

1 KRISTEN L. BOYLES (CSBA # 158450)
MARISA C. ORDONIA (WSBA # 48081)

2 *[Pro Hac Vice Admission Pending]*
3 PATTI A. GOLDMAN (WSBA # 24426)
[Pro Hac Vice Admission Pending]

4 Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104
5 Ph: (206) 343-7340 | Fax: (206) 343-1526
6 kboyles@earthjustice.org
mordonia@earthjustice.org
pgoldman@earthjustice.org

7
8 *Attorneys for Plaintiff Pesticide Action
Network of North America*

9 GREGORY C. LOARIE (CSBA #215859)
Earthjustice

10 50 California, Suite 500
San Francisco, CA 94111
11 Ph: (415) 217-2000 | Fax: (415) 217-2040
gloarie@earthjustice.org

12
13 *Local Counsel for Plaintiff Pesticide Action
Network of North America*

14
15 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 PESTICIDE ACTION NETWORK OF NORTH
AMERICA,

18 Plaintiff,

19 v.

20 UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

21 Defendant.

Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

(Freedom of Information Act, 5 U.S.C.
§ 552, *et seq.*)

22
23 INTRODUCTION

24 1. This action seeks to remedy violations of the Freedom of Information Act

25 *Earthjustice*
705 Second Ave., Suite 203
Seattle, WA 98104-1711
26 (206) 343-7340

1 (“FOIA”), 5 U.S.C. § 552, *et seq.* Plaintiff Pesticide Action Network of North America
2 (“PANNA”) filed two separate FOIA requests with Defendant U.S. Environmental Protection
3 Agency (“EPA”) seeking communications between EPA and certain parties regarding the
4 neurotoxic pesticide chlorpyrifos. PANNA seeks these communications as part of its public
5 education and advocacy to reverse EPA’s decision not to revoke chlorpyrifos tolerances. EPA
6 has failed to respond to PANNA’s FOIA requests within the time required by law and is
7 unlawfully withholding the information sought by PANNA. PANNA seeks declaratory relief
8 that EPA has no basis for withholding the requested records and injunctive relief directing EPA
9 to promptly provide PANNA with the requested material.

10 JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

11 2. This Court has both subject matter jurisdiction over this action and personal
12 jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction
13 over this action pursuant to 28 U.S.C. § 1331. Declaratory relief is appropriate under 28 U.S.C.
14 § 2201.

15 3. Venue is properly vested in this Court under 5 U.S.C. § 552(a)(4)(B), as PANNA,
16 which made the FOIA requests, has its principal place of business in Oakland, California.

17 4. Intradistrict assignment: this case is properly assigned to the San Francisco or
18 Oakland Division under Civil L.R. 3-2(c) because PANNA has its principal place of business in
19 Oakland, California.

20 PARTIES

21 5. Plaintiff PANNA is a non-profit organization that works to replace the use of
22 hazardous pesticides with ecologically sound and socially just alternatives. Its principal place of
23 business is located in Oakland, California. PANNA works throughout the U.S. and
24 internationally in partnership with consumer, labor, health, environmental, and agricultural

1 groups to reduce the indiscriminate and unnecessary use of hazardous pesticides. It defends
2 basic rights to health and environmental quality. PANNA works on behalf of pesticide-affected
3 communities, including farmworkers, farmers, residents of agricultural communities and
4 consumers. PANNA routinely gathers information on pesticides, turns raw information into
5 reports and expert analysis, and disseminates that information and analysis to the public. In
6 2007, PANNA, along with Natural Resources Defense Council (“NRDC”), filed a petition with
7 the U.S. EPA asking the agency to revoke all chlorpyrifos food tolerances and cancel all
8 chlorpyrifos registrations.

9 6. Defendant EPA is the federal agency charged with, among other things,
10 registering pesticides for sale and distribution, and establishing tolerances for pesticide use in or
11 on food. EPA is in possession and control of the records sought by PANNA.

