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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

NATURAL RESOURCES DEFENSE
COUNCIL, INC., SAN PEDRO AND
PENINSULA HOMEOWNERS
COALITION, SAN PEDRO PENINSULA
HOMEOWNERS UNITED, INC., EAST
YARD COMMUNITIES FOR
ENVIRONMENTAL JUSTICE, and
COALITION FOR CLEAN AIR, INC., non-
profit corporations

Petitioners/Plaintiffs,

v.

CITY OF LOS ANGELES, PORT OF LOS
ANGELES, and LOS ANGELES BOARD OF
HARBOR COMMISSIONERS, public
entities

Respondents/Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By E. SDCourt ,Deputy Clerk

Case No. 37-2021-00023385-CU-TT-CTL

Assigned For All Purposes To:
Hon. Timothy Taylor
Department: 2004

**PETITIONERS' AND INTERVENORS'
NOTICE OF MOTION AND MOTION
TO ENFORCE UNDER § CCP 1097;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: May 2, 2025
Time: 9:00 a.m.

Actions Filed: September 16, 2020
Trial Date: Not Set

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CHINA SHIPPING (NORTH AMERICA) HOLDING CO., LTD, a Delaware corporation; CHINA COSCO SHIPPING CORPORATION LIMITED, a corporation; COSCO SHIPPING (NORTH AMERICA), INC., a California corporation; WEST BASIN CONTAINER TERMINAL LLC, a Delaware corporation; and DOES 1 THROUGH 20, inclusive

Real Parties in Interest.

AND CONSOLIDATED CASE.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 5

NOTICE OF MOTION AND MOTION 6

MEMORANDUM OF POINTS AND AUTHORITIES..... 8

INTRODUCTION..... 8

PROCEDURAL BACKGROUND 9

ARGUMENT 9

 I. The Court has authority to make any orders necessary and proper for the complete enforcement of the Writ..... 9

 II. The Writ requires detailed status reports showing compliance with AQ-9 10

 III. Respondents have disobeyed the Writ by failing to prove compliance with AQ-9..... 11

 A. Research 15

 B. No exception cited 16

 C. Vessel incident event..... 17

 D. Commissioning 18

 E. Emergency and safety events 19

 IV. The Court should order Respondents to comply with the Writ by entering the Proposed Stipulated Second Amended Judgment..... 20

CONCLUSION..... 22

1
2
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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT: On May 2, 2025, at 9 a.m., or as soon thereafter as the matter can be heard, in Department 2004 of the above-referenced court, located at 1100 Union Street, San Diego, California 92101, Petitioners/Plaintiffs Natural Resources Defense Council, San Pedro and Peninsula Homeowners Coalition, San Pedro Peninsula Homeowners United, East Yard Communities for Environmental Justice, and Coalition for Clean Air (collectively, “Community Petitioners”); Petitioner South Coast Air Quality Management District (“South Coast AQMD”); Petitioner-Intervenor the California Air Resources Board (“CARB”); and Petitioner-Intervenor People of the State of California *ex rel.* Rob Bonta, Attorney General (collectively, “Petitioners and Intervenors”) will bring this motion to enforce the writ in this case under Code of Civil Procedure section 1097.

This motion is based on the accompanying memorandum in support of this motion, the declaration of Jaclyn H. Prange, the administrative record, and all other documentary evidence as may be presented to the Court at the hearing.

Date: April 1, 2025

Respectfully submitted,

NATURAL RESOURCES DEFENSE COUNCIL, INC.



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SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT



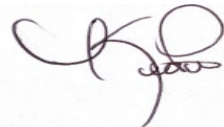
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Respondents have failed to comply with the writ entered in this case on May 24, 2024 (the
4 “Writ”). That Writ requires Respondents to implement certain environmental mitigation measures
5 and to report the status of that implementation to the Court every six months. In particular, the
6 Writ requires Respondents to implement AQ-9, a mitigation measure from the 2008
7 Environmental Impact Report (“EIR”) for the China Shipping terminal, which the Court
8 reinstated pursuant to this litigation. AQ-9 requires all China Shipping ships to use Alternative
9 Maritime Power (“AMP”) while at berth and also requires other ships to use AMP unless certain
10 exceptions apply. In addition to implementing AQ-9, Respondents must also report compliance
11 with the measure in mitigation status reports, which are filed with the Court and posted publicly.

12 Rather than report compliance (or lack thereof) under the terms of AQ-9, as required by
13 the Writ, Respondents have instead reported numerous exceptions to the at-berth emissions
14 control requirement that appears in a separate California Air Resources Board (“CARB”)
15 regulation. While Respondents must abide by that regulation, they must also comply with the
16 Writ in this case, and in turn, AQ-9. Indeed, a key point of this CEQA litigation was to require
17 additional mitigation that goes beyond existing regulations in order to mitigate the significant
18 impacts from the project. The longstanding failure of Respondents to fully implement this now-
19 Court-ordered mitigation measure—which Respondents originally adopted in 2008—has caused
20 continuing toxic emissions in the already heavily polluted communities next to the terminal.

