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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
15 **FRESNO DIVISION**

16 CENTRAL VALLEY AIR QUALITY)
17 COALITION, a fiscally sponsored project of)
Social and Environmental Entrepreneurs, Inc.,)
18 COMMITTEE FOR A BETTER ARVIN, a)
nonprofit corporation, COMMITTEE FOR A)
19 BETTER SHAFTER, a nonprofit corporation,)
DELANO GUARDIANS, an unincorporated)
20 association, and SOCIAL AND)
ENVIRONMENTAL ENTREPRENEURS, INC.,)
21 a nonprofit corporation.)

22 Plaintiffs,)

23 v.)

24 SAN JOAQUIN VALLEY UNIFIED AIR)
POLLUTION CONTROL DISTRICT, and the)
25 GOVERNING BOARD OF THE SAN)
JOAQUIN VALLEY UNIFIED AIR)
26 POLLUTION CONTROL DISTRICT,)

27 Defendants.)
28

Case No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

INTRODUCTION

1
2 1. Plaintiffs Central Valley Air Quality Coalition, *et al.* (collectively “Environmental Justice
3 Organizations”) file this citizen suit to restore air quality and secure environmental justice in the San
4 Joaquin Valley. The U.S. Environmental Protection Agency (“EPA”) demanded an accounting system
5 over two decades ago to ensure Defendants San Joaquin Valley Unified Air Pollution Control District, *et*
6 *al.* (collectively “Air District”) complied with federal offsets requirements that allow for economic
7 development without compromising air quality. But the Air District manipulated the accounting system,
8 the California Air Resources Board (“CARB”) exposed the Air District’s violations, and the Air District
9 has failed, and continues to fail, to implement the remedies EPA has required. As a result, new and
10 modified major stationary sources have emitted unmitigated air pollution in one of the most polluted air
11 basins, harming communities that already bear a disproportionate burden of pollution relative to the rest
12 of California and the United States.

13 2. New and modified major stationary sources of air pollution must offset their emissions
14 with Emission Reduction Credits representing pollution reductions from other sources. The EPA and the
15 Air District designed the accounting system, formally called the Annual Offset Equivalency Tracking
16 System (“Equivalency System”), to allow the Air District to implement offsets under California law as
17 long as the Air District demonstrated equivalency with federal offsets requirements. Because of
18 differences between offsets under state law and federal law, the accounting system requires the Air
19 District to balance the quantity of offsets required by federal law with the quantity of offsets required by
20 state law. Furthermore, because of the differences between Emission Reduction Credit values under
21 state law and federal law, the Air District must show that the value of offsets under state law is
22 equivalent to the value required by federal law.

23 3. The Equivalency System includes automatic remedies. If the accounting system shows an
24 offsets quantity deficit or an offsets value deficit, then federal offsets requirements would apply to
25 ensure major stationary sources of air pollution provided, and the public benefited from, valid and
26 appropriate offsets.

27 4. The Air District engaged in a series of actions to manipulate the accounting system,
28 improperly claiming the system demonstrated compliance until 2020 when CARB audited the

1 Equivalency System. The audit exposed Air District actions that allowed thousands of tons of
2 unmitigated air pollution annually into the San Joaquin Valley’s already polluted air. The District
3 minimized the amount of federally required offsets on one side of the accounting system’s ledger and
4 claimed non-creditable pollution reductions on the other side of the ledger. The Air District has admitted
5 the Equivalency System failed to show compliance with federal offsets requirements. The Air District’s
6 own data show that the accounting system accrued massive air pollution deficits for which the Air
7 District should have implemented automatic remedies several years before the CARB Audit.

8 5. The Air District has allowed and continues to allow federal offset quantity deficits in the
9 Equivalency System of at least 4,321.9 and 2,820.6 tons per year of oxides of nitrogen (“NOx”) and
10 volatile organic compounds (“VOC”), respectively. These deficits equate to an amount equivalent to the
11 offsets required for hundreds of new and modified major stationary sources.

12 6. The Air District has allowed and continues to allow offset value deficits in the
13 Equivalency System to exceed at least 408 and 1,428 tons per year of NOx and VOC, respectively.
14 These deficits equate to the pollution emitted by at least 40 and 142 new and modified major stationary
15 sources for NOx and VOC, respectively, in the San Joaquin Valley.

16 7. The Air District’s violations of the Equivalency System and failure to implement the
17 required remedies harms San Joaquin Valley residents because the unmitigated NOx and VOC contribute
18 to the Valley’s severe ozone and fine particulate matter (“PM2.5”) air pollution and public health crisis.
19 Low income and communities of color, including those communities identified by CalEnviroScreen as
20 disadvantaged communities, bear a disproportionate burden from air pollution and other environmental
21 injustices. Members of Environmental Justice Organizations live, work, recreate, and raise their families in
22 San Joaquin Valley disadvantaged communities and now seek to enforce the Clean Air Act to improve air
23 quality and secure environmental justice.

24 8. The Air District has violated and continues to violate the Clean Air Act, has failed to
25 implement the automatic remedies triggering federal offsets requirements, and has failed to correct its
26 annual reports, denying Environmental Justice Organizations and the public the required information in
27 the reports and the health benefits of federally required offsets. This Court should grant injunctive and
28 declaratory relief to remedy the Air District’s violations of federal law.

JURISDICTION

1
2 9. This Court has jurisdiction over any person who is alleged to have violated or to be in
3 violation of an emission standard or limitation pursuant to 42 U.S.C. § 7604(a)(1) (citizen suit provision
4 of the Clean Air Act) and 28 U.S.C. § 1331 (federal question jurisdiction).

5 10. The injunctive and declaratory relief Environmental Justice Organizations request is
6 authorized by 28 U.S.C. §§ 2801(a) and 2202, and 42 U.S.C. § 7604.

7 11. On March 21, 2023, Environmental Justice Organizations provided the Air District with
8 written notice of the violations of the emission standard or limitation alleged in this action at least 60
9 days before commencing this action, as required by Clean Air Act section 304(b)(1), 42 U.S.C. §
10 7604(b)(1), and 40 C.F.R. §§ 54.2 and 54.3. A copy of the notice letter, sent by certified mail, return
11 receipt requested, is attached as Exhibit 1. Although more than 60 days have elapsed since
12 Environmental Justice Organizations provided written notice, Defendants have failed to correct and
13 submit Offset Equivalency Reports for the reporting periods 2003-2004, 2004-2005, 2005-2006, 2006-
14 2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015,
15 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, and 2021-2022 and have failed to
16 implement automatic remedies required by sections 7.4.1.2, 7.4.1.3, 7.4.2.1, and 7.4.2.3 of Rule 2201.

17 12. The U.S. Environmental Protection Agency (“EPA”) and the California Air Resources Board
18 (“CARB”) have not commenced and are not diligently prosecuting a civil action in a court of the United
19 States or a State to require Defendants’ compliance with section 7 of Rule 2201.

VENUE

20
21 13. Venue lies in the Eastern District of California pursuant to 28 U.S.C. § 1391(b)(1)
22 because the District has its offices in Stanislaus, Fresno, and Kern counties.

INTRADISTRICT ASSIGNMENT

23
24 14. Because the violations of an emission standard or limitation alleged in this Complaint relate
25 to the violations of Rule 2201 by the Air District, assignment to the Fresno Division of this Court is
26 proper under Civil Local Rule 120 because the District has offices in Stanislaus, Fresno, and Kern
27 counties.

PARTIES

1
2 15. Plaintiff CENTRAL VALLEY AIR QUALITY COALITION (“CVAQ”) is a project of
3 Social and Environmental Entrepreneurs, Inc., a Delaware nonprofit corporation. CVAQ leads a
4 partnership of organizations in the fight to restore clean air in the San Joaquin Valley. CVAQ’s mission
5 is to work toward awareness, act as a watchdog, advocate for policy, and mobilize communities to
6 restore clean air to the San Joaquin Valley. CVAQ’s mission includes ensuring that all communities – of
7 all races, cultures, classes, and creeds – have the opportunity to be involved in policy development and
8 the regulatory processes improving regional health. CVAQ has an office in Stockton, California.

9 16. Plaintiff COMMITTEE FOR A BETTER ARVIN is a California nonprofit corporation based
10 in Arvin, California. CBA’s mission is to improve the quality of life in Arvin, to inform and unite the
11 community, to address problems facing the community, and to secure equality for all residents. CBA
12 and its members have engaged in advocacy for improved local and regional air quality for many years
13 and are especially concerned about the impacts of oil and gas production and refining in the San Joaquin
14 Valley.

15 17. Plaintiff COMMITTEE FOR A BETTER SHAFTER is a California nonprofit corporation
16 based in Shafter, California. CBS’s mission is to advocate for Shafter residents and mobilize the
17 community to address local environmental issues. CBS has engaged in advocacy to improve their local
18 and regional air quality and overall public health and safety. CBS is concerned with the proximity of oil
19 and gas refining and its effects on the community’s health and well-being. As a response, CBS has
20 advocated for better air quality in their region through community organizing.

21 18. Plaintiff DELANO GUARDIANS is an unincorporated association based in Delano,
22 California, and Northern Kern County. The Guardians mission is to advocate for the health and well-
23 being of Delano and Kern County residents. The Guardians are concerned about the impacts of oil and
24 gas production and, as such, have organized their communities to advocate for their public health.

