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23 Organization, Citizens for Alternatives to Radioactive Dumping, Saint Francis Prayer Center, Sierra
24 Club, and Michael Boyd*

25 IN THE UNITED STATES DISTRICT COURT
26 FOR THE NORTHERN DISTRICT OF CALIFORNIA
27 OAKLAND DIVISION

28 CALIFORNIANS FOR RENEWABLE)
29 ENERGY, ASHURST BAR/SMITH) Case No. 4:15-cv-03292-SBA
30 COMMUNITY ORGANIZATION,)
31 CITIZENS FOR ALTERNATIVES TO)
32 RADIOACTIVE DUMPING, SAINT) **SECOND AMENDED COMPLAINT**
33 FRANCIS PRAYER CENTER, SIERRA) **FOR DECLARATORY AND**
34 CLUB, and MICHAEL BOYD,) **INJUNCTIVE RELIEF**

35 Plaintiffs,) (Administrative Procedure Act Case)

36 v.)

37 UNITED STATES ENVIRONMENTAL)
38 PROTECTION AGENCY and GINA)
39 MCCARTHY, in her official capacity as)
40 Administrator of the Environmental Protection)
41 Agency,)

42 Defendants.)

1 **STATEMENT OF THE CASE**

2 1. Californians for Renewable Energy, Ashurst/Bar Smith Community Organization,
3 Citizens for Alternatives to Radioactive Dumping, Saint Francis Prayer Center, Sierra Club, and
4 Michael Boyd (collectively, “Plaintiffs”) bring this civil action for declaratory and injunctive relief
5 to challenge the unreasonable delay of Defendants United States Environmental Protection Agency
6 and Gina McCarthy, Administrator of the United States Environmental Protection Agency
7 (collectively, “EPA”) to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*
8 (1964) (“Title VI”), and EPA’s Title VI implementing regulations, 40 C.F.R. §§ 7.10 *et seq.*(1973).

9 2. Plaintiffs filed administrative complaints alleging violations of Title VI (“Title VI
10 Complaints” or “the Complaints”) with EPA between 1992 and 2003, all more than a decade ago,
11 and EPA accepted these complaints for investigation between 1995 and 2005, the most recent also
12 more than a decade ago. Despite a regulatory mandate that EPA issue preliminary findings and any
13 recommendations for achieving compliance within 180 days of accepting a Title VI complaint for
14 investigation, EPA has utterly failed to meet this deadline in each case and has engaged in a pattern
15 and practice of unlawfully withholding and unreasonably delaying action on administrative
16 complaints filed pursuant to Title VI.

17 3. Resolution of Plaintiffs’ Title VI Complaints and reform of EPA’s practice is long
18 overdue. Accordingly, Plaintiffs ask the Court to compel agency action unlawfully withheld and
19 unreasonably delayed pursuant to the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* (1946)
20 (“APA”).

21 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

22 4. This action is brought under the APA.

23 5. This Court has subject-matter jurisdiction over the claims set forth in this complaint
24 under 28 U.S.C. §§ 1331 and 1346(a)(2) because this is a civil action against the United States that
25 arises under a law of the United States. The relief requested is authorized pursuant to 5 U.S.C. §
26 706(1) and 28 U.S.C. §§ 2201-2202. *See also* 42 U.S.C. § 2000d-2 (“Any department or agency
27 action taken pursuant to section 2000d-1 of [Title VI] shall be subject to such judicial review as may
28

1 otherwise be provided by law for similar action taken by such department or agency on other
2 grounds.”).

3 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because a substantial
4 part of the events or omissions giving rise to the claims herein occurred in Contra Costa County,
5 California, Plaintiff Sierra Club resides in Alameda County, California, and Plaintiffs Michael Boyd
6 and CALifornians for Renewable Energy reside in Santa Cruz County, California in the Northern
7 District of California.

8 7. Similarly, intradistrict assignment to the San Francisco Division or the Oakland
9 Division of this Court is proper under Civil Local Rule 3-2(c) and (d) because a substantial part of
10 the events or omissions giving rise to the claims herein occurred in Contra Costa County, California
11 and Plaintiff Sierra Club resides in Alameda County, California. After Plaintiffs filed their original
12 Complaint, the Clerk of this Court assigned this matter to the Oakland Division of this Court.

13 **PARTIES**

14 8. Plaintiff CALifornians for Renewable Energy (“CARE”) is a 501(c)(3) nonprofit
15 corporation incorporated in California in September 1999. CARE is headquartered at 5439 Soquel
16 Drive, Soquel, California and has approximately 420 members nationwide, with roughly 95% of
17 these members residing in California. CARE’s purposes include researching and disseminating
18 information about legal rights in a healthy environment by giving legal advice, appearing before
19 administrative bodies, enforcing environmental laws through court actions, and providing
20 professional legal assistance to planning, conservation, and neighborhood groups with regard to new
21 energy projects in the state of California. CARE is an advocate for new renewable energy supplies
22 as the environmentally preferred alternative for the people of the state of California.

23 9. Plaintiff Michael Boyd is the President of CARE and provides overall supervision
24 and management of CARE’s activities. Michael Boyd resides in Soquel, California.

25 10. CARE and Michael Boyd filed a Title VI Complaint to EPA on or about April 17,
26 2000, alleging that the permitting process and ultimate decision to permit two gas-fired power plants
27 in the predominantly non-white and low-income community of Pittsburg, California by California
28 regional and state agencies violated Title VI. EPA accepted this complaint for investigation on or

1 about December 2001 but has yet to issue recommendations or preliminary findings from its
2 investigation.

3 11. One or more CARE members live in proximity to these two gas-fired power plants
4 and have aesthetic, recreational, economic, health, or other interests in the permitting and operation
5 of these facilities.

6 12. Plaintiff Ashurst Bar/Smith Community Organization is headquartered at 436
7 Gleeden Drive, Tallassee, Alabama. The organization strives for positive change and a better quality
8 of life for residents of the Ashurst Bar/Smith Community, an unincorporated area located in the
9 southernmost tip of Tallapoosa County, Alabama. At the time of the filing of its Title VI complaint,
10 the community was comprised of approximately 175 residents and was approximately 98% African
11 American. The organization formed to protest the Tallassee Waste Disposal Center, now known as
12 the Stone's Throw Landfill, and the adverse impacts associated with it, educate the community,
13 protect the heritage of the land, and seek an inclusive role in decision-making processes that affect
14 the health, social, and economic status of the community.

15 13. On or about December 15, 2003, an individual on behalf of Plaintiff Ashurst
16 Bar/Smith Community Organization submitted a Title VI Complaint to EPA alleging, among other
17 allegations, that the failure of the Alabama Department of Environmental Management to require the
18 proper use of siting factors violated Title VI. This individual was and is a member of the Ashurst
19 Bar/Smith Community Organization. EPA accepted this complaint for investigation on or about
20 September 7, 2005 but has yet to issue recommendations or preliminary findings from its
21 investigation of this allegation.

