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11 *Environmental Justice, and Sierra Club*

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13
14 **UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 EAST YARD COMMUNITIES FOR) Case No.
16 ENVIRONMENTAL JUSTICE, PEOPLE’S)
17 COLLECTIVE FOR ENVIRONMENTAL) **COMPLAINT FOR DECLARATORY AND**
JUSTICE, SIERRA CLUB, and COMMUNITIES) **INJUNCTIVE RELIEF**
18 FOR A BETTER ENVIRONMENT,)
(Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*)
19 Plaintiffs,)
v.)
20 UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY and MICHAEL)
21 REGAN, in his official capacity as Administrator)
of the United States Environmental Protection)
22 Agency, and MARTHA GUZMAN, in her official)
capacity as Regional Administrator for Region 9)
23 of the United States Environmental Protection)
Agency,)
24 Defendants.)
25)
26)
27)
28)

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INTRODUCTION

1
2 1. Since 2000, the South Coast Air Basin has been ranked as the most ozone-polluted
3 area in the entire nation nearly every single year. The region has failed to meet any federal ozone
4 standard and is also in serious nonattainment for federal particulate matter standards.

5 2. These air quality problems persist because of the highly polluting freight and logistics
6 industry operating in the South Coast Air Basin to support the two busiest container ports in the
7 nation. The Ports of Los Angeles and Long Beach, combined, process more than 40 percent of all
8 cargo imported into the United States each year.

9 3. In the past four decades, warehouses have proliferated throughout the region to keep
10 up with increasing cargo volumes flowing through the ports. Since the 1980s, the number of
11 warehouses in San Bernardino County has doubled every decade. Currently, over 1 billion square
12 feet of distribution centers have been built in Riverside and San Bernardino.

13 4. This immense growth in the warehousing and logistics industry has exacerbated the
14 air quality issues in the South Coast Air Basin. In 2019, the warehousing sector alone produced
15 around 45 tons per day of nitrogen oxide (“NOx”) emissions, nearly the same amount of NOx
16 emissions from all stationary sources in the region.

17 5. Many sources integral to warehouse operations, such as trucks and cargo handling
18 equipment, burn diesel fuel and also emit diesel particulate matter, a cancer-causing pollutant. This
19 pollution contributes to extremely high levels of localized pollution that affect nearby communities.

20 6. In 2017, the South Coast Air Quality Management District adopted its 2016 Air
21 Quality Management Plan (“2016 AQMP”). Recognizing the need to reduce pollution from
22 warehouse facilities, the 2016 AQMP included, as part of the Air District’s strategy to attain national
23 ambient air quality standards, a facility-based mobile source control measure to reduce warehouse
24 emissions.

25 7. On May 7, 2021, the South Coast Air Quality Management District adopted Rule
26 2305, or the Warehouse Indirect Source Rule, pursuant to the 2016 AQMP. The Rule requires large
27 warehouse facilities to limit their environmental impacts in the region.

28 8. On August 13, 2021, the California Air Resources Board submitted the Warehouse

1 Indirect Source Rule to EPA for approval into California’s State Implementation Plan (“SIP”).

2 9. The 2022 AQMP notes that the Warehouse Indirect Source Rule will achieve between
3 0.7 tons per day (tpd) to 1.5 tpd of NOx reductions in 2023, in addition to achieving 1.5 tpd to 3 tpd
4 of NOx reductions in 2031.

5 10. Under the federal Clean Air Act (“CAA”), EPA was required to act upon CARB’s
6 submittal of the Warehouse Indirect Source Rule by February 13, 2023 to determine if the SIP
7 submittal complies with statutory requirements. To date, EPA has not taken final action on the SIP
8 revision.

9 11. Plaintiffs EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE,
10 PEOPLE’S COLLECTIVE FOR ENVIRONMENTAL JUSTICE, SIERRA CLUB, and
11 COMMUNITIES FOR A BETTER ENVIRONMENT (collectively “Community Advocates”) seek
12 to vindicate the rights that Congress provided citizens to ensure that the Warehouse Indirect Source
13 Rule is enforceable under federal law and that they are afforded the clean air protections and
14 procedural rights provided by the Clean Air Act. Thus, these organizations bring this action under
15 the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, to compel EPA to comply with its statutorily required,
16 non-discretionary duty to review and act upon California’s SIP submittal on the Warehouse Indirect
17 Source Rule, approved by the South Coast AQMD and CARB, and submitted to EPA for approval
18 on August 13, 2021.