25 19. Plaintiff SOCIAL AND ENVIRONMENTAL ENTREPRENEURS, INC. is a Delaware
26 nonprofit corporation based in Calabasas, California. The mission of SEE is to empower, encourage, and
27 catalyze projects so that we can collaborate and facilitate progressive change in areas of social and
28 environmental justice.

1 20. Plaintiffs CENTRAL VALLEY AIR QUALITY COALITION, COMMITTEE FOR A
2 BETTER ARVIN, COMMITTEE FOR A BETTER SHAFTER, DELANO GUARDIANS, and
3 SOCIAL AND ENVIRONMENTAL ENTREPRENEURS, INC. are each a person within the meaning
4 of section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e), and may commence a civil action under
5 section 304(a) of the Act, 42 U.S.C. § 7604(a).

6 21. Members of COMMITTEE FOR A BETTER ARVIN, COMMITTEE FOR A BETTER
7 SHAFTER, and DELANO GUARDIANS live, raise their families, work, and recreate in the San
8 Joaquin Valley Air Basin. They are adversely affected by exposure to levels of ozone and fine
9 particulate matter (“PM2.5”) air pollution that exceed the health-based National Ambient Air Quality
10 Standards. The adverse effects of such pollution include actual or threatened harm to their health, their
11 families’ health, their professional, educational, and economic interests, and their aesthetic and
12 recreational enjoyment of the environment in the San Joaquin Valley.

13 22. CalEnviroScreen 4.0 ranks Arvin, Shafter, and Delano in the top 25 percent of California
14 Senate Bill 532 Disadvantaged Communities based on CalEnviroScreen 4.0 data. CalEnviroScreen 4.0
15 ranks Shafter and Delano above the 95th percentile of California census tracts for exposure to PM2.5.
16 CalEnviroScreen 4.0 ranks Arvin above the 95th percentile of census tracts for exposure to ozone.
17 CalEnviroScreen 4.0 ranks Shafter and Delano above the 80th percentile of census tracts for exposure to
18 ozone.

19 23. Defendants’ violations of the emission standard or limitation causes COMMITTEE FOR A
20 BETTER ARVIN, COMMITTEE FOR A BETTER SHAFTER, and DELANO GUARDIANS
21 members’ injuries. The Air District has failed to demonstrate equivalency for NOx and VOC and has
22 failed to submit Offset Equivalency Reports which comply with sections 7.1.2 and 7.2.2 of Rule 2201.
23 The Air District failed to implement automatic remedies required for pre-2020 NOx and VOC
24 equivalency failure and automatic remedies for non-compliant Offset Equivalency Reports. The Air
25 District’s failure to implement automatic remedies has allowed new and modified major stationary
26 sources in the San Joaquin Valley to emit unmitigated NOx and VOC air pollution without offsets that
27 comply with federal requirements. The unmitigated NOx and VOC air pollution contributes to additional
28 ozone and PM2.5 air pollution in the San Joaquin Valley and injures the members of COMMITTEE

1 FOR A BETTER ARVIN, COMMITTEE FOR A BETTER SHAFTER, and DELANO GUARDIANS.

2 24. Defendants' violations of the emission standard or limitation injures members of
3 COMMITTEE FOR A BETTER ARVIN, COMMITTEE FOR A BETTER SHAFTER, and DELANO
4 GUARDIANS by denying them the information required by sections 7.1.2 and 7.2.2 of Rule 2201 for
5 NOx and VOC in Offset Equivalency Reports for the reporting periods 2003-2004, 2004-2005, 2005-
6 2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014,
7 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, and 2021-2022. The
8 Air District's violations of an emission standard or limitation cause members' informational injuries
9 because the Offset Equivalency Reports for the reporting periods 2003-2004, 2004-2005, 2005-2006,
10 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-
11 2015, 2015-2016, 2016-2017, 2017-2018, and 2018-2019 purport to demonstrate equivalency when in
12 fact the Offset Equivalency Reports have suppressed the quantity of required federal offsets and claimed
13 non-creditable emission reductions to falsely demonstrate NOx and VOC equivalency during those
14 reporting periods. Furthermore, the Air District has caused members' informational injuries by refusing
15 to disclose the information required by sections 7.2.1 and 7.2.2 of Rule 2201 for NOx and VOC in the
16 Offset Equivalency Reports for the reporting periods 2019-2020, 2020-2021, and 2021-2022, thus
17 denying members the ability to review and consider the cumulative shortfalls for NOx and VOC in the
18 Equivalency System.

19 25. Defendants' violation of an emission standard or limitation has injured and continues to
20 injure COMMITTEE FOR A BETTER ARVIN, COMMITTEE FOR A BETTER SHAFTER, and
21 DELANO GUARDIANS' members. The injunctive relief requested in this lawsuit would redress these
22 injuries by compelling the Air District to implement the automatic remedies required by sections 7.4.1.2,
23 7.4.1.3, 7.4.2.1 and 7.4.2.3 of Rule 2201. The automatic remedies would require offsets for major
24 stationary sources in compliance with federal offsets requirements, including federal offsets quantities
25 and Emission Reduction Credits discounted at the time of use, from the deadline for non-compliant
26 Offset Equivalency Reports and the reporting period following Equivalency System failure. The offsets
27 meeting federal requirements would mitigate NOx and VOC emissions from the major stationary
28 sources subject to the automatic remedies and thus reduce ozone and PM2.5 air pollution in the San

1 Joaquin Valley. The injunctive relief requested in this lawsuit would further redress informational
2 injuries by ordering the Air District to correct the non-compliant Offset Equivalency Reports and to
3 implement automatic remedies for non-compliant Offset Equivalency Reports until the Air District has
4 submitted corrected Offset Equivalency Reports. The declaratory relief requested in this lawsuit would
5 further redress members' injuries by declaring that the Air District has a duty to comply with sections
6 7.2.1 and 7.2.2 of Rule 2201, has a duty to implement the automatic remedies required by sections
7 7.4.1.2, 7.4.1.3, 7.4.2.1 and 7.4.2.3 of Rule 2201, and has violated those duties.

8 26. The Air District's violations of the emission standard and limitation injure Plaintiffs
9 CENTRAL VALLEY AIR QUALITY COALITION ("CVAQ") and SOCIAL AND
10 ENVIRONMENTAL ENTREPRENEURS, INC. The District's implementation of the Equivalency
11 System has frustrated CVAQ's mission to ensure that clean air is restored to the San Joaquin Valley and
12 that San Joaquin Valley communities have the opportunity to be involved in the policy development and
13 regulatory processes that improve regional health. CVAQ has diverted and continues to divert its staff
14 and financial resources normally used to educate decision makers, train, and empower Valley residents,
15 and advocate for improved public health when it allocated resources to discover, disclose, and respond
16 to the District's violations of the Equivalency System and the District's efforts after 2020 to avoid
17 compliance with Rule 2201 automatic remedies. CVAQ diverted resources to participate in the ERC
18 Public Advisory Workgroup. CVAQ diverted resources to sponsor and support Assembly Bill 985 in the
19 California Legislature, a bill currently pending that would reform the Air District's Emission Reduction
20 Credits and the Equivalency System.

21 27. The Air District's violations of the emission standard and limitation injure Plaintiffs
22 CENTRAL VALLEY AIR QUALITY COALITION and SOCIAL AND ENVIRONMENTAL
23 ENTREPRENEURS, INC. because the diversion of CVAQ's resources have impaired and continue to
24 impair CVAQ's mission. CVAQ's limited staff and financial resources that CVAQ has diverted did not
25 support other, ongoing CVAQ campaigns, policy initiatives, and internal operations to advance CVAQ's
26 mission. To advance its mission, CVAQ staff draft comments, appear at public hearings, educate CVAQ
27 members and Valley residents during trainings, and support policy change at the Air District, CARB,
28 and in the California Legislature. CVAQ's Executive Director, Dr. Catherine Garoupa, has spent and

1 continues to spend a significant portion of her time on Equivalency System-related activities which
2 precludes her from CVAQ management, fundraising, coalition support, and programmatic policy
3 advocacy activities.

4 28. The District's violations of an emission standard and limitation cause the organizational
5 injuries of Plaintiffs CENTRAL VALLEY AIR QUALITY COALITION and SOCIAL AND
6 ENVIRONMENTAL ENTREPRENEURS, INC. The Air District's policies and procedures
7 implementing the Equivalency System caused CVAQ to divert its resources to petition CARB to
8 perform the CARB Audit and advocate for the District to correct the historical and cumulative
9 Equivalency System deficits and annual Offset Equivalency Reports.

10 29. Defendants' violation of an emission standard or limitation has injured and continues to
11 injure CENTRAL VALLEY AIR QUALITY COALITION and SOCIAL AND ENVIRONMENTAL
12 ENTREPRENEURS, INC. The injunctive relief requested in this lawsuit would redress these injuries by
13 compelling the Air District to implement the automatic remedies required by sections 7.4.1.2, 7.4.1.3,
14 7.4.2.1 and 7.4.2.3 of Rule 2201. The automatic remedies would require offsets for new and modified
15 major stationary sources in compliance with federal offsets requirements, including federal offsets
16 quantities and emission reduction credits discounted at the time of use, from the deadline for non-
17 compliant Offset Equivalency Reports and the reporting period following Equivalency System failure.
18 The offsets meeting federal requirements would mitigate NOx and VOC emissions from the major
19 stationary sources subject to the automatic remedies and thus reduce ozone and PM2.5 air pollution in
20 the San Joaquin Valley. The declaratory relief requested in this lawsuit would further redress these
21 injuries by declaring that the Air District has a duty to comply with sections 7.2.1 and 7.2.2 of Rule
22 2201, has a duty to implement the automatic remedies required by sections 7.4.1.2, 7.4.1.3, 7.4.2.1 and
23 7.4.2.3 of Rule 2201, and has violated those duties.

