



U.S. Department of Justice

United States Attorney
Northern District of California

10th Floor, Federal Building (415) 436-xxxx
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102 FAX: (415) 436-6748

February 5, 2002

General Counsel
U.S. Department of Energy
1000 Independence Ave., S.W.
Room 6A245, Forrestal Bldg.
Washington, D.C. 20585

Re: *Center for Biological Diversity, et al. v. Spencer Abraham, et al.*
Civil Action No. 02-00027 MEJ

Dear Sir or Madam:

I am enclosing a copy of the Summons and Complaint in this District Court action against your agency. This office was served on February 1, 2002. The government's response to the complaint is due on April 2, 2002.

I am the Assistant United States Attorney assigned to this case. Please have a lawyer on your staff immediately contact me as soon as possible at the telephone number above to discuss how to defend this litigation and when this office can expect a litigation report.

The litigation report should include the following:

- (a) a narrative statement of the facts;
- (b) a proposed response to the complaint;
- (c) a legal analysis of the claims and defenses (including, but not limited to, subject matter jurisdiction, standing, comparative fault and other statutory and common law defenses);
- (d) your agency file number for this litigation;
- (e) the full name, title, work or home address and telephone number of each person who has discoverable information about factual matters relevant to the case;
- (f) all unprivileged documents in the agency's custody or control that are reasonably available that tend to support the positions that the agency has taken or is reasonably likely to take in the case;

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- (g) all unprivileged documents and other evidentiary material in the agency's custody or control that are then reasonably available that relate to damages;
- (h) the nature and extent of the inquiry that you have undertaken to obtain the information in paragraphs (e), (f) and (g) above;
- (i) a statement that the disclosures in paragraphs (e), (f) and (g) are complete;
- (j) all documents, other than the documents described in paragraphs (f) and (g), which are relevant to the litigation; and
- (k) the agency's position on settlement; if the agency believes settlement should be considered, the agency's views on the settlement value of the case.

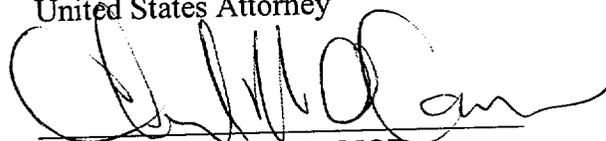
Within 14 days after the initial case management conference, the agency must disclose the identity of witnesses and evidence which support the agency's claims or defenses and any damage calculations and supporting evidence. These disclosures are required by Federal Rule of Civil Procedure 26(a)(1)(E) and must be made even if a motion to dismiss is filed. If you believe the complaint is subject to a dispositive motion, please call me immediately to discuss the matter.

I look forward to working with you on this matter.

Very truly yours,

DAVID W. SHAPIRO
United States Attorney

By:



CHARLES M. O'CONNOR
Assistant United States Attorney

Enclosures

cc:

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February 5, 2002
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL
Plaintiff(s)

-v-

SPENCER ABRAHAM
Defendant(s)

C 02-00027 MEJ

ORDER SETTING INITIAL CASE MANAGEMENT
CONFERENCE

IT IS HEREBY ORDERED that this action is assigned to the Honorable Maria-Elena James. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the handbook entitled "Dispute Resolution Procedures in the Northern District of California," the Notice of Assignment to United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients must familiarize themselves with that rule and with the handbook entitled "Dispute Resolution Procedures in the Northern District of California."

CASE SCHEDULE [ADR MULTI-OPTION PROGRAM]

Date	Event	Governing Rule
01/02/2002	Complaint filed	
04/11/2002	Last day to meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan	FRCivP 26(f) & ADR LR 3-5
04/11/2002	Last day to file Joint ADR Certification with Stipulation to ADR process or Notice of Need for ADR Phone Conference	Civil L.R. 16-8
04/25/2002	Last day to complete initial disclosures or state objection in Rule 26(f) Report, file/serve Case Management Statement, and file/serve Rule 26(f) Report	FRCivP 26(a)(1) Civil L.R.16-9
05/02/2002	Case Management Conference in Ctrm. B, 15th Floor, SF at 10:00 AM	Civil L.R. 16-10

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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4

5)
6)
7 Plaintiff(s),) No. C MEJ
8)
9 v.)
10 Defendant(s).) ORDER SETTING
11) CASE MANAGEMENT
12) CONFERENCE
13)
14) [ALL CASES]
15)

16 IT IS HEREBY ORDERED that, pursuant to Fed.R.Civ.P. 16 and Civil L.R. 16-10, a Case
17 Management Conference will be held in this case before the Honorable Maria-Elena James on
18 Thursday, _____ at 10:00 A.M. in Courtroom B, 15th Floor, 450 Golden Gate
19 Avenue, San Francisco, California.

20 IT IS FURTHER ORDERED that, within 120 days of filing the complaint, and in accordance
21 with Fed.R.Civ.P. 4, Plaintiffs shall complete service of the complaint on at least one Defendant and
22 file either a waiver of service or a certification of service of process. Failure to file the waiver of
23 service or a certification of service may result in issuance by the Court of an Order to Show Cause why
24 the complaint should not be dismissed without prejudice pursuant to Fed.R.Civ.P. 4.

25 IT IS FURTHER ORDERED that Counsel shall meet and confer prior to the Case Management
26 Conference and file, no later than ten business days before the Case Management Conference, a Joint
27 Case Management Conference Statement in compliance with Civil L.R. 16-9 addressing the
28 information contained in the Joint Case Management Statement and [proposed] Case Management
Order form, enclosed herewith. In addition, the parties must be prepared to discuss knowledgeably
with the Court, at the Case Management Conference, any of the other subjects listed in Fed.R.Civ.P. 16
or in Civil L.R. 16-10.

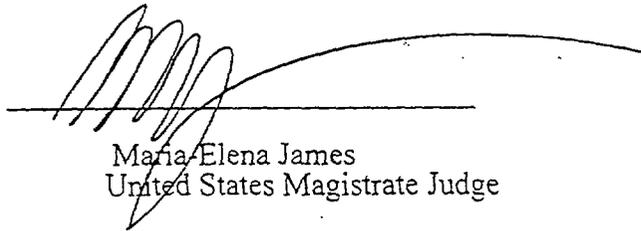
IT IS FURTHER ORDERED that motions for summary judgment shall be accompanied by a
joint statement of undisputed facts in compliance with Civil L.R. 56-2(b).

1 IT IS FURTHER ORDERED that ten business days (10) prior to the case management
2 conference. each party shall file either a written consent to Judge James' jurisdiction or a
3 written request for reassignment to a district court judge. In the event that Defendant(s) file a
4 Motion to Dismiss, pursuant to Fed.R.Civ.P. 12, Defendant(s) shall file a written consent/request
5 for reassignment at the time the motion is filed and Plaintiff(s) shall file the consent/request for
6 reassignment form seven days thereafter.

7 IT IS FURTHER ORDERED that Plaintiff(s) shall serve copies of this Order, the Joint Case
8 Management Statement and [proposed] Case Management Order form, the consent/request for
9 reassignment form and the attached Discovery and Dispute Procedures on all parties to this action, and
10 on any parties subsequently joined, in accordance with Fed.R.Civ.P. 4 and 5. Following service of
11 process on Defendant(s), Plaintiff(s) shall file a certificate of service with the Clerk of this Court.

12 Failure to comply with this Order or the Civil Local Rules of this Court may result in
13 sanctions, including the dismissal of the complaint or the entry of a default. See Fed.R.Civ.P. 16(f),
14 Civil L.R. 1-4.

15
16 Date: January 31, 2001



Maria Elena James
United States Magistrate Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 Plaintiff(s),
5 vs.
6
7 Defendant(s).
8

Case No. C MEJ
JOINT CASE MANAGEMENT
STATEMENT AND
[PROPOSED] CASE
MANAGEMENT ORDER.

9
10 The parties to the above-entitled action submit this Joint Case Management Statement
11 and Proposed Case Management Order and request the Court to adopt it as the Case Management
12 Order in this case, pursuant to Federal Rule of Civil Procedure 16 and Civil L.R.16-10(b).

13 **JOINT CASE MANAGEMENT STATEMENT**

14 A. Description of the case: (The parties may attach additional pages to this statement.)

15 1. A brief description of the events underlying the action:

16 _____
17 _____
18 _____
19 _____
20 _____
21 _____

22 2. The principal factual issues which the parties dispute:

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3. The principal legal issues which the parties dispute:

4. Other issues [e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue] which remain unresolved for the reason stated below and the parties' proposed resolution:

5. The parties who have not been served and the reasons for said lack of service:

6. The additional parties whom the below-specified parties intend to join and the intended time frame for such joinder:

1 B. Consent to Magistrate Judge for Trial:

2 1. The parties consent to assignment of this case to a United States Magistrate Judge for
3 Trial: ____ Yes ____ No.

4 Plaintiff received the consent/request for reassignment form from the Clerk of the Court
5 at the time the complaint was filed. The consent/request for reassignment form was
6 received by Defendant with service of process of the complaint. Each party shall file
7 the signed form consenting to the magistrate judge's jurisdiction or requesting
8 reassignment to a district court judge no later than the filing deadline for the joint
9 case management statement assigned by the initial case management schedule.

10
11 C. Alternative Dispute Resolution:

12 The parties have discussed and request the following court ADR process: Nonbinding
13 Arbitration, Early Neutral Evaluation, Mediation, or Early Settlement [*If Nonbinding*
14 *Arbitration, Early Neutral Evaluation or Mediation, state the expected or scheduled date*
15 *for the ADR session*]:

17
18
19 [PROPOSED] CASE MANAGEMENT ORDER

20 [*Counsel shall fill in the stipulated dates for the matters below*]

21 Pursuant to Fed.R.Civ.P. 16, the Court conducted a case management conference on
22 _____ and ORDERS as follows:

23 A. ADR Program:

- 24 1. The parties are hereby referred to _____ [*ADR selection above*].
25 2. The parties shall file their ADR certification by the date assigned by the initial case
26 management schedule received from the Clerk of the Court, pursuant to Civil L.R. 16-8.

1 B. Jury or Court Trial:

2 1. The parties shall designate in both their pleadings and joint case management
3 statement whether the trial requested is a jury trial or court trial [*designate one below*]:

4 Plaintiff requests a jury trial _____

5 Defendant requests a jury trial _____

6 Plaintiff requests a court trial _____

7 Defendant requests a court trial _____

8 C. Pretrial Motions:

9 1. All pretrial motions shall be filed in accordance with Civil L.R. 7. A motion shall be
10 noticed pursuant to Civil L.R. 7-2 without calling the Court. Civil law and motion is
11 heard on Thursday mornings at 10:00 a.m.

12
13 D. Discovery:

14 1. The parties shall abide by Judge James' standing order regarding discovery and dispute
15 procedures.

16
17 E. Disclosure of Expert Witnesses:

18 1. Any party wishing to present expert witness testimony with respect to a claim or defense
19 shall serve on all other parties the name, address, qualifications, resume, and a written
20 report which complies with Federal Rule of Civil Procedure 26(a)(2)(B) on or before
21 _____ (210 days before trial).

22 2. This disclosure must be made with respect to a person who is either (a) specifically
23 retained or specially employed to provide expert testimony pursuant to Federal Rule of
24 Evidence 702 or (b) a regular employee or agent or treating physician who may be called
25 to provide expert opinion testimony.

26 3. A party or counsel has a continuing duty to supplement the disclosure of expert
27 witnesses when required under Federal Rule of Civil Procedure 26(e)(1).

28

1 F. Rebuttal Expert Witnesses:

- 2 1. If the testimony of the expert is intended solely to contradict or rebut opinion testimony
3 on the same subject matter identified by another party, the party proffering a rebuttal
4 expert shall make the disclosures required by Federal Rule of Civil Procedure
5 26(a)(2)(B), no later than _____ (200 days before the trial).

6
7 G. Limitation on Testimony by Expert Witnesses:

- 8 1. Unless the parties enter into a written stipulation otherwise, upon timely objection, an
9 expert witness shall be precluded from testifying about any actions or opinions not
10 disclosed prior to the expert's deposition. This is to ensure that all factual material upon
11 which expert opinion may be based and all tests and reports are completed prior to the
12 expert deposition.
- 13 2. Unless application is made prior to the close of expert discovery, each party is limited to
14 calling only one expert witness in each discipline involved in the case.
- 15 3. Any party objecting to the admissibility of the testimony of person disclosed as an expert
16 witness must file a written motion *in limine* to exclude the testimony no later than the
17 deadline set in this order for filing motions *in limine*.

18
19 H. Close of Discovery:

- 20 1. All discovery, including depositions of expert witnesses, must be completed by
21 _____ (185 days before trial).
- 22 2. Pursuant to Federal Rule of Civil Procedure 16(b) and Civil L.R. 26-2, a discovery
23 request or stipulation that calls for responses or depositions after the discovery cut-off
24 date are not enforceable except by order of the Court and upon a showing of good cause.
- 25 3. Pursuant to Civil L.R. 26-2, no motions to compel discovery may be filed later than 10
26 days after the discovery cut-off date.
- 27
28

1 I. Dispositive Motions:

2 1. Pursuant to Civil L.R. 7-2, all dispositive motions shall be filed, served and noticed by
3 _____ (155 days prior to trial). The parties shall file a joint statement of
4 undisputed facts pursuant to Civil L.R. 56-2(b) when filing a motion for summary
5 judgment or summary adjudication.

6 2. The Court shall hear dispositive motions on _____ (120 prior days to trial) at
7 10:00 a.m. in Courtroom B, 15th Floor of the Federal Building, located at 450 Golden
8 Gate Avenue, San Francisco, California.

9
10 J. Exchange and filing of Trial Papers:

11 1. By _____ (60 days before trial) lead counsel who will try the case shall meet and
12 confer with respect to the preparation and content of the joint pretrial conference
13 statement and shall exchange (but not file or lodge) the papers described in paragraph 2
14 below.

15 2. By _____ (45 days before trial) counsel shall file the papers described in
16 Federal Rule of Civil Procedure 26(a)(3) and a joint pretrial conference statement
17 including the following:

18 (A) Substance of the Action: A brief description of the substance of claims and defenses
19 which remain to be decided.

20 (B) Relief Prayed: A detailed statement of all the relief claimed, particularly itemizing all
21 elements of damages claimed as well as witnesses, documents or other evidentiary
22 material to be presented concerning the amount of damages.

23 (C) Undisputed Facts: A plain and concise statement of all relevant facts not reasonably
24 disputable, as well as which facts parties will stipulate for incorporation into the trial
25 record without the necessity of supporting testimony or exhibits.

26 (D) Disputed Factual Issues: A plain and concise statement of all disputed factual issues
27 which remain to be decided.

28 (E) Agreed Statement: A statement assessing whether all or part of the action may be

1 presented upon an agreed statement of facts.

2 (F) Stipulations: A statement of stipulations requested or proposed for pretrial or trial
3 purposes.

4 (G) Witness list: A list of all witnesses to be called for trial. The parties shall submit a
5 page-length detailed summary of the substance of the proposed testimony of each witness,
6 which shall also specify to which disputed fact the testimony relates and an estimate of
7 the time required for direct and cross examination of each prospective witness.

8 (H) Exhibit list: A list of all exhibits to be offered at trial. The exhibit list shall list each
9 proposed exhibit by its number or alphabetical letter, description and sponsoring witness.

10 All documents shall be authenticated prior to trial.

11 (I) Estimated Time of Trial: An estimate of the number of hours needed for the
12 presentation of each party's case.

13 (J) Settlement: A statement summarizing the status of the parties' settlement negotiations.

14 No party shall be permitted to offer any witness or exhibit in its case in chief that is
15 not disclosed in its witness or exhibit list without leave of the Court for good cause shown.

16 3. Motions *in limine*: Counsel are directed to meet and confer to resolve any evidentiary
17 disputes prior to filing motions in limine. Any Opposition to motions *in limine* shall be
18 filed _____ (38 days prior to trial). These matters will be deemed submitted on
19 the papers without oral argument, unless the Court orders otherwise.

20 4. Trial Briefs: Counsel shall file trial briefs setting forth the applicable legal standard,
21 pursuant to Ninth Circuit authority, all significant disputed issues of law, including
22 foreseeable procedural and evidentiary issues.

23 5. Joint Proposed Voir Dire (Jury Trial Only): Counsel should submit a joint set of
24 requested voir dire to be posed by the Court. Any voir dire questions on which counsel
25 cannot agree shall be submitted separately. Counsel will be allowed brief follow-up voir
26 dire after the Court's questioning.

27 6. Joint Proposed Jury Instructions (Jury Trial Only): Jury instructions § 1.01 through §
28 2.02 and § 3.01 through § 3.15 from the Manual of Model Civil Jury Instructions for the

1 Ninth Circuit (1998 Edition) will be given absent objection. Counsel shall submit a joint
2 set of additional proposed jury instructions. The instructions shall be ordered in a logical
3 sequence, together with a table of contents. Any instruction on which counsel cannot
4 agree shall be marked as "disputed," and shall be included within the jointly submitted
5 instructions and accompanying table of contents, in the place where the party proposing
6 the instruction believes it should be given. Argument and authority for and against each
7 disputed instruction shall be included as part of the joint submission, on separate sheets
8 directly following the disputed instruction. The Court prefers that all jury instructions
9 conform to the Manual of Model Civil Jury Instructions for the Ninth Circuit.

10 If possible, counsel shall deliver to the Courtroom Deputy a copy of their joint proposed
11 jury instructions on a computer disk in WordPerfect format. The disk label shall include
12 the name of the parties, the case number and be entitled "Proposed Jury Instructions."

13 At the close of Defendant's case in chief, the Court shall hear oral argument on the
14 disputed jury instructions and will then render its rulings.

15 7. Proposed Verdict Forms, Joint or Separate (Jury Trial Only): Counsel shall submit any
16 joint proposed verdict forms and shall submit their separate verdict forms.

17 Whenever possible, counsel shall deliver to the Courtroom Deputy a copy of their joint
18 proposed verdict forms on a computer disk in WordPerfect. The disk label shall include
19 the name of the parties, the case number and be entitled "Proposed Verdict Forms."

20 8. Proposed Findings of Fact and Conclusions of Law (Court Trial Only): Counsel shall
21 submit joint proposed findings of facts. Counsel shall submit separately a copy of their
22 disputed findings of fact and conclusions of law.

23 Whenever possible, counsel shall deliver to the Courtroom Deputy a copy of their joint
24 proposed findings of fact on a computer disk in WordPerfect. The disk label shall include
25 the name of the parties, the case number and be entitled "Joint Proposed Findings of
26 Facts."

