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PUBLIC INTEREST RESEARCH GROUP, INC.  
11

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SAN DIEGO**

15 CALIFORNIA SOLAR ENERGY  
INDUSTRIES ASSOCIATION, INC. dba  
16 CALIFORNIA SOLAR AND STORAGE  
ASSOCIATION; SOLAR RIGHTS  
17 ALLIANCE; KARIN POELSTRA; and  
CALIFORNIA PUBLIC INTEREST  
18 RESEARCH GROUP, INC.

19 Petitioners and Plaintiffs,

20 v.

21 CONTRACTORS STATE LICENSE BOARD;  
DAVID FOGT, in his official capacity as  
22 Registrar of Contractors; and DOES 1-20,  
inclusive,  
23

24 Respondents and Defendants.

Case No.

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Code of Civil Procedure §§ 1085, 1094.5;  
Administrative Procedures Act, Government  
Code § 11340 et seq.; Public Resources Code  
§ 21000 et seq. (“CEQA”)

1 **INTRODUCTION**

2 1. This action challenges Respondent and Defendant Contractors State License Board’s  
3 (CSLB) unlawful rulemaking to amend Title 16, California Code of Regulations Sections 810, 832.10,  
4 and 832.46 (the “rule”) as well the unlawful interpretations of law CSLB relied upon during that  
5 rulemaking. The rule’s amendments to section 832.46, which contains the C-46 Solar Contractor license  
6 classification, prohibits Solar Contractors from installing, connecting, modifying, maintaining, or  
7 repairing battery energy storage systems, with limited exceptions. These categorical prohibitions turn a  
8 blind eye to the fact that CSLB’s own license exam requires Solar Contractors have extensive  
9 knowledge of the California Electrical Code and other relevant rules and regulations to safely perform  
10 battery work, and CSLB could not identify a single instance in which an installation by a Solar  
11 Contractor licensed in California caused serious damage or injury.

12 2. In adopting these new prohibitions, CSLB failed to satisfy numerous requirements of the  
13 California Administrative Procedure Act (APA), which the Legislature adopted out of concern that  
14 excessive regulations impose unnecessary burdens on the state and small businesses. For example,  
15 CSLB refused to disclose and analyze the full scope of the rule’s economic impacts—especially on  
16 small solar businesses; it failed to identify reasonable alternatives to this extreme action or to support its  
17 determinations regarding the efficacy of alternatives proposed by stakeholders and the public; and it  
18 neglected to fully summarize and respond to public objections and recommendations regarding the rule.  
19 In fact, CSLB lacked statutory authority to enact key provisions of the rule.

20 3. Additionally, throughout the rulemaking, CSLB made several statements interpreting the  
21 pre-amendment scope of the C-46 license classification to already exclude Battery Energy Storage  
22 System (referred to as “batteries,” “battery storage,” or “BESS”) work. Such statements that “apply  
23 generally, rather than in a specific case,” and “implement, interpret, or make specific the law enforced or  
24 administered by” CSLB and its executive officer, the Registrar of Contractors, may only be utilized *after*  
25 complying with the APA’s rulemaking requirements. *Tidewater Marine Western, Inc. v. Bradshaw*  
26 (1996) 14 Cal.4th 557, 556, 571. CSLB, however, never followed the APA’s notice and comment  
27 rulemaking procedures before declaring that the C-46 license classification already precluded battery  
28 work. As such, CSLB’s interpretation was an underground regulation adopted in violation of the APA.

1 *Tidewater Marine Western*, 14 Cal.4th at 556, 571.

2 4. CSLB relied on this underground interpretation to claim that the C-46 license already  
3 aligned with the new proposed rule. It thus avoided analyzing the consequences of its underground  
4 interpretation, and then used that unlawful interpretation to avoid fully analyzing the consequences of  
5 the new rule. But the APA does not allow agencies to avoid its strict rulemaking procedures this way.  
6 The statute requires agencies to take a hard look at the economic impacts of proposed rules, base their  
7 decisions on facts, and fully consider alternatives to ensure that regulations do not unnecessarily burden  
8 small businesses—none of which CSLB did.

9 5. CSLB compounded these legal failures by refusing to conduct environmental review of  
10 its rule under the California Environmental Quality Act (CEQA). CEQA requires agencies to evaluate  
11 whether an activity could have potentially significant environmental effects, to disclose those  
12 environmental impacts to decisionmakers, to analyze feasible mitigation measures to lessen the impacts,  
13 and to consider a reasonable range of alternatives. As the Association repeatedly pointed out, the rule  
14 constituted a “project” under CEQA that required analysis because it had the potential to cause  
15 reasonably foreseeable changes in the physical environment. Pub. Resources Code § 21065; 14 Cal.  
16 Code Regs. § 15378(a)(1). These changes, which will largely result from the rule’s chilling effect on  
17 solar and battery installations, include increased demand for other energy supplies and resources because  
18 fewer solar energy systems will be installed; increased use of carbon-based energy; additional  
19 greenhouse gas emissions from reliance on carbon-based energy sources; air quality impacts; and  
20 conflicts with state and local plans adopted to reduce greenhouse gas emissions throughout California.

21 6. Indeed, CSLB’s illegal rulemaking will have disastrous consequences for small  
22 businesses, consumers, and the State. The rule will be devastating to contractors who operate under a C-  
23 46 Solar Contractor’s license and have no other license that would allow them to do battery storage  
24 work (referred to herein as “pure C-46 contractors”). CSLB’s rule threatens existing C-46 solar  
25 companies and their workforce and will shrink the pool of people available to install much needed  
26 battery storage projects at a time when the state is trying to increase reliance on renewable energy to  
27 meet its ambitious climate goals. In preventing pure C-46 contractors from retrofitting existing solar  
28 panels with batteries (which CSLB has stated is not permissible “incidental and supplemental” work), or

1 from repairing and maintaining the batteries that they install, the rule will severely limit the ability of  
2 these companies to contract with new customers, provide warranties for their installation work, remain  
3 competitive in the solar industry, maintain their current workforce, and ultimately stay in business.  
4 These impacts will fall especially hard on the majority of Solar Contractors that are small businesses,  
5 and who are already struggling with shifting financial incentives in the solar industry.

6 7. This unlawful rule will also harm California’s consumers. It removes some of the most  
7 experienced contractors and their most skilled and trained workers from the marketplace, requiring  
8 inexperienced replacements when consumer demand for batteries is spiking. Even if consumers find  
9 other contractors who can perform battery installations, the rule will effectively require that certified  
10 electricians—who are in limited supply statewide and nationally—install batteries, thereby significantly  
11 increasing the costs of solar and storage projects. CSLB’s actions also harm consumers by jeopardizing  
12 existing consumer warranties and contracts for projects that have yet to be built.

13 8. The rule will also harm California’s climate goals and hamper a key part of the state’s  
14 renewable energy strategy. CSLB’s unlawful prohibitions on C-46 Solar Contractor work slams the  
15 brakes on the deployment of solar and battery storage projects throughout California at exactly the time  
16 when the state and consumers need them the most. This may benefit investor owned utilities, such as  
17 Pacific Gas & Electric, who do not profit when Californians generate and store their own renewable  
18 energy, and electricians who build and maintain the utilities’ infrastructure. But the APA requires a hard  
19 look at the impacts to small businesses that are harmed by CSLB’s rules and to consumers who may face  
20 changing costs or installer availability because of them. And CEQA requires consideration of a project’s  
21 potential impacts on the environment. CSLB’s inadequate rulemaking, reliance on an underground  
22 regulation, and refusal to conduct any environmental review have not satisfied either of these laws.

23 9. For these and the reasons discussed below, this Court must set aside CSLB’s rule  
24 concerning Battery Energy Storage Systems, and declare CSLB’s interpretation of the pre-existing scope  
25 of the C-46 Solar Contractor license classification as an invalid underground regulation.

26 **PARTIES**

27 10. Petitioner and Plaintiff California Solar Energy Industries Association, Inc., doing  
28 business as California Solar and Storage Association (“Association”), is a non-profit corporation

1 organized and existing under the laws of the State of California. The Association was formed to promote  
2 the widespread deployment of smart, local, clean energy technologies, including solar panels and energy  
3 storage projects, while supporting a wide variety of businesses that build a better energy future in urban  
4 and rural communities throughout the state. The Association advances this mission through policy  
5 development, advocacy, education, networking, and business services. For example, the Association has  
6 advanced the interests of Solar Contractors and their customers by appearing before the California  
7 Public Utilities Commission to advocate against utility proposals that would harm the rooftop solar  
8 market. The Association has also developed a program to fund solar installations on low-income  
9 apartment buildings and in disadvantaged communities through workforce development requirements,  
10 and sponsors bills in the Legislature to help make solar and battery storage investments affordable for all  
11 consumers.

12           11.     The Association’s 728 member companies come from all segments of the solar industry.  
13 Members include contractors who hold a C-46 (Solar Contractor) license classification, some of whom  
14 also hold C-10 (Electrical Contractor), A (General Engineering Contractor), or B (General Building  
15 Contractor) classifications, among other classifications. The Association’s members also include the  
16 manufacturers of solar and battery storage products that Solar Contractors install, including solar panel  
17 manufacturers and battery storage manufacturers. Eighty-seven of the Association’s member companies  
18 have their principal place of business in San Diego County. An additional 56 Association members  
19 based in other counties also operate in San Diego County. Of the Association’s members that operate in  
20 San Diego County, 45 have a C-46 Solar Contractor’s license and thirteen are pure C-46 contractors.  
21 Eight of the Association’s pure C-46 members have their principal place of business in San Diego  
22 County.

23           12.     Petitioner and Plaintiff Solar Rights Alliance is a statewide nonprofit association of  
24 California solar users. The Solar Rights Alliance’s supporters include homeowners, renters, businesses,  
25 nonprofits, schools and others from all parts of California. The Alliance works toward a vision of  
26 California in which millions of everyday people and communities—including homeowners, renters,  
27 farmers, and schools—can benefit from the freedom of rooftop solar energy. The Solar Rights Alliance  
28 believes Californians should have the right to make energy from the sun without unreasonable

1 interference by the utilities. The Alliance has serious concerns about regulators and utility companies  
2 making it harder and more expensive for Californians to choose solar energy. The Solar Rights Alliance  
3 is committed to alerting its supporters about threats to their solar investments and providing them with  
4 clear and effective ways to make their voices heard. The Alliance also provides its supporters with  
5 information about buying, maintaining, or improving their solar systems. The Solar Rights Alliance has  
6 27,902 supporters who live in San Diego County.

7 13. Petitioner and Plaintiff Karin Poelstra is a licensed C-46 Solar Contractor. Ms. Poelstra is  
8 a co-owner and Vice-President of CleanTech Energy Solutions, Inc., a California company specializing  
9 in solar energy system installation and maintenance. Ms. Poelstra co-founded CleanTech Energy  
10 Solutions in 2007. CleanTech is a small, family-style business with four full-time employees and one  
11 part-time employee, and meets California’s definition of “small business.” CleanTech is located in San  
12 Diego County, and performs solar and battery installations throughout San Diego County, as well as in  
13 southern Orange and Riverside Counties. CleanTech’s clients are mostly residential homeowners in San  
14 Diego County. CleanTech’s solar installations are performed under Ms. Poelstra’s C-46 license using  
15 local technicians. Neither she nor her co-owner hold another license type that would allow them to  
16 conduct battery storage work. CSLB’s new rule will harm Ms. Poelstra and her company, by prohibiting  
17 Ms. Poelstra and CleanTech’s employees from continuing to add batteries to existing solar PV systems,  
18 from maintaining any batteries that they have previously installed, or from providing warranties on any  
19 new battery systems they install.

