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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

WESTERN STATES PETROLEUM ASSOCIATION, a California not-for-profit corporation,

Plaintiff,

v.

CALIFORNIA OCCUPATIONAL HEALTH AND SAFETY STANDARDS BOARD, CALIFORNIA DIVISION OF OCCUPATIONAL SAFETY AND HEALTH, and CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES,

Defendants.

CASE NO. _____

WESTERN STATES PETROLEUM ASSOCIATION'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF TO DETERMINE INVALIDITY OF REGULATORY PROVISIONS (GOV. CODE, § 11350; CODE CIV. PROC., § 1060)

BY FAX

Plaintiff Western States Petroleum Association ("WSPA") brings this complaint for declaratory and injunctive relief pursuant to Government Code section 11350, to declare invalid and unenforceable certain regulations at California Code of Regulations, tit. 8, sections 5189.1, et seq.,

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and California Code of Regulations, tit. 19, sections 2735.1, et seq. (together, the "Regulations"), promulgated by the California Occupational Safety and Health Standards Board (the "Board")—and to be enforced by the California Department of Occupational Safety and Health ("DOSH")—and the Governor's Office of Emergency Services ("OES"), respectively, on the grounds that the Regulations violate the California Administrative Procedure Act ("APA"), Government Code, sections 11342.2 and 11349, subdivisions (a), (c), and (d).

PRELIMINARY STATEMENT

1. The challenged Regulations vastly expand both the scope and requirements of California's process safety management regulations applicable to petroleum refiners, without providing any justification or explanation as to the need for such sweeping changes to the regulatory regime. In a dramatic departure from the prior approach—which set threshold quantities necessary to trigger application of the rules and which continues to govern all other facilities in the state—the new rules for petroleum refineries apply to processes using any amount of certain chemicals. Similarly, the extensive and duplicative safety reviews for "major changes" appear to be triggered by almost any change to equipment at a refinery, no matter how trivial. The Regulations also seem to require petroleum refiners to conduct an impossibly broad, worldwide search for potentially relevant literature as part of the safety-review process. Moreover, the Regulations inexplicably provide for participation in a refinery's safety reviews by unqualified union-designated representatives who lack any employment connection to the refinery, while they require non-union employee representatives to be qualified for such participation and located on-site. On top of all this, the Regulations exceed the agencies' statutory authority because they purport to extend to chemicals not designated as "regulated substances" in the enabling statute—as OES itself admitted in the rulemaking.

2. Under the APA, the Board, DOSH, and OES must provide substantial evidence that the Regulations are reasonably necessary to advance statutorily authorized goals. For key aspects of the Regulations, however, the agencies have failed to give any explanation *at all*, much less to show with substantial *evidence* how these extreme measures can be justified as a matter of law or common sense.

3. The Board and OES also failed to provide the necessary clarity—due to ambiguous, vague, and undefined language in the Regulations, as well as conflicting and confusing responses to public comments—for petroleum refiners reasonably to ascertain how to achieve compliance with the new rules. A number of the new provisions leave refiners to guess what is required to meet the state's regulatory standards on pain of significant penalty, including possibly even criminal liability, for guessing wrong. For example, the purported definition of "major change"—a key component of the regulatory scheme—is no definition at all: It refers conclusorily to changes that "worsen" or "increase" process safety hazards, without providing any objective standard by which refiners may determine what those terms mean in practice. Likewise, the definition of "highly hazardous material" merely cross-references California and federal hazard communication regulations, which are highly complex and not designed for process safety management purposes, replacing lists developed by the agencies that previously set forth the specific chemicals that activate the regulatory requirements at petroleum refineries and which continue to apply to all other facilities in the state.

4. Taken together, these infirmities create a serious adverse impact on petroleum refineries throughout California that the Board, DOSH, and OES have failed to confront. Under the new regulatory regime, petroleum refiners apparently must perform virtually perpetual safety reviews, regardless of the significance of a triggering event, based on a potentially never-ending, international quest for governing standards. The agencies adopted these measures without adequate consideration of their real-world costs or demonstration of their asserted benefits. The agencies performed only a perfunctory and inherently flawed economic impact analysis based entirely on a survey of petroleum refiners that, as the final report itself found, produced "significant variance in . . . results" because "one could interpret the regulatory language in multiple ways." (RAND Report, at pp. xii, 7-8.) That disparity is unsurprising, since the survey expressly excluded any guidance on the proper interpretation of the Regulations' circular and confusing terms. But without any objective criteria or guidance as to what the rules would actually require, the survey data—and resulting "analysis" thereof—are inherently and fatally flawed. The *outputs* of the survey are only as good as the *inputs*, and the inputs were no more clear than the hopelessly indeterminate Regulations

themselves. Consequently, the agencies have never confronted, much less properly considered, the true potential costs of the final Regulations.

5. The Regulations therefore significantly harm WSPA and its member companies, upon which they impose unacceptable burdens and uncertainty. They are invalid and cannot stand.

BACKGROUND

6. As amended in 1990, section 112(r) of the Clean Air Act (42 U.S.C. section 7412) directed the United States Environmental Protection Agency ("EPA") and the federal Occupational Safety and Health Administration ("OSHA") to develop regulations to prevent accidental chemical releases. In response, the EPA and OSHA each adopted accident prevention plans to gather information on chemical accidents and to encourage industry members to improve process safety. The plan led by OSHA became known as Process Safety Management ("PSM"), and the plan led by the EPA became known as the Risk Management Plan.

7. Pursuant to its congressional mandate, OSHA published a Final Rule for Process Safety Management of Highly Hazardous Chemicals on February 24, 1992. (Code Fed. Regs., tit. 29, section 1910.119.) This rule applies to processes involving chemicals, flammable gases, and flammable liquids above certain threshold quantities.

8. In 1996, the EPA promulgated a final rule for accident prevention under the Risk Management Plan. (Code Fed. Regs., tit. 40, section 68.1 et seq.) This rule requires owners or operators of facilities with more than a threshold quantity of a regulated substance to develop an accident prevention program.

9. Meanwhile, at the state level, the California State Legislature passed a law in 1986 calling for the development of an accident prevention plan, which would become known as the California Accidental Release Prevention ("CalARP") program. (Health & Safety Code section 25531, et seq.) The CalARP program tracks the requirements of section 112(r) of the federal Clean Air Act and also includes other state-specific requirements. (Health & Safety Code section 25533.) Among other things, this legislation required OES to adopt regulations for the CalARP program. OES promulgated its original CalARP regulations in 1997. (Cal. Code Regs., tit. 19, section 2735.3.)

