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11 *Organization, Citizens for Alternatives to Radioactive Dumping, Maurice and Jane Sugar Law*
12 *Center for Economic and Social Justice, Sierra Club, and Michael Boyd*

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

15 CALIFORNIANS FOR RENEWABLE)
16 ENERGY, ASHURST BAR/SMITH)
17 COMMUNITY ORGANIZATION,)
18 CITIZENS FOR ALTERNATIVES TO)
19 RADIOACTIVE DUMPING, MAURICE)
AND JANE SUGAR LAW CENTER FOR)
20 ECONOMIC AND SOCIAL JUSTICE,)
SIERRA CLUB, and MICHAEL BOYD,)

20 Plaintiffs,

21 v.

22 UNITED STATES ENVIRONMENTAL)
23 PROTECTION AGENCY and GINA)
24 MCCARTHY, in her official capacity as)
Administrator of the Environmental Protection)
Agency,)

25 Defendants.)
26)
27)
28)

Case No: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

(Administrative Procedure Act Case)

1 **STATEMENT OF THE CASE**

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

10 2. Plaintiffs filed administrative complaints alleging violations of Title VI ("Title VI
11 Complaints" or "the Complaints") with EPA between 1994 and 2003, all more than a decade ago,
12 and EPA accepted these complaints for investigation between 1995 and 2005, the most recent
13 approximately a decade ago. Despite a regulatory mandate that EPA issue preliminary findings
14 and any recommendations for achieving compliance within 180 days of accepting a Title VI
15 complaint for investigation, EPA has utterly failed to meet this deadline in each case.

16 3. Resolution of Plaintiffs' Title VI Complaints is long overdue. Accordingly, Plaintiffs
17 ask the Court to compel agency action unlawfully withheld and unreasonably delayed pursuant to
18 the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.* ("APA").

19 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

20 4. This action is brought under the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

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

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

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

17 13. EPA's public documents refer to this individual as an unnamed individual, and this
18 Complaint will continue to refer to this individual as an unnamed individual.

19 14. Plaintiff Citizens for Alternatives to Radioactive Dumping ("CARD") is a non-profit
20 organization founded in 1978 in New Mexico. CARD is headquartered at 202 Harvard Avenue
21 Southeast, Albuquerque, New Mexico, and is sponsored by a 501(c)(3) Albuquerque organization,
22 Trinity House Catholic Worker, Inc. CARD has approximately ninety active members and
23 concentrates on local, New Mexican problems. Most members live in New Mexico though at any
24 one time a few members may be living outside of the state. Nearly all those who actively
25 participate in CARD activities, including almost all Steering Committee members, are volunteers.
26 CARD works in partnership with a number of other environmental and environmental justice
27 groups and with Native communities and reservations in New Mexico, especially in southeastern
28 New Mexico and Albuquerque. CARD was first formed by Chicano organizations in the

1 southeastern portion of the state that were concerned about the impacts of the nuclear industry on
2 their communities. CARD's original focus was the Waste Isolation Pilot Plant ("WIPP") in Eddy
3 County, New Mexico, but the threats and injustices in the southeastern part of New Mexico have
4 only continued to increase since the early days of WIPP. Accordingly, in the 1980's CARD
5 expanded its mission to address environmental injustices negatively affecting low-income or
6 underserved communities of color in New Mexico and organize resistance to other radioactive,
7 toxic, and hazardous threats throughout New Mexico.

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

14 16. Plaintiff Maurice and Jane Sugar Law Center for Economic and Social Justice
15 ("Sugar Law Center") is a 501(c)(3) national nonprofit, public-interest law center headquartered in
16 Detroit, Michigan. Its offices are located at 4605 Cass Avenue, Detroit, Michigan. Sugar Law
17 Center provides legal advocacy, representation, education, and technical support to empower
18 community groups, workers' rights groups, and individuals seeking systemic change toward
19 economic and social justice. Throughout its history, Sugar Law Center has highlighted the
20 interdependence of civil and economic rights, pursuing economic justice by supporting grassroots
21 campaigns for a living wage, representing communities of color in challenging environmental
22 racism, and pressing for corporate and government accountability. Sugar Law Center is dedicated
23 to helping individuals and community organizations, among others, who are working for social
24 justice. The Center provides direct legal representation or assistance in grassroots efforts, offering
25 expert advice or referrals to private attorneys skilled in specific fields and engaging in public
26 education around important issues of economic justice.