24 30. Defendant SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT
25 is one of thirty-five air quality management districts established under the California Health & Safety
26 Code to develop and implement strategies for reducing emissions from stationary sources in their
27 respective geographic regions. The District has primary authority for the control of air pollution from
28 stationary sources. Under California law, the District has the authority to sue and be sued in the name of

1 the District in all actions and proceedings in all courts and tribunals of competent jurisdiction. Cal.
2 Health & Safety Code § 40701.

3 31. Defendant GOVERNING BOARD OF THE SAN JOAQUIN VALLEY UNIFIED AIR
4 POLLUTION CONTROL DISTRICT is the 15-member governing body of the District that is
5 authorized to adopt the rules and regulations for the District. Cal. Health & Safety Code §§ 40600(c),
6 40601, 40604.

7 STATUTORY FRAMEWORK

8 32. The Clean Air Act reflects a model of cooperative federalism, whereby the U.S.
9 Environmental Protection Agency (“EPA”) sets health-based National Ambient Air Quality Standards
10 (“NAAQS” or “standards”) and states develop the attainment plans to achieve those standards. *See* 42
11 U.S.C. §§ 7401-7515. States’ attainment plans must contain enforceable emissions limitations necessary
12 to attain the NAAQS and meet applicable requirements of the Act. 42 U.S.C. §§ 7401(a)(1), (a)(2)(A);
13 7502(c)(6). EPA shall approve a plan as part of the State Implementation Plan if the plan meets the
14 minimum requirements of the Act. Upon approval as part of the State Implementation Plan, the plan
15 becomes federal law, enforceable by EPA and citizens, and does not change unless and until EPA
16 approves a revision to the State Implementation Plan.

17 33. State Implementation Plans for nonattainment areas must include a permitting program
18 for the construction and operation of new or modified major stationary sources that emit pollutants over
19 a threshold amount. 42 U.S.C. § 7502(c)(5). This permit program, called federal New Source Review
20 (“federal NSR”), requires new or modified major stationary sources to offset their emissions so that
21 aggregate emissions decrease in a nonattainment area. 42 U.S.C. § 7503(a)(1)(A).

22 34. An area that does not meet the ozone NAAQS is called a “nonattainment area.” The Act
23 further subdivides ozone nonattainment areas into classifications of “marginal,” “moderate,” “serious,”
24 “severe” and “extreme” based on the severity of the ozone pollution problem. 42 U.S.C. § 7511.

25 35. Federal New Source Review conditions the quantity of offsets required by federal New
26 Source Review on the severity of the ozone air pollution problem in a nonattainment area. In a severe
27 ozone nonattainment area, a stationary source triggers federal NSR and becomes a major stationary
28 source when its potential to emit exceeds 25 tons per year of NO_x or VOC. 42 U.S.C. § 7511a(d). That

1 major stationary source must provide offsets at a ratio of 1.3 pounds of offsets to every 1 pound of
2 emissions, which ensures a net air pollution reduction in the air basin. 42 U.S.C. § 7511a(d)(2). In an
3 extreme ozone nonattainment area, federal NSR becomes more stringent and a stationary source triggers
4 federal NSR and becomes a major stationary source when its potential to emit exceeds 10 tons per year
5 and must provide even more offsets at a ratio of 1.5 pounds of offsets to every 1 pound of emissions. 42
6 U.S.C. § 7511a(e), (e)(1).

7 36. The EPA has promulgated regulations implementing federal New Source Review. 40
8 C.F.R. § 51.165. Once EPA designates an area as nonattainment, then the provisions of 40 C.F.R. pt. 51,
9 Appendix S govern federal NSR in the area during the period between the date of designation as
10 nonattainment and the date that EPA approves the area's federal NSR permit program as part of the State
11 Implementation Plan if it meets the requirements of part D of Title I of the Clean Air Act. 40 C.F.R. §
12 52.24(k).

13 **FACTUAL BACKGROUND**

14 **A. The Public Health Crisis in the San Joaquin Valley.**

15 37. The Air District's violations of the Equivalency System have allowed unmitigated
16 emissions of NO_x and VOC from new and modified stationary sources. New and modified stationary
17 sources such as oil production facilities, oil refineries, natural gas power plants, and industrial facilities
18 emit NO_x and VOC that contribute to ozone and PM_{2.5} pollution in the San Joaquin Valley.

19 38. Ozone and PM_{2.5} air pollution in the San Joaquin Valley air basin has caused, and
20 continues to cause, a public health crisis. According to the American Lung Association's State of the Air
21 2023 report, the San Joaquin Valley air basin ranks among the worst in the United States. Tulare, Kern,
22 and Fresno are the fourth, fifth, and sixth most ozone-polluted counties in the United States,
23 respectively. The Valley cities of Visalia, Bakersfield, and Fresno-Madera-Hanford rank as the second,
24 third, and fourth most ozone-polluted cities, respectively. For short-term exposure to PM_{2.5}, the Valley
25 counties of Kern, Fresno, Kings, and Tulare rank as the first, second, fourth, and eighth most PM_{2.5}-
26 polluted counties, respectively. With respect to long-term exposures, Kern, Tulare, Kings, Fresno, and
27 Stanislaus rank as the first, second, fifth, sixth, and sixteenth most PM_{2.5}-polluted counties,
28 respectively.

1 39. Ground-level ozone is formed by a reaction between NO_x and VOC in the presence of
2 heat and sunlight. Unlike ozone in the upper atmosphere which forms naturally and protects the Earth
3 from ultraviolet radiation, ozone at ground level forms primarily from anthropogenic pollution.

4 40. Fine particulate matter (“PM_{2.5}”) is both a directly emitted pollutant and also forms
5 secondarily in the atmosphere by the precursor pollutants NO_x, ammonia, sulfur oxides, and VOC.

6 41. Short-term exposure to ozone irritates lung tissue, decreases lung function, exacerbates
7 respiratory disease such as asthma and Chronic Obstructive Pulmonary Disease (COPD), and increases
8 susceptibility to respiratory infections such as pneumonia, all of which contribute to an increased
9 likelihood of emergency department visits and hospitalizations. Short-term exposure to ozone also
10 increases the risk of premature death, especially among older adults. Long-term exposure to ozone can
11 cause permanent lung damage, stunt lung development in children, cause asthma in children, decrease
12 lung function, damage the airways, lead to the development of COPD, and increase allergic responses.

13 42. Short-term exposure to PM_{2.5} pollution causes premature death, decreases lung function,
14 exacerbates respiratory disease such as asthma, and causes increased hospital admissions. Long-term
15 exposure causes development of asthma in children, decreased lung function growth in children,
16 increased risk of death from cardiovascular disease, and increased risk of death from heart attacks.
17 CARB has estimated that PM_{2.5} exposure has caused 1,200 premature deaths annually in the San
18 Joaquin Valley.

19 43. The EPA has found that the San Joaquin Valley has failed to attain several National
20 Ambient Air Quality Standards (“NAAQS” or “standards”) by their respective deadlines. *See* 66 Fed.
21 Reg. 56476 (Nov. 8, 2001) (1-hour ozone standard failure to attain by 1999); 67 Fed. Reg. 48039 (July
22 23, 2002) (PM-10 standard failure to attain by 2001); 76 Fed. Reg. 82133 (December 30, 2011) (1-hour
23 ozone standard failure to attain by 2010); 81 Fed. Reg. 84481 (November 23, 2016) (1997 24-hour and
24 annual PM_{2.5} standards failure to attain by 2015); 86 Fed. Reg. 67329 (Nov. 26, 2021) (disapproving
25 1997 annual PM_{2.5} implementation plan because of failure to attain the standard by December 31,
26 2020).

27 44. CalEnviroScreen 4.0 ranks the San Joaquin Valley communities of Arvin, Shafter, and
28 Delano in the top 25 percent of California Senate Bill 532 disadvantaged communities based on

1 CalEnviroScreen 4.0 data. CalEnviroScreen 4.0 ranks Shafter and Delano above the 95th percentile of
2 California census tracts for exposure to PM_{2.5}. CalEnviroScreen 4.0 ranks Arvin above the 95th
3 percentile of census tracts for exposure to ozone. CalEnviroScreen 4.0 ranks Shafter and Delano above
4 the 80th percentile of census tracts for exposure to ozone.

5 45. According to EPA’s environmental justice screening and mapping tool (“EJ SCREEN”),
6 all eight San Joaquin Valley counties score well above the national average for the Demographic Index,
7 seven counties score above the 90th percentile for the PM_{2.5} Environmental Justice Index, and five
8 counties score above the 90th percentile for the Ozone Environmental Justice Index. 87 Fed. Reg.
9 60494, 60527-60528 (Oct. 5, 2022). The Demographic Index is the average of an area’s population of
10 people of color and low-income residents. The PM_{2.5} and Ozone Environmental Justice indices are an
11 area’s exposure to PM_{2.5} and ozone, respectively, combined with the Demographic Index.

