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6 *Committee for a Better Shafter, Medical Advocates for Healthy Air,*
7 *and National Parks Conservation Association*

8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 COMMITTEE FOR A BETTER ARVIN,
11 COMMITTEE FOR A BETTER SHAFTER,
12 MEDICAL ADVOCATES FOR HEALTHY AIR,
AND NATIONAL PARKS CONSERVATION
ASSOCIATION,

13 Plaintiffs,

14 v.

15 ANDREW WHEELER, in his official capacity as
16 Acting Administrator of the United States
Environmental Protection Agency, and MIKE
17 STOKER, in his official capacity as Regional
Administrator of the United States Environmental
18 Protection Agency Region 9,

19 Defendants.

Case No.

COMPLAINT

20
21 **NATURE OF THE ACTION**

22 1. This action is brought under the federal Clean Air Act, 42 U.S.C. §§ 7401–7671q, to
23 compel the U.S. Environmental Protection Agency (“EPA”) to take the statutorily required action of
24 making findings under 42 U.S.C. § 7410(k)(1)(B), and publishing notice of those findings in the
25 *Federal Register*, that the State of California has failed to develop and submit at least four separate
26 nonattainment state implementation plan revisions to combat persistent violations of the 1997, 2006,
27 and 2012 National Ambient Air Quality Standards for fine particulate matter (PM_{2.5}) in the San
28 Joaquin Valley, California.

NOTICE

1
2 7. Plaintiffs provided EPA with written notice of the claim stated in this action at least
3 sixty days before commencing this action as required by 42 U.S.C. § 7604(b)(2). Exhibit A (Letter
4 from Colin C. O’Brien, counsel for Plaintiffs, to EPA Administrator, dated July 6, 2018).

VENUE

5
6 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e). This civil action is
7 brought against officers of the United States acting in their official capacities. Defendant EPA
8 resides in the Northern District of California. EPA Region 9, which has authority over California
9 and is charged with reviewing state implementation plans and revisions for California, is
10 headquartered in San Francisco. A substantial part of the events or omissions giving rise to the
11 claims in this case likewise occurred in this judicial district. Further, Plaintiff NATIONAL PARKS
12 CONSERVATION ASSOCIATION resides in this judicial district.

PARTIES

13
14 9. Plaintiff COMMITTEE FOR A BETTER ARVIN (“CBA”) is a community group
15 consisting of residents from Arvin, California. CBA’s mission is to work to achieve environmental
16 justice and community leadership to protect the quality of water, air, and land for a better Arvin and
17 a healthier San Joaquin Valley. CBA was formed in 2007 as a community group and incorporated as
18 a 501(c)(3) nonprofit corporation in 2009. CBA is comprised of eight officers and fifty members.
19 CBA performs air quality monitoring to obtain data to fight for improved air quality. CBA recently
20 was involved in passing a local oil and gas ordinance that will enhance air quality and community
21 health in Arvin.

22 10. Plaintiff COMMITTEE FOR A BETTER SHAFTER (“CBS”) is a 501(c)(3)
23 nonprofit organization whose members reside and, in some cases, own property in Shafter,
24 California—a city located in the San Joaquin Valley. Incorporated in 2012, CBS has twelve full-
25 time members and thirty families that partner in its community garden. CBS’s mission is to work to
26 improve the quality of life in Shafter, to inform and unite the community, to address the
27 environmental problems that impact the community, and to ensure equality for all residents of
28 Shafter. CBS was created to promote organic and sustainable agriculture through community

1 gardens. CBS and its members and community gardeners actively engage on air quality issues,
2 owing to their concerns about the impact of air pollution upon their health and crops; members
3 participate in local, state, and national clean air advocacy efforts.

4 11. Plaintiff MEDICAL ADVOCATES FOR HEALTHY AIR (“Medical Advocates”) is
5 a California nonprofit organization based in Fresno, consisting of medical professionals living in the
6 San Joaquin Valley who regularly treat patients suffering from respiratory ailments that are caused
7 or greatly exacerbated by the Valley’s unhealthy levels of air pollution. Formed in 2001, its mission
8 is to advocate for the expeditious attainment of state and federal health-based air quality standards in
9 the San Joaquin Valley through public education, litigation, and other means.

10 12. Plaintiff NATIONAL PARKS CONSERVATION ASSOCIATION (“NPCA”) is a
11 501(c)(3) nonprofit membership organization headquartered in Washington, D.C., with a Pacific
12 Regional Office located in Oakland, California, and a Sierra Nevada Field Office located in Fresno,
13 California. NPCA currently has over 1.3 million members and supporters nationwide, including
14 2,270 active members living in the counties that comprise the San Joaquin Valley Air Pollution
15 Control District. NPCA’s primary mission is to protect and preserve America’s national parks and
16 their resources, including air quality, for the use and enjoyment of present and future generations.
17 Since its founding in 1919, NPCA has pursued its mission through advocacy, education, and
18 strategic litigation to enforce environmental laws. For example, NPCA has worked to protect air
19 quality in national parks nationwide and in California through the implementation and enforcement
20 of Clean Air Act provisions that regulate air pollution sources affecting the national parks.

21 13. Plaintiffs’ members live, raise their families, work, recreate, and conduct educational,
22 advocacy, and other activities in the San Joaquin Valley. They are adversely affected by exposure to
23 levels of PM_{2.5} pollution that exceed the national standards for 24-hour and annual concentrations of
24 PM_{2.5} established under the Clean Air Act. Adverse effects of such PM_{2.5} pollution include actual or
25 threatened harm to: their health; the health of their families; their professional, educational, and
26 economic interests; and their recreational and aesthetic use and enjoyment of the environment in the
27 San Joaquin Valley, including their use and enjoyment of Yosemite, Sequoia, and Kings Canyon
28 National Parks.

1 7513b (Subpart 4 of Part D of Title I of the Act, “Additional Provisions for Particulate Matter
2 Nonattainment Areas”), 7513a(a)(2)(B) (particulate matter deadline).¹

3 20. Nonattainment areas for particulate matter pollution initially are designated as
4 “Moderate Areas.” 42 U.S.C. § 7513(a). State implementation plans for such Moderate Areas must
5 improve air quality to meet the relevant national ambient air quality standard “as expeditiously as
6 practicable but no later than the end of the sixth calendar year after the area’s designation as
7 nonattainment” *Id.* § 7513(c)(1).

8 21. Before the attainment deadline, if EPA determines that a Moderate Area cannot
9 practicably attain a particulate matter national ambient air quality standard by the prescribed
10 attainment date, EPA may reclassify it as a “Serious Area.” 42 U.S.C. § 7513(b)(1). If no such
11 determination is made but a Moderate Area, in fact, fails to attain the relevant health standard, it
12 likewise will be reclassified as a Serious Area. *Id.* § 7513(b)(2). Under the Clean Air Act, such
13 reclassification from Moderate to Serious results in a new, longer attainment deadline—“as
14 expeditiously as practicable but no later than the end of the tenth calendar year beginning after the
15 area’s designation as nonattainment” *Id.* § 7513(c)(2).

16 22. The Clean Air Act requires that a state implementation plan for a particulate matter
17 Serious Area must contain additional, stricter pollution prevention and control measures than a
18 Moderate Area plan. 42 U.S.C. § 7513a(b)(1). For example, plans for a Serious Area must include
19 “[p]rovisions to assure that the best available control measures for the control of [particulate matter]
20 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a
21 Serious Area.” *Id.* § 7513a(b)(1)(B). The Act requires states to submit Serious Area plans “no later
22 than 18 months after reclassification of the area as a Serious Area.” *Id.* § 7513a(b)(2).

23 23. If a Serious Area, despite the extended timeline for compliance, still does not meet
24 the particulate matter standard by the attainment date, “the State in which such area is located shall .
25

26 ¹ Sections 7513 through 7513b of the Clean Air Act, which collectively comprise Subpart 4 of Part
27 D of Title I of the Act, refer to “PM-10” but govern nonattainment requirements for both forms of
28 regulated particulate matter pollution—PM₁₀ and PM_{2.5}. *Natural Res. Def. Council v. EPA*, 706 F.3d
428, 435 (D.C. Cir. 2013) (“[B]y its express terms, Subpart 4, when enacted, governed all PM₁₀
particles, including those now denominated PM_{2.5}.”)