1 L. Pretrial Conference:

2 1. On _____ (30 days prior to trial) the Court shall hold a pretrial conference at
3 10:00 a.m. in Courtroom B, 15th Floor of the Federal Building, located at 450 Golden
4 Gate Avenue, San Francisco, California. Lead counsel who will try the case must attend
5 the pretrial conference. The purpose of the pretrial conference is for the Court to rule on
6 any issues raised in the final pretrial conference statement, motions *in limine*, and to
7 discuss the trial of the case.
8

9 M. Final Pretrial Conference:

10 1. On _____ (4 days prior to trial) the Court shall hold a final pretrial
11 conference to address any outstanding trial issues.
12

13 N. Trial Date:

14 1. The trial shall commence [with jury selection taking place]
15 on _____ (Trial schedule: Monday through Thursday, at
16 1:30 pm to 5:00 p.m.)

17 2. For any documents, including the deposition of a witness testifying at trial, which will be
18 shown presented to a witness but will not be admitted into evidence, counsel shall bring
19 the original plus three clean copies of the documents. The original document will be
20 handed to the Court during testimony, and the clean copies of the document will be given
21 to the witness during the examination and to opposing counsel.

22 3. Counsel shall maintain their own exhibits during trial. Exhibits are to be premarked with
23 exhibit tags stapled to the upper lefthand corner. If a photo or chart is being used as an
24 exhibit, the exhibit tag should be placed on the back side of the exhibit. The Court will
25 only admit premarked exhibits which were listed on the earlier filed exhibit list.

26 Plaintiff shall mark the exhibits numerically; Defendant shall mark the exhibits
27 alphabetically. The exhibit markers shall each contain the name and number of the case,
28 the number or alphabetical letter of the exhibit, and blank spaces to accommodate the

1 date admitted and the Deputy Clerk's initials.

- 2 4. On the day of trial, counsel shall bring the original premarked exhibits, a copy of the
3 premarked exhibits for opposing counsel and two binders which contain a copy of each
4 side's premarked exhibits for the Court. The premarked exhibit binders are to be
5 designated with label dividers. The premarked exhibit binders will be given to the
6 Courtroom Deputy on the morning of the trial.

7
8 O. Jury Selection:

- 9 1. The Jury Commissioner will summon 20 to 25 prospective jurors. The Courtroom
10 Deputy will select their names at random and seat them in the courtroom in the order in
11 which their names are called.

12 Voir dire will be asked of sufficient venire persons that eight (or more for a
13 lengthy trial) will remain after all peremptory challenges and an anticipated number of
14 hardship dismissals and cause challenges have been made.

15 The Court will then take cause challenges, and discuss hardship claims from the
16 individual jurors, at side bar. The Court will inform the attorneys which hardship claims
17 and cause challenges will be granted, but will not announce those dismissals until the
18 process is completed. Each attorney may then list in writing up to three peremptory
19 challenges. The attorneys will review each other's lists and then submit them to the clerk.

20 Then, from the list of jurors in numerical order, the Court will strike the persons
21 with meritorious hardships, those excused for cause, and those challenged peremptorily.
22 The Court will then call the first eight people in numerical sequence remaining. These
23 people will be the jury. All jurors remaining at the close of the case will deliberate.
24 There are no alternates.

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26 P. Sanctions:

27 Failure to comply with this Order is cause for sanctions under Federal Rule of Civil
28 Procedure 16(f).

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Q. Transcripts:

Counsel who wants to receive a daily transcript shall contact Robert Stuart, Supervisor Court Reporting Services, at (415) 522-2079, at least ten days in advance of the trial date.

If any video or tape recording equipment or demonstrative devices will be used, a signed order will need to be obtained at least ten days in advance of the trial date for the items to clear security.

R. Questions:

All questions regarding these instructions should be directed to Brenda Tolbert, Courtroom Deputy Clerk to Judge James, at (415) 522-4708.

Date: _____ Plaintiff's Counsel _____
Signature

Plaintiff's Counsel _____
Printed Name

Date: _____ Defendant's Counsel _____
Signature

Defendant's Counsel _____
Printed Name

IT IS SO ORDERED.

Date: _____

Maria-Elena James
United States Magistrate Judge

NOTICE OF TRIAL ASSIGNMENT TO UNITED STATES MAGISTRATE
JUDGE AND ORDER TO FILE CONSENT/REQUEST FOR
REASSIGNMENT FORM

This civil case was randomly assigned to United States Magistrate Judge Maria-Elena James for all purposes including trial. In accordance with Title 28, U.S.C. § 636(c), the Magistrate Judges of this district court are designated to conduct any and all proceedings in a civil case including jury or non-jury trial and to order the entry of final judgment, upon the consent of the parties. An appeal from a judgment entered by Magistrate Judge James may be taken directly to the United States Court of Appeals for the Ninth Circuit in the same manner as an appeal from any other judgment of a district court.

You have the right to have your case assigned to a United States District Judge for trial and disposition. Attached is the form consenting to Judge James' jurisdiction for all purposes or the request for reassignment to a district court judge.

Each party shall sign and file the consent to Judge James' jurisdiction or request for reassignment to a United States District Judge no later than the filing deadline for the joint case management statement assigned by the initial case management schedule.

IT IS SO ORDERED.

Date: June 1, 1999



Maria-Elena James
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),
v.
Defendant(s).

CASE NO.
:
:
CONSENT TO ASSIGNMENT OR
REQUEST FOR REASSIGNMENT

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. Section 636(c), the undersigned party hereby consents to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment, and voluntarily waives the right to proceed before a United States District Judge.

Dated: _____
Signature _____
Counsel for _____

REQUEST FOR REASSIGNMENT TO A UNITED STATES DISTRICT JUDGE
FOR TRIAL AND DISPOSITION

The undersigned party hereby declines to consent to the assignment of this case to a United States Magistrate Judge for trial and disposition and hereby requests the reassignment of this case to a United States District Judge.

Dated: _____
Signature _____
Counsel for _____

For the Northern District of California

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 STANDING ORDER RE: DISCOVERY AND DISPUTE PROCEDURES FOR
5 CASES ASSIGNED OR REFERRED TO MAGISTRATE JUDGE MARIA-ELENA
6 JAMES

7

In ALL CASES, except those categories of cases listed in Fed.R.Civ.P. 26(a)(1)(E),
8 assigned to Magistrate Judge Maria Elena James for trial or referred to Magistrate Judge Maria-
9 Elena James for purposes of discovery, the parties shall follow the following procedures:
10

11 Discovery & Disclosure Dispute Procedures:

12 The Discovery and Disclosure Dispute Procedures inform a *pro se* party or counsel of
13 the specific procedures required by Judge James before filing a formal discovery motion,
14 pursuant to Civil L.R. 7, or when requesting a telephonic discovery conference, pursuant to
15 Paragraphs 4 or 5 below. Counsel and *pro se* parties are required to follow the Discovery and
16 Disclosure Dispute Procedures herein to resolve all discovery and disclosure disputes.

17 1. Parties (or counsel) shall propound disclosures and discovery in accordance with the
18 Federal Rules of Civil Procedure 26, 30, 31, 32, 33, 34, 35 and 36 and the Civil Local Rules 26,
19 30, 33, 34 and 36. All requests for protective orders must comply with Civil Local Rule 79-5.
20 A copy of the Civil Local Rules for the Northern District of California is available at the Office
21 of the Clerk of the Court or are available for public viewing at the Court's internet site -
22 <http://www.cand.uscourts.gov>. Pursuant to Federal Rule of Civil Procedure 30(a)(2), no more
23 than ten depositions may be taken except by order of the Court. Pursuant to Federal Rule of
24 Civil Procedure 33(a) and Civil L.R. 33-3, no more than 25 interrogatories shall be propounded
except pursuant to stipulation or order of the Court.

25 2. The parties shall meet and confer regarding their initial disclosures pursuant to Fed. R.
26 Civ. P. 26(f) and shall make disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(E). The parties
27
28

1 shall supplement their initial disclosures when required under Fed.R.Civ.P. 26(e)(1).

2 3. Civil law and motion is heard on Thursday mornings at 10:00 a.m. Motions to compel
3 may be noticed pursuant to Civil L.R. 7-2, without calling the Court. However, before the
4 Court will consider a motion to compel a joint meet and conferral letter must be filed, as
5 described in paragraph 4 below.

6 4. Prior to filing any discovery motion under Civil L.R. 7, or before requesting a
7 telephonic discovery conference, counsel must meet and confer **in person** for the purpose of
8 resolving all disclosure and/or discovery disputes. Thereafter, counsel shall draft and file a
9 jointly signed letter which (1) attests that prior to filing the motion to compel the parties met
10 and conferred **in person** on the unresolved discovery dispute; (2) sets forth the unresolved
11 discovery dispute; and (3) states each party's position as supported by statutory and/or case law.
12 Said joint letter shall be signed by both parties, shall be limited to five pages and may not be
13 accompanied by exhibits or affidavits. The moving party shall file said joint letter when filing a
14 formal discovery motion, pursuant to Civil L.R. 7, or when counsel requests in writing a
15 telephonic discovery conference, pursuant to Paragraph 6 below.

16 5. Generally, the Court will not consider a motion to compel which is not accompanied by
17 the parties' joint meet and confer letter. In the event that counsel was unable to meet and
18 confer with opposing counsel and/or party as directed above, counsel shall request in writing a
19 telephonic discovery conference for the purpose of enforcing the Court's requirement to meet
20 and confer or for the Court to fashion an alternative procedure which satisfies the meet and
21 confer requirement. Counsel's written request shall state (1) three agreed upon prospective
22 times and dates for the telephonic discovery conference to take place, (2) the anticipated length
23 of the telephonic discovery conference, and (3) the phone numbers at which counsel shall be
24 contacted on the day of the telephonic discovery conference. A copy of the written request shall
25 be served on opposing counsel and/or party and verification of said service shall be submitted
26 to the Court. Additionally, counsel shall file a declaration which states the attempt and reasons
27 for the failure to meet and confer. Counsel may attach exhibits to support the declaration, but
28 the declaration and exhibits combined may not exceed seven pages. The Court will not excuse

1 a party from the requisite meet and conferral unless good cause is shown. Counsel's refusal to
2 meet and confer without good cause shown will result in sanctions, pursuant to Federal Rule of
3 Civil Procedure 16(f) and Civil L.R. 37-3.

4 6. Pursuant to Civil L.R. 37-1(b), in lieu of filing a formal motion, discovery conferences.
5 may be conducted telephonically. Parties shall request a telephonic discovery conference in
6 writing which shall include (1) the joint meet and confer letter, as set forth above, (2) three
7 agreed upon prospective times and dates for the telephonic discovery conference to take place,
8 (3) the anticipated length of the telephonic discovery conference, and (4) the telephone numbers
9 at which the parties shall be contacted on the day of the telephonic discovery conference. A
10 copy of the written request shall be served on the opposing party or counsel and verification of
11 said service shall be submitted to the Court.

12 The parties shall not telephone the Court to arrange a telephonic discovery conference
13 without first sending the Court a written request for the telephonic discovery conference. The
14 Court will not consider a written request for a telephonic discovery conference which is not
15 accompanied by said joint meet and confer letter.

16 Upon approval, the Court shall contact the parties to inform them of the time and date of
17 the telephonic discovery conference. Unless excused for good cause, the party requesting the
18 telephonic discovery conference shall arrange the conference call on the date and time ordered
19 by the Court.

20 7. In the event that the parties are participating in a deposition or a site inspection and a
21 discovery dispute arises regarding the deposition and/or site inspection, the parties may contact
22 Judge James' Courtroom Deputy, Brenda Tolbert, at 415-522-4708, to inquire whether Judge
23 James' is available to resolve the parties' impending dispute telephonically. In the event that
24 Judge James is not available or the parties are unable to contact Judge James' Courtroom
25 Deputy for any reason, the parties shall follow the procedures set forth in paragraph 6 above.

26 8. In the event that a matter is to be taken off calender, or continued to a further date, a
27 written stipulation signed by the parties shall be submitted to the Court for approval: said
28 stipulation must be received by the Court at least five business days prior to the scheduled

1 hearing date.

2 9. Other than scheduling matters, pursuant to Civil L.R. 11-4(c), a party shall not contact
3 the Court *ex parte* without prior notice to opposing party. All communications or questions to
4 the Court shall be presented to the Court in writing. Parties must certify to the Court that all
5 parties were faxed or mailed a copy of the written communication. Unless expressly requested
6 by the Court, documents should not be faxed to chambers but should be filed or lodged in
7 accordance with the Local Rules of Court.

8 10. Parties shall not mail or fax to the Court copies of correspondence from a party
9 regarding any dispute pending before the Court.

10 11. Parties have a continuing duty to supplement the initial disclosures when required under
11 Federal Rule of Civil Procedure 26(e)(1).

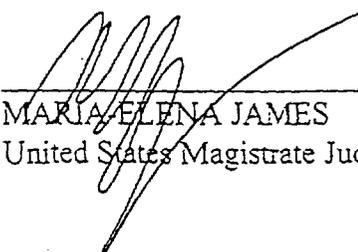
12 12. Motions for sanctions shall be filed separately, pursuant to Federal Rule of Civil
13 Procedure 37 and Civil L.R. 37-3. Any party seeking an award of attorney's fees or other
14 expenses in connection with a motion shall file a declaration with the opposition or reply
15 memorandum which itemizes with particularity the fees and expenses claimed.

16 13. The Court does not utilize a court reporter. All proceedings are electronically recorded.
17 Parties may receive a copy of any recorded hearing by contacting the Deputy Clerk to arrange
18 the payment, order and receipt of a copy of any taped proceeding.

19 The failure of a party to abide by Judge James' Discovery and Disclosure Dispute
20 Procedures may result in sanctions, pursuant to Federal Rule of Civil Procedure 16(f).

21 IT IS SO ORDERED.

22 DATED: January 31, 2001

23
24 
25 _____
26 MARIA ELENA JAMES
27 United States Magistrate Judge
28

28
2/1/02

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Center for Biological Diversity,
Bluewater Network, and
Sierra Club

SUMMONS IN A CIVIL CASE

CASE NUMBER: C 02 0027 (MEJ)

v.

Spencer Abraham, et al.

Spencer Abraham, Dep't of Energy, Donald Evans, Dep't of Commerce,
TO: Donald Rumsfeld, Dep't of Defense, Gale Norton, Dep't of the Interior,
John Ashcroft, Dep't of Justice, Stephen Perry, General Services Administration, Anthony Principi,
Dep't of Veterans Affairs, Norman Mineta, Dep't of Transportation, Richard Meserve, Nuclear
Regulatory Commission, Christine Whitman, Environmental Protection Agency, Ann Veneman, Dep't of
Agriculture, Tommy Thompson, Dep't of Health & Human Resources, Mel Martinez, Dep't of Housing and
Urban Development, Elaine Chao, Dep't of Labor, Colin Powell, Dep't of State, Paul O'Neill, Dep't
of Treasury, Sean O'Keefe, National Aeronautics and Space Administration, John Potter, United
States Postal Service

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

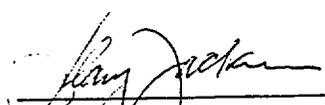
James J. Tutchton
Julie A. Teel
Earthjustice Environmental Law Clinic
University of Denver - Forbes House
1714 Poplar Street
Denver, CO 80220

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

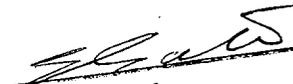
RICHARD W. WIEKING

CLERK

1/14/02
DATE



(BY) DEPUTY CLERK

SERVED ON 
USAC, SAN FRANCISCO
MANNER OF SERVICE: CERT MAIL
OTHER: _____
DATE 2/1/02 TIME _____

1 James J. Tuthton (CA Bar No. 150908)
Julie A. Teel (CA Bar No. 202282)
2 Earthjustice Environmental Law Clinic
University of Denver-Forbes House
3 1714 Poplar Street
Denver, CO 80220
4 Telephone: (303) 871-6034
Facsimile: (303) 871-6991
5

6 Attorneys for Plaintiffs
7

8 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

MEJ

10 CENTER FOR BIOLOGICAL
DIVERSITY,
11 BLUEWATER NETWORK, and
SIERRA CLUB,
12 Plaintiffs,

C 02 0027
Civil Action No:

13 v.

COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

14 SPENCER ABRAHAM, in his
official capacity as Secretary
15 of the U.S. Department of
Energy,
16 U.S. DEPARTMENT OF ENERGY,
DONALD L. EVANS, in his
17 official capacity as Secretary
of the U.S. Department of
18 Commerce,
U.S. DEPARTMENT OF COMMERCE,
19 DONALD H. RUMSFELD, in his
official in his official
20 capacity as Secretary of the
U.S. Department of Defense,
21 U.S. DEPARTMENT OF DEFENSE,
GALE A. NORTON, in her official
22 capacity as Secretary of the
U.S. Department of the
23 Interior,
U.S. DEPARTMENT OF THE

COPY

24 Complaint For Declaratory
25 & Injunctive Relief

ORIGINAL
FILED
C2 JAN -2 PM 3:05
RICHARD W. YERKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 INTERIOR,
2 JOHN ASHCROFT, in his official
3 capacity as Attorney General of
4 the United States,
5 U.S. DEPARTMENT OF JUSTICE,
6 STEPHEN A. PERRY, in his
7 official capacity as
8 Administrator of the U.S.
9 General Services
10 Administration,
11 U.S. GENERAL SERVICES
12 ADMINISTRATION,
13 ANTHONY J. PRINCIPI, in his
14 official capacity as Secretary
15 of the U.S. Department of
16 Veterans Affairs,
17 U.S. DEPARTMENT OF VETERANS
18 AFFAIRS,
19 NORMAN Y. MINETA, in his
20 official capacity as Secretary
21 of the U.S. Department of
22 Transportation,
23 U.S. DEPARTMENT OF
24 TRANSPORTATION,
25 RICHARD A. MESERVE, in his
official capacity as Chairman
of the U.S. Nuclear Regulatory
Commission,
U.S. NUCLEAR REGULATORY
COMMISSION,
CHRISTINE T. WHITMAN, in her
official capacity as the
Administrator of the U.S.
Environmental Protection
Agency,
U.S. ENVIRONMENTAL PROTECTION
AGENCY,
ANN M. VENEMAN, in her official
capacity as Secretary of the
U.S. Department of Agriculture,
U.S. DEPARTMENT OF AGRICULTURE,
TOMMY G. THOMPSON, in his
official capacity as Secretary
of the U.S. Department of
Health & Human Resources,
U.S. DEPARTMENT OF HEALTH &

1 HUMAN SERVICES,
2 MEL R. MARTINEZ, in his
3 official capacity as Secretary
4 of the U.S. Department of
5 Housing and Urban Development,
6 U.S. DEPARTMENT OF HOUSING AND
7 URBAN DEVELOPMENT,
8 ELAINE L. CHAO, in her official
9 capacity as Secretary of the
10 U.S. Department of Labor,
11 U.S. DEPARTMENT OF LABOR,
12 COLIN L. POWELL, in his
13 official capacity as Secretary
14 of the U.S. Department of
15 State,
16 U.S. DEPARTMENT OF STATE,
17 PAUL H. O'NEILL, in his
18 official capacity as Secretary
19 of the U.S. Department of
20 Treasury,
21 U.S. DEPARTMENT OF TREASURY,
22 DANIEL R. MULVILLE, in his
23 official capacity as Acting
24 Administrator of the National
25 Aeronautics and Space
Administration,
NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION,
JOHN E. POTTER, in his official
capacity as Postmaster General
of the U.S. Postal Service, and
U.S. POSTAL SERVICE,

Defendants.