12 46. EPA has designated the San Joaquin Valley as an extreme ozone nonattainment area for
13 the 2008 8-hour ozone standard and the 2012 8-hour ozone standard. EPA has designated the San
14 Joaquin Valley as a serious nonattainment area for the 1997 annual PM_{2.5} standard, the 2006 24-hour
15 PM_{2.5} standard, and the 2012 annual PM_{2.5} standard.

16 47. The San Joaquin Valley has not attained the 1997, 2008, and 2012 8-hour ozone
17 standards. EPA data show design values for 2018-2020 and 2019-2021 remaining flat at 0.93, well
18 above the 0.84 design value necessary to attain the 1997 8-hour ozone standard.

19 48. The San Joaquin Valley has not attained the 1997 and 2012 annual PM_{2.5} standards.
20 EPA data show design values for 2018-2020 and 2019-2021 at 17.6 and 17.8 micrograms per cubic
21 meter ($\mu\text{g}/\text{m}^3$), well above the 15 $\mu\text{g}/\text{m}^3$ and 12 $\mu\text{g}/\text{m}^3$ design values necessary to attain the 1997 and
22 2012 annual PM_{2.5} standards, respectively.

23 **B. Stationary Sources and District New Source Review.**

24 49. The Air District implements stationary source permitting requirements imposed by
25 California law and the federal Clean Air Act, 42 U.S.C. §§ 7401, *et seq.* California law requires new and
26 modified stationary sources to obtain approval from the Air District in the form of an Authority to
27 Construct (“ATC”) permit, install pollution control technology meeting the Best Available Control
28 Technology (“BACT”) standard, and offset the emissions from new or modified sources that occur after

1 implementation of BACT. The California state law permitting program is called “District New Source
2 Review” or “District NSR.”

3 50. District New Source Review applies to stationary sources with emissions greater than one
4 pound per day, and requires a source to obtain NO_x and VOC offsets for the source’s emissions greater
5 than ten tons per year. The ratio of offsets to emissions required by District NSR varies from a 1:1 ratio to
6 a 1.5:1 ratio depending on the source of offsets and the distance from the permitted source to the source of
7 offsets. Rule 2201 § 4.8.4.

8 51. Stationary sources subject to offsets must obtain and provide the offsets in the form of
9 Emission Reduction Credits (“ERC”), the currency for offsets.

10 52. To generate an Emission Reduction Credit, an emission reduction must be “creditable,”
11 which Rule 2201 defines as real, quantifiable, surplus, permanent, and enforceable. The surplus value
12 requirement that ensures claimed emissions reductions used as Emission Reduction Credits do not
13 represent reductions already required by law, thus assigning value only to those reductions that represent
14 surplus reductions.

15 53. District New Source Review and federal New Source Review offsets requirements apply
16 different standards for determining the surplus value of an Emission Reduction Credit. District New
17 Source Review determines the surplus value at the time a source generates the Emission Reduction Credit
18 (time of issuance). Federal New Source Review determines the surplus value at the time a source uses the
19 ERC to satisfy the offsets requirement (time of use).

20 54. Offsets under federal New Source Review lose time-of-use value as pollution control
21 measures become more stringent during the period between credit issuance and credit use. For example, a
22 source generates a credit equal to 1 ton per year at the time of issuance, and the Air District subsequently
23 adopts a generally applicable rule that requires adoption of a technology that achieves a 50 percent
24 reduction in emissions. District New Source Review would continue to value that credit at 1 ton per year
25 based on the time of issuance valuation while federal New Source Review would discount the credit’s
26 value to 0.5 tons per year based on the time of use. The surplus value difference between District New
27 Source Review and federal New Source Review expands over time as the Air District adopts more
28 controls and Emission Reduction Credits lose value.

C. The Annual Offset Equivalency Tracking System.

1
2 55. The Air District shall implement the Annual Offset Equivalency Tracking System
3 (“Equivalency System”) – the accounting system – to ensure the Air District can implement its offset
4 program under California law while guaranteeing San Joaquin Valley residents receive the more stringent
5 benefits of federal offsets requirements. The Equivalency System ensures an equivalent quantity of offsets
6 and an equivalent time-of-use surplus value of offsets to reconcile for the differences between District
7 NSR and federal NSR.

8 56. The Equivalency System tracks the following for each permitting action: (a) the quantity of
9 offsets that would have been required for new major sources and federal major modifications in the
10 District had the Air District applied federal New Source Review requirements; (b) the quantity of offsets
11 actually required for all new and modified sources in the District pursuant to the requirements of Rule
12 2201; and (c) the surplus value of creditable emission reductions used as offsets by stationary sources.
13 Rule 2201 §§ 7.1.1, 7.1.2, and 7.1.3.

14 57. The Air District shall annually prepare each Offset Equivalency Report for the period from
15 August 20 to August 19 and must submit the Report by November 20. Rule 2201 §§ 7.2, 7.3.1, 7.3.2.

16 58. The annual Offset Equivalency Reports compare the offsets required under District New
17 Source Review to what would otherwise have been required under federal New Source Review by
18 applying two analytical frameworks for offset quantity and time-of-use surplus value. The EPA and the
19 Air District have adopted the terms “Test 1” for the offset quantity analysis and “Test 2” for the time-of-
20 use surplus value analysis.

21 59. Although the Air District must submit Offset Equivalency Reports for each reporting
22 period, the Air District must cumulatively demonstrate the equivalency of offsets required by Rule 2201
23 with offsets required by federal New Source Review since August 20, 2001, the date the Equivalency
24 System’s accounting commenced.

25 60. Test 1 compares the total quantity of offsets that would have been required by federal
26 New Source Review – the federal offset quantity – to the total quantity of offsets required by District
27 New Source Review. Rule 2201 § 7.2.1.1.

28 61. If Test 1 fails to demonstrate equivalency, then the District shall rely on “additional

1 creditable emission reductions” that have not been used as offsets and have been banked or have been
2 generated as a result of permitting actions to make up any shortfall. Rule 2201 § 7.4.1.1.

3 62. If the District lacks sufficient additional creditable emission reductions to demonstrate
4 equivalency under Test 1, then all Authority to Construct permits issued after the report deadline for that
5 year shall comply with federal offset requirements. Rule 2201 § 7.4.1.2.

6 63. If the Air District fails to submit a report complying with Equivalency System requirements
7 for Test 1, all Authority to Construct permits issued after the report deadline and until the Air District
8 submits a report meeting the requirements of Test 1 shall comply with federal offset requirements. Rule
9 2201 § 7.4.1.3.

10 64. Test 2 compares the total quantity of offsets that would have been required by federal
11 New Source Review – the federal offset quantity – with the time-of-use surplus value of creditable
12 emissions reductions used as offsets in District New Source Review. Rule 2201 § 7.2.2.1.

13 65. Test 2 allows the Air District to use “additional creditable emissions reductions” that have
14 not been used as offsets and have been banked or have been generated as a result of permitting actions to
15 supplement the surplus value of the offsets required by District New Source Review. Rule 2201 § 7.2.2.2.

16 66. If the District fails to demonstrate equivalency under Test 2, an automatic remedy applies
17 so that all Authority to Construct permits issued for new major sources or federal major modifications, for
18 each pollutant for which there is a shortfall, shall ensure that emission reductions used to satisfy offset
19 requirements are creditable and that the time-of-use surplus value of those credits is determined at the time
20 of Authority to Construct permit issuance. Rule 2201 § 7.4.2.1.

21 67. If the Air District fails to submit a report meeting the Equivalency System requirements for
22 Test 2, all Authority to Construct permits issued for new major stationary sources or federal major
23 modifications after the report deadline and until the Air District submits a report complying with the
24 Equivalency System requirements shall ensure that emission reductions used to satisfy offset requirements
25 are creditable and that the time-of-use surplus value of those credits is determined at the time of Authority
26 to Construct permit issuance. Rule 2201 § 7.4.2.3.

1 **D. The Environmental Protection Agency has Approved the Annual Offset**
2 **Equivalency Tracking System as Part of the State Implementation Plan.**

3 68. Effective August 20, 2001, EPA finalized a limited approval and a limited disapproval of
4 the August 28, 1998 version of the Equivalency System. 65 Fed. Reg. 58252 (Sept. 28, 2000); 66 Fed.
5 Reg. 37587 (July 19, 2001). EPA found that the Equivalency System was “deficient because it [did] not
6 include a specific and enforceable remedy for a shortfall in the annual equivalency demonstration . . . [and]
7 the rule must be revised to contain a mandatory and enforceable remedy to cure any annual shortfall and
8 prevent future shortfalls.” 65 Fed. Reg. 58252, 58253.

9 69. Effective on June 16, 2004, EPA approved the December 19, 2001 version of Rule 2201.
10 EPA found that the Air District had cured the Equivalency System enforceability defects in the August 28,
11 1998 version of Rule 2201. 68 Fed. Reg. 7330 (Feb. 13, 2003); 69 Fed. Reg. 27837 (May 17, 2004). EPA
12 identified the December 19, 2001 version of Rule 2201 in the State Implementation Plan. 40 C.F.R. §
13 52.220(c)(311)(i)(B)(I).

14 70. Effective June 10, 2010, EPA approved the December 18, 2008 version of Rule 2201
15 which amended Rule 2201 to conform the rule with the federal New Source Review threshold and offset
16 ratio for an extreme ozone nonattainment area. 75 Fed. Reg. 4745 (Jan. 29, 2010); 75 Fed. Reg. 26102
17 (May 11, 2010). EPA identified the December 18, 2008 version of Rule 2201 in the State Implementation
18 Plan. 40 C.F.R. § 52.220(c)(363)(i)(A)(5).

