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9
10 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
11 **WESTERN DIVISION**

12 CENTER FOR BIOLOGICAL
13 DIVERSITY;

14 Plaintiff,

15 vs.

16 NATIONAL OCEANIC ATMOSPHERIC
ADMINISTRATION;

17 Defendant.

Civil Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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

18 **JURISDICTION AND VENUE**

19 1. This Court has jurisdiction over this action pursuant to the Freedom of
20 Information Act (“FOIA”), 5 U.S.C. § 552(a)(4)(B), and 28 U.S.C. § 1331 (federal
21 question jurisdiction).

22 2. Venue is properly vested in this Court pursuant to 28 U.S.C.
23 § 1391(e), because a substantial part of the events and omissions giving rise to the
24 claim occurred in this District and because a substantial number of the records are
25 likely located in this District.

26 3. Jurisdiction and venue are also proper under 5 U.S.C. § 552(a)(4)(B)
27 because a substantial number of the records are likely located in this District.
28

1 **INTRODUCTION**

2 4. In this action, Plaintiff Center For Biological Diversity (“Center”)—
3 an environmental conservation organization that works to protect native wildlife
4 species and their habitats—challenges the failure of the National Oceanic and
5 Atmospheric Administration (“NOAA”) to comply with FOIA in order to compel
6 NOAA to disclose records that have been unlawfully withheld after a FOIA
7 request.

8 5. FOIA requires that federal agencies respond to public requests for
9 records in order to increase public understanding of the workings of government
10 and provide access to agency records. The records that the Center seeks concern
11 NOAA’s decision to deny the Center’s petition to list the Pacific bluefin tuna as
12 threatened or endangered under the Endangered Species Act (“ESA”), 16 U.S.C.
13 § 1531 *et seq.*, and to designate critical habitat concurrently with its listing.

14 6. Pacific bluefin tuna are at a population level of less than 4 percent
15 than the estimated population before fishing. Because Pacific bluefin tuna ranges
16 from north of Japan to New Zealand in the western Pacific, and off California and
17 Mexico in the eastern Pacific, it is highly vulnerable to excessive fishing by
18 various nations. The information sought is of public interest because it relates to
19 the federal management of the nation’s most imperiled wildlife and the
20 implementation of the Endangered Species Act.

21 7. On December 18, 2017, the Center submitted a FOIA request to
22 NOAA for all records generated in connection with the denial of the Pacific bluefin
23 tuna listing petition. On April 10, 2018, NOAA sent its first interim response to
24 the Center’s FOIA request. On June 18, 2018, NOAA sent its second and final
25 response, while partially or fully withholding 257 records under FOIA Exemptions
26 4, 5, 6, or 7.

27 8. On September 11, 2018, the Center filed an appeal of NOAA’s FOIA
28 response. The Center’s appeal asserted that NOAA has conducted an inadequate

1 search for records and challenged the agency's exemption 5 withholdings.

2 9. FOIA requires agencies to make a determination on any
3 administrative appeal within 20-working days after the agency receives the
4 appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

5 10. NOAA has violated FOIA's statutory deadline for making a decision
6 on the Center's appeal.

7 11. The Center seeks an order declaring NOAA in violation of FOIA,
8 requiring NOAA to make a lawful determination on the Center's administrative
9 appeal, and directing NOAA to conduct an adequate search for records and to
10 release all records and portions of records that were improperly withheld pursuant
11 to Exemption 5.

12 **PARTIES**

13 12. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the Center")
14 is a national, nonprofit conservation organization that works through science, law,
15 and policy to secure a future for all species, great or small, hovering on the brink of
16 extinction. The Center is dedicated to the preservation, protection, and restoration
17 of biodiversity and ecosystems throughout the world. The Center has more than
18 69,500 members.

19 13. The Center informs, educates, and counsels the public regarding
20 environmental issues, policies, and laws relating to environmental issues.
21 Specifically, the Center works to provide its members and the public with a better
22 understanding of the government's management of protected species of wildlife,
23 and in particular, its implementation of the Endangered Species Act. The Center
24 has been substantially involved in the management activities of numerous
25 government agencies for decades and has consistently displayed its ability to
26 disseminate information granted to it through FOIA. Informing the public is
27 central to the Center's mission. The Center educates and informs the public
28 through media advocacy, its webpage, and other widely distributed publications.