10. In 1990—the same year Congress amended the Clean Air Act—the California State Legislature enacted legislation calling for the Board to implement state PSM standards (Lab. Code section 7855, et seq.) to "prevent or minimize the consequences of catastrophic releases of toxic, flammable, or explosive chemicals."

11. In 1992, the Board adopted state PSM standards, codified at California Code of Regulations, tit. 8, section 5189. These standards apply to more than 1,900 facilities in the state, including, but not limited to, petroleum refineries.

12. In 2012, the Governor's Interagency Working Group on Refinery Safety (the "Working Group") issued a report concerning the safety of petroleum refineries in California. The Working Group's report recommended the establishment of an Interagency Refinery Task Force to, among other things, coordinate refinery-specific revisions to the state's PSM regulations and the CalARP regulations.

13. In 2013, the California State Legislature passed legislation mandating that the Board adopt PSM standards for petroleum refineries. (Lab. Code section 7856.)

14. Invoking that requirement, the Board promulgated a new PSM regulatory scheme applicable to petroleum refineries in July 2017. (Cal. Code Regs., tit. 8, section 5189.1, et seq.) This regulatory scheme takes the form of the PSM regulation challenged herein (the "CalPSM Regulation"). A "general" violation of the CalPSM Regulation carries a $13,047 per-violation penalty (Cal. Code Regs., tit. 8, section 336, subd. (b)), and a "serious" violation of the CalPSM Regulation carries an $18,000 to $25,000 per-violation penalty (*id.*, section 336, subd. (c)). The penalty for a "willful" violation is multiplied by five, up to $130,464 per violation, and repeat violations are likewise subject to a scale of multipliers (i.e., two times for the first repeat; four times for the second repeat; ten times for the third repeat, up to $130,464 per violation). (Cal. Code Regs., tit. 8, section 336 subds. (g) and (h).) The failure to abate a violation can result in a daily penalty of up to $15,000. (Cal. Code Regs., tit. 8, section 336 subd. (f).) The Board and DOSH claim, and WSPA disputes, that the CalPSM Regulation satisfies the mandate of Labor Code section 7856.

15. OES also promulgated a new CalARP regulatory scheme applicable to petroleum refineries in California (Cal. Code Regs., tit. 19, section 2735.1, et seq.), which is challenged herein

(the "CalARP Regulation"). A "general" violation of the CalARP Regulation results in a civil penalty of up to $2,000 per day plus the cost of any associated emergencies or remediation. (Health & Safety Code section 25540, subd. (a)(1).) A "knowing" violation of the CalARP Regulation results in a civil penalty of up to $25,000 per day (plus associated emergency or remediation costs), as well as misdemeanor criminal liability. (Health & Safety Code sections 25540, subds. (a)(3), (b), and 25540.1.) OES claims, and WSPA disputes, that the CalARP Regulation is authorized by Health and Safety Code section 25531, et seq.

16. The CalPSM Regulation and the CalARP Regulation are substantively similar and, according to the Board and OES, are designed to function in tandem. The pre-existing PSM standards and CalARP Program continue to apply to all other regulated facilities in California, *other than* petroleum refineries.

17. The Regulations suffer from several specific legal infirmities and are unlawful and invalid for the following, among other, reasons.

18. First, the Regulations vastly expand the scope of regulated chemicals at petroleum refineries as compared with the pre-existing regulations and eliminate the requirement that a threshold quantity of such chemicals exist before process safety management requirements apply. The Regulations do not explain why this expansion in scope is necessary to achieve the safety of petroleum refineries but not any of the many other facilities in California that may use the same chemicals in the same or greater quantities. The Regulations also incorporate an expansive and vague definition of "highly hazardous material" that is neither readily understandable nor reasonably necessary. Further, the CalARP Regulation purports to apply to "highly hazardous material" that OES *admits* is beyond the scope of chemicals that it is authorized to regulate in its enabling statute.

19. Second, the term "major change," a critical component of both sets of Regulations, is defined so broadly as to incorporate even trivial changes, contains language that conflicts with existing agency guidance, and fails generally to put regulated parties on fair notice of what constitutes a "major change." This confusion is heightened by the fact that the CalPSM Regulation and the CalARP Regulation contain different and conflicting definitions of "major change." The definitions also create overlapping obligations with pre-existing PSM standards that render the

Regulations' additional requirements not reasonably necessary to effectuate the purpose of their enabling statutes.

20. Third, the Hierarchy of Hazard Control provisions of the Regulations contain undefined terms and phrases that render them impossibly broad and leave them with no objectively ascertainable meaning. For example, the Regulations appear to require refiners to conduct a worldwide review of publicly available information regarding inherent safety measures and safeguards used in the petroleum and "related" industries, including those that have been "achieved in practice," without defining what industries are "related" to the petroleum industry, nor what it means to "achieve in practice" an inherent safety measure or safeguard. These provisions also contain internally conflicting requirements regarding implementation of damage control mechanisms without providing any guidance as to how to deal with such conflicts. At the same time, the prescriptive elements of the Hierarchy of Hazard Control, such as those requiring recommendations to eliminate hazards in a prescribed order of priorities, do not provide the discretion necessary to effectuate the performance-based regulatory goals of the Regulations and their enabling statutes.

21. Fourth, the Regulations require the participation of an "employee representative" in all elements of process safety management. While the Regulations require "employee representatives" at non-union refineries to be qualified to participate and to work on-site at the refinery, "employee representatives" at refineries with unionized employees, by contrast, are not required to meet these prerequisites. That is, union employee representatives may be *unqualified* to serve as employee representatives at a facility and have no experience as an employee at that facility. The Regulations offer no justification or explanation for this disparate and irrational treatment of union and non-union employees, which both conflict with the stated purpose of the Regulations and are not reasonably necessary to effectuate the purpose of the enabling statutes.

