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Attorney for Plaintiffs
Little Manila Rising,
Medical Advocates for Healthy Air,
and the Sierra Club

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LITTLE MANILA RISING, a nonprofit
corporation, MEDICAL ADVOCATES FOR
HEALTHY AIR, a nonprofit corporation, and
SIERRA CLUB, a nonprofit corporation,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, MICHAEL REGAN,
in his official capacity as Administrator of the
United States Environmental Protection Agency,
and MARTHA GUZMAN ACEVES, in her
official capacity as Regional Administrator for
Region 9 of the United States Environmental
Protection Agency,

Defendants.

) Case No.

) **COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

INTRODUCTION

1
2 1. Plaintiffs Little Manila Rising, Medical Advocates for Healthy Air, and the Sierra Club
3 (collectively “Valley Air Advocates”) file this Clean Air Act citizen suit to compel Defendants to
4 protect public health in the San Joaquin Valley of California.

5 2. Defendants United States Environmental Protection Agency (“EPA”), Michael Regan,
6 and Martha Guzman Aceves have violated the Clean Air Act by failing to (a) make a determination of
7 attainment, or a finding of failure to attain, for the 1997 annual fine particulate matter (“PM2.5”)
8 National Ambient Air Quality Standard in the San Joaquin Valley; and (b) to approve, disapprove, or
9 partially approve/disapprove the San Joaquin Valley’s 2022 Plan for the 2015 8-hour Ozone Standard
10 and the Staff Report entitled “CARB Review of the San Joaquin Valley 2022 Plan for the 70 ppb 8-Hour
11 Ozone Standard” (collectively “2022 Ozone Plan”).

12 3. PM2.5 and ozone air pollution in the San Joaquin Valley of California constitutes a
13 public health crisis.

14 4. The Clean Air Act is a model of cooperative federalism, whereby the EPA sets health-
15 based National Ambient Air Quality Standards (“NAAQS” or “standards”) and the states develop the
16 plans and strategies to attain those standards by the applicable attainment date. States submit their plans
17 and strategies to EPA for review and approval. EPA shall approve a submission if it meets the Act’s
18 minimum requirements. EPA and citizens may enforce the EPA-approved State Implementation Plan as
19 a matter of federal law to hold states and regulated entities accountable.

20 5. EPA approved a December 31, 2023 attainment date for the 1997 annual PM2.5 standard
21 in the San Joaquin Valley when EPA approved the most recent plan to attain the standard. EPA shall,
22 within six months following the date for an area to attain a standard, determine whether the area attained
23 the standard by that date (hereafter “attainment determination”).

24 6. The Clean Air Act requires EPA to make an attainment determination by June 30, 2024.
25 To date, EPA has failed to make an attainment determination.

26 7. An attainment determination that finds an area failed to attain a standard triggers
27 implementation of emissions reductions called “contingency measures” and triggers a state’s obligation
28 to adopt a new plan to attain the standard.

1 8. The San Joaquin Valley Unified Air Pollution Control District (“District”) adopted the
2 2022 Plan for the 2015 8-hour Ozone Standard as part of its strategy to reduce ozone-forming pollution.

3 9. The California Air Resources Board (“CARB”) approved the 2022 Plan for the 2015 8-
4 hour Ozone Standard, adopted the Staff Report entitled “CARB Review of the San Joaquin Valley 2022
5 Plan for the 70 ppb 8-Hour Ozone Standard,” and submitted the 2022 Ozone Plan to EPA for review and
6 approval as part of the State Implementation Plan.

7 10. EPA’s review and approval of the 2022 Ozone Plan, with public notice and opportunity
8 to comment, will ensure that the 2022 Ozone Plan meets minimum Clean Air Act requirements,
9 including but not limited to ensuring the 2022 Ozone Plan is enforceable by citizens and the EPA.

10 11. The Clean Air Act requires EPA to review and take final action on the 2022 Ozone Plan
11 by August 22, 2024. To date, EPA has failed to take final action on the Plan.

12 **JURISDICTION**

13 12. This Court has jurisdiction over this action to compel the performance of a
14 nondiscretionary duty pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit provision of the Clean Air Act)
15 and 28 U.S.C. § 1331 (federal question jurisdiction).

