



1 Defendant, Gina McCarthy, in her official capacity as Administrator of the United States  
 2 Environmental Protection Agency (“EPA”), has failed to make findings of failure to submit  
 3 under 42 U.S.C. § 7410(k)(1)(B), and publish notice of those findings in the Federal Register, for  
 4 nonattainment state implementation plans (“SIPs”) for the 2008 ozone National Ambient Air  
 5 Quality Standards for the following areas and elements listed in Table 1:

**TABLE 1**

<b>AREA &amp; ELEMENT(S)</b>	<b>SUBMITTAL DEADLINE (No later than)</b>
9 Los Angeles-South Coast Air Basin, CA: Clean 10 Fuels for Boilers, Contingency measures for 11 Volatile Organic Compounds (VOC) and 12 Nitrogen Oxides (NO <sub>x</sub> ), Contingency Provisions 13 for Reasonable Further Progress (RFP) 14 Milestones 182(c)(9), Enhanced Monitoring Photochemical Assessment Monitoring Stations (PAMS), Extreme Nonattainment New Source Review (NNSR), Vehicle Miles Traveled- Transportation Control Measures (VMT-TCMs) to Offset Growth	7/20/2015
15 San Joaquin Valley, CA: Clean Fuels for Boilers, 16 Contingency measures for VOC and NO <sub>x</sub> , 17 Contingency Provisions for RFP Milestones 18 182(c)(9), Enhanced Monitoring (PAMS), Extreme NNSR, NO <sub>x</sub> Reasonably Available Control Technology (RACT) for Major Sources, VMT-TCMs to Offset Growth	7/20/2015
19 Los Angeles-San Bernardino Counties (Antelope 20 Valley), CA: Contingency measures for VOC and NO <sub>x</sub> , Contingency Provisions for RFP Milestones 182(c)(9), Enhanced Monitoring (PAMS), Severe 15 NNSR, VMT-TCMs to Offset Growth	7/20/2015
21 Los Angeles-San Bernardino Counties (Mojave 22 Desert), CA: Contingency measures for VOC and NO <sub>x</sub> , Contingency Provisions for RFP Milestones 182(c)(9), Enhanced Monitoring (PAMS), Severe 15 NNSR, VMT-TCMs to	7/20/2015

1	Offset Growth	
2	Riverside County (Coachella Valley), CA:	7/20/2015
3	Contingency measures for VOC and NOx,	
4	Contingency Provisions for RFP Milestones 182(c)(9), Enhanced Monitoring (PAMS), Severe 15 NNSR, VMT-TCMs to Offset Growth	
5	Sacramento Metro, CA: Contingency measures	7/20/2015
6	for VOC and NOx, Contingency Provisions for	
7	RFP Milestones 182(c)(9), VMT-TCMs to	
8	Offset Growth, Enhanced Monitoring (PAMS),	
9	Severe 15 NNSR for Yolo-Solano, Non-Control	
10	Techniques Guidelines VOC RACT for Major	
11	Sources for El Dorado, Sacramento, and Yolo-	
12	Solano, NOx RACT for Major Sources for El	
13	Dorado, Sacramento, and Yolo-Solano, Auto and	
14	Light-Duty Truck Assembly Coatings CTG	
15	RACT for El Dorado and Yolo-Solano,	
16	Fiberglass Boat Manufacturing Materials CTG	
17	RACT for El Dorado and Yolo-Solano, 2006	
18	Flat Wood Paneling Coatings CTG RACT for El	
19	Dorado and Yolo-Solano, Flexible Packaging	
20	Printing Material CTG RACT for El Dorado and	
21	Yolo-Solano, Industrial Cleaning Solvents	
22	(2006) CTG RACT for El Dorado and Yolo-	
23	Solano, Large Appliance Coatings (2007) CTG	
	RACT for El Dorado and Yolo-Solano,	
	Lithographic Printing Materials and Letterpress	
	Printing Materials (2006) CTG RACT for El	
	Dorado and Yolo-Solano, Metal Furniture	
	Coatings (2007) CTG RACT for El Dorado and	
	Yolo-Solano, Miscellaneous Industrial	
	Adhesives (2006) CTG RACT for El Dorado,	
	Sacramento and Yolo-Solano, Miscellaneous	
	Metal Products Coatings (2008) CTG RACT for	
	El Dorado and Yolo-Solano, Paper, Film, and	
	Foil Coatings (2007) CTG RACT for El Dorado	
	and Yolo-Solano, Plastic Parts Coatings (2008)	
	CTG RACT for El Dorado, Placer and Yolo-	
	Solano	
21	Ventura County, CA: Contingency measures for	7/20/2015
22	VOC and NOx, Serious NNSR	
22	Baltimore, MD: Inspection and Maintenance	7/20/2015
	(I/M) Basic	
23	Connecticut: Ozone Transport Region (OTR)	7/20/2015

