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6 *Signature Page)*

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
9 **OAKLAND DIVISION**

10 AMERICAN LUNG ASSOCIATION,)
11 AMERICAN PUBLIC HEALTH)
12 ASSOCIATION, AMERICAN THORACIC)
13 SOCIETY, APPALACHIAN MOUNTAIN)
14 CLUB, CENTER FOR BIOLOGICAL)
15 DIVERSITY, ENVIRONMENTAL)
16 DEFENSE FUND, ENVIRONMENTAL)
17 LAW AND POLICY CENTER, NATIONAL)
18 PARKS CONSERVATION ASSOCIATION,)
19 NATURAL RESOURCES DEFENSE)
20 COUNCIL, SIERRA CLUB, and WEST)
21 HARLEM ENVIRONMENTAL ACTION,)

22 Plaintiffs,

23 v.

24 SCOTT PRUITT, Administrator, United)
25 States Environmental Protection Agency, in)
26 his official capacity,)
27)
28)

Defendant.

Civil Action No. 4:17-cv-06900-HSG

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION

1
2 1. All areas of the country are legally entitled to healthy, clean air. Not all areas have it.
3 Plaintiffs American Lung Association, American Public Health Association, American Thoracic
4 Society, Appalachian Mountain Club, Center for Biological Diversity, Environmental Defense
5 Fund, Environmental Law and Policy Center, National Parks Conservation Association, Natural
6 Resources Defense Council, Sierra Club, and West Harlem Environmental Action bring this
7 action for declaratory judgment and injunctive relief to compel Defendant Scott Pruitt
8 (“Administrator” or “Defendant”), in his official capacity as Administrator of the U.S.
9 Environmental Protection Agency (“EPA”), to carry out his overdue legal obligation to officially
10 identify those areas of the country with dangerous levels of ground-level ozone air pollution, a
11 necessary step toward bringing those areas into compliance with federal clean air standards by
12 legally mandated deadlines.
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14

15 2. Ground-level ozone, or smog, seriously harms human health and the environment. At
16 high enough levels, it impairs breathing, inflames lungs, sends people to the hospital, and can
17 even kill. It also harms growing plants and even entire ecosystems. The Clean Air Act requires
18 EPA to establish health- and welfare-based national ambient air quality standards (“ozone
19 standards”) to limit the amount of ozone allowed in the outdoor air. Areas with ozone pollution
20 levels that violate the standards must clean up their air, and areas whose emissions contribute to
21 poor air quality in downwind communities must reduce those emissions.
22

23 3. EPA strengthened the ozone standards in 2015 based on an extensive scientific record
24 leading to its recognition that the prior ozone standards were inadequate to protect public health
25 and welfare. The signing of the final rule on October 1, 2015, triggered the Administrator’s
26 nondiscretionary duty to “promulgate the designations of all areas” of the country as meeting
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1 (“in attainment of”) or not meeting (“in nonattainment of”) the standards within two years—*i.e.*,
2 by October 1, 2017. 42 U.S.C. § 7407(d)(1)(B)(i).

3 4. This deadline has passed and the Administrator has not yet promulgated designations for
4 all areas of the nation. The areas that have not yet been designated are those that are most
5 polluted, where tens of millions of people live and work. EPA’s failure to meet the deadline that
6 Congress prescribed violates the Clean Air Act; thus, Plaintiffs seek both declaratory relief and
7 an order to compel the Administrator to issue designations for all areas forthwith.
8

9 **JURISDICTION AND VENUE**

10 5. This action arises under the Clean Air Act, 42 U.S.C. § 7407(d)(1)(B)(i). This Court has
11 jurisdiction over this action pursuant to 42 U.S.C. § 7604(a)(2) and 28 U.S.C. §§ 1331 and 1361.
12 This Court may grant the relief Plaintiffs request pursuant to 42 U.S.C. § 7604(a) and 28 U.S.C.
13 §§ 2201, 2202, and 1361. Plaintiffs have a right to bring this action pursuant to the Clean Air
14 Act, 42 U.S.C. § 7604(a)(2); 28 U.S.C. § 1361; and the Administrative Procedure Act, 5 U.S.C.
15 §§ 701-706.
16

17 6. By certified letters to the Administrator posted on October 3, 2017, and October 18,
18 2017, Plaintiffs gave notice of this action as required by the Clean Air Act, 42 U.S.C.
19 § 7604(b)(2), and 40 C.F.R. Part 54.
20