19 **JURISDICTION AND VENUE**

20 12. This case arises under the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* This Court has
21 jurisdiction over this action pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1331 and 1361. The
22 relief requested by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 2201,
23 2202, and 1361.

24 13. Community Advocates provided EPA with written notice of the claims stated in this
25 action at least sixty (60) days before commencing this action as required by 42 U.S.C. § 7604(b)(2).
26 More than sixty (60) days have passed since the notice was served, and the violations complained of
27 are ongoing as EPA has not taken action on CARB’s submittal of the Warehouse Indirect Source
28 Rule for inclusion in the State Implementation Plan. *See* Exhibit A (Letter from Regina Hsu, counsel

1 for Community Advocates, to Michael Regan, Administrator of EPA, dated June 7, 2023).

2 14. The declaratory and injunctive relief that Community Advocates request is authorized
3 by 28 U.S.C. §§ 2201(a) and 2202, and 42 U.S.C. § 7604.

4 15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because (a) this district
5 is one in which Defendant Regional Administrator Martha Guzman resides and performs official
6 duties; (b) a substantial part of the events and omissions giving rise to this claim have occurred in
7 this district because EPA’s Region 9 Office in San Francisco, California has a substantial role in
8 implementing the EPA duties at issue in the case; and (c) Plaintiff SIERRA CLUB resides in this
9 judicial district.

10 16. Because Defendant Regional Administrator Guzman resides in San Francisco and
11 Plaintiff SIERRA CLUB resides in Oakland, assignment to the San Francisco or Oakland Division
12 of this Court is proper under Civil Local Rule 3-2(c) & (d).

13 **PARTIES**

14 17. Plaintiff EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE
15 (“EYCEJ”), a non-profit corporation based in California, is an environmental health and justice
16 organization working towards a safe and healthy environment for communities that are
17 disproportionately suffering the negative impacts of industrial pollution. EYCEJ represents
18 approximately 1,000 members in East Los Angeles, Southeast Los Angeles, Long Beach, Carson,
19 and Wilmington—all areas that are within the South Coast Air Basin. Through grassroots organizing
20 and leadership-building skills, EYCEJ prepares community members to engage in policy issues of
21 environmental justice and air quality at the regional, statewide, and national levels. The
22 organization’s members, most of whom reside in the South Coast Air Basin covered by the South
23 Coast AQMD, disproportionately face many of the known detrimental health consequences of air
24 pollution associated with the freight industry. EYCEJ’s members have an interest in minimizing and
25 eliminating additional harms to their members’ health.

26 18. Among EYCEJ’s impacted members is Jamila Cervantes, who lives in Maywood,
27 California. Mx. Cervantes has lived in the South Coast Air Basin their entire life and suffers health
28 problems because of the poor air quality. Since childhood, they have experienced chronic nosebleeds

1 that they attribute to air pollution. Over time, Mx. Cervantes developed adult asthma and cannot
2 laugh without wheezing on bad air days. They and their siblings avoid laughter on hard asthma days
3 to avoid emergency room visits. In recent years, Mx. Cervantes has seen more and more warehouses
4 being built in their community. They experience dizziness when they walk to the riverbed, where
5 many warehouses are located. The air pollution impacts Mx. Cervantes' ability to recreate outdoors.
6 They can no longer hike due to their uncontrolled asthma. The respiratory issues Mx. Cervantes
7 developed from poor air quality have had a financial impact on their life. When they worked as an
8 independent contractor, they had significant medical expenses and would sometimes rely on home
9 remedies to avoid seeing a doctor.

10 19. Plaintiff PEOPLE'S COLLECTIVE FOR ENVIRONMENTAL JUSTICE ("PC4EJ")
11 is a non-profit organization organized and existing under the laws of the State of California. It is
12 dedicated to building community power in the Inland Empire region of Southern California, which is
13 part of the South Coast Air Basin, to fight against pollution and environmental racism. PC4EJ
14 represents over 1,000 community members in the Inland Empire who are impacted by the air
15 pollution across the region caused by freight, goods movement, and other industrial activities
16 throughout the region. PC4EJ's members reside in the South Coast Air Basin covered by the South
17 Coast AQMD and disproportionately face many of the known detrimental health consequences of air
18 pollution.

