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11 Engine Manufacturers Association

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SACRAMENTO

14
15 ENGINE MANUFACTURERS
16 ASSOCIATION,)

17 Petitioner and Plaintiff,)

18 v.)

19 CALIFORNIA AIR RESOURCES BOARD;
and Does 1 Through 100 Inclusive,)

20 Respondents and Defendants.)
21)
22)

Case No. _____

05CS00386

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

PETITION FOR WRIT OF MANDATE

23 Plaintiff and petitioner, the Engine Manufacturers Association ("EMA") respectfully
24 submits this petition for a writ of mandate, and hereby states the following claims for
25 declaratory and injunctive relief against defendant and respondent the California Air
26 Resources Board ("CARB"):

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~~FILED~~
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LEGAL PROCESS #8/21

NATURE OF THIS ACTION

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3 1. This action challenges certain unlawful emission control requirements relating
4 to motor vehicles and engines that CARB has adopted in violation of controlling provisions of
5 state law. Those unlawful emission control requirements -- generally referred to herein as the
6 "NOx Rebuild Rule" -- are in conflict with and beyond the limited scope of CARB's delegated
7 regulatory authority under California law. Accordingly, the NOx Rebuild Rule should be
8 overturned and invalidated.

9 2. Under the controlling provisions of state law that vest CARB with its limited
10 regulatory authority, CARB may only impose emissions-related regulatory requirements on
11 engine manufacturers with respect to engine products that are still within manufacturers'
12 custody and control. CARB has no authority to adopt and enforce engine emission standards
13 against engine manufacturers with respect to engines after they have been placed in the stream
14 of commerce. Under its NOx Rebuild Rule, however, CARB is attempting to enforce
15 emissions-related requirements against engine manufacturers with respect to engines already in
16 use in the stream of commerce. CARB also has no authority to mandate the retrofit of in-use
17 motor vehicles or engines in the absence of a specific statutory mandate. Nevertheless, and
18 despite the lack of any specific statutory mandate, CARB's NOx Rebuild Rule requires the
19 retrofit of in-use motor vehicle engines. Thus, CARB has exceeded its authority and acted
20 unlawfully by adopting a regulation compelling engine manufacturers to pay for the
21 installation of retrofits -- "Low NOx Rebuild Kits" -- for engines that have been placed into
22 service and that are no longer in the custody and control of engine manufacturers.

23 3. EMA brings this action to enjoin CARB's violations of state law, and to
24 overturn the NOx Rebuild Rule at issue. EMA is duly situated to bring this action because its
25 members would have standing to sue on their own behalf, the interests that EMA seeks to
26 protect are germane to its purposes, and neither the claims asserted nor the relief requested
27 requires the participation of any individual EMA member in the lawsuit.

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IV

BACKGROUND OF THE LITIGATION

A. Application of Emission Control Standards to Engine Manufacturers.

12. A key component of the carefully crafted legislative scheme for controlling emissions from motor vehicle engines is that the principal burden of complying with emission requirements is placed on engine and vehicle manufacturers, not on the owner-operators of such engines and vehicles. This is in recognition of the fact that motor vehicles and engines are centrally-manufactured and routinely move throughout the country as a medium of interstate commerce.

13. For example, pursuant to Section 206 of the federal Clean Air Act, 42 United States Code § 7525, the U.S. Environmental Protection Agency (“EPA”) implements its increasingly-stringent emission standards for new motor vehicle engines by mandating that engine manufacturers certify and demonstrate through specified engine test procedures (generally referred to as the “Federal Test Procedure” or “FTP”) that their engines meet the applicable EPA emission limits as a precondition to EPA granting manufacturers the authority to sell their engine products in interstate commerce. In this manner, the onus of designing and manufacturing compliant engine products is imposed on manufacturers prior to the time that their engines are transferred from manufacturers’ custody and control, and placed into service. Significantly, and distinct from EPA’s retained authority to order the recall of defective products, EPA has no authority to impose any new or additional emissions-related requirements on engine manufacturers with respect to engines already built, certified and sold into interstate commerce.

14. CARB’s conditional statutory authority to establish emission standards for new motor vehicle engines (conditional upon obtaining a preemption waiver from U.S. EPA pursuant to the federal Clean Air Act) mirrors that of EPA. Pursuant to Sections 43101, 43102 and 43105 of the California Health and Safety Code, engine manufacturers must demonstrate through specified engine test procedures (as adopted by CARB under Health and Safety Code section 43104) that their engine products meet any applicable CARB engine emission

1 standards as a precondition to their being able to sell their engines in California. Significantly,
2 and again as distinct from CARB's potential authority under the California Health and Safety
3 Code (sections 43009.5 and 43105) to take enforcement or recall actions against defective
4 engine products sold into California, CARB has no authority to impose any new or additional
5 emissions-related requirements on engine manufacturers with respect to engines that have been
6 built, certified and sold into California commerce.

