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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 CENTER FOR BIOLOGICAL DIVERSITY
21 and
22 CENTER FOR ENVIRONMENTAL
23 HEALTH

24 Plaintiffs,

25 vs.

26 ANDREW R. WHEELER, in his official
27 capacity as Administrator of the United States
28 Environmental Protection Agency,

Defendant.

Case No. 3:19-CV-02782-EMC

AMENDED COMPLAINT

(Clean Air Act, 42 U.S.C. §§ 7401 *et seq*)

INTRODUCTION

1
2 1. This action is brought under the federal Clean Air Act, 42 U.S.C. §§ 7401 –
3 7671q, and seeks to compel the Administrator of the United States Environmental Protection
4 Agency (“EPA”) to carry out his outstanding legal obligations to: (1) promulgate a Federal
5 Implementation Plan (“FIP”) addressing the 2006 24-hour National Ambient Air Quality
6 Standards (“NAAQS”) for particulate matter 2.5 micrometers or less (“PM_{2.5}”) for the Yolo-
7 Solano Air Quality Management District; (2) take final action either approving or disapproving
8 the contingency measures incorporated in the Portola Fine Particulate Matter (PM_{2.5}) Attainment
9 Plan submitted by the state of California for the Portola region of Plumas County; (3) take final
10 action on 49 plan elements submitted by the state of Arizona to implement the 2008 8-hour
11 ozone NAAQS for the Phoenix-Mesa region; and (4) take final action on five plan elements
12 submitted by the state of California to implement the 2008 8-hour ozone NAAQS for Ventura
13 County, California.

14 2. Soot and smog air pollution have profound effects on human health. Soot (PM_{2.5})
15 contributes to premature mortality, aggravation of respiratory and cardiovascular disease,
16 decreased lung function, and visibility impairment. EPA has found that short and long-term
17 exposure to smog (ozone) can result in “enhanced respiratory symptoms in asthmatic individuals,
18 school absences, and premature mortality.” 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008).
19 Individuals particularly sensitive to soot and smog exposure include older adults, people with
20 heart and lung disease, active people, and children. *See* 78 Fed. Reg. 3086, 3088 (Jan. 15, 2013);
21 62 Fed. Reg. 38,653, 38,668 (July 18, 1997); 73 Fed. Reg. 16,436, 16,440 (Mar. 27, 2008).

22 3. EPA also found that some plant species are especially sensitive to ozone
23 pollution, which stunts growth, interferes with photosynthesis, and increases susceptibility to
24 disease, weather, and insects. These negative impacts have a damaging effect on the surrounding
25 ecosystem, including loss of biodiversity, habitat degradation, and water, nutrient, and carbon
26 cycling. Studies link long-term ozone exposure to adverse health effects in birds such
27 inflammation, ruptured blood vessels, lung failure, decreases in egg production and hatching,
28

1 brood abandonment, and reduced growth.

2 4. Accordingly, Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY and
3 CENTER FOR ENVIRONMENTAL HEALTH bring this action against Defendant ANDREW
4 R. WHEELER, in his official capacity as Administrator for the United States Environmental
5 Protection Agency, to compel him to perform his mandatory duties to ensure health and public
6 welfare protections promised under the Clean Air Act.

7 **JURISDICTION**

8 5. This case is a Clean Air Act “citizen suit.” Therefore, the Court has jurisdiction
9 over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. §
10 7604(a) (Clean Air Act citizen suits).

11 6. An actual controversy exists between the parties. This case does not concern
12 federal taxes, is not a proceeding under 11 U.S.C. §§ 505 of 1146, and does not involve the
13 Tariff Act of 1930.

14 7. Thus, this Court has jurisdiction to order declaratory relief under 28 U.S.C. §§
15 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue
16 injunctive relief.

17 **NOTICE**

18 8. Plaintiffs mailed by certified mail, return receipt requested, written notice of
19 intent to sue regarding Claims 1 - 3 alleged in the original Complaint filed on May 22, 2019 and
20 incorporated in this Amended Complaint. EPA received the notice letter regarding the claims in
21 the original complaint on or about March 11, 2019.

22 9. Plaintiffs subsequently mailed by certified mail, return receipt requested, written
23 notice of intent to sue regarding Claim 4 (2008 8-hour ozone NAAQS for Ventura County,
24 California) alleged in this Amended Complaint. EPA received the notice letter regarding the
25 violations in this amended complaint on June 10, 2019.