22. Fifth, the agencies' consideration of the economic impact of these sweeping new Regulations and the substantial new burdens they place on refiners in California was inadequate. In the course of promulgating the Regulations, and prior to issuing their Initial Statements of Reasons, the Board and OES commissioned the RAND Corporation ("RAND") to perform a required economic impact assessment, the results of which RAND published in a report titled "Cost-Benefit

Analysis of Proposed California Oil and Gas Refinery Regulations" (the "RAND Report"). But RAND employed an invalid survey methodology in conducting its economic impact analysis and relied on data of questionable significance and reliability, choosing to ignore other highly relevant and significantly more reliable data. In so doing, the agencies concluded, contrary to the substantial evidence, that the Regulations would not have a significant, statewide economic impact, and they ignored public concerns that the Regulations will actually impose substantial and unreasonable costs on the state and its citizens.

23. The infirmities of key terms and provisions in the CalPSM and CalARP Regulations and the inadequacy of the agencies' economic impact analysis infect the Regulations, rendering provisions of the CalPSM Regulation and the CalARP Regulation, discussed above, invalid and unenforceable against petroleum refiners in this State.

PARTIES

24. Plaintiff WSPA is a California not-for-profit corporation and long-standing trade association of energy companies that own and operate properties and facilities in the petroleum industry, including petroleum refineries in California. WSPA's principal offices are located at 1415 L Street, Suite 600, Sacramento, California, 95814. WSPA's members operate petroleum refineries in Contra Costa, Los Angeles, and other California counties.

25. WSPA has associational standing to bring this suit on behalf of its members because more than one of those members will be directly, adversely, and imminently affected by the Regulations and thus would have standing to sue in their own right.[*] If the Regulations are not enjoined, WSPA's members face the "immediate or threatened injury" of enforcement actions. (*Hunt v. Wash. State Apple Advertising Comm'n* (1977) 432 U.S. 333, 342.) Furthermore, the interests that WSPA seeks to protect by way of this lawsuit are germane to the organization's purpose. Specifically, WSPA is dedicated to addressing the wide range of public policy issues that affect the petroleum industry, including state regulations such as CalARP and CalPSM that impose

[*] A list of WSPA's current members is available on its website: https://www.wspa.org/about/ (last visited July 1, 2019).

unreasonable and unlawful mandates on WSPA members. Finally, neither the claims asserted nor the relief requested requires an individual member of WSPA to participate in this suit.

26. WSPA has an interest in obtaining a judicial declaration as to the validity of the Regulations because its members own and operate most of the petroleum refineries in California, which are subject to the Regulations. WSPA's members have been or will be impacted by the enforcement of the Regulations. Such enforcement was or will be illegal and unlawful for the reasons explained herein.

27. Defendant California Occupational Safety and Health Standards Board is a seven-member body appointed by the Governor and charged with setting standards for the California Division of Occupational Safety and Health. The Board promulgated the CalPSM Regulation challenged herein and has its principal offices at 2520 Venture Oaks Way, Suite 350, Sacramento, California, 95833.

28. Defendant California Division of Occupational Safety and Health enforces occupational safety and health standards and regulations and offers training and consultation to employers and their employees for complying with occupational safety and health standards and regulations. DOSH is charged with enforcing the CalPSM Regulation challenged herein and has its principle offices at 1515 Clay Street, Suite 1901, Oakland, California, 94612.

29. Defendant Governor's Office of Emergency Services is a cabinet-level state public agency within the Office of the Governor of California. OES is charged with assuring the state's readiness to respond to and recover from all hazards and is responsible for overall state agency response to disasters. OES promulgated the CalARP Regulation challenged herein and has its principal offices at 2650 Shriever Avenue, Mather, California, 95655, and 10390 Peter A. McCuen Boulevard, Mather, California, 95655.

JURISDICTION AND VENUE

30. WSPA brings this action pursuant to Government Code section 11350.

31. Venue is proper in this Court because Defendant CalPSM is located in Sacramento, California and Defendant OES is located in Mather, California, which is located in Sacramento County. (Cal. Civ. Proc. Code section 395.)

PROCEDURAL AND LEGAL BACKGROUND

A. Promulgation Of The CalPSM And CalARP Regulations

32. The Board issued its notice of proposed rulemaking and Initial Statement of Reasons for the CalPSM Regulation on July 15, 2016, setting the public comment period from July 15, 2016 to September 15, 2016 and a public hearing date of September 15, 2016. WSPA submitted comments to the Board on September 15, 2016. On February 10, 2017, the Board issued a notice of proposed modifications and set a deadline of March 3, 2017 for comments on the modifications to the proposed regulation. WSPA submitted comments on the proposed modifications. Thereafter, the Board issued a Final Statement of Reasons, failing to adequately address several of the public comments, including many of those submitted by WSPA and its members. The CalPSM Regulation was approved by the Office of Administrative Law and filed with the Secretary of State on July 27, 2017. The CalPSM Regulation became effective on October 1, 2017.

33. OES issued its notice of proposed rulemaking and Initial Statement of Reasons for the CalARP Regulation on July 15, 2016, setting the public comment period from July 15, 2016 to September 15, 2016 and a public hearing date of August 31, 2016. WSPA submitted comments to OES on September 15, 2016. On February 14, 2017, OES issued a notice of modification of text of proposed regulations and set a deadline of March 3, 2017 for comments on the modifications to the proposed regulation. WSPA submitted comments on the proposed modifications. Thereafter, OES issued a Final Statement of Reasons, which failed to adequately address several of the public comments, including many of those submitted by WSPA and its members. The CalARP Regulation was approved by the Office of Administrative Law and filed with the Secretary of State on August 18, 2017. The CalARP Regulation became effective on October 1, 2017.

B. To Be Valid, A Regulation Must Be Authorized By The Enabling Statute And Satisfy The APA's Requirements Of "Necessity" And "Clarity"

34. The California Administrative Procedure Act, Government Code section 11340, et seq., provides that a regulation must meet standards for (1) necessity, (2) authority, (3) consistency, (4) clarity, (5) reference, and (6) nonduplication. (Gov. Code section 11349.)

35. Under the "authority" requirement, "no regulation adopted is valid or effective unless consistent and not in conflict with the statute." (Gov. Code section 11342.2.)

36. With respect to "necessity," "no regulation adopted is valid or effective unless . . . reasonably necessary to effectuate the purpose of the statute." (Gov. Code section 11342.2.) "Necessity" is established only where "the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record." (Gov. Code. section 11349, subd. (a).)

