do live closer to the regional core find themselves unable to afford skyrocketing rents and other necessities; many families are doubling or tripling up in homes, or facing housing instability and homelessness.[24]

17. Los Angeles (#1) and the Bay Area (#3) are already ranked the worst in the nation for traffic congestion, flanking Washington DC (#2).[25] Yet California's climate leaders have decided to intentionally increase traffic congestion—to lengthen commute times and encourage gridlock—to try to get more people to ride buses or take other form of public transit.[26] This climate strategy has already failed, with public transit ridership—particularly by bus—continuing to fall even as California has invested billions in public transit systems.[27]

18. Vehicle miles travelled ("VMT") by Californians forced to drive ever-greater distances to homes they can afford have also increased by 15% between 2000 and 2015.[28] Serious

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[24] *Id.* p. 2.

[25] INRIX Global Traffic Scorecard (2017), http://inrix.com/scorecard/.

[26] Governor's Office of Planning and Research ("OPR"), Updating Transportation Analysis in the CEQA Guidelines, Preliminary Discussion Draft (Aug. 6, 2014), 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 subject to congestion tends to lead to more people driving further distances. (Handy and Boarnet, "DRAFT Policy Brief on Highway Capacity and Induced Travel," (April 2014).) This is because the new roadway capacity may allow increased speeds on the roadway, which then allows people to access more distant locations in a shorter amount of time. Thus, the new roadway capacity may cause people to make trips that they would otherwise avoid because of congestion, or may make driving a more attractive mode of travel"). In subsequent CEQA regulatory proposals, and in pertinent parts of the 2017 Scoping Plan, text supportive of traffic congestion was deleted but the substantive policy direction remains unchanged. Further, the gas tax approved by the Legislature in 2017 was structured to limit money for addressing congestion to $250 million (less than 1% of 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.

[27] 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).

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

adverse health impacts to individual commuters,[29] as well as adverse economic impacts to drivers and the California economy,[30] from excessive commutes have also worsened.

19. In 2016 and 2017, the combination of increased congestion and more VMT reversed decades of air quality improvements in California, and caused increased emissions of both GHG and other traditional air pollutants that cause smog and other adverse health effects,[31] for which reductions have long been mandated under federal and state clean air laws.

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

21. For most Californians, especially those who lost their home in the Great Recession (with foreclosures disproportionately affecting minority homeowners),[32] or who never owned a home and are struggling with college loans or struggling to find a steady job that pays enough to cover California's extraordinary living costs, CARB's assertion that California is a booming, "clean and green" economy is a distant fiction.

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

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

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[29] 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/.

[30] TRIP, California Transportation by the Numbers (Aug. 2016), 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 for drivers and businesses, and wasted fuels).

[31] Next 10, 2017 CA Green Innovation Index (Aug. 22, 2017*),* http://next10.org/sites/default/files/2017-CA-Green-Innovation-Index-2.pdf.

[32] 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/.

1960's who destroyed minority communities in pursuit of redevelopment, and those who enabled decades of "redlining" practices by insurance and banking bureaucrats aimed at denying minorities equal access to mortgages and home insurance.[33]

23. Environmental regulators are no less susceptible to racism and bias than other regulators. Members of The Two Hundred had to intervene when environmental regulators threatened to block construction of the UC Merced campus, which is the only UC campus in the Central Valley and serves the highest percentage of Latino students of any UC campus.[34]

24. Members of The Two Hundred also had to intervene to require environmental regulators to establish clear standards for the cleanup of contaminated property that blighted many minority neighborhoods, where cleanup and redevelopment could not be financed without the standards that virtually all other states had already adopted.[35]

25. Racial bias in environmental advocacy organizations, including those that heavily lobbied CARB in 2017 Scoping Plan proceedings, was also confirmed in an influential study funded by major foundations that contribute to such organizations.[36]

[33] See Richard Rothstein, Color of Law: A Forgotten History of How Our Government Segregated America (2017).

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

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

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

26. Additional studies have confirmed racial bias in environmental organizations, and in media reports on environmental issues.[37] As the newest President of the Sierra Club Board of Directors, African American Aaron Mair recently confirmed: "White privilege and racism within the broader environmental movement is existent and pervasive."[38]

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

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

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

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

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

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[37] See, e.g., Nikhil Swaminathan, *The Unsustainable Whiteness of Green*, Moyers & Company (June 30, 2017), https://billmoyers.com/story/unsustainable-whiteness-green/; Jedidiah Purdy, *Environmentalism's Racist History,* The New Yorker (Aug. 13, 2015), https://www.newyorker.com/news/news-desk/environmentalisms-racist-history; Brentin Mock, *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.

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

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

31. These newly-adopted measures (herein the "GHG Housing Measures") are: (A) The new VMT mandate; (B) The new "net zero" CEQA threshold; (C) The new CO2 per capita targets for local climate action plans for 2030 and 2050; and (D) The "Vibrant Communities" policies in Appendix C to the 2017 Scoping Plan, to the extent they incorporate the VMT, net zero and new CO2 per capita targets.[39]

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

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

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

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

[39] While CARB styled the GHG Housing Measures as "guidelines", they are self-implementing and unlawful underground regulations. All other components of the 2017 Scoping Plan will be 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.

metric tons to meet the 2030 Target. Notwithstanding widespread reports, and public and agency concern about the housing crisis, the homelessness crisis, the housing-induced poverty crisis, and the transportation crisis (collectively referred to herein as the "housing crisis"), neither the 2017 Scoping Plan, nor the environmental or economic analyses, disclose how much of this 181.8 million metric ton GHG reduction must or even may be achieved by constructing the at least three million new homes that experts,[40] and all candidates for Governor,[41] agree California must produce to resolve the current housing shortfall.

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

37. The best available data on the actual GHG reductions that will be achieved by the Scoping Plan's GHG Housing Measures is the "Right Type, Right Place" report, prepared by a multi-disciplinary team of housing and environmental law experts at the University of California, Berkeley, that examined some of the consequences from the housing crisis solution embedded in the 2017 Scoping Plan's GHG Housing Measures ("UCB Study").[42]

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[40] Jonathan Woetzel et al., Closing California's Housing Gap, McKinsey Global Institute (Oct. 2016), https://www.mckinsey.com/global-themes/urbanization/closing-californias-housing-gap.

[41] Liam Dillon, *We asked the candidates how they planned to meet housing production goals. Here's how they responded*, LA Times (March 6, 2018), http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-we-asked-the-candidates-how-they-planned-1520382029-htmlstory.html.

[42] Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic Impacts of Infill Residential Development through 2030, U.C. Berkeley Terner Center for Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017), https://ternercenter.berkeley.edu/right-type-right-place.

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

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

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

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

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

"Northlake,"[43] would increase still further the cost of new housing (and thereby make it even less affordable to California's minority and other families). Since new housing—especially infill housing—is already the top target of CEQA lawsuits statewide, [44] the GHG Housing Measures will encourage even more anti-housing lawsuits, with attendant increases in project litigation costs and construction delays, as well as vehement opposition from existing residents.

43. CEQA lawsuits also disproportionately target multi-family housing such as apartments in existing urbanized "infill" locations. In a recent 3-year study of all CEQA lawsuits filed statewide, the approximately 14,000 housing units challenged in the six county region comprising the Southern California Association of Governments ("SCAG"), which includes Los Angeles, Orange, San Bernadino, Ventura, Imperial, and Riverside counties and all cities within those counties, SCAG determined that 98% of the challenged housing units were located in existing urbanized areas, 70% were within areas designated for transit-oriented high density development, and 78% were located in the whiter, wealthier and healthier areas of the region (outside the portions of the regions with higher minority populations, poverty rates, pollution, and health problems associated with adverse environmental conditions such as asthma).[45]

44. CEQA lawsuit petitioners also have an unusually high success rate against the cities and other government agencies responsible for CEQA compliance. A metastudy of administrative agency challenges nationally showed that agencies win approximately 70% of such cases. In contrast, three different law firm studies of CEQA reported appellate court opinions showed that CEQA petitioners prevailed in almost 50% of such cases.[46]

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

[44] Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 Hastings Envtl. L.J. (2018), https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf.

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

[46] Jennifer Hernandez, Spencer Potter, Dan Golub, Joanna Meldrum, CEQA Judicial Outcomes: 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.

45. As noted by senior CEQA practitioner William Fulton, "CEQA provides a way for anybody who wants anything out of a public agency to get some leverage over the situation – whether that's unions, environmentalists, businesses, developers, and even local governments themselves."[47]

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

> Moving to the bad and ugly side of CEQA, projects with merit that serve valid public purposes and not be harmful to the environment can be killed just by the passage of the time it takes to litigate a CEQA case.
>
> In the same vein, often just filing a CEQA lawsuit is the equivalent of an injunction because lenders will not provide funding where there is pending litigation. This is fundamentally unfair. There is no need to show a high probability of success to secure an injunction and no application of a bond requirement to offset damage to the developer should he or she prevail.
>
> CEQA has also been misused by people whose move is not environmental protection but using the law as leverage for other purposes. I have seen this happen where a party argues directly to argue lack of CEQA compliance or where a party funds an unrelated group to carry the fight. These, in my opinion, go to the bad or ugly side of CEQA's impact.[48]

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

[47] William Fulton, Insight: Everyone wants to keep leverage under CEQA, California Planning & Development Report (Sept. 30, 2014), http://www.cp-dr.com/node/3585.

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

sources to expand and replace undersized infrastructure and public services, and never be within reach of purchasing a family home.[49]

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

49. CARB also ignores a history of success in reducing traditional pollutants from cars, as required by the federal and state Clean Air Acts, while preserving the transportation mobility of people and goods. U.S. Environmental Protection Agency ("EPA") reported in 2016 that most auto tailpipe pollutants had declined by 98-99% in comparison to 1960's cars, gasoline got cleaner with the elimination of lead and reduction in sulfur, and even though it had not been directly regulated, the primary GHG from cars (carbon dioxide) has risen nationally by less than 20% even as VMT nationally more than doubled as a co-benefit of mandatory reductions of traditional pollutants.[50]

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

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

[49] Eric L. Frazier, The Power is Now, Facebook Live Broadcast (Feb. 28, 2018), https://thepowerisnow.com/events/event/jennifer-hernandez/.

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

staff said that GHG Housing Measures were in a separate chapter and thus not part of the 2017 Scoping Plan after all.[51]

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

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

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

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

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

[51] Supplemental Responses to Comments on the Environmental Analysis Prepared for the 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.

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

57. California's housing crisis is particularly acute, and has long-lasting adverse impacts. As the Director of the California Department of Housing and Community Development, Ben Metcalf, recently reported: "Research has been unequivocal in supporting two undeniable conclusions: Low-income households paying more than half their income in rent have profoundly reduced expenditures on food, retirement, health care, and education compared with non–rent-burdened households. And children growing up in neighborhoods of concentrated poverty are more likely to have psychological distress and health problems."[52]

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

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

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

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

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

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

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

II. JURISDICTION AND VENUE

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

III. PARTIES

65. Petitioners/Plaintiffs THE TWO HUNDRED are a California-based unincorporated association of community leaders, opinion makers and advocates working in California (including in Fresno County) and elsewhere on behalf of low income minorities who are, and have been, affected by California's housing crisis and increasing wealth gap.[53]

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

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

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

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

[53] See www.the200leaders.org.

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

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

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

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

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

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

- Cruz Reynoso – Cruz Reynoso, now retired, formerly served as Legal Counsel for THE TWO HUNDRED. Mr. Reynoso has dedicated his life to public service championing civil rights, immigration and refugee policy, government reform, and legal services for the poor. Mr. Reynoso began his career in private practice then moved to public service as the assistant director of the California Fair Employment Practices Commission, the associate general counsel of the Equal Employment Opportunity Commission, and head of the California Rural Legal Assistance (CRLA). Mr. Reynoso was a faculty member at the University of New Mexico School of Law and in 1976, he was appointed associate justice of the California Courts of Appeal. In 1982, he became the first Latino to be appointed an associate justice of the California Supreme Court. Mr. Reynoso later returned to private practice, and resumed his teaching career by joining the UCLA School of Law and then the UC Davis School of Law. Mr. Reynoso has served as Vice Chair of the U.S. Commission on Civil Rights, was a member of the Select Commission on Immigration and Human Rights, and received the Presidential Medal of Freedom.
- José Antonio Ramirez – José Antonio Ramirez is a Council Member of THE TWO HUNDRED. He has dedicated his life to public service, especially for the residents

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

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

- Hyepin Im – Hyepin Im is a Council Member of THE TWO HUNDRED. She currently serves as the Founder and President of Korean Churches for Community Development (KCCD) whose mission is to help churches build capacity to do economic development work. Under Ms. Im's leadership, KCCD has implemented a historic homeownership fair in the Korean community, a Home Buyer Center Initiative with Freddie Mac, a national database and research study on Korean American churches, and ongoing training programs. Previously, Ms. Im was a venture capitalist for Renaissance Capital Partners, Sponsorship and Community Gifts Manager for California Science Center, a Vice President with GTA Consulting Company, and a Consultant and Auditor with Ernst & Young LLP. Ms. Im serves on the Steering Committee of Churches United for Economic Development, as Chair for the Asian Faith Commission for Assemblymember Herb Wesson, and has served as the President of the Korean American Coalition, is a member of the Pacific Council, was selected to be a German Marshall Fund American Memorial Marshall Fellow, and most recently, was selected to take part in the Harvard Divinity School Summer Leadership Institute.
- Don Perata – Don Perata is a Council Member of THE TWO HUNDRED. Mr. Perata began his career in public service as a schoolteacher. He went on to serve on the Alameda County Board of Supervisors (1986-1994) and the California State Assembly (1996-1998). In 1998, he was elected to the California State Senate and served as president pro tem of the Senate from 2004-2008. As president pro tem, Mr. Perata oversaw the passage of AB 32, California's cap and trade regulatory scheme to reduce greenhouse gases. Mr. Perata has guided major legislation in health care, in-home services, water development and conservation and cancer, biomedical and renewable energy. Mr. Perata has broad experience in water, infrastructure, energy, and environmental policies, both as an elected official and a consultant. He is versed in the State Water Project, Bay Delta restoration,

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

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

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

- George Dean – George Dean is a Council Member of THE TWO HUNDRED. Mr. Dean has been President and Chief Executive Officer of the Greater Phoenix Urban League since 1992. As such, he has brought a troubled affiliate back to community visibility, responsiveness and sound fiscal accountability. Mr. Dean, a former CEO of the Sacramento, California and Omaha, Nebraska affiliates boasts more than 25 years as an Urban League staff member. His leadership focuses on advocacy toward issues affecting the African-American and minority community, education, training, job placement and economic development. Mr. Dean annually raises more than 3 million dollars from major corporations, local municipalities and state agencies for the advancement of minority enterprises, individuals, families and non-profits. Mr. Dean is nationally recognized in the field of minority issues and advancement, and affordable housing.
- Joey Quinto – Joey Quinto is a Council Member of THE TWO HUNDRED. Mr. Quinto's has made many contributions to the advancement of the API community. He began his professional career as a mortgage banker. As a publisher, his weekly newspaper advances the interests of the API community and addresses local, consumer and business news, and community events. He is a member of several organizations including the Los Angeles Minority Business Opportunity Committee and The Greenlining Coalition. Mr. Quinto is the recipient of the Award for Excellence in Journalism during the Fourth Annual Asian Pacific Islander Heritage Awards in celebration of the Asian Pacific Islander American Heritage Month. He was also listed among the Star Suppliers of the Year of the Southern California Regional Purchasing Council, received the Minority Media

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

- Bruce Quan, Jr. – Bruce Quan is a Council Member of THE TWO HUNDRED. Mr. Quan is a fifth generation Californian whose great grandfather, Lew Hing founded the Pacific Coast Canning Company in West Oakland in 1905, then one of the largest employers in Oakland. Bruce attended Oakland schools, UC Berkeley, and Boalt Hall School of Law. At Berkeley, he was a community activist for social justice, participated in the Free Speech Movement and the Vietnam Day Committee and was elected student body president. In 1973, he was chosen as one of three students to clerk for the Senate Watergate Committee and later returned to Washington to draft the "Cover-up" and "Break-in" sections of the committee's final report. He worked in the Alameda's City Attorney office, his own law practice advising Oakland's Mayor Lionel Wilson on economic development issues in Chinatown and serving Mayor Art Agnos as General Counsel for the San Francisco-Shanghai Sister City Committee and the San Francisco-Taipei Sister City Committee. In 2000, he moved to Beijing, continued his law practice, worked as a professor with Peking Law School, and became senior of counsel with Allbright Law Offices. Now in Oakland, he has reengaged in issues affecting the Chinese community and on issues of social justice, public safety and economic development in Oakland.
- Robert J. Apodaca – Robert Apodaca is a Council Member of THE TWO HUNDRED. He is a Founder of ZeZeN Advisors, Inc., a boutique financial services firm that connects institutional capital with developers and real estate owners. He has a 45-year career that spans private and public sectors. He was Chairman and Trustee of Alameda County Retirement Board (pension fund) and then joined Kennedy Associates, an institutional investor for pension funds as Senior Vice President & Partner. He represented Kennedy Companies on Barings Private Equity's "Mexico Fund" board of directors. He later joined McLarand

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

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

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

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

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

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

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

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

IV. GENERAL ALLEGATIONS

A. California's Statutory Scheme To Reduce Greenhouse Gas Emissions and Avoid Disparate Impacts

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

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

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

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

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

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

82. The initial scoping plan[54] was discussed in public hearings on or about December 11, 2008. The initial scoping plan was adopted by CARB on or about May 7, 2009.

83. On or about December 23, 2009, the initial scoping plan was challenged in the Superior Court for the City and County of San Francisco for failing to meet the statutory requirements of AB 32, the APA, and CEQA. The superior court accepted the challenge in part and the appeal was thereafter resolved after a further environmental document was filed.[55]

84. The Low Carbon Fuel Standard ("LCFS") was an early action item under AB 32. The LCFS was adopted on or about November 25, 2009 by CARB's executive officer. CARB's action to adopt the LCFS also was challenged for CEQA and APA violations. On or about November 2011, the Superior Court of Fresno County found that CARB had not violated the APA or CEQA. On or about July 15, 2013 the Fifth District Court of Appeal reversed the superior court's judgment and ordered it to issue a preemptory writ of mandate ordering CARB to revise and recertify its environmental assessment to meet CEQA's standards.[56]

85. The first update to the scoping plan[57] was adopted on or about May 22, 2014.

86. Thereafter, on or about May 30, 2017, the Fifth District Court of Appeal again found that CARB had violated CEQA and the APA, and that it had not acted in good faith in responding to certain of the Court's prior orders.[58] Specifically, the court found that CARB violated CEQA in deferring its analysis and mitigation of potential increases in nitrogen oxide emissions resulting from impacts of the LCFS regulations.

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

[55] *Ass'n. of Irritated Residents v. Cal. Air Res. Bd.*, 2011 WL 8897315 (Cal. Super. May 20, 2011) (approving challenges to alternatives analysis and improper "pre-approval" under CEQA) and *Ass'n. of Irritated Residents v. Cal. Air Res. Bd.* (2012) 206 Cal.App.4th 1487.

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

[57] 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.

[58] *POET, LLC v. State Air Resources Board* (2017) 12 Cal.App. 5th 52.

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

88. AB 32 requires CARB to update the scoping plan at least every five years. CARB superseded its 2014 Scoping Plan with the current 2017 Scoping Plan adopted on December 14, 2017. The 2017 Scoping Plan contains the new GHG Housing Measures complained of herein.[59]

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

B. The 2017 Scoping Plan

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

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

92. Petitioners submitted a detailed letter commenting on the 2017 Scoping Plan on December 11, 2017, in advance of CARB's meeting to vote on the 2017 Scoping Plan.[60] The letter included extensive citations to documents and publications analyzing California's ongoing housing crisis and the disproportionate impact of the worsening housing shortage on marginalized minority communities.

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[59] 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.

[60] The Two Hundred Comment Letter dated Dec. 11, 2017, can be found in the Supplemental 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

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

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

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

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

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

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

99. The LAO also has recognized that CARB's Scoping Plans include "a wide variety of regulations intended to help the state meet its GHG goal…"[61]

C. CARB's Improper "Cumulative Gap" Reduction Requirement

100. In AB 32, the Legislature directed CARB to reduce statewide GHG emissions to 1990 levels by 2020 via measures in the first Scoping Plan. This legislative mandate is simple and uncontested. CARB concluded that California's GHG emissions were 431 million metric tons of carbon dioxide equivalent ("$MMTCO_2e$") in 1990.

101. SB 32 established the more stringent mandate of reducing GHG emissions to 40% below 1990 levels by 2030, even though California's population and economic activities are expected to continue to increase during this period. The 2030 Target is simple math: 40% below 431 $MMTCO_2e$ equals 258.6 $MMTCO_2e$.[62] Thus, the 2017 Scoping Plan created measures to reduce statewide emissions to 260 MMTCO2e by 2030.

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

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

[61] 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.

[62] CARB generally rounds this to 260 MMTCO2e.

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

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

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

107. CARB's unlegislated "cumulative gap" requirement is based on the unsupportable assumption that state emissions must decline in a fixed trajectory from 431 $MMTCO_2e$ in 2020 to 258.6 MMTCO2e in 2030 despite the fact that SB 32 does not require that the state reach the 2030 Target in any specific way. CARB arbitrarily created the "cumulative gap" requirement by summing the annual emissions that would occur from 2021-2030 if emissions declined in a straight line trajectory, which totaled 3,362 MMTCO2e, as follows:

	Annual emissions based on a straight line trajectory from 2020 to 2030 ($MMTCO_2e$)
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

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

109. CARB then subtracted the cumulative "Reference Scenario" emissions (3,982 $MMTCO_2e$) from the cumulative emissions based on the straight line trajectory (3,362 $MMTCO_2e$) and illegally used the difference, 621 $MMTCO_2e$, as a new, unlegislated GHG "cumulative gap" reduction requirement.

Year	"Reference Scenario" Annual Emissions ($MMTCO_2e$)
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

110. Scoping Plan Figure 7, for example, is titled "Scoping Plan Scenario – Estimated Cumulative GHG Reductions by Measure (2021–2030)." The identified measures show the amount of reductions required to "close" the 621 $MMTCO_2e$ GHG "cumulative gap" CARB invented from the difference in cumulative emissions from 2021-2030 between a hypothetical straight line trajectory to the 2030 Target and the "Reference Scenario" projections.

111. Figure 8 of the Scoping Plan and associated text provide an "uncertainty analysis to examine the range of outcomes that could occur under the Scoping Plan policies and measures" which is entirely based on the 621 $MMTCO_2e$ GHG "cumulative gap" metric.[63]

112. CARB also calculated that the cumulative annual emissions projected to occur under the "Known Commitments Scenario" from 2021-2030 would be 3,586 MMTCO2e and subtracted this amount from the cumulative emissions generated by the straight line trajectory (3,362 $MMTCO_2e$). The difference is 224 $MMTCO_2e$, which is incorrectly shown as 236 $MMTCO_2e$ in Table 3 of the Scoping Plan and in the text following Table 3. CARB illegally characterized the 224 $MMTCO_2$ difference as the "cumulative emissions reduction gap" in the "Known Commitments Scenario" in the Scoping Plan and evaluated the need for additional 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

[63] The analysis discussion references Scoping Plan Appendix E for more details.

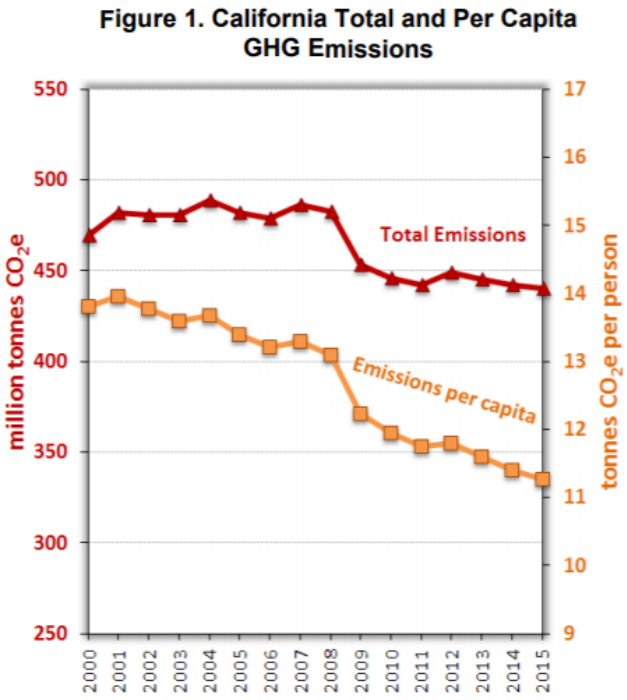
113. The California legislature in no way authorized CARB to invent a "cumulative gap" methodology based on an unreasonable and arbitrary straight line trajectory from 2020 to the 2030 Target, which counted each year's shortfall against the 2030 Target and then added all such shortfalls to inflate reduction needed from the 129 and 60 $MMTCO_2e$ (depending on scenario) required by the 2030 Target to the 621 and 224 $MMTCO_2e$ "cumulative gap" requirements.

114. SB 32 does not regulate cumulative emissions and only requires that the 2030 Target of 260 MMTCO2e be achieved by 2030. CARB's own analysis shows that existing legal requirements will reduce emissions to 320 $MMTCO_2e$ in 2030. At most, CARB was authorized to identify measures in the Scoping Plan that would further reduce emissions by 60 $MMTCO_2e$ in 2030 under the "Known Commitments Scenario". CARB instead illegally created new, and much larger "cumulative gap" reduction requirements of 224 $MMTCO_2e$ and 621 $MMTCO_2e$.

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

116. For example, as shown in Figure 1 below, in reaching the 2020 Target, California's GHG emissions reductions have not followed a straight line trajectory, but have gone up and down based on the economy and other factors.[64]

[64] 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.



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

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

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

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

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

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

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

1. Unlawful VMT Reduction Requirement

124. Among the new regulations and standards added to CARB's 2017 Scoping Plan—which were not in any of its earlier scoping plans—is a requirement to reduce VMT. This requirement is part of the Scoping Plan Scenario presented in Chapter 2 in the "Mobile Source Strategy."[65]

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

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

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

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

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

129. The "Mobile Source Strategy" as a whole is estimated to result in cumulative GHG emission reductions of 64 $MMTCO_2e$ per year. Scoping Plan, p. 28.

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

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

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

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

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

134. CARB's new VMT requirements, which purport to encourage public transit, essentially ignore the fact that far fewer than 10% of Californians can get from their home to their jobs in less than one hour on public transit, and that public transit ridership has fallen nationally and in California.[66] CARB's new VMT requirements fail to rationally address the reality that VMT continues to increase rather than decrease in California due to increasing population and employment levels.[67]

135. CARB's answer to reducing VMT by increasing bicycling, walking, and transit use is a laughable solution for low-income Californians, such as those living in the San Joaquin Valley and commuting to jobs in the San Francisco Bay Area.[68]

136. The burden of CARB's VMT reduction measures falls disproportionately on minority workers already forced by the housing crisis to endure long and even "mega" commutes lasting more than three hours per day.[69] The vast majority of middle and lower-income jobs (disproportionately performed by minority workers) require those workers to be physically present at their job sites to be paid. Affected job categories include teachers, nurses, emergency

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[66] Laura J. Nelson, *L.A. Bus Ridership Continues to Fall: Officials Now Looking to Overhaul the 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.

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

[68] 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.

[69] 2007 and 2016 American Community Survey 1-Year Estimates, Table B08303 series (Travel 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 in commute time from 2007 to 2016 in California and Bay Area); 2007 and 2016 American 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).

responders, courtroom and municipal service workers, construction workers, day care and home health care workers, retail clerks, and food service workers.[70]

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

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

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

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

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

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

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

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

144. In order to achieve these newly-mandated reductions in VMT, CARB intends to intentionally increase congestion to induce transit use. OPR's proposal for updating the CEQA Guidelines to include VMT as a metric for analyzing transportation impacts states that adding new roadway capacity increases VMT.[71] The OPR proposal further states that "[r]educing roadway capacity (i.e. a "road diet") will generally reduce VMT and therefore is presumed to cause a less than significant impact on transportation. Building new roadways, adding roadway capacity in congested areas, or adding roadway capacity to areas where congestion is expected in the future, typically induces additional vehicle travel." *Id.* at p. III:32.

145. Attempting to reduce VMT by purposefully increasing congestion by reducing roadway capacity will not lead to GHG emission reductions. Instead, increasing congestion will cause greater GHG emissions due to idling, not to mention increased criteria air pollutant[72] and

[71] 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.

[72] The six criteria air pollutants designated by the Environmental Protection Agency ("EPA") are particulate matter ("PM"), ozone, nitrogen dioxide ("NO_2" or "NOx"), carbon monoxide ("CO"), sulfur dioxide ("SO_2"), and lead.

toxic air contaminant[73] emissions. CARB has no authority to impose a VMT limit and any VMT limit imposed by an agency must be approved in a formal rulemaking process.

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

147. In addition, CARB has recently undergone an update of regional GHG emission reduction targets under SB 375 in which CARB stated that: "In terms of tons, CARB staff's proposed [SB 375] targets would result in an estimated additional reduction of approximately 8 million metric tons of CO2 per year in 2035 compared to the existing targets. The estimated remaining GHG emissions reductions needed would be approximately 10 million metric tons CO2 per year in 2035 based on the Scoping Plan Update scenario. These remaining GHG emissions reductions are attributed to new State-initiated VMT reduction strategies described in the Scoping Plan Update."[74]

148. Thus, CARB's only stated support for needing the VMT reduction mandates in the 2017 Scoping Plan is to close a gap to the Scoping Plan Update Scenario that the SB 375 targets will not meet. However, all of the allegedly "necessary" reductions in the Scoping Plan Update Scenario are based on CARB's unlawful "cumulative gap" reduction requirement, which, as described above, improperly ballooned the GHG reductions required from 60 to 224 $MMTCO_2e$ based on the "Known Commitments Scenario" and from 129 to 621 $MMTCO_2e$ based on the "Reference Case Scenario."

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

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[73] Toxic air contaminants, or TACs, include benzene, hexavalent chrome, cadmium, chloroform, vinyl chloride, formaldehyde, and numerous other chemicals.

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

150. There is also no evidence that CARB's estimated 10 MMTCO2e per year reductions based on the VMT reduction mandate is in any way achievable. The Right Type, Right Place report[75] estimates only 1.79 MMTCO2e per year will be reduced from both lower VMT and smaller unit size houses using less energy and thus creating lower operational emissions.

151. The Staff Report for SB 375 acknowledges that VMT has increased, that the results of new technologies are at best mixed in early reports as to VMT reductions, and that the correlation between VMT and GHG is declining.[76] There is no evidence that the 10 MMTCO2e per year reductions based on the VMT reduction mandate in the 2017 Scoping Plan is in any way something other than a number created solely based on the fundamental miscalculation about the 2030 target demonstrated by the "cumulative gap" methodology in the 2017 Scoping Plan.

2. Unlawful CEQA Net Zero GHG Threshold

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

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

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

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[75] Nathaniel Decker et al., Right Type Right Place: Assessing the Environmental and Economic Impacts of Infill Residential Development through 2030, U.C. Berkeley Terner Center for Housing Innovation and Center for Law, Energy and the Environment (Mar. 2017), https://ternercenter.berkeley.edu/right-type-right-place.

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

activities, operation of new buildings, offsite electricity generation, waste management, transportation fuel use, and a myriad of other activities. Meeting a net zero threshold for these activities is not possible. While there have been examples of "net zero" buildings—which are more expensive than other housing[77]—none of these examples included the other components of a "project" as required by CEQA.

155. The Scoping Plan's "net zero" CEQA provisions also would raise housing and homeowner transportation costs and further delay completion of critically needed housing by increasing CEQA litigation risks—thereby exacerbating California's acute housing and poverty crisis.[78]

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

157. The threshold has immediate evidentiary weight as the expert conclusion of the state's expert GHG agency. An agency's failure to use the 2017 Scoping Plan's CEQA threshold has already been cited as legal error in the comment letter preceding the expected lawsuit against the Northlake housing project in Los Angeles.[79]

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

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[77] LAO, Evaluating California's Pursuit of Zero Net Energy State Buildings (Nov. 14, 2017), http://www.lao.ca.gov/Publications/Report/3711.

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

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

159. The Scoping Plan's expansive new "net zero" GHG CEQA threshold is directly at odds with, and is dramatically more stringent than, the existing CEQA regulatory threshold for GHG emissions. This existing threshold was adopted by OPR pursuant to specific authorization and direction from the Legislature in SB 97. In the SB 97 rulemaking context, OPR, in its Statement of Reasons, expressly rejected a "zero molecule" or "no net increase" GHG threshold (now adopted by CARB without Legislative authority) as being inconsistent with, and not supported by, CEQA's statutory provisions or applicable judicial precedent. OPR stated that "[n]otably, section 15064.4(b)(1) is not intended to imply a zero net emissions threshold of significance. As case law makes clear, there is no "one molecule rule" in CEQA."[80]

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

161. In short, CARB's "net zero" GHG threshold is inconsistent with OPR's legal conclusion that CEQA cannot be interpreted to impose a "net zero" standard.[81]

162. In addition to being Legislatively unauthorized and unlawful, the "net zero" GHG threshold would operate unconstitutionally so as to disproportionately disadvantage low income minorities in need of affordable housing relative to wealthier, whiter homeowners who currently occupy the limited existing housing stock.[82] This disadvantage arises because of the use of CEQA

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[80] OPR, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA 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.

[81] 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.

[82] See Richard Rothstein, Color of Law: A Forgotten History of How Our Government Segregated America (2017) for a historical review of how zoning and land use laws were designed to promote discrimination against African Americans and other communities of color, 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.

litigation by current homeowners to block new housing for others, including especially low income housing for minorities.[83]

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

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

165. Anonymous use of CEQA lawsuits, as well as reliance on CEQA lawsuits to advance economic objectives such as fast cash settlements, union wage agreements, and competitive advantage, has been repeatedly documented—but Governor Brown has been unable

[83] See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 Hastings Envtl. L.J. (2018), https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf; see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf; 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-ceqa-august-2015/.

to secure the Legislature's support for CEQA because, as he explains, unions use CEQA to leverage labor agreements.[84]

166. Using CEQA to advance economic rather than environmental objectives, and allowing anonymous lawsuits to mask more nefarious motives including racism and extortion, has established CEQA litigation (and litigation threats) as among the top reasons why adequate housing supplies have not been built near coastal jobs centers.[85]

167. The "net zero" threshold, as applied to new housing projects in California, adds significantly to the risk and CEQA litigation outcome uncertainty faced by persons who wish to build such housing.[86] Not even the California Supreme Court, in *Newhall, supra,* 62 Cal.4th 204, could decide how CEQA should apply to a global condition like climate change in the context of considering the GHG impacts of any particular project. Instead, the Supreme Court identified four "potential pathways" for CEQA compliance. Notably, none of these was the "net zero" threshold adopted by CARB in its 2017 Scoping Plan.

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

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

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[84] See Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), 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 politically impossible because labor unions use litigation threats to "hammer" project sponsors into agreeing to enter into union labor agreements, and Building Trades Council lobbyist Caesar Diaz testimony in "strong opposition" to legislative proposal to require disclosure of the identity 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).

[85] 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.

[86] See *Id.*

include housing.[87] Over a three year period in the SCAG region, nearly 14,000 housing units were challenged in CEQA lawsuits, even though 98% of these units were located in already developed existing communities and 70% were located within a short distance of frequent transit and other existing infrastructure and public services. This and a referenced prior study also showed that the vast majority of CEQA lawsuits filed statewide are against projects providing housing, infrastructure and other public services and employment uses within existing communities.[88]

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

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

172. Finally, CARB's "net zero" threshold fails to address the likelihood that it will actually be counterproductive because of "leakage" of California residents driven out to other states because of unaffordable housing prices.[89] Including this measure in the 2017 Scoping Plan bypasses statutory requirements to discourage and minimize "leakage"—movement of

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[87] See Jennifer L. Hernandez, California Environmental Quality Act Lawsuits and California's Housing Crisis, 24 Hastings Envtl. L.J. (2018), https://www.hklaw.com/files/Uploads/Documents/Articles/121317_HELJ_Jennifer_Hernandez.pdf; see also Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015) (Jul. 2016), https://www.hklaw.com/files/UPloads/Documents/Alerts/Environment/InfillHousingCEQALawsuits.pdf; 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-ceqa-august-2015/

[88] *Ibid.*

[89] 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.

economically productive activities to other states or countries that have much higher GHG emissions on a per capita basis than California. Imposing "net zero" standards that end up shutting down or blocking economic activities in California results in a global increase in GHGs when those activities move to other states or countries with higher per capita GHG emissions.[90]

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

174. The housing crisis has resulted in a significant emigration of families that cannot afford California housing prices, and this emigration increases global GHG emissions—precisely the type of "cumulative" contribution to GHGs that OPR explains should be evaluated under CEQA, rather than CARB's net zero GHG threshold which numerically-focuses on project-level GHG emissions and mitigation.[91]

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

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

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

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[90] Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, The Sacramento Bee (Mar. 5, 2017), http://www.sacbee.com/news/state/california/article136478098.html; Drew Lynch, *Californians 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/.