16 13. The declaratory and injunctive relief Valley Air Advocates request is authorized by 28
17 U.S.C. §§ 2801(a) and 2202, and 42 U.S.C. § 7604.

18 **NOTICE**

19 14. On September 6, 2024, Valley Air Advocates provided EPA, Regan, and Guzman Aceves
20 written notice of the claims stated in this action at least 60 days before commencing this action
21 (hereafter “Notice Letter”), as required by Clean Air Act section 304(b)(2), 42 U.S.C. § 7604(b)(2) and
22 40 C.F.R. §§ 54.2 and 54.3. A copy of the Notice Letter, sent by certified mail, return receipt requested,
23 is attached as Exhibit 1. Although more than 60 days have elapsed since Valley Air Advocates provided
24 written notice, EPA has failed to make an attainment determination for the 1997 annual PM2.5 standard
25 in the San Joaquin Valley and has failed take final action on the 2022 Ozone Plan. EPA remains in
26 violation of the Clean Air Act.

VENUE

15. Venue lies in the Northern District of California pursuant to 28 U.S.C. § 1391(e)(1), because the Regional Administrator for Region 9 is located in San Francisco County and because EPA’s alleged violations relate to the duties of the Regional Administrator in San Francisco.

INTRADISTRICT ASSIGNMENT

16. Because the failure to perform a nondiscretionary duty alleged in this Complaint relates to the duties of the Regional Administrator located in San Francisco County, assignment to the San Francisco Division or the Oakland Division of this Court is proper under Civil L.R. 3-2(c) and (d).

PARTIES

17. Plaintiff LITTLE MANILA RISING is a nonprofit corporation organized and existing under the laws of the State of California, and based in Stockton, California. LITTLE MANILA RISING serves the South Stockton community, developing equitable solutions to the effects of historical marginalization, institutionalized racism, and harmful public policy. LITTLE MANILA RISING offers a wide spectrum of programs that address education, environment, redevelopment, public health, and air quality. LITTLE MANILA RISING values all people’s unique and diverse experiences and wishes to see the residents of South Stockton enjoy healthy, prosperous lives.

18. Plaintiff MEDICAL ADVOCATES FOR HEALTHY AIR is a nonprofit corporation organized and existing under the laws of the State of California, and based in Fresno, California. MEDICAL ADVOCATES FOR HEALTHY AIR brings this action on behalf of itself and its members. MEDICAL ADVOCATES FOR HEALTHY AIR’s members consist of medical professionals living in the San Joaquin Valley who regularly treat patients suffering from respiratory ailments that are caused or exacerbated by the Valley’s unhealthy levels of air pollution. Its mission is to advocate for the expeditious attainment of state and federal health-based air quality standards in the San Joaquin Valley through public education, litigation, and other means.

19. Plaintiff SIERRA CLUB is a nonprofit corporation organized and existing under the laws of the State of California, with its headquarters located in San Francisco, California. SIERRA CLUB brings this action on behalf of itself and its members. As a national organization dedicated to the protection of public health and the environment, including air quality, SIERRA CLUB has members

1 living in all eight counties comprising the San Joaquin Valley.

2 20. Plaintiffs LITTLE MANILA RISING, MEDICAL ADVOCATES FOR HEALTHY AIR,
3 and SIERRA CLUB are persons within the meaning of section 302(e) of the Clean Air Act, 42 U.S.C. §
4 7602(e), and may commence a civil action under section 304(a) of the Act, 42 U.S.C. § 7604(a).

5 21. Members of Plaintiffs MEDICAL ADVOCATES FOR HEALTHY AIR and SIERRA
6 CLUB live, raise their families, work, and recreate in the San Joaquin Valley air basin. They are
7 adversely affected by exposure to levels of PM2.5 and ozone air pollution that exceeds the health-based
8 National Ambient Air Quality Standards. The adverse effects of such pollution include actual or
9 threatened harm to their health, their families' health, their professional, educational, and economic
10 interests, and their aesthetic and recreational enjoyment of the environment in the San Joaquin Valley.

11 22. Members of Plaintiff MEDICAL ADVOCATES FOR HEALTHY AIR are medical
12 professionals who treat patients suffering from PM2.5 and ozone related health effects, have participated
13 in substantial research on the health effects of PM2.5 and ozone, and are concerned about the adverse
14 health effects that PM2.5 and ozone have on their patients, sensitive groups, and the public.