37. Compliance with the "necessity" standard requires more than a general discussion of the need for a regulatory action as a whole or simply a description of the regulatory action. It requires ***substantial evidence*** that each provision of a proposed regulation is required to carry out the purpose of a particular statute. When an agency proposes a new regulation, the agency must issue an Initial Statement of Reasons, which includes "[a] statement of the specific purpose of each adoption [or] amendment . . . , the problem the agency intends to address, and the rationale for the determination by the agency that each adoption [or] amendment . . . is reasonably necessary to carry out the purpose and address the problem for which it is proposed." (Gov. Code section 11346.2, subd. (b).)

38. Further, an agency proposing to adopt a regulation must "assess the potential for adverse economic impact on California business enterprises" and avoid "the imposition of unnecessary or unreasonable regulations" in this regard. (Gov. Code section 11346.3, subd. (a).)

39. The APA also requires that regulations have sufficient "clarity," meaning that they are "written or displayed so that the meaning . . . will be easily understood by those persons directly affected by them." (Gov. Code section 11349, subd. (c).)

40. A regulation "may be declared to be invalid for a substantial failure to comply with" any requirement of the APA. (Gov. Code section 11350, subd. (a).) For the reasons set forth below, the challenged provisions of the Regulations do not comply with the APA's standards for authority, necessity, and clarity.

GROUNDS FOR DECLARATORY RELIEF

A. The CalPSM And CalARP Regulations Unlawfully Expand The Scope Of Processes To Which They Apply

1. The Definitions of "Highly Hazardous Material" Do Not Meet the APA's Requirements of "Clarity" and "Necessity"

41. The requirements set forth in the Regulations are applicable to a "process" within a petroleum refinery. (Cal. Code Regs., tit. 8, section 5189.1, subd. (b); Cal. Code Regs., tit. 19, section 2762.0.1.)

42. Section 5189.1, subdivision (c) of the CalPSM Regulation defines "process" to mean "[p]etroleum refinery activities including use, storage, manufacturing, handling, piping or on-site movement that involve a *highly hazardous material*." (Italics added.) Similarly, section 2735.3, subdivision (yy) of the CalARP Regulation defines "process" to mean "petroleum refining activities involving a *highly hazardous material*, including use, storage, manufacturing, handling, piping, or on-site movement." (Italics added.) In turn, both Regulations define "highly hazardous material" to mean a flammable liquid or gas or a toxic or reactive substance, as defined in California Code of Regulations, tit. 8, section 5194. (Cal. Code Regs., tit. 8, section 5189.1, subd. (c); Cal. Code Regs., tit. 19, section 2735.3, subd. (y).)

43. California Code of Regulations, tit. 8, section 5194—the California hazard communication regulations—incorporates the federal hazard communications regulations at Code of Federal Regulations, tit. 29, section 1910.1200, which provides specific tests for determining whether a chemical qualifies as a flammable liquid or gas or a toxic or reactive substance. (Cal. Code Regs., tit. 8, section 5194, subd. (d)(3)(B).)

44. The federal hazard communications regulations are highly complex and not intended for process safety management purposes. Prior to the adoption of the Regulations, refineries had only to reference lists, developed by the Board and OES, of particular chemicals constituting "regulated substances" to determine the chemicals and threshold quantities that triggered the process safety management regulations. More specifically, the previous regulations applied only to processes that involved certain specified chemicals in quantities at or above specified thresholds or flammable liquids and gases in a quantity of 10,000 pounds or more. Under the previous regulations, therefore,

determining whether a substance was "regulated" was clear, straightforward, and easy to understand. The Regulations, however, have significantly expanded the scope of chemicals that trigger the process safety management requirements by replacing the straightforward *lists* with an entirely new set of *standards* that are contained in a different regulation concerning hazard *communications*.

45. WSPA and others raised concerns in their public comments regarding the confusion and burden created by incorporation of the federal hazard communication regulations into the Regulations. The Board failed to address these concerns in its Final Statement of Reasons, responding only that "[t]he definitions specify what constitutes a highly hazardous material . . . . The definitions clarify terms to assist employers in understanding the intent and requirements of the regulations." Likewise, OES conclusorily stated that it "maintains that the definition clearly specifies what constitutes a highly hazardous material" and that it would "take no action on this comment." Neither the Board nor OES has provided any rationale for the necessity of these revisions or offered any explanation of, or justification for, their expansion of scope beyond those chemicals regulated at all other industrial facilities in California.

46. Moreover, by incorporating the federal hazard communication regulations without providing any guidance as to their relevance with respect to application of the Regulations, or setting forth clear guidelines for determining whether a given substance is subject to the Regulations, the definitions of "highly hazardous material" in the Regulations are not readily understandable.

47. In addition to expanding the scope of covered chemicals, the Regulations eliminate prior threshold quantities below which chemicals were exempt from regulation under the pre-existing CalPSM Standards and CalARP Program. The prior regulations—which remain applicable to all facilities other than petroleum refineries—apply to any process that involves certain specified chemicals in quantities at or above specified thresholds or flammable liquids or gases in a quantity of 10,000 pounds or more. By contrast, the Regulations appear to apply to petroleum refineries when *any quantity*, however insignificant, of *any covered chemical* exists, as no threshold quantities are found in either the definition of "highly hazardous materials" or elsewhere in the Regulations.

48. Neither the Board nor OES provided any explanation or justification whatsoever for so significantly expanding the types and quantities of chemicals covered by eliminating quantity

thresholds and subjecting petroleum refineries to process safety management regulation for use of any quantity of any covered chemical. In its Initial Statement of Reasons, the Board claimed that the definition of "highly hazardous material" was necessary to "specify the threshold quantities of materials covered by these regulations," apparently unaware that the CalPSM Regulation contained no such thresholds. WSPA and others raised concerns regarding elimination of the thresholds, but neither agency provided any substantive response to these concerns.

49. Because the agencies have offered no basis whatsoever—*much less substantial evidence*—to support the conclusion that use of even the smallest quantities of reactive, toxic, or flammable chemicals present hazards of a magnitude sufficient to justify the complex process safety management regimes in the Regulations, the definitions of "highly hazardous material" in the Regulations are not reasonably necessary.