INTRODUCTION

1
2 1. In signing the Energy Policy Act of 1992 into law, former
3 president George H.W. Bush stated "[m]y action today will place
4 America upon a clear path toward a more prosperous, energy
5 efficient, environmentally sensitive, and economically secure
6 future." His hope was short-lived. America strayed far from the
7 "clear path" toward an environmentally sensitive and energy
8 efficient future because the federal government failed to implement
9 the Energy Policy Act.

10 2. This action seeks to compel the federal Defendants to
11 comply with Energy Policy Act requirements that Congress designed
12 to achieve cleaner air, strengthen energy security, and establish a
13 nationwide alternative fuels infrastructure.

14 3. First, this action seeks to compel all Defendants, with
15 the exception of the U.S. Department of Energy, to comply with the
16 Energy Policy Act's requirement that if an agency buys vehicles
17 covered by the Act, a certain percentage of those vehicles must be
18 alternative fuel vehicles ("AFVs").

19 4. Second, this action seeks to compel all Defendants to
20 comply with the Energy Policy Act's requirement that they place
21 their annual AFV fleet percentage compliance reports on a publicly
22 available website, the location of which must be provided to the
23 public in the Federal Register.

1 9. California has more than twice as many federal light duty
2 vehicles as any other state. California's 1998 federal light duty
3 vehicle inventory was 37,678. By comparison, the District of
4 Columbia had 3,638 federal light duty vehicles in 1998.

5 10. Pursuant to Civil L.R. 3-2, the Clerk should assign this
6 action to the San Francisco Division because a substantial part of
7 the events or omissions giving rise to the claims in this case
8 occurred in San Francisco and Alameda Counties.

9 11. Members of plaintiffs reside within San Francisco and
10 Alameda Counties. Many Defendants operate federal fleet vehicles in
11 San Francisco, which will be affected by the outcome of this
12 action. Furthermore, Plaintiffs Bluewater Network and Sierra Club
13 maintain offices in San Francisco County, Plaintiff Center for
14 Biological Diversity maintains an office in Alameda County, and
15 Defendants U.S. Department of Agriculture, U.S. Department of
16 Commerce, U.S. Department of Defense, U.S. Department of Energy,
17 U.S. Department of Health and Human Services, U.S. Department of
18 Housing and Urban Development, U.S. Department of Interior, U.S.
19 Department of Justice, U.S. Department of Labor, U.S. Department of
20 State, U.S. Department of Treasury, U.S. Department of
21 Transportation, U.S. Department of Veterans Affairs, U.S. General
22 Services Administration, U.S. Environmental Protection Agency, U.S.
23 Nuclear Regulatory Commission, National Aeronautics and Space

1 Administration, and U.S. Postal Service maintain offices in San
2 Francisco County.

3 **PARTIES**

4 12. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("The Center")
5 is a non-profit organization with an office in Berkeley,
6 California. The Center also maintains offices in Idyllwild and San
7 Diego, California, Phoenix and Tucson, Arizona, and Silver City,
8 New Mexico. The Center is a national membership organization with
9 over 6,000 members in the United States. The Center's mission is
10 to ensure the preservation, protection, and restoration of
11 biodiversity, native species, ecosystems, public lands, and public
12 health. The Center's activities include public education,
13 advocacy, scientific research, and litigation to enforce
14 environmental laws. The Center's members and staff are greatly
15 concerned about the effects of oil exploration and air pollution
16 associated with oil consumption on the environment, and have a long
17 history of involvement in activities related to environmental
18 protection. The Center brings this action on behalf of its
19 members.

20 13. Plaintiff BLUEWATER NETWORK is a national non-profit
21 environmental organization based in San Francisco, California with
22 over 3,000 members who reside throughout the United States.
23 Bluewater Network's mission is to confront the root causes of

1 climate change and combat environmental damage caused by the
2 shipping, oil, and motorized recreation industries. Bluewater
3 Network has active campaigns focused on reducing emissions from the
4 transportation sector, while also promoting the use of renewable
5 fuels. Bluewater Network and its members are deeply concerned
6 about the effects of air pollution and global warming on human
7 health and the environment, and have a history of involvement in
8 activities to combat air pollution and climate change. Bluewater
9 Network brings this action on behalf of its members.

10 14. Plaintiff SIERRA CLUB is a national conservation
11 organization headquartered in San Francisco with over 600,000
12 members nationwide, including more than 30,000 members in the San
13 Francisco Bay Area. The Sierra Club's mission includes protection
14 and restoration of the natural and human environment, and its
15 activities include public education, advocacy, and litigation to
16 enforce environmental laws. For over three decades, the Sierra
17 Club has worked to enact, strengthen, and enforce air pollution
18 laws and regulations to reduce air pollution in the United States -
19 at the national, state, and local levels. The Sierra Club and its
20 members are greatly concerned about the effects of air pollution on
21 human health and the environment and have a long history of
22 involvement in activities related to air quality, energy, and

1 transportation. The Sierra Club brings this action on behalf of
2 its members.

3 15. Plaintiffs' members and staff live, work, recreate, and
4 conduct other activities in metropolitan and "non-attainment"
5 areas, as defined by the Clean Air Act throughout the country where
6 federal fleets covered by the Energy Policy Act are located.
7 Plaintiffs' members and staff are adversely affected by exposure to
8 air in those areas that may have higher concentrations of
9 pollutants because Defendants have not purchased the required
10 percentage of AFVs established by the Energy Policy Act for the
11 protection of public health, the environment, and the nation's
12 energy security. Plaintiffs' members are adversely affected by
13 exposure to air in those areas that do not meet national ambient
14 air quality standards (NAAQS) established under the Clean Air Act
15 for the protection of public health and welfare. Such adverse
16 effects include, but are not limited to, actual or threatened harm
17 to their health and aesthetic enjoyment of the environment in those
18 areas due to increased vehicle emissions of pollutants.
19 Plaintiffs' members are already and will continue to be adversely
20 affected by the impacts of air pollution and global warming,
21 including, but not limited to, economic and public health effects
22 of increased temperatures, elevated ground-level ozone, loss of
23 freshwater supplies, increased erosion, and increased storms,

1 | floods and drought. Additionally, Plaintiffs' members are already
2 | and will continue to be adversely affected by the impacts of oil
3 | exploration and development in sensitive wildlife areas due to the
4 | increasing demand for petroleum oil.

5 | 16. The acts and omissions of Defendants alleged in this
6 | complaint related to AFV procurement cause injury to Plaintiffs'
7 | members and staff by contributing to global warming, prolonging air
8 | quality conditions that adversely affect Plaintiffs' health,
9 | welfare, and environment, compounding the need for petroleum oil
10 | exploration and development in sensitive wildlife areas in the U.S.
11 | and abroad, and nullifying measures mandated by the Energy Policy
12 | Act to protect their health, welfare, and environment.

13 | 17. Furthermore, Plaintiffs' members and staff derive
14 | scientific, recreational, health, conservation, spiritual, and
15 | aesthetic benefits from the preservation and protection of
16 | threatened and endangered species, which are adversely impacted by
17 | vehicle emissions. The decline of many species, such as
18 | California's mountain yellow-legged frog and other imperiled
19 | amphibian species, are associated with air pollution. The health,
20 | recreational, aesthetic, and environmental interests of the
21 | Plaintiffs' staff and members have been and continue to be
22 | adversely affected by the acts and omissions of Defendants alleged

23

24

25

1 in this complaint. Granting the requested relief would redress the
2 injuries described above.

3 18. The acts and omissions of all Defendants alleged herein
4 related to their refusal to publish AFV compliance reports on a
5 publicly accessible website and notify the public of their location
6 and availability through the Federal Register as required by the
7 Energy Policy Act deprive Plaintiffs' members and staff of
8 information guaranteed to the public by the Energy Policy Act.
9 Plaintiffs' members and staff are adversely affected by Defendants'
10 failure to publish this guaranteed information.

11 19. If Plaintiffs' staff and members had this information,
12 they would use it to educate the public about air pollution,
13 alternative fuels, and AFVs, and to advocate for the adoption of
14 measures by the government for attaining and maintaining compliance
15 with the Energy Policy Act's AFV purchasing requirements.
16 Defendants' failure to produce this information as required by the
17 Act deprives the Plaintiffs' staff and members of these benefits
18 and thus causes them injury. Granting the requested relief would
19 redress the injuries described above.

20 20. The acts and omissions of Defendant Department of Energy
21 alleged in this complaint deprive the Plaintiffs' members and staff
22 of procedural rights and protections to which they would otherwise
23 be entitled, including, but not limited to, the right to comment on

1 | the overdue proposed rule to determine whether a private and
2 | municipal fleet requirement is necessary to achieve the Energy
3 | Policy Act's goals. The Department of Energy's failure to timely
4 | determine whether a private and municipal fleet requirement is
5 | necessary in order to achieve the goals of the Act has the same
6 | effect as a decision that such a requirement is not necessary,
7 | without providing Plaintiffs' and their members with the right they
8 | would otherwise have to comment on the overdue proposed rule and
9 | challenge the final rule in court. Plaintiffs' members and staff
10 | have been, are being, and unless the relief requested is granted,
11 | will continue to be adversely affected and injured by the above
12 | violation.

13 | 21. Defendant SPENCER ABRAHAM is sued in his official
14 | capacity as Secretary of the U.S. Department of Energy. Defendant
15 | U.S. DEPARTMENT OF ENERGY is an agency of the government of the
16 | United States and is legally charged with implementing the Energy
17 | Policy Act and complying with its provisions, including the actions
18 | sought herein. Hereinafter, Defendants Abraham and U.S. Department
19 | of Energy are collectively referred to as "DOE."

20 | 22. Defendant DONALD L. EVANS is sued in his official
21 | capacity as Secretary of the U.S. Department of Commerce.
22 | Defendant U.S. DEPARTMENT OF COMMERCE is a federal executive
23 | department of the United States government and is legally charged

1 with complying with the Energy Policy Act, including the actions
2 sought herein. Hereinafter, Defendants Evans and U.S. Department
3 of Commerce are collectively referred to as "Commerce."

4 23. Defendant DONALD H. RUMSFELD is sued in his official
5 capacity as Secretary of the U.S. Department of Defense. Defendant
6 U.S. DEPARTMENT OF DEFENSE is a federal executive department of the
7 United States government and is legally charged with complying with
8 the Energy Policy Act, including the actions sought herein.
9 Hereinafter, Defendants Rumsfeld and U.S. Department of Defense are
10 collectively referred to as "DOD."

11 24. Defendant GALE A. NORTON is sued in her official capacity
12 as Secretary of the U.S. Department of the Interior. Defendant
13 U.S. DEPARTMENT OF INTERIOR is a federal executive department of
14 the United States government and is legally charged with complying
15 with the Energy Policy Act, including the actions sought herein.
16 Hereinafter, Defendants Norton and U.S. Department of the Interior
17 are collectively referred to as "DOI."

18 25. Defendant JOHN ASHCROFT is sued in his official capacity
19 as Attorney General of the United States and head of the U.S.
20 Department of Justice. Defendant U.S. DEPARTMENT OF JUSTICE is a
21 federal executive department of the United States government and is
22 legally charged with complying with the Energy Policy Act,
23 including the actions sought herein. Hereinafter, Defendants

1 Ashcroft and U.S. Department of Justice are collectively referred
2 to as "DOJ."

3 26. Defendant STEPHEN A. PERRY is sued in his official
4 capacity as Administrator of the U.S. General Services
5 Administration. Defendant U.S. GENERAL SERVICES ADMINISTRATION is
6 an independent establishment of the U.S. government and is legally
7 charged with complying with the Energy Policy Act, including the
8 actions sought herein. Hereinafter, Defendants Perry and U.S.
9 General Services Administration are collectively referred to as
10 "GSA."

11 27. Defendant ANTHONY J. PRINCIPI is sued in his official
12 capacity as Secretary of the U.S. Department of Veterans Affairs.
13 Defendant U.S. DEPARTMENT OF VETERANS AFFAIRS is a federal
14 executive department of the United States government and is legally
15 charged with complying with the Energy Policy Act, including the
16 actions sought herein. Hereinafter, Defendants Principi and U.S.
17 Department of Veterans Affairs are collectively referred to as
18 "DVA."

19 28. Defendant NORMAN Y. MINETA is sued in his official
20 capacity as Secretary of the U.S. Department of Transportation.
21 Defendant U.S. DEPARTMENT OF TRANSPORTATION is a federal executive
22 department of the United States government and is legally charged
23 with complying with the Energy Policy Act, including the actions

1 sought herein. Hereinafter, Defendants Mineta and U.S. Department
2 of Transportation are collectively referred to as "DOT."

3 29. Defendant RICHARD A. MESERVE is sued in his official
4 capacity as Chairman of the U.S. Nuclear Regulatory Commission.
5 Defendant U.S. NUCLEAR REGULATORY COMMISSION is an independent
6 establishment of the U.S. government and is legally charged with
7 complying with the Energy Policy Act, including the actions sought
8 herein. Hereinafter, Defendants Meserve and U.S. Nuclear
9 Regulatory Commission are collectively referred to as "NRC."

10 30. Defendant CHRISTINE T. WHITMAN is sued in her official
11 capacity as Administrator of the U.S. Environmental Protection
12 Agency. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY is an
13 executive agency of the U.S. government and is legally charged with
14 complying with the Energy Policy Act, including the actions sought
15 herein. Hereinafter, Defendants Whitman and U.S. Environmental
16 Protection Agency are collectively referred to as "EPA."

17 31. Defendant ANN M. VENEMAN is sued in her official capacity
18 as Secretary of the U.S. Department of Agriculture. Defendant U.S.
19 DEPARTMENT OF AGRICULTURE is a federal executive department of the
20 United States government and is legally charged with complying with
21 the Energy Policy Act, including the actions sought herein.
22 Hereinafter, Defendants Veneman and U.S. Department of Agriculture
23 are collectively referred to as "USDA."

1 32. Defendant TOMMY G. THOMPSON is sued in his official
2 capacity as Secretary of the U.S. Department of Health & Human
3 Resources. Defendant U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES is
4 a federal executive department of the United States government and
5 is legally charged with complying with the Energy Policy Act,
6 including the actions sought herein. Hereinafter, Defendants
7 Thompson and U.S. Department of Health & Human Resources are
8 collectively referred to as "HHS."

9 33. Defendant MEL R. MARTINEZ is sued in his official
10 capacity as Secretary of the U.S. Department of Housing and Urban
11 Development. Defendant U.S. DEPARTMENT OF HOUSING AND URBAN
12 DEVELOPMENT is a federal executive department of the United States
13 government and is legally charged with complying with the Energy
14 Policy Act, including the actions sought herein. Hereinafter,
15 Defendants Martinez and U.S. Department of Housing and Urban
16 Development are collectively referred to as "HUD."

17 34. Defendant ELAINE L. CHAO is sued in her official capacity
18 as Secretary of the U.S. Department of Labor. Defendant U.S.
19 DEPARTMENT OF LABOR is a federal executive department of the United
20 States government and is legally charged with complying with the
21 Energy Policy Act, including the actions sought herein.
22 Hereinafter, Defendants Chao and U.S. Department of Labor are
23 collectively referred to as "DOL."

1 35. Defendant COLIN L. POWELL is sued in his official
2 capacity as Secretary of the U.S. Department of State. Defendant
3 U.S. DEPARTMENT OF STATE is a federal executive department of the
4 United States government and is legally charged with complying with
5 the Energy Policy Act, including the actions sought herein.
6 Hereinafter, Defendants Powell and U.S. Department of State are
7 collectively referred to as "State."

8 36. Defendant PAUL H. O'NEILL is sued in his official
9 capacity as Secretary of the U.S. Department of Treasury.
10 Defendant U.S. DEPARTMENT OF TREASURY is a federal executive
11 department of the United States government and is legally charged
12 with complying with the Energy Policy Act, including the actions
13 sought herein. Hereinafter, Defendants O'Neill and U.S. Department
14 of Treasury are collectively referred to as "Treasury."

15 37. Defendant DANIEL R. MULVILLE is sued in his official
16 capacity as Acting Administrator of the National Aeronautics and
17 Space Administration. Defendant NATIONAL AERONAUTICS AND SPACE
18 ADMINISTRATION is an independent establishment of the U.S.
19 government and is legally charged with complying with the Energy
20 Policy Act, including the actions sought herein. Hereinafter,
21 Defendants Mulville and National Aeronautics and Space
22 Administration are collectively referred to as "NASA."

1 38. Defendant JOHN E. POTTER is sued in his official capacity
2 as Postmaster General and Chief Executive Officer of the U.S.
3 Postal Service. Defendant U.S. POSTAL SERVICE is an independent
4 establishment of the U.S. government and is legally charged with
5 complying with the Energy Policy Act, including the actions sought
6 herein. Hereinafter, Defendants Potter and U.S. Postal Service are
7 collectively referred to as "USPS."

8 **LEGAL FRAMEWORK**

9 39. The Energy Policy Act of 1992, 42 U.S.C. §§ 13201 et
10 seq., establishes a comprehensive scheme to achieve environmental,
11 economic, and national security benefits by promoting the use of
12 alternative fuels and reducing the transportation sector's
13 consumption of petroleum fuel.

14 40. The Act confronts the direct link between the level and
15 type of energy consumption and the quality of the environment. The
16 Act also embodies Congress's effort to enact a national energy
17 policy that gradually and steadily increases U.S. energy security
18 in part by reducing our use of oil-based fuels in our motor vehicle
19 sector. A barrel reduction in oil demand through substitution or
20 efficiency is at least as valuable as an additional barrel of oil
21 produced.