22 14. EPA's public documents refer to this individual as an unnamed individual, and this
23 Complaint will continue to refer to this individual as an unnamed individual.

24 15. This individual and other members of the Ashurst Bar/Smith Community
25 Organization are affected by the landfill and have aesthetic, recreational, economic, health, or other
26 interests in the permitting and operation of the landfill.

27 16. Plaintiff Citizens for Alternatives to Radioactive Dumping ("CARD") is a nonprofit
28 organization founded in 1978 in New Mexico. CARD is headquartered at 202 Harvard Avenue

1 Southeast, Albuquerque, New Mexico, and is sponsored by a 501(c)(3) Albuquerque organization,
2 Trinity House Catholic Worker, Inc. CARD has approximately ninety active members and
3 concentrates on local, New Mexican problems. Most members live in New Mexico though at any
4 one time a few members may be living outside of the state. Nearly all members who actively
5 participate in CARD activities, including almost all Steering Committee members, are volunteers.
6 CARD works in partnership with a number of other environmental and environmental justice groups
7 and with Native communities and reservations in New Mexico, especially in southeastern New
8 Mexico and Albuquerque. CARD was first formed by Chicano organizations in the southeastern
9 portion of the state that were concerned about the impacts of the nuclear industry on their
10 communities. CARD's original focus was the Waste Isolation Pilot Plant ("WIPP") in Eddy County,
11 New Mexico, but the threats and injustices in the southeastern part of New Mexico have only
12 continued to increase since the early days of WIPP. Accordingly, in the 1980's CARD expanded its
13 mission to address environmental injustices negatively affecting low-income or underserved
14 communities of color in New Mexico and organize resistance to other radioactive, toxic, and
15 hazardous threats throughout New Mexico.

16 17. On or about September 12, 2002, CARD submitted a Title VI complaint to EPA
17 concerning the permitting process and ultimate decision to permit the Triassic Park hazardous waste
18 facility in Chaves County in southeastern New Mexico, an area with a high percentage of people
19 living in poverty and Hispanic residents. EPA accepted this complaint for investigation on or about
20 June 27, 2005, but has yet to issue recommendations or preliminary findings from its investigation.

21 18. One or more CARD members live in proximity to the Triassic Park site and have
22 aesthetic, recreational, economic, health, or other interests in the permitting of the facility.

23 19. Plaintiff Saint Francis Prayer Center ("Prayer Center") is a 501(c)(3) nonprofit
24 organization incorporated in 1979 in Michigan. The Prayer Center is headquartered and operates a
25 public facility at G-2381 East Carpenter Road, Flint, Michigan. Animated by the spirit of its patron,
26 St. Francis of Assisi, the Prayer Center serves as a crossroads where people of all ethnic, racial,
27 economic, and denominational backgrounds may enrich each other through their encounter and
28 promotes justice by affirming the self-worth of disadvantaged communities and establishing

1 channels where their basic needs can be met, whether it be in a role of advocacy, referral, or
2 initiation.

3 20. On or about December 15, 1992, the Prayer Center submitted a complaint to EPA
4 alleging that the siting decision, permitting process, and ultimate decision to permit a wood-
5 incinerator power station located adjacent to a predominantly African American and low-income
6 community in Flint, Michigan constituted civil rights violations. EPA accepted this complaint for
7 investigation under Title VI on or about January 31, 1995, but has yet to issue recommendations or
8 preliminary findings from its investigation.

9 21. The Prayer Center is itself located in proximity to the wood-incinerator power station
10 and has aesthetic, recreational, economic, health, or other interests in the permitting and operation of
11 the facility. One or more Prayer Center members also live in proximity to the facility and have
12 aesthetic, recreational, economic, health, or other interests in the permitting of the facility.

13 22. Plaintiff Sierra Club is a 501(c)(4) organization founded in 1892 and headquartered at
14 2101 Webster Street, Suite 1300, Oakland, California. Sierra Club is incorporated in the State of
15 California as a nonprofit public benefit corporation and is, according to Sierra Club bylaws, the only
16 legally recognized corporate entity of Sierra Club in the United States. Sierra Club's mission is to
17 explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use
18 of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the
19 quality of the natural and human environment; and to use all lawful means to carry out these
20 objectives. Sierra Club's mission includes protecting and restoring the quality of wild places, such
21 as national parks, forests, and wilderness areas, enjoyed by its members for their scenic views and
22 vistas. Sierra Club's members regularly enjoy recreational activities on the Texas Gulf Coast and
23 other waterways.

24 23. Sierra Club Lone Star Chapter is the Texas chapter of Sierra Club. Like all Sierra
25 Club chapters, the Lone Star Chapter is a subunit of Sierra Club, and is not separately incorporated.
26 Its offices are located at 1202 San Antonio Street, Austin, Texas. The chapter has 22,000 members
27 statewide and is dedicated to protecting Texas's air, land, water, and remaining wild places. Sierra
28 Club Lone Star Chapter works to protect the health and well-being of the diverse communities in

1 Texas and up and down the Texas Gulf Coast. Several dozen environmental justice communities in
2 Texas are heavily impacted by large oil refineries, chemical and petrochemical plants, and other
3 industrial sources; indeed, Texas has the largest concentration of industrial plants (approximately
4 2,000) in the nation, making industrial air pollution a top issue for the Sierra Club Lone Star
5 Chapter.

6 24. On or about April 13, 2000, Sierra Club, through Sierra Club Lone Star Chapter, filed
7 a complaint with EPA alleging, among other allegations, that the permitting process and ultimate
8 decision to permit an oil-refinery expansion in a low-income and African American community in
9 Beaumont, Texas violated Title VI. On or about June 2003, EPA accepted for investigation two
10 allegations asserted in this complaint but has yet to issue recommendations or preliminary findings
11 from its investigation.

12 25. One or more Sierra Club members live proximity to the Beaumont oil refinery and
13 have aesthetic, recreational, economic, health, or other interests in the permitting and operation of
14 the facility.

15 26. Plaintiffs have a concrete interest in an efficient resolution of their Title VI
16 Complaints and in resolution of the discriminatory practices and policies complained of in those
17 Complaints.

18 27. As organizations that work on behalf of communities of color that are
19 disproportionately burdened by sources of pollution, Plaintiffs and their members have ongoing
20 interests in protection against discrimination by the recipients named in their Title VI Complaints
21 and in remedying EPA's pattern and practice of failing to enforce Title VI and EPA's implementing
22 regulations within mandated time periods.

23 28. Defendant United States Environmental Protection Agency is a federal agency with
24 its principal offices located at 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. EPA
25 distributes federal financial assistance and, like other federal agencies that distribute federal financial
26 assistance, is charged with issuing and implementing regulations to ensure that no person in the
27 United States is excluded from participation in, denied the benefits of, or subjected to discrimination
28

1 on the ground of race, color, or national origin under any program or activity that receives financial
2 assistance from EPA. 42 U.S.C. §§ 2000d, 2000d-1.