21 Therefore, Petitioners and Intervenors bring this motion to enforce the Writ under Code of
22 Civil Procedure section 1097. Section 1097 allows the Court to “make any orders necessary and
23 proper for the complete enforcement of the writ.” The parties in this case previously negotiated a
24 stipulated amended judgment that addressed the issues raised in this motion, but at the March 7,
25 2025, status conference, Respondents withdrew their agreement to that stipulation. Petitioners and
26 Intervenors respectfully request that, pursuant to section 1097, the Court enter that amended
27 judgment and also request that the Court order Respondents to re-file past mitigation status
28 reports in compliance with that judgment.

1 **PROCEDURAL BACKGROUND**

2 This case was filed on September 16, 2020. On May 24, 2024, the Court issued an
3 amended judgment and an amended peremptory writ of mandate (“Writ”). Petitioners personally
4 served the Writ on Respondents on May 31, 2024.

5 Since the entry of the Writ, Respondents have filed two mitigation status reports pursuant
6 to the Writ: the first on July 30, 2024, and the second on January 30, 2025. Petitioners and
7 Intervenors filed a response to the first report as allowed under the Writ. They file this motion in
8 lieu of a response to the second report.

9 **ARGUMENT**

10 **I. The Court has authority to make any orders necessary and proper for the complete**
11 **enforcement of the Writ**

12 Code of Civil Procedure section 1097 provides that if a respondent “has, without just
13 excuse, refused or neglected to obey the writ, the court may, upon motion, impose a fine not
14 exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may
15 order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and
16 proper for the complete enforcement of the writ.” (Code Civ. Proc., § 1097.)

17 As the courts have clarified, section 1097 “authorizes three methods by which a court may
18 enforce a peremptory writ of mandate: (1) a court may impose a fine not exceeding \$1,000; (2) a
19 court may order the disobedient party to be imprisoned until the writ is obeyed; and (3) a court
20 may make any order necessary and proper to enforce the writ.” (*King v. Woods* (1983) 144
21 Cal.App.3d 571, 577–78.) Furthermore, because “these methods vary in their severity, different
22 levels of disobedience must be shown to justify their use.” (*Id.* at p. 578.)

23 The first method of enforcement—a fine—“has been likened to a contempt penalty,” and
24 may not be imposed unless disobedience is “without just excuse.” (*Ibid.*) For the second method
25 of enforcement—imprisonment—a “higher level of disobedience must be found.” (*Id.* at p. 579.)
26 For that, the “court must find intentional refusal to obey the writ.” (*Ibid.*) “The third method,
27 allowing the court to order compliance, is the least severe and thus only requires that a court find
28

1 that such an order is necessary and proper under the circumstances.” (*Id.* at p. 578.) This power
2 flows from a court’s inherent power in issuing the writ. (*Ibid.*; *Prof. Engineers in Cal.*
3 *Government v. State Personnel Bd.* (1980) 114 Cal.App.3d 101, 109) [It is a “well settled rule that
4 the court which issues a writ of mandate retains continuing jurisdiction to make any orders
5 necessary and proper for the complete enforcement of the writ.”].) “Though grammatically the
6 statute seems to require a finding of persistent refusal before an order of imprisonment or any
7 other order may be issued, courts have historically treated the two clauses of this sentence as
8 separate methods.” (*King, supra*, at p. 578, fn.5.) “Thus, the power to order compliance with a
9 writ is not dependent on a showing of willfulness or persistent refusal,” but rather “may be used
10 when there is any inadequacy in the compliance with the writ.” (*Id.* at p. 578.)

11 **II. The Writ requires detailed status reports showing compliance with AQ-9**

12 The Writ directed Respondents to amend the lease with China Shipping to incorporate
13 specified mitigation measures that were included in the 2008 EIR. (Writ ¶ 1.a.) Respondents did
14 so on June 27, 2024, in a sixth amendment to the lease. (Prange Decl., Ex. 1, July 15, 2024, Initial
15 Return at pp. 4–5.) As relevant here, the sixth amendment that the Port adopted pursuant to the
16 Writ includes mitigation measure AQ-9 (AMP). That measure requires, in relevant part:

17 China Shipping ships calling at Berths 97-109 must use AMP at the
18 following percentages while hoteling in the Port: [¶] . . . [¶]

19 January 1, 2011, and thereafter: 100 percent of ship calls

20 Additionally, by 2010, all ships retrofitted for AMP shall be required to
21 use AMP while hoteling at a 100 percent compliance rate, with the
exception of circumstances when an AMP-capable berth is unavailable
due to utilization by another AMP-capable ship.

22 (Prange Decl., Ex. 1, July 15, 2024, Initial Return at p. 27.) In other words, measure AQ-9
23 requires 100% of *China Shipping* ships¹ to use AMP, and requires *all other* ships to use AMP
24 unless 1) a ship is not equipped to connect to AMP or 2) a berth equipped with AMP is
25 unavailable due to use by another ship. (*Ibid.*) There are no other exceptions in AQ-9; however,

26 _____
27 ¹ Respondents did not define “China Shipping ship” or “hoteling” in AQ-9. The parties
28 negotiated definitions of those terms in the Proposed Stipulated Second Amended Judgment. (See
Feb. 7, 2025, Proposed Stipulated Second Amended Judgment, Ex. 4.)

