### IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

| CENTER FOR BIOLOGICAL      |                                 |
|----------------------------|---------------------------------|
| DIVERSITY and SIERRA CLUB, | )                               |
| Plaintiffs,                | )<br>)                          |
| v.                         | ) Case No. 1:19-cv-1179-CCE-JLW |
| UNIVERSITY OF NORTH        | )                               |
| CAROLINA AT CHAPEL HILL,   |                                 |
| D. f 1 4                   | )                               |
| Defendant.                 | )                               |
|                            | ,                               |

## PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S **MOTION TO DISMISS**



## **TABLE OF CONTENTS**

| TABLE OF AUTHORITIES                            | i  |
|---|----|
| GLOSSARY OF ACRONYMS                            | v  |
| INTRODUCTION                                    | 1  |
| FACTUAL BACKGROUND                              | 1  |
| LEGAL BACKGROUND                                | 3  |
| A. Standard of Review                           | 3  |
| B. Pleading Requirement for Repeated Violations | 5  |
| C. Clean Air Act                                | 7  |
| ARGUMENT  | 7  |
| A. Claim I                                      | 7  |
| B. Claim II                                     | 12 |
| C. Claim III                                    | 14 |
| D. Claim IV                                     | 17 |
| E. Claim V                                      | 18 |
| F. Claim VI                                     | 19 |
| G. Claim VII                                    | 20 |
| H. Claim VIII                                   | 21 |
| I. Claim IX                                     | 22 |
| J. Claim X                                      | 23 |
| CONCLUSION                                      | 23 |



| CERTIFICATION OF WORD COUNT | 25 |
|-----------------------------|----|
|                             |    |
| CERTIFICATE OF SERVICE      | 26 |



# **TABLE OF AUTHORITIES**

### **CASES**

| Ashcroft v. Iqbal,<br>556 U.S. 662 (2009)   | 4, 12, 13, 18, 21 |
|---|-------------------|
| Baughman v. Bradford Coal Co., Inc.,<br>592 F.2d 215 (3d Cir. 1979)                                   | 17                |
| Colorado River Water Conservation District v. U.S.,<br>424 U.S. 800, 817-818 (1976)                   | 15                |
| Env't Tex. Citizen Lobby v. Exxonmobil Corp.,<br>2020 U.S. App. LEXIS 24100, (5th Cir. Jul. 29, 2020) | 6                 |
| Estate Constr. Co. v. Miller & Smith Holding Co.,<br>14 F.3d 213 (4th Cir. 1994)                      | 17, 18, 20        |
| Evans v. B.F. Perkins Co.,<br>166 F.3d 642 (4th Cir. 1999)  | 4                 |
| Fried v. Sungard Recovery Servs., Inc., 916 F. Supp. 465 (E.D. Pa. 1996)                              | 6, 7              |
| Grey v. Henderson,<br>169 F. Supp. 2d 448 (M.D.N.C. 2001)   | 3                 |
| Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc., 484 U.S. 49 (1987)                       | 4–6               |
| Heckler v. Chaney,<br>470 U.S. 821 (1985)   | 16                |
| N.C. Motorcoach Ass'n v. Guilford County Bd. of Educ.,<br>315 F. Supp. 2d 784, (M.D.N.C. 2004)        |                   |
| New York v. Am. Elec. Power Serv. Corp., 2006 WL 1331543, (S.D. Ohio Mar. 21, 2006)                   | 7                 |
| Ohio Valley Envtl. Coal. v. Fola Coal Co., LLC,<br>845 F.3d 133, 139 (4th Cir. 2017)                  | 9                 |



| Paper, Allied-Indus., Chem. & Energy Workers Int'l Union,         2005 WL 1389431 (W.D. Okla. June 10, 2005) |
|--|
| Piney Run Pres. Ass'n v. Cty. Comm'rs,<br>268 F.3d 255, 269 (4th Cir. 2001))                                 |
| PIRG v. Star Enterprise,<br>771 F. Supp. 655 (D. N.J. 1991)  |
| Roosevelt Campobello Intern. Park Comm'n. v. U.S. E.P.A., 711 F.2d 431 (1st Cir. 1983)                       |
| Texans United for a Safe Econ. Educ. Fund v. Crown Cent. Petroleum Corp., 207 F.3d 789 (5th Cir. 2000)       |
| Tucker v. Chrysler Credit Corp.,<br>149 F.3d 1170 (Table), 1998 U.S. App. LEXIS 10803 (4th Cir. 1998)13      |
| United States v. Am. Elec. Power Serv. Corp., 137 F. Supp. 2d 1060 (S.D. Ohio 2001)                          |
| United States v. Am. Trucking Ass'ns,<br>310 U.S. 534 (1940)   |
| WildEarth Guardians v. Lamar Utils. Bd.,<br>2012 U.S. Dist. LEXIS 43307 (D. Colo. 2012)14                    |
| STATUTES   |
| 42 U.S.C. § 7401(b)(2)   |
| 42 U.S.C. § 7410   |
| 42 U.S.C. § 7604(a)  |
| 42 U.S.C. §7604(b)(1)(B)   |
| 42 U.S.C. § 7604(f)(4)   |
| 42 U.S.C. § 7661   |
| 5 II S C 8 552   |



# DOCKET A L A R M

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

# **Real-Time Litigation Alerts**



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

# **Advanced Docket Research**



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## **Analytics At Your Fingertips**



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

#### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

#### **LAW FIRMS**

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

#### **FINANCIAL INSTITUTIONS**

Litigation and bankruptcy checks for companies and debtors.

#### **E-DISCOVERY AND LEGAL VENDORS**

Sync your system to PACER to automate legal marketing.