3 29. Defendant Gina McCarthy is the Administrator of the United States Environmental
4 Protection Agency and, in that capacity, provides overall supervision of the Agency and has final
5 responsibility for actions taken by EPA, including EPA's enforcement of Title VI of the Civil Rights
6 Act and the agency's regulations implementing Title VI. Administrator McCarthy's principal place
7 of business is located in Washington, D.C. Administrator McCarthy is sued in her official capacity.

8 **LEGAL BACKGROUND**

9 30. Title VI of the Civil Rights Act of 1964 provides that no person shall, "on the ground
10 of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be
11 subjected to discrimination under any program or activity" covered by Title VI. 42 U.S.C. § 2000d.
12 Title VI authorizes and directs all federal agencies that provide federal financial assistance to issue
13 regulations to effectuate the provisions of Title VI. *Id.* § 2000d-1

14 31. EPA regulations promulgated to implement Title VI, 40 C.F.R. §§ 7.10 *et seq.*, set
15 forth mandatory procedures and timelines for investigations of complaints filed pursuant to the
16 regulations. 40 C.F.R. §§ 7.115-7.135.

17 32. The regulations provide a process by which persons may file Title VI complaints with
18 EPA's Office of Civil Rights ("OCR"). Any "person who believes that he or she or a specific class
19 of persons has been discriminated against" in violation of Title VI, or his or her representative, may
20 file a complaint with OCR within 180 days of the alleged discriminatory act. *Id.* § 7.120(a), (b)(2).

21 33. The regulations require that "OCR *shall promptly* investigate all [such] complaints . .
22 . unless the complainant and the party complained against agree to a delay pending settlement
23 negotiations." 40 C.F.R. § 7.120 (emphasis added).

24 34. The regulations require OCR to notify the complainant and the recipient of federal
25 funds of OCR's receipt of the complaint within five days of receipt, after which "OCR will
26 *immediately* initiate complaint processing procedures." *Id.* § 7.120(c), (d) (emphasis added).

27 35. Within twenty calendar days of the acknowledgement of the receipt of the complaint,
28 OCR must determine whether to accept the complaint for investigation, reject the complaint (*e.g.*, for

1 lack of jurisdiction or timeliness), or refer the complaint to the appropriate federal agency. *Id.* §
2 7.120(d)(1)(i).

3 36. If a complaint is accepted for investigation, OCR must issue within 180 days of that
4 acceptance (1) preliminary findings; (2) recommendations, if any, for the funding recipient to
5 achieve voluntary compliance; and (3) a notification to the recipient of its right to engage in
6 voluntary compliance negotiations where appropriate. *Id.* § 7.115(c).

7 37. OCR's notice of preliminary findings triggers an opportunity for recipients to respond
8 to OCR's preliminary findings. *Id.* § 7.115(d). OCR's issuance of preliminary findings is also a
9 prerequisite to further action by OCR under Title VI including a formal written determination of
10 noncompliance and the denial, annulment, suspension, or termination of federal assistance, as
11 permitted under Title VI. *Id.* §§ 7.115(d)-(e), 7.130(b); *see also* 42 U.S.C. § 2000d-1.

12 38. Specifically, within fifty calendar days of receipt of a preliminary finding of
13 noncompliance, the funding recipient may agree to OCR's recommendations or, in the alternative,
14 provide a written response explaining why the preliminary findings are incorrect or how compliance
15 may be achieved through means other than those recommended by OCR. 40 C.F.R. § 7.115(d). If
16 the recipient does not take either action within fifty calendar days, OCR shall within an additional
17 fourteen calendar days send a formal written determination of noncompliance to the recipient, with
18 copies to the EPA Award Official and the United States Attorney General. *Id.* If the recipient does
19 not come into compliance within ten calendar days of receipt of the formal determination of
20 noncompliance, OCR must issue a finding of noncompliance and begin procedures to deny, annul,
21 suspend, or terminate EPA assistance. *Id.* §§ 7.115(e), 7.130(b).

22 **FACTUAL BACKGROUND**

23 39. Between 1992 and 2003, Plaintiffs filed timely Complaints to EPA alleging violations
24 of Title VI of the Civil Rights Act of 1964 and its implementing regulations by regional and state
25 agencies, and EPA accepted each of these Complaints for investigation between 1995 and 2005.

26 40. EPA has failed to meet its duty to issue preliminary findings within 180 days of
27 acceptance of each of the Complaints.

1 41. Indeed, EPA’s failure to comply with the regulatory timeline has extended the 180-
2 day deadline to issue preliminary findings into periods ranging from approximately ten to twenty
3 years, with no clear end in sight.

4 42. The injuries complained of in Plaintiffs’ Title VI Complaints are exacerbated by
5 EPA’s failure to comply with its mandatory duties to properly investigate and resolve these
6 Complaints.

7 **I. Prayer Center Complaint**

8 43. On or about December 15, 1992, Plaintiff Saint Francis Prayer Center submitted a
9 letter to Valdas Adamkus, Regional Administrator of EPA Region 5, enclosing two Prayer Center
10 letters to William Rosenburg and Herb Tate at EPA Headquarters (collectively, “Prayer Center
11 Complaint”) alleging that actions of the Michigan Department of Natural Resources (“MDNR”), a
12 recipient of federal funding, discriminated against residents of the City of Flint, Genesee County,
13 Michigan, on the basis of race and color in violation of Title VI. *See* Letter from Fr. Phil Schmitter
14 & Sr. Joanne Chiaverini, Saint Francis Prayer Center, to Valdas Adamkus, Reg’l Adm’r, EPA
15 Region 5 and attachments thereto (Dec. 15, 1992) (attached hereto as Exhibit 1).

16 44. The Prayer Center Complaint alleges that during the permitting process for the
17 Genesee Power Station in Genesee Township, Michigan – near the border with Flint, Michigan –
18 MDNR failed to consider the facility’s impacts on the surrounding community, which is
19 predominantly African American and low-income. *Id.* att. 1, at 1-2; *id.* att. 2, at 1-2. Specifically,
20 the Complaint alleges that MDNR’s permit is defective for failing to require established emission
21 control technology to prevent excessive emission of lead, mercury, arsenic, and other pollutants from
22 the burning of demolition waste and other waste; failing to require an ambient air quality study or
23 noise study of the area surrounding the plant; requiring only self-monitoring by the plant instead of
24 consistent monitoring by MDNR; and allowing the plant to be sited adjacent to – and cause an
25 increase of truck traffic in – a highly residential area of Flint predominantly comprised of low-
26 income residents and people of color. *Id.* att. 1, at 1-2; *id.* att. 2, at 1. In addition, the Complaint
27 alleges MDNR violated the civil rights of these residents during the permitting process by
28 conducting a permit hearing 65 miles away from the site, frustrating the attendance of low-income

1 residents and people of color; responding to residents' concerns in a condescending manner;
2 declining consideration of a residential speaker but allowing project proponents opportunities to
3 speak, including those not recognized by the chair; and conducting the hearing from 7:40 pm to 1:00
4 am instead of postponing the hearing to a later date so as not to delay the grant of the permit. *Id.* att.
5 1, at 2; *id.* att. 2, at 1-2. The Complaint also alleges that the only public information session held in
6 Genesee Township was located 5.5 miles away from the site in an all-white neighborhood with no
7 bus access, despite the availability of adequate facilities that were near the site and easily accessible
8 by the affected residents. *Id.* att. 2, at 2. Finally, the Complaint suggests that MDNR overlooked a
9 potential conflict of interest by readily permitting a project despite the fact that the project's chief
10 engineer had held a leadership position at MDNR shortly beforehand. *Id.* att. 1, at 2.