19 20. Among PC4EJ's impacted members is Ivette Torres, who lives in Moreno Valley.
20 Ms. Torres suffers from chronic migraines and allergy-induced asthma that she believes is caused by
21 the persistent air pollution in the South Coast Air Basin, particularly from warehouses near her
22 home. Ms. Torres does not have air conditioning and often opens the windows at home during
23 extreme heat events. This aggravates her migraines during bad air quality days. Because the air
24 pollution is often at unhealthy levels, Ms. Torres opts to exercise at an indoor gym, rather than
25 outdoors. As warehouse pollution negatively impacts Ms. Torres and other PC4EJ members, she
26 worked on a report with other organizational members to analyze the disproportionate impacts of
27 warehouse pollution on environmental justice communities in the South Coast Air Basin. Their
28 research showed that the top 10 communities in the South Coast with the highest concentration of

1 warehouses also fall in the highest percentile of toxic facilities and experience increased incidences
2 of asthma and hospitalizations due to exposure to high particulate matter and ozone levels.

3 21. Plaintiff SIERRA CLUB, a corporation organized and existing under the laws of the
4 State of California, is a national non-profit organization of more than 600,000 members, with more
5 than 130,000 living in California, and a local Southern California chapter headquartered in Los
6 Angeles County. SIERRA CLUB is dedicated to exploring, enjoying, and protecting the wild places
7 of the earth; to practicing and promoting the responsible use of earth's ecosystem and resources; to
8 educating and encouraging humanity to protect and restore the quantity of the natural and human
9 environment; and to using all lawful means to carry out these objectives. SIERRA CLUB has been a
10 strong and constant advocate for reducing dependence on fossil fuels to cut air pollution. Several
11 SIERRA CLUB members and staff reside in the South Coast Air Basin covered by the South Coast
12 AQMD and disproportionately face many of the known detrimental health consequences of air
13 pollution.

14 22. Among Sierra Club's affected members is Bobbi Jo Chavarria, who has lived in
15 Fontana, California, in San Bernardino County for the past three decades. Ms. Chavarria is very
16 concerned about the air pollution caused by the warehouses located near her home and in her
17 community, especially considering the increasing amount of warehouse development in the South
18 Coast in recent years. When she and her family first purchased their home, they were surrounded by
19 a chicken farm and open fields. Now, their home is surrounded by warehouses under construction
20 and heavy truck service areas. Ms. Chavarria suffers from health problems that she attributes to the
21 air pollution from warehouses and constant truck activity near her home. She developed rhinitis,
22 which causes constant congestion and headaches. Ms. Chavarria takes daily allergy medicine for
23 relief, even though her allergy tests have shown that she does not have any allergies. Ms. Chavarria's
24 doctor has stated that environmental air quality can be a factor for her symptoms. Ms. Chavarria's
25 husband has worked in a warehouse facility since 1991 and is exposed to dangerous emissions every
26 day. He suffers from chronic allergies, coughs frequently, and has also developed diabetes, high
27 blood pressure, and elevated cholesterol. Ms. Chavarria's younger son experiences regular
28 nosebleeds, which they believe are caused by long-term exposure to air pollution near their home.

1 23. Plaintiff COMMUNITIES FOR A BETTER ENVIRONMENT (“CBE”) is a non-
2 profit health and justice organization based in California. Since 1978, CBE has been organizing
3 residents living in frontline communities around issues of environmental, racial, and social justice.
4 CBE has staff and hundreds of members in Los Angeles, with a large representation in frontline
5 communities such as Southeast Los Angeles and Wilmington. Through organizing, education, and
6 leadership development, CBE is committed to empowering communities to transform environmental
7 conditions and improve health outcomes in low-income communities of color.

8 24. Among CBE’s affected members is Romeo Clay, who has lived in the South Coast
9 Air Basin his whole life. Both of the communities he has lived in, Torrance and now Wilmington,
10 are heavily impacted by air pollution from surrounding industry and are home to countless
11 warehouses that serve the Ports of Los Angeles and Long Beach. Mr. Clay has respiratory issues
12 including asthma that is exacerbated and can be triggered by poor air quality. Mr. Clay must contend
13 with the noise, smells, and emissions of diesel trucks that are constantly driving past his home to and
14 from the warehouses in his community. Mr. Clay often bikes to get around Wilmington and
15 encounters diesel trucks on the road almost any time he rides his bike. He worries about his health
16 and the health of his friends whenever any of them are excessively coughing, especially since this is
17 most common during poor air quality days. His concern led him to CBE, where he has been able to
18 learn more about environmental pollution and now works directly with community members as a
19 Youth Organizing Intern.

