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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

THE CALIFORNIA OCCUPATIONAL
HEALTH AND SAFETY STANDARDS
BOARD, together with its members, DAVID
THOMAS, CHRIS LASZCZ-DAVIS, LAURA
STOCK, BARBARA BURGEL, DAVID
HARRISON, and NOLA J. KENNEDY, in their
official capacities, and THE CALIFORNIA
GOVERNOR'S OFFICE OF EMERGENCY
SERVICES, together with its Director, MARK
GHILARDUCCI, in his official capacity,

Defendants.

Case No. 2:19-cv-01270-JAM-DB

**PROPOSED INTERVENOR USW'S
MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO INTERVENE**

[FRCP 24]

Date: November 5, 2019

Time: 1:30 p.m.

Location: Courtroom 6

Hon. John A. Mendez

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I. INTRODUCTION

In 2017, the State of California updated and strengthened two similar and complementary sets of regulations establishing health and safety standards for petroleum refineries. One set of regulations, known as process safety management or “CalPSM,” is designed to protect refinery employees. The other, known as the accidental release program or “CalARP,” is designed to protect the public and the environment (and of course, incidentally, CalARP protects refinery employees as well).

These regulatory actions did not occur in a vacuum. They followed five years of investigation and review after an explosion at the Chevron refinery in Richmond, California released a plume of smoke and particulates that sickened approximately 15,000 community members and engulfed 19 refinery workers in a burning cloud of vapor. Most of those 19 workers were members of Proposed Intervenor, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (“USW”). Indeed, USW represents approximately 3,000 operations and maintenance employees working at nearly every oil refinery in California.

Plaintiff Western States Petroleum Association, the trade association representing Chevron and other refinery operators, has filed suit to overturn a crucial component of the process safety management and accidental release program regulations requiring employee involvement in the development and implementation of refineries’ health and safety practices. USW seeks leave to intervene as a defendant to ensure that its members who work in these highly dangerous facilities are kept safe, and that they are empowered with a meaningful voice in the establishment of policies to keep themselves safe.

For the following reasons, USW should be granted to leave to intervene as of right pursuant to Fed. R. Civ. P. 24(a). In the alternative, USW should be granted permissive intervention under Fed. R. Civ. P. 24(b).

II. STATEMENT OF FACTS**A. Chevron and ExxonMobil Refinery Explosions and Governmental Responses**

On August 6, 2012, the Chevron oil refinery in Richmond, California “experienced a catastrophic pipe rupture[,]” releasing “flammable, high temperature light gas oil, which then partially vaporized into a large, opaque vapor cloud that engulfed 19 ... employees” and “ignited.” U.S. Chemical Safety and Hazard Investigation Board, *Final Investigation Report: Chevron Richmond*

1 *Refinery Pipe Rupture and Fire*, Report No. 2012-03-I-CA, at 1 (Jan. 2015), *available at*
 2 <https://www.csb.gov/chevron-refinery-fire/> (“Chevron Final Report”). A “large plume of vapor,
 3 particulates, and black smoke” then “traveled across the surrounding area.” *Id.* As a result,
 4 “approximately 15,000 people ... sought medical treatment ... for ailments including breathing
 5 problems, chest pain, shortness of breath, sore throat, and headaches” and “[a]pproximately 20 of these
 6 people were admitted to local hospitals as inpatients for treatment.” *Id.* at 2. Fortunately, the 19 workers
 7 survived.

8 The U.S. Chemical Safety and Hazard Investigation Board (“Chemical Safety Board”), a federal
 9 government agency charged with investigating industrial chemical accidents (*see* 42 U.S.C. §
 10 7412(r)(6)), thoroughly reviewed the Chevron explosion and issued three separate reports. Among its
 11 findings, the Board determined that Chevron “did not effectively implement internal recommendations
 12 to help prevent” exactly the type of pipe rupture that led to the explosion, and that it specifically
 13 “rejected” an internal recommendation to “inspect or replace the portion of the ... piping that ultimately
 14 failed.” Chevron Final Report, at 7-8. Moreover, the Board identified major deficiencies in Chevron’s
 15 “safety culture,” including (1) “[d]ecision making that encourages continued operation of a unit despite
 16 hazardous leaks,” (2) “[r]eluctance among employees to use their Stop Work Authority,” i.e., the
 17 “responsibility and authority of any individual to stop work” due to “an unsafe condition or act,” and (3)
 18 “[s]ubstandard equipment maintenance practices.” *Id.* at 13-14. The Board concluded that “[h]ad steps
 19 been taken before the incident to encourage employees to use their Stop Work Authority or to determine
 20 why the refinery’s mechanical integrity programs were seen as deficient, the August 6, 2012, pipe
 21 rupture might have been prevented.” *Id.* at 14.