1 41. Congress intended the Energy Policy Act to displace
2 conventional petroleum fuel with non-petroleum energy sources,
3 focusing on light-duty motor vehicle fleet operations.

4 42. By initially focusing on federal fleets, Congress
5 intended for the federal government to pave the way for alternative
6 fuel use and fuel flexibility for society at large by demonstrating
7 the in-use practicability of the technology on a substantial scale
8 and to provide the necessary critical mass to catalyze markets into
9 supplying alternative fuels and vehicles with sufficient scale and
10 access.

11 43. In this way, the federal fleet AFV requirements would
12 plant the seeds for growth of AFV use.

13 44. Under the Act, DOE is required to develop and oversee a
14 program designed to replace 10 percent of our petroleum motor fuel
15 consumption by the year 2000 and 30 percent by the year 2010.

16 45. To achieve this purpose, the Act contains several
17 regulatory mandates directed at federal agencies. The three
18 requirements that follow are the focus of this litigation.

19 **I. Minimum Federal Fleet Percentage Requirements**

20 **A. The Fleet Requirement Program of the Energy Policy Act**

21 46. Energy Policy Act requires that at least 25 percent of
22 the total number of Energy Policy Act-covered vehicles acquired by
23 a federal fleet in fiscal year 1996 must be AFVs; at least 33

1 percent of the total number of covered vehicles acquired by a
2 federal fleet in fiscal year 1997 must be AFVs; at least 50 percent
3 of the total number of covered vehicles acquired by a federal fleet
4 in fiscal year 1998 must be AFVs; and at least 75 percent of the
5 total number of covered vehicles acquired by a federal fleet in
6 fiscal year 1999 and thereafter must be AFVs.

7 47. The Act defines a federal fleet as a group of 20 or more
8 light-duty motor vehicles located in a metropolitan area with a
9 1980 population of 250,000 or more persons, and owned, operated,
10 acquired, controlled by, or assigned to any Federal executive
11 department, military department, Government corporation,
12 independent establishment, or executive agency, the U.S. Postal
13 Service, the Congress, the courts of the U.S., or the Executive
14 office of the President.

15 48. These vehicles must be centrally fueled or capable of
16 being centrally fueled. DOE regulations define capable of being
17 centrally fueled as a vehicle that can be refueled at least 75
18 percent of its time at the location that is owned, operated, or
19 controlled by the fleet or is under contract for refueling
20 purposes.

21 49. The Energy Policy Act exempts law enforcement vehicles
22 from the Act's requirements.

23

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1 50. The Energy Policy Act exempts emergency motor vehicles
2 from the Act's requirements.

3 51. The Energy Policy Act exempts from coverage motor
4 vehicles acquired and used for military purposes that the Secretary
5 of Defense has certified to the Secretary of Energy must be exempt
6 for national security reasons.

7 52. The Energy Policy Act exempts from coverage motor
8 vehicles held for lease or rental to the general public.

9 53. The Energy Policy Act exempts from coverage motor
10 vehicles held for sale by motor vehicle dealers.

11 54. The Energy Policy Act exempts from coverage motor
12 vehicles used for motor vehicle manufacturer product evaluations or
13 tests.

14 55. The Energy Policy Act exempts nonroad vehicles, including
15 farm and construction vehicles.

16 56. The Energy Policy Act exempts from coverage motor
17 vehicles that under normal operations are garaged at personal
18 residences at night.

19 57. The Act defines "alternative fuel vehicle" as a dedicated
20 vehicle, meaning one that only operates on alternative fuel, or a
21 dual fueled vehicle, meaning a vehicle that can operate on
22 alternative fuel and gasoline or diesel.

1 58. The Act defines "alternative fuel" as: methanol;
2 denatured ethanol; and other alcohols; mixtures containing 85
3 percent or more methanol, denatured ethanol, and other alcohols
4 with gasoline or other fuels; natural gas; liquefied petroleum gas;
5 hydrogen; coal-derived liquid fuels; fuels derived from biological
6 materials; electricity; and any other fuel the Secretary determines
7 by rule is substantially not petroleum and would yield substantial
8 energy security benefits and substantial environmental benefits.

9 59. In the alternative to fulfilling the Energy Policy Act's
10 AFV acquisition requirements by purchasing AFVs, the Act provides
11 that an agency may receive one AFV credit for every 450 gallons of
12 biodiesel fuel in fuel containing at least 20 percent biodiesel by
13 volume used in vehicles that weigh more than 8,500 pounds gross
14 vehicle weight rating. Credits allocated under this section can be
15 used to satisfy up to 50 percent of an agency's AFV requirements.

16 B. The Fleet Requirement Program In Executive Order 13149

17 60. On April 21, 2000, President Clinton issued an Executive
18 Order to "ensure that the Federal Government exercises leadership
19 in the reduction of petroleum consumption through improvements in
20 fleet fuel efficiency and the use of alternative fuel vehicles
21 (AFVs) and alternative fuels." Exec. Order No. 13149, Greening the
22 Government Through Federal Fleet and Transportation Efficiency, 65
23 Fed. Reg. 24607 (Apr. 21, 2000).

1 61. Executive Order 13149 directs each agency operating 20 or
2 more vehicles in the U.S. to reduce its entire fleet's annual
3 petroleum consumption by at least 20 percent by the end of FY 2005
4 as compared with FY 1999 levels.

5 62. Executive Order 13149 directs each agency to fulfill the
6 Energy Policy Act's acquisition requirements for AFVs and to use
7 alternative fuels to meet a majority of the fuel requirements for
8 those motor vehicles by the end of FY 2005.

9 63. Executive Order 13149 requires each agency to increase
10 the average Environmental Protection Agency fuel economy rating of
11 passenger cars and light trucks acquired by at least 1 mile per
12 gallon by the end of FY 2002 and at least 3 miles per gallon by the
13 end of FY 2005 as compared to FY 1999 acquisitions.

14 64. Section 401 of Executive Order 13149 makes it easier for
15 agencies to fulfill their Energy Policy Act AFV requirements by
16 providing vehicle reporting credits for the following: each agency
17 acquisition of an alternative fuel light-duty vehicle, regardless
18 of geographic placement; one additional credit for each light-duty
19 AFV that exclusively uses an alternative fuel; one additional
20 credit for each Zero Emission Vehicle of any size; three credits
21 for dedicated medium-duty AFVs; four credits for dedicated heavy-
22 duty AFVs; and one credit for every 450 gallons of pure bio-diesel
23 used in diesel vehicles.

1 **II. Reporting Requirements**

2 65. The Energy Policy Act requires the head of each Federal
3 agency subject to the Act to prepare and submit annual reports to
4 Congress summarizing the agency's compliance with the Act's
5 alternative fuel purchasing requirements for federal fleets. This
6 summary must include a plan of compliance containing specific dates
7 when the agency will achieve compliance.

8 66. The agency must place the reports on a publicly available
9 website and notify the public of the reports' existence and
10 location through publication of this information in the Federal
11 Register.

12 **III. Private And Municipal Fleet Requirement Program**

13 67. The Energy Policy Act requires DOE to undertake a staged
14 rulemaking process to determine whether or not AFV requirements
15 must also be applied to private and local government fleets.

16 68. DOE is authorized to promulgate a rule under one of two
17 distinct rulemaking schedules to determine whether a private and
18 municipal fleet requirement is necessary.

19 69. Under the "early rulemaking" provisions, DOE must publish
20 an advance notice of proposed rulemaking to evaluate the federal
21 government's progress toward achieving the replacement fuel goals
22 of the Act and assess the achievability and adequacy of those
23 goals.

1 70. Subsequently, DOE must publish in the Federal Register a
2 proposed rule implementing a private and municipal fleet
3 requirement and provide a public comment period with hearings on
4 the proposal. DOE is then authorized to promulgate a final rule.

5 71. However, any rule DOE promulgates under this early
6 rulemaking section must be completed by December 15, 1996 to be
7 enforceable. If DOE misses this deadline or determines under this
8 section that a fleet requirement program is not necessary at the
9 time, the agency must proceed with later rulemaking.

10 72. The section of the Act concerning later rulemaking
11 provides that by April 1, 1998, the Secretary must publish an
12 advance notice of proposed rulemaking to evaluate the progress made
13 toward reaching the goals set out in section 13252(b)(2) of the Act
14 of reducing 10 percent of our petroleum motor fuel consumption by
15 the year 2000 and 30 percent by the year 2010. DOE must provide
16 for at least three regional hearings and a public comment period on
17 this advance notice.

18 73. The Act requires DOE to publish a proposed rule for a
19 fleet requirement program by May 1, 1999, with hearings and public
20 comment to follow.

21 74. By January 1, 2000, DOE must determine whether a fleet
22 requirement program applicable to private and municipal fleets is
23 necessary.

1 75. A private and municipal fleet program "shall be
2 considered necessary" if DOE determines the following: (1) the goal
3 of 30 percent replacement fuel by 2010 (or other goal if modified
4 under the proper modification procedures) is not expected to be
5 achieved without a private and municipal fleet requirement program;
6 and (2) the 30 percent goal (or goal as modified) is practicable
7 and achievable with a private and municipal fleet requirement
8 program in combination with voluntary means and other programs.

9 76. The determination that a private and municipal fleet
10 requirement is necessary can serve to modify the goal of 30 percent
11 reduction in motor fuel consumption by 2010, and establish a
12 revised goal, if DOE determines through the proper rulemaking
13 procedures that the goal in place is inadequate, impracticable, or
14 not expected to be achievable.

15 77. DOE also may modify the private and municipal fleet
16 requirement percentages for a given year, but at least 10 percent
17 of the vehicles acquired must be AFVs.

18 78. If DOE determines that a private and municipal fleet
19 requirement program is not necessary, DOE must by January 1, 2000
20 publish this determination in the Federal Register as a final
21 agency action, including an explanation of DOE's findings and basis
22 for the determination.

1 79. If DOE determines that a private and municipal fleet
2 requirement program is necessary, then DOE must by January 1, 2000
3 require by rule that certain percentages of the total number of new
4 light duty motor vehicles acquired for a fleet, (other than
5 Federal, State, or covered alternative fuel provider) must be AFVs
6 beginning in model year 2002.

7 80. Model year 2002 began on September 1, 2001.

8 81. Under the Act, the following phased-in percentages of
9 AFVs apply to private and municipal fleet vehicle acquisitions: 20
10 percent of the light duty motor vehicles acquired in model year
11 2002 must be AFVs; 40 percent in model year 2003 must be AFVs; 60
12 percent in model year 2004 must be AFVs; and 70 percent in model
13 year 2005 and thereafter must be AFVs.

14 82. If accomplished by proper rulemaking, the Secretary can
15 establish lower percentages of AFV purchasing requirements (not
16 less than 10 percent) or later years for initiating the program.

17 83. The statute permits the Secretary to extend the January
18 1, 2000 deadline for determining whether a private and municipal
19 fleet requirement is necessary for a maximum of 90 days.

20 FACTUAL BACKGROUND

21 I. Motor Vehicle Emissions Harm Public Health and The Environment

22 A. The U.S. Consumes a Significant Amount of Oil for 23 Transportation, and Significant Air Pollution Results

1 84. In 2000, the U.S. was responsible for 25 percent of the
2 world total oil consumption. In 2000, the U.S. imported
3 approximately 58 percent of its total oil demand.

4 85. According to DOE, the gap between the transportation
5 sector's demand for petroleum and U.S. petroleum production
6 continues to widen. In the transportation sector alone, U.S.
7 consumption of petroleum surpasses total U.S. domestic petroleum
8 production by 5.9 million barrels. This gap is estimated to
9 increase to 12.8 million barrels per day by the year 2020.

10 86. The transportation sector is projected to use 17.8
11 million barrels of petroleum per day by 2020. Light-duty motor
12 vehicles will use approximately ten million of these barrels.

13 87. Each year in the U.S., approximately 65 percent of the
14 oil consumed is used for transportation. As a result, vehicle
15 emissions have become the leading source of U.S. air pollution.

16 88. Transportation related activities are responsible for an
17 estimated quarter of the greenhouse gases produced in this country,
18 with the U.S. contributing approximately 20 percent of these gases
19 globally.

20 **B. Poor Air Quality From Vehicle Emissions Adversely Affects**
21 **Humans And The Environment**

22 89. The U.S. Public Health Service has determined that high
23 levels of air pollution can cause and aggravate lung illnesses,
24

1 including acute respiratory infections, asthma, chronic bronchitis,
2 emphysema, and lung cancer.

3 90. Vehicles running on petroleum emit several "criteria"
4 pollutants regulated by the U.S. EPA under the Clean Air Act,
5 including ozone, carbon monoxide (CO), nitrogen oxides (NOx),
6 sulfur oxides (SOx), and particulate matter (PM).

7 91. Emitted NOx and volatile organic compounds ("VOCs"), form
8 low-level ozone (O₃) in the presence of sunlight and high
9 temperatures.

10 92. Low-level ozone is a major component of smog, which is
11 the most serious and persistent outdoor air quality problem in the
12 San Francisco Bay Area and in other parts of the country.

13 93. In the past five years, the San Francisco Bay Area has
14 violated the National Ambient Air Quality Standard ("NAAQS") for
15 ozone twenty-nine times. As a result, EPA has reclassified the Bay
16 Area as a non-attainment area for the federal one-hour ozone
17 standard.

18 94. Even at very low levels, ground-level ozone triggers a
19 variety of health problems including aggravated asthma, reduced
20 lung capacity, and increased susceptibility to respiratory
21 illnesses like pneumonia and bronchitis.

22 95. People with respiratory problems and children are most
23 vulnerable to ozone. However, when present in high levels, ozone

1 also can affect healthy adults, especially those active outdoors.
2 Repeated exposure to ozone pollution for several months may cause
3 permanent lung damage.

4 96. Ground-level ozone interferes with the ability of plants
5 to produce and store food, which makes them more susceptible to
6 disease, insects, other pollutants, and harsh weather. Ozone
7 damages the leaves of trees and other plants, ruining the
8 appearance of cities, national parks, and recreation areas. Ozone
9 reduces crop and forest yields and increases plant vulnerability to
10 disease, pests, and harsh weather.

11 97. Motor vehicle exhaust is responsible for about 56 percent
12 of all Carbon Monoxide (CO) emissions nationwide.

13 98. Higher levels of CO generally occur in areas with heavy
14 traffic congestion. In cities, 85 to 95 percent of all CO
15 emissions may come from motor vehicle exhaust.

16 99. At high levels in the air, CO is poisonous even to
17 healthy people. CO can affect the heart and central nervous
18 system. For a person with heart disease, a single exposure to CO
19 at low levels may cause chest pain and reduce that person's ability
20 to exercise; repeated exposure may contribute to other
21 cardiovascular effects.

22 100. People who breathe high levels of CO can develop vision
23 problems, reduced ability to work or learn, reduced manual

1 dexterity, and difficulty performing complex tasks. At extremely
2 high levels, CO is poisonous and can cause death.

3 101. Nitrogen oxide (Nox) is the term used to describe a group
4 of highly reactive gases, all of which contain nitrogen and oxygen
5 in varying amounts. NOx forms from fuels burned at high
6 temperatures. Motor vehicles are a primary source of NOx.

7 102. NOx is one of the main components involved in the
8 formation of ground-level ozone. NOx also reacts to form nitrate
9 particles, acid aerosols, as well as NO₂, which also cause
10 respiratory problems. NOx contributes to the formation of acid
11 rain, nutrient overload that deteriorates water quality, and
12 visibility impairment. Lost visibility is now noted in many
13 National Parks. Furthermore, NOx reacts to form toxic chemicals
14 and contributes to global warming.

15 103. Sulfur dioxide, or SO₂, is a member of the family of
16 sulfur oxide (Sox) gases. These gases are formed when gasoline is
17 extracted from oil and when fuel that contains sulfur, including
18 oil, is burned.

19 104. According to EPA, SO₂ dissolves in water vapor to form
20 acid and interacts with other gases and particles in the air to
21 form sulfates and other products that can harm human health and the
22 environment.

23

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1 105. SO₂ contributes to respiratory illness and exacerbates
2 heart and lung diseases. SO₂ contributes to acid rain, which
3 damages trees, crops, historic buildings, and monuments. SO₂ makes
4 soils, lakes, and streams acidic. SO₂ also contributes to the
5 formation of atmospheric particles that cause visibility
6 impairment.

7 106. Particulate Matter (PM) is the term used to describe
8 particles found in the air, including dust and smoke. PM can be
9 directly emitted into the air from a variety of sources including
10 cars, trucks, and buses.

11 107. PM is associated with serious health effects, including
12 aggravated asthma, increases in respiratory symptoms like coughing
13 and difficult or painful breathing, chronic bronchitis, decreased
14 lung function, and premature death.

15 108. According to EPA, PM is the major source of haze that is
16 responsible for reducing visibility in many areas of the U.S.,
17 including our national parks. PM settles on soil and water and
18 changes their nutrient and chemical balance. PM makes lakes and
19 streams acidic, changes the nutrient balance in coastal waters and
20 large river basins, depletes the nutrients in soil, damages
21 sensitive forests and farm crops, and affects the diversity of
22 ecosystems. PM erodes and stains structures including monuments
23 and statues.

1 109. Motor vehicles also emit several hazardous pollutants
2 that EPA classifies as known or probable human carcinogens. EPA
3 estimates that mobile sources of air toxics, such as cars, trucks,
4 and buses, account for as much as half of all cancers attributed to
5 outdoor sources of air toxics.

6 110. The gasoline additive benzene, for instance, is a known
7 human carcinogen. Benzene causes leukemia and blood disorders in
8 adults. Short-term exposure to benzene can cause dizziness,
9 headaches, vomiting, unconsciousness, and, at high levels, death.

10 111. Studies also indicate an association between high traffic
11 streets and childhood cancer, including leukemia. An estimated
12 80% of benzene emissions in the U.S. originate from motor vehicles.

13 112. Children, the elderly, athletes, and people with
14 compromised immune systems suffer the worst health problems
15 associated with poor air quality. Among these individuals, poor
16 air quality causes heightened health impacts, such as difficulty
17 breathing, lowered disease-resistance, and hindered development of
18 lung capacity in children.

19 113. Air pollution is a problem that affects millions of
20 Americans. In California, for example, over ninety percent of the
21 population lives in regions adversely affected by air quality
22 problems, largely as a result of vehicle exhaust.

1 114. Long-term exposure to air pollution in the four San
2 Francisco Bay Area counties may cause an additional 208 cases of
3 cancer for every million residents, which is 208 times greater than
4 the acceptable risk of cancer caused by air pollution as
5 established by the Clean Air Act of 1990. Most of the cancer risk
6 is attributable to benzene, discussed above, and butadiene, a
7 byproduct of fuel combustion.

