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[ADDITIONAL PARTIES AND COUNSEL  
SHOWN ON SIGNATURE PAGE]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

**NATIONAL PETROCHEMICAL & REFINERS )  
ASSOCIATION, AMERICAN TRUCKING )  
ASSOCIATIONS, THE CENTER FOR NORTH )  
AMERICAN ENERGY SECURITY, and THE )  
CONSUMER ENERGY ALLIANCE, )**

Plaintiffs, )

v. )

**JAMES GOLDSTENE**, in his official capacity as )  
Executive Officer of the California Air Resources )  
Board; **MARY D. NICHOLS, DANIEL )  
SPERLING, KEN YEAGER, DORENE )  
D'ADAMO, BARBARA RIORDAN, JOHN R. )  
BALMES, LYDIA H. KENNARD, SANDRA )  
BERG, RON ROBERTS, JOHN G. TELLES, and )  
RONALD O. LOVERIDGE**, in their official )  
capacities as members of the California Air )  
Resources Board; **ARNOLD )  
SCHWARZENEGGER** in his official capacity as )  
Governor of the State of California; and **EDMUND )  
G. BROWN, JR.** in his official capacity as Attorney )  
General of the State of California, )

Defendants. )

Case No.:

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF  
AND JURY DEMAND**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND JURY DEMAND**

1 Come now Plaintiffs, National Petrochemical & Refiners Association (NPRA), and  
2 American Trucking Associations (ATA), the Center for North American Energy Security (CNAES),  
3 and the Consumer Energy Alliance (CEA) (collectively, Plaintiffs) by and through their attorneys,  
4 and state as follows:

5 **INTRODUCTION AND SUMMARY**

6 1. This is an action for declaratory, injunctive and other relief brought by Plaintiffs  
7 against James Goldstene, in his official capacity as the Executive Officer of the California Air  
8 Resources Board (CARB), and Mary D. Nichols, Daniel Sperling, Ken Yeager, Dorene D’Adamo,  
9 Barbara Riordan, John R. Balmes, Lydia H. Kennard, Sandra Berg, Ron Roberts, John G. Telles, and  
10 Ronald O. Loveridge, also in their official capacities as members of CARB, and California’s  
11 Governor Arnold Schwarzenegger, and California’s Attorney General, Edmund G. Brown, Jr., in  
12 their official capacities as Governor and Attorney General of California.

13 2. Plaintiffs seek injunctive and declaratory relief enjoining the implementation and  
14 enforcement of the California Low Carbon Fuel Standard (LCFS), and declaring the LCFS unlawful  
15 under federal law.

16 3. The LCFS is a California regulation designed to promote the local production of  
17 transportation fuels in California and to make it more difficult to import and use transportation fuels  
18 and fuel feedstocks in California that are produced outside of California.

19 4. The LCFS violates the Commerce Clause of the United States Constitution.

20 5. First, the LCFS violates the Commerce Clause because it directly regulates interstate  
21 and foreign commerce and extraterritorial conduct, including the extraction, production and transport  
22 of transportation fuels and fuel feedstocks outside of California.

23 6. Second, the LCFS violates the Commerce Clause by imposing substantial burdens on  
24 interstate commerce that are clearly excessive in relation to the claimed local benefits.

25 7. Third, the LCFS discriminates both on its face, and as applied, against transportation  
26 fuels and fuel feedstocks imported from outside of California with the intended effect of (i)  
27 promoting in-state production of transportation fuels, and (ii) “keep[ing] consumer dollars local by  
28 reducing the need to make fuel purchases from beyond [California’s] borders.”

1 8. Finally, the LCFS violates the Supremacy Clause of the United States Constitution  
2 because it conflicts with the Energy Policy Act of 2005 (EPAAct 2005), Pub. L. No. 109-58, 119 Stat.  
3 594, the Energy Independence and Security Act of 2007 (EISA) §§ 201 *et seq.*, Pub. L. No. 110-140,  
4 121 Stat. 1492, and the federal Renewable Fuels Standard.

5 **THE PARTIES**

6 **Plaintiffs**

7 9. Plaintiff, NPRA, is a national trade association of more than 450 companies. NPRA's  
8 members include virtually all United States refiners and petrochemical manufacturers. NPRA  
9 members supply consumers nationwide with a wide variety of products and services used daily in  
10 their homes and businesses. These products include gasoline, diesel fuel and the chemicals that  
11 serve as "building blocks" in making diverse products, such as plastics, clothing, medicine and  
12 computers. Its members have terminals in the Fresno area through which millions of barrels of  
13 gasoline, diesel, and ethanol are transferred annually. Its members also own and brand multiple  
14 transportation fuel outlets in the Fresno area.