22 In its three reports, issued in April 2013, October 2014, and January 2015, the Chemical Safety
 23 Board made recommendations to Chevron, industry groups, the federal Environmental Protection
 24 Agency, and state and local government agencies. *Id.* at 2-4, 15-16. A number of these recommendations
 25 included improved “process safety management” regulations – occupational health and safety rules
 26 designed to protect workers by preventing industrial hazards. Specifically, the Board recommended that
 27 the State of California “[e]nhance and restructure California’s process safety management (PSM)
 28

regulations for petroleum refineries[.]” *Id.* at 4. The Board placed particular emphasis on the need for more robust employee participation, advising the state to:

Require mechanisms for the regulator, the refinery, and workers and their representatives to play an equal and essential role in the direction of preventing major incidents. Require an expanded role for workers in management of process safety by establishing the rights and responsibilities of workers and their representatives on health and safety-related matters, and the election of safety representatives and establishment of safety committees (with equal representation between management and labor) to serve health and safety-related functions. The elected representatives should have a legally recognized role that goes beyond consultation....

U.S. Chemical Safety and Hazard Investigation Board, *Regulatory Report: Chevron Richmond Refinery Pipe Rupture and Fire*, Report No. 2012-03-I-CA, at 97 (Oct. 2014), available at <https://www.csb.gov/chevron-refinery-fire/>.

Contemporaneous with the Chemical Safety Board’s investigation, then-California Governor Jerry Brown convened an Interagency Working Group on Refinery Safety (“Interagency Working Group”), which issued a final report in February 2014. *Improving Public and Worker Safety at Oil Refineries: Report of the Interagency Working Group on Refinery Safety* (Feb. 2014), available at <https://ww3.arb.ca.gov/fuels/carefinery/crseam/refinerysftyrrpt.pdf> (“Interagency Working Group Final Report”). The report noted that investigations into the Chevron refinery explosion conducted by the Chemical Safety Board, the EPA, Cal/OSHA, and Chevron itself all “identified serious concerns about process safety management procedures at the refinery and expressed the need for stronger preventative safeguards.” *Id.* at 4. As the report explained, “[r]efineries are subject to [both] the California Accidental Release Program (CalARP) Risk Management Program (RMP), and the California Division of Occupational Safety and Health (Cal/OSHA) Process Safety Management (PSM) regulation[.]” *Id.* at 1. Process safety management regulations are intended “[t]o prevent releases of hazardous chemicals that could expose *employees* and others to serious hazards,” and accidental release program regulations are intended “[t]o prevent accidental releases of substances that can cause serious harm to the *public and the environment*[.]” *Id.* at 15 (emphasis added). Not surprisingly, the requirements of the two regulatory programs “are very similar because the same industrial processes affecting workers may also affect public health and the environment.” *Id.* at 20.

1 Among other things, the Interagency Working Group concluded that existing process safety
 2 management and accidental release program regulations were insufficient and that the regulations should
 3 be updated and strengthened. *Id.* at 27-31. Echoing the Chemical Safety Board, the Interagency Working
 4 Group highlighted the importance of promoting a better “safety culture” within California refineries, and
 5 recognized that “involv[ing] front line workers *in meaningful ways* can help increase safety orientation
 6 and decrease incidents.” *Id.* at 28 (emphasis added). Improving the safety culture of refineries could “be
 7 done by strengthening current Cal/OSHA PSM requirements and CalARP RMP requirements through
 8 either rulemaking or legislation.” *Id.* Ultimately, the report offered a blunt summation of the lessons of
 9 the Chevron explosion: “[R]efinery safety in California can and must be improved.” *Id.* at 19.