1 . . . submit within 12 months . . . plan revisions which provide for attainment.” 42 U.S.C. § 7513a(d).
2 The Clean Air Act specifies that plan revisions for such an overdue Serious Area must reduce direct
3 particulate matter emissions or particulate matter precursor emissions at least five percent annually
4 until air quality is improved enough to meet the air quality standard. *Id.*

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

9 25. If a state completely fails to submit a required state implementation plan by the
10 deadline, then there is no submittal that may be deemed administratively complete, and EPA
11 therefore must make a determination—and publish notice of that determination in the *Federal*
12 *Register*—stating that the state failed to submit an administratively complete state implementation
13 plan. 42 U.S.C. § 7410(k)(1)(B). Such a determination is commonly referred to as a “finding of
14 failure to submit.” *See, e.g.*, 83 Fed. Reg. 14,759 (Apr. 6, 2018) (stating “[t]hese findings of failure
15 to submit apply to states with overdue [state implementation plan] revisions”).

16 26. Upon issuing a finding of failure to submit, the Clean Air Act establishes a two-year
17 deadline for EPA either to approve a state implementation plan (subsequently submitted by state
18 authorities to address the deficiency) or to promulgate a federal implementation plan. 42 U.S.C.
19 § 7410(c)(1). When a state implementation plan is required to address nonattainment of an air
20 quality standard, a finding of failure to submit also starts the clock on mandatory sanctions intended
21 to induce states to develop and submit their plan. More specifically, 18 months after the finding, all
22 proposed new pollution sources within the nonattainment area become subject to a heightened
23 permitting requirement. *Id.* § 7509(a), (b)(2); 40 C.F.R. § 52.31(c), (d). And 24 months after the
24 finding, a moratorium on federal highway funds also is imposed, with an exemption for safety and
25 mass transit projects. 42 U.S.C. § 7509(b)(1); 40 C.F.R. § 52.31(d).

26 27. If EPA fails to take a non-discretionary action, such as acting on a nonattainment
27 state implementation plan submittal or failing to issue a “finding of failure to submit,” citizens are
28 empowered to seek a court order to compel prompt action. 42 U.S.C. § 7604(a)(2).

STATEMENT OF FACTS

1
2 28. This case involves EPA's failure to timely implement the National Ambient Air
3 Quality Standards ("NAAQS") for PM_{2.5}. PM_{2.5} particles are fine inhalable particles, with diameters
4 of 2.5 micrometers and smaller, that are capable of penetrating deep into the lung and even into the
5 bloodstream.

6 29. PM_{2.5} is "produced chiefly by combustion processes and by atmospheric reactions of
7 various gaseous pollutants." 71 Fed. Reg. 61,144, 61,146 (Oct. 17, 2006). The main sources of fine
8 particles include "motor vehicles, power generation, combustion sources at industrial facilities, and
9 residential fuel burning." *Id.*

10 30. The effects of PM_{2.5} on human health are significant. For example, exposure has
11 been associated "with an array of health effects, notably premature mortality, increased respiratory
12 symptoms and illnesses (e.g. bronchitis and cough in children), and reduced lung function." 62 Fed.
13 Reg. 38,652, 38,668 (July 18, 1997). It is therefore vital that EPA timely implement Clean Air Act
14 requirements for PM_{2.5} to protect public health and welfare.

1997 PM_{2.5} Standards—Reclassification to Serious Nonattainment

15
16 31. EPA first established annual and 24-hour PM_{2.5} NAAQS in 1997 after reviewing
17 scientific data and public comment suggesting that separate standards for coarse (PM₁₀) and fine
18 (PM_{2.5}) particulate matter would lead to increased public health and welfare. 62 Fed. Reg. 38,652
19 (July 18, 1997).

20 32. EPA published initial air quality designations for the 1997 annual and 24-hour PM_{2.5}
21 NAAQS in 2005, effective April 5, 2005. 70 Fed. Reg. 944 (Jan. 5, 2005). At that time, EPA
22 designated the San Joaquin Valley as nonattainment for both the 1997 annual PM_{2.5} standard and the
23 1997 24-hour PM_{2.5} standard. *Id.* at 956.

24 33. Effective May 7, 2015, EPA reclassified the San Joaquin Valley from a Moderate to
25 Serious nonattainment area for the 1997 annual and 24-hour PM_{2.5} NAAQS. 80 Fed. Reg. 18,528
26 (Apr. 7, 2015). As a result, EPA declared that "California is required to submit additional [state
27 implementation plan] revisions to satisfy the statutory requirements that apply to Serious areas. . . ."
28 *Id.* at 18,531. These plan revisions, which the Clean Air Act specifies must include provisions to

1 ensure that best available control measures are implemented to reduce PM_{2.5} and PM_{2.5} precursor
2 emissions, were due to EPA within 18 months of reclassification. 42 U.S.C. §§ 7513a(b)(1)(B),
3 (b)(2); 80 Fed. Reg. at 18,531. Based on the effective date of reclassification (i.e., May 7, 2015),
4 California should have submitted a revised Serious area PM_{2.5} plan for the 1997 standards to EPA by
5 November 7, 2016 (i.e., within 18 months). To date, California has failed to make the required
6 submission.

7 34. Because California has neglected to submit a plan to address the San Joaquin Valley's
8 reclassification from a Moderate to Serious nonattainment area for the 1997 annual and 24-hour
9 PM_{2.5} NAAQS, EPA was required to issue a finding of failure to submit no later than six months
10 after the submission deadline—i.e., no later than May 7, 2017. 42 U.S.C. § 7410(k)(1)(B).

11 35. To date, EPA has failed to make the statutorily required finding of failure to submit.

12 **1997 PM_{2.5} Standards—Failure to Attain by Deadline**

13 36. Owing to EPA's 2005 reclassification of the San Joaquin Valley from a Moderate to
14 Serious nonattainment area for the 1997 annual and 24-hour PM_{2.5} NAAQS, the Clean Air Act
15 specifies that the Valley was required to achieve attainment “no later than the end of the tenth
16 calendar year beginning after the area's designation as nonattainment”—i.e., by December 31,
17 2015. 42 U.S.C. § 7513(c)(2); *accord* 80 Fed. Reg. at 18,530 (“[A]s a result of our reclassification
18 of the SJV area as a Serious nonattainment area, the latest permissible attainment date under section
19 188(c)(2) of the Act, for purposes of the 1997 PM_{2.5} standards in this area, is December 31, 2015.”).

20 37. On November 23, 2016, EPA found that the San Joaquin Valley failed to attain the
21 1997 annual and 24-hour PM_{2.5} standards by December 31, 2015, as required by law. 81 Fed. Reg.
22 84,481 (Nov. 23, 2016). This failure triggered a statutory obligation for California to submit within
23 12 months (i.e., by December 31, 2016) a revised state implementation plan that provides for annual
24 reductions “of not less than 5 percent of the amount of such emissions as reported in the most recent
25 inventory prepared for such area.” 42 U.S.C. § 7513a(d); *accord* 81 Fed. Reg. at 84,481–82. To
26 date, California has failed to make this required submission.

27 38. Because California has neglected to submit a plan to address the San Joaquin Valley's
28 failure to attain the 1997 annual and 24-hour PM_{2.5} NAAQS, EPA was required to issue a finding of

1 failure to submit no later than six months after the submission deadline—i.e., no later than June 30,
2 2017. 42 U.S.C. § 7410(k)(1)(B).

3 39. To date, EPA has failed to make the statutorily required finding of failure to submit.

4 **2006 24-hour PM_{2.5} Standard—Reclassification to Serious**

5 40. In 2006, EPA strengthened the 24-hour PM_{2.5} standard, revising the maximum
6 allowed 24-hour average concentration of PM_{2.5} from 65 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 35
7 $\mu\text{g}/\text{m}^3$. 71 Fed. Reg. 61,144 (Oct. 17, 2006) (codified at 40 C.F.R. § 50.13).

8 41. EPA issued nonattainment designations for the 2006 24-hour PM_{2.5} NAAQS on
9 November 13, 2009. 74 Fed. Reg. 58,688 (Nov. 13, 2009). In that rule, effective on December 14,
10 2009, EPA designated the San Joaquin Valley as a nonattainment area. *Id.* at 58,696, 58,711.

11 42. Effective February 19, 2016, EPA reclassified the San Joaquin Valley from a
12 Moderate to Serious nonattainment area for the 2006 24-hour PM_{2.5} NAAQS. 81 Fed. Reg. 2,993
13 (Jan. 20, 2016). This reclassification for the 2006 24-hour PM_{2.5} NAAQS triggered a requirement
14 for California to submit a revised plan that included provisions to implement “best available control
15 measures” by August 19, 2017 (i.e., within 18 months of reclassification for the 2006 standard). 42
16 U.S.C. §§ 7513a(b)(1)(B), (b)(2); *accord* 81 Fed. Reg. at 2,993 (“As a consequence of this
17 reclassification, California must submit, no later than 18 months from the effective date of this
18 reclassification, a Serious area attainment plan . . .”). To date, California has failed to make the
19 required submission.

