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8 Attorneys for Plaintiffs
 SAVE OUR RECREATION,
 9 SAN FRANCISCO DOG OWNERS GROUP,
 MARIN COUNTY DOG OWNERS GROUP, AND
 10 COASTSIDE DOG OWNERS GROUP

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

15 SAVE OUR RECREATION, SAN FRANCISCO
 DOG OWNERS GROUP, a 501(c)(3) non-profit
 16 organization, MARIN COUNTY DOG OWNERS
 GROUP, and COASTSIDE DOG OWNERS
 17 GROUP,

18 Plaintiffs,

19 vs.

20 UNITED STATES DEPARTMENT OF THE
 INTERIOR, NATIONAL PARK SERVICE,
 21 SALLY JEWELL, in her official capacity as
 Secretary of Interior, and CHRISTINE S.
 22 LEHNERTZ, and HOWARD LEVITT, all in their
 official capacities as employees of the National
 23 Park Service,

24 Defendants.

Case No.

**COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF**

**FREEDOM OF INFORMATION
 ACT ACTION**

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1 1. Plaintiffs Save Our Recreation, San Francisco Dog Owners Group (SFDOG),
2 Marin County Dog Owners Group (Marin DOG), and Coastside Dog Owners Group (Coastside
3 DOG) (collectively, Plaintiffs), by and through their undersigned counsel, bring this action
4 against the above-captioned defendants (collectively, Defendants) to compel compliance with the
5 Freedom of Information Act, 5 U.S.C. § 552 (FOIA). As grounds therefor, Plaintiffs allege as
6 follows:

7 **THE CONTROVERSY**

8 2. Defendant National Park Service (NPS) is the federal agency that administers the
9 Golden Gate National Recreation Area (GGNRA). The GGNRA is an “urban park” with some
10 80,000 acres of land in San Francisco, San Mateo, and Marin Counties within its boundaries. It is
11 a critical recreational resource for residents of those counties and the greater Bay Area. Residents
12 of those three counties have walked their dogs on those lands for many decades, and long before
13 the creation of the GGNRA in 1972. Thousands of Bay Area residents walk dogs in the GGNRA
14 every day.

15 3. Nonetheless, for more than a decade, NPS has been maneuvering to radically
16 reduce access to GGNRA lands for people walking dogs. In 2014, NPS released the General
17 Management Plan/Final Environmental Impact Statement (GMP/FEIS) for its management of the
18 GGNRA. The Draft GMP had itself pre-determined this radical reduction in access for those
19 wishing to walk dogs in the GGNRA, and the Final GMP did the same. NPS has been engaged in
20 a transparent effort to legitimize this pre-determination through various formal planning
21 processes. NPS developed a Dog Management Plan (DMP) with its own Supplemental
22 Environmental Impact Statement (SEIS), closing the comment period in February 2014. In
23 February 2016, NPS published its proposed rule modifying regulations to implement the agency’s
24 “preferred alternative” (Proposed Dog Rule) which, to no one’s surprise, radically reduces access
25 to GGNRA lands for people to walk dogs. These formalities are projected to conclude later this
26 year, when, according to NPS, it will issue the Final DMP/SEIS and adopt a Final Dog Rule. Not
27 surprisingly, NPS has scheduled those actions to occur *after* the festivities it has planned in the
28 GGNRA to celebrate the 100th Anniversary of the National Park Service.

1 4. If implemented, Plaintiffs understand, based on their review of public documents,
2 that the DMP and Proposed Dog Rule would result in an extreme and unlawful reduction in the
3 amount of GGNRA land on which people can walk their dogs, both on- and off-leash.

4 5. Long before the GGNRA was created in 1972, Bay Area residents walked their
5 dogs on the lands that NPS now wants to make off limits to dog walking. Dog walking is
6 specifically enumerated as a recreational activity in the House report on the GGNRA's creation,
7 House Report No. 92-1391, p. 4852: "On a nice day, it will satisfy the interest of those who
8 choose to fly kites, sunbathe, walk their dogs, or just idly watch the action along the bay." Not
9 surprisingly, the continuation of such historic recreational uses was part of the "deal" that brought
10 the GGNRA into existence, and is a commitment by the federal government reflected in the
11 GGNRA Enabling Act. In the more than forty years since the GGNRA was created, the need for
12 such recreational access has only become more pressing, as the areas surrounding the GGNRA
13 have become more developed and grown in population. The many decades of dog walking on the
14 lands now within the GGNRA is not only well-documented but animates, in part, the demands of
15 the Boards of Supervisors of San Francisco, Marin and San Mateo Counties that NPS officials
16 recognize the historical uses and the deal that those jurisdictions made with the federal
17 government in connection with the creation of the GGNRA. *See, e.g.*, San Francisco Board of
18 Supervisor Resolutions from 2011, 2013, and 2016;¹ Marin Board of Supervisors Resolution;²
19 San Mateo Board of Supervisors letter.³

