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9 *Attorneys for Plaintiffs Sierra Club, Center*
10 *for Biological Diversity, WildEarth Guardians,*
11 *Medical Advocates for Healthy Air, and*
12 *Physicians for Social Responsibility – Los Angeles*

13 UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO/OAKLAND DIVISION

16 SIERRA CLUB, CENTER FOR BIOLOGICAL)
17 DIVERSITY, WILDEARTH GUARDIANS,)
18 MEDICAL ADVOCATES FOR HEALTHY AIR,)
19 and PHYSICIANS FOR SOCIAL)
20 RESPONSIBILITY – LOS ANGELES,)

21 Plaintiffs,)

22 v.)

23 UNITED STATES ENVIRONMENTAL)
24 PROTECTION AGENCY; GINA MCCARTHY, in)
25 her official capacity as Administrator of the United)
26 States Environmental Protection Agency; and)
27 JARED BLUMENFELD, in his official capacity as)
28 Regional Administrator of the United States)
Environmental Protection Agency,)

Defendants.)

Case No:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*)

INTRODUCTION

1
2 1. One of the most dangerous forms of air pollution is fine particulate matter pollution.
3 Fine particulate matter pollution consists of tiny, dirty motes that come from sources like diesel
4 exhaust, agricultural activities, and heavy industry. These tiny particles can be easily inhaled deep
5 into the lungs and even absorbed into the bloodstream where they can cause a host of negative health
6 impacts.

7 2. The most polluted areas of the country for fine particulate matter pollution are
8 California’s Los Angeles-South Coast Air Basin and San Joaquin Valley. Under the Clean Air Act,
9 these areas were required to come into attainment with the Environmental Protection Agency’s
10 (EPA’s) 1997 fine particulate matter pollution standards by December 31, 2011. When they failed to
11 attain these standards by that date, the Clean Air Act required EPA to make a finding by June 30,
12 2012 that these areas had failed to achieve attainment by the applicable date, and to publish notice in
13 the Federal Register that these areas had been reclassified by operation of law as “Serious Areas.”
14 This “Serious Area” designation requires more aggressive and stringent air pollution control
15 measures to be put in place.

16 3. EPA has failed to make the required finding that these areas failed to achieve
17 attainment of fine particulate matter pollution standards, and failed to publish the required notice that
18 these areas are now “Serious Areas.” This is an action to compel the Administrator of the
19 Environmental Protection Agency to fulfill these mandatory duties under the Clean Air Act, to
20 ensure that Plaintiffs’ members receive the pollution protections that the Clean Air Act requires.

JURISDICTION AND VENUE

21
22 4. The instant action arises under the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* This
23 Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1331 and
24 1361. The relief requested by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C.
25 §§ 2201, 2202, and 1361.

26 5. In accordance with 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, Plaintiffs notified
27 the Administrator of the violations alleged herein, and of Plaintiffs’ intent to initiate the present
28 action. This notice was provided via certified mail on July 30, 2014 and addressed to the

1 Administrator. More than 60 days have passed since notice was served, and the violations
2 complained of are continuing.

3 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) since: (a) this district is
4 one in which Defendant EPA resides and performs its official duties; (b) a substantial part of the
5 events and omissions giving rise to this claim have occurred in this district because EPA's Regional
6 Office in San Francisco, California, has as substantial role in implementing the EPA duties at issue
7 in this case; and (c) Plaintiff Sierra Club resides in this district.

8 7. Similarly, because Defendant EPA and Plaintiff Sierra Club both reside in San
9 Francisco, assignment to the San Francisco Division or the Oakland Division of this Court is proper
10 under Civil Local Rule 3-2(c) and (d).

11 **PARTIES**

12 8. Plaintiff Sierra Club, a corporation organized and existing under the laws of the State of
13 California, is a national nonprofit organization of approximately 625,000 members, roughly 147,000 of
14 whom live in California. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild
15 places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and
16 resources; to educating and encouraging humanity to protect and restore the quality of the natural
17 and human environment; and to using all lawful means to carry out these objectives.