19 71. Effective October 17, 2014, EPA approved the April 21, 2011 version of Rule 2201. 76
20 Fed. Reg. 76112 (Dec. 6, 2011); 79 Fed. Reg. 55637 (Sept. 17, 2014). EPA identified the April 21, 2011
21 version of Rule 2201 in the State Implementation Plan. 40 C.F.R. § 52.220(c)(400)(i)(A)(I). The April 21,
22 2011 version of Rule 2201 is the most recent-EPA approved Rule 2201 version in the State
23 Implementation Plan.

24 **E. Reclassification of the San Joaquin Valley to an Extreme Ozone Nonattainment**
25 **Area.**

26 72. Even though the EPA reclassified the San Joaquin Valley to an extreme nonattainment
27 area for ozone on May 17, 2004, the District did not apply federal New Source Review extreme area
28 permitting thresholds and extreme area offset ratios in Test 1 and Test 2 until June 10, 2010. The District
29 also failed to apply the extreme area offset ratios in Test 1 and Test 2 from the Offset Equivalency

1 Report for the 2010-2011, 2011-2012, 2012-2013, and 2013-2014 reporting periods. These policies and
2 procedures suppressed the federal offsets quantities in Test 1 and Test 2, allowing the Air District to
3 demonstrate equivalency more easily.

4 73. Effective May 17, 2004, EPA reclassified the San Joaquin Valley as an extreme ozone
5 nonattainment area for the 1-hour ozone standard. 69 Fed. Reg. 20550 (April 16, 2004). EPA provided one
6 year for the Air District to amend and submit Rule 2201 to conform the rule with the federal New Source
7 Review threshold and offset ratio for an extreme ozone nonattainment area as required by 42 U.S.C. §
8 7511a(e), (e)(1). *Id.* at 20552.

9 74. Effective June 15, 2004, EPA designated the San Joaquin Valley as a serious nonattainment
10 area for the 1997 8-hour ozone standard. 69 Fed. Reg. 23858, 23888-23889 (April 30, 2004).

11 75. Effective June 15, 2004, federal NSR permitting continued as required by the 1-hour
12 standard if the area's nonattainment classification under the 1-hour standard was higher than the area's
13 classification under the 1997 8-hour ozone standard. 70 Fed. Reg. 71612, 71682-71683 (Nov. 29, 2005).
14 As an extreme ozone nonattainment area under the 1-hour ozone standard, federal NSR permitting in the
15 San Joaquin Valley continued under the 1-hour standard because the serious nonattainment classification
16 for the 1997 8-hour standard was lower than the extreme area classification for the 1-hour standard.

17 76. Effective June 15, 2005, EPA revoked the 1-hour ozone standard and federal New Source
18 Review requirements based on the 1-hour standard as part of the implementation of the 1997 8-hour ozone
19 standard. 69 Fed. Reg. 23951, 23954 (April 30, 2004).

20 77. Effective January 30, 2006, EPA amended 40 C.F.R. § 52.24(k) and 40 C.F.R. pt. 51,
21 Appendix S to include extreme area permitting thresholds and offset requirements. 70 Fed. Reg. 71612,
22 71677 (Nov. 29, 2005).

23 78. On August 29, 2007, the D.C. Circuit Court of Appeals entered the mandate and vacated
24 EPA's revocation of federal New Source Review based on the 1-hour ozone standard. *South Coast Air*
25 *Quality Management Dist. v. U.S. E.P.A.*, 422 F.3d 882 (D.C. Cir. 2006,) clarified on rehearing by *South*
26 *Coast Air Quality Management Dist. v. U.S. E.P.A.*, 489 F.3d 1245 (D.C. Cir. 2007), cert. denied by
27 *National Petrochemical & Refiners Ass'n v. South Coast Air Quality Management Dist.*, 552 U.S. 1140
28 (Jan. 18, 2008).

1 79. On December 18, 2008, the Air District adopted amendments to conform Rule 2201 with
2 federal New Source Review thresholds and offset ratios for an extreme ozone nonattainment area under
3 the 1-hour ozone standard and the 1997 8-hour ozone standard. Resolution 08-12-16 made the
4 amendments effective upon EPA approval of the amendments. The staff report accompanying the
5 amendments discussed the difficulty of demonstrating equivalency with the reclassification as an extreme
6 ozone nonattainment area and that NO_x was the pollutant most likely to fail equivalency.

7 80. Effective June 4, 2010, EPA granted California's request to reclassify the San Joaquin
8 Valley to an extreme ozone nonattainment area for the 1997 8-hour ozone standard. 75 Fed. Reg. 24409
9 (May 5, 2010). In that rulemaking, EPA interpreted the applicability of federal NSR and clarified that the
10 reclassification to extreme nonattainment marked no change for federal NSR because of the San Joaquin
11 Valley's classification as an extreme nonattainment area for the 1-hour ozone standard. 74 Fed. Reg.
12 43654, 43658 (Aug. 27, 2008); 75 Fed. Reg. 24409, 24414 (May 5, 2010).

13 81. Extreme area permit thresholds and offset ratios applied in the San Joaquin Valley after
14 May 17, 2004 when EPA reclassified the San Joaquin Valley as an extreme area for the 1-hour ozone
15 standard. In the alternative, extreme area permit thresholds and offset ratios applied after May 17, 2004,
16 except between June 15, 2005 when EPA revoked federal New Source Review requirements for the 1-hour
17 ozone standard and August 29, 2007 when the D.C. Circuit Court of Appeals entered the mandate vacating
18 that revocation. The Air District delayed extreme area permit thresholds and offset ratios until June 10,
19 2010, which suppressed the federal offset quantity in Test 1 and Test 2 of Offset Equivalency Reports for
20 the reporting periods 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2009-
21 2010.

22 **F. The Review of the San Joaquin Valley Air Pollution Control District Emission**
23 **Reduction Credit System.**

24 82. The Review of the San Joaquin Valley Air Pollution Control District Emission Reduction
25 Credit System ("CARB Audit"), an audit prepared by the Enforcement Division of the California Air
26 Resources Board, exposed the Air District's improper implementation of the Equivalency System.
27 Following the CARB Audit, the Air District admitted that the Equivalency System no longer demonstrated
28 equivalency for NO_x and VOC for Test 1 and Test 2. The CARB Audit is attached as Exhibit 2.

1 83. On January 9, 2019, several environmental justice and air quality advocacy organizations,
2 including the Central Valley Air Quality Coalition, petitioned the California Air Resources Board to
3 perform an audit of the Air District's Emission Reduction Credits.

4 84. On January 24, 2019, CARB responded to the petition and directed staff to review the Air
5 District's NOx and VOC Emission Reduction Credits and the Equivalency System.

6 85. On June 26, 2020, CARB adopted Resolution 20-11 following a public hearing in which
7 the Board considered and approved the findings in CARB Audit. The CARB Audit evaluated the validity
8 of Emission Reduction Credits used for compliance with District New Source Review. The CARB Audit
9 evaluated the Equivalency System using the most current Offset Equivalency Report for the 2018-2019
10 reporting period. The CARB Audit found the Air District had relied on highly questionable emissions
11 reductions from an agricultural internal combustion engine incentive program and reductions from
12 "orphan shutdowns" to claim equivalency. CARB Resolution 20-11 declared the CARB Audit's findings
13 well supported and the Board adopted those findings.

14 86. According to the CARB Audit, the Air District claimed 1,210.7 tons per year of NOx and
15 61.2 tons per year of VOC as additional creditable emission reductions from 919 agricultural internal
16 combustion engines (AG-ICE) electrification projects. The District claimed these credits from the
17 replacement of diesel-powered agricultural engines, used for pumping irrigation water, with electric
18 pumps. The District claimed the AG-ICE reductions as additional creditable emission reductions in 2008,
19 the same year that District staff warned of an extreme reclassification's consequences to the Equivalency
20 System and the potential equivalency failure for NOx.

21 87. The CARB Audit found that a sample of 10 AG-ICE projects were representative of all 919
22 projects and found that the AG-ICE reductions were not creditable because (a) the reductions were not
23 generated as a result of a permitting action as required by Rule 2201 § 7.2.2.2; (b) the reductions were not
24 creditable under Health & Safety Code § 44281(b) for projects receiving support from the Carl Moyer
25 incentive program; and (c) the reductions were not permanent. The CARB Audit further found that the
26 reductions were not real because the District overstated the claimed reductions by 35 percent or more
27 using an incorrect engine load factor, or the amount of time the engines were operating. CARB Audit at
28 47-55.

1 88. The Air District's decision to claim the non-creditable 1,210.7 tons per year of NO_x AG-
2 ICE reductions provided the majority of reductions the Air District used to improperly claim it had
3 demonstrated NO_x Test 2 equivalency. Between 2008 and the end of the 2017-2018 reporting period, the
4 District applied all AG-ICE reductions in Test 2, which represented approximately 58 percent of the total
5 NO_x additional creditable emission reductions the District applied in Test 2 through the 2017-2018
6 reporting period and approximately 77 percent of the NO_x additional creditable emission reductions the
7 District applied in Test 2 between 2008 and 2018. CARB Audit at 48.

8 89. The CARB Audit also evaluated so-called "orphan shutdowns" as actions generating
9 reductions the Air District claimed to support its equivalency reports. The CARB Audit defines orphan
10 shutdowns as "unclaimed emission reductions from facilities that have shut down and surrendered their air
11 permits, but did not claim the actual emission reductions, if any, from the cessation of emissions" as
12 Emission Reductions Credits. CARB Audit at 55.