20 43. Because California has neglected to submit a plan to address the San Joaquin Valley’s
21 reclassification from a Moderate to Serious nonattainment area for the 2006 24-hour PM_{2.5} NAAQS,
22 EPA was required to issue a finding of failure to submit no later than six months after the submission
23 deadline—i.e., no later than February 19, 2018. 42 U.S.C. § 7410(k)(1)(B).

24 44. To date, EPA has failed to make the statutorily required finding of failure to submit.

25 **2012 Annual PM_{2.5} Standard**

26 45. EPA lowered the annual PM_{2.5} standard in 2012, “lowering the level from 15.0 to
27 12.0 $\mu\text{g}/\text{m}^3$ so as to provide increased protection against health effects associated with long-and
28 short-term exposures.” 78 Fed. Reg. 3,086, 3,088 (Jan. 15, 2013) (codified at 40 C.F.R. § 50.13).

1 46. Effective April 15, 2015, EPA classified the San Joaquin Valley as a Moderate
2 nonattainment area for the 2012 annual PM_{2.5} NAAQS. 80 Fed. Reg. 2,206, 2,217-18 (Jan. 15,
3 2015). California therefore was required to submit a plan addressing this nonattainment of the 2012
4 annual PM_{2.5} NAAQS within 18 months—i.e., by October 15, 2016. 42 U.S.C. § 7513a(a)(1)(C),
5 (2)(B). To date, California has failed to make the required submission.

6 47. Because California has neglected to submit a plan to address the San Joaquin Valley's
7 classification as a Moderate nonattainment area for the 2012 annual PM_{2.5} NAAQS, EPA was
8 required to issue a finding of failure to submit no later than six months after the submission
9 deadline—i.e., no later than April 15, 2017. 42 U.S.C. § 7410(k)(1)(B).

10 48. To date, EPA has failed to make the statutorily required finding of failure to submit.

11 **FIRST CLAIM**

12 **(Failure to make required finding of failure to submit Serious Area**
13 **nonattainment plan for 1997 annual and 24-hour PM_{2.5} NAAQS)**

14 49. Plaintiffs reallege and reincorporate each and every allegation set forth above, as if
15 fully set forth herein.

16 50. As a consequence of EPA's reclassification of the San Joaquin Valley from a
17 Moderate to Serious nonattainment area for the 1997 annual and 24-hour PM_{2.5} NAAQS, the
18 deadline for California to submit to EPA a revised PM_{2.5} plan that meets heightened statutory
19 requirements—including implementation of best available control measures—was November 7,
20 2016.

21 51. To date, the State of California has not submitted a revised nonattainment state
22 implementation plan to address reclassification of the San Joaquin Valley as a Serious Area for its
23 failure to attain the 1997 annual and 24-hour PM_{2.5} NAAQS.

24 52. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a finding
25 of failure to submit within six months of the submission deadline and no later than May 7, 2017.

26 53. EPA has failed to perform this mandatory duty.

27 54. Accordingly, EPA has been in continuous violation of the Clean Air Act, 42 U.S.C.
28 § 7410(k)(1)(B), since May 8, 2017, or earlier.

1 55. This Clean Air Act violation constitutes “a failure of the Administrator to perform
2 any act or duty under this chapter which is not discretionary with the Administrator,” within the
3 meaning of the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is
4 ongoing.

5 **SECOND CLAIM**

6 **(Failure to make required finding of failure to submit revised plan to address**
7 **nonattainment of the 1997 annual and 24-hour PM_{2.5} NAAQS by the attainment deadline)**

8 56. Plaintiffs reallege and reincorporate each and every allegation set forth above, as if
9 fully set forth herein.

10 57. Because the San Joaquin Valley failed to attain the 1997 annual and 24-hour PM_{2.5}
11 standards by the Serious Area deadline of December 31, 2015, the deadline for California to submit
12 to EPA a revised PM_{2.5} plan that meets heightened statutory requirements—including the
13 requirement to reduce PM_{2.5} emissions by five percent annually—was December 31, 2016.

14 58. To date, the State of California has not submitted a revised nonattainment state
15 implementation plan to address its failure to attain the 1997 annual and 24-hour PM_{2.5} NAAQS by
16 the Serious Area deadline.

17 59. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a finding
18 of failure to submit within six months of the submission deadline and no later than June 30, 2017.

19 60. EPA has failed to perform this mandatory duty.

20 61. Accordingly, EPA has been in continuous violation of the Clean Air Act, 42 U.S.C.
21 § 7410(k)(1)(B), since July 1, 2017, or earlier.

22 62. This Clean Air Act violation constitutes “a failure of the Administrator to perform
23 any act or duty under this chapter which is not discretionary with the Administrator,” within the
24 meaning of the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is
25 ongoing.

26 //

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28 //

THIRD CLAIM

(Failure to make required finding of failure to submit Serious Area nonattainment plan for the 2006 24-hour PM_{2.5} NAAQS)

63. Plaintiffs reallege and reincorporate each and every allegation set forth above, as if fully set forth herein.

64. As a consequence of EPA’s reclassification of the San Joaquin Valley from a Moderate to Serious nonattainment area for the 2006 24-hour PM_{2.5} NAAQS, the deadline for California to submit to EPA a revised PM_{2.5} plan that meets heightened statutory requirements for the 2006 standard—including implementation of best available control measures—was August 19, 2017.

65. To date, the State of California has not submitted a revised nonattainment state implementation plan to address reclassification of the San Joaquin Valley as a Serious Area for its failure to attain the 2006 24-hour PM_{2.5} NAAQS.

66. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a finding of failure to submit within six months of the submission deadline and no later than February 19, 2018.

67. EPA has failed to perform this mandatory duty.

68. Accordingly, EPA has been in continuous violation of the Clean Air Act, 42 U.S.C. § 7410(k)(1)(B), since February 20, 2018, or earlier.

69. This Clean Air Act violation constitutes “a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator,” within the meaning of the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is ongoing.

FOURTH CLAIM

(Failure to make required finding of failure to submit Moderate Area nonattainment plan for the 2012 annual PM_{2.5} NAAQS)

70. Plaintiffs reallege and reincorporate each and every allegation set forth above, as if fully set forth herein.

1 71. As a consequence of EPA's classification of the San Joaquin Valley as a Moderate
2 nonattainment area for the 2012 annual PM_{2.5} NAAQS, the deadline for California to submit to EPA
3 a nonattainment plan to achieve the 2012 standard was October 15, 2016.

4 72. To date, the State of California has not submitted a state implementation plan to
5 address classification of the San Joaquin Valley as a Moderate Area for its failure to attain the 2012
6 annual PM_{2.5} NAAQS.

7 73. Pursuant to 42 U.S.C. § 7410(k)(1)(B), EPA had a mandatory duty to make a finding
8 of failure to submit within six months of the submission deadline and no later than April 15, 2017.

9 74. EPA has failed to perform this mandatory duty.

10 75. Accordingly, EPA has been in continuous violation of the Clean Air Act, 42 U.S.C.
11 § 7410(k)(1)(B), since April 16, 2017, or earlier.

12 76. This Clean Air Act violation constitutes "a failure of the Administrator to perform
13 any act or duty under this chapter which is not discretionary with the Administrator," within the
14 meaning of the Clean Air Act's citizen suit provision. 42 U.S.C. § 7604(a)(2). This violation is
15 ongoing.

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiffs respectfully request that the Court:

18 77. Declare that the Administrator is in violation of the Clean Air Act with regard to his
19 mandatory, nondiscretionary duty under 42 U.S.C. § 7410(k)(1)(B) to make findings that the State of
20 California has failed to submit nonattainment state implementation plans or revisions addressing:

- 21 a. reclassification of the San Joaquin Valley from a Moderate to Serious nonattainment area
22 for the 1997 annual and 24-hour PM_{2.5} NAAQS;
- 23 b. the failure of the San Joaquin Valley to attain the 1997 annual and 24-hour PM_{2.5}
24 NAAQS prior to the statutory deadline for Serious Areas;
- 25 c. reclassification of the San Joaquin Valley from a Moderate to Serious nonattainment area
26 for the 2006 24-hour PM_{2.5} NAAQS; and
- 27 d. classification of the San Joaquin Valley as a Moderate nonattainment area with respect to
28 the 2012 annual PM_{2.5} NAAQS.

1 78. Issue an injunction requiring the Administrator to make and publish in the *Federal*
2 *Register* within 30 days the overdue findings of failure to submit;

3 79. Retain jurisdiction of this matter until such time as EPA has complied with its non-
4 discretionary duties under the Clean Air Act;

5 80. Award to Plaintiffs their reasonable costs of litigation, including attorneys' fees; and

6 81. Grant such further relief as the Court deems just and proper.