15 23. The San Joaquin Valley has not attained the 1997 annual PM2.5 standard. EPA data show
16 PM2.5 design values for 2017-2019, 2018-2020, 2019-2021, 2020-2022, and 2021-2023 at 16.9 $\mu\text{g}/\text{m}^3$,
17 20.3 $\mu\text{g}/\text{m}^3$, 18.8 $\mu\text{g}/\text{m}^3$, 18.8 $\mu\text{g}/\text{m}^3$, and 16.2 $\mu\text{g}/\text{m}^3$ respectively, well above the 15 $\mu\text{g}/\text{m}^3$ design value
18 necessary to attain the 1997 annual PM2.5 standard.

19 24. The San Joaquin Valley has not attained the 2015 8-hour ozone standard. EPA data show
20 8-hour ozone design values for 2017-2019, 2018-2020, 2019-2021, 2020-2022, and 2021-2023 at 0.088
21 ppm, 0.093 ppm, 0.093 ppm, 0.094 ppm, and 0.090 ppm, respectively, well above the 0.070 ppm design
22 value necessary to attain the 2018 8-hour ozone standard.

23 25. EPA's failure to make an attainment determination as alleged in this Complaint deprives
24 Plaintiffs' members of certain procedural rights associated with EPA's required attainment
25 determination, including notice of, and opportunity to comment on, EPA's action.

26 26. EPA's failure to make an attainment determination as alleged in this Complaint causes
27 Valley Air Advocates' members' injuries because EPA has failed to implement the Clean Air Act's
28 remedial scheme. An EPA finding that the San Joaquin Valley has failed to attain the standard shall

1 trigger the implementation of attainment contingency measures and shall require the District and CARB
2 to adopt a new plan to attain the standard. EPA's failure to implement the remedial scheme denies
3 members the benefits of emissions reductions from contingency measures and the new plan.

4 27. EPA's failure to take action on the 2022 Ozone Plan as alleged in this Complaint
5 deprives Valley Air Advocates' members of certain procedural rights associated with EPA's required
6 action on the Plan, including notice of, and opportunity to comment on, EPA's proposed action and the
7 capacity to enforce the Plan upon EPA approval.

8 28. EPA's failure to take action on the 2022 Ozone Plan as alleged in this Complaint causes
9 Plaintiffs members' injuries because Defendants have failed to implement the Clean Air Act's remedial
10 scheme, including ensuring the 2022 Ozone Plan meets all Clean Air Act requirements and is
11 enforceable by EPA and citizens.

12 29. The Clean Air Act violations alleged in this Complaint have injured and continue to
13 injure Valley Air Advocate's members. The injunctive relief requested in this lawsuit would redress
14 these injuries by compelling Defendants to make an attainment determination and take action on the
15 2022 Ozone Plan, both of which Congress required as integral parts of the remedial scheme for
16 improving air quality in areas violating the NAAQS.

17 30. A finding of failure to attain the 1997 annual PM2.5 standard would redress these injuries
18 by triggering additional emissions reductions from contingency measures and requiring CARB and the
19 District to submit a section 189(d) plan pursuant to 42 U.S.C. § 7513a(d).

20 31. The injunctive relief requested in this lawsuit would redress members' injuries by
21 compelling Defendants to take final action on the 2022 Ozone Plan. Such action on the 2022 Ozone Plan
22 would ensure the plan complies with the Clean Air Act and would make the Plan federally enforceable.

23 32. Injunctive relief would redress members' procedural injuries by providing notice and an
24 opportunity to comment on the attainment determination and EPA action on the 2022 Ozone Plan. EPA
25 action on the Plan would further allow Valley Air Advocates to secure any necessary judicial review.

26 33. The declaratory relief requested in this lawsuit would redress members' injuries by
27 declaring that Defendants have a duty to make an attainment determination and take final action on the
28 2022 Ozone Plan. Declaratory relief would further redress these injuries by declaring that Defendants

1 have violated those duties.

2 34. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is the
3 federal agency Congress charged with implementation and enforcement of the Clean Air Act. As
4 described below, the Act assigns to the UNITED STATES ENVIRONMENTAL PROTECTION
5 AGENCY certain nondiscretionary duties.

