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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 ENVIRONMENTAL DEMOCRACY  
18 PROJECT, a California not-for-profit  
19 corporation,

20 Plaintiff,

21 v.

22 GREEN SAGE MANAGEMENT, LLC, a  
23 Colorado Limited Liability Corporation,

24 Defendant.  
25

**COMPLAINT FOR INJUNCTIVE  
RELIEF, CIVIL PENALTIES, AND  
DECLARATORY RELIEF**

[Clean Air Act, 42 U.S.C. § 7604(a)]

## **INTRODUCTION**

1. Defendant Green Sage Management, LLC (Defendant) has been violating the Clean Air Act for nearly two years. Defendant owns and operates an indoor cannabis cultivation facility located at 5601 and 5733 San Leandro Street, Oakland, California 94621 (the Facility). There is an artist live/work space with 32 residents located at the Facility. To supply the Facility with power, Defendant has been operating up to nine massive diesel generators twenty-four hours a day, seven days a week, since July 2020. The generators are the size of eighteen-wheeler trucks. In violation of the Clean Air Act, Defendant has not obtained air quality permits for the generators. Plaintiff Environmental Democracy Project, a non-profit environmental justice organization based in East Oakland (Plaintiff or EDP), seeks to put an immediate end to Defendant's Clean Air Act violations and to deter future violations.

2. Defendant's unpermitted, semi-truck size generators have emitted tons of cancer-causing diesel particulate matter (DPM) and other pollutants that are inhaled deeply into the lungs of residents of the Facility's live/workspace. Residents of the densely populated community of color located just east of the Facility's generators are also exposed to the Facility's pollution. The generators' emissions are not mitigated by any pollution limits or control technology because Defendant failed to obtain air quality permits before operating the generators.

3. Defendant's failure to obtain air quality permits for the generators violates the Clean Air Act's preconstruction permitting requirements as set forth in the Bay Area Air Quality Management District's (the District) Regulation 2, Rules 1-301 and 1-302.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 2201 (actions for declaratory relief), and 42 U.S.C. § 7604(a) (the Clean Air Act's citizen suit provision).

5. Venue is proper in the Northern District of California under 42 U.S.C. § 7604 because the Facility—where the violations have occurred and continue to occur—is located in this District. In addition, Plaintiff’s officers, who are directly impacted by the Facility’s air pollution, live in this District.

6. On April 12, 2022, Plaintiff gave notice of Defendant's violations and Plaintiff's intent to file suit under the Clean Air Act. Plaintiff served notice by certified mail return receipt requested to Defendant, the Administrator of the United States Environmental Protection Agency (EPA), the Regional Administrator for Region IX of the Environmental Protection Agency, the District, and the California Air Resources Board. *See* 40 C.F.R. § 54.2(a)-(c). Plaintiff also mailed a copy of the notice to the Governor of California. *Id.* § 54.2(b). The notice of violation described in detail Defendant's Clean Air Act violations—*i.e.*, Defendant's failure to obtain an authority to construct and permit to operate for the diesel generators. Defendant did not respond to Plaintiff's notice of violation. The notice of violation is attached hereto as **Exhibit A**.

7. More than sixty days have passed since service of Plaintiff's notice of violation described above. Defendant remains in violation of the Clean Air Act. Neither EPA, the state, nor the District have commenced, nor are diligently prosecuting, a civil action in a court of the United States or any state to require compliance with the Clean Air Act. *See* 42 U.S.C. § 7604(b)(1)(B).

## PARTIES

## Plaintiff Environmental Democracy Project

8. Plaintiff Environmental Democracy Project is a 501(c)(3) nonprofit corporation dedicated to representing communities of color exposed to disproportionate amounts of pollution. EDP is based in East Oakland. Several of EDP's officers live near the Facility and are exposed to the Facility's pollution on a daily basis.

9. Defendant Green Sage Management LLC is a limited liability corporation organized under the laws of the State of Colorado. Defendant is an owner or operator of

1 the enormous unpermitted diesel generators that have been used at the Facility since on or  
2 around July 30, 2020.