8 **II. Alternative Fuel Vehicles Are Better For Energy Security,
Public Health, and The Environment**

9
10 115. Displacing petroleum with alternative transportation
11 fuels reduces our dependence on imported petroleum, reduces U.S.
12 vulnerability to oil price shocks, decreases emissions of
13 greenhouse gases, criteria and toxic pollutants, and promotes
14 domestic economic development.

15 116. Substitution of petroleum-based transportation fuels
16 (gasoline and diesel) by non-petroleum-based fuels ("replacement
17 fuels," including alternative fuels such as electricity, ethanol,
18 hydrogen, liquefied petroleum gas, methanol, and natural gas) could
19 be a key means of reducing the vulnerability of the U.S.

20 transportation sector to disruptions of the petroleum supply.

21 117. The vehicles using alternative fuels work well and have
22 operating characteristics that are acceptable to a significant
23 portion of the vehicle-owning population.

1 118. Alternative fuels that have lower carbon fuel-cycles
2 than gasoline or diesel fuel also have the added benefit of
3 reducing greenhouse gas emissions.

4 119. Alternative fuels are inherently cleaner than gasoline
5 because they are chemically less complex and burn cleaner.

6 120. When used with advanced engine and emission control
7 technologies, alternative fuels burn more efficiently and thus
8 release fewer emissions from incomplete combustion. In addition,
9 because alternative fuels evaporate less readily than gasoline,
10 there are fewer evaporative emissions from the vehicle's tank,
11 limiting smog-forming emissions.

12 121. Electric vehicles, which have no internal combustion
13 engine, potentially offer the greatest emission reductions. Their
14 primary source of air pollution comes from the power plants that
15 create electricity to charge batteries. Yet even after these
16 emissions are considered, electric vehicles typically have 90
17 percent fewer emissions than an internal combustion engine.

18 **FACTS GIVING RISE TO PLAINTIFFS' CAUSES OF ACTION**

19 **I. Defendants Are In Violation Of The Act's AFV Purchasing**
20 **Requirements**

21 122. Defendant Commerce is in violation of the Energy Policy
22 Act's AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D).
23 In its response to Plaintiffs' August 10, 2001 Freedom of

1 Information Act (FOIA) request, Commerce provided no 1996
2 compliance data. On information and belief, Commerce is in
3 violation of the requirement that of the covered vehicles Commerce
4 acquired in 1996, 25 percent must be AFVs. In its response to
5 Plaintiffs' FOIA request, Commerce stated that in 1998, only 11
6 percent of the covered vehicles it acquired were AFVs rather than
7 the 50 percent required by law. In 1998, Commerce was
8 approximately 127 AFVs short of the Energy Policy Act requirement.
9 In its response to Plaintiffs' FOIA request, Commerce stated that
10 only 16 percent of the covered vehicles Commerce acquired in 1999
11 were AFVs rather than the 75 percent required by law. In 1999,
12 Commerce was approximately 227 AFVs short of the Act's requirement.
13 In its response to Plaintiffs' FOIA request, Commerce stated that
14 only 17 percent of the covered vehicles it acquired in 2000 were
15 AFVs rather than the 75 percent required by law. In 2000, Commerce
16 was approximately 76 AFVs short of the Act's requirement. In its
17 response to Plaintiffs' FOIA request, Commerce stated it only plans
18 to purchase 19 percent AFVs in 2001 and 35 percent in 2002, rather
19 than the 75 percent required for both years by the Energy Policy
20 Act.

21 123. Defendant DOD is in violation of the Energy Policy Act's
22 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). DOD
23 has not responded to Plaintiffs' FOIA request of August 10, 2001.

1 According to DOE information produced in response to Plaintiffs'
2 August 7, 2001 FOIA request to DOE, DOD stated that only 21 percent
3 of the covered vehicles DOD acquired in 1996 were AFVs rather than
4 the 25 percent required by law. In 1996, DOD was approximately 279
5 AFVs short of the Act's requirement. According to DOE information
6 produced in response to Plaintiffs' August 7, 2001 FOIA request to
7 DOE, DOD stated that only 24 percent of the covered vehicles DOD
8 acquired in 1997 were AFVs rather than the 33 percent required by
9 law. In 1997, DOD was approximately 722 AFVs short of the Act's
10 requirement. According to DOE information produced in response to
11 Plaintiffs' August 7, 2001 FOIA request to DOE, DOD stated that
12 only 33 percent of the covered vehicles DOD acquired in 1998 were
13 AFVs rather than the 50 percent required by law. In 1998, DOD was
14 approximately 1,184 AFVs short of the Act's requirement. According
15 to DOE information produced in response to Plaintiffs' August 7,
16 2001 FOIA request to DOE, DOD stated that only 36 percent of the
17 covered vehicles DOD acquired in 1999 were AFVs rather than the 75
18 percent required by law. In 1999, DOD was approximately 3,056 AFVs
19 short of the Act's requirement. According to DOE information
20 produced in response to Plaintiffs' August 7, 2001 FOIA request to
21 DOE, DOD stated that only 47 percent of the covered vehicles DOD
22 acquired in 2000 were AFVs rather than the 75 percent required by

1 law. In 2000, DOD was approximately 2,233 AFVs short of the Act's
2 requirement.

3 124. Defendant DOI is in violation of the Energy Policy Act's
4 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
5 its response to Plaintiffs' August 10, 2001 FOIA request, DOI
6 provided no 1996 compliance data. On information and belief, DOI
7 is in violation of the Act's requirement that 25 percent of the
8 covered vehicles DOI acquired in 1996 must be AFVs. In its
9 response to Plaintiffs' FOIA request, DOI stated that of the
10 covered vehicles DOI acquired in 1997, only 22 percent were AFVs
11 rather than the 33 percent required by law. In 1997, DOI was
12 approximately 7 AFVs short of the Act's requirement. In its
13 response to Plaintiffs' FOIA request, DOI stated that of the
14 vehicles it acquired in 2000, only 31 percent were AFVs rather than
15 the 75 percent required by the Act. In 2000, DOI was approximately
16 335 AFVs short of the Act's requirement.

17 125. Defendant DOJ is in violation of the Energy Policy Act's
18 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
19 its response to Plaintiffs' August 7, 2001 FOIA request, DOJ
20 claimed a 100 percent exemption from compliance in 1996.
21 Plaintiffs contend that a 100 percent exemption was not warranted
22 in 1996. On information and belief, DOJ is in violation of the
23 Act's requirement that 25 percent of the covered vehicles DOJ

1 | acquired in 1996 must be AFVs. In its response to Plaintiffs' FOIA
2 | request, DOJ claimed a 100 percent exemption from compliance in
3 | 1997. Plaintiffs contend that a 100 percent exemption was not
4 | warranted in 1997. On information and belief, DOJ is in violation
5 | of the Act's requirement that 33 percent of the covered vehicles
6 | DOJ acquired in 1997 must be AFVs. According to DOE information
7 | produced in response to Plaintiffs' August 7, 2001 FOIA request to
8 | DOE, DOJ stated that only 42 percent of the covered vehicles DOJ
9 | acquired in 1998 were AFVs rather than the 50 percent required by
10 | law. According to DOE information produced in response to
11 | Plaintiffs' August 7, 2001 FOIA request to DOE, DOJ stated that
12 | 4,791 out of the 4,828 covered vehicles DOJ purchased in 1998 were
13 | exempt for law enforcement. Plaintiffs contend that a 99.2
14 | percent exemption was not warranted in 1998. On information and
15 | belief, DOJ is in violation of the Act's requirement that of the
16 | covered vehicles DOJ acquired in 1998, 50 percent must be AFVs. In
17 | its response to Plaintiffs' FOIA request, DOJ provided insufficient
18 | data to determine whether DOJ complied with the Act's requirement
19 | that of the covered vehicles DOJ acquired in 1999, at least 75
20 | percent must be AFVs. In its response to Plaintiffs' FOIA request,
21 | DOJ stated that 4,233 out of the 4,237 covered vehicles DOJ
22 | purchased in 1999 were exempt for law enforcement. Plaintiffs
23 | contend that a 99.9 percent exemption was not warranted in 1998.

1 On information and belief, DOJ is in violation of the Act's
2 requirement that of the covered vehicles DOJ acquired in 1999, at
3 least 75 percent must be AFVs. In its response to Plaintiffs' FOIA
4 request, DOJ stated that of the covered vehicles it acquired in
5 2000, only 28 percent were AFVs rather than the 75 percent required
6 by law. In 2000, DOJ was approximately 54 AFVs short of the Act's
7 requirements.

8 126. Defendant GSA is in violation of the Energy Policy Act's
9 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
10 its response to Plaintiffs' August 10, 2001 FOIA request, GSA
11 stated that of the covered vehicles GSA acquired in 1996, only 23
12 percent were AFVs rather than the 25 percent required by law. In
13 1996, GSA was approximately 4 AFVs short of the Act's requirement.
14 In its response to Plaintiffs' FOIA request, GSA did not provide
15 any 1997 or 1998 compliance data. On information and belief, GSA
16 did not comply with the Act's requirement that 33 percent of the
17 covered vehicles GSA acquired in 1997 must be AFVs. On information
18 and belief, GSA did not comply with the Act's requirement that 50
19 percent of the covered vehicles GSA acquired in 1998 must be AFVs.
20 In its response to Plaintiffs' FOIA request, GSA stated that only
21 71 percent of the vehicles GSA acquired in 2000 were AFVs rather
22 than the 75 percent required by law. In 2000, GSA was
23 approximately 7 AFVs short of the Act's requirements.

1 127. Defendant DVA is in violation of the Energy Policy Act's
2 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
3 its response to Plaintiffs' August 10, 2001 FOIA request, DVA did
4 not provide any 1996 compliance data. On information and belief,
5 DVA is in violation of the Act's requirement that 25 percent of the
6 covered vehicles DVA acquired in 1996 must be AFVs. In its
7 response to Plaintiffs' FOIA request, DVA did not provide any 1997
8 compliance data. On information and belief, DVA is in violation of
9 the Act's requirement that 33 percent of the covered vehicles DVA
10 acquired in 1997 must be AFVs. In its response to Plaintiffs' FOIA
11 request, DVA did not provide any 1998 compliance data. On
12 information and belief, DVA is in violation of the Act's
13 requirement that 50 percent of the covered vehicles DVA acquired in
14 1998 must be AFVs. In its response to Plaintiffs' FOIA request,
15 DVA did not provide any 1999 compliance data. On information and
16 belief, DVA is in violation of the Act's requirement that 75
17 percent of the covered vehicles DVA acquired in 1999 must be AFVs.
18 In its response to Plaintiffs' FOIA request, DVA stated that only
19 22 percent of the covered vehicles DVA acquired in 2000 were AFVs
20 rather than the 75 percent required by law. In 2000, DVA was
21 approximately 662 AFVs short of the Act's requirement. In its
22 response to Plaintiffs' FOIA request, DVA stated that it only
23 planned to purchase 11 percent AFVs in 2001 rather than the 75

1 percent required by law. In its response to Plaintiffs' FOIA
2 request, DVA stated that it only planned to purchase 16 percent
3 AFVs in 2002 rather than the 75 percent required by law.

4 128. Defendant DOT is in violation of the Energy Policy Act's
5 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
6 its response to Plaintiffs' August 7, 2001 FOIA request, DOT stated
7 that only 23.2 percent of the covered vehicles DOT acquired in 1996
8 were AFVs rather than the 25 percent required by law. In 1996, DOT
9 was approximately 11 AFVs short of the Act's requirements. In its
10 response to Plaintiffs' FOIA request, DOT stated that only 24.1
11 percent of the covered vehicles DOT acquired in 1997 were AFVs
12 rather than the 33 percent required by law. In 1997, DOT was
13 approximately 56 AFVs short of the Act's requirements. In its
14 response to Plaintiffs' FOIA request, DOT stated that only 40
15 percent of the covered vehicles DOT acquired in 1998 were AFVs
16 rather than the 50 percent required by law. In 1998, DOT was
17 approximately 65 AFVs short of the Act's requirement. In its
18 response to Plaintiffs' FOIA request, DOT stated that only 53
19 percent of the covered vehicles DOT acquired in 1999 were AFVs
20 rather than the 75 percent required by law. In 1999, DOT was
21 approximately 133 AFVs short of the Act's requirement. In its
22 response to Plaintiffs' FOIA request, DOT stated that only 54
23 percent of the covered vehicles DOT acquired in 2000 were AFVs

1 rather than the 75 percent required by law. In 2000, DOT was
2 approximately 386 AFVs short of the Act's requirements.

3 129. Defendant NRC is in violation of the Energy Policy Act's
4 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
5 its response to Plaintiffs' August 7, 2001 FOIA request, NRC stated
6 that only 15 percent of the covered vehicles NRC acquired in 1996
7 were AFVs rather than the 25 percent required by law. In 1996, NRC
8 was approximately 2 AFVs short of the Act's requirement. In its
9 response to Plaintiffs' FOIA request, NRC admits that zero percent
10 of the vehicles NRC acquired in 1999 were AFVs rather than the 75
11 percent required by law. In its response to Plaintiffs' FOIA
12 request, NRC admits that of the covered vehicles NRC acquired in
13 2000, zero percent were AFVs rather than the 75 percent required by
14 law.

15 130. Defendant EPA is in violation of the Energy Policy Act's
16 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). EPA
17 has not responded to Plaintiffs' FOIA request of August 10, 2001.
18 On information and belief, EPA did not comply with the Act's
19 requirement that 25 percent of the covered vehicles EPA acquired in
20 1996 must be AFVs. According to DOE information produced in
21 response to Plaintiffs' August 7, 2001 FOIA request to DOE, EPA
22 stated that only 14 percent of the covered vehicles EPA acquired in
23 1997 were AFVs rather than the 33 percent required by law. In

1 1997, EPA was approximately 35 AFVs short of the Act's requirement.
2 According to DOE information produced in response to Plaintiffs'
3 August 7, 2001 FOIA request to DOE, EPA stated that only 35 percent
4 of the covered vehicles EPA acquired in 1998 were AFVs rather than
5 the 50 percent required by law. In 1998, EPA was approximately 22
6 AFVs short of the Act's requirement. EPA has not responded to
7 Plaintiffs' FOIA request of August 10, 2001. In response to
8 Plaintiffs' August 7, 2001 FOIA request to DOE, DOE had no 1999
9 compliance data for EPA. On information and belief, EPA did not
10 comply with the Act's requirement that 75 percent of the covered
11 vehicles EPA acquired in 1999 must be AFVs.

12 131. Defendant USDA is in violation of the Energy Policy Act's
13 AFV purchasing requirements. 42 U.S.C. § 13212.(b) (1) (A-D). USDA
14 has not responded Plaintiffs' August 10, 2001 FOIA request. On
15 information and belief, USDA did not comply with the Act's
16 requirement that 25 percent of the covered vehicles USDA acquired
17 in 1996 must be AFVs. On information and belief, USDA did not
18 comply with the Act's requirement that 33 percent of the covered
19 vehicles USDA acquired in 1997 must be AFVs. On information and
20 belief, USDA did not comply with the Act's requirement that 50
21 percent of the covered vehicles USDA acquired in 1998 must be AFVs.
22 On information and belief, USDA did not comply with the Act's

1 requirement that 75 percent of the covered vehicles USDA acquired
2 in 1999 must be AFVs.

3 132. Defendant HHS is in violation of the Energy Policy Act's
4 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
5 its response to Plaintiffs' August 10, 2001 FOIA request, HHS did
6 not provide any 1996 compliance data. On information and belief,
7 HHS did not comply with the Act's requirement that 25 percent of
8 the covered vehicles HHS acquired in 1996 must be AFVs. In its
9 response to Plaintiffs' FOIA request, HHS did not provide any 1997
10 compliance data. On information and belief, HHS did not comply
11 with the Act's requirement that 33 percent of the covered vehicles
12 HHS acquired in 1997 must be AFVs. In its response to Plaintiffs'
13 FOIA request, HHS did not provide any 1998 compliance data. On
14 information and belief, HHS did not comply with the Act's
15 requirement that 50 percent of the covered vehicles HHS acquired in
16 1998 must be AFVs. In its response to Plaintiffs' FOIA request,
17 HHS did not provide any 1999 compliance data. On information and
18 belief, HHS did not comply with the Act's requirement that 75
19 percent of the covered vehicles HHS acquired in 1999 must be AFVs.
20 In its response to Plaintiffs' FOIA request, HHS did not provide
21 any 2000 compliance data. On information and belief, HHS did not
22 comply with the Act's requirement that 75 percent of the covered
23 vehicles HHS acquired in 2000 must be AFVs.

1 133. Defendant HUD is in violation of the Energy Policy Act's
2 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). HUD
3 has not responded to Plaintiffs' August 10, 2001 FOIA request. On
4 information and belief, HUD did not comply with the Act's
5 requirement that 25 percent of the covered vehicles HUD acquired in
6 1996 must be AFVs. According to DOE information produced in
7 response to Plaintiffs' August 7, 2001 FOIA request to DOE, HUD
8 stated that zero percent of the covered vehicles HUD acquired in
9 1997 were AFVs rather than the 33 percent required by law.
10 According to DOE information produced in response to Plaintiffs'
11 August 7, 2001 FOIA request to DOE, HUD stated that zero percent
12 of the covered vehicles HUD acquired in 1998 were AFVs rather than
13 the 50 percent required by law. In 1998, HUD was approximately 1
14 AFV short of the Act's requirements. HUD has not responded to
15 Plaintiffs' FOIA request of August 10, 2001. In response to
16 Plaintiffs' August 7, 2001 FOIA request to DOE, DOE had no 1999 or
17 2000 compliance data for HUD. On information and belief, HUD did
18 not comply with the Act's requirement that 75 percent of the
19 covered vehicles HUD acquired in 1999 and 2000 must be AFVs.

20 134. Defendant DOL is in violation of the Energy Policy Act's
21 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
22 its response to Plaintiffs' August 10, 2001 FOIA request, DOL did
23 not provide any 1996 compliance data. On information and belief,
24

1 DOL is in violation of the Act's requirement that 25 percent of the
2 covered vehicles DOL acquired in 1996 must be AFVs. In its
3 response to Plaintiffs' FOIA request, DOL provided insufficient
4 information to determine whether DOL complied with the Act's
5 requirement that 75 percent of the covered vehicles DOL acquired in
6 1999 must be AFVs. On information and belief, DOL failed to comply
7 with the Act's requirement that 75 percent of the covered vehicles
8 DOL acquired in 1999 must be AFVs. In its response to Plaintiffs'
9 FOIA request, DOL provided insufficient information to determine
10 whether DOL complied with the Act's requirement that 75 percent of
11 the covered vehicles DOL acquired in 2000 must be AFVs. On
12 information and belief, DOL failed to comply with the Act's
13 requirement that 75 percent of the covered vehicles DOL acquired in
14 2000 must be AFVs.

