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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

Citizens Climate Lobby and Our Children's Earth Foundation, Petitioners and Plaintiffs, vs. California Air Resources Board, Respondent and Defendant.	No._____ PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; VERIFICATIONS

Petitioners and Plaintiffs, Citizens Climate Lobby and Our Children's Earth Foundation hereby petition this Court for a writ of mandate, pursuant to Code of Civil Procedure section 1085, and bring this action for declaratory and injunctive relief against Respondent and Defendant, the California Air Resources Board ("CARB"). Petitioner Citizens Climate Lobby makes the allegations about itself in paragraphs 5 and 7 below, based upon its own personal knowledge, and Petitioner Our Children's Earth Foundation makes the allegations about itself in paragraphs 6 and 7 below, based upon its own personal knowledge. The Petitioners make all other allegations herein on information and belief based upon their own and their counsels' investigations. The heart of the matter is that provisions related to offsets in CARB's recently promulgated Cap and Trade Regulation would undermine the letter and spirit of California's

landmark climate legislation, AB 32.

INTRODUCTION AND SUMMARY OF THE ACTION

1. This action challenges the validity of a limited set of regulatory actions taken by CARB as part of its implementation of AB 32, the California Global Warming Solutions Act of 2006, Health & Safety Code §§ 38500-99. On December 13, 2011, the Office of Administrative Law gave final approval to a set of regulations known as the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, Cal. Code Regs., tit. 17, §§ 95800 to 96023. Specifically, this action challenges the portion of these regulatory actions that addresses greenhouse gas offsets.

2. The December 13 regulations establish a cap on overall greenhouse gas emissions such as carbon dioxide ("CO_2") and a market-based, pollution allowance trading program to meet this emissions cap ("Cap-and-Trade Program"). Under the Cap-and-Trade Program, CARB limits the annual emissions of greenhouse gases from major emitters, such as power plants. To meet its compliance obligations, each of these major emitters must acquire and submit to CARB allowances equal to its total emissions.

3. These major greenhouse gas emitters may receive some of these allowances from the State, but may also purchase allowances from other emitters who have fewer emissions than the allowances they hold. In addition, and this is the nub of this case, CARB also allows major emitters to comply by purchasing "offsets," which are voluntary greenhouse gas reductions made by entities not otherwise participating in the Cap-and-Trade Program.

4. AB 32 allows the use of such offsets to meet greenhouse gas emission limits established by the Cap-and-Trade Program, but only if the reductions sought to be claimed as offsets are "in addition to any greenhouse gas emission reduction that otherwise would occur." CARB has created the following regulatory provisions, however, that fail to meet these statutory requirements, and consequently, this case seeks their invalidation: Cal. Code Regs., tit. 17, §§ 95802(a)(3), (36), (60), and (93); §§ 95970-97 (hereinafter the "Offset Regulations"); and the Compliance Offset Protocols, adopted October 20, 2011, for Livestock Projects, Ozone Depleting Substances Projects, Urban Forest Projects and U.S. Forest Projects (hereinafter the

"Offset Protocols"). The Offset Protocols are incorporated by reference into the regulations at § 95975(e) (hereinafter the Offset Regulations and Offset Protocols will be referred to collectively as the "Offset Provisions"). Because the Offset Provisions would allow up to 85% of all required reductions under the Cap-and-Trade Program to be met with offsets, the integrity of these provisions is critical to the success of the program.

THE PARTIES

A. Petitioners and Plaintiffs

5. Petitioner and Plaintiff Citizens Climate Lobby is a California Nonprofit Public Benefit Corporation whose purposes include the creation of a stable climate. Citizens Climate Lobby works to bring together the best scientific and economic information for effective solutions to energy problems, and it continuously works to build support for effective climate action. Citizens Climate Lobby has over 40 chapters spread across the United States and Canada. If CARB implements a regulatory scheme that fails to meet the requirements of AB 32, California's residents, including those who are "partners" (i.e., members of local chapters) of Citizens Climate Lobby will suffer from the threat posed by global warming. Consequently, these members of California chapters of Citizens Climate Lobby have a clear, present, and beneficial interest in these proceedings. Accordingly, Citizens Climate Lobby brings this action in its representative capacity on behalf of its chapter members who reside in California, many of whom will be directly and potentially adversely affected by the implementation of the CARB Offset Provisions.

6. Petitioner and Plaintiff Our Children's Earth Foundation is a non-profit public benefit corporation with members throughout the United States, including California, dedicated to protecting the public, especially children, from the health impacts of pollution and other environmental hazards and to improving environmental quality for the public benefit. Another aspect of the Foundation's mission is to participate in environmental decisionmaking, enforce environmental laws, both federal and state, to reduce pollution, and to educate the public concerning those laws and their enforcement. If CARB implements a regulatory scheme that fails to meet the requirements of AB 32, California's residents, including those who are members

of the Foundation will suffer from the threat posed by global warming. Consequently, members of the Foundation have a clear, present, and beneficial interest in these proceedings. Accordingly, Our Children's Earth Foundation brings this action in its representative capacity on behalf of its members who reside in California, many of whom will be directly and potentially adversely affected by the implementation of the CARB Offset Provisions.

7. The members of Citizens Climate Lobby and Our Children's Earth Foundation have a beneficial interest in seeing that the CARB Offset Provisions are invalidated. The CARB Offset Provisions will allow the use of offsets based upon reductions that "otherwise would occur," thereby threatening the integrity of the AB 32 climate program and the State's ability to inhibit harmful climate change, thus threatening the Petitioners' members.

B. Respondent and Defendant

8. Respondent and Defendant CARB is now, and at all times relevant to the allegations herein has been, a California governmental agency. The legislature charged CARB with the responsibility of designing emission reduction measures to meet the State-wide emission limits for greenhouse gases established by AB 32. CARB promulgated the Offset Provisions that are the subject of this action.

VENUE

9. Venue is proper in this court pursuant to Code of Civil Procedure section 401(a), because the California Attorney General maintains an office in San Francisco County.

THE REQUIREMENTS OF AB 32

10. The California legislature has found that "global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California." Health & Safety Code § 38501(a).

11. The legislature has also found that: "The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human

health-related problems." Health & Safety Code § 38501(a).

12. The legislature has also found that: "Global warming will have detrimental effects on some of California's largest industries, including agriculture, wine, tourism, skiing, recreational and commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state." Health & Safety Code § 38501(b).

13. Consequently, the legislature has ordered CARB to establish a *"statewide greenhouse gas emissions limit* . . . to be achieved by 2020." *Id*. § 38550. This limit is to be "what the statewide greenhouse gas emissions level was in 1990." *Id*. (Emphasis added).