1	New Source Review (NSR)	
	Delaware: OTR NSR,	7/20/2015
2	District of Columbia: OTR NSR, Non-CTG	7/20/2015
3	VOC RACT for Major Sources, NOx RACT for	
4	Major Sources, Refinery Vacuum Producing	
	Systems, Wastewater Separators and Process	
	Unit Turnarounds CTG RACT	
5	Maine: OTR NSR, Non-CTG VOC RACT for	7/20/2015
	Major Sources, NOx RACT for Major Sources,	
	Industrial Cleaning Solvents (2006) CTG RACT	
6	Maryland: OTR NSR, Non-CTG VOC RACT	7/20/2015
7	for Major Sources, NOx RACT for Major	
	Sources, Fiberglass Boat Manufacturing	
	Materials CTG RACT	
8	Massachusetts: OTR NSR, Non-CTG VOC	7/20/2015
9	RACT for Major Sources, NOx RACT for Major	
10	Sources, Auto and Light-Duty Truck Assembly	
	Coatings CTG RACT, Fiberglass Boat	
11	Manufacturing Materials CTG RACT, Flexible	
	Packaging Printing Material CTG RACT,	
12	Industrial Cleaning Solvents (2006) CTG RACT,	
	Large Appliance Coatings (2007) CTG RACT,	
13	Lithographic Printing Materials and Letterpress	
	Printing Materials (2006) CTG RACT, Metal	
14	Furniture Coatings (2007) CTG RACT,	
	Miscellaneous Industrial Adhesives (2006) CTG	
15	RACT, Miscellaneous Metal Products Coatings	
	(2008) CTG RACT, Paper, Film, and Foil	
	Coatings (2007) CTG RACT, Plastic Parts	
	Coatings (2008) CTG RACT	
16	New Hampshire: OTR NSR, Non-CTG VOC	7/20/2015
17	RACT for Major Sources, NOx RACT for Major	
	Sources	
18	New Jersey: Fiberglass Boat Manufacturing	7/20/2015
	Materials CTG RACT, Industrial Cleaning	
19	Solvents (2006) CTG RACT, Miscellaneous	
	Metal Products Coatings (2008) CTG RACT,	
20	Paper, Film, and Foil Coatings (2007) CTG	
	RACT, Plastic Parts Coatings (2008) CTG	
	RACT	
21	Pennsylvania: OTR NSR, Non-CTG VOC	7/20/2015
22	RACT for Major Sources, NOx RACT for Major	
	Sources, Auto and Light-Duty Truck Assembly	
23	Coatings CTG RACT, Flexible Packaging	
	Printing Material CTG RACT, Industrial	

1	Cleaning Solvents (2006) CTG RACT,	
2	Lithographic Printing Materials and Letterpress	
3	Printing Materials (2006) CTG RACT,	
	Miscellaneous Metal Products Coatings (2008)	
	CTG RACT, Plastic Parts Coatings (2008) CTG	
	RACT	
4	Rhode Island: OTR NSR, Non-CTG VOC	7/20/2015
5	RACT for Major Sources, NOx RACT for Major	
6	Sources, Auto and Light-Duty Truck Assembly	
7	Coatings CTG RACT, Fiberglass Boat	
8	Manufacturing Materials CTG RACT, 2006 Flat	
9	Wood Paneling Coatings CTG RACT, Flexible	
10	Packaging Printing Material CTG RACT, Large	
11	Appliance Coatings (2007) CTG RACT,	
	Lithographic Printing Materials and Letterpress	
	Printing Materials (2006) CTG RACT, Metal	
	Furniture Coatings (2007) CTG RACT,	
	Miscellaneous Metal Products Coatings (2008)	
	CTG RACT, Paper, Film, and Foil Coatings	
	(2007) CTG RACT, Plastic Parts Coatings	
	(2008) CTG RACT	
12	Vermont: I/M Enhanced, OTR NSR, Non-CTG	7/20/2015
13	VOC RACT for Major Sources, NOx RACT for	
14	Major Sources, Auto and Light-Duty Truck	
15	Assembly Coatings CTG RACT, Fiberglass Boat	
16	Manufacturing Materials CTG RACT, 2006 Flat	
17	Wood Paneling Coatings CTG RACT, Industrial	
18	Cleaning Solvents (2006) CTG RACT,	
19	Lithographic Printing Materials and Letterpress	
20	Printing Materials (2006) CTG RACT,	
21	Miscellaneous Industrial Adhesives (2006) CTG	
22	RACT, Miscellaneous Metal Products Coatings	
23	(2008) CTG RACT, Plastic Parts Coatings	
	(2008) CTG RACT	
18	Virginia: OTR NSR, Non-CTG VOC RACT for	7/20/2015
19	Major Sources, NOx RACT for Major Sources,	
20	Auto and Light-Duty Truck Assembly Coatings	
21	CTG RACT, Fiberglass Boat Manufacturing	
22	Materials CTG RACT, 2006 Flat Wood Paneling	
23	Coatings CTG RACT, Flexible Packaging	
	Printing Material CTG RACT, Industrial	
	Cleaning Solvents (2006) CTG RACT, Large	
	Appliance Coatings (2007) CTG RACT,	
	Lithographic Printing Materials and Letterpress	
	Printing Materials (2006) CTG RACT, Metal	