27 17. On or about July 6, 1994, Sugar Law Center submitted a Title VI complaint to EPA
28 concerning the permitting process and ultimate decision to permit a wood-incinerator power

1 station located in a predominantly African American and low-income community in Flint,
2 Michigan. EPA accepted this complaint for investigation on or about January 1995, but has yet to
3 issue recommendations or preliminary findings from its investigation.

4 18. Plaintiff Sierra Club is a 501(c)(4) organization founded in 1892 and headquartered at
5 85 Second Street, 2nd Floor, San Francisco, California. Sierra Club's mission is to explore, enjoy
6 and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's
7 resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the
8 natural and human environment; and to use all lawful means to carry out these objectives. Sierra
9 Club's mission includes protecting and restoring the quality of wild places, such as national parks,
10 forests, and wilderness areas, enjoyed by its members for their scenic views and vistas. Sierra
11 Club's members regularly enjoy recreational activities on the Texas Gulf Coast and other
12 waterways.

13 19. Sierra Club Lone Star Chapter is the Texas chapter of Sierra Club. Its offices are
14 located at 1202 San Antonio Street, Austin, Texas. The chapter has 22,000 members statewide and
15 is dedicated to protecting Texas's air, land, water, and remaining wild places. Sierra Club Lone
16 Star Chapter works to protect the health and well-being of the diverse communities in Texas and
17 up and down the Texas Gulf Coast. Several dozen environmental justice communities in Texas are
18 heavily impacted by large oil refineries, chemical and petrochemical plants, and other industrial
19 sources; indeed, Texas has the largest concentration of industrial plants (approximately 2,000) in
20 the nation, making industrial air pollution a top issue for the Sierra Club Lone Star Chapter.

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

1 21. Plaintiffs have a concrete interest in an efficient resolution of their Title VI
2 Complaints and in resolution of the discriminatory practices and policies complained of in those
3 Complaints.

4 22. As organizations that work on behalf of communities of color that are
5 disproportionately burdened by sources of pollution, Plaintiffs have ongoing interests in protection
6 against discrimination by the recipients named in their Title VI Complaints and in remedying
7 EPA’s pattern and practice of failing to enforce Title VI and EPA’s implementing regulations
8 within mandated time periods.

9 23. Defendant United States Environmental Protection Agency is a federal agency with
10 its principal offices located at 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. EPA
11 distributes federal financial assistance and, like other federal agencies that distribute federal
12 financial assistance, is charged with issuing and implementing regulations to ensure that no person
13 in the United States is excluded from participation in, denied the benefits of, or subjected to
14 discrimination on the ground of race, color, or national origin under any program or activity that
15 receives financial assistance from EPA. 42 U.S.C. §§ 2000d, 2000d-1.

16 24. Defendant Gina McCarthy is the Administrator of the United States Environmental
17 Protection Agency and, in that capacity, provides overall supervision of the Agency and has final
18 responsibility for actions taken by EPA, including EPA’s enforcement of Title VI of the Civil
19 Rights Act and the agency’s regulations implementing Title VI. Administrator McCarthy’s
20 principal place of business is located in Washington, D.C. Administrator McCarthy is sued in her
21 official capacity.

22 **LEGAL BACKGROUND**

23 25. Title VI of the Civil Rights Act of 1964 provides that no person shall, “on the ground
24 of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be
25 subjected to discrimination under any program or activity” covered by Title VI. 42 U.S.C. §
26 2000d. Title VI authorizes and directs all federal agencies that provide federal financial assistance
27 to issue regulations to effectuate the provisions of Title VI. *Id.* § 2000d-1
28

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

4 27. The regulations provide a process by which persons may file Title VI complaints with
5 EPA’s Office of Civil Rights (“OCR”). Any “person who believes that he or she or a specific class
6 of persons has been discriminated against” in violation of Title VI, or his or her representative,
7 may file a complaint with OCR within 180 days of the alleged discriminatory act. *Id.* § 7.120(a),
8 (b)(2).

9 28. The regulations require that “OCR *shall promptly* investigate all [such] complaints . .
10 . unless the complainant and the party complained against agree to a delay pending settlement
11 negotiations.” 40 C.F.R. § 7.120 (emphasis added).

12 29. The regulations require OCR to notify the complainant and the recipient of federal
13 funds of OCR’s receipt of the complaint within five days of receipt, after which “OCR will
14 *immediately* initiate complaint processing procedures.” *Id.* § 7.120(c), (d) (emphasis added).