20 14. Petitioner and Plaintiff California Public Interest Research Group, Inc. (CALPIRG) is a  
21 California-based non-profit, which operates and supports organizations committed to a shared vision of  
22 a better world and a strategic approach to social change. CALPIRG works to find common ground  
23 around common sense solutions that help to improve the quality of life for Californians and set the state  
24 on a path to a better future. CALPIRG has successfully advocated for changes resulting in more  
25 recycling and less waste, healthier and safer choices in the marketplace, and greater accountability in  
26 government. CALPIRG is also interested in solutions that will help California become fossil fuel free,  
27 electrify vehicles, and reduce power plant pollution. CALPIRG recognizes that rooftop solar and storage  
28 is an important tool in reaching those goals.

1           15.     Petitioners and their members and supporters have a direct and beneficial interest in  
2 CSLB's compliance with the APA and CEQA because these laws are designed to promote public  
3 participation in government decision-making and protect the public and taxpayers from government  
4 decisions uninformed by public input and adequate review. The interests of Petitioners and their  
5 members and supporters are adversely and directly affected by CSLB's rule severely limiting the ability  
6 of Solar Contractors to install battery storage, which will lead to labor shortages, impaired consumer  
7 warranties, and increased installation costs for solar consumers. Petitioners are also harmed by CSLB's  
8 interpretation of pre-amendment C-46 regulation as precluding Solar Contractors from installing battery  
9 storage because this interpretation is both erroneous and prompted CSLB to improperly ignore the  
10 harmful environmental and economic effects of its rule. Petitioners and their members and supporters'  
11 interests have also been adversely and directly impacted by CSLB's refusal to comply with CEQA,  
12 which prevented CSLB from disclosing the negative environmental effects of its rule. Moreover, many  
13 of the Association's Solar Contractor members will be severely harmed by the amended rule, which will  
14 cause C-46 Solar Contractors to lose business, customer good will, and the specialized employees that  
15 they have invested in training. The maintenance and prosecution of this action will confer a substantial  
16 benefit on the public by remedying CSLB's APA and CEQA violations and fulfilling the Acts' joint  
17 purpose of ensuring public participation in government decision-making.

18           16.     Respondent and Defendant Contractors State License Board is a body of the State of  
19 California. CSLB is responsible for compliance with the APA, CEQA, and the Contractors State License  
20 Law, Business and Professions Code section 7000 et seq. CSLB's staff adopted the underground  
21 regulation upon which the rule precluding C-46 Solar Contractors from installing battery storage is  
22 based, and CSLB relied on this underground regulation when it adopted the challenged rule. CSLB also  
23 approved the rule without conducting any environmental review required by the California  
24 Environmental Quality Act.

25           17.     Respondent and Defendant David Fogt is the Registrar of Contractors appointed by  
26 CSLB. He is the executive officer and secretary of CSLB and is responsible for carrying out all of the  
27 administrative duties as provided in the Contractors State License Law and as delegated to him by  
28 CSLB. Bus. & Prof. Code § 7011. Mr. Fogt is sued in his official capacity.

1 18. The true names and capacities, whether individual, corporate, associate or otherwise, of  
2 Respondents and Defendants Doe 1 through 20, inclusive, are unknown to Petitioners at this time, and  
3 Petitioners therefore sue said Respondents under fictional names. Petitioners allege, upon information  
4 and belief, that each fictionally named Respondent and Defendant is responsible in some manner for  
5 committing the acts upon which this action is based. Petitioners will amend this Petition and Complaint  
6 to show their true names and capacities if and when they have been ascertained.

7 **JURISDICTION AND VENUE**

8 19. This Court has jurisdiction over the matters alleged in this action pursuant to Code of  
9 Civil Procedure sections 1085 and 1094.5, Government Code section 11350, and Public Resources Code  
10 sections 21168, 21168.5, and 21168.9.

11 20. Venue for this action properly lies in the Central Division of the Superior Court for the  
12 State of California for the County of San Diego pursuant to Local Rule 1.2.2(G) because this petition  
13 pleads a California Environmental Quality Act claim, and alleges administrative and environmental  
14 harms which are likely to impact Petitioners and their members who live and do business in San Diego  
15 County. The Association represents the interests of pure C-46 contractors based in San Diego County,  
16 including in zip codes 92114 and 92109. Further, the Association's C-46 Solar Contractor members  
17 perform solar and battery installation jobs in the following zip codes: 92106, 92107, 92109, 92119, and  
18 92128. Between March 2023 and March 2024, approximately 6,000 solar plus storage projects were  
19 installed in San Diego County alone. The vast majority of these projects were residential. This  
20 represents approximately 16.5% of all the solar plus storage projects installed in California during this  
21 time period. Indeed, San Diego County ranks first in the state among all counties for solar plus storage  
22 projects and San Diego County has had over twice as many installations as any other county.

23 21. Venue is further proper in this Court because the California Attorney General has an  
24 office in the County of San Diego. Code of Civil Proc. § 401(1).

25 22. Petitioner has complied with the requirements of Public Resources Code section 21167.5  
26 by serving a written notice of Petitioner's intention to commence this action against Respondents on  
27 June 10, 2024. A copy of this written notice and proof of transmission is attached hereto as Exhibit A to  
28 this Petition.



1 23. Petitioner is complying with the requirements of Public Resources Code section 21167.6  
2 by concurrently filing a notice of its election to prepare the administrative record for this action.

3 24. Petitioner is sending a copy of the Petition to the California Attorney General  
4 concurrently with filing, thereby complying with the requirements of Public Resources Code section  
5 21167.7. A copy of this written notice is attached hereto as Exhibit B to this Petition.

6 25. Petitioner has performed any and all conditions precedent to filing this action and has  
7 exhausted any and all available administrative remedies to the extent required by law.

8 26. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless  
9 this Court grants the requested declaratory relief and writ of mandate to require CSLB to set aside its  
10 approval of the challenged regulation. In the absence of such remedies, CSLB's approval will remain in  
11 effect in violation of State law.

12 27. This Petition is timely filed.

### 13 **FACTUAL AND LEGAL BACKGROUND**

#### 14 **Solar Contractors, Battery Storage, and the C-46 (Solar) License Classification**

15 28. Solar Contractors have been installing solar and battery storage systems in California for  
16 over forty years. According to the CSLB, there are 481 contractors with a C-46 specialty license and no  
17 other license that allows battery storage work. The majority of the Association's members are small,  
18 independently owned and operated solar businesses.

19 29. Solar Contractors have built over two-million customer-sited solar energy systems in  
20 California. The majority of these systems are interconnected to the electric grid, while others serve  
21 homes and buildings that are "off-grid." Since the 1980's, Solar Contractors have been installing battery  
22 storage (also referred to as energy storage, Energy Storage Systems, ESS, Battery Energy Storage  
23 Systems, or BESS) in integrated systems to store the electrical energy generated by solar photovoltaic  
24 modules, or solar panels, typically located on roofs, shade structures, or on ground-mounted stands. Off-  
25 grid solar energy systems cannot properly serve the consumer without a battery. Even solar energy  
26 systems that are connected to the electric grid require batteries to avoid higher priced electricity during  
27 evening hours, or to provide power when there is a grid outage event because solar modules must turn  
28 off when the grid goes down. To date, over 115,000 solar-plus-battery storage systems have been

1 connected to the state’s electrical grid.

2           30.     Solar Contractors operate under a C-46 (Solar Contractor) specialty license classification.  
3 The C-46 Solar license has covered a variety of solar energy technologies over the years, including solar  
4 photovoltaics (solar electric) systems paired with battery storage going back to the early 1980s. For over  
5 forty years, the solar specialty license has been a multi-craft license requiring specialized knowledge in  
6 the combination of several different crafts including roofing, general construction, electrical, plumbing,  
7 financial analysis, technical site evaluation, and ongoing monitoring and maintenance of solar and  
8 energy storage technologies.

9           31.     CSLB created the C-46 classification through an APA regulatory rulemaking process in  
10 1982 under its authority to “adopt reasonably necessary rules and regulations to effect the classification  
11 of contractors in a manner consistent with established usage and procedures as found in the construction  
12 business.” Bus. & Prof. Code § 7059. One of the purposes of the Solar Contractor license was to allow  
13 CSLB to verify the practical skills of applicants, including but not limited to skills in the “electrical”  
14 trade, given that contractors were undertaking all phases of solar installations, which included battery  
15 storage. The 1982 classification clarified that the “active solar energy systems” installed by Solar  
16 Contractors included the storage of electricity generated from photovoltaic solar energy systems.

17           32.     In 2009, CSLB began a rulemaking process to simplify the 1982 regulation and allow it  
18 to encompass technological innovations. To this end, CSLB replaced the term “active solar energy  
19 system” with the term “thermal or photovoltaic solar energy systems.” Though the updated rule did not  
20 specifically define this new phrase as including storage, CSLB never expressed any intent or desire to  
21 remove storage or other aspects of the previous “active solar energy systems” definition from the scope  
22 of work that Solar Contractors were permitted to perform. The 2009 regulatory language remained  
23 unchanged in Title 16 of the California Code of Regulations prior to CSLB’s 2024 rulemaking  
24 challenged here. Before CSLB’s 2024 rule, the regulation read:

25                   § 832.46 Class C-46 – Solar Contractor

26                   A Solar Contractor installs, modifies, maintains, and repairs thermal and  
27                   photovoltaic solar energy systems.

28                   A licensee classified in this section shall not undertake or perform  
                      building or construction trades, crafts, or skills, except when required to

1 install a thermal or photovoltaic solar energy system.

2 33. Prior to CSLB’s 2024 rulemaking, the permitted scope of operations of a licensed Solar  
3 Contractor included installing batteries as a component of a solar energy system. As explained by CSLB  
4 in its 2019 study of energy storage systems, “[t]he C-46 Solar Contractor has been installing some form  
5 of [energy storage systems] in conjunction with a photovoltaic system for approximately 40 years.” In  
6 2017, CSLB conducted an occupational analysis “to identify the *critical job activities* performed by  
7 [Board]-Licensed C-46 Solar Contractors.” “Photovoltaic (PV) System Installation and  
8 Commissioning,” including the installation of “equipment used in the generation and *storage* of  
9 electricity,” received the highest critical task score for C-46 contractors with energy storage appearing  
10 over 120 times (compared to fewer than 15 times in CSLB’s occupational analysis for C-10 contractors).  
11 Reflecting this assessment, 22 percent of the C-46 license exam covered battery storage and assessed the  
12 candidate’s knowledge in the installation of photovoltaic systems “with energy storage (i.e., batteries),”  
13 among other tasks. The *Contractors State License Board License Examination Study Guide, Solar C-46*  
14 likewise lists “Install energy storage systems (ESS)” as a key exam topic.