1	Furniture Coatings (2007) CTG RACT, Miscellaneous Industrial Adhesives (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Plastic Parts Coatings (2008) CTG RACT	
4	Calaveras County, CA: Marginal NNSR	7/20/2015
5	Kern County (Eastern Kern), CA: Marginal NNSR	7/20/2015
6	Mariposa County, CA: Marginal NNSR	7/20/2015
7	Nevada County (Western part), CA: Marginal NNSR	7/20/2015
8	Washington, VA: Marginal NNSR	7/20/2015
9	Chicago-Naperville, IL, : Marginal NNSR	7/20/2015
	Cincinnati, IN: Marginal NNSR	7/20/2015
	Cincinnati, KY: Marginal NNSR	7/20/2015
	Washington, MD: Marginal NNSR	7/20/2015

10 Furthermore, EPA has failed to take final action, pursuant to 42 U.S.C. § 7410(k)(2) –  
 11 (4), to approve or disapprove, in whole or part, the 2009 ozone National Ambient Air Quality  
 12 Standards (“NAAQS”) nonattainment SIP submissions listed in Table 2 below:

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 14 **TABLE 2<sup>1</sup>**

15	AREA & STATE	ELEMENT(S)	COMPLETION DATE	FINAL ACTION DUE DATE
16	Philadelphia, Wilmington, Atlantic City, DE	Marginal NNSR	4/17/2014	4/17/2015
17	Seaford, DE	Marginal NNSR	4/17/2014	4/17/2015
18	Los Angeles-South Coast Air Basin, CA	Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Aerospace CTG RACT, Auto and Light-Duty Truck Assembly Coatings Control Technique Guidelines (CTG) Reasonably Available Control Technology, Equipment leaks from Natural	1/18/2015	1/18/2016

23 <sup>1</sup> Note: Submittals prior to May 21, 2012 must have been submitted for purposes of compliance with the 1997 ozone NAAQS.

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	<p>Gas/Gasoline Processing Plants CTG RACT, Factory Surface Coating of Flat Wood Paneling CTG RACT, Fiberglass Boat Manufacturing Materials CTG RACT, 2006 Flat Wood Paneling Coatings CTG RACT, Flexible Packaging Printing Material CTG RACT, Industrial Cleaning Solvents (2006) CTG RACT, Large Appliance Coatings (2007) CTG RACT, Lithographic Printing Materials and Letterpress Printing Materials (2006) CTG RACT, Metal Furniture Coatings (2007) CTG RACT, Miscellaneous Industrial Adhesives (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Plastic Parts Coatings (2008) CTG RACT,</p>		
<p>Sacramento Metro [Placer County], CA</p>	<p>Non-CTG VOC RACT for Major Sources, Aerospace CTG RACT, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Bulk Gasoline Plants CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT, Fiberglass Boat Manufacturing Materials CTG RACT, Flexible Packaging Printing Material CTG RACT, Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment CTG RACT, Graphic Arts – Rotogravure and Flexography CTG RACT, Large Appliance Coatings (2007) CTG RACT,</p>	<p>10/30/2014</p>	<p>10/30/2015</p>