7 15. The end point of CARB's authority to adopt additional or more stringent engine
8 emission control requirements enforceable against an original engine manufacture occurs once
9 the engine in question has been certified as compliant with the applicable emission
10 requirements then in place, and sold into commerce. In other words, once the engine's
11 equitable or legal title has passed to an ultimate purchaser, CARB relinquishes its authority to
12 adopt additional emissions-related requirements that are applicable to that engine and
13 enforceable against the original engine manufacturer.

14 **B. The Settlement Agreements Between Engine Manufacturers and CARB.**

15 16. In 1998, following extensive negotiations and without admitting any liability,
16 various engine manufacturers (EMA members) entered into settlement agreements with CARB
17 (the "Settlement Agreements") and substantively identical consent decrees with the United
18 States and EPA (the "Consent Decrees") to resolve a complex and vigorously contested dispute
19 over whether certain electronic controls used as components of heavy-duty diesel engines
20 violated California and federal EPA emissions requirements. Specifically at issue was whether
21 the electronic controls "defeated" emission controls by increasing NOx emissions relative to
22 the levels indicated by the transient (stop-and-go urban driving) state and federal engine
23 certification tests such as the FTP (even though fuel consumption and other emissions, such as
24 diesel particulates and greenhouse gases, were reduced).

25 17. CARB and EPA regulatory personnel had previously made public statements
26 that the electronic engine control strategies at issue complied with federal and state emission
27 requirements. Only subsequently did government enforcement personnel allege that the engine
28 control strategies "defeated" regulatory requirements. The engine manufacturers strongly

1 disputed that assertion, and the parties ultimately determined to negotiate a comprehensive
2 settlement of the dispute. In so doing, neither CARB nor EPA made any findings that the
3 heavy-duty diesel engines at issue (engines manufactured, certified and sold into commerce
4 during the 1993-1998 model years) violated any emission requirements, and neither CARB nor
5 EPA attempted to use their statutory and regulatory authority to compel a recall of any of the
6 previously-certified engines at issue. The regulatory agencies also never availed themselves of
7 regulatory mechanisms to void the compliance certificates of the 1993-1998 model year
8 engines in question, and today those in-use engines remain certified as fully compliant with
9 California and EPA emission standards.

10 18. The Settlement Agreements between CARB and the engine manufacturers state
11 that they fully resolve "all civil liability" of the engine manufacturers for any purported
12 violations of law alleged in the agreements and for any violations that CARB could have
13 alleged based on the use of electronic engine control strategies. In the Settlement Agreements,
14 CARB also relinquished any right to determine that the 1993-1998 model year engines subject
15 to its investigation failed to conform to California law because they contain one of the disputed
16 electronic engine controls, so long as the engine manufacturers comply with their agreements.

17 **C. The Settlement Agreements' Rebuild Provisions.**

18 19. As a component of the Settlement Agreements, but without admitting any
19 liability, the engine manufacturers agreed to implement specific programs to reduce NOx
20 emissions on certain of their 1993-1998 model year engines already placed into the stream of
21 commerce and in use. More specifically, the engine manufacturers agreed to reduce the NOx
22 emissions of certain specified in-use engines through the installation of "Low NOx Rebuild
23 Kits." The Settlement Agreements and Consent Decrees also explicitly define when the
24 Rebuild Kits are to be installed: *at the time the engines are rebuilt.*

25 20. After further extensive negotiations, the parties also agreed to a precise
26 definition of "Engine Rebuild" as a means to specify the triggering event for the installation of
27 the Low NOx Rebuild Kits. As set forth in the Settlement Agreements, an "Engine Rebuild"
28 is strictly limited to: "an activity occurring over one or more maintenance or repair events

1 involving: (a) disassembly of the engine, including removal of the cylinder heads; and (b) the
2 replacement or reconditioning of more than one Major Cylinder Component in more than half
3 the cylinders.” A key reason the parties agreed that Low NOx Rebuild Kits would be installed
4 only at the time of Engine Rebuild was to minimize or eliminate expense and downtime for
5 truck owners.