15 34. Consumer demand for solar paired with battery storage is increasing. Wildfires and  
16 electric grid outages have steadily increased consumer demand for this more reliable and safer source of  
17 electricity, and as a way to maintain access to the electricity during grid outages. The demand for solar  
18 and storage spiked in recent years as wildfires, extreme heat, and repeated utility power shut off events  
19 have left millions of residents and businesses without power for sometimes days at a time. Residents  
20 with medical needs and low-income households are particularly at risk during an electrical outage, and  
21 state financial incentive rebate programs have prioritized, and provided higher levels of rebates, for  
22 these customers. Potential economic losses to businesses and the interruption of telecommute work have  
23 also driven an increased demand for the reliability that solar and battery storage provides. Reduced costs  
24 and government subsidies have also made solar panels paired with batteries more affordable. And recent  
25 changes in California’s Net Energy Metering (NEM) program have made batteries crucial for customers  
26 who want to see cost savings and financial returns on their investment in solar.

27 35. As a result, investor-owned utility records demonstrate that batteries were included in  
28 over 39,000 solar energy systems connected to the utilities’ distribution networks between January 2016

1 and July 2021. Based on one survey, C-46 Solar Contractors installed over 75 percent of the solar and  
2 storage systems during this time. Many of these contractors were pure C-46 Solar Contractors. An  
3 economic analysis of more recent interconnection data from 2022 found that pure C-46 Solar  
4 Contractors alone installed solar and/or storage projects valued at roughly \$58 million during that year.

5 36. Solar Contractors have built these projects safely for over forty years. In a 2019 study,  
6 CSLB “was unable to identify significant instances of harm to persons or property caused by the  
7 installation of an [energy storage system].” A 2021 study of energy systems commissioned by CSLB  
8 likewise concluded that “in California there have been no significant incidents with injury or death that  
9 we could identify.” CSLB’s Initial Statement of Reasons and Final Statement of Reasons for the rule  
10 likewise failed to identify any safety incidents involving the installation of batteries by a C-46 Solar  
11 Contractor.

12 37. This track-record is not surprising given the extensive knowledge, training, and  
13 experience of licensed C-46 Solar Contractors and their skilled and trained workforce along with the  
14 product safety standards for solar paired batteries. Contractors must pass a Board competency exam to  
15 obtain a C-46 Solar Contractor license that extensively covers applicable safety codes and technical  
16 matters relating to both solar and battery storage. Solar contractors who install batteries are also  
17 approved by battery manufacturers and must meet the manufacturers’ safety requirements.

18 38. When performing installations, Solar Contractors follow the detailed rules in the  
19 California electrical, fire and building codes. Local building officials confirm compliance with these  
20 rules when they issue a permit and approve installation plans before the system is built and when they  
21 inspect and approve completed installations. This includes the California Electric Code requirement that  
22 the installation of Solar Photovoltaic Systems, which includes the wiring and interconnections for an  
23 Energy Storage System, be performed by “qualified persons” who have the skills and knowledge related  
24 to the electrical equipment installation and have received specified safety trainings to recognize and  
25 avoid potential hazards. 24 C.C.R. §§ 100, 690.4(C), 690.1(B). The California Electric Code does not  
26 limit the definition of “qualified persons” to “certified electricians.” Instead, local building departments  
27 provide safety validation to confirm that applicable electrical, fire, and building codes have been  
28 followed during the installation process and that installations were performed by qualified individuals.

1 39. The battery products that Solar Contractors install also meet strict code and safety  
2 standards developed to ensure that if a product fails, it will fail safely, without injury or damage. The  
3 manufacturers of these batteries produce detailed installation instructions and require Solar Contractors  
4 and their workforce to undergo product-specific trainings to ensure the batteries are installed safely and  
5 properly.

6 40. In conducting these battery installations, C-46 Solar Contractors have also offered  
7 warranties to modify, maintain, or repair the batteries they install. To increase demand for batteries, the  
8 state's Self-Generation Incentive Program (SGIP) pays Californians a financial incentive to reduce the  
9 cost of battery installations. State regulations require that the installers of grid-tied batteries, or batteries  
10 that receive a rebate through SGIP, provide installation and service warranties. California Public  
11 Utilities Commission Decision 16-01-044; *Self-Generation Incentive Handbook* (Oct. 28, 2022), at 70  
12 ("As part of the Executed Contract, all storage systems are required to include a minimum 10 year  
13 service warranty. . . . The service warranty must cover the system maintenance to include (but not  
14 limited to) system support, problem diagnosis, on-site repair and preventative maintenance). In addition  
15 to these state-mandated service and warranties, Solar Contractors are also often required by the battery  
16 manufacturers to provide a warranty with installation.

#### 17 **The California Administrative Procedures Act**

18 41. Before CSLB may alter the scope of operations for its C-46 Solar Contractor license  
19 classification, it must comply with the APA's rulemaking procedures. Bus. & Prof. Code §§ 7008, 7059.  
20 The APA establishes "basic minimum procedural requirements for the adoption, amendment, or repeal  
21 of administrative regulations." Gov. Code § 11346. It is intended "to advance 'meaningful public  
22 participation'" in the regulatory process and "was born out of the Legislature's perception that there  
23 existed too many regulations imposing greater than necessary burdens on the state and particularly upon  
24 small businesses." *Western State Petroleum Assoc. v. Board of Equalization* (2013) 57 Cal.4th 401, 424-  
25 25. The Legislature was particularly concerned that unclear and complex regulations put small  
26 businesses at a disadvantage. Gov. Code § 11340(g).

27 42. The APA's rulemaking procedures address these concerns by requiring the agency to  
28 prepare express regulatory terms, a statement of reasons for the regulation, economic impact

1 assessments, and a consideration of alternatives. Discussions with stakeholders and preparation of these  
2 materials occur during a pre-regulatory period. Formal notice and comment rulemaking begins when the  
3 agency provides notice of the proposed regulation and supporting materials to the Office of  
4 Administrative Law and the public. The agency’s notice is followed by a period of at least 45 days when  
5 the public may review and comment on the agency’s statement of reasons, economic impact  
6 assessments, and alternatives. Gov. Code § 11346.4(a). Following public comment, the agency must  
7 prepare a final statement of reasons that responds to each objection and recommendation from the  
8 public. It can only adopt the proposed rule if it determines that no considered alternative would be as  
9 effective and less burdensome. *Id.* § 11346.9. The Office of Administrative Law must approve all final  
10 regulations before they go into effect. *Id.* § 11349.3.

11 43. The APA’s procedures are meant to ensure that an agency does not turn a blind eye to the  
12 economic impacts of proposed regulations. It requires the agency to “assess the potential for adverse  
13 economic impact” on California businesses and individuals, including small businesses and jobs,  
14 “avoiding the imposition of unnecessary or unreasonable regulations . . . or compliance requirements.”  
15 *Id.* § 11346.3. The agency must describe “all cost impacts . . . that a representative private person or  
16 business would necessarily incur in reasonable compliance with the proposed action.” *Id.* §  
17 11346.5(a)(9). Any initial determination that a regulation will not have a significant adverse economic  
18 impact on businesses must be supported by facts and evidence. *Western State Petroleum Assoc.*, 57  
19 Cal.4th at 431. If the agency estimates that a regulation will have an economic impact on California  
20 businesses and individuals in excess of \$50,000,000, it must prepare a “standardized regulatory impact  
21 analysis” consistent with Department of Finance standards for cost benefits analyses. *Id.* §§  
22 11346.3(c)(1); 11342.548. The agency must also identify reasonable alternatives to the regulation,  
23 including those that would be less burdensome and equally effective, and those that would be less  
24 burdensome on small business, and justify its reasons for rejecting those. *Id.* § 11346.2.

25 44. The APA also provides that “[n]o state agency shall issue, utilize, enforce, or attempt to  
26 enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or  
27 other rule, which is a regulation . . . , unless the guideline, criterion, bulletin, manual, instruction, order,  
28 standard of general application, or other rule has been adopted as a regulation and filed with the

1 Secretary of State pursuant to” its notice and comment procedures. Gov. Code § 11340.5(a). The APA’s  
2 definition of “regulation” is extremely broad. A regulation includes “every rule, regulation, order, or  
3 standard of general application or the amendment, supplement, or revision of any rule, regulation, order,  
4 or standard adopted by any state agency to implement, interpret, or make specific the law enforced or  
5 administered by it, or to govern its procedure.” *Id.* § 11342.600.

6 45. The California Supreme Court has articulated a two part test to identify when an agency  
7 action is a regulation subject to the APA. “First the agency must intend its rule to apply generally, rather  
8 than in a specific case . . . Second, the rule must ‘implement, interpret, or make specific the law enforced  
9 or administered by [the agency].’” *Tidewater Marine Western*, 14 Cal.4th at 571. If the rule is a  
10 “regulation,” and there is no express statutory exemption excusing the agency from complying with the  
11 APA’s rulemaking procedures, then a rule that has not undergone notice and comment rulemaking is an  
12 invalid underground regulation. *Id.* at 576.

### 13 **CSLB’s Previous Attempts to Eliminate C-46 Battery Installations**

14 46. On February 23, 2018, at the urging of investor-owned utilities, including Pacific Gas and  
15 Electric, and representatives of electrical unions that work for the utilities, CSLB’s Licensing  
16 Committee contemplated a motion to restrict C-46 Solar Contractors from installing battery storage.  
17 After warnings from CSLB legal counsel regarding the legality of such a motion, the Committee  
18 narrowly voted instead to conduct public meetings to determine if any license classifications “should be  
19 precluded from installing an energy storage system in a standalone contract or when included in the  
20 installation of a solar system,” and to report staff’s findings to CSLB.

21 47. Staff’s resulting 2019 Energy Storage Systems Report summarized the long history of the  
22 C-46 (Solar Contractor) classification including installations of solar and storage projects, and various  
23 Board communications and reports discussing the activities permitted in this classification. The Report  
24 noted that the C-10 (Electrical Contractor) classification could also install energy storage systems, as  
25 well as A (General Engineering Contractor) and B (General Building Contractor) classifications when  
26 the installation was otherwise within their scope. The report summarized claims by members of the C-10  
27 Electrical Contractor industry that solar and battery storage installations are unsafe when not installed by  
28 certified electricians. CSLB’s Report reviewed the past 21,301 complaints to its field offices and found

1 that *none* involved energy storage systems. Likewise, the California Division of Occupational Safety and  
2 Health reported no injuries involving the installation of energy storage systems in the past fiscal year.

3 48. Nonetheless, on May 21, 2019, CSLB decided to begin preliminary rulemaking  
4 activities, and directed staff to “draft a proposed regulatory package for board consideration that would  
5 prohibit or restrict certain contractor classifications from performing the installation of battery energy  
6 storage systems.” The Chair of CSLB’s Legislative Committee recommended that CSLB hire a  
7 consultant to review the issue of battery storage because additional evidence was needed to support any  
8 proposed changes to the existing C-46 Solar classification.

9 49. CSLB took until December 2020 to contract for the UC Berkeley Labor Center to analyze  
10 the battery installation issue. The contract was approved over Petitioners’ strong objections to the Labor  
11 Center’s lack of subject matter expertise and their extensive affiliation with the International  
12 Brotherhood of Electrical Workers (“IBEW”), which had been lobbying CSLB to prohibit C-46 Solar  
13 Contractors from installing batteries. The Labor Center completed its final report, *Evaluation of*  
14 *Alternative Contractor License Requirements for Battery Energy Storage Systems* (Labor Center  
15 Report), six months later.