[91] Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, The Sacramento Bee (Mar. 5, 2017), http://www.sacbee.com/news/state/california/article136478098.html; Drew Lynch, *Californians 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/.

(compared to California's one) as well as more reliable hydropower from large dams that are less affected by the cyclical drought cycles affecting West Coast rivers.[92]

177. California's current very low per capita GHG emissions are approximately 11 MMTCO2e.

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

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

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

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

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

[92] U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

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

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

185. Additionally, under state law, local governments' authority to require more aggressive GHG reductions in buildings is subject to a cost-effectiveness test decided by the California Building Standards Commission ("CBSC")—the same CBSC that has already determined that "net zero", even for single family homes and even for just the electricity used in such homes, is *not* yet feasible or cost-effective to impose.[93]

186. Third, it is important to consider the per capita metrics that the 2017 Scoping Plan wants local governments to achieve in their localized climate action plans in a real world context. Since most of the world's energy is still produced from fossil fuels, energy consumption is still highly correlated to economic productivity and per capita incomes and other wealth-related metrics such as educational attainment and public health.[94] The suggested very low per capita

[93] California Energy Commission, 2019 Building Energy Efficiency Standards PreRulemaking 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.

[94] See Mengpin Ge, Johannes Friedrich, and Thomas Damassa, 6 Graphs Explain the World's 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 (see tables entitled "Per Capita Emissions for Top 10 Emitters" and "Emissions Intensity of Top 10 Emitters" showing that emissions are generally linked to GDP).

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

187. Growing economies such as China and India bargained for, and received, permission to substantially increase their GHG emissions under the Paris Accord precisely because economic prosperity remains linked to energy use.[95] This is not news: even in the 1940's, the then-Sierra Club President confirmed that inexpensive energy was critical to economic prosperity AND environmental protection.

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

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

190. The CAP measure thus effectively eliminates the one predictable CEQA GHG compliance pathway that has been upheld by the courts, compliance with an adopted CAP. The

[95] Marianne Lavelle, *China, India to Reach Climate Goals Years Early, as U.S. Likely to Fall Far Short,* Inside Climate News (May 16, 2017), https://insideclimatenews.org/news/15052017/china-india-paris-climate-goals-emissions-coal-renewable-energy.

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

191. In short, the 2017 Scoping Plan directs local governments to adopt CAPs—which the Supreme Court has explained must then be enforced—with per capita numeric GHG reduction mandates in sectors that local governments have no legal or practical capacity to meet, without any regard for the consequential losses to middle income jobs in manufacturing and other business enterprises, or to the loss of tax revenues and services from such lost jobs and businesses,[96] or to the highly disparate impact that such anti-jobs measures would have on minority populations already struggling to get out of poverty and afford housing.

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

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

[96] Just four states—Ohio, Pennsylvania, Georgia and Indiana—collectively have a population and economy comparable with California. With a combined gross product of $2.25 trillion in 2016, these four states would be the 8th largest economy in the world if considered a nation. Yet despite achieving five times more GHG emission reductions than California since 2007, in 2016 these four states had 560,000 fewer people in poverty and 871,000 more manufacturing jobs (including 200,000 new jobs from 2009 to 2017 compared with just 53,000 in California). U.S. Bureau of Labor Statistics, Monthly Total Nonfarm Employment, Seasonally Adjusted, 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/.

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

4. Appendix C "Vibrant Communities" Policies Incorporating Unlawful VMT, "Net Zero" and CO2 Per Capita Standards

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

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

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

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

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

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

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

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

(A) **Establishing mandatory development area boundaries (urban growth boundaries) around existing cities,** that cannot be changed even if approved by local voters as well as the city and county, to encourage higher density development (*e.g.*, multi-story apartments and condominiums) and to promote greater transit use and reduce VMT. An authoritative study that CARB funded, as well as other peer reviewed academic studies, show that there is no substantial VMT reduction from these high density urban housing patterns—although there is ample confirmation of "gentrification" (displacement of lower income, disproportionately minority) occupants from higher density transit neighborhoods to distant suburbs and exurbs where workers are forced to drive greater distances to their jobs.[97] Mandatory urban growth boundaries have been routinely rejected in the Legislature. See AB 721 (Matthews, 2003)

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

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

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

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

California—cannot function under policies that intentionally increase congestion.[98] CARB has itself approved hundreds of highway improvement projects pursuant to the Legislative mandates in SB 375—yet the "Vibrant Communities" appendix unilaterally rejects this by telling Californians not to expect any relief from gridlock, ever again. The Legislature and state agencies have also consistently rejected VMT reduction mandates. See SB 150 (Allen, 2017) (initially requiring regional transportation plans to meet VMT reductions but modified before passage); SB 375 (Steinberg, 2008) (early version stating bill would require regional transportation plan to include preferred growth scenario designed to achieve reductions in VMT but modified before passage).

(D) **Mileage-based road pricing strategies which charge a fee per miles driven.** These types of "pay as you drive" fees are barred by current California law, which prohibits local agencies from "imposing a tax, permit fee or other charge" in ways that would create congestion pricing programs. Vehicle Code § 9400.8. Yet CARB attempts to override a Legislative mandate via the 2017 Scoping Plan and its "Vibrant Communities" strategies.

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

202. The eight named state agencies CARB attempts to give unauthorized authority over local actions are:[99]

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[98] Edward Humes, *Four Easy Fixes for L.A. Traffic*, L.A. Times (Apr. 10, 2016), 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 Congestion,* Transport Topics (Mar. 26, 2018), http://www.ttnews.com/articles/california-eyes-future-projects-relieve-freight-congestion.

[99] Several of the eight named agencies are parent agencies, each of which has several subordinate 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) **Business, Consumer Services and Housing Agency**, which among other subordinate agencies includes the Department of Housing and Community Development (HCD), which alone among these agencies has direct statutory responsibility for designating housing production and corresponding land use planning requirements for cities and counties;

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

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

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

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

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

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

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

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

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

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

205. Less housing that is more expensive (urban growth boundary)[100], increased housing cost (CEQA mitigation measure fees), and ever-worsening gridlock resulting in ever-lengthier commutes with ever-increasing vehicular emissions and ever-reduced time at home with children, is the dystopian "necessity" built into the "Vibrant Communities" appendix.

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

207. But for the rest of the California populace—including particularly the people (disproportionately minorities) staffing those restaurants and coffee shops, delivering those goods, providing home healthcare and building and repairing our buildings and infrastructure, and those Californians that are actually producing food and manufacturing products that are consumed in California and around the world—"Vibrant Communities" is where they can't afford to live, where they sleep in their cars during the week, where they fall into homelessness for missing rental payments because of an illness or injury to themselves or a family member.[101] For these folks, "Vibrant Communities" amounts to an increase in poverty, homelessness, and premature "despair deaths" as well as permanent drop outs from the work force.

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[100] Shishir Mathur, Impact of Urban Growth Boundary on Housing and Land Prices: Evidence from King County, Washington, Journal of Housing Studies Vol. 29 – Issue 1 (2014), https://tandfonline.com/doi/abs/10.1080/02673037.2013.825695.

[101] 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.

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

E. CARB's Inadequate Environmental Analysis and Adverse Environmental Effects of the 2017 Scoping Plan

209. Along with the 2017 Scoping Plan, CARB prepared an EA purporting to comply with CEQA requirements.[102]

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

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

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

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

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

[102] 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.

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

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

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

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

1. Deficient Project Description

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

220. CARB has acknowledged that Chapter 5 of the 2017 Scoping Plan (which sets out the new GHG Housing Measures) was not part of what it analyzed in issuing the Scoping Plan. In CARB's words, "These recommendations in the 'Enabling Local Action' subchapter of the

Scoping Plan are not part of the proposed 'project' for purposes of CEQA review."[103] Thus, CARB admits that it did not even pretend to analyze the consequences of the provisions of Chapter 5 of the Scoping Plan.

221. The VMT reduction requirement is part of the Scoping Plan Scenario presented in Chapter 2 in the "Mobile Source Strategy".[104] Chapter 2 is included in the description of the Project in the EA but Chapter 5 is not, despite the fact that the VMT reduction mandate is found in both chapters.

222. For this reason, CARB applied an unreasonable and unlawful "project" definition and undermined CEQA's informational and decision-making purposes.

2. Improper Project Objectives

223. The Project objectives in the EA are also improperly defined in relation to the 2017 Scoping Plan, the unlawful GHG Housing Measures, and the goals explained in the 2017 Scoping Plan.[105] The EA states that the primary objectives of the 2017 Scoping Plan are:

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

[103] Supplemental Responses to Comments on the Environmental Analysis Prepared for the 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.

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

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

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

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

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

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

3. Illegal Piecemealing

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

228. CARB improperly piecemealed its 2017 Scoping Plan and the GHG Housing Measures within it from its similar and contemporaneous SB 375 GHG target update.[106] Both projects address mandated GHG reductions based on VMT and thus should have been addressed as one project for CEQA purposes.

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

4. Inadequate Impact Analysis

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

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

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

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

measures or alternatives.[107] In the first regional plan adopted for the SCAG region, California's most-populous region, the PEIR compared the impacts of developing all new housing within previously-developed areas in relation to developing half of such new housing in such areas, and the other half in previously-undeveloped areas near existing major infrastructure like freeways.

233. The SCAG 2012 PEIR concluded that the all-infill plan caused substantially more unavoidable significant adverse environmental impacts in relation to the preferred plan which divided new development equally between infill and greenfield locations.[108]

234. Following public comments and refinement of the PEIR (inclusive of the addition and modification of various mitigation measures to further reduce significant adverse environmental impacts), SCAG approved the mixed infill/greenfield plan instead of the all-infill alternative. CARB then approved SCAG's plan—first in 2012 and then again in 2016—as meeting California's applicable statutory GHG reduction mandates.[109]

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

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[107] See SB 375 "Sustainable Communities Strategies" review page at https://www.arb.ca.gov/cc/sb375/sb375.htm, which includes links to the regional land use and transportation plans for multiple areas (which then further link to the PEIRs).

[108] SCAG, Final PEIR for the 2012-2035 RTP/SCS (April 2012), http://rtpscs.scag.ca.gov/Pages/Final-2012-PEIR.aspx.

[109] 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.

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

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

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

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

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

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

F. CARB's Insufficient Fiscal Analysis and Failure To Comply with the APA's Cost-Benefit Analysis Requirements

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

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

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

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

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

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

245. The 2017 Scoping Plan continues CARB's use of highly aggregated macroeconomic models that provide almost no useful information about potential costs and

impacts in industries and households. The LAO, an independent state agency, has consistently pointed out the flaws in CARB's approach since the first Scoping Plan was developed in 2008.

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

- In a November 17, 2008 letter to Assembly Member Roger Niello,[110] the LAO found that "ARB's economic analysis raises a number of questions relating to (1) how implementation of AB 32 was compared to doing BAU, (2) the incompleteness of the ARB analysis, (3) how specific GHG reduction measures are deemed to be cost-effective, (4) weak assumptions relating to the low-carbon fuel standard, (5) a lack of analytical rigor in the macroeconomic modeling, (6) the failure of the plan to lay out an investment pathway, and (7) the failure by ARB to use economic analysis to shape the choice of and reliance on GHG reduction measures."
- In a March 4, 2010 letter to State Senator Dave Cogdill,[111] the LAO stated that while large macroeconomic models used by CARB in updated Scoping Plan assessments can "capture some interactions among broad economic sectors, industries, consumer groupings, and labor markets," the ability of these models to "adequately capture behavioral responses of households and firms to policy changes is more limited. Additionally, because the data in such models are highly aggregated, they capture at best the behavioral responses of hypothetical "average" households and firms and do not score well in capturing and predicting the range of behavioral responses to policy changes that can occur for individual or subgroupings of households or firms. As a result, for example, the adverse jobs impacts—including job losses associated with those firms that are especially negatively impacted by the Scoping Plan—can

[110] LAO, http://www.lao.ca.gov/2008/rsrc/ab32/AB32_scoping_plan_112108.pdf.

[111] LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_impact/ab32_impact_030410.aspx.

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

- Similarly, in a June 16, 2010 letter to Assembly Member Dan Logue,[112] the LAO found that CARB's revision to CARB's 2008 Scoping Plan analysis "still exhibits a number of significant problems and deficiencies that limit its reliability. These include shortcomings in a variety of areas including modeling techniques, identification of the relative marginal costs of different SP measures, sensitivity and scenario analyses, treatment of economic and emissions leakages, identification of the market failures used to justify the need for the regulations selected, analysis of specific individual regulations to implement certain Scoping Plan measures, and various data limitations." As a result, the LAO concluded that, contrary to CARB's statutory mandates, "The SP May Not Be Cost-Efficient." Given these and other issues, it is unclear whether the current mix and relative importance of different measures in the Scoping Plan will achieve AB 32's targeted emissions reductions in a cost-efficient manner as required."
- In a June 2017 presentation to the Joint Committee on Climate Change Policies, *Overview of California Climate Goals and Policies,*[113] and after the draft 2017 Scoping Plan had been released for public review, the LAO concluded that "To date, there have been no robust evaluations of the overall statewide effects—including on GHG reductions, costs, and co-pollutants—of most of the state's major climate policies and spending programs that have been implemented."

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

[112] LAO, http://www.lao.ca.gov/reports/2010/rsrc/ab32_logue_061610/ab32_logue_061610.pdf.

[113] LAO, http://lao.ca.gov/handouts/resources/2017/Overview-California-Climate-Goals-Policies-061417.pdf.

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

249. CARB's use of the improper "cumulative gap" methodology to determine the GHG reductions it claims are necessary for the 2017 Scoping Plan to meet the 2030 Target means that the inputs for the CARB FA were improper. The FA, which is supposed to inform policymakers and the public about the cost-effectiveness and equity of the Scoping Plan measures, is based on meeting the 621 $MMTCO_2e$ GHG "cumulative gap" reduction requirement invented by CARB.

250. In fact, the final FA adopted by CARB indicates that an earlier version was based on the asserted "need" to fill an even larger "cumulative gap" of 680 $MMTCO_2e$. This improper analysis renders the FA and the cost analysis required under the APA invalid.

G. The Blatantly Discriminatory Impacts of CARB's 2017 Scoping Plan

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

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

institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions."

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

254. California produces less than one percent of global GHG emissions, and has lower per capita GHG emissions than any other large state except New York, which unlike California still has multiple operating nuclear power plants to reduce its GHG emissions.[114]

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

256. In any event, as recently demonstrated in a joint study completed by scholars from the University of California at Berkeley and regulators at the Bay Area Air Quality Management District ("BAAQMD")[115], high wealth households cause far more global GHG emissions than middle-class and poor households. The Scoping Plan ignores this undisputed scientific fact and unfairly, and unlawfully, seeks to burden California's minority and middle-class households in need of affordable housing with new regulatory costs and burdens that do not affect existing, wealthier homeowners who "already have theirs".

257. California has the nation's highest poverty rate, highest housing prices, greatest housing shortage, highest homeless population—and highest number of billionaires.[116] While it is

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[114] U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, https://www.eia.gov/environment/emissions/state/.

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

[116] David Friedman, Jennifer Hernandez, California's Social Priorities, Holland & Knight, 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.

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

258. Members of hard working minority families, in contrast to wealthier white elites, currently are forced to "drive until they qualify" for housing they can afford to own, or even rent.[117] As a result, long-commute minority workers and their families then suffer a cascading series of adverse health, educational and financial consequences.[118]

259. It is well-documented and undisputed, in the record that the current housing shortage—which CARB's regulations would unnecessarily exacerbate—falls disproportionately on minorities. As stated in a United Way Study, "Struggling to Get By: The Real Cost Measure in California 2015" [119]: "Households led by people of color, particularly Latinos, disproportionately are likely to have inadequate incomes. Half (51%) of Latino households have incomes below the Real Cost Measure,[120] the highest among all racial groups. Two in five (40%) of African American households have insufficient incomes, followed by other races/ethnicities (35%), Asian Americans (28%) and white households (20%)." Put simply, approximately 80% of the poorest households in the State are non-white families.

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[117] Mike McPhate, *California Today: The Rise of the Super Commuter,* N.Y. Times (Aug. 21, 2017), https://www.nytimes.com/2017/08/21/us/california-today-super-commutes-stockon.html; 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.

[118] Rebecca Smith, Here's the impact long commutes have on your health and productivity, *Business Insider* (May 22, 2017), http://www.businessinsider.com/long-commutes-have-an-impact-on-health-and-productivity-2017-5.

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

[120] 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.

260. As noted in the same report: "Housing costs can consume almost all of a struggling household's income. According to Census Bureau data, housing (rent, mortgage, gas/electric) makes up 41% of household expenses in California. . . . Households living above the Federal Poverty Level but below the Real Cost Measure spend almost half of their income on rent (and more in many areas), and households below the Federal Poverty Level, however, report spending 80% of their income on housing, a staggering amount that leaves precious little room for food, clothing and other basics of life." *Id.*, p. 65.[121]

261. As further documented in the United Way report presented to CARB: "Recognizing that households of all kinds throughout the state are struggling should not obscure one basic fact: race matters. Throughout Struggling to Get By, we observe that people of Latino or African American backgrounds (and to a lesser extent Asian American ones) are less likely to meet the Real Cost Measure than are white households, even when the families compared share levels of education, employment backgrounds, or family structures. While all families face challenges in making ends meet, these numbers indicate that families of color face more obstacles in attempting to achieve economic security."[122]

262. Against this background, CARB's new GHG Housing Measures, which disproportionately harm housing-deprived minorities while not materially advancing the cause of GHG reductions, cannot be justified. CARB's new GHG Housing Measures, facially and as applied to the housing sector in particular, are not supported by sound scientific analysis and are in fact counterproductive. CARB's new GHG Housing Measures establish presumptive legal standards under CEQA that currently impose, as a matter of law, costly new mitigation obligations that apply only to housing projects proposed now and in the future to meet

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[121] In addition, family wealth of homeowners has increased in relation to family wealth of renters over time and a homeowners' net worth is 36 times greater than a renters' net worth. Jesse 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.

[122] *Id.* p. 75. Studies predict that the 2014-2016 dataset will show a wealth differential between homeowners and renters of 45 times. Lawrence Yun, *How Do Homeowners Accumulate Weath?*, Forbes (Oct. 14, 2015), https://www.forbes.com/sites/lawrenceyun/2015/10/14/how-do-homeowners-accumulate-wealth/#7eabbecd1e4b.

California's current shortfall of more than three million homes that experts and the Governor-elect agree are needed to meet current housing needs. Two specific examples are provided below.

263. By establishing a new "net zero" GHG CEQA significance threshold for all new projects, CARB has created a new legal obligation for such new projects to "mitigate" to a "less than significant" level all such GHG impacts. The California Air Pollution Control Officers Association ("CAPCOA"), which consists of the top executives of all of the local and regional air districts in California, has developed a well-established model for calculating GHG emissions from such new projects called The California Emissions Estimator Model ("CalEEMod").[123] This model is in widespread use throughout the state, and has been determined by the California Supreme Court to be a valid basis for estimating GHG emissions from residential projects for purposes of CEQA. *Newhall,* supra, 62 Cal.4th at 217-218.

264. CalEEMod calculates GHG emissions for 63 different types of development projects, including multiple types of residential projects. The scientific and legal framework of CalEEMod is the foundational assumption that all GHG project emissions are "new" and would not occur if the proposed project was not approved or built.

265. Within this overall framework, CalEEMod identifies GHG emissions that occur during construction (e.g., from construction vehicles and construction worker vehicular trips to and from the project site), and during ongoing project occupancy by new residents. GHG occupancy or "operational" emissions include GHG emissions from offsite electricity produced to serve the project, from onsite emissions of GHG from natural gas appliances, from on- and off-site GHG emissions associated with providing drinking water and sewage treatment services to the project, from vegetation removal and planting, and from vehicular use by project occupants on an ongoing basis. *See, e.g.*, Appendix A of CalEEMod[124]; South Coast Air Quality Management District User's Guide to CalEEMod[125].

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[123] Available at: http://www.caleemod.com/.

[124] CalEEMod Appendix A: Calculation Details for CalEEMOd, available at: http://www.aqmd.gov/docs/default-source/caleemod/caleemod-appendixa.pdf.

[125] CalEEMod User's Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

266. Under the CalEEMod CEQA compliance framework, if the project does not occur then the GHG emissions do not occur—notwithstanding the practical and obvious fact that people who cannot live in new housing they can afford must still live somewhere, where they will still engage in basic activities like consuming electricity, drinking water, and driving cars.

267. Under CEQA, a "significant" environmental impact is required to be "mitigated" by measures that avoid or reduce the significance of that impact by all "feasible" means. Pub. Res. Code § 21102. The CEQA Guidelines define "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal , social and technological factors." 14 C.C.R. § 15364.

268. The first of two examples of immediate and ongoing harm relates to the increased cost of housing caused by the "net zero" threshold. Before the 2017 Scoping Plan was approved, no agency or court had ever required a "net zero" GHG threshold. The only example of a residential project that met this target involved a voluntary commitment by the project applicant to a "net zero" project, in which 49% of the project's GHG emissions were "offset" by GHG reductions to be achieved elsewhere (e.g., funding the purchase of cleaner cook stoves in Africa) and paid for by higher project costs.

269. There is no dispute that funding these types of GHG reduction measures somewhere on Earth is "feasible" taking into account three of CEQA's five "feasibility" factors (environmental, social and technological). With housing costs already nearly three times higher in California than other states, home ownership rates far lower, and housing-induced poverty rates the highest in the nation, it remains possible – in theory – to demonstrate that in the context of a given housing project, adding $15,000-$30,000 more to the price of a home to fund the purchase of cleaner cook stoves in Africa, for example, would not be "legally" or "economically" feasible.

270. This theoretical possibility of demonstrating that any particular mitigation cost results in "economic infeasibility" has not succeeded, however, for any housing project in the nearly-50 year history of CEQA. A lead agency decision that a mitigation measure is infeasible must be supported by substantial evidence in the record—effectively the burden is placed on the project applicant to prove this latest "net zero" increment of mitigation costs is simply too

expensive and will make the project "infeasible." No court has found that a housing project has met this burden. *See, e.g.*, *Uphold our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587. Further, this infeasibility evaluation applies to the applicant for the housing project, not prospective future residents—simply raising housing prices affordable only to wealthier buyers.

271. The CEQA mitigation criterion of legal infeasibility is likewise illusory when applied to the GHG mitigation measures required to achieve a "net zero" significance threshold. Although there is some judicial precedent recognizing that lead agencies cannot impose CEQA mitigation obligations outside their jurisdictional boundaries (e.g, in adjacent local jurisdictions), this precedent—like OPR's definitive regulatory conclusion that CEQA cannot be used to impose a "net zero" threshold even and specifically within the context of GHG—is directly challenged by the 2017 Scoping Plan, which cited with approval the one "net zero" GHG residential project that relied in part on offsite (off-continent) GHG reduction measures.

272. This "legal infeasibility" burden of proof also is extremely high under CEQA. For example, the California Supreme Court considered in *City of San Diego, et al. v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, the University's "economic infeasibility" argument in relation to making very substantial transfer payments to local government to help fund local highway and transit infrastructure, which would be used in part by the growing student, faculty and staff for the San Diego campus. Although the Court acknowledged that the Trustees had expressly requested, and been denied, funding by the Legislature to help pay for these local transportation projects, the Court did not agree this was adequate to establish economic infeasibility under CEQA since the Trustees could have sought alumni donations or funding from other sources, or elected to stop accommodating new students in San Diego and instead grown other campuses with potentially lower costs. When CARB's "net zero" GHG measures are coupled with the "legal infeasibility" burden of proof, the result is a legal morass that frustrates the efforts of local governments to implement the Legislature's pro-housing laws and policies, to the detriment of under-housed minorities, including Petitioners.

273. The second example of immediate and ongoing harm is CARB's direct intervention in projects already in CEQA litigation by opining on the acceptable CEQA

mitigation for GHG emissions from fuel use, which typically create the majority of GHG emissions from new housing projects. In a long series of evolving regulations including most recently the 2018 adoption of new residential Building Code standards[126], and in compliance with the consumer protection and cost-effectiveness standards required for imposing new residential Building Code requirements established by the Legislature (Pub. Resources Code §§ 25402(b)(3), (c)(1); 25943(c)(5)(B)), California law requires new residences to be better insulated, use less electricity, install the most efficient appliances, use far less water (especially for outdoor irrigation), generate electricity (from rooftop solar or an acceptable alternative), and transition to future electric vehicles. These and similar measures have substantially reduced the GHG emissions from ongoing occupancy of new housing.

274. Under the CalEEMod methodology, however, gasoline and hybrid cars used by new residents are also counted as "new" GHG emissions attributed to that housing project – and these vehicular GHG emissions now account for the vast majority of a typical housing project's GHG emissions.[127]

275. In 2017, the Legislature expanded its landmark "Cap and Trade" program establishing a comprehensive approach for transitioning from fossil fuels to electric or other zero GHG emission technologies, which already includes a "wells to wheels" program for taxing oil and natural gas extraction, refinement, and ultimate consumer use.[128] CARB has explained that the Cap and Trade Program requires fuel suppliers to reduce GHG emissions by supplying low

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[126] See California Building Standards Commission, 2018 Triennial Code Adoption Cycle, available at: http://www.bsc.ca.gov/Rulemaking/adoptcycle/2018TriennialCodeAdoptionCycle.aspx. *See also* California Energy Code, California Code of Regulations, Title 24, Part 6; Building Energy Efficiency Standards (2019 update).

[127] In the Northlake project challenged in a comment letter citing noncompliance with the 2017 Scoping Plan discussed *supra* ¶ 42, for example, total project GHG emissions after mitigation were 56,722 metric tons, of which mobile sources from vehicles comprised 53,863 metric tons. Los Angeles County, Draft Supplemental EIR (May 2017), Table 5.7-3 (p. 5.7-26), available at https://scvhistory.com/scvhistory/files/northlakehills_deir_0517/northlakehills_deir_0517.pdf

[128] A.B. 398, 2017 (California Global Warming Solutions Act of 2006: market-based compliance mechanisms: fire prevention fees: sales and use tax manufacturing exemption).

carbon fuels or purchasing allowances to cover the GHG emissions produced when the conventional petroleum-based fuels they supply are burned.

276. Specifically, as part of the formal rulemaking process for the Cap and Trade Legislation, CARB staff explained in its *Initial Statement of Reasons for the Proposed Regulation to Implement the California Cap and Trade Program*, that:

> To cover the emissions from transportation fuel combustion and that of other fuels by residential, commercial, and small industrial sources, staff proposes to regulate fuel suppliers based on the quantifies of fuel consumed by their customers. … Fuel suppliers are responsible for the emissions resulting from the fuel they supply. In this way, a fuel supplier is acting on behalf of its customers who are emitting the GHGs … Suppliers of transportation fuels will have a compliance obligation for the combustion of emissions from fuel that they sell, distribute, or otherwise transfer for consumption in California. … [B]ecause transportation fuels and use of natural gas by residential and commercial users is a significant portion of California's overall GHG emissions, ***the emissions from these sources are covered indirectly through the inclusion of fuel distributers [in the Cap and Trade program]***."(emphasis added).[129]

277. CARB's express recognition of the fact that the Cap and Trade program "covers" emissions from the consumption of fossil fuels in the Cap and Trade regulatory approval process, in marked contrast with the challenged Housing Measures in the 2017 Scoping Plan, was subject to its own comprehensive environmental and economic analysis – which in no way disclosed, analyzed, or assessed the impacts of forcing residents of new housing to pay for GHG emission reductions from their fossil fuel uses at the pump (and in electricity bills) like their already-housed neighbors, and then paying *again – double-paying* – in the form extra GHG mitigation measures for the *same emissions*, resulting in higher housing costs.

278. The 2017 Scoping Plan likewise entirely omitted any analysis of the double-charging of residents of new homes for GHG emissions from the three million new homes the state needs to build to solve the housing crisis. Simply put, CARB should not now be permitted to use what purports to be only an "advisory" 2017 Scoping Plan to disavow and undermine its

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[129] CARB. October 2011. California's Cap-And-Trade Program Final Statement of Reasons, p. 2: https://www.arb.ca.gov/regact/2010/capandtrade10/fsor.pdf; (incorporating by reference CARB. October 28, 2010. Staff Report: *Initial Statement of Reasons for the Proposed Regulation to Implement the California Cap-and-Trade Program Part 1, Vol. 1,* pp. II-10, II-20, II-21, 11-53: https://www.arb.ca.gov/regact/2010/capandtrade10/capisor.pdf)

formal rulemaking statement for the Cap and Trade regulations, nor can CARB use this asserted "advisory" document to invent the new CEQA GHG mitigation mandates (and preclude use of Cap and Trade as CEQA mitigation) without going through a new regulatory process to amend its Cap and Trade program.

279. Whether compliance with Cap and Trade for fossil fuels used to generate electricity or power cars used by a particular project is an adequate mitigation measure for GHG under CEQA has been hotly contested in past and pending CEQA lawsuits. In *Newhall*, *supra*, 62 Cal.4th 204, one of the approved GHG compliance pathways for CEQA identified by the Court was compliance with applicable laws and regulations. That case was extensively briefed by numerous advocates (*see* Opening Brief on the Merits, *Center for Biological Diversity v. California Department of Fish and Game* (2015) 62 Cal.4th 204 (No. 5-S217763), and Consolidated Reply Brief, *Center for Biological Diversity v. California Department of Fish and Game*, (2015) 62 Cal.4th 204 (No. 9-S217763), which urged the Court to conclude as a matter of law that CEQA requires "additive" mitigation beyond what is otherwise required to comply with applicable environmental, health and safety laws.

280. Neither the appellate courts nor Supreme Court have imposed this novel interpretation of the GHG mandates imposed by CEQA as a newly discovered legal requirement lurking within this 1970 statute. As noted above, the Supreme Court declined to do so by expressly recognizing that compliance with law was one of several compliance "pathways" for addressing GHG impacts under CEQA. (*Newhall, supra,* 62 Cal.4th at 229). (*See also, Center for Biological Diversity et al. v. Department of Fish and Game* (2014) 224 Cal.App.4th 1105.)[130]

281. Consistent with this Supreme Court directive, and informed by both the Legislative history of the Cap and Trade program and by CARB's contemporaneous explanation that compliance with Cap and Trade is indeed the sole GHG mitigation required for fossil fuel use, several projects have mitigated GHG emissions from fossil fuel by relying on the legislated,

[130] This appellate court decision, which was reversed and remanded by the Supreme Court decision in the same case, is cited as evidence for the proposition that what constitutes adequate mitigation for GHG impacts under CEQA has been hotly contested in the courts.

and regulated, Cap and Trade program and similar legislative as well as regulatory mandates to reduce GHG emissions from fossil fuel. This has been accomplished through measures such as the Low Carbon Fuel Standards, which collectively and comprehensively mandate prescribed reductions in GHG emissions from fossil fuel use.

282. This approach has been expressly upheld by the Fifth District Court of Appeal in *Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708 ("*AIR"*). Although the project at issue was a refinery source that was itself clearly included within the category of industrial operations directly regulated by the Cap and Trade Program, opponents challenged that project's reliance on the Cap and Trade program for non-refining GHG emissions such as GHG emissions produced offsite by the electricity producers that provided power to the consumer power grid, and by vehicles used by contractors and employees engaged in refinery construction and operational activities. *See, e.g*., Appellants' Opening Brief, *AIR*, *5th Dist. Case No. F073892 (December 9, 2016) at 29 (arguing that "[c]ap-and-trade does not apply to greenhouse gas emissions from trains, trucks, and building construction . . . .") and at 34-35 (arguing that participation in the cap and trade program is inadequate mitigation for project emissions). The CEQA lead agency and respondent project applicant argued that reliance on Cap and Trade as CEQA mitigation was lawful and sufficient under CEQA. *See* Joint Respondents' Brief, *AIR*, 5th Dist. Case No. F073892 (March 10, 2017), at 52-56 (arguing that "The EIR Properly Incorporated GHG Emission Reductions Resulting From Cap-and-Trade In The Environmental Analysis").

283. The Fifth District concluded that compliance with the Cap and Trade program for the challenged project were adequate CEQA GHG mitigation. That case was then unsuccessfully challenged, and unsuccessfully petitioned for depublication, by numerous advocates that continued to assert that CEQA imposes an "additive" GHG mitigation obligation that could not be met by paying the higher fuel costs imposed by the Cap and Trade program.[131]

[131] *See* Letter from CARB to City of Moreno Valley regarding Final Environmental Impact Report for World Logistics Center, available at: https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf.

284. California already has the highest gasoline prices of any state other than Hawaii. CARB has consistently declined to disclose how much gasoline and diesel prices would increase under the 2017 Cap and Trade legislation. The non-partisan LAO completed an independent analysis of this question, and in 2017 concluded that under some scenarios, gasoline would increase by about 15¢ per gallon – and in others by about 73¢ per gallon. The LAO also noted that these estimated increases in gasoline prices "are an intentional design feature of the program."[132]

285. By using CEQA mitigation mandates created by the Scoping Plan to require only the disproportionately minority occupants of critically needed future housing to double-pay (both at the pump and in the form of higher housing costs imposed as a result of CEQA mitigation for the same fuel consumption), CARB has established a disparate new financial burden that is entirely avoided by those generally whiter, wealthier, and older Californians who have the good fortune of already occupying a home.

286. Both CARB and the Attorney General have acted in bad faith, and unlawfully, in their public description of and subsequent conduct regarding the immediate effectiveness and enforcement of the 2017 Scoping Plan.

287. First, in a written staff report distributed at the December 17, 2017 hearing at which the CARB Board approved the Scoping Plan, CARB staff misled the public and its Board by pretending that the challenged Housing Measures are simply not part of the Scoping Plan at all, and thus need not be considered as part of the environmental or economic study CARB was required to complete as part of the Scoping Plan approval process. This assertion flatly contradicted an earlier description of the immediately-implementing status of these Housing Measures made in a public presentation by a senior CARB executive.

288. Next, the Attorney General repeatedly advised this Court that the challenged Housing Measures were merely "advisory" and explained "the expectation that new measures proposed in the [Scoping] plan would be implemented through subsequent legislation or

[132] LAO, https://lao.ca.gov/letters/2017/fong-fuels-cap-and-trade.pdf.

regulations." (Memorandum of Points and Authorities in Support of Demurrer to Plaintiff's Verified Petition for Writ of Mandate, Case No. 18-CECG-01494 (August 31, 2018), p. 8:18-19 ("AG Memo")). The AG Memo argued that the disparate harms caused by such measures are not ripe because such subsequent implementing legislative or regulatory actions "have yet to be taken" (Reply Memorandum in Support of Defendants California Air Resources Board and Richard Corey's Demurrer to Plaintiffs' Verified Petition for Writ of Mandate *etc.*, Case No. 18-CECG-01494(October 16, 2018), p. 2:6-7 ("AG Reply Memo"), and that Petitioners' assertions that the challenged Housing Measures would result in litigation disputes aimed at stopping or increasing the cost of housing was "wildly speculative" (AG Memo, p. 10:7). Further the Attorney General argued that the 2017 Scoping Plan "cannot be reasonably viewed as providing a valid basis for filing suit under CEQA." (AG Memo, p. 14:15) The same arguments were advanced in this Court's hearing on October 26, 2018.