10 This conclusion gained even more salience one year after the release of the report, when on
 11 February 18, 2015, an explosion at the ExxonMobil refinery in Torrance, California injured four
 12 workers and nearly resulted in the release of highly toxic hydrofluoric acid into the densely populated
 13 community surrounding the refinery. U.S. Chemical Safety and Hazard Investigation Board,
 14 *Investigation Report: ExxonMobil Torrance Refinery Electrostatic Precipitator Explosion*, Report No.
 15 2015-02-I-CA, at 6-8, 23 (May 2017) (“ExxonMobil Report”), *available at*
 16 <https://www.csb.gov/exxonmobil-refinery-explosion-/>. Once again, the Chemical Safety Board “found
 17 that this incident occurred due to weaknesses in the ExxonMobil Torrance refinery’s process safety
 18 management system.” *Id.* at 6.

19 Both Chevron and ExxonMobil are members of Plaintiff. *See* Western States Petroleum
 20 Association, *Member Companies*, at <https://www.wspsa.org/about/> (last visited September 25, 2019).

21 **B. The Challenged Regulations**

22 On July 15, 2016, the California Occupational Safety and Health Standards Board issued
 23 proposed changes to California’s process safety management regulations designed to “implement[] the
 24 recommendations of the [Interagency Working Group Final Report] and other PSM elements that safety
 25 experts have learned over the past two decades are essential to the safe operation of a refinery.” 2016,
 26 No. 29-Z Cal. Regulatory Notice Reg. 1187-88 (July 15, 2016). The proposal was grounded in the
 27 authority of California Labor Code § 7856, which had been amended in 2013 and mandated the issuance
 28 of process safety management regulations. 2013 Cal. Legis. Serv. Ch. 28 (SB 71) (West). At the same

time, the California Governor’s Office of Emergency Services issued proposed changes to the state’s accidental release program regulations. 2016, No. 29-Z Cal. Regulatory Notice Reg. 1207 (July 15, 2016). That proposal was likewise intended to “implement[] the recommendations of the Governor’s Report and other CalARP Program elements” endorsed by “safety experts.” *Id.* at 1208. Both proposals emphasized the importance of “*involving front-line employees* in decision-making.” 2016, No. 29-Z Cal. Regulatory Notice Reg. 1188, 1208 (July 15, 2016) (emphasis in original). Indeed, in September 2019, the Chemical Safety Board praised the California regulations, noting that “[e]ffective worker participation programs allow workers (and their union representatives) to participate in matters pertaining to process safety in many ways” and concluding that “[w]orker participation is essential to improving process safety and preventing incidents at facilities with hazardous chemicals.” U.S. Chemical Safety and Hazard Investigation Board, *Safety Digest: The Importance of Worker Participation*, at 6, 9 (Sept. 4, 2019), available at <https://www.csb.gov/csb-releases-new-safety-digest-on-worker-participation-to-help-prevent-catastrophic-chemical-incidents/> (emphasis added).

Following the recommendations of the Interagency Working Group and the Chemical Safety Board, the final process safety management regulations, which became effective October 1, 2017, require “employee participation in all PSM elements.” 8 Cal. Code. Regs. § 5189.1(q). And the final accidental release program regulations, also effective October 1, 2017, require “employee participation in Accidental Release Prevention elements.” 19 Cal. Code Regs. § 2762.10(a). Both sets of regulations define the term, “employee representative” as a “union representative, where a union exists, or an employee-designated representative in the absence of a union that is on-site and qualified for the task.” 8 Cal. Code. Regs. § 5189.1(c) (process safety management); 19 Cal. Code Regs. § 2735.3(t) (accidental release program). But employee participation is not limited to “employee representatives.” On the contrary, in all instances, the regulations confer exactly the same rights on both “employee representatives” and “employees” in general. 8 Cal. Code. Regs. § 5189.1(q)(1)(A)-(C), (q)(5)(B), (u)(3) (process safety management); 19 Cal. Code Regs. §§ 2762.8(c), 2762.10(a)(1)-(3), 2762.16(f)(2) (accidental release program).

Plaintiff mischaracterizes the regulations in its Complaint by implying that *only* “employee representatives” are afforded these rights. Complaint (Dkt. #1) ¶¶ 33, 35. On this false pretense, Plaintiff

challenges *all* of “[t]he employee participation provisions” of the process safety management and accidental release program regulations on the grounds that they “govern how employees – through their union – select ‘representatives’” and “give those ‘employee representatives’ new and greater rights.” Complaint ¶¶ 38, 42.