16 50. The Labor Center Report recommended that CSLB “preclude C-46 license holders from  
17 installing BESS even when paired with solar, unless they hold another license under which BESS  
18 installation is permitted.” This recommendation was based on the authors’ claimed inability to evaluate  
19 the competency of the C-46 Solar Contractor’s workforce, and on their conclusion that certified  
20 electricians, who perform electrical work for C-10 electrical contractors, would be qualified to install  
21 batteries given the training and testing required to become certified.

22 51. This conclusion turned a blind eye to the 40-year track record of safe battery installations  
23 by Solar Contractors and their skilled and trained workforce, continuing to rely on a false narrative  
24 regarding how dangerous batteries and their installations could theoretically be. Yet, after surveying the  
25 major data sources on safety incidents, the Labor Center Report concluded that “in California there have  
26 been no significant incidents with injury or death that we could identify.” Regardless, the Labor Center  
27 Report also ignored the installer trainings mandated by battery manufacturers and CSLB’s oversight of  
28 C-46 Solar Contractors who are licensed only after demonstrating knowledge in electrical safety and



1 battery installations in particular. Indeed, the Labor Center Report’s recommendations were made in the  
2 face of a complete lack of evidence supporting the assumption that solar technicians are unqualified and  
3 in the face of overwhelming evidence to the contrary including tens of thousands of successful battery  
4 installations.

5 52. The Report’s recommendation was also based on the bald conclusion that “there will be  
6 no adverse economic impacts of precluding the C-46 license from” installing batteries. Despite  
7 testimony to the contrary, the Labor Center ignored the impact on hundreds of pure C-46 contractors and  
8 posited that all C-46 Solar Contractors who also hold a C-10 (Electrical Contractor) license already  
9 employ sufficient certified electricians in their workforce to comply with CSLB’s regulations. This is  
10 not the case.

11 53. Some C-46 Solar Contractors also hold a C-10 (Electrical Contractor) license to allow  
12 them to do work outside of the C-46 license at times. However, solar is a multi-craft trade that requires  
13 knowledge in general construction, roofing, site evaluation, and other knowledge specific to how solar  
14 and battery storage systems work. These dual license holders have reported difficulty hiring certified  
15 electricians because these electricians often do not have the experience, knowledge, or desire to learn  
16 about and install solar energy and battery storage systems. Moreover, there is a well-documented  
17 shortage of certified electricians in California, and across the country, that cannot adequately meet  
18 growing demand within the construction industry. Because certified electricians are in high demand,  
19 they frequently command a much higher salary than the typical solar technician.

20 54. Thus, the Labor Center’s “no adverse economic impacts” statement not only ignored the  
21 impact on the nearly 500 C-46 Solar Contractors who do not hold a C-10, A, or B contractor license, but  
22 also ignored the fact that hundreds of contractors hold dual licenses, such as C-46 (Solar Contractor) and  
23 C-10 (Electrical Contractor), and would need to change their workforce to employ certified electricians  
24 for a significant portion of solar installation work, even on projects that do not involve a battery.

25 55. CSLB released the Labor Center Report to the public on July 9, 2021. Just three days  
26 before its July 27 meeting on the Report, CSLB published an agenda packet noting that one of the  
27 actions CSLB might take on the Report was to “Formally determine that the C-46 is not authorized to  
28 install BESS in any application.”

1           56.     Indeed, CSLB used the July 27, 2021 meeting to adopt a rule removing battery  
2 installations from the existing scope of operations that C-46 Solar Contractors could perform. CSLB  
3 also adopted an interpretation of the California Labor Code that required Solar Contractors to replace  
4 their existing workforce of trained and skilled solar installers with “certified” electricians if the  
5 contractors obtain a C-10 license to continue installing batteries. Despite warnings from CSLB’s legal  
6 counsel that an APA rulemaking was required, CSLB—at the urging of a Board member affiliated with  
7 the electricians’ union—ignored this warning and adopted the solar classification battery prohibition  
8 without following the APA rulemaking process.

9           57.     The Association filed a September 17, 2021 suit challenging the CSLB’s July 27, 2021  
10 rule, as well as its interpretation of the Labor Code, all of which amounted to an unlawful underground  
11 regulation. San Francisco Superior Court Case No. CGC-21-594911. The Association then filed a  
12 motion for preliminary injunction on September 28, 2021 to enjoin CSLB’s enforcement of the invalid  
13 rule. To avoid litigating the preliminary injunction motion, Respondents stipulated not to enforce or  
14 implement the July 27, 2021 decision until the litigation was resolved.

15           58.     Respondents and the Association subsequently engaged in settlement discussions and, in  
16 July 2022, reached a settlement agreement through which CSLB agreed to rescind its July 27, 2021  
17 decision and to reimburse the Association’s attorneys’ fees. Through the settlement, Respondents also  
18 agreed not to “act to limit or make specific the scope of the C-46 license classifications to install battery  
19 energy storage systems in conjunction with a solar system, *or interpret the law enforced or administered*  
20 *by CSLB with respect to a C-46 licensee contracting or installing battery energy storage systems, except*  
21 *in compliance with APA notice and comment rulemaking procedures”* (emphasis added). In exchange,  
22 the Association requested dismissal of its case, which the superior court dismissed without prejudice on  
23 March 15, 2023.

### 24                           **CSLB’s Second Underground Regulation and Flawed Rulemaking**

25           59.     While the Association’s suit was pending, CSLB held a number of meetings to consider  
26 potential next steps. On November 29, 2021, CSLB considered initiating a rulemaking on a new  
27 regulation that would prohibit C-46 Solar Contractors from performing any battery installations. Before  
28 this meeting, the Association submitted a letter informing CSLB of the flaws with this proposal. The

1 letter explained that the proposed rule was unjustified and reiterated the numerous shortcomings in the  
2 Labor Center’s report, including a bias in favor of the electrician’s union and a failure to recognize the  
3 critical shortage of certified electricians needed to meet existing construction demands, let alone new  
4 battery installations. The letter further noted that the Labor Center report had failed to identify a single  
5 safety incident that would have been prevented by further restricting the class of contractors who may  
6 install batteries. As an alternative, the Association proposed that C-46 Solar Contractors only be  
7 prohibited from installing utility-scale batteries of over 1 megawatt-hour.

8         60.     The Association also informed CSLB that CEQA requires it to study the environmental  
9 effects of the proposed rule. Through counsel, the Association explained that “[b]y limiting the types of  
10 contractors and workers who can install solar and storage systems, [a rule of this nature] would severely  
11 curtail the installation of those systems, resulting in increased greenhouse gas emissions and other  
12 pollutants associated with fossil-fuel power plants.” The analysis also pointed out that this slowing of  
13 solar and battery installations could conflict with many of California’s climate goals and policies  
14 surrounding clean energy.

15         61.     After considering these comments and public testimony, including from the Association,  
16 CSLB declined to move forward with the proposal to entirely prohibit C-46 Solar Contractors from  
17 installing batteries. Board members expressed concerns about this sweeping proposal, including the  
18 magnitude of economic harm to the industry and hundreds of small Solar Contractors, barriers to solar  
19 technicians becoming certified electricians, inconsistency with state goals for increasing renewable  
20 energy, and the absence of any evidentiary justification for prohibiting C-46 contractors from installing  
21 batteries. CSLB then directed staff to develop alternative language that would be more acceptable to  
22 stakeholders like Petitioners.

23         62.     During this time, the IBEW also put forward alternative proposals to drastically curtail C-  
24 46 contractors’ ability to install any batteries based on arbitrary and unjustified capacity limits. In  
25 multiple letters, hearings, and meetings between CSLB and stakeholders between February 2022 and  
26 June 2022, the Association explained why IBEW’s proposals were not appropriate and suggested  
27 changes that would better reflect CSLB’s stated goals without unduly harming the solar industry. For  
28 instance, the Association requested that the rulemaking clarify that C-46 Solar Contractors could install

1 qualifying batteries to existing solar panels and maintain solar-paired batteries they have already  
2 installed, which were subject to service warranties.

3         63.     Yet, CSLB ignored these modest requests and put forward a draft rule that reflected  
4 IBEW’s proposals to preclude batteries from the C-46 license classification, even when experts  
5 consulted by CSLB told them that batteries were already a part of the C-46 license. Apparently  
6 recognizing that their safety-based justifications lacked support and that they did not have authority to  
7 regulate workers, CSLB also adopted an entirely new rationale for restricting incidental battery  
8 installations over a threshold. Towards that end, CSLB issued a staff report in June 2022, recommending  
9 a rule that would prohibit C-46 Solar Contractors from installing batteries above an 80 kWh threshold,  
10 prohibit installing batteries of any size to existing solar panels, and prohibit the maintenance and repair  
11 of any batteries that Solar Contractors installed.

12         64.     The Association responded via letter on June 15, 2022, explaining that the new rationale  
13 was unfounded and the 80 kWh threshold would cut off a significant and growing portion of C-46 Solar  
14 Contractors’ business while also harming consumers, and that CSLB still had not presented any safety  
15 data to justify this action. The Association pointed out that the proposed threshold would be below the  
16 232 kWh capacity for a single Tesla Powerpack, which were commonly used for small businesses and  
17 off-grid homes. The letter further detailed the economic harms that would result from CSLB’s proposed  
18 rule, explaining that between 2016 and 2021, over 768 grid-tied commercial and residential solar and  
19 storage projects had battery storage systems exceeding 80 kWh. Of 573 systems between 80 and 280  
20 kWh, 76 percent of them were installed by contractors holding a C-46 solar license classification.

21         65.     This June 15, 2022 letter further reiterated the need for C-46 Solar Contractors to retrofit  
22 previously installed solar panels with battery storage and to maintain batteries they have already  
23 installed, especially in light of their service warranty obligations. Denying Solar Contractors the ability  
24 to fulfill their contractual obligations and honor their warranties would also put solar customers in a  
25 difficult position, leaving them without warranties to protect their solar investments, creating  
26 disincentives for future solar installations, and damaging business relationships. The Association urged  
27 CSLB to consider alternatives with fewer economic and environmental impacts, such as a rule with a  
28 threshold based on the California Fire Code, which suggests that battery installations at or below 600

1 kWh did not require extensive safety analysis. Throughout, the Association emphasized the need for  
2 solar contractors to be able to add batteries to existing solar panels and to repair batteries. The  
3 Association also reiterated its concerns with the need for CEQA compliance in a separate June 2022  
4 letter.

5 66. At a June 16, 2022 CSLB Board hearing to consider the draft rule and public comments,  
6 the Board refused to discuss any modifications to address concerns at that time, and authorized initiating  
7 the rulemaking process for the proposed rule as drafted.

8 67. On April 28, 2023, CSLB issued a Notice of Proposed Action and Initial Statement of  
9 Reasons to initiate a formal rulemaking process under the APA. The Notice stated that CSLB had “faced  
10 questions about the appropriate specialty license classification(s) to install BESS as between C-10 and  
11 C-46 license contractor classifications.” The Notice further stated that “there are no CSLB regulations  
12 that expressly specify that BESS is not part of a PV system, or when a BESS is ‘incidental and  
13 supplemental’ or essential to a specialty contractor’s installation of a PV system,” and asserted that the  
14 proposed rule would adopt such regulations. Specifically, in relevant parts, the proposed rule would:

15 a. Add a new definition of “battery energy storage system” to section 810,  
16 “Definitions,” of Article 1, Division 8, of Title 16.

