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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA,

WESTERN DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AMERICAN FARM BUREAU FEDERATION, LOS ANGELES COUNTY BUSINESS FEDERATION, CENTRAL VALLEY BUSINESS FEDERATION, and WESTERN GROWERS ASSOCIATION,

Plaintiffs,

v.

LIANE M. RANDOLPH, in her official capacity as Chair of the California Air Resources Board, STEVEN S. CLIFF, in his official capacity as the Executive Officer of the California Air Resources Board, and ROBERT A. BONTA, in his official capacity as Attorney General of California.

Defendants.

CASE NO. 2:24-cv-00801-ODW-PVC

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT ON CLAIM I

HEARING:
Date: September 9, 2024
Time: 1:30 PM
Location: Courtroom 5D
Judge: Otis D. Wright II

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TO THE HONORABLE OTIS D. WRIGHT II, UNITED STATES DISTRICT JUDGE, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 9, 2024 at 1:30 PM, or as soon thereafter as may be heard by the Court, before the Honorable Otis D. Wright II, United States District Judge, in Courtroom 5D of the First Street Courthouse, 350 W. 1st Street, Los Angeles, California 90012, Plaintiffs Chamber of Commerce of the United States of America, California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central Valley Business Federation, and Western Growers Association will, and hereby do, move pursuant to Federal Rule of Civil Procedure 56 for summary judgment as to Plaintiffs' Claim I (Violation of the First Amendment Under 42 U.S.C. § 1983). Dkt. 28. Plaintiffs are entitled to summary judgment on Claim I because there is no genuine dispute as to any material fact and Plaintiffs are entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). As a result, the Court should enjoin Defendants Liane M. Randolph, Steven S. Cliff, and Robert A. Bonta ("Defendants" or the "State") from implementing, applying, or taking any action whatsoever to enforce S.B. 253, Cal. Health & Safety Code § 38532, and S.B. 261, Cal. Health & Safety Code § 38533.

With respect to Claim I, both S.B. 253 and 261 compel speech on the controversial issue of climate change, a political topic; thus, strict scrutiny, the most stringent form of First Amendment review, applies. *See Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 913-14 (2018); *NIFLA v. Becerra*, 585 U.S. 755, 766 (2018). The State cannot meet its burden to show that either S.B. 253 or 261 survive strict scrutiny. The State cannot prove that either law furthers a compelling governmental interest or is narrowly tailored, *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1283 (9th Cir. 2023); there are numerous less burdensome alternatives the State could have adopted, and the requirements to report both greenhouse-gas emissions and the future impact of climate change on corporate operations are unusually burdensome for entities compelled to speak by S.B. 253 and 261. A lack of historical

pedigree and vagueness heighten the First Amendment concerns for both laws. *See NIFLA*, 585 U.S. at 767; *O'Brien v. Welty*, 818 F.3d 920, 930 (9th Cir. 2016).

Less stringent standards of review do not apply because the speech compelled by S.B. 253 and 261 is not commercial speech, is unrelated to advertising, and is not purely factual and uncontroversial. *See Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557, 562-63 (1980); *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985). Finally, even if a less stringent standard were to apply, the State could not meet its burden to show that the laws satisfy that standard.

A First Amendment violation "unquestionably constitutes irreparable injury," *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808, 828 (9th Cir. 2013), and there is a "significant public interest in upholding First Amendment principles," *Am. Beverage Ass'n v. City of San Francisco*, 916 F.3d 749, 757 (9th Cir. 2019) (en banc). Therefore, the Court should permanently enjoin Defendants from applying, enforcing, or otherwise implementing S.B. 253 and 261.

This Motion is based on this Notice of Motion and Motion for Summary Judgment; the accompanying Memorandum of Points and Authorities; the concurrently filed Statement of Uncontroverted Facts; the concurrently filed declarations of Bradley J. Hamburger, Edward J. Shoen, Garrett Hawkins, and Michael White; all pleadings, records, and files in this action; all matters of which judicial notice may or shall be taken; and any other oral or written evidence or argument that the Court may consider.

This Motion is made following the conference between counsel for Plaintiffs and Defendants, pursuant to Central District Local Rule 7-3, which took place on April 26, 2024. *See* Declaration of Bradley J. Hamburger ¶ 2.

DATED: May 24, 2024

Respectfully submitted,

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By: */s/ Bradley J. Hamburger*

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Plaintiffs,

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LIANE M. RANDOLPH, in her official capacity as Chair of the California Air Resources Board, STEVEN S. CLIFF, in his official capacity as the Executive Officer of the California Air Resources Board, and ROBERT A. BONTA, in his official capacity as Attorney General of California.

Defendants.

CASE NO. 2:24-cv-00801-ODW-PVC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON CLAIM I [F.R.C.P. 56]

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Judge: Otis D. Wright II

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I. INTRODUCTION

It is fundamental that "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). S.B. 253 and 261 violate this First Amendment protection by compelling thousands of companies doing even minimal business in California to make controversial, opinion-laden statements on the hotly contested and politically salient issue of climate change. The laws will force every covered entity, as a consequence of merely entering the California market, to publicly state its opinions regarding the risks associated with climate change, post those opinions to its own website, and disclose an inexact, misleading calculation of the entity's greenhouse-gas emissions. Worse still, the laws do so with the express purpose of advancing the State's preferred view on emissions. The record makes clear that the State is attempting to force companies to make controversial disclosures that invite public opprobrium and thereby "encourage [companies] to take meaningful steps to reduce [greenhouse-gas] emissions." Plaintiffs' Statement of Uncontroverted Facts ("UF") No. 17.

Plaintiffs support policies that reduce greenhouse-gas emissions as much and as quickly as reasonably possible, consistent with the pace of innovation and the feasibility of implementing large-scale technical change. Nevertheless, the First Amendment does not permit California to impose speculative and—in the words of Governor Newsom—"likely infeasible" disclosures that burden speech rights and would have a substantial "financial impact," all in the hope that the scrutiny these disclosures invite will coerce companies to reduce their emissions. UF 22-23.

California's chosen path—designed to spark a public pressure campaign through compelled speech—violates the First Amendment. Because S.B. 253 and 261 compel the content of companies' speech, they "are 'presumptively invalid' and subject to strict scrutiny." *Ysursa v. Pocatello Education Ass'n*, 555 U.S. 353, 358 (2009). The laws fail that scrutiny. California cannot connect the required disclosures to any concrete,

direct, immediate, and legitimate interests, such as avoiding fraud. And the disclosure requirements are unusually burdensome, both in terms of cost and on free-speech rights. In fact, the mandate to report certain emissions is likely to cost some companies more than $1 million per year each, UF 29, which is why the SEC refused to adopt a similar requirement, *see* 89 Fed. Reg. 21,698, 21,736 (Mar. 28, 2024).

The Court should grant Plaintiffs' motion for summary judgment on Claim I of their Amended Complaint, declare S.B. 253 and 261 facially invalid under the First Amendment, and enjoin Defendants from implementing, applying, or taking any action whatsoever to enforce the laws.

II. BACKGROUND

A. California Seeks to Hold Corporations Accountable for Climate Change Through Senate Bills 253 and 261.

On October 7, 2023, Governor Newsom signed two bills, S.B. 253 and 261, requiring thousands of companies doing business in California to engage in burdensome, controversial, and opinion-laden speech regarding climate change—a hotly disputed political issue. The laws attempt, through compelled speech, to "create accountability for those that aren't" "doing their part to tackle the climate crisis." UF 1; *accord* UF 2, 4-6. "Californians," one legislator wrote, "have a right to know who" is "destroying [their] planet" by "causing" climate change. UF 15. And the laws, supporters have said, will "check the climate crisis" by letting the public "hold [companies] accountable," UF 19, for "emitting greenhouse gasses," UF 20; *accord* UF 7, 9-11.

As supporters of the bills explained, the purpose of these speech compulsions is to regulate conduct—to "encourage" companies to conform their behavior to the policy preferences of the State. UF 17. As one legislator explained, the goal of S.B. 253 is to compel companies to release information even though "they don't want to do the disclosure" because (in the State's view) "they think they're going to be embarrassed by it." UF 3.

B. The New Laws Impose Substantial Costs on Business.

Both laws compel a substantial amount of speech at significant expense, without a permissible compelling governmental interest. By the Governor's own reckoning, the legislation will have a negative "financial impact" on the more than 10,000 businesses covered, will impose deadlines that are "likely infeasible," and will deluge the public with unhelpful, "inconsistent" information. UF 22; *see also* UF 39-40.

1. S.B. 261 is expected to apply to more than 10,000 businesses. UF 48. It reaches any company with revenues exceeding $500 million that does any business in California. S.B. 261 § 2(a). Because there is no de minimis exception, if an entity exceeds the revenue threshold, it is subject to S.B. 261 even if it conducts an immaterial amount of business in the State and even if the business it conducts in California lacks any plausible connection to climate change.

The law requires any covered entity to publicly state its opinion regarding various "climate-related financial risk[s]" and to post that opinion to the entity's website. S.B. 261 § 2(b)(1)(A), (c)(1). Under the law, companies must opine on any "material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health." *Id.* § 2(a)(2). Companies must then provide a report discussing any "measures adopted to reduce and adapt to" any of the above climate-related risks. *Id.* § 2(b)(1)(A)(ii). And unless a company certifies that it has prepared an "equivalent" report for other reasons (e.g., it was required by federal law or the law of another "government entity"), the law requires companies to conform their reports to the "recommended framework" contained in the "Final Report of Recommendations of the Task Force on Climate-Related Financial Disclosures (June 2017)." *Id.* § 2(b)(1)(A), (4). That framework provides detailed instructions on the "types of information that should be disclosed or

considered" and how such information "should be presented." Hamburger Decl. Ex. 20 at 19, 51; *see also* UF 45.

2. S.B. 253 likewise applies to any company exceeding a certain revenue threshold (in this case, $1 billion) that does any business in California. S.B. 253 § 2(b)(2). The law is expected to directly cover more than 5,300 companies, UF 27, although its impact will extend to many more companies that do business with the covered entities, including small businesses and businesses with no operations in California.

S.B. 253 requires each covered entity to publicly state the "entity's" greenhouse-gas emissions. S.B. 253 § 2(c)(1). Each entity must "measure and report" three categories of greenhouse-gas emissions—Scope 1, Scope 2, and Scope 3—"in conformance with the Greenhouse Gas Protocol standards and guidance." *Id.* § 2(c)(1)(A)(ii). And although the law purports to require each company to report "its emissions," *id.*, "Scope 2" and "Scope 3" emissions are defined to include the emissions of *others*, including emissions from utility providers, upstream suppliers, and downstream customers. *Id.* § 2(c)(1). Thus, S.B. 253 requires a company to misleadingly represent that the emissions of other entities are its own. Moreover, by requiring reporting "in conformance with the Greenhouse Gas Protocol," the law requires companies to make reports that are misleadingly high, because the Greenhouse Gas Protocol does not factor in emissions that companies avoid or offset.

The reported emissions are not purely factual. Besides forcing a company to report others' emissions as its own, the proper calculation of a company's emissions is subject to significant debate. Even Governor Newsom expressed concerns about inconsistent reporting, stating "the reporting protocol specified" in S.B. 253 "could result in inconsistent reporting across businesses subject to the measure." UF 22. Emissions calculations necessarily turn on subjective judgments concerning the "advantages and disadvantages" of various approaches to estimation. UF 34. Even more so, the subjective estimations an entity reports as its Scope 3 emissions are those

of other reporting entities altogether, both downstream and upstream in the supply chain. UF 32.

The emissions estimations S.B. 253 requires are enormously burdensome. And S.B. 253's requirements go beyond what companies, including members of Plaintiffs, would otherwise do. *See, e.g.*, UF 62-65. The Scope-3 requirement alone could cost some companies more than $1 million per year. *See, e.g.*, UF 29. And as even the SEC acknowledges, the estimate in many instances may be inaccurate. *See* UF 30 (acknowledging that, "in many instances, direct measurement of [greenhouse-gas] emissions at the sources, which would provide the most accurate measurement, may not be possible").

The burden of estimating Scope 3 emissions flows up and down the supply chain. *See, e.g.*, UF 32. Small businesses nationwide, including family farms far outside of California, UF 66-85, will incur significant costs monitoring and reporting emissions to suppliers and customers swept within the law's reach.