20 25. The violations alleged in this Complaint have injured and continue to injure the
21 interests of Plaintiffs and their members. Granting the relief requested in this lawsuit would redress
22 these injuries by compelling EPA to take the action mandated by law and ensure that residents of the
23 South Coast Air Basin are afforded clean air protections and procedural rights afforded by the Clean
24 Air Act.

25 26. Defendant EPA is a federal agency charged with the implementation and enforcement
26 of the Clean Air Act.

27 27. Defendant MICHAEL REGAN is sued in his official capacity as the Administrator of
28 the EPA. He is responsible for taking various actions to implement and enforce the Clean Air Act,

1 including the actions sought in this Complaint.

2 28. Defendant MARTHA GUZMAN is sued in her official capacity as Regional
3 Administrator for Region 9 of the United States Environmental Protection Agency. She is
4 responsible for taking various actions to implement and enforce the Clean Air Act, including the
5 actions being sought in this Complaint, in Region 9. Region 9 includes California and the South
6 Coast Air Basin.

7 **STATUTORY AND LEGAL FRAMEWORK**

8 29. The Clean Air Act establishes a comprehensive scheme “to protect and enhance the
9 quality of the Nation’s air resources so as to promote the public health and welfare and the
10 productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

11 30. As one of its central features, the Act requires the Administrator to set NAAQS for
12 certain air pollutants. 42 U.S.C. § 7409(a). Under the Act, the Administrator must set “primary”
13 standards for those pollutants at levels that will protect the public health with an adequate margin of
14 safety, *id.* § 7409(b)(1), and “secondary” standards at levels that will “protect the public welfare
15 from any known or anticipated adverse effects associated with the presence of such air pollutant in
16 the ambient air.” *Id.* § 7409(b)(2).

17 31. In 1997, EPA adopted a national ambient air quality standard on the daily maximum
18 8-hour average concentrations of ozone of 0.08 parts per million. 62 Fed. Reg. 38,856 (July 18,
19 1997) (codified at 40 C.F.R. § 50.10). EPA strengthened the 8-hour ozone standard in 2008,
20 lowering the ambient ozone concentration to 0.075 parts per million. 73 Fed. Reg. 16,436 (Mar. 27,
21 2008) (codified at 40 C.F.R. § 50.15). In 2015, EPA again revised the 8-hour ozone standard to
22 0.070 parts per million. 80 Fed. Reg. 65,292 (Oct. 26, 2015) (codified at 40 C.F.R. § 50.19).

23 32. In 1997, EPA adopted national ambient air quality standards on the 24-hour
24 maximum concentration of PM_{2.5} of 65 µg/m³ and annual maximum concentration of PM_{2.5} of 15
25 µg/m³. 62 Fed. Reg. 38,652 (July 18, 1997) (codified at 40 C.F.R. § 50.7). EPA strengthened the 24-
26 hour PM_{2.5} standard in 2006 to 35 µg/m³, and the annual PM_{2.5} standard to 12 µg/m³ in 2013. 71
27 Fed. Reg. 61,144 (Oct. 17, 2006) (codified at 40 C.F.R. § 50.13); 78 Fed. Reg. 3,086 (Jan. 15, 2013)
28 (codified at 40 C.F.R. § 50.18).

1 33. The Clean Air Act directs EPA to designate areas with ambient air concentrations that
2 exceed a national standard as “nonattainment” areas. 42 U.S.C. § 7407(d)(1).

3 34. Each state with a nonattainment area must adopt a state implementation plan for
4 improving air quality in that area to meet the national standards. 42 U.S.C. §§ 7407(a), 7410(a),
5 7502(b), and 7511a. It is up to states to develop emissions-reducing regulations following strategies
6 set forth in its state implementation plan to meet NAAQS, or reach “attainment.” California
7 delegates some of its authority to local air districts to develop rules to meet national and state air
8 quality standards.

9 35. No later than six months after receiving a state implementation plan, EPA “shall
10 determine” whether it meets the agency’s minimum completeness criteria. 42 U.S.C. §
11 7410(k)(1)(B). If EPA makes no completeness finding before this deadline, the plan “shall ... be
12 deemed by operation of law to meet such minimum criteria” six months after the date of submittal.
13 *Id.* Within twelve months from the completeness finding, EPA must approve or disapprove the plan,
14 or approve in part and disapprove in part. 42 U.S.C. § 7410(k)(1)(B), (k)(2).

