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10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**
13

14 CALIFORNIA SOLAR ENERGY
15 INDUSTRIES ASSOCIATION, INC. dba
16 CALIFORNIA SOLAR and STORAGE
ASSOCIATION,

17 Petitioner and Plaintiff,

18 v.

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

22 Respondents and Defendants.
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Case No.

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

Code of Civil Procedure § 1085;
Administrative Procedures Act, Government
Code § 11340 et seq.; Bagley-Keene Act, Gov.
Code § 11120, et seq.

1 **INTRODUCTION**

2 1. This action challenges the July 27, 2021 rule adopted by Respondent and Defendant
3 Contractors State License Board removing battery installations from the existing scope of operations
4 that specialty contractors holding a C-46 (Solar Contractor) license are allowed to perform. It also
5 challenges the Board’s interpretation of the California Labor Code that will require Solar Contractors
6 working within the revised scope of their license to replace their existing workforce of trained and
7 skilled solar installers with “certified” electricians for extensive tasks when they obtain a C-10
8 (Electrical Contractor) license to allow them to continue installing batteries under the Board’s new rule.
9 Because the Board’s new restrictions on Solar Contractors “apply generally, rather than in a specific
10 case,” and because these actions “implement, interpret, or make specific the law enforced or
11 administered by” the Board and its executive officer, the Registrar of Contractors, they are invalid
12 underground regulations that cannot be enforced unless and until the Board complies with notice and
13 comment rulemaking procedures in the California Administrative Procedures Act (APA). *Tidewater*
14 *Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 566, 571.

15 2. Before adopting its new solar battery rule in July, the Board had begun preliminary
16 rulemaking activities to comply with the APA. Its published timeline included drafting the proposed
17 regulation to be filed with the Office of Administrative Law after receiving a consultant’s report on
18 battery installations. This did not occur. When the report was presented to the Board on July 27, 2021,
19 one Board member affiliated with the electricians’ union asserted that the process had already gone on
20 long enough and moved to preclude energy storage from the scope of the solar license classification
21 without complying with the APA. The Board’s legal counsel warned that an APA rulemaking was
22 required to “ensure compliance with the law.” The Registrar gave the Board the choice of either taking
23 the time to conduct a rulemaking, or adopting the rule immediately and having its enforcement
24 challenged later in court. The Board plowed ahead and adopted the solar classification battery rule that
25 day.

26 3. The Board’s underground regulations will be devastating to California’s Solar
27 Contractors and their workers, as well as to consumers who are increasingly demanding solar and
28 storage in the face of repeated and prolonged electrical power shutdowns. The Board’s unlawful action

1 also frustrates the state’s intensifying efforts to deploy solar and storage projects as quickly and as
2 widely as possible to combat climate change and address emergency energy shortfalls caused by
3 extreme weather events. The Board’s underground regulations are also unjustified. The Board prohibited
4 Solar Contractors from installing batteries under the guise of safety concerns but could not identify a
5 single instance in which an installation by a Solar Contractor caused serious damage or injury in
6 California. The absence of incidents is not surprising given the substantial experience and training of
7 Solar Contractors, who have been safely installing batteries for decades, and the numerous worker and
8 product safety requirements the state has adopted. Indeed, the Board’s own licensing exam for Solar
9 Contractors requires the applicant to demonstrate competency in safety requirements for battery
10 installations.

11 4. The Board turned a blind eye to these considerations because it failed to comply with the
12 strict APA rulemaking procedures, which the Legislature adopted to ensure that state agencies take a
13 hard look at the economic impacts of proposed rules, base their decisions on facts, and fully consider
14 alternatives to ensure that regulations do not unnecessarily burden small businesses.

15 5. Upending decades of industry practice, the Board provided Solar Contractors with a mere
16 90 days to come into compliance with its rules, announced in Industry Bulletins published August 12,
17 2021 and September 2, 2021. (Attached to this Petition as Exhibits A and B.) The Bulletins explain that
18 for a Solar Contractor to continue to install battery storage along with solar panels after November 1,
19 2021, the contractor must become an Electrical Contractor by passing the C-10 (Electrical Contractor)
20 exam to add this classification to his or her license. Further, based on the Board’s interpretation of the
21 Labor Code, adding the Electrical Contractor classification to a license will require the contractor to
22 replace its existing trained solar technician workforce with electricians certified by the Department of
23 Industrial Relations for extensive tasks, not only when installing batteries, but *also* when installing solar
24 panels, and other components of a solar system as well—even when those solar panels are *not* connected
25 to batteries.

26 6. Trained solar technicians who have been installing solar energy systems, including
27 batteries, for many years are now deemed ineligible to perform much of their craft starting November 1,
28 2021. Their livelihoods, during a global pandemic, are in jeopardy. The situation for Solar Contractors is

1 equally dire given the drastic shortage of certified electricians statewide.

2 7. The result of the Board’s unlawful regulations is to slam the brakes on the deployment of
3 solar and battery storage projects throughout California at exactly the time when the state and consumers
4 need them the most. This may benefit utilities, such as Pacific Gas & Electric, who miss out when
5 Californians generate and store their own renewable energy, and the utilities’ electricians who build and
6 maintain their infrastructure. But the APA requires a hard look at the impacts to small businesses who
7 must comply with the Board’s rules and to consumers.

8 8. Not only did the Board fail to comply with the APA when it unlawfully adopted its new
9 solar battery rule and underlying Labor Code interpretation, it also violated California’s open meeting
10 law, the Bagley Keene Act, by failing to give the public sufficient notice of the action it was considering
11 and eventually took. For these reasons, this Court must overturn the Board’s rules restricting solar and
12 energy storage installations as reflected in its August 12 and September 2, 2021 Industry Bulletins and
13 enjoin any enforcement of those rules.

14 **PARTIES**

15 9. Petitioner and Plaintiff California Solar Energy Industries Association, Inc., doing
16 business as California Solar and Storage Association (“Association”), is a non-profit corporation
17 organized and existing under the laws of the State of California. The Association was formed to promote
18 the widespread deployment of smart, local, clean energy technologies, including solar panels and energy
19 storage projects, while supporting a wide variety of businesses that build a better energy future in urban
20 and rural communities throughout the state. The Association advances this mission through policy
21 development, advocacy, education, networking, and business services. For example, the Association has
22 advanced the interests of Solar Contractors and their customers by appearing before the California
23 Public Utilities Commission to reject utility proposals that would harm the rooftop solar market,
24 developing a program to fund the installation of solar on low-income apartment buildings and in
25 disadvantaged communities with workforce development requirements, and sponsoring bills in the
26 Legislature to help make solar and battery storage investments affordable for all consumers.

27 10. The Association’s 680 member companies come from all segments of the solar industry.
28 Member businesses include contractors who hold a C-46 (Solar Contractor) license classification, some

1 of whom also hold C-10 (Electrical Contractor), A (General Engineering Contractor), or B (General
2 Building Contractor) classifications, among other licensing classifications. The Association's members
3 also include the manufacturers of solar and battery storage products that these contractors install,
4 including 14 solar panel manufacturers and 29 battery storage manufacturers. A number of member
5 companies have their principal place of business in the City and County of San Francisco.

6 11. The Association and its members have a direct and beneficial interest in the Board's
7 compliance with the APA and the Bagley-Keene Act because these laws are designed to promote public
8 participation in government decision-making and protect the public and taxpayers from government
9 decisions uninformed by public comment and adequate review. The interests of the Association and its
10 members are and have been adversely and directly affected by the Board's interpretation of the Labor
11 Code and its actions to preclude Solar Contractors from installing battery storage under their C-46 Solar
12 Contractor license classification in violation of the APA and the Bagley Keene Act by being deprived of
13 the opportunities to fully participate in the Board's decision-making provided by these laws. Moreover,
14 many of the Association's members are Solar Contractors holding the C-46 (Solar Contractor) license or
15 dual C-46 and C-10 (Electrical Contractor) classifications and will be impacted by the Board's
16 underground regulation limiting the C-46 classification and imposing Labor Code requirements for
17 certified electricians. The Association's members will be severely harmed complying with the
18 underground regulations challenged in this action because doing so will cause them to lose business,
19 customer good will, and scarce employees that they have invested in training. The maintenance and
20 prosecution of this action will confer a substantial benefit on the public by remedying the Board's APA
21 and Bagley-Keene Act violations and fulfilling the Acts' purpose of ensuring public participation in
22 government decision-making.