6 21. The engine manufacturers agreed to make available for installation, and to
7 authorize their authorized dealers, distributors, repair facilities, and rebuild facilities to install,
8 Low NOx Rebuild Kits “at no added cost to the owner above the amount the owner would
9 otherwise pay *to have the engine rebuilt or repaired.*”

10 22. Because EPA and CARB wanted to ensure that engine rebuilders who were not
11 affiliated with engine manufacturers also would have access to the Low NOx Rebuild Kits, the
12 parties agreed that the engine Manufacturers would “make available, either directly or through
13 [their] affiliated distribution networks, at no added cost, the appropriate Low NOx Rebuild Kit
14 to any non-affiliated engine rebuilder or person who requests it.”

15 23. As required by the Settlement Agreements, each engine manufacturer
16 independently submitted to CARB a “plan for the implementation of its Low NOx Engine
17 Rebuild Program in California.” Each of the plans calls for the installation of specifically
18 programmed NOx-reducing software *at the time of engine rebuild.* CARB approved each of
19 those plans.

20 24. The engine manufacturers are in full compliance with the requirements of the
21 agreed Low NOx Rebuild Program. In the administrative proceedings relating to its NOx
22 rebuild Rule, CARB publicly conceded that “[t]he Manufacturers have complied with the
23 provisions of the Low NOx Rebuild Program by providing the low NOx rebuild kits (*i.e.*
24 engine software) to dealers and distributors.”

25 25. The public was given an opportunity to comment to CARB and the United
26 States on the Settlement Agreements and Consent Decrees, and many comments were received
27 regarding the Low NOx Rebuild Program. The United States responded to those comments
28 when it moved to enter the Consent Decrees in federal court. CARB joined in the United

1 States' responses. As represented by the United States, the "settlements embodied in the
2 proposed Consent Decrees are the result of good-faith, arms length bargaining between the
3 United States, in conjunction with CARB, and the engine manufacturers (collectively and
4 individually), and represents the judgments of officials of both the Federal Government and the
5 State of California regarding the most appropriate means to resolve the controversy."

6 26. Public comments suggested that engine manufacturers should "provide Low
7 NOx Rebuild Kits earlier than the next rebuilds as required in the consent decrees." All of the
8 parties rejected that suggestion. Speaking for itself and CARB, the United States explained
9 that "[t]he very high cost of such a program would have prevented settlement." Another
10 commenter "suggested that Low NOx Rebuild Kits be installed at the time of the first service
11 event for an engine rather than the next rebuild." All of the parties rejected this suggestion as
12 well as impractical and overly burdensome. The United States noted that "at rebuild, the truck
13 or engine is already down for a significant period and reprogramming the computer will
14 contribute little in the way of added downtime."

15 **D. CARB's Breach of the Settlement Agreements.**

16 27. In 2003, CARB apparently became dissatisfied with the pace of engine rebuilds
17 under the program it negotiated and agreed to under the Settlement Agreements. Staff for
18 CARB asserted that (despite receiving explicit information to the contrary) they had
19 anticipated that the 1993-1998 model year engines at issue would be rebuilt after several
20 hundred thousand miles of use, so that by 2003 most of the engines at issue would have been
21 retrofitted with Low NOx Rebuild Kits. Based on its purported dissatisfaction, and flying in
22 the face of its duly negotiated Settlement Agreements, CARB in 2003 proposed a regulation to
23 require owners and operators of 1993-1998 model year engines for which Low NOx Rebuild
24 kits are available to have such kits installed prior to specified deadlines in 2004, regardless of
25 whether the engine was being rebuilt at the time.

26 28. At its March 25, 2004, board meeting, CARB proceeded to approve a
27 mandatory regulation -- the NOx Rebuild Rule -- to require low NOx software upgrades on
28 certain 1993 through 1998 model year heavy-duty diesel engines and established new

1 inspection and enforcement mechanisms. CARB characterized its Rule as a “reflash”
2 regulation, which is simply a euphemism for the installation of the engine manufacturers’ Low
3 NOx Rebuild retrofit kits. CARB noted in its rulemaking that the low NOx retrofit
4 requirements proposed in the Rule “target the same engines for which low NOx software is
5 required under federal Consent Decrees and California Settlement Agreements.” In fact, the
6 list of engine families covered by CARB’s NOx Rebuild Rule is identical to the list of the
7 engine manufacturers’ engine families that is appended to the Settlement Agreements.

8 29. The NOx Rebuild Rule imposes a \$300 - \$800 per engine penalty on truck
9 owners who do not install Low NOx retrofit kits on their engines pursuant to the new schedule
10 mandated by CARB.