20 6. Instead of honoring the federal government's promises and complying with the
21 law, the DMP and Proposed Dog Rule would radically diminish the GGNRA lands open to dog
22 walking and run afoul of the GGNRA Enabling Act's mandate to maintain historic recreational
23 uses. NPS and its officials seek to exclude people wanting to walk dogs from an urban recreation

24 ¹ <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions11/r0183-11.pdf>;
25 <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions13/r0386-13.pdf>;
26 <https://sfgov.legistar.com/View.ashx?M=F&ID=4365966&GUID=81CC7B7C-381D-4A7E-8655-63DB8917B0BB>

27 ² http://marin.granicus.com/Viewer.php?view_id=36&clip_id=6934&meta_id=718431

28 ³ <http://sanmateo.siretechnologies.com/sirepub/pubmtgframe.aspx?meetid=272&doctype=AGE>
NDA; http://www.mercurynews.com/san-mateo-county-times/ci_26069715/san-mateo-county-supervisors-ask-ggnra-rethink-dog

1 area and convert it into a nature preserve. Despite years of planning and environmental review
2 processes, NPS has failed to appropriately analyze many readily foreseeable environmental
3 impacts, including the impacts of the displacement of dog walking from GGNRA lands to other
4 lands in the three counties, the impacts on the urban environment, and the impacts on traffic.
5 Despite all this process, NPS has failed to appropriately consider alternatives to the extreme
6 actions it intends to take. Nor are those actions the product of reasoned decision-making because
7 any data NPS relies upon do not, in fact, support those actions.

8 7. In 2015, SFDOG and Save Our Recreation submitted a FOIA request to NPS for
9 information relating to the agency's actions and proposed actions so Plaintiffs could, among other
10 things, meaningfully participate in the rulemaking process for the Proposed Dog Rule. The
11 comment period for that proposed regulation closes on May 25, 2016. As explained below, NPS
12 has resisted producing the requested information since last summer—when the first FOIA request
13 for this information was made.

14 8. NPS has “slow-walked” production of and has otherwise purposefully blocked
15 access to the information called for by the FOIA request. It is apparent that as part of its long-
16 term “strategy,” NPS has decided to delay production of and keep from public view certain
17 records because it does not want those records to be used in connection with the public comment
18 process for the Proposed Dog Rule, or in connection with potential future lawsuits challenging the
19 various decisions of NPS to unlawfully restrict and reduce dog walking. This lawsuit seeks to
20 compel production of those improperly withheld documents.

21 JURISDICTION

22 9. The Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. §
23 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1361.

24 10. The core requested relief (*i.e.*, declaratory and injunctive) is authorized by 5
25 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 2201-2202.

26 11. Plaintiffs have exhausted their administrative remedies. Subject to an exception
27 not here applicable, Defendants were required to determine whether to comply with Plaintiffs'
28 request within twenty (20) working days after their receipt of the request, pursuant to 5 U.S.C.

1 § 552(a)(6)(A). Pursuant to this same provision, Defendants were also required to timely notify
2 Plaintiffs of the determination, the reasons therefor, and the right to appeal any adverse
3 determination to the agency. Defendants failed to provide a timely response to Plaintiffs' FOIA
4 request. Because Defendants failed to comply with the time limit set forth in 5 U.S.C. §
5 552(a)(6)(A)-(B), Plaintiffs are deemed to have exhausted any and all administrative remedies
6 with respect to their FOIA request, pursuant to 5 U.S.C. § 552(a)(6)(C).

7 **VENUE**

8 12. Venue is proper in this district under 28 U.S.C. § 1391(e). Defendants consist of a
9 federal agency, and an officer of the United States and employees of a federal agency all acting in
10 their official capacities. A substantial part of the events and omissions giving rise to the claims in
11 this action occurred in and/or relate to San Francisco County, which is located within this judicial
12 district. Further, some of the Plaintiffs reside in San Francisco County, making venue proper in
13 this judicial district pursuant to 5 U.S.C. § 552(a)(4)(B).

14 **INTRADISTRICT ASSIGNMENT**

15 13. A substantial part of the events and omissions giving rise to the claims in this case
16 occurred in San Francisco, making the San Francisco Division an appropriate venue under Civil
17 L.R. 3-2(d). Plaintiffs understand that many of the documents improperly withheld are located at
18 Defendants' offices located within San Francisco County.