C. Plaintiff’s Lawsuit

Plaintiff filed suit on July 9, 2019, nearly two years after the final regulations were issued, naming as defendants the California Occupational Safety and Health Standards Board and its members in seeking to overturn portions of the process safety management regulations, and naming as defendants the Governor’s Office of Emergency Services and its director in seeking to overturn portions of the accidental release program regulations. Plaintiff seeks declaratory relief and a permanent injunction barring enforcement of the regulations. Plaintiff does not specifically identify which provisions it seeks to strike down, alleging only that “[t]he employee-participation provisions of the CalARP and CalPSM Regulations directly regulate and interfere with labor-management relations, which are the exclusive province of federal law.” Complaint ¶ 38.

Plaintiff’s claim conflicts with long-settled Supreme Court precedent permitting states to establish minimum labor standards even when such standards “give employees something for which they otherwise might have to bargain.” *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 21 (1987); *see also Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 755 (1985). “Minimum labor standards will necessarily affect employer-employee relations by ‘form[ing] a backdrop’ – i.e., setting the statutory baseline – for collective bargaining negotiations.” *Interpipe Contracting, Inc. v. Becerra*, 898 F.3d 879, 888 (9th Cir. 2018) (quoting *Fort Halifax*, 482 U.S. at 21) (alteration in original). “But such *effects* differ in kind from a State’s regulation of the bargaining process itself.” *Interpipe*, 898 F.3d at 888 (emphasis in original). “[S]tate action that intrudes on the mechanics of collective bargaining is preempted, but state action that sets the stage for such bargaining is not.” *Am. Hotel & Lodging Assn. v. City of Los Angeles*, 834 F.3d 958, 964 (9th Cir. 2016).

Defendants filed an answer on August 30, 2019. Dkt. #9. Discovery has not commenced, and the Rule 26(f) conference has not yet taken place. To date, no dispositive motions have been filed.

D. The Interests of USW

USW is a labor organization representing approximately 850,000 workers in diverse industries throughout the United States, Canada, and the Caribbean. Declaration of Kim Nibarger in Support of USW’s Motion for Leave to Intervene (“Nibarger Decl.”) ¶ 5. More than 30,000 USW members work in the American petroleum industry, including refineries, petrochemical plants, pipelines, and terminals. *Id.* In California, USW represents approximately 3,000 workers employed by refinery operators, including the operations and maintenance employees of nearly every refinery in the state. *Id.* The majority of the 19 employees who were engulfed by a burning vapor cloud during the Chevron refinery explosion were USW members. *Id.* at ¶ 6.

USW has long advocated better safety standards in refineries. In 2015, USW members conducted an historic nationwide refinery strike, demanding, among other things, improved safety practices. *Id.* at ¶ 7. USW also maintains its own active health and safety program, providing training to members and local unions and rapid response assistance following industrial accidents. *Id.* at ¶ 8. When a significant incident occurs at a USW-represented facility, health and safety specialists are dispatched to visit the site, investigate the incident, and provide assistance to the families of employee-victims. *Id.*

When the Interagency Working Group was convened, USW and its members actively participated, reporting on the hazardous conditions in California refineries and the systemic failure of refinery management to address safety concerns and recommending the enhancement of process safety management regulations. Interagency Working Group Final Report, at 8; Nibarger Decl. ¶ 9. When the new regulations were proposed, USW and its coalition partners submitted detailed comments, both supporting the proposal and requesting changes to the initial draft. Nibarger Decl. ¶ 10, Exhibit A.

III. ARGUMENT**A. USW Should Be Granted Leave to Intervene as of Right**

Fed. R. Civ. P. 24(a) provides in relevant part:

On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). The Ninth Circuit “construe[s] the Rule broadly in favor of intervention” because “a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.” *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc) (quotations omitted). The Ninth Circuit has adopted a four-part test to determine whether a proposed intervenor has satisfied the requirements of Rule 24(a):

(1) the motion must be timely; (2) the applicant must claim a “significantly protectable interest” relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant’s interest must be inadequately represented by the parties to the action.

