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6

7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9	_____)	
)	
10	CENTER FOR BIOLOGICAL DIVERSITY,)	
	CENTER FOR ENVIRONMENTAL HEALTH,)	
11	and CLEAN AIR COUNCIL,)	Case No.
)	
12)	COMPLAINT FOR DECLARATORY
)	AND INJUNCTIVE RELIEF
13	Plaintiffs,)	
)	(Clean Air Act, 42 U.S.C. §§ 7401 <i>et. seq.</i>)
14	v.)	
)	
15	SCOTT PRUITT,)	
	in his official capacity as Administrator of the)	
16	United States Environmental Protection Agency,)	
)	
17	Defendant.)	
	_____)	

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19
20 **I. INTRODUCTION**

21 1. Plaintiffs the Center for Biological Diversity, the Center for Environmental Health, and
22 Clean Air Council bring this Clean Air Act citizen suit to compel the United States
23 Environmental Protection Agency to undertake overdue mandatory duties which are necessary to

1 protect the public from deadly air pollution. Specifically, Defendant Scott Pruitt, in his official
 2 capacity as Administrator of the United States Environmental Protection Agency (“EPA”), has
 3 failed to make findings of failure to submit under 42 U.S.C. § 7410(k)(1)(B), and publish notice
 4 of those findings in the Federal Register, for nonattainment state implementation plans (“SIPs”)
 5 for the 2012 particulate matter less than 2.5 microns in diameter (“PM2.5”) National Ambient
 6 Air Quality Standards, for the following areas and elements listed in Table 1:

7
 8 **TABLE 1**

AREA & ELEMENT(S)	SUBMITTAL DEADLINE (No later than)
Imperial County, CA: Emission Inventory, Reasonably Available Control Measures/Reasonably Available Control Technology (RACM/RACT), Attainment Demonstration, Reasonable Further Progress, Quantitative Milestones, Contingency Measures,	10/15/2016
West Silver Valley, ID: RACM/RACT, Attainment Demonstration, Reasonable Further Progress, Quantitative Milestones, Contingency Measures, Nonattainment New Source Review.	10/15/2016
Allegheny County, PA: Emission Inventory, RACM/RACT, Attainment Demonstration, Reasonable Further Progress, Quantitative Milestones, Contingency Measures, Nonattainment New Source Review.	10/15/2016
Delaware County, PA: Nonattainment New Source Review.	10/15/2016
Lebanon County, PA: RACM/RACT, Attainment Demonstration, Reasonable Further Progress, Quantitative Milestones, Contingency Measures, Nonattainment New Source Review.	10/15/2016

1 Accordingly, Plaintiffs THE CENTER FOR BIOLOGICAL DIVERSITY, THE CENTER FOR
2 ENVIRONMENTAL HEALTH, and CLEAN AIR COUNCIL bring this action against
3 Defendant SCOTT PRUITT, in his official capacity as EPA Administrator, to compel him to
4 perform these mandatory duties.

6 II. JURISDICTION

7 2. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this
8 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)
9 (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

10 3. An actual controversy exists between the parties. This case does not concern federal
11 taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of
12 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. §
13 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue
14 injunctive relief.

16 III. NOTICE

17 4. On August 3, 2017, Plaintiffs mailed to EPA by certified mail, return receipt requested,
18 written notice of intent to sue regarding the violations alleged in this Complaint. More than sixty
19 days have passed since EPA received this “notice of intent to sue” letter. EPA has not remedied
20 the violations alleged in this Complaint. Therefore, a present and actual controversy exists.