C. Plaintiffs Bring This Suit to Enjoin the Laws' Unconstitutional Mandates.

S.B. 253 and 261 forces thousands of companies, including Plaintiffs' members, to engage in controversial speech that they do not wish to make, untethered to any commercial purpose or transaction. *E.g.*, UF 50-85. And they do all this for the explicit purpose of placing political and economic pressure on companies to "encourage" them to conform their behavior to the policy goals of the State. This violates the First Amendment, as well as the Supremacy Clause and the Constitution's prohibition on extraterritorial regulation by the States.

Plaintiffs sued to enjoin the implementation or enforcement of the laws on these grounds. Dkt. 28. Defendants moved to dismiss Plaintiffs' complaint in part, but did not seek to dismiss the First Amendment claim. Dkt. 38; *see also* Dkt. 43 (opposition).

Plaintiffs now move for summary judgment on their First Amendment claim (Claim I of the amended complaint). Dkt. 46.

III. LEGAL STANDARD

Under Federal Rule of Civil Procedure 56(a), the Court may grant summary judgment on a claim "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). "Once the moving party has met its initial burden, Rule 56[ ] requires the nonmoving party to go beyond the pleadings and identify facts which show a genuine issue for trial." *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531 (9th Cir. 2000). The State's burden here "is not a light one." *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010). In deciding whether something is a "genuine issue for trial," the Court looks to "the record taken as a whole." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

In the First Amendment context, a party bringing a facial challenge need show only that "a substantial number of [a law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473 (2010). Unlike facial challenges in other contexts, "facial attacks under the First Amendment are given more permissive consideration" because "the First Amendment needs breathing space." *Nat'l Rifle Ass'n of Am. v. City of L.A.*, 441 F. Supp. 3d 915, 927 (C.D. Cal. 2019); *see Stevens*, 559 U.S. at 473. Facial challenges to state statutes are routinely resolved on motions for summary judgment. *See, e.g.*, *IMDB.com, Inc. v. Becerra*, 2018 WL 979031 (N.D. Cal. Feb. 20, 2018), *aff'd*, 962 F.3d 1111 (9th Cir. 2020).

IV. ARGUMENT

The Court should permanently enjoin Defendants from enforcing or implementing S.B. 253 and 261, because they unconstitutionally compel speech. The laws serve no compelling government interest, concern a controversial matter of

vehement public debate that is not purely factual, and are nothing like the government-required disclosures regarding health, safety, or other matters that courts have upheld in other contexts.

A. S.B. 253 and 261 Fail Strict Scrutiny.

The First Amendment prohibits "abridging the freedom of speech." U.S. Const. amend. I. This freedom "includes both the right to speak freely and the right to refrain from speaking at all," *Wooley*, 430 U.S. at 714, and it "applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid," *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995). "For corporations as for individuals, the choice to speak includes within it the choice of what not to say." *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n*, 475 U.S. 1, 16 (1986) (plurality). Laws compelling speech are thus "presumptively unconstitutional" and routinely trigger—and fail—strict scrutiny. *NIFLA v. Becerra*, 585 U.S. 755, 766 (2018); *accord Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1283 (9th Cir. 2023) ("Although commandeering speech may seem expedient, it is seldom constitutionally permissible."). S.B. 253 and 261 violate the First Amendment by compelling thousands of companies to make controversial, opinion-laden statements on the hotly contested, politically salient issue of climate change.

1. Strict Scrutiny Applies.

By requiring companies to wade into a contentious political debate, S.B. 253 and 261 infringe on companies' freedom "to remain silent," triggering strict scrutiny twice over. *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023).

First, by "[m]andating speech that a speaker would not otherwise make," the laws "necessarily alter[ ] the content of the speech" and thus qualify as "content-based regulation[s]." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). The laws require companies to disclose an inexact, misleading calculation of greenhouse-gas emissions, and publicly pronounce subjective judgments about future risks—requiring, for example, determinations of which risks to their businesses are

"climate-related." The laws thereby force companies into public discussions about why they do or do not have certain climate-related policies or expertise. As "[c]ontent-based" rules, S.B. 253 and 261 "presumptively" trigger, and fail, "strict scrutiny." *NIFLA*, 585 U.S. at 766. As the Ninth Circuit has explained, a "government regulation compelling individuals to speak a particular message is a content-based regulation that is subject to strict scrutiny." *Green v. Miss United States of Am., LLC*, 52 F.4th 773, 791 (9th Cir. 2022) (quoting *Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749, 759 (9th Cir. 2019) (en banc) (Ikuta, J., concurring in the result)).

Second, by "compelling" opinion-based discussion of climate change, the laws unavoidably "burden" political speech. *Riley*, 487 U.S. at 798. "Laws that burden political speech" are independently "'subject to strict scrutiny.'" *Citizens United v. FEC*, 558 U.S. 310, 340 (2010). "[C]limate change" is a "sensitive political topic[ ]," and it is "undoubtedly [a] matter[ ] of profound 'value and concern to the public.'" *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 913-14 (2018). Such speech thus "'occupies the highest rung on the hierarchy of First Amendment values' and merits 'special protection.'" *Id.* at 914. The California Legislature itself recognizes that climate change is a high-profile political issue subject to robust debate among "[g]lobal economic and climate policy leaders," S.B. 261 § 1(b); UF 42, and that it raises many contested questions, including climate change's "long-term" consequences, *id.*, and corporations' responsibility to "plan for and adapt to" it, *id.* § 1(c); UF 43. The laws' sponsors, moreover, admit that the speech compelled here not only will fuel the policy debate—"provid[ing] . . . policymakers with" information they want to use in support of their policy goals, UF 16, but also will necessarily address the efficacy of "public policies to address climate change," UF 39. The First Amendment protects each person's right to speak, or not, on this crucial matter of public debate; the government can no more compel than prohibit speech on the subject of climate change or the government's response "to address" it. *Id.*

For both reasons, S.B. 253 and 261 warrant strict scrutiny, and are "presumptively unconstitutional." *NIFLA*, 585 U.S. at 766.

2. The State Cannot Show that the Laws Survive Strict Scrutiny.

a. Strict scrutiny places the burden on the government, not the plaintiff, to show that the legislation survives review, *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171 (2015)—and "it is the rare case" when the government can meet this burden, *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 444 (2015). S.B. 253 and 261 "may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *NIFLA*, 585 U.S. at 766. "These requirements are daunting," *Green*, 52 F.4th at 791, and the State here cannot meet the challenge.

First, the laws are not justified by a compelling state interest. The government cannot rest on "mere speculation or conjecture." *Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1176 (9th Cir. 2018). It must prove that a compelling problem exists. *See, e.g.*, *Edenfield v. Fane*, 507 U.S. 761, 770-771 (1993). But there is no evidence that the rule furthers *any* "compelling" government interest. *NIFLA*, 585 U.S. at 766.

There is no compelling government interest "simply" in providing "information." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 348 (1995). "[T]he interest at stake must be more than the satisfaction of mere consumer curiosity." *CTIA - The Wireless, Ass'n v. City of Berkeley*, 928 F.3d 832, 844 (9th Cir. 2019); *see also AMI v. USDA*, 760 F.3d 18, 31 (D.C. Cir. 2014) (Kavanaugh, J., concurring) ("[I]t is plainly not enough for the Government to say simply that is has a substantial interest in giving consumers information," because "[a]fter all, that would be true of any and all disclosure requirements."); *Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67, 73 (2d Cir. 1996) ("We are aware of no case in which consumer interest alone was sufficient[.]"). The State needs more than that—but, here, there is nothing more. The State does not, and cannot, connect the required disclosures to any concrete, direct, and immediate interest that any court has recognized, such as avoiding fraud or undisclosed materials risks. A "state may not restrict protected speech to prevent something that does not appear to occur."

Junior Sports Magazines Inc. v. Bonta, 80 F.4th 1109, 1117 (9th Cir. 2023). Yet here, the State has not shown "a *single* instance," *id.*, of anyone having been harmed by a lack of climate-related disclosures—the *only* supposed problem these laws seek to remedy. Thus, "California has not demonstrated any justification for . . . [the compelled speech] that is more than 'purely hypothetical.'" *NIFLA*, 585 U.S. at 776; *see also Italian Colors*, 878 F.3d at 1177 (striking down speech restriction where California "pointed to no evidence" that the cited dangers "were in fact real").

The State has made vague, generalized assertions of interest, but the "'First Amendment demands a more precise analysis' than the 'high level of generality' offered here." *Green*, 52 F.4th at 791 (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021)). The State has asserted, for example, that "California investors, consumers, and other stakeholders deserve transparency from companies regarding their greenhouse gas (GHG) emissions to inform their decisionmaking," and that "people, communities, and other stakeholders in California . . . have a right to know about the sources of carbon pollution . . . in order to make informed decisions." S.B. 253 § 1(e), (j); UF 24-25, 44. But the State cannot explain what decisionmaking the required disclosures will better inform, or how the *disclosures* would do that. Why, for example, would a consumer purchasing a pack of gum at a convenience store in California need to know the precise level of "sulphur hexafluoride," UF 33, emitted by employees of the same convenience store chain "commut[ing]" to work in Rhode Island, S.B. 253 § 2(b)(5)? Or whether the chain's future financial performance may "be affected by changes in water availability" in Vermont? UF 45.

At most, the State seems to believe that consumers could boycott companies with significant greenhouse-gas emissions, which could help the State "move towards a net-zero carbon economy" that would "protect the state and its residents," presumably by ending or mitigating climate change. S.B. 253 § 1(*l*); UF 26. But to credit such a claim would require "pil[ing] inference upon inference." *United States v. Lopez*, 514 U.S. 549, 567 (1995). In *NAM v. SEC*, the SEC had similarly, and unsuccessfully, argued that a

compelled "conflict free" disclosure might cause consumers to "boycott mineral suppliers having any connection to [a specific] region of Africa," which would "decrease the revenue of armed groups in the DRC and their loss of revenue [would] end or at least diminish the humanitarian crisis there." 800 F.3d 518, 525 (D.C. Cir. 2015) ("*NAM II*"). But there, as here, the "major problem with this idea" is that it "is entirely unproven and rests on pure speculation." *Id.* The State cites no evidence that consumers would change their purchasing habits based on a company's greenhouse-gas emissions, that any such consumer sentiment would result in material changes in companies' emissions, or that any such changes would have a material impact on climate change. As the State admits, climate change is a "global" phenomenon, UF 14, 37, and combatting it requires a "*global* reduction of [greenhouse-gas emissions]," UF 18 (emphasis added). There is no evidence that S.B. 253 and 261 would make any discernable difference in global emissions, and thus to global climate change.

Second, even if the State were able to show some justification for these requirements, it has made no attempt to tailor them to that justification. "To be narrowly drawn, a 'curtailment of free speech must be actually necessary to the solution.'" *Twitter, Inc. v. Garland*, 61 F.4th 686, 698 (9th Cir. 2023) (quoting *Brown v. Entm't. Merchs. Ass'n*, 564 U.S. 786, 799 (2011)). And "[i]f a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative." *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 813 (2000).

The disclosures here fail tailoring because they are far "broader than reasonably necessary." *NIFLA*, 585 U.S. at 776. For example, even if California were able to show that "investors" or "consumers" need certain climate-related information, *see* S.B. 261 § 1(c); S.B. 253 § 1(e); UF 43, 24, the disclosure requirements apply far beyond that supposed justification—to *any* "business entity" satisfying the revenue threshold, *e.g.*, S.B. 261 § 2(a)(4), whether it has outside investors or not, *see* UF 28, 49, or whether the compelled climate-related speech bears any relation to a product or service sold within the State. *Cf. Citizens United*, 558 U.S. at 362 (statute to protect dissenting shareholders

was overinclusive where it applied to nonprofit corporations and corporations with only single shareholders). The laws are overbroad, too, in that they require companies to speak about climate change even if they have low [greenhouse-gas]emissions, or face negligible financial risk from climate change.

California could try numerous alternative approaches that burden less speech. For instance, rather than compel individual companies to discuss subjective climate-related financial risks themselves, California could compile its own reports disclosing the "physical and transition risks," S.B. 261 § 2(a)(2), that companies in various industries face. *Cf. NAM v. SEC*, 748 F.3d 359, 372 (D.C. Cir. 2014) ("*NAM I*") (finding the SEC's compelled conflict-mineral disclosures to be unduly burdensome because "the government could compile its own list of products that it believes are affiliated with the Congo war"), *overruled on other grounds by AMI*, 760 F.3d 18. California could similarly provide its own estimates of companies' greenhouse gas emissions. Studies show that 90% of a company's greenhouse-gas emissions could be estimated with readily available information, such as industry, size, and earnings growth. *See, e.g.*, UF 35. "California could . . . post [such] information . . . on its own website," without "co-opt[ing]" the speech of anyone else. *Wheat Growers*, 85 F.4th at 1283. To survive a First Amendment challenge, California must "provide evidence" that these and other "intuitive alternatives to regulating speech would be . . . less effective" than its current approach. *NAM I*, 748 F.3d at 373. California has not made, and cannot make, that showing.