11 45. On or about January 31, 1995, EPA accepted the Prayer Center Complaint for
12 investigation as Case No. 01R-94-R5. *See* Letter from Dan J. Rondeau, Dir., EPA OCR, to Kary L.
13 Moss, Exec. Dir., National Law Guild/Sugar Law Center for Economic and Social Justice ("Sugar
14 Law Center"), at 2-3 (Jan. 31, 1995) (attached hereto as Exhibit 2). Accordingly, EPA's regulations
15 require OCR to have issued preliminary findings and recommendations by July 30, 1995.

16 46. On or about June 29, 1995, MDNR responded to the Prayer Center Complaint. *See*
17 Letter from Kary L. Moss, Exec. Dir. & Lamont Satchel, Litigation & Program Coord., Sugar Law
18 Center, to Mike Mattheisen, EPA OCR, at 1 (Aug. 4, 1995) (attached hereto as Exhibit 3). Upon
19 information and belief, EPA had notified MDNR of the Prayer Center Complaint prior to this date.

20 47. On or about June 20, 2000, the Sugar Law Center, then counsel for the Prayer Center,
21 sent a letter to EPA "to formally inquire about the status of the [Prayer Center Complaint] and to
22 convey our ongoing serious concern regarding the delay in resolving this matter, now pending for
23 nearly eight (8) years." Letter from Julie H. Hurwitz, Exec. Dir. & E. Quita Sullivan, Env'tl. Justice
24 Staff Att'y Sugar Law Center, to Ann E. Goode, Dir., EPA OCR, at 1 (June 20, 2000) (attached
25 hereto as Exhibit 4). The letter noted that, as far back as 1996, the Prayer Center had "been told
26 repeatedly, for years, that a decision in this matter was imminent." *Id.* The letter expressed concern
27 that EPA OCR's investigation into this Complaint and others would "continue with no results,"
28 noting that, at the time, at least 49 outstanding Title VI administrative claims remained

1 “languishing” before EPA. *Id.* at 2. This June 20, 2000 letter is one of several communications that
2 counsel for the Prayer Center sent to EPA since the filing of their Complaint raising concerns about
3 EPA’s delay and imploring EPA to finalize its investigation into the Prayer Center Complaint.

4 48. Upon information and belief, as of the date of the filing of this Complaint,
5 approximately twenty years after EPA accepted the Prayer Center Complaint for investigation, EPA
6 has yet to issue preliminary findings of its investigation into the Prayer Center Complaint.

7 49. EPA’s investigation into the Prayer Center Complaint has grossly exceeded 180 days
8 as well as any reasonable period of time to conclude an investigation.

9 50. As a result of the permitting actions complained of in the Prayer Center Complaint,
10 the Genesee Power Station was built and began commercial operation in 1995. *See id.* at 1. EPA
11 has classified the Genesee Power Station as a Significant Violator, and the Michigan Department of
12 Environmental Quality has similarly cited the facility. *Id.* at 1.

13 51. At the time of the filing of this Complaint, the Genesee Power Station continues to be
14 in operation, and Prayer Center members continue to have reasonable concerns that the facility is
15 adversely affecting the surrounding community.

16 **II. CARE Complaint**

17 52. On or about April 17, 2000, Plaintiffs Michael Boyd, Californians for Renewable
18 Energy, and other signatories submitted a Title VI complaint (“CARE Complaint”) to OCR alleging
19 that the Bay Area Air Quality Management District (“BAAQMD”), California Air Resources Board
20 (“CARB”) – both recipients of federal funding – and the California Energy Commission (“CEC”)
21 discriminated against residents of the City of Pittsburg, California, on the basis of race, color, and
22 national origin in violation of Title VI. *See* Letter from Michael E. Boyd, CARE, to Carol M.
23 Browner, EPA (Apr. 17, 2000) (attached hereto as Exhibit 5).

24 53. The CARE Complaint alleges that these California regional and state agencies
25 granted permits for the construction of the Los Medanos Energy Center and Delta Energy Center
26 power plants in Pittsburg, California but unlawfully failed to consider the additional environmental
27 burdens caused by the two plants on residents who already suffer from the cumulative impacts of
28 multiple sources of pollutants in the area. *Id.* at 4-6. The complaint alleges that the two facilities

1 were sited in communities that are composed primarily of nonwhite and low-income residents who
2 already suffer from elevated levels of asthma, breast cancer, and human mortality related to
3 particulate matter exposure. *Id.* at 3, 6-12.

4 54. The Los Medanos Energy Center was initially known as the Pittsburg District Energy
5 Facility, and the CARE Complaint uses this previous name to refer to the Los Medanos Energy
6 Center.

7 55. On or about December 2001, OCR accepted the allegations in the CARE Complaint
8 against BAAQMD and CARB for investigation as Case No. 02R-00-R9. *See* EPA, Complaints Filed
9 with EPA under Title VI of the Civil Rights Act of 1964, at 14, [http://www.epa.gov/ocr/complaints-
11 filed-epa-under-title-vi-civil-rights-act-1964](http://www.epa.gov/ocr/complaints-
10 filed-epa-under-title-vi-civil-rights-act-1964) (last updated Mar. 3, 2015) (attached hereto as Exhibit
12 6). Accordingly, EPA's regulations require OCR to have issued preliminary findings and
13 recommendations by June 2002.

14 56. On or about March 16, 2006, CARE sent a letter to EPA to add a claim of retaliation
15 to the CARE Complaint and other Title VI complaints before the agency. *See* Letter from Lynne
16 Brown, Vice President, CARE, to Karen D. Higginbotham, Dir., EPA OCR (Mar. 16, 2006)
(attached hereto as Exhibit 7).

17 57. On or about April 20, 2009, CARE sent a complaint to the Civil Rights Division of
18 the United States Department of Justice ("DOJ") alerting DOJ to the "pattern of US EPA delaying
19 and sitting on Title VI complaints, missing their statutory deadlines for accepting and investigating
20 these administrative complaints" filed by CARE, including the April 17, 2000 CARE Complaint.
21 *See* Letter from Michael Boyd, President, CARE, to Civil Rights Div., DOJ, at 1 (Apr. 20, 2009)
22 (attached hereto as Exhibit 8). CARE also forwarded a copy of this April 20, 2009 complaint to
23 EPA. *Id.*

24 58. Upon information and belief, as of the date of the filing of this Complaint,
25 approximately fourteen years after EPA accepted the CARE Complaint for investigation, EPA has
26 yet to issue preliminary findings of its investigation into the CARE Complaint.