7
8 Dated: September 18, 2018

Respectfully submitted,

9 /s/ Colin O'Brien

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14 *Attorneys for Plaintiffs Committee for a Better Arvin,*
15 *Committee for a Better Shafter, Medical Advocates for*
16 *Healthy Air, and National Parks Conservation*
17 *Association*

EXHIBIT A



EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

July 6, 2018

Via Certified and Electronic Mail
Return Receipt Requested

Administrator
Environmental Protection Agency
Office of the Administrator: mail code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
E: pruit.scott@epa.gov; wheeler.andrew@epa.gov

Re: 60-Day Notice of Intent to File Clean Air Act Citizen Suit

Dear Administrator:

Pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, we hereby give notice of intent to commence a civil action against the Administrator of the United States Environmental Protection Agency (“Administrator,” “EPA,” or “you”) for failing to perform a nondiscretionary duty under the Clean Air Act (“Act”). As further specified below, you have failed to carry out your nondiscretionary duty under section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), to issue “findings of failure to submit” addressing the State of California’s failure to develop and submit at least *four separate* nonattainment State Implementation Plan (“SIP”) revisions to combat persistent violations of the 1997, 2006, and 2012 national ambient air quality standards (“NAAQS”) for fine particulate matter (PM_{2.5}) in the San Joaquin Valley, California.

Inhalable airborne particles present serious air quality problems in many areas of the United States, including in the San Joaquin Valley. Numerous scientific studies have linked particle pollution exposure, especially exposure to PM_{2.5}, to a variety of problems, including premature death in people with heart or lung disease; nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing.¹ A recent report released by the American Lung Association ranked the San Joaquin Valley as the nation’s most polluted air basin,² with three cities—Visalia, Bakersfield, and Fresno—ranked in the top five of dirtiest cities in the country

¹ See *Health and Environmental Effects of Particulate Matter (PM)*, U.S. ENVTL. PROTECTION AGENCY, <https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm> (last updated June 20, 2018).

² See Press Release, Am. Lung Ass’n, State of the Air 2018 1 (April 18, 2018), <http://www.lung.org/local-content/california/documents/state-of-the-air/2018/sota-2018-statewide-press-english.pdf>.

for both annual and 24-hour PM_{2.5} pollution.³ In addition to harming health in the San Joaquin Valley, PM_{2.5} also is the main cause of unsightly “haze” within the area’s iconic National Parks: Yosemite, Sequoia, and Kings Canyon.

As you are aware, EPA first established the Annual and 24-hour PM_{2.5} NAAQS in 1997 after reviewing scientific data and public comment suggesting separate standards for coarse (PM₁₀) and fine (PM_{2.5}) particulate matter would lead to increased public health and welfare. 62 Fed. Reg. 38,652 (July 18, 1997). The agency lowered the 24-hour PM_{2.5} NAAQS in 2006, 71 Fed. Reg. 61,144 (Oct. 17, 2006), and the Annual PM_{2.5} NAAQS in 2012, 78 Fed. Reg. 3,086 (Jan. 15, 2013), further strengthening the standards. Air quality in the San Joaquin Valley currently fails to meet *any* of these standards—not even the original 1997 PM_{2.5} standards adopted more than 20 years ago. Because of repeated failures to comply with the PM_{2.5} NAAQS, EPA has designated the San Joaquin Valley as a Serious or Moderate nonattainment area with respect to each. These designations and related findings have triggered specific SIP revision requirements that California has failed to timely satisfy. California’s specific failures are as follows:

1997 PM_{2.5} Standards

1. Failure to submit a revised SIP after Serious nonattainment reclassification with respect to the 1997 standards.

Effective May 7, 2015, EPA reclassified the San Joaquin Valley as a Serious nonattainment area for the 1997 Annual and 24-hour PM_{2.5} NAAQS. 80 Fed. Reg. 18,528 (Apr. 7, 2015). As a result, EPA declared that “California is required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious areas. . . .” *Id.* Among other things, section 189 of the Act requires California to submit a revised SIP to EPA within 18 months of reclassification that includes provisions to ensure best available control measures (“BACM”) are implemented for control of direct PM_{2.5} and precursors to PM_{2.5}. 42 U.S.C. §§ 7413a(b)(1)(B), (b)(2); 80 Fed. Reg. at 18,531. Based on the effective date of reclassification, California should have submitted a revised SIP to EPA by November 7, 2016 (i.e., within 18 months). To date, California has failed to make the required submission.

2. Failure to submit a revised SIP after missing attainment deadline for achieving the 1997 standards.

Section 188(c) of the Act establishes attainment dates for areas designated as Moderate or Serious nonattainment for a particulate matter standard. 42 U.S.C. §§ 7513(c)(1)-(2). A Serious nonattainment area must achieve attainment “no later than the end of the tenth calendar year beginning after the area’s designation as nonattainment” *Id.* § 7513(c)(2). EPA initially designated the San Joaquin Valley as a nonattainment area under the 1997 PM_{2.5} standards effective April 5, 2005. *See* 70 Fed. Reg. 944, 956-57 (Jan. 5, 2005). Thus, under section 188(c), once EPA designated the San Joaquin Valley as a Serious nonattainment area, the Act required attainment with the 1997 Annual and 24-hour PM_{2.5} NAAQS by December 31, 2015.

³ *See* AM. LUNG ASS’N, STATE OF THE AIR 2018 18-19 (2018), <http://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2018-full.pdf>.

Accord 80 Fed. Reg. at 18,530 (“[A]s a result of our reclassification of the SJV area as a Serious nonattainment area, the latest permissible attainment date under section 188(c)(2) of the Act, for purposes of the 1997 PM_{2.5} standards in this area, is December 31, 2015.”)

On November 23, 2016, EPA found that the San Joaquin Valley failed to attain the 1997 PM_{2.5} standards by December 31, 2015, as required by law. 81 Fed. Reg. 84,481 (Nov. 23, 2016). This failure to meet the attainment deadline triggers a separate SIP requirement under the Act. Within 12 months of missing the attainment deadline, states must submit to EPA revised SIPs that provide for annual reductions “of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.” 42 U.S.C. § 7513a(d); 81 Fed. Reg. at 84,481. Thus, the Act required California to submit a revised SIP that outlined 5 percent annual reductions in PM_{2.5} emissions in the Valley by December 31, 2016 (i.e., 12 months after December 31, 2015). *Id.* at 84,482 (“California is required under CAA sections 179(d) and 189(d) to submit, by December 31, 2016, a revision to the SIP for the San Joaquin Valley.”). To date, California has failed to make the required submission.

2006 PM_{2.5} Standards

3. Failure to submit a revised SIP after Serious nonattainment reclassification with respect to the 2006 24-hour standard.

Effective February 19, 2016, EPA reclassified the San Joaquin Valley as a Serious nonattainment area for the 2006 24-hour PM_{2.5} NAAQS. 81 Fed. Reg. 2,993 (Jan. 20, 2016). As with the reclassification from Moderate to Serious nonattainment for the 1997 PM_{2.5} standards, the reclassification for the 2006 24-hour PM_{2.5} NAAQS triggered a requirement for California to submit a revised SIP that included provisions to implement BACM by August 19, 2017 (i.e., within 18 months of reclassification for the 2006 standard). 42 U.S.C. §§ 7413a(b)(1)(B), (b)(2); *accord* 81 Fed. Reg. at 2,993 (“As a consequence of this reclassification, California must submit, no later than 18 months from the effective date of this reclassification, a Serious area attainment plan . . .”). To date, California has failed to make the required submission.

2012 PM_{2.5} Standards

4. Failure to revise SIP after Moderate nonattainment classification with respect to the 2012 Annual standard.

Effective April 15, 2015, EPA classified the San Joaquin Valley as a Moderate nonattainment area with respect to the 2012 Annual PM_{2.5} NAAQS. 80 Fed. Reg. 2,206, 2,217-18 (Jan. 15, 2015). For Moderate nonattainment areas, section 189 of the Act requires states to submit SIP revisions within 18 months of the designation that, *inter alia*, include provisions to implement reasonably available control measures to achieve compliance. 42 U.S.C. § 7513a(a)(1)(C), (2)(B). Thus, California should have submitted a revised SIP addressing nonattainment of the 2012 Annual PM_{2.5} NAAQS in the San Joaquin Valley by October 15, 2016 (i.e., 18 months after designation as a Moderate nonattainment area). To date, California has failed to make the required submission.