S.B. 253 and 261 also fail tailoring because they are incongruously burdensome. S.B. 253's requirement to report Scope 3 emissions alone will cost some companies more than $1 million per year, *see, e.g.*, UF 29; *see also* UF 62, which is so burdensome that the SEC refused to adopt a similar requirement, *see* 89 Fed. Reg. at 21,736. And given the fundamentally speculative nature of emissions reporting and climate risks, the laws, which require companies to go far beyond current practices, *see, e.g.*, UF 63-65, do nothing to better inform consumers or investors. The laws also reach far beyond

California's borders, burdening speech and threatening small businesses even when they have no direct business in California but merely deal with other companies that do, including thousands of family-farm members of AFBF and WGA. UF 66-85. Estimating emissions for these entities is unjustifiably burdensome.

b. Both laws also share characteristics that courts have recognized push "public disclosure" laws over the line into unconstitutional compelled speech.

First, there is no historical pedigree for disclosures of this type. *See NIFLA*, 585 U.S. at 767 (explaining that the government may not "impose content-based restrictions on speech without 'persuasive evidence . . . of a long (if heretofore unrecognized) tradition to that effect'"); *AMI*, 760 F.3d at 23 (explaining that determining whether an interest is "substantial" turns on the "historical pedigree" of that interest); *id.* at 31 (Kavanaugh, J., concurring) ("history and tradition are reliable guides" for "what interests qualify as sufficiently substantial to justify the infringement on the speaker's First Amendment autonomy").

Second, the laws by design will empower participants in the climate debate to use companies' disclosures about emissions, and about their plans to address them, as a basis to criticize the companies or to call for increased regulation or other concerted action, whether by regulators or by the companies themselves. *E.g.*, UF 1-5, 7, 9, 11, 13. Similar concerns underlaid the invalidation of the conflict mineral disclosure on First Amendment grounds, where the D.C. Circuit perceived that SEC disclosures would be used to "stigmatize" companies and attempt to "shape [their] behavior." *NAM II*, 800 F.3d at 530. By compelling companies to speak on California's terms, the government-mandated speech would likewise force companies into politically charged discussions about how they address certain climate-related risks, thereby "skew[ing] [the] public debate." *Id.* These effects "make[ ] the requirement[s] more constitutionally offensive." *Id.*

Third, vagueness concerns make the laws even more problematic. Vague laws "allow arbitrary and discriminatory enforcement," *O'Brien v. Welty*, 818 F.3d 920, 930

(9th Cir. 2016), and thus may have a significant chilling effect on speech. The definition of "climate-related financial risk," in particular, is so broad and vague—any "material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health," S.B. 261 § 2(a)(2)—that California could almost certainly find something to fault in the disclosure (or lack of disclosure) of *any* company the State disfavors. This creates a substantial risk that, among other things, companies whose climate-related practices do not conform to California's policy preferences will be subject to "arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000); *see also Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1029 (9th Cir. 2019) (striking down "reporting requirements" that were "triggered by *any* in-kind expenditure").

B. Less Stringent First Amendment Standards Have No Application and Cannot Save the Laws Anyway.

To avoid strict scrutiny, the State must carry "the burden of proving" that the expression compelled "falls outside of the category of [fully] protected speech." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2130 (2022); *accord Small Bus. Fin. Ass'n v. Hewlett*, 2023 WL 3551061, at *3 (C.D. Cal. Mar. 30, 2023). The State cannot make that showing and even if it could, there is no genuine dispute that S.B. 253 and 261 fail intermediate scrutiny anyway.

1. S.B. 253 and 261 Do Not Fall into Either Exception to Strict Scrutiny.

a. To start, the general test for commercial speech set forth in *Central Hudson* does not apply. "Under *Central Hudson*, the government may restrict or prohibit commercial speech that is neither misleading nor connected to unlawful activity, as long as the governmental interest in regulating the speech is substantial" and the regulation

"directly advance[s] the governmental interest asserted" without "be[ing] more extensive than is necessary to serve that interest." *CTIA*, 928 F.3d at 842 (citing *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980)). But as the Ninth Circuit has explained, "*Central Hudson*'s intermediate scrutiny test does not apply to *compelled*, as distinct from restricted or prohibited, commercial speech." *Id.* (emphasis added) (citing *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 631 (1985)). Because S.B. 253 and 261 compel speech, rather than restrict or prohibit it, *Central Hudson* is inapplicable.

S.B. 253 and 261 also do not regulate *commercial* speech. "Commercial speech is 'usually defined as speech that does no more than propose a commercial transaction.'" *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1115 (9th Cir. 2021) (quoting *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001)); *see also Central Hudson*, 447 U.S. at 562 ("[O]ur decisions have recognized 'the commonsense distinction between speech proposing a commercial transaction . . . and other varieties of speech."). But the speech compelled by S.B. 253 and 261 does not concern or relate to a commercial transaction. In fact, unlike every example of commercial speech of which Plaintiffs are aware, the speech here is not about any product or service a company offers at all. *Cf., e.g.*, *Central Hudson*, 447 U.S. at 561; *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983); *see also NIFLA*, 585 U.S. at 768 (explaining that a rule applicable to commercial speech concerns "the terms under which . . . services will be available"). Like other non-commercial speech, it does "not discuss the pricing, availability, or quality of any . . . product." *Townsend Farms Inc. v. Göknur Gida Maddeleri Enerji Imalat Ithalat Ihracat Ticaret Ve Sanayi A.S.*, 2016 WL 10570246, at *3 (C.D. Cal. Nov. 21, 2016). Instead, the compelled speech here addresses a company's greenhouse-gas emissions and climate-related financial risks *regardless* of whether those emissions or risks relate to a good or service provided in California. And while the disclosures are limited to businesses, not all speech that a business engages in constitutes commercial

speech. *See, e.g.*, *NIFLA*, 585 U.S. at 771; *Citizens United*, 558 U.S. at 340; *Townsend Farms*, 2016 WL 10570246, at *3.

b. For similar reasons, the limited exception to strict scrutiny recognized in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985), does not apply, either. In *Zauderer*, the Supreme Court held that the government could compel the disclosure of certain "information" where "the disclosure requirement governed only 'commercial advertising' and required the disclosure of 'purely factual and uncontroversial information.'" *NIFLA*, 585 U.S. at 768 (quoting *Zauderer*, 471 U.S. at 651); *see Am. Beverage*, 916 F.3d at 756 ("*Zauderer* provides the appropriate framework to analyze a First Amendment claim involving compelled commercial speech," and calls for an inquiry of whether the compelled speech is "purely factual" and "noncontroversial"). The speech at issue here, however, fails both of *Zauderer*'s prerequisites: It has no nexus to commercial advertising, nor is it purely factual and uncontroversial.

The lack of a nexus to commercial advertising is by itself sufficient to distinguish *Zauderer*, as "the Supreme Court has refused to apply *Zauderer* when the case before it did not involve voluntary commercial *advertising*." *NAM II*, 800 F.3d at 523 (emphasis added) (collecting cases). In *Hurley*, for example, the Court treated *Zauderer* as a decision that "at times" permits the government to "prescribe what shall be orthodox in commercial advertising." 515 U.S. at 573. But "*outside* that context," the Court stressed, "the speaker has the right to tailor [its] speech." *Id.* (emphasis added); *see also NIFLA*, 585 U.S. at 769 (declining application of *Zauderer* to a California compelled disclosure requirement that "in no way relate[d] to the services" provided); *Am. Beverage*, 916 F.3d at 755 ("*Zauderer* provides the proper analytical framework for considering required warnings on commercial products."). Here, the disclosure requirements have no connection to commercial advertising—or even, as discussed, to commercial speech more generally. The compelled disclosures apply to any company of a certain size that "does business in California," *e.g.*, S.B. 253 § 2(b)(2), whether that

company advertises goods or services in the State or not. In these circumstances, the State cannot reasonably argue that the legislation applies "[in]side [the] context" of "commercial advertising." *Hurley*, 515 U.S. at 573.

Even if the legislation were somehow limited to "commercial advertising," these government-mandated disclosures would be unconstitutional because they are not "purely factual and uncontroversial." *NIFLA*, 585 U.S. at 768-69. *Zauderer* applies only to mundane factual matters not subject to reasonable dispute, such as "country-of-origin labels" on imports, *AMI*, 760 F.3d at 20, or "whether a particular chemical is within any given product," *Entm't Software Ass'n v. Blagojevich*, 469 F.3d 641, 652 (7th Cir. 2006). The disclosure requirements here are much different. A discussion of a company's "climate-related financial risk[s]," S.B. 261 § 2(b)(1)(A)(i), is not the reporting of a rote, "pure" fact; it represents a company's compelled assessment of the "risk of harm to immediate and long-term financial outcomes" from a variety of events whose connection to climate change, if any, is subject to reasonable debate, *id.* § 2(a)(2). This exercise "inherently involve[s]" the company's subjective "judgment" about unverifiable "future-oriented" events, Hamburger Decl. Ex. 20 at 53; *see* UF 47, including future policy responses ("transition risks") and effects on global "financial markets," S.B. 261 § 2(a)(2), and requires the weighing and balancing of numerous "factors that may be indicative of potential financial implications for climate-related risks and opportunities," Hamburger Decl. Ex. 20 at 35; *see id.* (there is "high degree of uncertainty around the timing and magnitude of climate-related risks"); UF 46. "[U]ndertak[ing] [such] contextual analyses," and "weighing and balancing many factors," is "anything but the mere disclosure of factual information." *Book People, Inc. v. Wong*, 91 F.4th 318, 340 (5th Cir. 2024).

Even emissions disclosures are also more conjecture than fact, particularly with respect to Scope 3 emissions. Because the "gaps in emissions measurement methodologies . . . make reliable and accurate [emissions] estimates difficult," Hamburger Decl. Ex. 20 at 36; *see* UF 36, and require reporting entities to make many

different judgment calls, with competing "advantages and disadvantages," *e.g.*, UF 34, the resulting calculation is anything but "purely factual," *NIFLA*, 585 U.S. at 768. Governor Newsom himself has recognized that the laws may "result in inconsistent reporting across businesses." UF 22.

The compelled disclosures here will be misleading, which is the opposite of purely "factual." *Cal. Chamber of Commerce v. Council for Educ. & Research on Toxics*, 29 F.4th 468, 479 n.12 (9th Cir. 2022). S.B. 253 requires companies to report "*their* greenhouse gas (GHG) emissions" (or "*their* contributions to global GHG emissions"), § 1(e), (f) (emphases added); UF 24, but the law actually requires companies to claim as "their" own the emissions of *others*, including the emissions of "electricity" providers (Scope 2) and other "upstream and downstream" suppliers and customers who "the reporting entity does not own or directly control" (Scope 3), § 2(b)(4), (b)(5). It is not accurate—and certainly not "uncontroversial"—to saddle companies with "responsibility" (S.B. 253 § 1(f)) for emissions they did not make. And by forcing companies to speak "in conformance with the Greenhouse Gas Protocol standards and guidance," S.B. 253 § 2(c)(1)(A)(ii), the law further misleads by requiring them to report emissions numbers that do not factor in "avoided emissions or [greenhouse-gas] reductions from actions taken to compensate for or offset emissions," UF 31; *see also* UF 59. The State has no legitimate interest in misleadingly slanting the debate on this contested policy issue. *See Cal. Chamber*, 29 F.4th at 479; *Video Software Dealers Ass'n v. Schwarzenegger*, 556 F.3d 950, 967 (9th Cir. 2009), *aff'd sub nom. Brown*, 564 U.S. 786.