1 this Court recognized that the 2008 EIR also discussed how “emergency ‘situations’” and
2 “certain events such as equipment failure may mean less than 100% of ships would comply with
3 this measure in certain years” (June 27, 2022, Minute Order at p. 10, quoting AR5834.)
4 Nonetheless, the 2008 EIR estimated “compliance to be 97 to 98 percent in such cases.” (*Ibid.*)
5 The requirements of AQ-9 were found to be feasible and were required to be made enforceable
6 when Respondents adopted the 2008 EIR over a decade ago.

7 The Writ further requires Respondents to file “reports with the Court detailing the status
8 of the implementation of all Mitigation Measures and Lease Measures” within 60 days of service
9 of the Writ and continuing every six months until the final return. (Writ ¶ 4.) These reports must
10 be signed under penalty of perjury by the appropriate officials and posted publicly on the Port of
11 Los Angeles’s website. (Writ ¶ 4(a), (b).) To aid in determining compliance, the Writ requires
12 that these mitigation status reports include certain minimum information. The reports “shall
13 include 1) a list of all Mitigation Measures and Lease Measures in the [lease], 2) a detailed
14 explanation of the status of implementation of those measures, and 3) supporting evidence
15 proving progress towards implementation (e.g., logs, purchase orders, invoices, photographs,
16 etc.).” (Writ ¶ 4(b).) Furthermore, the Writ requires that “[i]f any Mitigation Measure or Lease
17 Measure is not being fully implemented as required by the [lease], Respondents must explain why
18 and describe the actions being taken to reach compliance with the [lease].” (Writ ¶ 4(b).)

19 Accordingly, as relevant here, Respondents are required to include in their mitigation
20 status reports “a detailed explanation of the status of implementation of” AQ-9 and “supporting
21 evidence proving progress towards implementation” of that measure. (Writ ¶ 4(b).) If AQ-9 is
22 “not being fully implemented as required,” Respondents must “explain why and describe the
23 actions being taken to reach compliance.” (Writ ¶ 4(b).) In sum, the Writ places the burden of
24 proving compliance with the mitigation measures on Respondents.

25 **III. Respondents have disobeyed the Writ by failing to prove compliance with AQ-9**

26 Respondents’ mitigation status reports lack the information required by the Writ. Rather
27 than reporting compliance with AQ-9, as required under the Writ, Respondents have reported
28 compliance with a different requirement: CARB’s statewide regulation for at-berth emissions,

1 “Control Measure for Ocean-Going Vessels at Berth” (“CARB’s At-Berth Regulation”). (Cal.
2 Code Regs., tit. 17, § 93130 et seq.) As explained in more detail below, because Respondents’
3 mitigation status reports address the reporting requirements for CARB’s At-Berth Regulation
4 rather than measure AQ-9, the reports lack the information necessary to determine compliance
5 with AQ-9, and accordingly lack the information required by the Writ. The insufficient
6 information provided by Respondents further suggests that they are also violating the substantive
7 requirements of AQ-9.

8 On July 30, 2024, Respondents filed their first mitigation status report, which provides
9 data on ship visits between January 1 and June 30, 2024. (Prange Decl., Ex. 2, July 30, 2024,
10 Ochsner Decl., Ex. C at pp. 35–38.) During that time, there were 83 ship calls at the terminal.
11 (*Ibid.*) However, for 13 of these ship calls, or 15.7%, Respondents reported exceptions to AMP
12 requirements under CARB’s At-Berth Regulation. (Compare *ibid.* with Cal. Code Regs., tit. 17,
13 § 93130.8.) Specifically, Respondents reported two “Bulk and General Cargo” exceptions; two
14 “Vessel Incident Event[s]” exceptions; five “Vessel Commissioning” exceptions; and four
15 “Safety and Emergency Event(s)” exceptions. (Prange Decl., Ex. 2, July 30, 2024, Ochsner Decl.,
16 Ex. C at pp. 35–36.) Respondents declared under penalty of perjury that they were in compliance
17 with the AMP requirement of AQ-9. (*Id.* at p. 32–33.)

18 On January 30, 2025, Respondents filed their second mitigation status report, which
19 showed 100 ship visits between July 1 and December 31, 2024. (Prange Decl., Ex. 3, Jan. 30,
20 2025, Ochsner Decl. at pp. 65–66.) Rather than citing exceptions in AQ-9, Respondents claimed
21 15 exceptions to AMP requirements under CARB’s At-Berth Regulation: three “research events;”
22 three “vessel incident events;” five for “vessel commissioning;” and four “safety and emergency
23 events.” (See *id.* at p. 64; compare *id.* at pp. 65–66 with Cal. Code Regs., tit. 17, § 93130.8.) AQ-
24 9 includes none of these exceptions. The mitigation status report also showed seven visits that did
25 not use AMP, but that Respondents did not mark as non-compliant with AQ-9 and for which
26 Respondents did not cite any exception. (See *infra*, section B.) Thus, 22% of ship visits did not
27 use AMP while hoteling. Notably, this substantially exceeds Respondents’ own estimate in the
28 2008 EIR, cited by the Court, that non-AMP visits would be only 2-3% of the total. (June 27,

1 2022, Minute Order at p. 10.) Respondents again declared under penalty of perjury that they were
2 in compliance with the AMP requirement of AQ-9. (Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner
3 Decl. at pp. 62–63.)