15 30. Within twenty calendar days of the acknowledgement of the receipt of the complaint,
16 OCR must determine whether to accept the complaint for investigation, reject the complaint (*e.g.*,
17 for lack of jurisdiction or timeliness), or refer the complaint to the appropriate federal agency. *Id.*
18 § 7.120(d)(1)(i).

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

23 32. OCR’s notice of preliminary findings triggers an opportunity for recipients to respond
24 to OCR’s preliminary findings. *Id.* § 7.115(d). OCR’s issuance of preliminary findings is also a
25 prerequisite to further action by OCR under Title VI including a formal written determination of
26 noncompliance and the denial, annulment, suspension, or termination of federal assistance, as
27 permitted under Title VI. *Id.* §§ 7.115(d)-(e), 7.130(b); *see also* 42 U.S.C. § 2000d-1.
28

1 33. Specifically, within fifty calendar days of receipt of a preliminary finding of
2 noncompliance, the funding recipient may agree to OCR’s recommendations or, in the alternative,
3 provide a written response explaining why the preliminary findings are incorrect or how
4 compliance may be achieved through means other than those recommended by OCR. 40 C.F.R. §
5 7.115(d). If the recipient does not take either action within fifty calendar days, OCR shall within
6 an additional fourteen calendar days send a formal written determination of noncompliance to the
7 recipient, with copies to the EPA Award Official and the United States Attorney General. *Id.* If
8 the recipient does not come into compliance within ten calendar days of receipt of the formal
9 determination of noncompliance, OCR must issue a finding of noncompliance and begin
10 procedures to deny, annul, suspend, or terminate EPA assistance. *Id.* §§ 7.115(e), 7.130(b).

11 **FACTUAL BACKGROUND**

12 34. Between 1994 and 2003, Plaintiffs filed timely complaints to EPA’s OCR alleging
13 violations of Title VI of the Civil Rights Act of 1964 and its implementing regulations by regional
14 and state agencies, and EPA accepted each of these Complaints for investigation between 1995 and
15 2005.

16 35. EPA has failed to meet its duty to issue preliminary findings within 180 days of
17 acceptance of each of the Complaints.

18 36. Indeed, EPA’s failure to comply with the regulatory timeline has extended the 180-
19 day timeframe to issue preliminary findings into periods ranging from approximately ten to twenty
20 years, with no clear end in sight.

21 37. The injuries complained of in Plaintiffs’ Title VI Complaints are exacerbated by
22 EPA’s failure to comply with its mandatory duties to properly investigate and resolve these
23 Complaints.

24 38. On or about July 6, 1994, Plaintiff Maurice and Jane Sugar Law Center for Economic
25 and Social Justice and other signatories submitted a Title VI complaint (“Sugar Law Center
26 Complaint”) to OCR alleging that actions of the Michigan Department of Natural Resources
27 (“MDNR”), a recipient of federal funding, discriminated against residents of the City of Flint,
28 Genesee County, Michigan, on the basis of race, color, and national origin in violation of Title VI.

1 See Letter from Kary L. Moss, Exec. Dir., Sugar Law Center, to Valdas Adamkus, Reg'l Adm'r,
2 EPA Region 5 (July 6, 1994) (attached hereto as Exhibit 1).

3 39. The Sugar Law Center Complaint alleges that during the permitting process for the
4 Genesee Power Station in Flint, Michigan, MDNR failed to consider the facility's impacts on the
5 surrounding community, which is predominantly African American and low income. Ex. 1, at 4-5.
6 The Complaint notes that while 61% of residents living in the neighborhood surrounding the
7 facility were African American and 27% lived below the poverty level, the county-wide population
8 was only 20% African American, with 14% below the poverty level. *Id.* at 12-13. As alleged in
9 the Complaint, the Genesee Power Station is fueled by wood waste including demolition wood,
10 which frequently contains lead-based paint and other chemicals that can be released into the air
11 when burned. *Id.* at 3. The Sugar Law Center Complaint alleges that MDNR's permitting of the
12 Genesee Power Station reflects MDNR's pattern or practice of permitting incinerators and other
13 hazardous sites in nonwhite communities, and that studies show that race is the dominant factor in
14 determining where MDNR will issue a siting permit. *Id.* at 11-15.

15 40. On or about January 1995, EPA accepted the Sugar Law Center Complaint for
16 investigation as Case No. 01R-94-R5. See EPA, Title VI Complaint Listing at 2 (May 2013)
17 (attached hereto as Exhibit 2). Accordingly, EPA's regulations require OCR to have issued
18 preliminary findings and recommendations by July 1995.