15 36. If EPA fails to take a non-discretionary action, such as acting on a submittal of a State
16 Implementation Plan, citizens are empowered to seek a court order to compel prompt action. 42
17 U.S.C. § 7604(a)(2).

18 **FACTUAL BACKGROUND**

19 **I. Air Pollution in the South Coast Air Basin**

20 37. The South Coast Air Basin has been ranked among the worst in the nation for ozone
21 pollution. Residents living in the region, particularly those who are most vulnerable to pollution,
22 including children and persons with lung diseases, outdoor workers, and the elderly, suffer ozone-
23 caused health impacts at higher levels compared to other regions.

24 38. Ozone is a colorless, odorless reactive gas comprised of three oxygen atoms. It is
25 formed by the chemical reaction between nitrogen oxides and volatile organic compounds (“VOC”)
26 in the presence of sunlight. 69 Fed. Reg. 23,858 (Apr. 30, 2004). NOx and VOC are emitted by
27 many different pollution sources, including cars and trucks.

28 39. Ozone pollution, also referred to as smog, reacts with internal body tissues and can

1 trigger various health problems, including chest pain, coughing, throat irritation, and congestion.
2 Short- and long-term exposure to ozone is known to inflame and damage the airways and aggravate
3 respiratory illnesses. 69 Fed. Reg. 23,858 (Apr. 30, 2004). It is also associated with school absences,
4 reduced activity and productivity, increased hospital and emergency room visits for respiratory
5 issues, increases in symptoms associated with adverse health effects, including chest tightness, and
6 medication usage, and increases in mortality due to non-accidental, cardio-respiratory deaths. *Id.*

7 40. To date, the South Coast Air Basin has failed to attain any of the ozone standards
8 established by EPA.

9 41. EPA's designation of the South Coast Air Basin as an "extreme" non-attainment area
10 for the 1997 8-hour ozone standard became effective on June 4, 2010. 40 C.F.R. § 81.305. EPA has
11 also designated the South Coast Air Basin as an "extreme non-attainment" area for the 2008 and
12 2015 8-hour ozone standards.

13 42. The South Coast Air Basin also violates air quality standards for fine particulate
14 matter, or particles with a diameter of 2.5 micrometers or smaller ("PM2.5"). The region is classified
15 as a moderate nonattainment area for the 1997 PM2.5 standards, and a serious nonattainment area
16 for the 2006 24-hour PM2.5 standard and the 2012 annual PM2.5 standard. 40 C.F.R. § 81.305.

17 43. Particulate matter describes a broad class of chemically and physically diverse
18 substances existing as distinct solid or liquid particles that become suspended in the ambient air. *See*
19 62 Fed. Reg. 38,652, 38,653 (July 18, 1997). When these particles bypass the body's natural
20 defenses, they can be inhaled into the lungs and even pass into the bloodstream. Fine particulate
21 matter, or PM2.5, comes primarily from combustion activities. 71 Fed. Reg. 61,144, 61,146 (Oct. 17,
22 2006).

23 44. PM2.5 exposure can cause aggravation of respiratory and cardiovascular diseases,
24 lung disease, asthma attacks, heart attacks, and premature death. 70 Fed. Reg. 65,984, 65,988 (Nov.
25 1, 2005). Individuals with heart and lung disease, the elderly, and children are most sensitive to
26 PM2.5 exposure. *Id.*

27 **II. South Coast Air District's Warehouse Indirect Source Rule**

28 45. Pollution from warehouse operations hinders the South Coast Air Basin's ability to

1 attain federal ozone and particulate matter standards. The warehousing and logistics industry is
2 responsible for over half of all NO_x emissions in the region. Diesel trucks and other sources
3 operating at warehouses also contribute a significant amount of diesel particulate matter emissions.

4 46. Warehouse facilities are overwhelmingly sited in low-income communities and
5 communities of color, with nearly 70 percent of warehouse-adjacent communities in the South Coast
6 Air Basin being made up of people of color and nearly 50 percent experiencing poverty.

7 47. Warehouse-adjacent communities bear the greatest health risks from exposure to this
8 pollution. Communities living within half a mile of a warehouse in the South Coast Air Basin
9 experience asthma and heart attacks at significantly higher rates than the rest of the region because
10 they are forced to breathe highly polluted air.