3 10. EDP's Executive Director, Tanya Boyce, lives in East Oakland near the  
4 Facility. She lives within the area impacted by the Facility's DPM pollution. In addition,  
5 one of EDP's Board Members, Alistair Monroe, lives at the artist live/work space known  
6 as the "the Cannery" at 5733 San Leandro Street, Oakland, California 9462, where several  
7 of the Facility's unpermitted diesel generators are located. The fumes from the generators  
8 permeate the live/work space and cause residents, including Mr. Monroe, to become  
9 nauseous. The fumes from the generators are visible and have created a black soot stain  
10 on the Facility's external walls. Ms. Boyce and Mr. Monroe are injured by the increased  
11 health risks and poor air quality caused by the Facility's unpermitted pollution.

12 11. EDP and its officers have been involved in community organizing, outreach,  
13 scientific analysis, and public education efforts related to the unpermitted generators'  
14 impacts on health and the environment in the East Oakland community of color where they  
15 are located. EDP's officers have spoken at numerous public hearings in opposition to the  
16 unpermitted generators.

17 12. The concrete interests EDP seeks to vindicate in this action—namely,  
18 addressing environmental racism, protecting air quality, ensuring compliance with  
19 environmental laws, and ensuring the public's right to participate in government decision-  
20 making processes—are within the purposes and goals of the organization. Plaintiff brings  
21 this action on behalf of itself and its members, including Mr. Monroe and Ms. Boyce, who  
22 live near the Facility.

23 13. Defendant's Clean Air Act violations pose an imminent threat to the health,  
24 happiness, and livelihood of Mr. Monroe and Ms. Boyce, who live and recreate near the  
25 Facility. The increased pollution and unregulated emissions of highly toxic chemicals—  
26 which could have been avoided had Defendant complied with the Clean Air Act—impact  
27 the health, economic, informational, organizational, and conservational interests of Mr.  
28

1 Monroe and Ms. Boyce. For instance, if Defendant had followed the permitting rules, the  
2 District could have required Defendant to conduct air quality monitoring, thereby serving  
3 EDP's informational interest in providing impacted communities with data concerning the  
4 quality of the air they breathe. Thus, EDP and its members have been, and continue to be,  
5 adversely affected by Defendant's violations of the Clean Air Act, which cause the  
6 emission of tons of toxic air contaminants in the low-income community of color  
7 surrounding the Facility.

8 14. Mr. Monroe and Ms. Boyce have constitutional standing to sue individually  
9 under the Clean Air Act for the violations alleged in this complaint. Nevertheless, their  
10 individual participation is not necessary for a just resolution of this case.

11 15. EDP, Mr. Monroe, and Ms. Boyce are "persons" within the meaning of the  
12 Clean Air Act, 42 U.S.C. §7604(a). Should the Court grant the relief requested by EDP in  
13 the present action—civil penalties, injunctive relief, and declaratory relief—the harm to  
14 EDP, Mr. Monroe, and Ms. Boyce alleged in this complaint will be redressed, *i.e.*, by  
15 stopping the illegal pollution and deterring future illegal pollution

#### 16 STATUTORY BACKGROUND

17 16. Defendant's operation of unpermitted diesel generators violates the Clean  
18 Air Act. The Clean Air Act sets out a comprehensive regulatory scheme designed to  
19 prevent and control air pollution. Congress passed the Clean Air Act to prevent air  
20 pollution and to protect and enhance the quality of the nation's air resources to promote  
21 the public health and welfare. 42 U.S.C. § 7401. The statute directs EPA to prescribe  
22 national ambient air quality standards at a level sufficient to protect the public health and  
23 welfare. 42 U.S.C. § 7409(a) & (b).

24 17. The Clean Air Act is implemented jointly by the United States  
25 Environmental Protection Agency (EPA) and the states. The Clean Air Act requires each  
26 state to adopt and submit to EPA for approval a State Implementation Plan (SIP). 42  
27 U.S.C. § 7410. SIPs provide the mechanism for states to ensure compliance with national  
28

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