19 41. On or about April 27, 1999 Sugar Law Center sent a letter to EPA urging EPA to
20 conclude its investigation into the Sugar Law Center Complaint, noting, "It is our sincere wish that
21 this investigation be brought to a close after seven years of waiting and five years of active
22 investigation." Letter from Julie H. Hurwitz, Exec. Dir., Sugar Law Center, to Carleton
23 Waterhouse, EPA Region 4, at 1 (Apr. 27, 1999) (attached hereto as Exhibit 3).

24 42. On or about June 20, 2000, Sugar Law Center sent another letter to EPA "to formally
25 inquire about the status of the [Sugar Law Center Complaint] and to convey our ongoing serious
26 concern regarding the delay in resolving this matter, now pending for nearly eight (8) years."
27 Letter from Julie H. Hurwitz, Exec. Dir., Sugar Law Center, to Ann E. Goode, Dir., EPA OCR, at
28 1 (June 20, 2000) (attached hereto as Exhibit 4). The letter noted that, as far back as 1996, Sugar

1 Law Center had “been told repeatedly, for years, that a decision in this in this matter was
2 imminent.” *Id.*

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

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

9 45. As a result of the permitting actions complained of in the Sugar Law Center
10 Complaint, the Genesee Power Station was built and began commercial operation in 1995. *See Ex.*
11 4 at 1. EPA has classified the Genesee Power Station as a Significant Violator, and the Michigan
12 Department of Environmental Quality has similarly cited the facility. *Id.* at 1.

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

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

23 48. The CARE Complaint alleges that these California regional and state agencies
24 granted permits for the construction of the Los Medanos Energy Center and Delta Energy Center
25 power plants in Pittsburg, California but unlawfully failed to consider the additional environmental
26 burdens caused by the two plants on residents who already suffer from the cumulative impacts of
27 multiple sources of pollutants in the area. *Ex. 5, at 4-6.* The complaint alleges that the two
28 facilities were sited in communities that are composed primarily of nonwhite and low-income

1 residents who already suffer from elevated levels of asthma, breast cancer, and human mortality
2 related to particulate matter exposure. *Id.* at 3, 6-12.

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

6 50. On or about December 2001, OCR accepted the allegations in the CARE Complaint
7 against BAAQMD and CARB for investigation as Case No. 02R-00-R9. *See* Ex. 2 at 2.
8 Accordingly, EPA's regulations require OCR to have issued preliminary findings and
9 recommendations by June 2002.

10 51. On or about March 16, 2006, CARE sent a letter to EPA to add a claim of retaliation
11 to the CARE Complaint and other Title VI complaints before the agency. *See* Letter from Lynne
12 Brown, Vice President, CARE, to Karen D. Higginbotham, Dir., EPA OCR (Mar. 16, 2006)
13 (attached hereto as Exhibit 6).

14 52. On or about April 20, 2009, CARE sent a complaint to the Civil Rights Division of
15 the United States Department of Justice ("DOJ") alerting DOJ to the "pattern of US EPA delaying
16 and sitting on Title VI complaints, missing their statutory deadlines for accepting and investigating
17 these administrative complaints" filed by CARE, including the April 17, 2000 CARE Complaint.
18 *See* Letter from Michael Boyd, President, CARE, to Civil Rights Div., DOJ, at 1 (Apr. 20, 2009)
19 (attached hereto as Exhibit 7). CARE also forwarded a copy of this April 20, 2009 complaint to
20 EPA. *Id.*

21 53. Upon information and belief, as of the date of the filing of this complaint,
22 approximately fourteen years after EPA accepted the complaint for investigation, EPA has yet to
23 issue preliminary findings of its investigation into the CARE Complaint.

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

26 55. As a result of the permitting actions complained of in the CARE Complaint, the Los
27 Medanos Energy Center was built and went online on or about July 2001, and the Delta Energy
28 Center was built and went online on or about June 2002. EPA classified the Los Medanos Energy

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

7 56. At the time of the filing of this complaint, both facilities continue to be in operation,
8 and CARE members continue to have reasonable concerns that the facilities are adversely affecting
9 the surrounding community of Pittsburg, California.

