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6

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

9 _____)
)
10 CENTER FOR BIOLOGICAL DIVERSITY and,)
CENTER FOR ENVIRONMENTAL HEALTH,)
11) Case No.
)
12) **COMPLAINT FOR DECLARATORY**
) **AND INJUNCTIVE RELIEF**
13 Plaintiffs,)
) (Clean Air Act, 42 U.S.C. §§ 7401 *et. seq.*)
14 v.)
)
15 MICHAEL S. REGAN,)
in his official capacity as Administrator of the)
16 United States Environmental Protection Agency,)
)
17 Defendant.)
_____)
18

19 **I. INTRODUCTION**
20

21 1. Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and CENTER FOR
22 ENVIRONMENTAL HEALTH (collectively “Environmental Groups”) challenge the failure of
23 Defendant MICHAEL S. REGAN, in his official capacity as Administrator of the United States

1 Environmental Protection Agency, (EPA) to perform mandatory duties required by the Clean Air
2 Act, 42 U.S.C. §§ 7401-7671q. Specifically, the Clean Air Act establishes mandatory deadlines
3 for EPA to complete a thorough review of the secondary National Ambient Air Quality
4 Standards (NAAQS) for Nitrogen Oxides (NO_x), Sulfur Oxides (SO_x), and Particulate Matter
5 (PM), to make such revisions to these NAAQS as may be appropriate, to promulgate such new
6 NAAQS as may be appropriate, and to publish notice of such actions in the Federal Register
7 every five years. EPA has failed to meet these deadlines. The Environmental Groups thus bring
8 this action to ensure that they and their members and others who breathe harmful air pollution in
9 communities around the nation and appreciate ecosystems damaged by harmful air pollution will
10 enjoy the up-to-date scientific analysis and air quality standards that Congress intended them to
11 have. Accordingly, Plaintiffs THE CENTER FOR BIOLOGICAL DIVERSITY and THE
12 CENTER FOR ENVIRONMENTAL HEALTH bring this action against Defendant MICHAEL
13 S. REGAN, in his official capacity as EPA Administrator, to compel EPA to perform these
14 mandatory duties.

16 II. JURISDICTION

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

21 3. An actual controversy exists between the parties. This case does not concern federal
22 taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of
23 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. §

1 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue
2 injunctive relief.

3
4 **III. NOTICE**

5 4. On February 2, 2022, the Environmental Groups mailed to EPA by certified mail, return
6 receipt requested, written notice of intent to sue regarding the violations alleged in this
7 Complaint. EPA received this notice of intent to sue letter no later than February 8, 2022. More
8 than sixty days have passed since EPA received this “notice of intent to sue” letter. EPA has not
9 remedied the violations alleged in this Complaint. Therefore, a present and actual controversy
10 exists.

11
12 **IV. VENUE**

13 5. Defendant EPA resides in this judicial district. EPA Region 9 is headquartered in San
14 Francisco. This civil action is brought against an officer of the United States acting in his
15 official capacity. In addition, Plaintiff Center for Environmental Health headquartered in
16 Oakland, California and thus resides in this judicial district. Therefore, venue is proper in this
17 Court pursuant to 28 U.S.C. § 1391(e).

18
19 **V. INTRADISTRICT ASSIGNMENT**

20 6. EPA Region 9 is headquartered in San Francisco. Accordingly, assignment to the San
21 Francisco Division or the Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

22 **VI. PARTIES**
23

1 7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
2 corporation incorporated in California. The Center for Biological Diversity has over 89,000
3 members throughout the United States and the world. The Center for Biological Diversity's
4 mission is to ensure the preservation, protection, and restoration of biodiversity, native species,
5 ecosystems, public lands and waters, and public health through science, policy, and
6 environmental law. Based on the understanding that the health and vigor of human societies and
7 the integrity and wildness of the natural environment are closely linked, the Center for
8 Biological Diversity is working to secure a future for animals and plants hovering on the brink of
9 extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

10 8. The Center for Biological Diversity and its members include individuals with varying
11 interests in public health, wildlife species and their habitat ranging from scientific, professional,
12 and educational to recreational, aesthetic, moral, and spiritual. Further, the Center for Biological
13 Diversity's members enjoy, on an ongoing basis, the biological, scientific, research, educational,
14 conservation, recreational, and aesthetic values of the regions inhabited by these species,
15 including the regions at issue in this action. The Center for Biological Diversity's members
16 observe and study native species and their habitat, and derive professional, scientific,
17 educational, recreational, aesthetic, inspirational, and other benefits from these activities and
18 have an interest in preserving the possibility of such activities in the future. The Center for
19 Biological Diversity and its members have participated in efforts to protect and preserve public
20 health and natural areas, including the habitat essential to the continued survival of native
21 species, and to address threats to the continued existence of these species, including the threats
22 posed by air pollution and other contaminants.

23

1 9. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is an Oakland, California
2 based nonprofit organization that helps protect the public from toxic chemicals and promotes
3 business products and practices that are safe for public health and the environment. The Center
4 for Environmental Health works in pursuit of a world in which all people live, work, learn, and
5 play in healthy environments.

6 10. Plaintiffs' members live, work, recreate, travel and engage in other activities throughout
7 the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the
8 affected areas threatens and damages, and will continue to threaten and damage, the health and
9 welfare of Plaintiffs' members as well as their ability to engage in and enjoy their other
10 activities. Pollution diminishes Plaintiff's members' ability to enjoy the aesthetic qualities and
11 recreational opportunities of the affected area. For example, Plaintiffs' have a member who
12 frequently observes the whooping crane. NO_x and SO_x emissions harm the aquatic ecosystems
13 the whooping crane needs to survive. Plaintiffs also have members who enjoy observing flora
14 that can be adversely affected by NO_x deposition that alters the ability of native species to
15 compete with non-native competitors or which can be adversely affected by SO_x or PM
16 pollution.

17 11. EPA's failure to timely perform the mandatory duties described herein also adversely
18 affects Plaintiffs, as well as their members, by depriving them of procedural protection and
19 opportunities, as well as information that they are entitled to under the Clean Air Act. The
20 failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiffs' members
21 as to whether they are exposed to excess air pollution.

22 12. The above injuries will continue until the Court grants the relief requested herein.
23

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