19 **PARTIES**

20 14. San Francisco Dog Owners Group (SFDOG) was founded in 1997 in response to
21 closures at Ocean Beach by the NPS, and incorporated in 2000. It has over 900 dues-paying
22 members, and has two email list-serves that reach roughly 750 people. SFDOG is a non-profit
23 organization that promotes responsible dog ownership/guardianship, offers educational programs
24 for both dog owners/guardians and the general public, and works for increased off-leash
25 recreational opportunities for responsible dog owners/guardians and their canine companions.
26 SFDOG is the premier citywide dog advocacy organization in San Francisco and works with
27 park-specific dog groups (e.g., Dolores Park DOG, Duboce DOG, etc.) throughout San Francisco.
28 It has held workshops with and actively collaborated with the San Francisco Parks and Recreation

1 Department, San Francisco Animal Care and Control Department, the San Francisco SPCA, the
2 Boys and Girls Clubs of San Francisco, the San Francisco Mounted Police unit, and numerous
3 rescue and animal welfare organizations. SFDOG actively participated in the scoping process
4 relating to the DMP and its accompanying environmental impact statements. SFDOG and its
5 members have submitted comments on the DMP and related environmental review documents to
6 NPS, and have analyzed the other public comments thereto. SFDOG seeks access to the
7 requested documents so it can, among other things, participate in the ongoing rulemaking process
8 relating to the DMP, evaluate the management decisions of NPS, and share that evaluation with
9 its members and members of the public.

10 15. Marin County Dog Owners Group (Marin DOG) was founded in 2013 in response
11 to the release of the NPS's environmental review materials relating to the DMP. Marin DOG is a
12 grassroots organization with a network reach of over 1000 people and considers itself a watchdog
13 of fair pet policies in Marin County. Marin DOG supports environmental stewardship, and
14 believes that goal is compatible with recreational use—as it has been for decades. As a local
15 organization, Marin DOG has partnered with the Marin Humane Society and other GGNRA
16 stakeholder groups to support programs that educate the public on how to share our open spaces
17 responsibly. Marin DOG has launched stewardship programs and conducted educational
18 outreach campaigns. It works to improve communications, offer solutions and elevate dog owner
19 representation with the following groups: Golden Gate National Recreation Area, Marin County
20 Parks and Open Space, Marin County Water District, local Community Service Districts and local
21 parks and recreation areas. Marin DOG seeks access to the requested documents so it can, among
22 other things, participate in the ongoing rulemaking process relating to the DMP, evaluate the
23 management decisions of NPS, and share that evaluation with its members and members of the
24 public.

25 16. Coastside Dog Owners Group (Coastside DOG) of San Mateo County is dedicated
26 to promoting responsible dog walking and advocating for dog-friendly open space on the San
27 Mateo County coast. The group (formerly Montara Dog Group) was initially founded in 2008 to
28 celebrate the community's long-standing culture of dog walking and stewardship at Rancho

1 Corral de Tierra—an area which many of its members helped save from development and which
2 at that time was owned by Peninsula Open Space Trust. Since 2008, Coastside DOG has placed
3 and maintained pet waste bags and bins throughout Rancho Corral de Tierra. To this day,
4 Coastside DOG provides the only trash removal service at Rancho. In addition, the organization
5 has sponsored community trail etiquette trainings designed to promote safety and best practices in
6 multi-use trail recreation at Rancho and other local open space areas. The trainings bring together
7 dog walkers, equestrians, and cyclists to practice some simple etiquette rules to ensure a positive
8 recreational experience for all. Today, Coastside DOG has grown to nearly 500 members
9 spanning from Pacifica to Half Moon Bay, and expanded its mission to include advocating for
10 dog-friendly open space on the entire San Mateo County coast. Coastside DOG (then the
11 Montara Dog Group) and its members have submitted comments to NPS relating to the DMP and
12 associated environmental review materials. Coastside DOG seeks access to the requested
13 documents so it can participate in the ongoing rulemaking process relating to the DMP, evaluate
14 the management decisions of NPS, and share that evaluation with its members and San Mateo
15 County coastside communities.

16 17. Save Our Recreation was founded in 2014 after the release of the GMP amid
17 concerns that the GMP would support restrictions on recreational access for all user groups, not
18 just dog owners. It has over 10,000 supporters. Save Our Recreation serves as an umbrella group
19 to bring together people and organizations supporting recreation in the GGNRA. Save Our
20 Recreation is dedicated to preserving access for all recreational users in the GGNRA, as well as
21 advocating for a comprehensive process to address recreational access that includes public input,
22 independent voices, and thoughtful consideration. SFDOG, Marin DOG, and Coastside DOG are
23 members of Save Our Recreation.