21 7. Venue is proper in this Court under 28 U.S.C. § 1391(e) because a) Plaintiff Sierra Club
22 resides in this district; b) this district is one in which Defendant EPA resides and performs its
23 official duties; and c) a substantial part of the events and omissions giving rise to this claim has
24 occurred and is occurring in this district because EPA’s failure to act as complained of herein
25 threatens the health and welfare of district residents, including members of Plaintiffs (as further
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1 detailed herein), and because EPA's Regional Office in San Francisco, California, has a
2 substantial role in implementing the EPA duties at issue in this case.

3 8. Pursuant to Civil L.R. 3-2(c), (d), this case is properly assigned to the San Francisco or
4 Oakland Division of this Court because Plaintiff Sierra Club resides in Oakland, California, and
5 Defendant EPA resides in San Francisco, California.
6

7 **PARTIES**

8 9. Plaintiff **American Lung Association** is a corporation organized and existing under the
9 laws of Maine. ALA is a national nonprofit organization dedicated to a world free of lung
10 disease and to saving lives by preventing lung disease and promoting lung health. ALA's Board
11 of Directors includes pulmonologists and other health professionals.
12

13 10. Plaintiff **American Public Health Association** is an organization incorporated in
14 Massachusetts, and has members from all fields of public health. Its issues include those
15 affecting personal and environmental health and pollution control, chronic and infectious
16 diseases, and health equity.
17

18 11. Plaintiff **American Thoracic Society** is an international, non-profit medical-professional
19 organization organized and existing under the laws of the State of New York. Its members
20 protect public health by preventing and treating respiratory disease, critical care illness, and
21 sleep-disordered breathing through research, education, care, and advocacy.
22

23 12. Plaintiff **Appalachian Mountain Club** is a corporation organized and existing under the
24 laws of the Commonwealth of Massachusetts. It is a regional nonprofit organization dedicated to
25 promoting the protection, enjoyment, and understanding of the mountains, forests, waters, and
26 trails of the Northeast and Mid-Atlantic Outdoors.
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1 13. Plaintiff **Center for Biological Diversity** is a national nonprofit corporation organized
2 and existing under the laws of the State of California. The organization uses science and law in
3 its work, which focuses on the preservation, protection, and restoration of biodiversity, native
4 species, ecosystems, public lands and waters, and public health.
5

6 14. Plaintiff **Environmental Defense Fund** is a national nonprofit corporation organized and
7 existing under the laws of the State of New York. It links science, economics, and law to create
8 innovative, equitable, and cost-effective solutions to society's most urgent environmental
9 problems.
10

11 15. Plaintiff **Environmental Law and Policy Center** is a nonprofit corporation incorporated
12 in and operating under the requirements of the State of Illinois. It is a legal advocacy
13 organization dedicated to improving environmental quality and protecting natural resources in
14 the Midwest and Great Plains states.
15

16 16. Plaintiff **National Parks Conservation Association** is a national nonprofit corporation
17 organized and existing under the laws of the District of Columbia. It is dedicated to protecting
18 and enhancing America's National Parks for present and future generations.
19

20 17. Plaintiff **Natural Resources Defense Council** is a national nonprofit corporation
21 organized and existing under the laws of the State of New York that is dedicated to improving
22 the quality of the human environment and protecting the nation's endangered natural resources.
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24 18. Plaintiff **Sierra Club** is a nonprofit corporation organized and existing under the laws of
25 the State of California, with its headquarters located in Oakland, California. It is dedicated to the
26 protection and enjoyment of the environment.
27

28 19. Plaintiff **West Harlem Environmental Action** is a corporation organized and existing
under the laws of New York. Founded in 1988, it is a Northern Manhattan community-based

1 organization whose mission is to build healthy communities by assuring that people of color
2 and/or those with low income participate meaningfully in the creation of sound and fair
3 environmental health and protection policies and practices.

4 20. Collectively, Plaintiffs have over two million members, with members living, working,
5 and engaging in outdoor activities in all 50 states and Washington, DC.

6 21. Defendant Scott Pruitt is the Administrator of the EPA. In that role, he is charged with
7 the duty to uphold the Clean Air Act and to take required regulatory actions according to the
8 schedules established therein. Administrator Pruitt is sued in his official capacity.