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Large Petroleum Dry Cleaners CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Leaks from Petroleum Refinery Equipment CTG RACT, Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins CTG RACT, Manufacture of Pneumatic Rubber Tires CTG RACT, Manufacture of Synthesized Pharmaceutical Products CTG RACT, Metal Furniture Coatings (2007) CTG RACT, Miscellaneous Industrial Adhesives (2006) CTG RACT, Miscellaneous Metal Products Coatings (2008) CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds CTG RACT, Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Processes CTG RACT, SOCMI Distillation and Reactor Processes CTG RACT, Shipbuilding/repair CTG RACT, Solvent Metal Cleaning CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating for Insulation of Magnet Wire CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface Coating of Cans CTG RACT,



1		Surface Coating of Coils CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Large Appliances CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Tank Truck Gasoline Loading Terminals CTG RACT, Use of Cutback Asphalt CTG RACT, Wood Furniture CTG RACT,		
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8	San Joaquin Valley, CA	Non-CTG VOC RACT for Major Sources, Aerospace CTG RACT, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Bulk Gasoline CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT,	1/18/2015	1/18/2016
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12	Connecticut	Non-CTG VOC RACT for Major Sources, NOx RACT for Major Sources, Aerospace CTG RACT, Auto and Light-Duty Truck Assembly Coatings CTG RACT, Bulk Gasoline CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT,	1/18/2015	1/18/2016
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17	Sacramento-Yolo-Solano, CA	Aerospace CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT, Factory Surface Coating of Flat Wood Paneling CTG RACT, Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment CTG RACT, Graphic Arts – Rotogravure and Flexography CTG RACT, Large Petroleum Dry Cleaners CTG RACT, Leaks from	7/31/2007	7/31/2008
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	<p>Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Leaks from Petroleum Refinery Equipment CTG RACT, Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins CTG RACT, Manufacture of Pneumatic Rubber Tires CTG RACT, Manufacture of Synthesized Pharmaceutical Products CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds CTG RACT, SOCOMI Air Oxidation Processes CTG RACT, SOCOMI Distillation and Reactor Processes CTG RACT, Shipbuilding/repair CTG RACT, Solvent Metal Cleaning CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating for Insulation of Magnet Wire CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface Coating of Cans CTG RACT, Surface Coating of Coils CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Large Appliances CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Tank Truck Gasoline Loading</p>		
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	Terminals CTG RACT, Use of Cutback Asphalt CTG RACT, Wood Furniture CTG RACT,		
Pennsylvania	Aerospace CTG RACT, Bulk Gasoline CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT, Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment CTG RACT, Graphic Arts – Rotogravure and Flexography CTG RACT, Large Petroleum Dry Cleaners CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Leaks from Petroleum Refinery Equipment CTG RACT, Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins CTG RACT, Manufacture of Pneumatic Rubber Tires CTG RACT, Manufacture of Synthesized Pharmaceutical Products CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds CTG RACT, SOCOMI Air Oxidation Processes CTG RACT, SOCOMI Distillation and Reactor Processes CTG RACT, Shipbuilding/repair CTG RACT, Solvent Metal Cleaning CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating for Insulation	3/28/2007	3/28/2008

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	of Magnet Wire CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface Coating of Cans CTG RACT, Surface Coating of Coils CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Large Appliances CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Tank Truck Gasoline Loading Terminals CTG RACT, Use of Cutback Asphalt CTG RACT, Wood Furniture CTG RACT,		
Sacramento, CA	Bulk Gasoline CTG RACT, Equipment leaks from Natural Gas/Gasoline Processing Plants CTG RACT, Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Leaks from Petroleum Refinery Equipment CTG RACT, Manufacture of Synthesized Pharmaceutical Products CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, SOCOMI Air Oxidation Processes CTG RACT, SOCOMI Distillation and Reactor Processes CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface	1/11/2008	1/11/2009