26 10. More than sixty days have passed since EPA received the notice letters discussed
27 above. EPA has not remedied the violations alleged in this Amended Complaint. Therefore, a

1 present and actual controversy exists between the parties.

2 **VENUE**

3 11. Defendant EPA resides in this judicial district. This civil action is brought against
4 an officer of the United States acting in his official capacity and a substantial part of the events
5 or omissions giving rise to the claims in this case occurred in the Northern District of California.
6 Each claim in this Amended Complaint concerns EPA's failure to perform mandatory duties
7 with regard to California and Arizona. EPA Region 9, which is responsible for California and
8 Arizona, is headquartered in San Francisco. Thus, events and omissions at issue in this action
9 occurred at EPA's Region 9 headquarters in San Francisco. Additionally, Plaintiff CENTER
10 FOR ENVIRONMENTAL HEALTH is headquartered in Oakland. Accordingly, venue is proper
11 in this Court pursuant to 28 U.S.C. § 1391(e).

12 **INTRADISTRICT ASSIGNMENT**

13 12. A substantial part of the events and omissions giving rise to the claims in this case
14 occurred in the County of San Francisco. Accordingly, assignment to the Oakland or San
15 Francisco Division is proper pursuant to Civil L.R. 3-2(c) and (d).

16 **PARTIES**

17 13. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)
18 corporation incorporated in California. The Center for Biological Diversity's mission is to ensure
19 the preservation, protection, and restoration of biodiversity, native species, ecosystems, public
20 lands and waters, and public health through science, policy, and environmental law. Based on the
21 understanding that the health and vigor of human societies and the integrity and wildness of the
22 natural environmental are closely linked, the Center for Biological Diversity is working to secure
23 a future for animals and plants hovering on the brink of extinction, for the ecosystems they need
24 to survive, and for a healthy, livable future for all of us.

25 14. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is an Oakland,
26 California based non-profit organization that helps protect the public from toxic chemicals and
27 promotes business products and practices that are safe for public health and the environment.

1 The Center for Environmental Health works in pursuit of a world in which all people live, work,
2 learn and play in health environments.

3 15. Plaintiffs' members live, work, recreate, travel and engage in activities throughout
4 the areas at issue in this Amended Complaint and will continue to do so on a regular basis.
5 Pollution in the affected areas threatens and damages, and will continue to threaten and damage,
6 the health and welfare of Plaintiffs' members. Pollution diminishes Plaintiffs' members' ability
7 to enjoy the aesthetic qualities and recreational opportunities of the affected area.

8 16. EPA's failure to timely perform the mandatory duties described herein also
9 adversely affects Plaintiffs, as well as their members, by depriving them of procedural
10 protection, opportunities, and information that they are entitled to under the Clean Air Act.
11 Furthermore, EPA's failure to perform its mandatory duties also creates uncertainty for
12 Plaintiffs' members as to whether they are exposed to excess air pollution.

13 17. Defendant ANDREW R. WHEELER is sued in his official capacity as the
14 Administrator of the United States Environmental Protection Agency ("EPA"). In that role, the
15 EPA has been charged by Congress with the duty to administer the Clean Air Act, including the
16 mandatory duties at issue in this case.

17 18. The above injuries will continue until the Court grants the relief requested herein.

18 STATUTORY FRAMEWORK

19 19. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war
20 against air pollution in the United States with a view to assuring the air we breathe through the
21 Nation is wholesome once again." H.R. Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S. Code
22 Cong. & Admin. News 5356, 5356.

23 20. Commensurate with this goal, Congress authorized the Administrator of the
24 United States Environmental Protection Agency to establish National Ambient Air Quality
25 Standards ("NAAQS") for "criteria pollutants," which are air pollutants that "cause or contribute
26 to air pollution which may reasonably be anticipated to endanger public health or welfare." 42
27 U.S.C. § 7408(a)(1)(A).

1 21. There are primary and secondary NAAQS. *Id.* § 7409(a)(1)(A). Primary NAAQS
2 provide for “an adequate margin of safety...to protect the public health,” while secondary
3 NAAQS “protect the public welfare from any known or anticipated adverse effects associated
4 with the presence of such air pollutants in the ambient air.” *Id.* § 7409(b)(1)-(2).