15 10. Plaintiff, ATA, is a federation of motor carriers, state trucking associations, and  
16 national trucking conferences created to promote and protect the interests of the trucking industry.  
17 Directly, and through its affiliated organizations, ATA encompasses over 30,000 companies and  
18 every type and class of motor carrier operation.

19 11. Plaintiff, CNAES, is a limited liability company, organized pursuant to the laws of  
20 the District of Columbia, for the purpose of promoting North American energy security through the  
21 responsible development of oil sands, oil shale, and similar so-called "non-conventional" energy  
22 resources in North America. Members of CNAES include entities with a financial interest in such  
23 non-conventional energy resources and/or technologies for developing those resources.

24 12. Plaintiff, CEA, is a nonprofit, nonpartisan organization with more than 125 affiliated  
25 organizations and tens of thousands of individual grassroots members that supports the thoughtful  
26 utilization of energy resources to help ensure improved domestic and global energy security and  
27 stable prices for consumers. The mission of CEA is to expand the dialogue between the energy and  
28 consuming sectors to improve overall understanding of energy security and the thoughtful

1 development and utilization of energy resources to help create sound energy policy and maintain  
2 stable energy prices for consumers. CEA seeks to help improve consumer understanding of the  
3 nation's energy security, including the need to properly balance our energy needs with  
4 environmental and conservation goals and continue efforts to diversify our energy resources.

5 13. NPRA, ATA, CNAES, and CEA bring this suit on behalf of their members. One or  
6 more of their members possesses standing to sue in its own right.

7 14. The regulation of the interstate market for transportation fuel is of vital concern to  
8 Plaintiffs' members.

9 15. Neither the claims asserted nor the relief sought in the Complaint requires the  
10 participation of any individual member of NPRA, ATA, CNAES, or CEA.

11 **Defendants**

12 16. Defendant James Goldstene is the Executive Officer of the California Air Resources  
13 Board (CARB). Defendant Goldstene (hereinafter, the "Executive Officer") is responsible, directly  
14 and through CARB, for the promulgation, implementation and, in substantial part, enforcement of  
15 the LCFS. Defendant Goldstene is sued in his official capacity only.

16 17. Defendants Mary D. Nichols, Daniel Sperling, Ken Yeager, Dorene D'Adamo,  
17 Barbara Riordan, John R. Balmes, Lydia H. Kennard, Sandra Berg, Ron Roberts, John G. Telles, and  
18 Ronald O. Loveridge, are members of CARB, and are sued in their official capacities only.

19 18. Defendant Arnold Schwarzenegger is the Governor of the State of California.  
20 Defendant Schwarzenegger is responsible for the enforcement of the LCFS and is sued in his official  
21 capacity only.

22 19. Defendant Edmund G. Brown, Jr. is the Attorney General of the State of California.  
23 Defendant Brown (hereinafter, the "Attorney General") is responsible for the enforcement of the  
24 LCFS and is sued in his official capacity only.

25 **JURISDICTION**

26 20. Subject matter jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343 because this  
27 case arises under the Constitution and laws of the United States.

28 21. The Court has authority to enjoin enforcement of the LCFS under 42 U.S.C. § 1983,

1 and to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

2 **VENUE**

3 22. Venue is proper in this Court under 28 U.S.C. § 1391(b). Defendants maintain their  
4 offices within the Eastern District of California and the events giving rise to the claims herein  
5 occurred within this judicial district.

6 **FACTUAL BACKGROUND**

7 **The California Low Carbon Fuel Standard**

8 23. Governor Schwarzenegger authorized the Low Carbon Fuel Standard (LCFS) by  
9 Executive Order S-01-07 (Jan. 18, 2007), which calls for a ten percent reduction in the carbon  
10 intensity of gasoline and diesel fuel by 2020.

11 24. Governor Schwarzenegger’s White Paper on the LCFS asserts that the LCFS is  
12 designed to “[g]row California’s clean energy industry” and “[r]educe California’s dependence on  
13 imported oil and keep more money in the state.” Office of the Governor, *The Role of a Low Carbon*  
14 *Fuel Standard in Reducing Greenhouse Gas Emissions and Protecting Our Economy* at 6-7 (Jan. 8,  
15 2007).