17 b. Add “battery energy storage systems” to the description of the C-10 Electrical  
18 Contractor classification in section 832.10, “Class C-10 – Electrical Contractor,” of Article 3, Division  
19 8, of Title 16.

20 c. Revise the existing section 832.46, “Class C-46 – Solar Contractor, “ of Article 3,  
21 Division 8, of Title 16, by adding two new paragraphs to establish, for the purposes of the C-46  
22 classification, that:

23 i. a BESS, as defined, is not required to install a PV system and shall not be  
24 considered within the scope of the C-46 Solar Contractor classification except as specified in the next  
25 subdivision; and

26 ii. the C-46 installation of a BESS is incidental and supplemental to the work  
27 of a C-46 Solar Contractor when the BESS is installed at the same time as PV system and the BESS  
28 rating does not exceed 80 kWh.

1           68.     CSLB’s Initial Statement of Reasons claimed, with little-to-no evidentiary support, that  
2 the proposed rule would not have a significant statewide adverse economic impact directly affecting  
3 businesses; would not significantly create or eliminate jobs within the state; would not create new  
4 businesses or eliminate existing businesses in the state; would not adversely affect the expansion of  
5 businesses currently doing business within the state; would positively affect the health and welfare of  
6 California residents; would benefit worker safety; and would not impact the state’s environment.

7           69.     The Initial Statement of Reasons also insisted that the proposed rule would “not affect  
8 demand for PV systems and BESS and [would] not decrease the deployment of BESS paired with PV  
9 systems in California.” It further claimed that the proposed rule was not a “project” under CEQA  
10 because any environmental impact from the rule would be “wholly speculative.” In the alternative,  
11 CSLB argued that even if the proposed rule were a “project,” it was exempt from environmental review  
12 under the “common sense” exemption in the CEQA regulatory guidelines. Cal. Code Regs. §  
13 15061(b)(3). This exemption provides that projects are exempt from CEQA only “[w]here it can be seen  
14 with certainty that there is no possibility that the activity in question may have a significant impact on  
15 the environment.” *Id.*

16           70.     The Initial Statement of Reasons asserted that CSLB had “made an initial determination  
17 that no reasonable alternative to the regulatory proposal would be more effective in carrying out the  
18 purpose for which the action is proposed,” but glaringly failed to mention any of the regulatory  
19 alternatives that stakeholders like Petitioners had previously proposed.

20           71.     The Initial Statement of Reasons also repeated the Notice’s acknowledgment that “there  
21 are no CSLB regulations that expressly specify that BESS is not part of a PV system,” but this statement  
22 is inconsistent with CSLB’s later insistence that “current law already prohibits C-46 contractors from  
23 performing all manner of BESS work, including BESS installations, except as necessary to install (not  
24 retrofit) a PV system. The proposed regulation does not change, but preserves, the existing classification  
25 restriction.” Not only did this interpretation of the C-46 license contradict CSLB’s occupational  
26 assessment for the C-46 license but it ignored decades of industry practice in which C-46 contractors  
27 have installed, maintained, and repaired batteries. Moreover, CSLB could not announce this generally  
28 applicable interpretation of law that CSLB enforces without first *completing* an APA rulemaking

1 process about that interpretation. CSLB’s unvetted assertion about the scope of the pre-amendment C-46  
2 license classification was an underground regulation. *Tidewater Marine Western*, 14 Cal.4th at 571, 576.

3 72. In making a case for the proposed rule, the Initial Statement of Reasons argued that  
4 certain electrical work was simply “more appropriate” for C-10 contractors. CSLB’s justification for the  
5 rule further shifted to claim that the main purpose of the regulation was to “clarify” existing law for  
6 battery installations regarding who could do this work, whether battery is part of a PV solar energy  
7 system, and how small a battery must be to be considered incidental and supplemental to a solar energy  
8 system installation.

9 73. On August 3, 2023, CSLB’s staff held a hearing to receive public comments on CSLB’s  
10 proposed rule as the APA requires when requested. The Association submitted in-person and written  
11 comments raising serious concerns with its economic and environmental effects and suggesting several  
12 amendments as an alternative to the proposed rule. The Association referred to these changes as the  
13 “Retrofit & Repair 280” compromise alternative and explained that the amendments would:

14 a. Expressly authorize Solar Contractors to install, modify, maintain, and repair  
15 batteries that do not exceed the regulatory threshold as one component of a solar energy system.

16 b. Prohibit Solar Contractors from installing, connecting, modifying, maintaining, or  
17 repairing Batteries with a rating that exceeds 280 kWhs.

18 c. Create an exception to the prohibition where necessary to protect existing  
19 customer warranties.

20 d. Phase in the new rule to allow time for more solar workers to become certified  
21 electricians and for Solar Contractors to complete pending contracts, obtain additional licenses, and hire  
22 certified electricians.

23 74. The Association explained the Retrofit and Repair 280 alternative would still meet  
24 CSLB’s stated goals, but would avoid much of the economic and environmental harms of the proposed  
25 rule because it would not have the same slowing effect on the industry and market and would protect  
26 customer warranties.

27 75. The Association’s comments also pointed out that the alleged uncertainty regarding the  
28 authority of C-46 Solar Contractors to install batteries and concern about their ability to do so safely

1 only arose when utilities like PG&E and electricians’ unions like IBEW raised claims about C-46  
2 qualifications. The Association further noted that in the five years CSLB had spent studying these  
3 alleged safety concerns, none of the “hypothesized safety incidents” had materialized despite the tens of  
4 thousands of battery installations by C-46 licensed contractors during this time.

5 76. The Association also submitted August 3, 2023 comments on the rulemaking’s numerous  
6 legal flaws. These comments focused on CSLB’s failure to satisfy the substantive and procedural  
7 requirements of the APA, including:

8 a. A failure to comply with the APA’s economic impact analysis requirements (Gov.  
9 Code § 11346.5) including:

10 i. A failure to assess the impacts of the rule being proposed and an improper  
11 determination that there would be no significant economic impacts on business enterprises;

12 ii. An improper and incorrect conclusion that the proposed rule is not a major  
13 regulation;

14 iii. A failure to support the economic impact assessment with substantial  
15 evidence;

16 iv. An improper determination that the proposed rule would not affect small  
17 businesses;

18 v. An improper determination that the proposed rule would not eliminate  
19 jobs, existing businesses, or impede the expansion of businesses;

20 vi. An improper determination that the proposed rule would not have fiscal  
21 impacts on government agencies;

22 vii. An improper determination that the proposed rule would not have a  
23 significant effect on housing costs;

24 viii. A failure to recognize the harm the proposed rule would have on  
25 California residents, worker safety, and the state’s environment;

26 b. A failure to identify reasonable alternatives to the proposed rule, including a  
27 failure to consider or incorporate any of the proposed alternatives the Association had suggested in the  
28 pre-rulemaking meetings and discussions;



- 1 c. A failure to show that the regulation is reasonably necessary because:
- 2 i. CSLB’s stated purpose and need is an insufficient basis for regulatory
- 3 amendment;
- 4 ii. CSLB failed to provide substantial evidence to support its determination
- 5 that the regulation was reasonably necessary;
- 6 d. A lack of authority to adopt the proposed regulation, which is not consistent with
- 7 state law and would unconstitutionally impair Solar Contractors’ contracts; and
- 8 e. A failure to meet the APA’s clarity standard.

9 77. The Association also reiterated that promulgating a rule without first conducting

10 environmental review would violate CEQA. Its letter explained that the proposed rule did not fall into

11 CEQA’s “common sense” exemption because CSLB had not refuted to a certainty that there was no

12 possibility the rule would have a significant effect on the environment. The letter also noted that CSLB

13 had used the wrong baseline in its initial consideration of whether the proposed rule would have any

14 environmental impact because CSLB erroneously claimed that “current law already prohibits C-46

15 contractors from performing all manner of BESS work.” Finally, the letter noted that the Initial

16 Statement of Reasons acknowledges that there is “stated confusion” in the current regulatory framework

17 and pushed back on CSLB’s assertion that this was, in fact, established law.

18 78. Petitioners’ members and supporters also submitted written comments to CSLB outlining

19 the significant harms they would face if CSLB approved the proposed rule. C-46 Solar Contractors and

20 small business owners pointed out that they would be cut off from significant portions of the solar

21 installation market, that they would no longer be able to retain their highly specialized workforce of

22 solar installers, that they would not be able to fulfill the service warranties they had entered for past

23 battery installations, that they would experience reputational harm with existing and would-be

24 customers, and that they likely would not be able to stay in business. Similarly, solar customers

25 submitted comments detailing their concerns about having their service warranties voided and having to

26 find a different contractor to service a battery previously installed by a C-46 Solar Contractor. Other

27 customers asserted that the added expenses from having certified electricians install batteries and the

28 delays in trying to find an authorized contractor to perform a battery installation would deter other

1 members of the public from investing in rooftop solar.

2 79. Petitioners and their members and supporters also attended the August 3, 2023 hearing to  
3 make many of these same comments in person. In the end, CSLB received 975 comments regarding the  
4 proposed rule, 458 of which were in opposition to the proposed changes. This level of public  
5 participation and input should have resulted in a robust and well-informed rulemaking process under the  
6 APA, which contemplates that these objections and recommendations inform the agency’s process. Gov.  
7 Code § 11346.9(a)(3).

8 80. Yet, CSLB took no action and made no response to these comments for over eight  
9 months. CSLB did not schedule consideration of the proposed rule again until April 18, 2024. On April  
10 12, 2024—just four business days before the April 18 hearing—CSLB posted its agenda packet, which  
11 included staff’s Final Statement of Reasons for the proposed rule. Under the APA, the Final Statement  
12 of Reasons must update the information contained in the Initial Statement; determine whether adoption  
13 of the rule imposes a mandate on local agencies or schools; summarize and respond to each public  
14 objection or recommendation regarding the proposed rule; and make a well-supported determination that  
15 no alternative would be more effective, less burdensome, or less costly. Gov. Code § 11346.9(a).

16 81. The Final Statement of Reasons entirely failed to meet these requirements. First, CSLB  
17 made no substantive changes to the proposed rule whatsoever and provided only cursory “updates” of  
18 the Initial Statement. Consequently, all of the procedural and substantive flaws that Petitioners had  
19 identified in the Initial Statement of Reasons remained uncorrected, including a failure to acknowledge  
20 and analyze the full scope of the rule’s impacts.

21 82. The Final Statement of Reasons also failed to adequately summarize and respond to all  
22 relevant objections or recommendations regarding the proposed rule. Gov. Code § 11346.9(a). Though  
23 CSLB did provide some responses, they suffered from a number of flaws including:

24 a. A failure to summarize and respond to several substantive comments, especially  
25 those made in person at CSLB’s August 3, 2023 meeting. CSLB’s responses either ignored the oral  
26 comments altogether, attributed them to the wrong person, or completely mischaracterized their  
27 substance. This error was further compounded by the very poor hearing transcript CSLB produced of its  
28 August 3, 2023 meeting, which did not represent an accurate record of the proceedings, as the APA

1 requires. Gov. Code § 11347.3(b)(8); 1 Cal. Code Regs. § 4.

2 b. A failure to fully summarize all relevant written comments;

3 c. A failure to accurately characterize what the proposed rule would do; and

4 d. A failure to provide responses that actually address the substance of a  
5 commenter’s concerns.