14. The legislature has defined the phrase "statewide greenhouse gas emissions limit" to mean "the maximum allowable level of *statewide greenhouse gas emissions* in 2020, as determined by the state board." *Id*. § 38505(n) (Emphasis added).

15. The legislature has defined the phrase "statewide greenhouse gas emissions" to mean "the total annual emissions of *greenhouse gases* in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of *carbon dioxide equivalents*." *Id*. § 38505(m) (Emphasis added).

16. The legislature has defined the term "greenhouse gas" to include "all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexaflouride." *Id*. § 38505(g).

17. The legislature has defined the term "carbon dioxide equivalent" to mean "the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science, including from the Intergovernmental Panel on Climate Change." *Id*. § 38505(c).

18. "In furtherance of achieving the statewide greenhouse gas emissions limit," the legislature also ordered CARB to "adopt *greenhouse gas emission limits* and emission reduction measures by regulation to achieve the maximum technologically feasible and cost-effective

reductions in greenhouse gas emissions." *Id*. § 38562(a) (Emphasis added).

19. The legislature has defined the term "greenhouse gas emissions limit" to mean "an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents." *Id*. § 38505(h).

20. In promulgating the required regulations mentioned in paragraph 18 above, the legislature gave CARB the option of using "*market-based compliance mechanisms* to comply with the regulations." *Id*. § 38570(a) (Emphasis added).

21. The legislature has defined the term "market-based compliance mechanisms" to mean either of the following:

> (1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.
>
> (2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.

Id. § 38505(k).

22. The legislature established criteria to ensure the integrity of any offset regulations and mandated that "any regulation adopted by the state board pursuant to [the parts of AB 32 governing greenhouse gas emission reductions and market-based compliance mechanisms] *shall ensure* [that] . . . the greenhouse gas emission reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the state board.. *Id*. § 38562(d)(1). (Emphasis added).

23. In order to ensure integrity, the legislature also mandated that "any regulation adopted by the state board pursuant to [the part of AB 32 governing greenhouse gas emission reductions and market-based compliance mechanisms] *shall ensure* . . . [f]or regulations pursuant to Part 5 (commencing with Section 38570) [addressing 'market-based compliance

mechanisms'], the reduction is in addition to *any* greenhouse gas emission reduction otherwise required by law or regulation, and *any* other greenhouse gas emission reduction that otherwise would occur." *Id*. § 38562(d)(2) (Emphasis added). (Hereinafter, the AB 32 requirements referenced in this paragraph and the immediately preceding paragraph shall be collectively referred to as the "AB 32 Integrity Standards.").

CARB'S REGULATIONS APPROVED BY THE

OFFICE OF ADMINISTRATIVE LAW DECEMBER 13, 2012

24. CARB has promulgated regulations pursuant to Health & Safety Code § 38562(a), and CARB has included in those regulations market-based compliance mechanisms, including a Cap-and-Trade Program that allows for the generation of greenhouse gas offsets outside the capped sectors. As mentioned above, the CARB Offset Provisions that were included in this regulatory action are the subject of this lawsuit.

25. Pursuant to the regulatory scheme CARB has developed, CARB defines "greenhouse gases" as carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), nitrogen trifluoride (NF_3), and other fluorinated greenhouse gases. Cal. Code Regs., tit. 17, § 95810.

26. Some of the CARB-defined greenhouse gases are more effective at trapping heat than carbon dioxide. For ease of measurement, "all emissions are measured in units relative to the heat-trapping potential of carbon dioxide, or CO_2e; the "e" standing for 'equivalent.'" *Id*. § 95802(a)(45).

27. The Cap-and-Trade Program sets annual overall caps for emissions of CO_2e from certain sources, called "covered entities," in the state. *Id*. § 95802(a)(64).

28. In 2013, the cap for those sources covered by the program is 162.8 million metric tons of CO_2e. *Id*. § 95841.

29. During 2013 and the year after, the only sources subject to the cap are electricity generators (including electricity imported into the state), as well as large industrial sources that annually emit more than 25,000 metric tons of CO_2e. *Id.* § 95851(a).

30. After this first phase, the cap increases in 2015 to 394.5 million metric tons of

CO_2e. *Id*. § 95841, but the program also expands to include distributors of fuel (including natural gas, gasoline, fuel oil, and liquefied petroleum gas). *Id*. § 95851(a).

31. For each year that the Cap-and-Trade Program is in effect, the state will distribute permits to emit greenhouse gases. Each permit, known as an "allowance," lets a covered entity emit one metric ton of CO_2e. *Id*. § 95802(a)(8).

32. At the end of each compliance period, each covered entity must surrender allowances or other "compliance instruments," *id*. § 95802(a)(55), equal to its total greenhouse gas emissions during the compliance period. *Id*. § 95856(a).

33. In general, the state will give covered entities some allowances. *Id*. § 95890.

34. If a facility does not have enough allowances from its allocation from the state to cover its emissions in a particular year, however, the facility can also purchase allowances from another entity (i.e. "trade") or use allowances it previously "banked."

35. Covered entities can also use other "compliance instruments," *id*. § 95802(a)(55), instead of allowances to meet their compliance obligations. These other compliance instruments are: *offsets*, specifically either "ARB offset credits" or "sector-based offset credits." *Id*. While AB 32 does not require that CARB create an offset program, the law allows offsets to be created and used, if and only if, these offsets meet the AB 32 Integrity Standards referred to in Paragraph 23 above. To help contain the cost of the Cap-and-Trade Program and to encourage reductions in other sectors, CARB's regulations allow up to 8 percent of each facility's compliance to be demonstrated by the use of "offsets." *See* Cal. Code Regs., tit. 17, § 95854(b).

36. While only 8 percent of each facility's total emissions may be satisfied with offsets, CARB has admitted that this 8 percent limit for each facility means that up to 85 percent of all greenhouse gas reductions required by the Cap-and-Trade Program could be met with offsets, rather than reductions by facilities within the "cap." Anne C. Mulkern, *Offsets Could Make up 85% of Calif.'s Cap and Trade,* New York Times, August 8, 2011, available at http://www.nytimes.com/gwire/2011/08/08/08greenwire-offsets-could-make-up-85-of-califs-cap-and-tra-29081.html?emc=eta1 (last visited March 26, 2012), *cited in* Citizen Climate Lobby Comments Submitted August 10, 2011 (R15-306). As a result, the integrity of

the Offset Provisions is central to the effectiveness of the entire Cap-and-Trade Program.

37. CARB has defined an ARB offset credit to be: "[A] tradable compliance instrument issued by ARB that represents a *GHG reduction* or *GHG removal enhancement* of one metric ton of CO2e. The GHG reduction or GHG removal enhancement must be real, *additional*, quantifiable, permanent, verifiable, and *enforceable*." *Id*. § 95802(a)(12) (Emphasis added).