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IV. VENUE

5. Defendant EPA resides in this judicial district. EPA Region 9, which has authority over California, is headquartered in San Francisco. This civil action is brought against an officer of the United States acting in his official capacity, and a substantial part of the events or omissions giving rise to the claims in this case occurred in the Northern District of California. The Center for Environmental Health resides in the Northern District of California. Therefore, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

V. INTRADISTRICT ASSIGNMENT

6. A substantial part of the events and omissions giving rise to the claims in this case occurred in the County of San Francisco. EPA Region 9, which has authority over California, is headquartered in San Francisco. Accordingly, assignment to the San Francisco Division or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

VI. PARTIES

7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3) corporation incorporated in California. The Center for Biological Diversity has approximately 61,000 members throughout the United States and the world.

8. The Center for Biological Diversity’s mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center for Biological Diversity is working to secure a future for animals and

1 plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a
2 healthy, livable future for all of us.

3 9. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is an Oakland, California
4 headquartered nonprofit organization that helps protect the public from toxic chemicals and
5 promotes business products and practices that are safe for public health and the environment.

6 The Center for Environmental Health works in pursuit of a world in which all people live, work,
7 learn, and play in healthy environments.

8 10. Plaintiff CLEAN AIR COUNCIL (“Council”) is a Philadelphia-based nonprofit
9 organization. It is a member-supported environmental organization serving the Mid-Atlantic
10 Region. The Council is dedicated to protecting and defending everyone’s right to breathe clean
11 air. The Council works through a broad array of related sustainability and public health
12 initiatives, using public education, community action, government oversight, and enforcement of
13 environmental laws.

14 11. Plaintiffs’ members live, work, recreate, travel and engage in other activities throughout
15 the areas at issue in this complaint and will continue to do so on a regular basis. PM2.5 pollution
16 in the affected areas threatens and damages, and will continue to threaten and damage, the health
17 and welfare of Plaintiffs’ members as well as their ability to engage in and enjoy their other
18 activities. PM2.5 pollution diminishes Plaintiffs’ members’ ability to enjoy the aesthetic
19 qualities and recreational opportunities of the affected area.

20 12. EPA’s failure to timely perform the mandatory duties described herein also adversely
21 affects Plaintiffs, as well as their members, by depriving them of procedural protection and
22 opportunities, as well as information that they are entitled to under the Clean Air Act. The
23

1 failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiffs' members
2 as to whether they are exposed to excess air pollution.

3 13. The above injuries will continue until the Court grants the relief requested herein.

4 14. Defendant SCOTT PRUITT is the Administrator of the EPA. In that role, Administrator
5 Pruitt has been charged by Congress with the duty to administer the Clean Air Act, including the
6 mandatory duties at issue in this case. Administrator Pruitt is also charged with overseeing all
7 EPA regional offices including EPA Region 9, which has authority over California, and is
8 headquartered in San Francisco.

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10 **VII. LEGAL BACKGROUND**

11 15. Congress enacted the Clean Air Act to “speed up, expand, and intensify the war against
12 air pollution in the United States with a view to assuring that the air we breathe throughout the
13 Nation is wholesome once again.” H.R. Rep. No. 1146, 91st Cong., 2d Sess. 1, 1, 1970 U.S.
14 Code Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National
15 Ambient Air Quality Standards for certain pollutants. 42 U.S.C. § 7409(a). National Ambient
16 Air Quality Standards establish maximum allowable concentrations in the air of such pollutants.

17 16. After EPA promulgates a National Ambient Air Quality Standard, the Clean Air Act
18 requires that EPA designate each area of the country as either a clean air area for that standard,
19 which is known as “attainment” in Clean Air Act jargon, or a dirty air area, which is known as
20 “nonattainment” in Clean Air Act jargon. *See* 42 U.S.C. § 7407(d).

21 17. Under the Clean Air Act, each state is required to submit state implementation plans to
22 ensure that each National Ambient Air Quality Standard will be achieved, maintained, and
23

1 enforced. Without such plans, the public is not afforded full protection against the harmful
2 impacts of air pollution.

3 18. For dirty air areas which EPA has designated as “nonattainment,” states must submit
4 nonattainment area state implementation plans. *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a,
5 7513 – 7513b.