4 After Respondents filed the first mitigation status report, the parties began a lengthy meet-
5 and-confer process which ultimately culminated in the Proposed Stipulated Second Amended
6 Judgment filed with the Court on February 7, 2025. In that document, Respondents agreed to stop
7 reporting according to CARB’s At-Berth Regulation and to instead report information consistent
8 with the Writ. (Feb. 7, 2025, Proposed Stipulated Second Amended Judgment, Ex. 4.) The
9 stipulated approach in that document defines certain terms in AQ-9; reiterates the existing
10 exceptions to AQ-9; sets forth three additional exceptions consistent with the 2008 EIR and this
11 Court’s June 27, 2022, ruling on the merits (exceptions for safety/emergency events, equipment
12 failures, and commissioning); and specifies information that must be included in the mitigation
13 status reports. (*Ibid.*) However, at the status conference on March 7, Respondents withdrew their
14 agreement to the stipulation, and the Court did not sign it. (Prange Decl., Ex. 4, Mar. 7, 2025,
15 R.T. 36:7-22.) Based on that withdrawal and subsequent meet and confers, Petitioners and
16 Intervenors understand that Respondents intend to continue reporting exceptions to AMP usage
17 based on CARB’s At-Berth Regulation rather than AQ-9.

18 The problem with Respondents relying on the exceptions in CARB’s At-Berth Regulation
19 is simple: AQ-9 does not contain these exceptions. Rather, AQ-9 requires 100% of China
20 Shipping ships to use AMP. (Prange Decl., Ex. 1, July 15, 2024, Initial Return at p. 27.) And it
21 requires all non-China Shipping ships to use AMP with only two exceptions: either 1) a ship is
22 not equipped to connect to AMP or 2) a berth equipped with AMP is unavailable due to use by
23 another ship. (*Ibid.*) Because AQ-9 is separate from and *additional* to the CARB regulations,
24 Respondents must comply with AQ-9 as well as the CARB regulations. Yet Respondents’
25 mitigation status reports do not contain information documenting exceptions to AQ-9. Thus,
26 Respondents’ reporting about its compliance with CARB’s At-Berth Regulation fails to satisfy
27 the Writ’s requirements.

28 Non-compliance with AQ-9 has real-world impacts, particularly to the communities

1 located closest to the China Shipping terminal. AQ-9, and the use of AMP generally, is designed
2 to significantly reduce emissions from the large diesel engines on container ships. Diesel engines
3 emit diesel particulate matter, a toxic air contaminant known to increase cancer risk. (AR7829;
4 AR7857.) The South Coast AQMD regularly conducts studies to evaluate risks from toxic air
5 pollution in the South Coast Air Basin and has determined that approximately 68% of the
6 background airborne cancer risk in the basin is due to diesel exhaust, with the highest identified
7 risk near the ports. (AR7832.) In addition to the type of pollutant, another major factor on the
8 impact of air pollution is the location of where the pollution is emitted. Pollution added to an area
9 already overburdened with air pollution is more significant due to the cumulative impacts.
10 (AR8000.) Pollutants emitted near sensitive receptors groups, including children, the elderly, or
11 the ill, also pose a special concern and can have outside impacts. (AR7832.) As the Court
12 witnessed during its site visit, there are numerous sensitive receptors near the terminal, including
13 baseball fields, parks, elementary schools, daycares, convalescent homes, and individual homes.
14 (AR7832; June 24, 2024, Minute Order at pp. 2–3.)

15 While AMP requires electricity from the grid, which in turn creates emissions at any non-
16 renewable generating sources (such as power plants), it is still far superior to ships running their
17 diesel engines while at berth. This is especially true in Los Angeles, where over 50% of
18 electricity is produced from non-fossil fuel sources.² Thus, generating electricity for shore power
19 at the Port creates lower total emissions than running diesel engines, even when taking into
20 account offsite emissions. Furthermore, AMP spares the overburdened communities surrounding
21 the ports, which are among the most polluted in the country, from additional pollution.

22 It is for similar reasons that barge-based emissions capture and control systems

23 _____
24 ² The Port obtains electricity from Los Angeles Department of Water and Power
25 (“LADWP”). (Port of Los Angeles, *High Voltage Shore Connection (HVSC) Systems Guidelines*
26 (Dec. 28, 2022), [https://kentico.portoflosangeles.org/getmedia/f94553bc-0356-4772-830a-
27 e255dcc10813/AMP_General_Program_Details](https://kentico.portoflosangeles.org/getmedia/f94553bc-0356-4772-830a-e255dcc10813/AMP_General_Program_Details).) For the most recent year available, LADWP’s
28 power mix was as follows: natural gas (32.4%), solar (14%), nuclear (13.9%), wind (13.5%), coal
(10.3%), geothermal (9.5%), large hydroelectric (3.9%), eligible hydroelectric (2.4%), and
biomass & biowaste (0.1%). (See LADWP, *2023 Power Content Label* (as of Mar. 31, 2025,
<https://www.ladwp.com/who-we-are/power-system/power-content-label>.) In total, 54.9% of
LADWP electricity is generated by non-fossil fuel sources.