12 BACKGROUND

13 I. EPA MAY ALLOW A PESTICIDE TO BE USED ON FOOD ONLY IF SUCH USE 14 MEETS A STATUTORILY DEFINED SAFETY STANDARD

15 7. EPA regulates pesticides under two overlapping statutes: the Federal Food, Drug
16 and Cosmetic Act (“FFDCA”), 21 U.S.C. § 301, *et seq.*, and the Federal Insecticide, Fungicide
17 and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136, *et seq.*

18 8. Under FFDCA, EPA issues tolerances to establish the maximum residue of a
19 pesticide allowed on food, and EPA may “establish or leave in effect a tolerance for a pesticide
20 chemical residue in or on a food only if the Administrator determines that the tolerance is safe.”
21 21 U.S.C. § 346a(b)(2)(A)(i).

22 9. The Food Quality Protection Act (“FQPA”), passed unanimously in 1996,
23 amended the FFDCA to require that EPA “ensure that there is a reasonable certainty that no
24 harm will result to infants and children from aggregate exposure” to pesticides. 21 U.S.C.

1 § 346a(b)(2)(C)(ii)(I), (II). EPA cannot maintain a tolerance if it finds a pesticide residue would
2 not be safe. *Id.* § 346a(b)(2)(A)(i).

3 10. Under FIFRA, EPA must establish a registration before a pesticide may generally
4 be sold or used in the United States. 7 U.S.C. § 136a(a). EPA has the authority to cancel a
5 pesticide registration if the pesticide use “causes unreasonable adverse effects on the
6 environment.” *Id.* § 136d(b).

7 11. The FFDCA and FIFRA safety standards are intertwined through FIFRA’s
8 definition of “unreasonable adverse effects,” which includes “a human dietary risk from residues
9 that result from a use of a pesticide in or on any food inconsistent with [FQPA] standard.” 7
10 U.S.C. § 136(bb)(2). In other words, a pesticide may not be registered for a food use unless a
11 food tolerance is in place, and whenever a food tolerance is revoked, the registration for use of
12 the pesticide on that food crop must be cancelled.

13 II. PANNA PETITIONED EPA TO REVOKE TOLERANCES AND CANCEL USES OF
14 CHLORPYRIFOS

15 12. On September 12, 2007, PANNA and NRDC filed a Petition to Revoke All
16 Tolerances and Cancel All Registrations for the Pesticide Chlorpyrifos (“2007 Petition”) with
17 EPA. The 2007 Petition sought a ban on chlorpyrifos based on a growing body of evidence that
18 risks from chlorpyrifos fail to meet the FQPA safety standard. In particular, the 2007 Petition
19 cited evidence correlating chlorpyrifos exposures with neurodevelopmental harm to infants and
20 children.

21 13. In 2011, EPA released a preliminary human health risk assessment for
22 chlorpyrifos which expressed concern that current tolerances may not afford sufficient protection
23 to children from drinking water and drift exposures. Chlorpyrifos Preliminary Human Health
24 Risk Assessment for Registration Review (June 30, 2011) at 17.

1 14. After EPA failed to meet an agreed-upon November 2011 deadline for a final
2 decision on the 2007 Petition, PANNA filed a writ of mandamus in the Ninth Circuit Court of
3 Appeals. *In re PANNA*, Petition for Writ of Mandamus and For Relief from Unreasonably
4 Delayed Action by EPA, No. 12-71125 (9th Cir. filed April 12, 2012).

5 15. EPA promised to respond to the 2007 Petition by February 2014, and the Ninth
6 Circuit denied the mandamus petition on July 10, 2013. *In re PANNA*, 532 F. App'x 649 (9th
7 Cir. 2013). EPA then failed to meet its February 2014 deadline, and on September 10, 2014,
8 PANNA and NRDC filed a Renewed Petition for a Writ of Mandamus in the Ninth Circuit Court
9 of Appeals.