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1		Coating of Coils CTG RACT, Tank Truck Gasoline Loading Terminals CTG RACT, Use of Cutback Asphalt CTG RACT,		
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3	Sacramento, CA	Factory Surface Coating of Flat Wood Paneling CTG RACT, 2006 Flat Wood Paneling Coatings CTG RACT, Flexible Packaging Printing Material CTG RACT, Graphic Arts – Rotogravure and Flexography CTG RACT, Large Appliance Coatings (2007) CTG RACT, Large Petroleum Dry Cleaners CTG RACT, Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins CTG RACT, Manufacture of Pneumatic Rubber Tires CTG RACT, Paper, Film, and Foil Coatings (2007) CTG RACT, Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds CTG RACT, Shipbuilding/repair CTG RACT, Surface Coating for Insulation of Magnet Wire CTG RACT, Surface Coating of Cans CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Large Appliances CTG RACT,	7/21/2009	7/21/2010
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18	E. and W. Massachusetts	2006 Flat Wood Paneling Coatings CTG RACT	7/31/2008	7/31/2009
19	Los Angeles and San Bernardino Counties (Western Mojave Desert) [Antelope Valley], CA	Graphic Arts – Rotogravure and Flexography CTG RACT, Large Petroleum Dry Cleaners CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Solvent Metal Cleaning CTG RACT, Surface Coating of Automobiles and Light-Duty Trucks CTG RACT, Surface	7/31/2007	7/31/2008
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1		Coating of Cans CTG RACT, Surface Coating of Coils CTG RACT, Surface Coating of Fabrics CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Use of Cutback Asphalt CTG RACT,		
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7	Los Angeles and San Bernardino Counties (Western Mojave Desert) [Mojave Desert], CA	Graphic Arts – Rotogravure and Flexography CTG RACT, Leaks from Gasoline Tank Trucks and Vapor Collection Systems CTG RACT, Petroleum Liquid Storage in External Floating Roof Tanks CTG RACT, Shipbuilding/repair CTG RACT, Solvent Metal Cleaning CTG RACT, Storage of Petroleum Liquids in Fixed Roof Tanks CTG RACT, Surface Coating of Metal Furniture CTG RACT, Surface Coating of Miscellaneous Metal Parts and Products CTG RACT, Surface coating of Paper CTG RACT, Tank Truck Gasoline Loading Terminals CTG RACT, Use of Cutback Asphalt CTG RACT, Wood Furniture CTG RACT,	1/11/2008	1/11/2009
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18	New York	Industrial Cleaning Solvents (2006) CTG RACT,	8/21/2013	8/21/2014
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21 Accordingly, Plaintiffs THE CENTER FOR BIOLOGICAL DIVERSITY, THE CENTER FOR  
 22 ENVIRONMENTAL HEALTH, and THE CLEAN AIR COUNCIL bring this action against  
 23

1 Defendant GINA McCARTHY, in her official capacity as EPA Administrator, to compel her to  
2 perform these mandatory duties.

## 3 **II. JURISDICTION**

4 2. This case is a Clean Air Act citizen suit. Therefore, the Court has jurisdiction over this  
5 action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 7604(a)(2)  
6 (citizen suits for failure to perform a non-discretionary duty required by the Clean Air Act).

7 3. An actual controversy exists between the parties. This case does not concern federal  
8 taxes, is not a proceeding under 11 U.S.C. §§ 505 or 1146, and does not involve the Tariff Act of  
9 1930. Thus, this Court has authority to order the declaratory relief requested under 28 U.S.C. §  
10 2201. If the Court orders declaratory relief, 28 U.S.C. § 2202 authorizes this Court to issue  
11 injunctive relief.

## 12 **III. NOTICE**

13 4. On May 12, 2016, Plaintiffs mailed to EPA by certified mail, return receipt requested,  
14 written notice of intent to sue regarding the violations alleged in this Complaint. EPA received  
15 this notice of intent to sue letter no later than May 16, 2016. More than sixty days have passed  
16 since EPA received this “notice of intent to sue” letter. EPA has not remedied the violations  
17 alleged in this Complaint. Therefore, a present and actual controversy exists.

## 18 **IV. VENUE**

19 5. Defendant EPA resides in this judicial district. EPA Region 9, which has authority over  
20 California, is headquartered in San Francisco. This civil action is brought against an officer of  
21 the United States acting in her official capacity and a substantial part of the events or omissions  
22 giving rise to the claims in this case occurred in the Northern District of California. Therefore,  
23 venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

**V. INTRADISTRICT ASSIGNMENT**

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2 6. A substantial part of the events and omissions giving rise to the claims in this case  
3 occurred in the County of San Francisco. EPA Region 9, which has authority over California, is  
4 headquartered in San Francisco. Accordingly, assignment to the San Francisco Division or the  
5 Oakland Division is proper pursuant to Civil L.R. 3-2(c) and (d).