2. The CalARP Regulation Lacks Statutory Authorization

50. The CalARP Regulation cites as the basis of its authority Health & Safety Code section 25531, et seq., which is intended to prevent "accidental releases of *regulated substances*." (Health & Safety Code section 25531, subd. (e), italics added.) The purported purpose of the CalARP Program likewise is to "prevent the accidental releases of *regulated substances*." (Cal. Code Regs., tit. 19, section 2735.1, italics added.) Section 25532 defines "regulated substance" as either a "regulated substance" under the federal Clean Air Act regulations, or a chemical that has been designated by OES as an "extremely hazardous substance." (Healthy & Safety Code section 25532, subd. (j).)

51. The CalARP Regulation, however, applies not only to "regulated substances," but also to all "highly hazardous material," as defined in section 2735.3, subdivision (y). As described above, the definition of "highly hazardous material" goes beyond the narrower category of "regulated substances." Notably, OES has admitted to this expansion, stating in its Initial Statement of Reasons that the CalARP Regulation is "designed to go beyond a list of regulated substances to the goal of protecting public health" and confirming the same in its responses to comments.

52. Although OES has authority to designate chemicals as extremely hazardous (and thereby identify additional "regulated substances" to be covered by section 25532), OES has not

undertaken to expand the list of "extremely hazardous substances" to encompass "highly hazardous materials" under the Regulations.

53. The disconnect between the scope of the CalARP Regulation and the enabling statute is further evidenced by the fact that the CalARP Program now has two separate and inconsistent definitions of "process." The definition of "process" applicable to facilities other than refineries refers to "regulated substance[s]," while the definition of "process" applicable to refineries refers to the more expansive "highly hazardous material." OES has not offered any justification for its selective departure from the statutorily prescribed application to "regulated substances" for refineries but not for any other facilities.

54. OES's elimination of the requirement of a threshold quantity of regulated substances is also inconsistent with the enabling statute. Health & Safety Code section 25532, subdivision (c) expressly defines "covered process" as "a process that has a regulated substance present in more than a threshold quantity." Additionally, Health & Safety Code section 25532, subdivision (*l*) requires OES to adopt threshold quantities, for which Health & Safety Code sections 25543.1, subdivision (g) and 25543.3 provide specific criteria and procedures. By eliminating threshold quantities, the CalARP Regulation is inconsistent, and in conflict, with its enabling statute.

B. The Definitions Of "Major Change" In The CalPSM And CalARP Regulations Lack "Clarity" And "Necessity"

55. The requirement to perform various process safety reviews provided for in the Regulations is triggered by a "major change." The term "major change" is therefore critical to the Regulations, as both the Board and OES acknowledged during the rulemaking process. But "major change" is defined with insufficient clarity to provide regulated entities adequate notice as to when the Regulations apply.

56. The CalPSM Regulation defines "major change" as "[i]ntroduction of a new process, new process equipment, or new highly hazardous material; [a]ny operational change outside of established safe operating limits; or, [a]ny alteration that introduces a new process safety hazard or worsens an existing process safety hazard." (Cal. Code Regs., tit. 8, section 5189.1, subd. (c).)

57. The CalARP Regulations define "major change" as "(1) introduction of a new process, or (2) new process equipment, or new regulated substance that results in any operational change outside of established safe operating limits; or (3) any alteration in a process, process equipment, or process chemistry that introduces a new hazard or increases an existing hazard." (Cal. Code Regs., tit. 19, section 2735.3, subd. (hh).)

58. These two definitions of "major change" are different such that an event may constitute a major change triggering process safety reviews under one regulatory scheme but not under the other. The agencies declined to reconcile the Regulations' definitions of "major change" during the rulemaking process, adding to the confusion and difficulty for refineries implementing them.

59. Regardless of this difference, the Regulations' definitions of "major change" share an extreme over-breadth, causing them to apply not just to major changes, but also to minor changes. As a result, *any* new equipment employed in a refinery could potentially trigger an array of safety reviews in addition to standard management of change processes, particularly under the CalPSM regime. For example, the term "major change" in both of the Regulations incorporates changes to "process equipment," which is in turn defined as "equipment, including . . . piping." (Cal. Code Regs., tit. 8, section 5189.1, subd. (c); Cal. Code Regs., tit. 19, section 2735.3, subd. (zz).) Indeed, the agencies confirmed that the term "process equipment" covers "all equipment in service and equipment that may be used in the future . . . ." Thus, an extremely minor change such as replacing a piping flange could constitute a "major change" under the regulatory language, particularly under the CalPSM Regulation, which renders the mere "introduction of . . . new process equipment" a "major change."

60. Despite the plain meaning of this language, OES stated in its Final Statement of Reasons that "truly minor equipment changes do not constitute 'major changes,'" and that "replacement of a minor piping flange" would not constitute a "major change." But OES completely failed to provide any explanation for its rationale, or provide any explanation more broadly as to how a "major change" should or would be interpreted. The Board, on the other hand, offered no substantive response to comments regarding the over-breadth of the definition of "major change,"

particularly with respect to the question whether the definition encompassed truly minor changes such as the replacement of a piping flange. This conflict between the regulatory language and OES's guidance, as just one example, makes the definition of "major change" not readily understandable. (See Cal. Code Regs., tit. 1, section 16, subd. (a)(2).)

61. As another example, any alteration that "worsens" an existing process safety hazard (under the CalPSM Regulation) or "increases" an existing process safety hazard (under the CalARP Regulation) is considered a "major change." (Cal. Code Regs., tit. 8, section 5189.1, subd. (c); Cal. Code Regs., tit. 19, section 2735.3, subd. (hh).) Because the Regulations contain no objective guidance for determining what constitutes a "worsen[ing]" or "increase" of an existing process safety hazard (and in the absence of such objective guidance, a determination would be inherently subjective), the terms "worsens" and "increases" are ambiguous and subject to more than one meaning. For this reason as well, the definitions of "major change" in the Regulations are not readily understandable by petroleum refiners.

62. Further, the definitions of "major change" in the Regulations create different categories of changes deemed to be "major" (e.g., the introduction of a new process, the introduction of new process equipment, etc.). The pre-existing process safety management standards, however, already ensured that all changes (except for replacements in-kind) would be evaluated for safety impacts. The Regulations now impose a number of additional requirements, including additional safety reviews, for the specified categories of "major change[s]." This creates overlapping burdens on refineries without adequate explanation or justification, which renders the definition of "major change" not reasonably necessary.

C. The Provisions In The CalPSM And CalARP Regulations Requiring Performance Of Hierarchy Of Hazard Controls Analyses Lack "Clarity" And "Necessity."