289. Meanwhile, however, and virtually simultaneously with making contrary assertions to this Court, both the Attorney General and CARB were filing comment letters (precedent to CEQA lawsuits), and the Attorney General filed an amicus brief in a CEQA lawsuit, to challenge the legality of a CEQA lead agency's mitigation measure (in one case) and proposed General Plan element approval (in another case) *based on alleged failure to comply with applicable Housing Measures in the Scoping Plan.*

290. CARB's (and the Attorney General's) claims that the 2017 Scoping Plan is merely "advisory" and that its future effects are merely "speculative" (as well as its express denial at the December 2017 hearing on the 2017 Scoping Plan that the four challenged GHG Housing Measures are even part of the Plan), have been belied by the actual use of the 2017 Scoping Plan by CARB and the Attorney General themselves, as well as by third party agencies and anti-housing project CEQA litigants. Among the recent examples of the use of the Scoping Plan are the following:

A. **CARB September 7, 2018 Comment Letter:** Before even completing its Demurrer briefing to this Court, on September 7, 2018, CARB filed a comment letter criticizing the revised Final Environmental Impact Report for the World

Logistics Center project. A copy of this letter can be found at https://www.arb.ca.gov/toxics/ttdceqalist/logisticsfeir.pdf. CARB's comment letter opines that as an absolute and unambiguous matter of law, compliance with the Cap and Trade program is not a permissible mitigation under CEQA. CARB's comment dismisses as "novel" the contention that compliance with laws and regulations requiring reductions in GHG can be, and is in fact, a permissible and legally sufficient mitigation measure under CEQA. Strikingly, CARB's letter simply ignores the *Newhall* decision. As for the Fifth District's on-point decision in *AIR*, CARB's letter states (at p. 11, note 23) that, "*[i]n CARB's view this case was wrongly decided as to the Cap-and-Trade issue* . . . ." Thus, CARB in its public comments is urging permitting agencies to *disregard* court decisions on GHG issues and instead to follow CARB's supposedly "advisory" Scoping Plan policies, which it cites extensively . This type of CEQA "expert agency" letter can be used by the agency itself, if it chooses to file a lawsuit against an agency approving a project in alleged noncompliance with CEQA, or it can be used for its evidentiary value (and expert agency opinions are presumptively entitled to greater deference) by any other third party filing a CEQA lawsuit against that project, or even in another lawsuit raising similar issues provided that the CARB comment letter is submitted in the agency proceeding that is targeted by such second and subsequent lawsuits.

B. **Attorney General's September 7, 2018 Comment Letter:** Also on September 7, 2018, the Attorney General ("AG") joined CARB in criticizing the World Logistics Project's GHG analysis in a comment letter that prominently featured the 2017 Scoping Plan. A copy of this letter can be found at https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-sections-feir.pdf. Like CARB, the AG relied on the Scoping Plan to measure the adequacy of GHG measures under CEQA. Also like CARB, the AG sought to sidestep the Fifth District's *AIR* decision, but did so "[w]ithout commenting on

whether or not that case was rightly decided" in the AG's opinion (p. 6). The Attorney General's comment letter relies on the 2017 Scoping Plan in opining that "CEQA requires" the CEQA lead agency to "evaluate the consistency of the Project's substantial increases in GHG emissions with state and regional plans and policies calling for a dramatic reduction in GHG emissions" The AG goes on to conclude that the lead agency engaged in a "failure to properly mitigate" impacts as required by CEQA because the project's "increase in GHG emissions conflicts with the downward trajectory for GHG emissions necessary to achieve state climate goals." The AG again cites the 2017 Scoping Plan text in explaining that, unless they mandate CEQA GHG mitigation measures that go beyond compliance with applicable GHG reduction laws and regulations, "local governments would . . . not be doing their part to help the State reach its ambitious, yet necessary, climate goals." [AG letter at p. 7-11]

C. **Attorney General's November 8, 2018 Amicus Filing:** A third example is provided by the AG's November 8, 2018 filing of an "Ex Parte Application of People of the State of California for Leave to File Amicus Curiae Brief in Support of Petitioners" in *Sierra Club, et al. v. County of San Diego* (Nov. 8, 2018) No. 37-2018-00014081-CU-TT-CTL (San Diego Superior Court). A true copy of this Ex Parte Application and accompanying AG memorandum is attached hereto as **Exhibit 1**. A copy of the underlying Sierra Club petition, into which the AG has sought to inject the Scoping Plan, is attached hereto as **Exhibit 2**. In the amicus filing (Exhibit 1), the Attorney General asserts that he "has a special role in ensuring compliance with CEQA", and that he "has actively participated in CEQA matters raising issues of greenhouse gas ("GHG") emissions and climate change." (Application at 3:16, 24-25.) The challenged San Diego County Climate Action Plan actually includes and requires implementation of the 2017 Scoping Plan's "recommended" Net Zero GHG CEQA threshold for new projects, but was nevertheless challenged in this lawsuit the grounds that it did not also mandate a

reduction in Vehicle Miles Traveled because it allowed the County to approve new housing projects that fully mitigated ("Net Zero GHG") all GHG emissions but still resulted in an increase in VMT from residents living in this critically needed new housing. Petitioners in the consolidated proceedings in this case have claimed that based on the state's climate laws including the 2017 Scoping Plan, the County could not lawfully approve any amendment to its General Plan to accommodate any of the state's three million home shortfall unless such housing was higher density (e.g., apartments) and located inside or immediately adjacent to existing urban areas served by transit, because only that type of housing and location could result in the required reduction in VMT. Petitioners in these cases further identified the pending housing projects they believed could not be approved by the County. Petitioners sought (and obtained) injunctive relief to prevent such housing projects from relying on this "Net Zero" GHG Climate Action Plan as allowed by one of the CEQA compliance pathways identified by the Supreme Court in its *Newhall* decision, and identified by the Legislature itself in CEQA compliance provisions set forth in SB 375. In his amicus brief, the Attorney General repeatedly cites CARB's 2017 Scoping Plan as the legal basis for a new mandate that allegedly prohibits San Diego County (and all other counties) from meeting any part of the housing shortfall with more traditional homes (e.g., small "starter" homes and duplexes, which cost less than a third to build than higher density apartment units), or from locating these new homes anywhere other than an existing developed city or unincorporated community. The Attorney General also falsely argues that VMT reductions are mandated by other state laws; however, no law enacted by the California Legislature mandates any VMT reduction, and the Legislature has repeatedly rejected enacting such a mandate.[133]

[133] The Attorney General further argues that VMT reductions are required by SB 375, which is designed to reduce GHG (not VMT) with land use and transportation plans, even though SB 375 specifically directs CARB to develop compliance metrics and CARB has

291. CARB cannot have it both ways: it cannot coyly claim that the 2017 Scoping Plan is merely "advisory" and then fire into the end of a second round of CEQA documentation for a single project a new legal conclusion that upends the published judicial precedents of our courts. The AG similarly cannot assure this Court that it is "wildly speculative" for a CEQA lawsuit to be filed in reliance on the challenged measures in the 2017 Scoping Plan, and then six days later file an amicus in a CEQA lawsuit that does just that. If CARB wants to change Cap and Trade laws and regulations, and other GHG reduction laws and regulations applicable to fossil fuels, to make those not already fortunate enough to have housing pay both at the pump, and in their down-payment/mortgage and rent check, for "additive" GHG reductions above and beyond what their more fortunate, generally whiter, wealthier and older well-housed residents have to pay, then that is first and foremost a new mandate that can only be imposed by the Legislature given direct court precedent on this issue.

292. If such a mandate were proposed by the Legislature, a full and transparent debate about the disparate harms such a proposal would confirm that those most affected by the housing crisis, including disproportionately our minority communities, would suffer the equivalent of yet another gasoline tax on those least able to pay, and most in need of new housing. Petitioners are confident that the Legislature would not approve such a proposal.

293. Even these few examples of direct CARB and Attorney General implementation actions of the 2017 Scoping Plan to require more mitigation or block new housing demonstrate the immediate and ongoing harm of the 2017 Scoping Plan's challenged Housing Measures, which CARB and the Attorney General have opined impose higher CEQA "mitigation" costs on housing under a "net zero" GHG mitigation framework, and block otherwise lawful new housing altogether under the Scoping Plan's "VMT reduction" framework. The harms caused by these Housing Measures is not "wildly speculative"— they are already underway. They already disproportionately affect California minority communities not already blessed with wealth and

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itself repeatedly declined to require VMT reduction compliance metrics under SB 37 as late as December of 2017 and March of 2018.

homeownership, and they are already the subject of both administrative and judicial proceedings. They are properly and timely before this Court. The following paragraphs provide additional evidence of ripeness in the context of the three other challenged Housing Measures, beyond the "Net Zero" GHG threshold and corresponding mitigation mandates described above.

294. The 2017 Scoping Plan's new numeric thresholds for local climate action plans present similarly immediate and ongoing harms to Petitioner/Plaintiffs. In its *Newhall* decision, the California Supreme Court concluded that one of the "pathways" for CEQA compliance was designing projects that complied with a local Climate Action Plan ("CAP") having the then-applicable GHG statutory reduction mandate of reducing GHG emissions to 1990 levels by 2020.

295. Housing projects that complied with a local CAP had been duly approved by the same local governments responsible for planning and approving adequate housing for our minority communities. This provided a judicially streamlined pathway for GHG CEQA compliance for housing. Local CAPs include community-scale GHG reduction strategies such as pedestrian, bicycle and transit improvements that are beyond the ability of any single housing project to invent or fully fund, and thus CAP compliance is a known and legally-defensible CEQA GHG compliance pathway. The Scoping Plan destroyed that pathway, and accordingly caused and is causing immediate harm to new housing projects that could otherwise rely on the CAP compliance pathway for CEQA.

296. There is no statutory obligation for a city or county to adopt a CAP, nor are there any regulations prescribing the required contents of a CAP; instead, a CAP's primary legal relevance to proposed new housing projects occurs within the CEQA compliance context.

297. There has been a flurry of unresolved and ongoing CEQA interpretative issues with respect to CAPs that have been and remain pending in courtrooms throughout California. For example, in the City of San Diego and the County of Sonoma, multi-year lawsuits have resulted in two judicial decisions that make clear that any jurisdiction electing to voluntarily approve a CAP must assure that the CAP has clear, adequate and enforceable measures to achieve the GHG reduction metric included in the CAP. *See Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152; *California Riverwatch v. County of Sonoma* (July 20, 2017) Case No.

SCV-259242 (Superior Court for the County of Sonoma)[134]; *see also Mission Bay Alliance, et. al. v. Office of Community Investment and Infrastructure, et. al.* (2016) 6 Cal.App.5th 160 (upholding the adequacy of a CAP as CEQA compliance for a new professional sports facility).

298. The new numeric GHG per capita metric that the 2017 Scoping Plan prescribes as the presumptively correct GHG reduction target for CAPs places the entire burden of achieving the state's legislated 40% reduction target by 2030, and the unlegislated 80% reduction target by 2050, on local governments, with for example a numeric GHG reduction target of 2 tons per person per year by 2050. However, as the 2017 Scoping Plan itself makes clear, the vast majority of GHG emissions derive from electric power generation, transportation, manufacturing, and other sectors governed by legal standards, technologies, and economic drivers that fall well beyond the land use jurisdiction and control of any local government. The Scoping Plan does not even quantify the GHG reductions to be achieved by local governments, in their voluntary caps or otherwise: it seeks to define and achieve the state's GHG reduction mandates with measures aimed at specific GHG emission sectors.

299. The 2018 San Diego County CAP, adopted after the County lost its first CEQA lawsuit, adopts both CARB's numeric GHG targets—and the mandate that new housing projects entirely absorb the additional cost of fully offsetting GHG emissions in compliance with the "net zero" standard by paying money to fund GHG reduction projects somewhere on earth. The San Diego CAP both proves the immediacy of the disparate mitigation cost harms of the Scoping Plan's imposition of even higher costs to housing critically needed by California's minority communities, and provides a case study in the anti-housing legal morass created by the 2017 Scoping Plan's ambiguous—and unexamined from an equity, environmental, economic disclosure or public review process—new CEQA "net zero" threshold and CAP per capita numeric standards.

[134] The trial court order in *California Riverwatch v. County of Sonoma* is cited herein as evidence for the existence of CEQA litigation challenges to local climate action plans and not as legal precedent. The order is available at: http://transitionsonomavalley.org/wp-content/uploads/2017/07/Order-Granting-Writ-7-20-17.pdf.

300. San Diego County faces its third round of CAP litigation (with the prior two rounds still ongoing in various stages of judicial remand and review) in a lawsuit filed in 2018, in which the same group of petitioners allege that the County again failed to include sufficient mandatory measures to achieve the 2017 Scoping Plan per capita GHG reduction metric because it continued to allow new housing to be built if offsetting GHG reductions were funded by the housing project in or outside the County. A copy of one such lawsuit (consolidated with others) is attached for reference as Exhibit 2. This lawsuit seeks a blanket, County-wide writ of mandate that would block "processing of permits for development projects on unincorporated County lands" unless these new housing-blocking measures are included. (See Exhibit 2 at p. 17:3-7.) The petitioners in these consolidated cases against San Diego County have further made clear that their ongoing objections to the County's CAP were so severe that they had also been compelled to file CEQA lawsuits *against individual housing projects*, and in their lawsuit, they have included a list of nearly a dozen pending housing projects that in their judgment should not be allowed to proceed. As described above, the Attorney General filed a request for leave to file an amicus brief in this case, accompanied by an amicus brief. See Exhibit 1. Based on CARB's 2017 Scoping Plan, the AG has sought to bolster to the petitioners' anti-housing CEQA lawsuits, including their claims that designated housing projects in unincorporated San Diego County cannot lawfully be approved or built based on VMT impacts, even if all GHG impacts are mitigated to "net zero."

301. This CEQA morass of extraordinary GHG reduction costs imposed only on residents of newly constructed housing, with still pending and unresolved CEQA lawsuit challenges against the CAP and specific housing projects, for GHG reductions that are not even quantified, let alone critical to California's climate leadership, is itself an ample demonstration of the disparate harms of CARB's poorly-conceived and discriminatory GHG Housing Measures.

302. The Scoping Plan's VMT reduction measure is likewise causing immediate, ongoing, and disparate harm to California's minority communities who are forced to drive ever-greater distances to find housing they can afford to buy or rent. As in the case of local climate action plans, there is no statewide statutory or regulatory mandate for reducing VMT. The

Legislature considered and rejected imposing a VMT reduction mandate, and CARB considered and rejected imposing a VMT reduction mandate as part of the regional land use and transportation planning mandated under SB 375 (first postponing its decision in December of 2017, at the same hearing CARB approved the Scoping Plan – and then definitively rejecting it in March of 2018).

303. At these hearings, CARB was informed that VMT had increased in California while transit utilization had fallen dramatically notwithstanding billions of dollars in new transit system investments. VMT reduction thus could not appropriately be included as SB 375 compliance metrics and with increases in electric and high efficiency hybrid vehicles, the correlation between VMT and GHG emissions is increasingly weak.

304. Even more than CARB's other GHG Housing Measures, the VMT reduction mandate is uniquely targeted to discriminate against minority workers. The American Community Survey ("ACS") is a project of the U.S. Census Bureau and tracks a wide range of data over time—including the ethnicity, transportation mode, and times of California commuters. The ACS data demonstrate that in the 10 year period between 2007 and 2016, 1,117,273 *more* Latino workers drove to their jobs, 377,615 *more* Asian workers drove to their jobs, and 18,590 *more* African American workers drove to their jobs.[135] During the same period, 447,063 *fewer* white workers drove to their jobs. Transit utilization increased for white and Asian workers, but fell for Latino and African American workers. During the same period, commute times lengthened substantially as more people—again disproportionately minorities—were forced to commute longer distances to housing they could afford.

305. By 2016, about 445,000 people in the Bay Area were commuting more than an hour each direction—an increase of 75% over the 2006 count of long distance Bay Area commuters. Anyone driving between the Bay Area and Central Valley during commute times vividly experiences the gridlock conditions, adverse personal health (e.g., stress, high blood

[135] David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate Change, Holland & Knight, Chapman University Press (2018), Table 3.7, p. 84, https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

pressure, back pain), and adverse family welfare (e.g., missed dinners, homework assistance, and exhaustion) consequences of these commutes.

306. CARB (and the Attorney General) also have no support for their argument disputing the fact that the challenged Housing Measures disproportionately affect minority community members. As early as 2014, CARB received a comprehensive report from NextGen, a firm closely aligned with the strongest supporters of California's climate leadership, urging CARB to restructure its electric car subsidy program, which was found to be disproportionately benefitting those in Marin County and other wealthier and whiter areas that could afford to purchase costly new electric vehicles. In "No Californian Left Behind," Next Gen noted the obvious: "the overwhelming majority of Californians still use cars to get to work," including 77% who commute alone and 12% who carpool. Further, "[i]n less densely developed and rural areas like California's San Joaquin Valley, commuters often have long distances to drive between home, school, work and shopping; as a result, car ownership is often not a choice, but a necessity." Even more specifically, the report found that in Fresno County, even for workers earning less than $25,000, fewer than 3 percent of commuters take public transportation to work; in Madera County, only 0.3% of low-income workers took transit, and the results were comparable in in the rest of the San Joaquin Valley. Next Generation, *No Californian Left Behind: Clean and Affordable Transportation Options for all through Vehicle Replacement*, *http://www.thenextgeneration.org/files/No_Californian_Left_Behind_1.pdf (February 27, 2014) at p. 9. NextGen advocated a restructured vehicle program designed to equitably retire and replace the oldest most polluting cars, and to shift subsidy and incentive programs to help those who are either low income or need rural transport to obtain cleaner, lower-GHG emitting cars. (*Id.* p. 5) NextGext noted:

> "California is already a leader in advanced and high tech transportation and transit solutions. It is time we also became a leader in pragmatic solutions for a population that is sometimes left behind in these discussions: non-urban, low-income, car-dependent households."

The VMT reduction mandate in the 2017 Scoping Plan was specifically identified as CARB was fully on notice of the disparate harms caused to minority communities by its approach. In a report submitted to CARB by the climate advocacy group NextGen in February 2014, CARB was informed that Central Valley Latinos drive longer distances than any other ethnic group in any other part of California—and live in communities and households with the highest poverty rates.

307. Notwithstanding CARB's express acknowledgement in March of 2018 (and preview in December of 2017) that even the regional transportation and housing plans required by SB 375 cannot attain a VMT reduction target, CARB and its fellow "Vibrant Communities Appendix" agencies, remain committed to using CEQA to require new projects—including housing that is affordable and critically needed for California's minority communities—to pay higher costs to fund VMT reductions through CEQA.

308. As with the "net zero" GHG mitigation mandate, the immediate and ongoing effect of this VMT reduction measure is to increase housing costs to even less affordable and attainable levels for California's minority communities.

309. Even before enactment of the 2017 Scoping Plan, OPR (the Vibrant Communities agency that has the responsibility for adopting regulatory updates to CEQA) had been proposing to regulate the act of driving a car (even an electric vehicle or carpool) one mile (one VMT) as a new CEQA "impact" requiring "mitigation"— independent of whether the mile that was driven actually caused any air quality, noise, GHG, safety, or other impacts to the physical environment.

310. This expansion of CEQA was prompted in 2013, when OPR was directed by the Legislature in SB 743 to adopt a metric other than congestion-related traffic delay in transit-served "infill" areas as the appropriate transportation impact required to be evaluated and mitigated under CEQA, since these neighborhoods were intentionally being planned for higher density, transit/bike/pedestrian rather than automobile-dependent, neighborhoods. Pub. Res. Code § 21099(b).

311. In SB 743, the Legislature authorized but did not require the state Office of Planning and Research (OPR) to use VMT as the replacement metric for transit-served areas, and authorized but did not require OPR to apply an alternate transportation impact metric outside

designated urban infill transit neighborhoods. OPR responded with three separate rounds of regulatory proposals, each of which proposed expanding CEQA by making VMT a new CEQA impact, and requiring new mitigation to the extent a VMT impact was "significant." OPR further proposed a series of VMT significance thresholds, analytical methodologies, and potential mitigation measures, which varied over time but included a "road diet" and measures to discourage reducing congestion, on the theory that such congestion could somehow "induce" transit use and VMT reductions.

312. Under all three sets of OPR proposals, projects would be required to do more mitigation to reduce significant VMT impacts—by reducing VMT (i.e., reducing GHG or other air pollutants is not a valid CEQA mitigation approach for a new VMT impact). OPR received scores of comments objecting to expanding CEQA by making driving a mile a new "impact" requiring "mitigation," particularly given the disparate impact such a metric has on minority communities and the many adverse impacts to the environment, and public health and welfare, caused by the housing crisis and the state's worst-in-the-nation commutes.

313. OPR, again and repeatedly citing to the asserted need to reduce VMT to meet California's GHG reduction and climate leadership commitments, held a recent round of workshops on VMT mitigation strategies, working in close coordination with CARB's earlier and since-abandoned proposal to include VMT reductions as a required SB 375 regional transportation plan compliance measures.

314. At these workshops, OPR and its outside experts from an Oregon university conceded that VMT could likely not be "mitigated" by reducing miles driven by the future residents of any particular housing project (e.g., by adding secure bike racks or charging extra for parking), since whether people drive a mile or call an Uber—or hop on a bike or bus—is a function of available, cost- and time-effective transportation modes as well as the incomes and planned destinations of future residents. Agency workshop participants expressly acknowledged that VMT had increased 6% over 2011 levels, even though California's primary climate statutes (including many programs designed to promote transit and higher density development, and many

billions of dollars in completed transit systems improvements) were in effect during this same period.

315. These experts also conceded that with the success of on-demand ride services like Uber and Lyft, including the increasing cost-effectiveness and popularity of voucher-based on-demand rides by transit agencies in lieu of operating fixed route buses with low and still-declining utilization levels, there was *no evidence* that VMT could be substantially reduced by a particular project in a particular location as part of the CEQA review process for that project.

316. Instead, the VMT mitigation proposals shared during the workshops required that new housing pay others to operate school buses, bikeshare, and make improvements to bike and pedestrian pathways to the extent these measures could be demonstrated to reduce VMT. The suggested VMT mitigation measures had in common the payment of substantial fees (with some options suggested requiring annual payments, in perpetuity, of $5000 per apartment or home).

317. A recent academic study of VMT mitigation under CEQA likewise concedes the difficulty of a particular project achieving VMT reductions, and endorses the concept of adding to housing and other project costs payments to VMT "banks" or "exchanges" to fund third party VMT reductions – VMT reductions that occur somewhere, by someone.

318. This OPR VMT saga, like CARB's ultimate decision not to require a VMT compliance metric under SB 375, further demonstrates that the 2017 Scoping Plan's VMT reduction mandate measure – which CARB's senior executive expressly acknowledged was intended to be "self-executing" - is a fundamentally flawed "throw-away" measure that was neither acknowledged nor given an equity, environmental, or economic evaluation before being included in CARB's 2017 Scoping Plan.

319. The last of the challenged GHG Housing Measures is the Vibrant Communities Appendix, in which eight state agencies (including OPR) join with CARB in committing to undertake a series of actions to implement the approved Scoping Plan. Some of these agencies already have begun implementing the Scoping Plan, to the immediate and ongoing harm of California minority communities who are already disproportionately suffering from the housing crisis.

320. The Vibrant Communities appendix is an "interagency vision for land use, **and** for discussion" (emphasis added) of "State-Level Strategies to Advance Sustainable, Equitable Communities and Reduce Vehicles Miles of Travel (VMT)." 2017 Scoping Plan Appendix C, p. 1.

321. **First,** all of disparate and unlawful current and ongoing harms described in connection with the Scoping Plan's VMT Reduction measure apply equally to the actions of other State agencies based on the Vibrant Communities appendix measures. None have a rational basis for claiming any actual success in reducing VMT through their respective direct regulatory activities.

322. **Second,** there is no constraint in the "Vibrant Communities Appendix" preventing any of the eight state agency signatories from taking immediate steps to directly enforce these "land use" policies, while claiming to "work together to achieve this shared vision and to encourage land use and transportation decisions that minimize GHG emissions." 2017 Scoping Plan Appendix C, p. 2.

323. OPR's VMT expansion of CEQA, discussed above, is an example of an agency action to reduce VMT and GHG that is at least subject to formal rulemaking procedures and is thus not yet being "implemented."

324. In contrast, in June of 2018, a combination of four Vibrant Communities Appendix implementing agencies joined by one other agency[136] announced that they would henceforth implement – without benefit of any further Legislative or regulatory action –the "December 2017 Scoping Plan directive". This announcement was made at the San Francisco Bay Area Regional Meeting announcing the "California's 2030 Natural and Working Lands Climate Change Implementation Plan." Consistent with the anti-housing bias built into CARB's GHG Housing Measures, these agencies collectively promised to avoid "conversion of land for development."

[136] The five agencies are: the California Environmental Protection Agency, the California Natural Resources Agency, CARB, the California Department of Food and Agriculture, and the Coastal Conservancy.

325. These five agencies made no exception for developing housing, even for housing that CARB has already concluded as part of the SB 375 regional plan process meets California's legislated GHG emission reduction requirements. These agencies likewise made no exception for transportation or other critical infrastructure, even if consistent with local and regional plans, even if approved by federal or state agencies other than this five-agency consortium, even if within an approved city limit, and even if approved by voters. *Simply put, these agencies – which have combinations of funding, permitting, planning and enforcement obligations – have signaled that they are not going to approve new development on land that is not already developed.*

326. The sole reed upon which this vast new legal prohibition rests is the 2017 Scoping Plan, and more specifically the Vibrant Communities Appendix. See SF Bay Area Regional Meeting, *California's 2020 Natural and Working Lands Climate Change Implementation Plan*, available at http://resources.ca.gov/wp-content/uploads/2018/08/SF-Bay-Area-NWL-meeting-presentation-6.18.pdf.

327. Less than 6% of California is urbanized, and each city and county is charged by state law with adopting a General Plan that must accommodate the housing, transportation, and infrastructure needs of its existing and planned future residents. Under SB 375, these local land use plans are effectively consolidated into regional transportation and land use plans that must accommodate future population and economic growth as well as meet CARB targets for reducing GHG from the land use sector. Every regional Sustainable Communities Strategy ("SCS") plan includes some combination of housing, infrastructure (including transportation improvements), schools and other land uses that are carefully and deliberatively sited within each jurisdiction's boundaries – and adopted only after each local government first complies with CEQA and completes an extensive public notice, comment, and hearing process before appointed and elected officials.

328. The decision of the California Department of Fish & Wildlife ("CDFW") to simply stop issuing permits for housing and related infrastructure projects that have already been approved by local elected officials, after community input, in compliance with all applicable laws—and have further already been approved by CARB, as part of the SB 375 regional plan

approval process—is a blatant example an announced harm being committed against housing by a state agency in furtherance of CARB's 2017 Scoping Plan.

329. **Third**, consistent with normal practice for lawsuits that include a claim that the respondent agency has failed to comply with CEQA, Petitioners elected to prepare the administrative record that is relevant to the disposition of this CEQA cause of action. The Legislature has specifically prescribed the content of the CEQA administrative record, which includes in part: "Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project" and "all . . . internal agency communications, including staff notes and memoranda relating to the project." Pub. Res. Code § 21167.6(c)(10).

330. Petitioners timely sought the administrative record from CARB, and in another normal practice for CEQA lawsuits submitted requests filed under the California Public Records Act ("CPRA") to each of the Vibrant Communities Appendix agencies in relation to each agency's Scoping Plan and Vibrant Communities Appendix, and VMT or other Scoping Plan documents.

331. Many months later, only incomplete responses have been provided by CARB (which sought to limit the administrative record in this case to select excerpts from its Scoping Plan docket).

332. Several of the Vibrant Communities Appendix agencies, including CDFW, OPR, parent and affiliated agencies of each (Natural Resources Agency and Strategic Growth Council), and CalSTA, responded with minimal documents and instead asserted that the requested documents were exempt from disclosure under the CPRA because they could result in public "controversy."

333. One of these partially-responsive agencies admitted that the withheld documents involved the highest level of state government, and included legislative proposals. All of these partially-responsive agencies declined a second letter request to disclose the withheld documents, or provide a privilege log describing each withheld document and the reason for its concealment.

334. There is no centralized or otherwise public repository of Vibrant Communities Appendix agency documents that disclose to the public their current, planned, or future activities with respect to implementing the Scoping Plan. There is likewise no centralized or otherwise public repository of which implementing activities are being (or will be) directly undertaken, and which will not be undertaken without future rulemaking or authorizing legislation.

335. From just the "direct" implementation activities noted above—and in particular CARB's intervention in an ongoing CEQA project-level review to opine on GHG mitigation requirements in a manner that is contrary to published judicial opinions, and CDFW's announced intention to cease authorizing activities that would convert land to development with no exception for new housing or related infrastructure that is already included in approved General Plans, infrastructure plans, voter-approved bonds, or CARB-approved Sustainable Communities Strategies implementing SB 375, is ample evidence of the immediate and ongoing new costs and regulatory obstacles already being imposed by these agency Scoping Plan implementing actions.

336. CARB's GHG reduction compliance metric is arbitrary, not supported by science, has no rational basis, and is racially discriminatory. In California's GHG and climate leadership laws, the Legislature did not prescribe any specific measurement methodology or compliance metric for meeting California's GHG reduction goals. The methodology and metrics that CARB has chosen completely ignore massive GHG emissions that occur when California's forests burn, as has tragically occurred at a large scale for several of the past years, notwithstanding estimates that just one major forest fire wipes out an entire year of GHG reductions achieved by CARB's regulatory actions.[137]

337. Similarly, CARB does not count—or require reductions of—GHG emissions associated with imported foods or other goods, or with a multitude of other activities such as airplane trips. However, every time a California resident (or job) leaves California, CARB counts that as a GHG reduction—even though the top destinations for the hundreds of thousands of

[137] David Friedman, Jennifer Hernandez, California, Greenhouse Gas Regulation, and Climate Change, Holland & Knight, Chapman University Press (2017), p. 60-61, https://www.chapman.edu/wilkinson/_files/ghg-fn.pdf.

Californians who have migrated to lower cost states in recent years, notably including Texas, Arizona and Nevada—have per capita GHG emissions that are more than double the emissions those same individuals would have if they remained in California.

338. Climate change and GHG emissions are a global challenge, and nearly tripling the GHG emissions of a California family that needs to move to Texas or Nevada to find housing they can afford to rent or buy, increases global GHG.

339. It may be that there are other environmental priorities favored by CARB and its allies that justify policies that are in fact resulting in the displacement and relocation of California's minority communities, that reduce the state's population, and that eliminate higher energy production jobs like manufacturing that traditionally provided a middle class income (and home ownership) to a hard worker without a college degree. These discriminatory anti-minority policies cannot, however, be scientifically, politically, or legally justified in the name of global reductions of GHG.

340. CARB's International Policy Director on climate, former Obama administration senior climate team Lauren Sanchez, admitted that the GHG reduction metrics used by CARB – that simply and completely ignores the increased global GHG emissions from forcing Californians to live in high GHG states to find housing they can afford to buy with commute times that did not damage driver health, family welfare, and the environment - were "flawed" at the recent (October 2018) Environmental Law Conference in Yosemite. This admission rebuts the politically shocking and legally invalid assertion that it is constitutional for CARB to implement racially discriminatory measures (because CARB's discriminatory objective is merely to force minority Californians to either try to live in housing they cannot afford located nowhere near their job, or migrate to another state).

341. The 2017 Scoping Plan is required to reduce California's share of *global* GHG emissions, but it completely ignores massive emission sources that are controversial within the environmental community (e.g. managing California's massive wildfire risks which result in GHG emissions that dwarf CARB's regulatory GHG reductions, based on what the non-partisan

Little Hoover Commission reported in February 2018 as a century of forest mismanagement including clashes between environmental agencies). [138]

342. The 2017 Scoping Plan also completely ignores other massive GHG emissions attributed to the behavior of wealthier Californians (e.g., airplane rides, and consumption of costly imported consumer products).[139] Instead, as summarized a Chapman University Research Brief, CARB has administered California's climate laws with actions such as the 2017 Scoping Plan that drive up the fundamental costs of living for ordinary Californians—housing, electricity, transportation—and thereby drive more people (and disproportionately minorities) into poverty, and out of the state.[140]

343. The 2017 Scoping Plan fails even the most rudimentary "rational basis" constitutional test, and it is being implemented today by organizations and agencies including CARB that are driving up housing costs and blocking housing projects today. To cause this much pain and hardship to this many people, and to place the greatest burdens on those already disparately harmed by the housing crisis, is unconscionable. It is also ongoing, illegal, and unambiguously intentional, for CARB to impose these "flawed" GHG reduction metrics that cause disparate harms to racial minorities living in California.

344. The foregoing paragraphs describe agency actions that are exacerbating the State's extreme poverty, homelessness and housing crisis while *increasing* global GHG emissions by driving Californians to higher per capita GHG states.[141]

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[138] Little Hoover Commission, *Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada* (February 2018), available at https://lhc.ca.gov/report/fire-mountain-rethinking-forest-management-sierra-nevada.

[139] Bay Area Air Quality Management District and Cool Climate Network at UC Berkeley, *Consumption-Based GHG Emissions Inventory: Prioritizing Climate Action for Different Locations* (December 15, 2015), available at https://escholarship.org/uc/item/2sn7m83z

[140] Friedman, Id., Summary at p. 7-9.

[141] Philip Reese, *California Exports Its Poor to Texas, Other States, While Wealthier People Move In*, The Sacramento Bee (Mar. 5, 2017), available at http://www.sacbee.com/news/state/california/article136478098.html; Drew Lynch, *Californians Consider Moving Due to Rising Housing Costs, Poll Finds*, Cal Watchdog (Sept. 21, 2017), available at https://calwatchdog.com/2017/09/21/californians-consider-moving-due-rising-

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

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

H. CARB'S GHG Housing Measures Are "Underground Regulations" and Ultra Vires

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

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

349. Each of CARB's new GHG Housing Measures are being implemented by CARB, and other state and local agencies, without further rulemaking or compliance with the APA. The GHG Housing Measures are underground regulations requiring APA compliance, and cannot be

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housing-costs-poll-finds/; U.S. Energy Information Agency, State Carbon Dioxide Emissions Data, October 2017, available at https://www.eia.gov/environment/emissions/state/.

lawfully implemented absent authorizing Legislation or formal rulemaking (inclusive of environmental and economic review as required by the APA).

350. CARB's new GHG Housing Measures infringe on areas reserved for other State agencies in two ways:

A. Senate Bill ("SB") 97 directs OPR to develop CEQA significance thresholds via the CEQA Guidelines. OPR's update does not include the Scoping Plan's presumptive CEQA GHG threshold. CARB was expressly allowed by the Legislature in SB 97 to adopt a CEQA significance threshold only in the context of updates to the CEQA Guidelines, which must undergo a rigorous rulemaking process. CARB has acted *ultra vires* and contrary to the express command of the Legislature in adopting its recommended CEQA significance threshold in the Scoping Plan.

B. California has adopted new building standards, which are designed to assure that new building code requirements are cost effective (with payback to the consumer). "Net zero" new home building standards were not included. CARB has no Legislative authority to bypass and frustrate this consumer protection law by using CEQA as a workaround to require "net zero".[142]

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

FIRST CAUSE OF ACTION

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

352. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-351 above, as well as in paragraphs 358-458.

[142] 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.

353. 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 land use practices, decisions, and authorizations, because of race, color, . . national origin, source of income or ancestry."

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

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

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

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

SECOND CAUSE OF ACTION

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

358. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-357 above, as well as paragraphs 368-458.

359. The Federal Housing Act (42 U.S.C. § 3601 *et seq.*) ("FHA") was enacted in 1968 to combat and prevent segregation and discrimination in housing. The FHA's language prohibiting discrimination in housing is broad and inclusive, and the purpose of its reach is to replace segregated neighborhoods with truly integrated and balanced living patterns.

360. In formal adjudications of charges of discrimination under the FHA over the past 20-25 years, the U.S. Department of Housing and Urban Development ("HUD") has consistently

concluded that the FHA is violated by facially neutral practices that have an unjustified discriminatory effect on the basis of a protected characteristic, regardless of intent.

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

362. HUD Regulations provide, *inter alia*, that liability under the FHA may be established "based on a practice's discriminatory effect . . . even if the practice was not motivated by a discriminatory intent." 24 C.F.R. § 100.500.

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

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

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

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

367. Because CARB's GHG Housing Measures have an unjustified discriminatory effect on members of minority communities, including Petitioners, they violate the FHA as implemented though HUD Regulations. Consequently, CARB's GHG Housing Measures should be declared unlawful and enjoined, and Petitioners are entitled to other and further relief pursuant to 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

(Denial of Due Process, Cal. Const. Art. I, § 7; U.S. Const. Amd. 14, § 1)

368. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-367 above, as well as paragraphs 373-448.

369. Petitioners have a right to be free of arbitrary State regulations that are imposed without having first been presented to the public through duly-authorized rulemaking processes by Legislatively-authorized State agencies.

370. CARB's new GHG Housing Measures, individually and collectively, will inevitably cause serious harm to the ability of Petitioners and other members of disadvantaged minority communities to gain access to affordable housing, and have a disproportionate adverse impact on them.

371. CARB's new GHG Housing Measures are not rationally calculated to further the State's legitimate interest in reducing GHG emissions, on their face or as applied to housing projects in California. Instead, CARB's new GHG Housing Measures are both arbitrary and counterproductive in terms of actually achieving their purported goals of GHG emission reductions.