5 22. After promulgating a new or revised NAAQS, the Administrator determines
6 whether geographic areas are designated nonattainment (areas that do not meet the primary or
7 secondary NAAQS), attainment (areas that meet the primary or secondary NAAQS), or
8 unclassifiable (areas that cannot be classified based on available information). *Id.* §
9 7407(d)(1)(A).

10 23. States are required to submit State Implementation Plans (“SIPs”) and plan
11 revisions that “provide for the implementation, maintenance, and enforcement” of any NAAQS.
12 *Id.* § 7410(a)(1).

13 24. Within six months of a state submitting a SIP, the Administrator must make a
14 completeness finding. If a determination is not made within six months of submittal, the plan
15 submission is deemed administratively complete by operation of law. *Id.* § 7410(k)(1)(B).

16 25. The Administrator is required to take final action to approve, disapprove, or
17 provide a conditional approval or disapproval within twelve months of a completeness finding.
18 *Id.* § 7410(k)(2)-(4).

19 26. Within two years of the Administrator finding that a state failed to submit a
20 required SIP or SIP revision by the required deadline for submittal, the Administrator must
21 promulgate a Federal Implementation Plan. *Id.* § 7410(c).

22 **FACTUAL BACKGROUND**

23 **A. Yolo-Solano Air Quality Management District: 2006 24-hour PM_{2.5}**
24 **Standard**

25 27. On May 16, 2008, EPA issued a final rule establishing the requirements for the
26 2006 PM_{2.5} NAAQS New Source Review permitting rules. 73 Fed. Reg. 28,321 (May 16, 2008).

27 28. The rule requires states to submit SIP revisions that integrate the new source
28

1 review requirements for nonattainment areas by December 31, 2014. *See* 81 Fed. Reg. 36,803
2 (Jun. 8, 2016); 79 Fed. Reg. 31,566 (June 2, 2014).

3 29. On June 8, 2016, EPA made a finding that California failed to submit new source
4 review SIP revisions for the Yolo-Solano Air Quality Management District. *See* 81 Fed. Reg.
5 36,803 (Jun. 8, 2016).

6 30. EPA's finding became effective on July 8, 2016. This finding initiated a two-year
7 deadline for EPA to promulgate a new source review Federal Implementation Plan ("FIP") for
8 the Yolo-Solano Air Quality Management District. *Id.*

9 31. Pursuant to 42 U.S.C. § 7410(c), EPA was required to promulgate a FIP no later
10 than July 9, 2018.

11 32. On July 11, 2019, EPA issued a *proposed* rule to "approve a rule governing
12 issuance of permits for stationary sources, including review and permitting of major sources and
13 major modifications under part D of title I of the Clean Air Act (CAA or "the Act")" for the
14 Yolo-Solano Air Quality Management District. Proposed rules, however, have no legal effect
15 and do not obviate EPA's mandatory duty to promulgate a FIP.

16 33. To date, EPA has failed to promulgate a new source review FIP for the Yolo-
17 Solano Air Quality Management District.

18 **B. Plumas County, California: 2012 Annual PM_{2.5} Standard**

19 34. On January 15, 2013, EPA published a final rule establishing the 2012 annual
20 PM_{2.5} NAAQS. 78 Fed. Reg. 3,086 (Jan. 15, 2013).

21 35. Under the 2012 annual PM_{2.5} NAAQS, the Portola area of Plumas County,
22 California is designated as a "moderate" nonattainment area. The designation required the
23 Northern Sierra Air Quality Management District to submit a nonattainment SIP for the Portola
24 area of Plumas County, California. 83 Fed. Reg. 64,774, 64,775 (Dec. 18, 2018).

25 36. On February 28, 2017, California submitted the Portola Fine Particulate Matter
26 PM_{2.5} Attainment Plan ("Portola Plan"), on behalf of the Northern Sierra Air Quality
27 Management District.

1 37. The Portola Plan “became complete by operation of law on August 28, 2017.” 83
2 Fed. Reg. 64,774, 64,776 (Dec. 18, 2018).

3 38. In its proposed rule for the Portola Plan, EPA declined to take “any action at this
4 time on the contingency measures in the Portola Plan.” 83 Fed. Reg. 64,774 (Dec. 18, 2018)

5 39. On March 25, 2019, EPA issued a final rule on the Portola Plan to approve all
6 elements of the Portola Plan except the contingency measures. 84 Fed. Reg. 11,208 (Mar. 29,
7 2019).