1 14. The Center and its members are harmed by NOAA's violations of
2 FOIA. Such violations preclude the Center from gaining a full understanding of
3 the management of Pacific bluefin tuna and NOAA's implementation of the
4 Endangered Species Act, or disseminating that information to the public. These
5 injuries would be redressed by a favorable decision granting the Center its
6 requested relief.

7 15. Defendant NATIONAL OCEANIC AND ATMOSPHERIC
8 ADMINISTRATION is an agency within the Department of Commerce. NOAA is
9 the agency to which the Secretary of Commerce has delegated the authority to
10 implement the Endangered Species Act for most threatened and endangered marine
11 species, and is in possession and control of the records that the Center seeks, and as
12 such, it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13 **STATUTORY BACKGROUND**

14 16. FOIA's basic purpose is government transparency. It establishes the
15 public's right to access all federal agency records unless such records may be
16 withheld pursuant to one of nine, narrowly construed FOIA exemptions. 5 U.S.C.
17 § 552(b)(1)-(9). Any inquiry under FOIA brings with it a strong presumption in
18 favor of disclosure.

19 17. FOIA imposes strict deadlines on federal agencies when they receive
20 a request for records pursuant to FOIA. Specifically, an agency must determine
21 whether to disclose responsive records and notify the requester of its determination
22 within 20-working days of receiving a FOIA request, and it must make records
23 "promptly" available, unless it can establish that certain unusual circumstances are
24 present and/or that it may lawfully withhold records, or portions thereof, from
25 disclosure. *Id.* § 552(a)(3)(A), (a)(6). Also within 20-working days, the agency
26 must inform the requester that it has a right to appeal the agency's determination.
27 *Id.* § 552(a)(6)(A)(i). If an administrative appeal is filed, the agency has 20-
28 working days to respond to that appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

1 18. FOIA places the burden on the agency to prove that it may withhold
2 responsive records from a requester. *Id.* § 552(a)(4)(B).

3 19. FOIA requires each agency to make reasonable efforts to search for
4 records in a manner that is reasonably calculated to locate all records that are
5 responsive to the FOIA request. *Id.* § 552(a)(3)(C)-(D).

6 20. Congress recognized that in certain, limited instances, records may be
7 withheld as exempt from FOIA’s broad disclosure mandate, and thus created nine
8 categories of exemptions. *Id.* § 552(b). These exemptions, however, are narrowly
9 construed in light of FOIA’s dominant objective of disclosure, not secrecy.

10 21. The U.S. district courts have jurisdiction “to enjoin the agency from
11 withholding agency records and to order the production of any agency records
12 improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

13 22. FOIA permits the Court to assess “reasonable attorney fees and other
14 litigation costs reasonably incurred in any case . . . in which the complainant has
15 substantially prevailed.” 5 U.S.C. § 552(a)(4)(E)(i).

16 **FACTUAL BACKGROUND**

17
18 **A. The Imperiled Pacific Bluefin Tuna and Petition to List Under the**
19 **Endangered Species Act**

20 23. The Pacific bluefin tuna (*Thunnus orientalis*), one of three bluefin
21 tuna species, are slow-growing, long-lived, endothermic fish. Pacific bluefin are
22 renowned for their large size, unique physiology and biomechanics, and capacity to
23 swim great distances. The species migrates tens of thousands of miles across the
24 largest ocean to feed and spawn, ranging from waters north of Japan to New
25 Zealand in the western Pacific, and off California and Mexico in the eastern
26 Pacific.

27 24. Commercial fishing is the primary threat to the survival of the Pacific
28 bluefin tuna. Since the start of heavy fishing, around the early 1930s, Pacific

1 bluefin tuna have suffered a more than 96% population decline. Despite severe
2 overfishing for decades, commercial catch in the eastern Pacific was not limited by
3 international agreement until 2012, and in the western Pacific until 2013. Recent
4 catch remains significantly higher than the catch limits based on scientific advice.

5 25. Pacific bluefin tuna are also threatened by water and plastic pollution,
6 oil and gas development, renewable energy projects, large-scale aquaculture,
7 forage fish depletion, and climate change.