372. For these reasons, CARB's GHG Housing Measures have been issued in violation of, and constitute substantive violations of, the Due Process Clauses of the California and United States Constitutions. (Cal. Const. Art. 1, § 7; U.S. Const. Amd. 14, § 1,)

FOURTH CAUSE OF ACTION

(Denial of Equal Protection, Cal. Const. Art. I, § 7, Art. IV § 16; U.S. Const. Amd. 14, § 1)

373. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-372 above, as well as 382-458.

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

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

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

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

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

379. Petitioners warned CARB about the racially discriminatory aspects of the Scoping Plan prior to CARB's finalizing and issuing the Scoping Plan. Despite Petitioners' warning, CARB disregarded these impacts and issued the Scoping Plan without changes. On information and belief, CARB did so with the intent to disproportionately cause harm to racial minorities, including minority communities of which Petitioners are members.

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

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

FIFTH CAUSE OF ACTION

(Violations of CEQA, Pub. Res. Code § 21000 *et seq.* and CEQA Guidelines, 14 C.C.R. § 15000 *et seq.*)

382. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-381 above, as well as paragraphs 395-458.

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

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

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

386. CARB did not base its Final EA on an accurate, stable, and finite project description. The EA did not include the four GHG Housing Measures in its project description. For this reason CARB applied an unreasonable and unlawful "project" definition and undermined CEQA's informational and decision-making purposes. The project description was misleading, incomplete, and impermissibly vague.

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

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

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

390. CARB also failed to adequately evaluate the direct, indirect, and cumulative environmental impacts of the 2017 Scoping Plan in its Final EA, even after commenters identified

numerous review gaps in their comments on the Draft EA. As discussed above, CARB was fully on notice of the scale and nature of the impacts associated with the GHG Housing Measures based on CARB's review and approval of more than a dozen regional plans to intensify housing densities near transit, and improve public transit, from all of California's most significant population centers; each of these regional plans identified multiple unavoidable significant adverse environmental impacts from implementation of current plans. The deficiencies in the Final EA include but are not limited to the following:

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

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

395. Petitioners hereby re-allege and re-incorporate herein by reference the allegations of paragraphs 1-394 above, as well as paragraphs 405-458.

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

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

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

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

(2) Can generate California economic variable estimates such as personal income, employment by economic sector, exports and imports, and gross state product, based on inter-

industry relationships that are equivalent in structure to the Regional Industry Modeling System published by the Bureau of Economic Analysis.

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

(A) The creation or elimination of jobs within the state;

(B) The creation of new businesses or the elimination of existing businesses within the state;

(C) The competitive advantages or disadvantages for businesses currently doing business within the state;

(D) The increase or decrease of investment in the state;

(E) The incentives for innovation in products, materials, or processes; and

(F) The benefits of the regulations, including but not limited to benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency."

399. DOF regulations require that DOF's "most current publicly available economic and demographic projections, which may be found on the department's website, shall be used unless the department approves the agency's written request to use a different projection for a specific proposed major regulation." 1 C.C.R. § 2003(b).

400. DOF regulations also provide that: "An analysis of estimated changes in behavior by businesses and/or individuals in response to the proposed major regulation shall be conducted and, if feasible, an estimate made of the extent to which costs or benefits are retained within the business and/or by individuals or passed on to others, including customers, employees, suppliers and owners." 1 C.C.R. § 2003(f).

401. In grafting its new GHG Housing Measures onto the 2017 Scoping Plan, CARB has failed to comply with the APA, including DOF regulations applicable to CARB.

402. More significantly, and consistent with the LAO's repeated findings that the CARB analysis methodology fails to provide sufficiently detailed information about impacts to individuals, households and businesses, CARB's 2017 Scoping Plan completely ignores the fact

that California has the greatest inequality in the United States, and that energy costs, loss of energy-intensive jobs and housing costs related to Scoping Plan policies play a major role in that unwanted outcome. To fulfill its statutory mandates, CARB must start by recognizing that, as meticulously documented in a United Way Study, more than 30% of all California households lack sufficient means to meet the real cost of living in the state.

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

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

SEVENTH CAUSE OF ACTION

(Violations of the California Global Warming Solutions Act, Health & Safety Code § 38500 *et seq.*)

405. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-404 above, as well as paragraphs 413-458.

406. The GWSA provides in pertinent part that, in promulgating GHG regulations, CARB "shall do all of the following:

(1) Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

(2) Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

(3) Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.

(4) Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

(5) Consider cost-effectiveness of these regulations.

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

407. In responses to Petitioners' comments on the 2017 Scoping Plan, CARB has acknowledged that Chapter 5 of the Scoping Plan (which sets out the new GHG Housing Measures) was not part of what it analyzed in issuing the Scoping Plan. In CARB's words, "These recommendations in the 'Enabling Local Action' subchapter of the Scoping Plan are not part of the proposed 'project' for purposes of CEQA review."[143] Thus, CARB admits that it did not even pretend to analyze the consequences of the provisions of Chapter 5 of the Scoping Plan.

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

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

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

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

[143] Supplemental Responses to Comments on the Environmental Analysis Prepared for the 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.

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

EIGHTH CAUSE OF ACTION

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

413. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-412 above, as well as paragraphs 437-458.

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

415. CAAQS are established for particulate matter ("PM"), ozone, nitrogen dioxide ("NO_2"), sulfate, carbon monoxide ("CO"), sulfur dioxide ("SO_2"), visibility-reducing particles, lead, hydrogen sulfide ("H_2S"), and vinyl chloride.

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

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

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

419. If a local district is not effectively working to achieve the CAAQS, CARB may establish a program or rules or regulations to enable the district to achieve and maintain the CAAQS. H&S Code § 41504. CARB may also exercise all the powers of a district if it finds the

district is not taking reasonable efforts to achieve and maintain ambient air quality standards. H&S Code § 41505.

420. Fresno County is part of the San Joaquin Valley Air Pollution Control District ("SJVAPCD"). The SJVAPCD is currently nonattainment/severe for the CAAQS for ozone and nonattainment for PM.

421. The vast majority of California is designated nonattainment for the CAAQS for ozone and PM.

422. Nitrogen oxides, including NO_2, CO, and volatile organic compounds ("VOCs") are precursor pollutants for ozone, meaning they react in the atmosphere in the presence of sunlight to form ozone.

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

424. PM emissions in California and in the SJVAPCD increased in 2016 as compared to prior years.

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

426. Increasing congestion increases emissions of multiple pollutants including NO_x, CO, and PM. This would increase ozone and inhibit California's ability to meet the CAAQS for ozone, NO_2, and PM, among others.

427. Because CARB intends to achieve the VMT reduction standard by intentionally increasing congestion, which will increase emissions of criteria pollutants such as NO_2 and PM, CARB is violating its statutory duty to ensure that every reasonable action is taken to expeditiously achieve attainment of the CAAQS.

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

429. Like the CAAQS, the NAAQS are limits on criteria pollutant emissions which each air district must attain and maintain. EPA has set NAAQS for CO, lead, NO_2, ozone, PM, and SO_2.

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

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

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

433. SJVAPCD is nonattainment/extreme for the ozone NAAQS and nonattainment for $PM_{2.5.}$

434. The vast majority of California is nonattainment for the ozone NAAQS and much of California is nonattainment for PM_{10}.

435. It is unlawful for CARB to intentionally undermine California's efforts to attain and maintain the NAAQS by adopting measures in the 2017 Scoping Plan that will increase NOx and PM by intentionally increasing congestion in an attempt to lower VMT to purportedly achieve GHG emission reductions.

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

NINTH CAUSE OF ACTION

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

437. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-436 above, as well as paragraphs 442-458.

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

439. The four GHG Housing Measures in CARB's 2017 Scoping Plan are underground regulations in violation of APA standards requiring formal rulemaking.

440. As to the CEQA net zero GHG threshold specifically, the Legislature directed OPR to adopt CEQA guidelines as regulations and CEQA itself requires that public agencies that adopt thresholds of significance for general use must do so through ordinance, resolution, rule, or regulations developed through a public review process. CEQA Guidelines § 15064.7(b). Thus, any state agency that purports to adopt CEQA guidelines must do so via regulations, following the full formal rulemaking process in the APA.[144]

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

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

TENTH CAUSE OF ACTION

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

442. Petitioners hereby re-allege and incorporate herein by reference the allegations contained in paragraphs 1-441 above.

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

CEQA Net Zero GHG Threshold

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

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

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

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

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

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

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

VMT Reduction Requirements

450. In addition, the VMT reduction standards mandated in the Scoping Plan are ultra vires and beyond CARB's statutory authority.

451. The Legislature rejected legislation as recently as 2017 requiring VMT reductions/standards.

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

SB 97 and OPR Promulgation of CEQA Guidelines

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

454. OPR has not included CARB's new GHG Housing Measures in its proposed new Guidelines, and CARB has no authority to make an "end run" around the rulemaking process established by the Legislature.

New Building Code Requirements

455. The Legislature has enacted new consumer protection requirements, including new building standards, designed to assure that new building code requirements are cost effective.

CARB's "net zero" new home building standard was not included in these new building standards.

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

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

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

PRAYER FOR RELIEF

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

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

- The Vehicle Miles Traveled ("VMT") mandate.
- The Net Zero CEQA threshold
- The CO2 per capita targets for local climate action plans for 2030 and 2050

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- The "Vibrant Communities" policies in Appendix C.

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

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

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

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

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

Dated November 21, 2018

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____

Jennifer L. Hernandez
Charles L. Coleman III
Marne S. Sussman
David I. Holtzman

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

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 FIRST AMENDED 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 21st day of November, 2018, at San Francisco, California.

JENNIFER L. HERNANDEZ

Attachment 3

THE CHRONICLE OF
PHILANTHROPY

ARTICLE
JANUARY 10, 2019
✔ PREMIUM

Environmental Groups Get Poor Marks for Diversity Efforts

By Julian Wyllie

Diversity at many large environmental organizations has stagnated or worsened in the past year, though a few have shown progress, according to two new reports.

The figures come from Green 2.0, an independent advocacy campaign, in its second annual "Transparency Report Card" on the leaders, boards, and staffs of environmental nonprofits and foundations. The report is based on self-reported data to GuideStar as of April 1, 2018.

Whitney Tome, executive director of Green 2.0, said the updated report card shows that not much has changed from its first report released in 2017. The "green ceiling" has prevented nonprofits and foundations from advancing their missions, she says.

Diversity at Nonprofits

The percentage of women working full-time at environmental nonprofits increased from 59 percent to 64 percent year-over-year from 2017. The senior staff is evenly divided between men and women, and there were 3 percent more women on boards in 2018.

Over all, racial diversity declined among full-time staff, decreased slightly among board members, and grew from 14 percent to 21 percent among senior staff.

Tome said some of the larger nonprofits "refuse" to disclose data about their diversity. She listed Pew Charitable Trusts and Oceana as examples in a conference call to media.

Other nonprofits that did not disclose any data for the report this year, according to Green 2.0, include Conservation International and Root Capital, though Root Capital disputes that. Others did not disclose numbers for specific categories, like staff or leadership.

Representatives from Oceana did not provide a response to the data in time for this article.

A spokeswoman for Pew Charitable Trusts said, "Pew is a public charity working on a number of issues including the environment, health, consumer finance, fiscal and economic policy, and state policy. We are also active in funding programs that help the most vulnerable and improve civic life in Philadelphia, and we conduct research about the issues, attitudes, and trends shaping America and the world. We do not consider ourselves an environmental organization. We are committed to creating a workplace that provides equal employment opportunity, values diversity, and fosters inclusion."

A spokeswoman for Conservation International said the organization "has a strong commitment to diversity, and our numbers reflect that." Further, she said, "across the globe, 90 percent of staff in our country programs are led by local nationals that represent the various communities, ethnicities, and cultures of the nearly 30 countries that we operate in. Unfortunately, due to an oversight, we missed the chance to share those numbers in time for this report's release. We are working to correct that by submitting data to Green 2.0 as soon as possible and look forward to participating in future reports."

In a statement, Kristin Williams, a communications manager for Root Capital, said the nonprofit has more than 100 staff members in the United States, Costa Rica, Kenya, Mexico, Nicaragua, Peru, and Senegal.

"As such, most of our team members are from the diverse countries where we work, representing many different communities. That diversity is at the heart of our ability to transform lives in rural areas. While we were not previously aware of the Green 2.0 initiative or asked to provide demographic data for this report, we're proud to showcase our entire global staff, including senior leadership, on our website. We invite everyone to come meet our team and see for themselves."

Lack of Transparency

Robert Raben, president and founder of the Raben Group and Green 2.0, said diversity at some organizations is "pretty lousy." He also said it can set a bad example when leaders don't report their data.

"This is a solvable problem. In the 21st century, we don't have a supply problem, we have a

demand problem," Raben said. "There's a tremendous pool of talented people of color who can handle leadership at the board level and the C-suite."

He added, "It is inconceivable to me that some key environmental organizations refuse to talk about the subject, and by talk about the subject in this case I mean report their data." He later said Pew Charitable Trusts and Oceana are among "the incredibly bad actors."

Tome said it will be necessary to apply public pressure on organizations that have skirted efforts to avoid self-reporting on their diversity numbers.

"It is clear that some have been slow to understand why it's important to highlight the diversity within their organizations," she said. "Some are continuing to refuse outright."

Foundations See Declines

Full-time staffs at foundations are still largely female, at 69 percent. Women senior staff account for 60 percent at foundations, although boards have slightly more men. As for race, the report showed big decreases in diversity among full-time staff, senior staff, and board members from 2017.

One foundation, the John D. and Catherine T. MacArthur Foundation, disputes the findings. A spokesman said the organi-zation publishes staff and board diversity annually on its website — which Green 2.0 did not cite — "in the interests of transparency and to hold ourselves accountable." Further, the spokesman said, "For us, diversity includes but is not limited to age, disability status, economic circumstance, ethnicity, gender, race, religion, and sexual orientation."

Some of the top foundations did not disclose some of their data.

"Foundations specifically exist to infuse resources, to cultivate innovation and action where government and perhaps culture even lag," Tome said. Those that do not take equity and inclusion seriously shouldn't be trying to drive innovation among grantees," she added.

Some foundations have taken steps to do better, Tome noted.

In the conference call, Nellis Kennedy-Howard, director of equity, inclusion, and justice for the Sierra Club, spoke about her experience identifying as a queer woman of color and said she has seen Sierra Club's slight improvements over time.

The Sierra Club increased its racial diversity among senior staff. But the data shows there is room for improvement among full-time staff. Also, the racial diversity on boards decreased from 33 percent to 14 percent.

"We have a majority female-identified executive team and a majority female-identified board executive committee. That being said, people of color like myself remain minorities on both of these bodies," Kennedy-Howard said. "The reality is that we do not reflect the demographics of the communities where we live, work, and love."

One way to increase diversity, the nonprofit has said, is to alter its marketing practices. The Sierra Club recently launched a new effort to attract more Latinos to programs by featuring them in its marketing material. In the past, stock photos on its website were considered inauthentic and lacked the personal touch needed to persuade Latinos that they were welcome.

In another case, the William and Flora Hewlett Foundation has increased racial diversity among boards and staff. (The Hewlett Foundation is a financial supporter of the *Chronicle of Philanthropy.)*

Larry Kramer, president of the foundation, said in the conference call that it is important for a foundation to collect information on itself to understand its implicit biases against grantees and workers.

"We're never going to build the kind of political coalition that we need to really move the country forward unless we have fully engaged all of the audiences of color," Kramer said.

Notes: This article has been updated to clarify that Root Capital says it did not receive a request for data for the report. Green 2.0 stands by its statement that it made the request but received no data.

It has also been updated to include a comment from the John D. and Catherine T. MacArthur Foundation. Although it was not named in the original piece, the foundation disputes the data in the Green 2.0 report.

THE CHRONICLE OF
PHILANTHROPY

Attachment 4

Jason Levin (161807)
STEPTOE & JOHNSON LLP
633 West Fifth Street, Suite 700
Los Angeles, California 90071
Telephone: (213) 439-9400
Facsimile: (213) 439-9599
jlevin@steptoe.com

Karl M. Tilleman (*Pro Hac Pending*)
Alan Bayless Feldman (*Pro Hac Pending*)
STEPTOE & JOHNSON LLP
201 East Washington Street, Suite 1600
Phoenix, Arizona 85004-2382
Telephone: (602) 257-5200
Facsimile: (602) 257-5299
ktilleman@steptoe.com
afeldman@steptoe.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

The Icon at Panorama, LLC,

Plaintiff,

vs.

Southwest Regional Council of Carpenters; Laborers International Union of North America Local 300; Daniel Langford, an individual; Alexis Olbrei, an individual; Ron Diament, an individual; Pete Rodriguez, an individual; Ernesto Pantoja, an individual; Sergio Rascon, an individual; Angel Olvera, an individual; SWAPE, LLC, a California limited liability company; Smith Engineering & Management, a California corporation; unnamed spouses of all named individual Defendants, and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2:19-CV-00181

COMPLAINT FOR:

1. **ATTEMPTED MONOPOLIZATION IN VIOLATION OF SECTION 2 OF THE SHERMAN ACT**
2. **CONSPIRACY TO MONOPOLIZE IN VIOLATION OF SECTION 2 OF THE SHERMAN ACT**
3. **DIRECTING A "GROUP BOYCOTT" IN VIOLATION OF SECTION 1 OF THE SHERMAN ACT**
4. **CONSPIRACY AND ATTEMPT TO ENTER INTO EXCLUSIVE DEALING ARRANGEMENT IN VIOLATION OF SECTION 3 OF THE CLAYTON ACT AND SECTION 1 OF THE SHERMAN ACT**
5. **VIOLATION OF LABOR MANAGEMENT RELATIONS ACT, 29 U.S.C. § 187**

6. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. § 1962 (C)

7. UNFAIR COMPETITION, CAL. BUS. & PROF. CODE § 17200, AGAINST ALL DEFENDANTS

AND DEMAND FOR JURY TRIAL

Plaintiff, The Icon at Panorama, LLC ("Icon") alleges as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and § 1337. This action arises under the Clayton Act, 15 U.S.C. §§ 15, 26, to obtain injunctive relief, damages and costs, including reasonable attorneys' fees for violations of sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, section 303 of the Labor Management Relations Act, 29 U.S.C. § 187, and the federal Racketeer Influenced and Corrupt Organizations statute, 18 U.S.C. § 1961 *et seq*.

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1367 over the state law causes of action because those causes of action are related to the federal law causes of action and form part of the same case and controversy under Article III of the United States Constitution.

3. The conduct alleged in this Complaint occurred in interstate commerce and has affected and will continue to substantially and directly affect interstate commerce.

4. The Court has personal jurisdiction over the Defendants and venue is proper in the Central District of California because (a) all Defendants reside in the State of California and at least one of the Defendants resides in this District, and (b) substantial parts of the events or omissions giving rise to the claims occurred in this District.

Introduction

5. The Southwest Regional Council of Carpenters ("SWRCC") and the Laborers International Union of North America Local 300 ("LIUNA") have conspired to dominate, monopolize, and control the sale of labor services to developers of large real estate projects within Los Angeles County, California by engaging in anti-competitive conduct and racketeering activities, including fraud and extortion, by means of, *inter alia*, their pattern and practice of filing repeated sham litigation under the guise of the California Environmental Quality Act ("CEQA"). This fraudulent, extortionist, and anti-competitive conduct is commonly referred to as "greenmail."

6. Throughout this Complaint the term "Union Defendants" will mean SWRCC and LIUNA, whether acting directly as a labor organization or through any of its officers, directors, employees, or agents authorized to act on behalf of one or both organizations.

7. For nearly two decades, the former Montgomery Ward building at 14665 Roscoe Boulevard in Panorama City has sat abandoned, attracting homeless encampments, gangs, graffiti, and various other criminal activities. Once a popular shopping destination, the department store shut its doors in 2001 after struggling to compete with other retailers.

8. Icon purchased the vacant site in January of 2016 and based on feedback from the City and numerous community stakeholders, Icon submitted an application to the Los Angeles Department of City Planning ("Department of City Planning"), proposing to transform the vacant and dilapidated property that encompasses an approximate nine-acre site, into a mixed-use complex, including numerous residential units and commercial space – known as The Icon Panorama Project ("Project").

9. The Department of City Planning, the area's City Council Office, neighboring property and business owners, Panorama City residents, business leaders, the Panorama City Neighborhood Council, the Panorama City Chamber of Commerce, law enforcement (LAPD), a local hospital (Mission Community Hospital), Galpin Motors (a prominent employer in the area), PATH (People Assisting The Homeless) (an advocacy group focused on housing the homeless), among others (collectively the "Community"), enthusiastically support the Project. The Community overwhelmingly supports Icon's plan for the property and have expressly stated that it would strongly satisfy the area's critical housing needs with a contemporary and diverse mix of apartments, bring needed jobs and desirable retail businesses, beautify and safeguard the community, and provide the overall redevelopment desperately needed in the currently blighted area.

10. Despite the overwhelming and vocal Community support, from March 2017 through August 2018, the Union Defendants have, at every step of the Project approval process, tried to induce the area's City Council Office, Department of City Planning, Los Angeles City Planning Commission ("Planning Commission"), and the Los Angeles City Council ("City Council") to deny approval of the Project on false grounds that it does not comply with CEQA. The Union Defendants' sole purpose in filing CEQA challenges was to delay the Project and coerce, intimidate, and pressure Icon to agree to use exclusively union labor, otherwise Icon would suffer significant cost increases to the Project.

11. The Union Defendants were the only individuals or entities to continuously challenge the Project's compliance with CEQA and to publicly oppose the Project.

12. During its sham CEQA challenges, the Union Defendants essentially bribed the Icon Project developers promising that they would withdraw their CEQA challenges and actively support the Project if Icon would agree to use

exclusively union labor on the Project. The Union Defendants made these promises to Icon even if Icon took no steps whatsoever to address the purported environmental concerns raised in the Union Defendants' CEQA challenges. The Union Defendants' CEQA challenges were an absolute sham, through and through, and had nothing whatsoever to do with protecting the environment.

13. Icon continuously made good faith efforts to engage with the Union Defendants to involve them in the Project in ways that were financially feasible. Icon was consistent in its message that given the Project's location and the area's low rents, it could not support the high cost of using exclusively union labor but that finding certain areas on the Project to use union trades was a possibility once Icon began working on the construction plans and pricing the Project.

14. Icon informed the Union Defendants that the Project's financial constraints were further demonstrated by the fact that the Project site sat vacant for almost two decades and experienced a number of failed attempts by other developers to redevelop it.

15. Not once was the environment raised as a legitimate concern by the Union Defendants to Icon during any discussions or written communications among the parties about the Project. In fact, early on, during discussions with the Union Defendants, Icon attempted to address any environmental concerns that the Union Defendants had. The Union Defendants summarily refused to engage in discussions about environmental concerns as the Union Defendants were solely interested in compelling Icon to use exclusively union labor on the Project. Otherwise stated, the Union Defendants are exploiting the CEQA process itself, not for any reason related to the environment but for their own financial gain and as a weapon to coerce Icon, and other developers like Icon, to use nothing but union labor on major developments in Los Angeles County.

16. The irony and hypocrisy of the Union Defendants' sham claims are noteworthy as a considerable part of what they challenged and objected to are alleged unsafe conditions on the site that would adversely impact the health and well-being of those working on the Project, yet while they were publicly opposing the Project with these bogus environmental and health concerns, privately, they were pressuring Icon to use exclusively union labor that would guarantee that no one other than a their own union members would be working on the Project thus ensuring that their members would be exposed to these alleged "health risks."

17. SWRCC refused to negotiate with Icon to find feasible ways to include their trades and demanded that Icon use exclusively union contractors on the Project. LIUNA refused to negotiate with Icon over an alternative labor arrangement, in part, because LIUNA disclosed to ICON that they previously entered a "most favored nation" agreement with a competing developer whereby LIUNA agreed with the competing developer not to enter more favorable agreements with other developers, such as Icon.

18. The Union Defendants' challenges so lacked in merit that, in rejecting one of their numerous challenges to the Project, at the conclusion of the Planning Commission hearing, Los Angeles Planning Commission President David Ambroz stated that the Union Defendants "weaponized" CEQA and made objections that were "just patently false." That blunt public rebuke of the Union Defendants is exactly what they are doing, which is why Icon has filed this litigation—to stop the Union Defendants from weaponizing CEQA and filing frivolous CEQA challenges as a threat to any developer who does not succumb to the Union Defendants' threats.

19. The Union Defendants failed on their appeals in every administrative level and, on August 29, 2018, the City Council denied the Union Defendants'

appeal and unanimously approved the Project, exhausting the administrative approvals process.

20. Failing to force Icon to use exclusively union contractors on the Project via their spurious administrative challenges, the Union Defendants nevertheless continued their sham efforts on October 1, 2018 by filing a Petition for Writ of Mandate based on CEQA in the Superior Court of the State of California, County of Los Angeles. As they did during the administrative process before the Planning Commission and City Council, the Union Defendants again made false statements regarding the Project. And again, the Union Defendants have only one goal in mind—to delay the Project further, to drive up costs, and to force Icon to cede to their continued improper and anticompetitive demands or suffer significant cost overruns, potential termination of contracts with interested retailers, and the loss of relationships with potential nonunion contractors who have expressed an interest in working on the Project.

21. This is not the first time that the Union Defendants filed sham oppositions and appeals to the Los Angeles Planning Department, Planning Commission, and City Council based on false CEQA claims to delay development of large projects within Los Angeles County for the purpose of coercing, intimidating, and pressuring developers to surrender to their demands.

22. In fact, the Union Defendants' practice of challenging projects under the guise of CEQA is rampant and has become the status quo in Los Angeles County on projects that are of substantial enough scale to attract their attention. The Union Defendants' practice is well known by developers, the community, the City's council offices, the Department of City Planning, the Planning Commission, and the City Council. In fact, there is a website called www.phonyuniontreehuggers.com that tracks and documents the unions opposition to countless public and private sector projects throughout California

"on environmental grounds.… with the ulterior motive of extracting something of economic value from the public or private owner." As stated in an email from a planner at the Department of City Planning, Major Projects/Environmental Analysis unit: "From the experience in the Major Projects unit, the law firm Lozeau Drury, the Southwest Carpenters union, and/or the LIUNA union submit comment letters (electronically and written comments) on nearly every single recent EIR that our unit processes."

23. In fact, the Union Defendants utilize virtually the same "template" arguments and claims in their comment letters and appeals on every project they challenge and appeal.

24. The Union Defendants regularly conspire with SWAPE, LLC and Smith Engineering & Management, Inc., two consulting firms that provide misleading analyses on environmental impacts such as air quality and traffic to distort the facts and assist the Union Defendants in asserting frivolous challenges to projects' Environmental Impact Reports ("EIR").

25. The Union Defendants have a consistent pattern and practice of filing sham challenges administratively and litigation in the Superior Court of the State of California against other developers within Los Angeles County in which they assert similar false claims under CEQA in an effort to delay their projects and drive up project costs to control the labor market.

26. Most developers buckle under the pressure and settle with the Union Defendants, resulting in disproportionally more developments in higher rent areas that can support these increased costs to the detriment and at the expense of underserved and lower income areas such as Panorama City (where the Project site is located) where developers cannot sustain the higher costs and thus abandon their projects as they are no longer financially feasible. Unfortunately, the ultimate losers are the lower income communities that see little in the way of

quality community-enhancing development and more blight from boarded-up and dilapidated abandoned sites.

27. Icon brings this action to assert and defend its right to manage, control, and operate its business affairs free from the Union Defendants' conspiracy to dominate, monopolize, and control the sale of labor services to developers of large real estate projects within Los Angeles County thorough its blatant use of sham litigation to achieve its goals.

28. The Union Defendants' anti-competitive and abusive conduct has not only harmed Icon and other developers, nonunion contractors, the Panorama City community, and businesses and residents, it has also wasted the time and resources of public agencies, and now the courts.

29. Without intervention from this Court, the Union Defendants will stop at nothing to prevent the development of the Project and other similar large projects within Los Angeles County and to eliminate competing nonunion contractors from the labor market. By engaging in the anti-competitive activities described in this Complaint, the Union Defendants have violated the Sherman Act, the Clayton Act, the Labor Management Relations Act, the Racketeer Influenced and Corrupt Organizations Act, and the California unfair competition laws.

The Parties

30. Plaintiff Icon is a limited liability company organized in 2015 and authorized to do business in Los Angeles County. Icon is a real estate planning, investment, and development company currently developing the Icon at Panorama Project. William Ruvelson and Eran Fields are co-founders and principals of Icon.

31. Defendant SWRCC is a labor organization within the meaning of the Labor Act (29 U.S.C. § 151 *et seq.*). SWRCC represents over 50,000 members in Southern California, Nevada, Arizona, Utah, New Mexico, and Colorado.

32. Alexis Olbrei is the Chief of Staff of the SWRCC.

33. Pete Rodriguez is the President/COO of the SWRCC.

34. Dan Langford is the Executive Secretary – Treasurer/CEO of the SWRCC.

35. Ron Diament is a Special Representative of the SWRCC.

36. SWRCC, Olbrei, Rodriguez, Langford, and Diament transact business in this jurisdiction with their principal place of business at 533 S. Fremont Ave, Los Angeles, California 90071.

37. At all relevant times, Olbrei, Rodriguez, Langford, and Diament have been agents of SWRCC and are authorized to act for and on behalf of SWRCC.

38. Defendant LIUNA is a labor organization within the meaning of the Labor Act (29 U.S.C. § 151 *et seq.*).

39. Angel Olvera is an organizer with LIUNA.

40. Sergio Rascon is the Business Manager of LIUNA.

41. Ernesto Pantoja is a Special Projects Field Agent of LIUNA.

42. LIUNA, Olvera, Rascon, and Pantoja transact business in this jurisdiction with their principal place of business at 2005 W. Pico Blvd, 2nd Floor, Los Angeles, California 90006.

43. At all relevant times, Olvera, Rascon, and Pantoja have been agents of LIUNA and are authorized to act for and on behalf of LIUNA.

44. The Union Defendants were at all relevant times the agents, principals, partners, co-conspirators, and/or co-venturers of each other, and each of them acted within the course, scope, and authority of those relationships. As a result, the Union Defendants are jointly and severally liable for the acts alleged in this Complaint.

45. Upon information and belief, SWAPE, LLC is a California limited liability company with an office and place of business located at 2656 29th Street, Suite 201, Santa Monica, CA 90405.

46. SWAPE is an environmental consulting firm that conducts business within Los Angeles County, California. SWAPE provides consulting services to the Union Defendants directly or through its legal counsel.

47. The Union Defendants engaged the services of SWAPE in connection with their efforts to monopolize the labor market as described herein.

48. Upon information and belief, Smith Engineering & Management, Inc. ("SEM") is a California corporation with an office and place of business located at 5311 Lowry Rd, Union City, CA 94587.

49. SEM is a traffic and civil consulting firm that conducts business within Los Angeles County, California.

50. SEM provides consulting services to the Union Defendants directly or through its legal counsel.

51. The Union Defendants engaged the services of SEM in connection with their efforts to monopolize the labor market as described herein.

52. Plaintiff is unaware of the true names or capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this pleading to set forth the true names and capacities of said Doe Defendants when the same are ascertained. Plaintiff is informed and believes, and on that basis allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, or was acting in concert with, and with the permission, approval, and authorization of, the specifically named Defendants.

Factual Allegations

I. Icon proposes a transformative redevelopment project that the local community overwhelmingly supports.

53. Retail company Montgomery Ward previously owned and operated a large store at 14665 Roscoe Boulevard in Panorama City, California. Montgomery Ward closed its business in 2001. The building at Roscoe Boulevard has sat vacant since 2001, and the area has experienced homeless encampments, gang activity, graffiti, and other criminal activities.

54. In 2016, Icon paid $18 million for the nearly nine-acre parcel on Roscoe Boulevard as the first step in its plan to transform the lot previously occupied by Montgomery Ward.

55. On the abandoned site, Icon plans to construct 623 residential apartments, a 17,000 square foot public park, and 60,000 square feet of commercial space to potentially include pedestrian active retail at an estimated cost of $150 million to Icon.

56. The proposed development is named the "The Icon Panorama" and has been enthusiastically greeted by the City and the Community.

57. Neighborhood residents and groups have described the Project as a job-creator; "provid[ing] much needed housing"; "exactly what we need"; and "a critical element for the area's renewal."

58. For example, Jack Waizenegger, a 30 year resident of Panorama City, wrote in a letter of support for the Project: "Development of the project, The ICON at Panorama City, will be the catalyst to begin restoration of our community. In addition, it will clean up the blight left from the defunct Montgomery Ward ruins, create good jobs during and after construction, provide much needed housing, add new desirable shopping and entertainment, complement the future Metro line along Van Nuys Boulevard, attract more redevelopment, and become a centerpiece which all of our community can be

proud of. I do not know of a single neighbor or business owner who objects, instead they are all eager and excited to see this project arrive."

59. Stephanie Cervantes, a 20 year resident of Panorama City wrote in her letter of support: "As you know, we have the densest residential population of any community in the valley, yet our housing is generally older and run down. We need new and beautiful apartments so that instead of moving out of Panorama City to other nicer neighborhoods, we stay here in the same community where we were born and where our parents and grandparents live. The residents here are good hard-working folks who want to give our children a better quality of life than we had. Moving into another community has been the answer for so many, but as long-time Panorama City residents move out, the community loses its soul. If there was a better housing alternative here in the neighborhood, more of us would stay. All of us go elsewhere to shop because our only shopping center (the Panorama Mall) is old and lacks any of the new and interesting elements that everyone else takes for granted when they shop at the gorgeous newer centers in Burbank, Woodland Hills or Universal City. Icon Panorama will give us a high-quality shopping experience with a beautiful open park with plenty of parking. We need this development to happen. Los Angeles needs for this development to happen."

60. Local business owners have "applaud[ed] the developers and their efforts to transform the Panorama City neighborhood." Jeff Skobin, VP of Business Operations for Galpin Motors, one of the area's largest employers, wrote in Galpin's letter of support: "While the rest of Los Angeles has enjoyed tremendous development and economic boom, Panorama City has continued to languish. There have been two failed attempts in the past to revitalize the site, both of which were headed by out of state developers. This development is absolutely critical for the revitalization of Panorama City and the surrounding

communities. We desperately need this dynamic mixed-use project with its proposed community park that will become the social hub of our community. We deserve such a quality project."

61. Saul Mejia, President of the Panorama City Chamber of Commerce wrote in the Chamber's letter of support: "After driving around other parts of Los Angeles such as North Hollywood and Koreatown and seeing their beautiful new developments, it is disappointing to return to Panorama City and not see the same. Our community was once known as the heart of the San Fernando Valley. With this new project and those that will follow it, we will be beating strong once again. We applaud The Icon Company for coming into an area that was considered unworthy of development until recently."

62. Gregory Wilkinson, Chair of the Panorama City Neighborhood Council wrote in the Council's letter of support: "Further, the lost economic activities for having such a large part of our business district has been a real loss to our residences and other local businesses. We are tired of seeing the Site being left to waste away and our community suffer as a result."

63. Michel Moore, Chief of Police for the Los Angeles Police Department noted that the vacant site "has been occupied by the homeless/transients" and "has fallen victim to vandalism and has been burglarized." Chief Moore emphasized, "This location would be ideal as a redevelopment project. A new development would create jobs and benefit the local economy. It is a densely populated area and in desperate need of redevelopment. The developer, ICON, has taken on this challenge and proposed a project which we feel not only fits the community but benefits the city as well."

64. Tescia Uribe, Chief Program Officer for PATH Housing Partnerships Program, whose mission is to end homelessness for individuals, families, and

communities, applauded "[t]he fact that they are building desperately needed housing in a community that has been largely ignored by development."

65. James K. Theiring, Chief Executive Officer of Mission Community Hospital located in Panorama City that employs over 700 workers wrote: "As active participants in our community, we have not seen any significant business growth in recent years and struggle to find close partnerships. In this regard, we believe that the development of Icon Panorama will bring needed jobs, businesses and contemporary housing into the community, as well as modern attractions for residents of Panorama City and neighboring towns."

II. The Union Defendants raised sham challenges to the Icon Project at every step of the CEQA administrative process.

66. CEQA sets forth a process for evaluating and publicly disclosing the environmental impacts of a proposed project.

67. For projects subject to CEQA, the agency prepares an initial study of the project's impact on the environment.

68. If necessary, the lead agency then sends a Notice of Preparation to inform the public that it will prepare an EIR for a project. The lead agency provides at least 30 days to comment on the Notice of Preparation. The lead agency may also hold meetings with experts and the public during this period.

69. The lead agency then prepares a draft EIR ("DEIR") and provides the public an opportunity to comment on the draft. The lead agency can also issue revised DEIRs. The lead agency then prepares a final EIR ("FEIR") and responds to the comments on the DEIR. The agency then holds public hearings and makes a decision on the project.