Allied Concrete & Supply Co. v. Baker, 904 F.3d 1053, 1067 (9th Cir. 2018) (citing *Wilderness Soc’y*, 630 F.3d at 1177).

USW satisfies each of these criteria.

1. USW’s Motion to Intervene Is Timely

“To determine whether a motion to intervene is timely, we consider (1) the state of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay.” *Peruta v. County of San Diego*, 824 F.3d 919, 940 (9th Cir. 2016) (en banc) (quotation omitted). Here, the complaint was filed on July 9, 2019, nearly two years after the process safety management and accidental release program regulations were promulgated, and Defendants answered on August 30, 2019. The Rule 26(f) conference has not taken place, discovery has not yet commenced, and no dispositive motions have been filed. Thus, USW has moved to intervene at an early stage in the proceeding, without delay and with no foreseeable risk of prejudice to the other parties. *See, e.g., Nw. Forest Resource Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996) (motion to intervene was timely because it was filed before any proceedings had taken place, and no party was prejudiced because the motion was filed before any substantive rulings were made by district court).

2. USW Has a Significantly Protectable Interest in the Subject Matter of this Action

Rule 24(a)’s requirement that the proposed intervenor show an “interest relating to the property or transaction” of the litigation is construed expansively. *See Cascade Natural Gas Corp. v. El Paso*

1 *Natural Gas Co.*, 386 U.S. 129, 132-36 (1967). The “liberal policy in favor of intervention serves both
 2 efficient resolution of issues and broadened access to the courts.” *Wilderness Soc’y*, 630 F.3d at 1179.
 3 Thus, a would-be intervenor’s interest is “significantly protectable” under the Ninth Circuit’s test when
 4 it is “protectable under some law, and ... there is a relationship between the legally protected interest
 5 and the claims at issue.” *Id.* An intervenor has a sufficient interest when it “will suffer a practical
 6 impairment of its interests as a result of the pending litigation.” *Id.* (quotation omitted). Here,
 7 USW has a significantly protectable interest in defending the health and safety of its members who work
 8 in the hazardous environment of a petroleum refinery, and particularly in ensuring that USW members
 9 are “involve[d] ... in meaningful ways” in developing policies and practices that promote their own
 10 health and safety. *See* Interagency Working Group Final Report, at 28. Indeed, it is the regulatory
 11 requirement that workers themselves be afforded genuine input into refinery safety that Plaintiff
 12 challenges in this lawsuit. Complaint ¶¶ 33-38.

13 As discussed in Section II.A above, the importance of employee involvement in a refinery’s
 14 safety practices is not a hypothetical concern. In its investigations of the Chevron and ExxonMobil
 15 explosions, the Chemical Safety Board cited inadequate “safety cultures” in the refineries. Chevron
 16 Final Report, at 13-14; *see also* ExxonMobil Report, at 52. In the case of Chevron, the Board
 17 specifically faulted both management’s failure to heed workers’ recommendation to shut down the unit
 18 where the explosion occurred and workers’ hesitance to invoke their “Stop Work Authority” due to
 19 “reluctance to speak up and delay work progress, and fear of reprisal for stopping the job.” Chevron
 20 Final Report, at 12-13. In its report on the ExxonMobil explosion, the Board recognized that California’s
 21 process safety management regulations, then in draft form, “could help prevent causal factors that led to
 22 the February 2015 ExxonMobil incident,” noting in particular that the employee participation provisions
 23 “could require refining companies to include additional knowledgeable personnel in changes to safety
 24 procedures ..., which could help include a broader knowledge base when specifying operational
 25 safeguards[.]” ExxonMobil Report, at 53-54. As the Occupational Safety and Health Standards Board
 26 and the Office of Emergency Services ultimately recognized in proposing the regulations, it is crucial to
 27 “involve[] front-line employees in decision-making.” 2016, No. 29-Z Cal. Regulatory Notice Reg. 1188,
 28 1208 (July 15, 2016) (emphasis in original).