In all events, climate change is undisputedly a "'[ ]controversial' topic," *NIFLA*, 585 U.S. at 769—independently taking the compelled disclosures here out of *Zauderer*'s reach. *See Janus*, 585 U.S. at 913 ("climate change" is a "controversial subject[ ]"); *Wheat Growers*, 85 F.4th at 1278 (refusing to apply *Zauderer* when assessing "a compelled statement of a hotly disputed scientific finding"). Activist groups will use information from the disclosures to (in the words of one climate-change activist)

"embarrass" companies and try to "hold them to account." UF 21; *accord* UF 3-4. The entire purpose of the laws is to peg companies with responsibility for climate change, to assign blame for "increas[ing] the state's climate risk," S.B. 253 § 1(g), and to in effect "compel[ ]" them to "confess blood on [their] hands," an assignment of "moral responsibility" with which many "may disagree." *NAM II*, 800 F.3d at 530.

Climate-related financial disclosures are particularly "controversial." Whether a particular "wildfire[ ]," "sea level rise," "extreme weather event[ ]," or "extreme drought[ ]," S.B. 261 § 1(a), for example, has anything to do with climate change, or to what extent, is a matter of significant debate and controversy. "Given [the] robust disagreement by reputable scientific sources" on the degree to which climate change affects these events, the compelled disclosures on these issues are "controversial." *Cal. Chamber*, 29 F.4th at 478. The *Zauderer* exception to standard First Amendment scrutiny does not apply.

2. The Laws Fail Any Degree of First Amendment Scrutiny.

The laws would fail under *Central Hudson* or *Zauderer* even if those cases applied. As noted, *Central Hudson* "applies intermediate scrutiny, which requires the government to 'directly advance' a 'substantial' governmental interest.'" *Wheat Growers*, 85 F.4th at 1275. "To satisfy its burden, California must provide evidence establishing that the harms it recites are real and that its speech will *significantly* alleviate those harms." *Junior Sports Magazines*, 80 F.4th at 1117. And the "[r]estrictions must be narrowly drawn." *In re R.M.J.*, 455 U.S. 191, 203 (1982).

The Ninth Circuit has interpreted *Zauderer* to apply a standard similar to *Central Hudson*: "*Zauderer* requires that the compelled disclosure further some substantial—that is, more than trivial—governmental interest." *CTIA*, 928 F.3d at 844. "[N]othing in *Zauderer* . . . would allow a lesser interest to justify compelled commercial speech" as compared to *Central Hudson*; rather, "the interest at stake must be more than the satisfaction of mere consumer curiosity." *Id.* And even if such an interest is shown, "a

disclosure requirement cannot be unjustified or unduly burdensome." *NIFLA*, 585 U.S. at 776.

S.B. 253 and 261 flunk these standards because the laws are "'unjustified,'" "'unduly burdensome,'" and "'broader than reasonably necessary.'" *NIFLA*, 585 U.S. at 776. As discussed, California has not shown, and cannot show, that "the harm" it seeks "to remedy" (an alleged lack of information) is "more than 'purely hypothetical,'" *id.*, or that the required disclosures "will in fact alleviate [that harm] to a material degree," *Ibanez v. Fla. Dep't of Bus. & Prof'l Reg.*, 512 U.S. 136, 146 (1994). Nor, as explained, has the State "narrowly drawn" either measure. *R.M.J.*, 455 U.S.at 203. The laws are incredibly broad. They apply to any company over a certain revenue threshold that does business in California, regardless of whether that company has investors or whether climate change is likely to have a material impact on any product or service sold within the State. The State has no evidence that the laws will materially curb climate change. And it cannot articulate a legitimate interest in forcing discussion of out-of-state, or even out-of-country, climate-related information merely because a company engages in a single transaction within the State, wholly unconnected to climate-related risks. The speech and financial burdens of the laws, moreover, are substantial, as even the Governor recognizes they will have a negative "financial impact" on covered businesses. UF 41. S.B. 253 and 261 fail any level of First Amendment scrutiny.

C. The Court Should Enjoin Application, Implementation, or Enforcement of the Laws.

Because S.B. 253 and 261 violate the First Amendment, the Court should enjoin Defendants from applying, enforcing, or otherwise implementing those laws. "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Accordingly, Plaintiffs "will suffer irreparable harm if the [laws] take[ ] effect." *Am. Beverage*, 916 F.3d at 758. Further, "[t]he fact that [Plaintiffs] have raised serious First Amendment

questions compels a finding that . . . the balance of hardships tips sharply in [Plaintiffs'] favor." *Id.*

The Ninth Circuit has "consistently recognized the significant public interest in upholding First Amendment principles." *Id.* "Indeed, 'it is *always* in the public interest to prevent the violation of a party's constitutional rights.'" *Id.* (emphasis added). For these reasons, the Court should enjoin implementation, application, or enforcement of S.B. 253 or 261. *See, e.g.*, *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2389 (2021); *NIFLA*, 585 U.S. at 779; *Brown*, 564 U.S. at 790, 805; *Wheat Growers*, 85 F.4th at 1283; *Am. Beverage*, 916 F.3d at 758.

V. CONCLUSION

The Court should grant summary judgment on Count I of Plaintiffs' Amended Complaint, declare that both S.B. 253 and 261 violate the First Amendment to the U.S. Constitution, and enjoin Defendants from implementing, applying, or taking any action whatsoever to enforce the laws.

DATED: May 24, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs Chamber of Commerce of the United States of America, California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central Valley Business Federation and Western Growers Association, certifies that this brief contains 6,991 words, which complies with the word limit of L.R. 11-6.1.

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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA,

WESTERN DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AMERICAN FARM BUREAU FEDERATION, LOS ANGELES COUNTY BUSINESS FEDERATION, CENTRAL VALLEY BUSINESS FEDERATION, and WESTERN GROWERS ASSOCIATION,

Plaintiffs,

v.

LIANE M. RANDOLPH, in her official capacity as Chair of the California Air Resources Board, STEVEN S. CLIFF, in his official capacity as the Executive Officer of the California Air Resources Board, and ROBERT A. BONTA, in his official capacity as Attorney General of California.

Defendants.

CASE NO. 2:24-cv-00801-ODW-PVC

PLAINTIFFS' SEPARATE STATEMENT OF UNCONTROVERTED FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT ON CLAIM I

HEARING:
Date: September 9, 2024
Time: 1:30 PM
Location: Courtroom 5D
Judge: Otis D. Wright II

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Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56-1, Plaintiffs Chamber of Commerce of the United States of America, California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central Valley Business Federation, and Western Growers Association hereby submit the following Statement of Uncontroverted Facts in Support of Plaintiffs' Motion for Summary Judgment on Claim I.

Uncontroverted Fact	Supporting Evidence
1. Senator Scott Wiener, the author of S.B. 253, has stated that the purpose of S.B. 253 is to "support those companies doing their part to tackle the climate crisis and create accountability for those that aren't."	Declaration of Bradley J. Hamburger ("Hamburger Decl."), Ex. 1 (Statement of Senator Wiener, Sept. 17, 2023) at 1.
2. At a March 15, 2023 California Senate Environmental Quality Committee Hearing, Senator Wiener said the following regarding S.B. 253: "We know that there are large corporations that work very hard to be green to reduce their carbon footprint. There are others that do not. Unfortunately, among the ones that really don't do a great job lowering their carbon footprint, they will at times market themselves as green, what we call green-washing. Marketing	Hamburger Decl., Ex. 2 (Transcript of Senate Environmental Quality Committee Hearing, 01:53:42-02:30:34 (Cal. Mar. 15, 2023)) at pp 2:25-3:11.

yourself as green when you're not. We need to make sure that the public actually knows who's green and who isn't and to make sure we have that transparency. That's all this bill does, transparency. Information for the public."	
3. At a March 15, 2023 California Senate Environmental Quality Committee Hearing, Senator Wiener said the following regard S.B. 253: "[S]ome of the nervousness by large corporations is because they don't want to do the disclosure and they don't want to say what their carbon footprint is because they think they're going to be embarrassed by it. I'm just being totally blunt. I think that's what the nervousness is."	Hamburger Decl., Ex. 2 at p 30:1-7.
4. At a March 15, 2023 California Senate Environmental Quality Committee Hearing, Alvaro Sanchez from the Greenlining Institute said the following regarding S.B. 253: "In order to meet the challenges posed by climate change, it is imperative to recognize the right of communities to know how and if	Hamburger Decl., Ex. 2 at p 6:20-25.

corporations are working to reduce their emissions and to verify corporate claims of sustainable leadership."	
5. At an April 18, 2023 California Senate Judiciary Committee Hearing, Senator Wiener said the following regarding S.B. 253: The law "will require these large corporations doing business in California to, in a standardized way, report this data so the consumers, investors, and others can know which corporations are actually engaging in climate action and which aren't."	Hamburger Decl., Ex. 3 (Transcript of Senate Judiciary Committee Hearing, 04:58:07-05:32:29 (Cal. Apr. 18, 2023)) at pp 2:21-3:1.
6. At an April 18, 2023 California Senate Judiciary Committee Hearing, Catherine Atkin from Carbondale Accountable said the following regarding S.B. 253: "Many of our California companies are already leading and reporting, and SB 253 will level the playing field for our in-state companies by ensuring that public and private companies from outside of California disclose as well."	Hamburger Decl., Ex. 3 at p 5:11-16.

7. During a May 30, 2023 California Senate Floor Session debate on S.B. 253, Senator Wiener said that "SB 253 will allow for much-needed transparency," and that "SB 253 is the next step California must take in climate action to ensure that corporate actors in our state are aligned with our goals and are working as diligently as we need them to be. And we can't do that unless we have transparency."	Hamburger Decl., Ex. 4 (Transcript of Senate Floor Session Debate, 04:21:02-04:25:00 (Cal. May 30, 2023)) at p 3:2-3, 3:12-17.
8. During a July 10, 2023 California Assembly Natural Resources Committee Hearing, Melanie Morales from the Greenlining Institute said the following regarding S.B. 253: "Creating solutions to climate change for low-income communities and communities of color requires unlocking the potential of the private sector to drive meaningful change as well as holding businesses accountable for their impact on the climate."	Hamburger Decl., Ex. 5 (Transcript of Assembly Natural Resources Committee Hearing, 04:06:16-04:33:07 (Cal. July 10, 2023)) at p 6:13-18.
9. During a September 11, 2023 California Assembly Floor Session debate on S.B. 253, Assemblymember Christopher Ward said the following: "This data, along	Hamburger Decl., Ex. 6 (Transcript of Assembly Floor Session Debate,

with the accompanying report, will then be published on a public facing website for all Californians to see. Now, you can't regulate what you don't know, and as the State continues to curb its emissions across public sectors, we have a clear idea of what work is remaining and what action needs to be taken to continue progress. However, the same can't be said today for the private sector."	05:13:50-05:32:50 (Cal. Sept. 11, 2023)) at pp 2:18-3:2.
10. During a September 11, 2023 California Assembly Floor Session debate on S.B. 253, Assemblymember Ward said the following: "But to not even know, to not even understand what company X is producing in the terms of a million tons of carbon dioxide emissions in a year, that's a standard which would then challenge themselves to say, okay, if I'm at a million this year, how do I get down to 800,000 next year? How do I get down to 600,000 the year after that?"	Hamburger Decl., Ex. 6 at p 17:5-12.
11. During a September 11, 2023 California Assembly Floor Session debate on S.B. 253,	Hamburger Decl., Ex. 6 at p 18:16-21.

Assemblymember Ward said the following: "[I]n California, our policy should be to not look the other way when there are bad actors out there miscalculating what their impact is and not holding themselves accountable, not allowing the public to hold themselves accountable."	
12. During a September 11, 2023 California Assembly Floor Session debate on S.B. 253, Assemblymember Rick Zbur characterized S.B. 253 as follows: "[A] bill that the 'Los Angeles Times' described as 'groundbreaking legislation with the potential to reach far beyond California's borders by forcing some of the world's biggest businesses to be honest about the damage they might be causing.'"	Hamburger Decl., Ex. 6 at pp 5:22-6:2.
13. During a September 11, 2023 California Assembly Floor Session debate on S.B. 253, Assemblymember Rick Zbur characterized S.B. 253 as follows: "This bill standardizes the measurements of these emissions, makes them transparent, and gives	Hamburger Decl., Ex. 6 at p 7:11-15.

companies a huge incentive to take steps to reduce their entire life cycle carbon footprints."	
14. The California Senate Judiciary Committee April 14, 2023 analysis of S.B. 253 attributes climate change to "global warming."	Hamburger Decl., Ex. 7 (California Senate Judiciary Committee Analysis of S.B. 253, 2023-2024 Reg. Session (Apr. 14, 2023)) at 2.
15. The California Senate Judiciary Committee April 14, 2023, analysis of S.B. 253 states that greenhouse-gases "are destroying our planet" and that "Californians are watching their state get irrevocably harmed by climate change, and they have a right to know who is at the forefront of the pollution causing this."	Hamburger Decl., Ex. 7 at 7.
16. The California Senate Judiciary Committee April 14, 2023 analysis of S.B. 253 states that the "requirements" of S.B. 253 "will provide . . . policymakers with" information.	Hamburger Decl., Ex. 7 at 11.