24 18. Thousands of individuals and organizations submitted comments on the DMP,
25 including Plaintiffs and their members. Plaintiffs and their members have discussed the potential
26 effects of the DMP with many individuals and other citizen groups and organizations in the three
27 counties and the larger Bay Area. Thousands of individuals in the San Francisco Bay Area are
28 interested in the policy decisions reflected in the DMP and Proposed Dog Rule. Many newspaper

1 articles have been written about the DMP in recent years. More recently, the release by NPS of
2 its Proposed Dog Rule led to a public uproar and extensive media coverage locally and nationally.
3 The requested documents will be of interest to a wide array of individuals and organizations and
4 they will help the general public evaluate the management decisions of NPS as they relate to the
5 GGNRA and one of its most-prized historic recreational uses. The plans of NPS to restrict dog
6 walking has implications for other traditional recreational uses of the GGNRA, which may be at
7 risk as well due to new restrictions. Plaintiffs intend to share their analysis of the requested
8 documents with other recreational user groups to help them understand NPS's management
9 decisions about dog walking, which will help them defend their own recreational interests against
10 unlawful restrictions.

11 19. Plaintiffs and their members regularly recreate within the GGNRA and the recent
12 decisions of the NPS concerning the GGNRA directly impact their activities and interests.
13 Absent relief from this Court, Plaintiffs will be irreparably harmed by the unlawful conduct of
14 NPS.

15 20. Plaintiffs believe Defendants' management decisions do not meet the requirements
16 of the law. By seeking access to the requested documents, Plaintiffs seek to promote integrity,
17 transparency, and accountability in government and fidelity to the rule of law.

18 21. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR (the
19 Department) is an agency of the United States and has possession, custody, and control of public
20 records to which Plaintiffs seek access.

21 22. Defendant NATIONAL PARK SERVICE is an agency within the Department and
22 has possession, custody, and control of public records to which Plaintiffs seek access.

23 23. Defendant SALLY JEWELL, sued in her official capacity as the Secretary of the
24 Interior, is responsible for managing the Department and all agencies within it (including NPS)
25 and has possession, custody, and control of public records to which Plaintiffs seek access.

26 24. Defendant CHRISTINE S. LEHNERTZ, sued in her official capacity, is the
27 General Superintendent for the Golden Gate National Recreation Area and an NPS employee.
28

1 Defendant Lehnertz has possession, custody, and control of public records to which Plaintiffs
2 seek access.

3 25. Defendant HOWARD LEVITT, sued in his official capacity, is an NPS employee
4 and has possession, custody, and control of public records to which Plaintiffs seek access.

5 LEGAL BACKGROUND

6 26. In Public Law 110-175, § 2, Dec. 31, 2007, 121 Stat. 2524, Congress found that

7 (1) The Freedom of Information Act was signed into law on July 4,
8 1966, because the American people believe that -- (A) our
9 constitutional democracy, our system of self-government, and our
10 commitment to popular sovereignty depends upon the consent of
11 the governed; (B) such consent is not meaningful unless it is
12 informed consent; and (C) as Justice Black noted in his concurring
13 opinion in *Barr v. Matteo* (360 U.S. 564 (1959)), ‘The effective
14 functioning of a free government like ours depends largely on the
15 force of an informed public opinion. This calls for the widest
16 possible understanding of the quality of government service
17 rendered by all elective or appointed public officials or employees.’

18 (2) the American people firmly believe that our system of
19 government must itself be governed by a presumption of openness;

20 (3) the Freedom of Information Act establishes a ‘strong
21 presumption in favor of disclosure’ as noted by the United States
22 Supreme Court in *United States Department of State v. Ray* (502
23 U.S. 164 (1991)), a presumption that applies to all agencies
24 governed by that Act; [and]

25 (4) ‘disclosure, not secrecy, is the dominant objective of the Act,’
26 as noted by the United States Supreme Court in *Department of Air
27 Force v. Rose* (425 U.S. 352 (1976)).

28 Pub. L. No. 110-175, § 2, Dec. 31, 2007, 121 Stat. 2524.

29 27. Congress enacted FOIA in 1966 to improve public access to information held by
30 government agencies. The Act expresses a public policy in favor of disclosure so that the public
31 might see what activities federal agencies are engaged in. FOIA is intended to “ensure an
32 informed citizenry, vital to the functioning of a democratic society, needed to check against
33 corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire &
34 Rubber Co.*, 437 U.S. 214, 242 (1978). To this end, FOIA requires a federal agency to disclose
35 records in its possession unless they fall under one of nine enumerated and exclusive exemptions.
36 5 U.S.C. §§ 552(a)(3), (b); *see also Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976).