38. CARB has defined a "GHG reduction" to be: "a calculated decrease in GHG emissions relative to a project baseline over a specified period of time." *Id*. § 95802(a)(122).

39. CARB has defined a "GHG removal enhancement" to be: "a calculated increase in GHG removals relative to a project baseline." *Id*. § 95802(a)(125).

40. As mentioned in paragraph 37, an ARB offset credit must be "additional."

41. CARB has defined "additional" to mean: "in the context of offset credits, greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas reductions or removals that would otherwise occur in *a conservative business-as usual scenario*." *Id*. § 95802(a)(3) (Emphasis added).

42. CARB has defined "Business-as-Usual Scenario" to mean "the set of conditions reasonably expected to occur within the *offset project boundary* in the absence of the financial incentives provided by offset credits, taking into account all current laws and regulations, as well as current economic and technological trends." *Id*. § 95802(a)(36) (Emphasis added).

43. CARB has defined "Offset Project Boundary" to be "defined by and include[] all GHG emission sources, GHG sinks or GHG reservoirs that are affected by an offset project and under control of the Offset Project Operator or Authorized Project Designee. GHG emissions sources, GHG sinks or GHG reservoirs not under control of the Offset Project Operator or Authorized Project Designee are not included in the offset project boundary." *Id*. § 95802(a)(176).

44. CARB has defined "conservative" to mean "in the context of offsets, utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not

to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements." *Id*. § 95802(a)(60).

45. CARB's regulations also provide that an ARB offset credit must result from an "offset project" and meet all the requirements of an "ARB Compliance Protocol." *Id*. §§ 95970)(b) and (a)(2) and (a)(3).

46. As mentioned in paragraph 37, an ARB offset credit must be "enforceable."

47. CARB has defined "enforceable" to mean: "the authority for ARB to hold a particular party liable and to take appropriate action if any of the provisions of this article are violated." *Id*. § 95802(a)(93).

48. On October 20, 2011, CARB promulgated four Offset Protocols: Livestock Projects, Ozone Depleting Substances Projects, Urban Forest Projects, and U.S. Forest Projects. These Offset Protocols are incorporated by reference into the regulations at Cal. Code Regs., tit. 17, § 95975(e).

49. CARB's regulations also provide that ARB offset credits must result from an offset project that is "verified." *Id*. §§ 95970)(b) and (a)(6).

50. The CARB Offset Protocols rely on a flawed approach to meeting the additionality requirements of the AB 32 Integrity Standards. Specifically, each of these protocols relies on a "Performance Standard," that inherently includes activities that would have otherwise occurred. In the protocols and other supporting documents, CARB's approach is also referred to "Performance Standard Test" and "Performance Test."

51. CARB's "Performance Standard" test means that an offset is determined to be "additional" because regulators have determined that the class of activities is "significantly better than average" or beyond "common practice" in terms of emissions reductions.

52. Use of the "Performance Standard" test is described in virtually identical language in the Staff Reports for the Livestock Digester, Ozone Depleting Substances, and Urban Forest Offset Protocols: "The purpose of a performance standard is to establish a threshold that *is significantly better than average* GHG production for a specified activity, which, if met or

exceeded by a project developer, satisfies the criterion of 'additionality.' If the project meets the threshold, then it exceeds what would happen under the business-as-usual scenario and generates surplus/additional GHG reductions." (Emphasis added). Use of the "Performance Test" is also described in both the Staff Report for the U.S. Forest Offset Protocol and the U.S. Forest Offset Protocol itself: "Projects must satisfy . . . a Performance Test for additionality. . . ." Staff Report 10/28/2010, page 6, R10-3149. A key factor in this test for additionality is comparing a proposed offset project "to '*Common Practice*,' defined as the average standing live carbon stocks of similar lands within the Forest Project's Assessment Area." Section 6.2.1 (Emphasis added).

53. The "Performance Standard," used in all four Offset Protocols, is flawed because offset activities which are merely "significantly better than average" or beyond "common practice" include, by definition, activities which already exist, are ongoing, and, therefore, do not produce greenhouse gas reductions or removals which are "in addition to *any* greenhouse gas emission reduction that otherwise would occur." (Emphasis added). The use of such a standard is in direct violation of AB 32's Integrity Standards.

54. CARB has also established Performance Standards using a type of "profitability analysis" test. CARB's "profitability analysis" test generally means that an offset payment is determined to make the difference between whether the activity that generates the offset will or will not be profitable. When an activity is determined to be profitable only with the financial incentive of offsets, the greenhouse gas reductions or removals from that activity are deemed to be additional. This concept is built into CARB's definition of "business-as-usual" which is what occurs "in the absence of the financial incentives provided by offset credits. . . ." However, a "profitability analysis" test is a flawed method for meeting the AB 32 Integrity Standards because it is inherently subjective and uncertain. Specifically, the test relies on knowing, among other things: (a) the costs of all inputs for the project, (b) the value of potential liabilities avoided by the project, (c) the amount of the offset payments for GHG reductions or sequestration, and (d) the value that the project will generate in addition to the offsets payment, such as timber, electricity, and "green" advertising. The value of each of these items is highly variable and unpredictable, cannot be known in advance, and may vary greatly over time. Therefore, any

determination of additionality based on this method is, at best, a guess about the future, which allows project proponents and verifiers to "turn the knobs" in order to get the result they seek and to include activities that "would otherwise occur," in violation of the AB 32 Integrity Standards.

55. Since non-additional offsets, i.e., activities that "would otherwise occur," will always be the least expensive (and therefore be preferred in an offset market by offset purchasers), no truly additional offsets will be financially viable until all non-additional activities have been exhausted. Since the "significantly above average," "beyond common practice" and "profitability analysis" test projects will flood the system with non-additional offsets, the Offset Provisions are likely to result in a large proportion of non-additional projects.

56. In March 2009, the United States General Accountability Office ("U.S. GAO") issued a report entitled: "Climate Change, Observations on the Potential Role of Offsets in Climate Change Legislation." In this report, U.S. GAO stated, "it is impossible to know with certainty whether any given [offset] project is additional," and "the use of offsets can compromise the integrity of programs designed to reduce greenhouse gas emissions."

57. In public comments submitted on October 19, 2011, regarding the regulations and offset protocols, petitioner Citizens Climate Lobby contended that CARB's offset scheme would allow offset project operators and offset project verifiers to use their subjective judgment in determining whether offset project reductions were "additional." In response to this comment, CARB maintained that: "[e]ach protocol provides clear criteria to support the generation of offsets that meet the AB 32 offset criteria. There is no subjectivity left to verifiers to assess whether or not the project meets the AB 32 criteria."