23 12. Respondent and Defendant ("Respondent") Contractors State License Board is a body of
24 the State of California. The Board is responsible for compliance with the APA, the Bagley Keene Act,
25 and its organic act, the Contractors State License Law, Business and Professions Code section 7000 et
26 seq. The Board approved the motion precluding contractors holding a C-46 Solar Contractor license
27 classification from installing battery storage that is challenged in this action and issued the Bulletins
28 challenged in this action.

1 California. The majority of these systems are interconnected to the electric grid, while others serve
2 homes and buildings that are “off-grid.” Since the 1980’s, Solar Contractors have been installing battery
3 storage (also referred to as energy storage, Energy Storage Systems, ESS, Battery Energy Storage
4 Systems, or BESS) in integrated systems to store the electrical energy generated by solar photovoltaic
5 modules, or solar panels, typically located on roofs, shade structures, or on ground-mounted stands. Off-
6 grid solar energy systems cannot properly serve the consumer without a battery. Even solar energy
7 systems that are connected to the electric grid require batteries to keep the lights on when there is a grid
8 outage event because solar modules must to turn off when the grid goes down.

9 19. Solar Contractors operate under a C-46 (Solar Contractor) specialty contract license
10 classification. The C-46 Solar license has covered a variety of solar energy technologies over the years,
11 including solar photovoltaics (solar electric) systems paired with battery storage going back to the early
12 1980s. For over forty years, the solar specialty license has been a multi-craft license requiring
13 specialized knowledge in the combination of several different crafts including roofing, general
14 construction, electrical, plumbing, financial analysis, technical site evaluation, and ongoing monitoring
15 and maintenance.

16 20. The Board created the C-46 classification through an APA regulatory rulemaking process
17 in 1982 under the Legislature’s delegated authority to “adopt reasonably necessary rules and regulations
18 to effect the classification of contractors in a manner consistent with established usage and procedures as
19 found in the construction business, and [to] limit the field and scope of operations of a licensed
20 contractor to those in which he or she is classified and qualified to engage.” Bus. & Prof. Code § 7059.
21 One of the purposes of the Solar Contractor license was to allow the Board to verify the practical skills
22 of applicants, including but not limited to skills in the “electrical” trade, given that contractors were
23 undertaking all phases of solar installations which, at the time, included battery storage.

24 21. In 2009, the Board began a rulemaking process to simplify the 1982 regulation and allow
25 it to encompass technological innovations. The final regulatory language is the same as it exists in Title
26 16 of the California Code of Regulations today:

1 § 832.46 Class C-46 – Solar Contractor

2 A solar contractor installs, modifies, maintains, and repairs thermal and
3 photovoltaic solar energy systems.

4 A licensee classified in this section shall not undertake or perform
5 building or construction trades, crafts, or skills, except when required to
6 install a thermal or photovoltaic solar energy system.

7 22. The permitted scope of operations of a licensed Solar Contractor includes installing
8 batteries as a component of a solar energy system. As explained by the Board in its 2019 study of energy
9 storage systems, “[t]he C-46 Solar Contractor has been installing some form of [energy storage systems]
10 in conjunction with a photovoltaic system for approximately 40 years.” With the increased demand for
11 solar and storage projects today, the Board ensures that licensed Solar Contractors continue to be well-
12 versed in battery installations. In 2017, the Board conducted an occupational analysis “to identify the
13 *critical job activities* performed by [Board]-Licensed C-46 Solar Contractors.” “Photovoltaic (PV)
14 System Installation and Commissioning,” including the installation of “equipment used in the generation
15 and *storage* of electricity,” received the highest critical task score. Reflecting this assessment, a full 22
16 percent of the C-46 (Solar Contractor) license exam covers battery storage and assesses the candidate’s
17 knowledge in the installation of photovoltaic systems “with energy storage (i.e., batteries),” among other
18 tasks. The *Contractors State License Board License Examination Study Guide, Solar C-46* likewise lists
19 “Install energy storage systems (ESS)” as a key exam topic. This stands in stark contrast to the C-10
20 (Electrical Contractor) exam that has only relatively recently included questions about energy storage,
21 and even then, questions about energy storage do not appear on every C-10 exam.

22 23. Over the last six years, wildfires and electric grid outages have steadily increased
23 consumer demand for solar paired with battery storage as a more reliable and safer source of electricity,
24 and as a way for the consumer to maintain access to the electricity generated by their solar panels during
25 grid outages. As discussed above, solar photovoltaic panels alone do not service the customer’s on-site
26 energy needs during a grid outage event without a battery. Reduced costs and government subsidies
27 have also made solar panels paired with batteries more affordable. The demand for solar and storage
28 spiked in the last two years as wildfires, extreme heat, and repeated utility power shut off events have
left millions of residents and businesses without power for sometimes days at a time. Residents with

1 medical needs and low-income households are particularly at risk when the electrical grid is shut down,
2 and state financial incentive rebate programs have prioritized, and provided higher levels of rebates, for
3 these customers. Economic losses to businesses and the interruption of telecommute work, which
4 increased during the COVID-19 pandemic, have also driven an increased demand for the reliability that
5 solar and battery storage provides.

6 24. As a result, investor-owned utility records demonstrate that batteries were included in
7 over 39,000 solar energy systems connected to their distribution networks between January 2016 and
8 July 2021. Based on one survey, C-46 Solar Contractors installed over 75 percent of the solar and
9 storage systems during this time.

10 25. Solar Contractors have built these projects safely for over forty years. In a 2019 study,
11 the Board “was unable to identify significant instances of harm to persons or property caused by the
12 installation of an [energy storage system.]” A 2021 study of energy systems commissioned by the Board
13 likewise concluded that “in California there have been no significant incidents with injury or death that
14 we could identify.”

15 26. This track-record is not surprising given the extensive knowledge, training, and
16 experience of licensed C-46 Solar Contractors and their skilled and trained workforce along with the
17 product safety standards for the solar paired batteries they install. As explained below, contractors must
18 pass a Board competency exam to obtain a C-46 Solar Contractor license that extensively covers
19 applicable safety codes and technical matters relating to both solar as well as battery storage. When
20 performing installations, Solar Contractors follow the detailed, prescriptive rules in the California
21 electrical, fire and building codes. Local building officials confirm compliance with these rules when
22 they issue a permit and approve installation plans before the system is built and when they inspect and
23 approve completed installations. This includes the California Electric Code requirement that the
24 installation of Solar Photovoltaic Systems, which includes the wiring and interconnections for the
25 Energy Storage System, be performed by “qualified persons” who have the skills and knowledge related
26 to the electrical equipment installation and have received specified safety trainings to recognize and
27 avoid the hazards involved. 24 C.C.R. §§ 100, 690.4(C), 690.1(B). The California Electric Code does
28 not limit the definition of “qualified persons” to “certified electricians.” Instead, local building

1 departments provide safety validation to confirm that applicable electrical, fire, and building codes have
2 been followed during the installation process and that installations were performed by qualified
3 individuals.

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

9 **The California Administrative Procedures Act**

10 28. Before the Board may alter the current scope of operations for its C-46 Solar Contractor
11 license classification, it must first comply with, and be informed by, the APA’s notice and comment
12 rulemaking procedures. Bus. & Prof. Code §§ 7008, 7059.

13 29. The APA establishes “basic minimum procedural requirements for the adoption,
14 amendment, or repeal of administrative regulations.” Gov. Code § 11346. It is intended “to advance
15 ‘meaningful public participation’” in the regulatory process and “was born out of the Legislature’s
16 perception that there existed too many regulations imposing greater than necessary burdens on the state
17 and particularly upon small businesses.” *Western State Petroleum Assoc. v. Board of Equalization*
18 (2013) 57 Cal.4th 401, 424-25. The Legislature was particularly concerned that unclear and complex
19 regulations put small businesses at a disadvantage. Gov. Code § 11340(g).

20 30. The APA’s rulemaking procedures address these concerns by requiring the agency to
21 prepare express regulatory terms, a statement of reasons for the regulation, economic impact
22 assessments, and a consideration of alternatives. Discussions with stakeholders and preparation of these
23 materials occur during a pre-regulatory period. Formal notice and comment rulemaking begins when the
24 agency provides notice of the proposed regulation and supporting materials to the Office of
25 Administrative Law and the public. The agency’s notice is followed by a period of at least 45 days when
26 the public may review and comment on the agency’s statement of reasons, economic impact
27 assessments, and alternatives. Gov. Code § 11346.4(a). Following public comment, the agency must
28 prepare a final statement of reasons that responds to each objection and recommendation. It can only

1 adopt the proposed rule if it determines that no considered alternative would be as effective and less
2 burdensome. *Id.* § 11346.9. The Office of Administrative Law must approve all final regulations before
3 they go into effect. *Id.* § 11349.3.