If a state fails to develop and timely submit a required SIP, Clean Air Act section 110(k)(1)(B) requires the Administrator to make a so-called “finding of failure to submit” no later than six months after the statutory submission deadline. *Id.* § 7410(k)(1)(B). EPA’s nondiscretionary obligation to make a “finding of failure to submit” within six months of the SIP submission deadline reflects Congress’s goal to establish “statutory teeth” to enforce the deadline. *Nat. Res. Def. Council, Inc. v. E.P.A.*, 22 F.3d 1125, 1131 (D.C. Cir. 1994). Failure by the State of California to submit any of the above required SIP revisions means that EPA should have issued four separate “findings of failure to submit” for the San Joaquin Valley no later than the following respective dates:

1. May 7, 2017, for the SIP revisions required after reclassification of the San Joaquin Valley as Serious nonattainment with respect to the 1997 Annual and 24-hour PM_{2.5} NAAQS.
2. June 30, 2017, for the SIP revisions required after the San Joaquin Valley missed the nonattainment deadline for achieving the 1997 Annual and 24-hour PM_{2.5} NAAQS.
3. February 19, 2018, for the SIP revisions required after reclassification of the Valley as Serious nonattainment with respect to the 2006 24-hour PM_{2.5} NAAQS.
4. April 15, 2017, for the SIP revisions required after classification of the Valley as Moderate nonattainment with respect to the 2012 Annual PM_{2.5} NAAQS.

Having not issued the mandatory findings, EPA is in violation of section 110(k)(1)(B) of the Act, 42 U.S.C. § 7410(k)(1)(B), with respect to all four overdue PM_{2.5} SIP revisions.

The parties listed below intend to commence a civil action to enforce your nondiscretionary duty to issue the four “findings of failure to submit” unless EPA has fully performed these mandatory duties within 60 days of the postmark date of this letter. As required by 40 C.F.R. § 54.3, this notice letter is submitted on behalf of the following organizations:

National Park Conservation Association
777 6th Street N.W., Suite 700
Washington, D.C. 20001

Medical Advocates for Healthy Air
5919 E. Robinson Ave
Fresno, CA 93727

Committee for a Better Arvin
1241 Bear Mountain Boulevard
Arvin, CA 93203

Committee for a Better Shafter
209 Golden West Avenue
Shafter, CA 93263

I am legal counsel for the above-named organizations in this matter. Please feel free to contact me to further discuss the basis for this claim or to explore possible options for resolving this claim short of litigation. Any communications should be addressed to me using the contact information indicated below.

Sincerely,

A handwritten signature in blue ink that reads "Colin C. O'Brien". The signature is written in a cursive style and is positioned above a horizontal line.

Colin C. O'Brien
Earthjustice
50 California Street, Suite 500
San Francisco, CA 94111
T: 415.217.2010
E: cobrien@earthjustice.org

cc via e-mail:

Mike Stoker, Regional Administrator, EPA Region 9
(stoker.michael@epa.gov; r9.info@epa.gov)

Gautam Srinivasan, Acting Associate General Counsel, Office of General Counsel, EPA Air and
Radiation Law Office (srinivasan.gautam@epa.gov)

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 Environmental Protection Agency
 1200 Pennsylvania Avenue, N.W.
 Washington, DC 20460
Mail Code 1101A

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JUL 12 2018

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Attn: Rikki Weber

Earthjustice

California Regional Office

50 California Street, Suite 500

San Francisco, CA 94111

Re: 3708

1-460825



EXHIBIT B

DECLARATION OF ESETELA ESCOTO

I, Esetela Escoto, hereby declare as follows:

1. I currently reside in Arvin, California.
2. I have lived in Arvin, California for over twelve years.
3. I am the President of Committee for a Better Arvin (“CBA”). CBA is a community group consisting of residents from Arvin. CBA’s mission is to work to achieve environmental justice and become leaders in our community to protect the quality of water, air and the land for a better Arvin and healthier Valley. CBA was formed in 2007 as a community group and 2009 we became a non-profit 501(c)(3) corporation. CBA is comprised of eight officers and 50 members. One of our main activities has been air quality monitoring so we can obtain data to fight for a better air quality. We have also been involved in passing the most recent oil and gas ordinance that will help us improve our health and our air quality locally.
4. I personally suffer from the detrimental health effects from pollution—particularly PM 2.5. My family and I are constantly going to the doctor for respiratory illnesses. Specifically, my husband and I get very bad coughs as a result of the air feeling thick and difficult to breath.
5. I suffer from the poor air quality in the San Joaquin Valley. I understand that the air quality does not meet EPA’s health-based standards. The Air District, state officials, and EPA have failed in their responsibilities to develop a plan to improve air quality. The longer the delay in a timely PM 2.5 plan, the chances of my husband and I having to go to the hospital because of respiratory illnesses increases.
6. CBA has always faced adversities in the face of environmental injustices. Now we not only have to defend ourselves from bad corporations that pollute our homes and schools, but from the agencies that lack responsibility and accountability. Every day that passes that we don’t

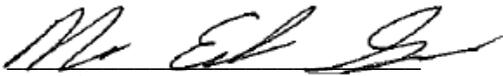
have plan in place is a day more in our long list of health issues and personal suffering. We are suffering from the negative effects of pollution, and the agencies tasked with protecting our health do not seem to prioritize our health.

7. Having a timely and sufficient PM 2.5 plan will signify that the health of our communities do matter. A timely immediate PM 2.5 plan will have positive health effects for my family and our respiratory illnesses. It will also indicate that our future generations will have increased health because of it.

8. I support litigation by CBA to enforce deadlines and other requirements for reducing PM 2.5 pollution.

9. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on September 17, 2018.



Esetela Escoto

DECLARATION OF KEVIN HAMILTON

I, KEVIN HAMILTON, do hereby declare as follows:

1. I have personal knowledge of the following and could competently testify thereto if called as a witness.

2. I have worked as a respiratory therapist for 37 years. I am a member of the Medical Advocates for Healthy Air (“Medical Advocates”). Formed in 2001, Medical Advocates is a California non-profit organization based in Fresno, consisting of medical professionals living in the San Joaquin Valley who regularly treat patients suffering from respiratory ailments that are caused or greatly exacerbated by the Valley’s unhealthy levels of air pollution. Its mission is to advocate for the expeditious attainment of state and federal health-based air quality standards in the San Joaquin Valley through public education, litigation, and other means.

3. Currently, I am the Chief Executive Officer for Central California Asthma Collaborative (“CCAC”). A non-profit organization with offices in Tulare, Fresno and Merced California. CCAC’s mission is dedicated to providing education and direct services, building regional capacity, and advocating or sensible policies that improve health through the prevention and management of chronic disease.

4. I also work as the Asthma Clinical Specialist for Kratzer/Graves Pediatrics in Fresno, California where I see children and their families and adults. I provide them with asthma and other chronic respiratory disease management in partnership with their primary care physicians.

5. Furthermore, I am the former Medical Program Coordinator for both California Asthma Among the School Aged (“CAASA”) and the Together for Asthma Control (“TAC”)

Project. CAASA, a University of California San Francisco School of Public Health funded project, provided both in-home and medical management to children with asthma and their families including assessing the economic impact of asthma to the community. TAC was an American Lung Association project that worked with various clinics throughout Fresno County to help families with asthmatic children aged five and under to better care for their children. Both CAASA and TAC are innovative programs for providing best practice modeling of asthma care for underserved children and their families. As the Medical Program Coordinator, I was responsible for training physicians, case managers, and other primary care providers in change management using the continuous quality improvement model.

6. For sixteen years, I worked as the Program Coordinator for the Asthma Education and Management Program at Community Medical Centers in Fresno. There, I developed then administered the program and coordinated its activities with other organizations with similar goals to improve public health in the five California counties of Fresno, Madera, Tulare, Kings, and Kern. I also consulted with five county health agencies to help them address the respiratory health needs of their populations and participated in the creation of the first California Asthma Strategic Plan as well as its 2004 update.

7. I am a member of the Fresno/Madera Regional Asthma Coalition, a coalition that aims to educate the public on air quality issues. Its goals are to provide health education and management assistance to patients and health care providers with regard to asthma and various pulmonary-related chronic disease; to improve the health of the community at large by actively participating in and sponsoring health education related events and community based classes; to track and report on outcomes of all interventions; and to provide ongoing follow-up to all patients of the program at regular intervals. The Fresno/Madera Regional Asthma Coalition is

one of the three original asthma coalitions (Fresno, New York, and Chicago) established under National Institute of Health charter in 1997. I have served as both chair and vice-chair of the Fresno County Regional Asthma Coalition.