1 In short, the regulations under attack in this case empower workers, including thousands of USW
 2 members, to protect their own safety by giving them a “meaningful” voice in the development, review,
 3 and implementation of safety practices and procedures in the highly dangerous environments in which
 4 they work. *See* Interagency Working Group Final Report, at 28. The plaintiff seeking to deprive workers
 5 of that voice is the trade association representing the owners and managers of refineries, including two
 6 companies whose systemic safety failures led to explosions that injured workers (including USW
 7 members), sickened members of the public, and sowed fear and confusion in neighboring communities.
 8 *See generally* Chevron Final Report, at 1-16; ExxonMobil Report, at 6-8, 23-24.

9 The Ninth Circuit has consistently held that labor organizations have a significantly
 10 protectable interest warranting intervention when employers challenge the validity of laws and
 11 regulations establishing minimum labor standards that protect union members. *Allied Concrete*, 904
 12 F.3d at 1068 (union entitled to intervene to defend state prevailing wage law against preemption
 13 challenge); *Californians for Safe and Competitive Dump Truck Trans. v. Mendonca*, 152 F.3d 1184,
 14 1189-90 (9th Cir. 1998) (same); *Associated Builders & Contractors of So. Cal. v. Nunn*, 356 F.3d
 15 979, 983-84 (9th Cir. 2004) (union federation permitted to intervene to defend state law establishing a
 16 minimum wage scale for state-registered apprentices against preemption challenge); *see also Golden*
 17 *Gate Rest. Assn. v. City & County of San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008) (union
 18 entitled to intervene to defend city health care ordinance against employers’ ERISA preemption
 19 challenge); *Alameda Newspapers, Inc. v. City of Oakland*, 95 F.3d 1406, 1411-12 & n.8 (9th Cir.
 20 1996) (newspaper guild entitled to intervene to defend city’s boycott of newspaper against preemption
 21 claim).

22 *Allied Concrete* and *Mendonca* are especially analogous. In each of those cases, a union sought
 23 to intervene to defend a state minimum labor standard against a preemption challenge. *Allied Concrete*,
 24 904 F.3d at 1066; *Mendonca*, 152 F.3d at 1189-90. Because the state labor standard created a “right”
 25 that was conferred upon the union’s members, the union had a “significantly protectible interest” in
 26 defending that right. *Allied Concrete*, 904 F.3d at 1067-68; *Mendonca*, 152 F.3d at 1190. Likewise here,
 27 the right of USW members to be protected by stronger health and safety regulations, including the right
 28

to play a meaningful role in the development and implementation of refinery safety practices, is a significantly protectible interest.

3. The Disposition of this Matter May Impair or Impede USW's Ability to Protect Its Interests

Under the third prong of the Rule 24(a)(2) inquiry, “the disposition of the action must as a practical matter impair or impede the applicant’s ability to protect [its] interest.” *Wilderness Soc’y*, 630 F.3d at 1177. “[I]f any [applicant] would be substantially affected in a practical sense by the determination made in an action, [the applicant] should, as a general rule, be entitled to intervene.” Fed. R. Civ. P. 24(a)(2), Advisory Committee Note. Undoubtedly, an adverse outcome in this matter would practically impair the interests of USW and its members by denying them the protections afforded by the process safety management and accidental release program regulations, because Plaintiff seeks an order invalidating those regulations and prohibiting state officials from enforcing them. “[B]ecause [USW] has an interest in the right[s] [conferred by the regulations], the district court invalidating [the regulations would] clearly impair[] that interest.” *Allied Concrete*, 904 F.3d at 1068. Indeed, because this suit is directed at the state officials with responsibility for administering the regulations, a judgment against them would be as binding upon USW as if USW itself had been named as a defendant.

4. The Existing Parties May Not Adequately Represent USW's Interests

To satisfy the fourth prong of the Rule 24(a) test – whether the proposed intervenor’s interest is adequately represented by the existing parties – it is unnecessary to show that the existing parties will behave detrimentally to the proposed intervenor’s interest. Rather, the inadequacy requirement “is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). Moreover, it is not the *quality* of the existing parties’ representation that matters, but whether the existing parties will “undoubtedly make all of the intervenor’s arguments” and whether the intervenor “offers a necessary element to the proceedings that would be neglected.” *Prete v. Bradbury*, 438 F.3d 949, 956 (9th Cir. 2006); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983).