9 10 **FACTUAL BACKGROUND: OZONE**

11 22. Ozone, the main component of smog, is a corrosive air pollutant that inflames the lungs
12 and constricts breathing, and likely kills people. *See* 80 FR 65,292, 65,308/3-09/1 (Oct. 26,
13 2015); EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* 2-20
14 to -23 tbl.2-1 (EPA-HQ-OAR-2008-0699-0405, Feb. 2013) (“ISA”). It causes and exacerbates
15 asthma attacks, emergency room visits, hospitalizations, and other serious health harms. *E.g.*,
16 EPA, *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards* 3-
17 18, 3-26 to -29, 3-32 (EPA-HQ-OAR-2008-0699-0404, Aug. 2014) (“PA”); ISA 2-16 to -18, 2-
18 20 to -24 tbl.2-1. Ozone-induced health problems can force people to change their ordinary
19 activities, requiring children to stay indoors and forcing people to take medication and miss work
20 or school. *E.g.*, PA 4-12.

21 23. Ozone can harm healthy adults, but others are more vulnerable. *See* 80 FR 65,310/1-3.
22 Because their respiratory tracts are not fully developed, children are especially vulnerable to
23 ozone pollution, particularly when they have elevated respiratory rates, as when playing
24 outdoors. *E.g.*, PA 3-81 to -82. People with lung disease and the elderly also have heightened
25 vulnerability. *See* 80 FR 65,310/3. People with asthma suffer more severe impacts from ozone
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1 exposure than healthy individuals do and are more vulnerable at lower levels of exposure. *Id.*
2 65,311/1 n.37, 65,322/3.

3 24. Ozone also damages vegetation and forested ecosystems, causing or contributing to
4 widespread stunting of plant growth, tree deaths, visible leaf injury, reduced carbon storage, and
5 reduced crop yields. PA 5-2 to -3; ISA 9-1. The damage includes tree-growth losses reaching 30-
6 50% in some areas, and widespread visible leaf injury, including 25-37% of sites studied in just
7 one state. PA 5-13; ISA 9-40. By harming vegetation, ozone can also damage entire ecosystems,
8 leading to ecological and economic losses. 80 FR 65,370/1-2, 65,377/3.

10 STATUTORY AND REGULATORY BACKGROUND

11 25. Congress enacted the Clean Air Act “to protect and enhance the quality of the Nation’s
12 air resources so as to promote the public health and welfare and the productive capacity of its
13 population.” 42 U.S.C. § 7401(b)(1). One “primary goal” is “pollution prevention.” *Id.* § 7401(c).
14 Congress found the Act to be necessary in part because “the growth in the amount and
15 complexity of air pollution brought about by urbanization, industrial development, and the
16 increasing use of motor vehicles, has resulted in mounting dangers to the public health and
17 welfare.” *Id.* § 7401(a)(2).

18 26. Central to the Act is the requirement that EPA establish national ambient air quality
19 standards for certain widespread air pollutants that endanger public health and welfare, referred
20 to as “criteria pollutants.” *Id.* §§ 7408-7409. One criteria pollutant is ground-level ozone. *See* 40
21 C.F.R. §§ 50.9, 50.10, 50.15, 50.19.

22 27. The national ambient air quality standards establish allowable concentrations of criteria
23 pollutants in ambient air. Primary standards protect public health, including that of sensitive
24 populations such as asthmatics, children, and the elderly. 42 U.S.C. § 7409(b)(1). Secondary
25 standards protect public welfare, including protection against damage to animals, crops,
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1 vegetation, and buildings. *Id.* §§ 7409(b)(2), 7602(h). EPA must review and, as appropriate,
2 revise these standards at least every five years. *Id.* § 7409(d)(1).

3 28. After EPA sets or revises a standard, the implementation process begins. Within one year
4 of the standards' promulgation, the states and Tribes provide EPA recommendations for initial
5 area designations, which classify all areas within the state or tribal land as "nonattainment,"
6 "attainment," or "unclassifiable" under the standards. *Id.* § 7407(d)(1)(A). A nonattainment area
7 is one that does not meet the standards or that "contributes to ambient air quality in a nearby area
8 that does not meet" the standards. *Id.* § 7407(d)(1)(A)(i). An attainment area is an area that meets
9 the standards and does not contribute to air quality in a nearby area that does not meet them. *Id.*
10 § 7407(d)(1)(A)(ii). An "unclassifiable" area is "any area that cannot be classified on the basis of
11 available information as meeting or not meeting" the standard, and is treated for regulatory
12 purposes as an attainment area. *Id.* §§ 7407(d)(1)(A)(iii), 7471.