6 35. Defendant MICHAEL REGAN is sued in his official capacity as Administrator of the
7 United States Environmental Protection Agency. He is charged in that role with taking various actions to
8 implement and enforce the Clean Air Act, including the actions sought in this Complaint.

9 36. Defendant MARTHA GUZMAN ACEVES is sued in her official capacity as Regional
10 Administrator for Region 9 of the United States Environmental Protection Agency. She is responsible
11 for implementing and enforcing the Clean Air Act in Region 9, including the actions sought in this
12 Complaint. Region 9 includes California and the San Joaquin Valley air basin.

13 **STATUTORY FRAMEWORK**

14 37. The Clean Air Act establishes a partnership between EPA and the states for the
15 attainment and maintenance of the National Ambient Air Quality Standards. *See* 42 U.S.C. §§ 7401-
16 7515. Under the Act, EPA has set health-based standards for six pollutants, including ozone and PM_{2.5}.
17 States must adopt a State Implementation Plan (“SIP”) that contains enforceable emissions limitations
18 necessary to attain the standards and meet applicable requirements of the Act. 42 U.S.C. §§ 7401(a)(1),
19 (a)(2)(A); 7502(c)(6). States must submit all such plans and plan revisions to the EPA. 42 U.S.C. §
20 7410(a)(1).

21 38. Within 60 days of EPA’s receipt of a proposed SIP revision, the Clean Air Act requires
22 EPA to determine whether the submission is sufficient to meet the minimum criteria established by EPA
23 for such proposals. 42 U.S.C. § 7410(k)(1)(B). If EPA fails to make this “completeness” finding, the
24 proposed SIP revision becomes complete by operation of law six months after a state submits the
25 revision. If EPA determines that the proposed SIP revision does not meet the minimum criteria, the state
26 is considered to have not made the submission. 42 U.S.C. 7410(k)(1)(C).

27 39. Within twelve months of an EPA finding that a proposed SIP revision is complete (or
28 deemed complete by operation of law), EPA must act to approve, disapprove, or approve in part and

1 disapprove in part, the submission. 42 U.S.C. § 7410(k)(2).

2 40. If EPA disapproves the SIP revision, in whole or in part, then the Clean Air Act requires
3 EPA to impose sanctions against the offending state or region, including increased offsets for new and
4 modified major stationary sources or a prohibition on the use of federal highway funds, unless the state
5 submits revisions within 18 months. 42 U.S.C. §§ 7509(a), (b). EPA must impose both offsets and
6 highway funding sanctions within 24 months unless the state has corrected the deficiency. Moreover, the
7 Act requires EPA to promulgate a Federal Implementation Plan within 24 months of disapproval unless
8 the state has corrected the deficiency, and EPA has approved the revision. 42 U.S.C. § 7410(c).

9 41. Once EPA approves a SIP or SIP revision, the state and any regulated person must
10 comply with emissions standards and limitations contained in the SIP, and all such standards and
11 limitations become enforceable as a matter of federal law by EPA and citizens. 42 U.S.C. § 7413;
12 7604(a), (f).

13 42. Areas that EPA designates as nonattainment for a National Ambient Air Quality Standard
14 must attain the standard by the applicable attainment date. Sections 179(c)(1) and 188(b)(2) of the Clean
15 Air Act, 42 U.S.C. §§ 7509(c)(1) and 7513(b)(2), require EPA to make an attainment determination, or a
16 finding that an area either attained or failed to attain a standard, as expeditiously as practicable but no
17 later than six months after the area's attainment date.

18 43. The Clean Air Act requires implementation of contingency measures upon the failure of
19 an area to attain a standard by the attainment date. 42 U.S.C. § 7502(c)(9); *see also* 89 Fed. Reg. 80749
20 (Oct. 4, 2024) (EPA finding that attainment contingency measures for the 1997 annual PM_{2.5} standard
21 would provide emissions reductions while the District and CARB adopt a new plan).

22 44. Section 189(d) of the Clean Air Act requires a serious PM_{2.5} nonattainment area that has
23 failed to attain a PM_{2.5} standard to adopt and submit a new plan. 42 U.S.C. §§ 7509(d), 7513a(d); 40
24 C.F.R. § 51.1003(c)(1). Such plan shall achieve an annual reduction of PM_{2.5} or PM_{2.5} precursor
25 emissions as required by section 189(d) of the Act ("section 189(d) plan"). 42 U.S.C. § 7513a(d); 40
26 C.F.R. § 51.1003(c)(1).

