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11
12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 CENTER FOR BIOLOGICAL DIVERSITY,
15 ASSOCIATION OF IRRITATED RESIDENTS,
16 SIERRA CLUB, and CLIMATE CHANGE
LAW FOUNDATION,

17 Plaintiffs,

18 v.

19 UNITED STATES ENVIRONMENTAL
20 PROTECTION AGENCY; CATHERINE
21 MCCABE, in her official capacity as Acting
22 Administrator of the United States Environmental
23 Protection Agency; and ALEXIS STRAUSS, in
her official capacity as Acting Regional
Administrator of the United States Environmental
Protection Agency,

24 Defendants.

Case No: 3:17-cv-720

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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INTRODUCTION

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2 1. This is an action to compel the Administrator of the United States Environmental
3 Protection Agency (“EPA” or “Administrator”) to fulfill mandatory duties under the federal Clean
4 Air Act to ensure that the citizens of California have adequate protections against air pollution
5 from a natural gas plant in the McKittrick Oil Field in California.

6 2. The Chevron USA 7Z Steam Plant (“Natural Gas Plant”) sought and received
7 approval for an Authority to Construct permit / Certificate of Conformity (“Permit”) from the San
8 Joaquin Valley Air Pollution Control District (“Air District”) pursuant the federal Clean Air Act.
9 The Permit allows Chevron to construct eight new 85 MMBtu/hr natural gas fired steam generators
10 (hereinafter, the “Project”). Each MMBtu equals one million British Thermal Units (“BTU”),
11 which is roughly equivalent to a thousand cubic meters of natural gas. The new generators
12 therefore will utilize roughly 85,000 cubic meters of natural gas an hour.

13 3. Allowing the Project to move forward will significantly increase harmful air
14 pollution that will exacerbate the poor air quality and respiratory illnesses that plague San Joaquin
15 Valley communities already unfairly burdened with industrial pollution, and will contribute to
16 climate change impacts.

17 4. The Permit was issued pursuant to Title V of the Clean Air Act and is a
18 modification of the Natural Gas Plant’s existing federal Title V operating permit. As a
19 modification of a Title V permit, the Permit was required to be submitted to EPA for a 45-day
20 review period before it became final. 42 U.S.C. §§ 7661d(a)(1), (b)(1). EPA did not object to the
21 Permit during the 45-day review period.

22 5. Therefore, the Association of Irrigated Residents (“AIR”), Center for Biological
23 Diversity (the “Center”), Sierra Club, and Climate Change Law Foundation (collectively,
24 “Plaintiffs”) filed a petition (“Petition”) with EPA on July 7, 2016, requesting that EPA object to
25 the Air District’s proposed Permit for the Natural Gas Plant. *See* 42 U.S.C. § 7661d(b)(2)
26 (authorizing such petitions).

27 6. Title V of the Clean Air Act establishes a mandatory 60-day deadline for EPA to
28 grant or deny a citizen petition for an objection to a Title V permit, modification, or renewal. *Id.*

1 7. Although more than 60 days have passed, the EPA Administrator has not acted on
2 the Petition. The EPA Administrator has therefore failed to complete her non-discretionary duty
3 and is in violation of the Clean Air Act. Plaintiffs seek a declaration stating that the Administrator
4 is in violation of the Act and an order compelling the Administrator to grant or deny the Petition.

5 **JURISDICTION, NOTICE, AND VENUE**

6 8. The instant action arises under the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* This
7 Court has jurisdiction over this action pursuant to 42 U.S.C. § 7604 and 28 U.S.C. §§ 1331 and
8 1361. The relief requested by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and 28 U.S.C.
9 §§ 2201, 2202, and 1361. 42 U.S.C. § 7604(d) authorizes this Court to award Plaintiffs their costs
10 and attorneys' fees.

11 9. In accordance with 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Parts 54.2 and 54.3,
12 Plaintiffs notified the Administrator of the violations alleged herein, and of Plaintiffs' intent to
13 initiate the present action. This notice was provided via certified mail by letter dated October 24,
14 2016 and addressed to the Administrator. More than 60 days have passed since notice was served,
15 and the violation complained of is continuing.