11 30. When it approved the NOx Rebuild Rule, CARB also approved a voluntary
12 program under which CARB, engine manufacturers and the California Trucking Association
13 would work together to promote the availability of Low NOx Rebuild Kits. CARB directed its
14 Executive Officer to withhold filing the adopted regulatory provisions with California’s Office
15 of Administrative Law until its December 2004 meeting so that CARB could evaluate the
16 effectiveness of the voluntary reflash program.

17 31. Under the voluntary program, the engine manufacturers agreed to install Low
18 NOx retrofit software whenever: (a) the owner/operator of a California-registered vehicle
19 equipped with a defined engine requests installation; (b) the owner/operator of a California-
20 registered vehicle, as part of a regular service visit, agrees to the installation of a Low NOx
21 reflash kit; and (c) when a subject engine undergoes a power conversion or rating upgrade.

22 32. At its December 2004 board meeting, CARB decided that it was not satisfied
23 with the pace of Low NOx retrofits under the voluntary program, just as it was not satisfied with
24 the terms of the binding Settlement Agreements it had negotiated and signed. Accordingly,
25 CARB authorized the filing of the mandatory NOx Rebuild Rule with the California Office of
26 Administrative Law. CARB’s Executive Officer characterized the regulatory mandate as “an
27 enforcement action to accomplish the goals of the previous settlement.”

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1 33. At the December hearing, CARB added new provisions to the NOx Rebuild
2 Rule. The Rule now provides that NOx retrofit rebuild kits must be provided at no added
3 cost, even when an engine is not being rebuilt. The Rebuild Rule also directly requires that
4 engine manufacturers reimburse authorized dealers, distributors and repair facilities for the
5 costs incurred in installing Low NOx Rebuild Kits. That reimbursement obligation is now a
6 regulatory requirement, beyond the otherwise clear limitations negotiated Settlement
7 Agreements. And the Rule imposes a \$500 per incident penalty on “Manufacturers’
8 authorized dealers, distributors, repair facilities, or rebuild facilities refusing to install a Low
9 NOx Rebuild Kit upon request, or failing to install a Low NOx Rebuild Kit within a
10 reasonable amount of time.”

11 34. CARB’s NOx Rebuild Rule also requires that out-of-state trucks driven into
12 California must have a Low NOx Rebuild Kit installed in accordance with California’s
13 expedited schedule, despite the federal Consent Decrees specifying that such trucks must have
14 Rebuild Kits installed only at the time of engine rebuild.

15 35. On February 4, 2005, CARB submitted the NOx Rebuild Rule to California’s
16 Office of Administrative Law and requested an early effective date for the regulation.

17 36. The NOx Rebuild Rule mandates the installation of Low NOx Rebuild Kits for
18 the identical listing of 1993 through 1998 model year heavy-duty diesel engines as covered by
19 the Settlement Agreements and Consent Decrees. However, instead of requiring installation at
20 the time of engine rebuild, as specified in the binding Settlement Agreements, the NOx
21 Rebuild Rule mandates the installation of Low NOx Rebuild Kits over the next 8 months for
22 “heavy heavy-duty diesel engines,” and over the next 20 months for “medium heavy-duty
23 diesel engines,” regardless of whether the covered engine is rebuilt during that accelerated time
24 period. Indeed, the fundamental purpose of the NOx Rebuild Rule is to override the Settlement
25 Agreements by implementing “a regulation requiring the installation of low NOx software into
26 eligible heavy-duty diesel engines *prior to normally scheduled engine rebuild.*”

27 37. The NOx Rebuild Rule (at section 2011(c)) mandates that the installation of the
28 Low NOx Rebuild Kits must result in the following specified emission levels of NOx:

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Software Upgrade Requirements					
Option A (1994 – 1998)			Option B (1993 – 1998)		
	MHDDE	HHDE		MHDDE	HHDE
Euro III	6.0 g/bhp-hr	7.0 g/bhp-hr	Euro III	6.5 g/bhp-hr	7.5 g/bhp-hr
NTE	7.5 g/bhp-hr	8.75 g/bhp-hr	NTE	8.1 g/bhp-hr	9.38 g/bhp-hr

Manufacturer Option for Software Upgrade		
Company	Option	MY Year
Caterpillar	B	1993 – 1998
Cummins	B	1993 – 1998
Detroit Diesel Corporation	A	1994 – 1998
Mack	A	1994 – 1998
Navistar	not applicable	1998 (only)
Volvo	A	1994 – 1998
Renault	B	1993 - 1998

38. Given the specified NOx emission limits at issue, it is clear that the NOx Rebuild Rule imposes standards relating to the control of emissions from Low NOx Rebuild Engines.