27 45. An area designated as a serious PM_{2.5} nonattainment area and subject to a section 189(d)
28 plan may not request an extension of its attainment date. 40 C.F.R. § 51.1005(c).

1 46. If EPA fails to perform a non-discretionary duty, including failing to make an attainment
2 determination or failing to act on a proposed SIP revision by the Clean Air Act deadline, then the Act
3 allows any person to bring suit to compel EPA to perform its non-discretionary duty. 42 U.S.C. §
4 7604(a)(2).

5 **FACTUAL BACKGROUND**

6 **Fine Particulate Matter**

7 47. PM_{2.5} is a directly emitted pollutant and forms secondarily in the atmosphere by the
8 precursor pollutants nitrogen oxides (“NO_x”), ammonia, sulfur oxides, and volatile organic compounds
9 (“VOC”). Secondary PM_{2.5} forms primarily during the winter in the San Joaquin Valley.

10 48. Short-term exposure to PM_{2.5} pollution causes premature death, causes decreased lung
11 function, exacerbates respiratory disease such as asthma, and causes increased hospital admissions.
12 Long-term exposure causes development of asthma in children, causes decreased lung function growth
13 in children, exacerbates respiratory disease such as asthma, increases the risk of death from
14 cardiovascular disease, and increases the risk of death from heart attacks. Individuals particularly
15 sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children.

16 49. According to the American Lung Association’s State of the Air 2024 report, the San
17 Joaquin Valley counties of Kern, Fresno, Kings, and Tulare rank as the first, second, fourth, and ninth
18 most polluted counties in the United States for short-term exposure to PM_{2.5}, respectively. For long-
19 term exposure, the same report ranks Kern, Tulare, Fresno, Kings, and Stanislaus as the second, third,
20 fourth, sixth, and ninth most polluted counties in the United States, respectively.

21 50. On July 18, 1997, the EPA established the primary annual National Ambient Air Quality
22 Standard for PM_{2.5} of 15 µg/m³ (“1997 annual PM_{2.5} standard”) after considering evidence from
23 “numerous health studies demonstrating that serious health effects” occur from exposures to PM_{2.5}. *See*
24 81 Fed. Reg. 6936 (February 9, 2016); *see also* 62 Fed. Reg. 38652 (July 18, 1997); 40 C.F.R. § 50.7.

25 51. Effective March 18, 2013, the EPA strengthened the primary annual National Ambient Air
26 Quality Standard for PM_{2.5} by lowering the level from 15.0 µg/m³ to 12.0 µg/m³. 78 Fed. Reg. 3086 (Jan.
27 13, 2013); 40 C.F.R. § 50.18.

28 52. Effective May 7, 2015, EPA designated the San Joaquin Valley as a serious

1 nonattainment area for the 1997 annual PM_{2.5} standard. 80 Fed. Reg. 18528 (Apr. 7, 2015).

2 53. Effective December 23, 2016, EPA found that the Valley failed to attain the 1997 annual
3 PM_{2.5} standard by the December 31, 2015 attainment date and required California to submit a section
4 189(d) plan. 81 Fed. Reg. 84481 (Nov. 23, 2016).

5 54. Effective December 27, 2021, EPA disapproved the San Joaquin Valley's section 189(d)
6 plan for the 1997 annual PM_{2.5} standard because data showed that the Valley failed to attain the
7 standard by the December 31, 2020 attainment date. 86 Fed. Reg. 67329 (Nov. 26, 2021).

8 55. Effective January 16, 2024, EPA approved the San Joaquin Valley's subsequent section
9 189(d) plan for the 1997 annual PM_{2.5} standard and approved a December 31, 2023 attainment date. 88
10 Fed. Reg. 45276, 45281 (July 14, 2023); 88 Fed. Reg. 86581 (Dec. 14, 2023).

11 56. Effective May 6, 2024, the EPA strengthened the primary annual National Ambient Air
12 Quality Standard for PM_{2.5} by lowering the level from 12.0 µg/m³ to 9.0 µg/m³. 89 Fed. Reg. 16202
13 (March 6, 2024); 40 C.F.R. § 50.20.