16 25. Defendants have stated that the LCFS is designed to “stimulate the production and  
17 use of alternative, low-carbon fuels in California.”

18 26. On June 21, 2007, CARB identified the LCFS as one of a set of proposed discrete  
19 early action measures pursuant to the California Global Warming Solutions Act of 2006.

20 27. In December 2008, CARB approved the Climate Action Scoping Plan, which  
21 includes the LCFS as a discrete early action measure.

22 28. On April 23, 2009, CARB adopted an initial version of the LCFS, recognizing that  
23 additional work would be needed to complete and finalize the regulation.

24 29. On November 25, 2009, CARB submitted the LCFS regulation to the California  
25 Office of Administrative Law (“OAL”).

26 30. On January 12, 2010, the OAL reviewed and approved the LCFS. The LCFS became  
27 effective on the same day when it was filed with the Secretary of State.

28

**Required Reductions in “Carbon Intensity”**

1  
2 31. The LCFS calls for a reduction in the “carbon intensity” of gasoline and diesel fuel by  
3 2020. LCFS § 95482, Tables 1–2. The LCFS requires fuel providers (refiners, importers and  
4 blenders of fuel) to reduce, by 2020, the average “carbon intensity” of the fuels they sell in  
5 California by 10%. *Id.*

6 32. The LCFS imposes reporting requirements beginning in 2010. Under the LCFS,  
7 beginning on May 31, 2010, all regulated parties must submit quarterly progress reports to the  
8 Executive Officer. Each regulated party’s report must include, for each transportation fuel, (i) the  
9 type of fuel, (ii) whether the fuel is blended, (iii) the number of fuelstocks, (iv) the types of  
10 blendstocks, (v) Renewable Identification Numbers (RINs), (vi) blendstock feedstock, (vii)  
11 feedstock origin, (viii) production process, (ix) amount of each blendstock, (x) the carbon intensity  
12 of the fuel or blendstock, (xi) the amount of each fuel used as gasoline replacement, and (xii) the  
13 amount of each fuel used as diesel fuel replacement. LCFS § 95484(c)(3).

14 33. In addition, for gasoline and diesel fuel, each regulated party must report (i) “[t]he  
15 carbon intensity value of each blendstock” calculated pursuant to LCFS § 95486 and (ii) the volume  
16 of each blendstock during the compliance period. LCFS § 95484(c)(3)(A).

17 34. Reductions in carbon intensity are mandated to begin in 2011, and the required  
18 reductions increase each year through 2020. LCFS § 95482, Tables 1–2.

19 35. Providers of gasoline fuel must reduce the average carbon intensity of their fuels from  
20 the current average of 95.86 gCO<sub>2</sub>e/MJ to 86.27 gCO<sub>2</sub>e/MJ by 2020. LCFS § 95486(b), Table 6;  
21 LCFS § 95482, Table 1.

22 36. Similarly, diesel fuel providers must reduce the carbon intensity of their fuels from  
23 the current average of 94.71 gCO<sub>2</sub>e/MJ to 85.24 gCO<sub>2</sub>e/MJ in 2020. LCFS § 95486(b), Table 7;  
24 LCFS § 95482, Table 2.

25 37. CARB has stated that fuel providers may meet the LCFS’s requirements by (i)  
26 “blend[ing] low-carbon ethanol into gasoline, or renewable diesel fuel in diesel fuel,” or (ii)  
27 “purchas[ing] credits generated by other fuel providers to offset any accumulated deficits from their  
28 own production,” such as “credits generated from another fuel provider that has banked credits from

1 using electricity in a plug-in hybrid vehicle.”

2 **The LCFS Directly Regulates Interstate Commerce and Conduct Outside California**

3 38. The LCFS requires that “[t]o ensure that low-carbon fuels that are produced outside  
4 of California are actually the source fuels used in the State, regulated parties must establish physical  
5 pathway evidence for transportation fuels and fuel feedstocks subject to the LCFS” including a  
6 “demonstration that there exists a physical pathway by which the transportation fuels and fuel  
7 feedstocks are expected to arrive in California.”