58. Given CARB's assertion in the previous paragraph, CARB maintains that any offset project that meets the requirements of one of the four protocols incorporated by reference at Cal. Code Regs., tit. 17, §§ 95975(e) meets the regulation's additionality requirements specified in Cal. Code Regs., tit. 17, §§ 95802(a)(3), (36), and (60).

59. Each of the four Offset Protocols, however, allow non-additional reductions to become ARB offset credits, thereby violating the AB 32 Intergity Standards.

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The Livestock Digester Protocol

60. The approved Livestock Digester Protocol exceeds the scope of what has been authorized by the legislature in AB 32 for a number of reasons, including the following.

61. The Livestock protocol , which has been incorporated into the regulations at Cal. Code Regs., tit. 17, § 95975(e)(2), uses a Performance Standard test that provides offsets for emissions avoided by the installation of anaerobic digesters used to treat manure at dairies and hog farms, even if this is an existing practice at these facilities and even if this practice would have been adopted in the absence of the CARB Offsets Provisions.

62. The CARB staff report found that the use of Livestock Digesters was "significantly better than average," but CARB acknowledged that livestock digesters were in use at some farm facilities.

63. In December 2009, the U.S. Secretary of Agriculture stated in a press release that Livestock Digesters were being used at only 2% of the farms at which they could be used profitably. Accordingly, the U.S. Department of Agriculture has found that many facilities across the United States could use livestock manure digesters profitably without offset payments provided by the AB 32 offset program.

64. Many farms have had to pay large judgments or settlements to address odors from hog farms. As a result, an additional reason that farmers may choose to install anaerobic digesters is that they wish to avoid the potential liability associated with open manure lagoons.

65. Several dairies have violated the Clean Water Act because of run-off from their manure lagoons. As a result, an additional reason that farmers may choose to install anaerobic digesters is that they wish to avoid the potential liability associated with contaminated run-off from open manure lagoons.

63. As a result, the Livestock Protocol violates the AB 32 Integrity Standards by allowing existing and ongoing projects, as well as projects that "would otherwise occur," to count as greenhouse gas offsets and satisfy the compliance obligations of "capped" facilities.

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Ozone Depleting Substance Protocol

66. The approved Ozone Depleting Substance Protocol exceeds the scope of what has been authorized by the legislature in AB 32 for a number of reasons, including the following.

67. This protocol, Cal. Code Regs., tit. 17, § 95975(e)(1) includes a Performance Standard test that provides offsets for any destruction of ozone depleting substances removed from appliances and allows existing and ongoing activities and projects to count as offsets.

68. In its Response to Comments, CARB admits that ozone depleting substance destruction is currently happening and that "[w]hile there may be evidence that some destruction has been taking place, it is far from common practice and is not required by regulation." CARB also states that: "[i]t is more common for this material to be recycled than it is for it to be destroyed."

69. The limited data cited by CARB to justify its statement that only 1.5% of all ozone depleting substances from appliances nationally was being destroyed in the 2003 and 2004 time frame (rather than stored and/or recycled) was inaccurate and ignored both a qualifying statement and attached data, collected by the United States Environmental Protection Agency through its Toxic Release Inventory, showing that more than ten times the quantity of ozone depleting substances cited by CARB was being destroyed at that time.

70. Prior to the promulgation of the Ozone Depleting Substances protocol, General Electric and its partners were capturing and destroying ozone depleting substances in efficient appliance-recycling centers.

71. Market research has shown that consumers prefer to purchase appliances from a company that recycles old appliances responsibly. Based in part on these studies, General Electric, its partners, and others have invested in facilities to capture and destroy ozone depleting substances from old appliances, even prior to the promulgation of the CARB Offset Provisions, demonstrating that they believed destruction of ozone depleting substances could be profitable even without the additional incentive of AB 32 offset payments.

72. As a result, the Ozone Depleting Substances Protocol violates the AB 32 Integrity Standards by allowing the existing and ongoing destruction of ozone depleting substances, as

well as future destruction projects that "would otherwise occur," to count as greenhouse gas offsets and to satisfy the compliance obligations of "capped" facilities.

The Urban Forest Protocol

73. The approved Urban Forest Protocol exceeds the scope of what has been authorized by the legislature in AB 32 for a number of reasons, including the following.

74. This protocol provides offsets for tree planting projects which are undertaken in municipalities, on educational campuses, or by utilities. Cal. Code Regs., tit. 17, § 95975(e)(3).

75. The primary basis for determinations of additionality pursuant to the Urban Forest Protocol is the Performance Standard test of "Net Tree Gain." CARB defines Net Tree Gain calculations as the difference between the number of trees planted minus number of trees removed due to disease, mortality, or disturbance. A Net Tree Gain of zero represents "maintenance of a stable urban tree population." 10/28/10 Staff Report, p. 5, R3-733.

76. As stated in the Staff Report, the CARB Urban Forest Protocol is largely based upon a very similar protocol, the Urban Forest Project Protocol developed by the California Climate Action Reserve. 10/28/10 Staff Report, p. 2, R3-736. Taken together, the Climate Action Reserve Protocol and the CARB Urban Forest Protocol explain the basis for using Net Tree Gain to determine additionality and clarify its application: "The threshold for municipalities and educational campuses is set at maintaining a stable urban forest population (i.e. a NTG of 0). In other words, municipalities and educational campuses must plant at least as many trees as they remove." 10/28/10 Staff Report, p. 5, R3-733.

77. CARB has created an even more generous standard than Net Tree Gain for utilities. CARB states: "Most utilities do not have tree planting programs that go beyond replacing trees removed during line clearance operations. While some have programs specifically aimed at storing carbon and conserving energy in residential households, on average utilities are planting fewer than 400 trees annually in these types of programs. All trees planted under these types of programs are considered additional and therefore are designated as eligible project trees. Trees planted that replace those removed during line clearance operations or are planted for energy conservation are eligible for offset credits. These trees may be used to

generate GHG reductions, provided all criteria in this protocol and the regulation are met." R5-382 (Urban Forest Protocol, p. 6). "Past Performance of individual urban forest projects is not used to determine business as usual; rather, business as usual is established from an assessment of urban forestry programs as a class." Climate Action Reserve Protocol, pp. 5-6.

78. As described above, under the Urban Forest Protocol, all net tree gain is counted as an offset, without regard to whether the project generating the offset was previously ongoing or whether the project would have been undertaken without the offset incentive because the project created economic and environmental benefits for the municipality, educational campus, or utility.