1 (sometimes colloquially referred to as “bonnets”) reduce fewer emissions than does AMP. A
2 barge system is an exhaust gas cleaning system that uses ducting to connect to the exhaust stack
3 of an ocean-going vessel to capture and treat the vessel’s auxiliary engine emissions while at
4 berth. (CARB, Initial Statement of Reasons for At-Berth Regulations (Oct. 15, 2019), at p. ES-
5 23.)³ These systems are typically powered by an on-board generator or by the electric grid. (See
6 *id.* at p. V-6.) While barge systems reduce emissions at the terminal, they do not prevent them
7 entirely: To be certified under CARB’s regulations, these systems must reduce certain non-
8 greenhouse gas emissions by at least 80%—meaning that up to 20% of emissions could still be
9 unmitigated depending on the particular system. (*Id.* at p. III-2; Cal. Code Regs., tit. 17,
10 § 93130.5, subd. (d)(1).) And currently certified barge systems do not reduce greenhouse gas
11 emissions. (CARB, Initial Statement of Reasons, *supra*, at p. V-6.) In short, AMP is the best way
12 to mitigate air pollution from diesel ship engines at berth, as well as being the required method of
13 emissions reductions under AQ-9 and Writ.

14 To further illustrate Respondents’ violations of the Writ, Petitioner and Intervenors
15 include a detailed discussion of the exceptions claimed by Respondents in the January 30, 2025,
16 mitigation status report. As shown below, the incomplete information in the report shows that
17 Respondents are violating the Writ’s reporting requirements and, moreover, indicates that they
18 are not complying with the Writ’s substantive requirement to implement AQ-9.

19 **A. Research**

20 The 2025 mitigation status report cites a “(d) Research” exception for three ship visits.
21 (Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner Decl. at pp. 65–66 [visit 131 (Colorado), visit 133
22 (Seaspan Emerald), and visit 213 (TS Kwangyang)]; see also Cal. Code Regs., tit. 17, § 93130.8,
23 subd. (d).) At the status conference, Respondents stated that these visits involved testing of barge
24 systems for certification by CARB. (See Prange Decl. Ex. 4, Mar. 7, 2025, R.T. 12:25-13:4.)
25 However, there is no exception for barge system certification testing or research under AQ-9.
26

27 ³ The October 15, 2019, CARB Initial Statement of Reasons for At-Berth Regulations is
28 available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2019/ogvatberth2019/isor.pdf>.

1 Furthermore, while Respondents “consider[] this connecting to Alternative Marine
2 Power,” (Prange Decl., Ex. 4, Mar. 7, 2025, R.T. 13:17-25), barge systems are *not* AMP. As
3 defined by Respondents, “AMP is the technique of utilizing shoreside electrical power from the
4 power grid of the City to operate the container ships when they are berthed at an appropriately
5 equipped wharf.” (Prange Decl., Ex. 1, July 15, 2024, Initial Return at p. 108.) Indeed, the very
6 name—Alternative Maritime *Power*—makes clear that it refers to a power source for the ship, not
7 merely a capture device collecting a portion of emissions from the diesel ship engine. And
8 although it is not legally relevant here because AQ-9 does not contain an exception for any type
9 of barge system, AMP is also environmentally superior, as explained above.

10 On March 26, four business days before Petitioners’ and Intervenors’ response to the
11 second mitigation status report was due, Respondents’ counsel sent a letter to Petitioners and
12 Intervenors asserting that these three ships were non-China Shipping ships that were not AMP
13 capable, and thus that AQ-9 does not apply to them. (Prange Decl., Ex. 6, Mar. 26, 2025, letter
14 from Shaye Diveley at p. 7.) If that is true, Respondents should have disclosed that information in
15 the second mitigation status report, rather than waiting to disclose that information until nearly
16 two months after filing the report and after the Court held a lengthy status conference on this very
17 issue. Furthermore, Respondents’ assertion is in a letter from counsel. To the extent that
18 Respondents believe a valid exception under AQ-9 applies to these visits, they have not reported
19 that to the Court and the parties with supporting evidence *and* under penalty of perjury, as
20 required by the Writ. As of this motion, the second mitigation status report filed with the Court
21 remains uncorrected by Respondents. Accordingly, Respondents have violated the Writ.

22 **B. No exception cited**

23 The second mitigation status report shows that there were seven ship visits that did not use
24 AMP, but for which there were no exceptions cited. (Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner
25 Decl. at pp. 65–66 [visit 148 (TS Bangkok), visit 150 (Coyhaique), visit 153 (TS Tokyo), visit
26 180 (TS Singapore), visit 191 (TS Tokyo), visit 201 (TS Bangkok), visit 237 (TS Bangkok)].) It
27 is unclear what happened during these visits because Respondents’ reporting contains no
28 narrative description. However, in some cases, it appears a barge system was used because the

1 spreadsheet in the report shows a company name. (Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner
2 Decl. at p. 66 [visit 191 (TS Tokyo) line stating “AB-15-01 (METS-1)”].) Entries for other visits
3 simply say “Not Listed” in that same space, but contain emissions control start and stop times.
4 (See, e.g., Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner Decl. at p. 66 [Visit 180 (TS Singapore)].)
5 But even assuming all of these ships used barge systems during their calls, AQ-9 does not contain
6 an exception for using any type of barge system.