70. In Los Angeles, the Los Angeles Advisory Agency initially approves the project. An interested party can appeal that decision to the Los Angeles Planning Commission, then to the Planning and Land Use Management Committee. If the Planning and Land Use Committee approves the project, an

interested party can appeal the decision to the City Council. Once an interested party has exhausted all administrative remedies, it can appeal the approval of the project by filing a Petition for a Writ of Mandate in California Superior Court.

71. On April 6, 2017, the Department of City Planning unanimously approved Icon's DEIR for the Panorama Project.

72. On May 22, 2017, the Union Defendants sent to the Department of City Planning, via e-mail and U.S. mail, comments challenging the DEIR for the Project.

73. The May 22, 2017 letter falsely stated that the DEIR failed to analyze the soil for hazardous chemicals at the Project site. In fact, the Union Defendants had a copy of the DEIR and knew that it analyzed the soil for hazardous chemicals at the Project site.

74. On August 31, 2017, the Department of City Planning recirculated a revised DEIR that addressed comment letters from City of Los Angeles's Building Departments, neighborhood stakeholders, and the Union Defendants.

75. On February 23, 2018, the Department of City Planning issued the FEIR for the Project.

76. On March 19, 2018, the day before the first public hearing on the Project, the Union Defendants sent another letter via e-mail challenging the FEIR. The letter urged the Department of City Planning to deny environmental certification of the Project.

77. The March 19, 2018 letter falsely stated that the City of Los Angeles Fire Department ("LAFD") found that fire protection for the Project would be inadequate. The Union Defendants knew that the LAFD found that the fire protection for the Project would be adequate if the Project made certain changes that are standard practice.

78. The March 19, 2018 letter also falsely stated that the FEIR refused to analyze the impact the project would have on fire protection. In fact, the Union Defendants knew that the FEIR analyzed the impact the Project would have on fire protection.

79. On March 20, 2018, at the first public hearing on the Project before the Los Angeles Advisory Agency, the Union Defendants opposed the Project and repeated the false statements about the Project contained in the March 19, 2018 letter. The Advisory Agency unanimously approved the Project the same day.

80. The Union Defendants appealed the Advisory Agency's decision to the Los Angeles Planning Commission.

81. On April 23, 2018, the Union Defendants sent another letter via e-mail and overnight mail to the Planning Commission challenging the Project.

82. The Union Defendants continued with their sham challenges by falsely claiming that the revised Project "has never been analyzed in any CEQA document," and "will dramatically increase almost all of the Project's environmental impacts," and that, because the revised Project has 48% more residential units than the original Project, it will have 48% greater impacts, conveniently ignoring that the overall scope of the revised Project was actually reduced by decreasing the commercial floor area proposed under the original Project from 200,000 to 60,000 square feet, a reduction of 70% which significantly reduced the Project's overall environmental impacts. In fact, the FEIR undertakes a thorough analysis to conclude that such impacts would be reduced from those of the original Project.

83. The Union Defendants, which purport to be advocating on behalf of environmental protection, seek to indict the Department of City Planning for advancing the purposes of CEQA by developing a less impactful project in

response to comments on the DEIR and analyzing that project as a new alternative in the FEIR.

84. The Union Defendants also falsely claimed that the Department of City Planning is required to adopt a different reduced project, which the EIR identified as the environmentally superior alternative. In certifying the EIR, the Advisory Agency correctly found this alternative to be infeasible, as it would not satisfy the Project's underlying purpose and key objectives to the same degree. In particular, it would not support regional housing goals and transit-oriented development or provide the critical mass and mix of uses necessary to successfully activate the area.

85. Inexplicably, the April 23, 2018 letter also falsely stated that the DEIR "states clearly that the Project proposal is for a ***maximum*** of 422 residential units." (Emphasis added.) In fact, the Union Defendants had a copy of the DEIR and knew or should have known that it did not state that the Project proposal is for a maximum of 422 residential units.

86. On April 26, 2018, the Planning Commission unanimously approved the Project over the Union Defendants' objections.

87. At the April 26, 2018 hearing, Planning Commission President David Ambroz chided the Union Defendants' abuse of process and sham litigation tactics, stating:

> I would like to say a few things. I feel as though ***the [Union Defendants'] appeal was specious at best*** and in my lawyer days I would say I would deny it with prejudice. I think ***CEQA has been weaponized*** and it's a shame that it is so. Things and assertions like "soil wasn't studied and would harm people" ***is just patently false***. And the staff provided information to this commission that Phase 1 and Phase 2 studies were done and ***that is in the record and available to the appellant and I am just unclear why someone would make an assertion that is just patently false***. I am dismayed that I have rarely seen CEQA used to actually protect the environment. It seems here and I would be curious to know, and I am not asking, that this seems to be a labor

> question, are you going to use union labor or not. And while that is not our decision to make it is a shame that we are now seeing CEQA used as a tool to both delay community redevelopment and potentially not harm by not improving the environment so dismaying and a trend that I do not see stopping anytime soon without significant reform.

88. On May 25, 2018, the Union Defendants again appealed the decision to the Planning and Land Use Management Committee.

89. On August 21, 2018, the Planning and Land Use Management Committee unanimously approved the Project.

90. The Union Defendants again appealed the decision to the Los Angeles City Council.

91. Before the City Council hearing on the Project, the SWRCC met with the City Council's office to further pressure them to oppose the Project.

92. On August 29, 2018, the City Council unanimously approved the Project.

93. On September 28, 2018, following the approval of the Project, SWRCC Chief of Staff Olbrei met with Jim Dantona, Chief of Staff of the area's City Council Office to try to discuss a labor agreement on the Project. According to Ackley Padilla, the area's City Council Office's Deputy Chief of Staff, Olbrei left the meeting amenable to the idea of providing SWRCC the right to match Icon's other subcontractors' pricing. On October 1, 2018, the final day to appeal the City Council's decision, the Union Defendants filed their suit as they were unable to coerce and force Icon to pledge in advance that it would use exclusively union contractors on the Project.

94. Throughout the entire administrative process, the Union Defendants were the *only* individuals or entities to continuously challenge the Project's compliance with CEQA and publicly oppose the Project. In fact, as detailed herein, the Project received overwhelming support from the City and Community.

95. Icon spent significant time and money responding to the Union Defendants' sham CEQA challenges at the administrative stage.

III. At the same time the Union Defendants pursued their sham CEQA challenges, the Union Defendants demanded that Icon agree to use exclusively union labor on its Project.

96. To facilitate their attempt to assert monopolistic control of the sale of labor services to developers of large projects in Los Angeles County, the Union Defendants have coerced or attempted to coerce developers like Icon to use exclusively union contractors.

97. In mid-April 2017, after the Department of City Planning released the DEIR but before the Unions Defendants filed their first opposition, Ron Diament, Special Representative for SWRCC, contacted Icon Principal Ruvelson and told him that he had learned about the Project and wanted to talk with him about having Icon use exclusively union contractors on the Project.

98. Ruvelson explained that Icon was willing to use both union and nonunion contractors on the Project, and that Icon would implement a competitive bidding process to select contractors for the Project to ensure that it met its budgets.

99. Unbeknownst to Icon, at the same time that Diament sought to discuss Icon's labor needs, the Union Defendants were preparing their sham CEQA challenges as described above.

100. After Icon received the Union Defendants' May 22, 2017 challenge to the Project, Ruvelson emailed Diament to express confusion about the Union Defendants' tactics, stating: "Ron, Please be in touch about this. I'm confused."

101. Diament told Ruvelson that if Icon agreed to use exclusively union contractors on the Project, the Union Defendants would drop their CEQA challenge to the Project. At no time did Diament ever tell Ruvelson that Icon also

needed to address any of the purported environmental issues contained in the Unions' CEQA challenge.

102. On June 8, 2017, Ruvelson met with Diament and Olbrei at SWRCC's training facility in Sylmar, CA.

103. At the June 8 meeting, Diament and Olbrei continued to pressure Ruvelson to use exclusively union contractors for the Project.

104. The next day, Diament emailed Ruvelson a list of four "Union General Contractors" that Icon should use for the Project: Morley Builders, Inc., W.M. Klorman Construction Corporation, Charles Pankow Builders, Ltd., and Bomel Construction Company. Diament stated that "There's more. . . . I started with these 4 and I will send out the complete list later."

105. Over the next few months, the administrative process and the Union Defendants' sham CEQA challenges continued.

106. On October 16, 2017, Icon principal Eran Fields contacted Diament to express his frustration with the Union Defendants' continuing challenges to the Project in an effort to force Icon to use exclusively union contractors. Fields reiterated that Icon was willing to use union contractors, as well as nonunion contractors, through a competitive bidding process. Fields stressed to Diament that due to the Project's location and projected rents, that it was infeasible for Icon to pledge in advance to use exclusively union contractors because of the higher labor costs but that Icon would work with the Union Defendants in good faith to include them in certain areas of the Project that Icon could afford.

107. That same day, Diament emailed Fields and stated, "I have some influence with these folks, [*i.e.*, the Unions]," and that they could work out a deal.

108. On March 14, 2018, one week before the first public hearing on the Project, Diament sent a text message to Fields asking to meet before the hearing and implying that the Union Defendants would drop their CEQA challenges only

if Icon agreed to use exclusively union contractors. In response to Fields questioning why he wanted to meet, Diament stated: "I know the road you need to be on the get the job to move forward," and in response to Fields' response of "Sorry, no idea what that means. You mean opposition from union if we don't?" Diament responded: "I know that there's been some of that from a few, including the carpenters."

109. In response, Fields texted the following: "As I mentioned to you in the past, we won't be coerced into using union labor due to threats of opposition but are willing to explore ways to include union labor on this job if feasible. Meeting before our hearing should have no bearing on that."

110. Diament immediately responded: "I'm just making suggestions on how to navigate through the woods. If you hire good contractors that participate in apprenticeship programs are tikkun olamins, it makes everyone smile."[1]

111. Fields responded: "Thanks Ron but it's very simple for us. We do our best and always act honorably and honestly. If we can find a way to work together that would be great. If we can't then it won't be for lack of trying."

IV. LIUNA agreed to give "Favored Nation" status to another Los Angeles County apartment developer.

112. G.H. Palmer, Inc. ("G.H. Palmer") is a real estate developer with apartment projects in Los Angeles County. G.H. Palmer claims to own more than 11,000 apartment units in Southern California.

113. Upon information and belief, LIUNA agreed with G.H. Palmer to grant G.H. Palmer "Favored Nation" status in its project labor agreements, ensuring that no other developer could obtain a more competitive agreement than the Union Defendants had with G.H. Palmer.

[1] Tikkun Olam is a concept in Judaism interpreted as an aspiration to behave and act constructively and beneficially.

114. Upon information and belief, LIUNA agreed with G.H. Palmer that they would never agree to allow a developer to use nonunion labor on a project. Per the Favored Nation agreement with G.H. Palmer, LIUNA agreed to demand use of exclusively union labor on all projects.

V. The Union Defendants offered to drop their sham CEQA litigation and allow the Project to timely proceed in exchange for exclusivity.

115. Despite the Union Defendants' sham CEQ challenges (as described above), Icon attempted to discuss possible ways to work together with the Union Defendants on the Project that did not require Icon to pledge in advance to use exclusively union labor, but met Icon's labor budget needs.

116. On May 2, 2018, Olbrei and Rodriguez from SWRCC and Pantoja and Rascon from LIUNA had a breakfast meeting with Ruvelson and Fields to discuss the Project and how to possibly work together. During the approximately two-hour meeting, Icon again explained that given the Project's location and the area's low rents, it could not support the higher cost of using exclusively union contractors, but that it would work with the Union Defendants to try to find areas in the Project to include their trades. Not once was the environment raised as a legitimate concern by the Union Defendants during the meeting. Icon left the meeting cautiously optimistic as the Union Defendants represented that it would be amenable to entering into a letter of intent between the parties that would require Icon to make good faith efforts to find ways to include the Union Defendants on the Project.

117. On May 24, 2018, one day before the Union Defendants filed yet another appeal of the Project's approval, Olbrei of SWRCC emailed Fields, stating that if Icon would sign a Letter of Understanding ("LOU") promising to use exclusively union contractors, in exchange the Union Defendants would withdraw its CEQA challenges without Icon doing anything to address the purported environmental issues. Specifically, the LOU promised that:

> the Carpenters' Union ***will promptly express its support for the Project before governmental bodies and/or community organizations in connection with any and all required government approvals***. Such expression of support may include, among other things, sending letters of support to appropriate entities; appearing in support at public hearings and/or community hearings; contacting the mayor and/or other elected or appointed officials to express support; and generally working together with the Owner/Construction Manager to obtain full entitlements and approvals for the Project to proceed. (Emphasis added.)

118. Fields responded to Olbrei's email: "Thanks for the LOU. As I'm sure you're aware, your proposed language is a far cry from what we discussed at breakfast a few weeks ago. As we mentioned to you, this project can only support a certain budget given its location and the project's projected rents. As a result, we cannot commit to anyone unless the numbers work. Nothing will change that. What we're willing to do is make a good faith effort to try to find ways to work with the Carpenters Union and for that matter, anyone, that can help us build this project at a feasible budget. That being said, please find attached redlined LOU that reflects our discussion and consistent position."

119. The next day, on May 25, Pantoja of LIUNA wrote to Fields that contrary to what they discussed at their breakfast meeting, they could not agree to anything other than the exclusivity arrangement in the proposed Letter of Commitment ["LOC"] because "of the Favored Nation Clause as it relates to our agreement with G.H. Palmer." Pantoja wrote that LIUNA "couldn't enter into anything different then [*sic*] we have with G.H. Palmer." Like SWRCC's LOU, in exchange to agreeing to use exclusive union under the LOC, LIUNA promised via its LOC:

> 17. The Union on its own behalf and/or through their participating individuals, members, labor organizations, unions, officers, representatives, business managers, agents, consultants, independent contractors (including any agents, persons or entities who assisted with preparation of comment letters and related appendices) or attorneys (or any other person action on their behalf or otherwise under the direction or control), or any of them (collectively 'Affiliated Parties') ***will not***

> ***participate in any meetings or hearings to challenge, oppose, contest, take adverse actions or bring suit or file any claim, complaint or opposition in any forum or before any agency, body, court or other tribunal, whether administratively, quasi-judicially, judicially or otherwise regarding a Residential/Commercial Podium Project covered by this Agreement.*** (Emphasis Added.)
>
> a. Furthermore, on behalf of itself and its Affiliated Parties, ***Union agrees that it will not assist, support, encourage or cooperate with any Affiliated Parties, or any other person or entity of any kind who challenges, opposes, contests, intervenes, takes adverse action or bring suit or files any claim, complaint or opposition in any forum or before any agency, body, court or other tribunal, whether administratively, quasi-judicially, judicially or otherwise, regarding a Residential/Commercial Podium Project and will take all lawful and good faith steps it deems necessary to ensure that all of its Affiliated Parties abide by the terms in the preceding paragraph and this Agreement.*** (Emphasis added.)

VI. When Icon did not cede to the Union Defendants' exclusivity demands, the Union Defendants brought their sham litigation to state court.

120. Having failed in their efforts to coerce, intimidate, extort and pressure Icon to use exclusively union contractors on the Project through its abuse of the administrative process from May 2017 through August 2018, the Union Defendants continued to press their sham CEQA challenges to delay the Project and drive up its costs by filing a Petition for Writ of Mandate in the Superior Court of the State of California County of Los Angeles. The Petition again asserted violations of CEQA and requested that the Court set aside the Project approvals.

121. The same day, SWRCC Senior Field Representative Dan Langford told Fields during a phone conversation that the Union Defendants had specifically budgeted money for their CEQA litigation scheme. Langford made it clear that the Union Defendants did not truly believe in the substance of their CEQA claims by telling Fields that if the Union Defendants did not challenge Icon's Project they would simply challenge another developer's project. Langford

further made clear that the Union Defendants' true goal was to delay the Project and drive up costs.

122. Immediately following Fields' discussion with Langford, Fields texted Ron Diament from SWRCC the following: "I spoke with Dan and he emphatically said that you want the full labor agreement or you'll sue. He suggested that we'd be better off paying for it now by hiring you versus getting the project delayed and the impacts it would cause. He boasted that they have the budget for it so it won't affect you but will significantly affect us."

123. Icon has continued to discuss with the SWRCC and the LIUNA the importance of the Project to the community and its willingness to use union contractors as well as nonunion contractors through a competitive bidding process, but the Union Defendants continue to abuse the CEQA process to force Icon to cede to their demands.

VII. The Union Defendants have a pattern and practice of filing sham CEQA litigation to delay large development projects within Los Angeles County (as well in other California counties).

124. Upon information and belief, the Union Defendants maintain databases that track general contractors, subcontractors, permit applications, as well as when cities release draft Mitigated Negative Declarations (environmental reports that are less comprehensive than EIRs) and EIRs for major construction projects. The Union Defendants use the databases to decide which contractors to target for CEQA litigation based on the size and scope of the project, without regard to the merits of the CEQA claims.

125. Upon information and belief, the Union Defendants used those databases to identify the Icon Panorama Project as a target for its scheme.

126. This is not the first time that the Union Defendants filed sham oppositions and appeals based on false CEQA claims to delay development projects within Los Angeles County, California for the sole purpose of coercing,

intimidating, extorting, and pressuring developers to surrender to their demands. The Union Defendants use the CEQA process as a means to secure control of the labor market and dictate the cost of labor for all construction projects in the County.

127. As an example, upon information and belief, LIUNA and/or SWRCC are currently utilizing the same sham challenges under the guise of alleging CEQA-based claims on the following large mixed use projects in Los Angeles County representing millions of square feet of residential and commercial space that include thousands of units and billions of dollars of development at a time when Los Angeles is experiencing a significant housing shortage that has resulted in a homeless crisis:

- 6901 West Santa Monica Boulevard, Los Angeles, CA
- 222 West Second Street, Los Angeles, CA
- 129-135 West College Street, Los Angeles, CA
- 1240-1260 South Figueroa Street, Los Angeles, CA
- 1107-1121 North Mansfield Avenue, and 1106-1126 North Orange Drive, Los Angeles, CA
- 520-532 South Mateo Street, Los Angeles, CA
- 676 South Mateo Street, Los Angeles, CA
- 1001 Olympic Blvd., Los Angeles, CA
- 1033-1057 South Olive Street, Los Angeles, CA
- 1375 St. Andrews Place, Los Angeles, CA
- 1030-1380 North Broadway and 1251 North Spring Street, Los Angeles, CA
- 1000-1022 South Hill Street, Los Angeles, CA and 220 and 226 West Olympic Blvd., Los Angeles, CA
- 1000 West Temple Street, Los Angeles, CA

FIRST CAUSE OF ACTION

Attempted Monopolization in Violation of

Section 2 of the Sherman Act

128. Paragraphs 1 through 127 are re-alleged and reincorporated herein.

129. The sham and baseless oppositions to construction permit applications on environmental or regulatory grounds is a strategy that labor organizations like the Union Defendants in this case use to eliminate competing nonunion contractors from the labor market. Developers who cannot pledge to use exclusively union labor find their projects blocked entirely or their costs increased significantly if their permits are challenged. Thus, developers like Icon suffer injury no matter which option they choose—higher labor costs if they pledge to use only union labor on their projects, or higher costs in delays of their projects if they do not succumb to the Union Defendants' tactics and defend against the sham litigation and proceedings that the Union Defendants pursue both administratively and in the courts.

130. Through such illegal conduct, the Union Defendants seek to obtain monopoly power over the sale of labor services to developers (like Icon) of large real estate projects within Los Angeles County, California (the "Relevant Market"). Such large real estate projects are generally those that fall within the purview of the Department of City Planning's "Major Projects Unit," which enables the Department to conduct a more thorough and focused analysis of large, complex projects that have the potential to generate the most significant effects on the City's infrastructure, local economy, and environment.

131. Unions, Icon, other project owners/construction contractors which use nonunion labor, other project owners/construction contractors which use union labor only, and the community at large recognize the existence of the Relevant Market as an area of effective competition for labor services due to the

high demand and desirability of project development and construction such as Icon's Panorama Project.

132. The Union Defendants compete against nonunion contractors in the Relevant Market.

133. The Union Defendants have sought to exercise control and monopoly power over the Relevant Market by engaging in predatory, unlawful, fraudulent and/or other anti-competitive business practices, including but not limited to initiating or threatening to initiate sham and objectively baseless CEQA-based protests and litigation that will prevent or delay the development of construction (including the Project) within the Relevant Market. Such baseless protests and lawsuits, which the Union Defendants file over and over again, are the means by which they conceal their attempts to control/lower the supply of labor and drive up the cost of using nonunion labor such that nonunion contractors are excluded from the Relevant Market, interfering directly with Icon's relationships with, and right to open competitive bidding to, construction contractors that use nonunion labor.

134. The Union Defendants' lawsuits and threats of lawsuits represent a significant barrier to entry to the Relevant Market for any price-competitive nonunion contractor that seeks to obtain work from developers like Icon. By raising the aggregate wage rate, the Union Defendants' anti-competitive activities also drive up the cost of projects because only union labor can be used, allowing the Union Defendants to maintain their market power in such downstream markets. As a result of the Unions' illegal actions, market labor prices will rise to the level set by the Union Defendants when nonunion contractors are driven out of the market.

135. The Union Defendants' acts have prevented or suppressed competition, and continue to prevent or suppress competition, and these acts have

permitted the Union Defendants to seek a dominant and monopolistic market position and wage control in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

136. The Union Defendants have made clear their intent to prevent development of any additional project in the Relevant Market on which union labor is not used. Their objective is to obtain a monopoly by increasing and controlling wage rates and/or destroying competition in the Relevant Market and to obtain and maintain a dominant market position.

137. Competition in the Relevant Market has suffered, and will continue to suffer, regardless of whether monopoly power is attained because through their anti-competitive activities, the Union Defendants will obtain the unilateral power to set wage rates in the Relevant Market.

138. The Union Defendants have willfully sought to acquire and maintain a monopoly in the Relevant Market through predatory, unlawful, fraudulent and/or other anti-competitive business practices. The Union Defendants' intent to monopolize can be inferred from the nature of their illegal conduct.

139. The Union Defendants' intent, power, and resources create a dangerous probability that they will succeed in monopolizing the Relevant Market, causing the significant anticompetitive consequences described above.

140. The Union Defendants' illegal conduct is not exempted from the Sherman Act or any other anti-trust law because they have sought to act in concert with project-owners like Icon, construction contractors, and consulting companies (SWAPE and SEM) – all non-labor groups – to achieve a monopoly in the Relevant Market and have sought to obtain that monopoly through illegitimate means and for illegitimate purposes. In particular, if developers (like Icon) or their contractors/designated agents do not succumb to the Union Defendants' demands that they use exclusively union labor on their construction projects, the Union

Defendants continue to assert their sham and objectively baseless protests and litigation, which have nothing to do with the legitimate goals of a union or the purpose of labor law protections.

141. Icon is a "person" entitled to sue under 15 U.S.C. § 15 because it has been injured as a direct result of the Union Defendants' antitrust violations described herein. Icon's injury was caused by a substantial reduction in the available supply of labor in the Relevant Market as a result of the Union Defendants' illegal conduct, which was intended to, and did in fact, have an anticompetitive effect beyond the costly delays in Icon's Project and the other damages it has suffered. Specifically, the Union Defendants' illegal conduct has removed nonunion labor from the Relevant Market: either developers (i) succumb and pledge to use exclusively union labor, substantially driving up their labor costs, or (ii) decline such a pledge, suffer delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incur substantial litigation costs in defending against that litigation.

142. As a direct and proximate result of the Union Defendants' above-described anti-competitive activities, Icon has suffered business injuries and/or loss of property by, among other things, threats to their project, loss of goodwill, significant lost profits, increase in interest rates, costs increases due to increases in the minimum wage, possible retail lease losses, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers of the Project and other projects that project-owners seek, or will seek, to develop, and significant cost overruns due to delays in construction and carrying costs of those projects.

143. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

144. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

SECOND CAUSE OF ACTION

Conspiracy to Monopolize in Violation of Section 2 of the Sherman Act

145. Paragraphs 1 through 144 are re-alleged and reincorporated herein.

146. The Union Defendants knowingly and willfully conspired among themselves and others, including the non-labor groups described above, to monopolize the Relevant Market.

147. The Union Defendants' specific intent to monopolize the Relevant Market is apparent from the character of the Unions' conduct and their actions as alleged in this Complaint.

148. The Union Defendants committed overt acts and engaged in other conduct pursuant to, and in furtherance of, the conspiracy. The Union Defendants have engaged in predatory, unlawful, fraudulent and/or other anti-competitive business practices directed toward achieving the objective of controlling labor costs and destroying competition in the Relevant Market as described above.

149. The Union Defendants did the acts and things alleged in this Complaint pursuant to, and in furtherance of, the conspiracy. By virtue of the Union Defendants' statements, behavior, conduct, overt acts, and omissions to prevent or substantially delay Icon from proceeding with the Project and other construction projects, the Union Defendants have the specific intent to monopolize the Relevant Market by controlling wage rates and excluding nonunion contractors and owner-developers which choose to work with nonunion contractors (like Icon) from the construction industry.

150. Icon is a "person" entitled to sue under 15 U.S.C. § 15, because it has been injured as a direct result of the Union Defendants' antitrust violations

described herein. Icon's injury was caused by a substantial reduction in the available supply of labor in the Relevant Market as a result of the Union Defendants' illegal conduct, which was intended to, and did in fact, have an anticompetitive effect beyond the costly delays in Icon's Project and the other damages it has suffered. Specifically, the Union Defendants' illegal conduct has removed nonunion labor from the Relevant Market: either developers (i) succumb and pledge to use exclusively union labor, substantially driving up their labor costs, or (ii) decline such a pledge, suffer delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incur substantial litigation costs in defending against that litigation.

151. As a direct and proximate result of the Union Defendants conspiracy to engage in anti-competitive activities in violation of the Sherman Act, Icon has suffered business injuries and/or loss of property by, among other things, threats to their projects, loss of goodwill, significant lost profits, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers for the Project and other projects Icon and other owners seek to develop, and significant cost overruns due to delays in construction of those projects.

152. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

153. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

THIRD CAUSE OF ACTION

Directing a "Group Boycott" in Violation of Section 1 of the Sherman Act

154. Paragraphs 1 through 153 are re-alleged and reincorporated herein.

155. The Union Defendants have sought to control/lower the supply of labor and drive up the cost of using nonunion labor such that nonunion

contractors are excluded from the Relevant Market by organizing and leading an unlawful group boycott in violation of Section 1 of the Sherman Act.

156. The Union Defendants have directed and orchestrated concerted efforts between and among various union contractors in the Relevant Market to enter into tacit and/or express agreements with the Union Defendants and each other to offer developers only union labor on any projects within the Relevant Market and refuse to work with developers who do not accede to their demands to use only union labor.

157. For example, as explained above in Paragraphs 112-114, 116-119, Defendant LIUNA refused to negotiate with Icon over an alternative labor arrangement, in part, because LIUNA entered a "most favored nation" agreement with a competing developer whereby LIUNA agreed with the competing developer not to enter more favorable agreements with other developers, such as Icon. Given the lower costs of nonunion labor, this type of agreement ensures that LIUNA, and the union contractors which participate in the unlawful group boycott with LIUNA described above, will never agree to allow a developer to use any nonunion labor on any project, effectively foreclosing nonunion contractors from entering the Relevant Market.

158. On information and belief, union contractors who have agreed to participate in the unlawful group boycott described above have refused to work with developers like Icon, and/or bid on any development projects, where the developer does not pledge to use only union labor.

159. As part of this unlawful group boycott, the Union Defendants have made clear their intent to prevent development of medium to large scaled projects that require environmental review in the Relevant Market on which union labor is not used. Their objective is to obtain a monopoly by increasing and controlling

wage rates and/or destroying competition in the Relevant Market and to obtain and maintain a dominant market position.

160. The Union Defendants have willfully sought to acquire and maintain a monopoly in the Relevant Market through predatory, unlawful, fraudulent and/or other anti-competitive business practices such as directing the above-described group boycott. The Union Defendants' intent to monopolize can be inferred from the nature of their illegal conduct.

161. The Union Defendants' illegal conduct is not exempted from the Sherman Act or any other anti-trust law because they have sought to act in concert with construction contractors and consulting companies like SWAPE and SEM – all non-labor groups – to achieve a monopoly in the Relevant Market and have sought to obtain that monopoly through illegitimate means and for illegitimate purposes, including an unlawful group boycott as described above.

162. The Union Defendants-led unlawful group boycott is a per se violation of section 1 of the Sherman Act. Alternatively, the Union Defendants-led unlawful group boycott violates the Rule of Reason because it harmed not only Icon's business, but also competition in the Relevant Market among suppliers of labor for development projects as described herein.

163. Icon is a "person" entitled to sue under 15 U.S.C. § 15, because it has been injured as a direct result of the Union Defendants' antitrust violations described herein. Icon's injury was caused by a substantial reduction in the available supply of labor in the Relevant Market as a result of the Union Defendants' illegal conduct, which was intended to, and did in fact, have an anticompetitive effect beyond the costly delays in Icon's Project and the other damages it has suffered. Specifically, the Union Defendants' illegal conduct has removed nonunion labor from the Relevant Market: either developers (i) succumb and pledge to use exclusively union labor, substantially driving up their labor

costs, or (ii) decline such a pledge, suffer delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incur substantial litigation costs in defending against that litigation.

164. As a direct and proximate result of the Unions' above-described anti-competitive activities, Icon has suffered business injuries and/or loss of property by, among other things, threats to their projects, loss of goodwill, significant lost profits, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers of the Project and other projects that project-owners seek, or will seek, to develop, and significant cost overruns due to delays in construction of those projects.

165. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

166. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

FOURTH CAUSE OF ACTION

Conspiracy and Attempt to Enter Into Exclusive Dealing Arrangement in Violation of Section 3 of the Clayton Act and Section 1 of the Sherman Act

167. Paragraphs 1 through 166 are re-alleged and reincorporated herein.

168. By engaging in predatory, unlawful, fraudulent and/or other anti-competitive business practices, including but not limited to initiating or threatening to initiate sham and objectively baseless CEQA-based protests and litigation that will prevent or delay the development of construction (including the Project) within the Relevant Market, the Union Defendants seek to create an unlawful exclusive dealing arrangement between themselves and contractors which work on development projects like Icon's Project, all of which is prohibited by section 3 of the Clayton Act, 15 U.S.C. § 14. Under this exclusive dealing

arrangement, whereby contractors pledge to the Union Defendants in advance of any bids the contractors may submit on construction projects in the Relevant Market that they will use exclusively union labor on such projects, union contractors become the exclusive source of labor services available for purchase by developers like Icon.

169. The Union Defendants knowingly and willfully conspired among themselves and others, including the non-labor groups described above, to obtain an exclusive dealing arrangement in violation of section 3 of the Clayton Act.

170. The Union Defendants' specific intent to monopolize the Relevant Market through an unlawful exclusive dealing arrangement is apparent from the character of the Union Defendants' conduct and their actions as alleged in this Complaint.

171. The Union Defendants committed overt acts and engaged in other conduct pursuant to, and in furtherance of, the above-described conspiracy. The Union Defendants have engaged in predatory, unlawful, fraudulent and/or other anti-competitive business practices directed toward achieving the objective of controlling labor costs, eliminating or foreclosing a substantial share of the nonunion labor supply that exists or previously existed in the Relevant Market, and destroying competition in the Relevant Market.

172. The Union Defendants did the acts and things alleged in this Complaint pursuant to, and in furtherance of, the conspiracy. By virtue of the Union Defendants' statements, behavior, conduct, overt acts, and omissions to prevent or substantially delay Icon from proceeding with the Project and other construction projects, the Union Defendants have the specific intent to enter into an exclusive dealing arrangement in violation of Section 3 of the Clayton Act.

173. The Union Defendants' illegal conduct is not exempted from the Clayton Act or any other anti-trust law because they have sought to act in concert

with construction contractors and certain consulting companies (SWAPE and SEM) – all non-labor groups – to achieve a monopoly in the Relevant Market and have sought to obtain that monopoly through illegitimate means and for illegitimate purposes. In particular, if owners (like Icon) or their contractors/designated agents do not succumb to the Union Defendants' demands that they use only union labor on their construction projects, the Union Defendants continue to assert their sham and objectively baseless protests and litigation, which have nothing to do with the legitimate goals of a union or the purpose of labor law protections.

174. The exclusive dealing arrangement described above violates the Rule of Reason because it harmed not only Icon's business, but also competition in the Relevant Market among suppliers of labor for development projects as described herein.

175. Icon is a "person" entitled to sue under 15 U.S.C. § 15, because it has been injured as a direct result of the Union Defendants' antitrust violations described herein. Icon's injury was caused by a substantial reduction in the available supply of labor in the Relevant Market as a result of the Union Defendants' illegal conduct, which was intended to, and did in fact, have an anticompetitive effect beyond the costly delays in Icon's Project and the other damages it has suffered. Specifically, the Union Defendants' illegal conduct has removed nonunion labor from the Relevant Market: either developers (i) succumb and pledge to use exclusively union labor, substantially driving up their labor costs, or (ii) decline such a pledge, suffer delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incur substantial litigation costs in defending against that litigation.

176. As a direct and proximate result of the Union Defendants conspiracy to enter into an exclusive dealing arrangement and engage in anti-competitive

activities in violation of the Clayton Act, Icon has suffered business injuries and/or loss of property by, among other things, threats to their projects, loss of goodwill, significant lost profits, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers for the Project and other projects Icon and other owners seek to develop, and significant cost overruns due to delays in construction of those projects.

177. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

178. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

FIFTH CAUSE OF ACTION

Violation of Labor Management Relations Act, 29 U.S.C. § 187

179. Paragraphs 1 through 178 are re-alleged and reincorporated herein.

180. Section 303(a) of the Labor Management Relations Act makes it unlawful for a labor organization, like the Union Defendants, to engage in conduct defined as an unfair labor practice under section 8(b)(4) of the National Labor Relations Act, 29 U.S.C. 158(b)(4).

181. Under section 8(b)(4) of the NLRA, it is an unfair labor practice for a union to threaten, coerce, or restrain an employer with the object of forcing the employer to enter into any agreement prohibited by section 8(e) of the NLRA or forcing or requiring any employer to cease doing business with any other employer.

182. Under section 8(e) of the NLRA, labor organizations and employers are prohibited from entering into any agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from doing business or otherwise dealing with the products of any other employer.

183. The Union Defendants used, and are using, the sham litigation tactics described herein to coerce Icon to sign project labor agreements in which Icon pledges to use exclusively union labor on the Panorama Project. Thus, the object of the Union Defendants' unlawful conduct is to force Icon not to purchase the labor services offered by nonunion contractors (i.e., "other employers") or otherwise work with nonunion contractors on the Project. Specifically, the Union Defendants' unlawful conduct coerces Icon into either (i) succumbing and signing the project labor agreements, eliminating competitive bidding and substantially driving up Icon's labor costs, or (ii) declining such a pledge, suffering delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incurring substantial litigation costs in defending against that litigation.

184. The project labor agreements are unlawful under section 8(e) of the NLRA because the Union Defendants do not have a collective bargaining relationship with Icon, and because the project labor agreements are not directed towards the "reduction of friction" that may be caused when union and nonunion employees of different employers are required to work together at the same jobsite. To the contrary, the Union Defendants' sole motivation in coercing Icon to sign the unlawful project labor agreements is to monopolize the supply of construction labor for projects within the Relevant Market, as described herein.

185. Under section 303(b) of the LMRA, an employer "injured in his business or property by reason of any violation" of section 303(a) of the Act may sue for and recover damages and the cost of suit.

186. Icon has standing to bring suit under section 303(b) because it was the specific target of the Union Defendants' illegal conduct in attempting to coerce Icon to enter into the project labor agreements. As a direct and proximate result of the Union Defendants' illegal conduct, Icon has suffered business injuries and/or loss

of property by, among other things, threats to their projects, loss of goodwill, significant lost profits, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers for the Project and other projects Icon and other owners seek to develop, and significant cost overruns due to delays in construction of those projects.

187. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c)

188. Paragraphs 1 through 187 are re-alleged and reincorporated herein.

189. Icon is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

190. The Union Defendants constitute an "enterprise" engaged in, and whose activities affect, interstate commerce within the meaning of 18 U.S.C. §§ 1961(4) and 1962 (the "Enterprise"). The Enterprise exists separate and apart from the pattern of racketeering activity alleged and the Union Defendants themselves.

191. Defendants Alexis Olbrei, Pete Rodriguez, Dan Langford, Ron Diament, Angel Olvera, Sergio Rascon, and Ernesto Pantoja are each "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c), who are employed by and/or associated with the Enterprise.