1 28. FOIA provides that but for certain exceptions not applicable here:

2 [E]ach agency, upon any request for records which (i) reasonably
3 describes such records and (ii) is made in accordance with
4 published rules stating the time, place, fees (if any), and procedures
to be followed, shall make the records promptly available to any
person.

5 5 U.S.C. § 552(a)(3)(A).

6 29. “Agency records” are materials that the agency either created or obtained that are
7 in the agency’s control at the time the FOIA request is made; “control” means that “the materials
8 came into the agency’s possession in the legitimate conduct of its official duties.” *Or. Natural*
9 *Desert Ass’n v. Gutierrez*, 409 F. Supp. 2d 1237, 1243 (D. Or. 2006).

10 30. In responding to a FOIA request, the producing agency “shall provide the record in
11 any form or format requested by the person if the record is readily reproducible by the agency in
12 that form or format.” 5 U.S.C. § 552(a)(3)(B).

13 31. Under FOIA, “an agency shall make reasonable efforts to search for the records in
14 electronic form or format, except when such efforts would significantly interfere with the
15 operation of the agency’s automated information system” and “the term ‘search’ means to review,
16 manually or by automated means, agency records for the purpose of locating those records which
17 are responsive to a request.” *Id.* §§ 552(a)(3)(C)-(D).

18 32. Under the statute, an agency is generally required to respond to a FOIA request
19 within 20 business days. *Id.* § 552(a)(6)(A)(i). Failure to respond in a reasonable timeframe is
20 itself a violation of law. *Or. Natural Desert Ass’n v. Gutierrez*, 409 F. Supp. 2d at 1248 (holding
21 that “an untimely response is a violation of FOIA, regardless of the final outcome of the
22 request”); *Gilmore v. United States Dep’t of Energy*, 33 F. Supp. 2d 1184, 1188 (N.D. Cal. 1998)
23 (same).

24 33. “An agency shall not assess search fees . . . under this subparagraph if the agency
25 fails to comply with [the 20-workday time limit], [or] if no unusual or exceptional
26 circumstances . . . apply to the processing of the request.” 5 U.S.C. § 552(a)(4)(A)(viii).

27 34. If a requesting party believes that the agency has improperly withheld all or part of
28 the responsive agency records within its control, or that the agency has failed to respond to all

1 aspects of its request, it must ordinarily file an administrative appeal before it may bring an action
2 in federal court. 5 U.S.C. §§ 552(a)(4)(B), (6).

3 35. However, if an agency fails to respond within the 20-workday time limits set forth
4 in 5 U.S.C. § 552(a)(6), a person making a FOIA request is deemed to have exhausted its
5 administrative remedies. 5 U.S.C. § 552(a)(6)(c)(i).

6 36. If the agency does not respond to a FOIA appeal within 20 workdays, the FOIA
7 appellant has the right to file an action to enforce its FOIA rights in district court. 5 U.S.C.
8 § 552(a)(6)(A)(ii).

9 37. FOIA places the burden of justifying a FOIA denial on the agency, not the person
10 who requests the records. 5 U.S.C. § 552(a)(4)(B). “The burden is on the agency to demonstrate,
11 not the requester to disprove, that the materials sought are not ‘agency records’ or have not been
12 ‘improperly withheld.’” *United States Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 142 n.3
13 (1989).

14 38. FOIA provides: “The court may assess against the United States reasonable
15 attorney fees and other litigation costs reasonably incurred in any case under this section in which
16 the complainant has substantially prevailed.” 5 U.S.C. § 552(a)(4)(E). For purposes of FOIA, a
17 plaintiff has substantially prevailed “if the complainant has obtained relief through either [¶] a
18 judicial order, or an enforceable written agreement or consent decree; or [¶] (II) a voluntary or
19 unilateral change in position by the agency, if the complainant’s claim is not insubstantial.” *Id.*
20 §§ 552(a)(4)(E)(ii)(I)-(II).

21 39. Moreover, FOIA provides that

22 Whenever the court orders the production of any agency records
23 improperly withheld from the complainant and assesses against the
24 United States reasonable attorney fees and other litigation costs,
25 and the court additionally issues a written finding that the
26 circumstances surrounding the withholding raise questions whether
27 agency personnel acted arbitrarily or capriciously with respect to
28 the withholding, ***the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding.*** The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and

1 recommendations to the officer or employee or his representative.
2 The administrative authority shall take the corrective action that the
3 Special Counsel recommends.