15 135. Defendant State is in violation of the Energy Policy
16 Act's AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D).
17 State has not responded to Plaintiffs' August 14, 2001 FOIA
18 request. On information and belief, State is in violation of the
19 Act's requirement that 25 percent of the covered vehicles State
20 acquired in 1996 must be AFVs. On information and belief, State is
21 in violation of the Act's requirement that 33 percent of the
22 covered vehicles State acquired in 1997 must be AFVs. On
23 information and belief, State is in violation of the Act's

1 requirement that 50 percent of the covered vehicles State acquired
2 in 1998 must be AFVs. On information and belief, State is in
3 violation of the Act's requirement that 75 percent of the covered
4 vehicles State acquired in 1999 must be AFVs.

5 136. Defendant Treasury is in violation of the Energy Policy
6 Act's AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D).
7 Treasury has not responded to Plaintiffs' August 10, 2001 FOIA
8 request. On information and belief, Treasury is in violation of
9 the Act's requirement that 25 percent of the covered vehicles
10 Treasury acquired in 1996 must be AFVs. On information and belief,
11 Treasury is in violation of the Act's requirement that 33 percent
12 of the covered vehicles Treasury acquired in 1997 must be AFVs. On
13 information and belief, Treasury is in violation of the Act's
14 requirement that 50 percent of the covered vehicles Treasury
15 acquired in 1998 must be AFVs. On information and belief, Treasury
16 is in violation of the Act's requirement that 75 percent of the
17 covered vehicles Treasury acquired in 1999 must be AFVs. On
18 information and belief, Treasury is in violation of the Act's
19 requirement that 75 percent of the covered vehicles Treasury
20 acquired in 2000 must be AFVs.

21 137. Defendant NASA is in violation of the Energy Policy Act's
22 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In
23 its response to Plaintiffs' August 10, 2001 FOIA request, NASA did
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1 not provide any 1996 compliance data. On information and belief,
2 NASA is in violation of the Act's requirement that 25 percent of
3 the covered vehicles NASA acquired in 1996 must be AFVs. In its
4 response to Plaintiffs' FOIA response, NASA did not provide any
5 1999 compliance data. On information and belief, NASA is in
6 violation of the Act's requirement that 75 percent of the covered
7 vehicles NASA acquired in 1999 must be AFVs. In its response to
8 Plaintiffs' FOIA response, NASA did not provide any 2000 compliance
9 data. On information and belief, NASA is in violation of the Act's
10 requirement that 75 percent of the covered vehicles NASA acquired
11 in 2000 must be AFVs.

12 138. Defendant USPS is in violation of the Energy Policy Act's
13 AFV purchasing requirements. 42 U.S.C. § 13212.(b) (1) (A-D). In
14 its response to Plaintiffs' October 24, 2001 FOIA request, USPS
15 stated that 28 percent of the covered vehicles USPS acquired in
16 1997 were AFVs rather than the 33 percent required by law. In
17 1997, USPS was approximately 137 AFVs short of the Act's
18 requirement.

19 **II. All Defendants Are In Violation of The Act's Public Reporting**
20 **Requirements**

21 139. Defendant DOE has failed to place its annual federal
22 fleet AFV compliance report on a publicly available website and
23 failed to notify the public of the reports' existence and location

1 through publication of this information in the Federal Register as
2 required by Energy Policy Act section 13218. See 42 U.S.C. §
3 13218 (b) .

4 140. Defendant Commerce has failed to place its annual federal
5 fleet AFV compliance report on a publicly available website and
6 failed to notify the public of the reports' existence and location
7 through publication of this information in the Federal Register as
8 required by Energy Policy Act section 13218. See 42 U.S.C. §
9 13218 (b) .

10 141. Defendant DOD has failed to place its annual federal
11 fleet AFV compliance report on a publicly available website and
12 failed to notify the public of the reports' existence and location
13 through publication of this information in the Federal Register as
14 required by Energy Policy Act section 13218. See 42 U.S.C. §
15 13218 (b) .

16 142. Defendant DOI has failed to place its annual federal
17 fleet AFV compliance report on a publicly available website and
18 failed to notify the public of the reports' existence and location
19 through publication of this information in the Federal Register as
20 required by Energy Policy Act section 13218. See 42 U.S.C. §
21 13218 (b) .

22 143. Defendant DOJ has failed to place its annual federal
23 fleet AFV compliance report on a publicly available website and

1 failed to notify the public of the reports' existence and location
2 through publication of this information in the Federal Register as
3 required by Energy Policy Act section 13218. See 42 U.S.C. §
4 13218 (b) .

5 144. Defendant GSA has failed to place its annual federal
6 fleet AFV compliance report on a publicly available website and
7 failed to notify the public of the reports' existence and location
8 through publication of this information in the Federal Register as
9 required by Energy Policy Act section 13218. See 42 U.S.C. §
10 13218 (b) .

11 145. Defendant DVA has failed to place its annual federal
12 fleet AFV compliance report on a publicly available website and
13 failed to notify the public of the reports' existence and location
14 through publication of this information in the Federal Register as
15 required by Energy Policy Act section 13218. See 42 U.S.C. §
16 13218 (b) .

17 146. Defendant DOT has failed to place its annual federal
18 fleet AFV compliance report on a publicly available website and
19 failed to notify the public of the reports' existence and location
20 through publication of this information in the Federal Register as
21 required by Energy Policy Act section 13218. See 42 U.S.C. §
22 13218 (b) .

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1 147. Defendant NRC has failed to place its annual federal
2 fleet AFV compliance report on a publicly available website and
3 failed to notify the public of the reports' existence and location
4 through publication of this information in the Federal Register as
5 required by Energy Policy Act section 13218. See 42 U.S.C. §
6 13218 (b).

7 148. Defendant EPA has failed to place its annual federal
8 fleet AFV compliance report on a publicly available website and
9 failed to notify the public of the reports' existence and location
10 through publication of this information in the Federal Register as
11 required by Energy Policy Act section 13218. See 42 U.S.C. §
12 13218 (b).

13 149. Defendant USDA has failed to place its annual federal
14 fleet AFV compliance report on a publicly available website and
15 failed to notify the public of the reports' existence and location
16 through publication of this information in the Federal Register as
17 required by Energy Policy Act section 13218. See 42 U.S.C. §
18 13218 (b).

19 150. Defendant HHR has failed to place its annual federal
20 fleet AFV compliance report on a publicly available website and
21 failed to notify the public of the reports' existence and location
22 through publication of this information in the Federal Register as
23

1 required by Energy Policy Act section 13218. See 42 U.S.C. §
2 13218 (b) .

3 151. Defendant HUD has failed to place its annual federal
4 fleet AFV compliance report on a publicly available website and
5 failed to notify the public of the reports' existence and location
6 through publication of this information in the Federal Register as
7 required by Energy Policy Act section 13218. See 42 U.S.C. §
8 13218 (b) .

9 152. Defendant DOL has failed to place its annual federal
10 fleet AFV compliance report on a publicly available website and
11 failed to notify the public of the reports' existence and location
12 through publication of this information in the Federal Register as
13 required by Energy Policy Act section 13218. See 42 U.S.C. §
14 13218 (b) .

15 153. Defendant State has failed to place its annual federal
16 fleet AFV compliance report on a publicly available website and
17 failed to notify the public of the reports' existence and location
18 through publication of this information in the Federal Register as
19 required by Energy Policy Act section 13218. See 42 U.S.C. §
20 13218 (b) .

21 154. Defendant Treasury has failed to place its annual federal
22 fleet AFV compliance report on a publicly available website and
23 failed to notify the public of the reports' existence and location

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1 through publication of this information in the Federal Register as
2 required by Energy Policy Act section 13218. See 42 U.S.C. §
3 13218(b).

4 155. Defendant NASA has failed to place its annual federal
5 fleet AFV compliance report on a publicly available website and
6 failed to notify the public of the reports' existence and location
7 through publication of this information in the Federal Register as
8 required by Energy Policy Act section 13218. See 42 U.S.C. §
9 13218(b).

10 156. Defendant USPS has failed to place its annual federal
11 fleet AFV compliance report on a publicly available website and
12 failed to notify the public of the reports' existence and location
13 through publication of this information in the Federal Register as
14 required by Energy Policy Act section 13218, See 42 U.S.C. §
15 13218(b).

16 **III. Defendant DOE Has Violated The Act's Private And Municipal**
17 **Fleet Provisions**

18 157. Defendant DOE has missed its January 1, 2000 deadline for
19 determining through rulemaking whether a private and municipal
20 fleet requirement program is necessary to comply with the Act's
21 clean air and energy security goals.

22 158. DOE complied with the first step of the mandatory fleet
23 requirement program rulemaking by publishing an advance notice of
24

1 proposed rulemaking to evaluate the progress made toward achieving
2 the 10 and 30 percent oil consumption reduction goals of the Act as
3 required under Energy Policy Act section 13257(a)(3). Alternative
4 Fueled Vehicle Acquisition Requirements for Private and Local
5 Government Fleets, Advance Notice of Proposed Rulemaking and Notice
6 of Public Hearings, 61 Fed. Reg. 41032 (Aug. 7, 1996).

7 159. DOE held three regional hearings in Dallas, TX,
8 Sacramento, CA, and Washington, D.C. and invited the public to
9 express oral views, data, and arguments on the proposed rulemaking
10 and submit written comments. Id.

11 160. DOE was unable to meet the December 15, 1996 deadline for
12 early rulemaking. Notice of Termination of Proposed Rule, 62 Fed.
13 Reg. 19701 (Apr. 23, 1997). As a result, the Act requires DOE to
14 follow the later rulemaking procedures. Under these procedures,
15 DOE was required to begin rulemaking by April 1998, 42 U.S.C. §
16 13257(c)(c), and publish a proposed rule for a fleet requirement
17 program before May 1, 1999, with hearings and public comment to
18 follow. 42 U.S.C. §§ 13257(d).

19 161. DOE was required to issue a final rule determining
20 whether a fleet requirement program is or is not necessary by
21 January 1, 2000. Id. at §§ 13257(e)(1), 13257(f)(2), 13257(g)(1).

22 162. On April 17, 1998, DOE published an advance notice of
23 proposed rulemaking and notice of public hearings for the Act's

1 private and municipal fleet requirement. Advance Notice of
2 Proposed Rulemaking and Notice of Public Hearings, 63 Fed. Reg.
3 19372 (Apr. 17, 1998). DOE held public hearings in Los Angeles,
4 CA, Minneapolis, MN, and Washington, D.C. Id. DOE missed its May
5 1, 1999 deadline for issuing a proposed rule.

6 163. The Act authorizes the Secretary of DOE to take advantage
7 of a one-time extension of the January 1, 2000 deadline for 90
8 days, which the Secretary did on December 29, 1999. Advance Notice
9 of Proposed Rulemaking; Extension of Deadline, 65 Fed. Reg. 1831
10 (Jan. 12, 2000). As a result, DOE's final determination was due on
11 April 1, 2000. However, DOE still has not even issued the proposed
12 rule due on May 1, 1999, a deadline with no statutory provision for
13 an extension.

14 164. Even though the Energy Policy Act has no other deadline
15 extension provisions, in July 2000, DOE announced that it is
16 "pausing its rulemaking efforts regarding whether and what to
17 propose as regulatory requirements on local government and private
18 fleets with respect to alternative fueled vehicles until after
19 consultations with State and local government officials have
20 occurred." Notice of Public Workshops and Opportunity for Public
21 Comment, 65 Fed. Reg. 44987 (July 20, 2000).

22 165. In a separate publication, DOE provided the following
23 tentative timetable for complying with the fleet requirement

1 program deadlines: (1) it will meet the May 1, 1999 deadline by May
2 2001; and (2) it will meet the January 1, 2000 deadline by January
3 2002. Unified Agenda, 65 Fed. Reg. 73763, 73764 (Nov. 30, 2000).

4 **FIRST CLAIM FOR RELIEF**

5 (Violation of the Energy Policy Act, 42 U.S.C. § 13212(b)(1))

6 166. Each and every allegation set forth above in the
7 Complaint is incorporated herein, by reference.

8 167. Defendants Commerce, DOI, DOJ, GSA, DVA, DOT, NRC, EPA,
9 USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS have
10 violated the Energy Policy Act by failing to meet the Energy Policy
11 Act federal fleet acquisition requirements. 42 U.S.C. §
12 13212(b)(1). This failure constitutes agency action unlawfully
13 withheld, unreasonably delayed, and contrary to law within the
14 meaning of the APA, 5 U.S.C. § 706(1).

15 **SECOND CLAIM FOR RELIEF**

16 (Violation of the Energy Policy Act, 42 U.S.C. §13218(b)(1)-(3))

17 168. Each and every allegation set forth above in the
18 Complaint is incorporated herein, by reference.

19 169. All Defendants have failed to make AFV acquisition
20 compliance reports available to the public on the Internet and
21 notify the public of the existence and location of these reports
22 through publication of this information in the Federal Register.
23 Defendants' failure to comply with section 13218 of the Energy

1 Policy Act constitutes agency action unlawfully withheld,
2 unreasonably delayed, and contrary to law within the meaning of the
3 APA, 5 U.S.C. § 706(1).

4 **THIRD CLAIM FOR RELIEF**

5 (Violation of the Energy Policy Act, 42 U.S.C. § 13257)

6 170. Each and every allegation set forth above in the
7 Complaint is incorporated herein, by reference.

8 171. Defendant DOE has violated section 13257 of the Energy
9 Policy Act by failing to issue a proposed rule and final
10 determination on the necessity of a private and municipal fleet
11 program by May 1, 1999 and April 1, 2000 respectively as required
12 by the Energy Policy Act. Defendant's failure constitutes agency
13 action unlawfully withheld, unreasonably delayed, and contrary to
14 law within the meaning of the APA, 5 U.S.C. § 706(1).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs request that this Court enter judgment
17 providing the following relief:

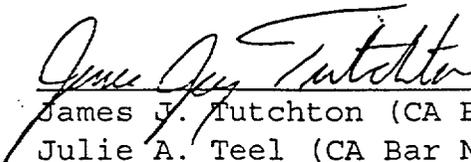
18 1. Declare that Defendants Commerce, DOI, DOJ, GSA, DVA, DOT,
19 NRC, EPA, USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS
20 are in violation of their nondiscretionary duties under 42 U.S.C. §
21 13212(b)(1).

- 1 2. Declare that all Defendants are in violation of their
2 nondiscretionary duties under 42 U.S.C. § 13218(b) of the Energy
3 Policy Act;
- 4 3. Declare that Defendant DOE is in violation of its
5 nondiscretionary duties under 42 U.S.C. § 13257 of the Energy
6 Policy Act;
- 7 4. Order Defendants Commerce, DOI, DOJ, GSA, DVA, DOT, NRC, EPA,
8 USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS to comply
9 with 42 U.S.C. § 13212(b)(1) of the Energy Policy Act.
- 10 5. Order Defendants Commerce, DOI, DOJ, GSA, DVA, DOT, NRC, EPA,
11 USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS to offset
12 future conventional vehicle purchases with the number of AFVs
13 necessary to bring Defendants into compliance with the Act's 1996,
14 1997, 1998, 1999, 2000 and 2001 percentage requirements.
- 15 6. Order all Defendants to comply with 42 U.S.C. § 13218 of the
16 Energy Policy Act;
- 17 7. Order Defendant DOE to comply with 42 U.S.C. § 13257 of the
18 Energy Policy Act;
- 19 8. Retain jurisdiction over this action to ensure compliance with
20 the Court's decree;
- 21 9. Award Plaintiffs their costs of litigation, including
22 reasonable attorneys' fees; and
- 23 10. Grant such other relief as the Court deems just and proper.

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Dated December 27, 2001.

Respectfully submitted,


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Attorneys for Plaintiffs
Center for Biological Diversity,
Bluewater Network, and Sierra Club

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

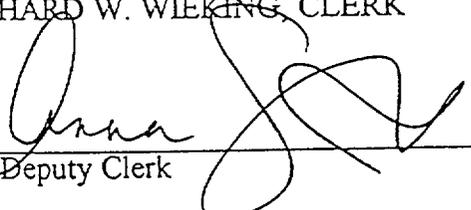
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4 NOTICE OF ASSIGNMENT OF CASE
5 TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL
6

7 Pursuant to General Order 44, the Assignment Plan of the United States District Court
8 for the Northern District of California, this case has been assigned to Magistrate Judge
9 MARIA ELENA JAMES

10 In accordance with Title 28 U.S.C. § 636(c), with written consent of the parties, the
11 magistrate judges of this district have been designated to conduct any and all proceedings in a civil
12 case, including a jury or nonjury trial and entry of a final judgment. An appeal from a judgment
13 entered by magistrate judge may be taken directly to the United States Court of Appeals in the same
14 manner as an appeal from any other judgment of the district court.

15 The plaintiff or removing party shall serve a copy of this notice upon all other parties to this
16 action pursuant to Federal Rules of Civil Procedure 4 and 5.

17
18 FOR THE COURT
19 RICHARD W. WIEKING, CLERK

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21 By: Deputy Clerk
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**INSTRUCTIONS FOR COMPLETION OF ADR FORMS
REGARDING SELECTION OF AN ADR PROCESS
(ADR L.R. 3-5)**

Under ADR L.R. 3-5, by the date set forth in the initial case management scheduling order, counsel shall meet and confer to attempt to agree on an ADR process. By that date, counsel also must file one of the two attached forms, as explained below:

- If the parties have agreed to non-binding arbitration, ENE, mediation, or private ADR, they shall file the form captioned "STIPULATION AND [PROPOSED] ORDER SELECTING ADR PROCESS / ADR CERTIFICATION."
- If the parties either have not yet reached an agreement to an ADR process or they have agreed to an early settlement conference before a magistrate judge, they shall file the form captioned "NOTICE OF NEED FOR ADR PHONE CONFERENCE [ADR L.R. 3-5] / ADR CERTIFICATION."

Please note that parties selecting an early settlement conference with a magistrate judge are required to participate in an ADR phone conference.

Under ADR L.R. 3-5(e), a copy of the applicable form must be received by the ADR Unit by the date set forth in the initial case management scheduling order. This copy may be provided in the form of a courtesy copy designated for the ADR Unit presented along with the filed original or may be submitted by fax directly to the ADR Unit at (415) 522-4112.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C

Plaintiff,

NOTICE OF NEED FOR ADR
PHONE CONFERENCE [ADR L.R. 3-5]

v.