10 57. On or about April 13, 2000, Sierra Club Lone Star Chapter, a local chapter of Plaintiff
11 Sierra Club, and other signatories submitted a Title VI complaint (“Sierra Club Complaint”) to
12 OCR alleging that actions of the Texas Commission on Environmental Quality (“TCEQ”), a
13 recipient of federal funding, discriminated against residents of the City of Beaumont, Texas on the
14 basis of race and color in violation of Title VI. *See* Letter from Rev. Roy Malveaux, Exec. Dir.,
15 People Against Contaminated Env’ts et al., to Ann E. Goode, Dir., EPA OCR (Apr. 13, 2000)
16 (attached hereto as Exhibit 9).

17 58. At the time of the Sierra Club Complaint, TCEQ was known as the Texas Natural
18 Resources Conservation Commission, and the Sierra Club Complaint uses this previous name to
19 refer to TCEQ.

20 59. Among other allegations, the Sierra Club Complaint alleges that TCEQ issued a
21 permit amendment to ExxonMobil (previously, Mobil Oil) that allowed its refinery operations in
22 Beaumont, Texas to increase several categories of emissions, including hydrogen sulfide, and that
23 TCEQ did so without allowing the public to participate in a contested case hearing on the matter.
24 Ex. 9, at 1. The complaint notes that 95% of the population living in the census block groups most
25 impacted by the Beaumont refinery was African American and that over half of this “maximum
26 impact” population lived in poverty. *Id.* at 7. Both of these values were more than twice the city-,
27 county-, and state-wide averages, showing a disproportionate impact on African Americans and
28 persons living in poverty. *Id.* The complaint alleges that TCEQ’s actions with regard to the

1 Beaumont refinery reflect the state agency's faulty method of administering its policies and
2 procedures, which has created and perpetuated a system of discriminatory facility siting and
3 expansion throughout the State of Texas. *Id.* at 1.

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

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

17 62. Upon information and belief, as of the date of the filing of this complaint,
18 approximately twelve years after EPA accepted allegations raised in the complaint for
19 investigation, EPA has yet to issue preliminary findings of its investigation into the Sierra Club
20 Complaint.

21 63. EPA's investigation into the Sierra Club Complaint has grossly exceeded 180 days as
22 well as any reasonable period of time to conclude an investigation.

23 64. As a result of the permitting actions complained of in the Sierra Club Complaint, the
24 Beaumont refinery expanded its refining operations and increased its emissions of hydrogen
25 sulfide and other air pollutants. On or about October 2005, EPA levied a \$8.7 million penalty on
26 ExxonMobil for Clean Air Act violations at the Beaumont refinery and other refineries. *See* EPA,
27 ExxonMobil Refinery Settlement (last updated Dec. 9, 2014) (attached hereto as Exhibit 11). On
28 or about December 2008, EPA again levied a \$122,500 penalty on ExxonMobil for failure to

1 monitor the sulfur content of gases burned in furnaces at the Beaumont refinery. *Id.* EPA first
2 classified the Beaumont refinery as in “Significant Violation” of the Clean Air Act on or about
3 December 19, 2000, and that classification continues to the date of the filing of this complaint. *See*
4 EPA ECHO, Detailed Facility Report, ExxonMobil Beaumont Refinery (accessed June 19, 2015)
5 (attached hereto as Ex. 12). Over the last five years, the Beaumont refinery has been subject to
6 \$638,103 in penalties from fourteen formal enforcement actions for violations of the Clean Air
7 Act, in addition to nine informal enforcement actions. *Id.* The Beaumont facility remains one of
8 the largest refinery and chemical complexes in the United States.

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

12 66. On or about September 12, 2002, Plaintiff Citizens for Alternatives to Radioactive
13 Dumping and other signatories submitted a Title VI complaint (“CARD Complaint”) to OCR
14 alleging that actions of the New Mexico Environment Department (“NMED”), a recipient of
15 federal funding, discriminated against residents of Chaves County, New Mexico on the basis of
16 race, color, and national origin in violation of Title VI. *See* CARD et al., Complaint under Title VI
17 of the Civil Rights Act (Sept. 12, 2002) (attached hereto as Exhibit 13).