79. Urban forest programs are already in progress around the country and have resulted in Net Tree Gain prior to the promulgation of the CARB Offset Provisions. Urban forest programs begun prior to the promulgation of the CARB Offset Provisions have resulted in millions of trees being planted in U.S. cities, including New York, Los Angeles, and San Francisco. These programs bring a variety of economic, environmental, and aesthetic benefits to the implementing communities. A study of the New York City tree planting program found benefits including energy savings, air quality improvement, stormwater runoff reductions, and property value increases. This study also concluded that New York received than $5.60 in benefits for every $1.00 spent on the program. "Over the years, the city has invested millions in its urban forest. Citizens are now receiving a return on that investment. Trees are providing $5.60 in benefits for every $1 spent on tree planting and care. New York City's benefit-cost ratio of $5.60 exceeds all other cities studied to date, including Fort Collins, Colorado ($2.18), Glendale, Arizona ($2.41), and Charlotte, North Carolina ($3.25)." New Your City, New York Municipal Forest Resource Analysis," March 2007, page 3, *cited in* Citizen's Climate Lobby Comments (10/19/11), Attachment 3. (R22-180).

80. Urban forest programs are non-additional because, as the studies cited above show, the economic benefits to the community substantially exceed and in some cases are multiples of the costs of tree planting and maintenance. Accordingly, communities will continue to undertake these programs even without consideration of any possible future offset payment.

81. As recognized by CARB in the Urban Forest Protocol, some utilities already have tree planting programs which exceed Net Tree Gain. One such existing tree planting program is Shade Tree and Cool Roof program run by the Sacramento Municipal Utility District, which has been in existence since 1990. Further, by extending additionality to include all trees planted by utilities to replace trees removed during line clearing operations, the Protocol would make every such operation in the Unites States eligible to generate offsets.

82. As a result, the Urban Forest Protocol violates the AB 32 Integrity Standards by allowing existing and ongoing projects, as well as projects that "would otherwise occur," to count as greenhouse gas offsets and satisfy the compliance obligations of "capped" facilities.

The U.S. Forest Protocol

83. The approved U.S. Forest Protocol exceeds the scope of what has been authorized by the legislature in AB 32 for a number of reasons, including the following.

84. This protocol provides offset credits for three types of forest projects: (a) reforestation, (b) improved forest management practices and (c) avoided conversion, each of which allows non-additional projects to become offsets. Cal. Code Regs., tit. 17, § 95975(e)(4).

85. In its U.S. Forest Protocol and the associated Staff Report, CARB sets forth virtually no technical or factual justification for the performance standards in the Protocol. Instead, CARB relies on prior Forest Project Protocols developed by the Climate Action Reserve, the most recent of which is Version 3.2 (August 2010). [Staff report pp. 4-6]. Climate Action Reserve Protocol 3.2 in turn relies on previous work by the Climate Action Reserve: "The Reserve strives to register only projects that yield surplus GHG emission reductions and removals that are additional to what would have occurred in the absence of a carbon offset market (i.e. under "Business As Usual"). For a general discussion of the Reserve's approach to determining additionality, see the Reserve's Program Manual." Climate Action Reserve Protocol 3.2, Section 3.1.

86. The Reserve Manual sets forth the Climate Action Reserve's approach to addressing the issue of additionality in the development of performance standards: "Projects that are not legally required may still be non-additional if they would have been implemented for

other reasons, e.g., because they are attractive investments irrespective of carbon offset revenues. Performance standard tests are intended to screen out this potential set of projects. In developing performance standards, the Reserve considers financial, economic, social, and technological drivers that may affect decisions to undertake a particular project activity. Standards are specified such that the large majority of projects that meet the standard are unlikely to have been implemented due to these other drivers. In other words, incentives created by the carbon market are likely to have played a critical role in decisions to implement projects that meet the performance standard." [Reserve Manual at p. 8]

87. It is clear from the discussion in the Reserve Manual that performance standards developed by the Climate Action Reserve to assess the additionality of projects are subjective "best-guess" estimates. The Climate Action Reserve "considers" the relevant factors and the resulting performance standards "are intended" to eliminate non-additional projects. The Climate Action Reserve claims that the "large majority" of projects meeting the standards "are unlikely" to have occurred without the offset incentive. Any performance standard developed to meet the criteria in the Reserve Manual cannot possibly ensure that offset projects will be additional, as required by the AB 32 Integrity Standards.

88. The first of the three project types in the U.S. Forest Protocol, "Reforestation," includes projects to plant trees and projects that "remov[e] impediments to natural reforestation." [Section 2.1.1]. Two types of land may qualify for reforestation projects. The first type is project land that has had less than 10 percent tree canopy cover for at least 10 years ("10-10 Standard"). [Section 3.1.2.1]. For this type of project land, all new "greenhouse gas removal enhancements" are then counted as additional.

89. The second type of project land that may qualify for reforestation offsets are areas that have suffered a natural "significant disturbance" on the project land, e.g., a fire or pest damage, that has "removed at least 20 percent of the land's above-ground biomass in trees." [Section 2.1.1]. Any time after such a "significant disturbance" (the protocol sets no time limit between the significant disturbance and the reforestation project), a reforestation project is deemed additional if it "corresponds to a scenario in Appendix E, Table E.1, indicating that it is

'eligible' (as determined by the requirements and methods in Appendix E)," or the project "occurs on a type of land for which the Forest Owner has not historically engaged in or allowed timber harvesting." [Section 3.1.2.1].

90. As set forth in Appendix E, "[a] reforestation project is considered 'business as usual' if the net present value of the expected timber is $0 or more" using assumptions set forth by CARB. In essence, CARB is using a profitability analysis to establish a Performance Standard and determine additionality. If the net present value of the expected timber is less than $0, the project is deemed to be additional. [Appendix E of U.S. Forest Offset protocol]. To determine eligibility, CARB created a table or matrix using the following factors: site preparation costs (high and low); harvest product values (high, medium, low and very low); rotation age (short, medium, long, and extremely long); and site class (higher and lower). *Id.* Application of these factors and ranges, which CARB describes as "standard assumptions," purportedly yields a determination of additionality and, presumably, the net present value of the expected timber from the project.

91. This simplistic, pick-a-value Performance Test for reforestation projects cannot ensure that only additional reductions or removals will be converted into offsets. Even CARB characterizes the future value of the forest product as "expected." While the factors chosen by CARB form the basis for some kind of profitability analysis, these factors are only vaguely described and the process for choosing any value on a range, such as "high" to "extremely low," allows project developers and verifiers to "turn the knobs" in order to arrive at a favorable determination for their clients. It is a subjective approximation, at best, which fails to meet the AB 32 Integrity Standards.

92. As cited earlier, for reforestation projects after a "significant disturbance," CARB deems any project to be additional is if it "occurs on a type of land for which the Forest Owner has not historically engaged in or allowed timber harvesting." [Section 3.1.2.1]. The fact that a Forest Owner has not harvested in the past is not necessarily predictive of future actions, and, as a result, cannot inform a determination of what "would otherwise occur."