8 39. The LCFS assigns various “carbon intensity” values to transportation fuels and fuel  
9 feedstocks used in California based upon a “life-cycle” analysis, which includes estimates of  
10 greenhouse gas (GHG) emissions “related to the full fuel lifecycle, including all stages of fuel and  
11 feedstock production and distribution, from feedstock generation or extraction through the  
12 distribution and delivery and use of finished fuel to the ultimate consumer.” LCFS § 95481(a)(28).

13 40. The LCFS defines “carbon intensity” as “the amount of lifecycle greenhouse gas  
14 emissions, per unit of energy of fuel delivered, expressed in grams of carbon dioxide equivalent per  
15 megajoule (gCO<sub>2</sub>E/MJ).” LCFS § 95481(a)(11).

16 41. The LCFS defines “lifecycle greenhouse gas emissions” as “the aggregate quantity of  
17 greenhouse gas emissions (including direct emissions and significant indirect emissions such as  
18 significant emissions from land use changes), as determined by the Executive Officer, related to the  
19 full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from  
20 feedstock generation or extraction through the distribution and delivery and use of the finished fuel  
21 to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for  
22 their relative global warming potential.” LCFS § 95481(a)(28).

23 42. Under the LCFS, the “carbon intensity” of a transportation fuel is not only a measure  
24 of the GHGs emitted when a transportation fuel is used in California, but also an estimate of GHGs  
25 emitted when the transportation fuel is produced or extracted, refined and transported to California.

26 43. Because “carbon intensity” is designed to account not only for a fuel’s *physical*  
27 *characteristics*, but also the energy necessary to bring the transportation fuel to market in California,  
28 chemically identical fuels are assigned different carbon intensities under the LCFS. LCFS §

1 95486(b), Tables 6–7.

2 44. CARB classes transportation fuels based on their raw materials, geographic origin,  
3 manufacturing process, and the power source used to refine them. LCFS § 95486(b), Tables 6–7.  
4 CARB calls each class of such fuels a “fuel pathway.” LCFS § 95486(b).

5 45. By regulating the “fuel pathway” of transportation fuels – *i.e.*, the manner in which  
6 transportation fuels are produced and ultimately reach the California market – the LCFS directly  
7 regulates interstate commerce and conduct occurring outside of California.

8 **The LCFS Burdens Interstate and Foreign Commerce**

9 46. CARB has recognized that the LCFS will encourage regulated parties to engage in  
10 “fuel shuffling”— *i.e.*, shipping fuels and feedstocks that have been assigned high carbon intensities  
11 to other States and countries while shipping fuels with lower carbon intensities to California.

12 47. The shuffling of billions of gallons of transportation fuels and fuel feedstocks in and  
13 out of California will impose significant burdens on Plaintiffs’ members in connection with their  
14 conduct of interstate commerce.

15 48. CARB has admitted that, because no other states have adopted a similar standard,  
16 “fuel producers are free to ship lower-carbon-intensity fuels to areas with such standards, while  
17 shipping higher-carbon-intensity fuels elsewhere.” CARB, *California’s Low Carbon Fuel Standard:  
18 An Update on the California Air Resources Board’s Low Carbon Fuel Standard Program* (Oct.  
19 2009) at 1.

20 49. According to CARB, “[t]he end result of this fuel ‘shuffling’ process is little or no net  
21 change in fuel carbon-intensity on a global scale.” *Id.*

22 50. In fact, the “fuel shuffling” promoted by the LCFS likely will lead to an overall  
23 increase in GHG emissions because it will mean redirecting fuels and feedstocks destined for  
24 California to other states through less efficient and redundant supply lines. *Id.*; *see also* CARB,  
25 *Final Statement of Reasons* (Dec. 2009) at 234–35.

26 51. The burdens imposed by the LCFS on the interstate market for transportation fuels  
27 and fuel feedstocks in California are clearly excessive when measured against the putative local  
28 benefits of the LCFS in California.

**Discrimination Against Out-of-State Fuels**

1  
2 52. The LCFS assigns different carbon intensities to physically identical in-state and out-  
3 of-state fuels, even when the fuels are produced by the same processes. LCFS § 95486(b),  
4 Tables 6-7. The “carbon intensity” assigned by CARB to a transportation fuel is based not solely on  
5 the amount of greenhouse gases (“GHGs”) emitted in California, but also on CARB’s assessment of  
6 conduct that occurs entirely outside of California.