16 10. Venue is proper in this Court pursuant to 28 U.S.C. section 1391(e). Defendant
17 EPA resides in this judicial district. EPA Region 9, which is responsible for implementation and
18 enforcement of the Clean Air Act within California, is headquartered in San Francisco. Climate
19 Change Law Foundation, the Center for Biological Diversity, and Sierra Club have offices in this
20 judicial district. This civil action is brought against an officer of the United States acting in his or
21 her official capacity and a substantial part of the events or omissions giving rise to the claims in
22 this case occurred in the Northern District of California.

23 **PARTIES**

24 11. Plaintiff Association of Irrigated Residents is a California non-profit corporation
25 based in Kern County. AIR formed in 2001 to advocate for clean air and environmental justice in
26 San Joaquin Valley communities. AIR has several dozen members who reside in Kern, Tulare,
27 Kings, Fresno, and Stanislaus Counties. AIR members, through themselves, their families, and
28

1 friends, have direct experience with the many health impacts that arise from the type of pollution
2 emissions associated with this Project.

3 12. Plaintiff Center for Biological Diversity is a non-profit corporation with offices in
4 Oakland, Los Angeles, and elsewhere throughout California and the United States. The Center is
5 actively involved in environmental protection issues throughout California and North America and
6 has over 47,000 members, including many throughout California, including in the Northern
7 District of California and in Kern County. The Center's mission includes protecting and restoring
8 habitat and populations of imperiled species, reducing greenhouse gas pollution to preserve a safe
9 climate, and protecting air quality, water quality, and public health. The Center's members and
10 staff include individuals who regularly live, work, recreate and visit Kern County.

11 13. Plaintiff Climate Change Law Foundation ("CCLF") is a California non-profit
12 corporation based in San Francisco. CCLF's core mission is to address climate change and related
13 environmental problems through legal advocacy. The organization engages in legal and policy
14 matters that include climate change, alternative energy, air quality, and environmental and natural
15 resources law. CCLF has members who reside in and regularly use, and intend to continue to use,
16 areas in Kern County and surrounding regions that will be affected by the Project and emissions of
17 pollution it will generate.

18 14. Plaintiff Sierra Club is a national nonprofit organization of approximately 695,000
19 members. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the
20 earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to
21 educating and encouraging humanity to protect and restore the quality of the natural and human
22 environment; and to using all lawful means to carry out these objectives. Sierra Club and its
23 members are greatly concerned about the effect of air pollution on human health and the
24 environment. Sierra Club has approximately 600-700 members in Kern County.

25 15. Plaintiffs are "persons" within the meaning of 42 U.S.C. § 7602(e). As such,
26 Plaintiffs may commence a civil action under 42 U.S.C. § 7604(a).

27 16. Plaintiffs' members live, work, recreate and conduct other activities in areas where
28 their health and welfare are adversely affected or threatened by air pollution caused by the Project.

1 17. By this action, Plaintiffs seek to protect the health, welfare, and economic interests
2 of their members and the general public. Plaintiffs' members and staff have an interest in their
3 health and well-being, and in the health and well-being of others, including the residents of Kern
4 County. The acts and omissions of EPA complained of herein have caused and continue to cause
5 injury to Plaintiffs and their members by authorizing modifications to the Natural Gas Plant that
6 will significantly increase harmful air pollution from the facility and impair or threaten members'
7 and the public's health and welfare, as well as recreational, aesthetic, and environmental interests.

8 18. Plaintiffs' interests and their members' interests have been, are being, and will
9 continue to be harmed by EPA's failure to act on the Petition to object to the Permit for the
10 Project. Plaintiffs and their members have a substantial interest in ensuring that EPA complies
11 with federal law, including the requirements of the Clean Air Act.