15 29. Then, "as expeditiously as practicable, but in no case later than" two years after
16 promulgating or revising a standard, EPA "shall promulgate the designations of all areas (or
17 portions thereof) submitted" by states and Tribes. *Id.* § 7407(d)(1)(A)-(B); *see also id.*
18 §§ 7601(d)(1), 7602(d). In promulgating designations, EPA may modify a state or Tribe's
19 recommendations, but if EPA intends to do so, it must so notify the state or Tribe at least 120
20 days in advance of promulgating the designation. *Id.* § 7407(d)(1)(B)(ii). If a state or Tribe does
21 not submit recommendations for an area, EPA still must promulgate a designation for that area.
22 *See id.*

24 30. A nonattainment designation triggers requirements for states to ensure that air quality in
25 nonattainment areas will attain ozone standards by specified deadlines. *Id.* §§ 7410(a), (c), 7502;
26 *see also id.* §§ 7511-7511f (provisions specific to ozone nonattainment areas). Among the
27

1 protections is a preconstruction permitting program, which requires large new factories and
2 power plants in nonattainment areas to operate state-of-the-art pollution controls and to secure
3 reductions in air pollution from other sources sufficient to more than offset the new pollution
4 they will introduce. *Id.* §§ 7503, 7511a. Each state must adopt a “state implementation plan” that
5 includes all the protections Congress required for nonattainment areas and any specific measures
6 the state determines should be implemented to address local sources of air pollution contributing
7 to elevated ozone levels. *Id.* § 7410(a)(2)(I).

9 31. The requirements—and deadlines—for states to adopt the specific programs Congress
10 mandated to control harmful emissions in nonattainment areas depend on the areas being
11 designated nonattainment. *See, e.g., id.* §§ 7502(b), (c), 7503.

13 32. Simultaneously with their designation, ozone nonattainment areas must be classified
14 based on the severity of their ozone pollution levels. *Id.* § 7511(a)(1) tbl.1. The higher the
15 classification, the longer the area has to come into attainment, but the more stringent the controls
16 it must adopt. If an area fails to attain on time, EPA must reclassify it to a higher classification,
17 triggering stronger pollution control requirements.

18
19 **FACTUAL BACKGROUND: 2015 OZONE STANDARD REVISION AND EPA’S**
20 **FAILURE TO PROMULGATE DESIGNATIONS**

21 33. EPA revised the ozone standards most recently on October 1, 2015 (“the 2015
22 standards”), strengthening them by tightening the maximum 8-hour level of ozone allowed in the
23 ambient air to 70 parts per billion (ppb), down from the 75 ppb allowed under the prior version
24 of the standards (“the 2008 standards”). 80 FR 65,292/1, 65,452/2; 73 FR 16,436, 16,436/1
25 (2008).

26 34. EPA made this revision after its lengthy and detailed review process demonstrated that
27 the 2008 standards were inadequate to protect public health and welfare. 80 FR 65,342/2-47/1,
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1 65,389/1-90/2. Important parts of the extensive record showed that healthy young adults
2 experienced adverse health effects with ozone exposures at levels allowed by the 2008 standards
3 and linked ozone levels allowed by those standards to hospital visits, deaths, and other serious
4 health harms. *Id.* 65,343/1-44/3, 65,346/2-3. In a 15-city study, EPA estimated that tens of
5 thousands of children would still face dangerous ozone exposures even after the 2008 standards
6 were met. *Id.* 65,344/3-47/1. EPA's independent scientific advisors likewise unanimously found
7 the 2008 standards were not strong enough to protect public health and welfare. *Id.* 65,346/2,
8 65,381/3.

9
10 35. EPA's revision of the standards on October 1, 2015 meant its mandatory deadline for
11 issuing designations was October 1, 2017. *See* 42 U.S.C. § 7407(d)(1)(B)(i).