7 53. CARB admits that it has assigned certain transportation fuels produced in California  
8 lower carbon intensities than physically identical fuels produced through the same production  
9 process outside of California in light of “shorter transportation distances and lower carbon intensity  
10 electricity sources.”

11 54. For example, CARB has assigned “Ethanol from Corn; California; Dry Mill; Dry  
12 DGS [Distillers Grains Plus Solubles], NG [Natural Gas]” a carbon intensity of 88.90 gCO<sub>2</sub>E/MJ.  
13 CARB has assigned the same fuel produced outside of California in the Midwest (“Ethanol from  
14 Corn; Midwest; Dry Mill; Dry DGS, NG”) with a carbon intensity of 98.40 gCO<sub>2</sub>E/MJ, more than  
15 10% greater than its in-state California counterpart. LCFS § 95486(b), Table 6.

16 55. Likewise, CARB has assigned “Ethanol from Corn; California; Dry Mill; Wet DGS;  
17 NG” with a carbon intensity of 80.70 gCO<sub>2</sub>E/MJ. The same fuel produced outside California in the  
18 Midwest (“Ethanol from Corn; Midwest; Dry Mill; Wet DGS”) is assigned a carbon intensity of  
19 90.10 gCO<sub>2</sub>E/MJ, more than 10% greater than its in-state California counterpart. LCFS § 95486(b),  
20 Table 6.

21 56. The LCFS requires regulated parties to reduce the average “carbon intensity” of their  
22 transportation fuels sold in California by, for example, blending gasoline with various or different  
23 forms of ethanol which are assigned a lower carbon intensity than that of the current baseline  
24 gasoline.

25 57. By way of example, by 2011, regulated parties must reduce the average carbon  
26 intensity of their products to 0.25% below the current baseline. The gasoline baseline, 95.86  
27 gCO<sub>2</sub>E/MJ, is a mixture of California Reformulated Gasoline Blendstock for Oxygenate Blending  
28 and 10% ethanol (“80% Midwest Average; 20% California; Dry Mill; Wet DGS; NG”). Under the

1 LCFS, regulated parties that sell gasoline may be able to *reduce* the “carbon intensity” of their fuel,  
2 for example, by reducing their use of Midwestern ethanol and replacing it with a California ethanol  
3 from corn that uses the “Dry Mill; Dry DGS; NG” production process. This ethanol is assigned a  
4 “carbon intensity” of 88.90 gCO<sub>2</sub>E/MJ, and thus has a lower “carbon intensity” than the baseline.

5 58. In contrast, a regulated party would *increase* the carbon intensity of its gasoline if it  
6 instead replaced current ethanol with the same corn ethanol from the “Midwest,” which is created by  
7 the same production process, but for which CARB has assigned a markedly higher “carbon  
8 intensity” value of 98.40 gCO<sub>2</sub>E/MJ, and which has a greater carbon intensity than the current  
9 baseline.

10 59. On its face, the LCFS creates an incentive for regulated parties to use California corn  
11 ethanol instead of physically identical corn ethanol produced outside of California in the Midwest.  
12 The LCFS creates regulatory disincentives for using corn ethanol produced in the Midwest.

13 60. Similarly, although “credits” generated under the LCFS can be exported to other  
14 carbon-permitting programs outside California, credits cannot be imported into California from other  
15 States. *See* LCFS § 95485(c)(1)(C), (2)(A).

16 61. The LCFS also creates a barrier to the sale of transportation fuel derived from oil  
17 extracted by certain processes, and in certain regions, including Canada, labeling it “High Carbon  
18 Intensity Crude Oil (HCICO)” LCFS § 95486(b)(2). LCFS § 95486(b), Table 6. Upon information  
19 and belief, the barrier to HCICO oil is designed, as a practical matter, to make it economically  
20 infeasible to import HCICO to California.

21 62. The LCFS allows the use of HCICO in two situations: 1) if “the regulated party”  
22 “propose[s] a new pathway for its HCICO and obtain[s] approval from the Executive Officer for the  
23 resulting pathway’s carbon intensity;” or 2) if “the GHG emissions from the fuel’s crude production  
24 and transport steps are subject to control measures, such as carbon capture-and-sequestration (CCS)  
25 or other methods, which reduce the crude oil’s production and transport carbon-intensity value to  
26 15.00 grams CO<sub>2</sub>e/MJ or less, as determined by the Executive Officer.” LCFS §  
27 95486(b)(2)(A)(2)(a)(ii).