10 16. EPA released a revised human health risk assessment for chlorpyrifos in
11 December 2014, in which it found that chlorpyrifos did not meet the FQPA safety standard due
12 to drinking water contamination. Chlorpyrifos: Revised Human Health Risk Assessment for
13 Registration Review (Dec. 31, 2014). In the 2014 risk assessment, EPA determined that low-
14 level exposures to chlorpyrifos *in utero* are correlated with damage to children's brains, like
15 lower IQs, developmental delays, and attention deficit disorder, and that the FQPA required the
16 agency to apply a tenfold margin of safety to protect children from neurodevelopmental harm.
17 *Id.* at 48-49. EPA also determined that drinking water contamination from chlorpyrifos exposed
18 children to unsafe levels of the pesticide. *Id.* at 95-96.

19 17. On August 10, 2015, the Ninth Circuit issued a writ of mandamus to put an end to
20 what it called EPA's "egregious" delay in responding to the 2007 Petition. *In re Pesticide Action*
21 *Network of North America v. EPA*, 798 F.3d 809, 811 (9th Cir. 2015). Noting that EPA had
22 found that a nationwide ban might be justified to protect people from drinking water
23 contamination, the Court held that EPA offered no acceptable justification for further delay and
24

1 gave EPA until October 31, 2015 to either (1) issue a proposed or final revocation rule, or (2)
2 deny the 2007 Petition. *Id.* at 814-15. Upon EPA’s request, the Ninth Circuit gave EPA until
3 March 31, 2017, to make a final decision on the 2007 Petition.

4 18. In October 2015, EPA proposed to revoke all tolerances because it could not
5 “determine that aggregate exposure to residues of chlorpyrifos, including all anticipated dietary
6 exposures and all other non-occupational exposures for which there is reliable information, are
7 safe.” 80 Fed. Reg. 69,080, 69,081 (Nov. 6, 2015).

8 19. In November 2016, EPA released another revised risk assessment for chlorpyrifos
9 which incorporated a lower regulatory endpoint to account for neurodevelopmental harm to
10 children. 81 Fed. Reg. 81,049, 81,050 (Nov. 17, 2016). According to this risk assessment,
11 people would be harmed from virtually every use and every way that people are exposed to
12 chlorpyrifos, with children, and particularly 1-2 year olds, most at risk. Chlorpyrifos: Revised
13 Human Health Risk Assessment for Registration Review (Nov. 3, 2016) at 23. Following this
14 risk assessment, EPA reiterated its determination that all chlorpyrifos tolerances had to be
15 revoked.

16 III. EPA REFUSES TO REVOKE CHLORPYRIFOS TOLERANCES

17 20. Despite EPA’s findings that chlorpyrifos is unsafe, on March 29, 2017, EPA
18 issued an order denying the 2007 Petition (“March 2017 Order”). 82 Fed. Reg. 16,581 (Apr. 5,
19 2017). Under the FQPA, tolerance decisions must be based on a finding of safety without
20 consideration of costs. 21 U.S.C. § 346a(b)(2)(A)(i).

21 21. In the March 2017 Order, EPA notes that “chlorpyrifos is currently the only cost-
22 effective choice for control of certain insect pests.” *Id.* at 16,584. The March 2017 Order further
23 states, “[a]lthough not a legal consideration, it is important to recognize that for many decades
24 chlorpyrifos has been and remains one of the most widely used pesticides in the United States,

1 making any decision to retain or remove this pesticide from the market an extremely significant
2 policy choice.” *Id* at 16,590.