8 26. In an effort to address these threats, on June 20, 2016, the Center
9 (along with individual scientists and other organizations) petitioned NOAA to list
10 the Pacific bluefin tuna as a threatened or endangered species under the
11 Endangered Species Act.

12 27. On October 11, 2016, NOAA published a “positive 90-day finding”
13 pursuant to the ESA, finding that the petition presented substantial scientific or
14 commercial information indicating that the listing of the Pacific bluefin tuna may
15 be warranted, and announcing the initiation of a status review of the species. 81
16 Fed. Reg. 70,074.

17 28. Subsequently, on August 8, 2017, NOAA issued a “negative 12-
18 month finding” pursuant to the ESA, concluding that listing of the Pacific bluefin
19 tuna is not warranted and that the species “faces an overall low risk of extinction.”
20 82 Fed. Reg. at 37,079.

21 **B. The Center’s FOIA Request to NOAA**

22 29. On December 18, 2017, the Center submitted a FOIA request to
23 NOAA seeking all records generated in connection with the denial of the Pacific
24 bluefin tuna listing petition under the Endangered Species Act.

25 30. On January 12, 2018, NOAA sent the Center a letter acknowledging
26 the FOIA request and invoking a 10-workday extension “[d]ue to the need to
27 search for and collect the requested records from field facilities or other
28 establishments separate from the office processing the request.”

1 31. On February 2, 2018, NOAA sent the Center electronic mail seeking
2 clarification of its request. In that email, NOAA stated that the Center's request
3 lacked a date range and thus, the agency considered "the date range for responsive
4 records from the date of the petition (June 20, 2016) to the date of the agency final
5 decision (August 8, 2017)." NOAA added that "[i]f that is not correct we will need
6 further clarification," and that it needed clarification on what is considered a
7 "responsive document."

8 32. On February 9, 2018, the Center sent NOAA electronic mail
9 confirming that its request sought all records comprising "the decision file for the
10 decision to not list Pacific bluefin tuna" including "correspondence related to the
11 denial of the petition," but not "the rollout plan." The Center further stated that it
12 did not seek background records "associated with the report [that] came after the
13 decision not to list Pacific bluefin tuna" (e.g., a summary fact sheet).

14 33. On February 23, 2018, NOAA and the Center participated in a
15 telephone call. On February 28, 2018, NOAA sent the Center a letter
16 memorializing that telephone conversation. That letter stated:

17 In that conversation, I provided you with a status update of our
18 response and requested an extension of the FOIA time limits.
19 We have tasked your request to the West Coast Region's
20 Protected Resources Division and Sustainable Fisheries
21 Divisions, the NOAA Office of Protected Resources (O/PR)
22 and the Southwest Fisheries Science Center to search for
23 responsive records. At this time, we are in the process of
24 collection and review of records submitted by the responding
25 offices. At the time of our conversation last Friday there were
26 over 1,000 separate record items, but this number has since
27 grown as additional records have been collected. Due to the
28 volume and complexity of the responsive material and our
limited resources, we will need additional time to complete our
processing of your request. Thank you for the Center's
willingness to receive records on a rolling basis (as indicated on
your request letter). We anticipate providing you with an
interim release on or about March 20, 2018. We hope to
complete our final response to you by September 20, 2018.

1 34. On March 12, 2018, the Center sent NOAA electronic mail stating
2 that it agreed to the date range to be “from the date of the petition (June 20, 2016)
3 to the date of the agency final decision (August 8, 2017).” The Center’s email
4 further stated that we are seeking “documents about the decision not to list Pacific
5 bluefin tuna,” and that “we want correspondence related to the denial of the
6 petition,” but “do not want the rollout plan.” The email further stated that “[w]e
7 are not clear as to what a background document associated with the report would
8 be, but if it came after the decision not to list Pacific bluefin tuna (like a summary
9 fact sheet), then no, we do not want it.”

10 35. On March 19, 2018, NOAA sent the Center electronic mail stating
11 that the agency is reviewing records and expects to provide its “first interim
12 response by next week (March 27, 2018) with our final response completed no
13 later than September 20, 2018.”