63. The Regulations require refiners to assemble a team to perform a Hierarchy of Hazards Control Analysis ("HCA") every five years for all existing processes, as well as in response to certain triggers, such as whenever a major change (as described above) is proposed. (Cal. Code Regs., tit. 8, section 5189.1, subd. (c); Cal. Code Regs., tit. 19, section 2762.13.) A "Hierarchy of Hazard Control" is defined as hazard "prevention and control measures, in priority order, to eliminate

or minimize a hazard." (Cal. Code Regs., tit. 8, section 5189.1(c); Cal. Code Regs., tit. 19, section 2735.3, subd. (x).)

64. The lack of clarity with respect to the definition of "major change," as described above, infects the HCA provisions, making it unclear to refiners when the HCA provisions even apply.

65. The Regulations require that a team evaluate different measures to control hazards, and further require that the team recommend, to the greatest extent feasible, inherent safety measures that will eliminate hazards. Where no feasible inherently safe measures exist, the team is required to recommend safeguards to mitigate hazards, with priority given to passive safeguards, followed by active safeguards, with procedural safeguards used only as a last resort. (Cal. Code Regs., tit. 8, section 5189.1, subd. (c); Cal. Code Regs., tit. 19, section 2735.3, subd. (x).)

66. The Regulations require the HCA team to identify, analyze, and document publicly available information on inherent safety measures and safeguards, including those "1. achieved in practice by the petroleum refining industry and related industrial sectors; [or] 2. required or recommended for the petroleum refining industry and related industrial sectors, by a federal or state agency, or local California agency, in a regulation or report." (Cal. Code Regs., tit. 8, section 5189.1, subd. (*l*)(4)(D); Cal. Code Regs., tit. 19, section 2762.13, subd. (e).)

67. Further, the Regulations do not specify what constitutes a "related industry sector." In addition, the agencies refused to provide any clarification during the rulemaking process as to the meaning of "related industry sector," despite receiving comments as to the term's vagueness and failure to specify which sectors an HCA team must consider when performing its HCA.

68. The requirement to identify, analyze, and document publicly available information on inherent safety measures and safeguards "achieved in practice" is impossibly broad and has no objectively ascertainable meaning. The provisions apparently require petroleum refiners to conduct a worldwide search for potentially relevant literature and then make a subjective determination as to whether such literature describes an "inherently safe" measure or safeguard that has been "achieved in practice." Rather than providing any clarification or tethering these HCA requirements to any recognized industry standards, the agencies have confirmed that refiners' obligations extend to *all*

"publicly available information on inherent safety measures and safeguards." The agencies' use of terms and phrases such as "achieved in practice" and "related industry sector," which are undefined and do not have meanings generally familiar or understood in the petroleum refining industry, make these HCA provisions not reasonably understandable.

69. The Regulations also fail to reconcile scenarios where the use of an inherent safety measure for one hazard could have a negative impact on safeguards for other hazards. A refiner will therefore need to make a judgment call as to which hazard is the more serious threat and which one can be more effectively controlled through other means. And, in order to maximize inherent safety in the aggregate, a refiner may need to select a hazard control that is lower on the hierarchy for a discrete hazard in order to provide greater overall protection. The Regulations, however, do not provide any guidance for balancing the need for conflicting hazard controls. The lack of guidance with respect to this tension makes the Regulations not reasonably understandable.

70. The Board and OES described the Regulations as performance-based standards in the Initial Statements of Reasons; performance-based standards are intended to allow refineries flexibility in determining how to comply appropriately in particular circumstances. As written, however, the requirements in the HCA provisions of the Regulations are *not* performance-based standards at all. Instead, they require the HCA to make recommendations to eliminate hazards in a prescribed order of priorities (e.g., first-order inherent safety measures, then second-order inherent safety measures, then passive safeguards, then active safeguards, then procedural safeguards). (Cal. Code Regs., tit. 8, section 5189.1, subd. (*l*)(4)(E); Cal. Code Regs., tit. 9, section 2762.13, subd. (f).) The Regulations then *require* refineries to adopt the HCA recommendations, with only limited exceptions. (Cal. Code Regs., tit. 8, section 5189.1, subd. (x); Cal. Code Regs., tit. 19, section 2762.16, subds. (d) and (e).)

71. These prescriptive elements fail to effectuate the performance-based goals of the enabling statutes and of the Regulations themselves, and are therefore not reasonably necessary.

D. The Disparate Treatment Of Union-Designated And Non-Union Employee Representatives In The CalPSM And CalARP Regulations Lacks "Necessity"

72. The CalPSM Regulation and CalARP Regulation contain provisions requiring the participation of employees and "employee representative[s]" in the design and implementation of an

employee participation program and in various types of process safety assessments. (Cal. Code Regs., tit. 8, section 5189.1, subd. (q); Cal. Code Regs., tit. 19, section 2762.10.) For example, the Regulations require refiners to ensure "effective participation by . . . employee representatives, throughout all phases" of PSM and ARP (Cal. Code Regs., tit. 19, section 2762.10, subd. (a); Cal. Code Regs., tit. 8, section 5189.1, subd. (q)), including the "development, training, implementation and maintenance" of Process Hazard Analyses, Damage Mechanism Reviews, Hierarchy of Hazard Controls Analyses, Safeguard Protection Analyses, Management of Organizational Change assessments, Process Safety Culture Assessments, Incident Investigations, and Pre-Start-Up Safety Reviews required by the Regulations (Cal. Code Regs., tit. 8, section 5189.1, subd. (q); Cal. Code Regs., tit. 19, section 2762.14; *see also* Cal. Code Regs., tit. 8, section 5189.1, subds. (i), (r) (making clear that employers must develop process safety culture assessments and pre-start-up safety reviews "*in consultation with*" employee representatives) (italics added).)

73. The Regulations also give union "employee representatives" a right of access to, and require petroleum refiners to share, a broad range of safety-related information including compliance audits, investigation reports, written procedures related to mechanical integrity, and "all documents or information developed or collected by the owner or operator pursuant to" the Regulations, "including information that might be subject to protection as a trade secret." (Cal. Code Regs., tit. 19, section 2762.10, subd. (a)(3); Cal. Code Regs., tit. 8, section 5189.1, subd. (q)(1)(C); *see* Cal. Code Regs., tit. 19, section 2762.5, subd. (a)(2); *id.* at section 2762.8, subd. (c); *id.* at section 2762.9, subd. (k); Cal. Code Regs., tit. 8, section 5189.1, subds. (j)(C), (u)(3), (o)(11).)