3 22. Upon issuing the March 2017 Order, EPA released a press statement in which
4 EPA Administrator Scott Pruitt said, “We need to provide regulatory certainty to the thousands
5 of American farms that rely on chlorpyrifos,” and noted that chlorpyrifos is “one of the most
6 widely used pesticides in the world.” The EPA press release also included a statement from
7 Sheryl Kunickis, director of the Office of Pest Management Policy at the U.S. Department of
8 Agriculture (“USDA”). Ms. Kunickis said EPA’s decision “frees American farmers from
9 significant trade disruptions that could have been caused by an unnecessary, unilateral revocation
10 of chlorpyrifos tolerances in the United States.” Press Release, U.S. EPA, EPA Administrator
11 Pruitt Denies Petition to Ban Widely Used Pesticide (Mar. 29, 2017),
12 [https://www.epa.gov/newsreleases/epa-administrator-pruitt-denies-petition-ban-widely-used-](https://www.epa.gov/newsreleases/epa-administrator-pruitt-denies-petition-ban-widely-used-pesticide-0)
13 [pesticide-0](https://www.epa.gov/newsreleases/epa-administrator-pruitt-denies-petition-ban-widely-used-pesticide-0).

14 23. On April 5, 2017, EPA released a press statement that compiled statements from
15 USDA and various agricultural associations praising EPA’s decision not to ban chlorpyrifos. Press
16 Release, U.S. EPA, Agriculture Community Reacts to Recent EPA Action (Apr. 5, 2017),
17 <https://www.epa.gov/newsreleases/agriculture-community-reacts-recent-epa-action>.

18 24. On April 5, 2017, PANNA and NRDC filed a Motion for Further Mandamus Relief
19 in the Ninth Circuit Court of Appeals asking the Court to order EPA to respond to the substance of
20 the 2007 Petition rather than further delay regulatory action to protect children.

21 25. Following the denial of a food tolerance revocation petition, a party has sixty (60)
22 days to file objections with the EPA Administrator. 21 U.S.C. § 346a(g)(2)(A). The deadline for
23 submitting objections to EPA’s denial of the 2007 Petition is June 5, 2017. 82 Fed. Reg. 16,581.

1 PANNA will be filing objections and is seeking records that explain the underlying reasons for
2 EPA's abrupt about-face regarding its chlorpyrifos tolerance revocation decision.

3 IV. NEWS REPORTS AND PRESS RELEASES DETAIL RELATIONSHIP BETWEEN
4 DOW CHEMICAL AND PRESIDENT TRUMP'S ADMINISTRATION

5 26. Following the 2016 presidential election, Dow Chemical CEO Andrew Liveris
6 was chosen to head the American Manufacturing Council by then-president-elect Donald Trump.
7 Daniella Diaz, *Trump announces Dow Chemical CEO as head of American Manufacturing*
8 *Council*, CNN (Dec. 9, 2016, 11:00 PM), [http://www.cnn.com/2016/12/09/politics/andrew-](http://www.cnn.com/2016/12/09/politics/andrew-liveris-dow-chemical-ceo-america-manufacturing-council/)
9 [liveris-dow-chemical-ceo-america-manufacturing-council/](http://www.cnn.com/2016/12/09/politics/andrew-liveris-dow-chemical-ceo-america-manufacturing-council/). CNN reported that Leveris
10 announced that Dow Chemical will invest in "a new state of the art innovation center" in
11 Michigan, and that Leveris credited President Trump with creating a business climate that
12 energized his company. *Id.*

13 27. On February 17, 2017, *USA Today* reported that Dow Chemical gave \$1 million
14 dollars to President Trump's inaugural committee, which was charged with raising "private
15 funds for the balls, receptions, parade and other events" celebrating the president's inauguration.
16 Additionally, "[t]hose who gave \$1 million to Trump's inauguration received an array of special
17 perks, including tickets to a black-tie candlelight dinner at Washington's Union Station attended
18 by Trump and his family...." Fredreka Schouten and Christopher Schnaars, *Corporations gave*
19 *millions to Donald Trump inauguration*, *USA Today* (Feb. 17, 2017, 5:22 PM),
20 [https://www.usatoday.com/story/news/politics/2017/02/17/corporations-gave-millions-donald-](https://www.usatoday.com/story/news/politics/2017/02/17/corporations-gave-millions-donald-trump-inauguration/98056554/)
21 [trump-inauguration/98056554/](https://www.usatoday.com/story/news/politics/2017/02/17/corporations-gave-millions-donald-trump-inauguration/98056554/).