27 59. EPA's investigation into the CARE Complaint has grossly exceeded 180 days as well
28 as any reasonable period of time to conclude an investigation.

1 60. As a result of the permitting actions complained of in the CARE Complaint, the Los
2 Medanos Energy Center was built and went online on or about July 2001, and the Delta Energy
3 Center was built and went online on or about June 2002. EPA classified the Los Medanos Energy
4 Center as in “Significant Violation” of the Clean Air Act, 42 U.S.C. §§ 7401-7671q, on or about
5 May 5, 2010, and that classification continues to the date of the filing of this complaint. *See* EPA
6 Enforcement and Compliance History Online (“ECHO”), Detailed Facility Report, Los Medanos
7 Energy Center (accessed June 19, 2015) (attached hereto as Exhibit 9). Over the last five years, the
8 Los Medanos Energy Center has been subject to at least \$3,000 in penalties from a formal
9 enforcement action for violations of the Clean Air Act. *Id.*

10 61. At the time of the filing of this complaint, both facilities continue to be in operation,
11 and CARE members continue to have reasonable concerns that the facilities are adversely affecting
12 the surrounding community of Pittsburg, California.

13 **III. Sierra Club Complaint**

14 62. On or about April 13, 2000, Sierra Club Lone Star Chapter, a local chapter of Plaintiff
15 Sierra Club, and other signatories submitted a Title VI complaint (“Sierra Club Complaint”) to OCR
16 alleging that actions of the Texas Commission on Environmental Quality (“TCEQ”), a recipient of
17 federal funding, discriminated against residents of the City of Beaumont, Texas on the basis of race
18 and color in violation of Title VI. *See* Letter from Rev. Roy Malveaux, Exec. Dir., People Against
19 Contaminated Env’ts et al., to Ann E. Goode, Dir., EPA OCR (Apr. 13, 2000) (attached hereto as
20 Exhibit 10).

21 63. At the time of the Sierra Club Complaint, TCEQ was known as the Texas Natural
22 Resources Conservation Commission, and the Sierra Club Complaint uses this previous name to
23 refer to TCEQ.

24 64. Among other allegations, the Sierra Club Complaint alleges that TCEQ issued a
25 permit amendment to ExxonMobil (previously, Mobil Oil) that allowed its refinery operations in
26 Beaumont, Texas to increase several categories of emissions, including hydrogen sulfide, and that
27 TCEQ did so without allowing the public to participate in a contested case hearing on the matter. *Id.*
28 at 1. The complaint notes that 95% of the population living in the census block groups most

1 impacted by the Beaumont refinery was African American and that over half of this “maximum
2 impact” population lived in poverty. *Id.* at 7. Both of these values were more than twice the city-,
3 county-, and state-wide averages, showing a disproportionate impact on African Americans and
4 persons living in poverty. *Id.* The complaint alleges that TCEQ’s actions with regard to the
5 Beaumont refinery reflect the state agency’s faulty method of administering its policies and
6 procedures, which has created and perpetuated a system of discriminatory facility siting and
7 expansion throughout the State of Texas. *Id.* at 1.

8 65. On or about June 2003, EPA notified Sierra Club Lone Star Chapter that it had
9 accepted for investigation two allegations asserted in the Sierra Club Complaint concerning the
10 permitting of the Beaumont refinery as Case No. 01R-00-R6. *See* Letter from Karen D.
11 Higginbotham, Acting Dir., EPA OCR, to Rev. Roy Malveaux, Exec. Dir., People Against
12 Contaminated Env’ts et al. (June 2003) (attached hereto as Exhibit 11). Accordingly, EPA’s
13 regulations require OCR to have issued preliminary findings and recommendations regarding these
14 two allegations by December 2003.

15 66. Specifically, EPA accepted for investigation two allegations from the Sierra Club
16 Complaint: the allegation that TCEQ “denied the affected community, which is predominantly
17 African American, the opportunity to participate in a contested hearing” on the permit amendment
18 and the allegation that the permit amendment “will lead to increases in hydrogen sulfide and other
19 emissions which will have an adverse health impact on the African American residents of the
20 community surrounding the refinery.” *Id.* at 2-3 (internal quotation marks omitted).

21 67. Upon information and belief, as of the date of the filing of this Complaint,
22 approximately twelve years after EPA accepted allegations raised in the Sierra Club Complaint for
23 investigation, EPA has yet to issue preliminary findings of its investigation into the Sierra Club
24 Complaint.

25 68. EPA’s investigation into the Sierra Club Complaint has grossly exceeded 180 days as
26 well as any reasonable period of time to conclude an investigation.

27 69. As a result of the permitting actions complained of in the Sierra Club Complaint, the
28 Beaumont refinery expanded its refining operations and increased its emissions of hydrogen sulfide

1 and other air pollutants. On or about October 2005, EPA levied an \$8.7 million penalty on
2 ExxonMobil for Clean Air Act violations at the Beaumont refinery and other refineries. *See* EPA,
3 ExxonMobil Refinery Settlement (last updated Dec. 9, 2014) (attached hereto as Exhibit 12). On or
4 about December 2008, EPA again levied a \$122,500 penalty on ExxonMobil for failure to monitor
5 the sulfur content of gases burned in furnaces at the Beaumont refinery. *Id.* EPA first classified the
6 Beaumont refinery as in “Significant Violation” of the Clean Air Act on or about December 19,
7 2000, and that classification continues to the date of the filing of this complaint. *See* EPA ECHO,
8 Detailed Facility Report, ExxonMobil Beaumont Refinery (accessed June 19, 2015) (attached hereto
9 as Exhibit 13). Over the last five years, the Beaumont refinery has been subject to \$638,103 in
10 penalties from fourteen formal enforcement actions for violations of the Clean Air Act, in addition to
11 nine informal enforcement actions. *Id.* The Beaumont facility remains one of the largest refinery
12 and chemical complexes in the United States.

13 70. At the time of the filing of this complaint, the Beaumont refinery continues to be in
14 operation, and Sierra Club Lone Star Chapter members continue to have reasonable concerns that the
15 facility is adversely affecting the surrounding community of Beaumont, Texas.

16 **IV. CARD Complaint**

17 71. On or about September 12, 2002, Plaintiff Citizens for Alternatives to Radioactive
18 Dumping and other signatories submitted a Title VI complaint (“CARD Complaint”) to OCR
19 alleging that actions of the New Mexico Environment Department (“NMED”), a recipient of federal
20 funding, discriminated against residents of Chaves County, New Mexico on the basis of race, color,
21 and national origin in violation of Title VI. *See* CARD et al., Complaint under Title VI of the Civil
22 Rights Act (Sept. 12, 2002) (attached hereto as Exhibit 14).