6 83. The Final Statement of Reasons also failed to make an adequate alternatives  
7 determination or justify its alternatives determination with supporting information. The Final  
8 Statement’s discussion of alternatives never mentioned any specific alternatives, but instead merely  
9 reiterated the APA standard and vaguely referenced responses to comments in which members of the  
10 public put forward alternatives. In an attempt to avoid directly grappling with any of the less harmful  
11 alternatives suggested by the public—most of which still satisfied CSLB’s stated purpose in clarifying  
12 the law, CSLB once again returned to its unsupported safety-based rationale for the rule to claim that  
13 electrical work is risky and must be regulated. Unsurprisingly, as Petitioners noted in April 18, 2024  
14 written comments, none of the responses to comment provide adequate reasoning or any supporting  
15 information to make the required determination regarding alternatives that would lessen the adverse  
16 economic impacts on small businesses. The Final Statement failed to explain or support any finding that  
17 Petitioners’ proposed retrofit and repair alternative would not be equally effective and less burdensome  
18 on the regulated industry.

19 84. Throughout its Final Statement of Reasons, CSLB repeatedly made and utilized  
20 additional interpretive statements regarding the scope of the preexisting C-46 regulation, such as:

21 “The proposed regulation makes no changes in the classification in terms of prohibiting C-46  
22 contractors from retrofitting existing PV systems with battery energy storage systems, or  
23 otherwise modifying, maintaining, or repairing existing PV systems by installing separate battery  
24 energy storage systems. The proposed regulation also makes no changes in terms of prohibiting  
25 C-46 contractors from modifying, maintaining, or repairing previously installed battery energy  
26 storage systems. *These licensed activities are prohibited under existing law, and the prohibitions  
27 are preserved in the proposed regulation.*”

28 (Emphasis added.) CSLB further claimed that this is “the only tenable interpretation of existing law.”

1 Later, CSLB asserted that “[s]ince they are legally separate and distinct systems, the only legally tenable  
2 interpretation of the existing classification regulation is that C-46 contractors may install a battery  
3 energy storage system with the installation of a PV system when such installation is required, but all  
4 other licensed battery energy storage system work is prohibited.”

5 85. CSLB made these generally applicable assertions regarding the scope of the C-46 Solar  
6 Contractor license despite (a) the text of 16 Cal. Code of Regs. section 832.46 not addressing batteries or  
7 whether maintenance and retrofits are allowing or prohibited (b) CSLB’s recognition of this ambiguity  
8 in the Notice of Proposed Action and Initial Statement of Reasons, (c) roughly 40 years of battery  
9 installations by C-46 Solar Contractor license holders, and (d) detailed reasons why the CSLB’s  
10 interpretation is not in fact correct as repeatedly explained by the Association and its legal counsel.  
11 CSLB’s own materials cast doubt on this being the only tenable interpretation of the C-46 Solar  
12 Contractor classification in section 832.46. For instance, CSLB’s 2017 occupational analysis to identify  
13 “critical job activities” performed by C-46 Solar Contractors identified installation of “equipment used  
14 in the generation and *storage* of electricity” as the C-46’s most important task. CLSB, Occupational  
15 Analysis Report, C-46 Solar Examination (August 2017) at 5 (emphasis added). The *Contractors State*  
16 *License Board License Examination Study Guide, Solar C-46* likewise lists “Install energy storage  
17 systems (ESS)” as a key topic for the C-46 classification exam.

18 86. CSLB never completed the APA rulemaking process before it adopted its generally  
19 applicable interpretation of the scope of the C-46 Solar Contractor license. Instead, CSLB used its new  
20 interpretation of the C-46 license classification to avoid analyzing the full effect of the new proposed  
21 rule by arguing that the proposed rule would not make any changes to existing law. CSLB repeated the  
22 same arguments in its Final Statement of Reasons as a rationale for not conducting any CEQA review  
23 for the proposed rule. In April 18, 2024 comments on the Final Statement of Reasons, the Association  
24 noted that CSLB’s statement claiming the scope of the C-46 license already prohibited retrofits,  
25 maintenance, and repair was an invalid underground regulation, absent a rulemaking, and thus could not  
26 be a basis for finding that this rulemaking makes no changes to existing law.

27 87. On April 18, 2024, CSLB held a hearing to consider adoption of its proposed rule. The  
28 Association submitted a letter outlining the rulemaking’s remaining legal flaws under the APA and

1 CEQA. Many of Petitioners’ members and supporters spoke at the hearing to oppose approval of the  
2 rule. During the meeting, Board Member De La Torre also acknowledged that the Labor Center, which  
3 authored the report CSLB was using to justify its actions, received financial contributions from IBEW.  
4 Despite this conflict of interest and the significant public comment and outcry at the meeting, CSLB  
5 voted to approve the regulation with minimal discussion and without having conducted any  
6 environmental analysis.

7 88. CSLB submitted a copy of its rule, along with the rulemaking record, to the Office of  
8 Administrative Law (OAL) on April 23, 2024. Bus. & Prof. Code § 313.1. OAL approved the rule on  
9 June 5, 2024. Gov. Code § 11349.1. The amended rule will go into effect on October 1, 2024.

10 **The Rule’s Devastating Impacts to Solar Contractors and the State’s Efforts to Accelerate the**  
11 **Deployment of Solar and Storage Projects**

12 89. Nearly 500 licensed Solar Contractors in California are specialty contractors that hold a  
13 C-46 license classification but not an A or B license, or a C-10 license classification, that would allow  
14 them to conduct battery storage work. If CSLB’s illegal rule stands, these pure C-46 Solar Contractors  
15 will be required to obtain a C-10 license classification to remain a specialty contractor that can complete  
16 solar and storage installation projects above 80 kWh and any battery maintenance or retrofit work for  
17 batteries of any size going forward. Even if a pure C-46 Solar Contractor obtains a C-10 electrical  
18 contractor license, the contractor will be required to replace existing workers with certified electricians  
19 for a wide range of tasks, not just for projects that have batteries, but for all of their solar panel  
20 installations—even those that do not include battery storage. Petitioners are informed and believe that  
21 this will be an extremely difficult, if not impossible task, for many of these contractors. Numerous  
22 newspaper articles, trade publications, expert analysis, and existing C-10 license holders report that there  
23 is already a statewide shortage of certified electricians. Moreover, Solar Contractors with a C-10 license  
24 attempting to hire certified electricians report that these electricians often do not want to enter the solar  
25 field which, among other things, typically requires climbing onto a roof and requires additional  
26 specialized training. A 2023 economic analysis concluded that California has faced a shortage of  
27 certified electricians for many years that is only expected to get worse. For instance, the number of  
28 certified electricians decreased by about 6% from 2021 to 2023 while demand for certified electricians is

1 expected to grow at 7%. Solar installers, this expert concluded, are better position to provide the labor  
2 necessary to continue the fast growth rate of solar installations than supply-constrained certified  
3 electricians. Further, it would take years for qualified solar workers to become certified electricians,  
4 during which time they would need to quit their solar installer jobs. To take the general electrician's  
5 exam, a candidate must have a minimum of 8,000 hours of electrical experience supervised by a  
6 certified general electrician. The residential electrician's exam requires 4,800 hours of electrical  
7 experience. Petitioners are informed and believe that work performed for a C-46 Solar Contractor  
8 installing solar and battery storage systems does not qualify for these hours.

9       90.     CSLB's actions also prevent pure C-46 contractors from performing widespread, state-  
10 mandated extended maintenance and warranty contract obligations for past projects that included  
11 batteries. The state's Self-Generation Incentive Program, which offers financing to help offset  
12 consumers' battery installation costs, requires contractors to provide customers a 10-year service and  
13 maintenance contract and warranty for all battery installations that receive an SGIP rebate. CSLB's rule  
14 would prohibit pure C-46 contractor from performing any service, maintenance, or warranty repairs on  
15 the batteries they lawfully installed. Their customers must now find and pay a different contractor to  
16 service their battery systems. And doing so may void the warranty provided by the original installation  
17 contractor, even if that contractor later obtains a C-10 electrical contractor license or CSLB changes its  
18 arbitrary rule. This result runs counter to CSLB's mission to protect consumers within the contracting  
19 industry.

20       91.     C-46 Solar Contractors cannot avoid these devastating impacts by simply subcontracting  
21 out their battery warranty and maintenance work to C-10 contractors. Even if subcontracting were  
22 possible and a maintenance warranty allowed for third-party work, which Petitioners are informed and  
23 believe that most do not, this would create tremendous costs for C-46 Solar Contractors, who would  
24 have to find C-10 contractors with certified electricians on staff to take this work and who would charge  
25 much higher rates. Because warranty and maintenance work is difficult to predict and is provided to the  
26 customer often at no additional charge, it would be extremely difficult for C-46 Solar Contractors to  
27 anticipate and budget for these additional costs in a financially viable way.

28       92.     In addition, Petitioners are informed and believe that because C-10 contractors will have

1 to use certified electricians to do this work, the labor costs for these jobs will be much higher than when  
2 contractors previously operated under a C-46 license. A 2023 economic impact analysis of the rule  
3 concluded that doing so would increase the cost of solar and battery installations by roughly 4.1%. The  
4 Association’s members are informed and believe that these increased costs—some of which cannot be  
5 fully anticipated if they arise under a service warranty—will be so significant that they will jeopardize  
6 the ability of C-46 contractors to stay in business.

7 93. The rule also puts dual C-46 and C-10 contractors in a difficult position. If Solar  
8 Contractors obtain the C-10 electrical contractor license CSLB now requires for all battery retrofits and  
9 maintenance, and installations over 80 kWh, and they cannot hire sufficient certified electricians, they  
10 cannot perform their warranty obligations under existing contracts, they cannot enter into new contracts  
11 for solar or storage work, and their existing workforce will become instantly disqualified from  
12 performing the work they have been trained to perform, and have performed successfully and safely to  
13 date.

14 94. The owners of several solar companies have provided public comments and testimony to  
15 CSLB that they would not be able to continue to employ their full current workforce under such  
16 conditions, and other companies have stated that they might go out of business entirely. These Solar  
17 Contractors also explained that in light of the skyrocketing demand for battery storage, the inability to  
18 retrofit past installations with new batteries or to provide a warranty on any batteries installed incidental  
19 to a PV solar system will leave them almost entirely unable to find enough work to stay financially  
20 viable. Many C-46 Solar Contractors further explained that the inability do maintenance work under  
21 existing warranties or to provide warranties for any new battery installations would severely damage  
22 their business reputations, customer relationships, and economic wellbeing. These business owners  
23 expressed deep skepticism about their ability to find C-10 contractors who could perform battery  
24 warranty work and to offset the increased costs of doing so, even if such subcontracting were  
25 permissible.

26 95. The rule further fails to account for the current financial incentives in the solar market,  
27 both for Solar Contractors and solar customers. The California Public Utilities Commission (CPUC)  
28 recently created the net billing tariff to replace the 25-year-old net energy metering tariff. The new tariff

1 gives customers far less compensation for solar energy they produce onsite and then send to the electric  
2 grid. This major change in policy is meant to encourage customers to install batteries to consume that  
3 extra energy for charging and later onsite usage at times when renewable energy production is low,  
4 rather than sending it to the electric grid at times when renewable energy production is high. The  
5 decision also encourages existing solar customers taking service under the net energy metering tariff to  
6 add batteries to their generating system, by granting these customers an exception to a rule that would  
7 otherwise force them to switch to the net billing tariff. Petitioners are informed and believe that these  
8 changing financial incentives have made battery installation vital for solar customers who want to want  
9 to see a return on their investment in solar. Yet, CSLB’s rule will make it more difficult for California  
10 solar customers to find contractors who are allowed to retrofit their solar systems with battery storage  
11 and will cut pure C-46 Solar Contractors out of most of this growing battery installation market.