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

18 **The Board’s Preliminary C-46 Battery Rulemaking Activities**

19 32. On February 23, 2018, at the urging of investor-owned utilities, including Pacific Gas and
20 Electric, and representatives of electrical unions, the Board’s Licensing Committee directed staff to
21 conduct public meetings to determine if any license classifications “should be precluded from installing
22 an energy storage system in a standalone contract or when included in the installation of a solar system,”
23 and to report its findings to the Board.

24 33. Staff’s resulting 2019 Energy Storage Systems Report summarized the long history of the
25 C-46 (Solar Contractor) classification including solar and storage projects, and various Board
26 communications and reports discussing the work activities permitted in this classification. The Report
27 noted that the C-10 (Electrical Contractor) classification could also install energy storage systems, as
28 well as A (General Engineering Contractor) and B (General Building Contractor) classifications when

1 the installation was otherwise within their scope. The report summarized claims by members of the C-10
2 Electrical Contractor industry that solar and battery storage installations are unsafe when not installed by
3 certified electricians. The Board’s Report reviewed the past 21,301 complaints to its field offices and
4 found that *none* involved energy storage systems. Likewise, the California Division of Occupational
5 Safety and Health reported no injuries involving the installation of energy storage systems in the past
6 fiscal year.

7 34. Nonetheless, on May 21, 2019, the Board decided to begin preliminary rulemaking
8 activities, and directed staff to “draft a proposed regulatory package for board consideration that would
9 prohibit or restrict certain contractor classifications from performing the installation of battery energy
10 storage systems.” Legal Counsel for the Board stated that these pre-regulatory activities will not change
11 anything for the industry, assuring that “nothing will change unless the board adopts changes to the
12 regulation,” and that “*those changes are required to be approved by . . . the Office of Administrative*
13 *Law prior to being adopted by the board.*”

14 35. At its August 6, 2019 meeting, the Board’s Legislative Committee considered “directing
15 staff to prepare regulatory language” to either preclude the C-46 Solar classification from installing
16 battery storage entirely, or to limit the scope to installation on residential units. When the Committee
17 received testimony by industry representatives, the Chair of the Committee explained that the APA
18 “requires the record of potential rulemaking to demonstrate by ‘substantial evidence’ the need for any
19 proposed changes to regulations, including any proposed changes to existing contractor classifications.”
20 The Committee ultimately recommended staff draft regulatory language to permit installations on
21 specified residential units, with further study by staff.

22 36. After meeting with legal counsel for the Department of Consumer Affairs and the Board,
23 the Chair of the Legislative Committee returned to the Committee on November 7, 2019 with the
24 recommendation that the Board hire a consultant to review the issue of battery storage because
25 additional evidence was needed to support any proposed changes to the existing C-46 Solar
26 classification. The Committee thus rescinded its direction to staff to prepare regulatory language and
27 recommended that the Board first retain an outside consultant to study battery installations and that staff
28 develop a timeline for the regulatory amendments.

1 37. The Board recognized “conflicting information from relevant stakeholders about the
2 economic impacts and safety implications underlying the need to modify the C-46 regulation,” and
3 approved retaining an outside consultant to analyze battery installation issues at its December 12, 2019
4 meeting. The Board also considered staff’s “timeline for possible rulemaking to effectuate proposed
5 changes to license classification(s).” The timeline included three phases:

6 **Phase 1:** Hire consultants to research and draft reports on economic and safety impacts.

7 **Phase 2:** CSLB determines what regulations should be drafted (if any) based on evidence in
8 reports.

9 **Phase 3:** CSLB drafts regulations and goes through [Office of Administrative Law] rulemaking
10 process.

11 The packet outlined the “Phase 3” rulemaking process as including Board review of draft regulatory
12 language; staff preparing and submitting to the Office of Administrative Law (“OAL”) the text of the
13 proposed regulation, an initial Statement of Reasons, Fiscal Impact Analysis, and other required
14 documents; a mandatory 45-day comment period; potential revision of draft regulations; Board review
15 of comments and materials; submittal of a Final Statement of Reasons; and OAL review and approval or
16 disapproval.

17 38. It ultimately took the Board until December 2020 to contract for the UC Berkeley Labor
18 Center to analyze battery installations. The contract was approved over the Association’s strong
19 objection to the Labor Center’s lack of subject matter expertise and their extensive affiliation with the
20 International Brotherhood of Electrical Workers (“IBEW”), which had been lobbying the Board to
21 prohibit C-46 Solar Contractors from installing batteries.

22 39. The Labor Center completed its final report, *Evaluation of Alternative Contractor*
23 *License Requirements for Battery Energy Storage Systems* (Labor Center Report), six months later.

24 40. The Labor Center Report recommended that the Board “preclude C-46 license holders
25 from installing BESS even when paired with solar, unless they hold another license under which BESS
26 installation is permitted.” This recommendation was based on the authors’ claimed inability to evaluate
27 the competency of the C-46 Solar Contractor’s workforce, and on their conclusion that certified
28 electricians, who perform electrical work for C-10 electrical contractors as required by Labor Code

1 section 108.2, would be qualified to install batteries given the training and testing required to become
2 certified.

3 41. The Labor Center Report’s conclusion turned a blind eye to the 40-year track record of
4 safe installations by Solar Contractors and their skilled and trained workforce: after surveying the major
5 data sources on incidents, the Report concluded that “in California there have been no significant
6 incidents with injury or death that we could identify.” It also ignored the installer trainings mandated by
7 battery manufacturers and the Board’s oversight of C-46 Solar Contractors who are licensed only after
8 demonstrating a knowledge in electrical safety and battery installations in particular. Thus, while state
9 law authorizes the Board to “limit the field and scope of the operations of a licensed contractor to those
10 in which *he or she* is classified and qualified to engage,” this recommendation, and the Board’s action to
11 preclude C-46 Solar Contractors from installing batteries, was based not on the qualifications of the
12 contractors who the Board would license, but their workers, over whom the Board does not have
13 regulatory authority, and in the face of a complete lack of evidence supporting the assumption that solar
14 technicians are unqualified.

15 42. The Labor Center Report’s recommendation was also based on the bald conclusion that
16 “there will be no adverse economic impacts of precluding the C-46 license from” installing batteries.
17 Despite testimony to the contrary, the Labor Center posited that all C-46 Solar Contractors who also
18 hold a C-10 (Electrical Contractor) license already employ sufficient certified electricians in their
19 workforce to comply with the board’s regulations. This is not the case.

20 43. The Labor Center’s assumption was based on “[t]he CSLB [Contractors State License
21 Board] rule that contactors with both a C-10 and C-46 license must adhere to the requirement that their
22 electricians have a state certification.” That “CSLB rule” was not adopted by the Board through an APA
23 rulemaking process. Nor was it adopted through a rulemaking process by the Department of Industrial
24 Relations, which has regulatory jurisdiction over certification requirements for electricians. Instead, the
25 rule was an interpretation by the Registrar of Contractors of Labor Code section 108.2 (requiring
26 persons who perform work as electricians for contractors licensed as C-10 electrical contractors to be
27 certified by the Department of Industrial Relations) and section 108 (defining electrician to include
28 persons who engage in the connection of electrical devices for contractors classified as C-10 electrical

1 contractors). Those Labor Code provisions, however, do not expressly apply to the multi-craft work
2 performed for a contractor who happens to hold a C-10 license classification but is building a project
3 entirely under the authorized scope of a different license classification, such as a C-46 (Solar Contractor)
4 classification, a C-20 (HVAC) classification, an A (General engineering), or a B (General building)
5 classification. Nor was that the Legislature’s implied intent.

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

15 45. Thus, the Labor Center’s “no adverse economic impacts” statement not only ignored the
16 impact on the over 500 C-46 Solar Contractors who do not hold a C-10, A, or B contractor license that
17 would be required for solar and storage work, it also ignored the fact that hundreds of contractors hold
18 dual licenses, such as C-46 (Solar Contractor) and C-10 (Electrical Contractor), and would now need to
19 change their workforce to employ certified electricians for a significant portion of solar installation work
20 going forward, even on projects that do not involve a battery.

21 46. The Board released the Labor Center Report to the public at the end of the day on July 9,
22 2021 with a note that “Board members will review, discuss, and possibly take action on the report” at
23 their 9:00 a.m. meeting on July 27, 2021. The Board provided the public with just eleven business days
24 to review and comment on the Labor Center Report, which was over 100 pages. No draft or advanced
25 review was afforded stakeholders in this process.