12 19. The acts and omissions of EPA alleged herein further deprive Petitioners and their
13 members of procedural rights and protections to which they are entitled. During the permitting
14 process for the Project, Petitioners provided comments critical of the Permit's conditions.
15 Subsequently, Petitioners petitioned EPA to object to the issuance of the Permit. The Clean Air
16 Act gives Petitioners a procedural right to a timely decision on their Petition. EPA's failure to take
17 action on the Petition prevents Petitioners and their members from challenging an unfavorable
18 EPA decision or from benefiting from a favorable decision on the Petition.

19 20. For all the foregoing reasons, the failures complained of herein cause Plaintiffs and
20 their members injuries for which they have no adequate remedy at law. Granting the requested
21 relief would redress these injuries.

22 21. Defendant EPA is the federal agency charged with implementation of the Clean Air
23 Act.

24 22. Defendant Catherine McCabe is the Acting Administrator of EPA, and is
25 responsible for implementation and enforcement of the Clean Air Act. Defendant McCabe is sued
26 in her official capacity, and officially resides in Washington, D.C.

27 23. Defendant Alexis Strauss is the Acting Regional Administrator of EPA for the
28 Pacific Southwest (Region 9), and is responsible for implementation and enforcement of the Clean

1 Air Act within California. Defendant Strauss is sued in her official capacity, and officially resides
2 in San Francisco, California.

3 **LEGAL BACKGROUND**

4 24. The Clean Air Act establishes a comprehensive scheme “to protect and enhance the
5 quality of the Nation’s air resources so as to promote the public health and welfare and the
6 productive capacity of its population.” 42 U.S.C. § 7401(b)(1). To help meet this goal, the 1990
7 amendments to the Clean Air Act created the Title V permit program—an operating permit
8 program that applies to all major sources of air pollution. *See* 42 U.S.C. §§ 7661-7661f.

9 25. Major sources of air pollution must obtain a valid Title V operating permit, which
10 records all of the air pollution control requirements that apply to a major source of air pollution.
11 Major sources of air pollution cannot legally discharge pollutants into the air unless they have a
12 valid Title V operating permit. 42 U.S.C. § 7661a(a), 7661c(a).

13 26. A significant modification to an existing Title V operating permit must meet the
14 requirements that apply to issuance of a Title V operating Permit. *See* U.S.C. § 7661a(a); 40
15 C.F.R. § 70.7(e), (h).

16 27. The Clean Air Act provides that the Administrator may approve state programs to
17 administer the Title V permitting program with respect to sources within their borders. *See* 42
18 U.S.C. § 7661a(d). The Administrator granted final approval to 34 district Title V programs in
19 California, including for the San Joaquin Valley Air Pollution Control District, in 2003. *See* 68
20 Fed. Reg. 65,637 (Nov. 21, 2003). The California Air Resources Board is responsible for
21 monitoring the activity of local air districts.

22 28. Before a state or local district with an approved Title V permit program can issue a
23 Title V permit or significant modification to a Title V permit, the state or district must forward the
24 proposed Title V permit to EPA. 42 U.S.C. § 7661d(a)(1); 40 C.F.R. § 70.8(a). EPA then has 45
25 days to review the proposed permit. 42 U.S.C. § 7661d(b)(1).

26 29. Air District Rule 2520 allows the Air District to issue a “Certificate of Conformity”
27 as a means of processing a significant modification to a Title V permit. *See* San Joaquin Valley Air
28

1 Pollution Control District Rule 2520 §§ 3.7, 5.3.3; *see also*, San Joaquin Valley Air Pollution
2 Control District Rule 2201 § 5.9.

3 30. A Certificate of Conformity prompts EPA review of the proposed Title V permit
4 changes before construction or modification of the permitted facility and states that procedural
5 requirements substantially equivalent to those of 40 C.F.R. sections 70.6 (covering permit
6 content); 70.7 (covering permit issuance and revision); and, 70.8 (covering permit review by EPA)
7 have been followed. Rule 2520 § 3.7. EPA has 45 days to review a Certificate of Conformity and
8 underlying proposed changes to a Title V facility. *Id.* § 11.3.7.