8 40. EPA has a mandatory duty to take final action on SIP submittals within twelve
9 months of those SIP submittals becoming administratively complete. 42 U.S.C. § 7410(k)(2)-(4).

10 41. EPA was required to take final action either approving or disapproving the
11 Portola Plan’s contingency measures by August 28, 2018.

12 42. To date, EPA has failed to take final action on the Portola Plan’s contingency
13 measures.

14 **C. Phoenix-Mesa, Arizona: 2008 8-hour Ozone NAAQS**

15 43. EPA promulgated the 2008 8-hour ozone NAAQS no later than on March 27,
16 2008. 73 Fed. Reg. 16,436 (Mar. 27, 2008). EPA subsequently published the SIP requirements
17 for implementing the 2008 8-hour ozone NAAQS on March 6, 2015. 80 Fed. Reg. 12, 264 (Mar.
18 6, 2015).

19 44. For the 2008 8-hour ozone NAAQS, EPA designated the Phoenix-Mesa region of
20 Arizona as a “moderate” nonattainment area. *See* 81 Fed. Reg. 26,697, 26,699 (May 4,
21 2016). The classification required the state to submit a nonattainment SIP for the 2008 8-hour
22 ozone NAAQS. 80 Fed. Reg. 12, 264 (Mar. 6, 2015).

23 45. EPA has a mandatory duty to take final action on SIP submittals within twelve
24 months of those SIP submittals becoming administratively complete. 42 U.S.C. § 7410(k)(2)-(4).

25 46. EPA is in violation of this mandatory duty for the Phoenix-Mesa, Arizona
26 nonattainment areas for the SIP elements listed in Table 1 below.

TABLE 1

Element	SIP Requirement	Submittal Date	Completion Date (no later than)	Final Action Due Date
1	Contingency Measures Volatile Organic Compounds (“VOC”) and Nitrogen Oxides (“NOx”)	12/19/2016	06/19/2017	6/19/2018
2	Reasonable Further Progress (“RFP”) VOC and NOx – Moderate	12/19/2016	6/19/2017	6/19/2018
3	Ozone Attainment Demonstration	12/19/2016	6/19/2017	6/19/2018
4	Reasonable Available Control Technology (“RACT”) Non-Control Technology Guidelines (“CTG”) VOC for Major Sources	6/22/2017	12/22/2017	12/22/2018
5	RACT NOx for Major Sources	6/22/2017	12/22/2017	12/22/2018
6	RACT VOC CTG Aerospace	6/22/2017	12/22/2017	12/22/2018
7	RACT VOC CTG Auto and Light-Duty Truck Assembly Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
8	RACT VOC CTG Bulk Gasoline Plants	6/22/2017	12/22/2017	12/22/2018
9	RACT VOC CTG Equipment Leaks from Natural Gas/Gasoline Processing Plants	6/22/2017	12/22/2017	12/22/2018
10	RACT VOC CTG Factory Surface Coating of Flat Wood Paneling	6/22/2017	12/22/2017	12/22/2018

11	RACT VOC CTG Fiberglass Boat Manufacturing Materials (2008)	6/22/2017	12/22/2017	12/22/2018
12	RACT VOC CTG Flat Wood Paneling Coatings (2006)	6/22/2017	12/22/2017	12/22/2018
13	RACT VOC CTG Flexible Packaging Printing Materials (2006)	6/22/2017	12/22/2017	12/22/2018
14	RACT VOC CTG Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment	6/22/2017	12/22/2017	12/22/2018
15	RACT VOC CTG Graphic Arts - Rotogravure and Flexography	6/22/2017	12/22/2017	12/22/2018
16	RACT VOC CTG Industrial Cleaning Solvents (2006)	6/22/2017	12/22/2017	12/22/2018
17	RACT VOC CTG Large Appliance Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
18	RACT VOC CTG Large Petroleum Dry Cleaners	6/22/2017	12/22/2017	12/22/2018
19	RACT VOC CTG Leaks from Gasoline Tank Trucks and Vapor Collection Systems	6/22/2017	12/22/2017	12/22/2018
20	RACT VOC CTG Leaks from Petroleum Refinery Equipment	6/22/2017	12/22/2017	12/22/2018