74. The Regulations define "employee representative" as "a union representative, where a union exists, or an employee-designated representative in the absence of a union *that is on-site and qualified for the task*." (Cal. Code Regs., tit. 8, section 5189.1, subd. (c); Cal. Code Regs., tit. 19, section 2735.3, subd. (t), italics added.) A union representative can be from "the local union, the international union, or [be] an individual designated by these parties." (*Ibid.*)

75. This language requires that a non-union representative be "on-site and qualified for the task," whereas a union may designate an employee representative without regard for the individual's qualifications or employment connection to the refinery.

76. In their responses to comments, the Board and OES confirmed that the Regulations provide for disparate treatment of non-union and union-designated representatives. The Board stated in its Final Statement of Reasons that "[e]mployees are entitled to select representatives of their choosing where a union exists. In the absence of a union, employee-designated representatives must be on-site and qualified for the task." OES stated in its Final Statement of Reasons that "for nonunion facilities, the employee representative must be an on-site and qualified employee. Employee representatives from refineries at which the employees are represented by a union can be ***whomever the union selects*** to be their representatives." (italics and boldface added.)

77. According to OES, "[t]he purpose of the employee representative is to designate a clear point of contact for an employee wishing to report concerns," regardless of whether the employee representative is union or non-union. This does not provide any justification for imposing requirements on non-union representatives that are not also imposed on union representatives, or for allowing union-selected representatives to be unqualified or not employed at the refinery.

78. Neither the Board nor OES provided any evidence of the need for the disparate treatment of union-designated and non-union representatives at any point during the rulemaking process, despite comments that, for example, "selection of a member of the 'international union,' who might not even be a refinery employee for participation in process hazard analysis would be inappropriate because such individuals would have no understanding of the specific hazards associated with the process equipment at the facility."

79. The Board and OES both recognize elsewhere that off-site representatives are less qualified to participate in the development and implementation of PSM elements. Initially, the agencies proposed employee participation language providing that "[a]uthorized collective bargaining agents may select (i) *representative(s)* to participate in overall PSM program development and implementation planning . . . ." (Italics added.) But the language of the final Regulations was changed to authorize collective bargaining agents to select "*employees*" to participate in PSM program development and implementation planning. (Cal. Code Regs., tit. 8, section 5189.1, subd. (q)(2); Cal. Code Regs., tit. 19, section 2762.10, subd. (b).) The Board and OES explained that this revision was "necessary to clarify that participation in the overall PSM program development and

implementation planning is from employees and *not from representatives who may or may not be employees of the refinery*." (Italics added.) By the agencies' own statements, they have conceded that requiring a non-union employee representative to be "qualified" and "on-site" but not requiring the same of a union employee representative cannot be reasonably necessary.

80. Additionally, allowing employee representatives who are not on-site and qualified directly conflicts with the employee participation provision for pre-startup safety reviews ("PSSR"). The Regulations provide that "[a]n operating employee who currently works in the unit and who has expertise and experience in the process being started shall be designated as the employee representative, pursuant to subsection (q)." (Cal. Code Regs., tit. 8, section 5189.1, subd. (i)(3); accord Cal. Code Regs., tit. 19, section 2762.7, subd. (c).) The requirements for employee representatives participating in PSSRs therefore directly conflict with the broader employee representative provision, as applied to union employee representatives, who need not have any "expertise" or "experience in the [relevant] process." In recognizing the importance of having an employee representative who is on-site and qualified to participate in a PSSR, the agencies highlight the arbitrariness of failing to impose this same requirement for union employee representatives participating in other similar safety reviews required by the Regulations. There is no apparent safety justification for this provision. Thus, it is not reasonably necessary.

E. The Sweeping And Vague Regulations Impose Potentially Substantial Costs That The Agencies Failed To Acknowledge And That Are Not Necessary Or Reasonable Under The Circumstances.

81. The Board and OES made initial determinations that the Regulations "will not have a significant, statewide adverse economic impact." However, the agencies' assessment of economic impact, performed by RAND, was deeply flawed. More broadly, the record makes clear that the agencies have never acknowledged, much less made any attempt to analyze, the true potential costs of the sweeping and vague Regulations.

82. As part of its analysis, RAND conducted a survey of California refineries that included a written questionnaire and follow-up interview sessions with process safety personnel regarding a preliminary draft of the CalPSM Regulation. Ten of the twelve refineries surveyed are members of WSPA. RAND's survey methodology and data analysis were deeply flawed and

therefore fatally undermine the agencies' conclusions that the Regulations "will not have a significant, statewide adverse economic impact."

83. RAND's survey asked refiners to use their own best efforts to understand the proposed rules—without providing any guidance, clarity, or instruction whatsoever as to what they would actually require—such that the refiners had to hazard their own best guesses as to the meaning of the proposed rules in order to try to assess the potential costs they would impose. RAND's final report expressly provides: "[W]e did *not* attempt to interpret or clarify the proposed regulations." (RAND Report, at p. 24, italics added.)

84. The absence of such guidance means that the survey results are inherently flawed. As explained above, the Regulations are vague, lack clarity and context and, as a result, are susceptible to multiple interpretations. Because the *inputs* of the survey were premised on the similarly vague terms of the proposed rules, the *outputs* of the survey are not a reliable indicator of estimated costs. They simply reflect the respondents' efforts to gauge costs of an indeterminate regulatory scheme, based on differing subjective understandings and assumptions of what the Regulations actually require.

85. Moreover, the RAND survey was based only on the proposed CalPSM Regulation—and not the CalARP Regulation—released before the agencies issued their Initial Statements of Reasons. Accordingly, the economic analysis did not cover all of the final regulatory requirements. And because it was finished prior to the conclusion of the comment period, many of the problems with the potential scope and substantive reach of the Regulations, including the inconsistencies between the CalPSM and CalARP Regulations, had not yet been aired in the comment phase of the rulemaking.

86. As a result of these fundamental flaws, nearly all survey respondents stated a below-average confidence level in the cost data they provided to RAND. In fact, RAND expressly qualified its analysis based on its finding that "there was significant variance in the results," which "reflect[ed] legitimate differences of opinion about how the regulations would be implemented" because "one could interpret the regulatory language in multiple ways." (RAND Report, at pp. xii, 7-8.) Due to the confusion about the correct interpretation of the proposed rules, and the fact that the requirements

of the CalARP Regulation were not considered at all, the survey data—and the analysis premised on that data—are incomplete and invalid.