17. The California Senate Judiciary Committee April 14, 2023 analysis of S.B. 253 states that "For companies, the knowledge that their emissions will be publicly available might encourage them to take meaningful steps to reduce their [greenhouse-gas] emissions."	Hamburger Decl., Ex. 7 at 12.
18. The California Senate Rules Committee September 11, 2023 analysis of S.B. 253 states that "Reducing scope 1 and 2 emissions by outsourcing polluting processes does not lead to a real, global reduction of GHG emissions and underscores the need for scope 3 reporting to capture the climate impacts of a business's full supply chain."	Hamburger Decl., Ex. 8 (California Senate Rules Committee Analysis of S.B. 253, 2023-2024 Reg. Session (Sept. 11, 2023)) at 5.
19. In a September 12, 2023, press release regarding S.B. 253, Clara Vondrich, senior policy council with Public Citizen's Climate Program, states: "For the nation to check the climate crisis, the first step is transparency on how our biggest emitters are navigating the energy transition: Are emissions going up, down, or staying the same? This legislation will let	Hamburger Decl., Ex. 9 (California Lawmakers Approve Groundbreaking Climate Disclosure Bill, Public Citizen (Sept. 12, 2023)) at 1.

the public and regulators track companies' decarbonization progress and hold them accountable to their climate promises."	
20. In an August 22, 2023 press release from Ceres, a nonprofit organization, Assemblymember Tasha Boerner states "SB 253 and 261 is a bold action that helps us combat the climate crisis by providing transparency and ensuring accountability for those emitting greenhouse gasses."	Hamburger Decl., Ex. 10 (Sacramento Rally to Unite for Climate Transparency & Passage of SB 253 & SB 261, CERES (Aug. 22, 2023)) at 4.
21. At a May 2022 shareholder meeting of Shell plc, demonstrators interrupted the proceedings, with one supporter stating: "We're here to embarrass them and hold them to account."	Hamburger Decl., Ex. 11 (Shareholders Back Shell's Climate Strategy After Raucous Meeting, Reuters (May 24, 2022)) at 4.
22. In his October 7, 2023 signing statement for S.B. 253, Governor Newsom states that "the implementation deadlines in this bill are likely infeasible, and the reporting protocol specified could result in inconsistent reporting across businesses	Hamburger Decl., Ex. 12 (Signing Statement of Governor Newsom for S.B. 253 (Oct. 7, 2023)) at 1.

subject to the measure. I am directing my Administration to work with the bill's author and the Legislature next year to address these issues."	
23. In his October 7, 2023, signing statement for S.B. 253, Governor Newsom states that "I am concerned about the overall financial impact of this bill on businesses, so I am instructing CARB to closely monitor the cost impact as it implements this new bill and to make recommendations to streamline the program."	Hamburger Decl., Ex. 12 at 1.
24. The California Legislature's legislative findings for S.B. 253 include the following: "California investors, consumers, and other stakeholders deserve transparency from companies regarding their greenhouse gas (GHG) emissions to inform their decisionmaking."	Hamburger Decl., Ex. 13 (Senate Bill No. 253), § 1(e).
25. The California Legislature's legislative findings for S.B. 253 include the following: "The people, communities, and other stakeholders in California,	Hamburger Decl., Ex. 13 (Senate Bill No. 253), § 1(j).

facing the existential threat of climate change, have a right to know about the sources of carbon pollution, as measured by the comprehensive GHG emissions data of those companies benefiting from doing business in the state, in order to make informed decisions."	
26. The California Legislature's legislative findings for S.B. 253 include the following: "Mandating annual, full-scope GHG emissions data reporting to the emissions reporting organization for all United States companies with total annual revenues in excess of $1,000,000,000 that do business in California, as well as ensuring public access to the data in a manner that is easily understandable and accessible, will inform investors, empower consumers, and activate companies to improve risk management in order to move towards a net-zero carbon economy and is a critical next step that California must take to protect the state and its residents."	Hamburger Decl., Ex. 13 (Senate Bill No. 253), § 1(*l*).
27. S.B. 253 will require approximately 5,300 U.S. businesses to report their emissions.	Hamburger Decl., Ex. 14 (California Assembly Floor

	Analysis of S.B. 253, 2023-2024 Reg. Session (Sept. 7, 2023)) at 2.
28. Of the approximately 5,300 business that will be required to report their emissions under S.B. 253, 73% are estimated to be private companies.	Hamburger Decl., Ex. 14 at 2.
29. The requirement to estimate and report Scope 3 emissions alone will cost some companies more than $1 million per year.	Hamburger Decl., Ex. 15 (Williams Companies, Inc., Comment Letter to Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (June 17, 2022)) at 14.
30. In an April 11, 2022, explanation related to its proposed rule that would require publicly traded companies to report climate-related information, the Securities and Exchange Commission "recognize[d]	Hamburger Decl., Ex. 16 (The Enhancement and Standardization of Climate-Related Disclosures for

that, in many instances, direct measurement of GHG emissions at the source, which would provide the most accurate measurement, may not be possible."	Investors, 87 Fed. Reg. 21,334 (proposed Apr. 11, 2022)) at 21,387.
31. The Greenhouse Gas Protocol, which S.B. 253 uses as the basis for its emissions-disclosure regime, states that Scope 3 emissions do not factor in "avoided emissions or [greenhouse-gas] reductions from actions taken to compensate for or offset emissions."	Hamburger Decl., Ex. 17 (Greenhouse Gas Protocol, Corporate Value Chain (Scope 3) Accounting and Reporting Standard (Sept. 2011)) at 6.
32. The Greenhouse Gas Protocol, which S.B. 253 uses as the basis for its emissions-disclosure regime, states that "Scope 3 includes all other indirect emissions that occur in a company's value chain. The 15 categories in scope 3 are intended to provide companies with a systematic framework to measure, manage, and reduce emissions across a corporate value chain."	Hamburger Decl., Ex. 18 ((Greenhouse Gas Protocol, Technical Guidance for Calculating Scope 3 Emissions (version 1.0) (2013)) at 6.
33. The Greenhouse Gas Protocol, which S.B. 253 uses as the basis for its emissions-disclosure regime,	Hamburger Decl., Ex. 18 at 14.

states that calculation of Scope 3 emissions includes a "require[ment] to calculate emissions of all the [greenhouse gases] required by the United Nations Framework Convention on Climate Change (UNFCCC)/Kyoto Protocol," including "carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF6) . . . [and] nitrogen trifluoride (NF3)."	
34. The Greenhouse Gas Protocol, which S.B. 253 uses as the basis for its emissions-disclosure regime, states that there are "advantages and disadvantages" for different methods of collecting information about greenhouse-gas emissions.	Hamburger Decl., Ex. 18 at 18.
35. Studies show that publicly available information about a company's operations, including industry membership, size, sales growth, earnings growth, property value, capital expenditures, and profitability, can explain 90% of greenhouse-gas emissions.	Hamburger Decl., Ex. 19 (Daniel J. Taylor, Comment Letter to Proposed Rule on The Enhancement and Standardization of Climate-

	Related Disclosures for Investors (June 16, 2022)) at 7.
36. There are gaps in emissions methodologies, making reliable and accurate calculations of emissions difficult.	Hamburger Decl., Ex. 20 (Task Force on Climate-Related Financial Disclosures, Recommendations of the Tasks Force on Climate-related Financial Disclosures (June 2017)) at 36; Hamburger Decl. Ex. 21 (Pilot Climate Scenario Analysis Exercise, Board of Governors of the Federal Reserve System (May 2024)) at 11.
37. The California Senate Rules Committee September 12, 2023 analysis of S.B. 261 states that "[u]ltimately, the reporting requirements contemplated	Hamburger Decl., Ex. 22 (California Senate Rules Committee Analysis of

under SB 261 will indeed create additional work for covered entities" and concern "how their future operations may affect—and be affected by—global climate change."	S.B. 261, 2023-2024 Reg. Session (Sept. 12 2023) at 5-6.
38. The California Senate Judiciary Committee April 10, 2023 analysis of S.B. 261 provides that the "information" required by S.B. 261 "is important to provide more transparency to policy makers, investors, and shareholders as it will result in improved decision making on where to invest private and public dollars."	Hamburger Decl., Ex. 23 (California Senate Judiciary Committee Analysis of S.B. 261, 2023-2024 Reg. Session (Apr. 14, 2023) at 5.
39. The California Assembly Committee on Natural Resources July 10, 2023 analysis of S.B. 261 provides that S.B. 261 "[d]efines 'climate-related financial risk' as risk that may include material financial risk posed by the effects of the changing climate, such as intense storms, rising sea levels, higher global temperatures, economic damages from carbon emissions, and other financial risks due to public policies to address climate change, shifting consumer attitudes, changing economics of traditional carbon-intense industries."	Hamburger Decl., Ex. 24 (California Assembly Natural Resources Committee Analysis of S.B. 261, 2023-2024 Reg. Session (July 7, 2023) at 1-2.

40. In his October 7, 2023, signing statement for S.B. 261, Governor Newsom states that "the implementation deadlines fall short in providing the California Air Resources Board (CARB) with sufficient time to adequately carry out the requirements in this bill. I am directing my Administration to work with the bill's author and the Legislature next year to address this issue."	Hamburger Decl., Ex. 25 (Signing Statement of Governor Newsom for S.B. 261 (Oct. 7, 2023)) at 1.
41. In his October 7, 2023, signing statement for S.B. 261, Governor Newsom states that "I am concerned about the overall financial impact of this bill on businesses, so I am instructing CARB to closely monitor the cost impacts as it implements this new bill and to make recommendations to streamline the program."	Hamburger Decl., Ex. 25 at 1.
42. The California Legislature's legislative findings for S.B. 261 include the following: "Global economic and climate policy leaders have conclusively established that the long-term strength of global and local economies will depend on their ability to	Hamburger Decl., Ex. 26 (Senate Bill No. 261), § 1(b)

withstand climate-related risks, including physical impacts, economic transitions, and policy and legal responses."	
43. The California Legislature's legislative findings for S.B. 261 include the following: "Failure of economic actors to adequately plan for and adapt to climate-related risks to their businesses and to the economy will result in significant harm to California, residents, and investors, in particular to financially vulnerable Californians who are employed by, live in communities reliant on, or have invested in or obtained financing from these institutions."	Hamburger Decl., Ex. 26 (Senate Bill No. 261), § 1(c).
44. The California Legislature's legislative findings for S.B. 261 include the following: "Though a precedent has been set to address climate risk to businesses, corporations, and financial institutions nationwide, current disclosure standards are voluntary, and thus inadequate, for meeting rapidly accelerating climate risks. In order to begin to address the climate crisis, consistent, higher level, and mandatory	Hamburger Decl., Ex. 26 (Senate Bill No. 261), § 1(j).

disclosures are needed from all major economic actors, and California has an opportunity to set mandatory and comprehensive risk disclosure requirements for public and private entities to ensure a sustainable, resilient, and prosperous future for our state."	
45. The June 2017 Recommendations of the Task Force on Climate-Related Financial Disclosures states that "Organizations' financial performance may also be affected by changes in water availability, sourcing, and quality; food security; and extreme temperature changes affecting organizations' premises, operations, supply chain, transport needs, and employee safety."	Hamburger Decl., Ex. 20 at 6.
46. There is high degree of uncertainty about the timing and magnitude of climate-related risks, and it is difficult to estimate how those risks impact company operations.	Hamburger Decl., Ex. 20 at 36; Hamburger Decl., Ex. 21 at 11.
47. A company's subjective judgment is required make disclosures about climate change risks for future company operations.	Hamburger Decl., Ex. 20 at 53.