11 48. In March 2017, the Governing Board of the South Coast Air Quality Management
12 District approved the 2016 Air Quality Management Plan (“2016 AQMP”), the Air District’s plan to
13 attain national ambient air quality standards. Acknowledging that increasing warehouse pollution
14 affects the region’s ability to meet attainment, the 2016 AQMP strategy included a facility-based
15 mobile source control measure to reduce warehouse emissions. The 2016 AQMP was then approved
16 by CARB, included into the State Implementation Plan, and approved by EPA in 2019.

17 49. On May 7, 2021, the South Coast Air Quality Management District adopted the
18 Warehouse Indirect Source Rule in order to meet its statutory obligations under the Clean Air Act to
19 attain national ambient air quality standards.

20 50. The Warehouse Indirect Source Rule requires regulated warehouses to meet an
21 annual “points” obligation, which is calculated based on the number of truck visits a facility
22 receives. Warehouse operators may earn points by selecting from a menu of 32 different compliance
23 options to reduce emissions on- or off-site, including installing or replacing air filters in residences,
24 schools, and hospitals, installing solar panels, onsite charging infrastructure, onsite yard equipment,
25 and incentivizing and tracking visits of zero-emission trucks to their facility. They may also develop
26 their own custom compliance plan.

27 51. By requiring warehouse facilities to reduce emissions, the Warehouse Indirect Source
28 will bring significant public health benefits to the South Coast Air Basin. From 2022 to 2031, the

1 Rule is estimated to result in 150 to 300 fewer deaths, 2,500 to 5,800 fewer asthma attacks, and
2 9,000 to 20,000 fewer work days missed due to air pollution.

3 **III. EPA’s Non-discretionary Duty to Act upon California’s SIP submittal to include the**
4 **South Coast Air Quality Management District’s Warehouse Indirect Source Rule**

5 52. On August 13, 2021, the California Air Resources Board submitted a revision to
6 California’s State Implementation Plan to include the Warehouse Indirect Source Rule adopted by
7 the South Coast AQMD on May 7, 2021 to EPA.

8 53. EPA was required to act on the SIP revision by either rejecting, partially approving,
9 or approving by February 13, 2023, but failed to take its legally required non-discretionary action. 42
10 U.S.C. § 7410(k)(2)–(3).

11 54. Since February 13, 2023, EPA has violated, and continues to be in violation of, its
12 mandatory duty under CAA section 110(k)(3).

13 55. EPA’s failure to perform its non-discretionary duty injures Community Advocates
14 and their members who advocated for a strong Warehouse Indirect Source Rule in order to obtain
15 relief from warehouse pollution. EPA’s delay deprives Community Advocates of the ability to seek
16 enforcement of the Warehouse Indirect Source Rule as part of California’s State Implementation
17 Plan and receive the pollution protections promised under the Clean Air Act.

18 **CLAIM FOR RELIEF**

19 **EPA’s Failure to Act on a Submitted State Implementation Plan**

20 56. Plaintiffs hereby incorporate all previous paragraphs by reference.

21 57. EPA was obligated to act on California’s submittal of the Warehouse Indirect Source
22 Rule no later than February 13, 2023. 42 U.S.C. § 7410(k)(2).

23 58. EPA has taken no action to approve or disapprove California’s SIP amendment
24 related to the South Coast Air District’s Warehouse Indirect Source Rule submitted on August 13,
25 2021.

26 59. Accordingly, EPA has been in continuous violation of 42 U.S.C. § 7410(k)(2) since
27 February 13, 2023, when it failed to act.

28 60. This Clean Air Act violation constitutes a “failure of the Administrator to perform

1 any act or duty under this chapter which is not discretionary with the Administrator,” within the
2 meaning of the Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is ongoing and
3 will continue unless remedied by this Court.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request the Court to grant the following relief:

- 6 1. DECLARE that Defendants are in violation of the Act for failing to act on California’s
- 7 SIP on the South Coast AQMD’s Warehouse Indirect Source Rule submitted on August
- 8 13, 2021;
- 9 2. ISSUE an injunction directing Defendants to take action on California’s SIP on the
- 10 Warehouse Indirect Source Rule, as required by law;
- 11 3. RETAIN jurisdiction over this matter until such time as Defendants have complied with
- 12 its non-discretionary duties under the Clean Air Act;
- 13 4. AWARD to Plaintiffs their costs of litigation, including reasonable attorney and expert
- 14 witness fees; and/or
- 15 5. GRANT such additional relief as the Court may deem just and proper.

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1 Respectfully submitted,

2 Dated: August 29, 2023

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