93. In addition, as defined in the U.S. Forest Protocol, a Forest Owner "is the owner

of any interest in the real (as opposed to personal) property involved in a Forest Project, excluding government agency third party beneficiaries of conservation easements." [Section 2.2]. No duration of time is required for someone to be a Forest Owner. A prior owner of forest land could have been involved in commercial timber harvesting for decades, but upon the sale of this commercial forest land, the new Forest Owner would not have "historically engaged in or allowed timber harvesting." Therefore, this newly-transferred commercial forest land could be eligible for an offset project.

94. For projects involving improved management forest practices, the activities of the project "are considered additional to the extent they produce GHG reductions and/or GHG removal enhancements in excess of those that would have occurred under a conservative Business-As-Usual Scenario, as defined by the baseline estimation requirements in Section 6.2.1." of the protocol. [Section 3.1.2.2].

95. Section 6.2.1 sets forth the basic approach to determining a baseline for a project and thus setting the standard for additionality: "The baseline approach for Improved Forest Management Projects on private lands applies a standardized set of assumptions to offset project-specific conditions. A key assumption is that baseline carbon stocks will depend on how a project's initial standing live carbon stocks compare to "Common Practice," defined as the average standing live carbon stocks on similar lands within the Forest Project's Assessment Area.

96. As discussed earlier, setting a performance test for additionality based upon any "average" means, by definition, that currently existing forest management practices which have already been implemented and are virtually certain to continue to be implemented in the future will qualify as being additional under the Protocol. Such an approach violates the AB 32 Integrity Standards because the claimed greenhouse gas removal enhancements from these forest management practices have otherwise occurred and will continue to otherwise occur in the future without the offset incentive.

97. In addition, the mechanisms created in the Protocol will allow entities which have implemented "above average" forest management practices for years, or even decades, to convert

these well-established practices into offset projects. Section 3.2 of the Protocol provides that only newly initiated projects and activities would be eligible to create offsets: "The date of offset project commencement for a Forest Project is the date on which an activity is first implemented that will lead to increased GHG reductions or GHG removal enhancements relative to the Forest Project's baseline." For improved forest management projects, "the action is initiating forest management activities that increase sequestration and/or decrease emissions relative to the baseline, or transferring the Project Area to public ownership."

98. However, this seemingly clear limitation is completely undercut by a subsequent and illogical redefinition of what it means to have a "new" activity. The Section 3.2 of the Protocol states that: "[a]n Improved Forest Management project's offset project commencement date must be linked to a discrete, verifiable action that delineates a change in practice relative to the Forest Project's baseline. Any one of the following actions denotes an Improved Forest Management project's offset project commencement date" and goes on to state that "Submitting the offset project listing information specified in Section 9.1.1. Offset project commencement is the date of submittal of listing information, provided that the offset project completes verification within 30 months of being submitted." Therefore, under the Protocol a long-existing "above average" forest management practice can become a "new" forest management practice eligible for generating offsets upon submission of the required project listing information.

99. Citizens Climate Lobby has documented in its October 19, 2011 comments numerous ongoing projects resulting in reforestation and improved forest management practices that occurred without the incentive of the offset payments that may be generated by the U.S. Forest protocol. *See* Tree Planting by American Forests, provided as Attachment 1 to the Citizens Climate Lobby comments dated October 19, 2011.

100. The third type of project covered in the U.S. Forest Protocol is the "avoided conversion" project. In this portion of the protocol, offsets may be created by allegedly forgoing an opportunity to convert forest land to another use. Such forbearance is deemed to be additional if the project proponent submits a real estate appraisal indicating, among other things, that the currently-forested land would be both more valuable (i.e., profitable) if converted to another use

(e.g., residential development) and is suitable to be converted to such a use. [Section 3.1.2.3]. This "profitability analysis" is determined by an appraisal.

101. This appraisal-based Performance Test for avoided conversion projects has at least two major flaws which violate the AB 32 Integrity Standards: subjectivity (non-enforceability) and leakage. First, real estate appraisals are inherently subjective and, as demonstrated in the recent housing market collapse, open to manipulation. The process created by CARB gives virtually complete discretion to the project proponent to define additionality through the appraisal process: "An Avoided Conversion Project satisfies the Performance Test if a real estate appraisal for the Project Area (as defined in Section 4) is submitted indicating" that the proposed project area is suitable for conversion and that such a conversion would make the land more valuable. [Section 3.1.2.3] (Emphasis added).

102. In addition, this appraisal-based Performance Test cannot ensure that any alleged avoided conversion of forest land results in greater greenhouse gas reductions or removals because of the potential for leakage. Any alleged avoided conversion of forest land can easily result in a "shell game" where a particular parcel of forest land is allegedly preserved, but another parcel of forest land is converted to satisfy the market demand for the converted use. The granting of offsets for any particular avoided conversion will not lessen the market demand for the projected, more profitable use. Rather, it is likely to result in activity shifting, i.e., the conversion will occur at another location. This result, described by CARB as "leakage," is known to undercut the integrity of offsets. [*See* U.S. Forest Protocol Section 5]. CARB's "solution" for this shell game/leakage problem is to require project proponent to somehow "account" for this effect. This vague afterthought leaves a critical aspect of determining the additionality of a project to the discretion of the project proponent. In addition, this nebulous and unexplained accounting does not and cannot ensure that activity shifting will not undercut the integrity of Avoided Conversion offsets generated pursuant to the U.S. Forest Offset Protocol.

103. As a result, the U.S. Forest Protocol violates the AB 32 Integrity Standards by allowing existing and ongoing projects, as well as projects that "would otherwise occur," to count as greenhouse gas offsets and satisfy the compliance obligations of "capped" facilities.

Early Action Offset Credits

104. Section 95990 of the Cap-and-Trade Program, Cal. Code Regs., tit. 17, § 95990, creates a mechanism for approval of offsets created prior to the creation of the Cap-and-Trade Program itself.

105. To qualify as ARB offset credits, these early action offset credits must result from one of four offset quantification methodologies promulgated by the Climate Action Reserve: U.S. Livestock Project Protocols, U.S. Ozone Depleting Substances Protocols, Urban Forest Project Protocols, and Forest Project Protocols. *Id.* § 95990(c)(5).

106. Each of these four Climate Action Reserve protocols allows offsets to be generated from entire classes of projects, even though projects within those classes are already being undertaken and will be undertaken without the incentive provided by offset payments.

107. For example, Section 3.5.1 of the Climate Action Reserve's U.S. Livestock Project Protocol, Version 3.0, September 29, 2010, provides that every installation of a biogas control system (BCS) for manure management on dairy cattle and swine farms meets additionality requirements even though, as shown above, such installations have already occurred and will occur even without the offset payment incentive.