12 96. CSLB’s actions restricting the available pool of contractors and workers for installing  
13 solar and storage projects also undermines the state’s efforts to accelerate the deployment of these  
14 projects in the face of climate change and extreme weather events. For instance:

- 15 • **Rebates for solar and storage.** To help address wildfires and power outages, the Self-  
16 Generation Incentive Program (SGIP) provides rebates for installing battery storage  
17 systems at both residential and non-residential facilities that can function during a power  
18 outage. Funding has historically prioritized communities living in high fire-threat areas,  
19 communities that have experienced two or more utility Public Safety Power Shut-off  
20 (PSPS) events, as well as low income and medically vulnerable customers. The funds are  
21 also available for “critical facilities” that support community resilience in the event of a  
22 PSPS or wildfire. In conjunction with the creation of this program, section 379.6 of the  
23 Public Utilities Code reads, “It is the intent of the Legislature that the self-generation  
24 incentive program increase deployment of distributed generation and energy storage  
25 systems to facilitate the integration of those resources into the electrical grid, improve  
26 efficiency and reliability of the distribution and transmission system, and reduce  
27 emissions of greenhouse gases, peak demand, and ratepayer costs.”
- 28 • **Streamlined rules for connecting storage to the grid.** Also motivated by the upcoming  
wildfire season and in response to the passage of SB 700 by the State Legislature, the  
California Public Utilities Commission updated California’s interconnection rules on  
June 4, 2021, which govern the process of connecting distributed energy projects to the  
grid. One of these updates streamlines the connection of smaller energy storage systems  
that do not send power back to the grid, including solar and storage projects. In its  
decision, the Commission noted that they “expect to experience an increased number of  
requests for these systems in the future.” The Commission required utilities to implement  
the streamlined program within just 45 days, given the urgent need to enable customers to  
activate these systems before the power shut down events begin again during the wildfire  
season.

28 ///



- **Mandated solar and storage building standards.** California’s 2019 Building Energy Efficiency Standards, which took effect on January 1, 2020, require the installation of solar panels with all new single-family residential homes and multi-family dwellings. In August 2021, the California Energy Commission approved extending these standards to require the installation of solar panels and battery storage on new commercial buildings and high-rise multifamily buildings beginning January 1, 2023. The new standards also include requirements for builders to design single-family homes so battery storage can be easily added to the already-mandated solar panels. The Association estimates that as a result of these mandates, the total annual photovoltaic solar market will increase approximately 22 percent due to the growth of solar in the commercial sector alone.

97. Petitioners are informed and believe that a large, experienced, and affordable pool of contractors and workers to install these solar and storage projects will be essential to meet these regulatory requirements and policy goals without slowing down housing production or commercial growth. For this reason, representatives of the California Energy Commission and the Building Industry Association have previously opposed CSLB’s attempts to prohibit C-46 Solar Contractors from continuing to install battery storage with solar energy systems.

#### **FIRST CAUSE OF ACTION**

#### **(Violations of the California Administrative Procedure Act, Gov. Code, § 11340 et seq.; Declaratory Relief, Code Civ. Proc. § 1060; Gov. Code § 11350; Writ of Mandate, Code Civ. Proc. § 1085)**

98. Petitioners hereby reallege and incorporate by reference the allegations contained in preceding paragraphs in their entirety.

99. Before CSLB may alter the scope of operations for its C-46 Solar Contractor license classification, it must comply with the APA’s notice and comment rulemaking procedures. Bus. & Prof. Code §§ 7008, 7059.

100. The APA establishes “basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations.” Gov. Code § 11346. Specifically, the APA requires the agency to prepare express regulatory terms, a statement of reasons for the regulation, economic impact assessments, and a consideration of alternatives. The agency must provide notice of the proposed regulation and supporting materials to the Office of Administrative Law and the public. The agency’s notice is followed by a period of at least 45 days when the public may review and comment on the agency’s statement of reasons, economic impact assessments, and alternatives. Gov. Code § 11346.4(a). Following public comment, the agency must prepare a final statement of reasons that responds to each

1 objection and recommendation from the public. It can only adopt the proposed rule if it determines that  
2 no considered alternative would be as effective and less burdensome. *Id.* § 11346.9.

3 101. The APA's procedures set out specific requirements for an agency's analysis of the  
4 economic impacts of a proposed regulation. *Id.* §§ 11346.3, 11346.5(a)(9). Any initial determination that  
5 a regulation will not have a significant adverse economic impact on businesses must be supported by  
6 facts and evidence. *Western State Petroleum Assoc.*, 57 Cal.4th at 431. The agency must also identify  
7 reasonable alternatives to the regulation, including those that would be less burdensome and equally  
8 effective, and those that would be less burdensome on small business, and justify its reasons for  
9 rejecting those. Gov. Code § 11346.2.

10 102. As set forth above, the CSLB's 2024 challenged rulemaking failed to satisfy the  
11 substantive and procedural requirements of the APA, including but not limited to:

12 a. A failure to comply with the APA's economic impact analysis requirements (Gov.  
13 Code § 11346.5), including:

14 i. A failure to assess the impacts of the rule being proposed and an improper  
15 determination that there would be no significant economic impacts on business enterprises;

16 ii. An improper and incorrect conclusion that the proposed rule is not a major  
17 regulation;

18 iii. A failure to support the economic impact assessment with substantial  
19 evidence;

20 iv. An improper determination that the proposed rule would not affect small  
21 businesses;

22 v. An improper determination that the proposed rule would not eliminate  
23 jobs, existing businesses, or impede the expansion of businesses;

24 vi. An improper determination that the proposed rule would not have fiscal  
25 impacts on government agencies;

26 vii. An improper determination that the proposed rule would not have a  
27 significant effect on housing costs;

28 viii. A failure to recognize the harm the proposed rule would have on

1 California residents, worker safety, and the state’s environment;

2           b.     A failure to identify reasonable alternatives to the proposed rule, including a  
3 failure to consider or incorporate any of the proposed alternatives the Association suggested in the pre-  
4 rulemaking meetings and discussions;

5           c.     A failure to show that the regulation is reasonably necessary because:

6                i.     CSLB’s stated purpose and need is an insufficient basis for regulatory  
7 amendment;

8                ii.    CSLB failed to provide substantial evidence to support its determination  
9 that the regulation was reasonably necessary;

10           d.    A lack of authority to adopt the proposed regulation, which was undertaken *ultra*  
11 *vires*, is not consistent with state law and Business and Professions Code section 7059(a), which  
12 empowers to “adopt reasonably necessary rules and regulations to effect the classification of contractors  
13 in a manner consistent with established usage and procedure,” and would unconstitutionally impair Solar  
14 Contractors’ contracts; and

15           e.     A failure to meet the APA’s clarity standard.

16           103.   CSLB’s Final Statement of Reasons for the rulemaking made no substantive changes to  
17 the proposed rule and consequently failed to correct any of the procedural and substantive flaws from  
18 the Initial Statement of Reasons.

19           104.   The Final Statement of Reasons itself contained numerous violations of the APA,  
20 including but not limited to:

21                a.     A failure to adequately summarize and respond to all relevant objections or  
22 recommendations regarding the proposed rule. Gov. Code § 11346.9(a). Specifically:

23                    i.     A failure to summarize and respond to several substantive comments,  
24 especially those made in person at CSLB’s August 3, 2023 meeting, largely due to a failure to provide  
25 an accurate record of the proceedings, as the APA requires. Gov. Code § 11347.3(b)(8).

26                    ii.    A failure to fully summarize all relevant written comments;

27                    iii.   A failure to accurately characterize what the proposed rule would do; and

28                    iv.   A failure to provide responses that actually address the substance of a

1 commenter’s concerns.

2 b. A failure to make an adequate alternatives determination and a failure to justify its  
3 alternatives determination with supporting information.

4 105. A writ of mandate may be issued under Code of Civil Procedure sections 1085 “to  
5 compel the performance of an act which the law specifically enjoins, as a duty resulting from an office.”

6 106. If not otherwise directed by this Court, CSLB will continue to violate its clear, present,  
7 and ministerial duty to comply with the APA by enforcing a rule that failed to comply with the APA’s  
8 rulemaking requirements and without fully analyzing and disclosing the economic impact of the 2024  
9 amended rule. The requested writ of mandate is necessary to prevent CSLB from continuing to violate  
10 California law and to ensure that the 2024 amended rule does not take effect where CSLB has failed to  
11 satisfy the requirements of the APA.

12 107. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law, in  
13 that no damages or other legal remedy could compensate them, their members, or their supporters for the  
14 harm that they and solar consumers will suffer if CSLB continues to evade their clear, present, and  
15 ministerial duty to comply with the APA.

16 **SECOND CAUSE OF ACTION**

17 **(Violations of the California Administrative Procedure Act, Gov. Code, § 11340 et**  
18 **seq.; Declaratory Relief, Code Civ. Proc. § 1060; Gov. Code § 11350; Writ of**  
19 **Mandate, Code Civ. Proc. § 1085)**

20 108. Petitioners hereby reallege and incorporate by reference the allegations contained in  
21 preceding paragraphs in their entirety.

22 109. CSLB has a clear, present, and ministerial duty to comply with the APA, Government  
23 Code section 11340 et seq., which provides, *inter alia*, that “[n]o state agency shall issue, utilize,  
24 enforce, or attempt to enforce any guidelines, criterion, bulletin, manual, instruction, order, standard of  
25 general application, or other rule, which is a regulation . . . , unless the guidance, criterion, bulletin,  
26 manual, instruction, order, standard of general application, or other rule has been adopted as a regulation  
27 and filed with the Secretary of State pursuant to” the APA’s notice and comment procedures. Gov. Code  
28 § 11340.5(a). The APA’s broad definition of “regulation” includes “every rule, regulation, order, or  
standard of general application or the amendment, supplement, or revision of any rule, regulation, order

1 or standard adopted by any state agency to implement, interpret, or make specific the law enforced or  
2 administered by it, or to govern its procedure.” *Id.* § 11342.6000. If the rule is a “regulation” that applies  
3 generally and interprets the law enforced by the agency and there is no express statutory exemption  
4 excusing the agency from complying with the APA’s rulemaking procedures, then the underground  
5 regulation is invalid and cannot be enforced. *Tidewater Marine Western*, 15 Cal.4th at 576. Notably, the  
6 Legislature has *expressly required* the Contractors State License Board to comply with the APA when  
7 adopting rules and regulations, including rules and regulations governing the classification of  
8 contractors, and any limits on the scope of operations within those classifications. Bus. & Prof. Code  
9 §§ 7008, 7059.