6 19. The Clean Air Act requires EPA to determine whether any state implementation plan
7 submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). EPA must make this
8 determination by “no later than 6 months after the date, if any, by which a State is required to
9 submit the plan or revision.” *Id.*

10 20. If a state fails to submit any required state implementation plan, there is no submittal that
11 may be deemed administratively complete, and EPA must make a determination, and publish
12 notice of that determination in the Federal Register, stating that the state failed to submit an
13 administratively complete state implementation plan submittal within six months of when the
14 submittal was due. 42 U.S.C. § 7410(k)(1)(B).

15 21. This is referred to as a “finding of failure to submit.”

17 **VIII. FACTS**

18 22. This case involves EPA’s failure to timely implement the 2012 primary National
19 Ambient Air Quality Standards for PM_{2.5}.

20 23. According to EPA, PM_{2.5} is “produced chiefly by combustion processes and by
21 atmospheric reactions of various gaseous pollutants,” thus “[s]ources of fine particles include . . .
22 motor vehicles, power generation, combustion sources at industrial facilities, and residential fuel
23 burning.” 71 Fed. Reg. 61,144, 61,146 (Oct. 17, 2006).

1 24. The effects of PM_{2.5} on humans are profound. For example, long-term exposure has
2 been associated “with an array of health effects, notably premature mortality, increased
3 respiratory symptoms and illnesses (e.g. bronchitis and cough in children), and reduced lung
4 function.” 62 Fed. Reg. 38652, 38668 (July 18, 1997).

5 25. PM_{2.5} also adversely impacts wildlife. EPA has explained “a number of animal
6 toxicologic . . . studies had reported health effects associations with high concentrations of
7 numerous fine particle components[.]” 71 Fed. Reg. 2620, 2643 – 2644 (Jan. 17, 2006). PM_{2.5}
8 also causes direct foliar injury to vegetation. *Id.* at 2682. As to broader ecosystem impacts, EPA
9 has explained that the nitrogen and sulfur “containing components of PM have been associated
10 with a broad spectrum of terrestrial and aquatic ecosystem impacts that result from either the
11 nutrient or acidifying characteristics of the deposited compounds. *Id.* These impacts include
12 nitrogen saturation, which “causes 1) decreased productivity, increased mortality, and/or shifts in
13 terrestrial plant community composition, often leading to decreased biodiversity in many natural
14 habitats wherever atmospheric [reactive nitrogen] deposition increases significantly and critical
15 thresholds are exceeded; (2) leaching of excess nitrate and associated base cations from
16 terrestrial soils into streams, lakes and rivers and mobilization of soil aluminum; and (3)
17 alteration of ecosystem processes such as nutrient and energy cycles through changes in the
18 functioning and species composition of beneficial soil organisms (Galloway and Cowling
19 2002).” *Id.* EPA has described these impacts on terrestrial ecosystems as “profound and
20 adverse[.]” *Id.* EPA has also determined that PM_{2.5} adversely impacts aquatic ecosystems via
21 excess nutrient inputs and acid and acidifying deposition. 71 Fed. Reg. at 2,682 – 2,683. “Data
22 from existing deposition networks in the U.S. demonstrate that N and S compounds are being
23

1 deposited in amounts known to be sufficient to affect sensitive terrestrial and aquatic ecosystems
2 over time.” 71 Fed. Reg. at 2,683.

3 26. Moreover, PM2.5 adversely affects the aesthetics of our natural surroundings. For
4 example, regional haze is caused in part by particulates in the air scattering sunlight. EPA,
5 Visibility and Haze: Basic Information about Visibility (available at
6 <https://www.epa.gov/visibility/basic-information-about-visibility>). It is vital that EPA take the
7 required action in order to strengthen protection of public health and welfare against PM2.5.

8 27. On December 14, 2012, EPA strengthened the primary annual PM2.5 NAAQS from 15.0
9 to 12.0 micrograms per cubic meter (ug/m³). 78 Fed. Reg. 3,086 (Jan. 15, 2013).