23 72. The CARD Complaint alleges that NMED discriminated on the basis of race and
24 national origin by permitting the Triassic Park hazardous waste treatment, storage, and disposal
25 facility in Chaves County, New Mexico, without examining possible disparate impacts on the basis
26 of race and ethnicity and by conducting the permitting process in a manner hostile to Spanish-
27 speaking residents. *Id.* at 6-8, 18-24. As alleged in the complaint, Chaves County has a high
28 percentage of people of color – mostly Hispanic New Mexicans and New Mexicans of Mexican

1 origin – and a high percentage of people living in poverty, and already suffers worse air quality and
2 higher rates of infant mortality, congenital abnormalities, and hospitalization for respiratory illnesses
3 than other New Mexico counties. *Id.* at 2-4. The complaint also alleges that NMED obstructed and
4 excluded members of the public – particularly the Spanish-speaking public – from the permitting
5 process by denying access to relevant documents, failing to provide information in Spanish, and
6 harassing and intimidating the public. *Id.* at 20-24.

7 73. In addition, the complaint alleges that NMED engaged in a pattern or practice of
8 discriminatory permitting and permitting processes, specifically through limited consideration of
9 impacts on Hispanic New Mexicans and New Mexicans of Mexican origin, including cumulative
10 impacts, and bias, hostility, and intimidation on the basis of race or national origin. *Id.* at 8-17, 24-
11 25.

12 74. On or about June 27, 2005, EPA notified NMED that it had accepted the CARD
13 Complaint for investigation as Case No. 09R-02-R6. *See* Letter from Karen D. Higginbotham, Dir.,
14 EPA OCR, to Ron Curry, Sec’y, NMED (June 27, 2005) (attached hereto as Exhibit 15).
15 Accordingly, EPA’s regulations require OCR to have issued preliminary findings and
16 recommendations by December 24, 2005.

17 75. Specifically, EPA accepted for investigation the CARD Complaint’s allegations that
18 NMED discriminated against Spanish-speaking residents of the affected community by “(1)
19 permitting [the facility] without ever having required or performed a scientific investigation into
20 possible disparate impacts on the nearby residents who are already overburdened with effects from
21 facilities, and (2) conducting the entire permitting process in a manner hostile to Spanish-speaking
22 residents so as to discourage and effectively prevent the participation of Spanish-speaking residents
23 in the permitting process.” *Id.* at 1. In addition, EPA accepted for investigation the allegation that
24 NMED engaged in a “statewide pattern and practice of similar discriminatory permitting and public
25 participation in the permitting process.” *Id.*

26 76. NMED responded to this notification on or about August 11, 2005, and CARD
27 promptly sent a letter to OCR addressing the issues raised in the NMED response on or about
28 November 8, 2005.

1 77. On or about November 20, 2007, CARD notified OCR that it was amending the
2 CARD Complaint to include newly discovered information concerning NMED’s removal from both
3 the administrative record and the permit record of an agency memo concerning a possible permit
4 amendment to allow the Triassic Park facility to accept low-level nuclear waste – despite the hearing
5 officer’s instructions that the memo should be kept in the record. *See* Letter from Deborah Reade,
6 CARD, to Karen D. Higginbotham, Dir., EPA OCR (Nov. 20, 2007) (attached hereto as Exhibit 16).

7 78. On or about June 26, 2014 – nearly a decade after acceptance of the CARD
8 Complaint for investigation – EPA sent a letter to CARD requesting further information “[t]o
9 facilitate the EPA’s investigation.” *See* Letter from Helena Wooden-Aguilar, Acting Deputy Dir.,
10 EPA OCR, to Deborah Reade, CARD, at 2 (June 26, 2014) (attached hereto as Exhibit 17). CARD
11 responded to this request for information on or about September 2014.

12 79. Upon information and belief, as of the date of the filing of this Complaint, ten years
13 after EPA accepted the CARD Complaint for investigation, EPA has yet to issue preliminary
14 findings of its investigation into the CARD Complaint.

15 80. EPA’s investigation into the CARD Complaint has grossly exceeded 180 days as well
16 as any reasonable period of time to conclude an investigation.

17 81. Though the Triassic Park hazardous waste facility was not constructed during the first
18 term of the Hazardous Waste Facility Permit complained of in the CARD Complaint, the permittee,
19 Gandy Marley, Inc., applied to NMED to renew the Hazardous Waste Facility Permit on or about
20 October 17, 2011, and submitted revised permit applications on or about April 30, 2012 and July 5,
21 2013. Upon information and belief, the permit renewal application remains pending before NMED.
22 CARD members continue to have reasonable concerns that the permitting of the Triassic Park
23 hazardous waste facility may lead to adverse impacts to communities in proximity to the Triassic
24 Park hazardous waste facility.

25 **V. Ashurst Bar/Smith Complaint**

26 82. On or about September 11, 2003, EPA received a letter from an unnamed individual
27 on behalf of Plaintiff Ashurst Bar/Smith Community Organization that attached comments that the
28 individual had sent to the Alabama Department of Environmental Management (“ADEM”), a

1 recipient of federal funding, during ADEM's permitting process for the Stone's Throw Landfill in
2 the unincorporated community of Tallassee, Tallapoosa County, Alabama. Letter from unnamed
3 individual to redacted recipient (Sept. 3, 2003) (attached hereto as Exhibit 18). Among other
4 comments, the letter noted the community's concern that ADEM's pattern and practice of permitting
5 landfills in majority African American communities violates Title VI. *See id.* at 4-5.

6 83. On or about December 8, 2003, after receiving notification that EPA was reviewing
7 these comments for acceptance as an administrative complaint, the unnamed individual submitted a
8 more formal Title VI complaint to OCR on behalf of the Ashurst Bar/Smith Community
9 Organization ("Ashurst Bar/Smith Complaint") alleging that actions of ADEM discriminated against
10 residents of Tallassee on the basis of race, color, and national origin in violation of Title VI. *See*
11 Letter from unnamed individual, to Karen D. Higginbotham, Dir., EPA OCR (Dec. 8, 2003)
12 (attached hereto as Exhibit 19).

13 84. Among other allegations, the Ashurst Bar/Smith Complaint alleges that ADEM's
14 failure to require the Tallapoosa County Commission to properly use the siting factors listed in a
15 prior EPA Title VI investigation constitutes discrimination on the basis of race. *Id.* at 2.

16 85. At the time of the filing of the Ashurst Bar/Smith Complaint, the Stone's Throw
17 Landfill was known as the Tallassee Waste Disposal Center, and the Ashurst Bar/Smith Complaint
18 and related documents use this previous name to refer to the Stone's Throw Landfill.

19 86. EPA notified ADEM of its receipt of the Ashurst Bar/Smith Complaint on March 29,
20 2005, and ADEM responded to this notice on April 13, 2005. *See* Letter from Onis "Trey" Glenn,
21 III, Dir., ADEM, to Karen D. Higginbotham, Dir., EPA OCR (Apr. 13, 2005) (attached hereto as
22 Exhibit 20).