14 36. On March 30, 2018, NOAA sent the Center a status update letter.
15 That letter stated that NOAA’s searches “will produce over 3,500 records,” and
16 that it is “in the process of producing approximately 3,000 records and anticipate
17 providing you with this material within the next 7 to 10 business days...We expect
18 to apply exemptions (b)(5), (b)(6), and possibly (b)(7) to some of the documents in
19 our final response. We will send you our final response no later than September 20,
20 2018, but we anticipate completion much sooner.”

21 37. On April 10, 2018, NOAA sent the Center its First Interim Response
22 Letter, which stated that it “located 3,226 records responsive to your request,”
23 granted the Center granted full access to those records, and provided an electronic
24 copy.

25 38. On April 24, 2018, NOAA sent the Center electronic mail stating that
26 it “provided [the Center] with an interim release of 3,226 records. We expect to
27 complete our final response within the next 30-60 days (significantly sooner than
28 our initial estimated completion date of 9/20/2018.)”

1 39. On June 18, 2018, NOAA sent the Center its Final Determination
2 Letter, which stated that the agency “identified an additional 458 documents that
3 are fully releasable and this material is being released to you in their entirety.”
4 That letter further stated that NOAA was “releasing 257 documents responsive to
5 your request that contain redactions under exemptions 5 U.S.C. 552(b)(5),” and
6 that Exemption 5 “exempts from disclosure inter-agency or intra-agency
7 memorandums or letters which would not be available by law to a party other than
8 an agency in litigation with the agency. The records are exempted from disclosure
9 under the deliberative process privilege, attorney client communication and/or
10 attorney work product.” NOAA’s letter went on to explain that the agency
11 withheld records under Exemptions 4, 6, and 7.

12 40. On July 27, 2018, the Center received an electronic mail with
13 NOAA’s Final Determination Letter dated June 18, 2018. On August 1, 2018, the
14 Center sent NOAA electronic mail stating that the Center “received this letter in
15 NOAA’s email on July 27, 2018. Please update the date on the letter and resend to
16 us for our records.”

17 41. On August 13, 2018, the Center sent electronic mail again asking for
18 an updated Final Determination Letter with corrected date.

19 42. To date, the Center has not received a response to neither its August 1,
20 2018, nor its August 13, 2018, emails seeking an updated Final Determination
21 Letter.

22 43. On September 11, 2018, the Center submitted an administrative
23 appeal to NOAA asserting that NOAA had improperly applied Exemption 5’s
24 attorney-client privilege to its withheld records, and had failed to conduct an
25 adequate search for all records.

26 44. Under FOIA, NOAA had 20-working days to make a decision on the
27 Center’s administrative appeal. 5 U.S.C. § 552(a)(6)(A)(ii). Thus, a decision was
28 due by October 9, 2018. NOAA has not yet issued this required decision.

1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

4 **(Failure to Comply with FOIA's Mandatory Administrative Appeal Deadline)**

5 45. The Center realleges and incorporates by reference all the allegations
6 set forth in this Complaint, as if set forth fully below.

7 46. NOAA's failure to respond and make a decision on the Center's
8 administrative appeal within the 20-working day deadline is a violation of FOIA, 5
9 U.S.C. § 552(a)(6)(A)(i).

10 47. Based on the nature of the Center's organizational activities, it will
11 undoubtedly continue to employ FOIA's provisions in record requests to NOAA in
12 the foreseeable future.

13 48. The Center's organizational activities will be adversely affected if
14 NOAA continues to violate FOIA's administrative appeal deadline as it has in this
15 case.

16 49. Unless enjoined and made subject to a declaration of the Center's
17 legal rights by this Court, NOAA will continue to violate the Center's rights to
18 receive public records under FOIA.

19 **SECOND CLAIM FOR RELIEF**

20 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

21 **(Failure to Conduct an Adequate Search for All Responsive Records)**

22 50. The Center realleges and incorporates by reference all the allegations
23 set forth in this Complaint, as if set forth fully below.

24 51. The Center has a statutory right to have NOAA process its FOIA
25 requests in a manner that complies with FOIA. 5 U.S.C. § 552(a)(3). NOAA
26 violated the Center's rights in this regard when it unlawfully failed to undertake a
27 search that is reasonably calculated to locate all records that are responsive to the
28 Center's FOIA Request.