13 90. The CARB Audit found that a sample of 11 orphan shutdowns showed discrepancies,
14 including orphan shutdown 2011S-9990046-4884, for which the District claimed 525.8 tons per year of
15 VOC reductions as additional creditable emission reductions in 2011. CARB staff found that the actual
16 emissions for this facility were zero in 2001 and ineligible for credit. At most, CARB found that the
17 District could have claimed 25 tons per year of VOC when the facility's Title V operating permit capped
18 VOC emissions at 50 tons per year.

19 91. The CARB Audit found that in the Offset Equivalency Reports for the 2010-2011
20 reporting period through the 2017-2018 reporting period, the District applied 320.7 tons per year of
21 VOC from orphan shutdown 2011-S-9990046-4884 as additional creditable emission reductions in Test
22 2 and carried forward 205.7 tons per year of VOC. These 320.7 tons per year of VOC equate to an
23 amount equivalent to the pollution emitted by 32 major stationary sources of VOC, respectively, based on
24 the 10 tons per year major stationary source threshold for an extreme ozone nonattainment area.

25 **G. Annual Offset Equivalency Reports.**

26 92. On November 18, 2004, the District submitted the Offset Equivalency Report for the
27 reporting period 2003-2004 to EPA.

28 93. On November 18, 2005, the District submitted the Offset Equivalency Report for the

1 reporting period 2004-2005 to EPA.

2 94. On November 17, 2006, the District submitted the Offset Equivalency Report for the
3 reporting period 2005-2006 to EPA.

4 95. On November 19, 2007, the District submitted the Offset Equivalency Report for the
5 reporting period 2006-2007 to EPA.

6 96. On November 19, 2008, the District submitted the Offset Equivalency Report for the
7 reporting period 2007-2008 to EPA.

8 97. On November 19, 2009, the District submitted the Offset Equivalency Report for the
9 reporting period 2008-2009 to EPA.

10 98. On November 18, 2010, the District submitted the Offset Equivalency Report for the
11 reporting period 2009-2010 to EPA.

12 99. On November 17, 2011, the District submitted the Offset Equivalency Report for the
13 reporting period 2010-2011 to EPA.

14 100. On November 14, 2012, the District submitted the Offset Equivalency Report for the
15 reporting period 2011-2012 to EPA.

16 101. On November 6, 2013, the District submitted the Offset Equivalency Report for the
17 reporting period 2012-2013 to EPA.

18 102. On November 17, 2014, the District submitted the Offset Equivalency Report for the
19 reporting period 2013-2014 to EPA.

20 103. On November 17, 2015, the District submitted the Offset Equivalency Report for the
21 reporting period 2014-2015 to EPA. On January 13, 2016, the District amended and resubmitted the Offset
22 Equivalency Report for the reporting period 2014-2015 to EPA.

23 104. On November 18, 2016, the District submitted the Offset Equivalency Report for the
24 reporting period 2015-2016 to EPA.

25 105. On November 17, 2017, the District submitted the Offset Equivalency Report for the
26 reporting period 2016-2017 to EPA.

27 106. On November 16, 2018, the District submitted the Offset Equivalency Report for the
28 reporting period 2017-2018 to EPA.

1 107. On November 18, 2019, the District submitted the Offset Equivalency Report for the
2 reporting period 2018-2019 to EPA. The Report is attached as Exhibit 3. The Report claimed equivalency
3 with Test 1 and claimed an excess balance of 4,313.9 and 707.2 tons per day of NO_x and VOC,
4 respectively. The Report claimed equivalency with Test 2 and claimed unused carry-over creditable
5 reductions of 408 and 1,428 tons per day of NO_x and VOC, respectively.

6 108. On September 17, 2020, the Governing Board adopted a motion to authorize the Executive
7 Director/APCO of the District to provisionally withdraw all additional creditable emission reductions
8 derived from all AG-ICE agricultural irrigation engine electrification projects and all orphan shutdowns.
9 The Staff Report recommending the provisional withdrawal stated the “findings of CARB’s review point
10 to the need to revisit the assumptions used in the District’s equivalency demonstrations for the [Test 2]
11 surplus value test . . . [and] CARB raised valid questions regarding the assumptions, quantification
12 methodologies, and creditability of the emission reductions associated” with the AG-ICE program and
13 orphan shutdown reductions.

14 109. On November 20, 2020, the District submitted the Offset Equivalency Report for the
15 reporting period 2019-2020 to EPA. On January 5, 2021, the District submitted an errata disclosure for the
16 Offset Equivalency Report for the reporting period 2019-2020. The Report and the errata disclosure are
17 attached as Exhibit 4.

18 110. For Test 1, the Offset Equivalency Report for the 2019-2020 reporting period disclosed a
19 Test 1 equivalency failure for VOC and reported a VOC year-end carryover shortfall of 2,128.4 tons per
20 year. The shortfall resulted from the Air District adjusting the VOC balance by subtracting 2,820.6 tons
21 per year due to changes it made to Test 1 following the CARB Audit. The Air District adjusted the Test 1
22 NO_x balance by subtracting 3,968.8 tons per year due to changes it made to Test 1 following the CARB
23 Audit and disclosed a NO_x year-end carryover excess of 353.1 tons per year.

24 111. For Test 2, the Offset Equivalency Report for the 2019-2020 reporting period conceded
25 equivalency failure for NO_x and VOC, did not disclose any data for those pollutants, and stated
26 “[e]ffective September 17, 2020, NO_x and VOC were no longer Surplus Value equivalent and Rule 2201
27 remedy was enacted to require surplus at time-of-use ERCs for projects requiring NO_x and VOC offsets
28 under Rule 2201.” The Air District made negative adjustments to Test 2 following the CARB Audit by

1 amounts greater than the unused carryover reductions from the 2018-2019 report of 408 and 1,428 tons per
2 year of NOx and VOC, respectively.

3 112. On November 19, 2021, the District submitted the Offset Equivalency Report for the
4 reporting period 2020-2021 to EPA. On March 1, 2022, the District amended and resubmitted the Offset
5 Equivalency Report for the reporting period 2020-2021. The amended and resubmitted Report is attached
6 as Exhibit 5.

7 113. The Offset Equivalency Report for the reporting period 2020-2021 omits all data for VOC
8 and NOx from both Test 1 and Test 2, and concedes Test 1 and Test 2 equivalency failure for NOx and
9 VOC. The Air District made an undisclosed negative adjustment to the Test 1 NOx balance by an amount
10 greater than 353.1 tons per year, the year-end carryover excess from 2019-2020.

11 114. On November 16, 2022, the District submitted the Offset Equivalency Report for the
12 reporting period 2021-2022 to EPA. The Report is attached as Exhibit 6. The Offset Equivalency Report
13 for the reporting period 2021-2022 omits data for VOC and NOx in both Test 1 and Test 2, and concedes
14 Test 1 and Test 2 equivalency failure for NOx and VOC.

15 115. The negative adjustments the Air District made to Test 1 data reflect offsets the Air District
16 failed to require from stationary sources prior to the 2019-2020 reporting period. The negative adjustments
17 equate to a cumulative offsets deficit of at least 4,321.9 and 2,820.6 tons per year of NOx and VOC,
18 respectively. The negative adjustments equate to at least an amount equivalent to the offsets required for
19 hundreds of major stationary sources of NOx and VOC, respectively, based on the 10 tons per year major
20 stationary source threshold for an extreme ozone nonattainment area.

21 116. The negative adjustments the Air District made to Test 2 data reflect the time-of-use
22 surplus value deficit and unmitigated air pollution the Air District allowed in the San Joaquin Valley in
23 excess of federal New Source Review offset requirements. The negative adjustments total at least 408 and
24 1,428 tons per year of NOx and VOC, respectively. These deficits equate to an amount equivalent to the
25 pollution emitted by at least 40 and 142 major stationary sources of NOx and VOC, respectively, based on
26 the 10 tons per year major stationary source threshold for an extreme ozone nonattainment area.

27 117. The Air District has denied San Joaquin Valley residents, including members of
28 Environmental Justice Organizations, the benefits of offsets as required by the Clean Air Act when the Air

1 District allowed new and modified sources of air pollution to emit unmitigated NO_x and VOC emissions
2 by failing to correct annual Offset Equivalency Reports and failing to implement the automatic remedies
3 for equivalency failure.

4 **H. The ERC Public Advisory Workgroup.**

5 118. On June 26, 2020, during the CARB Board hearing on the CARB Audit, the Executive
6 Officer/APCO for the Air District committed to assemble a public advisory working group “to assist in
7 developing solutions related to the Air District’s offset equivalency system.”

8 119. For the next two years, the Air District ran the ERC Public Advisory Workgroup as a body
9 to solve the lack of additional creditable emission reductions needed to demonstrate equivalency while
10 refusing to reconcile the historical and cumulative deficits in the Equivalency System.

11 120. On July 14, 2022, Dr. Catherine Garoupa, Executive Director of the Central Valley Air
12 Quality Coalition, and the other two public interest members of the ERC Public Advisory Workgroup
13 resigned because of the Air District’s failure to hold itself accountable.