1		RACT VOC CTG			
2	21	Lithographic Printing Materials and Letterpress Printing Materials (2006)	6/22/2017	12/22/2017	12/22/2018
3					
4					
5	22	RACT VOC CTG Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins	6/22/2017	12/22/2017	12/22/2018
6					
7					
8	23	RACT VOC CTG Manufacture of Pneumatic Rubber Tires	6/22/2017	12/22/2017	12/22/2018
9					
10					
11	24	RACT VOC CTG Manufacture of Synthesized Pharmaceutical Products	6/22/2017	12/22/2017	12/22/2018
12					
13					
14	25	RACT VOC CTG Metal Furniture Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
15					
16	26	RACT VOC CTG Miscellaneous Industrial Adhesives (2008)	6/22/2017	12/22/2017	12/22/2018
17					
18					
19	27	RACT VOC CTG Miscellaneous Metal Products Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
20					
21	28	RACT VOC CTG Paper, Film, and Foil Coatings (2007)	6/22/2017	12/22/2017	12/22/2018
22					
23	29	RACT VOC CTG Petroleum Liquid Storage in External Floating Roof Tanks	6/22/2017	12/22/2017	12/22/2018
24					
25	30	RACT VOC CTG Plastic Parts Coatings (2008)	6/22/2017	12/22/2017	12/22/2018
26					
27					
28					

1		RACT VOC CTG			
2		Refinery Vacuum			
3	31	Producing Systems, Wastewater	6/22/2017	12/22/2017	12/22/2018
4		Separators, and			
5		Process Unit			
6		Turnarounds			
7	32	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
8		SOCMI Air			
9		Oxidation Processes			
10	33	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
11		SOCMI Distillation			
12		and Reactor			
13		Processes			
14	34	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
15		Shipbuilding/repair			
16	35	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
17		Solvent Metal			
18		Cleaning			
19	36	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
20		Stage I Vapor			
21		Control Systems -			
22		Gasoline Service			
23		Stations			
24	37	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
25		Storage of Petroleum			
26		Liquids in Fixed			
27		Roof Tanks			
28	38	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
		Surface Coating for			
		Insulation of Magnet			
		Wire			
	39	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
		Surface Coating of			
		Automobiles and			
		Light-Duty Trucks			
	40	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
		Surface Coating of			
		Cans			
	41	RACT VOC CTG	6/22/2017	12/22/2017	12/22/2018
		Surface Coating of			
		Coils			

42	RACT VOC CTG Surface Coating of Fabrics	6/22/2017	12/22/2017	12/22/2018
43	RACT VOC CTG Surface Coating of Large Appliances	6/22/2017	12/22/2017	12/22/2018
44	RACT VOC CTG Surface Coating of Metal Furniture	6/22/2017	12/22/2017	12/22/2018
45	RACT VOC CTG Surface Coating of Miscellaneous Metal Parts and Products	6/22/2017	12/22/2017	12/22/2018
46	RACT VOC CTG Surface Coating of Paper	6/22/2017	12/22/2017	12/22/2018
47	RACT VOC CTG Tank Truck Gasoline Loading Terminals	6/22/2017	12/22/2017	12/22/2018
48	RACT VOC CTG Use of Cutback Asphalt	6/22/2017	12/22/2017	12/22/2018
49	RACT VOC CTG Wood Furniture	6/22/2017	12/22/2017	12/22/2018

47. To date, EPA has not taken final action on the SIP elements listed in Table 1.

D. Ventura County, California: 2008 8-hour Ozone NAAQS

48. For the 2008 8-hour ozone NAAQS, EPA designated Ventura County, California (Ventura County (part)) as a “serious” nonattainment area. *See* 77 Fed. Reg. 30,088, 30,109 (May 21, 2012). This designation required the state to submit a nonattainment SIP. 80 Fed. Reg. 12,264 (Mar. 6, 2015).

49. EPA has a mandatory duty to take final action on SIP submittals within twelve months of those SIP submittals becoming administratively complete. 42 U.S.C. § 7410(k)(2)-(4).

50. EPA has not taken final action for the SIP elements for the Ventura County, California 2008 8-hour ozone NAAQS serious nonattainment area listed below in Table 2 which were deemed administratively complete more than twelve months ago.