**VI. PARTIES**

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7 7. Plaintiff the CENTER FOR BIOLOGICAL DIVERSITY is a non-profit 501(c)(3)  
8 corporation incorporated in California. The Center for Biological Diversity has approximately  
9 50,000 members throughout the United States and the world. The Center for Biological  
10 Diversity's mission is to ensure the preservation, protection, and restoration of biodiversity,  
11 native species, ecosystems, public lands and waters, and public health through science, policy,  
12 and environmental law. Based on the understanding that the health and vigor of human societies  
13 and the integrity and wildness of the natural environment are closely linked, the Center for  
14 Biological Diversity is working to secure a future for animals and plants hovering on the brink of  
15 extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

16 8. The Center for Biological Diversity and its members include individuals with varying  
17 interests in wildlife species and their habitat ranging from scientific, professional, and  
18 educational to recreational, aesthetic, moral, and spiritual. Further, the Center for Biological  
19 Diversity's members enjoy, on an ongoing basis, the biological, scientific, research, educational,  
20 conservation, recreational, and aesthetic values of the regions inhabited by these species,  
21 including the regions at issue in this action. The Center for Biological Diversity's members  
22 observe and study native species and their habitat, and derive professional, scientific,  
23 educational, recreational, aesthetic, inspirational, and other benefits from these activities and



1 have an interest in preserving the possibility of such activities in the future. The Center for  
2 Biological Diversity and its members have participated in efforts to protect and preserve natural  
3 areas, including the habitat essential to the continued survival of native species, and to address  
4 threats to the continued existence of these species, including the threats posed by air pollution  
5 and other contaminants.

6 9. Plaintiff the CENTER FOR ENVIRONMENTAL HEALTH is an Oakland, California  
7 based nonprofit organization that helps protect the public from toxic chemicals and promotes  
8 business products and practices that are safe for public health and the environment. The Center  
9 for Environmental Health works in pursuit of a world in which all people live, work, learn, and  
10 play in healthy environments.

11 10. Plaintiff CLEAN AIR COUNCIL (“Council”) is a Philadelphia based nonprofit  
12 organization. It is a member-supported environmental organization serving the Mid-Atlantic  
13 Region. The Council is dedicated to protecting and defending everyone’s right to breathe clean  
14 air. The Council works through a broad array of related sustainability and public health  
15 initiatives, using public education, community action, government oversight, and enforcement of  
16 environmental laws.

17 11. Plaintiffs’ members live, work, recreate, travel and engage in other activities throughout  
18 the areas at issue in this complaint and will continue to do so on a regular basis. Pollution in the  
19 affected areas threatens and damages, and will continue to threaten and damage, the health and  
20 welfare of Plaintiffs’ members as well as their ability to engage in and enjoy their other  
21 activities. Pollution diminishes Plaintiff’s members’ ability to enjoy the aesthetic qualities and  
22 recreational opportunities of the affected area.

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1 12. EPA's failure to timely perform the mandatory duties described herein also adversely  
2 affects Plaintiffs, as well as their members, by depriving them of procedural protection and  
3 opportunities, as well as information that they are entitled to under the Clean Air Act. The  
4 failure of EPA to perform the mandatory duties also creates uncertainty for Plaintiffs' members  
5 as to whether they are exposed to excess air pollution.

6 13. The above injuries will continue until the Court grants the relief requested herein.

7 14. Defendant GINA McCARTHY is the Administrator of the EPA. In that role  
8 Administrator McCarthy has been charged by Congress with the duty to administer the Clean Air  
9 Act, including the mandatory duties at issue in this case. Administrator McCarthy is also  
10 charged with overseeing all EPA regional offices including EPA Region 9, which has authority  
11 over California and is headquartered in San Francisco.

## 12 **VII. LEGAL BACKGROUND**

13 15. Congress enacted the Clean Air Act to "speed up, expand, and intensify the war against  
14 air pollution in the United States with a view to assuring that the air we breathe throughout the  
15 Nation is wholesome once again." H.R. Rep. No. 1146, 91st Cong., 2d Sess. 1,1, 1970 U.S.  
16 Code Cong. & Admin. News 5356, 5356. To promote this, the Act requires EPA to set National  
17 Ambient Air Quality Standards for certain pollutants. 42 U.S.C. § 7409(a). National Ambient  
18 Air Quality Standards establish maximum allowable concentrations in the air of such pollutants.