8. In 1994, I developed the UCSF Resident Training Lecture series focusing on the special needs of patients suffering from pulmonary disease. I am also a guest instructor on respiratory issues for the University of California at Davis's Nurse Practitioner Training Program. In 1996, I developed and initiated the "Asthma Education and Management Program in the Primary Care Setting" Program as part of the Pediatrics and Family Practice Medicine programs at the University Medical Center. I have published six papers on asthma in various journals, magazines, and newsletters, including the *Journal of the American Medical Association*. I published an article in the *American Journal of Public Health* regarding asthma education. In 2000, I was awarded the American Lung Association Award, their highest honor for outstanding participation in the fight against lung disease. In 2006, I was the first non-physician to receive the Physicians for Social Responsibility award for the Practice of Socially Responsible Medicine. In 2013, I was awarded the Community Hero Award by the College of Health and Human Sciences at California State University Fresno for my work on air pollution, asthma, environmental justice and the environment.

9. I am invited by various groups and organizations approximately 4-5 times per year to present lectures on the effects of pollution on health. I have delivered lectures to senior groups, children's groups, and other community groups to educate them on air quality and the health impacts of air pollution.

10. Medical Advocates has been a plaintiff in several lawsuits relating to fine particle (PM_{2.5}) pollution in the San Joaquin Valley.

11. I live, raise my family, work (including treating patients suffering from air pollution related health effects), recreate, and conduct educational, research, advocacy, and other activities in the San Joaquin Valley and have done so for the past thirty-two years. I am harmed by exposure to high levels of PM2.5 pollution. The adverse effects of such pollution, as I describe below, include actual or threatened harm to my health, my family's health, my patients' health, my professional, educational, and economic interests, and my aesthetic enjoyment of the environment in the San Joaquin Valley.

12. I am concerned about air quality, especially PM2.5 pollution, for many reasons, both personal and professional. As a health professional, I have participated in extensive research on air pollution in the San Joaquin Valley and the serious health effects associated with chronic exposure to polluted air. I am concerned about the debilitating and potentially fatal effects of PM2.5 pollution on both the most sensitive groups and the general public. It should be noted for the record that these so-called "sensitive groups" make up 62% of Fresno County's population and almost 50% of the entire valley population. The effects of PM2.5 pollution on health include coughing and breathing impairment, chronic bronchitis, exacerbation of asthma and other respiratory diseases, decreased lung function, and premature death. I am also concerned about the economic costs to Valley residents who pay a high price each year in medical bills, lost work and school time, suffering, and premature death.

13. Because of the debilitating and chronic effects of air pollution, I have worked with the Fresno Unified School District to create the first ever Air Quality Advisory position to advise the district and its Calendar Committee charged with re-organizing schools' schedules to minimize children's exposure to air pollutants.

14. Before I moved to Fresno, I was an avid runner. I used to run 3 to 4 miles per day and was in very good physical condition. However, when I started running after moving to Fresno, I found myself feeling short of breath after just one mile. Often I would discover that PM2.5 levels were very high on the days I struggled to breathe. I would also see that the newspapers published warnings of high fine particle levels for those days. Sometimes I would hear the radio announcing a "Spare the Air" advisory, warning people not to exercise outside. Within a few months, the high levels of pollution in the air forced me to stop running. It is very upsetting to me that I am unable to exercise outdoors without jeopardizing my health.

15. My wife and two daughters have suffered from respiratory problems since we moved to Fresno, which distresses me very much. My oldest daughter, who is now forty, did not have any respiratory problems until the fall after we moved to Fresno. She had her first asthma attack at nine years old, which I knew from my work to be unusual; most cases of asthma come on when children are zero to six years old and 70-80% go into remission by age 7. Her asthma problems require her to follow a regimen of steroid inhalers every day. She tried to stop taking them a couple times, but she starts to cough, and it impedes her ability to do her normal daily activities. Each year, there are still several days when pollution levels are so high that she has to stay inside rather than being active outdoors.

16. My twenty-nine year-old daughter began to suffer from allergies when she turned six. Her allergies worsen on days when PM2.5 levels are high, and she has to use an inhaler. She loves to play soccer and ride her bicycle instead of driving her car but when air pollution is bad, she has to stay inside or drive around with the A/C on and windows closed. She also periodically gets migraine headaches on days when PM2.5 levels are high.

17. My wife also has asthma. She developed asthma three years after we moved here, and she has it worse than either of our daughters. She has to use a high-powered steroid inhaler and a long-acting bronchodilator twice a day. Like our younger daughter, she regularly gets migraines when pollution levels are high. She has been hospitalized twice because of her migraine problems. She is also an avid gardener, but for the past 17 years she has been upset about not being able to garden because of the high pollution levels.

18. I have four grandchildren who live in the Valley and three suffer from respiratory problems. Both my 16-year-old granddaughter and my 18-year-old grandson have been diagnosed with asthma. My youngest granddaughter is just five years old and has suffered several respiratory events that required the use of an inhaler to help her breathe. All three of my grandchildren who suffer from respiratory problems were born in Fresno and have lived here their whole lives. My grandson has suffered almost since birth and requires a daily steroid inhaler starting in mid-September and continuing through late spring. He has had to miss at least a day or two of school every month, which requires my daughter to put her employment in jeopardy to stay home with him. My 16-year-old granddaughter's asthma has now become more severe and she still must use a steroid inhaler all year. Her asthma has caused her to miss many days of school and to be taken to the ER multiple times. This has significantly affected the quality of life of my daughter's family, forcing them to curtail their camping activities and other outdoor recreation in the Valley. When they leave the Valley for recreation however, the children have no breathing problems and do not need any medication, steroid or otherwise.

19. Neither my daughters nor my wife have to use their inhalers when we travel outside of the San Joaquin Valley. We go to Ohio for one month every other year, and when we are there, they do not have to use inhalers at all. We also spend a week or two on the northern

California coast or in the mountains, and by the third day of the trip they are all medication free. I have several friends in the area who similarly are able to breathe better and reduce their dependence on medications when they leave the San Joaquin Valley. Watching my wife, children, and grandchildren suffer from the effects of air pollution is very distressing to me, especially since I know they would not suffer so much if we lived somewhere that had cleaner air.

20. My entire family and I are very concerned about the current pollution problems, particularly because they do not appear to be improving. In my work, I counsel people with severe respiratory problems who have the resources to move out of Fresno if possible. For those with limited resources, this is not an option. I do not move because I am professionally committed to this area and its public health and am actively working to correct the problem rather than run away.

21. Friends and patients tell me that you used to be able to see the mountain ranges on both sides of the Valley—the Sierra Nevada to the east, and the Coastal Range to the west—every day. Now, because of the thick smog that blankets the San Joaquin Valley, I cannot remember the last time I saw the Coastal Range, which is 45 miles away. The Sierra Nevada's are only sixteen miles away, and I can only see those mountains less than one-third of the days in the year.

22. When I leave the San Joaquin Valley, I can really see how bad the air is. When I drive to Los Angeles, I go over the Coastal Range. When I look back and see a brown haze, it saddens me. When I come home from the coast, I feel similarly depressed at the brown air hanging over the San Joaquin Valley. The smog that forms when PM_{2.5} concentrations are high creates a pollution ceiling above the Valley floor. In parts of the city, the trees turn brown. I

find this brown layer of pollution that cloaks Fresno depressing and it detracts from my enjoyment of the Valley, especially when I am doing an outdoor activity.

23. The health and social impacts caused by high levels of air pollution place a financial burden on my family and me. Each month I make co-payments of approximately \$400 for my family's medications. I also believe that air pollution adversely affects property values in the Valley including the value of my residence. I believe the poor air quality in the San Joaquin Valley has prevented real estate including my own house in Fresno from appreciating to its full potential.

24. The U.S. Environmental Protection Agency ("EPA") is ultimately responsible for many of the physical, financial, and aesthetic injuries my family and I experience due to the Valley's air pollution. The local air district and state authorities have missed deadlines to adopt and submit plans required by the Clean Air Act to address PM2.5 pollution, but EPA has neglected to make statutorily required findings that the plans are overdue. The EPA's past and ongoing failure to require the local air district and state authorities to do their job to solve the Valley's air pollution problems as quickly as possible also account for the high number of patients I see suffering from respiratory ailments.

25. I believe that the requirements of the Clean Air Act for controlling PM2.5 pollution, including deadlines, should be fully and expeditiously implemented in the San Joaquin Valley to protect my health and the health of my family and patients. My family and my patients would greatly benefit from increased PM2.5 pollution reductions in the San Joaquin Valley. I strongly believe that EPA should follow the law and enforce deadlines, rather than allowing for delays.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of September, 2018.

A handwritten signature in black ink, appearing to read 'K. D. Hamilton', written in a cursive style.