39. The NOx Rebuild Rule attempts to enforce its emission standards for Low NOx Rebuild Engines against the original engine manufacturers by mandating (at section 2011(c)(2) and (c)(3)) that engine manufacturers “must reimburse authorized dealers, distributors, repair facilities, and rebuild facilities for their costs to install Low NOx Rebuild Kits,” and by mandating that engine manufacturers’ authorized dealers, distributors, repair facilities, and rebuild facilities provide and install, at no added cost, Low NOx Rebuild Kits upon request, regardless of whether the Low NOx Rebuild engine at issue is being rebuilt.

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1 40. EMA's members, as well as their distributors, dealers and customers, have
2 suffered and will continue to suffer substantial and irreparable harm if the unlawful NOx
3 Rebuild Rule is not overturned.

4 41. The immediate and irreparable injury that EMA and its members will suffer
5 includes the significant costs of subsidizing the mandatory and unlawful retrofit of hundreds of
6 thousands of engines prior to the time of their normally schedule rebuild. The NOx Rebuild
7 Rule also constitutes an invasion and violation of engine manufacturers' fundamental interests
8 in ensuring that CARB exercise its limited delegated authority in accordance with state law.
9 Those interests -- along with manufacturers' interests in ensuring that additional emission-
10 control regulations are not applied against them with respect to engines already in use in the
11 stream of commerce -- will be irreparably damaged and eroded, and an unlawful and untenable
12 precedent will have been established for state mobile source standards if the NOx Rebuild Rule
13 is allowed to stand. Finally, the value of engine manufacturers' ability to negotiate binding
14 agreements with CARB will be irretrievably lost if CARB is allowed to abrogate its Settlement
15 Agreements through a subsequent rulemaking that unilaterally deprives manufacturers of the
16 benefit of their duly-negotiated (and judicially sanctioned) bargain.

17 42. EMA has no adequate remedy at law for the damage and injury that will result
18 from the CARB's unlawful conduct. To the extent that the monetary value of such injuries
19 could be ascertained, there is no action at law available to EMA to recover such losses from
20 CARB or its representatives. Only this Court's exercise of its equitable powers can protect
21 EMA and its members from sustaining irreparable harm.

22 43. The balance of hardships and the public interest favor granting the equitable
23 relief requested, because overturning the implementation and enforcement of the unlawful
24 NOx Rebuild Rule will result in no significant adverse consequences for CARB or the general
25 public, but will avoid imposing substantial irreparable harm on EMA and its members, as well
26 as their distributors, dealers, and will preserve the paramount public interest in upholding and
27 enforcing controlling state law.

28 ///

PETITION FOR WRIT OF MANDATE

Count One

CARB Lacks Any Regulatory Authority to Impose Additional Requirements on Original Engine Manufacturers with Respect to Motor Vehicle Engines in the Stream of Commerce.

44. EMA repeats and realleges paragraphs 1 through 43 of this Complaint as though fully set forth herein.

45. The scope of CARB's authority to adopt and enforce motor vehicle engine emission standards against original engine manufacturers is limited to new motor vehicle engines that are still in the custody and control of engine manufacturers, and the titles to which have not passed to any ultimate purchasers.

46. There is no California statute that delegates to CARB the authority to adopt and impose emission-control regulatory requirements on original engine manufacturers with respect to motor vehicle engines that already have been sold into commerce and placed into service.

47. The NOx Rebuild Rule imposes emissions-related regulatory requirements on original engine manufacturers with respect to motor vehicle engines that already have been sold into commerce and placed into service.

48. CARB has exceeded its regulatory authority and otherwise has acted unlawfully in adopting and enforcing the NOx Rebuild Rule, which should be overturned and invalidated.

49. EMA seeks the issuance of a writ because there is no plain, speedy, and adequate remedy in the ordinary course of law.

50. EMA requests recovery of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

WHEREFORE, EMA prays for relief as set forth below.

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Count Two

There Is No California Statute Mandating or Authorizing the Installation of Low NOx Rebuild Kits on Low NOx Rebuild Engines.

51. EMA repeats and realleges paragraphs 1 through 50 of this Complaint as though fully set forth herein.

52. The essence of CARB's NOx Rebuild Rule is to mandate the retrofit of used trucks, school buses and motor homes with Low NOx Rebuild Kits to reduce NOx emissions to specified emission limits.