48. Over 10,000 companies do business in California and have revenues of greater than $500,000,000 and thus are subject to S.B. 261.	Hamburger Decl., Ex. 22 at 5.
49. Of the more than 10,000 companies that are subject to S.B. 261, only 20% are publicly traded.	Hamburger Decl., Ex. 22 at 5.
50. U-Haul Holding Company ("UHHC"), a Nevada corporation, is a member of the United States Chamber of Commerce.	Declaration of Edward J. Shoen ("Shoen Decl.") ¶¶ 2-3.
51. UHHC has an annual total revenue exceeding $1 billion USD.	Shoen Decl. ¶ 3.
52. UHHC's subsidiary, U-Haul Co. of California ("UHCA"), does business in California.	Shoen Decl. ¶ 4.
53. If UHCA's activities in California are attributable to UHHC, then UHHC would be subject to the requirements of SB 253 and 261.	Shoen Decl. ¶ 5.
54. UHHC and its subsidiaries that do business throughout the United States and Canada make up the U-Haul System ("U-Haul").	Shoen Decl. ¶ 6.

55. Complying with SB 261 would require U-Haul to opine on climate-related risks.	Shoen Decl. ¶ 32.
56. Complying with SB 261 would require U-Haul to post opinions about climate risks to its website.	Shoen Decl. ¶ 32.
57. Complying with SB 253 would require U-Haul to calculate Scope 1, 2, and 3 emissions.	Shoen Decl. ¶ 13.
58. U-Haul will need to exercise subjective judgment in calculating greenhouse-gas emissions.	Shoen Decl. ¶¶ 11,17, 39.
59. Scope 1, 2, and 3 emissions alone do not accurately reflect U-Haul's total emissions because the calculation does not include Scope 4 emissions—i.e., those emissions that a company avoids that should be deducted from its Scope 1, 2, and 3 emission levels.	Shoen Decl. ¶¶ 28, 31.
60. U-Haul's commercial transactions with its customers do not involve disclosure of greenhouse-gas emissions or climate-related risks.	Shoen Decl. ¶ 36.
61. U-Haul's advertising does not highlight greenhouse-gas emissions or climate-related risks.	Shoen Decl. ¶ 36.

62. S.B. 253 and 261 are burdensome. For example, with respect to IT alone, U-Haul preliminarily estimates that complying with S.B. 261 would require approximately 30 additional dedicated team members to build and then support processes on an ongoing basis at an estimated cost exceeding $3,000,000 per year, which would rise as personnel costs increase over time. This cost estimate does not include costs outside of U-Haul's IT team and does not include costs for complying with S.B. 253, which would involve additional burdensome steps.	Shoen Decl. ¶¶ 12-15, 35, 39.
63. S.B. 261's requirement to discuss risks "including, but not limited to, risks to corporate operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health" would require investments of	Shoen Decl. ¶¶ 32-38.

significant time and money that U-Haul would not otherwise make.	
64. S.B. 253's requirement to calculate Scope 3 emissions would impose significant costs on U-Haul that U-Haul would not otherwise incur.	Shoen Decl. ¶¶ 15-27.
65. S.B. 253's requirement to calculate Scope 1 and 2 emissions would impose significant costs on U-Haul that U-Haul would not otherwise incur.	Shoen Decl. ¶¶ 13-14.
66. Triple H Farm is a family farm that raises beef cattle and markets them in local family-owned livestock auctions.	Declaration of Garrett Hawkins ("Hawkins Decl.") ¶¶ 1-2.
67. Triple H Farm is a member of the American Farm Bureau Federation.	Hawkins Decl. ¶ 1.
68. Triple H Farm does not operate in California or sell directly to California companies.	Hawkins Decl. ¶ 2.
69. Triple H Farm's cattle is in the supply chain of companies that will be required to report their Scope 3 emissions under S.B. 253.	Hawkins Decl. ¶¶ 2-3.

70. Companies that are subject to S.B. 253 and that purchase Triple H Farm's cattle will be required to include in their Scope 3 emissions reports information about Triple H Farm's emissions.	Hawkins Decl. ¶¶ 2-3.
71. Triple H Farm does not track its greenhouse-gas emissions and does not have policies, procedures, or systems in place to do so.	Hawkins Decl. ¶ 4.
72. Developing an emissions tracking process would be enormously burdensome for Triple H Farm. For example, day to day, Triple H Farm requires varying levels of water, fertilizer, and other inputs. Tracking the emissions associated with these and other inputs would be a significant undertaking, for which Triple H Farm's employees have no experience.	Hawkins Decl. ¶¶ 4-5.
73. As a family farm, Triple H Farm would be at a significant competitive disadvantage to large farms who could spread the fixed costs of tracking greenhouse-gas emissions over much greater output.	Hawkins Decl. ¶¶ 5-6.

74. By requiring the firms who purchase Triple H Farm's beef to report their emissions, S.B. 253 may, in turn, require Triple H Farm to state its emissions, including to purchasers. Triple H Farm would not otherwise make those statements.	Hawkins Decl. ¶ 7.
75. Triple H Farm does not believe that required emissions reports would be a fair representation of its emissions.	Hawkins Decl. ¶ 7.
76. White Farms and Cattle is a family farm, which has been in operation for over 100 years and raises wheat, cotton, hay, and cattle.	Declaration of Michael White ("White Decl.") ¶ 1.
77. White Farms and Cattle is a member of the American Farm Bureau Federation.	White Decl. ¶ 1.
78. White Farms and Cattle does not operate in California and does not sell directly to California companies.	White Decl. ¶ 2.
79. White Farms and Cattle's cattle is in the supply chain of companies that will be subject to Scope 3 reporting requirements under S.B. 253.	White Decl. ¶ 2.

80. Companies that are subject to S.B. 253 and that purchase White Farms and Cattle's cattle will be required to include in their Scope 3 emissions reports information about White Farms and Cattle's emissions.	White Decl. ¶ 3.
81. White Farms and Cattle does not currently track greenhouse-gas emissions, does not have experience tracking greenhouse-gas emissions, and does not have policies, procedures, or systems in place for tracking, recording, or reporting greenhouse-gas emissions.	White Decl. ¶ 4.
82. Developing the policies, procedures, or systems for tracking greenhouse-gas emissions would be enormously burdensome for White Farms and Cattle. For example, on any given day, White Farms and Cattle requires varying levels of water, fertilizer, and crop protection products. Tracking these fluctuations in the context of measuring greenhouse-gas emissions would be an enormous undertaking, for which White Farms and Cattle has no pre-existing procedures, policies, or systems in place.	White Decl. ¶¶ 4-5.

83. As a family farm, White Farms and Cattle would be at a significant competitive disadvantage to larger farms who could spread the fixed costs of tracking greenhouse-gas emissions over more units of output.	White Decl. ¶ 5.
84. If White Farms and Cattle's purchasers are required to report their Scope 3 emissions, White Farms and Cattle, in turn, could be required to make statements about its emissions.	White Decl. ¶ 7.
85. White Farms and Cattle does not believe the statements that it would be required to make about greenhouse-gas emissions would accurately portray White Farms and Cattle's emissions.	White Decl. ¶ 7.

DATED: May 24, 2024

Respectfully submitted,

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By: */s/ Bradley J. Hamburger*

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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA,

WESTERN DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AMERICAN FARM BUREAU FEDERATION, LOS ANGELES COUNTY BUSINESS FEDERATION, CENTRAL VALLEY BUSINESS FEDERATION, and WESTERN GROWERS ASSOCIATION,

Plaintiffs,

v.

LIANE M. RANDOLPH, in her official capacity as Chair of the California Air Resources Board, STEVEN S. CLIFF, in his official capacity as the Executive Officer of the California Air Resources Board, and ROBERT A. BONTA, in his official capacity as Attorney General of California.

Defendants.

CASE NO. 2:24-cv-00801-ODW-PVC

DECLARATION OF BRADLEY J. HAMBURGER IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON CLAIM I

HEARING:
Date: September 9, 2024
Time: 1:30 PM
Location: Courtroom 5D
Judge: Otis D. Wright II

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Attorneys for Plaintiff Chamber of Commerce of the United States of America

I, Bradley, J. Hamburger, declare as follows:

1. I am an attorney licensed to practice law before all courts of the State of California as well as the United States District Court for the Central District of California. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Plaintiffs Chamber of Commerce of the United States of America, California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central Valley Business Federation, and Western Growers Association in the above-titled action. I offer this declaration in support of Plaintiffs' Motion for Summary Judgment on Claim I. I have personal knowledge of the matters stated herein, and if asked to testify thereto, I could and would do so competently.

2. As required by Central District Rule 7-3, counsel for Plaintiffs and counsel for Defendants Liane M. Randolph, Steven S. Cliff, and Robert A. Bonta met and conferred regarding this motion on April 26, 2024.

3. Attached hereto as **Exhibit 1** is a true and correct copy of California State Senator Scott Wiener's September 17, 2023 statement entitled "Governor Newsom Announces Intention to Sign Senator Wiener's Landmark Climate Bill," available at https://web.archive.org/web/20240211114524/https://sd11.senate.ca.gov/news/20230917-governor-newsom-announces-intention-sign-senator-wiener%E2%80%99s-landmark-climate-bill.

4. Attached hereto as **Exhibit 2** is a true and correct copy of a transcript, along with a Certification by Sonya Ledanski Hyde of Veritext Legal Solutions, of the March 15, 2023 hearing of the California Senate Environmental Quality Committee from 01:53:42-2:30:34, available at https://www.senate.ca.gov/media/senate-environmental-quality-committee-20230315/video.

5. Attached hereto as **Exhibit 3** is a true and correct copy of a transcript, along with a Certification by Sonya Ledanski Hyde of Veritext Legal Solutions, of the April 18, 2023 hearing of the California Senate Judiciary Committee from 04:58:07-05:32:29,

available at https://www.senate.ca.gov/media/senate-judiciary-committee-20230418/video.

6. Attached hereto as **Exhibit 4** is a true and correct copy of a transcript, along with a Certification by Sonya Ledanski Hyde of Veritext Legal Solutions, of the May 30, 2023 California Senate Floor Session from 04:21:02-04:25:00, available at https://www.senate.ca.gov/media/senate-floor-session-20230530/video.

7. Attached hereto as **Exhibit 5** is a true and correct copy of a transcript, along with a Certification by Sonya Ledanski Hyde of Veritext Legal Solutions, of the July 10, 2023 hearing of the California Assembly Natural Resources Committee from 04:06:16-04:33:07, available at https://www.assembly.ca.gov/media/assembly-natural-resources-committee-20230710.

8. Attached hereto as **Exhibit 6** is a true and correct copy of a transcript, along with a Certification by Sonya Ledanski Hyde of Veritext Legal Solutions, of the September 11, 2023 California Assembly Floor Session from 05:13:50-05:32:50, available at https://www.assembly.ca.gov/media/assembly-floor-session-20230911.

9. Attached hereto as **Exhibit 7** is a true and correct copy of the California Senate Judiciary Committee's April 14, 2023 Analysis of S.B. 253, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB253.

10. Attached hereto as **Exhibit 8** is a true and correct copy of the California Senate Rules Committee's September 11, 2023 Analysis of S.B. 253, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB253.

11. Attached hereto as **Exhibit 9** is a true and correct copy of Public Citizen's September 12, 2023 press release entitled "California Lawmakers Approve Groundbreaking Climate Disclosure Bill," available at https://www.citizen.org/news/cali-carbon-disclosure/.

12. Attached hereto as **Exhibit 10** is a true and correct copy of CERES's August 22, 2023 announcement entitled "Sacramento Rally to Unite for Climate Transparency & Passage of SB 253 & SB 261," available at https://www.ceres.org/resources/news/sacramento-rally-to-unite-for-climate-transparency-passage-of-sb-253-sb-261.

13. Attached hereto as **Exhibit 11** is a true and correct copy of a May 24, 2022 Reuters article entitled "Shareholders back Shell's climate strategy after raucous meeting," available at https://www.reuters.com/business/environment/climate-protestors-disrupt-shell-shareholder-meeting-2022-05-24/.

14. Attached hereto as **Exhibit 12** is a true and correct copy of Governor Gavin Newsom's October 7, 2023 signing statement for S.B. 253, available at https://www.gov.ca.gov/wp-content/uploads/2023/10/SB-253-Signing.pdf.

15. Attached hereto as **Exhibit 13** is a true and correct copy of the session law version of California Senate Bill No. 253, available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB253.

16. Attached hereto as **Exhibit 14** is a true and correct copy of the California Assembly's September 7, 2023 Floor Analysis of S.B. 253, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB253.

17. Attached hereto as **Exhibit 15** is a true and correct copy of the Williams Companies, Inc.'s June 17, 2022 Comment Letter to the Securities and Exchange Commission's Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors, available at https://www.sec.gov/comments/s7-10-22/s71022-20132208-302726.pdf.