14 **FIRST CLAIM FOR RELIEF**

15 **Violation of an Emission Standard or Limitation:**

16 **Offset Equivalency Reports Rely on AG-ICE and Orphan Shutdown Reductions to Claim Test 2**

17 **Equivalency for NO_x and VOC**

18 **(42 U.S.C. § 7604(a)(1))**

19 121. Environmental Justice Organizations re-allege and incorporate by reference the allegations
20 set forth in the above paragraphs.

21 122. Section 7.2.2.1 of Rule 2201 requires that the annual Offset Equivalency Report “shall
22 include a comparison of the annual quantity of federal offsets that would have been required (as tracked
23 pursuant to Section 7.1.1) to the surplus value of creditable emission reductions used as offsets during the
24 year (as tracked pursuant to Section 7.1.3).”

25 123. Section 7.2.2.2 of Rule 2201 authorizes for “purposes of the demonstration described in
26 Section 7.2.2, the comparison may also include the surplus value of additional creditable emission
27 reductions that have not been used as offsets and have been banked or have been generated as a result of
28 permitting actions.”

1 124. Section 7 of Rule 2201 is an emission standard or limitation. EPA approved section 7 of
2 Rule 2201 as part of the State Implementation Plan. 40 C.F.R. § 52.220(c)(311)(i)(B)(I); 40 C.F.R. §
3 52.220(c)(363)(i)(A)(5); 40 C.F.R. § 52.220(c)(400)(i)(A)(I).

4 125. The Test 2 demonstrations in the Offset Equivalency Reports for the reporting periods
5 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-
6 2016, 2016-2017, 2017-2018, and 2018-2019 rely on reductions from AG-ICE agricultural irrigation
7 engine electrification projects claimed as additional creditable emission reductions pursuant to section
8 7.2.2.2 of Rule 2201.

9 126. The Test 2 demonstrations in the Offset Equivalency Reports for the reporting periods
10 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, and 2018-
11 2019 rely on reductions from orphan shutdown 2011-S-9990046-4884 claimed as additional creditable
12 emission reductions pursuant to section 7.2.2.2 of Rule 2201.

13 127. The reductions from AG-ICE agricultural irrigation engine electrification projects and
14 orphan shutdown 2011-S-9990046-4884 are not creditable within the meaning of section 7.1.5 of Rule
15 2201.

16 128. On September 17, 2020, the District provisionally withdrew all reductions it had claimed
17 from all AG-ICE agricultural irrigation engine electrification projects and all orphan shutdowns from the
18 Equivalency System.

19 129. The Offset Equivalency Report Test 2 demonstrations for reporting periods 2007-2008,
20 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-
21 2017, 2017-2018, and 2018-2019 violate section 7.2.2 of Rule 2201 by relying on reductions from AG-
22 ICE agricultural irrigation engine electrification projects and orphan shutdowns that are non-creditable and
23 which the District has provisionally withdrawn from the Equivalency System. The District has not
24 amended and submitted corrected Offset Equivalency Reports for reporting periods 2007-2008, 2008-
25 2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017,
26 2017-2018, and 2018-2019 to account for the withdrawn reductions from AG-ICE electrification projects
27 and orphan shutdowns.

28 130. By adopting and submitting annual Offset Equivalency Reports that rely on non-creditable

1 and withdrawn reductions from AG-ICE electrification projects and orphan shutdowns, Defendants have
2 violated and continue to violate an emission standard or limitation within the meaning of the Clean Air
3 Act's citizen suit provision. 42 U.S.C. § 7604(a)(1). Defendants' violation of the Clean Air Act is ongoing
4 and will continue unless remedied by this Court.

5 **SECOND CLAIM FOR RELIEF**

6 **Violation of an Emission Standard or Limitation:**

7 **Offset Equivalency Reports Use the Federal Offset Quantity for a Severe Ozone Nonattainment**

8 **Area to Claim Test 1 and Test 2 Equivalency for NO_x and VOC**

9 **(42 U.S.C. § 7604(a)(1))**

10 131. Environmental Justice Organizations re-allege and incorporate by reference the allegations
11 set forth in the above paragraphs.

12 132. Section 7.2.1.1 of Rule 2201 requires that the annual Offset Equivalency Report "shall
13 include a comparison of the annual quantity of federal offsets that would have been required (as tracked
14 pursuant to Section 7.1.1) to the annual quantity of offsets actually required under this rule, including any
15 excess offsets required from previous reporting years (as tracked pursuant to Section 7.1.2)."

16 133. Section 7.2.2.1 of Rule 2201 requires that the annual Offset Equivalency Report "shall
17 include a comparison of the annual quantity of federal offsets that would have been required (as tracked
18 pursuant to Section 7.1.1) to the surplus value of creditable emission reductions used as offsets during the
19 year (as tracked pursuant to Section 7.1.3)."

20 134. Section 7 of Rule 2201 is an emission standard or limitation. EPA approved section 7 of
21 Rule 2201 as part of the State Implementation Plan. 40 C.F.R. § 52.220(c)(311)(i)(B)(I); 40 C.F.R. §
22 52.220(c)(363)(i)(A)(5); 40 C.F.R. § 52.220(c)(400)(i)(A)(I).

23 135. Effective May 17, 2004, EPA reclassified the San Joaquin Valley as an extreme ozone
24 nonattainment area for the 1-hour ozone standard. 69 Fed. Reg. 20550 (April 16, 2004). Extreme area
25 major source thresholds and offset ratios applied to the San Joaquin Valley after May 17, 2004, the date of
26 designation as an extreme area. In the alternative, extreme area permit thresholds and offset ratios applied
27 after May 17, 2004, except between June 15, 2005 when EPA revoked federal New Source Review for the
28 1-hour ozone standard and August 29, 2007 when the D.C. Circuit Court of Appeals entered the mandate

1 vacating that revocation.

2 136. The District did not amend Rule 2201 to apply extreme area major source thresholds and
3 offset ratios until June 10, 2010, the effective date of EPA's approval of the December 18, 2008 version of
4 Rule 2201.

5 137. The Offset Equivalency Report for the period 2019-2020 admitted that the District failed to
6 apply the extreme area offset ratio for tracked federal projects during the reporting periods 2010-2011,
7 2011-2012, 2012-2013, and 2013-2014. "The District determined that an adjustment was necessary to
8 correct an issue affecting NOx and VOC for tracked federal projects during the period starting August 20,
9 2010, and ending August 19, 2014. Specifically, the appropriate extreme non-attainment federal offset
10 ratio of 1.5 to 1 for NOx and VOC was not applied during this period." 2019-2020 Offset Equivalency
11 Report at 10. By failing to apply the extreme area offset ratio, the Air District has submitted four annual
12 Offset Equivalency Reports with lower Federal Offset Quantities in Test 1 and Test 2 than that which the
13 Air District should have applied. This also affected Test 2 by requiring less additional creditable emission
14 reductions to compensate for shortfalls because the Air District applied lower, incorrect Federal Offset
15 Quantities.

16 138. The Test 1 and Test 2 demonstrations for the Offset Equivalency Reports for the reporting
17 periods 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2009-2010 violate
18 sections 7.2.1 and 7.2.2 of Rule 2201 by including Federal Offset Quantities based on the major source
19 permitting thresholds and offset ratios for a severe ozone nonattainment area (1.2 to 1) instead of the
20 permitting thresholds and offset ratios for an extreme ozone nonattainment area (1.5 to 1). As a result, the
21 Federal Offset Quantities were less than required by sections 7.2.1 and 7.2.2 of Rule 2201 and the Air
22 District more easily demonstrated equivalency.

23 139. The Test 1 and Test 2 demonstrations for the Offset Equivalency Reports for the reporting
24 periods 2010-2011, 2011-2012, 2012-2013, and 2013-2014 violate sections 7.2.1 and 7.2.2 of Rule 2201
25 by including Federal Offset Quantities based on offset ratios for a severe ozone nonattainment area (1.2 to
26 1) instead of the offset ratios for an extreme ozone nonattainment area (1.5 to 1). As a result, the Federal
27 Offset Quantities were less than required by sections 7.2.1 and 7.2.2 of Rule 2201 and the Air District
28 more easily demonstrated equivalency.

1 140. The erroneous Federal Offset Quantities applied in the Offset Equivalency Reports for the
2 reporting periods 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010,
3 2011-2012, 2012-2013, and 2013-2014 have a cumulative effect during those reporting periods and future
4 reporting periods.

5 141. By adopting and submitting annual Offset Equivalency Reports that applied severe ozone
6 nonattainment area major source thresholds and offset ratios instead of extreme area major source
7 thresholds and offset ratios, the District understated the Federal Offset Quantity in Test 1 and Test 2 in the
8 Offset Equivalency Reports for the reporting periods 2003-2004, 2004-2005, 2005-2006, 2006-2007,
9 2007-2008, 2008-2009, 2009-2010, 2011-2012, 2012-2013, and 2013-2014. Defendants have thus violated
10 and continue to violate an emission standard or limitation within the meaning of the Clean Air Act's
11 citizen suit provision. 42 U.S.C. § 7604(a)(1). Defendants' violation of the Clean Air Act is ongoing and
12 will continue unless remedied by this Court.

13 **THIRD CLAIM FOR RELIEF**

14 **Violation of an Emission Standard or Limitation:**

15 **Offset Equivalency Reports Fail to Disclose Test 1 and Test 2 Data**

16 **(42 U.S.C. § 7604(a)(1))**

17 142. Environmental Justice Organizations re-allege and incorporate by reference the allegations
18 set forth in the above paragraphs.