7 As with the research exception, Respondents also belatedly, in the March 26 letter to
8 Petitioners and Intervenors, asserted that these visits were non-China Shipping ships that were not
9 AMP capable. (Prange Decl., Ex. 6, Mar. 26, 2025, letter from Shaye Diveley at p. 7.) But again,
10 Respondents’ claim was made two months too late, was not included in the filed second
11 mitigation status report, and lacks any supporting evidence. To the extent that Respondents
12 believe a valid exception under AQ-9 applies to these visits, they have not reported that to the
13 Court and parties with supporting evidence and under penalty of perjury, as required by the Writ.
14 In short, because these ships did not use AMP and because Respondents have not reported any
15 applicable exception under AQ-9, Respondents have violated the Writ.

16 C. Vessel incident event

17 The second mitigation status report cites three “(f)(1) Vessel Incident Events,” or VIEs,
18 under the CARB At-Berth Regulation. (Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner Decl. at pp.
19 65–66 [visit 125 (MSC Sofia Paz), 227 (Androklis)⁴, and visit 240 (MSC Caterina)]; Cal. Code
20 Regs., tit. 17, § 93130.8, subd. (f).) That section of CARB’s regulation exempts VIEs, as well as
21 terminal incident events, TIEs, both of which are defined in a detailed section of the regulation
22 that allows a specific number of VIE and TIE exceptions based on a “percentage” of vessel visits
23 in the prior calendar year. (Cal. Code Regs., tit. 17, § 93130.11, subd. (a)(1).) For container
24 terminals in 2024, that allowance is 5% for VIEs. (*Id.* § 93130.11, subd. (b).)

25
26 _____
27 ⁴ On March 13, 2025, a month and a half after filing the mitigation status report,
28 Respondents claimed that this ship did not visit the China Shipping Terminal and was mistakenly
included in the report. (Prange Decl., Ex. 6, Mar. 26, 2025, letter from Shaye Diveley at pp. 1, 6.)
However, Respondents have not taken any action to correct their report.

1 On its face, AQ-9 provides no exception for VIEs and TIEs. Respondents do not explain
2 why a VIE or TIE is appropriate to claim under AQ-9. Nor do Respondents explain the criteria
3 that would apply here to any such exception under AQ-9.

4 However, the parties spent considerable time negotiating a reasonable approach that
5 would interpret AQ-9 to allow for unanticipated equipment failures. The results of that
6 negotiation were memorialized in the Proposed Stipulated Second Amended Judgment, which
7 defined the equipment failure exception under AQ-9. (Feb. 7, 2025, Proposed Stipulated Second
8 Amended Judgment, Ex. 4.) Despite Petitioners’ and Intervenors’ good-faith work to arrive at this
9 stipulated approach, at the March 7, 2025, status conference, Respondents withdrew their consent
10 to that stipulation. (Prange Decl., Ex. 4, Mar. 7, 2025, R.T. 36:12-22.)

11 To the extent that Respondents intend to rely on an implied exception for “equipment
12 failure” by citing the VIE exception, their reporting is still deficient. Notably, because the CARB
13 regulation allows for a certain quota of VIEs and TIEs for any reason, a visit could qualify for
14 that CARB exception without involving any “equipment failure.” Respondents’ second mitigation
15 status report contains no narrative description explaining what happened during these visits;
16 rather, Respondents simply appended various forms, some of which are illegible, with no
17 elaboration. (See, e.g., Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner Decl. at pp. 78–79, 119, 121.)

18 Respondents belatedly provided additional justifications to Petitioners and Intervenors in
19 their March 26 letter. (Prange Decl., Ex. 6, Mar. 26, 2025, letter from Shaye Diveley at p. 6.) But
20 again, that information was provided two months too late and was not submitted to the Court
21 under penalty of perjury. In short, the report does not claim any “equipment failure” exception
22 under AQ-9, let alone substantiate why these visits would qualify for such an exception.
23 Accordingly, Respondents have violated the Writ.

24 **D. Commissioning**

25 The second mitigation status report cites a “(c) Vessel Commissioning” exception five
26 times. (Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner Decl. at pp. 65–66 [visit 164 (Seaspan
27 Thames), visit 182 (Maersk Yosemite), visit 197 (MSC Agrigento), visit 198 (ONE Blue Jay),
28 and visit 220 (MSC Agrigento)]; Cal. Code Regs., tit. 17, § 93130.8, subd. (c).) “Commissioning”

1 is defined in CARB’s At-Berth Regulation as “the process undertaken by the vessel operator and
2 terminal operator to ensure that the shore power equipment on the vessel is compatible with the
3 shore power equipment on the terminal and that there are no safety issues for both the equipment
4 and the personnel handling the connection.” (Cal. Code Regs., tit. 17, § 93130.2, subd. (b)(84).)