108. In addition, Section 3.4.1 of the Climate Action Reserve's U.S. Ozone Depleting Substances Project Protocol, Version 1.0, February 3, 2010, because the Reserve determined that "destruction of [ozone depleting substances] is not common practice in the United States," all [ozone depleting substances] destruction activities are deemed additional. As mentioned above, however, private [ozone depleting substances] destruction activities are already taking place.

109. Similarly, Section 3.4.2 of the Climate Action Reserve's Urban Forest Project Protocol, Version 1.1, March 10, 2010, states that the Climate Action Reserve evaluated additionality for urban forestry programs as a class, even though, as mentioned above, such projects are already being undertaken around the country.

110. The Climate Action Reserve's Forest Protocol, Version 3.1.2 was the model for CARB's forest protocols and, not surprisingly, it fails to meet the AB 32 Integrity Standards in the same ways that CARB's forest protocol fails, as discussed above in paragraphs 83 to 103.

111. Consequently, offsets generated under the Climate Action Reserve protocols violate the AB 32 Integrity Standards by allowing existing and ongoing projects, as well as projects that "would otherwise occur," to count as greenhouse gas offsets and satisfy the compliance obligations of "capped" facilities.

PETITION FOR WRIT OF MANDATE

112. **Prohibitions on Expanding Authority and Adopting Regulations Inconsistent with a Statute**: California law prohibits state agencies from expanding their authority when they promulgate regulations that do not meet statutory standards for the particular activity. Under California law, an agency does not have the discretion to promulgate an administrative regulation if the regulation is not authorized by or is inconsistent with or enlarges the scope of an act of the Legislature. *See* Gov't Code §11342.1 ("Each regulation adopted, to be effective, shall be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law"). Furthermore, deference is not due to an agency if it is acting outside its area of expertise. A regulation is also invalid if it is inconsistent and is in conflict with the statute. Gov't Code §11342.2 ("no regulation adopted is valid or effective unless consistent and not in conflict with the statute"). The central contention of this action is that the CARB Offset Provisions exceed CARB's authority and are in conflict with the Integrity Criteria of AB 32.

113. Based on these considerations, Citizens Climate Lobby and Our Children's Earth Foundation state the following causes of action and seek the following relief:

First Cause of Action

Protocols Fail to Ensure the Additionality of Offsets

114. The allegations set forth above in Paragraphs 1 through 113, inclusive, are incorporated herein by this reference as if set forth in full herein.

115. Health & Safety Code § 38562(d)(2) requires CARB to ensure that its regulations ensure that "any" greenhouse gas reduction "that otherwise would occur" cannot be used as an offset.

116. CARB's Offset Protocols, Cal. Code Regs., tit. 17, § 95975(e) violate Health & Safety Code § 38562(d)(2) because they allow non-additional reductions to qualify as offsets.

117. Offset credits generated under protocols developed by the Climate Action Reserve fail to meet the AB 32 Integrity Standards. Consequently, AB 32 prohibits the accreditation of Early Action Offset Credits as CARB has allowed under Cal. Code Regs., tit. 17, § 95990.

118. CARB's Offset Protocols, Cal. Code Regs., tit. 17, § 95975(e) and CARB's Early Action Offset Credit program, *id*. § 94990, therefore fail to satisfy the requirements of Gov't Code §§11342.1 and 11342.2. Consequently, the Offset Protocols and the Early Action Offset Credit Program were promulgated in excess of the authority delegated to CARB and are therefore invalid.

119. Citizens Climate Lobby and Our Children's Earth Foundation (on behalf of their members) have no plain, speedy, and adequate remedy in the ordinary course of law, other than relief sought in this Petition. Petitioners' members will suffer irreparable injury if CARB's Offset Protocols, Cal. Code Regs., tit. 17, § 95975(e), are not invalidated.

120. Citizens Climate Lobby and Our Children's Earth Foundation have no administrative remedy that will result in preventing or enjoining the implementation of CARB's Offset Protocols, Cal. Code Regs., tit. 17, § 95975(e).

Second Cause of Action

Vague Regulatory Definitions Violate Government Code Section 11349.1

121. The allegations set forth above in Paragraphs 1 through 120, inclusive, are incorporated herein by this reference as if set forth in full herein.

122. The legality of Cal. Code Regs., tit. 17, §§ 95970-97 (CARB's regulatory provisions related to offsets), are contingent, inter alia, upon key definitions promulgated by CARB to implement the restriction in Health & Safety Code § 38562(d)(2) against the use of non-additional offsets, including the definitions for, "additional, "business-as-usual scenario," and "conservative." Cal. Code Regs., tit. 17, §§ 95802(a)(3), (36), and(60).

123. CARB defines "business-as-usual scenario" to mean "the set of conditions reasonably expected to occur within the offset project boundary in the absence of the financial incentives provided by offset credits, taking into account all current laws and regulations, as well as current economic and technological trends." *Id*. § 95802(a)(3).

124. CARB defines "conservative" to mean "in the context of offsets, utilizing project baseline assumptions, emission factors, and methodologies that are more likely than not to understate net GHG reductions or GHG removal enhancements for an offset project to address uncertainties affecting the calculation or measurement of GHG reductions or GHG removal enhancements." *Id*. § 95802(a)(60).

125. Together the terms "conservative" and "business as usual scenario" are used by CARB to define a what it means to be "additional" (reductions or removals "that exceed any greenhouse gas reductions or removals that would otherwise occur in a conservative business-as-usual scenario") and create a theoretical baseline from which the "additionality" of offsets must be judged.

126. CARB's definitions of "conservative" and "business-as-usual" can reasonably and logically be interpreted to have more than one meaning. As a result of the vague and subjective criteria that the definitions of these terms provide, CARB's definition of "additional," which incorporates these two key terms, does not ensure that only additional reductions will be used as offsets, as required by the AB 32 Integrity Standards found in Health & Safety Code § 38562(d).

127. Cal. Code Regs., tit. 17, §§ 95802(a)(3), (36), and (60) and §§ 95970-97, therefore fail to satisfy the requirements of Gov't Code §11349.1, and accordingly fail to satisfy the requirements of Gov't Code §§11342.1 and 11342.2. Consequently, these provisions were promulgated in excess of the authority delegated to CARB and are inconsistent with the AB 32 statute and are therefore invalid.

128. Citizens Climate Lobby and Our Children's Earth Foundation (on behalf of their members) have no plain, speedy, and adequate remedy in the ordinary course of law, other than relief sought in this Petition. Petitioners' members will suffer irreparable injury if Cal. Code Regs., tit. 17, §§ 95802(a)(3), (36), and(60) and §§ 95970-97, are not invalidated.