18 9. Plaintiff Center for Biological Diversity ("Center"), a corporation organized and
19 existing under the laws of the State of California, is a national nonprofit conservation organization
20 that has offices across the United States, including California. The Center has more than 775,000
21 members and supporters dedicated to the preservation, protection, and restoration of biodiversity and
22 ecosystems throughout the world. The Center works to insure the long-term health and viability of
23 animal and plant species across the United States and elsewhere, and to protect the habitat these
24 species need to survive. The Center has also worked to achieve full implementation of the Clean Air
25 Act to protect ecosystems and the environment.

26 10. Plaintiff WildEarth Guardians, a corporation organized and existing under the laws of
27 the State of New Mexico, is a nonprofit organization dedicated to protecting and restoring the
28 wildlife, wild places, wild rivers, and health of the American West.

1 11. Plaintiff Medical Advocates for Healthy Air is a California nonprofit organization
2 consisting of medical professionals living in the San Joaquin Valley who regularly treat patients
3 suffering from respiratory ailments caused or greatly exacerbated by the unhealthy levels of air
4 pollution in the area. Its mission is to advocate for the expeditious attainment of state and federal
5 health-based air quality standards in the San Joaquin Valley.

6 12. Plaintiff Physicians for Social Responsibility – Los Angeles, a corporation organized
7 and existing under the laws of the State of California, is a California nonprofit organization
8 dedicated to advocating for policies and practices that improve public health, eliminate
9 environmental threats, and address health inequalities.

10 13. Plaintiffs' members live, work, recreate and conduct other activities in areas where
11 their health and welfare are adversely affected or threatened by fine particulate matter pollution.

12 14. The acts and omissions of EPA complained of herein cause injury to Plaintiffs and
13 their members by delaying designation of the Los Angeles-South Coast Air Basin and the San
14 Joaquin Valley as serious nonattainment areas for fine particulate matter pollution. This delay injures
15 Plaintiffs' members by allowing air quality conditions to persist that impair or threaten members'
16 health and welfare, and by nullifying or delaying measures mandated by the Act to protect members'
17 health and welfare from fine particulate matter pollution. The health, recreational, aesthetic, and
18 environmental interests of Plaintiffs' members have been and continue to be adversely affected by
19 the acts and omissions of EPA.

20 15. For all the foregoing reasons, the failures complained of herein cause Plaintiffs and
21 their members injuries for which they have no adequate remedy at law. Granting the requested relief
22 would redress these injuries.

23 16. Defendant EPA is the federal agency charged with implementation of the Clean Air
24 Act.

25 17. Defendant Gina McCarthy is the Administrator of EPA, and is responsible for
26 implementation and enforcement of the Clean Air Act. Defendant McCarthy is sued in her official
27 capacity, and officially resides in Washington, D.C.

1 18. Defendant Jared Blumenfeld is the Regional Administrator of EPA for the Pacific
2 Southwest (Region 9), and is responsible for implementation and enforcement of the Clean Air Act
3 within California. Defendant Blumenfeld is sued in his official capacity, and officially resides in San
4 Francisco, CA.

5 **BACKGROUND AND FACTS**

6 **PM2.5 Pollution**

7 19. Particulate matter pollution, or PM, refers to particles suspended in the air. Particles
8 less than 10 micrometers in diameter (PM10) pose a health threat because they are respirable, and
9 are regulated under the Clean Air Act.

10 20. Particles less than 2.5 micrometers (PM2.5) are considered by EPA to pose the
11 greatest health risks. Finer particles are typically composed of more toxic materials, like heavy
12 metals and carcinogenic organic compounds, than larger particles. And these tiny particles—less
13 than 1/30 the width of a human hair—can be easily inhaled deep into the lungs, where they can
14 remain embedded or absorbed into the bloodstream. These lighter particles also stay in the air longer
15 and travel further than larger particles; whereas larger particles can stay in the air for minutes or
16 hours and travel up to thirty miles, PM2.5 can stay in the air for days or weeks and travel hundreds
17 of miles.