26 47. The Board published its agenda for the July 27 meeting on July 9. Agenda item C simply
27 stated “C. Presentation from UC Berkeley on Battery Energy Storage Systems Study. a. Review,
28 Discussion, and Possible Action on the Study and Recommendations.” The agenda did not state what the

1 recommendations were. Nor did it state that the Board would be considering taking any action that
2 would affect the scope of operations for a C-46 solar license classification. It was not until the Board
3 published its agenda packet on July 21, just three full business days before the Board’s meeting, that the
4 public could have discovered that one of the actions the Board might take on Agenda item C was to
5 “Formally determine that the C-46 is not authorized to install BESS in any application.” The packet
6 stated that “If this option is pursued, the board should provide 90-days to educate the C-46 licensees
7 regarding the classification restrictions and C-10 Contractors on the need to use certified electrifications
8 [sic] for BESS installations.”

9 48. The Association, which had been scrambling to review the Labor Center Report and
10 respond to its numerous deficiencies without the time to engage experts, was suddenly aware that it was
11 faced not with a Board decision about whether to proceed with a regulatory rulemaking as previously
12 announced and discussed with the Board and Registrar on numerous occasions, but with some “formal”
13 determination that would remove battery installations from the scope of operations that C-46 Solar
14 Contractors are permitted to perform. The Association was severely prejudiced by this lack of notice. If
15 the Association had known on July 9, or even by July 17, that such a dramatic action was on the agenda,
16 it would have directly contacted individual Board members before the meeting, engaged its legal
17 counsel, arranged testimony to counter the Labor Center’s fallacious and conclusory economic impact
18 analysis, and notified contractors holding other licenses, such as C-20 (Heating, Ventilating and Air-
19 Conditioning), A (General Engineering), and B (General Building) to urge them to appear to address the
20 Board’s interpretation of the Labor Code that will impact their operations as well.

21 **The Board’s July 27, 2021 Action and Subsequent Bulletins**

22 49. The Chair of the Board began consideration of the Battery Energy Storage Systems Study,
23 by reminding the Board that in March 2019 they had “directed staff to begin to develop regulations to
24 present to the Board that would prohibit or restrict certain classifications from performing the
25 installation of battery energy storage systems,” and then later agreed to hire an outside consultant to help
26 advise on that issue.

27 50. After a summary of the report, Board Member Johnny Simpson voiced his support for
28 option 2 in the agenda packet, which was to “Formally determine that the C-46 is not authorized to

1 install BESS in any application.” (The Board’s webpage identifies Mr. Simpson as “the International
2 Representative of the International Brotherhood of Electrical Workers (IBEW), 9th District, and
3 formerly was Business Manager/Financial Secretary of IBEW Local 569.”) Rather than direct staff to
4 prepare text of a proposed regulation to effectuate this determination, however, Mr. Simpson moved “to
5 rescind all prior CSLB staff classification determination that C-46 contractors may install battery energy
6 storage systems as these determinations may be applied to new projects. This includes rescinding the
7 May 14th, 2019 CSLB letter to the California Solar & Storage Association that set forth the general
8 policy that C-46 contractors can install BESS as part of the solar [PV] installation project.” This motion
9 tracks a theory advanced by lawyers for the IBEW in a letter submitted the day before on July 26,
10 claiming that such an approach could avoid an APA rulemaking. Mr. Simpson further stated that the
11 motion “does not affect the authorization of A and B contractors or C-10 contractors who install battery
12 energy storage systems,” even though the same “determinations” being rescinded also stated that
13 installing batteries was within the scope of those classifications. The Registrar later clarified the motion,
14 with Mr. Simpson’s agreement as follows:

- 15 • Accept U.C. Berkeley’s recommendation to preclude the C-46 classification from
16 installing the battery energy storage system.
- 17 • rescind all prior administrative correspondence or any option that a battery could be
18 installed at the same time as the solar system.
- 19 • provide a 90-day period to implement this change and educate the industry through
20 industry bulletins and help contractors to obtain the C-10 classification, if necessary.
- 21 • no impact to the A or the B or the C-10 classification’s ability to install a battery energy
22 storage system within their classifications.

23 51. Board Member Kevin Albanese stated that he was

24 really concerned here if the Board’s going down a road of changing
25 guidance based on who’s doing the work. We are a consumer protection
26 board. We regulate contractors. We don’t regulate the market. . . . We
27 have a regulation that’s been out there for about 40 years or so. It’s broad.
28 It includes the solar contractor to install what her or she need to install as
part of this system. . . . I have yet to see a single issue related to the C-46
installing something that caused harm to a consumer, caused injury to a
person because they weren’t qualified as a certified electrician.

52. Board Member Mary Teichert noted that the Labor Center report had only been out for a
very short period of time and requested that the Board defer any decision to allow the public to review

1 and comment on it and allow the Board to consider how any action will affect the future, given that the
2 report makes “a lot of inferences based on no data.” Undeterred, Mr. Simpson expressed his frustration
3 that this issue was not yet resolved and that he wished to put the issue to bed. He assured the Board that
4 precluding the C-46 classification from installing batteries would not stop a license holder who also has
5 a C-10 “from doing exactly what they’re doing today.” He failed to inform the Board that in fact these
6 contractors would be required to find and use certified electricians for all solar projects going forward
7 under the Registrar’s interpretation of the Labor Code, or that hundreds of Solar Contractors do not hold
8 a C-10 classification.

9 53. The Board’s legal counsel warned that if the Board desired to restrict the C-46 license
10 from installing batteries, then the most legally sound option was to “very clearly change the regulation
11 and go through the APA process.” He noted that while the Board was weary of going through the
12 lengthy APA process, doing so “would ensure consistency with the law and that would be my
13 recommendation.” When Board Member Love asked if the Board should first make sure the proper
14 procedures were followed before forcing contractors to get another license, the Registrar responded that
15 voting today would be a risk, but the regulatory rulemaking process could take 18 months, and as an
16 alternative they could just decide today that a C-46 license cannot install batteries, begin enforcement,
17 and resolve the issue in court when the enforcement is appealed. Mr. Simpson then repeated an
18 argument advanced by attorneys for the IBEW in its letter the night before that an APA rulemaking
19 process was not required.

20 54. After hearing public comment, which included the Association’s strong disagreement
21 with the analysis and assumptions in the report and request for additional time to respond to it, the Board
22 voted 11 to 3 to approve Mr. Simpson’s motion.

23 55. After the meeting, the Association urged the Registrar to return to the Board to request
24 that it begin a regulatory rulemaking process and allow sufficient time to respond to economic impact
25 analyses, as the required next step to move forward on accepting the Labor Center’s recommendation.

26 56. Instead, on August 12, 2021, the Board issued Industry Bulletin, CSLB #21-14, which
27 repeated the Board’s motion, with some additions, and made clear that by accepting the report’s
28 recommendation “to preclude the C-46 Solar license classification from installing BESS,” this action

1 effected a change in scope of operations for the license classification. The bulletin announces a “90-day
2 grace period to educate the public on the Board’s decision” and to “assist C-46 Solar Contractors in
3 obtaining a C-10 Electrical classification.” The Bulletin provided directions on obtaining a C-10
4 electrical contractor license. It also provided a legal interpretation of Labor Code sections 108.2 and
5 108, concluding that unless electrical work lawfully performed under a separate license classification is
6 expressly exempt under the statute, certified electricians must be employed, and that “there is no
7 statutory exemption for the C-46 solar license.” The Bulletin thus announces that if a C-46 contractor
8 obtains or already has a C-10 classification to allow it to install batteries under the Board’s new rule, any
9 projects entered into after November 1, 2021 will be subject to the certified electrician requirements.

10 57. The Board issued a follow-up Industry Bulletin on September 2, 2021, CSLB # 21-15, in
11 an attempt to clarify the rules announced in its August 12 Bulletin. It stated that “To place, install, erect,
12 or connect a BESS, the C-46 contractor will need to add the C-10 Electrical contractor classification on
13 their license.” It further stated that beginning November 1, 2021, a C-46 Solar Contractor who does not
14 also have a C-10, B, or A license classification may not take a contract or do work on a project that
15 includes a battery installation. Moreover, it stated that a C-10 Electrical contractor must use a certified
16 electrician when connecting batteries *or solar panels* to an existing electrical system or utility grid. It
17 further stated that A General engineering and B General building contractors do not need to use certified
18 electricians for this work if they do not have a C-10 Electrical classification on their license.