Even if, as is frequently the case, the proposed intervenor and one or more of the existing parties share the same ultimate objective (i.e., defeating the plaintiff's claims), the courts have found an entitlement to intervene as of right where, as here, the interests of the intervenor are "more narrow and parochial" than those of the existing parties. *Mendonca*, 152 F.3d at 1190; *Forest Conversation Council v. United States Forest Service*, 66 F.3d 1489, 1499 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc'y*, 630 F.3d 1173.

As a result, "[c]ourts routinely grant labor unions leave to intervene in lawsuits filed against California public officials to invalidate state laws protecting the union members' employment interests." *Cal. Trucking Assn. v. Becerra*, 2019 WL 202313, at *3 (S.D. Cal. Jan. 14, 2019). "For such cases, courts recognize that the interests of the labor intervenors in protecting their members are more 'narrow' and 'parochial' than California State officials' broad and more abstract interest in defending the laws of the State." *Id.* (citing *Allied Concrete*, 904 F.3d 1053; *Mendonca*, 152 F.3d at 1190) (other citations omitted) (permitting union to intervene to defend constitutionality of California wage order governing transportation industry). "The Ninth Circuit's findings in *Mendonca* and *Allied Concrete* ... are dispositive on this issue[.]" *Cal. Trucking Assn.*, 2019 WL 202313, at *3. *See, also, e.g., Mendonca*, 152 F.3d at 1189-90 ("[B]ecause the employment interests of [the union's] members were potentially more narrow and parochial than the interests of the public at large, [the union] demonstrated that the representation of its interests by named defendants-appellees may have been inadequate."); *Allied Concrete*, 904 F.3d at 1068 (same); *Air Conditioning Trade Assn. v. Baker*, 2012 WL 3205422 (E.D. Cal., Jul. 31, 2012) (granting labor federation the right to intervene in employers' challenge to state apprenticeship standards); *Golden Gate Restaurant Assn. v. City and County of San Francisco*, 2007 WL 1052820, *4 (N.D. Cal. Apr. 5, 2007) ("[T]he Unions' members here have a personal interest in the enforcement of the Ordinance that is more narrow than the City's general interest because they would be among the employees directly affected by the injunction of the Ordinance. In addition, the Defendant City and County of San Francisco represents the public generally, including businesses and employers who claim to be harmed by the passage of the Ordinance.").

Here, as in these cases, USW's interests are "more narrow and parochial" than those of the government defendants. California officials must represent not only the interests of the refinery

workers who would benefit from the process safety management and accidental release program regulations, but also the interests of the refinery owners who may oppose the increased regulation of their businesses, and the interests of the general public. USW, in contrast, has a more specific interest in protecting the health and safety of its members and empowering them to have a meaningful voice in the development and implementation of better refinery safety practices.

Finally, USW has “intimate and detailed knowledge” of the operations of refineries, the history of process safety management in California and throughout the country, the events that led to the adoption of the process safety management and accidental release program regulations, and the specific matters covered by the regulations. *Cal. Trucking Assn.*, 2019 WL 202313, at *4; *see also Sagebrush Rebellion*, 713 F.2d at 528. For all of these reasons, USW satisfies the requirements of Rule 24(a) for intervention as of right.

B. In the Alternative, Permissive Intervention Should Be Granted

Under Fed. R. Civ. P. 24(b), a court “may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact.” “[P]ermissive intervention requires (1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant’s claim or defense and the main action.” *Freedom from Religion Foundation, Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011) (quotation omitted). As discussed in Section III.A.1 above, USW’s motion is timely. Likewise, the jurisdictional requirement is met because this is a federal question case and USW does not “seek[] to bring new state-law claims.” *See id.* at 843-44.

The third element is also met, as USW’s defense shares a common question of law with the existing action: namely, whether the process safety management and accidental release program regulations are lawful. In such circumstances, the Ninth Circuit has allowed a labor union to intervene pursuant to Rule 24(b) to defend a state labor standard against preemption claims, explaining that the union’s participation “added no claims or issues to those already in the case, and did not complicate or delay resolution beyond the need of plaintiffs to respond to additional briefing. *Emp. Staffing Servs., Inc. v. Aubry*, 20 F.3d 1038, 1042-43 (9th Cir. 1994). For these reasons, permissive intervention is appropriate.

1 **IV. CONCLUSION**

2 For the foregoing reasons, USW's motion for leave to intervene as a defendant should be
3 granted.

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Respectfully submitted,
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