18 67. The CARD Complaint alleges that NMED discriminated on the basis of race and
19 national origin by permitting the Triassic Park hazardous waste treatment, storage, and disposal
20 facility in Chaves County, New Mexico, without examining possible disparate impacts on the basis
21 of race and ethnicity and by conducting the permitting process in a manner hostile to Spanish-
22 speaking residents. Ex. 13, at 6-8, 18-24. As alleged in the complaint, Chaves County has a high
23 percentage of people of color – mostly Hispanic New Mexicans and New Mexicans of Mexican
24 origin – and a high percentage of people living in poverty, and already suffers worse air quality
25 and higher rates of infant mortality, congenital abnormalities, and hospitalization for respiratory
26 illnesses than other New Mexico counties. *Id.* at 2-4. The complaint also alleges that NMED
27 obstructed and excluded members of the public – particularly the Spanish-speaking public – from
28

1 the permitting process by denying access to relevant documents, failing to provide information in
2 Spanish, and harassing and intimidating the public. *Id.* at 20-24.

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

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

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

22 71. NMED responded to this notification on or about August 11, 2005, and CARD
23 promptly sent a letter to OCR addressing the issues raised in the NMED response on or about
24 November 8, 2005.

25 72. On or about November 20, 2007, CARD notified OCR that it was amending the
26 CARD Complaint to include newly discovered information concerning NMED’s removal from
27 both the administrative record and the permit record of an agency memo concerning a possible
28 permit amendment to allow the Triassic Park facility to accept low-level nuclear waste – despite

1 the hearing officer's instructions that the memo should be kept in the record. *See* Letter from
2 Deborah Reade, CARD, to Karen D. Higginbotham, Dir., EPA OCR (Nov. 20, 2007) (attached
3 hereto as Exhibit 15).

4 73. On or about June 26, 2014 – nearly a decade after acceptance of the CARD
5 Complaint for investigation – EPA sent a letter to CARD requesting further information “[t]o
6 facilitate the EPA’s investigation.” *See* Letter from Helena Wooden-Aguilar, Acting Deputy Dir.,
7 EPA OCR, to Deborah Reade, CARD at2 (June 26, 2014) (attached hereto as Exhibit 16). CARD
8 responded to this request for information on or about September 2014.

9 74. Upon information and belief, as of the date of the filing of this complaint, ten years
10 after EPA accepted the CARD complaint for investigation, EPA has yet to issue preliminary
11 findings of its investigation into the CARD Complaint.

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

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

22 77. On or about September 11, 2003, EPA received a letter from an unnamed individual
23 on behalf of Plaintiff Ashurst Bar/Smith Community Organization that attached comments that the
24 individual had sent to the Alabama Department of Environmental Management (“ADEM”), a
25 recipient of federal funding, during ADEM’s permitting process for the Stone’s Throw Landfill in
26 the unincorporated community of Tallassee, Tallapoosa County, Alabama. Letter from unnamed
27 individual to redacted recipient (Sept. 3, 2003) (attached hereto as Exhibit 17). Among other
28

1 comments, the letter noted the community's concern that ADEM's pattern and practice of
2 permitting landfills in majority African American communities violates Title VI. *See id.* at 4-5.

3 78. On or about December 8, 2003, after receiving notification that EPA was reviewing
4 these comments for acceptance as an administrative complaint, the unnamed individual submitted
5 a more formal Title VI complaint to OCR on behalf of the Ashurst Bar/Smith Community
6 Organization ("Ashurst Bar/Smith Complaint") alleging that actions of ADEM discriminated
7 against residents of Tallassee on the basis of race, color, and national origin in violation of Title
8 VI. *See* Letter from unnamed individual, to Karen D. Higginbotham, Dir., EPA OCR (Dec. 8,
9 2003) (attached hereto as Exhibit 18).

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

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

16 81. EPA notified ADEM of its receipt of the Ashurst Bar/Smith Complaint on March 29,
17 2005, and ADEM responded to this notice on April 13, 2005. *See* Letter from Onis "Trey" Glenn,
18 III, Dir., ADEM, to Karen D. Higginbotham, Dir., EPA OCR (Apr. 13, 2005) (attached hereto as
19 Exhibit 19).

20 82. On or about September 7, 2005, EPA accepted the Ashurst Bar/Smith Complaint for
21 investigation as Case No. 06R-03-R4. Letter from Karen D. Higginbotham, Dir., EPA OCR, to
22 unnamed individual (Sept. 7, 2005) (attached hereto as Exhibit 20). Accordingly, EPA's
23 regulations require OCR to have issued preliminary findings and recommendations by March 26,
24 2006.