18 21. According to EPA, exposure to PM2.5 has been linked to premature death, heart
19 attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased
20 respiratory symptoms. Many of these impacts are suffered most acutely by our most vulnerable,
21 including people with heart or lung disease, children, and the elderly.

22 22. PM2.5 also adversely impacts wildlife and ecosystems. Numerous studies have linked
23 negative health effects in animals with high concentrations of numerous fine particle components.
24 As EPA has explained, the impacts of PM2.5 on terrestrial ecosystems are “profound and adverse.”
25 Compounds associated with PM2.5 change the nutrient and acidifying characteristics of water bodies
26 and soil, increasing plant mortality and decreasing ecosystem biodiversity. Moreover, PM2.5
27 adversely affects the visibility and aesthetics of our natural surroundings by contributing to visibility
28 impairment.

1 23. The most polluted areas in the country for PM_{2.5} are California's Los Angeles-South
2 Coast Air Basin and San Joaquin Valley. These areas are particularly burdened by PM_{2.5} sources
3 like cars, trucks, agriculture, and heavy industry, and air pollution is trapped in place by surrounding
4 mountains. As a result, people living in the Los Angeles-South Coast Air Basin and the San Joaquin
5 Valley suffer from high rates of asthma and other health ailments and experience regular impairment
6 of natural visibility. The wildlife and ecosystems in those areas are also adversely affected by the
7 ongoing PM_{2.5} violations.

8 **The Clean Air Act's Requirements for PM_{2.5}**

9 24. The Clean Air Act establishes a comprehensive scheme "to protect and enhance the
10 quality of the Nation's air resources so as to promote the public health and welfare and the
11 productive capacity of its population." 42 U.S.C. § 7401(b)(1).

12 25. As one of its central features, the Clean Air Act requires the Administrator of EPA to
13 set national ambient air quality standards for certain air pollutants, including particulate matter, at a
14 level "requisite to protect the public health" with "an adequate margin of safety." 42 U.S.C.
15 § 7409(b)(1). EPA is required to designate those areas failing to meet these standards as
16 "nonattainment" areas. 42 U.S.C. § 7407.

17 26. The Clean Air Act requires that areas designated as nonattainment for particulate
18 matter come into attainment with EPA's standards within six years of a nonattainment designation.
19 42 U.S.C. § 7513(c)(1).

20 27. Within six months of the attainment date, EPA must make a determination whether
21 the areas have attained the PM_{2.5} standards. 42 U.S.C. § 7513(b)(2).

22 28. If EPA determines that the areas have not attained the PM_{2.5} standards, "the area
23 shall be reclassified by operation of law as a Serious Area" and EPA must publish notice in the
24 Federal Register that the area has been reclassified. 42 U.S.C. § 7513(b)(2)(A), (B).

25 29. For Serious Areas, the attainment date is no later than the end of the tenth calendar
26 year beginning after the area's designation as nonattainment. 42 U.S.C. § 7513(c)(2).

27 30. Within eighteen months of designation as a Serious Area, a state must submit a
28 Serious Area Plan. 42 U.S.C. § 7513a(b)(2).

1 31. This Serious Area plan must demonstrate that the plan provides for attainment of the
2 particulate matter standard by the Serious Area attainment date. The Plan must also assure that the
3 best available control measures for the control of particulate matter are implemented no later than
4 four years after an area is classified as Serious. 42 U.S.C. § 7513a(b)(1).

5 32. The design of the Clean Air Act thus ensures that the areas of the country consistently
6 out of attainment with PM_{2.5} standards make increasingly aggressive progress towards cleaning up
7 the air.