9 31. Pursuant to a Certificate of Conformity, modifications to a Title V permit may
10 subsequently be processed as an administrative amendment to the permit without additional EPA
11 review or public participation. *Id.* §§ 3.2, 3.7, 6.4.

12 32. EPA must object to the issuance of a permit if EPA finds that the permit does not
13 comply with all applicable provisions of the Clean Air Act. 42 U.S.C. § 7661d(b)(1); 40 C.F.R. §
14 70.8(c).

15 33. If EPA objects to a permit, the permitting authority may not issue the permit unless
16 it is revised. 42 U.S.C. § 7661d(b)(3). If the permitting authority has issued a permit prior to
17 receipt of an objection by the Administrator, the Administrator shall modify, terminate, or revoke
18 such permit. *Id.*

19 34. After EPA's 45-day review period expires, "any person may petition the
20 Administrator within 60 days" to object to the proposed permit. 42 U.S.C. § 7661d(b)(2); 40
21 C.F.R. § 70.8(d); *see also*, San Joaquin Valley Air Pollution Control District Rule 2201 § 5.9.1.7;
22 Rule 2520 § 11.3.7.

23 35. The Clean Air Act requires that "[t]he Administrator shall grant or deny such
24 petition within 60 days after the petition is filed." 42 U.S.C. § 7661d(b)(2).

25 36. If EPA fails to comply with a non-discretionary duty, such as acting on a petition
26 within the statutorily mandated timeframe, the Clean Air Act allows any person to bring suit to
27 compel EPA to perform its duty. 42 U.S.C. § 7604(a).

28 **FACTS**

1 37. The Chevron USA – 7Z Steam Plant in the McKittrick Oil Field is a major
2 stationary source of air pollution located in western Kern County, California.

3 38. The Natural Gas Plant is subject to an existing Title V permit, issued on April 25,
4 2001.

5 39. On January 15, 2015, Chevron applied to the Air District for an Authority to
6 Construct / Certificate of Conformity to modify the Natural Gas Plant and construct eight new 85
7 MMBtu/hr natural gas fired steam generators.

8 40. The public health implications of the Project are significant. The Project would
9 result in the release of harmful air pollution, including significant levels of oxides of nitrogen
10 oxides (NOx), carbon monoxide (CO), volatile organic compounds (VOCs), particulate matter
11 (PM10) and sulfur oxides (SOx). NOx and VOCs are ozone “precursors” that react in the presence
12 of sunlight to create ground-level ozone (or “smog”).

13 41. Smog causes severe public health and related effects, which may include chronic
14 respiratory illnesses, emergency room visits, premature death, missed school days, medical bills,
15 lost wages, and reduced worker productivity.

16 **Procedural Background**

17 42. The Air District published notice of its preliminary decision on the Permit on May
18 6, 2016 (“Preliminary Decision”), triggering a 30-day comment period on the Preliminary
19 Decision.

20 43. Petitioners submitted comments objecting to the proposed Permit on grounds that
21 the proposed emissions reduction credit for the Project was invalid to the Air District during the
22 comment period, on June 9, 2016.

23 44. The Air District determined as part of its Preliminary Decision that the proposed
24 Project “modification can be classified as a significant Title V modification pursuant to Rule 2520,
25 and can be processed with a Certificate of Conformity (COC).”

26 45. Processing the modification with a Certificate of Conformity allows Chevron to
27 amend its Title V Permit for the Natural Gas Plant administratively under the theory that the
28 procedural requirements for the Permit would be “substantially equivalent” to those set forth in 40

1 C.F.R §§ 70.7 and 70.8. District Rule 2520 §§ 3.7, 5.3.3., 11.3. The Air District explicitly stated in
2 its Preliminary Decision that, “[s]ince the facility has specifically requested that this project be
3 processed [with a Certificate of Conformity”], the 45-day EPA comment period will be satisfied
4 prior to the issuance of the Authority to Construct.”¹

5 46. EPA did not raise objections to the Permit during the 45-day review period.