28 63. These differences in “carbon intensity” set forth in the LCFS discriminate against

1 identical out-of-state fuels and are designed to promote the use of California fuels over their out-of-  
2 state counterparts. By assigning lower carbon intensities to California fuels, the LCFS discourages  
3 the use of the same fuels produced outside of California.

4 64. The discrimination inherent in the LCFS is designed to provide a competitive  
5 advantage to local economic interests.

6 65. The Executive Order authorizing the LCFS states that it will “provide economic  
7 development opportunities” by encouraging production of alternative fuels. Executive Order S-01-  
8 07.

9 66. According to CARB, as a result of the LCFS, “over 25 new biofuel facilities will  
10 have to be built and will create more than 3,000 new jobs, mostly in the state’s [California’s] rural  
11 areas,” and this “[p]roduction of fuels within the state will also keep consumer dollars local by  
12 reducing the need to make fuel purchases from beyond its borders.” CARB, *California Adopts Low*  
13 *Carbon Fuel Standard* (Apr. 23, 2009).

14 67. The LCFS promotes economic balkanization by creating a transportation fuel  
15 standard that favors transportation fuels and fuel feedstocks produced in California and creates  
16 barriers to the import of identical transportation fuels and feedstocks produced outside California.

17 68. By discriminating against interstate and foreign commerce, Defendants are imposing  
18 significant burdens on importers who would bring fuel into the State and encouraging retaliation  
19 from other States.

20 69. Moreover, this discrimination is not justified by any local benefit, because, as  
21 California admits, it will not decrease, and will likely increase global emissions of GHGs. CARB,  
22 *California’s Low Carbon Fuel Standard: An Update on the California Air Resources Board’s Low*  
23 *Carbon Fuel Standard Program* (Oct. 2009) at 1.

24 **Regulation of Other States’ Energy Policies and**

25 **Discrimination Against States with Different Energy Policies**

26 70. The LCFS also assigns high-carbon intensities to out-of-state transportation fuels  
27 when they are produced using different energy sources than those available in California.

28 71. For example, “Ethanol from Corn; Midwest; Wet Mill, 100% NG” is assigned a

1 carbon intensity of 94.52 gCO<sub>2</sub>e/MJ, “Ethanol from Corn; Midwest; Wet Mill, 60% NG, 40% coal”  
2 is assigned a carbon intensity of 105.10 gCO<sub>2</sub>e/MJ, and “Ethanol from Corn; Midwest; Wet Mill,  
3 100% coal” is assigned a carbon intensity of 120.99 gCO<sub>2</sub>e/MJ. LCFS § 95486(b), Table 6.

4 72. The LCFS imposes a significant barrier to the use of corn ethanol produced in these  
5 manners because producers and importers are required to meet a standard of 86.27 gCO<sub>2</sub>e/MJ by  
6 2020, and the carbon intensity for each of these corn ethanol fuels is far in excess of that  
7 requirement.

8 73. The LCFS creates a significant barrier to the importation of ethanol from the Midwest  
9 because regulated entities that intend to import ethanol from these States will need to purchase vast  
10 quantities of other fuels that California has assigned very low carbon intensities or to purchase  
11 “credits” accumulated by other entities subject to the LCFS.

12 74. No part of California’s regulation can be salvaged by severance because the LCFS is  
13 designed, as a whole, to regulate interstate commerce directly. The LCFS is designed to regulate  
14 each transportation fuel’s “fuel pathway,” *i.e.*, the manner in which transportation fuels are produced  
15 outside California, their movement in interstate commerce to California, and the manner in which  
16 they ultimately reach the California market.

17 **The LCFS Conflicts with Federal Law**

18 75. The federal Renewable Fuels Standard program (RFS) is mandated by the Energy  
19 Policy Act of 2005 (EPAAct 2005), Pub. L. No. 109-58, 119 Stat. 594, and modified by the Energy  
20 Independence and Security Act of 2007 (EISA) §§ 201 *et seq.*, Pub. L. No. 110-140, 121 Stat. 1492.

21 76. Federal law requires “that transportation fuel sold or introduced into commerce in the  
22 United States . . . on an annual average basis, contains at least the applicable volume of renewable  
23 fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel” mandated by the EISA. EISA §  
24 202(a)(1), 42 U.S.C. § 7545(o)(2).