8 **EPA's Duty to Designate the Los Angeles-South Coast Air Basin and the San Joaquin Valley**
9 **as Serious Nonattainment Areas for PM_{2.5}**

10 33. In 1997, EPA revised the national ambient air quality standards for particulate matter,
11 setting a 15.0 µg/m³ annual standard and 65 µg/m³ 24-hour standard for PM_{2.5}. 62 Fed. Reg. 38,652
12 (July 18, 1997); 40 C.F.R. § 50.7.

13 34. Effective April 5, 2005, EPA designated the Los Angeles-South Coast Air Basin and
14 the San Joaquin Valley as nonattainment areas for the 1997 PM_{2.5} standards. 70 Fed. Reg. 944, 955
15 (Jan. 5, 2005); 40 C.F.R. § 81.305.

16 35. Six years after this nonattainment designation, by December 31, 2011, the Los
17 Angeles-South Coast Air Basin and the San Joaquin Valley were required to come into attainment
18 with EPA's 1997 PM_{2.5} standards. 42 U.S.C. § 7513(c)(1).

19 36. Neither the Los Angeles-South Coast Air Basin nor the San Joaquin Valley attained
20 the 1997 PM_{2.5} standards by December 31, 2011.

21 37. Within six months of the attainment date, by June 30, 2012, EPA was required to
22 publish notice in the Federal Register that the Los Angeles-South Coast Air Basin and the San
23 Joaquin Valley failed to come into attainment and were reclassified as Serious Areas. 42 U.S.C.
24 § 7513(b)(2).

25 38. These areas remain out of attainment with the 1997 PM_{2.5} standards.

26 39. To date, EPA has failed to make a determination that the Los Angeles-South Coast
27 Air Basin and the San Joaquin Valley failed to attain EPA's 1997 PM_{2.5} standards by the attainment
28

1 date; and has failed to publish notice in the Federal Register that these areas have been reclassified
2 by operation of law as Serious Areas.

3 **CLAIM FOR RELIEF**

4 **Failure to Designate the Los Angeles-South Coast Air Basin and the San Joaquin Valley as**
5 **Serious Areas for PM2.5 by the Statutory Deadline**

6 40. Plaintiffs hereby incorporate all previous paragraphs by reference.

7 41. Defendants have failed to fulfill their duties under 42 U.S.C. § 7513(b) to make a
8 determination that the Los Angeles-South Coast Air Basin and the San Joaquin Valley failed to
9 attain EPA's 1997 PM2.5 standards by the attainment date and publish notice in the Federal Register
10 that these areas have been reclassified by operation of law as Serious Areas.

11 42. Defendants' failure to timely complete these duties constitutes failure to perform acts
12 or duties that are not discretionary within the meaning of 42 U.S.C. § 7604(a)(2).

13 43. Defendants' failure to perform these nondiscretionary duties is ongoing. Plaintiffs are
14 informed and believe that the omissions complained of herein will continue unless enjoined by order
15 of this Court.

16 44. Accordingly, Plaintiffs are entitled to an order from this Court declaring that
17 Defendants have failed to perform the above-referenced nondiscretionary acts and duties, and
18 directing Defendants to perform such acts and duties immediately.

19 **RELIEF REQUESTED**

20 WHEREFORE, Plaintiffs respectfully request that the Court:

21 (A) Declare that Defendants' failure to act as complained of herein constitutes a failure to
22 perform nondiscretionary duties required by 42 U.S.C. § 7513(b), and within the meaning of 42
23 U.S.C. § 7604(a)(2);

24 (B) Issue a mandatory injunction requiring EPA to immediately perform its mandatory
25 duties;

26 (C) Retain jurisdiction over this action to ensure compliance with the Court's orders;

27 (D) Award Plaintiffs their reasonable costs of litigation, including attorneys' fees,
28 pursuant to 42 U.S.C. § 7604(d); and

1 (E) Grant such other relief as the Court deems just and proper.

2
3 DATED: October 15, 2014

Respectfully submitted,

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