ADR CERTIFICATION

Defendant.

The parties either:

- have not yet reached an agreement to an ADR process, or
- have tentatively agreed to a settlement conference before a magistrate judge.

Accordingly, ADR L.R. 3-5 requires a telephone conference with the ADR Director or Program Counsel before the case management conference.

Last day to file Joint Case Management Statement: _____

Date of Initial Case Management Conference: _____

The following counsel will participate in the ADR phone conference:

Name	Party Representing	Phone No.	Fax No.
------	--------------------	-----------	---------

_____	_____	_____	_____
_____	_____	_____	_____

(For additional participants, please attach a separate sheet with the above information.)

The ADR Unit will notify you by return fax indicating, in the space below, the date and time of your phone conference. Plaintiff's counsel shall initiate the call using the following number: (415) 522-4603. Please consult ADR L.R. 3-5(d).

For court use only:

ADR Phone Conference Date: _____ Time: _____ AM/PM

For scheduling concerns, call 415-522-2199.

Date: _____

ADR Case Administrator

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SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civ. L.R. 16 and ADR L.R. 3-5(b), each of the undersigned certifies that he or she has read either the handbook entitled "Dispute Resolution Procedures in the Northern District of California," or the specified portions of the ADR Unit's Internet site <www.adr.cand.uscourts.gov>, discussed the available dispute resolution options provided by the court and private entities, and considered whether this case might benefit from any of them.

(Note: This Certification must be signed by each party and its counsel.)

Dated: _____ [Typed name and signature of plaintiff]

Dated: _____ [Typed name and signature of counsel for plaintiff]

Dated: _____ [Typed name and signature of defendant]

Dated: _____ [Typed name and signature of counsel for defendant]

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C

Plaintiff,

STIPULATION AND [PROPOSED]
ORDER SELECTING ADR PROCESS

v.

ADR CERTIFICATION

Defendant.

The parties stipulate to participate in the following ADR process:

Court Processes:

Arbitration

ENE

Mediation

(To provide additional information regarding timing of session, preferred subject matter expertise of neutral, or other issues, please attach a separate sheet.)

Private Process:

Private ADR *(please identify process and provider)*

Dated: _____

Attorney for Plaintiff

Dated: _____

Attorney for Defendant

IT IS SO ORDERED:

Dated: _____

UNITED STATES DISTRICT JUDGE

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SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

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(Note: This Certification must be signed by each party and its counsel.)

Dated: _____ [Typed name and signature of plaintiff]

Dated: _____ [Typed name and signature of counsel for plaintiff]

Dated: _____ [Typed name and signature of defendant]

Dated: _____ [Typed name and signature of counsel for defendant]

APPENDIX A - JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

	CASE NO.
Plaintiff(s),	JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER
v.	
Defendant(s).	

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:
2. The principal factual issues which the parties dispute:
3. The principal legal issues which the parties dispute:
4. The other factual issues [e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue] which remain unresolved for the reason stated below and how the parties propose to resolve those issues:
5. The parties which have not been served and the reasons:
6. The additional parties which the below-specified parties intend to join and the intended time frame for such joinder:
7. The following parties consent to assignment of this case to a United States Magistrate Judge for [court or jury] trial:

ALTERNATIVE DISPUTE RESOLUTION

8. [Please indicate the appropriate response(s).]
- The case was automatically assigned to Nonbinding Arbitration at filing and will be ready for the hearing by (date) _____.
 - The parties have filed a Stipulation and Proposed Order Selecting an ADR process (specify process): _____.
 - The parties filed a Notice of Need for ADR Phone Conference and the phone conference was held on or is scheduled for _____.
 - The parties have not filed a Stipulation and Proposed Order Selecting an ADR process and the ADR process that the parties jointly request (or a party separately requests) is _____.

9. Please indicate any other information regarding ADR process or deadline.

DISCLOSURES

10. The parties certify that they have made the following disclosures *[list disclosures of persons, documents, damage computations and insurance agreements]*:

DISCOVERY

11. The parties agree to the following discovery plan *[Describe the plan e.g., any limitation on the number, duration or subject matter for various kinds of discovery; discovery from experts; deadlines for completing discovery]*:

TRIAL SCHEDULE

12. The parties request a trial date as follows:

13. The parties expect that the trial will last for the following number of days:

Dated: _____

[Typed name and signature of counsel.]

Dated: _____

[Typed name and signature of counsel.]

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

[The Court may wish to make additional orders, such as:

- a. Referral of the parties to court or private ADR process;*
- b. Schedule a further Case Management Conference;*
- c. Schedule the time and content of supplemental disclosures;*
- d. Specially set motions;*
- e. Impose limitations on disclosure or discovery;*
- f. Set time for disclosure of identity, background and opinions of experts;*
- g. Set deadlines for completing fact and expert discovery;*
- h. Set time for parties to meet and confer regarding pretrial submissions;*
- i. Set deadline for hearing motions directed to the merits of the case;*
- j. Set deadline for submission of pretrial material;*
- k. Set date and time for pretrial conference;*
- l. Set a date and time for trial.]*

Dated: _____

UNITED STATES DISTRICT/MAGISTRATE JUDGE

WAIVER OF SERVICE OF SUMMONS

TO: _____
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I acknowledge receipt of your request that I waive service of a summons in the action of _____, which is case number _____
(CAPTION OF ACTION) (DOCKET NUMBER)

in the United States District Court for the _____ District of _____ . I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____ (DATE REQUEST WAS SENT) or within 90 days after that date if the request was sent outside the United States.

DATE

SIGNATURE

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a defendant is allowed more time to answer than if the summons had

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) _____

as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.) A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) _____ District of _____ and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A - Name of individual defendant (or name of officer or agent of corporate defendant)
B - Title, or other relationship of individual to corporate defendant
C - Name of corporate defendant, if any
D - District



Dispute Resolution Procedures

in the
Northern District
of California



alternative dispute resolution program

United States District Court
450 Golden Gate Avenue • San Francisco • California • 94102

Tel: (415) 522-2199

Fax: (415) 522-4112

E-mail: ADR@cand.uscourts.gov

Internet: www.adr.cand.uscourts.gov

United States District Court



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Why does the court offer ADR?

A Message from the Judges of the U.S. District Court

It is the mission of this court to do everything it can to help parties resolve their disputes as fairly, quickly and efficiently as possible. The cases filed in our court present a wide range of issues and circumstances. No single process can be expected to meet the needs of all of these cases.

While traditional litigation can serve parties' interests well in some situations, many cases have needs that can be better met through other procedures. We offer a wide selection of non-binding alternative dispute resolution (ADR) options—each of which provides different kinds of services—so that parties can use the procedure that best fits the particular circumstances of their case.

As discussed in the following pages, ADR processes can offer numerous advantages over both formal litigation and direct negotiations between the parties. In contrast to formal litigation and direct negotiations, ADR procedures may lead to resolutions that are:

- faster
- less expensive
- more creative
- better tailored to all parties' underlying interests

We urge you to consider using an ADR process in any civil case, at any time. The court's professional ADR staff, which includes attorneys with expertise in ADR procedures, is available to help you select a suitable option or to customize an ADR procedure to meet your needs. Our ADR processes, which are governed by the court's ADR Local Rules, are available in each civil case, regardless of whether the case was assigned to a particular ADR program at filing.

This handbook informs you about:

- the benefits of ADR
- available ADR options
- selecting an appropriate ADR process
- procedures in ADR programs

To help ensure that you make informed choices, the court requires, under Civil Local Rule 16, that every attorney and client certify that they have read this handbook and considered the ADR options. Reading this handbook is not a substitute for understanding the ADR Local Rules. Be sure to consult the rules when selecting and participating in an ADR process.

We have committed substantial resources to our ADR programs because we are confident that litigants who use them conscientiously can save significant money and time and will often obtain more satisfying results.

Marilyn Hall Patel
Chief Judge
For all the Judges of the Court



How can ADR help in my case?

Most cases can benefit in some way from ADR. The various ADR processes offer different types of benefits. Each ADR process offers at least some of the following advantages over traditional litigation or direct settlement negotiations.

Produce more satisfying results

After litigating a case through trial, even the winners may feel they have lost. The costs and time commitment on both sides may be enormous. Sometimes neither side is satisfied with the result—and any relationship that may have existed between the parties is likely to have been severely strained. On the other hand, ADR may:

- ▶ help settle all or part of the dispute much sooner than trial
- ▶ permit a mutually acceptable solution that a court would not have the power to order
- ▶ save time and money
- ▶ preserve ongoing business or personal relationships
- ▶ increase satisfaction and thus result in a greater likelihood of a lasting resolution

Allow more flexibility, control and participation

In formal litigation, the court is limited in the procedures it must follow and the remedies it may award—and submitting a case to a judge or jury can be extremely risky. ADR processes are more flexible and permit parties to participate more fully and in a wider range of ways. They afford parties more control by providing opportunities to:

- ▶ tailor the procedures used to seek a resolution
- ▶ broaden the interests taken into consideration
- ▶ fashion a business-driven or other creative solution that may not be available from the court
- ▶ protect confidentiality
- ▶ eliminate the risks of litigation

Enable a better understanding of the case

In traditional litigation, sometimes the parties stop communicating directly—and it is only after a significant amount of time and expensive discovery or motions that the parties understand what is really in dispute. ADR can expedite the parties' access to information. It can also improve the quality of justice by helping the parties obtain a better understanding of their case early on. It may:

- ▶ provide an opportunity for clients to communicate their views directly and informally
- ▶ help parties get to the core of the case and identify the disputed issues
- ▶ enhance the parties' understanding of the relevant law and the strengths and weaknesses of their positions
- ▶ help parties agree to exchange key information directly

Improve case management

Attorneys in litigation sometimes find it difficult, early in the case, to devise a cost-effective case management plan, reach stipulations or narrow the dispute. An ADR neutral can help parties:

- ▶ streamline discovery and motions
- ▶ narrow the issues in dispute and identify areas of agreement and disagreement
- ▶ reach factual and legal stipulations

Reduce hostility

Due to its adversarial nature, litigation sometimes increases the level of hostility between sides, which can make communication more difficult and impede chances for settlement. In contrast, a trained ADR neutral can:

- ▶ improve the quality and tone of communication between parties
- ▶ decrease hostility between clients and between lawyers
- ▶ reduce the risk that parties will give up on settlement efforts

WHEN ADR MAY NOT BE USEFUL

Although most cases can benefit in some way from ADR, some cases might be better handled without ADR. These include suits in which:

- ▶ a party seeks to establish precedent
- ▶ a dispositive motion requiring little preparation will probably succeed
- ▶ a party needs the protections of formal litigation
- ▶ a party prefers that a judge preside over all processes

If your dispute might benefit from one or more of the listed advantages, you should seriously consider trying ADR and give careful thought to selecting the most appropriate process for your case.



Which ADR processes does the court offer?

The court sponsors four major ADR processes:

- ▶ **Arbitration** (non-binding, or binding if all parties agree)
- ▶ **Early Neutral Evaluation**
- ▶ **Mediation**
- ▶ **Settlement Conferences** conducted by magistrate judges or district judges

Each of these programs is described separately in the next few pages. Please consult the ADR Local Rules for more information. The court's ADR staff will help parties customize an ADR process to meet their needs.

The court also makes available other dispute resolution processes and encourages parties to consider retaining the services of private sector ADR providers as discussed on page 19 and in ADR Local Rule 8.

Arbitration

Goal:

The goal of court-sponsored arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The award (a proposed judgment) in a non-binding arbitration may either:

- ▶ become the judgment in the case if all parties accept it, or
- ▶ serve as a starting point for settlement discussions

Process:

At the election of the parties, either one arbitrator or a panel of three arbitrators presides at a hearing where the parties present evidence through documents, other exhibits and testimony. The application of the rules of evidence is relaxed somewhat in order to save time and money.

The process includes important, trial-like sources of discipline and creates good opportunities to assess the impact and credibility of key witnesses:

- ▶ parties may use subpoenas to compel witnesses to attend or present documents
- ▶ witnesses testify under oath, through direct and cross-examination
- ▶ the proceedings can be transcribed and testimony could, in some circumstances, be used later at trial for impeachment

Arbitrators apply the law to the facts of the case and issue a non-binding award on the merits. Arbitrators do not "split the difference" and do not conduct mediations or settlement negotiations.

Preservation of right to trial:

Either party may reject the non-binding award and request a trial *de novo* before the assigned judge, who will not know the content of the arbitration award. If no such demand is filed within the prescribed time, the award becomes the final judgment of the court and is not subject to appellate review. There is no penalty for demanding a trial *de novo* or for failing to obtain a judgment at trial that is more favorable than the arbitration award. Rejecting an arbitration award will not delay the trial date.

Parties may stipulate in advance to waive their right to seek a trial *de novo* and thereby commit themselves to be bound by the arbitration award.

The neutral(s):

The court provides the parties with a list of 10 trained arbitrators. Taking turns, the parties strike four names and rank the remaining six in order of preference. The court attempts to assign the parties' first choice.

All arbitrators on the court's panel have the following qualifications:

- ▶ admission to the practice of law for at least 10 years
- ▶ for at least five years, spent a minimum of 50 percent of professional time litigating or had substantial experience as an ADR neutral
- ▶ training by the court

Attendance:

Insurers of parties are strongly encouraged to attend the arbitration.

The following individuals are required to attend:

- ▶ clients with knowledge of the facts
- ▶ the lead trial attorney for each party
- ▶ any witnesses compelled by subpoena

Confidentiality:

The arbitration award is not admissible at a subsequent trial *de novo*, unless the parties stipulate otherwise. The award itself is sealed upon filing and may not be disclosed to the assigned judge until the court has entered final judgment in the action or the action is otherwise terminated. Recorded communications made during the arbitration may, for limited purposes, be admissible at a trial *de novo*. See 28 U.S.C. § 655(c).

Timing:

An arbitration may be requested at any time. For cases assigned at filing, the arbitration hearing is generally held within six months of filing the last responsive pleading. For later-referred cases, the hearing is generally held within 120 days after referral to arbitration. The hearing date is set by the arbitrator(s) after consultation with the parties.

Written submissions:

The parties exchange and submit written statements to the arbitrator(s) at least 10 days before the arbitration. The statements are not filed with the court.

Appropriate cases/circumstances:

All civil cases are eligible. Cases that do not meet the criteria for referral to arbitration at filing under ADR Local Rule 4-2 may not be referred to arbitration unless all parties consent in writing. Cases with the following characteristics may be particularly appropriate for arbitration:

- ▶ only monetary (and not injunctive) relief is sought
- ▶ the complaint alleges personal injury, property damage or breach of contract
- ▶ the amount in controversy is less than \$150,000
- ▶ the case turns on credibility of witnesses
- ▶ the case does not present complex or unusual legal issues

Cost:

There is no charge to the litigants.

Governing rule:

ADR Local Rule 4.

Early Neutral Evaluation

Goal:

The goals of Early Neutral Evaluation (ENE) are to:

- ▶ enhance direct communication between the parties about their claims and supporting evidence
- ▶ provide an assessment of the merits of the case by a neutral expert
- ▶ provide a “reality check” for clients and lawyers
- ▶ identify and clarify the central issues in dispute
- ▶ assist with discovery and motion planning or with an informal exchange of key information
- ▶ facilitate settlement discussions, when requested by the parties

ENE aims to position the case for early resolution by settlement, dispositive motion or trial. It may serve as a cost-effective substitute for formal discovery and pretrial motions. Although settlement is not the major goal of ENE, the process can lead to settlement.

Process:

The evaluator, an experienced attorney with expertise in the subject matter of the case, hosts an informal meeting of clients and counsel at which the following occurs:

- ▶ each side—through counsel, clients or witnesses—presents the evidence and arguments supporting its case (without regard to the rules of evidence and without direct or cross-examination of witnesses)
- ▶ the evaluator identifies areas of agreement, clarifies and focuses the issues and encourages the parties to enter procedural and substantive stipulations
- ▶ the evaluator writes an evaluation in private that includes:
 - ▶ an estimate, where feasible, of the likelihood of liability and the dollar range of damages
 - ▶ an assessment of the relative strengths and weaknesses of each party’s case
 - ▶ the reasoning that supports these assessments

- ▶ the evaluator offers to present the evaluation to the parties, who may then ask either to:
 - ▶ hear the evaluation (which must be presented if any party requests it), *or*
 - ▶ postpone hearing the evaluation to:
 - ▶ engage in settlement discussions facilitated by the evaluator, often in separate meetings with each side, *or*
 - ▶ conduct focused discovery or make additional disclosures
- ▶ if settlement discussions do not occur or do not resolve the case, the evaluator may:
 - ▶ help the parties devise a plan for sharing additional information and/or conducting the key discovery that will expeditiously equip them to enter meaningful settlement discussions or position the case for resolution by motion or trial
 - ▶ help the parties realistically assess litigation costs
 - ▶ determine whether some form of follow up to the session would contribute to case development or settlement

Preservation of right to trial:

The evaluator has no power to impose settlement and does not attempt to coerce a party to accept any proposed terms. The parties’ formal discovery, disclosure and motion practice rights are fully preserved. The confidential evaluation is non-binding and is not shared with the trial judge. The parties may agree to a binding settlement. If no settlement is reached, the case remains on the litigation track.

The neutral:

The court’s ADR staff appoints an ENE evaluator with expertise in the substantive legal area of the lawsuit, who is available and has no apparent conflict of interest. The parties may object to the evaluator if they perceive a conflict of interest.

All evaluators on the court’s panel have the following qualifications:

- ▶ admission to the practice of law for at least 15 years
- ▶ experience with civil litigation in federal court
- ▶ expertise in the substantive law of the case
- ▶ training by the court

Many evaluators also have received the court’s mediation training.

Attendance:

The following individuals are required to attend in person:

- ▶ clients with settlement authority and knowledge of the facts
- ▶ the lead trial attorney for each party
- ▶ insurers of parties, if their agreement would be necessary to achieve settlement

Requests to permit attendance by phone rather than in person, which will be granted only under extraordinary circumstances, may be made to the ADR Magistrate Judge. Clients are strongly encouraged to participate actively in the ENE session.

Confidentiality:

Communications made in connection with an ENE session ordinarily may not be disclosed to the assigned judge or to anyone else not involved in the litigation, unless otherwise agreed.

Timing:

An ENE session may be requested at any time. Usually, the time for holding the ENE session is:

- ▶ for cases in the ADR Multi-Option program (see page 27), presumptively within 90 days after the first Case Management Conference, but this date may be changed by the judge for good cause
- ▶ for other cases, generally 60-90 days after the referral to ENE, or as otherwise fixed by the court

The evaluator contacts counsel to schedule an initial telephone conference to set the date, time and location of the ENE session and to discuss how to maximize the utility of ENE.