53. The essence of CARB's NOx Rebuild Rule is in direct contravention with and violative of controlling state law, including but not limited to Health & Safety Code section 43600, which provides in relevant part that "the installation of certified [retrofit] devices on used motor vehicles shall not be mandated except by statute."

54. In this instance, there is no statute mandating or authorizing the installation of Low NOx Rebuild Kits on Low NOx Rebuild Engines, or mandating or authorizing that original engine manufacturers pay for any such retrofit installations. Consequently, CARB has exceeded its regulatory authority and otherwise has acted unlawfully in adopting and enforcing the NOx Rebuild Rule, which should be invalidated and overturned.

55. CARB's approval, adoption and attempted enforcement of the NOx Rebuild Rule undermines the value of otherwise legally binding agreements that engine manufacturers negotiate in good faith with CARB and is beyond the scope of CARB's limited delegated authority.

56. The NOx Rebuild Rule as adopted by CARB is thus invalid and unlawful under the relevant provisions and principles of state law, and should be overturned.

57. EMA requests recovery of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

WHEREFORE, EMA prays for relief as set forth below.

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1 VI

2 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

3 **FIRST CAUSE OF ACTION**
4 **Declaratory Relief**

5 58. EMA repeats and realleges paragraphs 1 through 57 of this Complaint as though
6 fully set forth herein.

7 59. An actual controversy has arisen and now exists concerning the legality of
8 CARB's actions.

9 60. A judicial declaration of the legality of CARB's conduct, and of the validity of the
10 NOx Rebuild Rule, is necessary and appropriate at this time so as to determine whether CARB
11 wrongfully and without legal authority has adopted the NOx Rebuild Rule. A judicial declaration
12 also is necessary to determine whether CARB's adoption of the NOx Rebuild Rule constitutes an
13 *ultra vires* act, and whether the NOx Rebuild is inconsistent and in conflict with state law.

14 61. EMA requests recovery of attorneys' fees pursuant to California Code of Civil
15 Procedure section 1021.5.

16 WHEREFORE, EMA prays for relief as set forth below.

17 **SECOND CAUSE OF ACTION**
18 **Injunctive Relief**

19 62. EMA repeats and realleges paragraphs 1 through 61 of this Complaint as though
20 fully set forth herein.

21 63. CARB has wrongfully adopted the NOx Rebuild Rule, without legal authority
22 and in violation of state law.

23 64. CARB's conduct is without legal authority and constitutes *ultra vires* acts.

24 65. EMA has no adequate remedy at law to prevent CARB's unlawful and *ultra*
25 *vires* conduct, and enforcement of the unlawful NOx Rebuild Rule.

26 66. EMA requests recovery of attorneys' fees pursuant to California Code of Civil
27 Procedure section 1021.5.

28 WHEREFORE, EMA prays for relief as set forth below.

1 VII

2 PRAYER FOR RELIEF

3 WHEREFORE, EMA respectfully requests that this Court enter the following relief:

4
5 On the Petition for Writ of Mandate:

- 6 1) That a writ of mandate issue directing CARB to cease enforcement of the NOx
7 Rebuild Rule;
- 8 2) That a writ of mandate issue directing CARB to withdraw the NOx Rebuild
9 Rule; and
- 10 3) For reasonable attorneys' fees, pursuant to California Code of Civil Procedure
11 section 1021.5.

12
13 On the First Cause of Action of the Complaint, for Declaratory Relief:

- 14 4) For a declaratory judgment against CARB ruling that the NOx Rebuild Rule is
15 unlawful, invalid and beyond the scope of CARB's limited delegated authority
16 under state law; and
- 17 5) For reasonable attorneys' fees, pursuant to California Code of Civil Procedure
18 section 1021.5.

19
20 On the Second Cause of Action of the Complaint, for Injunctive Relief:

- 21 6) For a permanent injunction enjoining CARB and its agents, employees, and
22 representatives from implementing and attempting to enforce any provisions of
23 the NOx Rebuild Rule; and
- 24 7) For reasonable attorneys' fees, pursuant to California Code of Civil Procedure
25 section 1021.5.

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1 On the Petition and on All Causes of Action:


2 8) For costs of suit; and

3 9) For such other and further relief as the Court may deem proper.

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6 Dated: March 22, 2005.

7 NEAL, GERBER & EISENBERG LLP
8 Jed R. Mandel
9 Timothy A. French

10 LIVINGSTON & MATTESICH
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14 David Gonzalez

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