1 52. Based on the nature of the Center's organizational activities, it will
2 undoubtedly continue to employ FOIA's provisions in record requests to NOAA in
3 the foreseeable future.

4 53. The Center's organizational activities will be adversely affected if
5 NOAA continues to violate FOIA's requirement to undertake a search that is
6 reasonably calculated to locate records that are responsive to the Center's FOIA
7 requests.

8 54. Unless enjoined and made subject to a declaration of the Center's
9 legal rights by this Court, NOAA will continue to violate the Center's rights to
10 receive public records under FOIA.

11 **THIRD CLAIM FOR RELIEF**

12 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

13 **(Failure to Disclose All Responsive Records/Unlawful Exemptions)**

14 55. The Center realleges and incorporates by reference all the allegations
15 set forth in this Complaint, as if set forth fully below.

16 56. The Center has a statutory right to the records it seeks, and there is no
17 legal basis for NOAA to assert that any of FOIA's nine exemptions to mandatory
18 disclosure apply to withhold records from the Center. *See* 5 U.S.C. § 552(b)(1)-
19 (9).

20 57. NOAA has violated the Center's rights in this regard by withholding
21 records that are responsive to the Center's FOIA request.

22 58. Based on the nature of the Center's organizational activities, it will
23 undoubtedly continue to employ FOIA's provisions in FOIA requests to NOAA in
24 the foreseeable future.

25 59. The Center's organizational activities will be adversely affected if
26 NOAA continues to violate FOIA's disclosure provisions as it has in this case.
27
28

1 60. Unless enjoined and made subject to a declaration of the Center's
2 legal rights by this Court, NOAA will continue to violate the Center's rights to
3 receive public records under FOIA.

4 **FOURTH CLAIM FOR RELIEF**

5 **VIOLATION OF THE FREEDOM OF INFORMATION ACT**

6 **(Failure to Provide Reasonably Segregable Portions**
7 **of Any Lawfully Exempt Records)**

8 61. The Center realleges and incorporates by reference all the allegations
9 set forth in this Complaint, as if set forth fully below.

10 62. The Center has a statutory right to any reasonably segregable portion
11 of a record that contains information that is subject to any of FOIA's exemptions.
12 5 U.S.C. § 552(b).

13 63. NOAA violated the Center's rights in this regard by unlawfully
14 withholding reasonably segregable portions of any lawfully exempt records that
15 are responsive to the Center's FOIA Request.

16 64. Based on the nature of the Center's organizational activities, it will
17 continue to employ FOIA's provisions in record requests to NOAA in the
18 foreseeable future.

19 65. The Center's organizational activities will be adversely affected if
20 NOAA is allowed to continue violating FOIA's disclosure provisions as it has in
21 this case.

22 66. Unless enjoined and made subject to a declaration of the Center's
23 legal rights by this Court, NOAA will continue to violate the Center's rights to
24 receive public records under FOIA.

25 **RELIEF REQUESTED**

26 For the foregoing reasons, the Center respectfully requests that the Court:
27
28

- 1 A. Declare that NOAA's failure to timely make a determination on the
2 Center's FOIA appeal is unlawful under FOIA, 5 U.S.C.
3 § 552(a)(6)(A)(ii).
- 4 B. Order NOAA to issue a decision on the Center's September 11, 2018,
5 administrative appeal by a date certain.
- 6 C. Declare that NOAA's failure to undertake a search for and disclose to
7 the Center all records that are responsive to the Center's FOIA request
8 is unlawful under FOIA, 5 U.S.C. § 552(a)(6)(A)(i).
- 9 D. Order NOAA to conduct a search that is reasonably calculated to
10 locate all records responsive to the Center's FOIA request, with the
11 cut-off date for such searches being the date that the searches are
12 conducted, and to provide the Center, by date certain from the Court's
13 order, with all responsive records and reasonably segregable portions
14 of lawfully exempt records sought in this action.
- 15 E. Declare that NOAA's failure to properly apply FOIA exemptions, 5
16 U.S.C. § 552(b), is unlawful under FOIA.
- 17 F. Order NOAA to provide all records or portions of records that were
18 unlawfully withheld pursuant to FOIA Exemption 5 by date certain.
- 19 G. Award the Center its costs and reasonable attorney fees pursuant to
20 FOIA, 5 U.S.C. § 552(a)(4)(E), or 28 U.S.C. § 2412.
- 21 H. Maintain jurisdiction over this action until NOAA is in compliance
22 with FOIA and every order of this Court;
- 23 I. Grant the Center such other relief as the Court deems just and proper.