192. From April 2017 until the present, the "persons" identified in Paragraph 191 conducted, participated in, engaged in, conspired to engage in, or aided and abetted the conduct of the affairs of the Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5), and 1962(c). The predicate acts constituting the pattern of unlawful activity engaged in by the "persons" identified in Paragraph 191 constitute:

a. Extortion, as defined in 18 U.S.C. § 1961(1)(B) and 18 U.S.C. § 1951, including but not limited to:

i. The sham and objectively baseless litigation and related conduct described above beginning in April 2017 and continuing to the present, in which one or more of the "persons" identified in Paragraph 191 threatened to stop and/or delay the Project through unfounded CEQA and/or related challenges and litigation if Icon continued its efforts to develop the Project or other projects in the Relevant Market. Icon's fear of economic loss from the extortion is reasonable. This extortion obstructed interstate commerce;

ii. Upon information and belief, additional acts of extortion were engaged in by one or more of the "persons" identified in Paragraph 191 beginning on or after April 2017. The information regarding each of those separate acts of extortion is within the custody and control of the Union Defendants and/or their agents.

b. Mail fraud, as defined in 18 U.S.C. § 1961(1)(B) and 18 U.S.C. § 1341, including but not limited to, one or more of the "persons" identified in Paragraph 191 used the U.S. mails in around April 2017 through August 2018 to submit to the Planning Committee correspondence, petitions, "written comments," and/or other documents that made false and misleading factual representations about the size, scope and environmental impact of the Project. Upon information and belief, one or more of the "persons" identified in Paragraph 191 made additional uses of the U.S. mails to circulate materially false and misleading information and/or documents about the Project. The information regarding those additional separate mail fraud violations is entirely within the custody and control of the Union Defendants and/or their agents.

193. These acts all occurred after the effective date of RICO and more than two such acts occurred within ten years of one another.

194. All of the predicate acts described herein were continuous so as to form a pattern of racketeering activity in that the "persons" identified in Paragraph 191 engaged in the predicate acts over a substantial period of time and such predicate acts have become their regular way of conducting business, and these business practices will continue indefinitely into the future unless restrained by this Court. Specifically, the "persons" identified in Paragraph 191 knowingly violated the extortion, mail fraud statutes and other statutes discussed in the preceding paragraphs in connection with their illegal schemes. Each of these acts constitutes a separate and distinct racketeering activity, as defined in 18 U.S.C. § 1961(a).

195. The "persons" identified in Paragraph 191 have engaged in numerous illegal acts in connection with their fraudulent schemes, as described in the preceding paragraphs. Those illegal acts constitute predicate acts of racketeering activity within the meaning of 18 U.S.C. § 1961(1) and were perpetrated for the same or similar purpose, and had similar results, participants, victims, and methods of communication.

196. As a direct and proximate result of, and by reason of the activities of the "persons" identified in Paragraph 191, and their conduct in violation of 18 U.S.C. § 1962(c), Icon has been injured in its business or property within the meaning of 18 U.S.C. § 1964(c). The above-described actions were taken, among other purposes described herein, with the specific intent and for the purpose of carrying out the Union Defendants' scheme and artifice to defraud and to conduct or participate in the affairs of the Enterprise. These acts are capable of repetition. Furthermore, the extortionate conduct aimed at Icon was done specifically to prevent construction of the Project and any other project which would utilize non-union labor.

197. As a result of these actions, Icon has been injured in its business or property, having suffered, among other things, threats to their projects, significant lost profits, lost goodwill, costs of suit and attorneys' fees, and significant cost overruns due to delays in construction of the Project.

198. Icon is entitled to recover treble the damages it has sustained together with the cost of the suit, including reasonable attorneys' and experts' fees.

199. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

SEVENTH CAUSE OF ACTION

Unfair Competition, Cal. Bus. & Prof. Code § 17200, Against All Defendants

200. Paragraphs 1 through 199 are re-alleged and reincorporated herein.

201. Icon brings this action on its own behalf as an entity that has suffered injury in fact and lost money or property as a result of the Union Defendants' unfair competition within Los Angeles County, California.

202. The Union Defendants have engaged in unfair competition by committing acts that are unlawful, unfair, and fraudulent business practices or acts as defined by the California Business and Professions Code sections 17200, *et seq*. by, among other things, engaging in the acts described above, including but not limited to:

a. Conduct that constitutes or threatens incipient violation of the Sherman and Clayton Acts, 15 U.S.C. § 2, *et seq*., and/or violates the policy and spirit of these laws by significantly threatening or actually harming lawful competition, including but not limited to the conduct described in the first, second, third, and fourth causes of action;

b. Conduct that violates the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1960, *et seq*., including but not limited to the predicate acts described in Paragraphs 192-196 above; and

c. Initiating and maintaining frivolous sham inquiries or objections to the Project, with the sole purpose of halting or delaying completion of the Project.

203. The acts described in this Complaint constitute numerous individuals and combined unfair, unlawful, and/or fraudulent acts or practices within the meaning of Business and Professions Code sections 17200, *et seq*. The totality of the Union Defendants' conduct has enabled the Union Defendants, among other things, to dominate and control competition, including the sale of labor services to construction contractors and project developers, including but not limited to Icon, within the Relevant Market. The Union Defendants' conduct as detailed above represents a significant barrier to entry to the Relevant Market for any developer-owner, like Icon, which seeks or may seek to use a price-competitive nonunion contractor. By raising the aggregate wage rate, the Unions' anti-competitive activities raise barriers to entry in both project-owner and construction contractor markets because projects will become cost-prohibitive or more costly to complete, allowing the Union Defendants to maintain their market power in such downstream markets. As a result of the Union Defendants' illegal actions, market labor prices will rise to the level set by the Union Defendants when nonunion contractors are driven out of the market.

204. The Union Defendants actively and directly participated in or provided substantial assistance to others who committed the unfair, unlawful and/or fraudulent acts or practices described herein.

205. The gravity of the harm of the Union Defendants' conduct on Icon as well as on nonunion contractors and labor within the Relevant Market outweighs

any potential benefits of such conduct. The Union Defendants' conduct described herein offends established public policies, is immoral, unethical, oppressive, unscrupulous, and is substantially injurious to consumers.

206. The Union Defendants' unfair and unlawful business practices are likely to continue to harm Icon, nonunion contractors and labor, and consumers, and present a continuing threat to the public.

207. As a result of these actions, Icon has been injured in its business or property, having suffered, among other things, threats to their projects, significant lost profits, lost goodwill, costs of suit and attorneys' fees, and significant cost impacts and overruns due to delays in construction of the Project.

208. Icon seeks a permanent injunction pursuant to Business and Professions Code section 17203, restraining and enjoining the Union Defendants from continuing the acts of unfair competition set forth above;

209. Icon requests during this action a preliminary injunction pursuant to Business and Professions Code section 17203 to enjoin and restrain the Union Defendants from the acts of unfair competition set forth above;

210. Icon is entitled to recover restitutionary disgorgement of profits and other economic benefits unjustly obtained by the Union Defendants from the Icon as a result of the Union Defendants' acts of unfair competition;

211. Icon requests all costs, expenses and attorneys' fees of suit pursuant to 17 U.S.C. §§ 503-05; and

212. Any other and further relief as the court deems just and equitable.

WHEREFORE, Plaintiffs request judgment against Defendants, and each of them, for the following:

ON THE FIRST, SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION

213. The Union Defendants and their agents be enjoined during this litigation, and permanently thereafter, from ongoing and future acts constituting violations of Federal antitrust laws to maintain or secure a monopoly, as provided for by 15 U.S.C. § 26;

214. Treble damages under section 4 of the Clayton Act, 15 U.S.C. § 15, arising from harm Icon has sustained as a result of the Union Defendants' violation of section 2 of the Sherman Act, 15 U.S.C. § 2;

215. Damages under 29 U.S.C. § 187(b);

216. Prejudgment interest;

217. Costs of suit incurred;

218. All costs, expenses and attorneys' fees; and

219. Such other and further relief as the court deems just and proper.

ON THE SIXTH CAUSE OF ACTION

220. Issue a permanent injunction restraining the Union Defendants, their officers, employees, agents, affiliates, parents, subsidiaries and all other persons who act in concert with them from making false, misleading or deceptive statements or representations about the Project;

221. Issue a permanent injunction restraining the Union Defendants, their officers, employees, agents, affiliates, parents, subsidiaries and all other persons who act in concert with them from extorting Icon;

222. Award damages against the Union Defendants, jointly and severally, for a sum of money equal to the amount of damages Icon has sustained or will sustain, said amount to be trebled pursuant to 18 U.S.C. § 1964(c);

223. Award prejudgment interest on the amount of damages Icon has sustained;

224. Award all costs of litigation incurred by Icon, including its reasonable attorneys' fees and expert witness fees, pursuant to 18 U.S.C. § 1964(c);

225. Award punitive damages; and

226. Award such other further relief as the Court deems just and equitable.

ON THE SEVENTH CAUSE OF ACTION

227. A permanent injunction pursuant to Business and Professions Code section 17203, restraining and the Union Defendants from continuing the acts of unfair competition set forth above;

228. During this action, a preliminary injunction pursuant to Business and Professions Code section 17203 to enjoin and restrain the Union Defendants from the acts of unfair competition set forth above;

229. The Union Defendants be ordered to restore all funds acquired by the acts of unfair competition set forth above pursuant to Business and Professions Code section 17203;

230. For all costs, expenses and attorney's fees of suit pursuant to 17 U.S.C. §§ 503-05; and

231. Any other and further relief as the court deems just and equitable.

DATED: January 9, 2019.

STEPTOE & JOHNSON LLP

s/ Jason Levin

Jason Levin
633 West Fifth Street, Suite 700
Los Angeles, California 90071

Karl M. Tilleman (*Pro Hac Pending*)
Alan Bayless Feldman (*Pro Hac Pending*)
201 E. Washington St., Suite 1600
Phoenix, AZ 85004

Attorneys for Plaintiff

Attachment 5

Jason Levin (161807)
STEPTOE & JOHNSON LLP
633 West Fifth Street, Suite 700
Los Angeles, California 90071
Telephone: (213) 439-9400
Facsimile: (213) 439-9599
jlevin@steptoe.com

Karl M. Tilleman (*Pro Hac Pending*)
Alan Bayless Feldman (*Pro Hac Pending*)
STEPTOE & JOHNSON LLP
201 East Washington Street, Suite 1600
Phoenix, Arizona 85004-2382
Telephone: (602) 257-5200
Facsimile: (602) 257-5299
ktilleman@steptoe.com
afeldman@steptoe.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

The Icon at Panorama, LLC,

Plaintiff,

vs.

Southwest Regional Council of Carpenters; Laborers International Union of North America Local 300; Daniel Langford, an individual; Alexis Olbrei, an individual; Ron Diament, an individual; Pete Rodriguez, an individual; Ernesto Pantoja, an individual; Sergio Rascon, an individual; Angel Olvera, an individual; SWAPE, LLC, a California limited liability company; Smith Engineering & Management, a California corporation; unnamed spouses of all named individual Defendants, and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2:19-CV-00181

COMPLAINT FOR:

1. **ATTEMPTED MONOPOLIZATION IN VIOLATION OF SECTION 2 OF THE SHERMAN ACT**
2. **CONSPIRACY TO MONOPOLIZE IN VIOLATION OF SECTION 2 OF THE SHERMAN ACT**
3. **DIRECTING A "GROUP BOYCOTT" IN VIOLATION OF SECTION 1 OF THE SHERMAN ACT**
4. **CONSPIRACY AND ATTEMPT TO ENTER INTO EXCLUSIVE DEALING ARRANGEMENT IN VIOLATION OF SECTION 3 OF THE CLAYTON ACT AND SECTION 1 OF THE SHERMAN ACT**
5. **VIOLATION OF LABOR MANAGEMENT RELATIONS ACT, 29 U.S.C. § 187**

6. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. § 1962 (C)

7. UNFAIR COMPETITION, CAL. BUS. & PROF. CODE § 17200, AGAINST ALL DEFENDANTS

AND DEMAND FOR JURY TRIAL

Plaintiff, The Icon at Panorama, LLC ("Icon") alleges as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and § 1337. This action arises under the Clayton Act, 15 U.S.C. §§ 15, 26, to obtain injunctive relief, damages and costs, including reasonable attorneys' fees for violations of sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, section 303 of the Labor Management Relations Act, 29 U.S.C. § 187, and the federal Racketeer Influenced and Corrupt Organizations statute, 18 U.S.C. § 1961 *et seq*.

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1367 over the state law causes of action because those causes of action are related to the federal law causes of action and form part of the same case and controversy under Article III of the United States Constitution.

3. The conduct alleged in this Complaint occurred in interstate commerce and has affected and will continue to substantially and directly affect interstate commerce.

4. The Court has personal jurisdiction over the Defendants and venue is proper in the Central District of California because (a) all Defendants reside in the State of California and at least one of the Defendants resides in this District, and (b) substantial parts of the events or omissions giving rise to the claims occurred in this District.

Introduction

5. The Southwest Regional Council of Carpenters ("SWRCC") and the Laborers International Union of North America Local 300 ("LIUNA") have conspired to dominate, monopolize, and control the sale of labor services to developers of large real estate projects within Los Angeles County, California by engaging in anti-competitive conduct and racketeering activities, including fraud and extortion, by means of, *inter alia*, their pattern and practice of filing repeated sham litigation under the guise of the California Environmental Quality Act ("CEQA"). This fraudulent, extortionist, and anti-competitive conduct is commonly referred to as "greenmail."

6. Throughout this Complaint the term "Union Defendants" will mean SWRCC and LIUNA, whether acting directly as a labor organization or through any of its officers, directors, employees, or agents authorized to act on behalf of one or both organizations.

7. For nearly two decades, the former Montgomery Ward building at 14665 Roscoe Boulevard in Panorama City has sat abandoned, attracting homeless encampments, gangs, graffiti, and various other criminal activities. Once a popular shopping destination, the department store shut its doors in 2001 after struggling to compete with other retailers.

8. Icon purchased the vacant site in January of 2016 and based on feedback from the City and numerous community stakeholders, Icon submitted an application to the Los Angeles Department of City Planning ("Department of City Planning"), proposing to transform the vacant and dilapidated property that encompasses an approximate nine-acre site, into a mixed-use complex, including numerous residential units and commercial space – known as The Icon Panorama Project ("Project").

9. The Department of City Planning, the area's City Council Office, neighboring property and business owners, Panorama City residents, business leaders, the Panorama City Neighborhood Council, the Panorama City Chamber of Commerce, law enforcement (LAPD), a local hospital (Mission Community Hospital), Galpin Motors (a prominent employer in the area), PATH (People Assisting The Homeless) (an advocacy group focused on housing the homeless), among others (collectively the "Community"), enthusiastically support the Project. The Community overwhelmingly supports Icon's plan for the property and have expressly stated that it would strongly satisfy the area's critical housing needs with a contemporary and diverse mix of apartments, bring needed jobs and desirable retail businesses, beautify and safeguard the community, and provide the overall redevelopment desperately needed in the currently blighted area.

10. Despite the overwhelming and vocal Community support, from March 2017 through August 2018, the Union Defendants have, at every step of the Project approval process, tried to induce the area's City Council Office, Department of City Planning, Los Angeles City Planning Commission ("Planning Commission"), and the Los Angeles City Council ("City Council") to deny approval of the Project on false grounds that it does not comply with CEQA. The Union Defendants' sole purpose in filing CEQA challenges was to delay the Project and coerce, intimidate, and pressure Icon to agree to use exclusively union labor, otherwise Icon would suffer significant cost increases to the Project.

11. The Union Defendants were the only individuals or entities to continuously challenge the Project's compliance with CEQA and to publicly oppose the Project.

12. During its sham CEQA challenges, the Union Defendants essentially bribed the Icon Project developers promising that they would withdraw their CEQA challenges and actively support the Project if Icon would agree to use

exclusively union labor on the Project. The Union Defendants made these promises to Icon even if Icon took no steps whatsoever to address the purported environmental concerns raised in the Union Defendants' CEQA challenges. The Union Defendants' CEQA challenges were an absolute sham, through and through, and had nothing whatsoever to do with protecting the environment.

13. Icon continuously made good faith efforts to engage with the Union Defendants to involve them in the Project in ways that were financially feasible. Icon was consistent in its message that given the Project's location and the area's low rents, it could not support the high cost of using exclusively union labor but that finding certain areas on the Project to use union trades was a possibility once Icon began working on the construction plans and pricing the Project.

14. Icon informed the Union Defendants that the Project's financial constraints were further demonstrated by the fact that the Project site sat vacant for almost two decades and experienced a number of failed attempts by other developers to redevelop it.

15. Not once was the environment raised as a legitimate concern by the Union Defendants to Icon during any discussions or written communications among the parties about the Project. In fact, early on, during discussions with the Union Defendants, Icon attempted to address any environmental concerns that the Union Defendants had. The Union Defendants summarily refused to engage in discussions about environmental concerns as the Union Defendants were solely interested in compelling Icon to use exclusively union labor on the Project. Otherwise stated, the Union Defendants are exploiting the CEQA process itself, not for any reason related to the environment but for their own financial gain and as a weapon to coerce Icon, and other developers like Icon, to use nothing but union labor on major developments in Los Angeles County.

16. The irony and hypocrisy of the Union Defendants' sham claims are noteworthy as a considerable part of what they challenged and objected to are alleged unsafe conditions on the site that would adversely impact the health and well-being of those working on the Project, yet while they were publicly opposing the Project with these bogus environmental and health concerns, privately, they were pressuring Icon to use exclusively union labor that would guarantee that no one other than a their own union members would be working on the Project thus ensuring that their members would be exposed to these alleged "health risks."

17. SWRCC refused to negotiate with Icon to find feasible ways to include their trades and demanded that Icon use exclusively union contractors on the Project. LIUNA refused to negotiate with Icon over an alternative labor arrangement, in part, because LIUNA disclosed to ICON that they previously entered a "most favored nation" agreement with a competing developer whereby LIUNA agreed with the competing developer not to enter more favorable agreements with other developers, such as Icon.

18. The Union Defendants' challenges so lacked in merit that, in rejecting one of their numerous challenges to the Project, at the conclusion of the Planning Commission hearing, Los Angeles Planning Commission President David Ambroz stated that the Union Defendants "weaponized" CEQA and made objections that were "just patently false." That blunt public rebuke of the Union Defendants is exactly what they are doing, which is why Icon has filed this litigation—to stop the Union Defendants from weaponizing CEQA and filing frivolous CEQA challenges as a threat to any developer who does not succumb to the Union Defendants' threats.

19. The Union Defendants failed on their appeals in every administrative level and, on August 29, 2018, the City Council denied the Union Defendants'

appeal and unanimously approved the Project, exhausting the administrative approvals process.

20. Failing to force Icon to use exclusively union contractors on the Project via their spurious administrative challenges, the Union Defendants nevertheless continued their sham efforts on October 1, 2018 by filing a Petition for Writ of Mandate based on CEQA in the Superior Court of the State of California, County of Los Angeles. As they did during the administrative process before the Planning Commission and City Council, the Union Defendants again made false statements regarding the Project. And again, the Union Defendants have only one goal in mind—to delay the Project further, to drive up costs, and to force Icon to cede to their continued improper and anticompetitive demands or suffer significant cost overruns, potential termination of contracts with interested retailers, and the loss of relationships with potential nonunion contractors who have expressed an interest in working on the Project.

21. This is not the first time that the Union Defendants filed sham oppositions and appeals to the Los Angeles Planning Department, Planning Commission, and City Council based on false CEQA claims to delay development of large projects within Los Angeles County for the purpose of coercing, intimidating, and pressuring developers to surrender to their demands.

22. In fact, the Union Defendants' practice of challenging projects under the guise of CEQA is rampant and has become the status quo in Los Angeles County on projects that are of substantial enough scale to attract their attention. The Union Defendants' practice is well known by developers, the community, the City's council offices, the Department of City Planning, the Planning Commission, and the City Council. In fact, there is a website called www.phonyuniontreehuggers.com that tracks and documents the unions opposition to countless public and private sector projects throughout California

"on environmental grounds.… with the ulterior motive of extracting something of economic value from the public or private owner." As stated in an email from a planner at the Department of City Planning, Major Projects/Environmental Analysis unit: "From the experience in the Major Projects unit, the law firm Lozeau Drury, the Southwest Carpenters union, and/or the LIUNA union submit comment letters (electronically and written comments) on nearly every single recent EIR that our unit processes."

23. In fact, the Union Defendants utilize virtually the same "template" arguments and claims in their comment letters and appeals on every project they challenge and appeal.

24. The Union Defendants regularly conspire with SWAPE, LLC and Smith Engineering & Management, Inc., two consulting firms that provide misleading analyses on environmental impacts such as air quality and traffic to distort the facts and assist the Union Defendants in asserting frivolous challenges to projects' Environmental Impact Reports ("EIR").

25. The Union Defendants have a consistent pattern and practice of filing sham challenges administratively and litigation in the Superior Court of the State of California against other developers within Los Angeles County in which they assert similar false claims under CEQA in an effort to delay their projects and drive up project costs to control the labor market.

26. Most developers buckle under the pressure and settle with the Union Defendants, resulting in disproportionally more developments in higher rent areas that can support these increased costs to the detriment and at the expense of underserved and lower income areas such as Panorama City (where the Project site is located) where developers cannot sustain the higher costs and thus abandon their projects as they are no longer financially feasible. Unfortunately, the ultimate losers are the lower income communities that see little in the way of

quality community-enhancing development and more blight from boarded-up and dilapidated abandoned sites.

27. Icon brings this action to assert and defend its right to manage, control, and operate its business affairs free from the Union Defendants' conspiracy to dominate, monopolize, and control the sale of labor services to developers of large real estate projects within Los Angeles County thorough its blatant use of sham litigation to achieve its goals.

28. The Union Defendants' anti-competitive and abusive conduct has not only harmed Icon and other developers, nonunion contractors, the Panorama City community, and businesses and residents, it has also wasted the time and resources of public agencies, and now the courts.

29. Without intervention from this Court, the Union Defendants will stop at nothing to prevent the development of the Project and other similar large projects within Los Angeles County and to eliminate competing nonunion contractors from the labor market. By engaging in the anti-competitive activities described in this Complaint, the Union Defendants have violated the Sherman Act, the Clayton Act, the Labor Management Relations Act, the Racketeer Influenced and Corrupt Organizations Act, and the California unfair competition laws.

The Parties

30. Plaintiff Icon is a limited liability company organized in 2015 and authorized to do business in Los Angeles County. Icon is a real estate planning, investment, and development company currently developing the Icon at Panorama Project. William Ruvelson and Eran Fields are co-founders and principals of Icon.

31. Defendant SWRCC is a labor organization within the meaning of the Labor Act (29 U.S.C. § 151 *et seq.*). SWRCC represents over 50,000 members in Southern California, Nevada, Arizona, Utah, New Mexico, and Colorado.

32. Alexis Olbrei is the Chief of Staff of the SWRCC.

33. Pete Rodriguez is the President/COO of the SWRCC.

34. Dan Langford is the Executive Secretary – Treasurer/CEO of the SWRCC.

35. Ron Diament is a Special Representative of the SWRCC.

36. SWRCC, Olbrei, Rodriguez, Langford, and Diament transact business in this jurisdiction with their principal place of business at 533 S. Fremont Ave, Los Angeles, California 90071.

37. At all relevant times, Olbrei, Rodriguez, Langford, and Diament have been agents of SWRCC and are authorized to act for and on behalf of SWRCC.

38. Defendant LIUNA is a labor organization within the meaning of the Labor Act (29 U.S.C. § 151 *et seq.*).

39. Angel Olvera is an organizer with LIUNA.

40. Sergio Rascon is the Business Manager of LIUNA.

41. Ernesto Pantoja is a Special Projects Field Agent of LIUNA.

42. LIUNA, Olvera, Rascon, and Pantoja transact business in this jurisdiction with their principal place of business at 2005 W. Pico Blvd, 2nd Floor, Los Angeles, California 90006.

43. At all relevant times, Olvera, Rascon, and Pantoja have been agents of LIUNA and are authorized to act for and on behalf of LIUNA.

44. The Union Defendants were at all relevant times the agents, principals, partners, co-conspirators, and/or co-venturers of each other, and each of them acted within the course, scope, and authority of those relationships. As a result, the Union Defendants are jointly and severally liable for the acts alleged in this Complaint.

45. Upon information and belief, SWAPE, LLC is a California limited liability company with an office and place of business located at 2656 29th Street, Suite 201, Santa Monica, CA 90405.

46. SWAPE is an environmental consulting firm that conducts business within Los Angeles County, California. SWAPE provides consulting services to the Union Defendants directly or through its legal counsel.

47. The Union Defendants engaged the services of SWAPE in connection with their efforts to monopolize the labor market as described herein.

48. Upon information and belief, Smith Engineering & Management, Inc. ("SEM") is a California corporation with an office and place of business located at 5311 Lowry Rd, Union City, CA 94587.

49. SEM is a traffic and civil consulting firm that conducts business within Los Angeles County, California.

50. SEM provides consulting services to the Union Defendants directly or through its legal counsel.

51. The Union Defendants engaged the services of SEM in connection with their efforts to monopolize the labor market as described herein.

52. Plaintiff is unaware of the true names or capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this pleading to set forth the true names and capacities of said Doe Defendants when the same are ascertained. Plaintiff is informed and believes, and on that basis allege, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, or was acting in concert with, and with the permission, approval, and authorization of, the specifically named Defendants.

Factual Allegations

I. Icon proposes a transformative redevelopment project that the local community overwhelmingly supports.

53. Retail company Montgomery Ward previously owned and operated a large store at 14665 Roscoe Boulevard in Panorama City, California. Montgomery Ward closed its business in 2001. The building at Roscoe Boulevard has sat vacant since 2001, and the area has experienced homeless encampments, gang activity, graffiti, and other criminal activities.

54. In 2016, Icon paid $18 million for the nearly nine-acre parcel on Roscoe Boulevard as the first step in its plan to transform the lot previously occupied by Montgomery Ward.

55. On the abandoned site, Icon plans to construct 623 residential apartments, a 17,000 square foot public park, and 60,000 square feet of commercial space to potentially include pedestrian active retail at an estimated cost of $150 million to Icon.

56. The proposed development is named the "The Icon Panorama" and has been enthusiastically greeted by the City and the Community.

57. Neighborhood residents and groups have described the Project as a job-creator; "provid[ing] much needed housing"; "exactly what we need"; and "a critical element for the area's renewal."

58. For example, Jack Waizenegger, a 30 year resident of Panorama City, wrote in a letter of support for the Project: "Development of the project, The ICON at Panorama City, will be the catalyst to begin restoration of our community. In addition, it will clean up the blight left from the defunct Montgomery Ward ruins, create good jobs during and after construction, provide much needed housing, add new desirable shopping and entertainment, complement the future Metro line along Van Nuys Boulevard, attract more redevelopment, and become a centerpiece which all of our community can be

proud of. I do not know of a single neighbor or business owner who objects, instead they are all eager and excited to see this project arrive."

59. Stephanie Cervantes, a 20 year resident of Panorama City wrote in her letter of support: "As you know, we have the densest residential population of any community in the valley, yet our housing is generally older and run down. We need new and beautiful apartments so that instead of moving out of Panorama City to other nicer neighborhoods, we stay here in the same community where we were born and where our parents and grandparents live. The residents here are good hard-working folks who want to give our children a better quality of life than we had. Moving into another community has been the answer for so many, but as long-time Panorama City residents move out, the community loses its soul. If there was a better housing alternative here in the neighborhood, more of us would stay. All of us go elsewhere to shop because our only shopping center (the Panorama Mall) is old and lacks any of the new and interesting elements that everyone else takes for granted when they shop at the gorgeous newer centers in Burbank, Woodland Hills or Universal City. Icon Panorama will give us a high-quality shopping experience with a beautiful open park with plenty of parking. We need this development to happen. Los Angeles needs for this development to happen."

60. Local business owners have "applaud[ed] the developers and their efforts to transform the Panorama City neighborhood." Jeff Skobin, VP of Business Operations for Galpin Motors, one of the area's largest employers, wrote in Galpin's letter of support: "While the rest of Los Angeles has enjoyed tremendous development and economic boom, Panorama City has continued to languish. There have been two failed attempts in the past to revitalize the site, both of which were headed by out of state developers. This development is absolutely critical for the revitalization of Panorama City and the surrounding

communities. We desperately need this dynamic mixed-use project with its proposed community park that will become the social hub of our community. We deserve such a quality project."

61. Saul Mejia, President of the Panorama City Chamber of Commerce wrote in the Chamber's letter of support: "After driving around other parts of Los Angeles such as North Hollywood and Koreatown and seeing their beautiful new developments, it is disappointing to return to Panorama City and not see the same. Our community was once known as the heart of the San Fernando Valley. With this new project and those that will follow it, we will be beating strong once again. We applaud The Icon Company for coming into an area that was considered unworthy of development until recently."

62. Gregory Wilkinson, Chair of the Panorama City Neighborhood Council wrote in the Council's letter of support: "Further, the lost economic activities for having such a large part of our business district has been a real loss to our residences and other local businesses. We are tired of seeing the Site being left to waste away and our community suffer as a result."

63. Michel Moore, Chief of Police for the Los Angeles Police Department noted that the vacant site "has been occupied by the homeless/transients" and "has fallen victim to vandalism and has been burglarized." Chief Moore emphasized, "This location would be ideal as a redevelopment project. A new development would create jobs and benefit the local economy. It is a densely populated area and in desperate need of redevelopment. The developer, ICON, has taken on this challenge and proposed a project which we feel not only fits the community but benefits the city as well."

64. Tescia Uribe, Chief Program Officer for PATH Housing Partnerships Program, whose mission is to end homelessness for individuals, families, and

communities, applauded "[t]he fact that they are building desperately needed housing in a community that has been largely ignored by development."

65. James K. Theiring, Chief Executive Officer of Mission Community Hospital located in Panorama City that employs over 700 workers wrote: "As active participants in our community, we have not seen any significant business growth in recent years and struggle to find close partnerships. In this regard, we believe that the development of Icon Panorama will bring needed jobs, businesses and contemporary housing into the community, as well as modern attractions for residents of Panorama City and neighboring towns."

II. The Union Defendants raised sham challenges to the Icon Project at every step of the CEQA administrative process.

66. CEQA sets forth a process for evaluating and publicly disclosing the environmental impacts of a proposed project.

67. For projects subject to CEQA, the agency prepares an initial study of the project's impact on the environment.

68. If necessary, the lead agency then sends a Notice of Preparation to inform the public that it will prepare an EIR for a project. The lead agency provides at least 30 days to comment on the Notice of Preparation. The lead agency may also hold meetings with experts and the public during this period.

69. The lead agency then prepares a draft EIR ("DEIR") and provides the public an opportunity to comment on the draft. The lead agency can also issue revised DEIRs. The lead agency then prepares a final EIR ("FEIR") and responds to the comments on the DEIR. The agency then holds public hearings and makes a decision on the project.

70. In Los Angeles, the Los Angeles Advisory Agency initially approves the project. An interested party can appeal that decision to the Los Angeles Planning Commission, then to the Planning and Land Use Management Committee. If the Planning and Land Use Committee approves the project, an

interested party can appeal the decision to the City Council. Once an interested party has exhausted all administrative remedies, it can appeal the approval of the project by filing a Petition for a Writ of Mandate in California Superior Court.

71. On April 6, 2017, the Department of City Planning unanimously approved Icon's DEIR for the Panorama Project.

72. On May 22, 2017, the Union Defendants sent to the Department of City Planning, via e-mail and U.S. mail, comments challenging the DEIR for the Project.

73. The May 22, 2017 letter falsely stated that the DEIR failed to analyze the soil for hazardous chemicals at the Project site. In fact, the Union Defendants had a copy of the DEIR and knew that it analyzed the soil for hazardous chemicals at the Project site.

74. On August 31, 2017, the Department of City Planning recirculated a revised DEIR that addressed comment letters from City of Los Angeles's Building Departments, neighborhood stakeholders, and the Union Defendants.

75. On February 23, 2018, the Department of City Planning issued the FEIR for the Project.

76. On March 19, 2018, the day before the first public hearing on the Project, the Union Defendants sent another letter via e-mail challenging the FEIR. The letter urged the Department of City Planning to deny environmental certification of the Project.

77. The March 19, 2018 letter falsely stated that the City of Los Angeles Fire Department ("LAFD") found that fire protection for the Project would be inadequate. The Union Defendants knew that the LAFD found that the fire protection for the Project would be adequate if the Project made certain changes that are standard practice.

78. The March 19, 2018 letter also falsely stated that the FEIR refused to analyze the impact the project would have on fire protection. In fact, the Union Defendants knew that the FEIR analyzed the impact the Project would have on fire protection.

79. On March 20, 2018, at the first public hearing on the Project before the Los Angeles Advisory Agency, the Union Defendants opposed the Project and repeated the false statements about the Project contained in the March 19, 2018 letter. The Advisory Agency unanimously approved the Project the same day.

80. The Union Defendants appealed the Advisory Agency's decision to the Los Angeles Planning Commission.

81. On April 23, 2018, the Union Defendants sent another letter via e-mail and overnight mail to the Planning Commission challenging the Project.

82. The Union Defendants continued with their sham challenges by falsely claiming that the revised Project "has never been analyzed in any CEQA document," and "will dramatically increase almost all of the Project's environmental impacts," and that, because the revised Project has 48% more residential units than the original Project, it will have 48% greater impacts, conveniently ignoring that the overall scope of the revised Project was actually reduced by decreasing the commercial floor area proposed under the original Project from 200,000 to 60,000 square feet, a reduction of 70% which significantly reduced the Project's overall environmental impacts. In fact, the FEIR undertakes a thorough analysis to conclude that such impacts would be reduced from those of the original Project.

83. The Union Defendants, which purport to be advocating on behalf of environmental protection, seek to indict the Department of City Planning for advancing the purposes of CEQA by developing a less impactful project in

response to comments on the DEIR and analyzing that project as a new alternative in the FEIR.

84. The Union Defendants also falsely claimed that the Department of City Planning is required to adopt a different reduced project, which the EIR identified as the environmentally superior alternative. In certifying the EIR, the Advisory Agency correctly found this alternative to be infeasible, as it would not satisfy the Project's underlying purpose and key objectives to the same degree. In particular, it would not support regional housing goals and transit-oriented development or provide the critical mass and mix of uses necessary to successfully activate the area.

85. Inexplicably, the April 23, 2018 letter also falsely stated that the DEIR "states clearly that the Project proposal is for a ***maximum*** of 422 residential units." (Emphasis added.) In fact, the Union Defendants had a copy of the DEIR and knew or should have known that it did not state that the Project proposal is for a maximum of 422 residential units.

86. On April 26, 2018, the Planning Commission unanimously approved the Project over the Union Defendants' objections.

87. At the April 26, 2018 hearing, Planning Commission President David Ambroz chided the Union Defendants' abuse of process and sham litigation tactics, stating:

> I would like to say a few things. I feel as though ***the [Union Defendants'] appeal was specious at best*** and in my lawyer days I would say I would deny it with prejudice. I think ***CEQA has been weaponized*** and it's a shame that it is so. Things and assertions like "soil wasn't studied and would harm people" ***is just patently false***. And the staff provided information to this commission that Phase 1 and Phase 2 studies were done and ***that is in the record and available to the appellant and I am just unclear why someone would make an assertion that is just patently false***. I am dismayed that I have rarely seen CEQA used to actually protect the environment. It seems here and I would be curious to know, and I am not asking, that this seems to be a labor

> question, are you going to use union labor or not. And while that is not our decision to make it is a shame that we are now seeing CEQA used as a tool to both delay community redevelopment and potentially not harm by not improving the environment so dismaying and a trend that I do not see stopping anytime soon without significant reform.

88. On May 25, 2018, the Union Defendants again appealed the decision to the Planning and Land Use Management Committee.

89. On August 21, 2018, the Planning and Land Use Management Committee unanimously approved the Project.

90. The Union Defendants again appealed the decision to the Los Angeles City Council.

91. Before the City Council hearing on the Project, the SWRCC met with the City Council's office to further pressure them to oppose the Project.

92. On August 29, 2018, the City Council unanimously approved the Project.

93. On September 28, 2018, following the approval of the Project, SWRCC Chief of Staff Olbrei met with Jim Dantona, Chief of Staff of the area's City Council Office to try to discuss a labor agreement on the Project. According to Ackley Padilla, the area's City Council Office's Deputy Chief of Staff, Olbrei left the meeting amenable to the idea of providing SWRCC the right to match Icon's other subcontractors' pricing. On October 1, 2018, the final day to appeal the City Council's decision, the Union Defendants filed their suit as they were unable to coerce and force Icon to pledge in advance that it would use exclusively union contractors on the Project.