14 57. On May 23, 2024, CARB submitted a request to extend the December 31, 2023 attainment
15 date for the 1997 annual PM_{2.5} standard. CARB requested a one-year extension to December 31, 2024.

16 58. On July 8, 2024, EPA published a notice of proposed rulemaking in which EPA proposed
17 to approve CARB's request to extend the December 31, 2023 attainment date for the 1997 annual PM_{2.5}
18 standard (hereafter "Proposed Extension Rule"). 89 Fed. Reg. 55901 (July 8, 2024).

19 59. On August 7, 2024, several organizations submitted to EPA a letter which objected to the
20 Proposed Extension Rule including Plaintiffs LITTLE MANILA RISING and SIERRA CLUB. EPA
21 designated the comments as document EPA-R09-OAR-2024-0250-0067_attachment_1 in the rulemaking
22 docket available at www.regulations.gov and a copy of which is attached as Exhibit 2.

23 60. On September 6, 2024, Valley Air Advocates sent the Notice Letter to EPA.

24 61. On November 2, 2024, Defendant MARTHA GUZMAN ACEVES signed the final rule
25 "Air Plan Approval and Attainment Date Extension; 1997 Annual Fine Particulate Matter Nonattainment
26 Area; San Joaquin Valley, California" (hereafter "Final Extension Rule"). A copy of the pre-publication
27 version of the Extension Final Rule is attached as Exhibit 3.

28 62. The Extension Final Rule will take effect 30 days after the date of publication in the

1 Federal Register.

2 63. Defendant MARTHA GUZMAN ACEVES signed the Extension Final Rule on the 57th
3 day after Valley Air Advocates sent the Notice Letter.

4 **Ozone Background**

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

8 65. Short-term exposure to ozone irritates lung tissue, decreases lung function, exacerbates
9 respiratory disease such as asthma and Chronic Obstructive Pulmonary Disease (COPD), increases
10 susceptibility to respiratory infections such as pneumonia, all of which contribute to an increased
11 likelihood of emergency department visits and hospitalizations. Short-term exposure to ozone also
12 increases the risk of premature death, especially among older adults. Long-term exposure to ozone
13 causes asthma in children, decreases lung function, damages the airways, leads to development of
14 COPD, and increases allergic responses.

15 66. According to the American Lung Association’s State of the Air 2024 report, the San
16 Joaquin Valley counties of Tulare, Kern, and Fresno rank as the fourth, fifth, and sixth most ozone-
17 polluted counties in the United States, respectively.

18 67. On October 26, 2015, EPA revised “the level of the [8-hour ozone] standard to 0.070
19 ppm to provide increased public health protection against health effects associated with long- and short-
20 term exposures” and promulgated the 2015 8-hour ozone standard. 80 Fed. Reg. 65292, 65294 (Oct. 26,
21 2015); 40 C.F.R. § 50.19.

22 68. EPA classified the San Joaquin Valley as an extreme nonattainment area for the 2015 8-
23 hour ozone standard which established an August 3, 2038 attainment date. 83 Fed. Reg. 25776 (June 4,
24 2018).

25 69. On December 15, 2022, the District adopted the 2022 Plan for the 2015 8-hour Ozone
26 Standard.

27 70. On January 26, 2023, CARB approved the 2022 Plan for the 2015 8-hour Ozone Standard
28 and adopted the Staff Report entitled “CARB Review of the San Joaquin Valley 2022 Plan for the 70

1 ppb 8-Hour Ozone Standard.”

2 71. The Staff Report entitled “CARB Review of the San Joaquin Valley 2022 Plan for the 70
3 ppb 8-Hour Ozone Standard” includes a commitment by CARB to achieve an aggregate emission
4 reduction in the San Joaquin Valley by 2037 of 25.3 tons per day of NOx and 4.6 tons per day of VOC.

5 72. By letter dated February 22, 2023 CARB submitted the 2022 Ozone Plan to EPA for
6 review and inclusion in the State Implementation Plan.

7 73. The SPeCS for SIPs Public Element Dashboard is a database maintained by EPA to track
8 SIP elements submitted by states. The SPeCS for SIPs Public Element Dashboard states that CARB
9 submitted the attainment demonstration in the 2022 Ozone Plan on February 23, 2024.

10 **FIRST CLAIM FOR RELIEF**

11 **Failure to Perform a Non-Discretionary Duty**

12 **to Make an Attainment Determination**

13 **(42 U.S.C. §§ 7509(c)(1), 7513(b)(2))**

14 74. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-73.