KEVIN D. HAMILTON, RTT

DECLARATION OF VINCENT HOENIGMAN

I, Vincent Hoenigman, declare as follows:

1. I am of legal age and competent to give this declaration.
2. I am an active member of National Parks Conservation Association (NPCA) and have been for the last 24 years. I have also served on NPCA's National Board of Trustees for a period of 7 years and currently serve on NPCA's Pacific Regional Council.
3. I reside in San Francisco, where I have lived for approximately the last 28 years. I share my house with my wife, my son, and my daughter.
4. From childhood on I have been very susceptible to air pollution, experiencing shortness of breath and breathing problems that often have forced me to stay inside during particularly smoggy days. Into adulthood, this susceptibility has made me extremely cautious when it comes to exposing myself or my family to air pollution. For instance, during the recent forest fires impacting air quality in San Francisco and near our home on Lake Tahoe, I have refrained from exercising outdoors for fear of breathing in high amounts of fine particulate matter (PM2.5) air pollution. I am also worried that my susceptibility to air pollution could be passed down onto my children, and fear for their health during particularly smoggy days.
5. I know from sources I have read that breathing in PM2.5 air pollution is a severe health risk and can exacerbate or lead to issues like asthma and lung disease. I am also aware that elevated levels of PM2.5 air pollution from the San Joaquin Valley

often makes its way into the Sierra Nevada mountains, where it harms overall air quality in national parks like Yosemite, Sequoia, and Kings Canyon.

6. I have been an avid lover of nature and our national parks since childhood and have spent much of my adult life working to see that these resources are protected and preserved. I can remember the first time I visited Yosemite around the age of 10, and the impression it left on me continues in my work with NPCA to this day. Since then I have visited Yosemite over 15 times. I have also visited Sequoia National Park roughly 3 times, and Kings Canyon National Park roughly twice. I generally visit one of these parks every 2 to 3 years and definitely plan to visit them again in the near future.

7. Given my longstanding love of our national parks, I am troubled by reports that places like Yosemite, Sequoia, and Kings Canyon have been designated by the U.S. Environmental Protection Agency as a serious nonattainment area for PM2.5 pollution. I was further troubled to discover that the neighboring San Joaquin Valley has yet to meet health-based PM2.5 standards set well over twenty years ago, in 1997, and that state and local agencies are far behind in drafting plans to tackle this pollution. From what I understand, EPA has a duty to require deadlines for overdue PM2.5 state plans yet it has failed to issue a finding that local and state agencies did not submit their plans in accordance with dates set out in the Clean Air Act.

8. With my own breathing problems and my concern for my family's health, I am extremely worried about air quality when I visit the Sierra Nevada national parks. I have experienced firsthand the smoggy skies in these 3 parks and am very worried

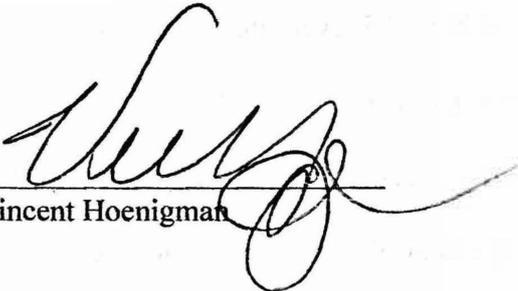
about the impact it may have on my health and the health of my family when we visit. I fear PM2.5 pollution in the Sierra parks could exacerbate my existing health issues, causing me to cut short hikes, or change my plans for what activities I might choose to do while in the parks. I also foresee the possibility that PM2.5 pollution may change when or where I decide to visit these parks. For instance, I may avoid the parks entirely during times of the year when PM2.5 levels are elevated or choose to visit the eastern side of the Sierra as opposed to the western side.

9. The more that I have learned about this issue, the more I have become upset by the impact it has on my ability to enjoy the sights these parks have to offer. I have personally experienced extremely smoggy air in all three of these parks and the result is very disappointing and depressing. It is obvious that these parks are far more beautiful when the sky is clear, and you can see all the sights in the distance. I have memories of days when the mountains fade endlessly into the distance beneath clear, blue skies. Unfortunately I also have memories from days when the nearest ridge is just a pale silhouette under hazy, white skies and the more distance peaks are completely obscured.

10. I am also concerned about published reports I have read discussing the impact particulate matter precursors, like nitrogen compounds, have on algae blooms in high altitude Sierra lakes. I have witnessed the impact that nitrogen deposition has had on water clarity in Tahoe and hate to think that the same thing is happening in what should be some of the most isolated and pristine lakes in the country.

11. For the reasons above, I fully support NPCA in their lawsuit to ensure that requirements of the Clean Air Act for controlling PM2.5 pollution are enforced and deadlines for submitting plans are established.

12. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on 9/12/18.



Vincent Hoenigman

DECLARATION OF MICHAEL MALAGA

I, Michael Malaga, declare as follows:

1. I am of legal age and competent to give this declaration.
2. I am an active member of National Parks Conservation Association (NPCA) and have been a member since I first joined in 2004. In addition to my membership, I also sit on NPCA's Pacific Regional Council and have been a councilmember since the Pacific Regional Council was first established in September of 2007.
3. I currently reside in San Francisco, California, where I have lived and worked for roughly the last 30 years. I live here with my wife and our two young daughters—one of whom was born only a few short weeks ago.
4. Since moving to California in the late 1980's, I have been a frequent visitor to the Sierra Nevada National Parks. I have been to both Sequoia and Kings Canyon National Parks numerous times, including a 2010 trip to Sequoia to climb Mount Whitney and a 2015 backpacking trip to Kings Canyon to hike Kearsarge Pass. I am an avid backpacker and plan to go on a backpacking trip in either Sequoia or Kings Canyon sometime within the next three years. In addition to my time spent in the Southern Sierra parks, I am a frequent visitor to Yosemite National Park and have traveled there many times since first moving to California. I usually visit Yosemite around once a year, and sometimes more. I last visited the park as recently as April of 2018 and plan to return in the spring or summer of 2019.
5. Through my close relationship with NPCA's Pacific office and my ongoing personal interest in our national parks and the environment, I have learned how fine particulate

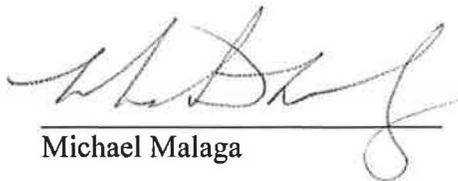
in the parks could affect our future plans for when and how we might visit the parks, as well as what activities we might choose to partake in when visiting the parks. Though I love to backpack and hike in the Sierra National Parks and hope to share this experience with my daughters as they grow older, I will be more cautious in the future about hiking with them during high PM2.5 pollution events.

9. In addition to health concerns, I can think of numerous occasions when I have experienced decreased visibility due to overly smoggy skies. This smog caused by poor air quality has definitely diminished my enjoyment of the parks by affecting my ability to view natural features in the distance.

10. I understand that the Clean Air Act requires state agencies to develop plans to address pollutants like PM2.5 in the San Joaquin Valley. I also understand that state and local authorities have missed deadlines to adopt and submit these required plans and that EPA has not held those agencies accountable for their missed deadlines by issuing a failure to submit finding as required under the Clean Air Act.

11. I strongly support litigation by NPCA to ensure that requirements of the Clean Air Act for controlling PM2.5 pollution are enforced so as to protect my health, the health of my family, and the wellbeing of our National Parks for this and future generations.

12. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on 9/6/18.



Michael Malaga

DECLARATION OF MARIA ANABEL MARQUEZ

I, Maria Anabel Marquez, hereby declare as follows:

1. I currently reside in Shafter, California.
2. I have lived in Shafter, California for more than ten years.
3. I am the President of Committee for a Better Shafter (“CBS”). CBS is a community group consisting of residents from Shafter. CBS is a non-profit 501(c)(3) organization whose members reside and, in some cases, own property in Shafter, California—a city located in the San Joaquin Valley. CBS has twelve full-time members and thirty families that partner in its community garden. CBS was incorporated in 2012.
4. CBS’ mission is to work to improve the quality of life in Shafter, to inform and unite the community, to address the environmental problems that impact the community, and to ensure equality for all residents of Shafter.
5. CBS was created to promote organic and sustainable agriculture through community gardens. CBS and its members and community gardeners actively engage on air quality issues, owing to their concerns about the impact of air pollution upon their health and crops.
6. CBS members also participate in local, state, and national clean air advocacy efforts. Namely, CBS members participated in the activities related to the regulation of the local oil and gas industry in Kern County. CBS members are also actively engaged in the regulation of methane and other pollutants from the local dairy industry.
7. I personally suffer from the detrimental health effects from pollution—particularly PM 2.5. I suffer from allergies, and my grandchildren living in Shafter also suffer from asthma. My family and I constantly have to make trips to the hospital in Bakersfield. Sometimes we have difficulty breathing; we have some serious dry coughs. I personally have gone several times for itchy eyes and rashes on my skin.