12
13 36. All the impacted states and Tribes submitted designation recommendations to EPA well
14 in advance of this deadline. *See* [www.epa.gov/ozone-designations/2015-ozone-standards-state-](http://www.epa.gov/ozone-designations/2015-ozone-standards-state-recommendations)
15 [recommendations; www.epa.gov/ozone-designations/2015-ozone-standards-tribal-](http://www.epa.gov/ozone-designations/2015-ozone-standards-tribal-recommendations)
16 [recommendations](http://www.epa.gov/ozone-designations/2015-ozone-standards-tribal-recommendations). They did so with ample guidance from EPA regarding what kind of
17 information it needed to make final designations. *See, e.g.*, Memorandum on Area Designations
18 for the 2015 Ozone National Ambient Air Quality Standards, from Janet McCabe, Acting Ass't
19 Adm'r, to Reg'l Adm'rs (Feb. 25, 2016).

20
21 37. On June 28, 2017, EPA purported to extend its ozone designation deadline by one year.
22 82 Fed. Reg. 29,246 (June 28, 2017). After multiple public health and environmental
23 organizations (including Plaintiffs) and several states sued EPA over the extension, EPA issued a
24 notice formally withdrawing it. 82 Fed. Reg. 37,318 (Aug. 10, 2017). Thus, the mandatory
25 deadline for issuing designations remains October 1, 2017. *See* 42 U.S.C. § 7407(d)(1)(B)(i).
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1 38. By its October 1, 2017 deadline, EPA had not promulgated a single ozone designation
2 under the 2015 standards for any area in the country. At no point did EPA notify any state or
3 Tribe that it intended to modify any of their recommended designations pursuant to
4 § 7407(d)(1)(B)(ii).

5
6 39. On November 6, 2017, EPA issued attainment and unclassifiable designations for some
7 areas of the country, but no nonattainment designations. 82 FR 54,232, 54,235/2 (Nov. 16, 2017)
8 (signature date is November 6, 2017).

9 40. As of the date of this filing, EPA has not issued designations under the 2015 standards for
10 all areas of the nation by the October 1, 2017, deadline, as required by the Clean Air Act. EPA
11 also has not notified any state or Tribe that it intends to modify any of their recommended
12 designations. Nor has EPA attempted to extend its now-passed deadline.

13
14 41. More than 100 million of the roughly 323 million people in the United States live in the
15 hundreds of counties that remain as of this date without designations under the 2015 standards,
16 including urban areas like Los Angeles, New York City, Chicago, Washington-Baltimore,
17 Denver, Houston, San Antonio, Detroit, Cincinnati, Philadelphia, Atlanta, and Oakland, where
18 ozone pollution is particularly severe. *See* 82 FR 54,235-87.

19 20 **PLAINTIFFS' INJURIES**

21 42. Plaintiffs' members include individuals who live, work, travel, and/or engage in
22 recreational activities in areas where air quality violates the 2015 ozone standards, including
23 areas state governors themselves have recommended be designated nonattainment, but for which
24 EPA has failed to make ozone designations in the timeframe required by 42 U.S.C.
25 § 7407(d)(1)(B)(i), including in cities like Baltimore, Chicago, Philadelphia, and San Antonio.

26
27 43. The acts and omissions of EPA alleged herein harm Plaintiffs' members by prolonging
28 air quality conditions that adversely affect or threaten their health, and by nullifying or delaying

1 measures and procedures mandated by the Act to protect their health from ozone pollution in
2 places where they live, work, travel, and/or recreate. Indeed, ozone levels that exceed the 2015
3 standards can exacerbate Plaintiffs' members' health problems such as asthma and chronic
4 obstructive pulmonary disease, causing physical problems that force them to limit activities that
5 they would otherwise be able to do and enjoy.
6

7 44. The acts and omissions of EPA alleged herein also harm Plaintiffs' members' welfare
8 interests—including their recreational, aesthetic, educational, and professional interests—
9 because their reasonable concerns about the health effects of their ozone exposure diminish their
10 enjoyment of activities they previously enjoyed or would like to continue to engage in, and of
11 areas they previously enjoyed or would like to continue to use.
12

13 45. The acts and omissions of EPA alleged herein further harm Plaintiffs' members' welfare
14 interest in using and enjoying the natural environment in areas that do not meet the 2015
15 standards. Elevated levels of ozone damage plant life and natural ecosystems, thus harming
16 Plaintiffs' members' recreational and aesthetic interests. Ozone damage to vegetation can lead to
17 wildlife avoidance of certain areas, as well as a reduction in biodiversity or other changes to a
18 local community's ecosystem, making it more difficult for Plaintiffs' members to observe, fish,
19 cultivate, study, research, or write about wildlife, plants, or ecosystems.
20

21 46. The acts and omissions of EPA alleged herein further deprive Plaintiffs and their
22 members of procedural rights and protections to which they would otherwise be entitled,
23 including, but not limited to, the right to judicially challenge final ozone designations adversely
24 affecting their members, the right to enforce requirements of the Act for preparation and
25 implementation of plans to remedy violations of the 2015 ozone standards in nonattainment areas
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1 and prevent violations in attainment areas, and the right to comment on and judicially challenge
2 such plans.