19 16. After EPA promulgates a National Ambient Air Quality Standard, the Clean Air Act  
20 requires that EPA designate each area of the country as either a clean air area for that standard,  
21 which is known as "attainment" in Clean Air Act jargon, or a dirty air area, which is known as  
22 "nonattainment" in Clean Air Act jargon. *See* 42 U.S.C. § 7407(d).

1 17. Under the Clean Air Act, each state is required to submit state implementation plans to  
2 ensure that each National Ambient Air Quality Standard will be achieved, maintained, and  
3 enforced. Without such plans, the public is not afforded full protection against the harmful  
4 impacts of air pollution.

5 18. For dirty air areas which EPA has designated as “nonattainment,” states must submit  
6 nonattainment area state implementation plans. *See* 42 U.S.C. §§ 7410(a)(2)(I), 7501 – 7509a,  
7 7513 – 7513b.

8 19. The Clean Air Act requires EPA to determine whether any state implementation plan  
9 submittal is administratively complete. 42 U.S.C. § 7410(k)(1)(B). EPA must make this  
10 determination by “no later than 6 months after the date, if any, by which a State is required to  
11 submit the plan or revision.” *Id.*

12 20. If a state fails to submit any required state implementation plan, there is no submittal that  
13 may be deemed administratively complete, and EPA must make a determination, and publish  
14 notice of that determination in the Federal Register, stating that the state failed to submit an  
15 administratively complete state implementation plan submittal within six months of when the  
16 submittal was due. 42 U.S.C. § 7410(k)(1)(B). This is referred to as a “finding of failure to  
17 submit.”

18 21. Once a state does submit a state implementation plan submittal, EPA has a mandatory  
19 duty to take final action on any administratively complete state implementation plan submission  
20 by approving in full, disapproving in full, or approving in part and disapproving in part within 12  
21 months of the date the submission is deemed administratively complete. 42 U.S.C. § 7410(k)(2)  
22 - (4).

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## VIII. FACTS

1  
2 22. This case involves EPA's failure to timely implement the National Ambient Air Quality  
3 Standards for ozone. While ozone is critical for the protection of the Earth when it is in the  
4 stratosphere, at ground level, ozone, the chief component of smog, is a dangerous air pollutant  
5 which causes a variety of adverse impacts.

6 23. According to EPA, based on exhaustive scientific review, ozone pollution causes  
7 decreased lung function, increased respiratory symptoms, emergency department visits,  
8 hospital admissions for respiratory causes, and even death. 73 Fed. Reg. 16,436 (Mar. 27, 2008).

9 24. Those most at risk from ozone pollution are children; active people, *e.g.*, runners and  
10 people who do manual labor outside; people with pre-existing lung and heart diseases such as  
11 asthma; and older people. *Id.* at 16,440. Ozone also damages vegetation, both native and  
12 commercial crops. *Id.* at 16,485-16,486. Damage to native vegetation results in ecosystem  
13 damage, including diminished ecosystem services, that is, the life sustaining services that  
14 ecosystems provide to people for free, such as clean air, clean water and carbon sequestration.  
15 *Id.*

16 25. In 2008, EPA strengthened the primary and secondary ozone NAAQS from 0.08 to 0.075  
17 parts per million (ppm). 73 Fed.Reg. 16,436 (Mar. 27, 2008).

18 26. EPA made attainment and nonattainment designations for the 2008 ozone NAAQS  
19 effective July 20, 2012. *See* 77 Fed. Reg. 30,088 (May 21, 2012), 77 Fed. Reg. 34,221 (June 11,  
20 2012).

21 27. EPA designated all of the areas listed in Tables 1 and 2 nonattainment or as part of the  
22 ozone transport region (OTR) for the 2008 ozone NAAQS. *Id.*

1 28. All elements of the nonattainment SIPs for the 2008 ozone NAAQS listed in Table 1  
2 were due by no later than July 20, 2015. *See* 80 Fed. Reg. 12,264, 12,266 (Mar. 6, 2015).

3 29. Thus, EPA has a mandatory duty to make a completeness finding under 42 U.S.C. §  
4 7410(k)(1)(B) for the SIP elements listed in Table 1 by no later than January 20, 2016.

## 5 **IX. CLAIM FOR RELIEF**

### 6 CLAIM ONE

7 (Failure to Make Findings of Failure to Submit.)

8 30. Plaintiffs incorporate by reference paragraphs 1 through 29.