22 28. On February 24, 2017, Dow Chemical CEO Andrew Liveris was present at
23 President Trump's signing of an Executive Order on regulatory reform. The president referred to
24 Mr. Liveris as "my friend Andrew," thanked Mr. Liveris for "initially getting the group" of

1 business leaders in attendance together, and gave Mr. Liveris the pen used to sign the Executive
2 Order. Speeches & Remarks, The White House Office of the Press Secretary, Remarks by
3 President Trump at Signing of Executive Order on Regulatory Reform (Feb. 24, 2017),
4 [https://www.whitehouse.gov/the-press-office/2017/02/24/remarks-president-trump-signing-](https://www.whitehouse.gov/the-press-office/2017/02/24/remarks-president-trump-signing-executive-order-regulatory-reform)
5 [executive-order-regulatory-reform.](https://www.whitehouse.gov/the-press-office/2017/02/24/remarks-president-trump-signing-executive-order-regulatory-reform)

6 29. On March 30, 2017, Dow AgroSciences released a press statement supporting
7 EPA's decision and stating that, "This is the right decision for farmers who, in about 100
8 countries, rely on the effectiveness of chlorpyrifos to protect more than 50 crops." Press
9 Release, Dow AgroSciences, Dow AgroSciences Statement on EPA Decision to Deny the
10 Petition to Revoke U.S. Food Tolerances of Chlorpyrifos (Mar. 30, 2017),
11 [http://www.dowagro.com/en-us/newsroom/pressreleases/2017/03/statement-on-epa-decision-to-](http://www.dowagro.com/en-us/newsroom/pressreleases/2017/03/statement-on-epa-decision-to-deny-the-petition-to-revoke-us-food-tolerances-of-chlorpyrifos#.WRDI21XyuUl)
12 [deny-the-petition-to-revoke-us-food-tolerances-of-chlorpyrifos#.WRDI21XyuUl.](http://www.dowagro.com/en-us/newsroom/pressreleases/2017/03/statement-on-epa-decision-to-deny-the-petition-to-revoke-us-food-tolerances-of-chlorpyrifos#.WRDI21XyuUl)

13 30. On April 20, 2017, the Associated Press reported that Dow Chemical and other
14 pesticide manufacturers asked President Trump's Cabinet heads to "set aside" the results of
15 government studies that suggest organophosphate pesticides, including chlorpyrifos, are harmful
16 to almost 2,000 critically threatened or endangered species. Michael Biesecker, *AP Exclusive:*
17 *Pesticide maker tries to kill risk study*, Associated Press (Apr. 20, 2017),
18 [https://apnews.com/a29073ecef9b4841b2e6cca07202bb67/ap-exclusive-pesticide-maker-tries-](https://apnews.com/a29073ecef9b4841b2e6cca07202bb67/ap-exclusive-pesticide-maker-tries-scrap-risk-study)
19 [scrap-risk-study.](https://apnews.com/a29073ecef9b4841b2e6cca07202bb67/ap-exclusive-pesticide-maker-tries-scrap-risk-study)

20 V. PANNA'S FOIA REQUESTS

21 31. In order to understand the full extent of outside influences on EPA's decision-
22 making with regard to its proposal to revoke chlorpyrifos food tolerances, PANNA submitted
23 two FOIA requests to EPA. The first FOIA request was submitted on April 8, 2015. The second
24 FOIA request was submitted on March 15, 2017.

- 1 b. representative or agent of the United States Department of Agriculture (including
- 2 any member of the transition, landing, or beachhead teams);
- 3 c. Any representative or agent of the Office of Management and Budget (including
- 4 any member of the transition, landing, or beachhead teams);
- 5 d. Any representative or agent of the Small Business Administration;
- 6 e. Any representative or agent of Dow AgroSciences;
- 7 f. Any representative or agent of CropLife America; and/or
- 8 g. Any representative or agent of a private company or trade association.