10 28. EPA made attainment and nonattainment designations for the 2012 PM2.5 NAAQS
11 effective April 15, 2015. *See* 80 Fed. Reg. 2,206 (Jan. 15, 2015).

12 29. EPA designated all of the areas listed in Table 1 as nonattainment. *Id.*

13 30. All elements of the nonattainment SIPs for the 2012 annual PM2.5 NAAQS listed in
14 Table 1 were due by no later than 18 months after the effective date of the nonattainment
15 designations, that is October 15, 2016. *See* 40 C.F.R. § 51.1003(a)(2). *See also*
16 https://www3.epa.gov/airquality/urbanair/sipstatus/reports/pm-2.5__2012_en.html.

17 31. Thus, EPA had a mandatory duty to make a completeness finding under 42 U.S.C. §
18 7410(k)(1)(B) for the SIP elements listed in Table 1 by no later than April 15, 2017.

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20 **IX. CLAIM FOR RELIEF**

21 **CLAIM ONE**
22 (Failure to Make Findings of Failure to Submit)

23 32. Plaintiffs incorporate by reference paragraphs 1 through 29.

1 33. The deadline for the 2012 PM_{2.5} primary annual National Ambient Air Quality Standard
2 nonattainment state implementation plan submissions listed in Table 1 is no later than October
3 15, 2016. *See* 80 Fed. Reg. 2,206 (Jan. 15, 2015) (Effective date of nonattainment designations
4 was April 15, 2015), 40 C.F.R. § 51.1003(a)(2)(SIPs due 18 months after effective date of
5 nonattainment designations). *See also*
6 https://www3.epa.gov/airquality/urbanair/sipstatus/reports/pm-2.5_2012_en.html
7 (Nonattainment SIPs due October 15, 2016).

8 34. More than six months have passed since October 15, 2016.

9 35. For each of the areas and nonattainment SIP elements listed in Table 1 of paragraph 1
10 above, the relevant state has failed to submit the listed nonattainment SIP element.

11 36. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a finding of
12 failure to submit by no later than April 15, 2017 for each area's nonattainment SIP elements
13 listed in Table 1 of paragraph 1 above.

14 37. EPA has not made findings of failure to submit for each of the areas and nonattainment
15 SIP elements listed in Table 1 of paragraph 1 above.

16 38. Thus, EPA is in violation of its mandatory duty to make a finding of failure to submit
17 each of the areas and nonattainment SIP elements listed in Table 1 of paragraph 1 above.

18
19 **REQUEST FOR RELIEF**

20 WHEREFORE, Plaintiffs respectfully request that the Court:

- 21 A. Declare that the Administrator is in violation of the Clean Air Act with regard to his
22 failure to perform the mandatory duties listed above;

- 1 B. Issue a mandatory injunction requiring the Administrator to perform his mandatory duties
- 2 listed above by certain dates;
- 3 C. Retain jurisdiction of this matter for purposes of enforcing the Court’s order;
- 4 D. Grant Plaintiffs their reasonable costs of litigation, including attorneys’ and experts’ fees;
- 5 and;
- 6 E. Grant such further relief as the Court deems just and proper.

7
8 Respectfully submitted,

9 /s/ Jonathan Evans

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23 Counsel for Plaintiffs

24 Dated: December 20, 2017

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Center for Biological Diversity, Center for Environmental Health and Clean Air Council

(b) County of Residence of First Listed Plaintiff Pima, AZ (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jonathan Evans, Center for Biological Diversity, 1212 Broadway, Ste. 800, Oakland, CA 94612, 510-844-7100 ext 318

DEFENDANTS

Scott Pruitt, in his official capacity as US EPA Administrator

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

U.S. Department of Justice

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
X 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 7604(a)

Brief description of cause: Clean Air Act mandatory duty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes X No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 12/20/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jonathan Evans

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.