19 143. The Offset Equivalency Report for the reporting period 2019-2020 failed to compare the
20 "annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1) to
21 the surplus value of creditable emission reductions used as offsets during the year (as tracked pursuant to
22 Section 7.1.3)" for NO_x and VOC.

23 144. The Offset Equivalency Report for the reporting period 2020-2021 failed to compare the
24 "annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1) to
25 the annual quantity of offsets actually required under this rule, including any excess offsets required from
26 previous reporting years (as tracked pursuant to Section 7.1.2)" for NO_x and VOC.

27 145. The Offset Equivalency Report for the reporting period 2020-2021 failed to compare the
28 "annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1) to

1 the surplus value of creditable emission reductions used as offsets during the year (as tracked pursuant to
2 Section 7.1.3)” for NOx and VOC.

3 146. The Offset Equivalency Report for the reporting period 2021-2022 failed to compare the
4 annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1) to
5 the annual quantity of offsets actually required under this rule, including any excess offsets required from
6 previous reporting years (as tracked pursuant to Section 7.1.2)” for NOx and VOC.

7 147. The Offset Equivalency Report for the reporting period 2021-2022 failed to compare the
8 “annual quantity of federal offsets that would have been required (as tracked pursuant to Section 7.1.1) to
9 the surplus value of creditable emission reductions used as offsets during the year (as tracked pursuant to
10 Section 7.1.3)” for NOx and VOC.

11 148. Rather than disclose data for NOx and VOC required by sections 7.2.1 and 7.2.2 of Rule
12 2201 in Offset Equivalency Reports for the reporting periods 2019-2020, 2020-2021, and 2021-2022, the
13 Air District omitted the data and conceded equivalency failure.

14 149. By failing to disclose data for NOx and VOC required by sections 7.2.1 and 7.2.2 of Rule
15 2201 in Offset Equivalency Reports for the reporting periods 2019-2020, 2020-2021, and 2021-2022, the
16 Air District has violated and continues to violate an emission standard or limitation within the meaning of
17 the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a)(1). Defendants’ violation of the Clean Air
18 Act is ongoing and will continue unless remedied by this Court.

19 **FOURTH CLAIM FOR RELIEF**

20 **Violation of an Emission Standard or Limitation:**

21 **Failure to Implement Automatic Remedies for Submitting Offset Equivalency Reports that Violate**

22 **Sections 7.2.1 and 7.2.2 of Rule 2201**

23 **(42 U.S.C. § 7604(a)(1))**

24 150. Environmental Justice Organizations re-allege and incorporate by reference the allegations
25 set forth in the above paragraphs.

26 151. Section 7.4.1.3 of Rule 2201 requires that if “the APCO fails to submit a report meeting the
27 requirements of Section 7.2.1, all ATC issued after the report deadline and until the APCO submits to
28 ARB, EPA and the public a report complying with the requirements of Section 7.2.1 shall comply with the

1 offset requirements of 40 CFR 51.165, and part D of Title I of the CAA.”

2 152. Section 7.4.2.3 of Rule 2201 requires that if “the APCO fails to submit a report meeting the
3 requirements of Section 7.2.2, all ATCs issued for new major sources or federal major modifications after
4 the report deadline and until the APCO submits to ARB, EPA and the public a report complying with the
5 requirements of Section 7.2.1 shall ensure that emission reductions used to satisfy offset requirements are
6 creditable and that the surplus value of those credits is determined at the time of ATC issuance.”

7 153. The Air District has failed to submit compliant Offset Equivalency Reports for reporting
8 periods 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015,
9 2015-2016, 2016-2017, 2017-2018, and 2018-2019 for the Test 1 and Test 2 equivalency demonstrations
10 to account for the non-creditable reductions from the AG-ICE agricultural irrigation engine electrification
11 projects and orphan shutdown 2011-S-9990046-4884 and the provisional withdrawal of all reductions
12 from all AG-ICE agricultural irrigation engine electrification projects and all orphan shutdowns, as alleged
13 in the First Claim for Relief.

14 154. The Air District has failed to submit compliant Offset Equivalency Reports for reporting
15 periods 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011,
16 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, and 2018-2019 for the
17 Test 1 and Test 2 equivalency demonstrations to account for incorrect Federal Offset Quantities, as alleged
18 in the Second Claim for Relief.

19 155. The Air District has failed to submit compliant Offset Equivalency Reports for reporting
20 periods 2019-2020, 2020-2021, and 2021-2022 for the Test 1 and Test 2 equivalency demonstrations to
21 account for the NO_x and VOC data omitted, as alleged in the Third Claim for Relief.

22 156. The Air District has failed to implement automatic remedies for non-compliant Offset
23 Equivalency Reports as required by sections 7.4.1.3 and 7.4.2.3 of Rule 2201.

24 157. By failing to implement automatic remedies as required by sections 7.4.1.3 and 7.4.2.3 of
25 Rule 2201 because of noncompliant Offset Equivalency Reports for the reporting periods 2003-2004,
26 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-
27 2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, and
28 2021-2022, Defendants have violated and continue to violate an emission standard or limitation within the

1 meaning of the Clean Air Act's citizen suit provision. 42 U.S.C. § 7604(a)(1). Defendants' violation of the
2 Clean Air Act is ongoing and will continue unless remedied by this Court.

3 **FIFTH CLAIM FOR RELIEF**

4 **Violation of an Emission Standard or Limitation:**

5 **Failure to Implement Automatic Remedies upon Equivalency Failure**

6 **(42 U.S.C. § 7604(a)(1))**

7 158. Environmental Justice Organizations re-allege and incorporate by reference the allegations
8 set forth in the above paragraphs.

9 159. If the Air District fails to demonstrate equivalency pursuant to Test 1, the district may use
10 additional creditable emission reductions to correct the shortfall. If the District cannot correct the shortfall,
11 the District shall implement the automatic remedies required by section 7.4.1.2 of Rule 2201.

12 160. If the Air District fails to demonstrate equivalency pursuant to Test 2, the District shall
13 implement the automatic remedies required by section 7.4.2.1 of Rule 2201.

14 161. The Offset Equivalency Reports for the reporting periods 2019-2020, 2020-2021, and
15 2021-2022 concede Test 1 and Test 2 equivalency failure for NOx and VOC.

16 162. The Air District has failed to submit amended Offset Equivalency Reports for reporting
17 periods 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011,
18 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, and 2018-2019 as
19 alleged in the Fourth Claim for Relief.

20 163. Based upon information and belief, and upon information in the public record including the
21 CARB Audit, the annual Offset Equivalency Reports, and the Air District's provisional withdrawal of all
22 reductions from AG-ICE agricultural irrigation engine electrification projects and orphan shutdowns from
23 the Equivalency System, Environmental Justice Organizations allege that the Air District has failed to
24 demonstrate equivalency pursuant to Test 1 and Test 2 during reporting periods prior to the 2019-2020
25 reporting period. The data showing the precise reporting period or periods in which the District has failed
26 to demonstrate Test 1 and Test 2 equivalency are within the exclusive possession and control of the
27 District.

28 164. The District has failed to implement the automatic remedies required by sections 7.4.1.2

1 and 7.4.2.1 of Rule 2201 during reporting periods prior to the 2019-2020 reporting period.

2 165. By failing to implement the automatic remedies required for Test 1 and Test 2 equivalency
3 failure prior to the 2019-2020 reporting period, the Air District has violated and continues to violate an
4 emission standard or limitation within the meaning of the Clean Air Act's citizen suit provision. 42 U.S.C.
5 § 7604(a)(1). Defendants' violation of the Clean Air Act is ongoing and will continue unless remedied by
6 this Court.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully request the Court grant the following relief:

- 9 A. DECLARE that the Defendants have adopted and submitted Offset Equivalency Reports
10 for the reporting periods 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-
11 2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016,
12 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, and 2021-2022 that violate
13 sections 7.2.1 and 7.2.2 of Rule 2201.
- 14 B. DECLARE that the Defendants have a duty to implement automatic remedies until
15 Defendants have submitted corrected Offset Equivalency Reports for the reporting periods
16 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-
17 2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018,
18 2018-2019, 2019-2020, 2020-2021, and 2021-2022 and have violated an emission standard
19 or limitation by failing to implement automatic remedies.
- 20 C. DECLARE that the Defendants have a duty to implement automatic remedies for Test 1
21 and Test 2 equivalency failure during reporting periods prior to the 2019-2020 reporting
22 period and have violated an emission standard or limitation by failing to implement
23 automatic remedies during those reporting periods.
- 24 D. ISSUE preliminary and permanent injunctions directing the Defendants to correct and
25 submit amended Offset Equivalency Reports to the California Air Resources Board, the
26 U.S. Environmental Protection Agency, and the public;
- 27 E. ISSUE preliminary and permanent injunctions directing the Defendants to implement
28 automatic remedies required by sections 7.4.1.2, 7.4.1.3, 7.4.2.1 and 7.4.2.3 of Rule 2201;

- 1 F. RETAIN jurisdiction over this matter until such time as the Defendants have complied with
2 their duty under the Clean Air Act;
- 3 G. AWARD to Plaintiffs their costs of litigation, including reasonable attorney and expert
4 witness fees; and
- 5 H. GRANT such additional relief as the Court may deem just and proper.
- 6

7 Dated: May 24, 2023

Respectfully Submitted,

8 LAW OFFICES OF BRENT J. NEWELL

9 /s/ Brent Newell
10 Brent J. Newell
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19 Grecia Orozco
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