9 36. On March 23, 2017, EPA National FOIA Officer Larry F. Gottesman issued a
10 letter granting PANNA's request for a fee waiver on EPA-HQ-2017-004961. The letter was
11 made available at foiaonline.regulations.gov. On March 24, 2017, PANNA's counsel received a
12 form email from OPP_FOIA@epa.gov also indicating that PANNA's request for a fee waiver
13 was granted.

14 37. On April 13, 2017, PANNA's counsel received a Request for
15 Clarification/Modify letter regarding EPA-HQ-2017-004961 from Earl Ingram, Branch Chief in
16 EPA's OPP Public Information and Records Integrity Branch. The letter indicated that "[t]his
17 FOIA request is tolled until we receive your clarification or modification."

18 38. On April 14, 2017, PANNA's counsel spoke with Earl Ingram regarding EPA-
19 HQ-2017-004961. To accelerate receipt of requested information, PANNA agreed to narrow the
20 request's scope to communications with a select subset of individuals at EPA. Following this
21 conversation, Mr. Ingram sent an email to PANNA's counsel stating that, "It appears your
22 request has been narrowed in such way in which the Agency will be able to search for the
23 requested records." To date, this modification and narrowing of scope has not resulted in a
24 response to the request, nor has it resulted in an estimated timeline of when documents might be
25 made available.

1 With respect to a request for which a written notice [purports to apply the
2 ‘unusual circumstances’ extension beyond 10 business days], the agency shall
3 notify the person making the request if the request cannot be processed within the
4 time limit specified in that clause and shall provide the person an opportunity to
5 limit the scope of the request so that it may be processed within that time limit or
6 an opportunity to arrange with the agency an alternative time frame for processing
7 the request or a modified request. To aid the requester, each agency shall make
8 available its FOIA Public Liaison, who shall assist in the resolution of any
9 disputes between the requester and the agency.

6 5 U.S.C. § 552(a)(6)(B)(ii).

7 44. Under FOIA, an agency’s failure to comply with the Act’s deadlines constitutes a
8 constructive denial of the request, and the requester’s administrative remedies are deemed
9 exhausted for purposes of litigation. 5 U.S.C. § 552(a)(6)(C)(i).

10 45. FOIA compels the release of the requested records, unless they fall within one of
11 FOIA’s nine narrowly tailored exemptions. 5 U.S.C. § 552(b)(1)-(9). The agency bears the
12 burden of proving that one of the exemptions applies. 5 U.S.C. § 552(a)(4)(B). Even if some
13 information is exempt from disclosure, “[a]ny reasonably segregable portion of a record shall be
14 provided to any person requesting such record after deletion of the portions which are exempt...”
15 5 U.S.C. § 552(b).

16 CLAIM FOR RELIEF

17 Violation of FOIA’s Statutory Timelines

18 46. The allegations made in all preceding paragraphs are realleged and incorporated
19 by this reference.

20 47. EPA is an agency under FOIA. It has possession and control of the requested
21 records.

22 48. PANNA submitted FOIA requests to EPA on April 8, 2015, and on March 15,
23 2017.

24 49. EPA has failed to provide a substantive response to PANNA’s April 8, 2015

Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104-1711
(206) 343-7340

1 FOIA request for the 2015 Category One Documents. Despite several conversations and
2 amended requests, EPA has provided no responsive records.

3 50. The deadline for issuing a final determination of PANNA's April 8, 2015 FOIA
4 request lapsed approximately two years ago. Even assuming that EPA invoked the FOIA
5 provision allowing an extension due to "unusual circumstances," 5 U.S.C. § 552(a)(6)(B)(ii),
6 there are no "unusual circumstances" within the meaning of 5 U.S.C. § 552(a)(6)(B)(ii) that
7 would justify the long delay in responding to PANNA's April 8, 2015 FOIA request. EPA has
8 violated FOIA and PANNA's rights by failing to respond to PANNA's FOIA request by the
9 deadline imposed by the FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i), (B). PANNA has fully exhausted
10 all administrative remedies required by FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

11 51. EPA has failed to provide a substantive response to PANNA's March 15, 2017
12 FOIA request. Despite several conversations and amended requests, EPA has provided no
13 responsive records.