4 5 U.S.C. § 552(a)(4)(F)(i) (emphasis added).

5 **FACTUAL BACKGROUND**

6 40. On November 24, 2015, Plaintiffs submitted via electronic mail and U.S. Mail a
7 FOIA request to NPS seeking access to:

8 A. Documents reflecting the number of individuals that visit the Golden Gate
9 National Recreation Area, broken down by year for the last ten years.

10 B. Documents reflecting the number of individuals that visit specific sites
11 located within the Golden Gate National Recreation Area (e.g., number of visitors per
12 year at Ocean Beach, number of visitors per year at Fort Funston) broken down by year
13 for the last ten years.

14 C. Documents reflecting the number of citations issued by the National Park
15 Service to park visitors during the last ten years in connection with alleged violations of
16 any dog walking laws or regulations applicable to the Golden Gate National Recreation
17 Area.

18 D. Other than the Draft Dog Management Plan and related documents
19 published on the National Park's Service's website, all documents relating to restricting
20 dog walking within the Golden Gate National Recreation Area. The scope of this request
21 is limited to documents dated, collected, or generated between 1999 and the present.

22 E. All documents concerning park resources which have allegedly been
23 impacted by dog walking within the Golden Gate National Recreation Area. The scope of
24 this request is limited to documents dated, collected, or generated between 1999 and the
25 present.

26 F. Documents reflecting the number of dogs, broken down by site if possible,
27 brought to the Golden Gate National Recreation Area each year for the last ten years.

28 41. Pursuant to 40 CFR § 2.16, NPS must ordinarily provide a response to a FOIA
request within 20 workdays from the date the request is received. The NPS may extend the basic

1 20-workday time limit if “unusual circumstances exist.” 40 CFR § 2.19. However, to extend the
2 basic deadline, NPS must provide written notification “[b]efore the expiration of the basic 20-
3 workday time limit to respond” of its intent to do so, and provide the information called for by 40
4 CFR § 2.19. NPS was required to respond to Plaintiffs’ FOIA request by December 28, 2015.
5 No response was received from NPS by that date.

6 42. Troubled by the decision of NPS to ignore Plaintiffs’ FOIA request, on January 8,
7 2016, Plaintiffs, through counsel, sent a letter by electronic mail and U.S. Mail to NPS inquiring
8 about the status of its pending FOIA request. A few days later, on January 12, NPS, through its
9 counsel, contacted Plaintiffs’ counsel and acknowledged NPS had failed to provide a response.
10 On that same day (January 12, 2016), NPS, through counsel, stated Plaintiffs would be provided
11 documents in the coming weeks, along with a formal response from the NPS with a projected
12 timeline. Counsel for Plaintiffs explained that it was important that the documents be produced in
13 a timely fashion because Plaintiffs wished to review them in advance of an upcoming rulemaking
14 process relating to a proposed management plan for the GGNRA. NPS, through counsel,
15 acknowledged that it understood this.

16 43. On February 9, 2016, having received no response from the NPS by regular mail,
17 Plaintiffs, through counsel, contacted counsel for NPS by phone to inquire about the status of
18 their FOIA request. During that call, counsel for NPS stated NPS had sent a response letter by e-
19 mail on January 19, 2016 (January 19 Response Letter). Plaintiffs’ counsel responded by
20 explaining it had not received the January 19 Response Letter by e-mail, and further stated NPS
21 should have sent its response letter by regular mail. Counsel for NPS agreed the January 19
22 Response Letter should have been sent by regular mail, and, on February 9, 2016, sent a copy of
23 it to counsel for Plaintiffs by e-mail, which was received.

24 44. During the February 9, 2016 telephone call between counsel for the parties,
25 Plaintiffs’ counsel pointed out that the January 19 Response Letter stated NPS anticipated
26 providing more than 29,000 documents by January 29, 2016 and would notify Plaintiffs when
27 those materials were available and directed Plaintiffs to the NPS website claiming that some
28 responsive information could be found there. Plaintiffs’ counsel explained NPS did not contact

1 Plaintiffs by January 29 nor did NPS make any documents available by that date. Counsel for
2 NPS said it would follow up with its client regarding the status of the document collection and
3 report back with an update. No update was provided.

4 45. On February 25, 2016, Plaintiffs' counsel, again, called counsel for NPS to check
5 on the status of its FOIA request. As of that date, Plaintiffs still had not received the promised
6 documents from NPS. During that call, NPS, through counsel, informed Plaintiffs' counsel that
7 NPS still had not processed Plaintiffs' FOIA request and had not even begun collecting any
8 documents as of that date. Plaintiffs' counsel expressed its disappointment in hearing such news
9 and explained that it appears NPS is "slow-walking" the FOIA request so as to deprive Plaintiffs
10 of a meaningful opportunity to review the documents.