Written submissions:

Counsel exchange and submit written statements to the evaluator at least 10 days before the ENE session. ADR Local Rule 5-9 lists special requirements for intellectual property cases. The statements are not filed with the court.

Appropriate cases/circumstances:

All civil cases are eligible if the court has an available evaluator with the appropriate subject matter expertise. Cases with the following characteristics may be particularly appropriate:

- ▶ counsel or the parties are far apart on their view of the law and/or value of the case
- ▶ the case involves technical or specialized subject matter—and it is important to have a neutral with expertise in that subject
- ▶ case planning assistance would be useful
- ▶ communication across party lines (about merits or procedure) could be improved
- ▶ equitable relief is sought—if parties, with the aid of a neutral expert, might agree on the terms of an injunction or consent decree

Cost:

The evaluator volunteers preparation time and the first four hours of the ENE session. After four hours of ENE, the evaluator may either (1) continue to volunteer his or her time or (2) give the parties the option of concluding the procedure or paying the evaluator for additional time at an hourly rate of \$200, to be split among the parties as they determine. The procedure continues only if all parties and the evaluator agree. After eight hours in one or more ENE sessions, if all parties agree, the evaluator may charge his or her hourly rate or such other rate that the parties agree to pay.

Governing rule:

ADR Local Rule 5.

Mediation

Goal:

The goal of mediation is to reach a mutually satisfactory agreement resolving all or part of the dispute by carefully exploring not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities.

Process:

Mediation is a flexible, non-binding, confidential process in which a neutral lawyer-mediator facilitates settlement negotiations. The informal session typically begins with presentations of each side's view of the case, through counsel or clients. The mediator, who may meet with the parties in joint and separate sessions, works to:

- ▶ improve communication across party lines
- ▶ help parties clarify and communicate their interests and those of their opponent
- ▶ probe the strengths and weaknesses of each party's legal positions
- ▶ identify areas of agreement and help generate options for a mutually agreeable resolution

The mediator generally does not give an overall evaluation of the case. Mediation can extend beyond traditional settlement discussion to broaden the range of resolution options, often by exploring litigants' needs and interests that may be independent of the legal issues in controversy.

Preservation of right to trial:

The mediator has no power to impose settlement and does not attempt to coerce a party to accept any proposed terms. The parties' discovery, disclosure and motion practice rights are fully preserved. The parties may agree to a binding settlement. If no settlement is reached, the case remains on the litigation track.

The neutral:

The court's ADR staff appoints a mediator who is available and has no apparent conflicts of interest. The parties may object to the mediator if they perceive a conflict of interest.

All mediators on the court's panel have the following qualifications:

- ▶ admission to the practice of law for at least 7 years
- ▶ experience in communication and negotiation techniques
- ▶ knowledge about civil litigation in federal court
- ▶ training by the court

Attendance:

The following individuals are required to attend the mediation session in person:

- ▶ clients with settlement authority and knowledge of the facts
- ▶ the lead trial attorney for each party
- ▶ insurers of parties, if their agreement would be necessary to achieve a settlement

Requests to permit attendance by phone rather than in person, which will be granted only under extraordinary circumstances, may be made to the ADR Magistrate Judge. Clients are strongly encouraged to participate actively in the mediation

Confidentiality:

Communications made in connection with a mediation ordinarily may not be disclosed to the assigned judge or to anyone else not involved in the litigation, unless otherwise agreed.

Timing:

A mediation may be requested at any time. Usually, the time for holding the mediation is:

- ▶ for cases in the ADR Multi-Option program (see page 27), presumptively within 90 days after the first Case Management Conference, but this date may be changed by the judge for good cause
- ▶ for other cases, generally 60-90 days after the referral to mediation, or as otherwise fixed by the court

The mediator contacts counsel to schedule an initial telephone conference to set the date, time and location of the mediation session and to discuss how to maximize the utility of mediation.

Written submissions:

Counsel exchange and submit written statements to the mediator at least 10 days before the mediation. The mediator may request or accept additional confidential statements that are not shared with the other side. These statements are not filed with the court.

Appropriate cases/circumstances:

All civil cases are eligible. Cases with the following characteristics may be particularly appropriate:

- ▶ the parties desire a business-driven or other creative solution
- ▶ the parties may benefit from a continuing business or personal relationship
- ▶ multiple parties are involved
- ▶ equitable relief is sought—if parties, with the aid of a neutral, might agree on the terms of an injunction or consent decree
- ▶ communication appears to be a major barrier to resolving or advancing the case

Cost:

The mediator volunteers preparation time and the first four hours of the mediation. After four hours of mediation, the mediator may either (1) continue to volunteer his or her time or (2) give the parties the option of concluding the procedure or paying the mediator for additional time at an hourly rate of \$200, to be split among the parties as they determine. The mediation continues only if all parties and the mediator agree. After eight hours in one or more mediation sessions, if all parties agree, the mediator may charge his or her hourly rate or such other rate that the parties agree to pay.

Governing Rule:

ADR Local Rule 6.

Settlement Conferences

Goal:

The goal of a settlement conference is to facilitate the parties' efforts to negotiate a settlement of all or part of the dispute.

Process:

A judicial officer, usually a magistrate judge, helps the parties negotiate. Some settlement judges also use mediation techniques to improve communication among the parties, probe barriers to settlement and assist in formulating resolutions. Settlement judges might articulate views about the merits of the case or the relative strengths and weaknesses of the parties' legal positions. Often settlement judges meet with one side at a time, and some settlement judges rely primarily on meetings with counsel.

Preservation of right to trial:

The settlement judge has no power to impose settlement and does not attempt to coerce a party to accept any proposed terms. The parties may agree to a binding settlement. If no settlement is reached, the case remains on the litigation track. The parties' formal discovery, disclosure and motion practice rights are fully preserved.

The neutral:

A magistrate judge or, in limited circumstances, a district judge conducts the settlement conference. The judge who would preside at trial does not conduct the settlement conference unless the parties stipulate in writing and the judge agrees. Parties may request a specific magistrate judge or rank several magistrate judges in order of preference. The court will attempt to accommodate such preferences.

Magistrate judges have standing orders setting forth their requirements for settlement conferences, including written statements and attendance. Questions about these issues should be directed to the chambers of the assigned magistrate judge.

Attendance:

Settlement judges' standing orders generally require the personal attendance of lead trial counsel and the parties. This requirement is waived only when it poses a substantial hardship, in which case the absent party is required to be available by telephone. Persons who attend the settlement conference are required to be thoroughly familiar with the case and to have authority to negotiate a settlement.

Confidentiality:

Communications made in connection with a settlement conference ordinarily may not be disclosed to the assigned judge or to anyone else not involved in the litigation, unless otherwise agreed.

Timing:

The assigned judge may refer a case to a magistrate judge for a settlement conference at any time. The timing of the settlement conference depends on the schedule of the assigned magistrate judge.

Written submissions:

Written settlement conference statements, when required, are submitted directly to the settlement judge. The statements are not filed with the court.

Appropriate cases/circumstances:

All civil cases are eligible. Cases with the following characteristics may be particularly appropriate:

- ▶ a client or attorney prefers to appear before a judicial officer
- ▶ issues of procedural law are especially important
- ▶ a party is not represented by counsel

Cost:

There is no charge to the litigants.

Governing rule:

ADR Local Rule 7.

Other ADR Processes

Customized ADR Processes

The court's ADR staff will work with parties to customize an ADR process to meet the needs of their case or to design an ADR process for them. An ADR staff member is available for a telephone conference with all counsel to discuss ADR options. Clients are invited to join such conferences.

Non-binding Summary Bench or Jury Trial

The ADR staff can help parties structure a non-binding summary bench or jury trial under ADR Local Rule 8-1. A summary bench or jury trial is a flexible, non-binding process designed to:

- ▶ promote settlement in complex, trial-ready cases headed for long trials
- ▶ provide an advisory verdict after an abbreviated presentation of evidence
- ▶ offer litigants a chance to ask questions and hear the reactions of the judge and/or jury
- ▶ trigger settlement negotiations based on the judge's or jury's non-binding verdict and reactions

Special Masters

The assigned judge may appoint a special master, whose fee is paid by the parties, to serve a wide variety of functions, including:

- ▶ discovery manager
- ▶ fact-finder
- ▶ host of settlement negotiations
- ▶ post-judgment administrator or monitor

Private ADR Providers

The court encourages parties to consider private sector ADR providers who offer services including arbitration, mediation, fact-finding, neutral evaluation and private judging. Private providers may be lawyers, law professors, retired judges or other professionals with expertise in dispute resolution techniques. They generally charge a fee.



Which is the most suitable ADR process for my case?

Each ADR process meets different needs and circumstances. When selecting an ADR process, you should carefully consider the needs of your particular case or situation and identify the goals you hope to achieve through ADR. Then select the ADR process that appears to maximize the potential for achieving your goals.

The chart on the next page may help you select an ADR process. The chart summarizes the court's general observations about the major benefits of ADR and the extent to which the court's four major ADR processes are likely to accomplish them. These are generalizations that the court believes are accurate in many, but not all, cases. The likelihood that a particular ADR process will deliver a benefit depends not only on the type of process, but on numerous other factors including: the style of the neutral; the type and procedural posture of the case; and the parties' and counsel's attitudes and personalities, level of preparation, and experience with the particular ADR process. The court's ADR staff is available to help you select or customize an ADR process to meet your needs.

What if I don't have a lawyer?

If you are not represented by a lawyer, the court generally suggests that you select the option of a magistrate judge settlement conference where your questions and concerns can be addressed directly by a judge who has experience working with unrepresented parties. Volunteer mediators, evaluators, and arbitrators, who take only a few cases each year, sometimes feel uncomfortable working with unrepresented parties, making it more difficult to place your case in these programs and potentially slowing down the process. If you do select mediation, ENE, or non-binding arbitration and we are unable to find a suitable neutral, your case will be re-directed to a settlement conference with a magistrate judge.

How likely is each ADR Process to deliver the specific benefit?

● = Very likely ◐ = Somewhat likely ○ = Unlikely

Arbitration
ENE
Mediation
Settlement Conference

ENHANCE PARTY SATISFACTION

Help settle all or part of dispute	○ ₁	◐ ₂	●	● ₃
Permit creative/business driven solution that court could not offer	○	◐ ₂	●	◐ ₃
Preserve personal or business relationships	○ ₁	◐ ₂	●	◐ ₃
Increase satisfaction and thus improve chance of lasting solution	○ ₁	◐ ₂	●	◐ ₃

ALLOW FLEXIBILITY, CONTROL AND PARTICIPATION

Broaden the interests taken into consideration	N/A	◐ ₂	●	◐ ₃
Protect confidentiality	◐ ₄	●	●	●
Provide trial-like hearing	●	N/A	N/A	N/A
Provide opportunity to appear before judicial officer	N/A	N/A	N/A	●

IMPROVE CASE MANAGEMENT

Help parties agree on further conduct of the case	N/A	●	◐ ₅	◐ ₃
Streamline discovery and motions	N/A	●	◐	◐ ₃
Narrow issues and identify areas of agreement	N/A	●	● ₅	●
Reach stipulations	N/A	●	◐ ₅	●

IMPROVE UNDERSTANDING OF CASE

Help get to core of case and sort out issues in dispute	◐	●	●	●
Provide neutral evaluation of case	●	●	○	◐ ₃
Provide expert in subject matter	◐ ₆	●	◐ ₆	◐ ₆
Help parties see strengths and weaknesses of positions	●	●	●	●
Permit direct and informal communication of clients' views	○	◐	●	○ ₃
Provide opportunity to assess witness credibility and performance	●	◐ ₇	◐ ₇	○
Help parties agree to an informal exchange of key information	○	●	◐ ₅	◐ ₃

REDUCE HOSTILITY

Improve communications between parties/attorneys	○ ₁	●	●	◐ ₃
Decrease hostility	○	●	●	◐ ₃

Notes:

1. Arbitration may provide this benefit when the award triggers or contributes to settlement discussions.
2. ENE may provide this benefit when the parties use it for settlement discussions. Many of the court's ENE evaluators also have been trained as mediators.
3. Depending on the settlement judge's particular style, a settlement conference may or may not deliver this benefit.
4. The arbitration award may not be disclosed to the assigned trial judge until the action is terminated. Although the award is not admissible at a trial *de novo*, recorded communications made during the arbitration may be admissible for limited purposes.
5. Mediations may deliver this benefit, but they focus primarily on settlement.
6. Depending on the subject matter of the dispute, the neutral may have expertise.
7. This benefit may result if the parties participate actively in the joint session.



What else do I need to know?

How do I get my case into an ADR Process?

There are three ways cases can enter an ADR process:

At filing

Some cases are presumptively assigned at filing to arbitration. *See* ADR Local Rules 2-3 and 4-2. Other cases are assigned at filing to the ADR Multi-Option Program. *See* page 27 and ADR Local Rules 2-3 and 3-3.

By stipulation/proposed order

Counsel may file a stipulation and proposed order with the assigned judge. *See* ADR Local Rule 2-3(b).

By other order of the court

The assigned judge may order the case into an ADR program at the request of a party or on the judge's own initiative. *See* Local Rule 2-3(b).

What if my case is assigned at filing to arbitration but I'd prefer a different ADR process?

If your case was assigned to arbitration at filing and you would prefer a different ADR process, you may switch processes if the assigned judge so orders, pursuant to the request of one party or stipulation of all parties. You must submit this request within 60 days after the case was filed or within 20 days of the defendant's first appearance. *See* ADR Local Rule 4-2(c).

When can I get my case into an ADR Process?

At any time

Counsel, individually or jointly, can request an ADR referral at any time. The court encourages the use of ADR as early as it can be helpful.

Before the Case Management Conference

If all parties agree on an ADR process before the initial Case Management Conference, which usually occurs about 120 days after filing, you should submit a stipulation and proposed order identifying the process selected and the time frame you prefer.

At the Case Management Conference

If all parties have not yet agreed on an ADR process before the initial Case Management Conference, you will discuss ADR with the judge at the conference. You are asked to state your ADR preferences in the Joint Case Management Statement you file before that conference.

When is the best time to use ADR and how much discovery should I first complete?

You should consider using ADR early, whether you are seeking assistance with settlement or case management. Conducting full-blown discovery before an ADR session may negate potential cost savings. If you are using ADR for settlement purposes, you should know enough about your case to assess its value and identify its major strengths and weaknesses.

Will ADR affect my case's status on the trial track or disclosure and discovery?

Assignment to an ADR process generally does not affect the status of your case in litigation. Disclosure, discovery and motions are not stayed during ADR proceedings unless the court orders otherwise. Judges sometimes postpone case management or status conferences until after the parties have had an ADR session. If your case does not settle through ADR, it remains on the litigation track.

How might ADR be better than the parties meeting on their own?

Getting settlement discussions started

Sometimes advocates are reluctant to initiate settlement discussions. The availability of multiple ADR options and the ADR staff allows a party to explore settlement potential without indicating any litigation weakness.

Saving time and money

For various reasons, direct settlement discussions often do not occur until late in the lawsuit after much time and money have been spent. A substantial amount of time and money can be saved if parties actively explore settlement early in the pretrial period. An ADR process can provide a safe and early opportunity to discuss settlement.

Providing momentum and a “back up”

Often parties successfully negotiate an early resolution to their dispute on their own. Even if you are negotiating a settlement without the assistance of a neutral, you should still consider having your case referred to an ADR process to use as a “back up” in the event the case does not settle. Meanwhile, knowing that you have a date for the ADR process may help provide momentum and a “deadline” for your direct settlement discussions.

Overcoming obstacles to settlement

The adversarial nature of litigation often makes it difficult for counsel and parties to negotiate a settlement effectively. An ADR neutral can help overcome barriers to settlement by selectively using information from each side to:

- ▶ help parties engage in productive dialogue
- ▶ help each party understand the other side’s views and interests
- ▶ communicate views or proposals in more palatable terms
- ▶ gauge the receptiveness of proposals
- ▶ help parties realistically assess their alternatives to settlement
- ▶ help generate creative solutions

Improving case management

Discovery can be broad and expensive and sometimes fails to focus on the most important issues in the case. An early meeting with a neutral such as an ENE evaluator may help parties agree to a focused, cost-effective discovery plan or may help them agree to exchange information informally.

Won’t I risk giving away my trial strategy in ADR?

About 98 percent of civil cases in our court are resolved without a trial. If you don’t raise your best arguments in settlement discussions, you risk failing to achieve the best result for your side. Although you need not reveal in an ADR session sensitive information related to trial strategy, you might find it useful to raise it in a confidential separate session with the neutral (available after the evaluator prepares the evaluation in ENE, or at any time in mediation or a settlement conference). You can then hear the neutral’s views of the significance of the information and whether or when sharing it with the other side may benefit you in the negotiations.

What is the ADR Multi-Option Program?

If your case is assigned automatically to the ADR Multi-Option program governed by ADR Local Rule 3, you will be notified on the initial case management scheduling order. In this program, you are presumptively required to participate in one non-binding ADR process offered by the court or, with the assigned judge’s permission, in an ADR process offered by a private provider.

We encourage you to discuss ADR with the other side and stipulate to an ADR process as early as feasible. If you do not stipulate early, you may be required to participate in a joint telephone conference with an ADR staff member to consider suitable ADR options for your case. If you have not stipulated before your case management conference, you will discuss ADR with the judge who may refer you to one of the court’s ADR processes.

What is an ADR Phone Conference and how do I schedule one?

During ADR Phone Conferences, the court’s ADR staff helps counsel select or customize an ADR process that meets the needs of the parties. Clients are encouraged to participate. You may contact the ADR Unit to schedule an ADR Phone Conference.



Where can I get more information?

Website

Our website at www.adr.cand.uscourts.gov contains information about the court's ADR Programs, including the contents of this ADR handbook, the ADR Local Rules, and an application to serve as a neutral.

Clerk's Office

You may obtain copies of this handbook and the ADR Local Rules from the intake counter at the Clerk's Office. The phone number of the Clerk's Office in San Francisco is (415) 522-2000.

Court Library

The court's library on the 18th floor of the Federal Building and United States Courthouse in San Francisco is open to counsel and clients who have cases pending before the court. The library has a collection of resources on ADR. The collection includes an "ENE Handbook," which was prepared by the court for evaluators, but which might be helpful to counsel and clients with cases in ENE. The library's telephone number is (415) 436-8130.

ADR Unit

For information about selecting an ADR process or customizing one for your case, conflicts of interest, becoming a neutral or for other information, contact:

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