14 52. The deadline for issuing a final determination of PANNA's March 15, 2017 FOIA
15 request lapsed on or about April 14, 2017. EPA has not invoked the FOIA provision allowing an
16 extension due to "unusual circumstances." 5 U.S.C. § 552(a)(6)(B)(ii). However, even if EPA
17 assumes that it is entitled to an extension of ten additional working days under 5 U.S.C. §
18 552(a)(6)(B)(i), the deadline for issuing a final determination would have lapsed on or about
19 April 28, 2017. EPA has violated FOIA and PANNA's rights by failing to respond to PANNA's
20 FOIA request by the deadline imposed by the FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i), (B). PANNA
21 has fully exhausted all administrative remedies required by FOIA. 5 U.S.C. §§ 552(a)(6)(A),
22 (a)(6)(C).

23 53. EPA has violated PANNA's rights under FOIA by unlawfully withholding
24

1 information responsive to PANNA's FOIA requests.

2 54. EPA has a duty to release any and all portions of records that are not subject to a
3 FOIA exemption. To the extent that EPA claims the application of any FOIA exemptions, EPA
4 has a duty to substantiate those claims and meet its burden of proof regarding the application of
5 any such exemptions. EPA has failed to prove that the requested records fall within any FOIA
6 exemptions. Even if EPA can prove that some portions of the requested records are subject to an
7 exemption and can be withheld on that basis, it must release all segregable portions of the
8 requested records.

9 PRAYER FOR RELIEF

10 WHEREFORE, plaintiff prays that this Court:

11 1. Declare that PANNA has a statutory right to the requested records except to the
12 extent that EPA establishes an exemption (5 U.S.C. §§ 552(a)(3), (b)(1)-(9)), that EPA failed to
13 make a timely determination on each of PANNA's information requests in violation of FOIA (5
14 U.S.C. § 552(a)(6)(A)(i)), that PANNA has fully exhausted all administrative remedies required
15 by FOIA (5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C)), and that this Court has jurisdiction to hear this
16 case (5 U.S.C. § 552(a)(4)(B));

17 2. Enjoin EPA to release to PANNA all of the requested records except to the extent
18 that EPA meets its burden of proving that a particular record or portion of a record is exempt
19 from disclosure under FOIA;

20 3. Award PANNA its costs and reasonable attorneys' fees pursuant to 5 U.S.C.
21 § 552(a)(4)(E); and

22 ///

23 ///

24 ///

25 *Earthjustice*
705 Second Ave., Suite 203
Seattle, WA 98104-1711
26 (206) 343-7340

1 4. Grant such other and further relief as the Court may deem just and proper.

2 DATED: May 10, 2017

Respectfully submitted,

3
4 /s/ Kristen L. Boyles

KRISTEN L. BOYLES (CSBA # 158450)

MARISA C. ORDONIA (WSBA # 48081)

5 [Pro Hac Vice Admission Pending]

PATTI A. GOLDMAN (WSBA # 24426)

6 [Pro Hac Vice Admission Pending]

Earthjustice

7 705 Second Avenue, Suite 203

Seattle, WA 98104

8 Ph: (206) 343-7340 | Fax: (206) 343-1526

kboyles@earthjustice.org

9 mordonia@earthjustice.org

10 pgoldman@earthjustice.org

GREGORY C. LOARIE (CSBA # 215859)

11 Earthjustice

50 California, Suite 500

12 San Francisco, CA 94111

13 Ph: (415) 217-2000 | Fax: (415) 217-2040

gloarie@earthjustice.org

14 *Local Counsel for Plaintiff PANNA*

15
16
17
18
19
20
21
22
23
24
25 Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104-1711
26 (206) 343-7340