11 46. On March 4, 2016, Plaintiffs, through counsel, sent a formal letter to counsel for
12 NPS detailing the history of events and, again, expressing concern NPS was deliberately refusing
13 to produce documents and explaining how such delay would prejudice Plaintiffs. The March 4
14 letter also requested NPS provide a response as soon as reasonably possible if any of the facts set
15 forth in the letter did not accurately capture the discussions between counsel or the sequence of
16 events. After sending the letter, Plaintiffs' counsel contacted counsel for NPS by phone and
17 asked if the letter was accurate. Counsel for NPS confirmed that all material facts were indeed
18 accurate, and that a confirming letter would be provided within the coming weeks. More than a
19 month later, NPS still has not responded to that letter, despite repeated assurances that it would do
20 so. On March 4, 2016, in the hopes of resolving this matter informally, Plaintiffs also sent a
21 formal appeal letter to NPS asking that all requested documents be provided by March 10, 2016
22 and explained that such a deadline was reasonable under the circumstances. NPS refused to
23 produce documents by that date as well.

24 47. On March 7, 2016, NPS sent a response by e-mail to Plaintiffs' March 4 letters
25 stating NPS anticipated providing some documents by March 25, 2016. On March 23, 2016,
26 Defendant Mr. Howard Levitt, sent by e-mail a letter explaining that NPS has made available
27 some materials that are "partially responsive" to Plaintiffs' FOIA request. No timeline was
28 provided as to when the remaining documents called for by Plaintiffs' request would be provided.

1 Instead, NPS simply stated “[r]esearch continues on these and other outstanding items.” To date,
2 NPS has failed to provide all of the requested documents.

3 48. At every stage, NPS has demonstrated a purposeful disregard for its duties under
4 FOIA and has only showed the courtesy of even acknowledging the existence of Plaintiffs’ FOIA
5 request after Plaintiffs, through counsel, placed calls and/or wrote letters.

6 49. This is not the first time NPS has demonstrated a purposeful disregard of its
7 obligations under FOIA. Plaintiffs sent a similar FOIA request (NPS-2015-00761) to NPS in July
8 2015. Rather than producing the requested documents, NPS took the position that the requested
9 documents would only be produced if Plaintiffs paid a fee of \$6,000. Plaintiffs, through counsel,
10 explained that asking a non-profit to pay such a high fee in connection with a document request
11 that is clearly subject to a fee waiver is improper and offered to address any concerns that NPS
12 might have by supplementing Plaintiffs’ FOIA request with further information. Plaintiffs,
13 through counsel, explained that proceeding in this way would be more efficient. Despite initially
14 requesting such information, NPS changed course, refused to accept further information and
15 demanded that Plaintiffs either pay the fee or submit a new request. To simplify matters and
16 avoid further delay, Plaintiffs elected to submit a new request (the request now at issue in this
17 lawsuit: NPS-2016-00154), narrowed some of the document requests (at the request of
18 Defendant Mr. Howard Levitt) to reduce the claimed burden on the NPS, submitted a declaration
19 to address the purported concerns of NPS relating to a fee waiver, requested NPS promptly
20 process the request, and assured NPS that Plaintiffs would pay any associated fees but would do
21 so under a reservation of rights. Despite all of that, NPS employed a new strategy to avoid
22 having to comply with its obligations under FOIA: act as if the FOIA request does not exist. In
23 other words, NPS first tried to claim that it would cost many thousands of dollars to process the
24 FOIA request as a strategy to block Plaintiffs from gaining access to the requested documents.
25 When that did not work, NPS decided simply to act as if the FOIA request did not exist, hoping
26 Plaintiffs would just go away. That strategy failed as well. The fact that NPS later conceded that
27 Plaintiffs were entitled to a fee waiver shows that NPS was acting in bad faith when it initially
28 refused to produce documents.