19 **The Devastating Impacts to Solar Contractors and the State’s Efforts to Accelerate the**
20 **Deployment of Solar and Storage Projects**

21 58. The Board’s actions and the subsequent August 12 and September 2 Bulletins will have
22 devastating impacts on Solar Contractors and the state’s ability to deploy solar and storage projects.
23 These underground regulations threaten existing solar companies and their workforce and will shrink the
24 pool of contractors and workers available to install stand-alone solar as well as solar paired with battery
25 storage projects, while also increasing the costs of these projects at a time when they are desperately
26 needed in the state. The Board’s actions also harm consumers by jeopardizing consumer warranties and
27 contracts for projects that have yet to be built. It also removes the most experienced contractors and their
28 most skilled and trained workers from the marketplace, requiring inexperienced replacements just as

1 consumer demand is spiking. These impacts will fall especially hard on the majority of Solar
2 Contractors that are small businesses, who are already struggling with a global pandemic that has
3 wreaked havoc on workforce availability, lead to increased costs, and created supply chain problems for
4 solar and battery storage products.

5 59. When the Board acted on July 27, there were over 500 licensed Solar Contractors that
6 held a C-46 (Solar Contractor) license but did not also hold a license under the A, B, or C-10
7 classification (a “pure C-46 contractor”). If the Board’s underground regulations stand, pure C-46 Solar
8 Contractors will be required to obtain a C-10 license to complete any of their existing projects for solar
9 and storage after November 1, 2021 or to take on any new contracts for this work. Not only that, once a
10 pure C-46 Solar Contractors passes the exam to obtain a C-10 electrical contractor license, the contractor
11 will be required to replace existing workers with certified electricians for a wide range of tasks, not just
12 for projects that have batteries, but for all of their solar panel installations—even those that do not
13 include battery storage. The Association is informed and believes that this will be an extremely difficult,
14 if not impossible task for many of these contractors. Numerous newspaper articles, trade publications,
15 and existing C-10 license holders report that there is already a shortage of certified electricians in the
16 state. Moreover, Solar Contractors with a C-10 license attempting to hire certified electricians report that
17 these workers often do not want to switch from their current work as electricians to enter the solar field
18 which, among other differences, typically requires getting up on a roof and comes with additional
19 specialized training. An analysis by the Association in 2019 estimated that there were a total of 50,000
20 certified electricians, electrical trainees, and electrical apprentices in California compared to 48,295
21 qualified solar installers, demonstrating the huge labor shift that would be required even if solar jobs
22 were more attractive to certified electricians than their current work. Further, it takes years for qualified
23 solar workers to become certified electricians. To take the general electrician’s exam the candidate must
24 have a minimum of 8,000 hours of electrical experience supervised by a certified general electrician.
25 The residential electrician’s exam requires 4,800 hours of electrical experience. The Association is
26 informed and believes that work performed for a C-46 Solar Contractor installing solar and battery
27 storage systems does not qualify for these hours.

28 60. If Solar Contractors holding the C-10 electrical contractor license the Board now requires

1 for batteries cannot hire sufficient certified electricians, they cannot perform their obligations under
2 existing contracts, they cannot enter into new contracts, and their existing workforce will become
3 instantly disqualified from performing the work they have been trained to perform, and have performed
4 successfully and safely to date.

5 61. The owners of several solar companies have reported to the Association that they would
6 not be able to continue to employ their full current workforce under such conditions, and other
7 companies have reported that they might go out of business entirely. Other solar companies have
8 reported that if they are unable to employ certified electricians they will simply surrender their C-10
9 electrical contractor license so they can continue installing solar only projects with their existing
10 workforce, further reducing the pool of contractors available to satisfy consumer demand and state
11 incentives for battery storage paired with solar and blocking the Solar Contractor's access to this
12 growing solar market.

13 62. The Association is informed and believes that the Board's requirement to use certified
14 electricians for solar and battery storage projects will increase costs to consumers. A 2019 study by the
15 Association estimated that doing so would add \$2,322 to the cost of a residential solar and storage
16 installation, \$4,867 to the cost of a small commercial solar and storage installation, and \$26,162 to the
17 cost of a large commercial solar and storage installation. This study also concluded that it would add an
18 estimated \$93 million to solar and storage installations the year after adoption.

19 63. The Board's actions also prevent pure C-46 contractors from performing widespread,
20 state-mandated extended maintenance and warranty contract obligations for past projects that included
21 batteries. To increase demand for batteries, the state's Self-Generation Incentive Program pays
22 Californians a financial incentive to reduce the cost of battery installations. But this program requires
23 contractors to provide customers a 10-year service and maintenance contract and warranty for all battery
24 installations receiving a rebate under the program. The Board's underground regulation now prohibits
25 the pure C-46 contractor from performing any service, maintenance, or warranty repairs on the batteries
26 they lawfully installed previously. Their customers must now find and pay a different contractor to
27 service their battery systems. And under standard warranty exclusions, doing so will void the warranty
28 provided by the original installation contractor, even if that contractor later obtains a C-10 electrical

1 contractor license or the Board changes its arbitrary rule. This result runs counter to the Board’s mission
2 to protect consumers within the contracting industry.

3 64. The Board’s actions restricting the available pool of contractors and workers for
4 installing solar and storage projects not only harms the solar industry, and consumers. It also undermines
5 the state’s efforts to accelerate the deployment of these projects in the face of climate change and
6 extreme weather events. For instance:

- 7 • **Governor’s Energy Supply State of Emergency.** On July 30, 2021, Governor Gavin
8 Newsom declared a state of emergency “due to the combined effects of drought, wildfire,
9 and extreme heat on the State’s energy system [and] severe energy shortages throughout
10 California caused by these climate events.” He issued several emergency orders to
11 expedite and expand clean energy and storage projects including “accelerating plans for
12 the construction, procurement, and rapid deployment of new clean energy and storage
13 projects to mitigate the risk of capacity shortages and increase the availability of carbon-
14 free energy at all times of day.”
- 15 • **Rebates for solar and storage.** In preparation for wildfires and power outages, the
16 California Public Utilities Commission authorized funding of more than \$1 billion
17 through 2024 for the Self-Generation Incentive Program (SGIP), which includes rebates
18 for installing battery storage systems at both residential and non-residential facilities that
19 can function during a power outage. This funding includes prioritization of communities
20 living in high fire-threat areas, communities that have experienced two or more utility
21 Public Safety Power Shut-off (PSPS) events, as well as low income and medically
22 vulnerable customers. The funds are also available for “critical facilities” that support
23 community resilience in the event of a PSPS or wildfire. In conjunction with the creation
24 of this program, section 379.6 of the Public Utilities Code reads, “It is the intent of the
25 Legislature that the self-generation incentive program increase deployment of distributed
26 generation and energy storage systems to facilitate the integration of those resources into
27 the electrical grid, improve efficiency and reliability of the distribution and transmission
28 system, and reduce emissions of greenhouse gases, peak demand, and ratepayer costs.”
- **Streamlined rules for connecting storage to the grid.** Also motivated by the upcoming
wildfire season, on June 4 of this year, and in response to the passage of SB 700 by the
State Legislature, the California Public Utilities Commission updated California’s
interconnection rules, 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.
- **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.
This August, 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

1 easily added to the already-mandated solar panels. The Association estimates that as a
2 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.

3 65. The Association is informed and believes that a large, experienced, and affordable pool
4 of contractors and workers to install these solar and storage projects will be essential in the coming
5 months and years to meet these regulatory requirements and policy goals without slowing down housing
6 production or commercial growth. For this reason, California Energy Commission staff and
7 representatives of the Building Industry Association opposed the Board’s proposal to prohibit C-46
8 Solar Contractors from continuing to install battery storage with solar energy systems.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of the California Administrative Procedure Act, Gov. Code, § 11340 et seq.; Writ of**
11 **Mandate, Code Civ. Proc. §1085)**

12 66. Petitioner realleges and incorporates by reference the allegations set forth in preceding
13 paragraphs in their entirety.

14 67. Respondents have a clear, present, and ministerial duty to comply with the APA,
15 Government Code section 11340 et seq., which provides, *inter alia*, that “[n]o state agency shall issue,
16 utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order,
17 standard of general application, or other rule, which is a regulation . . . , unless the guideline, criterion,
18 bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a
19 regulation and filed with the Secretary of State pursuant to” the APA’s notice and comment procedures.
20 Gov. Code § 11340.5(a). The APA’s definition of “regulation” is extremely broad. A regulation includes
21 “every rule, regulation, order, or standard of general application or the amendment, supplement, or
22 revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret,
23 or make specific the law enforced or administered by it, or to govern its procedure.” *Id.* § 11342.600.
24 The California Supreme Court has distilled this definition into a two part test to identify when an agency
25 action is a regulation subject to the APA. “First the agency must intend its rule to apply generally, rather
26 than in a specific case. . . . Second, the rule must ‘implement, interpret, or make specific the law
27 enforced or administered by [the agency], or . . . govern [the agency’s] procedure.’” *Tidewater Marine*
28 *Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571. If the rule is a “regulation,” and there is no

1 express statutory exemption excusing the agency from complying with the APA’s rulemaking
2 procedures, then the underground regulation is invalid and cannot be enforced. *Id.* at 576.