25 83. Specifically, EPA accepted for investigation two allegations, including the allegation
26 that "ADEM's failure to require the Tallapoosa County Commission to properly use the siting
27 factors listed in the EPA June 2003 Title VI Investigative Report has created a discriminatory
28

1 effect for the African American citizens since most of Tallapoosa County’s municipal solid waste
2 landfills are located in their communities.” *Id.*

3 84. ADEM responded to EPA’s notification of acceptance of the Complaint on or about
4 October 7, 2005. *See* Letter from Karen D. Higginbotham, Dir., EPA OCR, to Onis “Trey” Glenn,
5 III, Dir., ADEM (Jan. 22, 2007) (attached hereto as Exhibit 21).

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

10 86. On or about January 25, 2013, EPA sent a letter to ADEM, with a copy to the
11 unnamed individual, explaining that EPA had bifurcated the investigation into two allegations
12 raised in the Ashurst Bar/Smith Complaint and was dismissing the Complaint’s first allegation.
13 Letter from Rafael DeLeon, Dir., EPA OCR, to Lance R. LeFleur, Dir., ADEM (Jan. 25, 2013)
14 (attached hereto as Exhibit 23). The letter stated that the allegation that ADEM failed to require
15 the use of EPA’s siting factors “will be addressed in subsequent correspondence.” *Id.* at 13.

16 87. Upon information and belief, as of the date of the filing of this complaint, EPA has
17 yet to issue preliminary findings of its investigation into the remaining allegation asserted in the
18 Ashurst Bar/Smith Complaint.

19 88. EPA’s investigation into the Ashurst Bar/Smith Complaint has grossly exceeded 180
20 days as well as any reasonable period of time to conclude an investigation.

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

1 continue to have reasonable concerns that the facility is adversely affecting their community in
2 Tallassee, Alabama.

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

5 91. Plaintiffs' experiences with EPA's lax enforcement of its statutory duty to investigate
6 these Title VI Complaints are "sadly and unfortunately, typical of those who appeal to OCR to
7 remedy civil rights violations," in which OCR often "fail[s] to process a *single* complaint . . . in
8 accordance with its regulatory deadlines." *Rosemere Neighborhood Ass'n v. U.S. Env'tl. Prot.*
9 *Agency*, 581 F.3d 1169, 1175 (9th Cir. 2009) (emphasis in original).

10 92. EPA has demonstrated a pattern and practice of unreasonable delay in investigating
11 Title VI complaints and issuing preliminary findings and recommendations within the mandated
12 time period.

13 **FIRST CLAIM FOR RELIEF**

14 **Violation of the Administrative Procedure Act**

15 (Failure to Issue Preliminary Findings; Sugar Law Center Complaint)

16
17 93. Plaintiffs hereby reallege and incorporate by reference all allegations in the preceding
18 paragraphs.

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

22 95. EPA has failed to issue preliminary findings in response to the Sugar Law Center
23 Complaint within 180 days of the EPA's initiation of investigation.

24 96. EPA has failed to issue recommendations for voluntary compliance in response to the
25 Sugar Law Center Complaint within 180 days of the EPA's initiation of investigation.

26 97. EPA's failure constitutes an agency action unlawfully withheld and unreasonably
27 delayed contrary to and in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(1).

1 98. EPA's violation is continuous and ongoing. EPA will continue to violate the
2 Administrative Procedure Act until it complies with its duty to issue preliminary findings and
3 recommendations for voluntary compliance in response to the Sugar Law Center Complaint.

4 **SECOND CLAIM FOR RELIEF**

5 **Violation of the Administrative Procedure Act**

6 (Failure to Issue Preliminary Findings; CARE Complaint)

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

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

13 101. EPA has failed to issue preliminary findings in response to the CARE Complaint
14 within 180 days of EPA's initiation of investigation.

15 102. EPA has failed to issue recommendations for voluntary compliance in response to the
16 CARE Complaint within 180 days of EPA's initiation of investigation.

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

19 104. EPA's violation is continuous and ongoing. EPA will continue to violate the
20 Administrative Procedure Act until it complies with its duty to issue preliminary findings and
21 recommendations for voluntary compliance in response to the CARE Complaint.

22 **THIRD CLAIM FOR RELIEF**

23 **Violation of the Administrative Procedure Act**

24 (Failure to Issue Preliminary Findings; Sierra Club Complaint)

25
26 105. Plaintiffs hereby reallege and incorporate by reference all allegations in the preceding
27 paragraphs.

28

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

4 107. EPA has failed to issue preliminary findings in response to the Sierra Club Complaint
5 within 180 days of EPA's initiation of investigation.