129. Citizens Climate Lobby and Our Children's Earth Foundation have no administrative remedy that will result in preventing or enjoining the implementation of Cal. Code Regs., tit. 17, §§ 95802(a)(3), (36), and (60) and §§ 95970-97.

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Third Cause of Action

The Offset Regulations are Not Enforceable

130. The allegations set forth above in Paragraphs 1 through 129, inclusive, are incorporated herein by this reference as if set forth in full herein.

131. As mentioned above in paragraph 22, the legislature has required any regulation adopted by CARB shall ensure greenhouse gas emission reductions achieved are enforceable." Health & Safety Code § 38562(d)(1).

132. CARB's definition of "enforceable" provides only that a provision is enforceable if CARB has the "authority . . . to hold a particular party liable and to take appropriate action if any of the provisions of this article are violated." Cal. Code Regs., tit. 17, § 95802(a)(93).

133. As discussed in the previous claim, CARB's regulatory definition of "business-as-usual scenario," "conservative," and "additional" are subjective and vague, thereby failing to provide fundamental fair notice.

134. As a result, CARB's regulatory definitions of "business-as-usual scenario," "conservative," and "additional" are not "enforceable" as that latter term is used in Health & Safety Code § 38562(d)(1).

135. Consequently, the Offset Regulations were promulgated in excess of the authority delegated to the CARB and are therefore invalid.

136. Citizens Climate Lobby and Our Children's Earth Foundation (on behalf of their members) have no plain, speedy, and adequate remedy in the ordinary course of law, other than relief sought in this Petition. Petitioners' members will suffer irreparable injury if the Offset Regulations are not invalidated.

137. Citizens Climate Lobby and Our Children's Earth Foundation have no administrative remedy that will result in preventing or enjoining the implementation of the Offset Regulations.

Fourth Cause of Action

Regulatory Provisions Violate AB 32's Integrity Standards

138. The allegations set forth above in Paragraphs 1 through 137, inclusive, are

incorporated herein by this reference as if set forth in full herein.

139. CARB's Offset Regulations, including, but not limited to its definitions of "additional," "business-as-usual," "conservative," and "enforceable," Cal. Code Regs., tit. 17, §§ 95802(a)(3), (36), (60), and (93), and its requirements for Compliance Offset Protocols, *id.* § 95972 only provide vague and subjective estimation methods for determining whether an offset project is additional, and therefore, the Offset Regulations fail to provide a reliable methodology that would "ensure," as required by AB 32's Integrity Standards, that the projects are additional.

140. Consequently, the Offset Regulations were promulgated in excess of the authority delegated to the CARB and are therefore invalid.

141. Citizens Climate Lobby and Our Children's Earth Foundation (on behalf of their members) have no plain, speedy, and adequate remedy in the ordinary course of law, other than relief sought in this Petition. Petitioners' members will suffer irreparable injury if the Offset Regulations are not invalidated.

142. Citizens Climate Lobby and Our Children's Earth Foundation have no administrative remedy that will result in preventing or enjoining the implementation of the Offset Regulations.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Fifth Cause of Action

Declaratory Relief

[Code of Civil Procedure section 1060]

143. The allegations set forth above in Paragraphs 1 through 142, inclusive, are incorporated herein by this reference as if set forth in full herein.

144. An actual controversy has arisen and now exists between Petitioners and Plaintiffs Citizens Climate Lobby and Our Children's Earth Foundation and Respondent and Defendant CARB regarding their respective rights and duties. CARB maintains that it has acted lawfully in issuing, enacting, and implementing the CARB Offset Provisions and has indicated no intention of refraining from enforcing these provisions. Petitioners and plaintiffs, on the other hand, maintain that the CARB Offset Provisions are ineffective, unenforceable, and violate the

Integrity Criteria of AB 32.

145. Citizens Climate Lobby and Our Children's Earth Foundation hence desire a declaration of the rights and powers, if any, of Defendant to enforce the CARB Offset Provisions.

146. A declaration from the Court is necessary and appropriate at this time in order to avoid confusion in the enforcement of the Carb Offset Provisions and harm to the interests of Citizens Climate Lobby and Our Children's Earth Foundation's members.

Sixth Cause of Action

Injunctive Relief

147. The allegations set forth above in Paragraphs 1 through 146, inclusive, are incorporated herein by this reference as if set forth in full herein.

148. CARB lacked the authority to promulgate the CARB Offset Provisions, and consequently, those provisions are invalid.

149. Citizens Climate Lobby and Our Children's Earth Foundation's have no adequate remedy at law to protect their members' interests, which will be harmed if the CARB Offset Provisions are implemented, which will result in emissions in excess of the limits set by the California legislature in AB 32.

RELIEF REQUESTED

WHEREFORE, Citizens Climate Lobby and Our Children's Earth Foundation pray for relief and judgment as follows:

A. For issuance of a writ of mandate ordering the California Air Resources Board to repeal:

(i) the Compliance Offset Protocols adopted October 11, 2011 , for Livestock Projects, Ozone Depleting Substances Projects, Urban Forest Projects, and U.S. Forest Products, Cal. Code Regs., tit. 17, § 95975(e);

(ii) Cal. Code Regs., tit. 17, §§ 95802(a)(3), (36), (60) and (93); and

(iii) Cal. Code Regs., tit. 17, §§ 95970-97.

B. For a declaration that the following regulatory provisions are invalid:

(i) the Compliance Offset Protocols adopted October 11, 2011 , for Livestock

Projects, Ozone Depleting Substances Projects, Urban Forest Projects, and U.S. Forest Products, Cal. Code Regs., tit. 17, § 95975(e);

(ii) Cal. Code Regs., tit. 17, §§ 95802(a)(3), (36), (60), and (93); and

(iii) Cal. Code Regs., tit. 17, §§ 95970-97.

C. For a permanent injunction prohibiting CARB using ARB offset credits as compliance instruments as it implements AB 32;

D. For costs of suit and an award of Petitioners' reasonable attorneys' fees to the maximum extent allowable by law; and

E. For other and further relief as the Court may deem just and proper.

DATED: March 27, 2012

Michael A. Costa
George E. Hays
Attorneys for Petitioners and Plaintiffs
Our Children's Earth Foundation

VERIFICATION

I, Mark Reynolds, am the Executive Director of Citizens Climate Lobby, which is a Petitioner in the above-captioned proceeding. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents. The facts stated therein are true to the best of my knowledge. declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 26, 2012, at Covina, CA.

Mark Reynolds

VERIFICATION

I, Tiffany Schauer, am the Executive Director of Our Children's Earth Foundation, which is a Petitioner in the above-captioned proceeding. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents. The facts stated therein are true to the best of my knowledge. declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 26, 2012, at San Francisco, CA

Tiffany Schauer