25 77. The categories of advanced biofuel, cellulosic biofuel, and biomass-based diesel are  
26 defined in terms of their “lifecycle greenhouse gas emissions, as determined by the Administrator”  
27 of the United States Environmental Protection Agency.

28 78. The EISA expressly exempts certain existing ethanol biorefineries (that were either in

1 production or under construction on the date the EISA was enacted) from the EISA’s requirements  
2 for reduced GHG emissions. 42 U.S.C. § 7545(o)(2)(A)(i).

3 79. The EISA also provides that EPA’s regulations may not “restrict geographic areas in  
4 which renewable fuel may be used.” 42 U.S.C. §§ 7545(o)(2)(A)(i), (o)(2)(A)(iii)(II)(aa).

5 80. One of the purposes for the EISA is to ensure a continued market for ethanol and  
6 other renewable fuels nationwide. 42 U.S.C. § 7545(o)(2)(B).

7 81. The LCFS conflicts with the EISA by penalizing the continued production of certain  
8 renewable fuels in existing biorefineries. *See* 42 U.S.C. § 7545(o)(2)(A)(i).

9 82. The LCFS is designed to close California as a market for certain renewable fuels  
10 produced in *existing* biorefineries and thus frustrates and stands as an obstacle to the congressional  
11 purpose of ensuring a continued market nationwide for certain renewable fuels and meeting the  
12 applicable volume requirements for certain renewable fuels. Indeed, CARB has stated that the LCFS  
13 will require “over 25 *new* biofuel facilities . . . in the state’s [California’s] rural areas.” CARB,  
14 *California Adopts Low Carbon Fuel Standard* (Apr. 23, 2009) (emphasis added).

15 83. The conflict between the LCFS and federal law is particularly acute because  
16 California is the largest single state market for ethanol in the United States.

17 **CLAIMS FOR RELIEF**

18 **FIRST CLAIM**

19 **Violation of the Commerce Clause**

20 84. The prior paragraphs of the Complaint are incorporated by reference.

21 85. The LCFS violates the Commerce Clause of the United States Constitution by  
22 directly regulating interstate and foreign commerce and purporting to regulate conduct that occurs in  
23 other States and Nations.

24 86. The LCFS violates the Commerce Clause by regulating, on its face and in its practical  
25 effect, the channels of interstate and foreign commerce and the use of these channels of interstate  
26 and foreign commerce.

27 87. By regulating the “fuel pathway” of transportation fuels – *i.e.*, the manner in which  
28 transportation fuels are produced and ultimately reach the California market – LCFS impermissibly

1 penalizes producers and importers based upon the manner in which their transportation fuels are  
2 produced and the manner in which they move in interstate and foreign commerce.

3 88. The LCFS imposes significant burdens on Plaintiffs' members in connection with  
4 their conduct of interstate commerce.

5 89. By design and in practical effect, the LCFS impermissibly regulates conduct  
6 occurring outside of California by making it more difficult to market and sell transportation fuels  
7 based upon where the fuels are produced, the manner in which they are produced, and the manner in  
8 which they reach the California market.

9 90. Defendants are purporting to act within the scope of their authority under state law in  
10 enforcing and implementing the LCFS.

11 91. Defendants are liable to Plaintiffs for proper redress under 42 U.S.C. § 1983 because  
12 the LCFS deprives Plaintiffs' members of the rights, privileges, and immunities secured by the  
13 Commerce Clause of the United States Constitution.

14 92. Plaintiffs have no adequate remedy at law.

15 **SECOND CLAIM**

16 **Violation of the Commerce Clause**

17 93. The prior paragraphs of the Complaint are incorporated by reference.

18 94. The LCFS violates the Commerce Clause by imposing unreasonable burdens on  
19 interstate and foreign commerce that are clearly excessive when measured against the purported  
20 local benefits of the LCFS. The LCFS imposes significant burdens on Plaintiffs' members in  
21 connection with their conduct of interstate commerce.

22 95. For example, the LCFS will encourage regulated parties to ship fuels and feedstocks  
23 that have been assigned high carbon intensities to other States and countries while shipping fuels  
24 with lower carbon intensities to California.

25 96. The shuffling of billions of gallons of transportation fuels and fuel feedstocks in and  
26 out of California will impose significant burdens on Plaintiffs' members in connection with their  
27 conduct of interstate commerce.