5 AQ-9 contains no exception for “vessel commissioning;” however, in the Proposed
6 Stipulated Second Amended Judgment, the parties negotiated a reasonable approach that would
7 interpret AQ-9 to allow sufficient time to ensure ships are properly commissioned. (Feb. 7, 2025,
8 Proposed Stipulated Second Amended Judgment, Ex. 4.) Now that Respondents’ consent to that
9 stipulation is withdrawn (Prange Decl., Ex. 4, Mar. 7, 2025, R.T. 36:12-22), if Respondents
10 believe commissioning is allowed under the express terms of AQ-9, or that non-compliance with
11 AQ-9 is otherwise permissible under the Writ, they have made no such showing.

12 But even assuming an exception for vessel commissioning exception applied,
13 Respondents’ reporting still fails to adequately demonstrate why all the cited vessel visits would
14 fall within that exception. Generally, vessel commissioning is needed only the first time a vessel
15 visits a terminal and sometimes if a ship has not visited in the past year. For ship visits 164
16 (Seaspan Thames) and 198 (ONE Blue Jay), the documentation fails to show that this was a first
17 visit within a year or more. (Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner Decl. at pp. 86, 106.)
18 And for ship visit 220 (MSC Agrigento), a commissioning exception was claimed for the same
19 ship less than a month before (*id.* at p. 66), and the documentation fails to explain why further
20 commissioning was necessary (*id.* at pp. 99–101). Even if a commissioning exception is read into
21 AQ-9, Respondents have violated the Writ because their reporting fails to show these visits
22 qualify for the exception.

23 **E. Emergency and safety events**

24 The second mitigation status report cites four “(a) Safety and Emergency Events.” (Prange
25 Decl., Ex. 3, Jan. 30, 2025, Ochsner Decl. at pp. 65–66 [visit 109 (YM Uniformity), visit 161
26 (Acostos), visit 188 (MSC Lily), and visit 228 (YM Upward)]; Cal. Code Regs., tit. 17,
27 § 93130.8, subd. (a).) AQ-9 contains no such exception on its face. As with commissioning and
28 equipment failure, the parties negotiated a reasonable approach that would interpret AQ-9 to

1 allow for emergency and safety events in the Proposed Stipulated Second Amended Judgment,
2 but as noted above, Respondents withdrew their consent to that stipulation. (Prange Decl., Ex. 4,
3 Mar. 7, 2025, R.T. 36:12-22.)

4 Regardless, it appears from the documentation provided in the second mitigation status
5 report that some of the claimed visits do not qualify for this exception under the parties'
6 negotiated definition or even under CARB's regulation. For ship visit 109 (YM Uniformity) and
7 161 (Acostos), the report lists "Port Power Outage" as the reason for the exception, but in both
8 cases, the ships did not reconnect to shore power after the power was restored, even though they
9 stayed at berth for many more hours. (Prange Decl., Ex. 3, Jan. 30, 2025, Ochsner Decl. at pp. 65,
10 67, 73.) Respondents do not explain why these ships were not reconnected to shore power
11 following the restoration of power. For ship visit 188 (MSC Lily), the report lists "weather" as the
12 basis for the exception. (*Id.* at p. 74.) The documentation shows that the ship crew wanted to
13 reconnect, but Port staff did not show up for unexplained reasons. (*Id.* at p. 92.) And for ship visit
14 228 (YM Upward), the documentation regarding this visit appears to show mechanical problems
15 (*id.* at p. 68, 74, 118), but Respondents do not explain why they cited a safety exception rather
16 than an equipment failure exception.

17 Respondents belatedly provided additional explanations to Petitioners and Intervenors in
18 their March 26 letter. (Prange Decl., Ex. 6, Mar. 26, 2025, letter from Shaye Diveley at p. 5.) But
19 again, that information was provided two months too late and was not submitted to the Court
20 under penalty of perjury. Even if an emergency exception is read into AQ-9, Respondents have
21 violated the Writ because their reporting fails to show these visits qualify for the exception.

22 **IV. The Court should order Respondents to comply with the Writ by entering the**
23 **Proposed Stipulated Second Amended Judgment**

24 The communities surrounding the terminal have waited long enough for compliance with
25 the law. Respondents' disregard for CEQA—and specifically the AMP mitigation measures—
26 goes back decades. Community Petitioners first filed suit over the China Shipping terminal in
27 2001, when Respondents failed to prepare a project-specific EIR for the construction of the
28 terminal. And shortly after Respondents certified the 2008 EIR that originally included AQ-9,

1 they began to secretly waive those AMP requirements at China Shipping’s request. (AR60865–
2 AR60869, AR45097, AR46524–AR46525; AR47321–AR47322; AR48334.) In short,
3 Respondents have been failing to comply with an AMP requirement that they adopted *over 15*
4 *years ago*. The Writ in this case should have put an end to Respondents’ flouting of CEQA.