23 87. On or about September 7, 2005, EPA accepted the Ashurst Bar/Smith Complaint for
24 investigation as Case No. 06R-03-R4. Letter from Karen D. Higginbotham, Dir., EPA OCR, to
25 unnamed individual (Sept. 7, 2005) (attached hereto as Exhibit 21). Accordingly, EPA's regulations
26 require OCR to have issued preliminary findings and recommendations by March 26, 2006.

27 88. Specifically, EPA accepted for investigation two allegations, including the allegation
28 that "ADEM's failure to require the Tallapoosa County Commission to properly use the siting

1 factors listed in the EPA June 2003 Title VI Investigative Report has created a discriminatory effect
2 for the African American citizens since most of Tallapoosa County's municipal solid waste landfills
3 are located in their communities." *Id.*

4 89. ADEM responded to EPA's notification of acceptance of the Complaint on or about
5 October 7, 2005. *See* Letter from Karen D. Higginbotham, Dir., EPA OCR, to Onis "Trey" Glenn,
6 III, Dir., ADEM (Jan. 22, 2007) (attached hereto as Exhibit 22).

7 90. On or about January 22, 2007, EPA requested certain documents from ADEM to
8 facilitate the investigation of the Ashurst Bar/Smith Complaint. *Id.* ADEM responded to this
9 request on February 26, 2007. *See* Letter from Onis "Trey" Glenn, III, Dir., ADEM, to Karen D.
10 Higginbotham, Dir., EPA OCR (Feb. 26, 2007) (attached hereto as Exhibit 23).

11 91. On or about January 25, 2013, EPA sent a letter to ADEM, with a copy to the
12 unnamed individual, explaining that EPA had bifurcated the investigation into two allegations raised
13 in the Ashurst Bar/Smith Complaint and was dismissing the Complaint's first allegation. Letter
14 from Rafael DeLeon, Dir., EPA OCR, to Lance R. LeFleur, Dir., ADEM (Jan. 25, 2013) (attached
15 hereto as Exhibit 24). The letter stated that the allegation that ADEM failed to require the use of
16 EPA's siting factors "will be addressed in subsequent correspondence." *Id.* at 13.

17 92. Upon information and belief, as of the date of the filing of this Complaint, ten years
18 after EPA accepted the Ashurst Bar/Smith Complaint for investigation, EPA has yet to issue
19 preliminary findings of its investigation into the remaining allegation asserted in the Ashurst
20 Bar/Smith Complaint.

21 93. EPA's investigation into the Ashurst Bar/Smith Complaint has grossly exceeded 180
22 days as well as any reasonable period of time to conclude an investigation.

23 94. As a result of the permitting actions complained of in the Ashurst Bar/Smith
24 Complaint, the Stone's Throw Landfill was reopened in the spring of 2002 and remains in operation.
25 Ashurst Bar/Smith Community members have suffered from the adverse effects of the landfill,
26 including the large amount of truck traffic to and from the landfill on residential roads, putrid smells
27 that on some days can travel up to three miles from the landfill, and vultures and other pests that are
28 attracted to the landfill. At the time of the filing of this Complaint, the Stone's Throw Landfill

1 continues to be in operation, and Ashurst Bar/Smith Community members continue to have
2 reasonable concerns that the facility is adversely affecting their community in Tallassee, Alabama.

3 * * *

4 95. In all of the above instances, EPA has failed to issue preliminary findings within 180
5 days of accepting the Title VI Complaint for investigation, as required by law.

6 96. Plaintiffs' experiences with EPA's lax enforcement of its statutory duty to investigate
7 these Title VI Complaints are "sadly and unfortunately, typical of those who appeal to OCR to
8 remedy civil rights violations," in which OCR often "fail[s] to process a *single* complaint . . . in
9 accordance with its regulatory deadlines." *Rosemere Neighborhood Ass'n v. U.S. Env'tl. Prot.*
10 *Agency*, 581 F.3d 1169, 1175 (9th Cir. 2009) (emphasis in original); *see also Padres Hacia Una*
11 *Vida Mejor v. McCarthy*, 614 F. App'x 895, 897 (9th Cir. 2015) (echoing the District Judge's
12 finding that the EPA's seventeen-year delay in processing a Title VI complaint was "simply
13 deplorable").

14 97. In addition to the Plaintiffs' five Title VI Complaints, OCR's online docket indicates
15 that another twelve Title VI complaints were accepted or partially accepted between 1994 and 2014
16 but investigations into these complaints have not been completed. *See* Ex. 6.

17 98. OCR's lax enforcement of Title VI extends to all facets of the Title VI process.
18 Indeed, on or about March 21, 2011, Deloitte Consulting LLP released a report that found that only
19 six percent of Title VI complaints filed between 1993 and 2010 were accepted or rejected in
20 accordance with EPA's regulatory deadline of twenty days, *see* 40 C.F.R. § 7.120(d)(1)(i), and half
21 of these complaints took over one year to reach this stage. Deloitte Consulting LLP, *Evaluation of*
22 *the EPA Office of Civil Rights 25* (2011) (attached hereto as Exhibit 25).

23 99. More recently, a report issued by the Center for Public Integrity, based on its review
24 of all Title VI complaints filed with EPA from 1996 to mid-2013, found that the agency's delays in
25 processing and prosecuting complaints affected the disposition of claims and, particularly, that EPA
26 ultimately found allegations "'moot' precisely because of its own inaction." Kristen Lombardi et al.,
27 *Environmental Racism Persists, and the EPA is One Reason Why*, Center For Public Integrity, Sept.
28 4, 2015, <http://www.publicintegrity.org/2015/08/03/17668/environmental-racism-persists-and-epa->

1 [one-reason-why](#) (attached hereto as Exhibit 26); Yue Qiu & Talia Buford, *Decades of Inaction*,
2 Center For Public Integrity, Aug. 3, 2015,
3 <http://www.publicintegrity.org/2015/08/03/17726/decades-inaction> (attached hereto as Exhibit 27).

4 100. EPA has demonstrated a pattern and practice of unreasonable delay in investigating
5 Title VI complaints and issuing preliminary findings and recommendations within the mandated
6 time period.

7 **FIRST CLAIM FOR RELIEF**

8 **Violation of the Administrative Procedure Act**

9 (Failure to Issue Preliminary Findings; Prayer Center Complaint)

10 101. Plaintiffs hereby reallege and incorporate by reference all allegations in the preceding
11 paragraphs.

12 102. EPA has a mandatory duty to issue preliminary findings and recommendations for
13 voluntary compliance, if any, within 180 days of acceptance of a Title VI complaint for
14 investigation. 40 C.F.R. § 7.115(c).

15 103. EPA has failed to issue preliminary findings in response to the Prayer Center
16 Complaint within 180 days of the EPA's initiation of investigation.