6 47. On July 7, 2016, Plaintiffs filed a petition requesting that the Administrator object
7 to the issuance of the Permit on grounds that the Permit relies on invalid emissions reduction
8 credits. The Petition was timely filed within 60 days following the conclusion of EPA’s review
9 period. *See* 42 U.S.C. § 7661d(b)(2).

10 48. The Petition was based on objections raised during the public comment period for
11 the proposed permit or on grounds that arose subsequent to the public comment period, in
12 accordance with 42 U.S.C. § 7661d(b)(2) and 40 C.F.R §§ 70.8(d), 70.7(h).

13 49. EPA had 60 days, until September 6, 2016, to grant or deny the Petition. 42 U.S.C.
14 § 7661d(b)(2). As of the date of filing of this complaint, EPA has not yet granted or denied the
15 petition.

16 50. The Air District issued the Authority to Construct/Certificate of Conformity for the
17 Project on October 6, 2016.

18 51. By letter dated October 24, 2016, Plaintiffs provided the Administrator with written
19 notice of their intent to sue for EPA’s failure to take action on the Petition. The Administrator
20 received this notice letter via certified mail on October 31, 2016. More than 60 days have elapsed
21 since Plaintiffs gave notice, and EPA remains in violation of the law.

22 **CLAIM FOR RELIEF**
23 **(Failure to Grant or Deny Petition)**

24 52. Plaintiffs hereby incorporate all previous paragraphs by reference herein.
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28 ¹ Proposed Decision, [http://www.valleyair.org/notices/Docs/2016/05-09-16_\(S-1144548\)/S-1144548.pdf](http://www.valleyair.org/notices/Docs/2016/05-09-16_(S-1144548)/S-1144548.pdf) (last accessed February 8, 2017).

1 DATED: February 13, 2017

Respectfully submitted,

2
3 /s/ James M. Birkelund

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20 *Attorney for Plaintiff Center for Biological Diversity*
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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

CENTER FOR BIOLOGICAL DIVERSITY, ASSOCIATION OF IRRITATED RESIDENTS, SIERRA CLUB, and CLIMATE CHANGE LAW FOUNDATION

Plaintiff(s)

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; CATHERINE MCCABE, in her official capacity as Acting Administrator of the United States Environmental Protection Agency; and ALEXIS STRAUSS, in her official capacity as Acting Regional Administrator of the United States Environmental Protection Agency,

Defendant(s)

Civil Action No. 3:17-cv-00720

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

U.S. Environmental Protection Agency - 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; Catherine McCabe, Acting Administrator, U.S. Environmental Protection Agency - 1200 Pennsylvania Avenue, N.W. Mail Code 1101A, Washington, D.C. 20460; Alexis Strauss, Acting Administrator, USEPA Region 9 - 75 Hawthorne Street, Mail Code: ORA-1, San Francisco, CA 94105

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

James Birkelund
Climate Law Foundation
548 Market St., #11200
San Francisco, CA 94104

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____
_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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, ASSOCIATION OF IRRITATED RESIDENTS, SIERRA CLUB, and CLIMATE CHANGE LAW FOUNDATION

(b) County of Residence of First Listed Plaintiff USA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) JAMES M. BIRKELUND, Bar No. 206328; Climate Change Law Foundation; 548 Market St., #11200 San Francisco, CA 94104; Tel: 415-602-6223; Fax: 415-789-4556 MAYA GOLDEN-KRASNER, Bar No. 217557; The Center for Biological Diversity; P.O. Box 1476; La Canada Flintridge, CA 91012

DEFENDANTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; CATHERINE MCCABE, in her official capacity as Acting Administrator of the United States Environmental Protection Agency; and ALEXIS STRAUSS, in her official capacity as Acting Regional Administrator of the United States Environmental Protection Agency

County of Residence of First Listed Defendant USA (IN U.S. PLAINTIFF CASES ONLY)

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: 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)

Large table with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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
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): Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq. Brief description of cause: Suit to compel EPA to perform mandatory duties under Clean Air Act to protect against pollution from oil refinery.

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: 2/13/17 SIGNATURE OF ATTORNEY OF RECORD: /s/ James Birkelund