3 68. Additionally, the Legislature has *expressly required* the Contractors State License Board
4 to comply with the APA when adopting rules and regulations, including rules and regulations governing
5 the classification of contractors, and any limits on the scope of operations within those classifications.
6 Bus. & Prof. Code § 7008, 7059.

7 69. As set forth above, on August 12, 2021, the Board issued Industry Bulletin CSLB # 21-14
8 titled “CSLB Announces Contractor Classifications Authorized to Install Battery Energy Storage
9 Systems” and on September 2, 2021 the Board issued Industry Bulletin CSLB # 21-15 titled “CSLB
10 Holds Online BESS Workshop and Answers Frequently Asked BESS Questions.” *See* Exhibits A and B
11 (collectively the “Bulletins”). These Bulletins summarize and carry out the Board’s decision on agenda
12 item C at its July 27, 2021 meeting and the underlying interpretation of Labor Code sections 108 and
13 108.2. They establish rules that (1) preclude the C-46 Solar Contractor license classification from
14 installing Battery Energy Storage Systems and (2) require the use of certified electricians by any
15 contractor holding a C-10 Electrical Contractor license, even when the contractor is performing work
16 entirely within the scope of its C-46 Solar Contractor license. In addition to issuing these Bulletins,
17 Petitioner is informed and believes, and on that basis alleges, that Defendants have utilized and
18 attempted to enforce these Bulletins and their underlying rules.

19 70. The Bulletins were not issued following compliance with the strict procedural
20 requirements of the APA.

21 71. On their face, the Bulletins and their underlying rules apply generally, rather than to a
22 specific case. The Bulletins and their underlying rules constitute underground regulations in that they
23 apply generally and implement, interpret, or make specific the law enforced or administered by
24 Respondents, or govern the procedures of Respondents.

25 72. There is no express statutory exemption excusing Respondents from complying with the
26 APA’s strict procedural requirements with respect to the Bulletins and the underlying Board action and
27 interpretation.

28 73. A writ of mandate may be issued under Code of Civil Procedure section 1085 “to compel

1 the performance of an act which the law specifically enjoins, as a duty resulting from an office.”

2 74. If not otherwise directed by this Court, Respondents will continue to violate their clear,
3 present, and ministerial duty to comply with the APA by continuing to utilize or attempt to enforce the
4 rules reflected in the Bulletins, which constitute illegal underground regulations. Because the Board has
5 stated that enforcement of the Bulletins could begin as soon as November 1, 2021, the requested writ of
6 mandate is necessary to prevent Respondents from continuing to violate California law and to ensure
7 that the Bulletins are not used by Respondents to restrict the scope of operations and available workforce
8 for C-46 Solar Contractors.

9 75. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, in
10 that no damages or other legal remedy could compensate it or its members for the harm that they and
11 solar consumers will suffer if Respondents continue to evade their clear, present, and ministerial duty to
12 comply with the APA and continue to utilize and attempt to enforce the August 12 and September 2
13 Bulletins and underlying rules, which constitute illegal underground regulations.

14 **SECOND CAUSE OF ACTION**

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

17 76. Petitioner realleges and incorporates by reference the allegations set forth in preceding
18 paragraphs in their entirety.

19 77. An actual controversy has arisen and now exists between Petitioner and Respondents
20 concerning the obligations and duties of Respondents under the APA. As set forth more fully above,
21 Petitioner contends that the August 12, 2021 and September 2, 2021 Industry Bulletins, and Board’s
22 actions on July 27, 2021 and the interpretation of the Labor Code reflected in those Bulletins, constitute
23 illegal underground regulations that Respondents have issued, utilized, or attempted to enforce in
24 violation of the APA. Petitioner is informed and believes, and on that basis alleges, that Respondents
25 contend in all respects to the contrary. A judicial determination and declaration as to the legal
26 obligations of Respondents is therefore necessary and appropriate to determine the duties of the
27 Respondents and the rights of C-46 Solar Contractors that Petitioners represent.

1 **THIRD CAUSE OF ACTION**

2 **(Writ of Mandate, Code of Civ. Proc. § 1085)**

3 78. Petitioner realleges and incorporates by reference the allegations set forth in preceding
4 paragraphs in their entirety.

5 79. Under Code of Civil Procedure section 1085, a quasi-legislative decision that is “arbitrary
6 or capricious or totally lacking in evidentiary support” will not be upheld. *Avenida San Juan Partnership*
7 *v. City of San Clemente* (2011) 201 Cal.App.4th 1256, 1268. A writ of mandate will also issue to
8 invalidate rules and regulations that are “inconsistent with the governing statute, alter or amend the
9 statute, or enlarge its scope.” *California Sch. Bds. Ass’n v. State Bd. of Education* (2010) 191
10 Cal.App.4th 530, 544.

11 80. The Board’s actions to preclude the C-46 Solar Contractor license classification from
12 installing batteries and rescinding the Board’s administrative correspondence and opinions that batteries
13 could be installed under that license, while leaving in place the correspondence and opinion that
14 batteries can be installed by A (General Engineering Contractor) and B (General Building Contractor)
15 classifications (often contained within the same documents) was arbitrary and capricious.

16 81. The Board’s primary justification for precluding Solar Contractors from installing
17 batteries is the Labor Center Report authors’ conclusion that “they cannot confidently classify [solar
18 electrical workers] as ‘qualified personnel’” since the state does not have a certification requirement for
19 these workers like that for certified electricians. But the workers for contractors holding A and B license
20 classifications who perform work as electricians are likewise not subject to state certification
21 requirements. While the Board had considered regulations to clarify “whether the scope of the ‘A’ or ‘B’
22 classification would be limited in their authorization to install ESS,” similar to a previous clarification in
23 section 832.62 of Title 16 of the California Code of Regulations, the Board did not pursue this option.
24 Instead, the Board expressly excluded these classifications from its July 27, 2021 action and offered no
25 explanation for why Solar Contractors could not install battery storage without using certified
26 electricians when A and B contractors could continue to do so.

27 82. The Board’s decision is also arbitrary and capricious because the Board has repeatedly
28 affirmed that highly technical electrical work is within the C-46 Solar Contractor’s qualifications and

1 has not questioned those determinations.

2 83. Moreover, the Board’s decision was entirely lacking in evidentiary support. It could not
3 point to one instance in which a Solar Contractor licensed in California did not safely install a battery as
4 part of a solar system. In fact, the Board’s Licensing chief reported that in the C-46 classification exam,
5 Solar Contractors are tested more extensively on battery installations than applicants for other license
6 classifications, including the C-10 Electrical Contractor classification. Further, the Board’s action to
7 preclude C-46 Solar Contractors from installing batteries is inconsistent with the law. Business and
8 Professions Code section 7059 only allows the Board to limit the field and scope of operations of a
9 licensed contractor to those in which *he or she* is classified and qualified to engage, and the Board’s
10 action was based on a determination that the contractors’ *workers* are not qualified to engage in battery
11 installations—it made no determination that the contractor was not qualified to engage in battery
12 installations. The Board’s action thus exceeded the authority delegated to it by the Legislature in section
13 7059.

14 84. The Board’s action is also inconsistent with and exceeds its authority under Business and
15 Professions Code section 7059 because for more than 40 years battery installations have been, and
16 continue to be, the “established usage and procedures as found in the construction business” for C-46
17 Solar Contractors. The Board’s C-46 Solar classification must be consistent with this industry practice.
18 Similarly, the Board’s action is inconsistent with section 832.46 of Title 16 of the California Code of
19 Regulations because battery storage is within the photovoltaic solar energy systems that a Solar
20 Contractor may install, modify, maintain, and repair. Alternatively, the Board’s action is inconsistent
21 with Business and Professions Code section 7059 and section 832.46 of Title 16 of the California Code
22 of Regulations because battery storage is incidental and supplemental to the installation of solar energy
23 systems, which C-46 Solar Contractors are licensed to install.