5 Rather, Respondents continue to violate AQ-9. They have failed to provide the
6 information necessary to assess compliance with the measure because the data in the mitigation
7 status reports is tailored specifically for reporting under CARB’s At-Berth Regulation, not AQ-9.
8 While Respondents must separately comply with CARB’s At-Berth Regulation, AQ-9 does not
9 authorize the exceptions allowed by the regulation or even mention the regulation, which did not
10 exist at the time AQ-9 was developed. The Writ explicitly requires Respondents to include “a
11 detailed explanation of the status of implementation of” AQ-9 in their mitigation status reports
12 and provide “supporting evidence proving progress towards implementation” of that measure.
13 (Writ ¶ 4(b).) If AQ-9 is “not being fully implemented as required by the [lease], Respondents
14 must explain why and describe the actions being taken to reach compliance with the [lease].”
15 (Writ ¶ 4(b).) This information must be provided under penalty of perjury. (Writ ¶ 4(b).) Because
16 Respondents’ mitigation status reports lack the information required under AQ-9, Respondents
17 have violated the Writ. Respondents must either provide a valid basis for deeming certain ship
18 visits exempt from AQ-9, and support that assertion with evidence, or report that they are not in
19 compliance with the measure and take action to reach compliance.

20 Under Code of Civil Procedure section 1097, the power to order compliance with a writ
21 “is not dependent on a showing of willfulness or persistent refusal,” but rather “may be used
22 when there is any inadequacy in the compliance with the writ.” (*King, supra*, 144 Cal.App.3d at
23 p. 578.) This low bar is easily met here, where Respondents have failed to report even the basic
24 information required under the Writ. Respondents are well aware that reporting exceptions to
25 CARB’s At-Berth Regulation is not consistent with the Writ. Yet they have continued to do so for
26 two reporting periods, despite Petitioners’ and Intervenors’ repeated objections.

27 Consequently, Petitioners and Intervenors respectfully request that the Court:

- 28 1) Enter the Proposed Stipulated Second Amended Judgment that the parties filed on

1 February 7, 2025.⁵ This judgment would clarify the allowable exceptions under AQ-9 and the
2 information required to substantiate those exceptions, and would make clear that Respondents
3 may not rely on CARB's At-Berth Regulation except to the extent provisions are explicitly
4 incorporated by the judgment. For the Court's convenience, Petitioners and Intervenors have
5 included the Proposed Stipulated Second Amended Judgment as Attachment A to this motion.

6 2) Order Respondents to include in their mitigation status reports vessel-specific
7 narratives for all visits not using AMP that clearly explain whether and why each vessel visit is or
8 is not in compliance with mitigation measure AQ-9, with citations to paginated and legible
9 supporting documentation.

10 3) Order Respondents to update their first and second mitigation status reports to
11 conform with the Second Amended Judgment.

12 4) Order Respondents to pay Petitioners and Intervenors their reasonable attorneys'
13 fees for preparing and bringing this motion. Petitioners and Intervenors will provide
14 documentation of the fees incurred after the hearing on this motion.

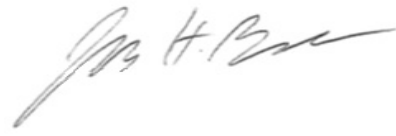
15 CONCLUSION

16 For the foregoing reasons, Petitioners and Intervenors respectfully request that the Court
17 grant their motion to enforce.

18 Date: April 1, 2025

Respectfully submitted,

19 NATURAL RESOURCES DEFENSE COUNCIL, INC.

20 

21 _____
22 Jaclyn H. Prange
23 Margaret T. Hsieh
24 Melissa Lin Perrella
25 *Attorneys for Petitioners/Plaintiffs Natural
Resources Defense Council, San Pedro and*

26 ⁵ The Proposed Stipulated Second Amended Judgment also contains provisions related to
27 cargo handling equipment and the vessel speed reduction program. To Petitioners' and
28 Intervenors' knowledge, there are no disputes about those provisions. They should be adopted by
the Court for the same reasons as the AMP provisions.

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*Peninsula Homeowners Coalition, San Pedro
Peninsula Homeowners United, East Yard
Communities for Environmental Justice, and
Coalition for Clean Air*

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT



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PROOF OF SERVICE

I, Jaclyn H. Prange, declare that I am over the age of 18 and not a party to this action. I am employed in San Francisco, California. My business address is: 111 Sutter St. Fl. 21, San Francisco, CA, 94104. On April 1, 2025, I served true copies of the following document(s) described as:

PETITIONERS' AND INTERVENORS' NOTICE OF MOTION AND MOTION TO ENFORCE UNDER § CCP 1097; MEMORANDUM OF POINTS AND AUTHORITIES

- BY MAIL** – I deposited such envelope in the mail at Santa Monica, California. The envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the organization’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Monica, CA in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- BY PERSONAL SERVICE** – I caused such envelope to be delivered by a process server retained by me.
- BY ELECTRONIC TRANSMISSION** – I transmitted a PDF version of this document by electronic mail to the party(s) identified on the attached service list using the email address(es) indicated: *Please see attached service list.*
- BY OVERNIGHT DELIVERY** – I deposited such enveloped for collection and delivery by Federal Express Overnight Delivery service, with delivery fees paid or provided for in accordance with ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing of correspondence for overnight delivery by Federal Express. It is deposited with Federal Express on that same day in the ordinary course of business.

ELECTRONIC SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 1, 2025, in San Francisco, California.

Jaclyn H. Prange



Printed Name

Signature

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