10 110. As set forth above, throughout its rulemaking process, CSLB made a number of  
11 statements interpreting the scope of the pre-amendment C-46 Solar Contractor license, including as  
12 “already prohibit[ing] C-46 contractors from performing all manner of BESS work, including BESS  
13 installations, except as necessary to install (not retrofit) a PV system.” CSLB used these general  
14 assertions about the contracting law it enforces to claim that the proposed regulation made no changes to  
15 “the existing classification restriction by permitting C-46 contractors to install BESS with the  
16 installation of a PV system,” and instead preserved pre-existing prohibitions.

17 111. CSLB’s interpretations constitute an unlawful underground regulation. On their face, the  
18 interpretations of law made in the Initial Statement and Final Statement apply generally, rather than to a  
19 specific case. The statements also attempt to implement, interpret, or make specific the law enforced or  
20 administered by CSLB. CSLB utilized these interpretations without complying with the strict procedural  
21 requirements of the APA.

22 112. These interpretations do not represent the only legally tenable interpretation of the C-46  
23 license classification law, contrary to CSLB’s claims. In fact, storage is one component of a solar energy  
24 system that C-46 Solar Contractors were authorized to install, modify, maintain and repair. As CSLB  
25 acknowledged in its 2019 study of energy storage systems, “[t]he C-46 Solar Contractor has been  
26 installing some form of [energy storage systems] in conjunction with a photovoltaic system *for*  
27 *approximately 40 years.*” CSLB, Energy Storage Systems Report (March 2019) (emphasis added).  
28 These decades of battery installations by C-46 Solar Contractors also included maintenance and repair

1 work. And, for roughly the last 15 years of that period, C-46 Solar Contractor battery installations and  
2 maintenance were conducted under the same version of 16 Cal. Code of Regs section 832.46 that CSLB  
3 now claims prohibited such work.

4 113. CSLB is expressly required to follow the APA’s strict procedural requirements with  
5 respect to interpretations of the scope of the C-46 Solar Contractor license.

6 114. A writ of mandate may be issued under Code of Civil Procedure sections 1085 “to  
7 compel the performance of an act which the law specifically enjoins, as a duty resulting from an office.”

8 115. If not otherwise directed by this Court, CSLB will continue to violate their clear, present,  
9 and ministerial duty to comply with the APA by advancing an interpretation of the C-46 Solar  
10 Contractor license regulation that was never subject to public comment and APA rulemaking and by  
11 then using that interpretation to avoid analyzing the full economic impact of CSLB’s 2024 rule. The  
12 requested writ of mandate is necessary to prevent CSLB from continuing to violate California law and to  
13 ensure that the 2024 rule is not allowed to go into effect where CSLB has improperly relied on an  
14 underground regulation to avoid a full analysis of restricting the scope of operations for C-46 Solar  
15 Contractors.

16 116. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law, in  
17 that no damages or other legal remedy could compensate them, their members, or their supporters for the  
18 harm that they and solar consumers will suffer if CSLB continues to evade their clear, present, and  
19 ministerial duty to comply with the APA and continue to utilize and attempt to enforce a rule which  
20 relies on interpretations of licensing law that constitute illegal underground regulations.

21 **THIRD CAUSE OF ACTION**

22 **(Violation of the California Administrative Procedure Act, Gov. Code § 11340 et**  
23 **seq.; Declaratory Relief, Code Civ. Proc. § 1060; Gov. Code § 11350)**

24 117. Petitioner realleges and incorporates by reference the allegations set forth in preceding  
25 paragraphs in their entirety.

26 118. An actual controversy has arisen and now exists between Petitioners and CSLB  
27 concerning the obligations and duties of CSLB under the APA. As set forth more fully above,  
28 Petitioners contend that statements made in the Initial Statement of Reasons, Final Statement of

1 Reasons, and throughout the rulemaking record regarding the scope of the pre-amendment C-46 Solar  
2 Contractor license classification and the ability of C-46 holders to install, modify, maintain, and repair  
3 BESS constituted illegal underground regulations in violation of the APA. Petitioners are informed and  
4 believe, and on that basis allege, that CSLB contends in all respects to the contrary. A judicial  
5 determination and declaration as to the legal obligations of CSLB is therefore necessary and appropriate  
6 to determine the duties of the CSLB and the rights of C-46 Solar Contractors, solar customers, and  
7 Californians that Petitioners represent.

#### 8 **FOURTH CAUSE OF ACTION**

##### 9 **(Violations of CEQA, Pub. Res. Code § 21000, et seq.)**

10 119. Petitioners hereby reallege and incorporate the allegations contained in preceding  
11 paragraphs in their entirety.

12 120. The State Contractors License Board is a state agency required to comply with CEQA  
13 when it seeks to adopt regulations. Public Res. Code § 21108(b)-(c); Bus. Prof. Code §§ 22, 7000.5.

14 121. CEQA is designed to ensure that the long-term protection of the environment be the  
15 guiding criterion in public decisions. CEQA requires the lead agency for a project with the potential to  
16 cause significant environmental impacts to prepare an Initial Study to determine whether additional  
17 environmental review that complies with the requirements of the statute, including, but not limited to,  
18 the requirement to analyze the project’s potentially significant environmental impacts, is warranted. A  
19 CEQA environmental review document must provide sufficient environmental analysis such that the  
20 decision-makers can intelligently consider environmental consequences when acting on the proposed  
21 project.

22 122. CEQA defines a “project” subject to environmental review as any activity undertaken by  
23 a public agency that has the potential to cause either a direct or a reasonably foreseeable indirect change  
24 in the physical environment. Pub. Resources Code § 21065; 14 Cal. Code Regs. § 15378(a)(1). “[A]  
25 proposed activity is a CEQA project if, by its general nature, the activity is *capable of causing* a direct  
26 or reasonably foreseeable indirect physical change in the environment. This determination is made  
27 without considering whether . . . these potential effects will actually occur.” *Union of Medical*  
28 *Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1197 (emphasis added).

1           123.     An agency’s adoption of rules or regulations is “[a]n activity directly undertaken by a  
2 public agency” under Section 21065(a), and therefore may be a project for purposes of CEQA. *See, e.g.,*  
3 *John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 98; *POET, LLC*  
4 *v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 73-74; *California Unions for Reliable Energy v.*  
5 *Mojave Desert Air Quality Management District* (2009) 178 Cal.App.4th 1225, 1240.

6           124.     Here, the rule is a “project” for purposes of CEQA. By limiting the types of contractors  
7 and workers who can install batteries exceeding 80 kWh, install batteries of any size to retrofit an  
8 existing solar energy system, or maintain and repair any batteries, the proposed rule will both increase  
9 the cost of battery installations and reduce the number of contractors who are allowed to perform these  
10 installations. Together, these factors will severely curtail the installation and maintenance of solar  
11 energy systems with battery storage. By slowing and/or halting the installation of solar energy systems  
12 with battery storage, the amended regulation will result in numerous environmental impacts, including  
13 but not limited to:

14                 a.       Increased demand for local and regional energy supplies and resources because  
15 fewer solar energy systems are available;

16                 b.       Increased use of carbon-based energy during peak and base periods;

17                 c.       Additional greenhouse gas emissions from reliance on carbon-based energy  
18 sources;

19                 d.       Conflicts with state and local plans, policies, or regulations “adopted for the  
20 purpose of reducing” greenhouse gas emissions.

21                 e.       Air quality impacts, including risks to human health that result from increased air  
22 pollutant emissions. CEQA Guidelines, Appendix G, § III. This could include disproportionately  
23 adverse impacts on low-income and minority communities who are already overburdened by such  
24 pollution and resulting health impacts. *See* 14 Cal. Code Regs. § 15064(e) (“economic and social effects  
25 of a physical change may be used to determine that the physical change is a significant effect on the  
26 environment”); and

27                 f.       Biological, agricultural, and aesthetic impacts caused by increased utility-scale  
28 solar and storage projects constructed on open space lands.



1           125.     Accordingly, the amended regulation is capable of causing a direct or a reasonably  
2 foreseeable indirect change in the physical environment and must undergo environmental review. *See*  
3 *Union of Medical Marijuana Patients*, 7 Cal.5th at 1197-98.

4           126.     Nor may CSLB rely upon its assertion that the amended regulation qualifies for the  
5 “common sense” exception to CEQA. The “common sense” exemption applies in rare circumstances,  
6 only where “it can be seen with *certainty* that there is no possibility that the activity in question may  
7 have a significant effect on the environment.” 14 Cal. Code Regs. § 15061(b)(3) (emphasis added). This  
8 exemption is “reserved for those ‘obviously exempt’ projects, ‘where its absolute and precise language  
9 applies.’” *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 117 (quoting *Myers v. Bd. of*  
10 *Supervisors* (1976) 58 Cal.App.3d 413, 425). CSLB has failed to refute the myriad evidence indicating  
11 that the amended regulation may have significant environmental impacts. *Id.* at 118.

12           127.     Because the amended regulation is a project and not exempt from CEQA, CSLB was  
13 required to prepare at least an Initial Study to evaluate the regulation’s potential impacts and their  
14 significance. *See* Pub. Resources Code §§ 21080.1, 21080.3; 14 Cal. Code Regs. §§ 15063-65. As CSLB  
15 failed to do so, it prejudicially abused its discretion and violated CEQA.

16           128.     Pursuant to Section 21080.5 of the Public Resources Code, Petitioners are entitled to  
17 petition this Court for a writ of mandate requiring CSLB to comply with CEQA and conduct the  
18 requisite environmental review.

19           129.     Petitioners have a clear, present, and beneficial right to performance by CSLB of its  
20 duties under CEQA, and CSLB has the duty and capacity to perform their duties under CEQA.  
21 Petitioners also have a clear, present, and beneficial interest in the issuance of a mandate by virtue of the  
22 facts set forth in this Petition, in that they are and will continue to be adversely affected by CSLB’s  
23 continuing violations of CEQA and its own implementing regulations. The failure of CSLB to perform  
24 its duties requires this Court to issue a writ of mandate directing it to discharge its duties under Sections  
25 1085 and 1094.5 of the Code of Civil Procedure, and Sections 21080.5, 21168, and 21168.5 of the  
26 Public Resources Code.

27   **PRAYER FOR RELIEF**

28           WHEREFORE, Petitioners pray for judgment as follows:

1           1.       For a declaration that CSLB’s statements in the Initial Statement of Reasons, the Final  
2 Statement of Reasons, and throughout the APA rulemaking record interpreting the scope of the  
3 preexisting C-46 Solar Contractor license classification are invalid underground regulations;

4           2.       For a declaration that CSLB’s adoption of its 2024 rule regarding battery energy storage  
5 systems failed to comply with the APA and is invalid;

6           3.       For alternative and peremptory writs of mandate directing CSLB to vacate and set aside  
7 its 2024 rule regarding battery energy storage systems;

8           4.       For a stay, temporary restraining order, and preliminary and permanent injunctions  
9 restraining Respondents and their respective agents, employees, officers, representatives, and all others  
10 acting in concert with Respondents on their behalf, from taking any action to implement or enforce  
11 CSLB’s actions to preclude the C-46 license classification from installing Battery Energy Storage  
12 Systems, pending full compliance with the requirements of the APA and CEQA;

13           5.       For costs of the suit;

14           6.       For attorneys’ fees as authorized by Code of Civil Procedure section 1021.5, Government  
15 Code section 11130.5, and other provisions of law; and

16           7.       For other and future relief as the Court deems just and proper.

17 DATED: June 21, 2024

SHUTE, MIHALY & WEINBERGER LLP

18  
19 By:



20 \_\_\_\_\_  
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