9 31. The deadline for the 2008 ozone National Ambient Air Quality Standard nonattainment  
10 state implementation plan submissions listed in Table 1 is no later than July 20, 2015. *See* 80  
11 Fed. Reg. 12,264, 12,266 (Mar. 6, 2015).

12 32. More than six months have passed since July 20, 2015.

13 33. For each of the areas and nonattainment SIP elements listed in Table 1 of paragraph 1  
14 above, the relevant state has failed to submit the listed nonattainment SIP element.

15 34. Pursuant to 42 U.S.C. 7410(k)(1)(B), EPA has a mandatory duty to make a finding of  
16 failure to submit by no later than January 20, 2016 for each area's nonattainment SIP elements  
17 listed in Table 1 of paragraph 1 above.

18 35. EPA has failed to make such findings.

### 19 CLAIM TWO

20 (Failure to Take Final Action on State Implementation Plan Submissions.)

21 36. Plaintiffs incorporate by reference paragraphs 1 through 35.

22 37. The Clean Air Act requires EPA to determine whether any state implementation plan  
23 submission is administratively complete. 42 U.S.C. 7410(k)(1)(B).

1 38. If, six months after a state submits a state implementation plan, EPA has not made the  
2 completeness finding and has not found the submission to be incomplete, the submission is  
3 deemed administratively complete by operation of law. *Id.*

4 39. EPA must take final action on an administratively complete submission by approving in  
5 full, disapproving in full, or approving in part and disapproving in part within 12 months of the  
6 date of the submission's administrative completeness finding. 42 U.S.C. § 7410(k)(2) - (4).

7 40. Each area's nonattainment SIP elements listed in Table 2 of paragraph 1 above was  
8 deemed administratively complete, either by EPA or by operation of law, by the date listed in  
9 Table 2 of paragraph 1.

10 41. EPA has a mandatory duty to take final action, and publish notice of that action in the  
11 Federal Register, by approving in full, disapproving in full, or approving in part and  
12 disapproving in part each area's nonattainment SIP elements listed in Table 2 of paragraph 1  
13 above by no later than one year after the nonattainment SIP element was deemed  
14 administratively complete. 42 U.S.C. § 7410(k)(2) and (4).

15 42. However, EPA has failed to approve in full, disapprove in full, or approve in part and  
16 disapprove in part each area's nonattainment SIP elements listed in Table 2 of paragraph 1 above  
17 by no later than one year after the nonattainment SIP element was deemed administratively  
18 complete.

19 **REQUEST FOR RELIEF**

20 WHEREFORE, Plaintiffs respectfully request that the Court:

- 21 A. Declare that the Administrator is in violation of the Clean Air Act with regard to her  
22 failure to perform the mandatory duties listed above;

- 1 B. Issue a mandatory injunction requiring the Administrator to perform her mandatory  
2 duties listed above by certain dates;
- 3 C. Retain jurisdiction of this matter for purposes of enforcing the Court's order;
- 4 D. Grant Plaintiffs their reasonable costs of litigation, including attorneys' and experts' fees;  
5 and;
- 6 E. Grant such further relief as the Court deems just and proper.

7  
8 Respectfully submitted,

9 /s/Jonathan Evans  
Jonathan Evans (Cal. Bar #247376)  
CENTER FOR BIOLOGICAL DIVERSITY  
10 1212 Broadway  
Suite 800  
11 Oakland, CA 94612  
Phone: 510-844-7100 x318  
12 Fax: 510-844-7150  
email: [jevans@biologicaldiversity.org](mailto:jevans@biologicaldiversity.org)

13  
14 Counsel for Plaintiffs

15 Dated: July 21, 2016

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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Center for Biological Diversity, Center for Environmental Health, and Clean Air Council,
(b) County of Residence of First Listed Plaintiff Alameda
(c) Attorneys (Firm Name, Address, and Telephone Number)
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA. 94619
(510) 844-7118

DEFENDANTS
Gina McCarthy
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment Of Veteran's Benefits, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice
PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability, 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC § 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC § 158, 423 Withdrawal 28 USC § 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS-Third Party 26 USC § 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC § 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. §§ 7401 et seq. (Clean Air Act).
Brief description of cause:
Failure to perform mandatory duties pursuant to the Clean Air Act.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):
JUDGE
DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only)
SAN FRANCISCO/OAKLAND
SAN JOSE
EUREKA-MCKINLEYVILLE

DATE: 7/21/2016
SIGNATURE OF ATTORNEY OF RECORD: /s/ Jonathan Evans



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.