28 97. The net effect of this fuel shuffling will be an overall increase in GHG emissions

1 because fuels and feedstocks destined for California will be directed to other States through less  
2 efficient and redundant supply lines.

3 98. The LCFS is not justified by any valid public welfare, consumer protection, or pro-  
4 competitive purpose unrelated to economic protectionism.

5 99. Defendants are purporting to act within the scope of their authority under state law in  
6 enforcing and implementing the LCFS.

7 100. The Defendants are liable to Plaintiffs for proper redress under 42 U.S.C. § 1983  
8 because the LCFS deprives Plaintiffs' members of the rights, privileges, and immunities secured by  
9 the Commerce Clause of the United States Constitution.

10 101. Plaintiffs have no adequate remedy at law.

11 **THIRD CLAIM**

12 **Violation of the Commerce Clause**

13 102. The prior paragraphs of the Complaint are incorporated by reference.

14 103. The LCFS violates the Commerce Clause of the United States Constitution by  
15 discriminating against transportation fuels produced in other States and other countries.

16 104. The LCFS treats chemically identical fuels and fuel feedstocks differently based, in  
17 part, on where they are produced. By assigning lower carbon intensities to California fuels and  
18 higher carbon intensities to fuels from outside California, the LCFS encourages the use of fuels  
19 produced in California as compared to chemically identical fuels produced outside of California.

20 105. The discrimination inherent in the LCFS is designed to provide an unfair competitive  
21 advantage to local economic interests and to promote the use of California fuels in California.

22 106. The LCFS impose significant burdens on Plaintiffs' members in connection with their  
23 conduct of interstate commerce.

24 107. The LCFS is not justified by any valid public welfare, consumer protection, or pro-  
25 competitive purpose unrelated to economic protectionism.

26 108. Defendants are purporting to act within the scope of their authority under state law in  
27 enforcing and implementing the LCFS.

28 109. Defendants are liable to Plaintiffs for proper redress under 42 U.S.C. § 1983 because

1 the LCFS deprives Plaintiffs' members of the rights, privileges, and immunities secured by the  
2 Commerce Clause of the United States Constitution.

3 110. Plaintiffs have no adequate remedy at law.

4 **FOURTH CLAIM**

5 **Violation of the Supremacy Clause**

6 111. The prior paragraphs are incorporated by reference.

7 112. The LCFS conflicts with and stands as an obstacle to the purposes and goals of the  
8 Energy Policy Act of 2005 (EPA Act 2005), Pub. L. No. 109-58, 119 Stat. 594, the Energy  
9 Independence and Security Act of 2007 (EISA) §§ 201 *et seq.*, Pub. L. No. 110-140, 121 Stat. 1492,  
10 and the federal Renewable Fuels Standard.

11 113. The LCFS is designed to close California as a market for certain renewable fuels  
12 produced in existing refineries necessary to meet national renewable fuel standards set by Congress  
13 and implemented by EPA in the laws above, and thus frustrates and stands as an obstacle to the  
14 congressional purpose of ensuring a continued market nationwide for this corn ethanol.

15 114. The LCFS imposes significant burdens on Plaintiffs' members in connection with  
16 their conduct of interstate commerce and their compliance with the federal laws and regulations.

17 115. The LCFS conflicts with federal standards and regulations set forth above regarding  
18 the suitability of using certain renewable fuels produced outside California to meet the federal  
19 mandates within the borders of California.

20 116. The LCFS is unconstitutional under the Supremacy Clause because it conflicts with  
21 and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of  
22 the federal laws and regulations.

23 117. Defendants are purporting to act within the scope of their authority under state law in  
24 enforcing and implementing the LCFS.

25 118. Defendants are liable to Plaintiffs for proper redress under 42 U.S.C. § 1983 because  
26 the LCFS deprives Plaintiffs' members of the rights, privileges, and immunities secured by the  
27 Supremacy Clause of the United States Constitution.

28 119. Plaintiffs have no adequate remedy at law.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request the following relief:

A. A declaratory judgment, pursuant to 28 U.S.C. § 2201, that the LCFS violates the United States Constitution and is unenforceable;

B. A preliminary and permanent injunction enjoining the Defendants from implementing or enforcing the LCFS;

C. An order awarding Plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

D. Such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury in this action of all issues so triable.

Dated: February 2, 2010

SIDLEY AUSTIN LLP

By: /s/ Marie L. Fiala  
Marie L. Fiala

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