94. Throughout the entire administrative process, the Union Defendants were the *only* individuals or entities to continuously challenge the Project's compliance with CEQA and publicly oppose the Project. In fact, as detailed herein, the Project received overwhelming support from the City and Community.

95. Icon spent significant time and money responding to the Union Defendants' sham CEQA challenges at the administrative stage.

III. At the same time the Union Defendants pursued their sham CEQA challenges, the Union Defendants demanded that Icon agree to use exclusively union labor on its Project.

96. To facilitate their attempt to assert monopolistic control of the sale of labor services to developers of large projects in Los Angeles County, the Union Defendants have coerced or attempted to coerce developers like Icon to use exclusively union contractors.

97. In mid-April 2017, after the Department of City Planning released the DEIR but before the Unions Defendants filed their first opposition, Ron Diament, Special Representative for SWRCC, contacted Icon Principal Ruvelson and told him that he had learned about the Project and wanted to talk with him about having Icon use exclusively union contractors on the Project.

98. Ruvelson explained that Icon was willing to use both union and nonunion contractors on the Project, and that Icon would implement a competitive bidding process to select contractors for the Project to ensure that it met its budgets.

99. Unbeknownst to Icon, at the same time that Diament sought to discuss Icon's labor needs, the Union Defendants were preparing their sham CEQA challenges as described above.

100. After Icon received the Union Defendants' May 22, 2017 challenge to the Project, Ruvelson emailed Diament to express confusion about the Union Defendants' tactics, stating: "Ron, Please be in touch about this. I'm confused."

101. Diament told Ruvelson that if Icon agreed to use exclusively union contractors on the Project, the Union Defendants would drop their CEQA challenge to the Project. At no time did Diament ever tell Ruvelson that Icon also

needed to address any of the purported environmental issues contained in the Unions' CEQA challenge.

102. On June 8, 2017, Ruvelson met with Diament and Olbrei at SWRCC's training facility in Sylmar, CA.

103. At the June 8 meeting, Diament and Olbrei continued to pressure Ruvelson to use exclusively union contractors for the Project.

104. The next day, Diament emailed Ruvelson a list of four "Union General Contractors" that Icon should use for the Project: Morley Builders, Inc., W.M. Klorman Construction Corporation, Charles Pankow Builders, Ltd., and Bomel Construction Company. Diament stated that "There's more. . . . I started with these 4 and I will send out the complete list later."

105. Over the next few months, the administrative process and the Union Defendants' sham CEQA challenges continued.

106. On October 16, 2017, Icon principal Eran Fields contacted Diament to express his frustration with the Union Defendants' continuing challenges to the Project in an effort to force Icon to use exclusively union contractors. Fields reiterated that Icon was willing to use union contractors, as well as nonunion contractors, through a competitive bidding process. Fields stressed to Diament that due to the Project's location and projected rents, that it was infeasible for Icon to pledge in advance to use exclusively union contractors because of the higher labor costs but that Icon would work with the Union Defendants in good faith to include them in certain areas of the Project that Icon could afford.

107. That same day, Diament emailed Fields and stated, "I have some influence with these folks, [*i.e.*, the Unions]," and that they could work out a deal.

108. On March 14, 2018, one week before the first public hearing on the Project, Diament sent a text message to Fields asking to meet before the hearing and implying that the Union Defendants would drop their CEQA challenges only

if Icon agreed to use exclusively union contractors. In response to Fields questioning why he wanted to meet, Diament stated: "I know the road you need to be on the get the job to move forward," and in response to Fields' response of "Sorry, no idea what that means. You mean opposition from union if we don't?" Diament responded: "I know that there's been some of that from a few, including the carpenters."

109. In response, Fields texted the following: "As I mentioned to you in the past, we won't be coerced into using union labor due to threats of opposition but are willing to explore ways to include union labor on this job if feasible. Meeting before our hearing should have no bearing on that."

110. Diament immediately responded: "I'm just making suggestions on how to navigate through the woods. If you hire good contractors that participate in apprenticeship programs are tikkun olamins, it makes everyone smile."[1]

111. Fields responded: "Thanks Ron but it's very simple for us. We do our best and always act honorably and honestly. If we can find a way to work together that would be great. If we can't then it won't be for lack of trying."

IV. LIUNA agreed to give "Favored Nation" status to another Los Angeles County apartment developer.

112. G.H. Palmer, Inc. ("G.H. Palmer") is a real estate developer with apartment projects in Los Angeles County. G.H. Palmer claims to own more than 11,000 apartment units in Southern California.

113. Upon information and belief, LIUNA agreed with G.H. Palmer to grant G.H. Palmer "Favored Nation" status in its project labor agreements, ensuring that no other developer could obtain a more competitive agreement than the Union Defendants had with G.H. Palmer.

[1] Tikkun Olam is a concept in Judaism interpreted as an aspiration to behave and act constructively and beneficially.

114. Upon information and belief, LIUNA agreed with G.H. Palmer that they would never agree to allow a developer to use nonunion labor on a project. Per the Favored Nation agreement with G.H. Palmer, LIUNA agreed to demand use of exclusively union labor on all projects.

V. The Union Defendants offered to drop their sham CEQA litigation and allow the Project to timely proceed in exchange for exclusivity.

115. Despite the Union Defendants' sham CEQ challenges (as described above), Icon attempted to discuss possible ways to work together with the Union Defendants on the Project that did not require Icon to pledge in advance to use exclusively union labor, but met Icon's labor budget needs.

116. On May 2, 2018, Olbrei and Rodriguez from SWRCC and Pantoja and Rascon from LIUNA had a breakfast meeting with Ruvelson and Fields to discuss the Project and how to possibly work together. During the approximately two-hour meeting, Icon again explained that given the Project's location and the area's low rents, it could not support the higher cost of using exclusively union contractors, but that it would work with the Union Defendants to try to find areas in the Project to include their trades. Not once was the environment raised as a legitimate concern by the Union Defendants during the meeting. Icon left the meeting cautiously optimistic as the Union Defendants represented that it would be amenable to entering into a letter of intent between the parties that would require Icon to make good faith efforts to find ways to include the Union Defendants on the Project.

117. On May 24, 2018, one day before the Union Defendants filed yet another appeal of the Project's approval, Olbrei of SWRCC emailed Fields, stating that if Icon would sign a Letter of Understanding ("LOU") promising to use exclusively union contractors, in exchange the Union Defendants would withdraw its CEQA challenges without Icon doing anything to address the purported environmental issues. Specifically, the LOU promised that:

> the Carpenters' Union ***will promptly express its support for the Project before governmental bodies and/or community organizations in connection with any and all required government approvals***. Such expression of support may include, among other things, sending letters of support to appropriate entities; appearing in support at public hearings and/or community hearings; contacting the mayor and/or other elected or appointed officials to express support; and generally working together with the Owner/Construction Manager to obtain full entitlements and approvals for the Project to proceed. (Emphasis added.)

118. Fields responded to Olbrei's email: "Thanks for the LOU. As I'm sure you're aware, your proposed language is a far cry from what we discussed at breakfast a few weeks ago. As we mentioned to you, this project can only support a certain budget given its location and the project's projected rents. As a result, we cannot commit to anyone unless the numbers work. Nothing will change that. What we're willing to do is make a good faith effort to try to find ways to work with the Carpenters Union and for that matter, anyone, that can help us build this project at a feasible budget. That being said, please find attached redlined LOU that reflects our discussion and consistent position."

119. The next day, on May 25, Pantoja of LIUNA wrote to Fields that contrary to what they discussed at their breakfast meeting, they could not agree to anything other than the exclusivity arrangement in the proposed Letter of Commitment ["LOC"] because "of the Favored Nation Clause as it relates to our agreement with G.H. Palmer." Pantoja wrote that LIUNA "couldn't enter into anything different then [*sic*] we have with G.H. Palmer." Like SWRCC's LOU, in exchange to agreeing to use exclusive union under the LOC, LIUNA promised via its LOC:

> 17. The Union on its own behalf and/or through their participating individuals, members, labor organizations, unions, officers, representatives, business managers, agents, consultants, independent contractors (including any agents, persons or entities who assisted with preparation of comment letters and related appendices) or attorneys (or any other person action on their behalf or otherwise under the direction or control), or any of them (collectively 'Affiliated Parties') ***will not***

> ***participate in any meetings or hearings to challenge, oppose, contest, take adverse actions or bring suit or file any claim, complaint or opposition in any forum or before any agency, body, court or other tribunal, whether administratively, quasi-judicially, judicially or otherwise regarding a Residential/Commercial Podium Project covered by this Agreement.*** (Emphasis Added.)
>
> a. Furthermore, on behalf of itself and its Affiliated Parties, ***Union agrees that it will not assist, support, encourage or cooperate with any Affiliated Parties, or any other person or entity of any kind who challenges, opposes, contests, intervenes, takes adverse action or bring suit or files any claim, complaint or opposition in any forum or before any agency, body, court or other tribunal, whether administratively, quasi-judicially, judicially or otherwise, regarding a Residential/Commercial Podium Project and will take all lawful and good faith steps it deems necessary to ensure that all of its Affiliated Parties abide by the terms in the preceding paragraph and this Agreement.*** (Emphasis added.)

VI. When Icon did not cede to the Union Defendants' exclusivity demands, the Union Defendants brought their sham litigation to state court.

120. Having failed in their efforts to coerce, intimidate, extort and pressure Icon to use exclusively union contractors on the Project through its abuse of the administrative process from May 2017 through August 2018, the Union Defendants continued to press their sham CEQA challenges to delay the Project and drive up its costs by filing a Petition for Writ of Mandate in the Superior Court of the State of California County of Los Angeles. The Petition again asserted violations of CEQA and requested that the Court set aside the Project approvals.

121. The same day, SWRCC Senior Field Representative Dan Langford told Fields during a phone conversation that the Union Defendants had specifically budgeted money for their CEQA litigation scheme. Langford made it clear that the Union Defendants did not truly believe in the substance of their CEQA claims by telling Fields that if the Union Defendants did not challenge Icon's Project they would simply challenge another developer's project. Langford

further made clear that the Union Defendants' true goal was to delay the Project and drive up costs.

122. Immediately following Fields' discussion with Langford, Fields texted Ron Diament from SWRCC the following: "I spoke with Dan and he emphatically said that you want the full labor agreement or you'll sue. He suggested that we'd be better off paying for it now by hiring you versus getting the project delayed and the impacts it would cause. He boasted that they have the budget for it so it won't affect you but will significantly affect us."

123. Icon has continued to discuss with the SWRCC and the LIUNA the importance of the Project to the community and its willingness to use union contractors as well as nonunion contractors through a competitive bidding process, but the Union Defendants continue to abuse the CEQA process to force Icon to cede to their demands.

VII. The Union Defendants have a pattern and practice of filing sham CEQA litigation to delay large development projects within Los Angeles County (as well in other California counties).

124. Upon information and belief, the Union Defendants maintain databases that track general contractors, subcontractors, permit applications, as well as when cities release draft Mitigated Negative Declarations (environmental reports that are less comprehensive than EIRs) and EIRs for major construction projects. The Union Defendants use the databases to decide which contractors to target for CEQA litigation based on the size and scope of the project, without regard to the merits of the CEQA claims.

125. Upon information and belief, the Union Defendants used those databases to identify the Icon Panorama Project as a target for its scheme.

126. This is not the first time that the Union Defendants filed sham oppositions and appeals based on false CEQA claims to delay development projects within Los Angeles County, California for the sole purpose of coercing,

intimidating, extorting, and pressuring developers to surrender to their demands. The Union Defendants use the CEQA process as a means to secure control of the labor market and dictate the cost of labor for all construction projects in the County.

127. As an example, upon information and belief, LIUNA and/or SWRCC are currently utilizing the same sham challenges under the guise of alleging CEQA-based claims on the following large mixed use projects in Los Angeles County representing millions of square feet of residential and commercial space that include thousands of units and billions of dollars of development at a time when Los Angeles is experiencing a significant housing shortage that has resulted in a homeless crisis:

- 6901 West Santa Monica Boulevard, Los Angeles, CA
- 222 West Second Street, Los Angeles, CA
- 129-135 West College Street, Los Angeles, CA
- 1240-1260 South Figueroa Street, Los Angeles, CA
- 1107-1121 North Mansfield Avenue, and 1106-1126 North Orange Drive, Los Angeles, CA
- 520-532 South Mateo Street, Los Angeles, CA
- 676 South Mateo Street, Los Angeles, CA
- 1001 Olympic Blvd., Los Angeles, CA
- 1033-1057 South Olive Street, Los Angeles, CA
- 1375 St. Andrews Place, Los Angeles, CA
- 1030-1380 North Broadway and 1251 North Spring Street, Los Angeles, CA
- 1000-1022 South Hill Street, Los Angeles, CA and 220 and 226 West Olympic Blvd., Los Angeles, CA
- 1000 West Temple Street, Los Angeles, CA

FIRST CAUSE OF ACTION

Attempted Monopolization in Violation of

Section 2 of the Sherman Act

128. Paragraphs 1 through 127 are re-alleged and reincorporated herein.

129. The sham and baseless oppositions to construction permit applications on environmental or regulatory grounds is a strategy that labor organizations like the Union Defendants in this case use to eliminate competing nonunion contractors from the labor market. Developers who cannot pledge to use exclusively union labor find their projects blocked entirely or their costs increased significantly if their permits are challenged. Thus, developers like Icon suffer injury no matter which option they choose—higher labor costs if they pledge to use only union labor on their projects, or higher costs in delays of their projects if they do not succumb to the Union Defendants' tactics and defend against the sham litigation and proceedings that the Union Defendants pursue both administratively and in the courts.

130. Through such illegal conduct, the Union Defendants seek to obtain monopoly power over the sale of labor services to developers (like Icon) of large real estate projects within Los Angeles County, California (the "Relevant Market"). Such large real estate projects are generally those that fall within the purview of the Department of City Planning's "Major Projects Unit," which enables the Department to conduct a more thorough and focused analysis of large, complex projects that have the potential to generate the most significant effects on the City's infrastructure, local economy, and environment.

131. Unions, Icon, other project owners/construction contractors which use nonunion labor, other project owners/construction contractors which use union labor only, and the community at large recognize the existence of the Relevant Market as an area of effective competition for labor services due to the

high demand and desirability of project development and construction such as Icon's Panorama Project.

132. The Union Defendants compete against nonunion contractors in the Relevant Market.

133. The Union Defendants have sought to exercise control and monopoly power over the Relevant Market by engaging in predatory, unlawful, fraudulent and/or other anti-competitive business practices, including but not limited to initiating or threatening to initiate sham and objectively baseless CEQA-based protests and litigation that will prevent or delay the development of construction (including the Project) within the Relevant Market. Such baseless protests and lawsuits, which the Union Defendants file over and over again, are the means by which they conceal their attempts to control/lower the supply of labor and drive up the cost of using nonunion labor such that nonunion contractors are excluded from the Relevant Market, interfering directly with Icon's relationships with, and right to open competitive bidding to, construction contractors that use nonunion labor.

134. The Union Defendants' lawsuits and threats of lawsuits represent a significant barrier to entry to the Relevant Market for any price-competitive nonunion contractor that seeks to obtain work from developers like Icon. By raising the aggregate wage rate, the Union Defendants' anti-competitive activities also drive up the cost of projects because only union labor can be used, allowing the Union Defendants to maintain their market power in such downstream markets. As a result of the Unions' illegal actions, market labor prices will rise to the level set by the Union Defendants when nonunion contractors are driven out of the market.

135. The Union Defendants' acts have prevented or suppressed competition, and continue to prevent or suppress competition, and these acts have

permitted the Union Defendants to seek a dominant and monopolistic market position and wage control in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

136. The Union Defendants have made clear their intent to prevent development of any additional project in the Relevant Market on which union labor is not used. Their objective is to obtain a monopoly by increasing and controlling wage rates and/or destroying competition in the Relevant Market and to obtain and maintain a dominant market position.

137. Competition in the Relevant Market has suffered, and will continue to suffer, regardless of whether monopoly power is attained because through their anti-competitive activities, the Union Defendants will obtain the unilateral power to set wage rates in the Relevant Market.

138. The Union Defendants have willfully sought to acquire and maintain a monopoly in the Relevant Market through predatory, unlawful, fraudulent and/or other anti-competitive business practices. The Union Defendants' intent to monopolize can be inferred from the nature of their illegal conduct.

139. The Union Defendants' intent, power, and resources create a dangerous probability that they will succeed in monopolizing the Relevant Market, causing the significant anticompetitive consequences described above.

140. The Union Defendants' illegal conduct is not exempted from the Sherman Act or any other anti-trust law because they have sought to act in concert with project-owners like Icon, construction contractors, and consulting companies (SWAPE and SEM) – all non-labor groups – to achieve a monopoly in the Relevant Market and have sought to obtain that monopoly through illegitimate means and for illegitimate purposes. In particular, if developers (like Icon) or their contractors/designated agents do not succumb to the Union Defendants' demands that they use exclusively union labor on their construction projects, the Union

Defendants continue to assert their sham and objectively baseless protests and litigation, which have nothing to do with the legitimate goals of a union or the purpose of labor law protections.

141. Icon is a "person" entitled to sue under 15 U.S.C. § 15 because it has been injured as a direct result of the Union Defendants' antitrust violations described herein. Icon's injury was caused by a substantial reduction in the available supply of labor in the Relevant Market as a result of the Union Defendants' illegal conduct, which was intended to, and did in fact, have an anticompetitive effect beyond the costly delays in Icon's Project and the other damages it has suffered. Specifically, the Union Defendants' illegal conduct has removed nonunion labor from the Relevant Market: either developers (i) succumb and pledge to use exclusively union labor, substantially driving up their labor costs, or (ii) decline such a pledge, suffer delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incur substantial litigation costs in defending against that litigation.

142. As a direct and proximate result of the Union Defendants' above-described anti-competitive activities, Icon has suffered business injuries and/or loss of property by, among other things, threats to their project, loss of goodwill, significant lost profits, increase in interest rates, costs increases due to increases in the minimum wage, possible retail lease losses, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers of the Project and other projects that project-owners seek, or will seek, to develop, and significant cost overruns due to delays in construction and carrying costs of those projects.

143. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

144. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

SECOND CAUSE OF ACTION

Conspiracy to Monopolize in Violation of Section 2 of the Sherman Act

145. Paragraphs 1 through 144 are re-alleged and reincorporated herein.

146. The Union Defendants knowingly and willfully conspired among themselves and others, including the non-labor groups described above, to monopolize the Relevant Market.

147. The Union Defendants' specific intent to monopolize the Relevant Market is apparent from the character of the Unions' conduct and their actions as alleged in this Complaint.

148. The Union Defendants committed overt acts and engaged in other conduct pursuant to, and in furtherance of, the conspiracy. The Union Defendants have engaged in predatory, unlawful, fraudulent and/or other anti-competitive business practices directed toward achieving the objective of controlling labor costs and destroying competition in the Relevant Market as described above.

149. The Union Defendants did the acts and things alleged in this Complaint pursuant to, and in furtherance of, the conspiracy. By virtue of the Union Defendants' statements, behavior, conduct, overt acts, and omissions to prevent or substantially delay Icon from proceeding with the Project and other construction projects, the Union Defendants have the specific intent to monopolize the Relevant Market by controlling wage rates and excluding nonunion contractors and owner-developers which choose to work with nonunion contractors (like Icon) from the construction industry.

150. Icon is a "person" entitled to sue under 15 U.S.C. § 15, because it has been injured as a direct result of the Union Defendants' antitrust violations

described herein. Icon's injury was caused by a substantial reduction in the available supply of labor in the Relevant Market as a result of the Union Defendants' illegal conduct, which was intended to, and did in fact, have an anticompetitive effect beyond the costly delays in Icon's Project and the other damages it has suffered. Specifically, the Union Defendants' illegal conduct has removed nonunion labor from the Relevant Market: either developers (i) succumb and pledge to use exclusively union labor, substantially driving up their labor costs, or (ii) decline such a pledge, suffer delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incur substantial litigation costs in defending against that litigation.

151. As a direct and proximate result of the Union Defendants conspiracy to engage in anti-competitive activities in violation of the Sherman Act, Icon has suffered business injuries and/or loss of property by, among other things, threats to their projects, loss of goodwill, significant lost profits, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers for the Project and other projects Icon and other owners seek to develop, and significant cost overruns due to delays in construction of those projects.

152. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

153. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

THIRD CAUSE OF ACTION

Directing a "Group Boycott" in Violation of Section 1 of the Sherman Act

154. Paragraphs 1 through 153 are re-alleged and reincorporated herein.

155. The Union Defendants have sought to control/lower the supply of labor and drive up the cost of using nonunion labor such that nonunion

contractors are excluded from the Relevant Market by organizing and leading an unlawful group boycott in violation of Section 1 of the Sherman Act.

156. The Union Defendants have directed and orchestrated concerted efforts between and among various union contractors in the Relevant Market to enter into tacit and/or express agreements with the Union Defendants and each other to offer developers only union labor on any projects within the Relevant Market and refuse to work with developers who do not accede to their demands to use only union labor.

157. For example, as explained above in Paragraphs 112-114, 116-119, Defendant LIUNA refused to negotiate with Icon over an alternative labor arrangement, in part, because LIUNA entered a "most favored nation" agreement with a competing developer whereby LIUNA agreed with the competing developer not to enter more favorable agreements with other developers, such as Icon. Given the lower costs of nonunion labor, this type of agreement ensures that LIUNA, and the union contractors which participate in the unlawful group boycott with LIUNA described above, will never agree to allow a developer to use any nonunion labor on any project, effectively foreclosing nonunion contractors from entering the Relevant Market.

158. On information and belief, union contractors who have agreed to participate in the unlawful group boycott described above have refused to work with developers like Icon, and/or bid on any development projects, where the developer does not pledge to use only union labor.

159. As part of this unlawful group boycott, the Union Defendants have made clear their intent to prevent development of medium to large scaled projects that require environmental review in the Relevant Market on which union labor is not used. Their objective is to obtain a monopoly by increasing and controlling

wage rates and/or destroying competition in the Relevant Market and to obtain and maintain a dominant market position.

160. The Union Defendants have willfully sought to acquire and maintain a monopoly in the Relevant Market through predatory, unlawful, fraudulent and/or other anti-competitive business practices such as directing the above-described group boycott. The Union Defendants' intent to monopolize can be inferred from the nature of their illegal conduct.

161. The Union Defendants' illegal conduct is not exempted from the Sherman Act or any other anti-trust law because they have sought to act in concert with construction contractors and consulting companies like SWAPE and SEM – all non-labor groups – to achieve a monopoly in the Relevant Market and have sought to obtain that monopoly through illegitimate means and for illegitimate purposes, including an unlawful group boycott as described above.

162. The Union Defendants-led unlawful group boycott is a per se violation of section 1 of the Sherman Act. Alternatively, the Union Defendants-led unlawful group boycott violates the Rule of Reason because it harmed not only Icon's business, but also competition in the Relevant Market among suppliers of labor for development projects as described herein.

163. Icon is a "person" entitled to sue under 15 U.S.C. § 15, because it has been injured as a direct result of the Union Defendants' antitrust violations described herein. Icon's injury was caused by a substantial reduction in the available supply of labor in the Relevant Market as a result of the Union Defendants' illegal conduct, which was intended to, and did in fact, have an anticompetitive effect beyond the costly delays in Icon's Project and the other damages it has suffered. Specifically, the Union Defendants' illegal conduct has removed nonunion labor from the Relevant Market: either developers (i) succumb and pledge to use exclusively union labor, substantially driving up their labor

costs, or (ii) decline such a pledge, suffer delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incur substantial litigation costs in defending against that litigation.

164. As a direct and proximate result of the Unions' above-described anti-competitive activities, Icon has suffered business injuries and/or loss of property by, among other things, threats to their projects, loss of goodwill, significant lost profits, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers of the Project and other projects that project-owners seek, or will seek, to develop, and significant cost overruns due to delays in construction of those projects.

165. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

166. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

FOURTH CAUSE OF ACTION

Conspiracy and Attempt to Enter Into Exclusive Dealing Arrangement in Violation of Section 3 of the Clayton Act and Section 1 of the Sherman Act

167. Paragraphs 1 through 166 are re-alleged and reincorporated herein.

168. By engaging in predatory, unlawful, fraudulent and/or other anti-competitive business practices, including but not limited to initiating or threatening to initiate sham and objectively baseless CEQA-based protests and litigation that will prevent or delay the development of construction (including the Project) within the Relevant Market, the Union Defendants seek to create an unlawful exclusive dealing arrangement between themselves and contractors which work on development projects like Icon's Project, all of which is prohibited by section 3 of the Clayton Act, 15 U.S.C. § 14. Under this exclusive dealing

arrangement, whereby contractors pledge to the Union Defendants in advance of any bids the contractors may submit on construction projects in the Relevant Market that they will use exclusively union labor on such projects, union contractors become the exclusive source of labor services available for purchase by developers like Icon.

169. The Union Defendants knowingly and willfully conspired among themselves and others, including the non-labor groups described above, to obtain an exclusive dealing arrangement in violation of section 3 of the Clayton Act.

170. The Union Defendants' specific intent to monopolize the Relevant Market through an unlawful exclusive dealing arrangement is apparent from the character of the Union Defendants' conduct and their actions as alleged in this Complaint.

171. The Union Defendants committed overt acts and engaged in other conduct pursuant to, and in furtherance of, the above-described conspiracy. The Union Defendants have engaged in predatory, unlawful, fraudulent and/or other anti-competitive business practices directed toward achieving the objective of controlling labor costs, eliminating or foreclosing a substantial share of the nonunion labor supply that exists or previously existed in the Relevant Market, and destroying competition in the Relevant Market.

172. The Union Defendants did the acts and things alleged in this Complaint pursuant to, and in furtherance of, the conspiracy. By virtue of the Union Defendants' statements, behavior, conduct, overt acts, and omissions to prevent or substantially delay Icon from proceeding with the Project and other construction projects, the Union Defendants have the specific intent to enter into an exclusive dealing arrangement in violation of Section 3 of the Clayton Act.

173. The Union Defendants' illegal conduct is not exempted from the Clayton Act or any other anti-trust law because they have sought to act in concert

with construction contractors and certain consulting companies (SWAPE and SEM) – all non-labor groups – to achieve a monopoly in the Relevant Market and have sought to obtain that monopoly through illegitimate means and for illegitimate purposes. In particular, if owners (like Icon) or their contractors/designated agents do not succumb to the Union Defendants' demands that they use only union labor on their construction projects, the Union Defendants continue to assert their sham and objectively baseless protests and litigation, which have nothing to do with the legitimate goals of a union or the purpose of labor law protections.

174. The exclusive dealing arrangement described above violates the Rule of Reason because it harmed not only Icon's business, but also competition in the Relevant Market among suppliers of labor for development projects as described herein.

175. Icon is a "person" entitled to sue under 15 U.S.C. § 15, because it has been injured as a direct result of the Union Defendants' antitrust violations described herein. Icon's injury was caused by a substantial reduction in the available supply of labor in the Relevant Market as a result of the Union Defendants' illegal conduct, which was intended to, and did in fact, have an anticompetitive effect beyond the costly delays in Icon's Project and the other damages it has suffered. Specifically, the Union Defendants' illegal conduct has removed nonunion labor from the Relevant Market: either developers (i) succumb and pledge to use exclusively union labor, substantially driving up their labor costs, or (ii) decline such a pledge, suffer delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incur substantial litigation costs in defending against that litigation.

176. As a direct and proximate result of the Union Defendants conspiracy to enter into an exclusive dealing arrangement and engage in anti-competitive

activities in violation of the Clayton Act, Icon has suffered business injuries and/or loss of property by, among other things, threats to their projects, loss of goodwill, significant lost profits, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers for the Project and other projects Icon and other owners seek to develop, and significant cost overruns due to delays in construction of those projects.

177. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

178. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

FIFTH CAUSE OF ACTION

Violation of Labor Management Relations Act, 29 U.S.C. § 187

179. Paragraphs 1 through 178 are re-alleged and reincorporated herein.

180. Section 303(a) of the Labor Management Relations Act makes it unlawful for a labor organization, like the Union Defendants, to engage in conduct defined as an unfair labor practice under section 8(b)(4) of the National Labor Relations Act, 29 U.S.C. 158(b)(4).

181. Under section 8(b)(4) of the NLRA, it is an unfair labor practice for a union to threaten, coerce, or restrain an employer with the object of forcing the employer to enter into any agreement prohibited by section 8(e) of the NLRA or forcing or requiring any employer to cease doing business with any other employer.

182. Under section 8(e) of the NLRA, labor organizations and employers are prohibited from entering into any agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from doing business or otherwise dealing with the products of any other employer.

183. The Union Defendants used, and are using, the sham litigation tactics described herein to coerce Icon to sign project labor agreements in which Icon pledges to use exclusively union labor on the Panorama Project. Thus, the object of the Union Defendants' unlawful conduct is to force Icon not to purchase the labor services offered by nonunion contractors (i.e., "other employers") or otherwise work with nonunion contractors on the Project. Specifically, the Union Defendants' unlawful conduct coerces Icon into either (i) succumbing and signing the project labor agreements, eliminating competitive bidding and substantially driving up Icon's labor costs, or (ii) declining such a pledge, suffering delays to their projects caused by the Union Defendants' sham and baseless CEQA litigation, and incurring substantial litigation costs in defending against that litigation.

184. The project labor agreements are unlawful under section 8(e) of the NLRA because the Union Defendants do not have a collective bargaining relationship with Icon, and because the project labor agreements are not directed towards the "reduction of friction" that may be caused when union and nonunion employees of different employers are required to work together at the same jobsite. To the contrary, the Union Defendants' sole motivation in coercing Icon to sign the unlawful project labor agreements is to monopolize the supply of construction labor for projects within the Relevant Market, as described herein.

185. Under section 303(b) of the LMRA, an employer "injured in his business or property by reason of any violation" of section 303(a) of the Act may sue for and recover damages and the cost of suit.

186. Icon has standing to bring suit under section 303(b) because it was the specific target of the Union Defendants' illegal conduct in attempting to coerce Icon to enter into the project labor agreements. As a direct and proximate result of the Union Defendants' illegal conduct, Icon has suffered business injuries and/or loss

of property by, among other things, threats to their projects, loss of goodwill, significant lost profits, costs of suit and attorneys' fees, a loss of revenue that will impact prices paid by consumers for the Project and other projects Icon and other owners seek to develop, and significant cost overruns due to delays in construction of those projects.

187. As a proximate result of the wrongful acts herein alleged, Icon has been damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c)

188. Paragraphs 1 through 187 are re-alleged and reincorporated herein.

189. Icon is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

190. The Union Defendants constitute an "enterprise" engaged in, and whose activities affect, interstate commerce within the meaning of 18 U.S.C. §§ 1961(4) and 1962 (the "Enterprise"). The Enterprise exists separate and apart from the pattern of racketeering activity alleged and the Union Defendants themselves.

191. Defendants Alexis Olbrei, Pete Rodriguez, Dan Langford, Ron Diament, Angel Olvera, Sergio Rascon, and Ernesto Pantoja are each "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c), who are employed by and/or associated with the Enterprise.

192. From April 2017 until the present, the "persons" identified in Paragraph 191 conducted, participated in, engaged in, conspired to engage in, or aided and abetted the conduct of the affairs of the Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5), and 1962(c). The predicate acts constituting the pattern of unlawful activity engaged in by the "persons" identified in Paragraph 191 constitute:

a. Extortion, as defined in 18 U.S.C. § 1961(1)(B) and 18 U.S.C. § 1951, including but not limited to:

i. The sham and objectively baseless litigation and related conduct described above beginning in April 2017 and continuing to the present, in which one or more of the "persons" identified in Paragraph 191 threatened to stop and/or delay the Project through unfounded CEQA and/or related challenges and litigation if Icon continued its efforts to develop the Project or other projects in the Relevant Market. Icon's fear of economic loss from the extortion is reasonable. This extortion obstructed interstate commerce;

ii. Upon information and belief, additional acts of extortion were engaged in by one or more of the "persons" identified in Paragraph 191 beginning on or after April 2017. The information regarding each of those separate acts of extortion is within the custody and control of the Union Defendants and/or their agents.

b. Mail fraud, as defined in 18 U.S.C. § 1961(1)(B) and 18 U.S.C. § 1341, including but not limited to, one or more of the "persons" identified in Paragraph 191 used the U.S. mails in around April 2017 through August 2018 to submit to the Planning Committee correspondence, petitions, "written comments," and/or other documents that made false and misleading factual representations about the size, scope and environmental impact of the Project. Upon information and belief, one or more of the "persons" identified in Paragraph 191 made additional uses of the U.S. mails to circulate materially false and misleading information and/or documents about the Project. The information regarding those additional separate mail fraud violations is entirely within the custody and control of the Union Defendants and/or their agents.

193. These acts all occurred after the effective date of RICO and more than two such acts occurred within ten years of one another.

194. All of the predicate acts described herein were continuous so as to form a pattern of racketeering activity in that the "persons" identified in Paragraph 191 engaged in the predicate acts over a substantial period of time and such predicate acts have become their regular way of conducting business, and these business practices will continue indefinitely into the future unless restrained by this Court. Specifically, the "persons" identified in Paragraph 191 knowingly violated the extortion, mail fraud statutes and other statutes discussed in the preceding paragraphs in connection with their illegal schemes. Each of these acts constitutes a separate and distinct racketeering activity, as defined in 18 U.S.C. § 1961(a).

195. The "persons" identified in Paragraph 191 have engaged in numerous illegal acts in connection with their fraudulent schemes, as described in the preceding paragraphs. Those illegal acts constitute predicate acts of racketeering activity within the meaning of 18 U.S.C. § 1961(1) and were perpetrated for the same or similar purpose, and had similar results, participants, victims, and methods of communication.

196. As a direct and proximate result of, and by reason of the activities of the "persons" identified in Paragraph 191, and their conduct in violation of 18 U.S.C. § 1962(c), Icon has been injured in its business or property within the meaning of 18 U.S.C. § 1964(c). The above-described actions were taken, among other purposes described herein, with the specific intent and for the purpose of carrying out the Union Defendants' scheme and artifice to defraud and to conduct or participate in the affairs of the Enterprise. These acts are capable of repetition. Furthermore, the extortionate conduct aimed at Icon was done specifically to prevent construction of the Project and any other project which would utilize non-union labor.

197. As a result of these actions, Icon has been injured in its business or property, having suffered, among other things, threats to their projects, significant lost profits, lost goodwill, costs of suit and attorneys' fees, and significant cost overruns due to delays in construction of the Project.

198. Icon is entitled to recover treble the damages it has sustained together with the cost of the suit, including reasonable attorneys' and experts' fees.

199. Icon has suffered, and will continue to suffer, irreparable harm, entitling Icon to injunctive relief, if the Union Defendants are not enjoined from engaging in their anti-competitive conduct.

SEVENTH CAUSE OF ACTION

Unfair Competition, Cal. Bus. & Prof. Code § 17200, Against All Defendants

200. Paragraphs 1 through 199 are re-alleged and reincorporated herein.

201. Icon brings this action on its own behalf as an entity that has suffered injury in fact and lost money or property as a result of the Union Defendants' unfair competition within Los Angeles County, California.

202. The Union Defendants have engaged in unfair competition by committing acts that are unlawful, unfair, and fraudulent business practices or acts as defined by the California Business and Professions Code sections 17200, *et seq*. by, among other things, engaging in the acts described above, including but not limited to:

a. Conduct that constitutes or threatens incipient violation of the Sherman and Clayton Acts, 15 U.S.C. § 2, *et seq*., and/or violates the policy and spirit of these laws by significantly threatening or actually harming lawful competition, including but not limited to the conduct described in the first, second, third, and fourth causes of action;

b. Conduct that violates the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1960, *et seq*., including but not limited to the predicate acts described in Paragraphs 192-196 above; and

c. Initiating and maintaining frivolous sham inquiries or objections to the Project, with the sole purpose of halting or delaying completion of the Project.

203. The acts described in this Complaint constitute numerous individuals and combined unfair, unlawful, and/or fraudulent acts or practices within the meaning of Business and Professions Code sections 17200, *et seq*. The totality of the Union Defendants' conduct has enabled the Union Defendants, among other things, to dominate and control competition, including the sale of labor services to construction contractors and project developers, including but not limited to Icon, within the Relevant Market. The Union Defendants' conduct as detailed above represents a significant barrier to entry to the Relevant Market for any developer-owner, like Icon, which seeks or may seek to use a price-competitive nonunion contractor. By raising the aggregate wage rate, the Unions' anti-competitive activities raise barriers to entry in both project-owner and construction contractor markets because projects will become cost-prohibitive or more costly to complete, allowing the Union Defendants to maintain their market power in such downstream markets. As a result of the Union Defendants' illegal actions, market labor prices will rise to the level set by the Union Defendants when nonunion contractors are driven out of the market.