8. I understand that: air quality in the San Joaquin Valley does not meet EPA's health-based standards; as a result, the Air District, state officials, and EPA are responsible for developing a plan to improve air quality; and that is something they have neglected to do.

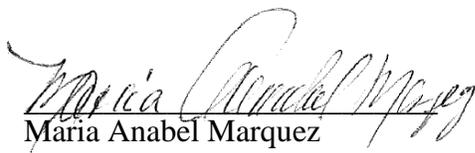
9. Delay by the Air District, state officials, and EPA in approving a timely PM 2.5 plan has personally affected me. Every minute that passes without an effective PM2.5 plan shortens my life and the life of the people in community including my family members. The Air District, state officials, and EPA's inaction can further be reflected in the constant visits to the doctor that my family and I have to make to the hospital.

10. EPA's timely approval of a PM 2.5 plan would matter to me because it would help both my health and the health of my family. In addition, the timely approval of a PM 2.5 plan can secure that the next generation of children in my community will not have to face the same health problems we have now. It will also reassure our community that the agencies in charge of taking care of our health are truly fighting for us and not for the corporations.

11. I support litigation by CBS to enforce deadlines and other requirements for reducing PM 2.5 pollution.

12. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on September 17, 2018.


Maria Anabel Marquez

DECLARATION OF MARK ROSE

I, Mark Rose, declare as follows:

1. I am of legal age and competent to give this declaration.
2. I am the Sierra Nevada Field Representative for the National Parks Conservation Association (NPCA). I have worked at NPCA for one year. In my role, I oversee NPCA's campaign work to protect and preserve Yosemite, Sequoia, and Kings Canyon National Parks, as well as for threats to the parks that extend beyond their borders including from areas such as the San Joaquin Valley. Part of my job includes working with our membership department to track and engage NPCA local members near these three Sierra Nevada National Parks.
3. NPCA is a membership organization headquartered in Washington, DC, with a Pacific Regional Office located in Oakland, CA, and a Sierra Nevada Field Office located in Fresno, CA. NPCA is recognized as a not-for-profit corporation under Section 501(c)(3) of the United States Internal Revenue Code.
4. NPCA currently has over 400,000 active (dues paying) members nationwide, and an additional 900,000 (non-dues paying) supporters. Additionally, as of September 2018, NPCA has 48,728 members in California and 2,270 active members in the counties that make up the San Joaquin Valley Air Pollution Control District (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare). NPCA's membership department carefully tracks active members and regularly updates their databases to reflect items such as current addresses and the membership status of active members versus lapsed-payment prior members.
5. NPCA's primary mission is to protect and preserve America's national parks and their resources, including air quality, for the use and enjoyment of present and future generations.

Since its founding in 1919, NPCA has worked to execute our mission through advocacy, education, and strategic litigation to enforce environmental laws.

6. For decades, NPCA has worked to strengthen and protect air quality in national parks nationwide through implementation and enforcement of the Clean Air Act, including target sources of air pollution that affect our parks. We have worked extensively to ensure implementation and enforcement of the Clean Air Act's regional haze program—a program designed to restore clean and clear air to national parks and wilderness areas by requiring states to pursue pollution reduction from industries such as power plants, oil refineries, and other sources. In California, NPCA has worked on clean air issues in the Sierra Nevada and San Joaquin Valley for around 15 years. For instance, NPCA commented on the state's regional haze progress report and led a campaign focused on public awareness of air pollution issues in the Sierra Nevada parks. Specific to fine particulate matter (PM_{2.5}) in the San Joaquin Valley, NPCA has been engaged in the rulemaking process for the multiple PM_{2.5} plans for well over a year—submitting comments to the California Air Resource Board (CARB) and attending multiple Valley Air District and CARB public meetings for the plans.

7. Through my work at NPCA, I am aware that Yosemite, Sequoia, and Kings Canyon are harmed by PM_{2.5} pollution originating from within the San Joaquin Valley Air District. Furthermore, all of the counties that encompass Sequoia and Kings Canyon National Parks, and one of the three counties that makes up Yosemite National Parks, are wholly within counties under the jurisdiction of the San Joaquin Valley Air Pollution Control District.

8. In addition to my role as NPCA's Sierra Nevada Field Representative, I am also a resident of Fresno, CA, a paying dues member of NPCA, and, in my free time, I frequently visit Yosemite, Sequoia, and Kings Canyon National Park for personal enjoyment. In my personal and

professional life, I have experienced the all-too-frequent occurrences of poor air quality—from my own backyard or office in Fresno, all the way to seemingly isolated locations within Yosemite, Sequoia, and Kings Canyon. I have read numerous studies outlining the significant harm that inhaling elevated levels of particulate matter can have on my health. Living in the San Joaquin Valley—an area listed as being in serious non-attainment for multiple PM2.5 standards—I pay close attention to the air quality levels at the nearest air monitoring site to my house and worry about the harm this pollution may be doing to my body. During the frequent periods when PM2.5 levels are listed as being “unhealthy for sensitive groups” or higher I often choose to stay entirely indoors, which is not how I’d prefer to spend my time. Inside my house, I have spent my own money on expensive indoor air purifiers and HVAC filters to lessen the levels of PM2.5 air pollution I breathe while at home. Despite living close to my office, more often than not I drive to work in my car as opposed to my preferred way of travel, by bike, due to concerns about local air quality. Similarly, since moving to Fresno I choose to mostly exercise at home on an exercise bike instead of outside in nearby parks, as I was previously accustomed to doing. My wife and I also have also chosen not to have children while living here in the San Joaquin Valley because of reports on higher than average rates of diseases, like asthma, in Valley-raised children.

9. For both personal recreation and work, I visit Yosemite, Sequoia, and Kings Canyon National Parks at least once every two to three months, and plan to continue doing so well into the foreseeable future. Several times over the last year I visited these parks to go hiking with my wife and friends. While in each of these three parks I have seen firsthand the severe effect that PM2.5 air pollution has on overall visibility. This reduced visibility (or haze) has an obvious and direct impact on my ability to fully enjoy the incredible scenery that these parks have to offer. I

can think of numerous occasions while in one of those three parks during PM2.5 season where features I knew were in the distance were partially or wholly obscured by haze. Furthermore, my wife and I limit the dates for when we choose to visit these parks for recreation by paying close attention to air quality alerts and PM2.5 levels. Similarly, when in the parks, I gauge the level of activity that I partake in based on current air quality levels, sometimes forsaking a longer hike because of my awareness that exercise subjects me to inhaling even more dirty air than normal.

10. As an employee and member of NPCA, I am also concerned with the damage that PM2.5 pollution is causing to plant and animal life in these parks. I am aware of reports linking PM2.5 precursor pollutants to harmful effects on the wellbeing of Sierra ecosystems. These precursor impacts include ammonia and nitrogen oxide pollution interfering with essential ecosystem functions—such as altering the ability of plants like Jeffrey Pines to photosynthesize or the deposition of excess nitrogen causing extensive algae blooms in high altitude lakes. I am also aware of reports linking PM2.5 precursor air pollution to the ongoing tree mortality crisis that has devastated the Sierras over the last several years. I have seen firsthand the impact tree mortality has had on Yosemite, Sequoia, and Kings Canyon, and know how key those ecosystems are to biodiversity in the parks. With numerous other environmental stressors like drought, large scale wildfires, and bark beetles already harming Sierra forests, our parks cannot afford additional damage from preventable air pollution.

11. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on 9/10/2018.



Mark Rose

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

Committee for a Better Arvin; Committee for a Better Shafter; Medical Advocates for Healthy Air; and National Parks Conservation Association

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Colin C. O'Brien and Paul Cort, Earthjustice, 50 California Street, Suite 500, San Francisco, CA 94111 (415-217-2010)

DEFENDANTS

Andrew Wheeler, in his official capacity as Acting Administrator of the United States Environmental Protection Agency, and Mike Stoker, in his official capacity as Regional Administrator of the United States Environmental Protection Agency Region 9

County of Residence of First Listed Defendant Washington, D.C. (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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): Clean Air Act citizen suit provision, 42 U.S.C. § 7604
Brief description of cause: Challenge to U.S. EPA's failure to fulfill a non-discretionary duty to issue findings that California did not submit required plans to address fine particulate matter pollution.

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 09/18/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Colin C. O'Brien