18. Attached hereto as **Exhibit 16** is a true and correct copy of the Securities and Exchange Commission's Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,223, available at https://www.govinfo.gov/content/pkg/FR-2022-04-11/pdf/2022-06342.pdf.

19. Attached hereto as **Exhibit 17** is a true and correct copy of the Greenhouse Gas Protocol's September 2011 Corporate Value Chain (Scope 3) Accounting and Reporting Standard, available at https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf.

20. Attached hereto as **Exhibit 18** is a true and correct copy of the Greenhouse Gas Protocol's 2013 Technical Guidance for Calculating Scope 3 Emissions (version 1.0), available at https://ghgprotocol.org/sites/default/files/standards/Scope3_Calculation_Guidance_0.pdf.

21. Attached hereto as **Exhibit 19** is a true and correct copy of Professor Daniel J. Taylor's June 16, 2022 Comment Letter to the Securities and Exchange Commission's Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors, available at https://www.sec.gov/comments/s7-10-22/s71022-20131668-302058.pdf.

22. Attached hereto as **Exhibit 20** is a true and correct copy of the June 2017 Recommendations of the Task Force on Climate-Related Financial Disclosures, available at https://assets.bbhub.io/company/sites/60/2021/10/FINAL-2017-TCFD-Report.pdf.

23. Attached hereto as **Exhibit 21** is a true and correct copy of the May 2024 Board of Governors of the Federal Reserve System's Pilot Climate Scenario Analysis Exercise, available at https://www.federalreserve.gov/publications/files/csa-exercise-summary-20240509.pdf.

24. Attached hereto as **Exhibit 22** is a true and correct copy of the California Senate Rules Committee's September 12, 2023 Analysis of S.B. 261, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB261.

25. Attached hereto as **Exhibit 23** is a true and correct copy of the California Senate Judiciary Committee's April 14, 2023 Analysis of S.B. 261, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB261.

26. Attached hereto as **Exhibit 24** is a true and correct copy of the California Assembly Natural Resources Committee's July 7, 2023 Analysis of S.B. 261, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB261.

27. Attached hereto as **Exhibit 25** is a true and correct copy of Governor Gavin Newsom's October 7, 2023 signing statement for S.B. 261, available at https://www.gov.ca.gov/wp-content/uploads/2023/10/SB-261-Signing.pdf.

28. Attached hereto as **Exhibit 26** is a true and correct copy of the session law version of California Senate Bill No. 261, available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB261.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Los Angeles, California, this 24th day of May, 2024.

By: */s/ Bradley J. Hamburger*

Bradley J. Hamburger, SBN 266916

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

I, Edward J. Shoen, hereby declare as follows:

1. I am over the age of eighteen, of sound mind, and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

2. I am the President and Chairman of U-Haul Holding Company, a Nevada corporation (NYSE- UHAL and UHAL.B) (hereinafter "UHHC").

3. UHHC is a member of the United States Chamber of Commerce and has annual total revenue exceeding $1 billion USD. UHHC does not do business in California.

4. UHHC's subsidiary, U-Haul Co. of California ("UHCA"), does business in California.

5. If UHCA's activities in California are attributable to UHHC such that UHHC "does business" in California as a "Reporting Entity" under SB 253 and "Covered Entity" under SB 261, then UHHC would be subject to the requirements of SB 253 and 261.

6. UHHC and its subsidiaries that do business throughout the United States and Canada make up the U-Haul System ("U-Haul").

7. U-Haul was started in 1945 by my mother and father as they returned from military service. U-Haul remains family managed today, and we view the

communities in which we operate as partners. U-Haul's community partnership model enables it to collaborate to reduce vehicle registrations and greenhouse gas ("GHG") emissions. U-Haul has pioneered starch-based packing peanuts, permeable ground cover, cardboard-box reuse, moving pads from discarded fabrics, reuse of obsolete buildings, improved fuel economy, and a long list of other award-winning sustainable business practices. *See* "News and Recognition," uhaul.com/Articles/Sustainability/News-And-Recognition-350/.

8. Small independent businesses that partner with U-Haul, also known as Dealers, are critical to U-Haul's shared-use model and its commitment to sustainability and the environment. The number of locations that U-Haul itself owns and operates is dwarfed by small independent businesses who contract with U-Haul to be in U-Haul's Dealer network. U-Haul itself owns and operates 2,299 locations. This is compared to 21,314 independent Dealers in the U-Haul network—5,506 of which are sole proprietorships. Such independent Dealers account for nearly half of U-Haul's entire rental business.

9. U-Haul's independent Dealers often do not solely (or even primarily) rent or sell U-Haul products. Instead, they take the form of a variety of small businesses for whom U-Haul rentals and sales are just a component of their business. To get a sense of the size and variety of businesses who are Dealers, Dealers include: self-storage facilities, auto repair garages, gas stations, convenience stores, used car

dealerships, hardware stores, tire shops, furniture stores, grocery stores, repair shops, car washes, auto parts stores, motels, hotels, restaurants, wireless phone stores, appliance stores, nurseries, and office supply stores—just to name a few.

10. Building the apparatus necessary to comply with the requirements of SB 253 and SB 261 will take years, not months.

11. To be in a position to begin tracking the required climate-related information, U-Haul will need to determine where the required information is located, both within its own operations and those of its independent Dealers; it will need to develop systems and processes to collect, store, and analyze this information; it will need to hire additional employees and retain external consultants; it will need to develop policies and internal controls to analyze the vast quantity of data collected; and it will need time to test its internal processes before they go live.

12. With respect to IT alone, U-Haul preliminarily estimates that this would require approximately 30 additional dedicated team members to build and then support these processes on an ongoing basis at an estimated cost exceeding $3,000,000 per year, which would rise as personnel costs increase over time. This cost estimate does not include costs outside of U-Haul's IT team.

Impact of SB 253

13. Complying with SB 253 would require U-Haul to calculate Scope 1, 2, and 3 emissions. To do so involves several burdensome steps. And these disclosures

would go far beyond U-Haul's disclosure requirements under existing state and federal law and regulations. Moreover, complying with SB 253 would require U-Haul to pay fees to support the State's implementation of its requirements.

14. Complying with SB 253 would require U-Haul to take several burdensome steps to calculate Scope 1 and Scope 2 emissions.

15. Complying with SB 253 would also require U-Haul to calculate Scope 3 emissions. This will necessitate several highly burdensome steps.

16. *First*, U-Haul would have to calculate those Scope 3 emissions. To do so, U-Haul would have to determine the emissions of various third parties upstream and downstream from its activities.

17. *Second*, because the emissions data for these activities is largely not in U-Haul's custody, it would have to rely on third parties to provide that data to calculate its Scope 3 emissions. U-Haul would have to ask its suppliers, including vehicle manufacturers, component part manufacturers, and raw material providers, to disaggregate the portion of their Scope 1 and Scope 2 emissions (assuming those suppliers calculate that data) attributable to the production of goods and services purchased by U-Haul. It would have to ask its third-party transportation providers, including freight companies, to disaggregate the portion of their vehicle emissions attributable to the transportation of U-Haul's inputs and outputs. And U-Haul would have to ask these third parties to provide not only their total Scope 1 and Scope 2

emissions attributable to U-Haul, but also break down those emissions by constituent gases. U-Haul would likely have to renegotiate its contracts with many of these various third parties to ensure that they collect and provide U-Haul with all this detailed data, which alone would require substantial employee hours and additional consultant and expert costs. To the extent information is unavailable from particular third parties in its value chain, U-Haul would have to estimate those parties' emissions as best it can using industry or national averages (assuming such data is available).

18. *Third*, U-Haul would have to create a system for recording and compiling all the third-party emissions data it receives. Such a system does not currently exist. U-Haul will have to develop such IT infrastructure, databases, and computer systems from scratch.

19. *Fourth*, once the data is recorded in the new system, management would have to review the raw data collected and compile it into the format required for disclosure to the emissions reporting organization.

20. *Fifth*, U-Haul would have to retain a third-party assurance provider to review its Scope 3 emissions and prepare an assurance engagement in compliance with the law's requirements.

21. U-Haul would have to begin building the systems and contracts to comply with this new regime immediately and at great cost and commitment of personnel hours.

22. Reporting Scope 3 emissions is enormously burdensome for an entity like U-Haul. SB 253's provisions requiring the calculation not only U-Haul's own emissions but also the emissions of entities that it does business with would be particularly burdensome on U-Haul in light of its dealer-network model.

23. As noted above, the number of locations that U-Haul itself owns and operates is dwarfed by small independent businesses who contract with U-Haul to be in U-Haul's Dealer network. Such independent Dealers account for nearly half of U-Haul's entire rental business. Dealers are critical to U-Haul's shared-use model and its commitment to sustainability and the environment.

24. Under SB 253, U-Haul would likely be responsible for reporting emissions and climate risks from all U-Haul Dealers. This is a practical impossibility. It does not reflect the reality of business models such as U-Haul's that rely on a network of independent small businesses as dealers.

25. The costs of obtaining this data from U-Haul's Dealer network would be immense. As an initial matter, many of these small businesses, which include things like individually owned convenience stores, are simply unable to collect this data. And if U-Haul included a requirement to collect this data in its contracts it

would risk losing a very substantial portion of its Dealer network. Dealers might cease working with U-Haul either because they are unable to collect the data required by the law, or because the cost of such collection would outweigh the revenue of the U-Haul portion of their businesses. As noted above, 5,506 of U-Haul's Dealer network are small sole proprietorships. Many, likely most, of these small businesses cannot collect, or it is financially infeasible for them to collect, the data required by the law. Compliance with SB 253 threatens the very essence of U-Haul's business model. And it strikes at the core of any dealership-based model based on small, independent dealers.

26. SB 253 is irreconcilable with business models such as U-Haul's. Each of U-Haul's Dealers does not solely rent or sell U-Haul products. Rather, they are multi-service businesses. A common example is a gas station. A gas station sells gas, it sells a variety of goods in the convenience store, it sometimes provides car washes and auto services. And it sometimes provides U-Haul truck rentals. It is impractical if not impossible for a sole-proprietor of such a business to separate out the U-Haul component of the business from the non-U-Haul components of the business. Under SB 253, only the U-Haul component of the gas station can be attributed to U-Haul. The business owner has no way of tracking climate impacts from the U-Haul rental side of the business as opposed to the emissions from selling gasoline or keeping the lights on in the store, nor would the business owner otherwise be required to do so

under the law for its own business purposes. The costs to calculate and provide the required data would likely have a negative impact on the business's bottom line and the small business owner's livelihood.

27. Given the large number of U-Haul Dealers, U-Haul is constantly entering into new contracts and renewing existing contracts. If U-Haul has to include contractual terms mandating the sharing of the information required by SB 253, it has to begin revising contracts and otherwise collecting this information immediately. How many Dealers U-Haul loses due to these requirements is not specifically calculable at this time, but U-Haul anticipates massive damage to its Dealer network from SB 253.

Failure to consider Scope 4 emissions

28. SB 253 only factors in Scopes 1, 2, and 3 emissions into its reporting requirement. It does not allow for consideration of Scope 4 emissions—i.e., those emissions that a company avoids that should be deducted from its Scope 1, 2, and 3 emission levels. Scope 4 emissions include things like emissions avoided through the purchase of efficient vehicles or practices that reduce mileage driven.

29. In light of its business model, U-Haul would have substantial Scope 4 emissions, which would go a long way in offsetting Scope 1, 2, and 3 emissions. For example, the nature of U-Haul's shared-use model reduces the total number of vehicles on the road and attendant GHG emissions. Additionally, U-Haul has

pioneered sustainable business technologies and practices such as starch-based packing peanuts, permeable ground cover, cardboard-box reuse, moving pads from discarded fabrics, reuse of obsolete buildings, improved fuel economy, and many other award-winning practices.

30. U-Haul's Dealer network in particular offsets massive amounts of emissions. By partnering with small independent businesses, U-Haul's Dealer network reduces GHG emissions by providing rental equipment within a short distance of its customers rather than requiring customers to travel long distances to rent and return rental equipment from U-Haul owned locations. This is especially true in rural areas. Placing equipment close to customers reduces miles driven and the attendant GHG emissions.

31. In short, U-Haul's Scope 4 emissions represent a positive in terms of GHG emissions. Yet S.B. 253 does not allow U-Haul to offset its Scope I, 2, and 3 emissions to present a more accurate measure of U-Haul's emissions footprint.