17 104. EPA has failed to issue recommendations for voluntary compliance in response to the
18 Prayer Center Complaint within 180 days of the EPA's initiation of investigation.

19 105. EPA's failure constitutes an agency action unlawfully withheld and unreasonably
20 delayed contrary to and in violation of the APA. *See* 5 U.S.C. § 706(1).

21 106. EPA's violation is continuous and ongoing. EPA will continue to violate the APA
22 until it complies with its duty to issue preliminary findings and recommendations for voluntary
23 compliance in response to the Prayer Center Complaint.

24 **SECOND CLAIM FOR RELIEF**

25 **Violation of the Administrative Procedure Act**

26 (Failure to Issue Preliminary Findings; CARE Complaint)

27 107. Plaintiffs hereby reallege and incorporate by reference all allegations in the preceding
28 paragraphs.

1 118. EPA's violation is continuous and ongoing. EPA will continue to violate the APA
2 until it complies with its duty to issue preliminary findings and recommendations for voluntary
3 compliance in response to the Sierra Club Complaint.

4 **FOURTH CLAIM FOR RELIEF**

5 **Violation of the Administrative Procedure Act**

6 (Failure to Issue Preliminary Findings; CARD Complaint)

7 119. Plaintiffs hereby reallege and incorporate by reference all allegations in the preceding
8 paragraphs.

9 120. EPA has a mandatory duty to issue preliminary findings and recommendations for
10 voluntary compliance, if any, within 180 days of acceptance of a Title VI complaint for
11 investigation. 40 C.F.R. § 7.115(c).

12 121. EPA has failed to issue preliminary findings in response to the CARD Complaint
13 within 180 days of EPA's initiation of investigation.

14 122. EPA has failed to issue recommendations for voluntary compliance in response to the
15 CARD Complaint within 180 days of EPA's initiation of investigation.

16 123. EPA's failure constitutes an agency action unlawfully withheld and unreasonably
17 delayed contrary to and in violation of the APA. *See* 5 U.S.C. § 706(1).

18 124. EPA's violation is continuous and ongoing. EPA will continue to violate the APA
19 until it complies with its duty to issue preliminary findings and recommendations for voluntary
20 compliance in response to the CARD Complaint.

21 **FIFTH CLAIM FOR RELIEF**

22 **Violation of the Administrative Procedure Act**

23 (Failure to Issue Preliminary Findings; Ashurst Bar/Smith Complaint)

24 125. Plaintiffs hereby reallege and incorporate by reference all allegations in the preceding
25 paragraphs.

26 126. EPA has a mandatory duty to issue preliminary findings and recommendations for
27 voluntary compliance, if any, within 180 days of acceptance of a Title VI complaint for
28 investigation. 40 C.F.R. § 7.115(c).

1 127. EPA has failed to issue preliminary findings in response to the remaining allegations
2 asserted in the Ashurst Bar/Smith Complaint within 180 days of EPA's initiation of investigation.

3 128. EPA has failed to issue recommendations for voluntary compliance in response to the
4 remaining allegations asserted in the Ashurst Bar/Smith Complaint within 180 days of EPA's
5 initiation of investigation.

6 129. EPA's failure constitutes an agency action unlawfully withheld and unreasonably
7 delayed contrary to and in violation of the APA. *See* 5 U.S.C. § 706(1).

8 130. EPA's violation is continuous and ongoing. EPA will continue to violate the APA
9 until it complies with its duty to issue preliminary findings and recommendations for voluntary
10 compliance in response to the Ashurst Bar/Smith Complaint.

11 **SIXTH CLAIM FOR RELIEF**

12 **Violation of the Administrative Procedure Act**

13 (Pattern and Practice of Failing to Issue Preliminary Findings)

14 131. Plaintiffs hereby reallege and incorporate by reference all allegations in the preceding
15 paragraphs.

16 132. EPA has a mandatory duty to issue preliminary findings and recommendations for
17 voluntary compliance, if any, within 180 days of acceptance of a Title VI complaint for
18 investigation. 40 C.F.R. § 7.115(c).

19 133. EPA has failed to issue preliminary findings in response to allegations asserted in the
20 Title VI Complaints filed by the Prayer Center, CARE, Sierra Club, CARD, the Ashurst Bar/Smith
21 Community Organization, and other complainants within 180 days of EPA's initiation of
22 investigation.

23 134. EPA has failed to issue recommendations for voluntary compliance in response to
24 Title VI Complaints filed by the Prayer Center, CARE, Sierra Club, CARD, the Ashurst Bar/Smith
25 Community Organization, and other complainants within 180 days of EPA's initiation of
26 investigation.

27 135. EPA's failure to investigate Title VI complaints and issue preliminary findings and
28 recommendations within the mandated time period constitutes a pattern and practice of agency

1 action unlawfully withheld and unreasonably delayed contrary to and in violation of the APA. *See* 5
2 U.S.C. § 706(1).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs respectfully request that this Court:

5 (a) Declare that EPA's failure to meet its mandatory duty and comply with the deadline
6 set forth in 40 C.F.R. § 7.115, requiring the EPA to issue preliminary findings and recommendations
7 for voluntary compliance within 180 days of initiating its investigation into a Title VI complaint,
8 constitutes agency action unlawfully withheld and unreasonably delayed under the APA with respect
9 to each of Plaintiffs' Title VI Complaints;

10 (b) Declare that EPA's failure to meet its mandatory duty and comply with the deadline
11 set forth in 40 C.F.R. § 7.115, requiring the EPA to issue preliminary findings and recommendations
12 for voluntary compliance within 180 days of initiating its investigation into a Title VI complaint,
13 constitutes a pattern or practice of agency action unlawfully withheld and unreasonably delayed
14 under the APA;

15 (c) Issue an injunction compelling EPA to issue preliminary findings and
16 recommendations for voluntary compliance for the investigations into each of Plaintiffs' Title VI
17 Complaints within ninety (90) days of this Court's order, compelling EPA to complete the complaint
18 investigation procedures set forth in 40 C.F.R. part 7 in response to each of Plaintiffs' Title VI
19 Complaints in compliance with the timelines set forth in those regulations and provide reports on the
20 status of the investigations to the Court every thirty (30) days after the Court's order;

21 (d) Award Plaintiffs their costs of litigation, including reasonable attorney and expert
22 witness fees, pursuant to 28 U.S.C. § 2412(b); and

23 (e) Grant Plaintiffs such further and additional relief as the Court may deem just, proper,
24 and equitable.

1 DATED: January 19, 2017

Respectfully submitted,

2 /s/ Suzanne Novak

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Ashurst/Bar Smith Community Organization, Saint
Francis Prayer Center, Sierra Club, and Michael Boyd*

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2017, I electronically transmitted the foregoing Second Amended Complaint with exhibits to the Clerk of Court using the ECF system for filing, which will send notification of such filing to all listed counsel of record.

/s/ Suzanne Novak
SUZANNE NOVAK

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