TABLE 2

SIP Elements	Submittal Date	Completion Date (no later than)	Final Action Due Date
Contingency Measures Volatile Organic Compounds ("VOC") and Nitrogen Oxides ("NOx")	4/11/2017	10/11/2017	10/11/2018
Emission Inventory	7/17/2014	1/17/2015	1/17/2016
Emission Statement	4/11/2017	10/11/2017	10/11/2018
Ozone Attainment Demonstration	4/11/2017	10/11/2017	10/11/2018
Reasonable Further Progress ("RFP") Volatile Organic Compound ("VOC") and Nitrogen Oxides ("NOx") - Serious	4/11/2017	10/11/2017	10/11/2018

CLAIMS FOR RELIEF

FIRST CLAIM

(Failure to promulgate a new source review FIP for Yolo-Solano Air Quality Management District)

51. Plaintiffs incorporate by reference all paragraphs listed above.

52. It has been more than two years since EPA made a finding of California's failure to submit a SIP on behalf of the Yolo-Solano Air Quality Management District to implement the nonattainment new source review element for the 2006 24-hour PM_{2.5} NAAQS.

53. EPA has not promulgated a FIP to address this nonattainment new source review element.

54. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(c)(1) with regard to this element.

1 **SECOND CLAIM**

2 **(Failure to take final action on the contingency measures for the Portola Plan)**

3 55. Plaintiffs incorporate by reference all paragraphs listed above.

4 56. It has been more than twelve months since the Portola Plan contingency measures
5 for the 2012 annual PM_{2.5} NAAQS were deemed administratively complete.

6 57. EPA has not taken final action on the Portola Plan contingency measures for the
7 2012 annual PM_{2.5} NAAQS.

8 58. EPA is in violation of its mandatory duty under 42 U.S.C. § 7410(k)(2)-(4) to
9 take final action on the Portola Plan contingency measures for the 2012 annual PM_{2.5} NAAQS.

10 59. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. §
11 7410(c)(1) with regard to this element.

12 **THIRD CLAIM**

13 **(Failure to take final action on the 2008 8-hour ozone SIP submittals for Phoenix-Mesa,**
14 **Arizona)**

15 60. Plaintiffs incorporate by reference all paragraphs listed above.

16 61. It has been more than twelve months since the 2008 8-hour ozone NAAQS SIP
17 elements for the Phoenix-Mesa 2008 ozone NAAQS nonattainment area listed in Table 1 were
18 deemed administratively complete.

19 62. EPA has not taken final action on the 2008 8-hour ozone NAAQS SIP elements
20 for the Phoenix-Mesa 2008 ozone NAAQS nonattainment area listed in Table 1.

21 63. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. §
22 7410(k)(2)-(4) to take final action on the 2008 8-hour ozone NAAQS SIP elements for the
23 Phoenix-Mesa 2008 ozone NAAQS nonattainment area listed in Table 1.

24 **FOURTH CLAIM**

25 **(Failure to take final action on the 2008 8-hour ozone SIP submittals for Ventura County,**
26 **California)**

27 64. Plaintiffs incorporate by reference all paragraphs listed above.

1 65. It has been more than twelve months since the nonattainment SIP elements for the
2 2008 ozone NAAQS Ventura County, California Serious nonattainment area listed in Table 2
3 were deemed administratively complete.

4 66. EPA has not taken final action on the 2008 8-hour ozone NAAQS SIP elements
5 for the 2008 ozone NAAQS Ventura County, California Serious nonattainment area listed in
6 Table 2.

7 67. Accordingly, EPA is in violation of its mandatory duty under 42 U.S.C. §
8 7410(k)(2)-(4) to take final action on the 2008 8-hour ozone NAAQS SIP elements for the
9 Ventura County, California 2008 ozone NAAQS nonattainment area listed in Table 2.

10 **REQUEST FOR RELIEF**

11 Wherefore, Plaintiffs respectfully request that the Court:

12 68. Declare that the Administrator is in violation of the Clean Air Act with regard to
13 his nondiscretionary duty to perform each mandatory duty listed above;

14 69. Issue a mandatory injunction requiring the Administrator to perform his
15 mandatory duties by certain dates;

16 70. Retain jurisdiction of this matter for purposes of enforcing the Court's order;

17 71. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and expert
18 fees; and

19 72. Grant such other relief as the Court deems just and proper.

1 Dated: August 13, 2019

2
3 Respectfully submitted,

4 /s/ Robert Ukeiley

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