Impact of SB 261

32. Complying with SB 261 would require U-Haul to opine on climate-related risks and post its government-compelled opinion to its website.

33. Complying with SB 261 would force U-Haul to state its opinion on "material risk of harm to immediate and long-term financial outcomes due to physical and transition risks, including, but not limited to, risks to corporate

operations, provision of goods and services, supply chains, employee health and safety, capital and financial investments, institutional investments, financial standing of loan recipients and borrowers, shareholder value, consumer demand, and financial markets and economic health."

34. SB 261's requirements go far beyond U-Haul's disclosure requirements under existing state and federal law and regulations. Compliance with SB 261 would require U-Haul to pay fees to support the State's implementation of it. And compliance would force U-Haul to place its climate-related risk report on its website.

35. SB 261's requirements would force U-Haul to expend considerable time and resources.

36. The content that SB 261 would require U-Haul to post on its website also has nothing to do with U-Haul's commercial transactions. And U-Haul does not disclose GHG emissions in its commercial interactions with customers. Moreover, U-Haul's advertising does not highlight GHG emissions or climate-related risks.

37. U-Haul considers the information that SB 261 requires to be controversial and disagrees with including this type of information on its public website—as indicated by such opinions' absence on its website.

38. Complying with SB 261 thus would force U-Haul to convey to the public a philosophy of environmental sustainability that it does not believe and is incompatible with the philosophy U-Haul currently expresses in the public square.

Conclusion

39. Complying with these new laws would require U-Haul to make disclosures that, while based on a good faith effort and great expense, will be based on high-priced guesswork (assumptions and prognostications multiplied by industry-wide average emissions factors or average emission factors for energy generation) which ultimately yield inaccurate data compared to reality. Due to the inherent inaccuracies in calculating the data required for reporting, disclosures will require updates as methodologies and calculations become more advanced and accurate. These inaccuracies and updates will undoubtedly lead to litigation. And the laws do not factor in the emissions that U-Haul's business model and innovative business practices prevent.

Pursuant to 28 U.S.C. §1746, I, Edward J. Shoen, declare under penalty of perjury that the foregoing is true and correct. EXECUTED on this 24th day of May, 2024.

Edward J. Shoen

Edward J. Shoen
U-Haul Holding Company
5555 Kietzke Lane, Ste. 100
Reno, Nevada 89511

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA,

WESTERN DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AMERICAN FARM BUREAU FEDERATION, LOS ANGELES COUNTY BUSINESS FEDERATION, CENTRAL VALLEY BUSINESS FEDERATION, and WESTERN GROWERS ASSOCIATION,

Plaintiffs,

v.

LIANE M. RANDOLPH, in her official capacity as Chair of the California Air Resources Board, STEVEN S. CLIFF, in his official capacity as the Executive Officer of the California Air Resources Board, and ROBERT A. BONTA, in his official capacity as Attorney General of California.

Defendants.

CASE NO. 2:24-cv-00801-ODW-PVC

DECLARATION OF GARRETT HAWKINS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON CLAIM I

1. My name is Garrett Hawkins. I am a fifth-generation farmer based in Appleton City, Missouri. I operate Triple H Farm with my father and brother. I am also the President of the Missouri Farm Bureau Federation and a member of the American Farm Bureau Federation.

2. Triple H Farm raises beef cattle and markets them in local family-owned livestock auctions. I do not operate in California or sell directly to California companies. But my cattle are in the supply chain of companies that will be required to report their Scope 3 emissions under S.B. 253. I understand that my cattle are ultimately bought by meat packers, including Tyson, JBS, Cargill, and Marfrig, who, I understand, purchase about 85% of U.S. beef. I understand that beef purchased by Tyson, JBS, Cargill, and Marfrig is sold in California and that each company has revenue exceeding $1 billion. Accordingly, I understand that these companies are subject to reporting requirements, including Scope 3 emissions reporting requirements, under S.B. 253.

3. S.B. 253 defines "Scope 3" emissions as "indirect upstream and downstream greenhouse gas emissions, other than scope 2 emissions, from sources that the reporting entity does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products." I understand that I am an "upstream" source for Tyson, JBS, Cargill, and Marfrig, among others. As a result, these companies will be required to include in their Scope 3 emissions reports information about my emissions.

4. However, I do not track my emissions. And I do not have policies, procedures, or systems in place to do so. Developing an emissions tracking process would be enormously burdensome. For example, day to day, my farm requires varying levels of water, fertilizer, and other inputs. Tracking the emissions associated with these and other inputs would be a significant undertaking, for which neither myself nor any of my employees have experience.

5. As a family farm, I would be at a significant competitive disadvantage to large farms who could spread the fixed costs of tracking greenhouse-gas emissions over

much greater output. As a result of this competitive dynamic, only large farm operations are likely to remain competitively viable.

6. In addition, unlike large farms, I face a significant risk that anomalous natural events, over which I have no control, will cause artificial spikes in my greenhouse-gas emissions per unit of output. For example, suppose a natural event, such as drought, disease, or flooding, were to destroy part of my livestock. That would spread my total greenhouse-gas emissions over a smaller output, which would increase my per-unit emissions. In these circumstances, buyers who need to report their Scope 3 emissions, which would include my emissions, could refuse to purchase my livestock or demand a steep discount. Larger farms with much higher output are much less likely to experience significant variation in their greenhouse-gas emissions per unit of output, another disadvantage S.B. 253 will impose on family farms like mine.

7. Finally, by requiring the firms who purchase my beef to report their emissions, S.B. 253 may, in turn, require me to state my emissions, including to purchasers. I would not otherwise make these statements. And I do not believe that required emissions reports would be a fair representation of my emissions. For instance, I do not believe that I bear responsibility for potential spikes in my per-unit emissions due to anomalous weather events.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 23 day of May 2024 at Jefferson City, Missouri.

Garrett Hawkins

Garrett Hawkins

On behalf of Triple H Farm

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA,

WESTERN DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AMERICAN FARM BUREAU FEDERATION, LOS ANGELES COUNTY BUSINESS FEDERATION, CENTRAL VALLEY BUSINESS FEDERATION, and WESTERN GROWERS ASSOCIATION,

Plaintiffs,

v.

LIANE M. RANDOLPH, in her official capacity as Chair of the California Air Resources Board, STEVEN S. CLIFF, in his official capacity as the Executive Officer of the California Air Resources Board, and ROBERT A. BONTA, in his official capacity as Attorney General of California.

Defendants.

CASE NO. 2:24-cv-00801-ODW-PVC

DECLARATION OF MICHAEL WHITE IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON CLAIM I

1. My name is Michael White, and I am a fourth-generation farmer based in Wilbarger County, Texas. My brother, nephew, and I raise wheat, cotton, hay, and cattle on our family farm, White Farms and Cattle, which has been in operation for over 100 years. I am a member of the American Farm Bureau Federation.

2. Although I do not operate in California and do not sell directly to California companies, my cattle is in the supply chain of companies that will be subject to Scope 3 reporting requirements under S.B. 253. I retain ownership of my cattle until they are sold to packers (slaughter-houses), who, in turn, sell beef to grocery stores. For example, I understand that Tyson Foods has purchased my cattle and, in turn, has sold beef to California customers, including grocery stores. I understand that Tyson Foods and many of their customers have revenue exceeding $1 billion and conduct business in California, and are accordingly subject to S.B. 253.

3. I further understand that S.B. 253 will require companies subject to the law to report their "Scope 3 emissions," which includes "indirect upstream and downstream greenhouse gas emissions, other than scope 2 emissions, from sources that the reporting entity does not own or directly control and may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products." I am an "upstream" source for Tyson Foods. Accordingly, Tyson Foods will be required to include in their emissions reports under S.B. 253 information about my emissions. These businesses would thus likely require me to report to them, and verify, information about my greenhouse-gas emissions.

4. I am concerned, however, that the procedures, documentation, and recordkeeping required to supply and verify information about my greenhouse-gas emissions to purchasers of my cattle will be incredibly onerous and burdensome for my operation and farms like mine. For example, I do not currently track my greenhouse-gas emissions. I do not have experience tracking greenhouse-gas emissions. And I do not have any policies, procedures, or systems in place for tracking, recording, or reporting greenhouse-gas emissions. Developing these policies, procedures, or systems

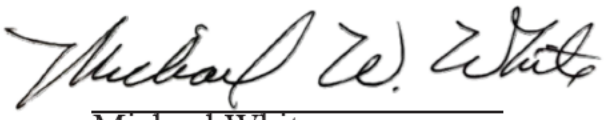
would be enormously burdensome. A farm is not a power plant where a known quantity of fuel produces a known quantity of energy. To the contrary, on any given day, my farm requires varying levels of water, fertilizer, and crop protection products. Tracking these fluctuations in the context of measuring greenhouse-gas emissions would be an enormous undertaking, for which my farm has no pre-existing procedures, policies, or systems in place.

5. And as a family farm, I would be at a significant competitive disadvantage to larger farms who could spread the fixed costs of tracking greenhouse-gas emissions over more units of output. As a result of this competitive dynamic, only very large farm operations are likely to remain competitively viable.

6. Further, I face significant risk that anomalous weather events or other acts of nature can cause the greenhouse-gas emissions I will need to report to my purchasers to spike per unit of output, through no fault of my own, endangering my business. For example, if drought or disease were to destroy part of my livestock, my greenhouse-gas emissions *per unit of output* would substantially increase, which could cause purchasers required to report their Scope 3 emissions (which would include my emissions) to refuse to purchase my livestock (or demand a steep discount). Again, as a result of this risk and the competitive dynamics of the market, only the largest farms, who are able to spread costs and emissions over much larger volumes of output, are likely to remain competitively viable.

7. In addition, in connection with my business, I make statements to potential purchasers and others concerning the quality and other characteristics of my livestock. If my purchasers are required to report their Scope 3 emissions, I, in turn, could be required to make statements about my emissions. However, I do not believe the statements that I would be required to make would accurately portray my emissions. For instance, I do not believe that I bear responsibility for potential spikes in my emissions per unit of output attributable to anomalous weather or other natural events, as discussed above.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of May 2024 at Vernon, Texas.



Michael White

On behalf of White Farms and Cattle

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA,

WESTERN DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AMERICAN FARM BUREAU FEDERATION, LOS ANGELES COUNTY BUSINESS FEDERATION, CENTRAL VALLEY BUSINESS FEDERATION, and WESTERN GROWERS ASSOCIATION,

Plaintiffs,

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LIANE M. RANDOLPH, in her official capacity as Chair of the California Air Resources Board, STEVEN S. CLIFF, in his official capacity as the Executive Officer of the California Air Resources Board, and ROBERT A. BONTA, in his official capacity as Attorney General of California.

Defendants.

CASE NO. 2:24-cv-00801-ODW-PVC

[PROPOSED] ORDER

Judge: Honorable Otis D. Wright II, U.S. District Judge

[PROPOSED] ORDER

Having considered Plaintiffs Chamber of Commerce of the United States of America, California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central Valley Business Federation, and Western Growers Association's Motion for Summary Judgment on Claim I (Violation of the First Amendment Under 42 U.S.C. § 1983) and the evidence submitted in support thereof, and Defendants Liane M. Randolph, Steven S. Cliff, and Robert A. Bonta's opposition and the evidence submitted in support thereof, and based on the undisputed admissible evidence, drawing all reasonable inferences in Defendants' favor:

1. The Court hereby DECLARES that S.B. 253, Cal. Health & Safety Code § 38532, and S.B. 261, Cal. Health & Safety Code § 38533, violate the First Amendment to the United States Constitution,

2. The Court hereby ORDERS that Plaintiffs' Motion for Summary Judgment on Claim I is GRANTED; and, having granted Plaintiffs' Motion for Summary Judgment on Claim I,

3. The Court hereby FURTHER ORDERS that Defendants are permanently enjoined from implementing, applying, or taking any action whatsoever to enforce S.B. 253, Cal. Health & Safety Code § 38532, and S.B. 261, Cal. Health & Safety Code § 38533, against any entity subject to either law, and

4. The Court hereby FURTHER ORDERS that this permanent injunction shall remain in full force and effect until further order of the Court.

5. Plaintiffs may seek an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and all other applicable statutes by subsequent motion.

IT IS SO ORDERED.

Date: _____, 202___

Honorable Otis D. Wright II
United States District Judge