24 85. Additionally, the Board’s and Registrar of Contractor’s interpretation of Labor Code
25 sections 108.2 and 108 is further illegal, void, and ultra vires because the Association is informed and
26 believes and thereon alleges that the Registrar and the Board are not, and were not, authorized to issue
27 interpretive rules defining when certified electricians are required to perform work. The Department of
28 Industrial Relations has exclusive regulatory jurisdiction over regulations establishing the certification

1 requirements for electricians.

2 86. At all times relevant to this action, Respondents have had the ability to perform the duties
3 set forth herein, and have failed and refused to do so. Respondents have acted arbitrarily, capriciously,
4 and without legal basis in refusing to carry out or discharge their mandatory duties as set forth herein.

5 87. Unless compelled by this Court to perform those acts and duties and to refrain from acts
6 as required by law, Respondents will continue to refuse to perform said duties and continue to violate
7 the law, and Petitioner and its members will be injured as a result.

8 **FOURTH CAUSE OF ACTION**

9 **(Violation of the Bagley Keen Act, Gov. Code § 11120 et seq.)**

10 **(Against Respondent Contractors State License Board only)**

11 88. Petitioner realleges and incorporates by reference the allegations set forth in preceding
12 paragraphs in their entirety.

13 89. The purpose of the Bagley-Keene Act is to facilitate accountability and transparency of
14 government activities and to protect the rights of citizens to participate in state government
15 deliberations. In furtherance of these goals, the Bagley-Keene Act requires that at least 10 days in
16 advance of a meeting, a state body post a notice of the meeting with “a specific agenda for the meeting,
17 containing a brief description of the items of business to be transacted or discussed.” Gov. Code §
18 11125(a), (b).

19 90. The state body may not add any item to the agenda after the notice has been provided,
20 except in certain situations not applicable here. *Id.* § 11125(b). Further, absent an “emergency situation”
21 or “a need to take immediate action,” a state body may not “take action on items of business not
22 appearing on the posted agenda.” *Id.* § 11125.3.

23 91. As a multimember state body created by statute, the Respondent Contractors State
24 License Board is subject to the Bagley-Keene Act’s public meeting requirements. Gov. Code § 11121.

25 92. Respondent Contractors State License Board violated the Bagley-Keene Act by failing to
26 properly include a specific agenda or a brief description of the items of business to be transacted or
27 discussed at its July 27, 2021 meeting. Specifically, the published agenda merely informed the public
28 that there would be “review, discussion, and possible action on the study [on battery energy storage

1 systems] and recommendations.” But the agenda did not hint at what those recommendations were, a
2 critical matter for those deciding whether to attend and what comments they should prepare. 67
3 Ops.Cal.Atty.Gen. 84, 87 (1984) (Bagley-Keene notice requirement is “intended to nullify the need for .
4 . . guesswork or further inquiry on the part of the interested public.”). Further, the published agenda
5 listed no item of business to preclude the C-46 Solar license classification from installing batteries. Nor
6 did it list an item of business to rescind all prior administrative correspondence or any opinion that a C-
7 46 licensed contractor could install a battery within its scope of operations, while leaving such
8 administrative correspondence and opinions for A, B, and C-10 license classifications in place.
9 Moreover, the Board failed to substantially comply with its obligation to ensure that the public has
10 notice of the items of business to be transacted at this meeting.

11 93. Petitioner Association was prejudiced by this violation. The Association was denied the
12 opportunity to have sufficient time to prepare and provide meaningful comments to the Board on its
13 determinations to preclude the C-46 Solar license classification from installing batteries and rescind all
14 prior administrative correspondence or opinions that a C-46 license classification may install batteries.
15 Indeed, had the Association had the opportunity to provide meaningful comment on these
16 determinations and the devastating impact they would have on the solar industry and its workforce, it is
17 probable that the Board would have delayed any determination pending a more thorough study of these
18 issues.

19 94. “Any interested party may commence an action by mandamus, injunction or declaratory
20 relief [to obtain] a judicial determination that an action taken by a state body in violation of Section . . .
21 11125 is null and void.” Gov. Code § 11130.3. Plaintiff is an interested party as that term is broadly
22 construed because it is a taxpayer of the state, and because it and its member companies along with tens
23 of thousands of consumers are harmed by the Board’s actions in violation of the Bagley-Keene Act.

24 95. For these reasons, the Board’s actions at its July 27, 2021 meeting described above must
25 be declared null and void.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Petitioner prays for judgment as follows:

- 28 1. For alternative and peremptory writs of mandate directing Respondents to vacate and set

1 aside their actions to preclude the C-46 Solar Contractor license classification from installing Battery
2 Energy Storage Systems and require contractors to employ certified electricians when working within
3 the scope of operations for a C-46 (Solar Contractor) classification or other classifications if they also
4 have a C-10 (Electrical Contractor) classification on their license, including (1) the Board's approved
5 motion on Agenda Item C (a) at its July 27, 2021 Board meeting; (2) the issuance of Industry Bulletin
6 CSLB # 21-14; and (3) the issuance of Industry Bulletin CSLB # 21-15.

7 2. For alternative and peremptory writs of mandate directing Respondents to comply with
8 their ministerial duty to follow the requirements of the APA when issuing, utilizing, enforcing, or
9 attempting to enforce any regulation, including but not limited to standards of general application
10 addressing the C-46 license classification or the classification for installing Battery Energy Storage
11 Systems, and interpretations of Labor Code sections 108.2 and 108.

12 3. For a declaration that (1) the Board's approved motion on Agenda Item C (a) at its July
13 27, 2021 Board meeting; (2) Industry Bulletin CSLB # 21-14; (3) Industry Bulletin CSLB # 21-15; and
14 (4) the interpretation of Labor Code sections 108.2 and 108 that was a basis for the Board's motion and
15 reflected in the Bulletins; are invalid based on Respondents' failure to comply with the requirements of
16 the APA.

17 4. For a stay, temporary restraining order, and preliminary and permanent injunctions
18 restraining Respondents and their respective agents, employees, officers, representatives, and all others
19 acting in concert with Respondents on their behalf, from taking any action to enforce Respondents'
20 actions to preclude the C-46 license classification from installing Battery Energy Storage Systems and to
21 require C-46 or other license classifications to employ certified electricians when acting within the scope
22 of those classifications if they also hold a C-10 Electrical Contractor license, pending full compliance
23 with the requirements of the APA.

24 5. For a declaration that the Board's approval of the motion on Agenda Item C (a) at its July
25 27, 2021 Board meeting violated the Bagley-Keene Act by failing to provide a specific agenda and
26 sufficient notice of the items of business transacted and discussed.

27 6. For a declaration that the Board's approval of the motion on Agenda Item C (a) at its July
28 27, 2021 Board meeting is null and void due to the Board's violation of the Bagley-Keene Act.

1 7. For a stay, and preliminary and permanent injunctions, restraining the Board and its
2 agents, employees, officers, representatives, and all others acting in concert with the Board on its behalf,
3 from undertaking any activity to implement or enforce the motion in any way pending the Board's full
4 compliance with the requirements of the Bagley-Keene Act.

5 8. For costs of the suit.

6 9. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5, Government
7 Code section 111130.5, and other provisions of law.

8 10. For other and future relief as the Court deems just and proper.

9 DATED: Sepetember 17, 2021

SHUTE, MIHALY & WEINBERGER LLP

10
11 By:



12 _____
HEATHER M. MINNER

13 Attorneys for Petitioner and Plaintiff
14 CALIFORNIA SOLAR ENERGY INDUSTRIES
15 ASSOCIATION, INC. dba CALIFORNIA SOLAR
16 and STORAGE ASSOCIATION,
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VERIFICATION

I, Bernadette Del Chiaro, am the Executive Director of California Solar Energy Industries Association, Inc. dba California Solar & Storage Association, the Petitioner and Plaintiff in this action, and I am authorized to execute this verification on Petitioner's behalf. I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive Relief ("Petition"). I am familiar with its contents. All facts alleged in the above Petition not otherwise supported by exhibits or other documents are true of my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Sacramento, California on September 17, 2021.


Signature

Attachment A

August 12, 2021**CSLB #21-14**

CSLB Announces Contractor Classifications Authorized to Install Battery Energy Storage Systems

On July 27, 2021, the Contractors State License Board (CSLB or Board) held a public meeting to review, discuss, and take action on the June 30, 2021 [Battery Energy Storage Systems License Classification Report](#) issued by the University of California (UC) Berkeley. As part of the public meeting and consistent with Open Meeting Act requirements, the Board afforded members of the public an opportunity to comment on UC Berkeley's report prior to taking any action.