6 108. EPA has failed to issue recommendations for voluntary compliance in response to the
7 Sierra Club Complaint within 180 days of EPA's initiation of investigation.

8 109. EPA's failure constitutes an agency action unlawfully withheld and unreasonably
9 delayed contrary to and in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(1).

10 110. EPA's violation is continuous and ongoing. EPA will continue to violate the
11 Administrative Procedure Act until it complies with its duty to issue preliminary findings and
12 recommendations for voluntary compliance in response to the Sierra Club Complaint.

13 **FOURTH CLAIM FOR RELIEF**

14 **Violation of the Administrative Procedure Act**

15 (Failure to Issue Preliminary Findings; CARD Complaint)

16
17 111. Plaintiffs hereby reallege and incorporate by reference all allegations in the preceding
18 paragraphs.

19 112. EPA has a mandatory duty to issue preliminary findings and recommendations for
20 voluntary compliance within 180 days of acceptance of a Title VI complaint for investigation. 40
21 C.F.R. § 7.115(c).

22 113. EPA has failed to issue preliminary findings in response to the CARD Complaint
23 within 180 days of EPA's initiation of investigation.

24 114. EPA has failed to issue recommendations for voluntary compliance in response to the
25 CARD Complaint within 180 days of EPA's initiation of investigation.

26 115. EPA's failure constitutes an agency action unlawfully withheld and unreasonably
27 delayed contrary to and in violation of the Administrative Procedure Act. *See* 5 U.S.C. § 706(1).

1 116. EPA's violation is continuous and ongoing. EPA will continue to violate the
2 Administrative Procedure Act until it complies with its duty to issue preliminary findings and
3 recommendations for voluntary compliance in response to the CARD Complaint.

4 **FIFTH CLAIM FOR RELIEF**

5 **Violation of the Administrative Procedure Act**

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

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

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

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

15 120. EPA has failed to issue recommendations for voluntary compliance in response to the
16 remaining allegations asserted in the Ashurst Bar/Smith Complaint within 180 days of EPA's
17 initiation of investigation.

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

20 122. EPA's violation is continuous and ongoing. EPA will continue to violate the
21 Administrative Procedure Act until it complies with its duty to issue preliminary findings and
22 recommendations for voluntary compliance in response to the Ashurst Bar/Smith Complaint.

23 **SIXTH CLAIM FOR RELIEF**

24 **Violation of the Administrative Procedure Act**

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

26
27 123. Plaintiffs hereby reallege and incorporate by reference all allegations in the preceding
28 paragraphs.

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

4 125. EPA has failed to issue preliminary findings in response to allegations asserted in the
5 Title VI Complaints filed by Sugar Law Center, CARE, Sierra Club, CARD, and the Ashurst
6 Bar/Smith Community Organization within 180 days of EPA’s initiation of investigation.

7 126. EPA has failed to issue recommendations for voluntary compliance in response to
8 Title VI Complaints filed by Sugar Law Center, CARE, Sierra Club, CARD, and the Ashurst
9 Bar/Smith Community Organization within 180 days of EPA’s initiation of investigation.

10 127. EPA’s failure to investigate Title VI complaints and issue preliminary findings and
11 recommendations within the mandated time period constitutes a pattern and practice of agency
12 action unlawfully withheld and unreasonably delayed contrary to and in violation of the
13 Administrative Procedure Act. *See* 5 U.S.C. § 706(1).

14 **PRAYER FOR RELIEF**

15 128. WHEREFORE, Plaintiffs respectfully request that this Court:

16 (a) Declare that EPA’s failure to meet its mandatory duty and comply with the deadline
17 set forth in 40 C.F.R. § 7.115, requiring the EPA to issue preliminary findings and recommendations
18 for voluntary compliance within 180 days of initiating its investigation into a Title VI complaint,
19 constitutes agency action unlawfully withheld and unreasonably delayed under the APA;

20 (b) Issue an injunction compelling EPA to issue preliminary findings and
21 recommendations for voluntary compliance for the investigations into each of Plaintiffs’ Title VI
22 Complaints within ninety (90) days of this Court’s order, and compel EPA to complete the complaint
23 investigation procedures set forth in 40 C.F.R. part 7 in response to each of Plaintiffs’ Title VI
24 Complaints in compliance with the timelines set forth in those regulations;

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

27 (d) Grant Plaintiffs such further and additional relief as the Court may deem just, proper,
28 and equitable.

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Respectfully submitted,

/s/ Irene V. Gutierrez

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