1 50. Defendants have unashamedly refused to comply with the law. The responses of
2 NPS to date to the pending operative FOIA request are woefully incomplete, by the agency's own
3 admission. While it would not constitute the legally required complete response to the pending
4 operative FOIA request, Plaintiffs are eager to review communications between NPS staff and
5 various "park partners," who are supporting NPS in its effort to radically reduce dog walking in
6 the GGNRA. Plaintiffs believe that those "park partners" -- ranging from Wild Equity Institute,
7 which has aggressively litigated in federal and California courts for years to convert historic
8 public recreational land on the California Coast into a nature preserve, to the Golden Gate
9 National Parks Conservancy, which has provided off-budget funding to NPS for expenditures
10 related to the GGNRA for years (including for its "communications" efforts to counter the claims
11 and concerns of citizens and groups critical of NPS management, such as Plaintiffs), to the
12 National Parks Conservation Association, which has supported NPS efforts to restrict recreation
13 in the GGNRA for years -- and NPS staff have engaged in extensive communications that are
14 reflected in documents called for by the pending operative FOIA request. To date, no such
15 responsive documents have been produced.

16 51. On multiple occasions, NPS has "promised" to produce documents, only later to
17 break those promises and try to remedy its breach by making additional promises about what it
18 might do in the future. This pattern and practice of intentional delay is prejudicial to Plaintiffs
19 and must stop. Plaintiffs intend to submit in the coming weeks additional FOIA requests to NPS
20 and believe that NPS will employ the same tactic: improper delay.

21 52. For about nine (9) months, Plaintiffs have patiently tried to work with NPS to gain
22 access to all documents responsive to their FOIA request. Only after Plaintiffs, through counsel,
23 had already spent considerable energy writing and calling did NPS respond, and even then, the
24 response ultimately was and is that there will be further delays. This lawsuit is necessary to force
25 NPS to follow the law.
26
27
28

1 **CLAIM FOR RELIEF**
2 **FIRST CLAIM**
3 **(Violation of FOIA, 5 U.S.C. § 552)**

4 53. Plaintiffs incorporate by reference each of the foregoing paragraphs.

5 54. Defendants failed to provide a timely response to Plaintiffs' FOIA request and are
6 unlawfully and improperly withholding agency records requested by Plaintiffs pursuant to 5
7 U.S.C. § 552. Plaintiffs have waited months for the requested documents, and Defendants'
8 failure to provide a timely response is egregious. Defendants have not delineated the scope of the
9 requested documents nor have they provided any concrete timeline, which Plaintiffs believe is
10 part of Defendants' strategy to purposefully delay production. Defendants are also failing to
11 search for responsive documents. At no time have Defendants identified any documents that may
12 be exempt from disclosure.

13 55. Defendants are intentionally, unlawfully, and improperly withholding agency
14 records and providing tardy and incomplete responses and have a pattern and practice of doing so.
15 That pattern and practice is shown by, among other things, Defendants' response to Plaintiffs'
16 FOIA requests made in July 2015 and in November 2015, and their decision to ignore another
17 FOIA request made by SFDOG in 2014. Defendants' conduct in similar cases further shows
18 Defendants' pattern and practice of disregarding their duties under FOIA. *See, e.g., Rocky*
19 *Mountain Wild, Inc. v. United States Forest Service*, Case No. 14-cv-2496-WYD-KMT (D.
20 Colo.)(finding Forest Service violated FOIA by failing to conduct reasonable search and by
21 withholding documents) (Order dated September 30, 2015). Plaintiffs intend to submit additional
22 FOIA requests and reasonably believe Defendants will not voluntarily comply with FOIA.

23 56. Plaintiffs are being irreparably harmed by reason of Defendants' unlawful
24 withholding of the requested records, and Plaintiffs will continue to be irreparably harmed unless
25 Defendants are compelled to follow the law.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

28 1. Order Defendants to conduct a search for any and all responsive records to
Plaintiffs' FOIA request (NPS-2016-00154) and demonstrate they employed search methods

1 reasonably likely to lead to the discovery of records responsive to Plaintiffs' FOIA request;

2 2. Order Defendants to produce, by a date certain that will allow Plaintiffs to
3 participate in the ongoing rulemaking process, any and all non-exempt records responsive to
4 Plaintiffs' FOIA request (NPS-2016-00154) and a *Vaughn* Index of any responsive records
5 withheld under claim of exemption;

6 3. Enjoin Defendants from continuing to withhold any and all non-exempt records
7 responsive to Plaintiffs' FOIA request;

8 4. Declare Defendants' conduct reflects a pattern and practice of unreasonably and
9 intentionally failing to comply with the requirements of FOIA;

10 5. Grant Plaintiffs an award of attorneys' fees and costs reasonably incurred in this
11 action pursuant to 5 U.S.C. § 552(a)(4)(E); and

12 6. Grant Plaintiffs such other relief as the Court deems just and proper under the
13 circumstances.

14 Dated: April 5, 2016

CHRISTOPHER J. CARR
NAVI SINGH DHILLON
ALEJANDRO LUIS BRAS
LALA T. WU
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18 By: /s/ Christopher J. Carr
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