204. The Union Defendants actively and directly participated in or provided substantial assistance to others who committed the unfair, unlawful and/or fraudulent acts or practices described herein.

205. The gravity of the harm of the Union Defendants' conduct on Icon as well as on nonunion contractors and labor within the Relevant Market outweighs

any potential benefits of such conduct. The Union Defendants' conduct described herein offends established public policies, is immoral, unethical, oppressive, unscrupulous, and is substantially injurious to consumers.

206. The Union Defendants' unfair and unlawful business practices are likely to continue to harm Icon, nonunion contractors and labor, and consumers, and present a continuing threat to the public.

207. As a result of these actions, Icon has been injured in its business or property, having suffered, among other things, threats to their projects, significant lost profits, lost goodwill, costs of suit and attorneys' fees, and significant cost impacts and overruns due to delays in construction of the Project.

208. Icon seeks a permanent injunction pursuant to Business and Professions Code section 17203, restraining and enjoining the Union Defendants from continuing the acts of unfair competition set forth above;

209. Icon requests during this action a preliminary injunction pursuant to Business and Professions Code section 17203 to enjoin and restrain the Union Defendants from the acts of unfair competition set forth above;

210. Icon is entitled to recover restitutionary disgorgement of profits and other economic benefits unjustly obtained by the Union Defendants from the Icon as a result of the Union Defendants' acts of unfair competition;

211. Icon requests all costs, expenses and attorneys' fees of suit pursuant to 17 U.S.C. §§ 503-05; and

212. Any other and further relief as the court deems just and equitable.

WHEREFORE, Plaintiffs request judgment against Defendants, and each of them, for the following:

ON THE FIRST, SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION

213. The Union Defendants and their agents be enjoined during this litigation, and permanently thereafter, from ongoing and future acts constituting violations of Federal antitrust laws to maintain or secure a monopoly, as provided for by 15 U.S.C. § 26;

214. Treble damages under section 4 of the Clayton Act, 15 U.S.C. § 15, arising from harm Icon has sustained as a result of the Union Defendants' violation of section 2 of the Sherman Act, 15 U.S.C. § 2;

215. Damages under 29 U.S.C. § 187(b);

216. Prejudgment interest;

217. Costs of suit incurred;

218. All costs, expenses and attorneys' fees; and

219. Such other and further relief as the court deems just and proper.

ON THE SIXTH CAUSE OF ACTION

220. Issue a permanent injunction restraining the Union Defendants, their officers, employees, agents, affiliates, parents, subsidiaries and all other persons who act in concert with them from making false, misleading or deceptive statements or representations about the Project;

221. Issue a permanent injunction restraining the Union Defendants, their officers, employees, agents, affiliates, parents, subsidiaries and all other persons who act in concert with them from extorting Icon;

222. Award damages against the Union Defendants, jointly and severally, for a sum of money equal to the amount of damages Icon has sustained or will sustain, said amount to be trebled pursuant to 18 U.S.C. § 1964(c);

223. Award prejudgment interest on the amount of damages Icon has sustained;

224. Award all costs of litigation incurred by Icon, including its reasonable attorneys' fees and expert witness fees, pursuant to 18 U.S.C. § 1964(c);

225. Award punitive damages; and

226. Award such other further relief as the Court deems just and equitable.

ON THE SEVENTH CAUSE OF ACTION

227. A permanent injunction pursuant to Business and Professions Code section 17203, restraining and the Union Defendants from continuing the acts of unfair competition set forth above;

228. During this action, a preliminary injunction pursuant to Business and Professions Code section 17203 to enjoin and restrain the Union Defendants from the acts of unfair competition set forth above;

229. The Union Defendants be ordered to restore all funds acquired by the acts of unfair competition set forth above pursuant to Business and Professions Code section 17203;

230. For all costs, expenses and attorney's fees of suit pursuant to 17 U.S.C. §§ 503-05; and

231. Any other and further relief as the court deems just and equitable.

DATED: January 9, 2019.

STEPTOE & JOHNSON LLP

s/ Jason Levin

Jason Levin
633 West Fifth Street, Suite 700
Los Angeles, California 90071

Karl M. Tilleman (*Pro Hac Pending*)
Alan Bayless Feldman (*Pro Hac Pending*)
201 E. Washington St., Suite 1600
Phoenix, AZ 85004

Attorneys for Plaintiff

Attachment 6

Holland & Knight

50 California Street, Suite 2800 | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Jennifer L. Hernandez
+1 415-743-6927
Jennifer.Hernandez@hklaw.com

December 3, 2018

CHAIRWOMEN INMAN AND NICHOLS, AND MEMBERS OF THE CALIFORNIA TRANSPORTATION COMMISSION AND CALIFORNIA AIR RESOURCES BOARD

Re: CARB 2018 Progress Report on California's Sustainable Communities and Climate Protection Act

Dear Chairwomen and Members:

We are honored to represent The 200, a distinguished group of California's civil rights leaders who have spent their entire careers – with some careers spanning more than 50 years – fighting racial discrimination by public agencies blind to the disparate harm to minority communities caused by the policy preferences advanced by the political elite of their day.

The 200 formed to respond to California's extreme poverty, homelessness, and housing crisis with a simple objective: homeownership must be attainable for California's minority workers and families. Homeownership has been recognized as the most effective means of entering and remaining in the middle class, but for decades minority communities were "redlined" – by discriminatory lending, insurance, zoning, and other government-imposed or sanctioned barriers – and denied access to the better health, education, economic security, and welfare benefits that derive from home ownership.

The California Air Resources Board (CARB) is the latest in a long line of public agencies to use purportedly race-neutral goals to unlawfully discriminate against California's minority communities. The 200 has filed a civil rights lawsuit against four anti-housing measures in CARB's 2017 Scoping Plan, including its expansion of CEQA, its mandated reduction in vehicle miles travelled (VMT), and its "Vibrant Communities Appendix C" which includes multiple new barriers to building housing that California's minority workers can actually afford to buy. A copy of that lawsuit, which includes a detailed description of CARB's discriminatory conduct, is included as Attachment A to this letter. That lawsuit seeks to compel CARB to rescind the four challenged housing measures, and to halt implementation of any Scoping Plan action not expressly required by legislation or existing regulations until a comprehensive environmental and economic assessment is completing that documents the cost and environmental consequences of Scoping Plan measures on existing Californians.

The 200 filed a second lawsuit against several of the other state agencies that comprise the "Vibrant Communities" implementing agencies (referenced in Footnote 9 of the above-referenced CARB report) declined to disclose documents responsive to our Public Records Act request, claiming that such documents would be too "controversial" and should thus be concealed under the deliberative process privilege, to compel disclosure of the withheld documents. A copy of this lawsuit is included as Attachment B to this letter.

CARB has distorted and mismanaged California's climate mandates into a regressive regime that has and will continue to worsen the state's poverty, homelessness, and housing crises. More than 1,000,000 Californians have moved out of California because of high housing costs, and most of them – our children, our grandchildren, and our treasured teachers and valued craftsmen – move to states like Texas, Nevada and Arizona, all of which have much higher per capita greenhouse gas emissions than California. With its unique brand of math and metrics, CARB has managed to achieve the twin objectives of harming our young minority workforce while actually increasing global GHG emissions. A one-page summary of the GHG "math" behind CARB's proposed agenda to engage in still more study of how and where to build critically needed housing and mandate reductions in VMT is included as Attachment C, and a detailed study of California's GHG reduction programs in relation to the GHG reduction progress made by other countries and states, as well as a focused examination on the disparate racial and regional impacts of CARB's GHG reduction programs, is included as Attachment D.

Because this is a joint meeting of the California Transportation Commission and the California Air Resources Board, we address our comments to each agency below:

California Transportation Commission.

We first take this opportunity to commend the staff of the California Transportation Commission, which timely and completely responded to our California Public Records Act (CPRA) request. We have not named CTC as a party to our CPRA lawsuit, but regret to report that CalSTA is a party based on that agency's decision to conceal responsive documents, including the fact that these issues were considered at the highest level of state government and consideration of potential legislation. Neither of these reasons is a lawful basis for concealing public records.

We next want to commend CTC for its work in managing California's complex transportation systems in compliance with your agency's statutory obligations, including support for voter-approved transportation projects and funding priorities, and for your tradition of working collaboratively with and respecting the legal obligations of the state's regional transportation authorities, as well as cities and counties.

California Air Resources Board.

First, CARB's 2018 Progress Report is a wish list of power over local land use generally, and mandating reductions in VMT in particular, that CARB sought, but did not receive, from the Legislature.

Second, the Report also demonstrates CARB's ongoing and intentional discrimination against California's minority communities.

The detailed reasons for both of these conclusions are set forth in the attachments to this letter, such as The 200's lawsuit against CARB, and are not repeated here.

Four points warrant highlighting for the combined attention of CTC/CARB.

1. CARB Has Zero Legal Authority to Mandate Reductions In Vehicle Miles Travelled (VMT), and Its Efforts to Do So Are Both Unlawful and Discriminatory

CARB and its environmental (open space and species protection, and more recently climate) allies have long sought legislative authority to mandate reductions in VMT. There is zero evidence, available anywhere in the world and anywhere in history, that a growing population with more jobs can ever be accommodated while reducing VMT. On the contrary, there is ample evidence, including in reports submitted to CARB by climate advocacy organizations like NextGen, that for lower income and rural workers – who are disproportionately minorities – public transit is not a practicable option, and cleaner automobiles – electric and fuel efficient cars, and equitable replacement of the state's oldest and most polluting cars – is the "right" climate solution for California's majority-minority workforce.

In sharp contrast to CARB's invented VMT reduction mandate "metric" dominating this SB 150 report, the Legislature has repeatedly, and expressly, rejected imposing a VMT mandate on California communities:

- The earliest versions of SB 375 included a VMT reduction mandate, which was quickly deleted in subsequent versions of that bill. SB 375 requires GHG reductions, not VMT reductions.

- The first versions of SB 743 also included a VMT reduction mandate, which was likewise deleted. Through the CEQA Guidelines, a different state agency was directed to develop a metric other than traffic delay in high quality transit-served areas – and one such possible metric was VMT. The CEQA Guidelines have in fact not been amended, and the Legislature did not direct that separate agency to adopt a VMT at all, or any alternative metric, outside such transit-served areas.

- The first version of SB 150, the Legislation directing CARB to develop this report, likewise started with a mandated VMT reduction that was separate and apart from CARB's GHG reduction mandate. VMT was again rejected in the enacted version of SB 150.

- In fact, SB 1014 is only Legislation requiring consideration of VMT, and it establishes a framework for evaluating GHG per VMT (with electric and more fuel-efficient cars having lower GHG per VMT), for app-based ride companies like Uber and Lyft. Neither this bill, nor any other, authorizes any California agency to mandate reductions in VMT.

- Similarly, the Legislature has repeatedly rebuffed "Vibrant Communities" top-down state land use mandates like imposing statewide urban growth boundaries, or directing one or more state agencies (other than the Coastal Commission) to assume responsibility for permitting local land use and transportation plans statewide. CARB does have an assigned role in reviewing regional Sustainable Communities Strategies under SB 375, and has as part of that statutory role itself declined to impose a VMT reduction target that is independent of a GHG reduction target just a few months ago, in March of 2018 – four months after approving the 2017 Scoping Plan CARB now cites as the basis for requiring a VMT reduction mandate. The SB 375 Target Update process included extensive and collaborative studies that showed, among other conclusions, why VMT was not a reliable or necessary metric for achieving GHG reduction targets. The SB 375 Target Update also included numerous studies, and scores of comments from stakeholders, explaining why VMT reductions were not feasible with a growing population and jobs base. (The 200 spoke in support of the updated GHG reduction SB 375 targets at the CARB meeting approving these standards, in March of 2018.)

It is not surprising that the Legislature has declined to mandate VMT reductions, or otherwise enshrine CARB or any other state agency as a new statewide Coastal Commission in charge of local land use and transportation approvals in California's complex and diverse communities.

Simply put, those who drive the farthest are priced out of more proximate homes, and are disproportionately minorities. Many live in poverty or near-poverty, and have – as NextGen reported to CARB – no option to driving to their jobs. NextGen urged CARB to reorient its electric car incentives that had disproportionately favored wealthy Tessla buyers in Marin and other coastal enclaves, who live closer to work – and in any event are wealthy enough to have food delivered and children shuttled by drivers who aren't part of their household. NextGen advocated incentives for getting more electric cars and infrastructure into lower income areas, and for accelerating equitable retirement/replacement of the oldest and most polluting vehicles on the road. CARB has made some progress toward achieving these goals, but is insisting on ever-escalating VMT reductions in a concealed math exercise that defies common sense given our emphasis on electric vehicle fleets. This "CARB Math" is discussed further in Part 4 below.

2. CARB's Transportation Vision is Infeasible, and Discriminatory

CARB's fixation on reducing VMT makes the act of being in a car for a mile – even in an electric car or a carpool – an assault on California's climate leadership. CARB wants to achieve its VMT reduction mandate by making people walk or bike, or ride a bus (or for a tiny fraction of California commuters, ride a ferry or rail).

CARB's Report shows that transit ridership is generally down in California regions, and transportation mode shifts continue to rapidly evolve. Electric scooters and bikes have become a viable business model in some of California's densest communities, while app-based and on-demand carpooling, rideshare, and driver options have emerged as a popular and effective (for at least some trips, some of the time) transportation option. None of these transportation options existed or had been deployed at scale when SB 375 was enacted and therein decreed that quality transit service meant four buses, operating at 15 minute intervals, on fixed routes during peak hours (with similar prescriptive mandates for weekend bus service).

Deployment of partially and eventually more fully automated vehicles, technology improvements that lower costs and increase ranges for electric vehicles, public private partnerships between transit agencies and hundreds of new transportation service and technology companies, and other evolutions in transportation, continue at a remarkable pace. Hostile to all VMT, however, CARB is attempting to lock in land use and transportation patterns for the next century with technology that existed two centuries ago – fixed-route buses, trains and boats.

Fixed route bus lines – especially the four-bus (and typically six or more bus driver shifts) routes required to provide the required SB 375 frequency of bus ridership – cost transit agencies (and taxpayers) millions of dollars to maintain. On-demand ride services, including carpool and other multi-passenger systems, provide more nimble, fast, and far less costly transportation options for those who cannot "walk or bike" between home and work. Transit agencies have begun using these evolving transportation services, including both agency-run services and public-private partnership voucher-based systems, with often excellent, effective, and equitable transportation service results; however, this actual and cost-effective transportation mode does not equate to a VMT reduction and has been openly and repeatedly scorned by CARB staff.

Rail (light and heavy) and ferry service have also expanded, but California's notoriously burdensome procedural requirements have typically resulted in a 20-year delay (and hundreds of millions of cost increases) in actually delivering substantial new transportation infrastructure. CARB's Report enthusiastically endorses yet another "study" of the daily transportation catastrophe suffered by our increasingly (and disproportionately minority) number of "supercommuters," while doing absolutely nothing to expedite the time or reduce the cost in delivering effective transportation solutions to today's suffering workers.

California's existing land use patterns, with or without evolving into greater density, also make fixed route transit systems exceptionally burdensome and impractical. Again as CARB well

knows, several studies have confirmed that riding transit takes nearly twice as long as a point-to-point car trip (single occupancy, carpool, or app-based car service). This is not to deny the critical role buses, and fixed rail and ferry service, play as effective transit solutions for some jobs for some residents some of the time. However, 6,000 times more jobs are accessible in a 30-minute commute by car than bus in the LA region, and that existing land use dispersal is a reality, and in a region with a growing population and jobs base that means more VMT.

CARB is a state air quality agency: it is not responsible for making transportation, housing, or employment solutions work for any people anywhere in California. CARB is clearly blind to the needs of working Californians in minority communities, although it periodically gives a nod to the poor and homeless with offers of modest direct funding for limited programs.

CARB ignores, however, the role that the automobile plays for working Californians. As noted by the University of Southern California's most experienced land use law professor, George Lefcoe, "Automobiles are the survival mechanism for low-income people." Numerous other studies, including poverty and housing segregation studies completed by the Obama administration and non-partisan think tanks like the Brookings Institute, confirm that families with a car have a much better future: cars make it easier to hold a job that pays for housing and other needs, cars make it easier to keep kids in school and get medical attention, and this housing, employment, health and educational security means a level of financial stability that families without cars simply cannot match – not in California, and not nationally.

If the Legislature wants to mandate VMT reductions, then it can sort through scores of racial, class, job type, regional, and transportation alternative considerations. Nearly 40% of our economy is linked to Port-related trade and transportation: is this sector slashed even if electric trucks become viable? A Stanford study confirmed that construction workers spend the highest percentage of their incomes on transportation: driving trucks to and from construction job sites, to and from locations and during work hours and with equipment that is simply not consistent with fixed route public transit – so are construction workers uniquely harmed, or do they get a total pass, from CARB's VMT reduction mandate? For urgently needed housing projects, CARB and other agencies have suggested imposing substantial and in-perpetuity new "VMT mitigation" fees – thousands of dollars per unit of housing, to be paid by new renters or homeowners every year, to help subsidize school buses and bike path construction as new CEQA mitigation mandates. Those without housing – disproportionately minorities – will pay even more for housing along with these remarkable new annual, in perpetuity new housing fees – conferring yet another fiscal windfall for the state's generally whiter, wealthier and older homeowners and piling on more housing fees for housing on top of the country club initiation equivalent of $150,000 per new housing unit already charged by some California agencies. Imposing extortionate fees and regulatory obstacles on housing is a proven winner for those seeking to block housing based on class or race: is inventing new VMT fees to impose on California's 3 million missing homes a policy choice made by our elected officials (or voters)?

CARB cannot, based on undisclosed math, impose a VMT reduction – or a disguised VMT reduction in the form of a VMT fee as noted in the Vibrant Communities Appendix - on any California agency, project or person based on any statutory authority granted to CARB by the Legislature. CARB's repeated attempts to do so, with failed legislation and its own abandoned effort to impose a VMT reduction mandate in the SB 375 Target Updates finally approved without that mandate in March of 2018, are unlawful and discriminatory.

3. CARB's Housing Vision is Infeasible, and Discriminatory

The Report also notes that most regions have fallen behind in housing production, and is particularly critical of the continued construction of single family homes – anywhere. However, just as CARB pretends that its VMT reduction mandate is based on non-existent legal authority, CARB pretends its housing vision is based on a high density housing economic fantasy.

As one of CARB's own advisors have documented, and has been well documented in numerous other studies, high density housing units cost 300-500% more to build than small-lot single family, duplex, quadplex and townhome housing units. California's new high density transit-oriented housing units cost far in excess of what middle income families can afford to rent or buy. Even 100% affordable housing units, built in the less costly mid-density (4-6 stories) rather than most costly high density (above 6 stories) range, cost in excess of $500,000 per unit in Los Angeles, and $700,000 per unit in San Francisco. As experts from the non-partisan Legislative Analyst Office and others have repeatedly noted, there is no way that public funding will pay for a 3 million home shortage where 40% of Californians need to make a monthly choice between paying for food and medicine. There is no option – none – to reducing the cost of housing to levels that are actually affordable to middle income families if California is serious about solving our housing crisis.

CARB also knows from its own experts that lower density housing – smaller single family homes, duplexes/quadplexes and townhomes – is the only available type of housing that has the level of substantially lower production costs that make this housing affordable.

In the most comprehensive examination of what it would take to build just under 2 million new homes entirely within existing urban areas that are actually affordable (e.g., small single family/duplex/quad/townhomes) to those earning normal salaries, scholars at UC Berkeley (one of whom was on the Report's advisory group) concluded that "tens if not hundreds of thousands" of single family homes would need to be demolished. Given our current shortfall of 3 million homes, CARB's infill-only, transit vision of California's climate future will require razing thousands of single family homes.

CARB's demand for the most costly form of urban housing - high density transit oriented housing units - isn't just infeasible for California's aspiring minority homeowners (and renters). Other studies have demonstrated that these high cost, dense new housing projects can displace low and middle income families (especially renters) who actually use transit but are forced to

relocate to more distant locations with less costly housing, where public transit is not as viable as it was from their more centrally-located original neighborhoods. Simply put, new residents of chic new high density housing urban projects near transit, who are able to afford $1 million condos or pay $5000 per month in rent, don't take the bus. In the Bay Area, and as documented in yet another comprehensive new study, the housing crisis has resulted in a racial diaspora, as African American and Latino populations have shrunk – substantially – in the region's wealthiest five counties closest to jobs, while these minority populations have grown substantially in the Central Valley and more distant East Bay counties. About 190,000 daily commuters enter the Bay Area from outside the 9-county region, and over 210,000 commute from the East Bay to Silicon Valley or San Francisco. CARB's prescription – to require even higher densities in costly urbanized areas, and prohibit lower density small "starter" homes and townhomes – could not be more perfectly tailored to worsen the housing options for our hard working minority families.

There is not a single Legislator who voted to approve CARB's new land use vision, or the related proposal in "Vibrant Communities" to impose a new "ecosystem services" tax on urban residents to pay for the open space lands they do not use or inhabit.

There is not a single Legislator who has proposed or voted to spend at least $500,000 per apartment to build 40% of the needed 3 million new housing units for the lower income Californians that United Way describes as unable to meet normal monthly expenses (1,200,000 new homes at $500,000 per home is $600,000,000,000 – that's billion.

There is not a single Legislator who has proposed or voted to end home ownership as a pathway to the middle class for Californians who work hard to earn median and above-median incomes.

Instead, the Legislature enacted SB 375 to ask each region to reduce GHG from the land use and transportation sectors – and directed CARB to establish GHG (not VMT) reduction targets. Regions, informed by cities and counties, have in turn spent tens of millions of dollars doing two (mostly completed) rounds of SB 375 plans, which CARB has in turn reviewed and approved.

Under SB 375, each regional transportation agency has carefully weighed density and transportation choices, and disclosed the substantial environmental impact tradeoffs between density and to make lower density and more financially feasible housing within the footprint of existing communities our only housing solution. Each Sustainable Communities Strategy, prepared by each region and approved by CARB, endorses far more transit and supports more density – but also documents scores of significant unavoidable impacts to the existing environment in affected communities that has created political and voter backlash against new housing. If CARB wants to pronounce SB 375 a failure, as indicated in the Report, then it's time to rethink practical housing and transportation solutions for actual Californians – but as a state air quality agency, CARB has not been charged – and is clearly not qualified – to lead this complex undertaking.

Instead, CARB's proposed solution to today's urgent poverty, homeless and housing crisis can only be invented by bureaucrats with secure employment, and special interest advocates paid to participate in endless "process" instead of actual "progress." The Report's prescription is to develop yet another "plan" – even though CARB the latest round of SB 375 targets in March of 2018!

CARB completely ignores the simple and ongoing, but politically inconvenient truths, of what experts from around the state agreed would be required to make SB 375 successful:

- More public funding would be needed, especially for housing and infrastructure. Instead, Governor Brown eliminated redevelopment, which was by far the most effective financing tool then in existence – and itself not sufficient – to make SB 375 work. CARB proposes no financing solutions.

- CEQA reform would be needed, especially for existing communities where the vast majority of CEQA lawsuits are filed and threatened. The top target statewide of CEQA lawsuits is high density infill housing, and abuse for non-environmental objectives – sometimes for openly racist NIMBY "redlining" of the type long ago recognized as illegal and immoral – is likewise ignored by CARB, which has instead decided to impose even higher housing costs with its recommended expansions of CEQA. Governor Brown took office championing CEQA reform, only to throw in the towel a few years later because "unions use CEQA to leverage project labor agreements." Even housing that complies with every single local, regional, and state law, ordinance, and mandate, can get stalled out for years by CEQA studies prepared in defense of threatened lawsuits – and then held up for even longer by CEQA lawsuits.

- Land use reform would be needed, to reduce the time and cost required to get new projects approved and contain runaway fees that in some communities have now hit $150,000 per single unit of housing (even a small apartment!). Here Governor Brown made a try with "by right" housing requiring only ministerial (non-CEQA) approvals, which failed to be endorsed by a single Legislator. The "housing package" approved in 2017 was important in recognizing and making incremental improvements, but all Legislators and the Governor conceded that far more was necessary to solve the housing crisis – and 2018 was effectively a time-out for the election. CARB in its Report at least acknowledges this problem, but its clear preference is a state agency takeover of land use approvals – a statewide equivalent of the Coastal Commission – with a leading role by, of course, CARB itself.

CARB's report demonstrates its total amnesia about what it would take for SB 375 to succeed, and its call for yet another "plan" with still more jargon about "action items" for future consideration, along with an ever-expanding mission creep of other policy preferences dear to some of CARB's allies (e.g., avoiding urban conversion of agricultural lands even within existing city limits, notwithstanding estimates that more than 500,000 acres of agricultural land

must be taken out of production to meet groundwater sustainability mandates), is yet another demonstration of the fundamental mismatch between an air agency and its environmentalist allies, and the housing and transportation needs of California's minority communities.

CARB did not, and should not, get legal authorization to forward its proposed "MAP" plan. This is an unlawful distraction from the urgent housing and transportation needs of the state, and the state's minority communities in particular.

4. CARB Climate Math

In these highly partisan times, too often those challenging anything CARB proposes have been pilloried as climate denier – or worse, Trumpites! However, enforcing hard-won civil rights protections, including equal access to housing and homeownership, have nothing to do with denying climate change – or criticizing California's commitment to climate leadership. But like other powerful bureaucrats in other times, CARB and its allies are advancing their own version of climate policies which are blind to the needs of our communities, while intentionally concealing its own inconvenient truths.

For example, one of CARB's most vexing habits is its refusal to "show its work" on math. Even third graders are trained that getting the answer right isn't enough: in math, you must show your work.

Scores of commenters have – for many years, and in many different proceedings - asked CARB, "How much GHG reduction do you need to get from VMT reductions to meet the AB 32 (and now SB 32) GHG reduction target?" CARB has adamantly and repeatedly declined to answer this question, and instead insisted that high density housing and reliance on public transit is absolutely necessary for California to meet its GHG reduction target. Even the most basic examination of CARB's math demonstrates that this is patently false, and a land use power grab that harms those most hurt by California's housing and poverty crisis.

From the earliest days of AB 32, CARB's own scientists questioned how much GHG reduction could be achieved from the land use sector, given how established land uses and transit modes established patterns that would take decades to change – if they could be changed at all. Lowering fossil fuel emissions from power plants and other manufacturing/refining facilities, increasing renewable power production, and reducing emissions from vehicles, were clear GHG "big" reduction opportunities. When pressed, CARB's scientists – and the Legislature – agreed that retrofitting older buildings with energy and water conservation features (e.g., LED lighting, insulation, more efficient HVAC systems, modern appliances, etc.) would result in the biggest GHG reductions from this sector. Ignoring science and the Legislature, CARB has never prioritized or committed meaningful funding levels needed to retrofit the vast majority of California's built environment – preferring instead to weigh in on sexier decisions about where new housing should be located that already must meet the most GHG efficient standards in the United States.

The revolution in transportation technology and services has also not been allowed to interfere with CARB's anti-VMT agenda, even as huge strides are made with electric and other clean transportation modes like electric bikes and scooters, and even with the advent of carshare and app-based ride services that reduce reliance on owned – and mostly parked – private cars. CARB does not even have an established methodology for calculating how many trips (or how much VMT) does not occur based on the exploding use of these new transportation technologies or services. These types of trips are not even counted in CARB-approved models – yet CARB remains adamant that VMT reductions are required.

Why does CARB refuse to convert its VMT reduction demand into GHG? Simply put, CARB refuses to accept that there very likely are far less intrusive, far less costly, and far less damaging to minority communities, ways to reduce GHG than mandating reductions in VMT.

CARB knows very well how to "rank" potential emission reduction strategies, and this transparent approach has a remarkably successful track record in the Clean Air Act. If CARB needs to get 10 tons, or 10,000 tons, of GHG reductions from VMT reductions, then other potential GHG reduction sources can be evaluated on the basis of relative environmental, equity, and economic consequences. As the Obama administration documented, tailpipe emissions from 1960's-era cars were reduced by nearly 99% as of 2016 – a remarkable regulatory success under the Clean Air Act that required a careful combination of technology-forcing regulations, accompanied by technical and economic analyses, that preserved the functionality and affordability of cars with technological advances in engines and fuels that were not conceivable when this regulatory effort began in the early 1970's.

CARB is clearly no fan of this Clean Air Act regulatory model, or the transparency and accountability that comes with "showing its math." In fact, there is not a single location, in either the Report or in the 2017 Scoping Plan, where CARB "shows its math" by explaining how much GHG this desired new VMT reduction mandate will achieve.

Attachment 3 to this letter "shows the math" – which, shockingly – shows that building even two-thirds of the needed housing units will require the demolition of "tens if not hundreds of thousands" of single family homes, must be done in far less dense housing types (e.g., duplexes/quadplexes) than the high densities demanded by CARB because of the exceptionally high cost of high density housing, will mean that average new housing units will be about 800 square feet instead of about 2100 square feet (and will of course have no private back yard), and then – ready the drumroll – GHG from VMT will be reduced by less than 2 million metric tons per year, which is itself less than 1% of CARB's Scoping Plan target of reducing GHG by 260 tons per year by 2030. Since CARB agrees that the California economy produces about 1% of the world's GHG, CARB's VMT reduction/high density housing agenda will result in reducing GHG by less than 1% of what CARB believes is needed - which will have statistically zero effect in reducing the GHG emissions worldwide for this global pollutant.

To worsen California's housing and poverty crisis, and disparately harm California's minority communities, chasing 1% of 1% of global GHG is quite simply an outrageous regulatory abuse of the sincere support that Californians have for leading the world on climate change.

There are a myriad suite of options to get 1% - less than 2 MMT - of GHG out of the California GHG inventory. CARB can do what its scientists and the Legislature told it to do and retrofit existing buildings (and save struggling residents money on power and water bills), or it can reduce what the Little Hoover Commission called "catastrophic" conditions in the 33% of California that is forested to avoid even a single forest fire, and generate stable levels of electricity from dead forest vegetation when it is dark and not windy (England's base load replacement for coal as a carbon neutral power production source), or it can equitably retire the oldest and dirtiest cars that have the highest GHG and other emissions in California's vehicle (which are most often owned and absolutely relied on by low income workers and their families), or it can choose to "lead the world" in developing and deploying new production methods that produce consumer products with less GHG and avoid GHG emissions from ocean-crossing exporters (and provide middle income job opportunities to Californians). These are all "win-win" strategies that reduce GHG and achieve other very important goals for California, and actually help rather than harm California's minority communities. Instead, CARB and its Vibrant Community state agency allies appear intent on using climate to make California look like and be as expensive and exclusive as Manhattan in NYC.

We urge CTC and all other California agencies and stakeholders to demand "math transparency" by CARB.

Stop CARB's Voter Disenfranchisement

Finally, we note that CARB missed its statutory deadline of September 2018 for publishing this report – thereby conveniently avoiding accountability to the majority of California voters who dutifully supported the state leaders by rejecting Measure 6 and paying higher fuel taxes to repair and maintain existing roadway infrastructure, while directing substantial future spending on transit instead of road expansions. CARB, now free of voter oversight or accountability, attacks our transportation agencies for spending money on road maintenance – by far the biggest existing transportation system infrastructure – even while voters have decided that the vast majority of new transportation projects funded by the gasoline tax will be transit and pedestrian/bicycle projects. CARB's conflation of maintenance funding with new project funding intentionally distorts California's commitment to direct most new money away from roads, and is another example of "CARB math."

CARB also provided less than 7 days, inclusive of a weekend and right after the Thanksgiving holiday, and with zero advance notice, for review and comment on this remarkable new Report. If there was a more effective way to suppress input from other state, regional and local agencies – and virtually every other California person and enterprise since all of us are dependent on

either housing or transportation – we would need to travel to a totalitarian country or dictatorship rather than a democracy to find it. This is, however, typical of CARB: for example, its "Vibrant Communities" appendix was released after the Legislative session without notice and with only a few days for comments, and the resulting hailstorm of criticism was entirely ignored by CARB and its aligned agencies. It is also the case that CARB will intone that its desired next step – it's "MAP Plan" for taking over housing and transportation decisionmaking – assuming the CARB Board allows staff to further squander taxpayer dollars and obstruct progress in solving the housing crisis or spending voter-approved housing and transportation dollars in the current housing emergency, was merely the inevitable outcome of this Report – which was, after all, the subject of a public notice and comment, and Board hearing, process.

CARB is an air agency, and it has been directed to reduce GHG. It should do so based on the tried and true transparency requirements of the Clean Air Act. There is no question that the CARB Board, and a properly managed staff, can find other opportunities achieving 1% of California's SB 32 GHG reduction goal.

In conclusion, we strongly oppose CARB's continued planning and work to mandate VMT reductions unaffordable-by-design high density housing. Global climate change creates no excuse for violating the civil rights of Californians.

Sincerely yours,

HOLLAND & KNIGHT LLP

Jennifer L. Hernandez
Equity Partner

JLH:mlm

Math Matters: Actual Math – and CARB Math – On VMT/Land Use GHG Reductions

Table 1: California's GHG Emissions Inventory	Million Metric Tons of CO2 Equivalent
1990 CA GHG Inventory	431
AB 32 GHG Inventory Target by 2020 (achieved early, after GHG peaked in 2004)	431
SB 32 GHG Inventory Target by 2030	258.6
Inventory reduced 40% from 1990 (i.e., 60% of 431)	

Table 2: SB 32 GHG Emission Reductions Required in 2017 Scoping Plan	
Actual Math: SB 32 Reductions Needed by 2030	- 172.4
40% of 1990 Inventory of 431	
CARB Math: 2017 Scoping Plan Calculation Mandated SB 32 Reductions	- 224
Unprecedented "Cumulative Gap" approach adds up pre-2030 GHG emissions	

Table 3: GHG Reductions Mandating Changes to Home Type/Location (Assumed by CARB to Result in Less Auto and More Transit Use)	
CARB Math: Not Disclosed	???
Next 10/UCB Math (*Right Type/Right Place*, 2017):	
How CA Should Build 1.78 Million New Homes: Three scenarios considered:	
1. Base Case (**BC**): Location and type of housing consistent with Post-Recession pattern including compliance with new laws (e.g., SB 375, CalGreen building codes, etc.)[1]	
2. "Medium" Infill Scenario: mostly infill, more smaller units More duplex/quadplex, less single family, much more multi-family (e.g., apartments) with average unit size of ~ 800sf	- 0.80 below BC
3. "Target" Infill Scenario: all infill, almost all multi-family	-1.61 below BC

Table 4: How of CARB's GHG Reductions Come from Reducing VMT?	
Actual Math: All infill/mostly multi-family homes reduce GHG by 1.61 MMT in relation to CARB's 224 MMT Scoping Plan Target	<1% reduction

Table 5: California's Share of Global GHG Emissions

Actual and CARB Math: California emits less than 1% of global GHG emissions

Paris Agreement:

California's GHG commitment is more than 2x greater than any Paris Agreement signatory

If CA economy ceased to exist, global GHG would be 99.54% of total allowed by Paris

Conclusions:

Actual and CARB Math Matters: How much additional poverty and homelessness, how much more expensive and litigious should housing and infrastructure be, and how much disparate harm should be caused to California's minority communities suffering from housing insecurity and the loss of home ownership opportunities, should CARB be allowed to cause in its effort to take control of land use and transportation decisions to achieve less than 1% of its SB 32 GHG reduction mandate???

Law Matters: Legislature repeatedly declined to require VMT reductions, and CARB decided not to require VMT reductions in March of 2018. CARB's proposed new "study" undermines progress by state, regional and local governments in solving the housing crisis and managing effective (and voter-approved) transportation infrastructure.

Transparency and Accountability Matter: Transparent ranking of potential GHG reduction measures – just as air agencies rank other emission reduction measures under the Clean Air Act – is required to allow informed policy choices by CARB and other stakeholders based on equity, science, the environment, and economics, and to avoid CARB's ongoing pattern of civil rights violations and disparate harms to California's minority community members suffering the greatest harms from our housing-induced poverty crisis.

[1] The UCB Report was adopted before 2018 Building Code revisions that now mandate rooftop solar (or equivalent) for single family homes, which largely negates the difference in energy utilization between single family and multi-family homes predicted in the UCB study. The UCB study attributes most of the GHG reduction to VMT rather than in-unit energy usage (e.g., 1.61 MMT reduction is attributed to VMT in the "Target" scenario, and in-home energy use in that scenario is only 0.08 MMT).