15 75. EPA approved California’s section 189(d) plan for the 1997 annual PM2.5 standard for
16 the San Joaquin Valley and approved an attainment date of December 31, 2023. 88 Fed. Reg. 86581
17 (Dec. 14, 2023).

18 76. EPA has a mandatory duty to determine whether the San Joaquin Valley attained or failed
19 to attain the 1997 annual PM2.5 standard no later than June 30, 2024. 42 U.S.C. §§ 7509(c)(1),
20 7513(b)(2).

21 77. The final rule signed by Defendant MARTHA GUZMAN ACEVES has not been
22 published in the Federal Register and does not take effect until 30 days after publication in the Federal
23 Register.

24 78. EPA has failed and continues to fail to make an attainment determination.

25 79. By failing to make an attainment determination, EPA has violated and continues to violate
26 its nondiscretionary duty to make an attainment determination pursuant to Clean Air Act sections
27 179(c)(1) and 188(b)(2), 42 U.S.C. §§ 7509(c)(1), 7513(b)(2).

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

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

4 **SECOND CLAIM FOR RELIEF**

5 **Failure to Perform a Non-Discretionary Duty**

6 **to Act on the 2022 Ozone Plan**

7 **(42 U.S.C. § 7410(k)(2))**

8 81. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-80.

9 82. By letter dated February 22, 2023, the California Air Resources Board submitted the
10 2022 Ozone Plan to EPA for inclusion in the State Implementation Plan. In the alternative and based on
11 the submission date in the SPeCS database, CARB submitted the 2022 Ozone Plan on February 23,
12 2023.

13 83. The 2022 Ozone Plan became complete by operation of law on August 22, 2023. In the
14 alternative and based on the submission date in the SPeCS database, the 2022 Ozone Plan became
15 complete by operation of law on August 23, 2023.

16 84. EPA has a mandatory duty to act on the 2022 Ozone Plan no later than August 22, 2024,
17 2024. 42 U.S.C. § 7410(k)(2). In the alternative and based on the submission date in the SPeCS
18 database, EPA has a mandatory duty to act on the 2022 Ozone Plan no later than August 23, 2024.

19 85. EPA has failed and continues to fail to act on the 2022 Ozone Plan.

20 86. By failing to act on the 2022 Ozone Plan, EPA has violated and continues to violate its
21 nondiscretionary duty to act on the 2022 Ozone Plan pursuant to Clean Air Act section 110(k)(2), 42
22 U.S.C. § 7410(k)(2).

23 87. This Clean Air Act violation constitutes a “failure of the Administrator to perform any act
24 or duty under this chapter which is not discretionary with the Administrator” within the meaning of the
25 Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). EPA’s violation of the Act is ongoing and will
26 continue unless remedied by this Court.

PRAYER FOR RELIEF

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

- A. DECLARE that Defendants have a duty by June 30, 2024 to make an attainment determination of whether the San Joaquin Valley attained the 1997 annual PM2.5 standard;
- B. DECLARE that Defendants have violated and continue to violate the Clean Air Act by failing to make an attainment determination of whether the San Joaquin Valley attained the 1997 annual PM2.5 standard;
- C. DECLARE that Defendants have a duty to take final action on the 2022 Ozone Plan by August 22, 2024 or, in the alternative, by August 23, 2024.
- D. DECLARE that Defendants have violated and continue to violate the Clean Air Act by failing to take final action on the 2022 Ozone Plan;
- E. ISSUE preliminary and permanent injunctions directing the Defendants to take final action on the attainment determination by December 31, 2024;
- F. ISSUE preliminary and permanent injunctions directing the Defendants to take final action on the 2022 Ozone Plan by June 30, 2025;
- G. RETAIN jurisdiction over this matter until such time as the Defendants have complied with their nondiscretionary duties under the Clean Air Act;
- H. AWARD to Plaintiffs their costs of litigation, including reasonable attorney’s and expert witness fees; and
- I. GRANT such additional relief as the Court may deem just and proper.

Dated: November 7, 2024

Respectfully Submitted,

LAW OFFICE OF BRENT J. NEWELL

/s/ Brent J. Newell
Brent J. Newell
Attorney for Plaintiffs