3 47. The EPA acts and omissions alleged herein further injure Plaintiffs and their members by
4 depriving them of information to which they are entitled by law, including, but not limited to,
5 EPA's published identification of each area in the nation as attainment, nonattainment, or
6 unclassifiable. If Plaintiffs had access to such information, they would use it to, among other
7 things: educate their members and the public about the scope of ozone standards violations
8 nationwide, including identification of areas that violate the 2015 ozone standards and areas that
9 meet the standards; advocate for adoption of adequate measures to bring nonattainment areas
10 into compliance with the standards and prevent significant deterioration of air quality in
11 attainment areas; advocate for appropriate action by EPA to determine whether unclassifiable
12 areas meet or do not meet the standards; and more efficiently target Plaintiffs' actions to promote
13 effective implementation of the 2015 ozone standards. Such information would also assist
14 Plaintiffs' members in determining whether they are exposed to ozone levels that violate health
15 standards and in taking action to protect themselves and their families from ozone pollution. The
16 acts and omissions complained of herein deprive Plaintiffs and their members of the benefits of
17 such information and thus cause them injury.

18 48. EPA's failure also hampers Plaintiffs' ability to perform certain programmatic functions
19 essential to their missions, such as ensuring that states put in place the public health and
20 environmental protections that accompany nonattainment designations, and educating the public
21 about these protections.
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1 49. Accordingly, the health, recreational, aesthetic, procedural, informational, and
2 organizational interests of Plaintiffs and their members have been and continue to be adversely
3 affected by the acts and omissions of EPA alleged herein.

4
5 50. A court order requiring EPA to promptly promulgate designations for all areas, as the law
6 requires, would redress Plaintiffs' and Plaintiffs' members' injuries.

7 **CLAIM FOR RELIEF**

8 51. The allegations of all foregoing paragraphs are hereby incorporated as if set forth fully
9 herein.

10 Violation of the Clean Air Act

11 52. EPA's deadline for promulgating initial area air quality designations for all areas of the
12 country under the 2015 ozone standards was October 1, 2017.

13
14 53. The Administrator failed to promulgate designations for all areas in the country by that
15 date, as required by 42 U.S.C. § 7407(d)(1)(B)(i).

16 54. As of the filing of this Complaint, EPA has not promulgated designations for all areas in
17 the country.

18 55. This constitutes a "failure of the Administrator to perform any act or duty under this
19 chapter which is not discretionary" within the meaning of the Clean Air Act, 42 U.S.C.
20 § 7604(a)(2), and thus a violation of the Act. EPA's violations are ongoing, and will continue
21 unless remedied by this Court.
22

23 **RELIEF REQUESTED**

24 WHEREFORE, Plaintiffs respectfully request that the Court:

- 25 (1) Declare that EPA's failure to timely promulgate area designations for all areas under the
26 2015 National Ambient Air Quality Standards for ozone by the deadline required by 42
27 U.S.C. § 7407(d)(1)(B)(i) constitutes a "failure of the Administrator to perform any act or
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1 duty under this chapter which is not discretionary” within the meaning of 42 U.S.C.

2 § 7604(a)(2);

3 (2) Enjoin the Administrator from continuing to violate the above-described nondiscretionary

4 duty;

5 (3) Order the Administrator to promulgate area designations for all areas of the country

6 under the 2015 National Ambient Air Quality Standards for ozone forthwith;

7 (4) Retain jurisdiction to ensure compliance with the Court’s decree;

8 (5) Award Plaintiffs the costs of this action, including attorneys’ fees; and,

9 (6) Grant such other relief as the Court deems just and proper.

10
11
12 DATED: December 18, 2017

13
14 Respectfully Submitted,

15 /s/ Seth L. Johnson

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