In response to the data compiled in the report by UC Berkeley as to the appropriate classification to install Battery Energy Storage Systems (BESS), the Board motioned and voted by majority decision, to take the following actions:

- Accept the UC Berkeley recommendation to preclude the C-46 Solar license classification from installing BESS.
- Rescind all prior staff opinions that BESS can be installed by a C-46 Solar license classification as "incidental and supplemental" work when the BESS is paired with a solar photovoltaic (PV) system. You may find the regulatory definition of incidental and supplemental [here](#).
- Provide a 90-day grace period to educate the industry on the Board's decision to adopt UC Berkeley's recommendation to preclude the C-46 Solar license from BESS installation and assist C-46 Solar contractors in obtaining a C-10 Electrical classification. As highlighted in the report, there are currently 447 dual C-10 and C-46 license holders.
- The Board's July 27, 2021, decision does not impact the "A" General Engineering Contractor, "B" General Building Contractor or C-10 Electrical Contractor to install BESS with their respective classifications.

The July 27, 2021, Board Meeting materials are published [here](#). The webcast of the full July 27, 2021, Board Meeting is viewable [here](#).

Obtaining a C-10 Classification

- Contractors with experience installing electrical devices who believe they may qualify for a C-10 Electrical contractor's license should contact the Classification Deputy at classifications@cslb.ca.gov for assistance with the CSLB application process.
- Board staff will provide an expedited review of any existing C-46 contractor application seeking to add a C-10 classification if the Board receives the application no later than November 1, 2021.
- CSLB will host a workshop for those who are interested in applying for a C-10 Electrical Contractor license.

Department Of Industrial Relations Electrician Certification Requirement

Labor Code Provisions

Labor Code section 108, subdivision (c), statutorily defines “electricians” as:

[A]ll persons who engage in the connection of electrical devices for electrical contractors licensed pursuant to Section 7058 of the Business and Professions Code, specifically, contractors classified as electrical contractors in the Contractors’ State License Board Rules and Regulations.

You may find the regulatory definition of an “electrical contractor” here: [16 CCR § 832.10](#).

In addition, Labor Code section [108.2](#) provides in relevant part:

(a) Persons who perform work as electricians shall become certified pursuant to Section 108. Uncertified persons shall not perform electrical work for which certification is required.

(b) (1) Certification is required only for those persons who perform work as electricians for contractors licensed as class C-10 electrical contractors under the Contractors’ State License Board Rules and Regulations.

(2) Certification is not required for persons performing work for contractors licensed as class C-7 low voltage systems or class C-45 electric sign contractors as long as the work performed is within the scope of the class C-7 or class C-45 license, including incidental and supplemental work as defined in Section 7059 of the Business and Professions Code, and regardless of whether the same contractor is also licensed as a class C-10 contractor.

However, under Labor Code section 108.2, subdivision (g), “the qualifying person for a class C-10 electrical contractor license issued by the Contractors State License Board need not also be certified pursuant to Section 108 to perform electrical work for that licensed contractor or to supervise an uncertified person employed by that licensed contractor pursuant to Section 108.4.”

Contractors are encouraged to review Labor Code sections 108 and 108.2 for other enumerated statutory exemptions from the Department of Industrial Relations’ (DIR)

electrician certification requirement. Presently, there is no statutory exemption for the C-46 solar license.

Contractors should also be aware that failure to comply with DIR's Labor Code provisions may result in CSLB taking future disciplinary action against the contractor pursuant to Labor Code section 108.2, subdivision (h).

The DIR's Division of Labor Standards and Enforcement maintains minimum standards for the competency and training of certified electricians in California. Additional information for the California's Electrician Certification Program is here: [Division of Labor Standards Enforcement - Electrician certification program](#))

Additional Information

- Specialty contractors, including the C-46 solar license, are subject to the Board's regulatory requirements concerning Classification Policy and Limitation of Classification, that can be found at Title 16 California Code of Regulations sections [830\(b\)](#) and [834\(c\)](#).
- CSLB will not take any retroactive enforcement action against a licensee as a result of the Board's July 27, 2021, decision to rescind all prior staff opinions concerning incidental and supplemental work performed by a C-46 solar license. Any enforcement action will be prospective, effective November 1, 2021. Projects entered into after this date will be subject to the electrician certification requirement unless such work is statutorily exempted under Labor Code sections 108 or 108.2.
- Again, please refer to the following useful information to determine whether certification is required or whether a contractor is exempted from the statutory electrician certification requirements:
 - (1) DLSE's electrician certification website; [Division of Labor Standards Enforcement - Electrician certification program](#)
 - (2) Labor Code sections 108 and 108.2 outlining specified exemptions; and
 - (3) California Code of Regulations, title 16, section 832.10, defining the scope of work for an electrical contractor.

If you have questions on enforcement of electrician certification requirements, please email classifications@cslb.ca.gov and provide a **phone number where you can be reached**. CSLB staff will return calls in the order received.

Attachment B



September 2, 2021

CSLB #21-15

CSLB Holds Online BESS Workshop and Answers Frequently Asked BESS Questions

ONLINE BESS WORKSHOP

CSLB will hold an online battery energy storage system (BESS) workshop on Friday, September 17, 2021, from 3 to 4 p.m., to address application or scope of work/classification questions.

Please email your questions to classifications@cslb.ca.gov by Friday, September 10, 2021.

Meeting Link:

<https://cslb.webex.com/cslb/j.php?MTID=m0fe62a957e0e941ed0a18f28d5edec53>

Friday, Sep 17, 2021, 3:00 pm | 1 hour | (UTC-07:00) Pacific Time (US & Canada)

Event number: 2556 472 8621

Event password: BPxcxn3Pf77 (27929637 from phones)

Questions & Answers

1. What do C-46 Solar contractors need to do if they want to install battery energy storage systems (BESS) after November 1, 2021?

To place, install, erect, or connect a BESS, the C-46 contractor will need to add the C-10 Electrical contractor classification on their license. To get the C-10 added, go to the CSLB website and complete this [application](#). CSLB will expedite its review of applications received by November 1, 2021.

If you are a solar contractor that has been installing BESS in conjunction with photovoltaic (PV) systems for four or more years, you will meet the requirements to add the C-10 Electrical classification to your license. CSLB also encourages you to start studying early for the trade exam, please refer to CSLB's [study guide](#). Information regarding obtaining a waiver of the exam can be found [here](#).

Without the C-10, B, or A classification on your license, a C-46 Solar contractor **cannot** take a contract on a project that includes BESS installation. Beginning November 1, 2021, this applies to all new contracts on projects entered into on and after November 1, 2021, and for work occurring on and after November 1, 2021. You may refer to Business and Professions Code section [7059](#).

2. Who needs to have a certified electrician on their team?

A C-10 Electrical contractor needs a certified electrician on staff to engage in the connection of electrical devices greater than 100-volt amperes. CSLB recommends contractors review California Labor Code sections [108-108.5](#) and California Department of Industrial Relations [regulations](#) and its Electrical Certification [FAQ](#).

The only time a contractor needs a certified electrician on staff is when they hold a C-10 classification and are engaging in the connection of an electrical device pursuant to California Labor Code sections [108-108.5](#). This includes connecting a BESS or PV system to an existing electrical system or to a utility grid. This also includes placing, installing, erecting or connecting an electrical panel.

If you have questions about a specific project, please email CSLB's classification at classifications@cslb.ca.gov.

If you have questions about electrician certification or how to obtain it, please visit the Department of Industrial Relations, Electrician Certification Program [webpage](#).

3. When can a contractor with a C-10 electrical classification use non-certified workers?

A C-10 contractor does not need to use a certified electrician to perform work on a BESS or PV when the work does not involve connecting an electrical device. Examples include installation, repair, or service of:

- Racks on a roof (including associated flashing and sealing roof penetrations from rack attachment).
- Installation of poles and racks for ground mounted solar systems.
- Installation of BESS racks.
- Installation of required BESS or PV signage.
- Seismic Restraints

4. What about General Contractors (“A” General Engineering, “B” General Building) and BESS?

Please see the [August 12, 2021 CSLB Industry Bulletin](#) about this question. A General Building contractor may take a prime contract that involves a PV or BESS installation if the multiple trade requirement of [Business and Professions Code section 7057](#) is met. And a General Engineering contractor may take a prime contract that involves a PV or BESS installation if the project is in connection with fixed works requiring general engineering knowledge or skill, as required by [Business and Professions Code 7056](#).

The Labor Code sections 108 – 108.5 referenced above do not require general contractors who do not have a C-10 Electrical license to employ certified electricians.

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