24 Respectfully submitted this 13th day of February, 2019.

25 /s/ Catherine Kilduff

26 Catherine Kilduff (Bar No. 256331)
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Attorneys for Plaintiff

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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Center for Biological Diversity	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) National Oceanic Atmospheric Administration
(b) County of Residence of First Listed Plaintiff <u>Pima County, AZ</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Center for Biological Diversity 660 S. Figueroa St., Suite 1000 Los Angeles, CA 90017 805-750-8852	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input checked="" type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border: none;"> <tr> <td style="border: none;">Citizen of This State</td> <td style="border: none; text-align: center;">PTF DEF</td> <td style="border: none;"> <input type="checkbox"/> 1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 3 </td> <td style="border: none;"> Incorporated or Principal Place of Business in this State Incorporated and Principal Place of Business in Another State Foreign Nation </td> <td style="border: none; text-align: center;">PTF DEF</td> <td style="border: none;"> <input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6 </td> </tr> </table>	Citizen of This State	PTF DEF	<input type="checkbox"/> 1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 3	Incorporated or Principal Place of Business in this State Incorporated and Principal Place of Business in Another State Foreign Nation	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6
Citizen of This State	PTF DEF	<input type="checkbox"/> 1 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 3	Incorporated or Principal Place of Business in this State Incorporated and Principal Place of Business in Another State Foreign Nation	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 6		

IV. 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

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Freedom of Information Act, 5 U.S.C. § 552: failure to respond to appeal, to search adequately to locate all records, and to release segregable records; improper record withholding.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <div style="background-color: #e0e0e0; padding: 2px;">REAL PROPERTY</div> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <div style="background-color: #e0e0e0; padding: 2px;">TORTS PERSONAL INJURY</div> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <div style="background-color: #e0e0e0; padding: 2px;">TORTS PERSONAL PROPERTY</div> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <div style="background-color: #e0e0e0; padding: 2px;">BANKRUPTCY</div> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <div style="background-color: #e0e0e0; padding: 2px;">CIVIL RIGHTS</div> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities-Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education	<div style="background-color: #e0e0e0; padding: 2px;">Habeas Corpus:</div> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <div style="background-color: #e0e0e0; padding: 2px;">Other:</div> <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement <div style="background-color: #e0e0e0; padding: 2px;">FORFEITURE/PENALTY</div> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <div style="background-color: #e0e0e0; padding: 2px;">LABOR</div> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <div style="background-color: #e0e0e0; padding: 2px;">SOCIAL SECURITY</div> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g)) <div style="background-color: #e0e0e0; padding: 2px;">FEDERAL TAX SUITS</div> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<p>QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.</p>	<p align="center">STATE CASE WAS PENDING IN THE COUNTY OF:</p> <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	<p align="center">INITIAL DIVISION IN CACD IS:</p> Western Southern Eastern
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<p>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "no," skip to Question C. If "yes," answer Question B.1, at right.</p>	<p>B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →</p> <p>B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Continue to Question B.2.</p> <p><input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.</p> <p><input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.</p>
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<p>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If "no," skip to Question D. If "yes," answer Question C.1, at right.</p>	<p>C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →</p> <p>C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →</p>	<p><input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.</p> <p><input checked="" type="checkbox"/> NO. Continue to Question C.2.</p> <p><input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.</p> <p><input checked="" type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.</p>
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QUESTION D: Location of plaintiffs and defendants?	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<p>D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →</p>	<p>D.2. Is there at least one answer in Column B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓</p>
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QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	Western

QUESTION F: Northern Counties?

Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? Yes No

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court**? NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**? NO YES

If yes, list case number(s): _____

Civil cases are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): /s/ Catherine Kilduff DATE: February 13, 2019

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))