87. RAND also chose to omit from its analysis relevant and statistically significant data that undermine its prediction regarding the level of safety improvement the Regulations would supposedly produce. For example, RAND omitted from its dataset statistics on reportable safety incidents that more accurately represent process safety management performance at refineries than RAND's metrics—"Major Refinery Incidents" and refinery worker fatalities—and chose not to draw data from more robust, geographically diverse samples, such as nationwide annual safety reports published by the American Fuels & Petrochemical Manufacturers based on federal OSHA performance results, which are inherently more comprehensive and reliable. As a result of these and other errors, RAND overestimated the benefits of the Regulations.

88. Several commentators, including WSPA, raised these concerns with the agencies during the public comment period. For example, one commentator explained: "[T]he cost estimate developed by RAND for the state of California significantly underestimates the costs of the proposed rule and . . . the estimated benefits are overstated." Another commentator stated: "In summary, industry has indicated large variability in implementation costs and the range and point estimates calculated by RAND are likely too low. The economy wide benefits are likely overestimated, as the impacts reported by RAND rely on a bad assumption." But these comments were summarily dismissed, without any explanation of or *specific support* for RAND's survey methodology and data analysis.

89. This record shows that the Board and OES have failed to acknowledge, much less make any attempt to analyze, the true potential aggregate costs of the Regulations. The agencies never grappled with the indeterminacy of the Regulations, but ignored it by leaving the survey respondents to guess for themselves the meaning of the Regulations in attempting to estimate costs. Nor did the Board or OES perform any independent cost-benefit analysis based on a clarifying interpretation of the Regulations' actual scope and requirements. As a result, the agencies have never confronted the real-world costs and impacts of requiring a virtually perpetual safety review process.

The true potential aggregate impact of the Regulations thus remains unacknowledged and unconsidered.

90. The agencies are not, however, entitled to adopt any regulation that they believe will produce an incremental increase in safety; to the contrary, they must *avoid* "the imposition of unnecessary or unreasonable regulations." (Gov. Code section 11346.3, subd. (a); see also *id.* section 11342.2 [regulations must be "reasonably necessary"].) That standard includes a legitimate evaluation of whether the costs imposed by the rules outweigh the benefits. (Cf. *Michigan v. EPA* (2015) __ U.S. __, 135 S. Ct. 2699, 2707 ["Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions."]) Here, the overall potential negative economic impact of the Regulations is neither necessary nor reasonable under the circumstances.

FIRST CAUSE OF ACTION

(Declaratory Relief Against The Occupational Safety And Health Standards Board And The Department Of Occupational Safety And Health)

91. WSPA realleges and incorporates by reference Paragraphs 1 through 90, inclusive, of this Complaint as if fully set forth herein.

92. WSPA is an "interested person" within the meaning of Government Code section 11350, subdivision (a) because its members are subject to the requirements of the CalPSM Regulation.

93. The provisions of the CalPSM Regulation described above at California Code of Regulations, tit. 8, sections 5189.1, et seq., are invalid and unenforceable because they are inconsistent, and in conflict, with the governing statutes, they are not reasonably necessary to effectuate the purposes of the statutes, and they lack the clarity to be easily understood by the petroleum refiners subject to them.

94. WSPA is informed and believes, and thereon alleges, that the Board and DOSH contend that the challenged provisions of the CalPSM Regulation are valid and enforceable.

95. Therefore, an actual controversy has arisen and now exists between WSPA, on the one hand, and the Board and DOSH, on the other hand, concerning whether the CalPSM Regulation is valid and enforceable.

96. WSPA is therefore entitled to a judicial declaration pursuant to Government Code section 11350 and Code of Civil Procedure section 1060 that the above-described provisions of the CalPSM Regulation at California Code of Regulations, tit. 8, sections 5189.1, et seq., are invalid under Government Code sections 11342.2 and 11349, subdivisions (a), (c), and (d), and unenforceable.

SECOND CAUSE OF ACTION

(Declaratory Relief Against The Governor's Office Of Emergency Services)

97. WSPA realleges and incorporates by reference Paragraphs 1 through 90, inclusive, of this Complaint as if fully set forth herein.

98. WSPA is an "interested person" within the meaning of Government Code section 11350, subdivision (a) because its members are subject to the requirements of the CalARP Regulation.

99. The provisions of the CalARP Regulation described above at California Code of Regulations, tit. 19, sections 2735.1, et seq. are invalid and unenforceable because they are inconsistent, and in conflict, with the governing statutes, they are not reasonably necessary to effectuate the purposes of the statutes, and they lack the clarity to be easily understood by the petroleum refiners subject to them.

100. WSPA is informed and believes, and thereon alleges, that OES contends that the challenged provisions of the CalARP Regulation are valid and enforceable.

101. Therefore, an actual controversy has arisen and now exists between WSPA and OES concerning whether the CalARP Regulation is valid and enforceable.

102. WSPA is therefore entitled to a judicial declaration pursuant to Government Code section 11350 and Code of Civil Procedure section 1060 that the above-described provisions of the CalARP Regulation at California Code of Regulations, tit. 19, sections 2735.1, et seq. is invalid

under Government Code sections 11342.2 and 11349, subdivisions (a), (c), and (d), and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, WSPA prays that:

1. A judicial declaration be issued that the above-described provisions of the CalPSM Regulation at California Code of Regulations, tit. 8, sections 5189.1, et seq., are invalid and unenforceable;

2. A permanent injunction be issued, enjoining enforcement of the above-described provisions of the CalPSM Regulation at California Code of Regulations, tit. 8, sections 5189.1, et seq.;

3. A judicial declaration be issued that the above-described provisions of the CalARP Regulation at California Code of Regulations, tit. 19, sections 2735.1, et seq., are invalid and unenforceable;

4. A permanent injunction be issued, enjoining enforcement of the above-described provisions of the CalARP Regulation at California Code of Regulations, tit. 19, sections 2735.1, et seq.;

5. WSPA recover its costs in this action, including any attorneys' fees authorized by law; and

6. Such other or further relief be granted that the Court deems proper.

DATED: July 9, 2019

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